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REPORTS OF CASES

DETERMINED IN THE

SUPREME COURT

OF THE

PHILIPPINES

FROM

JANUARY 13, 2016 TO JANUARY 20, 2016

SUPREME COURT
MANILA
2017

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

FIRST DIVISION

[A.M. No. P-15-3344. January 13, 2016]
(Formerly OCA IPI No. 14-4276-P)

ANTONIO A. FERNANDEZ, *complainant, vs.* **MILA A. ALERTA, Court Stenographer III, Regional Trial Court, Branch 68, Dumangas, Iloilo**, *respondent.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; PUBLIC OFFICERS; COURT PERSONNEL; PROHIBITION AGAINST ENGAGING IN PRIVATE BUSINESS OR VOCATION WITHOUT PRIOR APPROVAL OF THE COURT OR "MOONLIGHTING"; PROPER PENALTY.—** In a number of administrative cases, officers and employees of the judiciary engaging in any private business, vocation or profession without prior approval of the Court were adjudged guilty of "moonlighting." Under the Revised Rules on Administrative Cases in the Civil Services, "moonlighting" is denominated as the light offense of "[t]he pursuit of a private business or vocation without the permission required under Civil Service rules and regulations." It is punishable by reprimand for the first offense, suspension from office for a period of one (1) to thirty (30) days for the second offense, and dismissal from service for the third offense. In this case, respondent's administrative liability for "moonligliting" remains undisputed as she, in fact, readily admitted that she endeavored to process the transfer of OCT No. T-11566 in

complainant's name as agreed upon by them. Evidently, such task is not part of her duties as court stenographer. x x x

2. ID.; ID.; ID.; ID.; RESPONDENT'S ENGAGEMENT WAS CLEARLY IN PURSUIT OF A PRIVATE BUSINESS VENTURE, AKIN TO THE SERVICES OFFERED BY REAL ESTATE BROKERS.— On the other hand, respondent's engagement was clearly in pursuit of a private business venture, akin to the services offered by real estate brokers. In dealing and transacting with external government agencies, more particularly, the Registry of Deeds, she had not only expended time and effort which should have been devoted to the performance of her official functions, but she had also tainted the integrity of her office by giving, at the very least, the impression that she could have wielded her authority or influence in exchange for unofficial favors. Overall, absent any showing that such conduct was permitted, she violated the rule against "moonlighting" and hence, being her first infraction therefor, should be meted with the penalty of reprimand, with a stern warning that a commission of the same or similar acts in the future shall be dealt with more severely. Indeed, case law dictates that officials and employees of the judiciary must serve with the highest degree of responsibility and integrity and are enjoined to conduct themselves with propriety even in private life, as any reproach to them is bound to reflect adversely on their office. As such, they are prohibited from engaging directly in any private business, vocation, or profession even outside office hours to ensure full-time service so that there may be no undue delay in the administration of justice and in the disposition of cases as required by prevailing rules.

R E S O L U T I O N

PERLAS-BERNABE, *J.*:

This administrative case stemmed from the judicial-affidavit[1] filed by complainant Antonio A. Fernandez (complainant) before the Office of the Court Administrator (OCA), charging

[1] Attached in a letter dated April 2, 2014; *rollo,* pp. 1-6.

respondent Mila A. Alerta (respondent), Court Stenographer III of the Regional Trial Court of Dumangas, Iloilo, Branch 68 (RTC) with Grave Misconduct, Dishonesty, and violation of Republic Act No. 3019,[2] otherwise known as "Anti-Graft and Corrupt Practices Act."

The Facts

On October 18, 1993, complainant engaged the services of respondent to cause the transfer to the former's name the Original Certificate of Title (OCT) No. T-11566, which covers the parcel of land he bought from one Ma. Fema M. Arones (Arones).[3] According to complainant, he gave respondent original copies of the following documents to facilitate the transfer; *(a)* deed of absolute sale; *(b)* capital gains tax certificate; *(c)* OCT No. T-11566; and *(d)* tax declaration,[4] as evidenced by an acknowledgement receipt,[5] and paid respondent the amount of ₱15,000.00 for his services for which the latter did not issue any receipt.[6]

After over nineteen (19) years, however, respondent still had not caused the transfer of the title to complainant's name.[7] Thus, in letters dated February 17, 2014[8] and March 3, 2014,[9] complainant, through his counsel, demanded the return of the documents previously transmitted to respondent, but to no avail. Hence, complainant was constrained to institute the present administrative case.

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[2] Approved on August 17, 1960.

[3] *Rollo,* p. 2.

[4] *Id.*

[5] *Id*. at 11.

[6] *Id*. at 3.

[7] *Id*.

[8] *Id*. at 7-8.

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

In her Comment,[10] respondent admitted that she was engaged by complainant to process the transfer of OCT No. T-11566 in his name and received the documents relative thereto, but denied receipt of the amount of ₱15,000.00 for her alleged services.[11] She clarified that the sale from Arones actually covered three (3) parcels of land, and that she was able to complete the transfer of two (2) parcels of land as early as 1994.[12] With respect to the third parcel of land covered by OCT No. T-11566, respondent explained that she could not facilitate its transfer to complainant's name because the latter failed to pay the capital gains tax due thereon, and that, due to her change of residence and the heavy workload at the RTC, she inadvertently forgot about it until she was reminded of it by complainant sometime in 2013.[13] She initially thought that she had lost the original copy of OCT No. T-11566, but after diligent search, was able to find it and thereafter, tried to return it to complainant who was, however, nowhere to be found.[14]

The Report and Recommendation of the OCA

In a Memorandum[15] dated March 10, 2015, the OCA recommended that respondent be found guilty of Simple Misconduct and thus, be suspended from office for a period of one (1) month and one (1) day, with a stern warning that a repetition of the same or similar offense shall be dealt with more severely.

The OCA observed that respondent's administrative liability is undisputed in light of her admission that she agreed to cause the transfer of the property covered by OCT No. T-11566 in

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[10] Dated June 30, 2014. *Id.* at 15-17.

[11] *Id.* at 15.

[12] *Id.*

[13] *Id.* at 15-16.

[14] *Id.*

[15] *Id.* 33-36. Signed by Court Administrator Jose Midas P. Marquez and Deputy Court Administrator Raul Bautista Villanueva.

complainant's name, which is not among her duties as court stenographer.[16] It remarked that respondent was engaged in "moonlighting", considering the fact that processing of transfer of properties requires transacting with government offices, such as the Registry of Deeds, only during office hours. Finally, it emphasized that officials and employees of the judiciary are prohibited from engaging directly in any private business, vocation, or profession even outside office hours to ensure full-time service and avoid undue delay in the administration of justice and in the disposition of cases.

The Issue Before the Court

The sole issue for the Court's resolution is whether or not respondent should be held administratively liable.

The Court's Ruling

The Court concurs with the OCA's findings except as to its recommended penalty.

In a number of administrative cases, officers and employees of the judiciary engaging in any private business, vocation or profession without prior approval of the Court were adjudged guilty of "moonlighting."[17]

Under the Revised Rules on Administrative Cases in the Civil Services, "moonlighting" is denominated as the light offense of "[t]he pursuit of a private business or vocation without the permission required under Civil Service rules and regulations." It is punishable by reprimand for the first offense, suspension from office for a period of one (1) to thirty (30) days for the second offense, and dismissal from service for the third offense.[18]

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[16] *Id*. at 35.

[17] See *Cortez v. Soria,* 434 Phil. 793 (2002); *Abeto v. Garcesa,* 321 Phil. 931 (1995); and *Biyaheros Mart Livelihood Association, Inc. v. Cabusao, Jr.,* A.M. No. P-93-811, June 2, 1994, 232 SCRA 707.

[18] Section 46 (F) (16).

In this case, respondent's administrative liability for "moonligliting" remains undisputed as she, in fact, readily admitted that she endeavored to process the transfer of OCT No. T-11566 in complainant's name as agreed upon by them. Evidently, such task is not part of her duties as court stenographer which, under Administrative Circular No. 24-90[19] dated July 12, 1990, in relation to Section 17, Rule 136 of the Rules of Court, are generally limited to the following:

(a) transcribing stenographic notes and attaching the same to the records of the case not later than twenty (20) days from the time the notes were taken;

(b) accomplishing a verified monthly certification which monitors their compliance with this duty; and

(c) delivering all notes taken during the court's sessions to the clerk of court.[20]

On the other hand, respondent's engagement was clearly in pursuit of a private business venture, akin to the services offered by real estate brokers. In dealing and transacting with external government agencies, more particularly, the Registry of Deeds, she had not only expended time and effort which should have been devoted to the performance of her official functions, but she had also tainted the integrity of her office by giving, at the very least, the impression that she could have wielded her authority or influence in exchange for unofficial favors. Overall, absent any showing that such conduct was permitted, she violated the rule against "moonlighting" and hence, being her first infraction therefor, should be meted with the penalty of reprimand, with a stern warning that a commission of the same or similar acts in the future shall be dealt with more severely.

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[19] Entitled "REVISED RULES ON TRANSCRIPTION OF STENOGRAPHIC NOTES AND THEIR TRANSMISSION TO APPELLATE COURTS."

[20] See *De Guzman v. Bagadiong,* 350 Phil. 227, 232-233 (1998).

Indeed, case law dictates that officials and employees of the judiciary must serve with the highest degree of responsibility and integrity and are enjoined to conduct themselves with propriety even in private life, as any reproach to them is bound to reflect adversely on their office.[21] As such, they are prohibited from engaging directly in any private business, vocation, or profession even outside office hours to ensure full-time service so that there may be no undue delay in the administration of justice and in the disposition of cases as required by prevailing rules.[22]

WHEREFORE, respondent Mila A. Alerta, Court Stenographer III, Regional Trial Court of Dumangas, Iloilo, Branch 68, is adjudged **GUILTY** of the light offense of engaging in private business or vocation without the prior approval of the Court, for which she is hereby **REPRIMANDED.** Further, she is **STERNLY WARNED** that a commission of the same or similar acts will be dealt with more severely.

Let a copy of this Resolution be attached to her 201 file.

SO ORDERED.

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

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[21] *Benavidez v. Vega,* 423 Phil. 437, 441 (2001).

[22] See *id*.

FIRST DIVISION

[G.R. No. 168078. January 13, 2016]

FABIO CAHAYAG and CONRADO RIVERA, *petitioners, vs.* **COMMERCIAL CREDIT CORPORATION, represented by its President, LEONARDO B. ALEJANDRO; TERESITA T. QUA, assisted by her husband ALFONSO MA. QUA; and the REGISTER OF DEEDS OF LAS PIÑAS, METRO MANILA, DISTRICT IV,** *respondents.*

[G.R. No. 168357. January 13, 2016]

DULOS REALTY & DEVELOPMENT CORPORATION, represented by its President, JUANITO C. DULOS; and MILAGROS E. ESCALONA, and ILUMINADA D. BALDOZA, *petitioners, vs.* **COMMERCIAL CREDIT CORPORATION, represented by its President, LEONARDO B. ALEJANDRO; TERESITA T. QUA, assisted by her husband ALFONSO MA. QUA; and the REGISTER OF DEEDS OF LAS PIÑAS, METRO MANILA, DISTRICT IV,** *respondents.*

SYLLABUS

1. **CIVIL LAW; CIVIL CODE; CONTRACTS; INTERPRETATION OF CONTRACTS; *CONTRA PROFERENTEM* RULE; FINDS NO APPLICATION IN CASE AT BAR; THE REAL ESTATE MORTGAGE CLEARLY ESTABLISHES THAT THE IMPROVEMENTS FOUND ON THE REAL PROPERTIES LISTED THEREIN ARE INCLUDED AS SUBJECT-MATTER OF THE CONTRACT.—** It is true that the List of Properties attached to the Deed of Real Estate Mortgage refers merely to the lands themselves and does not include the housing units found thereon. A plain reading of the Real Estate Mortgage, however, reveals that it covers the **housing units** as well. x x x Thus, the housing units would fall under the catch-all phrase **"together with all the buildings and/or other improvements now existing or which may**

hereafter be placed or constructed thereon." The *contra proferentem* rule finds no application to this case. The doctrine provides that in the interpretation of documents, ambiguities are to be construed against the drafter. By its very nature, the precept assumes the existence of an ambiguity in the contract, which is why *contra proferentem* is also called the ambiguity doctrine. In this case, the Deed of Real Estate Mortgage *clearly* establishes that the improvements found on the real properties listed therein are included as subject-matter of the contract. It covers not only the real properties, but the buildings and improvements thereon as well.

2. **ID.; ID.; ID.; THE CONTRACTS TO SELL AND DEED OF ABSOLUTE SALE COULD NOT HAVE POSED AN IMPEDIMENT AT ALL TO THE MORTGAGE, GIVEN THAT SAID CONTRACTS HAD YET TO MATERIALIZE WHEN THE MORTGAGE WAS CONSTITUTED.—** There was neither a contract to sell nor a deed of absolute sale to speak of when the mortgage was executed. Petitioners equate a contract to sell to a contract of sale, in which the vendor loses ownership over the property upon its delivery. But a contract to sell, standing alone, does not transfer ownership. At the point of perfection, the seller under a contract to sell does not even have the obligation to transfer ownership to the buyer. The obligation arises only when the buyer fulfills the condition: *full payment of the purchase price.* In other words, the seller retains ownership at the time of the execution of the contract to sell. There is no evidence to show that any of petitioners Cahayag, Rivera and Escalona were able to effect full payment of the purchase price, which could have at least given rise to the obligation to transfer ownership. Petitioners Cahayag and Rivera even admit that they defaulted on their obligations under their respective Contracts to Sell, although they attribute the default to respondent Qua's "harassment and unlawful actuations." The statement, though, was a mere allegation that was left unsubstantiated and, as such, could not qualify as proof of anything.

3. **ID.; ID.; ID.; MORTGAGE; REGISTRATION OF THE MORTGAGE BOUND THE BUYERS UNDER THE CONTRACTS TO SELL.—** Registration of the mortgage establishes a real right or lien in favor of the mortgagee, as provided by Articles 1312 and 2126 of the Civil Code. Corollary to the rule, the lien has been treated as "inseparable from the

property inasmuch as it is a right in rem." In other words, it binds third persons to the mortgage. The purpose of registration is to notify persons other than the parties to the contract that a transaction concerning the property was entered into. Ultimately, registration, because it provides constructive notice to the whole world, makes the certificate of title reliable, such that third persons dealing with registered land need only look at the certificate to determine the status of the property. In this case, the Real Estate Mortgage over the property was registered on 3 February 1981. On the other hand, the Contracts to Sell were all executed after the registration of the mortgage. The Contract to Sell in favor of petitioner Cahayag was executed on 29 March 1981, or almost two months *after* the registration of the mortgage. The corresponding Contract to Sell in favor of Rivera was executed only on 12 August 1981, roughly six months after the registration of the mortgage contract. Lastly, the Contract to Sell in favor of Escalona was executed on 13 January 1983, or nearly two years *after* the registration of the mortgage on 3 February 1981. Consequently, petitioners Cahayag, Rivera and Escalona, were bound to the mortgage executed between mortgagor Dulos Realty and mortgagee CCC, by virtue of its registration. Definitely, the buyers each had constructive knowledge of the existence of the mortgage contract when they individually executed the Contracts to Sell.

4. ID.; ID.; ID.; ID.; CASE OF *DELA MERCED V. GSIS* IS NOT APPLICABLE IN CASE AT BAR.— But *Dela Merced* is not relevant here. *Dela Merced* involved a Contract to Sell that was executed *prior* to the mortgage, while the Contracts to Sell in this case were all executed *after* the constitution and registration of the mortgage. In *Dela Merced*, since GSIS had knowledge of the contract to sell, this knowledge was equivalent to the registration of the Contract to Sell. Effectively, this constitutes registration canceled out the subsequent registration of the mortgage. In other words, the buyer under the Contract to Sell became the first to register. Following the *priority in time* rule in civil law, the lot buyer was accorded preference or priority in right in *Dela Merced*. In this case, the registration of the mortgage, which predated the Contracts to Sell, already bound the buyers to the mortgage. Consequently, the determination of good faith does not come into play. *Dela Merced* materially differs from this case on another point. The Contract to Sell in favor of Dela Merced was followed **by full payment**

of the price and execution of the Deed of Absolute Sale. In this case, the Contract to Sell in favor of each of petitioners Cahayag, Rivera and Escalona, is not coupled with full payment and execution of a deed of absolute sale.

5. **ID.; ID.; ID.; ID.; EXTRAJUDICIAL FORECLOSURE OF MORTGAGE; ONE-YEAR REDEMPTION PERIOD; GENERAL RULE; EXCEPTION.—** When it comes to extrajudicial foreclosures, the law grants mortgagors or their successors-in-interest an opportunity to redeem the property within one year from the date of the sale. The one-year period has been jurisprudentially held to be counted from the registration of the foreclosure sale with the Register of Deeds. An exception to this rule has been carved out by Congress for juridical mortgagors. Section 47 of the General Banking Law of 2000 shortens the redemption period to within three months after the foreclosure sale or until the registration of the certificate of sale, whichever comes first. The General Banking Law of 2000 came into law on 13 June 2000. If the redemption period expires and the mortgagors or their successors-in-interest fail to redeem the foreclosed property, the title thereto is consolidated in the purchaser. The consolidation confirms the purchaser as the owner of the property; concurrently, the mortgagor—for failure to exercise the right of redemption within the period—loses all interest in the property.

6. **ID.; ID.; ID.; ID.; THE ONE-YEAR REDEMPTION PERIOD IS APPLICABLE IN CASE AT BAR.—** As the foreclosure sale took place prior to the advent of the General Banking Law of 2000, the applicable redemption period is one year. In this case, because the Certificate of Sale in favor of respondent CCC was registered on 8 March 1982, the redemption period was until 8 March 1983. It lapsed without any right of redemption having been exercised by Dulos Realty. Consequently, the right of respondent CCC, as purchaser of the subject lots, became absolute. As a matter of right, it was entitled to the consolidation of the titles in its name and to the possession of those lots. Further, the right of respondent CCC over the lots was transferred to respondent Qua by virtue of the Deed of Sale executed between them. Given the foregoing considerations, respondent Qua, who now has title to the properties subject of the various Contracts to Sell, is the lawful owner thereof.

7. ID.; ID.; ID.; SALES; PROPER PLACE OF *NEMO DAT QUOD NON HABET* RULE IN THE LAW ON SALES.— Undeniably, there is an established rule under the law on sales that one cannot give what one does not have (*Nemo dat quod non habet*). The CA, however, confuses the application of this rule with respect to time. It makes the *nemo dat quod non habet* rule a requirement for the *perfection* of a contract of sale, such that a violation thereof goes into the validity of the sale. But the Latin precept has been jurisprudentially held to apply to a contract of sale at its *consummation* stage, and not at the perfection stage. *Cavite Development Bank v. Spouses Syrus Lim* puts *nemo dat quod non habet* in its proper place. Initially, the Court rules out ownership as a requirement for the perfection of a contract of sale. For all that is required is a meeting of the minds upon the object of the contract and the price. The case then proceeds to give examples of the rule. It cites Article 1434 of the Civil Code, which provides that in case the seller does not own the subject matter of the contract at the time of the sale, but later acquires title to the thing sold, ownership shall pass to the buyer. The Court also refers to the rule as the rationale behind Article 1462, which deals with sale of "future goods." *Cavite Development Bank* thereafter turns to Article 1459, which requires ownership by the seller of the thing sold **at the time of delivery or consummation stage of the sale.** The Court explains that if the rule were otherwise, the seller would not be able to comply with the latter's obligation to transfer ownership to the buyer under a perfected contract of sale. The Court ends the discourse with the conclusion that "[i]t is at the consummation stage where the principle of *nemo dat quod non habet* applies."

8. ID.; ID.; ID.; ID.; APPLICATION OF THE RULE IN CASE AT BAR.— Case law also provides that the fact that the seller is not the owner of the subject matter of the sale at the time of perfection does not make the sale void. Hence, the lesson: for title to pass to the buyer, the seller must be the owner of the thing sold at the *consummation* stage or at the time of *delivery* of the item sold. The seller need not be the owner at the perfection stage of the contract, whether it is of a contract to sell or a contract of sale. Ownership is not a requirement for a valid contract of sale; it is a requirement for a valid transfer of ownership. Consequently, it was not correct for the CA to consider the contract of sale void. The CA erroneously considered

lack of ownership on the part of the seller as having an effect on the validity of the sale. The sale was very much valid when the Deed of Absolute Sale between the parties was executed on 10 December 1983, even though title to the property had earlier been consolidated in favor of respondent CCC as early as 10 November 1983. The fact that Dulos Realty was no longer the owner of the property in question at the time of the sale did not affect the validity of the contract. On the contrary, lack of title goes into the **performance** of a contract of sale. It is therefore crucial to determine in this case if the seller was the owner at the time of delivery of the object of the sale. For this purpose, it should be noted that execution of a public instrument evidencing a sale translates to delivery. It transfers ownership of the item sold to the buyer. In this case, the delivery coincided with the perfection of the contract — The Deed of Absolute Sale covering the real property in favor of petitioner Baldoza was executed on 10 December 1983. As already mentioned, Dulos Realty was no longer the owner of the property on that date. Accordingly, it could not have validly transferred ownership of the real property it had sold to petitioner. Thus, the correct conclusion that should be made is that while there was a valid sale, there was no valid transfer of title to Baldoza, since Dulos Realty was no longer the owner at the time of the execution of the Deed of Absolute Sale.

9. **REMEDIAL LAW; EVIDENCE; EVIDENCE NOT FORMALLY OFFERED COULD NOT BE CONSIDERED; RATIONALE BEHIND THE RULE.—** A perusal of the records shows that the Contract to Sell that Baldoza referred to had in fact been marked as Exhibit "L" during her direct examination in court. Even so, Exhibit "L" was never formally offered as evidence. For this reason, we reject her contention. Courts do not consider evidence that has not been formally offered. This explains why the CA never mentioned the alleged Contract to Sell in favor of Baldoza. The rationale behind the rule rests on the need for judges to confine their factual findings and ultimately their judgment solely and strictly to the evidence offered by the parties to a suit. The rule has a threefold purpose. It allows the trial judge to know the purpose of the evidence presented; affords opposing parties the opportunity to examine the evidence and object to its admissibility when necessary; and facilitates review, given that an appellate court does not have to review documents that have not been subjected to scrutiny by the trial court.

10. **ID.; ID.; ID.; EXCEPTION TO THE RULE.—** The rule, of

course, admits an exception. Evidence not formally offered may be admitted and considered by the trial court so long as the following requirements obtain: (1) the evidence is duly *identified* by testimony duly recorded; and (2) the evidence is *incorporated* into the records of the case. The exception does not apply to the case of Baldoza. While she duly identified the Contract to Sell during her direct examination, which was duly recorded, Exhibit "L" was not incorporated into the records.

11. **ID.; ID.; ID.; ID.; EXHIBIT "L" IS NOT RELEVANT; ISSUES OVER EXHIBIT "L" WERE NOT ALSO RAISED IN THE MEMORANDA FILED WITH THE COURT, HENCE, THEY ARE DEEMED WAIVED OR ABANDONED.—** Be that as it may, the contention that a Contract to Sell in favor of Baldoza preceded the sale in her favor is irrelevant. It must be stressed that the sale to Baldoza made by Dulos Realty took place **after the lapse of the redemption period and after consolidation of title** in the name of respondent CCC on 10 November 1983, one month prior to the sale to Baldoza on 10 December 1983. Dulos Realty still would have lost all interest over the property mortgaged. The fact that Dulos Realty ceased to be the owner of the property and therefore it could no longer effect delivery of the property at the time the Deed of Absolute Sale in favor of Baldoza was executed is the very reason why the case of Baldoza cannot be compared with *Dela Merced*. In the case, the buyer in the Contract to Sell was able to effect full payment of the purchase price and to execute a Deed of Absolute Sale in his favor **before the foreclosure sale**. In this case, the full payment of the purchase price and the execution of a Deed of Absolute Sale in favor of Baldoza was done **after the foreclosure sale**. Equally important is the fact that petitioners failed to include the issue over Exhibit "L" in any of the Memoranda they filed with us. The omission is fatal. **Issues raised in previous pleadings but not included in the memorandum are deemed waived or abandoned** (A.M. No. 99-2-04-SC). As they are "a summation of the parties' previous pleadings, the memoranda alone may be considered by the Court in deciding or resolving the petition." Thus, even as the issue was raised in the Petition, the Court may not consider it in resolving the case on the ground of failure of petitioners to include the issue in the Memorandum. They have either waived or abandoned it.

12. **ID.; CIVIL PROCEDURE; THEORIES AND ISSUES NOT RAISED AT THE TRIAL WILL NOT BE CONSIDERED ON APPEAL; IT IS TOO LATE IN THE DAY FOR PETITIONERS TO RAISE ISSUE OF NULLITY OF THE MORTGAGE DUE TO NON-APPROVAL OF THE HOUSING AND LAND USE REGULATORY BOARD (HLURB).—** Petitioners allege before the Court that the mortgage contract in this case was not approved by the HLURB. They claim that this violates Section 18 of P.D. 957 and results in the nullity of the mortgage. Respondents have disputed the claim and counter-argue that the allegation of the petitioners is not supported by evidence. Respondents likewise aver that the argument was raised for the first time on appeal. It is rather too late in the day for petitioners to raise this argument. Parties are not permitted to change their theory of a case at the appellate stage. Thus, theories and issues not raised at the trial level will not be considered by a reviewing court on the ground that they cannot be raised for the first time on appeal. Overriding considerations of fair play, justice and due process dictate this recognized rule. This Court cannot even receive evidence on this matter. Petitioners' original theory of the case is the nullity of the mortgage on the grounds previously discussed. If petitioners are allowed to introduce their new theory, respondents would have no more opportunity to rebut the new claim with contrary evidence, as the trial stage has already been terminated. In the interest of fair play and justice, the introduction of the new argument must be barred.

13. **ID.; ID.; EXCEPTIONS TO THE RULE NOT APPLICABLE IN CASE AT BAR.—** The Court is aware that the foregoing is merely a general rule. Exceptions are written in case law: *first*, an issue of jurisdiction may be raised at any time, even on appeal, for as long as the exercise thereof will not result in a mockery of the demands of fair play; *second*, in the interest of justice and at the sound discretion of the appellate court, a party may be allowed to change its legal theory on appeal, but only when the factual bases thereof would not require further presentation of evidence by the adverse party for the purpose of addressing the issue raised in the new theory; and *last*, which is actually a bogus exception, is when the question falls within the issues raised at the trial court. The exceptions do not apply to the instant case. The new argument offered in this case concerns a factual matter — prior approval by the HLURB.

This prerequisite is not in any way related to jurisdiction, and so the first exception is not applicable. There is nothing in the record to allow us to make any conclusion with respect to this new allegation. Neither will the case fall under the second exception. Evidence would be required of the respondents to disprove the new allegation that the mortgage did not have the requisite prior HLURB approval. Besides, to the mind of this court, to allow petitioners to change their theory at this stage of the proceedings will be exceedingly inappropriate. Petitioners raised the issue only after obtaining an unfavorable judgment from the CA. Undoubtedly, if we allow a change of theory late in the game, so to speak, we will unjustifiably close our eyes to the fundamental right of petitioners to procedural due process. They will lose the opportunity to meet the challenge, because trial has already ended. Ultimately, we will be throwing the Constitutional rulebook out the window.

APPEARANCES OF COUNSEL

Aguirre and Aguirre Law Firm for petitioners Fabio Cahayag and Conrado Rivera.

Felino M. Ganal for respondent Teresita T. Qua.

Socrates M. Arevalo for petitioner Dulos Realty & Development Corp., *et al.*

Ma. Loreto U. Navarro for respondent Penta Capital Finance Corp. (formerly Commercial Credit Corporation.)

D E C I S I O N

SERENO, *C.J.*:

Before us are consolidated Rule 45 Petitions[1] seeking to nullify the Court of Appeals (CA) Decision dated 2 November 2004[2]

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[1] Under Rule 45 of the Rules of Court; *rollo* (G.R. No. 168078), pp. 3-31; (G.R. No. 168357) pp. 11-47.

[2] Penned by Perlita J. Tria-Tirona, Associate Justice and Chairperson, Fifth Division, and concurred in by Associate Justice and Chairperson Jose C. Reyes, Jr. and Associate Justice Ruben Reyes, *rollo* (G.R. No. 168078), pp. 33-58.

and Resolution dated 10 May 2005[3] in CA-G.R. CV No. 47421. The CA Decision reversed and set aside the Decision dated 6 July 1992 issued by the Regional Trial Court (RTC), Branch 65 of Makati.[4]

FACTUAL ANTECEDENTS

Petitioner Dulos Realty was the registered owner of certain residential lots covered by Transfer Certificate of Title (TCT) Nos. S-39767, S-39775, S-28335, S-39778 and S-29776, located at Airmen's Village Subdivision, Pulang Lupa II, Las Pinas, Metro Manila.

On 20 December 1980, Dulos Realty obtained a loan from respondent CCC in the amount of ₱300,000. To secure the loan, the realty executed a Real Estate Mortgage over the subject properties in favor of respondent. The mortgage was duly annotated on the certificates of title on 3 February 1981.[5]

On 29 March 1981, Dulos Realty entered into a Contract to Sell with petitioner Cahayag over the lot covered by TCT No. S-39775.[6]

On 12 August 1981, Dulos Realty entered into another Contract to Sell, this time with petitioner Rivera over the lot covered by TCT No. S- 28335.[7]

Dulos Realty defaulted in the payment of the mortgage loan, prompting respondent CCC to initiate extrajudicial foreclosure proceedings. On 17 November 1981, the auction sale was held, with respondent CCC emerging as the highest bidder.[8]

On 23 November 1981, a Certificate of Sale covering the properties, together with all the buildings and improvements

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

[4] Penned by Judge Salvador S. Abad Santos; records, pp. 492-493.

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

[6] Records, pp. 36-38.

[7] CA *rollo,* p. 121.

[8] Records, p. 210.

existing thereon, was issued in favor of CCC.[9] The Certificate of Sale was annotated on the corresponding titles to the properties on 8 March 1982.[10]

Thereafter, or on 13 January 1983, Dulos Realty entered into a Contract to Sell with petitioner Escalona over the house and lot covered by TCT No. S-29776.[11]

On 10 November 1983, an Affidavit of Consolidation in favor of respondent CCC dated 26 August 1983 was annotated on the corresponding titles to the properties.[12] By virtue of the affidavit, TCT Nos. S-39775, S- 28335, S-39778 and S-29776 -all in the name of Dulos Realty — were cancelled and TCT Nos. 74531, 74532, 74533 and 74534 were issued in the name of respondent CCC on the same day.[13]

On 10 December 1983, Dulos Realty entered into a Deed of Absolute Sale with petitioner Baldoza over the property covered by TCT No. S- 39778, together with the improvements existing thereon.[14]

On 21 December 1983, respondent CCC, through a Deed of Absolute Sale, sold to respondent Qua the same subject properties, now covered by TCT Nos. 74531, 74532, 74533 and 74534, which were in the name of respondent CCC. The sale was duly annotated on the corresponding titles to the properties on 5 January 1984.[15]

Accordingly, TCT Nos. 74531, 74532, 74533 and 74534 were cancelled; and TCT Nos. 77012, 77013, 77014 and 770015

[9] *Id*. at 210-211.

[10] *Id.* at 209.

[11] *Id*. at pp. 87-88.

[12] *Id*. at 209.

[13] *Id*. at pp. 214-217.

[14] *Id*. at 84.

[15] *Id*. at 213.

[16] Records, pp. 218-220.

were issued to respondent Qua on 5 January 1984.[16]

Subsequently, respondent Qua filed ejectment suits individually against petitioners Dulos Realty,[17] Cahayag,[18] Escalona,[19] and Rivera[20] before the Metropolitan Trial Court (MTC) of Las Piñas, Metro Manila.

The MTC rendered Decisions in favor of respondent Qua. It ordered Dulos Realty, Escalona, Cahayag, and Rivera to vacate the properties.

On 8 March 1988, the MTC issued a Writ of Execution to enforce its Decision dated 20 October 1986 in Civil Case No. 2257 against Dulos Realty "and all persons claiming right under defendant."[21] The subject of the writ of execution was Lot 11 Block II,[22] which was the lot sold by Dulos Realty to petitioner Baldoza.

COMPLAINT FOR ANNULMENT OF SHERIFF'S SALE AND OTHER DOCUMENTS

On 5 December 1988, petitioners filed a Complaint against respondents for the "Annulment of Sherifffs] Sale and Other Documents with Preliminary Injunction and/or Temporary Restraining Order" before the RTC of Makati City, where it was docketed as Civil Case No. 88-2599.[23]

The Complaint[24] alleged that petitioners Cahayag, Rivera, Escalona and Baldoza were owners of the properties in question by virtue of Contracts of Sale individually executed in their favor, and that the Real Estate Mortgage between Dulos Realty and defendant-appellant CCC did not include the houses, but

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[17] Docketed as Civil Case No. 2257.

[18] Civil Case No. 2203.

[19] Civil Case No. 2205.

[20] Civil Case No. 2206.

[21] Records, p. 112.

[22] *Id.*

[23] *Id.* at 4.

[24] *Id.*

[25] *Id.* at 9, 11-12.

merely referred to the lands themselves.[25] Thus, the inclusion of the housing units in the Deed of Sale executed by respondent CCC in favor of respondent Qua was allegedly illegal.[26]

Respondents failed to file an answer within the reglementary period. Subsequently, they were declared in default. They appealed the order of default but their appeal was dismissed on 8 February 1990.[27]

On 6 July 1992, the RTC rendered a Decision[28] which ruled that the houses were not included in the Real Estate Mortgage; and that the foreclosure of the mortgage over the subject lots, as well as the housing units, was not valid.[29] The trial court held that this conclusion was established by the plaintiffs' evidence, which went unrefuted when defendants were declared in default.[30]

THE CA DECISION

Respondents proceeded to the CA, where they secured a favorable ruling. In its Decision rendered on 2 November 2004,[31] the appellate court held that the extrajudicial foreclosure was valid, since the Real Estate Mortgage clearly included the buildings and improvements on the lands, subject of the mortgage.

After establishing the inclusion of the housing units in the Real Estate Mortgage, the CA determined the rights of the buyers in the Contracts to Sell/Contract of Sale vis-a-vis those of the mortgagee and its successor-in- interest.

In the cases of petitioners Cahayag, Rivera and Escalona, the CA pointed to lack of evidence establishing full payment of the price. As supporting reason, it stated that even if there

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[26] *Id*.

[27] *Id*. at 492.

[28] *Supra* note 4.

[29] *Id*.

[30] *Id*.

[31] *Supra* note 2.

were full payment of the purchase price, the mortgagee and the latter's successor-in-interest had a better right over the properties. The CA anchored this conclusion on the fact that the Real Estate Mortgage was annotated at the back of the titles to the subject properties before the execution of the Contracts to Sell. It said that the annotation constituted sufficient notice to third parties that the property was subject to an encumbrance. With the notice, Cahayag, Rivera and Escalona should have redeemed the properties within the one-year redemption period, but they failed to do so. Consequently, the right of respondent CCC over the properties became absolute, and the transfer to respondent Qua was valid.

As regards Baldoza, though the case involved a Contract of Sale, and not a mere Contract to Sell, the CA declared the transaction null and void on the purported ground that Dulos was no longer the owner at the time of the sale.

The CA accordingly reversed and set aside the RTC Decision, dismissed the case for lack of merit, and ordered petitioners to surrender possession of the properties to respondent Qua.

THE RULE 45 PETITIONS

On 30 May 2005, petitioners Cahayag and Rivera filed their Rule 45 Petition with this Court.[32] For their part, petitioners Dulos Realty, Baldoza and Escalona filed their Rule 45 Petition on 19 July 2005.[33]

In the Petition under G.R. No. 168357, it is argued, among others, that the Deed of Absolute Sale in favor of petitioner Baldoza was the culmination of a Contract to Sell between her and Dulos Realty. She claims that the Contract to Sell, *marked as Exhibit "L" during the trial,* was executed on 10 January 1979, which preceded the execution of the Deed of Real Estate Mortgage and the registration of the mortgage on 3 February

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[32] *Rollo* (G.R. No. l68078), p. 3.

[33] *Rollo* (G.R. No. 168357), p. 11.

[34] *Rollo* (G.R. No. 168357), pp. 39-40.

1981.[34] After full payment of the price under the Contract to Sell, Dulos Realty executed the Deed of Absolute Sale. In other words, Baldoza is arguing that she has a better title to the property than respondent Qua since the unregistered contract to sell in her favor was executed before the registration of the mortgage. But the CA ignored Exhibit "L" and merely stated that there was only a Deed of Absolute Sale in favor of Baldoza.

THE ARGUMENTS

The arguments of petitioners, as stated in their respective Memoranda, are summarized as follows:

Coverage of the Mortgage

Initially, petitioners attempt to stave of the effects of the extrajudicial foreclosure by attacking the coverage of the Real Estate Mortgage with respect to its subject-matter.[35] They draw attention to the fact that the List of Properties attached to the Deed of Real Estate Mortgage refers merely to the lands themselves and does not include the housing units found thereon.[36] Petitioners also contend that doubts should be resolved against the drafter inasmuch as the agreement is a contract of adhesion, having been prepared by the mortgagee.[37]

As backup argument for the theory that the houses are outside the coverage of the mortgage agreement, petitioners argue that the improvements were not owned by Dulos Realty, the mortgagor, but by its buyers under the Contracts to Sell and Contracts of Sale; hence, those improvements are excluded from the coverage of the real estate mortgage.

Validity of the Mortgage

Petitioners next challenge the validity of the foreclosure sale on the ground that the mortgage executed by the mortgagor

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[35] *Rollo* (G.R. No. 168357) p. 201; *Rollo* (G.R. No. 168078), p. 294.

[36] *Id.*

[37] *Rollo* (G.R. No. 168357) p. 204; *Rollo* (G.R. No. 168078), p. 297.

[38] For purposes of validity of a mortgage, Article 2085 of the New Civil Code requires, among other things, ownership of the subject-matter of the

(petitioner Dulos Realty) and the mortgagee (respondent CCC) was null and void.[38] Petitioners claim that Dulos Realty was no longer the owner of the properties it had mortgaged at the time of the execution of the mortgage contract, as they were sold under existing Contracts to Sell and Deed of Absolute Sale.[39]

Petitioners Cahayag, Rivera and Escalona lean on the unregistered Contracts to Sell they had individually executed with Dulos Realty as vendor. For his part, petitioner Baldoza points to the Deed of Absolute Sale executed by Dulos Realty in his favor.

Better Right over the Properties

Petitioners claim that respondent CCC cannot claim to be a mortgagee in good faith, since it is a financial institution.[40] As such, respondent CCC knew that it was dealing with a subdivision developer, which was in the business of selling subdivision lots.[41] *Dela Merced v. GSIS*[42] which states that the general rule that a mortgagee need not look beyond the title cannot benefit banks and other financial institutions, as a higher

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mortgage by the mortgagor. See *Torbela v. Spouses Rosario,* G.R. Nos. 140528 & 140553, 7 December 2011, 661 SCRA 633. Further, Article 2085 of the New Civil Code reads:

Art. 2085. The following requisites are essential to the contracts of pledge and mortgage:

(I) 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.

Third persons who are not parties to the principal obligation may secure the latter by pledging or mortgaging their own property.

[39] *Rollo* (G.R. No. l68078), p. 300.

[40] *Rollo* (G.R. No. 168357), pp. 212-215.

[41] *Rollo* (G.R. No. l68078), pp. 21-26.

[42] 417 Phil. 324 (2001).

due diligence requirement is imposed on them.

They also raise the contention that lack of full payment of the purchase price under the Contracts to Sell on the part of Cahayag, Rivera and Escalona was due to respondent Qua's "harassment and unlawful actuations."[43]

Petitioners further state that respondent Qua is a mere transferee of respondent CCC and that, like a stream, she cannot rise higher than her source. They also argue that Qua is not an innocent purchaser for value, since she is a former investor of respondent CCC and one of its principal stockholders.[44]

No Prior Written HLURB Approval of the Mortgage

Finally, petitioners allege that the mortgage contract in this case was not approved by the HLURB, which violates Section 18 of P.D. 957[45] and results in the nullity of the mortgage.[46]

Exltibit "L" as Evidence of a Prior Contract to Sell

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[43] *Rollo* (G.R. No. 168357), p. 208.

[44] *Rollo* (G.R. No. 168078), p. 301.

[45] Section 18 of the Subdivision and Condominium Buyers' Protective Decree, issued on 12 July 1976, states:

> Section 18. *Mortgages.*– **No mortgage on any unit or lot shall be made by the owner or developer without prior written approval of the Authority.** Such approval shall not be granted unless it is shown that the proceeds of the mortgage loan shall be used for the development of the condominium or subdivision project and effective measures have been provided to ensure such utilization. The loan value of each lot or unit covered by the mortgage shall be determined and the buyer thereof, if any, shall be notified before the release of the loan. The buyer may, at his option, pay his installment for the lot or unit directly to the mortgagee who shall apply the payments to the corresponding mortgage indebtedness secured by the particular lot or unit being paid for, with a view to enabling said buyer to obtain title over the lot or unit promptly after full payment thereto. (Emphasis supplied)

[46] *Rollo* (G.R. No. l68078), pp. 299-301.

The matter of CA ignoring Exhibit "L" as evidence of a prior unregistered Contract to Sell was not included in the Memoranda of petitioners.

THE ISSUES

Based on the foregoing facts and arguments raised by petitioners, the threshold issues to be resolved are the following:

1. Whether the real mortgage covers the lands only, as enumerated in the Deed of Real Estate Mortgage or the housing units as well;
2. Whether Dulos Realty was the owner of the properties it had mortgaged at the time of its execution in view of the various Contracts to Sell and Deed of Absolute Sale respectively executed in favor of petitioners Cahayag, Rivera, Escalona and Cahayag;
3. Who, as between petitioners-buyers and respondent Qua, has a better right over the properties?
4. Whether the Deed of Absolute Sale in favor of Baldoza was not preceded by a Contract to Sell and full payment of the purchase price; and
5. Whether the mortgage is void on the ground that it lacked the prior written approval of the HLURB.

OUR RULING

We deny the Petition for reasons as follows.

1. Attack on the Subject-matter of the Real Estate Mortgage

It is true that the List of Properties attached to the Deed of Real Estate Mortgage refers merely to the lands themselves and does not include the housing units found thereon. A plain reading of the Real Estate Mortgage, however, reveals that it covers the **housing units** as well. We quote the pertinent provision of the agreement:

[T]he MORTGAGOR has transferred and conveyed and, by these presents, do hereby transfer and convey by way of FIRST MORTGAGE

unto the MORTGAGEE, its successors and assigns the real properties described in the list appearing at the back of this document and/or in a supplemental document attached hereto as Annex "A" and made and integral part hereof, **together with all the buildings and/or other improvements now existing or which may hereafter be place(d) or constructed thereon**, all of which the MORTGAGOR hereby warrants that he is the absolute owner and exclusive possessor thereof, free from all liens and encumbrances of whatever kind and nature. xxx.[47] (Emphasis Ours)

Thus, the housing units would fall under the catch-all phrase **"together with all the buildings and/or other improvements now existing or which may hereafter be placed or constructed thereon."**

The *contra proferentem* rule finds no application to this case. The doctrine provides that in the interpretation of documents, ambiguities are to be construed against the drafter.[48] By its very nature, the precept assumes the existence of an ambiguity in the contract, which is why *contra proferentem* is also called the ambiguity doctrine.[49] In this case, the Deed of Real Estate Mortgage *clearly* establishes that the improvements found on the real properties listed therein are included as subject-matter of the contract. It covers not only the real properties, but the buildings and improvements thereon as well.

***2. Challenge to the Foreclosure Sale with Regard to the Ownership of the Mortgaged* Properties**

To begin with, the Contracts to Sell and Deed of Absolute Sale could not have posed an impediment at all to the mortgage, given that these contracts had yet to materialize when the mortgage was constituted. **They were all executed *after* the constitution of the Real Estate Mortgage** on 20 December 1980.

[47] Records, p. 16.

[48] *Black's Law Dictionary* 995 (8th ed. 2004).

[49] *Black's Law Dictionary, supra.*

[50] *Supra* note 8.

As regards Cahayag, the Contract to Sell in his favor was executed on 29 March 1981, more than three months after the execution of the mortgage contract.[50] This is taken from the Contract to Sell itself, which forms part of the records of this case.[51]

At this juncture, we note that the CA, for reasons unknown, specified 29 September 1980,[52] and not 29 March 1981, as the date of the execution of the Contract to Sell in its Decision. Respondent Qua has raised this point in her Memorandum filed with us. This Court cannot be bound by the factual finding of the CA with regard to the date of the Contract to Sell in favor of Cahayag. The general rule that the Court is bound by the factual findings of the CA must yield in this case, as it falls under one of the exceptions: *when the findings of the CA are contradicted by the evidence on record.*[53] In this case, there is nothing in the records to support the CA's conclusion that the Contract to Sell was executed on 29 September 1980. The evidence on record, however reveals that the correct date is 29 March 1981.

In the case of petitioner Rivera, the corresponding Contract to Sell in his favor was executed only on 12 August 1981, or almost eight months after the perfection of the mortgage contract on 20 December 1980.

The Contract to Sell in favor of Escalona was executed on 13 January 1983, almost two years after the constitution of the mortgage on 20 December 1980.

Lastly, Dulos Realty executed the Deed of Absolute Sale in favor of petitioner Baldoza on 10 December 1983, which was almost three years from the time the mortgage contract was executed on 20 December 1980.

There was neither a contract to sell nor a deed of absolute

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[51] *Id.*

[52] CA Decision, p. 2. CA *rollo,* p. 120.

[53] *Benito v. People,* G.R. No. 204644, 11 February 2015.

sale to speak of when the mortgage was executed.

Petitioners equate a contract to sell to a contract of sale, in which the vendor loses ownership over the property upon its delivery.[54] But a contract to sell, standing alone, does not transfer ownership.[55] At the point of perfection, the seller under a contract to sell does not even have the obligation to transfer ownership to the buyer.[56] The obligation arises only when the buyer fulfills the condition: *full payment of the purchase price.*[57]In other words, the seller retains ownership at the time of the execution of the contract to sell.[58]

There is no evidence to show that any of petitioners Cahayag, Rivera and Escalona were able to effect full payment of the purchase price, which could have at least given rise to the obligation to transfer ownership. Petitioners Cahayag and Rivera even admit that they defaulted on their obligations under their respective

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[54] *Spouses Flancia v. Court of Appeals,* 496 Phil. 693-703 (2005).

[55] A contract to sell is an agreement stipulating that the seller shall execute a deed of sale only upon or after full payment of the purchase price. It is not a contract of sale. The stipulation to execute a deed of sale upon full payment of the purchase price signifies that the vendor reserves title to the property until full payment. *(Diego v. Diego,* G.R. No. 179965, 20 February 2013, 691 SCRA 361.)

[56] *Luzon Development Bank v. Enriquez,* 654 Phil. 315 (2011), sheds light on the nature of a contract to sell:

[A] contract to sell is one where the prospective seller reserves the transfer of title to the prospective buyer until the happening of an event, such as full payment of the purchase price. What the seller obliges himself to do is to sell the subject property only when the entire amount of the purchase price has already been delivered to him. "In other words, the full payment of the purchase price partakes of a suspensive condition, the non-fulfillment of which prevents the obligation to sell from arising and thus, **ownership is retained by the prospective seller** without further remedies by the prospective buyer." It does not, by itself, transfer ownership to the buyer. (Emphasis supplied)

[57] *Id.*

[58] *Id*.

[59] See Petition dated 28 May 2005, *rollo* (G.R. No. I68078), p. 20.

[60] *Real v. Bello,* 542 Phil. 109-127 (2007).

Contracts to Sell, although they attribute the default to respondent Qua's "harassment and unlawful actuations."[59] The statement, though, was a mere allegation that was left unsubstantiated and, as such, could not qualify as proof of anything.[60]

3. Who Has a Better Right over the Properties

Registration of the mortgage bound the buyers under the Contracts to Sell

Registration of the mortgage establishes a real right or lien in favor of the mortgagee, as provided by Articles 1312[61] and 2126[62] of the Civil Code.[63] Corollary to the rule, the lien has been treated as "inseparable from the property inasmuch as it is a right in rem."[64] In other words, it binds third persons to the mortgage.

The purpose of registration is to notify persons other than the parties to the contract that a transaction concerning the property was entered into.[65] Ultimately, registration, because it provides constructive notice to the whole world, makes the certificate of title reliable, such that third persons dealing with registered land need only look at the certificate to determine the status of the property.[66]

In this case, the Real Estate Mortgage over the property was

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[61] Article 1312 of the New Civil Code (NCC) states:

Art. 1312. In contracts creating real rights, third persons who come into possession of the object of the contract are bound thereby, subject to the provisions of the Mortgage Law and the Land Registration laws.

[62] Article 2126 of the NCC states:

Art. 2126. The mortgage directly and immediately subjects the property upon which it is imposed, whoever the possessor may be, to the fulfillment of the obligation for whose security it was constituted.

[63] *Spouses Paderes v. Court of Appeals,* 502 Phil. 76 (2005).

[64] *Garcia v. Villar,* G.R. No. 158891, 27 June 2012, 675 SCRA 92.

[65] *Gutierrez v. Mendoza-Plaza,* 622 Phil. 844-858 (2009).

[66] *People v. Reyes,* 256 Phil. 1015-1027 (1989).

registered on 3 February 1981. On the other hand, the Contracts to Sell were all executed after the registration of the mortgage. The Contract to Sell in favor of petitioner Cahayag was executed on 29 March 1981, or almost two months *after* the registration of the mortgage. The corresponding Contract to Sell in favor of Rivera was executed only on 12 August 1981, roughly six months after the registration of the mortgage contract. Lastly, the Contract to Sell in favor of Escalona was executed on 13 January 1983, or nearly two years *after* the registration of the mortgage on 3 February 1981.

Consequently, petitioners Cahayag, Rivera and Escalona, were bound to the mortgage executed between mortgagor Dulos Realty and mortgagee CCC, by virtue of its registration. Definitely, the buyers each had constructive knowledge of the existence of the mortgage contract when they individually executed the Contracts to Sell.

Dela Merced v. GSIS *not applicable*

Petitioner invokes the above case. *Dela Merced* involved a clash between an unrecorded contract to sell and a registered mortgage contract. The contract to sell between the mortgagors (Spouses Zulueta) and the buyer (Francisco Dela Merced) was executed **before** the former's constitution of the mortgage in favor of GSIS. Because the Zuluetas defaulted on their loans, the mortgage was foreclosed; the properties were sold at public auction to GSIS as the highest bidder; and the titles were consolidated after the spouses' failure to redeem the properties within the one-year redemption period. GSIS later sold the contested lot to Elizabeth D. Manlongat and Ma. Therese D. Manlongat. However, Dela Merced was able to *fully pay the purchase price* to Spouses Zulueta, who *executed a Deed of Absolute Sale in his favor* prior to the foreclosure sale.

This Court stated therein the general rule that the purchaser is not required to go beyond the Torrens title if there is nothing therein to indicate any cloud or vice in the ownership of the property or any encumbrance thereon. The case nonetheless provided an exception to the general rule. The exception arises

when the purchaser or mortgagee has *knowledge* of a defect in the vendor's title or lack thereof, or is *aware* of sufficient facts to induce a reasonably prudent person to inquire into the status of the property under litigation. The Court applied the exception, taking into consideration the fact that GSIS, the mortgagee, was a **financing institution.**

But *Dela Merced* is not relevant here. *Dela Merced* involved a Contract to Sell that was executed *prior* to the mortgage, while the Contracts to Sell in this case were all executed *after* the constitution and registration of the mortgage.

In *Dela Merced,* since GSIS had knowledge of the contract to sell, this knowledge was equivalent to the registration of the Contract to Sell. Effectively, this constitutes registration cancelled out the subsequent registration of the mortgage. In other words, the buyer under the Contract to Sell became the first to register. Following the *priority in time* rule in civil law, the lot buyer was accorded preference or priority in right in *Dela Merced.*

In this case, the registration of the mortgage, which predated the Contracts to Sell, already bound the buyers to the mortgage. Consequently, the determination of good faith does not come into play.

Dela Merced materially differs from this case on another point. The Contract to Sell in favor of Dela Merced was followed **by full payment of the price and execution of the Deed of Absolute Sale.** In this case, the Contract to Sell in favor of each of petitioners Cahayag, Rivera and Escalona, is not coupled with full payment and execution of a deed of absolute sale.

This case also needs to be distinguished from *Luzon Development Bank v. Enriquez.*[67] In that case, the unregistered Contract to Sell was executed **after** the execution of the mortgage. Instead of resorting to foreclosure, the owner/developer and the bank entered into a *dacion en pago.* The Court declared that the bank was bound by the Contract to Sell despite the non-registration of the contract. It reasoned that

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[67] *Supra* note 58.

the bank impliedly assumed the risk that some of the units might have been covered by contracts to sell. On the other hand, the Court pronounced the mortgage to be void, as it was without the approval of the Housing and Land Use Regulatory Board (HLURB). The Court consequently ordered the unit buyer in that case to pay the balance to the bank, after which the buyer was obliged to deliver a clean title to the property.

There are points of distinction between the case at bar and *Luzon Development Bank. First,* there is a definite finding in *Luzon Development Bank* that the mortgage was without prior HLURB approval, rendering the mortgage void. In the present case, as will be discussed later, there is no proof from the records on whether the HLURB did or did not approve the mortgage. *Second, Luzon Development Bank* did not even reach the foreclosure stage of the mortgage. This case, however, not only reached the foreclosure stage; it even went past the redemption period, consolidation of the title in the owner, and sale of the property by the highest bidder to a third person.

The first distinction deserves elaboration. The absence of prior written approval of the mortgage by the HLURB rendered it void. This effectively wiped out any discussion on whether registration bound the installment buyer. In fact, *Luzon Development Bank* did not even bother to state whether the mortgage was registered or not. More important, the tables were turned when *Luzon Development Bank* held that the bank was bound to the Contract to Sell in view of the latter's constructive notice of the Contract to Sell. Stated differently, the actually unregistered Contract to Sell became fictionally registered, making it binding on the bank.

In this case, on account of its registration, and the fact that the contracts were entered into after it, the mortgage is valid even as to petitioners.

No Redemption within One Year from the Foreclosure Sale

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[68] Section 6 of Act No. 3135, as amended.

When it comes to extrajudicial foreclosures, the law[68] grants mortgagors or their successors-in-interest an opportunity to redeem the property within one year from the date of the sale. The one-year period has been jurisprudentially held to be counted from the registration of the foreclosure sale with the Register of Deeds.[69] An exception to this rule has been carved out by Congress for juridical mortgagors. Section 47 of the General Banking Law of 2000 shortens the redemption period to within three months after the foreclosure sale or until the registration of the certificate of sale, whichever comes first.[70] The General Banking Law of 2000 came into law on 13 June 2000.

If the redemption period expires and the mortgagors or their successors-in-interest fail to redeem the foreclosed property, the title thereto is consolidated in the purchaser.[71] The consolidation confirms the purchaser as the owner of the property; concurrently, the mortgagor—for failure to exercise the right of redemption within the period—loses all interest in the property.[72]

We now apply the rules to this case.

As the foreclosure sale took place prior to the advent of the General Banking Law of 2000, the applicable redemption period is one year. In this case, because the Certificate of Sale in favor of respondent CCC was registered on 8 March 1982, the

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[69] See also *UCPB v. Lumbo,* G.R. No. 162757, 11 December 2013, 712 SCRA 217.

[70] The second paragraph of Section 47 of the General Banking Law of 2000 reads:

Notwithstanding Act 3135, juridical persons whose property is being sold pursuant to an extrajudicial foreclosure shall have the right to redeem the property in accordance with this provision until, but not after, the registration of the certificate of foreclosure sale with the applicable Register of Deeds which in no case shall be more than three (3) months after foreclosure, whichever is earlier. Owners of property that has been sold in a foreclosure sale prior to the effectivity of this Act shall retain their redemption rights until their expiration.

[71] *ld*.

[72] *Id*.

redemption period was until 8 March 1983. It lapsed without any right of redemption having been exercised by Dulos Realty. Consequently, the right of respondent CCC, as purchaser of the subject lots, became absolute. As a matter of right, it was entitled to the consolidation of the titles in its name and to the possession of those lots. Further, the right of respondent CCC over the lots was transferred to respondent Qua by virtue of the Deed of Sale executed between them.

Given the foregoing considerations, respondent Qua, who now has title to the properties subject of the various Contracts to Sell, is the lawful owner thereof.

Foreclosure Sale vs. Contract of Sale

When Dulos Realty executed a Deed of Absolute Sale covering the real property registered under TCT No. S-39778 in favor of petitioner Baldoza on 10 December 1983, it was no longer the owner of the property. Titles to the subject properties, including the one sold to Baldoza, had already been consolidated in favor of respondent CCC as early as 10 November 1983. In fact, on the same date, the titles to the subject lots in the name of Dulos Realty had already been cancelled and new ones issued to respondent CCC.

The fact that Dulos Realty was no longer the owner of the real property at the time of the sale led the CA to declare that the Contract of Sale was null and void. On this premise, the appellate court concluded that respondent Qua had a better title to the property over petitioner Baldoza.

We find no error in the conclusion of the CA that respondent Qua has a better right to the property. The problem lies with its reasoning. We therefore take a different route to reach the same conclusion.

***Proper place of* nemo dat quod non**

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[73] *Noel v. Court of Appeals,* 240 SCRA 78 (1995); *Nool v. Court of Appeals,* 342 Phil. 106-124 (1997); *Tangalin v. Court of Appeals,* 422 Phil. 358-366 (2001); *Naval v. Court of Appeals,* 518 Phil. 271-285 (2006); *Midway Maritime and Technological Foundation v. Castro,* G.R. No. 189061, 6 August 2014, 732 SCRA 192.

habet in *the Law on Sales*

Undeniably, there is an established rule under the law on sales that one cannot give what one does not have *(Nemo dat quod non habet).*[73] The CA, however, confuses the application of this rule with respect to time. It makes the *nemo dat quod non habet* rule a requirement for the *perfection* of a contract of sale, such that a violation thereof goes into the validity of the sale. But the Latin precept has been jurisprudentially held to apply to a contract of sale at its *consummation* stage, and not at the perfection stage.[74]

Cavite Development Bank v. Spouses Syrus Lim [75] puts *nemo dat quod non habet* in its proper place. Initially, the Court rules out ownership as a requirement for the perfection of a contract of sale. For all that is required is a meeting of the minds upon the object of the contract and the price. The case then proceeds to give examples of the rule. It cites Article 1434 of the Civil Code, which provides that in case the seller does not own the subject matter of the contract at the time of the sale, but later acquires title to the thing sold, ownership shall pass to the buyer. The Court also refers to the rule as the rationale behind Article 1462, which deals with sale of "future goods."

Cavite Development Bank thereafter turns to Article 1459, which requires ownership by the seller of the thing sold **at the time of delivery or consummation stage of the sale**. The Court explains that if the rule were otherwise, the seller would not be able to comply with the latter's obligation to transfer ownership to the buyer under a perfected contract of sale. The Court ends the discourse with the conclusion that "[i]t is at the consummation stage where the principle of *nemo dat quod non habet*

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[74] *Cavite Development Bank v. Spouses Lim,* 381 Phil. 355, 365-366 (2000).

[75] *Id.*

[76] *Id.*

[77] *Nool v. Court of Appeals,* 342 Phil. 106-124 (1997).

applies."[76]

Case law also provides that the fact that the seller is not the owner of the subject matter of the sale at the time of perfection does not make the sale void.[77]

Hence, the lesson: for title to pass to the buyer, the seller must be the owner of the thing sold at the *consummation* stage or at the time of *delivery* of the item sold. The seller need not be the owner at the perfection stage of the contract, whether it is of a contract to sell or a contract of sale. Ownership is not a requirement for a valid contract of sale; it is a requirement for a valid transfer of ownership:

Consequently, it was not correct for the CA to consider the contract of sale void. The CA erroneously considered lack of ownership on the part of the seller as having an effect on the validity of the sale. The sale was very much valid when the Deed of Absolute Sale between the parties was executed on 10 December 1983, even though title to the property had earlier been consolidated in favor of respondent CCC as early as 10 November 1983. The fact that Dulos Realty was no longer the owner of the property in question at the time of the sale did not affect the validity of the contract.

On the contrary, lack of title goes into the **performance** of a contract of sale. It is therefore crucial to determine in this case if the seller was the owner at the time of delivery of the object of the sale. For this purpose, it should be noted that execution of a public instrument evidencing a sale translates to delivery.[78] It transfers ownership of the item sold to the buyer.[79]

In this case, the delivery coincided with the perfection of the contract — The Deed of Absolute Sale covering the real property in favor of petitioner Baldoza was executed on 10 December 1983. As already mentioned, Dulos Realty was no longer the owner of the property on that date. Accordingly, it

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[78] Article 1498 of the Civil Code. See also *Velarde v. Court of Appeals,* 413 Phil. 360-376.

[79] *Id*.

could not have validly transferred ownership of the real property it had sold to petitioner.

Thus, the correct conclusion that should be made is that while there was a valid sale, there was no valid transfer of title to Baldoza, since Dulos Realty was no longer the owner at the time of the execution of the Deed of Absolute Sale.

No Bad Faith on Qua

The contention that Qua is a stockholder and former member of the Board of Directors of respondent CCC and therefore she is not exactly a stranger to the affairs of CCC is not even relevant.

An innocent purchaser for value is one who "buys the property of another without notice that some other person has a right to or interest in it, and who pays a full and fair price at the time of the purchase or before receiving any notice of another person's claim."[80] The concept presupposes that there must be an adverse claim of defect in the title to the property to be purchased by the innocent purchaser for value.

Respondent Qua traces her title to respondent CCC, whose acquisition over the property proceeded from a foreclosure sale that was valid. As there is no defect in the title of respondent CCC to speak of in this case, there is no need to go into a discussion of whether Qua is an innocent purchaser for value.

4. Dispute as to the Factual Finding of the CA that the Deed of Absolute Sale in Favor of Baldoza was not Preceded by a Contract to Sell and Full Payment of the Purchase Price

We absolutely discard the argument. We can think of at least four reasons why. *First,* Exhibit ''L" was not formally offered in evidence. *Second,* it was not even incorporated into the records. *Third,* the argument is irrelevant. *Fourth,* it was even abandoned in the Memoranda filed by petitioners with us. *Last,* we are not

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[80] *Leong v. See,* G.R. No. 194077, 3 December 2014.

a trier of facts and thus we yield to the finding of the CA.

Exhibit "L" not formally offered

A perusal of the records shows that the Contract to Sell that Baldoza referred to had in fact been marked as Exhibit "L" during her direct examination in court.[81] Even so, Exhibit "L" was never formally offered as evidence. For this reason, we reject her contention. Courts do not consider evidence that has not been formally offered.[82] This explains why the CA never mentioned the alleged Contract to Sell in favor of Baldoza.

The rationale behind the rule rests on the need for judges to confine their factual findings and ultimately their judgment solely and strictly to the evidence offered by the parties to a suit.[83] The rule has a threefold purpose. It allows the trial judge to know the purpose of the evidence presented; affords opposing parties the opportunity to examine the evidence and object to its admissibility when necessary; and facilitates review, given that an appellate court does not have to review documents that have not been subjected to scrutiny by the trial court.[84]

Exhibit "L" not incorporated into the records

The rule, of course, admits an exception. Evidence not formally offered may be admitted and considered by the trial court so long as the following requirements obtain: (1) the evidence is duly *identified* by testimony duly recorded; and (2) the evidence is *incorporated* into the records of the case.

The exception does not apply to the case of Baldoza. While she duly identified the Contract to Sell during her direct examination, which was duly recorded, Exhibit "L" was not incorporated into the records.

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[81] Records, p. 537.

[82] *Heirs of Saves v. Heirs of Saves,* 646 Phil. 536. 544 (2010).

[83] *Id.*

[84] *Id.*

Exhibit "L" not relevant

Be that as it may, the contention that a Contract to Sell in favor of Baldoza preceded the sale in her favor is irrelevant. It must be stressed that the sale to Baldoza made by Dulos Realty took place **after the lapse of the redemption period and after consolidation of title** in the name of respondent CCC on 10 November 1983, one month prior to the sale to Baldoza on 10 December 1983. Dulos Realty still would have lost all interest over the property mortgaged.

The fact that Dulos Realty ceased to be the owner of the property and therefore it could no longer effect delivery of the property at the time the Deed of Absolute Sale in favor of Baldoza was executed is the very reason why the case of Baldoza cannot be compared with *Dela Merced.* In the case, the buyer in the Contract to Sell was able to effect full payment of the purchase price and to execute a Deed of Absolute Sale in his favor **before the foreclosure sale.** In this case, the full payment of the purchase price and the execution of a Deed of Absolute Sale in favor of Baldoza was done **after the foreclosure sale.**

Issue over Exhibit "L" not included in the Memorandum

Equally important is the fact that petitioners failed to include the issue over Exhibit "L" in any of the Memoranda they filed with us. The omission is fatal. **Issues raised in previous pleadings but not included in the memorandum are deemed waived or abandoned** (A.M. No. 99-2-04-SC). As they are "a summation of the parties' previous pleadings, the memoranda alone may be considered by the Court in deciding or resolving the petition."[85] Thus, even as the issue was raised in the Petition, the Court may not consider it in resolving the case on the ground of failure of petitioners to include the issue in the Memorandum. They have either waived or abandoned it.

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[85] *De Castro v. Liberty Broadcasting Network, Inc.,* G.R. No. 165153, 25 August 2010, 629 SCRA 77, 86.

[86] The Subdivision and Condominium Buyers' Protective Decree, issued on 12 July 1976.

5. Issue of HLURB 's Non-Approval of the Mortgage

Petitioners allege before the Court that the mortgage contract in this case was not approved by the HLURB. They claim that this violates Section 18 of P.D. 957[86] and results in the nullity of the mortgage. Respondents have disputed the claim and counter-argue that the allegation of the petitioners is not supported by evidence. Respondents likewise aver that the argument was raised for the first time on appeal.[87]

It is rather too late in the day for petitioners to raise this argument. Parties are not permitted to change their theory of a case at the appellate stage.[88] Thus, theories and issues not raised at the trial level will not be considered by a reviewing court on the ground that they cannot be raised for the first time on appeal.[89] Overriding considerations of fair play, justice and due process dictate this recognized rule.[90] This Court cannot even receive evidence on this matter.

Petitioners' original theory of the case is the nullity of the mortgage on the grounds previously discussed. If petitioners are allowed to introduce their new theory, respondents would have no more opportunity to rebut the new claim with contrary evidence, as the trial stage has already been terminated. In the interest of fair play and justice, the introduction of the new argument must be barred.[91]

Exceptions Not Applicable

The Court is aware that the foregoing is merely a general

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[87] *Rollo* (G.R. No. 168357), p. 251.

[88] *Ramos v. PNB,* G.R. No. 178218, 14 December 2011, 662 SCRA 479.

[89] *Id.*

[90] *Id*.

[91] *Maxicare PCIB CIGNA Healthcare v. Contreras,* G.R. No. 194352, 30 January 2013, 689 SCRA 763.

[92] *Ramos v. PNB*, G.R. No. 178218, 14 December 2011, 662 SCRA 479.

rule. Exceptions are written in case law: *first,* an issue of jurisdiction may be raised at any time, even on appeal, for as long as the exercise thereof will not result in a mockery of the demands of fair play;[92] *second,* in the interest of justice and at the sound discretion of the appellate court, a party may be allowed to change its legal theory on appeal, but only when the factual bases thereof would not require further presentation of evidence by the adverse party for the purpose of addressing the issue raised in the new theory;[93] and *last,* which is actually a bogus exception, is when the question falls within the issues raised at the trial court.[94]

The exceptions do not apply to the instant case. The new argument offered in this case concerns a factual matter — prior approval by the HLURB. This prerequisite is not in any way related to jurisdiction, and so the first exception is not applicable. There is nothing in the record to allow us to make any conclusion with respect to this new allegation.

Neither will the case fall under the second exception. Evidence would be required of the respondents to disprove the new allegation that the mortgage did not have the requisite prior HLURB approval. Besides, to the mind of this court, to allow petitioners to change their theory at this stage of the proceedings will be exceedingly inappropriate.

Petitioners raised the issue only after obtaining an unfavorable judgment from the CA. Undoubtedly, if we allow a change of theory late in the game, so to speak, we will unjustifiably close our eyes to the fundamental right of petitioners to procedural due process. They will lose the opportunity to meet the challenge, because trial has already ended. Ultimately, we will be throwing the Constitutional rulebook out the window.

WHEREFORE, premises considered, the Petitions are **DENIED,** and the Court of Appeals Decision dated 2 November 2004 and Resolution dated 10 May 2005 in CA-G.R. CV No. 47421 are hereby **AFFIRMED.**

SO ORDERED.

Leonardo-de Castro, Bersamin, Perez, and *Perlas-Bernabe, JJ.,* concur.

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[93] *Id.*

[94] *Ferolan v. Court of Appeals,* 441 Phil. 377, 385 (2002).

THIRD DIVISION

[G.R. No. 170004. January 13, 2016]

ILONA HAPITAN, *petitioner, vs.* **SPOUSES JIMMY LAGRADILLA and WARLILY LAGRADILLA and ESMERALDA BLACER,** *respondents.*

SYLLABUS

1. **CIVIL LAW; SALES; THE NULLITY OF THE DEED OF SALE CANNOT BE AFFECTED BY THE SUBSEQUENT WAIVER OF A PARTY.—** Petitioners anchored their Motion for Reconsideration/Modification on the Affidavit of Waiver, Quitclaim and Satisfaction of Claim executed by Warlily, which they aver to have rendered the issue of the validity of the transfer of the property moot and academic. We are not persuaded. The nullity of the Deed of Sale could not be affected by the subsequent waiver of Warlily. The Court has explained the nature of a waiver: Waiver is defined as "a voluntary and intentional relinquishment or abandonment of a known existing legal right, advantage, benefit, claim or privilege, which except for such waiver the party would have enjoyed x x x." Warlily's Waiver cannot cover the issue of the validity of the sale of the property to the Spouses Terosa since the property is neither a right nor a benefit she is entitled to. Moreover, the declaration of nullity due to the existence of fraud was both a finding of fact and of law by the lower courts, and the parties cannot agree amongst themselves and decide otherwise.

2. **ID.; CONTRACTS; COMPROMISE AGREEMENT; DEFINED; ELEMENTS TO BE VALID, DISCUSSED AND APPLIED; WHEN THE PARTIES DID NOT FULLY UNDERSTAND THE TERMS OF THE AMICABLE SETTLEMENT, IT CAN BE INFERRED THAT THEY DID NOT GIVE THEIR CONSENT TO SUCH SETTLEMENT.—** A compromise agreement is defined as a contract whereby the parties make reciprocal concessions in order to resolve their differences and thus avoid or put an end to a lawsuit. To have the force of law between the parties, a compromise agreement must comply with the requisites and principles of contracts. Thus, it must have the following elements: 1) the consent of the parties to the

compromise; 2) an object certain that is the subject matter of the compromise; and 3) the cause of the obligation that is established. We note that much has been said by the parties on the validity of the Amicable Settlement, specifically on the element of consent. Jimmy and Warlily consistently maintained that they were deceived into executing the Waiver and the Amicable Settlement, and that they were not properly assisted by counsel. They insist that the settlement was proposed and forged by Nolan and Ilona in bad faith, having advance knowledge of the decision of the CA. While compromise agreements are generally favored and encouraged by the courts, it must be proved that they were voluntarily, freely, and intelligently entered into by the parties, who had full knowledge of the judgment. The allegations of Jimmy and Warlily cast doubt on whether they fully understood the terms of the Amicable Settlement when they signed it. They further argued that they did not fully comprehend the CA Decision in their favor. Thus, it may be reasonably inferred that Jimmy and Warlily did not give consent to the Amicable Settlement with Nolan and Ilona.

3. **ID.; ID.; ID.; THE HUSBAND CANNOT DISPOSE OF OR WAIVE HIS HAND AND HIS WIFE'S RIGHTS OVER THEIR CONJUGAL PROPERTY THROUGH AN AMICABLE SETTLEMENT.—** The Amicable Settlement, which Nolan signed, aims to recall the lower courts' finding of nullity of the sale of the house and lot to the Spouses Terosa. In effect, by agreeing to the validity of the sale, Nolan disposed of or waived his and Esmeralda's rights over the house and lot, which the lower courts found to be part of their conjugal property. Such disposal or waiver by Nolan is not allowed by law. Article 124 of the Family Code requires that any disposition or encumbrance of conjugal property must have the written consent of the other spouse; otherwise, such disposition is void. Further, under Article 89 of the Family Code, no waiver of rights, interests, shares, and effects of the conjugal partnership of gains during the marriage can be made except in case of judicial separation of property. Clearly, Esmeralda did not consent to Nolan disposing or waiving their rights over the house and lot through the Amicable Settlement. In fact, she even objected to the Amicable Settlement, as evidenced by her pleadings filed before the courts. She further expressed disbelief that Nolan would want the CA to reverse its decision when its

ruling, saving Nolan and Esmeralda's conjugal property, is favorable to him.

APPEARANCES OF COUNSEL

Reyes & Reyes Law Office for petitioner.
Del Rosario Law Office for respondent Spouses Lagradilla.
Cartagena Sombiro Erebaren Law Offices for respondent Esmeralda Blacer.

D E C I S I O N

JARDELEZA, *J.*:

This is a petition for review on *certiorari*[1] assailing the Decision[2] and Resolution[3] of the Court of Appeals (CA) in CA G.R. CV No. 53301 dated October 14, 2003 and October 7, 2005, respectively. The Decision and Resolution affirmed the Decision[4] dated February 13, 1996 issued by the Regional Trial Court (RTC), Branch 37, of Iloilo City in Civil Case No. 22150 entitled *"Sps. Jimmy Lagradilla and Warlily Lagradilla v. Spouses Nolan Bienvenido Hapitan and Esmeralda Blacer Hapitan, et al."* for Sum of Money with Preliminary Attachment and Nullification of Title.

The Facts

Between September to December 1994, respondent Esmeralda Blacer Hapitan (Esmeralda) issued thirty-one (31) United Coconut Planters Bank (UCPB) checks in various amounts in the total amount of ₱510,463.98, payable to the order of respondent Warlily Lagradilla (Warlily). The checks were

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[1] *Rollo,* pp. 3-13.

[2] *Id.* at 85-104, penned by Associate Justice Sergio L. Pestaño, with Associate Justice Marina L. Buzon and then CA Associate Justice Jose C. Mendoza, concurring.

[3] *Id.* at 159-160.

[4] *Id.* at 61-82.

dishonored by UCPB for reasons of "account closed" when presented for payment by Warlily.[5]

On January 6, 1995, Warlily, with her husband Jimmy Lagradilla (Jimmy), filed a civil case for sum of money against Nolan (Nolan) and Esmeralda Hapitan, Ilona Hapitan (Ilona), and Spouses Jessie and Ruth Terosa (Spouses Terosa), with a prayer that a writ for preliminary attachment be issued against the real property of Esmeralda and Nolan, consisting of a house and lot, as security for the satisfaction of any judgment that might be recovered.[6]

In their complaint[7] Jimmy and Warlily alleged that they made several demands on Nolan and Esmeralda for the latter to settle their outstanding obligations. The latter spouses promised to convey and transfer to Jimmy and Warlily the title of their house and lot, located at Barangay M. V. Hechanova, Jaro, Iloilo City.[8] The lot was covered by TCT No. T-1 03227 in the name of Nolan and Esmeralda.[9] Jimmy and Warlily later found out that Nolan and Esmeralda separately executed a Special Power of Attorney (SPA) designating Ilona, Nolan's sister, as their attorney-in-fact for the sale of the same property.[10] Jimmy and Warlily alleged that the property was fraudulently sold to Spouses Terosa,[11] and that Nolan and Esmeralda were about to depart from the Philippines with the intent to defraud their creditors; thus, the prayer for the issuance of preliminary attachment of the house and lot.[12]

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[5] *Id.* at 86.

[6] *Id.*

[7] *Id.* at 14-20.

[8] *Id.* at 16.

[9] *Id.* at 17.

[10] *Id.* at 16.

[11] *Id.* at 17.

[12] *Id.* at 18.

Esmeralda filed an Answer with Cross-Claim,[13] admitting her indebtedness to Warlily. She alleged that due to the failure of Nolan, who was a seaman at that time, to send her substantial amounts and on account of the losses she sustained in her jewelry business, she failed to fund the checks she issued.[14] Also, although she executed an SPA in favor of Ilona authorizing the latter to sell the house and lot owned by her and Nolan, she subsequently revoked the said SPA.[15]

Nolan and Ilona denied the allegations of Jimmy and Warlily.[16] They argued that the debts were incurred solely by Esmeralda and were not intended to benefit the conjugal partnership.[17] They further stated that Esmeralda has abandoned her only son with Nolan and that Nolan has filed a petition for declaration of nullity of his marriage with Esmeralda.[18]

On the other hand, the RTC, in its Order[19] dated March 31, 1995, declared the Spouses Terosa in default for failure to file their Answer within the reglementary period.

On February 13, 1996, the RTC rendered its Decision,[20] ruling in favor of Jimmy and Warlily. The dispositive portion of the Decision reads:

WHEREFORE, in view of the foregoing considerations, judgment is hereby rendered in favor of the plaintiffs and against the defendants:

I. Declaring the Deed of Sale in favor of spouses Jessie P. Terosa and Ruth O. Terosa covering the property in question, Lot 19-A- covered by TCT No. T-103227 and the house thereon, in the name

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[13] *Id.* at 45-54.

[14] *Id.* at 48.

[15] *Id.* at 46.

[16] Answer with Affirmative Defense and Counterclaim, *id.* at 40-43.

[17] *Id.* at 40.

[18] *Id.* at 41.

[19] *Id.* at 55.

[20] *Id.* at 61-82.

of the defendants Nolan Hapitan and Esmeralda Blacer Hapitan null and void; consequently, TCT No. T-107509 in the name of the spouses Jessie P. Terosa and Ruth O. Terosa is ordered cancelled;

2. Ordering the defendants jointly and severally to pay the plaintiffs the sum of ₱510,463.98 with interest at the legal rate from the filing of this complaint until fully paid;

3. Ordering the defendants jointly and severally to pay the plaintiffs:

a. ₱30,000.00 as moral damages;
b. ₱30,000.00 as attorney's fees;
c. ₱20,000.00 as exemplary damages

4. Dismissing the counterclaims.

On the cross-claim, defendants Nolan Hapitan, Ilona Hapitan and the spouses Jessie P. Terosa and Ruth O. Terosa are ordered jointly and severally to pay cross-claimant Esmeralda Blacer Hapitan:

a. ₱30,000.00 as moral damages;
b. ₱30,000.00 as attorney's fees;
c. ₱20,000.00 as exemplary damages.

No pronouncement as to costs.

SO ORDERED.[21]

The RTC ruled that the house and lot is part of Nolan and Esmeralda's conjugal property, having been built from the amounts sent by Nolan to Esmeralda as well as the income from Esmeralda's business. As regards the sale of the house and lot to the Spouses Terosa, the RTC noted that the property was sold through an attorney-in-fact, Ilona. The SPA provided that the proceeds of the sale of Esmeralda's share in the property shall be applied specifically in payment of her obligations. This limited authority was acknowledged by Nolan in his SPA to Ilona.[22]

The RTC found that the house and lot was sold at an unreasonably low amount of ₱450,000.00. The lot's market value was ₱290,150.00 and the bill of materials for the

[21] *Id.* at 81-82.

[22] *Id.* at 73.

construction of the house was ₱511,341.94. Thus, the minimum consideration for the property should have been at least ₱800,000.00. The RTC also found that the SPA was revoked after Esmeralda knew that the consideration was unconscionably low and that Nolan and his relatives became antagonistic to her. Further, Ilona turned over the payment to Nolan, but Ilona or Nolan did not pay Esmeralda's obligations.

On the liability of the Spouses Terosa, the RTC ruled that there is sufficient evidence on record to prove that they connived and cooperated with their co-defendants Nolan and Ilona to defraud Esmeralda, and also Jimmy and Warlily. The RTC noted that the Spouses Terosa chose to remain silent because whatever the outcome of the case, they will not stand to lose anything. In addition, before the sale was consummated, they were informed of the revocation of the SPA in favor of Ilona.

The parties filed separate Notices of Appeal.[23]

In its Decision[24] dated October 14, 2003, the CA agreed with the RTC ruling. The dispositive portion reads:

> **WHEREFORE**, in view of all the foregoing, and finding no reversible error in the appealed Decision dated February 13, 1996 in Civil Case No. 22150 of Branch 37 of the Regional Trial Court of Iloilo City, said Decision is hereby **AFFIRMED** in toto and the appeal is **DISMISSED** for lack of merit.
>
> No pronouncement as to costs.
>
> **SO ORDERED**.[25]

On November 6, 2003, Nolan and Ilona filed a Motion for Reconsideration/Modification[26] based mainly on the Affidavit of Waiver, Quitclaim and Satisfaction of Claim (Waiver)[27] dated

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[23] Nolan, Ilona, and the Spouses Terosa filed their separate Notice of Appeal on March 1, March 4, and March 5, 1996, respectively, *RTC Records,* pp. 220-222.

[24] *Rollo,* pp. 85-104.

[25] *Id.* at 104.

[26] *Id.* at 105-115.

October 22, 2003 executed by Warlily, which reads:

AFFIDAVIT OF WAIVER, QUITCLAIM
AND SATISFACTION OF CLAIM

KNOW ALL MEN BY THESE PRESENTS:

I, WARLILY LAGRADILLA, of legal age, married and resident of Molo, Iloilo City, Philippines, after having been duly sworn to in accordance with law hereby depose and state:

That I am the plaintiff in Civil Case No. 22150 RTC, Branch 37, Iloilo City which was to the Court of Appeals as CA G.R. No. CV 53301 against Spouses Nolan Bienvenido L. Hapitan and Esmeralda Blacer, Ilona Hapitan and Spouses Jesse and Ruth Terrosa for Collection of sum of money and damages;

That today I have fully received from Nolan Bienvenido Hapitan for himself and for the rest of the defendants, the balance of my total claim against them, which is now only in the sum of ONE HUNDRED TWENTY-FIVE THOUSAND (₱125,000.00) PESOS, representing the full and complete satisfaction of my claim in the aforementioned Civil Case.

WITH this receipt of such amount, I hereby make remission, release and quitclaim all of whatever claims or causes of action against aforesaid defendants and consider my claims in the aforementioned Civil Case as fully satisfied including attorney's fees.

IN WITNESS WHEREOF, I have hereunto set my hands this 22nd day of October, 2003, in the City of Iloilo, Philippines.

(signed)
WARLILY LAGRADILLA
Plaintiff/Claimant

SIGNED IN THE PRESENCE OF:

(signed)
ROSARIO F. FLORES

(signed)
ANELYN P. PERAL

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[27] *Id.* at 114.

In the same motion, they moved that the CA reconsider its finding that: 1) the sale to the Spouses Terosa was fraudulent, and 2) Esmeralda is entitled to damages.

On November 20, 2003, Jimmy and Warlily, and Nolan and Ilona filed a Motion for Approval of Amicable Settlement.[28] The terms of the Amicable Settlement state:[29]

AMICABLE SETTLEMENT

COME NOW plaintiffs-appellees Jimmy and Warlily Lagradilla and defendants-appellants Nolan Bienvenido Hapitan and Ilona Hapitan assisted by their respective counsels and to this Honorable Court respectfully submit the following Amicable Settlement thus:

1. Plaintiffs-appellees and defendants-appellants Nolan Bienvenido Hapitan and Ilona Hapitan hereby agree to the full, final and complete settlement of the liability of the latter and that of defendants-appellants Sps. Jessie P. Terosa and Ruth O. Terosa to the former under the Decision rendered by the *court a quo* dated February 13, 1996 and affirmed by this Court in its Decision dated October 14, 2003 with the herein defendants-appellants paying the former the amount of Four Hundred Twenty Five Thousand Pesos (₱425,000.00), Three Hundred Thousand Pesos (₱300,000.00) in cash receipt of which is acknowledged by the plaintiffs-appellees Lagradilla in this amicable settlement and the amount of One Hundred Twenty Five Thousand Pesos (₱125,000.00) received by plaintiff- appellee Warlily Lagradilla as mentioned in the Affidavit of Waiver, Quitclaim and Satisfaction of Claim dated 22 October 2003 attached to the Motion for Reconsideration/Modification dated November 6, 2003 and submitted to this Honorable Court which amount of ₱125,000.00 they acknowledge as part payment of the said agreed settlement of ₱425,000.00. It is understood that this payment of defendants — appellants include their share and that of defendant Esmeralda Blacer and defendants — appellants Terosa.

2. They agree, further, to the modification of the judgment of the *court a quo* and affirmed by this Court that instead of its judgment which states-

[28] *Id*. at 121-127.

[29] *Id*. at 124-126.

"Declaring the Deed of Sale in favor of Spouses Jessie P. Terosa and Ruth O. Terosa covering the property in question, Lot 19 -A covered by TCT No. T - 103227 and the house thereon, in the name of the defendants Nolan Hapitan and Esmeralda Blacer Hapitan null and void; consequently, TCT No. T-107509 in the name of the spouses Jessie P. Terosa and Ruth O. Terosa is ordered cancelled;

"2. Ordering the defendants jointly and severally to pay the plaintiffs the sum of ₱520,463.98 with interest at the legal rate from the filing of this complaint until fully paid;

"3. Ordering the defendants jointly and severally to pay the plaintiffs:

a.) ₱ 30,000.00 as moral damages;
b.) ₱ 30,000.00 as attorney's fees;
c.) ₱ 20,000.00 as exemplary damages

"4. Dismissing the counterclaims.

"On the cross-claim, defendants Nolan Hapitan, Ilona Hapitan and the spouses Jessie P. Terosa and Ruth O. Terosa are ordered jointly and severally to pay cross-claimant Esmeralda Blacer Hapitan:

"a.) ₱ 30,000.00 as moral damages;
"b.) ₱ 30,000.00 as attorney's fees;
"c.) ₱ 20,000.00 as exemplary damages."

the terms of the Amicable Settlement in the first paragraph hereof be considered to have modified the terms of the foregoing Decision and that the Deed of Sale in favor of Spouses Jessie P. Terosa and Ruth O. Terosa covering the property in question, Lot 19 – A covered by TCT No. T – 103227 and the house thereon be declared valid and the order for the cancellation of TCT No. T – 107509 in the name of Spouses Jessie P. Terosa and Ruth O. Terosa be recalled.

IN WITNESS WHEREOF the herein parties have signed this Amicable Settlement this 19th day of November 2003 at Iloilo City, Philippines.

(signed)
JIMMY LAGRADILLA
Plaintiff- Appellee

(signed)
WARLILY LAGRADILLA
Plaintiff-Appellee

(signed)
NOLAN BIENVENIDO HAPITAN
Defendant-Appellant

(signed)
ILONA HAPITAN
Defendant-Appellant

Assisted by:

(signed)
ATTY. EDGAR PRAILE
Counsel for plaintiffs-appellees

(signed)
ATTY. EDUARDO N. REYES,
Counsel for defendants-appellants

Jimmy and Warlily filed a Manifestation and Motion[30] dated December 19, 2003. They alleged that on October 28, 2003, Warlily was approached by Nolan who offered money to settle the case amicably. Considering that she was not assisted by her counsel, who had died earlier that year, and that she was in difficult financial constraints then, she accepted the deal of ₱125,000.00 for her and her husband to sign a quitclaim or waiver. Further, at that moment, she was not aware of the fact that the CA had already rendered a decision dated October 14, 2003 as she only knew of the decision on October 30, 2003. She said that she felt somehow deprived of her rights when Nolan willfully failed to disclose the fact that the case was already decided by the CA and taking undue advantage of her counsel's absence, hurriedly closed the deal with her. She further averred that perhaps Nolan was bothered by his conscience when he gave her ₱300,000.00 on November 19, 2003.[31]

In response, Nolan and Ilona filed an Answer to the Manifestation and Motion[32] dated January 6, 2004. They argued

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

[31] *Id.* at 128.

[32] *Id.* at 132-134.

that Warlily's claim of being deceived rests on dubious grounds as she did not categorically state when she officially received a copy of the CA Decision. Also, whatever defects there were in the Waiver were cured or rendered moot and academic by her signing of the Amicable Settlement.

Jimmy and Warlily further refuted Nolan and Ilona's claims in their Opposition to the Motion for Reconsideration/ Modification and Comment to the Answer to the Manifestation and Motion.[33] Jimmy and Warlily said that the execution of the Waiver was actually done on October 28, 2003, not on October 22. In noting the dates of receipts of the CA Decision by the counsel for Nolan and Ilona (October 24, 2003) and by Jimmy and Warlily (October 30, 2003), it clearly appears that Warlily was deceived when she executed her Waiver. The execution of the Amicable Settlement later on November 19, 2003 did not change Warlily's situation as she was never apprised of the import of the CA Decision. She was also of the impression that she had no counsel at that time as she believed that Atty. Edgar Praile, who assisted Jimmy and Warlily in the Amicable Settlement, was only a witness that she received ₱300,000.00 in addition to the ₱125,000.00 that she already received.

In their Reply to Opposition and Answer to Comment[34] dated January 20, 2004, Nolan and Ilona belied Warlily's claim that she only knew of the CA Decision on October 30, when the office of Atty. William Devilles, Jimmy and Warlily's counsel, received a copy on October 23. Moreover, while Atty. Praile signed as a witness to her receipt of ₱300,000.00, it was likewise true that Atty. Praile signed as counsel for Jimmy and Warlily in the Amicable Settlement and Motion to Approve Amicable Settlement dated November 19, 2003.

Meanwhile, Esmeralda filed an Opposition to [the] Motion for Reconsideration/Modification[35] wherein she stated that she

[33] Dated January 11, 2004. *Id.* at 137-142.

[34] *Id.* at 143-146.

[35] Dated January 5, 2004. *Id.* at ll6-ll9.

is not a party to the Waiver and has no knowledge as to its veracity.[36] She further argued that it is incredulous for Nolan to insist that the CA reverse its decision when such decision is even favorable to him. Only the Spouses Terosa would suffer from the decision ordering their title cancelled. She averred that the act of Nolan and Ilona merely bolsters the claim that the alleged deed of sale executed by Nolan and Ilona in favor of the Spouses Terosa is a fictitious and simulated document intended only to deprive Esmeralda and the creditors of their claims against the conjugal assets.[37]

In its Resolution dated October 7, 2005, the CA denied the Motion for Reconsideration/Modification filed by Nolan and Ilona.

Hence, this petition by Ilona.

Ilona argues that by virtue of the Waiver, the CA should have, at the very least, reconsidered or modified its Decision dated October 14, 2003 as Warlily had received from Nolan and Ilona ₱125,000.00 representing the full and complete satisfaction of her claim in the civil case.[38]

Ilona further argues that in addition to the Waiver, the Amicable Settlement results in the modification of the CA Decision. This is so because the parties agreed that the ₱425,000.00 payment received by Jimmy and Warlily is the full, final and complete settlement of their claims. Thus, Ilona prays to this Court that the terms of the Amicable Settlement be considered to have modified the terms of the RTC Decision.[39] Further, the petitioner prays that the deed of sale in favor of Spouses Terosa conveying the house and lot be declared valid, and that the order for the cancellation of TCT No. I07509 in the name of Spouses Terosa be recalled.

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[36] *Id*. at 116.

[37] *Id*. at 117.

[38] *Id*. at 9.

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

The Issue

We decide whether the Waiver and the Amicable Settlement can modify the Decision of the CA.

The Court's Ruling

The Waiver is invalid

Petitioners anchored their Motion for Reconsideration/ Modification on the Affidavit of Waiver, Quitclaim and Satisfaction of Claim[40] executed by Warlily, which they aver to have rendered the issue of the validity of the transfer of the property moot and academic. We are not persuaded.

The nullity of the Deed of Sale could not be affected by the subsequent waiver of Warlily. The Court has explained the nature of a waiver:

> Waiver is defined as "a voluntary and intentional relinquishment or abandonment of a known existing legal right, advantage, benefit, claim or privilege, which except for such waiver the party would have enjoyed x x x."
>
> xxx x x x x x x
>
> [I]t is the general rule that a person may waive any matter which affects his property, and any alienable right or privilege of which he is the owner or which belongs to him or to which he is legally entitled, whether secured by contract, conferred with statute, or guaranteed by constitution, provided such rights and privileges rest in the individual, are intended for his sole benefit, do not infringe on the rights of others, and further provided the waiver of the right or privilege is not forbidden by law, and does not contravene public policy x x x.[41]

Warlily's Waiver cannot cover the issue of the validity of the sale of the property to the Spouses Terosa since the property is neither a right nor a benefit she is entitled to. Moreover, the

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[40] *Id*. at 114.

[41] *F.F. Cruz and Co., Inc. v. HR Construction Corp.,* G.R. No. 187521, March 14, 2012, 668 SCRA 302, 322 citing *People v. Donato,* G.R. No. 79269, June 5, 1991, 198 SCRA 130, 153-154.

declaration of nullity due to the existence of fraud was both a finding of fact and of law by the lower courts, and the parties cannot agree amongst themselves and decide otherwise.

The Amicable Settlement is not valid

The Amicable Settlement, intending to put an end to the controversy between Jimmy and Warlily and Nolan and Ilona, partakes the nature of a compromise agreement. The Amicable Settlement involves two subjects: 1) the payment of the principal obligation of ₱510,463.98 to Jimmy and Warlily; and 2) the cancellation of the sale of the house and lot to the Spouses Terosa.

The Amicable Settlement of the payment of the debt to Jimmy and Warlily is not valid

With the payment of ₱425,000.00, Jimmy and Warlily allegedly released Nolan and Ilona, Esmeralda, and even the Spouses Terosa from their obligations. Specifically:

> l. Plaintiffs-appellees and defendants-appellants Nolan Bienvenido Hapitan and Ilona Hapitan hereby agree to the full, final and complete settlement of the liability of the latter and that of defendants- appellants Sps. Jessie P. Terosa and Ruth O. Terosa to the former under the Decision rendered by the *court a quo* dated February 13, 1996 and affirmed by this Court in its Decision dated October 14, 2003 x x x. It is understood that this payment of defendants-appellants include their share and that of defendant Esmeralda Blacer and defendants-appellants Terosa.
>
> 2. They agree, further, to the modification of the judgment of the *court a quo* and affirmed by this Court that instead of its judgment x x x
>
> x x x x x x x x x
>
> the terms of the Amicable Settlement in the first paragraph hereof be considered to have modified the terms of the foregoing Decision and that the Deed of Sale in favor of Spouses Jessie P. Terosa and Ruth O. Terosa covering the property in question, Lot 19 - A covered by TCT No. T-103227 and the house thereon be declared valid and

the order for the cancellation of TCT No. T - 107509 in the name of Spouses Jessie P. Terosa and Ruth O. Terosa be recalled.[42] (Emphasis supplied)

A compromise agreement is defined as a contract whereby the parties make reciprocal concessions in order to resolve their differences and thus avoid or put an end to a lawsuit.[43] To have the force of law between the parties, a compromise agreement must comply with the requisites and principles of contracts.[44] Thus, it must have the following elements: 1) the consent of the parties to the compromise; 2) an object certain that is the subject matter of the compromise; and 3) the cause of the obligation that is established.[45]

We note that much has been said by the parties on the validity of the Amicable Settlement, specifically on the element of consent. Jimmy and Warlily consistently maintained that they were deceived into executing the Waiver and the Amicable Settlement, and that they were not properly assisted by counsel. They insist that the settlement was proposed and forged by Nolan and Ilona in bad faith, having advance knowledge of the decision of the CA.

While compromise agreements are generally favored and encouraged by the courts, it must be proved that they were voluntarily, freely, and intelligently entered into by the parties,

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[42] *Rollo,* pp. 124-125.

[43] *Magbanua vs. Uy,* G.R. No. 161003, May 6, 2005, 458 SCRA 184, 190 citing CIVIL CODE, Art. 2028; *Manila International Airport Authority (MIAA) v. ALA Industries Corporation,* G.R. No. 147349, February 13, 2004, 422 SCRA 603, 609; *Ramnani v. Court of Appeals,* G.R. No. 85494, July 10, 2001, 360 SCRA 645, 653-654; *Abarintos v. Court of Appeals,* G.R. No. 113070, September 30, 1999, 315 SCRA 550, 560; *Del Rosario v. Madayag,* G.R. No. 118531, August 28, 1995, 247 SCRA 767,770.

[44] *Magbanua v. Uy, supra* at 190-191, citing *Regal Films, Inc. v. Concepcion,* G.R. No. 139532, August 9, 2001, 362 SCRA 504, 508; *Anacleto v. Van Twest,* G.R. No. 131411, August 29, 2000, 339 SCRA 211, 215; *Del Rosario v. Madayag, supra* at 767, 770-771.

[45] *Magbanua v. Uy, supra* 195, citing CIVIL CODE, Art. 1318.

who had full knowledge of the judgment.[46] The allegations of Jimmy and Warlily cast doubt on whether they fully understood the terms of the Amicable Settlement when they signed it. They further argued that they did not fully comprehend the CA Decision in their favor. Thus, it may be reasonably inferred that Jimmy and Warlily did not give consent to the Amicable Settlement with Nolan and Ilona.

Nolan cannot waive his and Esmeralda's rights over the house and lot sold to the Spouses Terosa

The Amicable Settlement, which Nolan signed, aims to recall the lower courts' finding of nullity of the sale of the house and lot to the Spouses Terosa. In effect, by agreeing to the validity of the sale, Nolan disposed of or waived his and Esmeralda's rights over the house and lot, which the lower courts found to be part of their conjugal property.

Such disposal or waiver by Nolan is not allowed by law. Article 124[47] of the Family Code requires that any disposition or encumbrance of conjugal property must have the written consent of the other spouse; otherwise, such disposition is

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[46] *Agustin v. Cruz-Herrera,* G.R. No. 174564, February 12, 2014, 716 SCRA 42, 54-55.

[47] FAMILY CODE, Art. 124. The administration and enjoyment of the conjugal partnership property shall belong to both spouses jointly. In case of disagreement, the husband's decision shall prevail, subject to recourse to the court by the wife for proper remedy, which must be availed of within five years from the date of the contract implementing such decision.

In the event that one spouse is incapacitated or otherwise unable to participate in the administration of the conjugal properties, the other spouse may assume sole powers of administration. <u>These powers do not include disposition or encumbrance without authority of the court or the written consent of the other spouse. In the absence of such authority or consent, the disposition or encumbrance shall be void.</u> However, the transaction shall be construed as a continuing offer on the part of the consenting spouse and the third person, and may be perfected as a binding contract upon the acceptance by the other spouse or authorization by the court before the offer is withdrawn by either or both offerors. (Emphasis supplied)

void.[48] Further, under Article 89[49] of the Family Code, no waiver of rights, interests, shares, and effects of the conjugal partnership of gains[50] during the marriage can be made except in case of judicial separation of property. Clearly, Esmeralda did not consent to Nolan disposing or waiving their rights over the house and lot through the Amicable Settlement. In fact, she even objected to the Amicable Settlement, as evidenced by her pleadings filed before the courts. She further expressed disbelief that Nolan would want the CA to reverse its decision when its ruling, saving Nolan and Esmeralda's conjugal property, is favorable to him.

The invalidity of the Amicable Settlement notwithstanding, we find that it still is evidence of payment by Nolan and Ilona of ₱425,000.00. Even Jimmy and Warlily do not deny that they received the said amount. In fact, in their Opposition to the Motion for Reconsideration/ Modification and Comment to the Answer to the Manifestation and Motion[51] filed with the CA,

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[48] *Titan Construction Corporation v. David, Sr.,* G.R. No. 169548, March 15, 2010, 615 SCRA 362, 371. See also *Aggabao v. Parulan, Jr.,* G.R. No. 165803, September 1, 2010, 629 SCRA 562, 565.

[49] FAMILY CODE, Art. 89. No waiver of rights, interests, shares and effects of the absolute community of property during the marriage can be made except in case of judicial separation of property.

When the waiver takes place upon a judicial separation of property, or after the marriage has been dissolved or annulled, the same shall appear in a public instrument and shall be recorded as provided in Article 77. The creditors of the spouse who made such waiver may petition the court to rescind the waiver to the extent of the amount sufficient to cover the amount of their credits.

[50] FAMILY CODE, Art. 107. The rules provided in Articles 88 and 89 shall also apply to conjugal partnership of gains.

[51] *Rollo*, pp. 137-142.

[52] *Id.* at 139.

1.1 That plaintiff's receipt of the ₱425,0000 [₱125,000 + ₱300,000] does not, in any manner, affect the merit of the case especially as to the finding of this Honorable Court that the transaction of Sale was in fraud of creditors, but on the contrary, it even bolster plaintiff's case for why should appellants settle plaintiffs' claim if indeed there is no legal and factual truism that the sale was really in fraud of creditors.

they admitted that they received the amount,[52] and even attached a copy of the receipt[53] as annex to the said pleading. The amount of ₱425,000.00 should therefore be deducted from the total amount due to Jimmy and Warlily.

WHEREFORE, the Petition is **DENIED.** The Decision dated October 14, 2003 and the Resolution dated October 7, 2005 of the Court of Appeals in CA-G.R. CV No. 53301 are **AFFIRMED** with the **MODIFICATION** that the amount of ₱425,000.00 should be deducted from the total amount due to the Spouses Jimmy and Warlily Lagradilla.

SO ORDERED.

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

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[53] *Id*. at 142.

R E C E I P T

RECEIVED from Nolan Bienvenido Hapitan the amount of Three Hundred Thousand Pesos (₱300,000.00) in cash pursuant to the Amicable Settlement dated November 19, 2003 in C.A. G.R. C.V. No. 53301.

This is also to acknowledge the payment of One Hundred Twenty Five Thousand Pesos (125,000.00) as payment pursuant to the said Amicable Settlement received by Warlily Lagradilla per Affidavit of Waiver, Quitclaim and Satisfaction of Claim dated 22 October 2003.

(signed) (signed)
JIMMY LAGRADILLA WARLILY LAGRADILLA

Witness:

(signed)
ATTY. EDGAR PRAILE

THIRD DIVISION

[G.R. No. 172919. January 13, 2016]

TIMOTEO BACALSO and DIOSDADA BACALSO, *petitioners, vs.* **GREGORIA B. ACA-AC, EUTIQUIA B. AGUILA, JULIAN BACUS and EVELYN SYCHANGCO,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; LIMITED TO REVIEW OF QUESTIONS OF LAW; EXCEPTIONS.—** "[S]ubject to a few exceptions, only questions of law may be brought before the Court *via* a petition for review on *certiorari.*" The Court has repeatedly held that it is not necessitated to examine, evaluate or weigh the evidence considered in the lower courts all over again. "This is especially true where the trial court's factual findings are adopted and affirmed by the CA as in the present case. Factual findings of the trial court, affirmed by the CA, are final and conclusive and may not be reviewed on appeal." Although the Court recognized several exceptions to the limitation of an appeal by *certiorari* to only questions of law, including: (1) when the findings are grounded entirely on speculation, surmises, or conjectures; (2) when the interference made is manifestly mistaken, absurd, or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of fact are conflicting; (6) when in making its findings, the CA went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to those of the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; and (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record, the present appeal does not come under any of the exceptions.

2. **CIVIL LAW; OBLIGATIONS AND CONTRACTS; SALES; CONSIDERATION; WHERE THERE IS NO CONSIDERATION, THE SALE IS NULL AND VOID *AB INITIO*.—** Contrary to the petitioners' claim, this is not merely a case of failure to pay the purchase price which can only amount to a breach of obligation with rescission as the proper remedy. As correctly observed by the RTC, the disputed sale produces no effect and is considered void *ab initio* for failure to or want of consideration since the petitioner failed to pay the consideration stipulated in the Deed of Absolute Sale. x x x It is clear from the factual findings of the RTC that the Deed of Absolute Sale entirely lacked consideration and, consequently, void and without effect. No portion of the ₱8,000.00 consideration indicated in the Deed of Absolute Sale was ever paid by the petitioners. The Court also finds no compelling reason to depart from the court *a quo*'s finding that the Deed of Absolute Sale executed on October 15, 1987 is null and void *ab initio* for lack of consideration x x x. Well-settled is the rule that where there is no consideration, the sale is null and void *ab initio*.

APPEARANCES OF COUNSEL

Ricalde Law Offices for petitioners.

Mercado Cordero Bael Acuña & Sepulveda for respondent Evelyn Sychangco.

Salvador O. Solima for respondents Julian Bacus, *et al*.

D E C I S I O N

REYES, *J*.:

Before this Court is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court seeking to annul and set aside the Decision[2] dated December 14, 2005 and the Resolution[3]

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[1] *Rollo,* pp. 13-23.

[2] Penned by Associate Justice Ramon M. Bato, Jr., with Associate Justices Arsenio J. Magpale and Apolinario D. Bruselas, Jr. concurring; *id*. at 27-39.

[3] *Id*. at 46.

dated May 30, 2006 of the Court of Appeals (CA) in CA-G.R. CV No. 67516. The CA affirmed the Decision dated April 19, 2000 of the Regional Trial Court (RTC) of Cebu City, Branch 11, in Civil Case No. CEB-17994. The RTC ruled that the Deed of Absolute Sale dated October 15, 1987 between herein respondents Gregoria B. Aca-Ac, Eutiquia B. Aguila and Julian Bacus (Julian) (Bacus siblings) and herein petitioner Timoteo Bacalso (Timoteo) was void for want of consideration.

The Facts

The Bacus siblings were the registered owners of a parcel of land described as Lot No. 1809-G-2 located in San Roque, Talisay, Cebu with an area of 1,200 square meters and covered by Transfer Certificate of Title (TCT) No. 59260. The Bacus siblings inherited the said property from their mother Matea Bacalso (Matea).[4]

On October 15, 1987, the Bacus siblings executed a Deed of Absolute Sale conveying a portion of Lot No. 1809-G-2 with an area of 1 sq m, described as Lot No. 1809-G-2-C, in favor of their cousin, Timoteo for and in consideration of the amount of ₱8,000.00.[5]

On March 4, 1988, however, Timoteo, together with his sisters Lucena and Victoria and some of his cousins filed a complaint for declaration of nullity of documents, certificates of title, reconveyance of real property and damages against the Bacus siblings and four other persons before the RTC of Cebu City, Branch 12, and was docketed as Civil Case No. CEB-6693. They claimed that they are co-owners of the three-fourths portion of Lot No. 1809-G (which Lot No. 1809-G-2-C was originally part of) as Matea had paid for the said property for and in behalf of her brother Alejandro (father of petitioner Timoteo) and sisters Perpetua and Liberata, all surnamed Bacalso.[6]

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[4] *Id*. at 27.

[5] *Id*. at 28.

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

On November 29, 1989, the RTC found that Matea was the sole owner of Lot No. 1809-G and affirmed the validity of the conveyances of portions of Lot No. 1809-G made by her children. The same was affirmed by the CA in a Decision dated March 23, 1992 and became final and executory on April 15, 1992.[7]

Undaunted, Timoteo and Diosdada Bacalso (petitioners) filed on October 26, 1995, a complaint for declaration of nullity of contract and certificates of title, reconveyance and damages against the Bacus siblings, this time claiming ownership over Lot No. 1809-G-2-C by virtue of the Deed of Absolute Sale dated October 15, 1987. They claimed, however, that the Bacus siblings reneged on their promise to cause the issuance of a new TCT in the name of the petitioners.[8]

Moreover, the petitioners alleged that the Bacus siblings have caused the subdivision of Lot No. 1809-G-2 into four lots and one of which is Lot No. 1809-G-2-C which is now covered by TCT No. 70783. After subdividing the property, the Bacus siblings, on February 11, 1992, without knowledge of the petitioners, sold Lot No. 1809-G-2-C again to respondent Evelyn Sychangco (Sychangco) and that TCT No. 74687 covering the same property was issued in her name.[9]

In their answer, the Bacus siblings denied the allegations of the petitioners and claimed that the alleged sale of Lot No. 1809-G-2-C in favor of the petitioners did not push through because the petitioners failed to pay the purchase price thereof.[10]

For her part, Sychangco averred that she is a buyer in good faith and for value as she relied on what appeared in the certificate of title of the property which appeared to be a clean title as no lien or encumbrance was annotated therein.[11]

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[7] *Id*. at 29.

[8] *Id*.

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

[10] *Id*. at 30.

[11] *Id*.

On April 19, 2000, the RTC issued a Decision declaring the Deed of Absolute Sale dated October 15, 1987 void for want of consideration after finding that the petitioners failed to pay the price of the subject property. Moreover, the RTC held that even granting that the sale between the Bacus siblings and the petitioners was valid, the petitioners still cannot ask for the rescission of the sale of the disputed portion to Sychangco as the latter was a buyer in good faith, thus has a better right to the property.[12]

Aggrieved by the foregoing disquisition of the RTC, the petitioners interposed an appeal with the CA. On December 14, 2005, however, the CA affirmed the ruling of the RTC. The petitioners sought a reconsideration[13] of the CA decision but it was denied in a Resolution dated May 30, 2006.

The Issues

The petitioners assign the following errors of the CA:

I

THE [CA] SERIOUSLY ERRED WHEN IT RELIED TOO MUCH ON THE RESPECTIVE ORAL TESTIMONIES OF RESPONDENTS JULIAN BACUS AND EVELYN SYCHANGCO UTTERLY DISREGARDING THE ORAL TESTIMONIES OF PETITIONER TIMOTEO BACALSO AND THE LATTER'S WITNESS ROBERTO YBAS AND THE DOCUMENTARY EVIDENCE OF THE PETITIONERS, THE DULY EXECUTED AND NOTARIZED DEED OF ABSOLUTE SALE COVERING THE SUBJECT LOT NO. 1809-G-2-C.

II

THE [CA] SERIOUSLY ERRED WHEN IT RULED THAT THE DEED OF ABSOLUTE SALE DATED 15 OCTOBER 1987 IS NULL AND VOID *AB INITIO* FOR FAILURE OR WANT OF CONSIDERATION.

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[12] *Id*.

[13] *Id*. at 41-44.

III

THE [CA] SERIOUSLY ERRED WHEN IT DID NOT CONSIDER THE FACT THAT THE DEED OF ABSOLUTE SALE DATED 15 OCTOBER 1987 WAS NOTARIZED, HENCE, A PUBLIC DOCUMENT WHICH ENJOYS THE PRESUMPTION OF REGULARITY.

IV

THE [CA] SERIOUSLY ERRED WHEN IT DID NOT RULE THAT ON 15 OCTOBER 1987, THE [BACUS SIBLINGS] WERE NO LONGER OWNERS AND POSSESSORS OF THE SUBJECT LOT AS THE SAME WAS ALREADY TRANSFERRED TO THE PETITIONERS BY REASON OF THE MERE EXECUTION OF A DEED OF SALE IN A PUBLIC DOCUMENT, AS IN THIS CASE.[14]

Essentially, the issues presented to the Court for resolution could be reduced into whether the CA erred in holding that the Deed of Absolute Sale dated October 15, 1987 is void for want of consideration.

Ruling of the Court

The petition is bereft of merit.

The central issue to be resolved in the present controversy is the validity of the Deed of Absolute Sale between the petitioners and the Bacus siblings. "Such issue involves a question of fact and settled jurisprudence dictates that, subject to a few exceptions, only questions of law may be brought before the Court *via* a petition for review on *certiorari.*"[15]

The Court has repeatedly held that it is not necessitated to examine, evaluate or weigh the evidence considered in the lower courts all over again. "This is especially true where the trial court's factual findings are adopted and affirmed by the CA as in the present case. Factual findings of the trial court, affirmed

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[14] *Id.* at 17-18.

[15] *Sps. Carpio v. Sebastian, et al.,* 635 Phil. 1, 8 (2010).

by the CA, are final and conclusive and may not be reviewed on appeal."[16]

Although the Court recognized several exceptions to the limitation of an appeal by *certiorari* to only questions of law, including: (1) when the findings are grounded entirely on speculation, surmises, or conjectures; (2) when the inference made is manifestly mistaken, absurd, or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on a misapprehension of facts; (5) when the findings of fact are conflicting; (6) 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; (7) when the findings are contrary to those of the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; and (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record,[17] the present appeal does not come under any of the exceptions.

In any event, the Court has carefully reviewed the records of the instant case and found no reason to disturb the findings of the RTC as affirmed by the CA.

Under the Civil Code, a contract is a meeting of minds, with respect to the other, to give something or to render some service. Article 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.

In the case at bar, the petitioners argue that the Deed of Absolute Sale has all the requisites of a valid contract. The

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[16] *Spouses Pascual v. Spouses Coronel,* 554 Phil. 351, 360 (2007).

[17] *Citibank, N.A. v. Sabeniano,* 535 Phil. 384, 410-411 (2006).

petitioners contend that there is no lack of consideration that would prevent the existence of a valid contract. The petitioners contend that there is no lack of consideration that would prevent the existence of a valid contract. They assert that the testimonies of Timoteo and witness Roberto Ybas sufficiently established that the purchase price of ₱8,000.00. for Lot No. 1809-G-2-C was paid to Julian at Sto. Niño Church in Cebu City before the execution of the Deed of Absolute Sale. They also claim that even assuming that they failed to pay the purchase price, such failure does not render the sale void for being fictitious or simulated, rather, there is only non-payment of the consideration within the period agreed upon for payment.[18]

The Court does not agree.

Contrary to the petitioners' claim, this is not merely a case of failure to pay the purchase price which can only amount to a breach of obligation with rescission as the proper remedy. As correctly observed by the RTC, the disputed sale produces no effect and is considered void *ab initio* for failure to or want of consideration since the petitioner failed to pay the consideration stipulated in the Deed of Absolute Sale. The trial court's discussion on the said issue, as affirmed by the CA, is hereby quoted:

> To begin with, the Court hereby states that, from the totality of the evidence adduced in this case which it scrutinized and evaluated, it has come up with a finding that there was failure or want of consideration of the Deed of Sale of Lot 1809-G-2-C executed in favor of the [petitioners] on October 15, 1987. The Court is morally and sufficiently convinced that [Timoteo] had not paid to the [Bacus siblings] the price for the said land. This fact has been competently and preponderantly established by the testimony in court of [Julian]. [Julian] made the following narration in his testimony:
>
> Sometime in October 1987, he and his two sisters agreed to sell to the [petitioners] Lot No. 1809-G-2-C because they needed money for the issuance of the titles to the four lots into which Lot 1809-G-2 was subdivided. [Timoteo] lured him and his sisters into selling the said land by his promise and representation that money was coming

[18] *Rollo,* pp. 32-33.

from his sister. Lucena Bacalso, from Jolo, Sulu. Timoteo Bacalso asked for two weeks within which to produce the said money. However, no such money came. To the shock and surprise of him and his sisters, a complaint was filed in Court against them in Civil Case No. CEB-6693 by [Timoteo], together with nine others, when Lucena Bacalso arrived from Jolo, Sulu, wherein they claimed as theirs Lot 1809-G. Instead of being paid, he and his sisters were sued in Court. From then on, [Timoteo] never cared anymore to pay for Lot 1809-G-2-C. He and his sisters just went through the titling of Lots 1809-G-A, 1809-G-2-B, Lot 1809-G-2-C and 1809-G-2-D on their own.

On his part, [Timoteo] himself acted in such a manner as to confirm that he did not anymore give significance or importance to the Deed of Sale of Lot 1809-G-2-C which, in turn, creates an impression or conclusion that he did not pay for the consideration or price thereof. Upon being cross-examined in Court on his testimony, he made the following significant admissions and statements:

1. That he did not let [Julian] sign a receipt for the sum of ₱8,000.00 purportedly given by him to the latter as payment for the land in question;

2. That the alleged payment of the said sum of ₱8,000.00 was made not in the presence of the notary public who notarized the document but in a place near Sto. Nino Church in Cebu City;

3. That it was only [Julian] who appeared before the notary public, but he had no special power of attorney from his two sisters;

4. That the Deed of Sale of Lot 1809-G-2-C was already in his possession before Civil Case No. CEB-6693 was filed in court;

5. That he did not however show the said Deed of Sale to his lawyer who filed for the plaintiffs the complaint in Civil Case No. CEB 6693, as in fact he suppressed the said document from others;

6. That he did not bother to cause the segregation of Lot 1809-G-2-C from the rest of the lots even after he had already bought it already;

7. That it was only after he lost in Civil Case No. CEB-6693 that he decided to file the present case;

8. That he did not apply for building permits for the three houses that he purportedly caused to be built on the land in question;

9. That he did not also declare for taxation purposes the said

alleged houses;

10. That he did not declare either for taxation purposes the land in question in his name or he had not paid taxes therefore; and

11. That he did not bother to register with the Registry of Deeds for the Province of Cebu the Deed of Sale of the lot.

To the mind of the Court, [Timoteo] desisted from paying to [the Bacus siblings] the price for Lot 1809-G-2-C when he, together with nine others, filed in Court the complaint in Civil Case No. CEB-6693. He found it convenient to just acquire the said land as supposed co-owners of Lot 1809-G of which the land in question is merely a part of. x x x.

x x x x x x x x x

Thus, it is evident from all the foregoing circumstances that there was a failure to or want of consideration of the supposed sale of the land in question to the [petitioners] on October 15, 1987. So, the said sale could not be given effect. Article 1352 of the New Civil Code of the Philippines is explicit in providing that 'contracts without cause produce no effect whatsoever.' If there is no cause, the contract is void. x x x There being no price paid, there is no cause or consideration; hence, the contract is void as a sale. x x x Consequently, in the case at bench, the plaintiffs have not become absolute owners of Lot 1809-G-2-C of Psd-07-022093 by virtue of the Deed of Sale thereof which was executed on October 15, 1987 by the [Bacus siblings] in their favor.[19] (Citations omitted)

It is clear from the factual findings of the RTC that the Deed of Absolute Sale entirely lacked consideration and, consequently, void and without effect. No portion of the ₱8,000.00 consideration indicated in the Deed of Absolute Sale was ever paid by the petitioners.

The Court also finds no compelling reason to depart from the court *a quo*'s finding that the Deed of Absolute Sale executed on October 15, 1987 is null and void *ab initio* for lack of consideration, thus:

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[19] *Id*. at 33-37.

It must be stressed that the present case is not merely a case of failure to pay the purchase price, as [the petitioners] claim, which can only amount to a breach of obligation with rescission as the proper remedy. What we have here is a purported contract that lacks a cause — one of the three essential requisites of a valid contract. Failure to pay the consideration is different from lack of consideration. The former results in a right to demand the fulfillment or cancellation of the obligation under an existing valid contract while the latter prevents the existence or a valid contract. Consequently, we rule that the October 15, 1987 Deed of Sale is null and void *ab initio* for lack of consideration.[20] (Citation omitted)

Well-settled is the rule that where there is no consideration, the sale is null and void *ab initio.* In *Sps. Lequin v. Sps. Vizconde,*[21] the Court ruled that:

There can be no doubt that the contract of sale or *Kasulatan* lacked the essential element of consideration. It is a well-entrenched rule that where the deed of sale states that the purchase price has been paid but in fact has never been paid, the deed of sale is null and void *ab initio* for lack of consideration.[22] (Citation omitted)

WHEREFORE, petition is **DENIED** and the Decision dated December 14, 2005 of the Court of Appeals in CA-G.R. CV No. 67516 is **AFFIRMED.**

SO ORDERED.

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

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

[21] 618 Phil. 409 (2009).

[22] *Id*. at 426.

THIRD DIVISION

[G.R. Nos. 173254-55 & 173263. January 13, 2016]

DIAMOND FARMS, INC., *petitioner, vs.* **SOUTHERN PHILIPPINES FEDERATION OF LABOR (SPFL)-WORKERS SOLIDARITY OF DARBMUPCO/DIAMOND-SPFL, DIAMOND FARMS AGRARIAN REFORM BENEFICIARIES MULTI-PURPOSE COOPERATIVE (DARBMUPCO), VOLTER LOPEZ, RUEL ROMERO, PATRICIO CAPRECHO, REY DIMACALI, ELESIO EMANEL, VICTOR SINGSON, NILDA DIMACALI, PREMITIVO[*] DIAZ, RUDY VISTAL, ROGER MONTERO, JOSISIMO GOMEZ and MANUEL MOSQUERA,** *respondents.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; LABOR CODE; CONTRACTING OR SUBCONTRACTING; INVOLVES A TRILATERAL RELATIONSHIP AMONG THE PRINCIPAL OR EMPLOYER, THE CONTRACTOR OR SUBCONTRACTOR, AND THE WORKERS ENGAGED BY THE CONTRACTOR OR SUBCONTRACTOR.—** This case involves job contracting, a labor arrangement expressly allowed by law. Contracting or subcontracting is an arrangement whereby a principal (or employer) agrees to put out or farm out with a contractor or subcontractor the performance or completion of a specific job, work or service within a definite or predetermined period, regardless of whether such job, work or service is to be performed or completed within or outside the premises of the principal. It involves a trilateral relationship among the principal or employer, the contractor or subcontractor, and the workers engaged by the contractor or subcontractor.Article 106 of the Labor Code of the Philippines (Labor Code) explains the relations which may arise between an employer, a contractor, and the contractor's emp1oyees x x x.

[*] Also referred to as Primitivo in other parts of the records.

2. **ID.; ID.; OMNIBUS RULES IMPLEMENTING THE LABOR CODE; PERMISSIBLE JOB CONTRACTING AND LABOR-ONLY CONTRACTING, DISTINGUISHED.—** The Omnibus Rules Implementing the Labor Code distinguishes between permissible job contracting (or independent contractorship) and labor-only contracting. Job contracting is permissible under the Code if the following conditions are met: "(a) The contractor carries on an independent business and undertakes the contract work on his own account under his own responsibility according to his own manner and method, free from the control and direction of his employer or principal in all matters connected with the performance of the work except as to the results thereof; and (b) The contractor has substantial capital or investment in the form of tools, equipment, machineries, work premises, and other materials which are necessary in the conduct of his business." In contrast, job contracting shall be deemed as labor-only contracting, an arrangement prohibited by law, if a person who undertakes to supply workers to an employer: "(1) Does not have substantial capital or investment in the form of tools, equipment, machineries, work premises and other materials; and (2) The workers recruited and placed by such person are performing activities which are directly related to the principal business or operations of the employer in which workers are habitually employed." As a general rule, a contractor is presumed to be a labor-only contractor, unless such contractor overcomes the burden of proving that it has the substantial capital, investment, tools and the like.

3. **ID.; ID.; LABOR-ONLY CONTRACTING; IN LABOR-ONLY CONTRACTING, THERE IS AN EMPLOYER-EMPLOYEE RELATIONSHIP BETWEEN THE PRINCIPAL AND THE WORKERS OF THE LABOR-ONLY CONTRACTOR, THE LABOR-ONLY CONTRACTOR IS DEEMED ONLY AN AGENT OF THE PRINCIPAL.—** There is no evidence showing that respondent-contractors are independent contractors. The respondent-contractors, DFI, and DARBMUPCO did not offer any proof that respondent-contractors were not engaged in labor-only contracting. x x x To support its argument that respondent-contractors are the employers of respondent-workers, and not merely labor-only contractors, DFI should have presented proof showing that respondent-contractors carry on an

independent business and have sufficient capitalization. The record, however, is bereft of showing of even an attempt on the part of DFI to substantiate its argument. x x x [R]espondent-contractors admit, and even insist that they are engaged in labor-only contracting. x x x [R]espondent- contractors made the admissions and declarations on two occasions: *first* was in their Formal Appearance of Counsel and Motion for Exclusion of Individual Party-Respondents filed before the LA; and *second* was in their Verified Explanation and Memorandum filed before this Court. x x x The x x x admissions are legally binding on respondent- contractors. Judicial admissions made by parties in the pleadings, or in the course of the trial or other proceedings in the same case are conclusive and so does not require further evidence to prove them. Here, the respondent- contractors voluntarily pleaded that they are labor-only contractors; hence, these admissions bind them. A finding that a contractor is a labor-only contractor is equivalent to a declaration that there is an employer-employee relationship between the principal, and the workers of the labor-only contractor; the labor-only contractor is deemed only as the agent of the principal. Thus, in this case, respondent-contractors are the labor-only contractors and either DFI or DARBMUPCO is their principal.

4. **ID.; ID.; EMPLOYER-EMPLOYEE RELATIONSHIP; PRINCIPAL OR EMPLOYER; REFERS TO THE PERSON WHO ENTERS INTO AN AGREEMENT WITH A JOB CONTRACTOR, EITHER FOR THE PERFORMANCE OF A SPECIFIC WORK OR FOR THE SUPPLY OF MANPOWER.—** Under Article 106 of the Labor Code, a principal or employer refers to the person who enters into an agreement with a job contractor, either for the perfomance of a specified work or for the supply of manpower. x x x DFI does not deny that it engaged the services of the respondent-contractors. It does not dispute the claims of respondent-contractors that they sent their billing to DFI for payment; and that DFI's managers and personnel are in close consultation with the respondent-contractors. x x x That DARBMUPCO owns the awarded plantation where the respondent-contractors and respondent-workers were working is immaterial. This does not change the situation of the parties. As correctly found by the CA, DFI, as the principal, hired the respondent-contractors and the latter, in turn, engaged the services of the respondent-workers.

This was also the unanimous finding of the SOLE, the LA, and the NLRC. Factual findings of the NLRC, when they coincide with the LA and affirmed by the CA are accorded with great weight and respect and even finality by this Court. x x x That DFI is the employer of the respondent-workers is bolstered by the CA's finding that DFI exercises control over the respondent-workers. DFI, through its manager and supervisors provides for the work assignments and performance targets of the respondent-workers. The managers and supervisors also have the power to directly hire and terminate the respondent-workers. Evidently, DFI wields control over the respondent-workers. x x x DFI is the true employer of the respondent-workers; respondent-contractors are only agents of DFI. Under Article 106 of the Labor Code, DFI shall be solidarily liable with the respondent-contractors for the rightful claims of the respondent-workers, to the same manner and extent as if the latter are directly employed by DFI.

5. ID.; ID.; LABOR-ONLY CONTRACTING; THE EXISTENCE OF AN EMPLOYER-EMPLOYEE RELATIONSHIP BETWEEN THE PRINCIPAL AND THE WORKERS OF THE LABOR-ONLY CONTRACTOR CANNOT BE MADE THE SUBJECT OF AN AGREEMENT.— Neither can DFI argue that it is only the purchaser of the bananas produced in the awarded plantation under the BPPA, and that under the terms of the BPPA, no employer-employee relationship exists between DFl and the respondent-workers x x x. In labor-only contracting, it is the law which creates an employer- employee relationship between the principal and the workers of the labor- only contractor. Inasmuch as it is the law that forms the employment ties, the stipulation in the BPPA that respondent-workers are not employees of DFI is not controlling, as the proven facts show otherwise. The law prevails over the stipulations of the parties.

APPEARANCES OF COUNSEL

Siguion Reyna Montecillo & Ongsiako for petitioner.
Cariaga Law Offices for respondent DARBMUPCO.
Wilbur T. Fuentes for respondent Southern Philippines Federation of Labor (SPFL).

DECISION

JARDELEZA, *J.*:

We resolve in this Petition for Review[1] under Rule 45 of the Rules of Court, the issue of who among Diamond Farms, Inc. ("DFI"), Diamond Farms Agrarian Reform Beneficiaries Multi-Purpose Cooperative ("DARBMUPCO") and the individual contractors[2] ("respondent- contractors") is the employer of the 400 employees ("respondent-workers").

DFI challenges the March 31, 2006 Decision[3] and May 30, 2006 Resolution [4] of the Court Appeals, Special Twenty-Second Division, Cagayan De Oro City for being contrary to law and jurisprudence. The Decision dismissed DFI's Petition for Certiorari in C.A.-G.R. SP Nos. 53806 and 61607 and granted DARBMUPCO's Petition for Certiorari in C.A.-G.R. SP No. 59958. It declared DFI as the statutory employer of the respondent- workers.

The Facts

DFI owns an 800-hectare banana plantation ("original plantation") in Alejal, Carmen, Davao.[5] Pursuant to Republic Act No. 6657 or the Comprehensive Agrarian Reform Law of 1988 ("CARL"), commercial farms shall be subject to compulsory acquisition and distribution,[6] thus the original plantation was

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[1] *Rollo,* pp. 9-39.

[2] Volter Lopez, Ruel Romero, Patricio Caprecho, Rey Dimacali, Elesio Emanel, Victor Singson, Nilda Dimacali, Premitivo Diaz, Rudy Vistal, Roger Montero, Josisimo Gomez and Manuel Mosquera.

[3] Penned by Associate Justice Myrna Dimaranan Vidal and concurred in by Associate Justices Romulo V. Borja and Ricardo R. Rosario. *Rollo,* pp. 42-73.

[4] Penned by Associate Justice Myrna Dimaranan Vidal and concurred in by Associate Justices Romulo V. Borja and Edgardo A. Camello (in lieu of Associate Justice Rosario, on leave). *Id.* at 76-77.

[5] *Id*. at 50.

[6] The pertinent portion of Republic Act No. 6657 provides:

covered by the law. However, the Department of Agrarian Reform ("DAR") granted DFI a deferment privilege to continue agricultural operations until 1998.[7] Due to adverse marketing problems and observance of the so-called "lay-follow" or the resting of a parcel of land for a certain period of time after exhaustive utilization, DFI closed some areas of operation in the original plantation and laid off its employees.[8] These employees petitioned the DAR for the cancellation of DFI's deferment privilege alleging that DFI already abandoned its area of operations.[9] The DAR Regional Director recalled DFI's deferment privilege resulting in the original plantation's automatic compulsory acquisition and distribution under the CARL.[10] DFI filed a motion for reconsideration which was denied. It then appealed to the DAR Secretary.[11]

In the meantime, to minimize losses, DFI offered to give up its rights and interest over the original plantation in favor of

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Section 11. *Commercial Farming.*— Commercial farms, which are private agricultural lands devoted to commercial livestock, poultry and swine raising, and aquaculture including saltbeds, fishponds and prawn ponds, fruit farms, orchards, vegetable and cut-flower farms, and cacao, coffee and rubber plantations, shall be subject to immediate compulsory acquisition and distribution after (10) years from the effectivity of the Act. In the case of new farms, the ten-year period shall begin from the first year of commercial production and operation, as determined by the DAR. During the ten-year period, the government shall initiate the steps necessary to acquire these lands, upon payment of just compensation for the land and the improvements thereon, preferably in favor of organized cooperatives or associations, which shall hereafter manage the said lands for the worker-beneficiaries. xxx.

[7] *Rollo,* p. 50.

[8] *Id*.

[9] *Id*.

[10] *Id*.; Republic Act No. 6657 reads:

Section 11. *Commercial Farming.* xxx If the DAR determines that the purposes for which this deferment is granted no longer exist, such areas shall automatically be subject to redistribution.

[11] *Rollo,* p. 50.

the government by way of a Voluntary Offer to Sell.[12] The DAR accepted DFI's offer to sell the original plantation. However, out of the total 800 hectares, the DAR only approved the disposition of 689.88 hectares. Hence, the original plantation was split into two: 689.88 hectares were sold to the government ("awarded plantation") and the remaining 200 hectares, more or less, were retained by DFI ("managed area"). [13] The managed area is subject to the outcome of the appeal on the cancellation of the deferment privilege before the DAR Secretary.

On January 1, 1996, the awarded plantation was turned over to qualified agrarian reform beneficiaries ("ARBs") under the CARL. These ARBs are the same farmers who were working in the original plantation. They subsequently organized themselves into a multi-purpose cooperative named "DARBMUPCO," which is one of the respondents in this case.[14]

On March 27, 1996, DARBMUPCO entered into a Banana Production and Purchase Agreement ("BPPA")[15] with DFI.[16] Under the BPPA, DARBMUPCO and its members as owners of the awarded plantation, agreed to grow and cultivate only high grade quality exportable bananas to be sold exclusively to DFI.[17] The BPPA is effective for 10 years.[18]

On April 20, 1996, DARBMUPCO and DFI executed a "Supplemental to Memorandum Agreement" ("SMA").[19] The SMA stated that DFI shall take care of the labor cost arising from the packaging operation, cable maintenance, irrigation

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[12] *Id.* at 51.

[13] *Id.*

[14] *Rollo,* p. 14.

[15] CA *rollo* (CA-G.R. SP No. 59958), pp. 108-112.

[16] Petition for Review, *rollo,* p. 14.

[17] CA *rollo* (CA-G.R. SP No. 59958), p. 109.

[18] *Id.* at 108.

[19] *Id.* at 113-114.

pump and irrigation maintenance that the workers of DARBMUPCO shall conduct for DFI's account under the BPPA.[20]

From the start, DARBMUPCO was hampered by lack of manpower to undertake the agricultural operation under the BPPA because some of its members were not willing to work.[21] Hence, to assist DARBMUPCO in meeting its production obligations under the BPPA, DFI engaged the services of the respondent-contractors, who in turn recruited the respondent-workers.[22]

The engagement of the respondent-workers, as will be seen below, started a series of labor disputes among DARBMUPCO, DFI and the respondent- contractors.

C.A. G.R. SP No. 53806

On February 10, 1997, respondent Southern Philippines Federation of Labor ("SPFL")—a legitimate labor organization with a local chapter in the awarded plantation—filed a petition for certification election in the Office of the Med-Arbiter in Davao City.[23] SPFL filed the petition on behalf of some 400 workers (the respondent-workers in this petition) "jointly employed by DFI and DARBMUPCO" working in the awarded plantation.

DARBMUPCO and DFI denied that they are the employers of the respondent-workers. They claimed, instead, that the respondent-workers are the employees of the respondent-contractors.[24]

In an Order dated May 14, 1997,[25] the Med-Arbiter granted

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[20] *Id.* at 113.

[21] CA *rollo* (CA-G.R. SP No. 53806), p. 53.

[22] *Rollo,* p. 52 citing CA *rollo* (CA-G.R. SP No. 53806), p. 53.

[23] CA *rollo* (CA-G.R. SP No. 53806), pp. 57-60.

[24] *Id.* at 76.

[25] *CA rollo* (CA-G.R. SP No. 61607), pp. 125-131.

the petition for certification election. It directed the conduct of certification election and declared that DARBMUPCO was the employer of the respondent-workers. The Order stated that "whether the said workers/employees were hired by independent contractors is of no moment. What is material is that they were hired purposely to work on the 689.88 hectares banana plantation [the awarded plantation] now owned and operated by DARBMUPCO."[26]

DARBMUPCO appealed to the Secretary of Labor and Employment ("SOLE"). In a Resolution dated February 18, 1999,[27] the SOLE modified the decision of the Med-Arbiter. The SOLE held that DFI, through its manager and personnel, supervised and directed the performance of the work of the respondent- contractors. The SOLE thus declared DFI as the employer of the respondent- workers.[28]

DFI filed a motion for reconsideration which the SOLE denied in a Resolution dated May 4, 1999.[29]

On June 11, 1999, DFI elevated the case to the Court of Appeals ("CA") *via* a Petition for *Certiorari*[30] under Rule 65 of the Rules of Court. The case was raffled to the CA's former Twelfth Division and was docketed as *C.A.-G.R. SP No. 53806.*

C.A.-G.R. SP. No. 59958

Meanwhile, on June 20, 1997[31] and September 15, 1997,[32] SPFL, together with more than 300 workers, filed a case for underpayment of wages, non-payment of 13th month pay and

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

[27] *CA rollo* (CA-G.R. SP No. 53806), pp. 86-88.

[28] *Id.* at 88.

[29] *Id.* at 95.

[30] *Id.* at 47-56.

[31] RAB-11-05-00598-97. Decision of the LA dated January 22, 1999, CA *rollo* (CA-G.R. SP No. 59958), p. 88.

[32] RAB-11-09-00865-97. *Id.*

service incentive leave pay and attorney's fees against DFI, DARBMUPCO and the respondent-contractors before the National Labor Relations Commission ("NLRC") in Davao City. DARBMUPCO averred that it is not the employer of respondent-workers; neither is DFI. It asserted that the money claims should be directed against the true employe—-the respondent-contractors.[33]

In a Decision dated January 22, 1999[34] the Labor Arbiter ("LA") held that the respondent-contractors are "labor-only contractors." The LA gave credence to the affidavits of the other contractors[35] of DFI (who are not party-respondents in this petition) asserting that DFI engaged their services, and supervised and paid their laborers. The affidavits also stated that the contractors had no dealings with DARBMUPCO, except that their work is done in the awarded plantation.[36]

The LA held that, under the law, DFI is deemed as the statutory employer of all the respondent-workers.[37] The LA dismissed the case against DARBMUPCO and the respondent-contractors.[38]

DFI appealed to the NLRC. In a Resolution dated May 24, 1999,[39] the NLRC Fifth Division modified the Decision of the LA and declared that DARBMUPCO and DFI are the statutory employers of the workers rendering services in the awarded plantation and the managed area, respectively.[40] It adjudged DFI and DARBMUPCO as solidarily liable with the respondent-

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[33] CA *rollo* (CA-G.R. SP No. 59958), p. 95.

[34] *Id*. at 83-100.

[35] Pertaining to Rolando Alonsagay, Edilberto Amoguis and Socrates Edilon who were former contractors of DFI. *Id*. at 97.

[36] *Id*. at 98.

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

[38] *Id*. at 100.

[39] *Id*. at 55-62.

[40] *Id.* at 60.

[41] *Id*. at 61.

contractors for the monetary claims of the workers, in proportion to their net planted area.[41]

DARBMUPCO filed a motion for reconsideration which was denied.[42] It filed a second motion for reconsideration in the NLRC, which was also denied for lack of merit and for being barred under the NLRC Rules of Procedure. [43] Hence, DARBMUPCO elevated the case to the CA by way of a Petition for *Certiorari.*[44] The case was docketed as *C.A.-G.R. SP. No. 59958.*

The Former Eleventh Division of the CA consolidated C.A. G.R. SP. No. 59958 and C.A.-G.R. SP No. 53806 in a Resolution dated January 27, 2001.[45]

C.A.-G.R. SP No. 61607

Pursuant to the May 4, 1999 Resolution of the SOLE approving the conduct of certification election, the Department of Labor and Employment ("DOLE") conducted a certification election on October 1, 1999.[46] On even date, DFI filed an election protest[47] before the Med-Arbiter arguing that the certification election was premature due to the pendency of a petition for *certiorari* before the CA assailing the February 18, 1999 and May 4, 1999 Resolutions of the SOLE *(previously discussed in C.A.-G.R. SP No. 53806).*

In an Order dated December 15, 1999,[48] the Med-Arbiter denied DFI's election protest, and certified SPFL-Workers Solidarity of DARBMUPCO/DIAMOND-SPFL ("WSD-SPFL") as

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[42] NLRC's Resolution dated July 30, 1999, *id.* at 64-67.

[43] NLRC's Resolution dated June 26, 2000, *id.* at 69-71.

[44] *Id.* at 14-53.

[45] *Rollo*, p. 18.

[46] *Id.* at 58.

[47] CA *rollo* (CA-G.R. SP No. 61607), pp. 137-139.

[48] *Id.* at 144-147.

[49] *Id.* at 148-150.

the exclusive bargaining representative of the respondent-workers. DFI filed a Motion for Reconsideration[49] which the Med-Arbiter treated as an appeal, and which the latter elevated to the SOLE.

In a Resolution dated July 18, 2000,[50] the SOLE dismissed the appeal. The Resolution stated that the May 4, 1999 Resolution directing the conduct of certification election is already final and executory on June 4, 1999. It pointed out that the filing of the petition for *certiorari* before the CA assailing the February 18, 1999 and May 4, 1999 Resolutions does not stay the conduct of the certification election because the CA did not issue a restraining order.[51] DFI filed a Motion for Reconsideration but the motion was denied.[52]

On October 27, 2000, DFI filed a Petition for *Certiorari*[53] before the CA, docketed as *C.A.-G.R. SP No. 61607.*

In a Resolution dated August 2, 2005,[54] the CA Twenty-Third Division consolidated C.A.-G.R. SP No. 61607 with C.A.-G.R. SP. No. 59958 and C.A. G.R. SP No. 53806.

The Assailed CA Decision and Resolution

The CA was confronted with two issues:[55]

(1) "Whether DFI or DARBMUPCO is the statutory employer of the [respondent-workers] in these petitions; and

(2) Whether or not a certification election may be conducted pending the resolution of the petition for *certiorari* filed before this Court, the main issue of which is the identity of the employer of the [respondent-workers] in these petitions."

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[50] *Id*. at 165-167.

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

[52] *Id*. at 172.

[53] *Id*. at 10-23.

[54] *Id*. at 389.

[55] *Rollo*, pp. 60-61.

[56] In C.A.-G.R. SP No. 53806 (certification election).

On the first issue, the CA agreed with the ruling of the SOLE[56] that DFI is the statutory employer of the respondent-workers. It noted that the DFI hired the respondent-contractors, who in turn procured their own men to work in the land owned by DARBMUPCO. Further, DFI admitted that the respondent-contractors worked under the direction and supervision of DFI's managers and personnel. DFI also paid for the respondent-contractors' services.[57] The CA said that the fact that the respondent-workers worked in the land owned by DARBMUPCO is immaterial. "Ownership of the land is not one of the four (4) elements generally considered to establish employer-employee relationship."[58]

The CA also ruled that DFI is the true employer of the respondent-workers because the respondent-contractors are not independent contractors.[59] The CA stressed that in its pleadings before the Med-Arbiter, the SOLE, and the CA, DFI revealed that DARBMUPCO lacks manpower to fulfill the production requirements under the BPPA. This impelled DFI to hire contractors to supply labor enabling DARBMUPCO to meet its quota. The CA observed that while the various agencies involved in the consolidated petitions sometimes differ as to who the statutory employer of the respondent-workers is, they are uniform in finding that the respondent-contractors are labor-only contractors.[60]

On the second issue, the CA reiterated the ruling of the SOLE[61] that absent an injunction from the CA, the pendency of a petition for *certiorari* does not stay the holding of the certification election.[62] The challenged Resolution of the SOLE is already

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[57] *Rollo*, pp. 64-65.

[58] *Id*. at 65.

[59] *Id*. at 67.

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

[61] In C.A. G.R. No. 61607.

[62] *Rollo*, p. 69.

[63] *Id*. at 69-72.

final and executory as evidenced by an Entry of Judgment dated July 14, l999; hence, the merits of the case can no longer be reviewed.[63]

The CA thus held in its Decision dated March 31, 2006:

WHEREFORE, premises considered, this Court hereby ORDERS:

(1) the DISMISSAL of the petitions in C.A.-G.R. SP No. 53806 and C.A-G.R. SP No. 61607; and

(2) the GRANTING of the petition in C.A.-G.R. SP No. 59958 and the SETTING ASIDE of the assailed resolutions of the NLRC dated 24 May 1999, 30 July 1999 and 26 June 2000, respectively.

SO ORDERED.[64]

DFI filed a Motion for Reconsideration of the CA Decision which was denied in a Resolution dated May 30, 2006.[65]

DFI is now before us by way of Petition for Review on *Certiorari* praying that DARBMUPCO be declared the true employer of the respondent-workers.

DARBMUPCO filed a Comment[66] maintaining that under the control test, DFI is the true employer of the respondent-workers.

Respondent-contractors filed a Verified Explanation and

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[64] *Id*. at 72.

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

[66] *Id*. at 90-111.

[67] *Id*. at 513-518. Only Voltaire Lopez, Jr., Ruel Romero, Patricio Capricho, Rudy Vistal Roger Montero, Zosimo Gomez and Manuel Mosquera prepared the Verified Explanation and Memorandum. Elesio Emanel and Premitivo Diaz were already deceased.

In a Resolution dated January 16, 2012, this Court dispensed with the memorandum or Rey Dimacali, Nilda Dimacali, Primitivo Diaz, Elesio Emanel and Victor Singson; *id.* at 566.

[68] In a Manifestation dated December 17, 2012, Alvaro Lague, Sr.—the President of SPFL— asked for this Court's indulgence in view of SPFL's

Memorandum[67] asserting that they were labor-only contractors; hence, they are merely agents of the true employer of the respondent-workers.

SPFL did not file any comment or memorandum on behalf of the respondent-workers.[68]

The Issue

The issue before this Court is who among DFI, DARBMUPCO and the respondent-contractors is the employer of the respondent-workers.

Our Ruling

We deny the petition.

This case involves job contracting, a labor arrangement expressly allowed by law. Contracting or subcontracting is an arrangement whereby a principal (or employer) agrees to put out or farm out with a contractor or subcontractor the performance or completion of a specific job, work or service within a definite or predetermined period, regardless of whether such job, work or service is to be performed or completed within or outside the premises of the principal.[69] It involves a trilateral relationship

failure to report the death of its counsels. He admitted that SPFL has been negligent in representing the respondent-workers and such was caused by "inter- organization conflict and serious splitting among its leaders." SPFL also informed this Court of the new address where notices and resolutions should be sent; *id*., at 606-607

In a Resolution dated March 6, 2013, this Court required SPFL to cause the entry of appearance of its new counsel, *id.* at 611. However, SPFL failed to comply. Hence, this Court issued a Resolution dated September 18, 2013 reiterating the order for SPFL to cause the entry of appearance or its new counsel. SPFL, again, failed to comply, *id.* at 618. On July 23, 2014, we resolved to issue a show cause order against Lague, Sr. for his failure to comply with this Court's abovementioned resolution; *id*. at 651.

[69] DOLE Department Order No. 10 (1997), Amending the Rules Implementing Books III and VI of the Labor Code, as amended, Section 4(d).

[70] DOLE Department Order No. 10 (1997), Section 3.

[71] Presidential Decree No. 442 (1974).

[72] *Polyfoam-RGC International Corporation v. Concepcion,* G.R. No. 172349, June 13, 2012, 672 SCRA 148, 158.

among the principal or employer, the contractor or subcontractor, and the workers engaged by the contractor or subcontractor.[70]

Article 106 of the Labor Code of the Philippines[71] (Labor Code) explains the relations which may arise between an employer, a contractor, and the contractor's employees,[72] thus:

ART. 106. Contractor or subcontracting. — Whenever an employer enters into a contract with another person for the performance of the formers work, the employees of the contractor and of the latter's subcontractor, if any, shall be paid in accordance with the provisions of this Code.

In the event that the contractor or subcontractor fails to pay the wages of his employees in accordance with this Code, the employer shall be jointly and severally liable with his contractor or subcontractor to such employees to the extent of the work performed under the contract, in the same manner and extent that he is liable to employees directly employed by him.

The Secretary of Labor and Employment may, by appropriate regulations, restrict or prohibit the contracting out of labor to protect the rights of workers established under this Code. In so prohibiting or restricting, he may make appropriate distinctions between labor-only contracting and job contracting as well as differentiations within these types of contracting and determine who among the parties involved shall be considered the employer for purposes of this Code, to prevent any violation or circumvention of any provision of this Code.

There is "labor-only" contracting where the person supplying workers to an employer does not have substantial capital or investment in the form of tools, equipment, machineries, work premises, among others, and the workers recruited and placed by such person are performing activities which are directly related to the principal business of such employer. In such cases, the person or intermediary shall be considered merely as an agent of the employer who shall be

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[73] The Omnibus Rules Implementing the Labor Code (before its amendment by Department Order No. 1 0, series of 1997) is the prevailing rule at the time the respondent-workers were employed by respondent-contractors in 1996.

responsible to the workers in the same manner and extent as if the latter were directly employed by him.

The Omnibus Rules Implementing the Labor Code[73] distinguishes between permissible job contracting (or independent contractorship) and labor-only contracting. Job contracting is permissible under the Code if the following conditions are met:

(a) The contractor carries on an independent business and undertakes the contract work on his own account under his own responsibility according to his own manner and method, free from the control and direction of his employer or principal in all matters connected with the performance of the work except as to the results thereof; and

(b) The contractor has substantial capital or investment in the form of tools, equipment, machineries, work premises, and other materials which are necessary in the conduct of his business.[74]

In contrast, job contracting shall be deemed as labor-only contracting, an arrangement prohibited by law, if a person who undertakes to supply workers to an employer:

(1) Does not have substantial capital or investment in the form of tools, equipment, machineries, work premises and other materials; and

(2) The workers recruited and placed by such person are performing activities which are directly related to the principal business or operations of the employer in which workers are habitually employed.[75]

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[74] Omnibus Rules Implementing the Labor Code, Book III, Rule VIII, Section 8.

[75] *Id.,* Section 9.

[76] *Alilin v. Petron Corporation,* G.R. No. 177592, June 9, 2014, 725 SCRA 342,346, citing *Garden of Memories Park and Life Plan, Inc. v. NLRC,* G.R. No. 160278, February 8, 2012, 665 SCRA 293, 306. See also *Alps Transportation v. Rodriguez,* G.R. No. 186732, June 13, 2013, 698 SCRA 423, 434.

As a general rule, a contractor is presumed to be a labor-only contractor, unless such contractor overcomes the burden of proving that it has the substantial capital, investment, tools and the like.[76]

Based on the conditions for permissible job contracting, we rule that respondent-contractors are labor-only contractors.

There is no evidence showing that respondent-contractors are independent contractors. The respondent-contractors, DFI, and DARBMUPCO did not offer any proof that respondent-contractors were not engaged in labor-only contracting. In this regard, we cite our ruling in *Caro v. Rilloraza,*[77] thus:

"In regard to the first assignment of error, the defendant company pretends to show through Venancio Nasol's own testimony that he was an independent contractor who undertook to construct a railway line between Maropadlusan and Mantalisay, but as far as the record shows, *Nasol did not testify that the defendant company had no control over him as to the manner or methods he employed in pursuing his work.* On the contrary, he stated that he was not bonded, and that he only depended upon the Manila Railroad for money to be paid to his laborers. As stated by counsel for the plaintiffs, the word 'independent contractor' means 'one who exercises independent employment and contracts to do a piece of work according to his own methods and without being subject to control of his employer except as to result of the work.' Furthermore, if the employer claims that the workmen is an independent contractor, for whose acts he is not responsible, *the burden is on him to show his independence.*

Tested by these definitions and by the fact that *the defendant has presented practically no evidence to determine whether Venancio Nasol was in reality an independent contractor* or not, we are inclined to think that he is nothing but an intermediary between the defendant and certain laborers. It is indeed difficult to find that Nasol is an independent contractor; a person who *possesses no capital* or money of his own to pay his obligations to

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[77] 102 Phil. 61 (1957).

[78] *Id.* at 65-66, citing *Andoyo v. Manila Railroad Co.,* 56 Phil. 852 (1932) (unreported).

them, *who files no bond* to answer for any fulfillment of his contract with his employer and *specially subject to the control and supervision of his employer,* falls short of the requisites or conditions necessary for the common and independent contractor."[78] (Citations omitted; emphasis supplied.)

To support its argument that respondent-contractors are the employers of respondent-workers, and not merely labor-only contractors, DFI should have presented proof showing that respondent-contractors carry on an independent business and have sufficient capitalization. The record, however, is bereft of showing of even an attempt on the part of DFI to substantiate its argument.

DFI cannot cite the May 24, 1999 Resolution of the NLRC as basis that respondent-contractors are independent contractors. Nowhere in the NLRC Resolution does it say that the respondent-contractors are independent contractors. On the contrary, the NLRC declared that "it was not clearly established on record that said [respondent-]contractors are independent, xxx."[79]

Further, respondent-contractors admit, and even insist that they are engaged in labor-only contracting. As will be seen below, respondent- contractors made the admissions and declarations on two occasions: *first* was in their Formal Appearance of Counsel and Motion for Exclusion of Individual Party-Respondents filed before the LA; and *second* was in their Verified Explanation and Memorandum filed before this Court.

Before the LA, respondent-contractors categorically stated that they are "labor-only" contractors who have been engaged by DFI and DARBMUPC0.[80] They admitted that they do not have substantial capital or investment in the form of tools,

[79] CA *rollo* (CA-G.R. S.P. No. 59958), p. 59.

[80] Manifestation and Explanation In Lieu or Comment filed before us (reproduced *in toto* the Formal Appearance of Counsel and Motion for Exclusion of Individual Party-Respondents); *rollo,* p. 148.

[81] *Id.*

equipment, machineries, work premises and other materials, and they recruited workers to perform activities directly related to the principal operations of their employer.[81]

Before this Court, respondents-contractors *again* admitted that they are labor-only contractors. They narrated that:

1. **Herein respondents, Voltaire Lopez, Jr., et al., were commissioned and contracted by petitioner, Diamond Farms, Inc. (DFI) to recruit farm workers, who are the complaining [respondent-workers] (as represented by Southern Philippines Federation of Labor (SPFL) in this appeal by *certiorari*),** in order to perform specific farm activities, such as pruning, deleafing, fertilizer application, bud inject, stem spray, drainage, bagging, etc., on banana plantation lands awarded to private respondent, Diamond Farms Agrarian Reform Beneficiaries Multi-Purpose Cooperative (DARBMUPCO) and on banana planted lands owned and managed by petitioner, DFI.

2. All farm tools, implements and equipment necessary to performance of such farm activities were supplied by petitioner DFI to respondents Voltaire Lopez, Jr., et. al. as well as to respondents-SPFL, et. al. **Herein respondents Voltaire Lopez, Jr. et. al. had no adequate capital to acquire or purchase such tools, implements, equipment, etc.**

3. **Herein respondents Voltaire Lopez, Jr., et. al. as well as respondents-SPFL, et. al. were being directly supervised, controlled and managed by petitioner DFI farm managers and supervisors, specifically on work assignments and performance targets.** DFI managers and supervisors, at their sole discretion and prerogative, could directly hire and terminate any or all of the respondents-SPFL, et. al., including any or all of the herein respondents Voltaire Lopez, Jr., et. al.

4. Attendance/Time sheets of respondents-SPFL, et. al. were being prepared by herein respondents Voltaire Lopez, Jr., et. al., and correspondingly submitted to petitioner DFI. Payment of wages to respondents-SPFL, et. al. were being paid for by petitioner DFI thru herein respondents Voltaire

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[82] Verified Explanation and Memorandum. *Rollo,* pp. 514-515.

Lopez, [Jr.], et. al. The latter were also receiving their wages/ salaries from petitioner DFI for monitoring/leading/recruiting the respondents- SPFL, et. al.

5. No monies were being paid directly by private respondent DARBMUPCO to respondents-SPFL, et al., nor to herein respondents Voltaire Lopez, [Jr.], et. al. Nor did respondent DARBMUPCO directly intervene much less supervise any or all of [the] respondents- SPFL, et. al. including herein respondents Voltaire Lopez, Jr., et. al.[82] (Emphasis supplied.)

The foregoing admissions are legally binding on respondent-contractors.[83] Judicial admissions made by parties in the pleadings, or in the course of the trial or other proceedings in the same case are conclusive and so does not require further evidence to prove them.[84] Here, the respondent- contractors voluntarily pleaded that they are labor-only contractors; hence, these admissions bind them.

A finding that a contractor is a labor-only contractor is equivalent to a declaration that there is an employer-employee relationship between the principal, and the workers of the labor-only contractor; the labor-only contractor is deemed only as the agent of the principal.[85] Thus, in this case, respondent-contractors are the labor-only contractors and either DFI or DARBMUPCO is their principal.

We hold that DFI is the principal.

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[83] *Constantino v. Heirs of Pedro Constantino, Jr.,* G.R. No. 181508, October 2, 2013, 706 SCRA 580, 596.

[84] *Philippine Long Distance Telephone Company v. Pingol,* G.R. No. 182622, September 8, 2010, 630 SCRA 413, 421; citing *Damasco v. NLRC,* G.R. Nos. 115755 & 116101, December 4, 2000, 346 SCRA 714, 725, citing *Philippine American General Insurance Co., Inc. v. Sweet Lines, Inc.,* G.R. No. 87434, August 5, 1992, 212 SCRA 194, 204.

[85] *Aklan v. San Miguel Corporation,* G.R. No. 168537, December 11, 2008, 573 SCRA 675, 685; citing *Aboitiz Haulers, Inc. v. Dimapatoi,* G.R. No. 148619, September 19, 2006, 502 SCRA 271, 283. See also *Polyfoam-RGC International Corporation v. Concepcion, supra* note 73 at 163.

[86] *PCI Automation Center, Inc. v. NLRC,* G.R. No. 115920, January 29, 1996, 252 SCRA 493,503.

Under Article 106 of the Labor Code, a principal or employer refers to the person who enters into an agreement with a job contractor, either for the perfomance of a specified work or for the supply of manpower.[86] In this regard, we quote with approval the findings of the CA, to wit:

> **The records show that it is DFI which hired the individual [respondent-contractors) who in turn hired their own men to work in the 689.88 hectares land of DARBMUPCO as well as in the managed area of the plantation.** DFI admits [that] these [respondent- contractors] worked under the direction and supervision of the DFI managers and personnel. DFI paid the [respondent-contractors] for the services rendered in the plantation and the [respondent-contractors] in turn pay their workers after they [respondent-contractors] received payment from DFI. xxx DARBMUPCO did not have anything to do with the hiring, supervision and payment of the wages of the workers-respondents thru the contractors-respondents. xxx[87] (Emphasis supplied.)

DFI does not deny that it engaged the services of the respondent- contractors. It does not dispute the claims of respondent-contractors that they sent their billing to DFI for payment; and that DFI's managers and personnel are in close consultation with the respondent-contractors.[88]

DFI cannot argue that DARBMUPCO is the principal of the respondent-contractors because it (DARBMUPCO) owns the awarded plantation where respondent-contractors and respondent-workers were working;[89] and therefore DARBMUPCO is the ultimate beneficiary of the employment of the respondent-

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[87] CA Decision, *rollo*, pp. 64-65.

[88] DFI's Memorandum before the CA, CA *rollo* (CA-G.R. SP No. 53806), p. 308.

[89] Memorandum for the Petitioner, *rollo*, p. 301.

[90] *Id*.

[91] CA Decision, *rollo*, p. 64.

[92] SOLE's Resolution dated February 18, 1998, CA *rollo* (CA-G.R. SP No. 53806), p. 88.

[93] LA's Decision dated January 23, 1999, CA *rollo* (CA-G.R. SP No. 59958), p. 99.

workers.[90]

That DARBMUPCO owns the awarded plantation where the respondent-contractors and respondent-workers were working is immaterial. This does not change the situation of the parties. As correctly found by the CA, DFI, as the principal, hired the respondent-contractors and the latter, in turn, engaged the services of the respondent-workers.[91] This was also the unanimous finding of the SOLE,[92] the LA,[93] and the NLRC.[94] Factual findings of the NLRC, when they coincide with the LA and affirmed by the CA are accorded with great weight and respect and even finality by this Court.[95]

Alilin v. Petron Corporation[96] is applicable. In that case, this Court ruled that the presence of the power of control on the part of the principal over the workers of the contractor, under the facts, prove the employer-employee relationship between the former and the latter, thus:

[A] finding that a contractor is a 'labor-only' contractor is equivalent to declaring that there is an employer- employee relationship between the principal and the employees of the supposed contractor." **In this case, the employer-employee relationship between Petron and petitioners becomes all the more apparent due to the presence of the power of control on the part of the former over the latter.**

It was held in *Orozco v. The Fifth Division of the Hon. Court of Appeals* that:

> This Court has constantly adhered to the "four-fold test" to determine whether there exists an employer-employee relationship between the parties. The four elements of an employment relationship are: (a) the selection and engagement

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[94] NLRC's Resolution dated May 24, 1999, *id.* at 59-60.

[95] *Emeritus Security and Maintenance Systems, Inc. v. Dailig*, G.R. No. 204761, April 2, 2014, 720 SCRA 572, 578-579, citing *Bank of Lubao, Inc. v. Manabat*, G.R. No. 188722, February 1, 2012, 664 SCRA 772, 779.

[96] G.R. No. 177592, June 9, 2014, 725 SCRA 342.

of the employee; (b) the payment of wages; (c) the power of dismissal; and (d) the power to control the employee's conduct.

Of these four elements, it is the power to control which is the most crucial and most determinative factor, so important, in fact, that, the other elements may even be disregarded.

Hence, the facts that petitioners were hired by Romeo or his father and that their salaries were paid by them do not detract from the conclusion that there exists an employer-employee relationship between the parties due to Petron's power of control over the petitioners. One manifestation of the power of control is the power to transfer employees to another. Here, Petron could order petitioners to do work outside of their regular "maintenance/utility" job. Also, petitioners were required to report for work everyday at the bulk plant, observe an 8:00 a.m. to 5:00 p.m. daily work schedule, and wear proper uniform and safety helmets as prescribed by the safety and security measures being implemented within the bulk plant. All these imply control. In an industry where safety is of paramount concern, control and supervision over sensitive operations, such as those performed by the petitioners, are inevitable if not at all necessary. Indeed, Petron deals with commodities that are highly volatile and flammable which, if mishandled or not properly attended to, may cause serious injuries and damage to property and the environment. Naturally, supervision by Petron is essential in every aspect of its product handling in order not to compromise the integrity, quality and safety of the products that it distributes to the consuming public[97] (Citations omitted; emphasis supplied).

That DFI is the employer of the respondent-workers is bolstered by the CA's finding that DFI exercises control over the respondent-workers. [98] DFI, through its manager and supervisors provides for the work assignments and performance

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[97] *Id.* at 361-362.

[98] CA Decision, *rollo*, pp. 64-65.

[99] Verified Explanation and Memorandum, *id.* at 515.

[100] *Id.* at 29l.

[101] *Id.* at 302.

targets of the respondent-workers. The managers and supervisors also have the power to directly hire and terminate the respondent-workers. [99] Evidently, DFI wields control over the respondent-workers.

Neither can DFI argue that it is only the purchaser of the bananas produced in the awarded plantation under the BPPA,[100] and that under the terms of the BPPA, no employer-employee relationship exists between DFI and respondent-workers,[101] to wit:

UNDERTAKING OF THE FIRST PARTY

x x x x x x x x x

3. THE FIRST PARTY [DARBMUPCO] shall be responsible for the proper conduct, safety, benefits and general welfare of its members working in the plantation and specifically render free and harmless the SECOND PARTY [DFI] of any expense, liability or claims arising therefrom. **It is clearly recognized by the FIRST PARTY that its members and other personnel utilized in the performance of its function under this agreement are not employees of the SECOND PARTY**.[102] (Emphasis supplied)

In labor-only contracting, it is the law which creates an employer- employee relationship between the principal and the workers of the labor-only contractor.[103]

Inasmuch as it is the law that forms the employment ties, the stipulation in the BPPA that respondent-workers are not employees of DFI is not controlling, as the proven facts show otherwise. The law prevails over the stipulations of the parties. Thus, in *Tabas v. California Manufacturing Co., Inc.,*[104] we held that:

The existence of an employer-employees relation is a question of law and being such, it cannot be made the subject of agreement. Hence, the fact that the manpower supply agreement between Livi and California had specifically designated the former as the petitioners' employer and had absolved the latter from any liability as an employer, will not erase either party's obligations as an employer, if an employer-employee relation otherwise exists between the workers and either firm. xxx[105] (Emphasis supplied.)

[102] CA *rollo* (CA-G.R. SP No. 59958), pp. 108-109.

[103] *Alviado v. Procter & Gamble Phils., Inc.*, G.R. No. 160506, March 9, 2010, 614 SCRA 563, 580, citing *Neri v. NLRC*, G.R. Nos. 97008-09, July 23, 1993, 224 SCRA 717, 720, citing *Philippine Bank of Communications v. NLRC*, G.R. No. 66598, December 19, 1986, 146 SCRA 347, 356.

[104] G.R. No. 80680, January 26, 1989, 169 SCRA 497.

[105] *Id.* at 500. See also *Insular Life Assurance Co., Ltd. v. NLRC (4th Division)*, G.R. No. 119930, March 12, 1998, 287 SCRA 476, 483.

Clearly, DFI is the true employer of the respondent-workers; respondent-contractors are only agents of DFI. Under Article 106 of the Labor Code, DFI shall be solidarily liable with the respondent-contractors for the rightful claims of the respondent-workers, to the same manner and extent as if the latter are directly employed by DFI.[106]

WHEREFORE, the petition is **DENIED** for lack of merit. The March 31, 2006 Decision and the May 30, 2006 Resolution of the Court of Appeals in C.A.-G.R. SP Nos. 53806, 61607 and 59958 are hereby **AFFIRMED.**

SO ORDERED.

Velasco, Jr. (Chairperson), Leonardo-de Castro,[**] *Peralta,* and *Villarama, Jr., JJ.,* concur.

THIRD DIVISION

[G.R. No. 173636. January 13, 2016]

HEIRS OF JOSE MA. GEPUELA, *petitioners, vs.* **HERNITA MEÑEZ-ANDRES,** ***ET AL.***, *respondents.*

[G.R. No. 173770. January 13, 2016]

HERNITA MEÑEZ-ANDRES and NELIA MEÑEZ CAYETANO, represented by their duly-appointed

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[106] *Vigilla v. Philippine College of Criminology, Inc.*, G.R. No. 200094, June 10, 2013, 698 SCRA 247; *San Miguel Corporation v. MAERC Integrated Services, Inc.*, G.R. No. 144672, July 10, 2003, 405 SCRA 579.

[**] Designated as additional Member per Raffle dated November 4, 2015.

Attorney-In-Fact ANGELITO MEÑEZ, *petitioners, vs.* **HEIRS OF JOSE MA. GEPUELA,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; *RES JUDICATA*; BAR BY PRIOR JUDGMENT; REQUISITES.—** Under the rule of *res judicata*, a final judgment or decree on the merits by a court of competent jurisdiction is conclusive as to the rights of the parties or their privies in all later suits, and on all points and matters determined in the former suit. x x x There are two distinct concepts of *res judicata*: (1) bar by former judgment and (2) conclusiveness of judgment. x x x. The former concept of *res judicata*, that is, bar by prior judgment, applies in this case. The following requisites must concur in order that a prior judgment may bar a subsequent action, *viz*: (1) the former judgment or order must be final; (2) it must be a judgment or order on the merits, that is, it was rendered after a consideration of the evidence or stipulations submitted by the parties at the trial of the case; (3) it must have been rendered by a court having jurisdiction over the subject matter and the parties; and (4) there must be, between the first and second actions, identity of parties, of subject matter and of cause of action.

2. **ID.; ID.; ID.; ID.; ID.; SUBSTANTIAL IDENTITY OF PARTIES AND CAUSES OF ACTIONS IS SUFFICIENT; CASE AT BAR.—** It is not disputed that both LRC Case No. R-3855 and Civil Case No. 65327 involved the same subject matter, that is, the 36/72 *pro indiviso* share of Basilia in the land covered by TCT No. 95524. LRC Case No. R-3855, on the one hand, was filed by Gepuela **to consolidate his ownership** over Basilia's one-half portion of the parcel of land covered by TCT No. 95524. Isagani, Perfecto, Jr., Pedrito, and Vito, all registered co-owners of the whole property, appeared as oppositors. In Civil Case No. 65327, on the other hand, Hernita, et al. sought **to nullify the earlier redemption** made by Gepuela over Basilia's portion and redeem the same for their own account as Basilia's instituted heirs. Thus, while there appears to be a lack of identity between the concerned parties and the causes of action involved in the two actions, it must be recalled that absolute identity is not required for *res judicata*

to apply; substantial identity of parties and causes of actions is sufficient.

3. **ID.; ID.; PARTIES TO CIVIL ACTIONS; INDISPENSABLE PARTY; DEFINED AS A PARTY IN INTEREST WITHOUT WHOM NO FINAL DETERMINATION CAN BE HAD OF AN ACTION.—** An indispensable party is defined as a party in interest without whom no final determination can be had of an action. Hernita, et al. are voluntary heirs to ten percent of the **free portion** of Basilia's estate. x x x Given their limited participation in the estate, this Court is at a loss as to how Hernita, et al. can be considered indispensable parties for purposes of LRC Case No. R-3855, an action to consolidate Gepuela's title over the property covered by TCT No. 95524. The claim all the more fails to persuade especially when one considers that the estate itself through its Administratrix, and all the other **registered** co-owners of aliquot portions of the property (namely, Isagani, Perfecto Jr., Pedrito, Vito and Alberto Cruz) appear to have been properly notified of and, in fact, actively participated in, the proceedings in LRC Case No. R-3855.

4. **CIVIL LAW; CIVIL CODE; MODES OF ACQUIRING OWNERSHIP; SUCCESSION; VOLUNTARY HEIRS; VOLUNTARY HEIRS TO THE FREE PORTION HAVE NO RIGHT TO CLAIM ANY SPECIFIC PROPERTY OF THE ESTATE UNTIL AFTER THE ESTATE HAS BEEN SETTLED AND DISTRIBUTED IN ACCORDANCE WITH LAW.—** Even assuming that *res judicata* would not bar Civil Case No. 65327, Hernita, et al.'s claim of a right to redeem Basilia's disputed share would still not prosper. *First*. As instituted heirs only to a part of the **free** portion of Basilia's estate, Hernita, et al. are entitled to receive their share of the same, **if any,** only after payment of all debts, funeral charges, expenses of administration, allowance to the widow and inheritance tax. Otherwise stated, their share would be dependent on whether anything is left of the estate after payment of all its obligations. In this case, the disputed 36/72 *pro indiviso* share was sold at public auction to satisty the judgment claim of a creditor (Benita) of the estate. When it was redeemed by Gepuela, no further redemption was made. Upon expiration of the periods to redeem, Gepuela became entitled, as a matter of right, to the consolidation of the ownership of the share in his name. The

share no longer formed part of the estate which can theoretically be distributed to Hernita, et al. as Basilia's voluntary heirs. *Second*, and more importantly, as voluntary heirs to the free portion, Hernita, et al. have no right to claim any specific property of the estate, such as the contested 36/72 *pro indiviso* share in the property, until after the estate had been settled and distributed in accordance with law.

APPEARANCES OF COUNSEL

The Law Firm of Balagtas Gupo & Associates for the Heirs of JM Gepuela.

Paul P. Sagayo, Jr. for H. Meñez-Andres, *et al*.

D E C I S I O N

JARDELEZA, *J.*:

These are consolidated petitions for review on *certiorari* assailing the Decision[1] dated January 31, 2005 and the Amended Decision[2] dated July 21, 2006 of the Court of Appeals (CA) which denied the appeals of both parties and affirmed with modification the Decision[3] dated May 25, 1999 of Branch 67 of the Regional Trial Court of Pasig City. The assailed Amended Decision upheld the redemption made by the late Jose Ma. Gepuela of the 36/72 *pro indiviso* share of the late Basilia Austria Vda. de Cruz over the property covered by Transfer Certificate of Title (TCT) No. 95524, except for the two and a half percent (2.5%) share of Hernita Meñez-Andres and her co-heirs.

The Facts

The controversy arose from the redemption made by the late Jose Ma. Gepuela (Gepuela), petitioner in G.R. No. 173636,

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[1] *Rollo* (G.R. No. 173636), pp. 45-61. Penned by Associate Justice Fernanda Lampas-Peralta, with Associate Justice Conrado M. Vasquez Jr. and Associate Justice Josefina Guevara-Salonga as members.

[2] *Id*. at 64-76.

[3] *Id*. at 121-125.

and transferee of an aliquot portion of the property covered by TCT No. 95524, of the 36/72 *pro indiviso* share of Basilia Austria Vda. de Cruz (Basilia). Hernita Meñez-Andres and Nelia Meñez-Cayetano (Hernita, et al.), petitioners in G.R. No. 173770, assailed the redemption on the ground that Gepuela had no legal personality to make the redemption.

Basilia was the widow of Pedro Cruz, with whom she had five children, namely, Perfecto, Alberto, Luz, Benita and Isagani. Basilia executed a *Huling Habilin*,[4] where she named her daughter Benita's children Hernita, Nelia, Rosemarie, Angel and Gracita as voluntary heirs to ten percent (10%) of the free portion of her estate. Basilia's *Huling Habilin* was admitted into ante-mortem probate on March 1, 1957.[5] Her daughter Luz Cruz Salonga (Luz) was appointed Administratrix of Basilia's estate on August 18, 1976.[6]

When Basilia died, she left behind considerable properties, including a 36/72 *pro indiviso* share in a 5,492 square meter property in San Juan, then province of Rizal. This property was covered by TCT No. 95524 and co- owned with some of Basilia's children and grandchildren, as follows:

> Basilia Austria Vda. de Cruz, widow—36/72: Perfecto Cruz, married to Flavia Jorge—12/72; Luz Cruz, married to Feliciano Salonga—12/72; Isagani Cruz, married to Milagros Villareal—4/72; Flavia Jorge, married to Perfecto Cruz—2/72; Pedrito Cruz, single-2/72; Perfecto Cruz, Jr., single—2/72; Vito Cruz, 20 years of age, single—2/72.[7]

Perfecto and Flavia sold their interests (14/72 *pro indiviso* share) in the property to Severino Etorma (Etorma), who later on sold the same to Gepuela and one Antonio Cinco (Cinco). These transactions were annotated on TCT No. 95524 as Entry

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[4] Records, pp. 17-23.

[5] *Id*. at 66-67. (Case was docketed as SP. PROC. No. 2457 with the then Court of First Instance of Rizal.).

[6] *Id*. at 68.

[7] *Id*. at 196.

Nos. 12640 and 73035, dated November 13, 1964 and November 18, 1971, respectively.[8] In 1978, Cinco sold his share to Gepuela.[9] This was likewise annotated in the title as Entry No. 3904 dated May 20, 1988.[10] Luz also disposed, by way of a Sale of Rights with Mortgage, her 12/72 *pro indiviso* share in the property to Gepuela in another transaction registered as Entry No. 8536 dated May 8, 1989 on TCT No. 95524.[11]

On July 29, 1986, Basilia's 36/72 *pro indiviso* share was sold in a public auction to satisfy the judgment in Civil Case No. 32824, entitled "*Benita Me[ñ]ez v. Luz Cruz Salonga as Administratrix of the Estate of Basilia Austria Vda. [d]e Cruz.*" Benita, as judgment creditor in the case, emerged as the highest bidder.[12]

On May 14, 1987, Gepuela redeemed Basilia's 36/72 *pro indiviso* share from Benita by paying the auction price of Four Hundred Seventy- Four Thousand Nine Hundred Seventy-Seven Pesos (₱474,977.00), inclusive of interest and other legal fees.[13] This was inscribed on the title as Entry No. 022 dated May 14, 1987. Accordingly, Basilia's estate, through Administratrix Luz, executed a Deed of Sale[14] and Waiver of Redemption[15] over the share, subject to the following conditions: 1) Gepuela should obtain court approval of the sale; and 2) Gepuela should inform all heirs of the sale formally in writing.

After the expiration of the periods to redeem, Gepuela filed an action to consolidate his ownership over the 36/72 *pro indiviso* share he acquired by way of redemption from Basilia's estate.

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[8] *Id*. at 28.

[9] *Id*.

[10] *Id*.

[11] *Id*. at 31.

[12] *Id*. at 3.

[13] *Id*. at 30.

[14] *Id*. at 32-33.

[15] *Id*. at 34.

This was docketed as **LRC Case No. R-3855** and assigned to Branch 166 of the Regional Trial Court of Pasig. The other registered co-owners Isagani, Perfecto, Jr., Pedrito, and Vito (Isagani, et al.) opposed this action, raising Gepuela's lack of standing to redeem given that he is not a co-owner of Basilia's one-half portion. In a Decision[16] dated December 6, 1989, the trial court granted Gepuela's petition, declared him the owner of Basilia's 36/72 *pro indiviso* share in the parcel of land covered by TCT No. 95524 and ordered the issuance of a new certificate of title to reflect this change in ownership.[17]

Aggrieved, oppositors Isagani, Perfecto, Jr., Pedrito, Vito and Alberto appealed the trial court's Decision to the CA, docketed as CA-G.R. CV No. 25605. In a Decision[18] dated January 31, 1992, the CA, however, affirmed the trial court's findings. **The CA's Decision in CA G.R. CV No. 25605 was not appealed and became final and executory on February 26, 1992.**[19] TCT No. 5033-R was issued that same year, reflecting Gepuela's ownership of the 36/72 *pro indiviso* share previously owned by Basilia.[20]

The proceedings covering Basilia's estate were, per motion of her heirs, ordered closed on February 15, 1996.[21] The record also shows that Gepuela filed a case, docketed as **SCA No. 302** with Branch 159 of the Regional Trial Court of Pasig, for the partition of the property covered by TCT No. 5033-R.[22] The lower court rendered a decision ordering the partition of the property. TCT No. 5033-R was cancelled and several titles were issued covering the respective shares of Gepuela, Isagani, Perfecto and Pedrito., and Vito Cruz in the property.[23]

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[16] *Id*. at 101-103.

[17] *Id*. at 103.

[18] *Id.* at l05-110.

[19] *Rollo* (GR. No. 173636), p. 48.

[20] Records, p. 78.

[21] *Id*. at 231-232.

[22] CA *rollo*, p. 358. See also *rollo* (G.R. No. 173636), p. 211.

[23] *Id*.

In the meantime, or on October 10, 1995, Basilia's grandchildren Hernita and Nelia filed a Complaint for Redemption and Consignation with Damages[24] and a subsequent Amended Complaint for Declaration of Nullity of Redemption, Cancellation of Notation in Title, and Consignation with Damages[25] against Gepuela. This was docketed as **Civil Case No. 65327** and raffled to Branch 67 of the Regional Trial Court of Pasig City.

In their complaint, Hernita and Nelia alleged, among others, that: 1) Gepuela's redemption was null and void as he (not being an heir, legatee/devisee, co-owner or creditor) did not have the legal personality to redeem the share;[26] and 2) Hernita and Nelia sent notices to Gepuela informing him of their intent to recover their interest in Basilia's 36/72 *pro indiviso* share and to tender payment of the redemption price paid by him, plus interest, which Gepuela refused.[27]

In his Answer with Compulsory Counterclaim[28] dated December 28, 1995, Gepuela denied Hernita and Nelia's allegations and alleged that his redemption had already been adjudicated by the trial court in LRC Case No. R-3855. This ruling has, in turn, been affirmed by the Seventh Division of the CA in CA GR. CV No. 25605. No further appeal having been made, Gepuela asserts that the CA's Decision became final and executory on February 26, 1992.[29]

Ruling of the Regional Trial Court

In its Decision[30] dated May 25, 1999, the trial court upheld Gepuela's redemption of Basilia's 36/72 *pro indiviso* share. It, however, ruled that because Gepuela failed to formally notify Hernita, Nelia and Rosemarie of the redemption, the same was

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[24] Records, pp. 1-10.

[25] *Id*. at 44-52.

[26] *Id.* at 46.

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

[28] *Id*. at 95-100.

[29] *Id.* at 97.

[30] *Rollo* (G.R. No. 173636), pp. 121-125.

null and void insofar as it affected the latter's six percent (6%) share in the property. The dispositive portion of the trial court's Decision reads:

WHEREFORE, in view of the foregoing, the Court hereby renders judgment in favor of plaintiffs **HERNITA ME[Ñ]EZ ANDRES, NELIA ME[Ñ]EZ CAYETANO, ROSEMARIE ME[Ñ]EZ PRONSTROLLER**, all represented herein by their duly-appointed Attorney-in-fact, ANGELINO ME[Ñ]EZ and against defendant JOSE MA. GEPUELA, declaring that:

1. [T]he redemption made by defendant GEPUELA of the 36/72 portion of the Estate of Basilia Austria Vda. [d]e Cruz as covered previously by TCT No. 95524 and at present by TCT No. 5033-R is NULL AND VOID only insofar as to the shares of plaintiffs which corresponds to Six Percent (6%) thereof;
2. [Plaintiffs are allowed to consign with the Court the redemption price of that portion which is their share of the 36/72 *pro indiviso* share of the Estate of Basilia Austria Vda. [d]e Cruz with interest at Twelve Percent 12% per annum from the institution of this action until fully paid;
3. [U]pon payment of the redemption price, and finality of this Decision the Register of Deeds of San Juan, Metro Manila is ordered to cancel Transfer Certificate of Title No. 5033-R and to issue another Transfer Certificate of Title reflecting therein the names of plaintiffs as owners of the *pro indiviso* share corresponding to six percent (6 %) of the 36/72 *pro indiviso* share of defendant Jose Ma. Gepuela;
4. [D]efendant is ordered to pay the amount of Two Hundred Thousand Pesos (₱200,000.00) for and as attorney's fees;
5. [T]o pay the cost of suit.

SO ORDERED.[31]

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[31] *Id*. at 124-125.

[32] Gepuela died on July 30, 2000 and was substituted by his heirs. *Id*. at 146.

Both parties filed their respective appeals before the CA.[32]

Ruling of the Court of Appeals

The CA rejected both appeals and affirmed the trial court's Decision, with certain modifications. **At the outset, the CA noted that the validity of Gepuela's redemption has already been settled in LRC Case No. R-3855 and affirmed by the CA in CA G.R. CV No. 25605.** Since the Decision in said case had already become final and executory per entry of judgment dated February 26, 1992, the CA declared that Hernita, et al. are barred from assailing it again under the principle of *res judicata*.[33]

Despite this, the CA still proceeded to resolve the case on the merits. Rejecting Hernita, et al.'s claim that Gepuela had no personality to redeem Basilia's 36/72 *pro indiviso* share, the appellate court held that Gepuela was not a stranger to, but rather a co-owner of, the entire communal property "x x x because the two estates are not separate and distinct properties but actually constitute one and the same property owned in community and covered by the same TCT No. 95524."[34] Since redemption inures to the benefit of the other co-owners, the CA affirmed the trial court's decision insofar as it nullified the redemption *in proportion to Hernita, et al.'s respective shares*.[35]

The CA thereafter recomputed the corresponding shares as follows: Hernita, Nelia, and Rosemarie, with their siblings Angel and Granito, are instituted heirs entitled to ten percent (10%) of the free portion of Basilia's estate, equivalent to two and a half percent (2.5 %) share in the property. They are likewise entitled to the five percent (5%) share corresponding to the legitime of their deceased mother Benita, to which they are entitled to, by right of representation, as the latter's heirs. The dispositive portion of the CA's Decision dated January 31, 2005 thus reads:

WHEREFORE, both appeals of plaintiffs-appellants and

[33] *Id.* at 49-51.

[34] *Id.* at 53.

[35] *Id.* at 56.

defendant-appellant are dismissed and the trial court's Decision dated May 25, 1999 is affirmed, with certain modification. The award of attorney's fees is deleted and paragraphs 1, 2 and 3 of the dispositive portion thereof are modified to read as follows:

> "1. [T]he redemption made by defendant GEPUELA of the 36/72 portion of the Estate of Basilia Austria Vda. [d]e Cruz as covered previously by TCT No. 95524 and at present by TCT No. 5033-R is NULL AND VOID only insofar as to the shares of plaintiffs (and their siblings Angel and Gracito Me[ñ]ez) which correspond to 7.5 % thereof;
>
> 2. [P]laintiffs are allowed to consign with the Court the redemption price of that portion which is their share or the 36/72 *pro indiviso* share of the Estate of Basilia Austria Vda. de Cruz with interest at Twelve Percent 12% per annum from finality of this Decision until fully paid;
>
> 3. [U]pon payment of the redemption price[ ]and finality of this Decision[,] the Register of Deeds of San Juan, Metro Manila is ordered to cancel Transfer Certificate of Title No. 5033-R and to issue another Transfer Certificate of Title reflecting therein the names of plaintiffs as owners of the *pro indiviso* share corresponding to 7.5% of the 36/72 *pro indiviso* share of defendant Jose Ma. Gepuela.
>
> The trial court's Decision is affirmed in all other respects.
>
> **SO ORDERED.**[36]

Both parties filed their respective motions for reconsideration.

In denying these motions, the CA held that: (1) under the principle of *res judicata*, Hernita, et al. are barred from assailing the redemption made by Gepuela, the validity of which had long been settled in LRC Case No. R-3855 and CA G.R. CV No. 25605;[37] (2) the nullification of the redemption over Hernita, et al.'s proportionate share does not serve to disturb the final

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[36] *Id*. at 60.

[37] *Id*. at 70.

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

ruling in LRC Case No. R-3855 and CA G.R. CV No. 25605 because Hernita, et al. 's rights as co-owners were not resolved in said cases;[38] (3) the one year period provided under the Rules of Court to redeem applies to redemption of properties sold on execution whereas Hernita, et al.'s right to recover their share is premised on the fact that they are co-owners of the subject property;[39] (4) the lapse of about nine years from the auction sale cannot be equated with laches because of the equitable considerations that Hernita, et al. were neither shown to have been notified of the auction sale in 1986, nor impleaded as parties in the petition for consolidation subsequently filed by defendant Gepuela;[40] (5) the imposition of 12% interest per annum from finality of Decision until fully paid is consistent with the guidelines in *Eastern Shipping Lines* case.[41]

The CA, however, modified its ruling with respect to the computation of Hernita, et al.'s shares in Basilia's estate. According to the CA, since both parties attested to the fact that Benita Cruz was still alive, Hernita et al.'s right to inherit by representation has not accrued as yet.[42] Thus, they shall inherit from Basilia's estate only to the extent of their right as devisees or voluntary heirs as per the *Huling Habilin* executed by the deceased Basilia.[43]

The dispositive portion of the CA's Decision, *as amended*, now reads:

> **WHEREFORE,** the motions for reconsideration filed by both parties are denied. The Decision dated January 31, 2005 is modified to read as follows:
>
> I. [T]he redemption made by defendant GEPUELA of the 36/72 portion of the Estate of Basilia Austria Vda. [d]e Cruz as covered previously by TCT No. 95524 and at present by

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[39] *Id.* at 73.

[40] *Id*.

[41] *Id.* at 74.

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

[43] *Id*. at 75.

TCT No. 5033-R is NULL AND VOID only insofar as to the shares of plaintiffs (and their siblings Angel and Gracito Meñez) which corresponds to 2.5% thereof;

2. [P]laintiffs are allowed to consign with the Court the redemption price of that portion which is their share of the 36/72 *pro indiviso* share of the Estate of Basilia Austria Vda. de Cruz with interest at Twelve Percent 21% per annum from finality of judgment until fully paid;

3. [U]pon payment of the redemption price[1] and finality of this Decision[,] the Register of Deeds of San Juan, Metro Manila is ordered to cancel Transfer Certificate of Title No. 5033-R and to issue another Transfer Certificate of Title reflecting therein the names of plaintiffs as owners of the *pro indiviso* share corresponding to 2.5% of the 36/72 *pro indiviso* share in the name of defendant Jose Ma. Gepuela.

SO ORDERED.[44]

Hence, these petitions.

G.R. No. 173636

The Heirs of Gepuela maintain that the CA erred in nullifying his redemption of the 36/72 *pro indiviso* share of Basilia. They argue that:

(1) By issuing the assailed Decisions, the CA indirectly disturbed and altered the judgment rendered in LRC Case. No. R-3855 which had long attained finality;"[45]

(2) Even assuming *arguendo* that the redemption inured to the benefit of the other co-owners, the latter should have timely opposed the action for consolidation of ownership or filed an annulment of the resulting judgment to protect their interest;[46]

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

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

[46] *Id*. at 27-29.

[47] *Id*. at 28.

(3) There is nothing more for Hernita, et al. to inherit as the 36/72 share was sold at auction and the estate failed to redeem the same within the period provided by law;[47]

(4) The *Mariano* case cited by the CA is inapplicable as there is no community of interest (for the redemption to inure to the benefit of all co-owners) Gepuela not being a co-owner of the *36/72 share* which was the subject of the execution sale;[48]

(5) Hernita et al. cannot feign ignorance of the sale in Gepuela's favor as the same was duly annotated in the title;[49] and

(6) Interest should be reckoned not from the finality of decision but from the time redemption was made.[50]

<u>G.R. No. 173770</u>

Hernita, et al., on the other hand, insist that Gepuela's redemption is null and void for the following reasons:

I) Benita Meñez, who purchased the property, was a co-owner thereof and under Article 1620, when a co-owner purchases the property, no stranger may redeem the same;

2) Gepuela is a complete stranger who could not redeem;

3) The portions of the property purchased by Gepuela were in *custodia legis* by a probate court and could not have been purchased without court approval;

4) Gepuela will lose nothing if he is not able to redeem, his act was nothing but an illegitimate act of expansion;

5) Gepuela is conclusively estopped from claiming that he became a co-owner of the property because he admitted otherwise. He claimed that he was a co-owner in the estate of Pedro Cruz and not in the estate of Basilia;

6) Gepuela deceived the other heirs and co-owners by not

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

[49] *Id*. at 31.

[50] *Id*. at 34-36.

[51] *Rollo* (G.R. No. 173770), p. 16.

informing the latter about the court proceedings initiated by him; and

7) As instituted heirs of Basilia, Hernita, et al. had every right to redeem the property for themselves and their co-heirs.[51]

Hernita, et al. also challenge the jurisdiction of the CA claiming that since Gepuela did not present any evidence in the trial court, he and his successors-in-interest can only raise pure questions of law, over which the appellate court has no jurisdiction.[52]

The Issues

The main issues presented for our consideration in this case arc (1) whether Gepuela's redemption of Basilia's 36/72 *pro indiviso* share in the subject property was valid; and (2) whether Hernita, et al. could still redeem the 36/72 *pro indiviso* share. Before these issues can be resolved, however, we must determine whether the issues raised herein are already barred under the principle of *res judicata.*

The Court's Ruling

We rule in favor of the heirs of Gepuela, petitioners in G.R. No. 173636.

Under the rule of *res judicata*, a final judgment or decree on the merits by a court of competent jurisdiction is conclusive as to the rights of the parties or their privies in all later suits, and on all points and matters determined in the former suit.[53]

In the case of *Degayo v. Magbanua-Dinglasan*, we held that:

> *Res judicata* literally means "a matter adjudged; a thing judicially acted upon or decided; a thing or matter settled by judgment." It also refers to the "rule that a final judgment or decree on the merits by a court of competent jurisdiction is conclusive of the rights of the parties or their privies in all later suits on points and matters determined in the former suit. It rests on the principle that parties

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[52] *Id*. at 16.

[53] *Riviera Golf Club, Inc. v. CCA Holdings, B.V.*, G.R. No. 173783, June 17, 2015, p. 16 citing *Chu v. Cunanan*, G.R. No. 156185, September 12, 2011, 657 SCRA 379, 391.

should not to be permitted to litigate the same issue more than once; that, when a right or fact has been judicially tried and determined by a court of competent jurisdiction, or an opportunity for such trial has been given, the judgment of the court, so long as it remains unreversed, should be conclusive upon the parties and those in privity with them in law or estate.

This judicially created doctrine exists as an obvious rule of reason, justice, fairness, expediency, practical necessity, and public tranquility. Moreover, public policy, judicial orderliness, economy of judicial time, and the interest of litigants, as well as the peace and order of society, all require that stability should be accorded judgments, that controversies once decided on their merits shall remain in repose, that inconsistent judicial decision shall not be made on the same set of facts, and that there be an end to litigation which, without the doctrine of *res judicata*, would be endless. (Citations omitted.)[54]

It is embodied in Section 47, Rule 39 of the Rules of Court which provides:

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:

(a) In case of a judgment or final order against a specific thing, or in respect to the probate of a will, or the administration of' the estate of a deceased person, or in respect to the personal, political, or legal condition or status of a particular person or his relationship to another, the judgment or final order is conclusive upon the title to the thing, the will or administration, or the condition, status or relationship of the person; however, the probate of a will or granting of letters of administration shall only be *prima facie* evidence of the death of the testator or intestate;

(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 the parties and their successors in interest, by title subsequent to the commencement of the action or special proceeding, litigating for the same thing and

[54] G.R. No. 173148, April 6, 2015, pp. 4-5.

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.

There are two distinct concepts of *res judicata*: (1) bar by former judgment and (2) conclusiveness of judgment:

The first aspect is the effect of a judgment as a bar to the prosecution of a second action upon the same claim, demand or cause of action. In traditional terminology, this aspect is known as merger or bar; in modern terminology, it is called claim preclusion.

The second aspect precludes the relitigation of a particular fact of issue in another action between the same parties on a different claim or cause or action. This is traditionally known as collateral estoppel; in modern terminology, it is called issue preclusion.

Conclusiveness of judgment finds application when a fact or question has been squarely put in issue, judicially passed upon, and adjudged in a former suit by a court of competent jurisdiction. The fact or question settled by final judgment or order binds the parties to that action (and persons in privity with them or their successors-in-interest), and continues to bind them while the judgment or order remains standing and unreversed by proper authority on a timely motion or petition; the conclusively settled fact or question furthermore cannot again be litigated in any future or other action between the same parties or their privies and successors-in-interest, in the same or in any other court of concurrent jurisdiction, either for the same or for a different cause of action. Thus, only the identities of *parties and issues* are required for the operation or the principle of conclusiveness of judgment.

While *conclusiveness of judgment* does not have the same barring effect as that of a *bar by former judgment* that proscribes subsequent actions, the former nonetheless estops the parties from raising in a later case the issues or points that were raised and controverted, and were determinative of the ruling in the earlier case. In other words, the dictum laid down in the earlier final judgment or order becomes

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[55] *Degayo v. Magbanua-Dinglasan, supra* at 6-7.

conclusive and continues to be binding between the same parties, their privies and successors-in- interest, as long as the facts on which that judgment was predicated continue to be the facts of the case or incident before the court in a later case; the binding effect and enforceability of that earlier dictum can no longer be re- litigated in a later case since the issue has already been resolved and finally laid to rest in the earlier case.[55] (Citations omitted; emphasis in the original)

The former concept of *res judicata*, that is, bar by prior judgment, applies in this case. The following requisites must concur in order that a prior judgment may bar a subsequent action. *viz*: (1) the former judgment or order must be final; (2) it must be a judgment or order on the merits, that is, it was rendered after a consideration of the evidence or stipulations submitted by the parties at the trial of the case; (3) it must have been rendered by a court having jurisdiction over the subject matter and the parties; and (4) there must be, between the first and second actions, identity of parties of subject matter and cause of action.[56]

We find that all of the foregoing elements are present in this case.

There is no question that the Decision rendered in LRC Case No. R-3855 and affirmed by the CA in CA G.R. CV No. 25605 had already become final for failure of the parties to appeal the same. The Decision was rendered by the Regional Trial Court which had jurisdiction over the action (for consolidation of ownership filed by Gepuela) and the parties thereto. It was a judgment on the merits, with the trial court rejecting the claims of the oppositors and declaring Gepuela as the owner of the disputed one-half portion of the property covered by TCT No. 95524.[57]

Furthermore, as between LRC Case No. R-3855 and Civil Case No. 65327 (the action for nullity of the redemption filed

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[56] *Vda. de Cruzo v. Carriaga, Jr.*, G.R. Nos. 75109-10, June 28, 1989, 174 SCRA 330, 340.

[57] Records (Civil Case No. 65327), p. 103.

by Hernita, et al.), there is identity of parties, of subject matter, and of causes of action.

Identity of subject matter;
parties and causes of action

It is not disputed that both LRC Case No. R-3855 and Civil Case No. 65327 involved the same subject matter, that is, the 36/72 *pro indiviso* share of Basilia in the land covered by TCT No. 95524.

LRC Case No. R-3855, on the one hand, was filed by Gepuela **to consolidate his ownership** over Basilia's one-half portion of the parcel of land covered by TCT No. 95524. Isagani, Perfecto, Jr., Pedrito, and Vito, all registered co-owners of the whole property, appeared as oppositors. In Civil Case No. 65327, on the other hand, Hernita, et al. sought **to nullify the earlier redemption** made by Gepuela over Basilia's portion and redeem the same for their own account as Basilia's instituted heirs.

Thus, while there appears to be a lack of identity between the concerned parties and the causes of action involved in the two actions, it must be recalled that absolute identity is not required for *res judicata* to apply; substantial identity of parties and causes of actions is sufficient.[58] The court articulated this principle in *Cruz v. Court of Appeals*,[59] to wit:

> x x x Only substantial identity is necessary to warrant the application of *res judicata*. The addition or elimination of some parties does not alter the situation. **There is substantial identity of parties when there is a community of interest between a party in the first case and a party in the second case albeit the latter was not impleaded in the first case.**
>
> In the case at bar, it is apparent that from the face of the complaint for Quieting of Title, private respondent Rolando Bunag was not a party therein as his name does not appear in the title. This,

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[58] *Cruz v. Court of Appeals*, G.R. No. 164797, February 13, 2006, 482 SCRA 379, 393. See also *P.L. Uy Realty Corp. v. ALS Management and Development Corporation*, G.R. No. 166462, October 24, 2012, 684 SCRA 453.

[59] *Supra*.

notwithstanding, his claim and that of the plaintiffs therein, which included private respondent Mariano Bunag, are the same—to be declared the true owners of the parcel of land covered by Original Certificate of Title (OCT) No. 22262 and Transfer Certificate of Title (TCT) No. 67161 of the Registry of Deeds of Nueva Ecija. **Private respondent Rolando Bunag and the plaintiffs are all heirs of the alleged owners of the parcel of land covered by OCT No. 22262.** Private respondent Rolando Bunag, though not a party therein, shared an identity of interest from which f1owed an identity of relief sought, namely, to declare them the true owners of the parcel of land covered by OCT No. 22262 and TCT No. 67161. **Such identity of interest is sufficient to make them privy-in- law, thereby satisfying the requisite of substantial identity of parties**.[60] (Emphasis supplied; citations omitted.)

In this case, Hernita, et al., though not a party to LRC Case No. R-3855, share an identity of interest with Isagani, et al., in that they (1) are heirs of Basilia, the owner of the disputed 36/72 portion of the land covered by TCT No. 95524, and (2) both sought to challenge the redemption made by Gepuela of the said portion of property. Following the ruling in *Cruz*, both Hernita, et al. and Isagani, et al. can be considered to share "an identity of interest from which flowed an identity of relief sought,[61] that is, to be eventually declared owners of the portion being contested.

Similarly, we find that there is identity in the causes of action involved in LRC Case No. R-3855 and Civil Case No. 65327. To reiterate, for the doctrine of *res judicata* to apply, identity of causes of action does **not** mean absolute identity. Otherwise, a party could easily escape the operation of the doctrine by simply changing the form of the action or the relief sought.[62]

In *Benedicto v. Lacson*,[63] we held:

The test to determine identity or causes or action is to ascertain

[60] *Id*. at 392-393.

[61] *Id*. at 393.

[62] *Id*.

[63] G.R. No. 141508, May 5, 2010, 620 SCRA 82.

[64] *Id*. at 103 citing *Vda. de Cruzo v. Carriaga, Jr.*, *supra* at 342.

whether the same evidence necessary to sustain the second cause of action is sufficient to authorize a recovery in the first, even if the forms or the nature of the two (2) actions are different from each other. **If the same facts or evidence would sustain both, the two (2) actions are considered the same within the rule that the judgment in the former is a bar to subsequent action**; otherwise, it is not. This method has been considered the most accurate test as to whether a former judgment is a bar in subsequent proceedings between the same parties. It has even been designated as infallible.[64] (Emphasis supplied)

The allegations in Civil Case No. 65327 show that Hernita, et al. are seeking exactly the same relief sought by the oppositors in LRC Case No. R-3855, that is, the denial of the consolidation of Gepuela's ownership over Basilia's 36/72 *pro indiviso* share. In fact, the issues presented against Gepuela's redemption over the disputed portion had already been thoroughly ventilated in LRC Case No. R-3855. Thus, although ostensibly styled in different forms, the complaints in Civil Case No. 65327 and LRC Case No. R-3855 are really litigating for the same thing and seeking the same relief, that is, to remove from Gepuela ownership over the disputed 36/72 portion.

In fact, Civil Case No. 65327 was filed specifically seeking to declare the nullity of Gepuela's redemption of the one-half share previously owned by Basilia.[65] This issue, however, has already been conclusively settled in LRC Case No. R-3855, where the trial court upheld Gepuela's redemption of the share and declared him absolute owner of the same.

Hernita, et al. are not indispensable parties to LRC Case No. R-3855; their non-participation does not affect the validity of the decision rendered

[65] Records (Civil Case No. 65327), pp. 50-51.

[66] *Rollo* (G.R. No. 173636), pp. 275-276.

[67] *Id.* at 276.

Hernita, et al., in their comment to Gepuela's petition, argue that the doctrine of *res judicata* "does not at all attach, because the judgment in LRC Case No. [R-3855] is not valid for lack of due process and in the absence of indispensable parties."[66] As indispensable parties who were not made part of the proceedings, Hernita, et al. claim that they cannot be bound by the decision in LRC Case No. R-3855 or the appeal in CA-G.R. No. 25605.[67]

We reject this contention.

An indispensable party is defined as a party in interest without whom no final determination can be had of an action.[68] Hernita, et al. are voluntary heirs to ten percent of the **free portion** of Basilia's estate.[69] In fact, the complaint filed by Hernita, et al. in Civil Case No. 65327 reads:

III. Causes of Action

3.1 **As <u>instituted instituted in the "Huling Habilin"</u> of Basilia Austria Vda. [d]e Cruz, it is indubitable that the plaintiffs are co-owners of the 36/72 *pro-indiviso* share** of the estate of said decedent in the property formerly covered by [TCT] No. 95524 and now covered by [TCT] No. 5033-R **and they are legally entitled to redeem the same** pursuant to Article 1620 of the Civil Code[.][70] (Emphasis and underscoring supplied)

Given their limited participation in the estate, this Court is at a loss as to how Hernita, et al. can be considered indispensable parties for purposes of LRC Case No. R-3855, an action to consolidate Gepuela's title over the property covered by TCT No. 95524. The claim all the more fails to persuade especially when one considers that the estate itself, through its Administratrix, and all the other **registered** co-owners of aliquot

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[68] *Heirs of Faustino Mesina v. Heirs of Domingo Fian, Sr.*, G.R. No. 201816, April 8, 2013, 695 SCRA 345, 352.

[69] Records (Civil Case No. 65327), pp. 19-20.

[70] *Id*. at 6.

[71] *Rollo* (G.R. No. 173636), p. 276.

portions of the property (namely, Isagani, Perfecto Jr., Pedrito, Vito and Alberto Cruz) appear to have been properly notified of and, in fact, actively participated in, the proceedings in LRC Case No. R-3855.

We further note from Hernita, et al.'s comment that the decision in LRC Case No. R-3855 was subject of a petition for annulment of judgment (docketed as CA G.R. SP No. 50424) filed by their mother Benita.[71] In that case, Benita alleged nullity of the proceedings on grounds of extrinsic fraud, want of jurisdiction and denial of due process. We take judicial notice,[72] however, of the Decision rendered by the CA denying the petition for lack of merit.[73] The CA's finding was later on affirmed by this Court which denied with finality Benita's petition for the annulment of the decision in LRC Case No. R-3855.[74]

In sum, inasmuch as both LRC Case No. R-3855 and Civil Case No. 65327 are anchored on the same cause of action, based on identical facts, and even claim the same reliefs, we hold that the latter case is barred by the decision in the former case. The CA therefore erred when, after declaring that the Decision in LRC Case No. R-3855 bad become final, executory and unappealable, it still modified the terms of the case and awarded Hernita, et al. with portions of the property allegedly corresponding to their shares as instituted heirs of Basilia's estate.

Hernita, et al. cannot claim a stake over a specific

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[72] See *Lee v. Land Bank of the Philippines*, G.R. No. 170422, March 7, 2008, 548 SCRA 52,58:

x x x It has been said that courts may take judicial notice or a decision or the facts involved in another case tried by the same court if the parties introduce the same in evidence or the court, as a matter of convenience, decides to do so. x x x

[73] CA Decision in CA G.R. SP. No. 50424 dated August 29, 2008.

[74] SC Resolution dated September 9, 2009 in G.R. No. 187015, entitled *Benita C. Meñez vs.The Heirs of Jose Ma. Gepuela*.

property of the decedent.

Even assuming that *res judicata* would not bar Civil Case No. 65327, Hernita, et al.'s claim of a right to redeem Basilia's disputed share would still not prosper.

First. As instituted heirs only to a part of the **free** portion of Basilia's estate, Hernita, et al. are entitled to receive their share of the same, **if any,** only after payment of all debts, funeral charges, expenses of administration, allowance to the widow and inheritance tax.[75] Otherwise stated, their share would be dependent on whether anything is left of the estate after payment of all its obligations.

In this case, the disputed 36/72 *pro indiviso* share was sold at public auction to satisty the judgment claim of a creditor (Benita) of the estate. When it was redeemed by Gepuela, no further redemption was made. Upon expiration of the periods to redeem, Gepuela became entitled, as a matter of right, to the consolidation of the ownership of the share in his name. The ~~share no longer~~ formed part of the estate which can theoretically be distributed to Hernita, et al. as Basilia's voluntary heirs.

Second, and more importantly, as voluntary heirs to the free portion, Hernita, et al. have no right to claim any specific property of the estate, such as the contested 36/72 *pro indiviso* share in the property, until after the estate had been settled and distributed in accordance with law.

[75] Section I, Rule 90 of the Rules of Court provides:

SEC. 1. *When order for distribution of residue made.* — When the debts, funeral charges, and expenses of administration, the allowance to the widow, and inheritance tax, if any, chargeable to the estate in accordance with law, have been paid, the court, on the application of the executor or administrator, or of a person interested in the estate, and after hearing upon notice, shall assign the residue of the estate to the persons entitled to the same, naming them and the proportions, or parts, to which each is entitled, and such persons may demand and recover their respective shares from the executor or administrator, or any other person having the same in his possession. If there is a controversy before the court as to who are the lawful heirs of the deceased person or as to the distributive shares to which each person is entitled under the law, the controversy shall be heard and decided as in ordinary cases.

No distribution shall be allowed until the payment of the obligations above mentioned has been made or provided for unless the distributees, or any of them, give a bond, in a sum to be fixed by the court, conditioned for the payment of said obligations within such time as the court directs. (Emphasis supplied)

See also *Agtarap v. Agtarap*, G.R. No. 177099, June 8, 2011, 651 SCRA 455.

WHEREFORE, premises considered, the Petition in G.R. No. 173636 is **GRANTED**. The assailed Decisions of the CA affirming with modification the Regional Trial Court's Decision are **SET ASIDE**. The Petition in G.R. No. 173770 is **DENIED** for lack of merit.

SO ORDERED.

Sereno,[*] *C.J., Velasco, Jr. (Chairperson), Villarama, Jr.,* and *Reyes, JJ.,* concur.

FIRST DIVISION

[G.R. No. 174113. January 13, 2016]

PAZ CHENG *y* CHU, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. **CRIMINAL LAW; REVISED PENAL CODE; ESTAFA THROUGH MISAPPROPRIATION; ELEMENTS.—** The elements of *Estafa* under [Article 315 (1) (b) of the RPC] are as follows: (1) the offender's receipt of money, goods, or other personal property in trust, or on commission, or for administration, or under any other obligation involving the duty to deliver, or to return, the same; (2) misappropriation or conversion by the offender of the money or property received, or denial of receipt of the money or property; (3) the misappropriation, conversion or denial is to the prejudice of another; and (4) demand by the offended party that the offender return the money or property received. In the case of *Pamintuan v. People,* the Court had the opportunity to elucidate further

[*] As per Raffle dated October 10, 2011.

on the essence of the aforesaid crime, as well as the proof needed to sustain a conviction for the same x x x. In this case, a judicious review of the case records reveals that the elements of *Estafa,* as defined and penalized by the afore-cited provision, are present, considering that: (*a*) Rodriguez delivered the jewelry to Cheng for the purpose of selling them on commission basis; (*b*) Cheng was required to either remit the proceeds of the sale or to return the jewelry after one month from delivery; (*c*) Cheng failed to do what was required of her despite the lapse of the aforesaid period; (*d*) Rodriguez attempted to encash the check given by Cheng as security, but such check was dishonored twice for being drawn against insufficient funds and against a closed account; (*e*) Rodriguez demanded that Cheng comply with her undertaking, but the latter disregarded such demand; *(f)* Cheng's acts clearly prejudiced Rodriguez who lost the jewelry and/or its value.

2. **ID.; ID.; ID.; AGENCY ON COMMISSION BASIS; DULY ESTABLISHED IN CASE AT BAR.—** Cheng posits that since Rodriguez "admitted" in her testimony that the check issued by the former in the amount of ₱120,000.00 constituted full payment for the first and second batch of jewelry and partial payment for the last batch, the transactions entered into by the parties should be deemed in the nature of a sale. x x x The foregoing "admission" on the part of Rodriguez did not change the fact that her transactions with Cheng should be properly deemed as an agency on a commission basis whereby Rodriguez, as the owner of the jewelry, is the principal, while Cheng is the agent who is tasked to sell the same on commission. In the eyes of the Court, Rodriguez merely accepted the check as full security for the first and second batches of jewelry and as partial security for the last batch. It was only when Cheng defaulted in her undertaking pursuant to their agreement that Rodriguez was constrained to treat the check as the former's remittance of the proceeds of the sale of jewelry—albeit deficient—by presenting it for encashment on October 20, 1997, or more than two (2) months after the delivery of the last batch of jewelry. However, the check was dishonored for being drawn against insufficient funds. This notwithstanding and with the assurance from Cheng that the check will be cleared, Rodriguez presented such check for the

second time on November 4, 1997; but it was again dishonored — this time for being drawn against a closed account. As such, the fact that Rodriguez loosely used the words "payment" and "paid" should not be taken against her and should not in any way change the nature of her transactions with Rodriguez from an agency on a commission basis to a full-fledged sale. Moreover, even Cheng does not consider such check as payment for the jewelry, but rather, as security for the loan she allegedly obtained from Rodriguez.

3. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; FACTUAL FINDINGS OF THE TRIAL COURT, WHEN AFFIRMED BY THE COURT OF APPEALS, ARE ENTITLED TO GREAT WEIGHT AND RESPECT BY THE SUPREME COURT WHEN SUPPORTED BY THE EVIDENCE ON RECORD.—** [T]here is no reason to deviate from the findings of the RTC and the CA as they have fully considered the evidence presented by the prosecution and the defense, and they have adequately explained the legal and evidentiary reasons in concluding that Cheng is indeed guilty beyond reasonable doubt of three (3) counts of *Estafa* by misappropriation defined and penalized under Article 315 (1) (b) of the RPC. It is settled that factual findings of the RTC, when affirmed by the CA, are entitled to great weight and respect by this Court and are deemed final and conclusive when supported by the evidence on record, as in this case.

BERSAMIN, *J.*, *dissenting opinion*:

1. **CRIMINAL LAW; REVISED PENAL CODE; ESTAFA THROUGH MISAPPROPRIATION; ELEMENTS.—** The felony of *estafa* through misappropriation is defined and penalized in Article 315, 1(b) of the *Revised Penal Code* x x x. The elements of *estafa* through misappropriation are: (a) that personal property is received in trust, on commission, for administration or under any other circumstances involving the duty to make delivery of or to return the same, even though the obligation is guaranteed by a bond; *(b)* that there is conversion or diversion of such property by the person who has so received it or a denial on her part that she received it; (*c*) that such conversion, diversion

or denial is to the injury of another; and (*d*) that there be demand for the return of the property.

2. **ID.; ID.; ID.; CANNOT BE COMMITTED WHEN THE TRANSACTION BETWEEN THE PARTIES IS A SALE; CASE AT BAR.—** By stating that the check issued by the petitioner was "payment for the first and second transactions, x x x for ₱18,000.00 and ₱36,000.00 and the excess amount is applied for the third transaction," Rodriguez revealed that she *had sold* the pieces of jewelry to the latter. Thus, the petitioner was the buyer of Rodriguez, not an agent on commission basis. The right to a commission only establishes the relation of principal and agent, with the agent coming under the obligation to turn over to the principal the amount collected minus such commission. If the agent should retain more than the commission, she would be guilty of *estafa* through misappropriation. Yet, because the transaction between Rodriguez and the petitioner was a sale, the former effectively transferred to the latter the possession and the ownership of the items of jewelry. Once the ownership of the jewelry became vested in the latter, she could not misappropriate the items of jewelry. x x x Although Rodriguez had described the petitioner's PDCP Check No. 003626 for ₱120,000.00 (Exhibit B) as the *security* for the items of jewelry listed under Exhibits A and Exhibit A-1, and as the *partial payment* for the last delivery listed under Exhibits A-2, her presenting the check to the drawee bank for payment or collection of the *entire amount* of the check indicated that the check was always intended as payment. This finding is still consistent with holding the transactions as sales of the items of jewelry. Indeed, the presentment of the check to the drawee bank as the person primarily liable was antithetical to the notion of having the check serve as mere security.

3. **ID.; ID.; ID.; TO CONVICT A PERSON OF ESTAFA THROUGH MISAPPROPRIATION, THE STATE MUST PROVE THAT SHE HAS THE OBLIGATION TO DELIVER OR RETURN THE SAME MONEY, GOODS OR PERSONAL PROPERTY RECEIVED.—** [T]he dishonor [of PDCP Check No. 003626] did not alter the character of the transactions as sales but only rendered Rodriguez an unpaid seller. The relationship between them resulting from the dishonor

was that of a creditor- and-debtor. In a purely debtor-and-creditor relationship, the debtor who merely refuses to pay or denies the indebtedness cannot be held liable for *estafa* by misappropriation. The reason is readily apparent. To convict a person of *estafa* under Article 315, par. 1(b) of the *Revised Penal Code,* the State must prove that she has the obligation to deliver or return the same money, goods or personal property received. Considering that the petitioner already became the owner of the pieces of jewelry, she could dispose of the same, and her disposal of them would not amount to the misappropriation thereof. In short, the petitioner did not thereby violate any trust or other obligation to account for the items of jewelry that she already owned.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated March 28, 2006 and the Resolution[3] dated June 26, 2006 of the Court of Appeals (CA) in CA-G.R. CR No. 24871, which affirmed the conviction of petitioner Paz Cheng *y* Chu (Cheng) for three (3) counts of the crime of *Estafa* defined and penalized under Article 315 (1) (b) of the Revised Penal Code (RPC).

The Facts

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[1] *Rollo,* pp. 13-29.

[2] *Id*. at 86-97. Penned by Associate Justice Noel G. Tijam with Associate Justices Elvi John S. Asuncion and Mariflor P. Punzalan Castillo concurring.

[3] *Id*. at 107-108.

The instant case arose from the filing of three (3) separate Informations[4] charging Cheng of the crime of *Estafa* defined and penalized Under Article 315 (1) (b) of the RPC before the Regional Trial Court of Quezon City, Branch 226 (RTC), docketed as Criminal Case Nos. Q-98-75440, Q-98-75441, and Q-98-75442. According to the prosecution, private complainant Rowena Rodriguez (Rodriguez) and Cheng entered into an agreement whereby Rodriguez shall deliver pieces of jewelry to Cheng for the latter to sell on commission basis. After one month, Cheng is obliged to either: (*a*) remit the proceeds of the sold jewelry; or (*b*) return the unsold jewelry to the former. On different dates (*i.e*., July 12, 1997, July 16, 1997, and August 12, 1997), Rodriguez delivered various sets of jewelry to Cheng in the respective amounts of ₱18,000.00, ₱36,000.00, and ₱257,950.00. Upon delivery of the last batch of jewelry, Cheng issued a check worth ₱120,000.00 as full security for the first two (2) deliveries and as partial security for the last. When Cheng failed to remit the proceeds or to return the unsold jewelry on due date, Rodriguez presented the check to the bank for encashment, but was dishonored due to insufficient funds. Upon assurance of Cheng, Rodriguez re-deposited the check, but again, the same was dishonored because the drawee account had been closed. Rodriguez then decided to confront Cheng, who then uttered "*Akala mo, babayaran pa kita*?" Thus, Rodriguez was constrained to file the instant charges.[5]

In defense, Cheng denied receiving any jewelry from Rodriguez or signing any document purporting to be contracts of sale of jewelry, asserting that Rodriguez is a usurious moneylender. She then admitted having an unpaid loan with Rodriguez and that she issued a check to serve as security for the same, but was nevertheless surprised of her arrest due to the latter's filing of *Estafa* charges against her.[6]

The RTC Ruling

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[4] Records, pp. 2-3, 8-9 and 14-15.

[5] See *rollo,* pp. 88-89.

[6] See *id*. at 89-90.

In a Decision[7] dated December 7, 2000, the RTC found Cheng guilty beyond reasonable doubt of three (3) counts of *Estafa* and, accordingly, sentenced her as follows: (*a*) for the first count, Cheng is sentenced to an indeterminate penalty ranging from four (4) years, two (2) months, and one (1) day to six (6) years, eight (8) months, and twenty-one (21) days to eight (8) years of *prision correccional* in its maximum period to *prision mayor* in its minimum period (maximum); (*b*) for the second count, Cheng is sentenced to an indeterminate penalty ranging from six (6) months and one (1) day to one (1) year, eight (8) months, and twenty (20) days of *prision correccional* in its minimum and medium periods to six (6) years, eight (8) months, and twenty-one (21) days to eight (8) years of *prision correccional* in its maximum period to *prision mayor* in its minimum period (maximum); and (*c*) for the third count, Cheng is sentenced to an indeterminate penalty ranging from six (6) months and one (1) day to one (1) year, eight (8) months, and twenty (20) days of *prision correccional* in its minimum and medium periods to four (4) years, two (2) months, and one (1) day to five (5) years, five (5) months, and ten (10) days of *prision correccional* in its maximum period to *prision mayor* in its minimum period (minimum).[8]

The RTC found that the prosecution has sufficiently proven through documentary and testimonial evidence that: *(a)* Rodriguez indeed gave Cheng several pieces of jewelry for the latter to either sell and remit the proceeds or to return said jewelry if unsold to the former; and *(b)* Cheng neither returned the jewelry nor remitted their proceeds to Rodriguez within the specified period despite the latter's demands. In contrast, Cheng failed to substantiate her claims through the documentary evidence she presented while her testimony was deemed to be incredible and not worthy of belief.[9]

Aggrieved, Cheng appealed[10] to the CA.

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[7] *Id*. at 31-46. Penned by Judge Leah S. Domingo-Regala.

[8] *Id*. at 45.

[9] See *id*. at 40-45.

The CA Ruling

In a Decision[11] dated March 28, 2006, the CA affirmed Cheng's conviction for three (3) counts of *Estafa,* with modification as to the penalties, as follows: *(a)* for the first count of *Estafa* where the amount misappropriated is ₱257,950.00, Cheng is sentenced to suffer the penalty of imprisonment for an indeterminate period of four (4) years and two (2) months of *prision correccional,* as minimum, to twenty (20) years of *reclusion temporal,* as maximum; *(b)* for the second count of *Estafa* where the amount misappropriated is ₱36,000.00, Cheng is sentenced to suffer the penalty of imprisonment for an indeterminate period of four (4) years and two (2) months of *prision correccional,* as minimum, to nine (9) years of *prision mayor,* as maximum; and (*c*) for the third count of *Estafa* where the amount misappropriated is ₱18,000.00, Cheng is sentenced to suffer the penalty of imprisonment for an indeterminate period of four (4) years and two (2) months of *prision correccional,* as minimum, to six (6) years, eight (8) months, and twenty (20) days of *prision mayor,* as maximum.[12]

The CA agreed with the RTC's findings that the prosecution had sufficiently established Cheng's guilt beyond reasonable doubt, pointing out that Rodriguez's testimony was '"more candid, credible and straightforward' and that 'her demeanor in the witness stand is worthy of belief" as opposed to that of Cheng which is highly self-serving and uncorroborated.[13] Further, the CA found that a modification of Cheng's penalties is in order to conform with prevailing law and jurisprudence on the matter.[14]

Undaunted, Cheng moved for reconsideration[15] but was denied

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[10] See Brief for the Accused-Appellant dated June 28, 2001; *id*. at 47-59.

[11] *Id*. at 86-97.

[12] See *id*. at 95-97.

[13] See *id*. at 91-95.

[14] See *id*. at 95-96.

in a Resolution[16] dated June 26, 2006; hence, this petition.

The Issue Before the Court

The core issue for the Court's resolution is whether or not the CA correctly affirmed Cheng's conviction for three counts of *Estafa* defined and penalized under Article 315 (1) (b) of the RPC.

The Court's Ruling

The petition is without merit.

Article 315 (1) (b) of the RPC states:

> Art. 315. *Swindling (estafa).* - Any person who shall defraud another by any of the means mentioned hereinbelow shall be punished by:
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> *1st.* The penalty of *prision correccional* in its maximum period to *prision mayor* in its minimum period, if the amount of the fraud is over 12,000 pesos but does not exceed 22,000 pesos; and if such amount exceeds the latter sum, the penalty provided in this paragraph shall be imposed in its maximum period, adding one year for each additional 10,000 pesos; but the total penalty which may be imposed shall not exceed twenty years. In such cases, and in connection with the accessory penalties which may be imposed and for the purpose of the other provisions of this Code, the penalty shall be termed *prision mayor* or *reclusion temporal,* as the case may be[.]
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> x x x x x x x x x
>
> 1. With unfaithfulness or abuse of confidence, namely:
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> x x x x x x x x x
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> (b) By misappropriating or converting, to the prejudice of another, money, goods or any other personal property received by the offender in trust, or on commission, or for administration, or under any other obligation involving the duty to make delivery of, or to return the same, even though such obligation be totally or partially guaranteed by a bond; or by denying having received such money, goods, or

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[15] See Motion for Reconsideration dated April 17, 2006; *id*. at 98-101.

[16] *Id*. at 107-108.

other property;

xxx x x x x x x

The elements of *Estafa* under this provision are as follows: (1) the offender's receipt of money, goods, or other personal property in trust, or on commission, or for administration, or under any other obligation involving the duty to deliver, or to return, the same; (2) misappropriation or conversion by the offender of the money or property received, or denial of receipt of the money or property; (3) the misappropriation, conversion or denial is to the prejudice of another; and (4) demand by the offended party that the offender return the money or property received.[17] In the case of *Pamintuan v. People,*[18] the Court had the opportunity to elucidate further on the essence of the aforesaid crime, as well as the proof needed to sustain a conviction for the same, to wit:

> **The essence of this kind of *[E]stafa* is the appropriation or conversion of money or property received to the prejudice of the entity to whom a return should be made.** The words "convert" and "misappropriate" connote the act of using or disposing of another's property as if it were one's own, or of devoting it to a purpose or use different from that agreed upon. To misappropriate for one's own use includes not only conversion to one's personal advantage, but also every attempt to dispose of the property of another without right. **In proving the element of conversion or misappropriation, a legal presumption of misappropriation arises when the accused fails to deliver the proceeds of the sale or to return the items to be sold and fails to give an account of their whereabouts.**[19] (Emphases and underscoring supplied)

In this case, a judicious review of the case records reveals that the elements of *Estafa,* as defined and penalized by the afore-cited provision, are present, considering that: (*a*) Rodriguez delivered the jewelry to Cheng for the purpose of selling them

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[17] *Pamintuan v. People,* 635 Phil. 514, 522 (2010).

[18] *Id.*

[19] *Id.*

on commission basis; (*b*) Cheng was required to either remit the proceeds of the sale or to return the jewelry after one month from delivery; (*c*) Cheng failed to do what was required of her despite the lapse of the aforesaid period; (*d*) Rodriguez attempted to encash the check given by Cheng as security, but such check was dishonored twice for being drawn against insufficient funds and against a closed account; (*e*) Rodriguez demanded that Cheng comply with her undertaking, but the latter disregarded such demand; *(f)* Cheng's acts clearly prejudiced Rodriguez who lost the jewelry and/or its value.

In a desperate attempt to absolve herself from liability, Cheng insists that Rodriguez admitted in her own testimony that the transaction between them is not an agency on commission basis, but a plain sale of jewelry with Rodriguez as the seller and Cheng as the buyer. As such, Cheng's non- payment of the purchase price of the jewelry would only give rise to civil liability and not criminal liability.[20] The pertinent portion of Rodriguez's testimony is as follows:

Q. After the delivery of these several items totalling ₱257,950.00, what happened next?

A. She issued a check worth ₱120,000.00.

Q. What check is that?

A. PDCP Bank, sir.

Q. What is this check for, Ms. Witness?

A. **As payment for the first and second transactions, sir, for ₱18,000.00 and ₱36,000.00 and the excess amount is applied for the third transaction.**

x x x x x x x x x

Q. So, all in all, you have sixty (60) days period with respect to this item, and the first delivery expired I am referring to July 12, 1997 worth ₱18,000.00 which will mature on September 11, so, from September 11, what happened?

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[20] See *rollo,* pp. 22-27.

A. **<u>These were considered paid because she issued me a check for the period of August 13, so I was expecting that.</u>**[21] (Emphases and underscoring supplied)

Essentially, Cheng posits that since Rodriguez "admitted" in her testimony that the check issued by the former in the amount of ₱120,000.00 constituted full payment for the first and second batch of jewelry and partial payment for the last batch, the transactions entered into by the parties should be deemed in the nature of a sale.

Cheng is sadly mistaken.

The foregoing "admission" on the part of Rodriguez did not change the fact that her transactions with Cheng should be properly deemed as an agency on a commission basis whereby Rodriguez, as the owner of the jewelry, is the principal, while Cheng is the agent who is tasked to sell the same on commission. In the eyes of the Court, Rodriguez merely accepted the check as full security for the first and second batches of jewelry and as partial security for the last batch. It was only when Cheng defaulted in her undertaking pursuant to their agreement that Rodriguez was constrained to treat the check as the former's remittance of the proceeds of the sale of jewelry — albeit deficient — by presenting it for encashment on October 20, 1997, or more than two (2) months after the delivery of the last batch of jewelry.[22] However, the check was dishonored for being drawn against insufficient funds. [23] This notwithstanding and with the assurance from Cheng that the check will be cleared, Rodriguez presented such check for the second time on November 4, 1997; but it was again dishonored — this time for being drawn against a closed account.[24] As such, the fact that Rodriguez loosely used the words "payment" and "paid" should not be taken against

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[21] See *id*. at 36-37 and 111-112.

[22] See PDCP Check amounting to ₱120,000.00 payable to Rowena R. Rodriguez; records, p. 62.

[23] See *id*., including dorsal portion.

her and should not in any way change the nature of her transactions with Rodriguez from an agency on a commission basis to a full-fledged sale. Moreover, even Cheng does not consider such check as payment for the jewelry, but rather, as security for the loan she allegedly obtained from Rodriguez.

Indisputably, there is no reason to deviate from the findings of the RTC and the CA as they have fully considered the evidence presented by the prosecution and the defense, and they have adequately explained the legal and evidentiary reasons in concluding that Cheng is indeed guilty beyond reasonable doubt of three (3) counts of *Estafa* by misappropriation defined and penalized under Article 315 (1) (b) of the RPC. It is settled that factual findings of the RTC, when affirmed by the CA, are entitled to great weight and respect by this Court and are deemed final and conclusive when supported by the evidence on record,[25] as in this case.

WHEREFORE, the petition is **DENIED.** The Decision dated March 28, 2006 and the Resolution dated June 26, 2006 of the Court of Appeals in CA-G.R. CR No. 24871 are hereby **AFFIRMED.**

Accordingly, petitioner Paz Cheng *y* Chu is found **GUILTY** beyond reasonable doubt of *Estafa* defined and penalized under Article 315 (1) (b) of the Revised Penal Code, and is **SENTENCED** as follows: *(a)* for the first count of *Estafa* where the amount misappropriated is ₱257,950.00, Cheng is sentenced to suffer the penalty of imprisonment for an indeterminate period of four (4) years and two (2) months *of prision correccional,* as minimum, to twenty (20) years of *reclusion temporal,* as maximum; *(b)* for the second count of *Estafa* where the amount misappropriated is ₱36,000.00, Cheng is sentenced to suffer the penalty of imprisonment for an indeterminate period of four (4) years and two (2) months of *prision correccional,* as

[24] See *id.*

[25] *Guevarra v. People,* G.R. No. 170462, February 5, 2014, 715 SCRA 384, 394-395.

minimum, to nine (9) years of *prision mayor,* as maximum; and (*c*) for the third count of *Estafa* where the amount misappropriated is ₱18,000.00, Cheng is sentenced to suffer the penalty of imprisonment for an indeterminate period of four (4) years and two (2) months of *prision correccional,* as minimum, to six (6) years, eight (8) months, and twenty (20) days of *prision mayor,* as maximum.

SO ORDERED.

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

Bersamin, J., dissents.

DISSENTING OPINION

BERSAMIN, *J.*:

I dissent. The State did not establish beyond reasonable doubt the culpability of the accused for the crimes charged.

Based on the assailed decision of the CA, the following were the factual and procedural antecedents, *viz.*:

> Accused-Appellant was charged with 3 counts of Estafa under Article 315, par. 1(b) of the Revised Penal Code. Similarly worded except as to the date of the commission of each estafa, the number of pieces of jewelry, and the amount involved, the *3 Informations* charged as follows:
>
>> That on or about the _day of ___, 1997 in Quezon City, Philippines, the said accused, did then and there willfully, unlawfully and feloniously defraud ROWENA RODRIGUEZ in the following manner, to wit: the said accused received in trust from said complainant ____ pieces of Jewelry worth ₱______, Philippine Currency, for the purpose of selling the same on commission basis, under the express obligation on the part of said accused of turning over the proceeds of the sale to said complainant if sold, or of returning the same if unsold to said complainant, but the said accused, once in

possession of the said items, far from complying with her obligation as aforesaid, with intent to defraud, unfaithfulness and grave abuse of confidence, failed and refused and still fails and refuses to fulfill his aforesaid obligation despite repeated demands made upon her to do so and instead misapplied, misappropriated and converted the same or the value thereof, to her own personal use and benefit, to the damage and prejudice of said ROWENA RODRIGUEZ in the aforesaid amount of Philippine Currency.

CONTRARY TO LAW.

Private Complainant testified as follows:

Private Complainant and Accused-Appellant entered into various and numerous transactions. At times, Accused-Appellant acquired loans from Private Complainant or acted as the latter's sales agent.

On July 12, 1997, Private Complainant delivered 2 pieces of jewelry amounting to ₱18,000.00 for Accused-Appellant to sell on commission basis. Both agreed that Accused-Appellant shall remit to Private Complainant the proceeds of the sale, or return the jewelry if unsold after 1 month. The parties entered into a similar transaction on July 16, 1997, but this time involving 3 pieces of jewelry valued at ₱36,000.00. The agreement on these transactions were written in one document.

On August l2, 1997, Private Complainant delivered another set of jewelry amounting to ₱257,950.00 reflected in a written agreement executed between the parties. Accused-Appellant likewise issued a *check* worth ₱120,000.00 as security for the first two deliveries and as partial payment for the last delivery.

When Accused-Appellant failed to return the unsold jewelries (sic) on due date, Private Complainant presented the check for encashment. However, the check was dishonored due to insufficiency of funds. Consequently, Accused-Appellant promised to pay Private Complainant on the first week of November.

However, when Private Complainant re-deposited the check on November 4, 1997, the check was again dishonored because the account was closed. When confronted, Accused-appellant refused to pay Private Complainant and instead uttered: *"AKALA MO, BABAYARAN*

PA KITA?"

Private Complainant filed criminal charges for estafa against the Accused-Appellant.

The Defense presented *Accused-Appellant and Virginia Araneta,* who testified as follows:

Accused-Appellant denied receiving any jewelry from Private Complainant or entering into any agreement for her to sell said jewelry on commission basis. Accused-Appellant denied signing the 2 written agreements presented by Private Complainant purporting to be contracts for the sale of jewelries. (Sic)

Accused-Appellant claimed that Private Complainant is a usurious money lender engaged in what is otherwise known as "5-6." It was Private Complainant who loaned her part of the capital for her vegetable business.

On one occasion, Virginia Araneta accompanied Accused- Appellant to borrow money from Private Complainant. Accused-Appellant pledged some pieces of jewelry as collateral for the loan and signed a written contract. Unfortunately, Accused-Appellant failed to ask a copy of the written contract from Private Complainant. Private Complainant also requested Accused-Appellant to issue a check to serve as a security for said loan but promised not to deposit the same on due date.

Accused-Appellant admitted that her loan with Private Complainant remained unpaid but she, nevertheless, was surprised of her arrest. It was only when she was at the Quezon City Jail that she was informed by Private Complainant that Estafa cases were filed against her.

The Regional Trial Court (RTC), Branch 226, in Quezon City found and declared the petitioner guilty of three counts of *estafa* in Criminal Case No. Q-98-75440, Criminal Case No. Q-98-75441 and Criminal Case No. Q- 98-75442, all entitled *People of the Philippines v. Paz Cheng y Chu,* through the judgment rendered on December 7, 2000,[1] decreeing thusly:

In view of all the foregoing, this Court finds the accused guilty

beyond reasonable doubt of 3 counts of estafa, defined and penalized under Art. 315, 1 (b) of the Revised Penal Code.

On the first count, accused is sentenced to an indeterminate penalty ranging from 4 years 2 months and 1 day to 6 years 8 months and 21 days to 8 years of prision correccional in its maximum period to prision mayor in its minimum period (maximum).

On the second count, accused is sentenced to an indeterminate penalty ranging from 6 months and 1 day to 1 year 8 months and 20 days of prison correccional in its minimum and medium periods to 6 years 8 months and 21 days to 8 years of prision correccional in its maximum period to prision mayor in its minimum period (Maximum).

On the third count, accused is sentenced to an indeterminate penalty ranging from 6 months 1 day to 1 year 8 month and 20 days of prision correccional in its minimum and medium periods to 4 years 2 months and 1 day to 5 years 5 months and 10 days of prision correccional in its maximum period to prision mayor in its minimum period (minimum).

The sentence shall be served successively; and the accused is ordered to indemnify the private complainant Rowena Rodriguez in the amount of ₱257,950.00, ₱36,000.00 and ₱l8,000.00 and to pay the costs of the suit

SO ORDERED.[2]

On appeal, the petitioner submitted that:

I

THE COURT A QUO GRAVELY ERRED IN GIVING WEIGHT AND CREDENCE TO THE TESTIMONY OF THE PRIVATE COMPLAINANT AND IN TOTALLY DISREGARDING THE VERSION OF THE DEFENSE.

II

THE COURT A QUO GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY BEYOND REASONABLE

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[1] *Rollo*, pp. 31-45; penned by Presiding Judge Leah S. Domingo-Regala.

[2] *Id*. at 87-90.

DOUBT OF THE THREE (3) COUNTS OF ESTAFA.[3]

Nonetheless, the CA affirmed the conviction of the petitioner with modification of the penalties,[4] to wit:

WHEREFORE, the instant Appeal is ***DISMISSED.*** The assailed Decision, dated December 7, 2000, of the Regional Trial Court of Quezon City, Branch 226, in Criminal Case No. Q98-75440-2, is hereby AFFIRMED with the following MODIFICATIONS:

1. On the first count, Accused-Appellant shall suffer the indeterminate penalty of 4 years and 2 months of Prision Correccional, as MINIMUM, to 20 years as MAXIMUM;
2. On the second count, Accused-Appellant shall suffer the indeterminate penalty of 4 years and 2 months of Prision Correccional, as MINIMUM, to 9 years as MAXIMUM;
3. On the third count, Accused-Appellant shall suffer the indeterminate penalty of 4 years and 2 months of Prision Correccional, as MINIMUM, to 6 years, 8 months and 20 days, as MAXIMUM.

SO ORDERED.

The CA later denied the petitioner's motion for reconsideration on June 26, 2006.[5]

In her present appeal, the petitioner urges the Court to consider and resolve the following issues, namely:

I

WHETHER THE PETITIONER COMMITTED THE CRIME OF ESTAFA UNDER ARTICLE 315, PARAGRAPH l(B) OF THE

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[3] *Id*. at 49.

[4] *Id.* at 86-97; penned by Associate Justice Noel G. Tijam, with the concurrence of Associate Justice Elvi John S. Asuncion and Associate Justice Mariflor P. Punzalan Castillo.

[5] *Id*. at 107-108.

REVISED PENAL CODE.

II

WHETHER THE COURT OF APPEALS COMMITTED A GRAVE ERROR IN GIVING WEIGHT TO THE EVIDENCE OF THE PROSECUTION AND FAILED TO CONSIDER THE MERITS OF THE PETITIONER'S DEFENSE.[6]

In its comment,[7] the Office of the Solicitor General (OSG) counters that the petitioner hereby seeks the review of the facts and the evidence; that the appeal should be rejected because it urges a departure from the general rule that the CA' s findings of fact, which have affirmed the factual findings of the trial court, should be accorded great respect, even finality; that this case did not constitute an exception to warrant the re-evaluation of the unanimous findings of fact of the lower courts; that the Prosecution established the guilt of the petitioner by sufficiently showing the concurrence of all the essential elements of the offense charged; and that her bare denial, being negative in nature, did not prevail over the positive evidence presented against her.

Submission

I vote to acquit the petitioner on the ground that the State did not establish her guilt for *estafa* through misappropriation beyond reasonable doubt. I insist that in every criminal prosecution, the State must discharge the duty to establish the guilt of the accused by proof beyond reasonable doubt. Otherwise, the accused is entitled to acquittal.

The felony of *estafa* through misappropriation is defined and penalized in Article 315, 1(b) of the *Revised Penal Code, viz:*

Article 315. *Swindling (estafa).* —Any person who shall defraud another by any of the means mentioned hereinbelow shall be punished by:

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[6] *Id*. at 21.

[7] *Id*. at 130-147.

1st. The penalty of *prision correccional* in its maximum period to *prision mayor* in its minimum period, if the amount of the fraud is over 12,000 pesos but does not exceed 22,000 pesos; and if such amount exceeds the latter sum, the penalty provided in this paragraph shall be imposed in its maximum period, adding one year for each additional 10,000 pesos; but the total penalty which may be imposed shall not exceed twenty years. In such cases, and in connection with the accessory penalties which may be imposed under the provisions of this Code, the penalty shall be termed *prision mayor* or *reclusion temporal,* as the case may be.

2nd. The penalty of *prision correccional* in its minimum and medium periods, if the amount of the fraud is over 6,000 pesos but does not exceed 12,000 pesos;

3rd. The penalty of *arresto mayor* in its maximum period to *prision correccional* in its minimum period if such amount is over 200 pesos but does not exceed 6,000 pesos; and

4th. By *arresto mayor* in its maximum period, if such amount does not exceed 200 pesos, provided that in the four cases mentioned, the fraud be committed by any of the following means:

1. With unfaithfulness or abuse of confidence, namely:

x x x x x x x x x

(b) By misappropriating or converting, to the prejudice of another, money, goods, or any other personal property received by the offender in trust or on commission, or for administration, or under any other obligation involving the duty to make delivery of or to return the same, even though such obligation be totally or partially guaranteed by a bond; or by denying having received such money, goods, or other property. (bold emphasis supplied)

x x x x x x x x x

The elements of *estafa* through misappropriation are: (*a*) that personal property is received in trust, on commission, for administration or under any other circumstances involving the duty to make delivery of or to return the same, even though the obligation is guaranteed by a bond; *(b)* that there is conversion or diversion of such property by the person who has so received

it or a denial on her part that she received it; (*c*) that such conversion, diversion or denial is to the injury of another; and (*d*) that there be demand for the return of the property.[8]

According to the CA, the Prosecution established the petitioner's commission of *estafa* through misappropriation, to wit:

> All these elements were duly proven by the Prosecution.
>
> The 2 written agreements *stipulated* that the pieces of jewelry were delivered to Accused-Appellant to be sold on commission basis or to be returned if unsold within 1 month. Clearly, the jewelry delivered to Accused-Appellant was for a specific purpose, that is, for Accused- Appellant to sell them, and in the event that it cannot be sold, to return the same to Private Complainant.
>
> Accused-appellant, however, insisted that the Prosecution "*failed to prove the existence of misappropriation" as there was no proof that the accused-appellant kept the proceeds" of the sale."*
>
> *We disagree.*
>
> The words "convert" and "misappropriate" as used in Article 315 connote an act of using or disposing of another's property as if it were one's own or of devoting it to a purpose or use different from that agreed upon. To "misappropriate" a thing of value for one's own use or benefit, not only the conversion to one's personal advantage but also every attempt to dispose of the property of another without a right. Misappropriation or conversion may be proved by the prosecution by direct evidence or by circumstantial evidence. Failure to account, upon demand, for funds or property held in trust, is circumstantial evidence of misappropriation.
>
> Demand need not be formal. It may be verbal. A query as to the whereabouts of the money, such as the one proven in the case at bench, is tantamount to a demand. In this case, despite repeated demands from Private Complainant, Accused-Appellant still failed to return the jewelry or to remit the proceeds of the sale to the prejudice of Private Complainant. Accused-Appellant's failure to account for

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[8] *Manahan, Jr. v. Court of Appeals,* G.R. No. 111656. March 20, 1996, 255 SCRA 202, 213; *Saddul, Jr. v. Court of Appeals,* G.R. No. 91041, December 10, 1990, 192 SCRA 277, 286.

the jewelry entrusted to her by Private Complainant constitutes misappropriation. Accused-Appellant is, thus, liable for conversion under Art. 315, par. 1 (b) of the Revised Penal Code.

x x x x x x x x x[9]

The Majority concur with the CA.

However, I cannot join my distinguished Brethren in the conclusion that the CA correctly affirmed the conviction of the petitioner. My assiduous and thorough review of the records of the trial convinces me that the real agreement between the parties was a *sale* of the items of jewelry, not the supposed agency to sell such items on commission basis as the RTC and the CA concluded.

It is conceded that the text of Exhibits A, Exhibit A-1 and Exhibit A-2 — the documents *evidencing* the transactions — seemed to allude to the petitioner's obligation as one of agency to sell the items of jewelry on commission basis. Under ordinary circumstances, the literal terms of such documents would control and be regarded as the manifestation of the true intention of the parties. But to give outright credence to the interpretation of the evidence as the CA did would be to ignore and disregard what complainant Rowena Rodriguez had herself declared to be the true nature of the transactions with the petitioner.

Rodriguez testified as follows:

Q. After the delivery of these several items totalling ₱257,950.00, what happened next?

A. She issued a check worth ₱120,000.00.

Q. What check is that?

A. PDCP Bank, sir.

Q. What is this check for, Ms. Witness?

A. **As payment for the first and second transactions, sir, for**

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

₱18,000.00 and ₱36,000.00 and the excess amount is applied for the third transaction.[10]

x x x x x x x x x

Q. So, all in all, you have sixty (60) days period with respect to this item, and the first delivery expired. I am referring to July 12, 1997 worth ₱18,000.00 which will mature on September 11, so, from September 11, what happened?

A. **These were considered paid because she issued me a check for the period of August 13, so I was expecting that.**[11]

x x x x x x x x x

By stating that the check issued by the petitioner was "payment for the first and second transactions, sir, for ₱18,000.00 and ₱36,000.00 and the excess amount is applied for the third transaction," Rodriguez revealed that she *had sold* the pieces of jewelry to the latter. Thus, the petitioner was the buyer of Rodriguez, not an agent on commission basis.

The right to a commission only establishes the relation of principal and agent, with the agent coming under the obligation to turn over to the principal the amount collected minus such commission. If the agent should retain more than the commission, she would be guilty of *estafa* through misappropriation.[12] Yet, because the transaction between Rodriguez and the petitioner was a sale, the former effectively transferred to the latter the possession and the ownership of the items of jewelry.[13] Once the ownership of the jewelry became vested in the latter,[14] she could not misappropriate the items of jewelry.

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[10] TSN, October 21. 1998, p. 16.

[11] *Id*. at 19.

[12] Guevara, *Commentaries on the Revised Penal Code,* Fourth Ed., Revised and Enlarged, Filipino Book Dealers' Association, Manila, 1946, p. 646; 649-651.

[13] *Id*.

The foregoing excerpts of testimony further showed Rodriguez to have "considered [the items of jewelry] paid" by the petitioner. We should consider and regard such express declaration as a confirmation of the true nature of her agreement with the petitioner as a sale of the jewelry. The CA erroneously ignored the testimony despite its being a forthright judicial admission in the context of Section 4, Rule 129 of the *Rules of Court.*[15]

Although Rodriguez had described the petitioner's PDCP Check No. 003626 for ₱120,000.00 (Exhibit B) as the *security* for the items of jewelry listed under Exhibit A and Exhibit A-1, and as the *partial payment* for the last delivery listed under Exhibits A-2, her presenting the check to the drawee bank for payment or collection of the *entire amount* of the check indicated that the check was always intended as payment. This finding is still consistent with holding the transactions as sales of the items of jewelry. Indeed, the presentment of the check to the drawee bank as the person primarily liable was antithetical to the notion of having the check serve as mere security.

Clearly, the CA had no basis to hold the written text of Exhibit A, Exhibit A-1 and Exhibit A-2 as controlling. In contracts the intent of the parties always prevails over the written form.

Did the dishonor of PDCP Check No. 003626 affect the character of the transactions between the petitioner and Rodriguez as sales of the items of jewelry?

I submit that the dishonor did not alter the character of the transactions as sales but only rendered Rodriguez an unpaid

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[14] According to Article 1458, *Civil Code,* by the contract of sale, one of the contracting parties obligates herself to transfer the ownership of and to deliver a determinate thing, and the other to pay therefor a price certain in money or its equivalent.

[15] Section 4 *Judicial admissions.*— An admission, verbal or written, made by a party **in the course of the proceedings in the same case**, does not require proof. The admission may be contradicted only by showing that it was made through palpable mistake or that no such admission was made.

seller. The relationship between them resulting from the dishonor was that of a creditor- and-debtor. In a purely debtor-and-creditor relationship, the debtor who merely refuses to pay or denies the indebtedness cannot be held liable for *estafa* by misappropriation. The reason is readily apparent. To convict a person of *estafa* under Article 315, par 1(b) of the *Revised Penal Code,* the State must prove that she has the obligation to deliver or return the same money, goods or personal property received.[16] Considering that the petitioner already became the owner of the pieces of jewelry, she could dispose of the same, and her disposal of them would not amount to the misappropriation thereof.[17] In short, the petitioner did not thereby violate any trust or other obligation to account for the items of jewelry that she already owned.

Considering that the Prosecution did not establish the petitioner's guilt for the crimes of *estafa* through misappropriation beyond reasonable doubt, she was entitled to acquittal,[18] for it is always indispensable for the valid conviction of the accused that the State shall prove the existence of all the essential elements of the offense charged beyond reasonable doubt. With less than all the elements of the offense charged having been established, it is unwarranted and unjust to still find her criminally liable.

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[16] *Tanzo v. Drilon,* G.R. No. 106671, March 30, 2000, 329 SCRA 147, 155.

[17] *Yam v. Malik,* G.R. Nos. 50550-52, October 31, 1979, 94 SCRA 30, 35.

[18] Section 2, Rule 133 of the *Rules of Court* states:

Section 2. *Proof beyond reasonable doubt.* - In a criminal case, the accused is entitled to an acquittal, unless his guilt is shown beyond reasonable doubt. Proof beyond reasonable doubt does not mean such a degree of proof as, excluding possibility of error, produces absolute certainty. Moral certainty only is required, or that degree of proof which produces conviction in an unprejudiced mind. (2 a)

THIRD DIVISION

[G.R. No. 176986. January 13, 2016]

NISSAN CAR LEASE PHILS., INC., *petitioner, vs.* **LICA MANAGEMENT, INC. and PROTON PILIPINAS, INC.,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; PLEADINGS; VERIFICATION AND CERTIFICATION AGAINST FORUM SHOPPING; CAN BE SIGNED BY THE PRESIDENT OF THE CORPORATION WITHOUT THE NEED OF A BOARD RESOLUTION.—** As a rule, a corporation has a separate and distinct personality from its directors and officers and can only exercise its corporate powers through its board of directors. Following this rule, a verification and certification signed by an individual corporate officer is defective if done without authority from the corporation's board of directors. The requirement of verification being a condition affecting only the form of the pleading, this Court has, in a number of cases, held that: **[T]he following officials or employees of the company can sign the verification and certification without need of a board resolution:** (1) the Chairperson of the Board or Directors, (2) **the President of a corporation,** x x x. In this case, Banson was President of NCLPI at the time of the filing of the petition. "Thus, and applying the foregoing ruling, he can sign the verification and certification against forum shopping in the petition without the need of a board resolution."

2. **CIVIL LAW; CIVIL CODE; OBLIGATIONS AND CONTRACTS; RESCISSION; AN AGGRIEVED PARTY IS NOT PREVENTED FROM EXTRAJUDICIALLY RESCINDING A CONTRACT TO PROTECT ITS INTEREST EVEN IN THE ABSENCE OF ANY PROVISION EXPRESSLY PROVIDING FOR SUCH RIGHT.—** It is true that NCLPI and LMI's Contract of Lease does not contain a provision expressly authorizing extrajudicial rescission. LMI can nevertheless rescind the contract, without prior court

approval, pursuant to Art. 1191 of the Civil Code. Art. 1191 provides that the power to rescind is implied in reciprocal obligations, in cases where one of the obligors should fail to comply with what is incumbent upon him. Otherwise stated, an aggrieved party is not prevented from extrajudicially rescinding a contract to protect its interests, even in the absence of any provision expressly providing for such right. The rationale for this rule was explained in the case of *University of the Philippines v. De los Angeles* x x x NCLPI's non-payment of rentals and unauthorized sublease of the leased premises were both clearly proven by the records. We thus confirm LMI's rescission of its contract with NCLPI on account of the latter's breach of its obligations.

3. **ID.; ID.; ID.; ID.; ALWAYS AVAILABLE AS A REMEDY AGAINST A DEFAULTING PARTY WHETHER A CONTRACT PROVIDES FOR IT OR NOT.—** Whether a contract provides for it or not, the remedy of rescission is always available as a remedy against a defaulting party. When done without prior judicial *imprimatur,* however, it may still be subject to a possible court review. x x x The only practical effect of a contractual stipulation allowing extrajudicial rescission is "merely to transfer to the defaulter the initiative of instituting suit, instead of the rescinder." In fact, the rule is the same even if the parties' contract **expressly** allows extrajudicial rescission. The other party denying the rescission may still seek judicial intervention to determine whether or not the rescission was proper.

APPEARANCES OF COUNSEL

Ponce Enrile Reyes & Manalastas for petitioner.

Quiroz Dumas Capistrano & Teleron Law Offices for respondent Proton Pilipinas.

Mercedes Buhayang-Margallo for respondent Lica Management, Inc.

D E C I S I O N

JARDELEZA, *J*.:

This is a Petition for Review on *Certiorari*[1] filed by Nissan Car Lease Philippines, Inc. (NCLPI) to assail the Decision[2] and Resolution[3] dated September 27, 2006 and March 8, 2007, respectively, of the Court of Appeals (CA) in CA-G.R. CV No. 75985. The CA affirmed with modification the Decision[4] of the Regional Trial Court dated June 7, 2002 and ruled that there was a valid extrajudicial rescission of the lease contract between NCLPI and Lica Management, Inc. (LMI). It also ordered NCLPI to pay its unpaid rentals and awarded damages in favor of LMI and third-party respondent Proton Pilipinas, Inc. (Proton).

The Facts

LMI is the absolute owner of a property located at 2326 Pasong Tamo Extension, Makati City with a total area of approximately 2,860 square meters.[5] On June 24, 1994, it entered into a contract with NCLPI for the latter to lease the property for a term of ten (10) years (or from July l, 1994 to June 30, 2004) with a monthly rental of ₱308,000.00 and an annual escalation rate of ten percent (10%).[6] Sometime in September 1994, NCLPI, with LMI's consent, allowed its subsidiary Nissan Smartfix Corporation (NSC) to use the leased premises.[7]

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[1] *Rollo,* pp. 11-35.

[2] *Id.* at 39-52. Penned by Associate Justice Fernanda Lampas Peralta with Associate Justices Bienvenido L. Reyes, now a member of this Court, and Myrna Dimaranan-Vidal concurring.

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

[4] *Id.* at 144-168. Penned by Judge Marissa Macaraig Guillen.

[5] *Id*. at 60, 65.

[6] *Id*. at 65-71.

[7] *Id*. at 60, 72.

Subsequently, NCLPI became delinquent in paying the monthly rent, such that its total rental arrearages[8] amounted to ₱1,741,520.85.[9] In May 1996, Nissan and Lica verbally agreed to convert the arrearages into a debt to be covered by a promissory note and twelve (12) postdated checks, each amounting to ₱162,541.95 as monthly payments starting June 1996 until May 1997.[10]

While NCLPI was able to deliver the postdated checks per its verbal agreement with LMI, it failed to sign the promissory note and pay the checks for June to October 1996. Thus, in a letter dated October 16, 1996, which was sent on October 18, 1996 by registered mail, LMI informed NCLPI that it was terminating their Contract of Lease due to arrears in the payment of rentals. It also demanded that NCLPI (1) pay the amount of ₱2,651,570.39 for unpaid rentals[11] and (2) vacate the premises within five (5) days from receipt of the notice.[12]

In the meantime, Proton sent NCLPI an undated request to use the premises as a temporary display center for "Audi'' brand cars for a period or ten (1 0) days. In the same letter, Proton undertook "not to disturb [NCLPI and LMI's] lease agreement and ensure that [NCLPI] will not breach the same [by] lending the premises x x x without any consideration."[13] NCLPI acceded to this request.[14]

On October 11, 1996, NCLPI entered into a Memorandum of Agreement with Proton whereby the former agreed to allow Proton "to immediately commence renovation work even prior

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[8] As of May 1996, *id.* at 60.

[9] *Rollo*, p. 60.

[10] *Id.* at 61.

[11] Covering a portion of July 1996 up to and including October 1996. *Id.* at 73.

[12] *Id.*

[13] *Id.* at 102-103.

[14] *Id.* at 104.

to the execution of the Contract of Sublease x x x."[15] In consideration, Proton agreed to transmit to NCLPI a check representing three (3) months of rental payments, to be deposited only upon the due execution of their Contract of Sublease.[16]

In a letter dated October 24, 1996, NCLPI, through counsel, replied to LMI's letter of October 16, 1996 acknowledging the arrearages incurred by it under their Contract of Lease. Claiming, however, that it has no intention of abandoning the lease and citing efforts to negotiate a possible sublease of the property, NCLPI requested LMI to defer taking court action on the matter. [17]

LMI, on November 8, 1996, entered into a Contract of Lease with Proton over the subject premises.[18]

On November 12, 1996, LMI filed a Complaint[19] for sum of money with damages seeking to recover from NCLPI the amount of ₱2,696,639.97, equivalent to the balance of its unpaid rentals, with interest and penalties, as well as exemplary damages, attorney's fees, and costs of litigation.[20]

On November 20, 1996, NCLPI demanded Proton to vacate the leased premises.[21] However, Proton replied that it was occupying the property based on a lease contract with LMI.[22] In a letter of even date addressed to LMI, NCLPl asserted that its failure to pay rent does not automatically result in the

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

[16] *Id*.

[17] *Id*. at 74-75. See also *id*. at 61-62.

[18] *Id*. at 139.

[19] Docketed as Civil Case No. 96-1840 before the RTC, Branch 60 of Makati City. *Id*. at 59-64.

[20] *Id*. at 63.

[21] *Id*. at 105-106.

[22] *Id*. at 109.

termination of the Contract of Lease nor does it give LMI the right to terminate the same.[23] NCLPI also informed LMI that since it was unlawfully ousted from the leased premises and was not deriving any benefit therefrom, it decided to stop payment of the checks issued to pay the rent.[24]

In its Answer[25] and Third-Party Complaint[26] against Proton, NCLPI alleged that LMI and Proton "schemed" and "colluded" to unlawfully force NCLPI (and its subsidiary NSC) from the premises. Since it has not abandoned its leasehold right, NCLPI asserts that the lease contract between LMI and Proton is void for lack of a valid cause or consideration.[27] It likewise prayed for the award of: (1) ₱3,000,000.00, an amount it anticipates to lose on account of LMI and Proton's deprivation of its right to use and occupy the premises; (2) ₱l ,000,000.00 as exemplary damages; and (3) ₱500,000.00 as attorney's fees, plus ₱2,000.00 for every court appearance.[28]

The trial court admitted[29] the third-party complaint over LMI's oppossition.[30]

Subsequently, or on April 17, 1998, Proton filed its Answer with Compulsory Counterclaim against NCLPI.[31] According to Proton, the undated letter-request supposedly sent by Proton to NCLPI was actually prepared by the latter so as to keep from LMI its intention to sublease the premises to Proton until NCLPI is able to secure LMI 's consent.[32] Denying NCLPI's

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[23] *Id*. at 107.

[24] *Id*. at 108.

[25] *Id*. at 84-94.

[26] *Id*. at 111-118.

[27] *Id*. at 88.

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

[29] *Id*. at 136.

[30] *Id*. at 76-83.

[31] *Id*. at 137-143.

[32] *Id.* at 137.

allegation that its use of the lease premises was made without any consideration, Proton claims that it "actually paid [NCLPI] rental of ₱200,000.00 for the use of subject property for 10 days x x x."[33]

Proton further asserted that NCLPI had vacated the premises as early as during the negotiations for the sublease and, in fact, authorized the former to enter the property and commence renovations.[34] When NCLPl ultimately failed to obtain LMI's consent to the proposed sublease and its lease contract was terminated, Proton, having already incurred substantial expenses renovating the premises, was constrained to enter into a Contract of Lease with LMI. Thus, Proton prayed tor the dismissal of the Third-Party Complaint, and asked, by way of counterclaim, that NCLPl be ordered to pay exemplary damages, attorney's fees, and costs of litigation.[35]

Ruling of the Trial Court

On June 7, 2002, the trial court promulgated its Decision,[36] the decretal portion of which reads:

> WHEREFORE. in view of the foregoing, judgment is rendered in plaintiff LICA MANAGEMENT INCORPORATED's favor. As a consequence of this, defendant NISSAN CAR LEASE PHILIPPINES, lNC. is directed to pay plaintiff the following:
>
> 1.) [₱]2,696,639.97 representing defendant's unpaid rentals inclusive of interest and penalties up to 12 November 1996. plus interest to be charged against said amount at the rate of twelve percent (12%) beginning said date until the amount is fully paid.
>
> 2.) Exemplary damages and attorney's fees amounting to Two Hundred Thousand Pesos ([₱]200,000.00) and litigation expenses amounting to Fifty Thousand Pesos ([₱]50,000.00).
>
> The third party complaint filed by defendant is DENIED for

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[33] *Id*. at 137.

[34] *Id.* at 139.

[35] *Id*. at 139-140.

[36] *Id*. at 144-168.

lack of merit and in addition to the foregoing and as prayed for, defendant NISSAN is ordered to pay third party defendant PROTON PILIPINAS INC. the sum of Two Hundred Thousand Pesos ([₱]200,000.00) representing exemplary damages and attorney's fees due.

SO ORDERED.[37]

The trial court found that NCLPI purposely violated the terms of its contract with LMI when it failed to pay the required rentals and contracted to sublease the premises without the latter's consent.[38] Under Article 1191 of the Civil Code, LMI was therefore entitled to rescind the contract between the parties and seek payment of the unpaid rentals and damages.[39] In addition, the trial court ruled that LMI's act of notifying NCLPI of the termination of their lease contract due to non-payment of rentals is expressly sanctioned under paragraphs 16[40] and 18[41] of their contract.[42]

Contrary to NCLPI's claim that it was "fooled" into allowing Proton to occupy the premises for a limited period after which the latter unilaterally usurped the premises for itself, the trial court found that it was NCLPI "which misrepresented itself to [Proton] as being a lessee of good standing, so that it could

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[37] *Id*. at 168.

[38] *Id.* at 166.

[39] *Id*.

[40] *Id*. at 69. This paragraph reads:

16. BREACH OR DEFAULT– Any breach or default by either party of any of the terms and conditions of this Contract shall be sufficient ground for the aggrieved party to rescind the same.

[41] *Id*. This paragraph reads:

18. DAMAGES — It is hereby mutually agreed and covenanted that non-compliance by either party with any of the provisions of this Contract to be performed by it and which may be the basis of a suit by the other shall entitle the injured party to collect such damages it may sustain.

[42] *Id*. at 65-71, 162.

induce the latter to occupy and renovate the premises when at that time the negotiations were underway the lease between [LMI] and [NCLPI] had already been terminated."[43]

Aggrieved, NCLPl filed a Petition for Review with the CA. In its Appellant's Brief,[44] it argued that the trial court erred in: (1) holding that there was a valid extrajudicial rescission of its lease contract with LMI; and (2) dismissing NCLPI's claim for damages against LMI and Proton while at the same time holding NCLPI liable to them for exemplary damages and attorney's fees.[45]

Ruling of the Court of Appeals

The CA denied NCLPI's appeal and affirmed the trial court's decision with modification. The decretal portion ofthe CA's Decision[46] reads:

> **WHEREFORE,** the appealed Decision dated June 7, 2002 of the trial court is affirmed, subject to modification that:
>
> (1) The award of exemplary damages of ₱100,000.00 each in favor of plaintiff-appellee and third-party defendant-appellee is reduced to ₱50,000.00 each:
>
> (2) The award of attorney's fees of ₱100,000.00 each in favor of plaintiff-appellee and third-party defendant- appellee is reduced to ₱50,000.00 each;
>
> (3) The amount of unpaid rentals is reduced from ₱2,696,639.97 to ₱2,365,569.61, exclusive of interest; and,
>
> (4) Plaintiff-appellee is ordered to return the balance of the security deposit amounting to ₱883,253.72 to defendant-appellant.
>
> The Decision dated June 7, 2002 is affirmed in all other respects.

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[43] *Id.* at 164.

[44] *Id.* at 169-206.

[45] *Id*. at 171.

[46] *Id*. at 39-52.

[47] *Id*. at 51-52.

SO ORDERED.[47]

NCLPI sought for a reconsideration[48] of this decision. LMI, on the other hand, filed a motion to clarify whether the amount of ₱2,365,569.61 representing unpaid rentals was inclusive of interest.[49] The CA resolved both motions, thus:

WHEREFORE, the motion for reconsideration filed by defendant-appellant Nissan Car Lease is denied for lack of merit.

With respect to the motion for clarification filed by plaintiff-appellee Lica Management, Inc., paragraph (3) of the dispositive portion of the Decision is hereby clarified to read as follows:

> (3) The amount of unpaid rentals is reduced from ₱2,696,639.97 to ₱2,365,569.61, inclusive of interest and penalties up to November 12, 1996, plus interest to be charged against said amount at the rate of twelve per cent (12%) beginning said date until the amount is fully paid.

SO ORDERED.[50]

Hence, this petition.

The Petition

NCLPI, in its Petition, raises the following questions:

1. May a contract be rescinded extrajudicially despite the absence of a special contractual stipulation therefor?
2. Do the prevailing facts warrant the dismissal of [LMI]'s claims and the award of NCLPI's claims?
3. How much interest should be paid in the delay of the release of a security deposit in a lease contract?[51]

The Court's Ruling

48 CA *rollo*, pp. 269-295.

49 *Id*. at 265-268.

50 *Rollo*, pp. 54-58.

51 *Id*. at 11.

We deny the Petition for lack of merit.

Before going into the substantive merits of the case, however, we shall first resolve the technical issue raised by LMI in its Comment[52] dated August 22, 2007.

According to LMI, NCLPI's petition must be denied outright on the ground that Luis Manuel T. Banson (Banson), who caused the preparation of the petition and signed the Verification and Certification against Forum Shopping, was not duly authorized to do so. His apparent authority was based, not by virtue of any NCLPI Board Resolution, but on a Special Power of Attorney (SPA) signed only by NCLPI's Corporate Secretary Robel C. Lomibao.[53]

As a rule, a corporation has a separate and distinct personality from its directors and officers and can only exercise its corporate powers through its board of directors. Following this rule a verification and certification signed by an individual corporate officer is defective if done without authority from the corporation's board of directors.[54]

The requirement of verification being a condition affecting only the form of the pleading,[55] this Court has, in a number of cases, held that:

> [T]**he following officials or employees of the company can sign the verification and certification without need of a board resolution:** (1) the Chairperson of the Board of Directors, (2) **<u>the President of a corporation</u>,** (3) the General Manager or Acting General Manager, (4) Personnel Officer, and (5) an Employment Specialist in a labor case.
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> x x x [T]he determination of the sufficiency of the authority was done on a case to case basis. **The rationale applied in the foregoing**

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[52] *Id*. at 312-327.

[53] *Id*. at 315.

[54] *Swedish Match Philippines, Inc. v. The Treasurer of the City of Manila*, G.R. No. 181277, July 3, 2013, 700 SCRA 428, 434.

[55] *Id*., citing *Shipside Incorporated v. Court of Appeals*, G.R. No. 143377, February 20, 2001, 352 SCRA 334, 345-346.

cases is to justify the authority of corporate officers or representatives of the corporation to sign x x x, being "in a position to verify the truthfulness and correctness of the allegations in the petition."[56] (Emphasis and underscoring supplied)

In this case, Banson was President of NCLPI at the time of the filing of the petition.[57] Thus, and applying the foregoing ruling, he can sign the verification and certification against forum shopping in the petition without the need of a board resolution.[58]

Having settled the technical issue, we shall now proceed to discuss the substantial issues.

Validity of Extrajudicial Rescission of Lease Contract

It is clear from the records that NCLPI committed substantial breaches of its Contract of Lease with LMI

Under Paragraph 2, NCLPI bound itself to pay a monthly rental of ₱308,000.00 not later than the first day of every month to which the rent corresponds. NCLPI, however, defaulted on its contractual obligation to timely and properly pay its rent, the arrearages of which, as of October 16, 1996, amounted to ₱2,651,570.39.[59] This fact was acknowledged and admitted by NCLPI.[60]

Aside from non-payment of rentals, it appears that NCLPI

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[56] *PCI Travel Corporation v. National Labor Relations Commission,* G.R. No. 154379, October 31, 2008, 570 SCRA 315, 321, citing *Cagayan Valley Drug Corporation v. Commissioner of Internal Revenue*, G.R. No. 151413, February 13, 2008, 545 SCRA 10, 18-19. See also *University of the East v. Pepanio*, G.R. No. 193897, January 23, 2013, 689 SCRA 250, 258.

[57] *Rollo*, p. 35.

[58] See also *PCI Travel Corporation v. National Labor Relations Commission, supra*.

[59] *Id.* at 73.

[60] *Id.* at 23, 74-75.

[61] *Id.* at 66-67. This paragraph reads:

4. USE OF LEASED PREMISES — The LESSEE shall use and allow the use of the Leased Premises exclusively for legitimate

also breached its obligations under Paragraphs 4[61] and 5[62] of the Contract of Lease which prohibit it from subleasing the premises or introducing improvements or alterations thereon without LMI's prior written consent. The trial court found:

As revealed from the evidence presented by PROTON however, even before [NCLPI] represented that it would try to negotiate a possible sub-lease of the premises, **it had, <u>without any semblance of authority from (LMI,</u>) already effectively subleased the subject premises to PROTON and allowed the latter not only to enter the premises but to renovate the same.**

[NCLPI]'s assertion that they only allowed PROTON to utilize the premises for ten days as a display center for Audi cars on the occasion of the historic visit of Chancellor Helmut Kohl of Germany to the Philippines is **belied by the evidence offered by PROTON that by virtue of a Memorandum of Agreement [NCLPI] had <u>already permitted PROTON "to immediately commence renovation work</u> even prior to the execution of the Contract of Sublease" <u>and had accepted a check</u>** from PROTON representing the rental deposit under the yet to be executed Contract of Sublease. x x x

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business, industrial and commercial purposes and for such purposes as the premises are presently devoted and shall not divert the same or allow the diversion thereof to other uses or purposes without the written consent of the LESSOR. The LESSOR shall provide the LESSEE with written notice requesting that the LESSEE cease any operations and activities which the LESSOR deems to be non[-]acceptable use of the premises.

The LESSEE shall not sublease the premises to other parties without the prior written consent of the LESSOR[.]

[62] *Id.* at 67. This paragraph reads:

5. IMPROVEMENTS — The LESSEE may not introduce any structural changes, improvements or alterations to the Leased Premises without the LESSOR's prior written consent, however, any such improvements or alterations shall upon the expiration or termination of this Contract inure to the benefit of the Leased Premises and become the LESSOR's property, without any obligation on the latter's part to pay or refund the LESSEE for its cost or value, except those improvements which can be removed without causing damage to the Leased Premises.

x x x x x x x x x

Besides, the court is not inclined to show [NCLPI] any sympathy x x x because **it came to court with unclean hands when it accused [LMI] and PROTON of being guilty partics when they supposedly connived with each other to oust [NCLPI] from the leased premises when in truth and in fact, NCLPI]'s lease was already terminated when it pursued negotiations to sub-lease the premises to PROTON** then giving the latter the assurance they would be able to obtain [LMI]'s consent to the sublease when this was very remote, in light of [NCLPI]'s failure to update its rental payments.[63] (Emphasis and underscoring supplied)

This factual finding was affirmed by the CA:

There is no merit in [NCLPI]'s claim for damages allegedly arising from [LMI]'s failure to maintain it in peaceful possession of the leased premises. **It was [NCLPI] who breached the lease contract by** defaulting in the payment of lease rentals, **entering into a sublease contract with [Proton] and allowing [Proton] to introduce renovations on the leased premises without the consent of [LMI]**.[64] x x x (Emphasis supplied)

Factual findings of the CA are binding and conclusive on the parties and upon this Court and will not be reviewed or disturbed on appeal. While the rule admits of certain exceptions,[65] NCLPI failed to prove that any of the exceptions applies in this case.

The crux of the controversy rather revolves around the validity of LMI's act of extrajudicially rescinding its Contract of Lease with NCLPI.

NCLPI maintains that while a lessor has a right to eject a delinquent lessee from its property, such right must be exercised in accordance with law:

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[63] *Id. Rollo*, pp. 163-164, 167.

[64] *Id.* at 48.

[65] *Bank of the Philippine Islands v. Leobrera*, G.R. No. 137147, November 18, 2003, 416 SCRA 15, 18, citing *Vicente v. Planters Development Bank,* G.R. No. 136112, January 28, 2003, 396 SCRA 282, 290.

6.15. In this case, [LMI] did not comply with the requirement laid down in Section 2 of Rule 70 of the Rules of Court, in unceremoniously ejecting [NCLPI] from the property. The said Rule explicitly provides that the lessor shall serve a written notice of the demand to pay or comply with the conditions of the lease and to vacate or post such notice on the premises if no person is found thereon, giving the lessee **15 days to comply with the demand.** [LMI]'s demand letter dated l6 October 1996 provides only a period of **five days** for [NCLPI] to comply with such demand and, thus, defective.[66] (Emphasis and underscoring supplied)

NCLPI's reliance on Section 2, Rule 70[67] in this case is misplaced.

Rule 70 of the Rules of Court sets forth the procedure in relation to *the filing of suits for forcible entry and unlawful detainer.* The action filed by LMI against NCLPI, however, is *one for the recovery of a sum of money.* Clearly, Section 2 of Rule 70 is not applicable.

In fact, it does not appear that it was even necessary for LMI to eject NCLPI from the leased premises. NCLPI had already vacated the same as early as October 11, 1996 when it surrendered possession of the premises to Proton, by virtue of their Memorandum of Agreement, so that the latter can commence renovations.[68]

NCLPI also maintains that LMI cannot unilaterally and extrajudicially rescind their Contract of Lease *in the absence*

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[66] *Rollo,* p. 23.

[67] RULES OF COURT, Rule 70, Sec. 2 provides:

SEC. 2. *Lessor to proceed against lessee only after demand.—* Unless otherwise stipulated, such action by the lessor shall be commenced only after demand to pay or comply with the conditions of the lease and to vacate is made upon the lessee, or by serving written notice of such demand upon the person found on the premises, or by posting such notice on the premises if no person be found thereon, and the lessee fails to comply therewith after fifteen (15) days in the case of land, or five (5) days in the case of buildings.

[68] *Rollo,* pp. 139, 142.

[69] *Id.* at 17-20.

of an express provision in their Contract to that effect.[69] According to NCLPI:

6.1. The power to rescind is judicial in nature x x x

6.2. Nevertheless, the Supreme Court has allowed extrajudicial rescission if such remedy is specifically provided for in the contract. A provision granting the non- defaulting party merely a right to rescind would be superfluous because by law, it is inherent in such contract *[see by analogy* Villanueva, PHILIPPINE LAW ON SALES, P. 238 (1998)].

x x x x x x x x x

6.4. [Paragraph 16],[70] however, cannot be construed as an authority for either party to unilaterally and extrajudicially rescind the *Lease Contract* in case of breach by the other party. All that [Paragraph] 16 affords the aggrieved party is merely the **right** to rescind the lease contract which is the very same right already granted under Article 1191 of the Civil Code.[71] (Emphasis and underscoring in the original)

It is true that NCLPI and LMI's Contract of Lease does not contain a provision expressly authorizing extrajudicial rescission. LMI can nevertheless rescind the contract, without prior court approval, pursuant to Art. 1191 of the Civil Code.

Art. 1191 provides that the power to rescind is implied in reciprocal obligations, in cases where one of the obligors should fail to comply with what is incumbent upon him. Otherwise stated, an aggrieved party is not prevented from extrajudicially

[70] *Id.* at 124. This Paragraph reads:

16. BREACH OR DEFAULT— Any breach or default by either party of any of the terms and conditions of this Contract shall be sufficient ground for the party to **rescind** the same. (Emphasis supplied)

[71] *Id*. at 185-186, 188.

[72] *Multinational Village Homeowners Association, Inc. v. Ara Security & Surveillance Agency, Inc.*, G.R. No. 154852, October 21, 2004, 441 SCRA 126, 135: *Casiño, Jr. v. Court of Appeals*, G.R. No. 133803, September 16, 2005, 470 SCRA 57, 67-68. See also *University of the Philippines v. De los Angeles*, G.R. No. L-28602, September 29, 1970, 35 SCRA 102, 107; and the Concurring Opinion of Justice Marvic Mario Victor F. Leonen in *EDS Manufacturing, Inc. v. Healthcheck International, Inc.*, G.R. No. 162802, October 9, 2013, 707 SCRA 133,147-148.

rescinding a contract to protect its interests, even in the absence of any provision expressly providing for such right.[72] The rationale for this rule was explained in the case of *University of the Philippines v. De los Angeles*[73] wherein this Court held:

> **[T]**he law definitely does not require that the contracting party who believes itself injured must first file suit and wait for a judgment before taking extrajudicial steps to protect its interest. **Otherwise, the party injured by the other's breach will have to passively sit and watch its damages accumulate during the pendency of the suit until the final judgment of rescission is rendered when the law itself requires that he should exercise due diligence to minimize its own damages** (Civil Code, Article 2203). (Emphasis and underscoring supplied)

We are aware of this Court's previous rulings in *Tan v. Court of Appeals,*[74] *Iringan v. Court of Appeals,*[75] and *EDS Manufacturing, Inc. v. Healthcheck International, Inc.*,[76] for example, wherein we held that extrajudicial rescission of a contract is not possible without an express stipulation to that effect.[77]

The seeming "conflict" between this and our previous rulings, however, is more apparent than real.

Whether a contract provides for it or not, the remedy of rescission is always available as a remedy against a defaulting party. When done without prior judicial *imprimatur,* however, it may still be subject to a possible court review. In *Golden Valley Exploration, Inc. v. Pinkian Mining Company,*[78] we explained:

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[73] *Supra*.

[74] G.R. No. 80479, July 28, 1989, 175 SCRA 656.

[75] G.R. No. 129107, September 26, 2001, 366 SCRA 41, 48.

[76] *Supra* at 143, citing *Iringan v. Court of Appeals, id*.

[77] *Alcaraz v. Tangga-an*, G.R. No. 128568, April 9, 2003, 401 SCRA 84, 92. See also *Tan v. Court of' Appeals, supra* at 662.

[78] G.R. No. 190080, June 11, 2014, 726 SCRA 259, 273-274.

This notwithstanding, jurisprudence still indicates that **an extrajudicial rescission based on grounds not specified in the contract would not preclude a party to treat the same as rescinded.** The rescinding party, however, by such course of action, subjects himself to the risk of being held liable for damages when the extrajudicial rescission is questioned by the opposing party in court. This was made clear in the case of *U.P. v. De los Angeles,* wherein the Court held as follows:

> Of course, it must be understood that **the act of a party in treating a contract as cancelled or resolved on account of infractions by the other contracting party must be made known to the other and is always provisional, being ever subject to scrutiny and review by the proper court. If the other party denies that rescission is justified, it is free to resort to judicial action in its own behalf, and bring the matter to court.** Then, **should the court, after due hearing, decide that the resolution of the contract was not warranted, the responsible party will be sentenced to damages;** in the contrary case, the resolution will be affirmed, and the consequent indemnity awarded to the party prejudiced.
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> **In other words, the party who deems the contract violated may consider it resolved or rescinded, and act accordingly, without previous court action, but it *proceeds at its own risk.* For it is only the final judgment of the corresponding court that will conclusively and finally settle whether the action taken was or was not correct in law. [x x x (Emphasis and underscoring in the original)]**

The only practical effect of a contractual stipulation allowing extrajudicial rescission is "merely to transfer to the defaulter initiative of instituting suit, instead of the rescinder."[79]

In fact, the rule is the same even if the parties' contract **expressly** allows extrajudicial rescission. The other party denying the rescission may still seek judicial intervention to determine

[79] *University of the Philippines v. Delos Angeles, supra* at 108.

[80] *Golden Valley Exploration, Inc. v. Pinkian Mining Company, supra* at 272, 274, citing *De Luna v. Abrigo*, G.R. No. 57455, January 18, 1990, 181 SCRA 150, 158. See also *Olympic Mines and Development Corp. v. Platinum Group Metals Corporation*, G.R. No. I78188, August 14, 2009, 596 SCRA 314; *Pangilinan v. Court of Appeals*, G.R. No. 83588, September 29, 1997, 279 SCRA 590.

whether or not the rescission was proper.[80]

Having established that LMI *can* extrajudicially rescind its contract with NCLPI even absent an express contractual stipulation to that effect, the question now to be resolved is whether this extrajudicial rescission was proper under the circumstances.

As earlier discussed, NCLPI's non-payment of rentals and unauthorized sublease of the leased premises were both clearly proven by the records. We thus confirm LMI's rescission of its contract with NCLPI on account of the latter's breach of its obligations.

Rental Arrearages and Interest

Having upheld LMI's extrajudicial rescission of its Contract of Lease, we hold that NCLPI is required to pay all rental arrearages owing to LMI, computed by the CA as follows:

> In its appellant's brief [NCLPI] admitted that it had rental arrears of ₱1,300,335.60 *as of May 1996.* Additionally, the statement of account submitted by [LMI] showed that *from June 1996 to October 1996* the rental arrears of [NCLPI] amounted to ₱l,065,234.01. **Hence, the total of said rental arrears not disputed by the parties is ₱2,365,569.61** x x x.[81] (Emphasis and underscoring supplied)

The Contract of Lease shows that the parties did not stipulate an applicable interest rate in case of default in the payment of rentals. Thus, and following this Court's ruling in *Nacar v. Gallery Frames,*[82] the foregoing amount of rental arrearages shall earn interest at the rate of six percent (6%) per annum computed from October 18, 1996, the date of LMI 's extrajudicial demand,[83] until the date of finality of this judgment. The total amount shall thereafter earn interest at the rate of six percent

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[81] *Rollo*, p. 50.

[82] G.R. No. 189871, August 13, 2013, 703 SCRA 439, 457-459.

[83] *Rollo*, p. 73. See also *Gilat Satellite Networks, Ltd. v. United Coconut Planters Bank General Insurance Co., Inc.*, G.R. No 189563, April 7, 2014, 720 SCRA 726, 741.

(6%) per annum from such finality of judgment until its satisfaction.

Security Deposit

NCLPI also argues that, assuming LMI could validly rescind their Contract of Lease, the security deposit must be returned, with interest at the rate of twelve percent (12%) per annum, the obligation to return being in the nature of a forbearance of money.[84]

NCLPI is partly correct.

Paragraph 3[85] of the Contract of Lease provides that, in case of termination of the lease, the balance of the security deposit must be returned to NCLPI within seven (7) days. Since "there is no question that [LMI] is retaining the security deposit" in the amount of ₱883,253.72 (after deduction of the expenses for water and telephone services),[86] LMI must return the same to NCLPI, with interest.

Considering, however, that the Contract of Lease does not stipulate an applicable interest rate, again following our ruling in *Nacar,* the rate shall be **six percent (6%)** from the time of judicial or extrajudicial demand. The records of this case show that *the first time* NCLPI raised the issue on the security deposit was in its *Brief* dated March 25, 2003 filed with the CA.[87] Thus, the interest should be computed starting only on said date until the finality of this Decision, after which the total amount

[84] *Rollo*, p. 31.

[85] *Id*. at 121. This Paragraph reads:

3. SECURITY DEPOSIT – During the effectivity of this Contract, the Lessee shall ensure that there is on deposit at all time with the LESSOR an amount equivalent to three (3) months rental payments which shall answer for water, gas[,] electricity, telephone, garbage fees, or damages to the premises aside from ordinary wear and tear, the liabilities for which shall be deducted from the deposit **and the balance, if any, shall be refinded to the LESSEE not later than seven (7) days from the termination of this lease. The security deposit cannot be applied against unpaid rental payments.** x x x (Emphasis and underscoring supplied)

[86] *Id*. at 51.

[87] *Id*. at 202-203.

[88] *Nacar v. Gallery Frames, supra.*

shall earn interest at the rate of six percent (6%) from the finality of this Decision until satisfaction by LMI.[88]

Improvements

In its *Petition,* NCLPI also prayed for the return of "**all** the equipment installed and the other improvements on the property, or their value, pursuant to the mandate of mutual restitution."[89]

NCLPI errs.

Under Paragraph 5 of the Contract of Lease, NCLPI is entitled only to the return of those improvements introduced by it which can be removed without causing damage to the leased premises.[90] Considering, however, that the issue of ownership of the improvements within the premises appears to be subject of another case initiated by NCLPI's subsidiary, NSC,[91] this Court will not rule on the same.

Denial of NCLPI's claim and award of damages in favor of LMI and Proton proper

Both the trial court and CA found that NCLPI breached the Contract of Lease. In sustaining the denial of NCLPI's claim for damages, the CA held:

> There is **no** merit in [NCLPI]'s claim for damages allegedly arising from [LMI]'s failure to maintain it in peaceful possession of the

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[89] *Rollo*, p. 31. Emphasis supplied.

[90] *Id*. at 122. Paragraph 5 of the Contract of Lease states:

5. IMPROVEMENTS — The LESSEE may not introduce any structural changes, improvements or alterations to the Leased Premises without the LESSOR's prior written consent however any such improvements or alterations shall upon the expiration or termination of this Contract inure to the benefit of the Leased Premises and become the LESSOR's property, without the obligation on the latter's part to pay or refund the LESSEE for its cost or value, except those improvements which can be removed without causing damage to the Leased Premises. (Underscoring supplied)

[91] Docketed as Civil Case No. 98-595. See RTC records, Vol. I, pp. 302-303.

leased premises. It was [NCLPI] who breached the lease contract x x x Moreover, the lease contract between [LMI] and [Proton] was entered into only on November 8, 1996 x x x after the lease contract between [LMI] and [NCLPl] had been terminated. As aptly noted by the trial court:

x x x x x x x x x

In other words, while in its responsive pleading [NCLPI] claims [that] it was fooled into allowing [Proton[to occupy the subject premises for a limited period, after which the latter, in alleged collusion with [LMI] unilaterally usurped the premises for itself, the **evidence shows that it was [NCLPI] which misrepresented itself to PROTON as being a lessee of good standing, so that it could induce the latter to occupy and renovate the premises when at that time the negotiations were underway, the lease between [LMI] and [NCLPI] had already been terminated.**[92] (Emphasis and underscoring supplied)

Contrary to NCLPI's claims of an unlawful "scheme" devised by LMI and Proton to force it out of the leased premises, we find that it was NCLPI who was in bad faith and itself provided the bases for the cancellation of its Contract of Lease with LMI and its eventual ejectment from the leased premises. Accordingly, we affirm (1) the award of exemplary damages and attorney's fees in favor of LMI and Proton and (2) the denial of NCLPI's claim for damages.[93]

WHEREFORE, in view of the foregoing, the petition is **DENIED**. The Decision dated September 27, 2006 and the Resolution dated March 8, 2007 rendered by the CA in CA-G.R. CV No. 75985 are, however, **MODIFIED** as follows:

(1) NCLPI is ordered to pay LMI and Proton exemplary damages of ₱50,000.00 and attorney's fees of ₱50,000.00, each;

(2) NCLPI is ordered to pay the amount of ₱2,365,569.61 unpaid rentals, with interest at the rate of six percent (6%) per annum computed from October 18, 1996 until the date of finality

[92] *Rollo*, pp. 48-49.

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

of this judgment. The total amount shall thereafter earn interest at the rate of six percent (6%) per annum from the finality of judgment until its satisfaction;

(3) LMI is ordered to return to NCLPI the balance of the security deposit amounting to ₱883,253.72, with interest at the rate of six percent (6%) starting March 25, 2003 until the finality of this Decision, after which the total amount shall earn interest at the rate of six percent (6%) from the finality of this Decision until satisfaction by LML.[94]

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 177680. January 13, 2016]

JENNIFER C. LAGAHIT, *petitioner, vs.* **PACIFIC CONCORD CONTAINER LINES/MONETTE CUENCA (BRANCH MANAGER),** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; ILLEGAL DISMISSAL; BEFORE THE EMPLOYER IS EXPECTED TO

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[94] *Nacar v. Gallery Frames, supra.*

[*] Designated additional Member in lieu of Associate Justice Bienvenido L. Reyes, per Raffle dated September 3, 2014.

[**] Designated additional Member in lieu of Associate Justice Diosdado M. Peralta per Raffle dated November 11, 2015.

DISCHARGE ITS BURDEN OF PROVING THAT THE DISMISSAL WAS LEGAL, THE EMPLOYEE MUST FIRST ESTABLISH BY SUBSTANTIAL EVIDENCE THE FACT OF HER DISMISSAL FROM EMPLOYMENT.— In cases of unlawful dismissal, the employer bears the burden of proving that the termination was for a valid or authorized cause, but before the employer is expected to discharge its burden of proving that the dismissal was legal, the employee must first establish by substantial evidence the fact of her dismissal from employment. In this case, the petitioner proved the overt acts committed by the respondents in abruptly terminating her employment through the text messages sent by Cuenca to the petitioner and her husband, as well as the notices distributed to the clients and published in the *Sun Star*. It is notable that the respondents did not deny or controvert her evidence on the matter. Thereby, she showed Pacific Concord's resolve to terminate her employment effective November 8, 2002.

2. **ID.; ID.; ID.; ID.; THE EMPLOYER WHO INTERPOSES RESIGNATION OF THE EMPLOYEE AS A DEFENSE SHOULD PROVE THAT IT IS VOLUNTARY AND UNCONDITIONAL.—** As a rule, the employer who interposes the resignation of the employee as a defense should prove that the employee voluntarily resigned. A valid resignation is the voluntary act of an employee who finds herself in a situation where she believes that personal reasons cannot be sacrificed in favor of the exigency of the service and that she has no other choice but to disassociate herself from employment. The resignation must be unconditional and with a clear intention to relinquish the position. Consequently, the circumstances surrounding the alleged resignation must be consistent with the employee's intent to give up the employment. In this connection, the acts of the employee before and after the resignation are considered to determine whether or not she intended, in fact, to relinquish the employment. x x x [E]very resignation presupposes the existence of the employer-employee relationship; hence, there can be no valid resignation after the fact of termination of the employment simply because the employee had no employer-employee relationship to relinquish.

3. **ID.; ID.; ID.; TO JUSTIFY THE DISMISSAL OF AN EMPLOYEE, THE EMPLOYER MUST PROVE THAT THE DISMISSAL WAS FOR A JUST CAUSE, AND THAT**

THE EMPLOYEE WAS AFFORDED DUE PROCESS PRIOR TO DISMISSAL.— To justify the dismissal of an employee, the employer must, as a rule, prove that the dismissal was for a just cause, and that the employee was afforded due process prior to dismissal. As a complementary principle, the employer has the onus of proving the validity of the dismissal with clear, accurate, consistent, and convincing evidence. The employer's case succeeds or fails on the strength of its evidence, not on the weakness of that adduced by the employee, in keeping with the principle that the scales of justice should be tilted in favor of the latter in case of doubt in the evidence presented by them.

4. **ID.; ID.; ID.; JUST CAUSES; LOSS OF TRUST AND CONFIDENCE; WHEN CONSIDERED A VALID GROUND FOR TERMINATION OF EMPLOYMENT.—** Article 282(c) of the *Labor Code* authorizes an employer to dismiss an employee for committing fraud, or for willful breach of the trust reposed by the employer. However, loss of confidence is never intended to provide the employer with a blank check for terminating its employee. For this to be a valid ground for the termination of the employee, the employer must establish that: (1) the employee must be holding a position of trust and confidence; and (2) the act complained against would justify the loss of trust and confidence.

5. **ID.; ID.; EMPLOYEES VESTED WITH TRUST AND CONFIDENCE; CLASSES.—** There are two classes of employees vested with trust and confidence. To the first class belong the managerial employees or those vested with the powers or prerogatives to lay down management policies and to hire, transfer, suspend, lay-off, recall, discharge, assign or discipline employees or effectively recommend such managerial actions. The second class includes those who in the normal and routine exercise of their functions regularly handle significant amounts of money or property. Cashiers, auditors, and property custodians are some of the employees in the second class.

6. **ID.; ID.; TERMINATION OF EMPLOYMENT; JUST CAUSES; LOSS OF TRUST AND CONFIDENCE; FOR NON-MANAGERIAL EMPLOYEES, THE EMPLOYER MUST PRESENT CLEAR AND CONVINCING PROOF OF AN ACTUAL BREACH OF DUTY TO JUSTIFY A**

DISMISSAL.— Her position as sales manager did not immediately make the petitioner a managerial employee. The actual work that she performed, not her job title, determined whether she was a managerial employee vested with trust and confidence. Her employment as sales manager was directly related with the sales of cargo forwarding services of Pacific Concord, and had nothing to do with the implementation of the management's rules and policies. As such, the position of sales manager came under the second class of employees vested with trust and confidence. Therein was the flaw in the CA's assailed decision. Although the mere existence of the basis for believing that the managerial employee breached the trust reposed by the employer would normally suffice to justify a dismissal, we should desist from applying this norm against the petitioner who was not a managerial employee. At any rate, the employer must present clear and convincing proof of an actual breach of duty committed by the employee by establishing the facts and incidents upon which the loss of confidence in the employee may fairly be made to rest. The required amount of evidence for doing so is substantial proof. With these guidelines in mind, we cannot hold that the evidence submitted by the respondents (consisting of the three affidavits) sufficiently established the disloyalty of the petitioner. The affidavits did not show how she had betrayed her employer's trust.

7. **ID.; ID.; ID.; ID.; ID.; THE BREACH OF TRUST WILL BE WILLFUL AND THE CAUSE OF THE LOSS OF TRUST MUST BE WORK-RELATED.—** In her affidavit, Jo Ann Otrera declared that the petitioner had called other forwarding companies to inquire about any vacant positions, and that the petitioner had enticed her to transfer to another company. However, such declarations did not provide the sufficient basis to warrant the respondents' loss of confidence in the petitioner. We stress that although her supposedly frantic search for gainful employment opportunities elsewhere should be considered as inappropriate for being made during office hours, the same did not constitute willful breach of trust and confidence of the employer. The loss of trust and confidence contemplated under Article 282(c) of the *Labor Code* is not ordinary but willful breach of trust. Verily, the breach of trust is willful if it is intentional, knowing, deliberate and without justifiable excuse, as distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently. Most importantly, the cause of

the loss of trust must be work-related as to expose the employee as unfit to continue working for the employer.

APPEARANCES OF COUNSEL

E.F. Rosello & Associates Law Offices for petitioner.
Fernandez & Associates Law Offices for respondents.

D E C I S I O N

BERSAMIN, *J.*:

We resolve the appeal of petitioner Jennifer Lagahit from the decision promulgated on May 10, 2006,[1] whereby the Court of Appeals (CA) disposed in CA-G.R. SP No. 00991 entitled *Pacific Concord Container Lines and Monette Cuenca v. National Labor Relations Commission, Fourth Division, and Jennifer Lagahit*, as follows:

WHEREFORE, in view of the foregoing, the petition is hereby GRANTED and the assailed Decision dated December 15, 2004 promulgated by the National Labor Relations Commission, Fourth Division, Cebu City, in NLRC Case No. V-000529-2003/RAB Case No. VII-11-2271-2002, as well as the Resolution dated May 25, 2005 are hereby REVERSED and SET ASIDE. Petitioner is ORDERED to pay private respondent the amount of ₱25,000.00 as nominal damages. Further, the preliminary injunction issued by this Court is likewise made permanent.

No pronouncement as to costs.

SO ORDERED.[2]

Antecedents

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[1] *Rollo*, pp. 33-44; penned by Associate Justice Enrico A. Lanzanas (retired), with Associate Justice Pampio A. Abarintos (retired) and Associate Justice Apolinario D. Bruselas, Jr. concurring.

[2] *Id*. at 43.

In February 2000, respondent Pacific Concord Container Lines (Pacific Concord), a domestic corporation engaged in cargo forwarding,[3] hired the petitioner as an Account Executive/ Marketing Assistant.[4] In January 2002, Pacific Concord promoted her as a sales manager with the monthly salary rate of ₱25,000.00, and provided her with a brand new Toyota Altis plus gasoline allowance.[5] On November 8, 2002, she reported for work at 9:00 a.m. and left the company premises at around 10:30 a.m. to make client calls. At 1:14 p.m. of that day, she received the following text message from respondent Monette Cuenca, to wit:

TODAY U R OFFICIALY NT CONNECTED WITH US.
Sender: MONETTE
+639173215330
Sent: 8-Nov-2002
13:14:01[6]

Cuenca also sent a text message to Roy Lagahit, the petitioner's husband, as follows:

IBALIK KARON DAYON ANG AUTO OG PALIHUG LANG KO OG KUHA SA NYONG BUTANG OG DI NAKO MO STORYA NI JENIFER. IL WAIT[7]
Sender: MONETTE
+639173215330
Sent: 8-Nov-2002
12:50:54[8]

The petitioner immediately tried to contact Cuenca, but the

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[3] *Id*. at 34.

[4] *Id*. at 14.

[5] *Id*. at 72.

[6] *Id*. at 16, 52.

[7] Translated as: "*Return the car right now and please get your things, I will no longer talk with Jenifer. I'll wait.*" (See *id*. [at 16,52])

[8] *Id*.

latter refused to take her calls. On the same day, the petitioner learned from clients and friends that the respondents had disseminated notices, flyers and memos informing all clients of Pacific Concord that she was no longer connected with the company as of November 8, 2002.[9] Pacific Concord also caused the publication of the notice to the public in the *Sunstar Daily* issue of December 15, 2002.[10]

On November 13, 2002, the petitioner sent a letter to Pacific Concord,[11] which reads as follows:

November 13, 2002

Branch Manager
PACIFIC CONCORD CONTAINER LINES, INC.
N&N Building A.C. Cortes Mandaue City

Attention: Monette Cuenca

Madam,

In connection with your text message and flyers advising me that you have terminated my employment, please arrange and expedite settlement of all benefits due to me under the law.

In as much as the facts of my termination has not been formally detailed to me, I believe I was deprived of the due process that would have given me the chance to formally present my side. It startled me at first but I have accepted my fate. However, **we both have names and reputations to protect.** Factual incidents made as basis of my termination can help us mutually clear our names.[12]

Thank you,

(Sgd)
JENNIFER LAGAHIT

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[9] *Id*. at 185.

[10] *Id*. at 186.

[11] *Id*. at 152.

[12] Bold underscoring is part of the original text.

Cuenca replied to the letter on November 25, 2002,[13] advising the petitioner thusly:

25 November 2002

TO : MS. JENNIFER C. LAGAHIT
FM : PACIFIC CONCORD CONTAINER LINES, INC.
CEBU BRANCH

RE : UNCOLLECTED ACCOUNTS

Herewith is the list of your uncollected accounts as of November 22, 2002.

Kindly take note that you have personally guaranteed the above accounts. Moreover, you have reported it as your income and you have already availed the commission due for the above shipments.

We are therefore holding the release of the monies due to you until we can collect the above accounts.

x x x x x x x x x

(Sgd)
MONETTE G. CUENCA
Branch Manager

On November 26, 2002, the petitioner filed her complaint for constructive dismissal in the Regional Arbitration Branch of the National Labor Relations Commission (NLRC) in Cebu City.[14]

In their position paper,[15] the respondents denied having terminated the petitioner despite the fact that there were valid grounds to do so. They insisted that the petitioner had betrayed the trust and confidence reposed in her when she: (*a*) used the company-issued vehicle for her own personal interest; (*b*) failed to achieve her sales quota, and to enhance and develop the Sales Department; (*c*) enticed her marketing assistant, Jo Ann Otrera,

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[13] *Rollo*, p. 279.

[14] *Id*. at 49.

[15] *Id*. at 283-306.

to resign and join her in transferring to another forwarding company; (*d*) applied for other employment during office hours and using company resources; (*e*) solicited and offered the services of Seajet International, Inc. during her employment with Pacific Concord; (*f*) received a personal commission from Wesport Line, Inc. for container shipments; and (*g*) illegally manipulated and diverted several containers to Seajet International.[16]

The respondents claimed that Pacific Concord even issued at one time a memorandum to the petitioner[17] to cite her insubordination in refusing to participate in the company's teambuilding activity; that in the two meetings held on September 27, 2002[18] and October 9, 2002,[19] she was afforded the chance to explain her side on the reports that she was looking for other employment, but she dismissed the reports as mere speculations and assured them of her loyalty; that although valid grounds to terminate the petitioner already existed, they did not dismiss her; and that she voluntarily resigned on November 13, 2002 after probably sensing that the management had gotten wind of her anomalous transactions.[20] They submitted affidavits to support their allegations.[21]

Ruling of the Labor Arbiter

Labor Arbiter Julie C. Rendoque rendered a decision on June 9, 2003, declaring that the respondents were not able to prove that the petitioner had committed acts constituting betrayal of trust; that they had not informed her prior to her dismissal of the offenses she had supposedly committed;[22] and that owing to the illegality of the dismissal, they were liable for backwages

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[16] *Id*. at 288-290.

[17] *Id*. at 251.

[18] *Id*. at 148-149.

[19] *Id*. at 150-151.

[20] *Id*. at 287.

[21] *Id*. at 143-145.

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

and separation pay, to wit:

WHEREFORE, VIEWED FROM THE FOREGOING, judgment is hereby rendered declaring herein **respondents GUILTY of ILLEGALLY DISMISSING complainant from her employment**. Consequently, respondents PACIFIC CONCORD CONTAINER LINES/MONEETTE [sic] CUENCA are hereby ordered to pay, jointly and severally, **complainant JENNIFER C. LAGAHIT with the following**:

a. Separation Pay ₱ 25,000.00
b. Backwages ₱175,000.00
TOTAL=============== ₱200,000.00
VVVVVVV

within ten (10) days from receipt hereof, through the Cashier of this Arbitration Branch.

Other claims are DISMISSED for lack of merit.

SO ORDERED.[23]

Ruling of the NLRC

On appeal, the NLRC affirmed the ruling of the Labor Arbiter with modification, *viz.*:

WHEREFORE, the Decision dated June 9, 2002 of the Labor Arbiter is **MODIFIED** by **AFFIRMING** his finding that the respondents are guilty of illegally dismissing the complainant from her employment, but **MODIFYING** his award for separation pay computed at one (1) month salary for every year of service, a fraction of at least six (6) months being considered one (1) year from the complainant's first day of employment in February 2000 UNTIL THE FINALITY OF THIS DECISION; and backwages starting November 8, 2002 UNTIL THE FINALITY OF THIS DECISION.

The appeal of the respondents is dismissed for lack of merit.

x x x x x x x x x

[23] *Id.* at 100.

[24] *Id.* at 194.

SO ORDERED.[24]

The NLRC found that the respondents did not observe due process in terminating the services of the petitioner; and rejected their claim that she had resigned on November 13, 2002.[25]

The respondents filed their motion for reconsideration,[26] but the NLRC denied their motion on May 25, 2005.[27]

Decision of the CA

On May 10, 2006, the CA promulgated its decision granting the respondents' petition for *certiorari*, and annulling the decision of the NLRC. It pronounced that there were sufficient justifications to terminate the petitioner's services for disloyalty and willful breach of trust, *viz.*:

In the present case, it is clear that Lagahit deliberately committed successive acts which translated to blatant disloyalty and willful breach of the trust reposed upon her by Pacific, and acts which, in the final reckoning are obviously detrimental to the material interest of the company under which she is employed. From January 2002, Lagahit was found to have committed a series of willful acts which may reasonably and expectedly arouse Pacific's distrust and a consequent finding of Lagahit's unfitness to continue her employment, thus: (a) Lagahit has been persistent in applying for employment in other competing cargo- forwarding companies; (b) Lagahit even enticed her Marketing Assistant to join her quest to find anoher (sic) job outside Pacific and at a competing company at that; (c) Lagahit rendered actual services at competing companies for a fee and commission while she was still under the employee of Pacific and was regularly receiving salary therefrom; and (d) Lagahit brought and referred prospective shipping clients to other cargo- forwarding corporations. Verily, the commission of the foregoing acts vividly demonstrated, not only, Lagahit's disloyalty and unfaithfulness to her employer, but likewise her blatant ingratitude to the company from which she derives her regular source of livelihood, considering that, incidentally, the performance of these disloyal and inimical acts commenced when Lagahit was just newly promoted to the higher post of Sales Manager at Pacific.

[25] *Id.* at 192-193.

[26] *Id.* at 195-202.

[27] *Id.* at 206-207.

x x x x x x x x x

Lagahit is not an ordinary rank-and-file employee of Pacific, but contrarily, is by far an employee authorized to formulate significant company plans and policies, and whose designation and basic functions, on its face, betrays the fact that too much trust and confidence was indeed reposed upon her. As borne by the records, Lagahit occupies the responsible post of Sales Manager, and as such her basic functions, *inter alia,* consists [sic] of the following: (1) formulation of strategic action and marketing plans to make the Pacific Sales Department successful, (2) implementation of marketing strategies to help Pacific Sales team achieve its periodic target, (3) direct transaction with various shipping clients, and (4) in having a free hand in dealing with various shipping lines. Quite significantly, Lagahit was given sensitive and responsible functions that goes deep into the financial success, or otherwise ruin, of Pacific, which is more than a clear testament to the fact her position is accorded with trust and confidence.

Such being the case, Lagahit owes it to herself and to Pacific to work religiously and with undivided time and attention to promote the latter's business interests. Unfortunately, such was not the case. As it turned out, Lagahit made a consistent attempt to seek employment at other cargo forwarding companies that directly compete with the business of Pacific, obviously, constituting a willful breach of trust consequentially resulting to Pacific's loss of confidence in Lagahit's loyalty and efficacy. Worse, Lagahit conducted her job applications during office hours when she should have been rendering her services for Pacific. Furthermore, the height of her disloyalty exhibited its face when Lagahit begun to actually render services and refer prospective shipping clients to other competing cargo-forwarding companies for a fee and commission, at the same time employed with Pacific and receiving regular salary therefrom.[28]

Nonetheless, the CA held that despite the existence of a valid cause to terminate her employment Pacific Concord was liable for nominal damages of ₱25,000.00 for denying the petitioner's right to due process.[29]

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[28] *Id.* at 39-41.

[29] *Id.* at 43.

The CA denied the petitioner's motion for reconsideration on March 30, 2007.[30] Hence, this appeal.

Issues

The petitioner imputes the following errors to the CA, namely:

I

THE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION IN GIVING UNDUE WEIGHT AND CREDENCE TO THE RESPONDENTS' LATEST DEFENSE, THEREBY DISTURBING THE FINDINGS OF FACT OF THE LABOR ARBITER AND NLRC WHO SHARE THE SAME FINDINGS;

II

THE COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION IN FINDING MS. LAGAHIT TO HAVE BEEN VALIDLY DISMISSED ON THE GROUND OF LOSS OF TRUST AND CONFIDENCE;

III

PETITIONER IS ENTITLED TO HER CLAIMS FOR SEPARATION PAY AND BACKWAGES[31]

The petitioner argues that the CA erroneously concluded that she had been dismissed considering that the respondents had initially denied her having dismissed her, and claimed instead that she had voluntarily resigned; that the Labor Arbiter and the NLRC had correctly concluded that she had not resigned, but had been illegally terminated without substantive and procedural due process;[32] and that the evidence adduced against her that the CA relied upon to sufficiently establish her breach of trust were speculative and hearsay.[33]

In contrast, the respondents aver that:(*a*) the petitioner occupied a position of trust and confidence that she breached

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

[31] *Id*. at 23.

[32] *Id*. at 24.

[33] *Id*. at 27.

by working for, serving, and soliciting clients in behalf of competing cargo-forwarding companies using the respondents' resources;[34] (*b*) she had not explained her meetings, job applications and moonlighting with competing companies;[35] (*c*) the sworn statements narrating her breach of trust and disloyalty to the company submitted by the respondents substantially justified her dismissal on the ground of loss of trust and confidence;[36] and (*d*) her resignation letter confirmed that she no longer desired to work for the company considering that she succeeded in landing a job with Seajet Lines in just three days after her resignation.[37]

Did the petitioner resign as sales manager of Pacific Concord? Did Pacific Concord have sufficient grounds to terminate her for breach of trust and confidence under Article 282[38] of the *Labor Code*?

Ruling of the Court

We find merit in the appeal.

I

Lagahit did not resign from her employment

On the first issue, we find in favor of the petitioner.

In cases of unlawful dismissal, the employer bears the burden of proving that the termination was for a valid or authorized cause, but before the employer is expected to discharge its burden of proving that the dismissal was legal, the employee must first establish by substantial evidence the fact of her dismissal from

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[34] *Id*. at 322.

[35] *Id*. at 323.

[36] *Id*. at 324.

[37] *Id*. at 326.

[38] Now Article 297 pursuant to R.A. No. 10151 (*See* DOLE Department Advisory No. 01, series of 2015).

[39] *Noblejas v. Italian Maritime Academy of the Phils., Inc.*, G.R. No. 207888, June 9, 2014, 725 SCRA 570, 579; *Philippine Rural Reconstruction*

employment.[39] In this case, the petitioner proved the overt acts committed by the respondents in abruptly terminating her employment through the text messages sent by Cuenca to the petitioner and her husband, as well as the notices distributed to the clients and published in the *Sun Star*. It is notable that the respondents did not deny or controvert her evidence on the matter. Thereby, she showed Pacific Concord's resolve to terminate her employment effective November 8, 2002.

On the other hand, the respondents' insistence that the petitioner had resigned was bereft of factual support. As a rule, the employer who interposes the resignation of the employee as a defense should prove that the employee voluntarily resigned.[40] A valid resignation is the voluntary act of an employee who finds herself in a situation where she believes that personal reasons cannot be sacrificed in favor of the exigency of the service and that she has no other choice but to disassociate herself from employment.[41] The resignation must be unconditional and with a clear intention to relinquish the position.[42] Consequently, the circumstances surrounding the alleged resignation must be consistent with the employee's intent to give up the employment.[43] In this connection, the acts of the employee before and after the resignation are considered to

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Movement (PRRM) v. Pulgar, G.R. No. 169227, July 5, 2010, 623 SCRA 244-256.

[40] *Central Azucarera de Bais v. Siason,* G.R. No. 215555, July 29, 2015; *San Miguel Properties Philippines, Inc. v. Gucaban*, G.R. No. 153982, July 18, 2011, 654 SCRA 18, 29; *Peñaflor v. Outdoor Clothing Manufacturing Corporation,* G.R. No. 177114, April 13, 2010, 618 SCRA 208, 215; *Vicente v. Court of Appeals*, G.R. No. 175988, August 24, 2007, 531 SCRA 240, 250.

[41] *Globe Telecom v. Crisologo*, G.R. No. 174644, August 10, 2007, 529 SCRA 811, 819; *Alfaro v. Court of Appeals*, G.R. No. 140812, August 28, 2001, 363 SCRA 799, 808.

[42] *Blue Angel Manpower and Security Services v. Court of Appeals*, G.R. No. 161196, July 28, 2008, 560 SCRA 157, 164.

[43] *Malig-on v. Equitable General Services, Inc.*, G.R. No. 185269, June 29, 2010, 622 SCRA 326, 329.

[44] *Fortuny Garments v. Castro*, G.R. No. 150668, December 15, 2005, 478 SCRA 125, 130.

determine whether or not she intended, in fact, to relinquish the employment.[44]

The facts and circumstances before and after the petitioner's severance from her employment on November 8, 2002 did not show her resolute intention to relinquish her job. Indeed, it would be unfounded to infer the intention to relinquish from her November 13, 2002 letter, which, to us, was not a resignation letter due to the absence therefrom of anything evincing her desire to sever the employer-employee relationship. The letter instead presented her as a defenseless employee unjustly terminated for unknown reasons who had been made the subject of notices and flyers informing the public of her unexpected termination. It also depicted her as an employee meekly accepting her unexpected fate and requesting the payment of her backwages and accrued benefits just to be done with the employer.

For sure, to conclude that the petitioner resigned because of her letter of November 13, 2002 is absurd in light of the respondents having insisted that she had been terminated from her employment earlier on November 8, 2002. In that regard, every resignation presupposes the existence of the employer-employee relationship; hence, there can be no valid resignation after the fact of termination of the employment simply because the employee had no employer-employee relationship to relinquish.

II

Lagahit did not breach her employer's trust; her dismissal was, therefore, illegal

Having settled the issue of the dismissal in the petitioner's favor, we next resolve whether or not the CA correctly ruled the petitioner's dismissal as justified on the ground of breach of trust and confidence.

The petitioner assails the CA for upholding her termination based on speculations and hearsay, and for entirely disregarding the factual findings in her favor of the LA and the NLRC.[45] In

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[45] *Rollo*, p. 25.

[46] *Id.* at 324.

contrast, the respondents maintain that the allegation of disloyalty against her was substantiated by the affidavits they had submitted that the CA relied on to sustain the validity of her dismissal.[46]

We agree with the petitioner.

To justify the dismissal of an employee, the employer must, as a rule, prove that the dismissal was for a just cause, and that the employee was afforded due process prior to dismissal. As a complementary principle, the employer has the onus of proving the validity of the dismissal with clear, accurate, consistent, and convincing evidence.[47] The employer's case succeeds or fails on the strength of its evidence, not on the weakness of that adduced by the employee, in keeping with the principle that the scales of justice should be tilted in favor of the latter in case of doubt in the evidence presented by them.[48]

In its decision, the CA recognized the wide latitude of discretion given to the management in terminating managers for breach of trust and confidence. It declared Pacific Concord to have justifiably resorted to terminating the petitioner's employment as a measure of self-preservation in view of her repeated acts of disloyalty that were prejudicial to its interest.[49]

The CA was thereby gravely mistaken.

Article 282(c)[50] of the *Labor Code* authorizes an employer to dismiss an employee for committing fraud, or for willful breach of the trust reposed by the employer. However, loss of

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[47] *Aliling v. Feliciano*, G.R. No. 185829, April 25, 2012, 671 SCRA 186, 205.

[48] *Prudential Guarantee and Assurance Employee Labor Union v. National Labor Relations Commission*, G.R. No. 185335, June 13, 2012, 672 SCRA 375, 394.

[49] *Rollo*, pp. 39-42.

[50] Now Article 297(c).

[51] *Mabeza v. National Labor Relations Commission*, G.R. No. 118506, April 18, 1997, 271 SCRA 670, 682.

confidence is never intended to provide the employer with a blank check for terminating its employee.[51] For this to be a valid ground for the termination of the employee, the employer must establish that: (1) the employee must be holding a position of trust and confidence; and (2) the act complained against would justify the loss of trust and confidence.[52]

There are two classes of employees vested with trust and confidence. To the first class belong the managerial employees or those vested with the powers or prerogatives to lay down management policies and to hire, transfer, suspend, lay-off, recall, discharge, assign or discipline employees or effectively recommend such managerial actions. The second class includes those who in the normal and routine exercise of their functions regularly handle significant amounts of money or property. Cashiers, auditors, and property custodians are some of the employees in the second class.[53]

The petitioner discharged the following duties and responsibilities as sales manager, to wit:

SALES MANAGER

Job Description

- Promotes services being offered by the company
- Must generate new accounts for the company
- Responsible for motivating the Sales Team to hit their respective QUOTA and TARGET
- Responsible for the Strategic Planning and Action Plan for the Sales Department
- Should submit Production Report on a weekly basis for the Sales Department specifying each sales contribution for the week
- Responsible in inspiring and developing confidence of the Sales Team
- Responsible in promoting, formulating, implementing market strategy that will help achieve the target of the Sales Department

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[52] *Bristol Myers Squibb (Phils.) v. Baban*, G.R. No. 167449, December 17, 2008, 574 SCRA 198, 205-206.

[53] *Id*.

- Coordinates regularly with the Sales people on their day to day activities regarding rates and operational matters
- Keeps track all sales transactions, assist the sales people in their problem regarding rates and operational matters
- Gathers and provides sales leads, replied to agents' inquiries regarding sales matters
- Transacts rates and other related cargo needs with the shipping lines
- Promotes and maintains good relations with clients
- Prepares quotation to the clients for intended shipments
- Performs other tasks, duties and responsibilities as may be assigned from time to time
- Reports directly to the Branch Manager[54]

Her position as sales manager did not immediately make the petitioner a managerial employee. The actual work that she performed, not her job title, determined whether she was a managerial employee vested with trust and confidence.[55] Her employment as sales manager was directly related with the sales of cargo forwarding services of Pacific Concord, and had nothing to do with the implementation of the management's rules and policies. As such, the position of sales manager came under the second class of employees vested with trust and confidence. Therein was the flaw in the CA's assailed decision. Although the mere existence of the basis for believing that the managerial employee breached the trust reposed by the employer would normally suffice to justify a dismissal,[56] we should desist from applying this norm against the petitioner who was not a managerial employee.

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[54] *Rollo,* p. 236.

[55] *M+W Zander Philippines, Inc. v. Enriquez*, G.R. No. 169173, June 5, 2009, 558 SCRA 590, 605.

[56] *Grand Asian Shipping Lines v. Galvez*, G.R. No. 178184, January 29, 2014, 715 SCRA 1, 27; *Mendoza v. HMS Credit Corporation*, G.R. No. 187232, April 17, 2013, 696 SCRA 794, 804 citing *Etcuban v. Sulpicio Lines*, G.R. No. 148410, January 17, 2005, 448 SCRA 516, 478.

[57] *Wah Yuen Restaurant v. Jayona,* G.R. No. 159448, December 16, 2005, 478 SCRA 315-319; *Estiva v. National Labor Relations Commission*, G.R. No. 95145, August 5, 1993, 225 SCRA 169, 177.

At any rate, the employer must present clear and convincing proof of an actual breach of duty committed by the employee by establishing the facts and incidents upon which the loss of confidence in the employee may fairly be made to rest.[57] The required amount of evidence for doing so is substantial proof. With these guidelines in mind, we cannot hold that the evidence submitted by the respondents (consisting of the three affidavits) sufficiently established the disloyalty of the petitioner. The affidavits did not show how she had betrayed her employer's trust. Specifically, the affidavit of Russell B. Noel[58] only stated that she and her husband Roy had met over lunch with Garcia Imports and a certain Wilbur of Sea-Jet International Forwarder in the first week of November 2002. To conclude that such lunch caused Pacific Concord to lose its trust in the petitioner would be arbitrary. Similarly, the affidavit of Mark Anthony G. Lim[59] was inconclusive. Therein affiant Lim deposed:

> 1. That I was present when Ms. Vivian Veloso, former Branch Manager of Westport Line Inc., disclosed to Ms. Monette Cuenca and Ms. Mitzie Ibona on November 11, 2002 at the office of Admiral Overseas Shipping Corp., where she is presently employed with, that Ms. Jennifer C. Lagahit received a personal commission or rebate for the full container shipments moved via Westport Line Inc. in the amount of USD 50.00 per container.[60]

The foregoing statement was bereft of the particulars about how the petitioner had entered into the transaction, as well as about the prejudice that Pacific Concord had suffered from her receipt of the commission. Also, that this information was made known to Cuenca three days after she had already terminated the petitioner belied the relevance of the information to the termination.

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[58] *Rollo*, p. 143.

[59] *Id.* at 144.

[60] *Id.*

[61] *Id.* at 145.

In her affidavit,[61] Jo Ann Otrera declared that the petitioner had called other forwarding companies to inquire about any vacant positions, and that the petitioner had enticed her to transfer to another company. However, such declarations did not provide the sufficient basis to warrant the respondents' loss of confidence in the petitioner. We stress that although her supposedly frantic search for gainful employment opportunities elsewhere should be considered as inappropriate for being made during office hours, the same did not constitute willful breach of trust and confidence of the employer. The loss of trust and confidence contemplated under Article 282(c) of the *Labor Code* is not ordinary but willful breach of trust. Verily, the breach of trust is willful if it is intentional, knowing, deliberate and without justifiable excuse, as distinguished from an act done carelessly, thoughtlessly, heedlessly or inadvertently.[62] Most importantly, the cause of the loss of trust must be work-related as to expose the employee as unfit to continue working for the employer.[63]

Considering that the petitioner's duties related to the sales of forwarding services offered by Pacific Concord, her calling other forwarding companies to inquire for vacant positions did not breach the trust reposed in her as sales manager. Such act, being at worst a simple act of indiscretion, did not constitute the betrayal of trust that merited the extreme penalty of dismissal from employment. We remind that dismissal is a penalty of last resort, to be meted only after having appreciated and evaluated all the relevant circumstances with the goal of ensuring that the ground for dismissal was not only serious but true.[64]

WHEREFORE, the Court **GRANTS** the petition for review on *certiorari*; **REVERSES** and **SETS ASIDE** the decision promulgated on May 10, 2006 by the Court of Appeals; **REINSTATES** the decision of the National Labor Relations

[62] *The Coca-Cola Export Corporation v. Gacayan*, G.R. No. 149433, June 22, 2011, 652 SCRA 463, 471 citing *Tiu v. National Labor Relations Commission*, G.R. No. 83433, November 12, 1992, 215 SCRA 540, 547.

[63] *Alvarez v. Golden Tri Bloc, Inc.*, G.R. No. 202158, September 25, 2013, 706 SCRA 406, 418-419; *Jerusalem v. Keppel Monte Bank*, G.R. No. 169564, April 6, 2011, 647 SCRA 313, 325.

[64] *Dongon v. Rapid Movers and Forwarders Co., Inc.*, G.R. No. 163431, August 28, 2013, 704 SCRA 56, 69.

Commission rendered on December 15, 2004 subject to the **MODIFICATION** that the total monetary awards shall earn interest at the rate of 6% *per annum* from the finality of this decision until full satisfaction; and **ORDERS** the respondents to pay the costs of suit.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 187691. January 13, 2016]

OLYMPIA HOUSING, INC., *petitioner, vs.* **ALLAN LAPASTORA and IRENE UBALUBAO,** *respondents.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; REGULAR EMPLOYMENT; AN UNINTERRUPTED EMPLOYMENT FOR MORE THAN ONE YEAR MANIFESTS THE CONTINUING NEED AND DESIRABILITY OF THE EMPLOYEE'S SERVICES WHICH CHARACTERIZE REGULAR EMPLOYMENT.—** Lapastora was a regular employee of OHI. As found by the LA, he has been under the continuous employ of OHI since March 3, 1995 until he was placed on floating status in February 2000. His uninterrupted employment by OHI, lasting for more than a year, manifests the continuing need and desirability of his services, which characterize regular employment. x x x Based on records, OHI is engaged in the business of managing residential and commercial condominium units at the OER. By the nature of its business, it is imperative that it maintains a pool of

housekeeping staff to ensure that the premises remain an uncluttered place of comfort for the occupants. It is no wonder why Lapastora, among several others, was continuously employed by OHI precisely because of the indispensability of their services to its business. The fact alone that Lapastora was allowed to work for an unbroken period of almost five years is all the same a reason to consider him a regular employee.

2. **ID.; ID.; TERMINATION OF EMPLOYMENT; TO JUSTIFY FULLY THE DISMISSAL OF AN EMPLOYEE, THE EMPLOYER MUST PROVE THAT THE DISMISSAL WAS FOR A JUST CAUSE AND THAT THE EMPLOYEE WAS AFFORDED DUE PROCESS PRIOR TO DISMISSAL.—** The attainment of a regular status of employment guarantees the employee's security of tenure that he cannot be unceremoniously terminated from employment. "To justify fully the dismissal of an employee, the employer must, as a rule, prove that the dismissal was for a just cause and that the employee was afforded due process prior to dismissal. As a complementary principle, the employer has the onus of proving with clear, accurate, consistent, and convincing evidence the validity of the dismissal." OHI miserably failed to discharge its burdens thus making Lapastora's termination illegal. On the substantive aspect, it appears that OHI failed to prove that Lapastora's dismissal was grounded on a just or authorized cause. x x x On the procedural aspect, OHI admittedly failed to observe the twin notice rule in termination cases.

3. **ID.; ID.; ID.; THE EMPLOYER IS REQUIRED TO FURNISH THE CONCERNED EMPLOYEE TWO WRITTEN NOTICES.—** As a rule, the employer is required to furnish the concerned employee two written notices; (1) a written notice served on the employee specifying the ground or grounds for termination, and giving to said employee reasonable opportunity within which to explain his side; and (2) a written notice of termination served on the employee indicating that upon due consideration of all the circumstances, grounds have been established to justify his termination. In the present case, Lapastora was not informed of the charges against him and was denied the opportunity to disprove the same. He was summarily terminated from employment.

4. **ID.; ID.; THE APPLICATION OF LABOR LAWS CANNOT BE SUBJECTED TO THE AGREEMENT OF THE PARTIES;**

CASE AT BAR.— The issue of employer-employee relationship between OHI and Lapastora had been deliberated and ruled upon by the LA and the NLRC in the affirmative on the basis of the evidence presented by the parties. The LA ruled that Lapastora was under the effective control and supervision of OHI through the company supervisor. She gave credence to the pertinent records of Lapastora's employment, *i.e.*, timecards, medical records and medical examinations, which all indicated OHI as his employer. She likewise noted Fast Manpower's failure to establish its capacity as independent contractor based on the standards provided by law. That there is an existing contract of services between OHI and Fast Manpower where both parties acknowledged the latter as the employer of the housekeeping staff, including Lapastora, did not alter established facts proving the contrary. The parties cannot evade the application of labor laws by mere expedient of a contract considering that labor and employment are matters imbued with public interest. It cannot be subjected to the agreement of the parties but rather on existing laws designed specifically for the protection of labor. Thus, it had been repeatedly stressed in a number of jurisprudence that "[a] party cannot dictate, by the mere expedient of a unilateral declaration in a contract, the character of its business, *i.e.*, whether as labor-only contractor or as a job contractor, it being crucial that its character be measured in terms of and determined by the criteria set by statute." The Court finds no compelling reason to deviate from the findings of the LA and NLRC, especially in this case when the same was affirmed by the CA. It is settled that findings of fact made by LAs, when affirmed by the NLRC, are entitled not only to great respect but even finality and are binding on this Court especially when they are supported by substantial evidence.

5. **CIVIL LAW; CIVIL CODE; EFFECT AND APPLICATION OF LAWS; PRINCIPLE OF *STARE DECISIS*; DEFINED; THE PRINCIPLE DOES NOT APPLY WHEN THERE IS NO DOCTRINE OF LAW THAT IS SIMILARLY APPLICABLE IN BOTH THE PRESENT AND AN EARLIER CASE; CASE AT BAR.—** In *Ting v. Velez-Ting*, the Court elaborated on the principle of *stare decisis* x x x. [T]he import of the principle is that questions of law that have been decided by this Court and applied in resolving earlier cases shall be deemed the prevailing rule which shall be binding on future cases dealing on the same intricacies. Apart from saving

the precious time of the Court, the application of this principle is essential to the consistency of the rulings of the Court which is significant in its role as the final arbiter of judicial controversies. The CA correctly ruled that the principle of *stare decisis* finds no relevance in the present case. To begin with, there is no doctrine of law that is similarly applicable in both the present case and in *Ocampo v. OHI*. While both are illegal dismissal cases, they are based on completely different sets of facts and involved distinct issues. In the instant case, Lapastora cries illegal dismissal after he was arbitrarily placed on a floating status on mere suspicion that he was involved in theft incidents within the company premises without being given the opportunity to explain his side or any formal investigation of his participation. On the other hand, in *Ocampo v. OHI*, the petitioners therein questioned the validity of OHI's closure of business and the eventual termination of all the employees. Thus, the NLRC ruled upon both cases differently.

6. **LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; IN ILLEGAL DISMISSAL CASES, THE PAYMENT OF SEPARATION PAY IS PROPER WHEN REINSTATEMENT IS LEGALLY IMPOSSIBLE.—** [W]hile the finding of illegal dismissal in favor of Lapastora subsists, his reinstatement was rendered a legal impossibility with OHI's closure of business. x x x Considering the impossibility of Lapastora's reinstatement, the payment of separation pay, in lieu thereof, is proper. The amount of separation pay to be given to Lapastora must be computed from March 1995, the time he commenced employment with OHI, until the time when the company ceased operations in October 2000. As twin relief, Lapastora is likewise entitled to the payment of backwages, computed from the time he was unjustly dismissed, or from February 24, 2000 until October 1, 2000 when his reinstatement was rendered impossible without fault on his part.

7. **ID.; ID.; ID.; PAYMENT OF BENEFITS; THE BURDEN RESTS ON THE EMPLOYER TO PROVE PAYMENT, RATHER THAN ON THE EMPLOYEE TO PROVE NONPAYMENT.—** [F]or OHI's failure to prove the fact of payment, the Court sustains the award for the payment of service incentive leave pay and 13th month pay. The rule, as stated in *Mantle Trading Services, Inc. and/or Del Rosario v. NLRC, et*

al., is that "the burden rests on the employer to prove payment, rather than on the employee to prove nonpayment. The reason for the rule is that the pertinent personnel files, payrolls, records, remittances and other similar documents – which will show that overtime, differentials, service incentive leave and other claims of workers have been paid – are not in the possession of the employee but in the custody and absolute control of the employer." Considering that OHI did not dispute Lapastora's claim for nonpayment of the mentioned benefits and opted to disclaim employer-employee relationship, the presumption is that the said claims were not paid.

APPEARANCES OF COUNSEL

De Jesus Cueto & Madarieta Law Offices for petitioner.
Arnold F. De Vera for respondents.

D E C I S I O N

REYES, *J.*:

This is a Petition for Review on *Certiorari*[1] filed under Rule 45 of the Rules of Court, assailing the Decision[2] dated April 28, 2009 of the Court of Appeals (CA) in CA-G.R. SP No. 103699, which affirmed the Decision dated December 28, 2007 and Resolution[3] dated February 29, 2008 of the National Labor Relations Commission (NLRC) in NLRC NCR Case No. 30-03-00976-00.

The instant case stemmed from a complaint for illegal dismissal, payment of backwages and other benefits, and regularization of employment filed by Allan Lapastora (Lapastora) and Irene Ubalubao (Ubalubao) against Olympic Housing, Inc. (OHI), the entity engaged in the management

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[1] *Rollo*, pp. 3-32.

[2] Penned by Associate Justice Hakim S. Abdulwahid, with Associate Justices Arturo G. Tayag and Myrna Dimaranan Vidal concurring; *id*. at 34-48.

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

of the Olympia Executive Residences (OER), a condominium hotel building situated in Makati City, owned by a Philippine-registered corporation known as the Olympia Condominium Corporation (OCC). The complaint, which was docketed as NLRC NCR Case No. 30-03-00976-00 (NLRC NCR CA No. 032043-02), likewise impleaded as defendants the part owner of OHI, Felix Limcaoco (Limcaoco), and Fast Manpower and Allied Services Company, Inc. (Fast Manpower). Lapastora and Ubalubao alleged that they worked as room attendants of OHI from March 1995 and June 1997, respectively, until they were placed on floating status on February 24, 2000, through a memorandum sent by Fast Manpower.[4]

To establish employer-employee relationship with OHI, Lapastora and Ubalubao alleged that they were directly hired by the company and received salaries directly from its operations clerk, Myrna Jaylo (Jaylo). They also claimed that OHI exercised control over them as they were issued time cards, disciplinary action reports and checklists of room assignments. It was also OHI which terminated their employment after they petitioned for regularization. Prior to their dismissal, they were subjected to investigations for their alleged involvement in the theft of personal items and cash belonging to hotel guests and were summarily dismissed by OHI despite lack of evidence.[5]

For their part, OHI and Limcaoco alleged that Lapastora and Ubalubao were not employees of the company but of Fast Manpower, with which it had a contract of services, particularly, for the provision of room attendants. They claimed that Fast Manpower is an independent contractor as it (1) renders janitorial services to various establishments in Metro Manila, with 500 janitors under its employ; (2) maintains an office where janitors assemble before they are dispatched to their assignments; (3) exercises the right to select, refuse or change personnel assigned to OHI; and (4) supervises and pays the wages of its employees.[6]

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[4] *Id*. at 35.

[5] *Id*. at 36.

[6] *Id*.

Reinforcing OHI's claims, Fast Manpower reiterated that it is a legitimate manpower agency and that it had a valid contract of services with OHI, pursuant to which Lapastora and Ubalubao were deployed as room attendants. Lapastora and Ubalubao were, however, found to have violated house rules and regulations and were reprimanded accordingly. It denied the employees' claim that they were dismissed and maintained they were only placed on floating status for lack of available work assignments.[7]

Subsequently, on August 22, 2000, a memorandum of agreement was executed, stipulating the transfer of management of the OER from OHI to HSAI-Raintree, Inc. (HSAI-Raintree). Thereafter, OHI informed the Department of Labor and Employment (DOLE) of its cessation of operations due to the said change of management and issued notices of termination to all its employees. This occurrence prompted some union officers and members to file a separate complaint for illegal dismissal and unfair labor practice against OHI, OCC and HSAI-Raintree, docketed as NLRC NCR CN 30-11-04400-00 (CA No. 032193-02), entitled *Malonie D. Ocampo, et al. v. Olympia Housing, Inc., et al.* (*Ocampo v. OHI*). This complaint was, however, dismissed for lack of merit. The complainants therein appealed the said ruling to the NLRC.[8]

Meanwhile, on May 10, 2002, the Labor Arbiter (LA) rendered a Decision[9] in the instant case, holding that Lapastora and Ubalubao were regular employees of OHI and that they were illegally dismissed. The dispositive portion of the decision reads as follows:

> WHEREFORE, finding complainants to have been illegally dismissed and as regular employees of [OHI] the latter is ordered to reinstate complainants to their former position or substantially equal position without loss of seniority rights and benefits. [OHI] is further ordered to pay complainants backwages, service incentive leave pay and attorney's fees as follows:

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[7] *Id.* at 37.

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

[9] *Id.* at 83-95.

1. Backwages:
[Lapastora] - ₱171,616.60 and
[Ubalubao] - ₱170,573.44 from February 24, 2000 to date of decision which shall further be adjusted until their actual reinstatement.
2. ₱3,305.05 - ILP for Lapastora
3. ₱3,426.04 - SILP for Ubalubao
4. 10% of the money awards as attorney's fees.

Other claims are dismissed for lack of merit.

The claim against [Limcaoco] is hereby dismissed for lack of merit.

SO ORDERED.[10]

In ruling for the existence of employer-employee relationship, the LA held that OHI exercised control and supervision over Lapastora and Ubalubao through its supervisor, Anamie Lat. The LA likewise noted that documentary evidence consisting of time cards, medical cards and medical examination reports all indicated OHI as employer of the said employees. Moreover, the affidavit of OHI's housekeeping coordinator, Jaylo, attested to the fact that OHI is the one responsible for the selection of employees for its housekeeping department. OHI also paid the salaries of the housekeeping staff by depositing them to their respective ATM accounts. That there is a contract of services between OHI and Fast Manpower did not rule out the existence of employer-employee relationship between the former and Lapastora and Ubalubao as it appears that the said contract was a mere ploy to circumvent the application of pertinent labor laws particularly those relating to security of tenure. The LA pointed out that the business of OHI necessarily requires the services of housekeeping aides, room boys, chambermaids, janitors and gardeners in its daily operations, which is precisely the line of work being rendered by Lapastora and Ubalubao.[11]

Both parties appealed to the NLRC. OHI asseverated that

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

[11] *Id*. at 89-91.

the reinstatement of Lapastora and Ubalubao was no longer possible in view of the transfer of the management of the OER to HSAI-Raintree.[12]

On December 28, 2007, the NLRC rendered a decision, dismissing the appeal for lack of merit, the dispositive portion of which reads as follows:

> WHEREFORE, premises considered, the appeals of both the respondents and the complainants are DISMISSED, and the Decision of the [LA] is hereby AFFIRMED. All other claims are dismissed for lack of merit.[13]

The NLRC held that OHI is the employer of Lapastora and Ubalubao since Fast Manpower failed to establish the fact that it is an independent contractor. Further, it ruled that the memorandum of agreement between OCC and HSAI-Raintree did not render the reinstatement of Lapastora and Ubalubao impossible since a change in the management does not automatically result in a change of personnel especially when the memorandum itself did not include a provision on that matter.[14]

Unyielding, OHI filed its Motion for Reconsideration[15] but the NLRC denied the same in a Resolution[16] dated February 29, 2008.

In the meantime, in *Ocampo v. OHI*, the NLRC rendered a Decision[17] dated November 22, 2002, upholding the validity of the cessation of OHI's operations and the consequent termination of all its employees. It stressed that the cessation of business springs from the management's prerogative to do

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

[13] *Id*. at 146.

[14] *Id.* at 41.

[15] *Id*. at 146-160.

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

[17] *Id*. at 116-128.

what is necessary for the protection of its investment, notwithstanding adverse effect on the employees. The discharge of employees for economic reasons does not amount to unfair labor practice.[18] The said ruling of the NLRC was elevated on petition for *certiorari* to the CA, which dismissed the same in Resolutions dated November 28, 2003[19] and June 23, 2004.[20] The mentioned resolutions were appealed to this Court and were docketed as G.R. No. 164160, which was, however, denied in the Resolution[21] dated July 26, 2004 for failure to comply with procedural rules and lack of reversible error on the part of the CA.

Ruling of the CA

OHI, upon receipt of the adverse decision in NLRC NCR Case No. 30-03-00976-00, filed a Petition for *Certiorari*[22] with the CA, praying that the Decision dated December 28, 2007 and Resolution dated February 29, 2008 of the NLRC be set aside. It pointed out that in the related case of *Ocampo v. OHI*, the NLRC took into consideration the supervening events which transpired after the supposed termination of Lapastora and Ubalubao, particularly OHI's closure of business on October 1, 2000. The NLRC then likewise upheld the validity of the closure of business and the consequent termination of employees in favor of OHI, holding that the measures taken by the company were proper exercises of management prerogative. OHI argued that since the said disposition of the NLRC in *Ocampo v. OHI* was affirmed by both the CA and the Supreme Court, the principle of *stare decisis* becomes applicable and the issues that had already been resolved in the said case may no longer be relitigated.[23]

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[18] *Id*. at 123.

[19] *Id*. at 129-130.

[20] *Id*. at 131.

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

[22] *Id*. at 49-75.

[23] *Id*. at 63.

At any rate, OHI argued that it could not be held liable for illegal dismissal since Lapastora and Ubalubao were not its employees.[24]

On April 28, 2009, the CA rendered a Decision[25] dismissing the petition, the dispositive portion of which reads as follows:

> **WHEREFORE,** the petition for certiorari is **DISMISSED**. The NLRC's Decision dated December 28, 2007 and Resolution dated February 29, 2008 in NLRC NCR Case No. 30-03-00976-00 (NLRC NCR CA No. 032043-02) are **AFFIRMED**.
>
> **SO ORDERED**.[26]

The CA ruled that OHI's cessation of operations on October 1, 2000 is not a supervening event because it transpired long before the promulgation of the LA's Decision dated May 10, 2002 in the instant case. In the same manner, the ruling of the NLRC in *Ocampo v. OHI* does not constitute *stare decisi*s to the present petition because of the apparent dissimilarities in the attendant circumstances. For instance, *Ocampo v. OHI* was founded on the union members' allegation that OHI's claim of substantial financial losses to support closure of business lacked evidence, while in the instant case, Lapastora and Ubalubao claimed illegal dismissal on account of their being placed on floating status after they were implicated in a theft case. The differences in the facts and issues in the two cases rule out the invocation of the doctrine. The CA added that the prevailing jurisprudence is that the NLRC decision upholding the validity of the closure of business and retrenchment of employees resulting therefrom will not preclude it from decreeing the illegality of an employee's dismissal. Considering that OHI failed to prove that the memorandum of agreement between OCC and HSAI-Raintree had any effect on the employment of

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[24] *Id*. at 68.

[25] *Id*. at 34-48.

[26] *Id*. at 47.

Lapastora and Ubalubao or that there is any other valid or authorized cause for their termination from employment, the CA concluded that they were unlawfully dismissed.[27]

Unyielding, OHI filed the instant petition, reiterating its arguments before the CA. It added that, even assuming that the facts warrant a finding of illegal dismissal, the cessation of operations of the company is a supervening event that should limit the award of backwages to Lapastora and Ubalubao until October 1, 2000 only and justify the deletion of the order of reinstatement. After all, it complied with the notice requirements of the DOLE for a valid closure of business.[28]

On April 4, 2011, Ubalubao, on her own behalf, filed a Motion to Dismiss/Withdraw Complaint and Waiver,[29] stating that she has decided to accept the financial assistance in the amount of ₱50,000.00 offered by OHI, in lieu of all the monetary claims she has against the company, as full and complete satisfaction of any judgment that may be subsequently rendered in her favor. She likewise informed the Court that she had willingly and knowingly executed a quitclaim and waiver agreement, releasing OHI from any liability. She thus prayed for the dismissal of the complaint she filed against OHI.

In a Resolution[30] dated January 16, 2012, the Court granted Ubalubao's motion and considered the case closed and terminated as to her part, leaving Lapastora as the lone respondent in the present petition.

Ruling of the Court

Lapastora was illegally dismissed

Indisputably, Lapastora was a regular employee of OHI. As found by the LA, he has been under the continuous employ of OHI since March 3, 1995 until he was placed on floating status

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[27] *Id*. at 44-45.

[28] *Id*. at 15.

[29] *Id*. at 266-269.

[30] *Id*. at 292-293.

in February 2000. His uninterrupted employment by OHI, lasting for more than a year, manifests the continuing need and desirability of his services, which characterize regular employment. Article 280 of the Labor Code provides as follows:

Art. 280. Regular and casual employment. The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreement of the parties, an employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer, except where the employment has been fixed for a specific project or undertaking, the completion or termination of which has been determined at the time of the engagement of the employee or where the work or services to be performed is seasonal in nature and the employment is for the duration of the season.

An employment shall be deemed to be casual if it is not covered by the preceding paragraph: *Provided*, That, any employee who has rendered at least one year of service, whether such service is continuous or broken, shall be considered a regular employee with respect to the activity in which he is employed and his employment shall continue while such activity exists.

Based on records, OHI is engaged in the business of managing residential and commercial condominium units at the OER. By the nature of its business, it is imperative that it maintains a pool of housekeeping staff to ensure that the premises remain an uncluttered place of comfort for the occupants. It is no wonder why Lapastora, among several others, was continuously employed by OHI precisely because of the indispensability of their services to its business. The fact alone that Lapastora was allowed to work for an unbroken period of almost five years is all the same a reason to consider him a regular employee.

The attainment of a regular status of employment guarantees the employee's security of tenure that he cannot be unceremoniously terminated from employment. "To justify fully the dismissal of an employee, the employer must, as a rule, prove that the dismissal was for a just cause and that the employee was afforded due process prior to dismissal. As a complementary

principle, the employer has the onus of proving with clear, accurate, consistent, and convincing evidence the validity of the dismissal."[31]

OHI miserably failed to discharge its burdens thus making Lapastora's termination illegal.

On the substantive aspect, it appears that OHI failed to prove that Lapastora's dismissal was grounded on a just or authorized cause. While it claims that it had called Lapastora's attention several times for tardiness, unexplained absences and loitering, it does not appear from the records that the latter had been notified of the company's dissatisfaction over his performance and that he was made to explain his supposed infractions. It does not even show from the records that Lapastora was ever disciplined because of his alleged tardiness. In the same manner, allegations regarding Lapastora's involvement in the theft of personal items and cash belonging to hotel guests remained unfounded suspicions as they were not proven despite OHI's probe into the incidents.

On the procedural aspect, OHI admittedly failed to observe the twin notice rule in termination cases. As a rule, the employer is required to furnish the concerned employee two written notices: (1) a written notice served on the employee specifying the ground or grounds for termination, and giving to said employee reasonable opportunity within which to explain his side; and (2) a written notice of termination served on the employee indicating that upon due consideration of all the circumstances, grounds have been established to justify his termination.[32] In the present case, Lapastora was not informed of the charges against him and was denied the opportunity to disprove the same. He was summarily terminated from employment.

OHI argues that no formal notices of investigation, notice of charges or termination was issued to Lapastora since he was

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[31] *Aliling v. Feliciano*, G.R. No. 185829, April 25, 2012, 671 SCRA 186, 205.

[32] *Lynvil Fishing Enterprises, Inc., et al. v. Ariola, et al.*, 680 Phil. 696, 715 (2012).

not an employee of the company but of Fast Manpower.

The issue of employer-employee relationship between OHI and Lapastora had been deliberated and ruled upon by the LA and the NLRC in the affirmative on the basis of the evidence presented by the parties. The LA ruled that Lapastora was under the effective control and supervision of OHI through the company supervisor. She gave credence to the pertinent records of Lapastora's employment, *i.e.*, timecards, medical records and medical examinations, which all indicated OHI as his employer. She likewise noted Fast Manpower's failure to establish its capacity as independent contractor based on the standards provided by law.

That there is an existing contract of services between OHI and Fast Manpower where both parties acknowledged the latter as the employer of the housekeeping staff, including Lapastora, did not alter established facts proving the contrary. The parties cannot evade the application of labor laws by mere expedient of a contract considering that labor and employment are matters imbued with public interest. It cannot be subjected to the agreement of the parties but rather on existing laws designed specifically for the protection of labor. Thus, it had been repeatedly stressed in a number of jurisprudence that "[a] party cannot dictate, by the mere expedient of a unilateral declaration in a contract, the character of its business, *i.e.*, whether as labor-only contractor or as job contractor, it being crucial that its character be measured in terms of and determined by the criteria set by statute."[33]

The Court finds no compelling reason to deviate from the findings of the LA and NLRC, especially in this case when the same was affirmed by the CA. It is settled that findings of fact made by LAs, when affirmed by the NLRC, are entitled not only to great respect but even finality and are binding on this

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[33] *Almeda, et al. v. Asahi Glass Philippines, Inc.*, 586 Phil. 103, 116 (2008).

[34] *Metro Transit Organization, Inc. v. NLRC*, 367 Phil. 259, 263 (1999).

Court especially when they are supported by substantial evidence.[34]

The principle of *stare decisis* is not applicable

Still, OHI argues that the legality of the closure of its business had been the subject of the separate case of *Ocampo v. OHI*, where the NLRC upheld the validity of the termination of all the employees of OHI due to cessation of operations. It asserts that since the ruling was affirmed by the CA and, eventually by this Court, the principle of *stare decisis* becomes applicable. Considering the closure of its business, Lapastora can no longer be reinstated and should instead be awarded backwages up to the last day of operations of the company only, specifically on October 1, 2000.[35]

In *Ting v. Velez-Ting*,[36] the Court elaborated on the principle of *stare decisis*, thus:

> The principle of *stare decisis* enjoins adherence by lower courts to doctrinal rules established by this Court in its final decisions. It is based on the principle that once a question of law has been examined and decided, it should be deemed settled and closed to further argument. Basically, it is a bar to any attempt to relitigate the same issues, necessary for two simple reasons: economy and stability. In our jurisdiction, the principle is entrenched in Article 8 of the Civil Code.[37] (Citations omitted)

Verily, the import of the principle is that questions of law that have been decided by this Court and applied in resolving earlier cases shall be deemed the prevailing rule which shall be binding on future cases dealing on the same intricacies. Apart from saving the precious time of the Court, the application of this principle is essential to the consistency of the rulings of the Court which is significant in its role as the final arbiter of judicial controversies.

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[35] *Rollo*, pp. 20-21.

[36] 601 Phil. 676 (2009).

[37] *Id.* at 687.

The CA correctly ruled that the principle of *stare decisis* finds no relevance in the present case. To begin with, there is no doctrine of law that is similarly applicable in both the present case and in *Ocampo v. OHI*. While both are illegal dismissal cases, they are based on completely different sets of facts and involved distinct issues. In the instant case, Lapastora cries illegal dismissal after he was arbitrarily placed on a floating status on mere suspicion that he was involved in theft incidents within the company premises without being given the opportunity to explain his side or any formal investigation of his participation. On the other hand, in *Ocampo v. OHI*, the petitioners therein questioned the validity of OHI's closure of business and the eventual termination of all the employees. Thus, the NLRC ruled upon both cases differently.

Nonetheless, the Court finds the recognition of the validity of OHI's cessation of business in the Decision dated November 22, 2002 of the NLRC, which was affirmed by the CA and this Court, a supervening event which inevitably alters the judgment award in favor of Lapastora. The NLRC noted that OHI complied with all the statutory requirements, including the filing of a notice of closure with the DOLE and furnishing written notices of termination to all employees effective 30 days from receipt.[38] OHI likewise presented financial statements substantiating its claim that it is operating at a loss and that the closure of business is necessary to avert further losses.[39] The action of the OHI, the NLRC held, is a valid exercise of management prerogative.

Thus, while the finding of illegal dismissal in favor of Lapastora subsists, his reinstatement was rendered a legal impossibility with OHI's closure of business. In *Galindez v. Rural Bank of Llanera, Inc.*,[40] the Court noted:

Reinstatement presupposes that the previous position from which

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[38] *Rollo*, p. 197.

[39] *Id*. at 199.

[40] G.R. No. 84975, July 5, 1989, 175 SCRA 132.

one had been removed still exists or there is an unfilled position more or less of similar nature as the one previously occupied by the employee. Admittedly, no such position is available. Reinstatement therefore becomes a legal impossibility. The law cannot exact compliance with what is impossible.[41]

Considering the impossibility of Lapastora's reinstatement, the payment of separation pay, in lieu thereof, is proper. The amount of separation pay to be given to Lapastora must be computed from March 1995, the time he commenced employment with OHI, until the time when the company ceased operations in October 2000.[42] As a twin relief, Lapastora is likewise entitled to the payment of backwages, computed from the time he was unjustly dismissed, or from February 24, 2000 until October 1, 2000 when his reinstatement was rendered impossible without fault on his part.[43]

Finally, for OHI's failure to prove the fact of payment, the Court sustains the award for the payment of service incentive leave pay and 13th month pay. The rule, as stated in *Mantle Trading Services, Inc. and/or Del Rosario v. NLRC, et al.*,[44] is that "the burden rests on the employer to prove payment, rather than on the employee to prove nonpayment. The reason for the rule is that the pertinent personnel files, payrolls, records, remittances and other similar documents — which will show that overtime, differentials, service incentive leave and other claims of workers have been paid — are not in the possession of the employee but in the custody and absolute control of the employer."[45] Considering that OHI did not dispute Lapastora's claim for nonpayment of the mentioned benefits and opted to disclaim employer-employee relationship, the presumption is that the said claims were not paid.

The award of attorney's fees of 10% of the monetary awards is likewise sustained considering that Lapastora was forced to

[41] *Id.* at 139, citing *Pizza Inn/Consolidated Foods Corp. v. NLRC*, 245 Phil. 738, 743 (1988).

[42] *Industrial Timber Corporation v. NLRC*, 323 Phil. 753, 761 (1996).

[43] *Golden Ace Builders, et al. v. Talde*, 634 Phil. 364, 371 (2010).

[44] 611 Phil. 570 (2009).

[45] *Id.* at 581-582.

litigate and, thus, incurred expenses to protect his rights and interests.[46]"

WHEREFORE, the Decision dated April 28, 2009 of the Court of Appeals in CA-G.R. SP No. 103699 is **AFFIRMED with MODIFICATION** in that OHI is hereby **ORDERED** to pay Allan Lapastora the following: (1) separation pay, in lieu of reinstatement, computed from the time of his employment until the time of its closure of business, or from March 1995 to October 2000; (2) backwages, computed from the time of illegal dismissal until cessation of business, or from February 24, 2000 to October 1, 2000; (3) service incentive leave pay and 13th month pay; and (4) attorneys fees.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 196784. January 13, 2016]

PEOPLE OF THE PHILIPPINES, *plantiff-appellee, vs.* **MA. FE TORRES SOLINA** ***a.k.a.*** **MA. FE BAYLON GALLO,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 8042 (THE MIGRANT WORKERS AND OVERSEAS FILIPINOS ACT OF 1995); ILLEGAL RECRUITMENT IN LARGE SCALE;

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[46] *Kaisahan at Kapatiran ng mga Manggagawa at Kawani sa MWC-East Zone Union, et al. v. Manila Water Company, Inc.*, 676 Phil. 262, 276 (2011).

ELEMENTS.— All the elements of the crime of illegal recruitment in large scale are present, namely: (1) the offender has no valid license or authority required by law to enable him to lawfully engage in recruitment and placement of workers; (2) the offender undertakes any of the activities within the meaning of "recruitment and placement" under Article 13 (b) of the Labor Code, or any of the prohibited practices enumerated under Article 34 of the said Code (now Section 6 of R.A. 8042); and (3) the offender committed the same against three (3) or more persons, individually or as a group. More importantly, all the said elements have been established beyond reasonable doubt.

2. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; GREATER WEIGHT IS GIVEN TO THE POSITIVE IDENTIFICATION OF THE ACCUSED BY THE PROSECUTION WITNESSES THAN THE ACCUSED'S DENIAL.—**Accused-appellant's defense of denial cannot overcome the positive testimonies of the witnesses presented by the prosecution. As is well-settled in this jurisdiction, greater weight is given to the positive identification of the accused by the prosecution witnesses than the accused's denial and explanation concerning the commission of the crime. Based on the factual findings of the RTC, the combined and corroborative testimonies of the witnesses for the prosecution show that it was appellant herself who informed them of the existence of the job vacancies in Japan and of the requirements needed for the processing of their applications. It was properly established that it was accused-appellant who accompanied the private complainants to undergo training and seminar conducted by a person who represented himself as connected with the Technical Education and Skills Development Authority *(TESDA)*. Evidence was also presented that the private complainants, relying completely on accused-appellant's representations, entrusted their money to her. Finally, since there were six (6) victims, the RTC therefore did not commit any error in convicting accused-appellant of the charge of illegal recruitment in large scale.

3. **CRIMINAL LAW; REVISED PENAL CODE; *ESTAFA* UNDER ARTICLE 315(2) (a); ELEMENTS; A PERSON MAY BE CHARGED AND CONVICTED SEPARATELY**

OF ILLEGAL RECRUITMENT AND *ESTAFA*.— It is settled that a person may be charged and convicted separately of illegal recruitment under R.A. 8042, in relation to the Labor Code, and *estafa* under Article 315 (2) (a) of the Revised Penal Code. The elements of *Estafa* are: (a) that the accused defrauded another by abuse of confidence or by means of deceit, and (b) that damage or prejudice capable of pecuniary estimation is caused to the offended party or third person. As aptly found by the RTC and affirmed by the CA, accused-appellant defrauded the private complainants into believing that she had the authority and capability to send them for overseas employment in Japan and because of such assurances, private complainants each parted with ₱20,000.00 in exchange for said promise of future work abroad. Still, accused-appellant's promise never materialized, thus, private complainants suffered damages to the extent of the sum of money that they had delivered to accused-appellant.

4. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS OF THE TRIAL COURT THEREON ARE ENTITLED TO GREAT RESPECT BECAUSE IT HAS THE ADVANTAGE OF OBSERVING THE DEMEANOR OF WITNESSES AS THEY TESTIFY.—** [S]ettled is the rule that the findings and conclusion of the trial court on the credibility of witnesses are entitled to great respect because the trial courts have the advantage of observing the demeanor of witnesses as they testify. The determination by the trial court of the credibility of witnesses, when affirmed by the appellate court, as in this case, is accorded full weight and credit as well as great respect, if not conclusive effect.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
Public Attorney's Office for accused-appellant.

D E C I S I ON

PERALTA, *J*.:

Accused-appellant Ma. Fe Torres Solina a.k.a. Ma. Fe Baylon Gallo appeals her case to this Court after the Court of Appeals *(CA)* in its Decision[1] dated March 11, 2010 affirmed with modification her conviction beyond reasonable doubt of the crime of illegal recruitment in large scale under Republic Act No. 8042, otherwise known as the *Migrant Workers and Overseas Filipinos Act of 1995 (R.A. 8042)* imposing the penalty of life imprisonment and ordered to pay a fine in the amount of ₱200,000.00 with subsidiary liability in case of insolvency and six (6) counts of Estafa under Article 315 (2) (a) of the Revised Penal Code *(RPC),* imposing the indeterminate penalty of one (1) year, eight (8) months and twenty (20) days *prision correccional,* as minimum, to five (5) years, five (5) months and eleven (11) days of *prision mayor,* as maximum, for each count and ordered to return to each complainant the amount of ₱20,000.00 as actual damages, handed down by the Regional Trial Court *(RTC),* Branch 147, in Makati City.

Accused-appellant was arraigned and tried under an Information dated June 16, 2006, charging her of the crime of illegal recruitment in large scale under R.A. 8042 thus:

> That in or about and sometime during the period from September, 2005 up to February 2006, in the City of Makati, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, representing herself to have capacity to contract, enlist, transport and refer workers for employment abroad, did then and there, without any license or authority, recruit for overseas employment and for a fee, the following complainants, to wit:
>
> MONICA B. HIMAN
> ERWIN B. DELA VEGA

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[1] Penned by Associate Justice Josefina Guevara-Salonga, with the Associate Justices Pampio A. Abarintos and Jane Aurora C. Lantion, concurring, *rollo*, pp. 2-13.

GLADYS Z. REMORENTO
JOEY P. BACOLOD
MARLON B. DELACRUZ
AUGUSTO A. CEZAR GARCES
LEYNARD B. TUTANES

thus in a large scale amounting to economic sabotage but said accused failed to deploy said complainants and likewise failed to return the money incurred by them and the documents submitted despite demands, to the latter's damage and prejudice.

CONTRARY TO LAW.[2]

Accused-appellant was also charged and tried under seven (7) separate informations for estafa under Article 315, par. 2 (a) of the RPC, to wit:

1) That in or about and sometime during the month of September 2005, in the City of Makati, Philippines, a place within the jurisdiction of this Honorable Court, the abovenamed accused, did then and there willfully, unlawfully and feloniously, defraud complainant MONICA HIMAN y BASAMOT in the following manners, to wit: the said accused by means of false manifestations and fraudulent representations made prior and simultaneously with the commission of fraud, to the effect that she have the capacity to deploy complainant for overseas employment and could facilitate the necessary papers, in connection therewith if given the necessary amount and by means of other deceit of similar import, induced and succeeded in inducing complainant to give and deliver and, in fact, the complainant gave and delivered to said accused the total amount of Php20,000.00 on the strength of said manifestation and representation which turned out to be false, to the damage and prejudice of said complainant in the aforementioned amount of ₱20,000.00.

CONTRARY TO LAW.[3]

2) That in or about and sometime during the month of October, 2005, in the City of Makati, Philippines, a place within the jurisdiction of this Honorable Court, the abovenamed accused, did then and there willfully, unlawfully and feloniously, defraud complainant JOEY

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[2] CA *rollo,* p. 9.

[3] *Id*. at 11.

BACOLOD y PORTILLES in the following manners, to wit: the said accused by means of false manifestations and fraudulent representations made prior and simultaneously with the commission of fraud, to the effect that she have the capacity to deploy complainant for overseas employment and could facilitate the necessary papers, in connection therewith if given the necessary amount and by means of other deceit of similar import, induced and succeeded in inducing complainant to give and deliver and, in fact, the complainant gave and delivered to said accused the total amount of ₱hp20,000.00 on the strength of said manifestation and representation which turned out to be false, to the damage and prejudice of said complainant in the aforementioned amount of ₱20,000.00.

CONTRARY TO LAW.[4]

3) That in or about and sometime during the month of October, 2005, in the City of Makati, Philippines, a place within the jurisdiction of this Honorable Court, the abovenamed accused, did then and there willfully, unlawfully and feloniously, defraud complainant MARLON DELA CRUZ y BOLESA in the following manners, to wit: the said accused by means of false manifestations and fraudulent representations made prior and simultaneously with the commission of fraud, to the effect that she have the capacity to deploy complainant for overseas employment and could facilitate the necessary papers, in connection therewith if given the necessary amount and by means of other deceit of similar import, induced and succeeded in inducing complainant to give and deliver and, in fact, the complainant gave and delivered to said accused the total amount of Php20,000.00 on the strength of said manifestation and representation which turned out to be false, to the damage and prejudice of said complainant in the aforementioned amount of ₱20,000.00.

CONTRARY TO LAW.[5]

4) That in or about and sometime during the month of November, 2005, in the City of Makati, Philippines, a place within the jurisdiction of this Honorable Court, the abovenamed accused, did then and there willfully, unlawfully and feloniously, defraud complainant ERWIN DELA VEGA y BRIONES in the following manners, to wit: the said accused by means of false manifestations and fraudulent representations

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[4] *Id*. at 12.

[5] *Id*. at 13.

made prior and simultaneously with the commission of fraud, to the effect that she have the capacity to deploy complainant for overseas employment and could facilitate the necessary papers, in connection therewith if given the necessary amount and by means of other deceit of similar import, induced and succeeded in inducing complainant to give and deliver and, in fact, the complainant gave and delivered to said accused the total amount of Php20,000.00 on the strength of said manifestation and representation which turned out to be false, to the damage and prejudice of said complainant in the aforementioned amount of ₱20,000.00.

CONTRARY TO LAW.[6]

5) That in or about and sometime during the month of November, 2005, in the City of Makati, Philippines, a place within the jurisdiction of this Honorable Court, the abovenamed accused, did then and there willfully, unlawfully and feloniously, defraud complainant GLADYS REMORENTO y ZAMORA in the following manners, to wit: the said accused by means of false manifestations and fraudulent representations made prior and simultaneously with the commission of fraud, to the effect that she have the capacity to deploy complainant for overseas employment and could facilitate the necessary papers, in connection therewith if given the necessary amount and by means of other deceit of similar import, induced and succeeded in inducing complainant to give and deliver and, in fact, the complainant gave and delivered to said accused the total amount of Php20,000.00 on the strength of said manifestation and representation which turned out to be false, to the damage and prejudice of said complainant in the aforementioned amount of ₱20,000.00.

CONTRARY TO LAW.[7]

6) That in or about and sometime during the month of February, 2006, in the City of Makati, Philippines, a place within the jurisdiction of this Honorable Court, the abovenamed accused, did then and there willfully, unlawfully and feloniously, defraud complainant AUGUSTO CEZAR GARCES y ALIMAGNO in the following manners, to wit: the said accused by means of false manifestations and fraudulent representations made prior and simultaneously with the commission or fraud, to the effect that she have the

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[6] *Id*. at 14.

[7] *Id*. at 15.

capacity to deploy complainant for overseas employment and could facilitate the necessary papers, in connection therewith if given the necessary amount and by means of other deceit of similar import, induced and succeeded in inducing complainant to give and deliver and, in fact, the complainant gave and delivered to said accused the total amount of Php20,000.00 on the strength of said manifestation and representation which turned out to be false, to the damage and prejudice of said complainant in the aforementioned amount of ₱20,000.00.

CONTRARY TO LAW.[8]

7) That in or about and sometime during the month of February, 2006, in the City of Makati, Philippines, a place within the jurisdiction of this Honorable Court, the abovenamed accused, did then and there willfully, unlawfully and feloniously, defraud complainant LEYNARD TUTANES y BADIOLA in the following manners, to wit: the said accused by means of false manifestations and fraudulent representations made prior and simultaneously with the commission of fraud, to the effect that she have the capacity to deploy complainant for overseas employment and could facilitate the necessary papers, in connection therewith if given the necessary amount and by means or other deceit of similar import, induced and succeeded in inducing complainant to give and deliver and, in fact, the complainant gave and delivered to said accused the total amount of Php20,000.00 on the strength of said manifestation and representation which turned out to be false, to the damage and prejudice of said complainant in the aforementioned amount of ₱20,000.00.

CONTRARY TO LAW.[9]

Accused-appellant pleaded "not guilty" and after trial on the merits, the RTC found accused-appellant guilty beyond reasonable doubt of the crimes charged except for one charge of estafa which was provisionally dismissed by the RTC, upon motion of accused-appellant, without prejudice to reinstatement considering that the subpoena sent to complainant Monica B. Himan had not been duly served upon her person. The dispositive portion of the decision reads:

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[8] *Id*. at 16.

[9] *Id*. at 17.

WHEREFORE, premises considered, judgment is rendered in these cases as follows:

1. In Crim. Case No. 06-1275, finding herein accused Ma. Fe Torres Solina a.k.a. Ma. fe Baylon Gallo, Guilty Beyond Reasonable Doubt of Illegal Recruitment in Large Scale and sentencing her to suffer the indeterminate penalty of six (6) years and one (l) day as minimum to eight (8) years as maximum, and to pay a fine in the amount of ₱200,000.00 with subsidiary liability in case of insolvency;

2. In Crim. Cases Nos. 06-1277 to 06-1282, finding the said accused Ma. Fe Torres Solina a.k.a. Ma. Fe Baylon Gallo, Guilty Beyond Reasonable Doubt of six (6) counts of Estafa under Art. 315, par. 2 (a), Revised Penal Code, and sentencing her to suffer for each count, the indeterminate penalty of one (1) year, eight (8) months, and twenty (20) days *prision correccional* as minimum to five (5) years, five (5) months, and eleven (11) days of *prision mayor* as maximum; to return to each private complainant, namely, Joey P. Bacolod, Marlon B. dela Cruz, Erwin B. Dela Vega, Gladys Z. Remorento, Augusto Cezar A. Garces, and Leynard B. Tutanes, the amount of ₱20,000.00 as actual damages.

SO ORDERED.

Makati City, October 30, 2007.[10]

Thereafter, accused-appellant filed a Notice of Appeal,[11] thus elevating the cases to the CA. On March 11, 2010, the CA affirmed the decision of the RTC with modification, the dispositive portion of which reads as follows:

WHEREFORE, the foregoing considered, the instant appeal is hereby DENIED. However, the assailed Decision dated 30 October 2007 is MODIFIED in that the appellant is hereby sentenced to suffer the penalty of LIFE IMPRISONMENT as penalty for the crime of illegal recruitment in large scale and is ordered to pay a fine in the amount of ₱200,000.00 with subsidiary liability in case of insolvency. No costs.

SO ORDERED.

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[10] *Id*. at 32.

[11] *Id*. at 33.

Thus, the case is now before this Court after accused-appellant filed her Notice of Appeal on March 24, 2010.[12]

Accused-appellant and the Office of the Solicitor General (*OSG)* both adopted their respective briefs filed before the CA.[13]

In her Brief, accused-appellant assigned the following errors:

I.

THE COURT *A QUO* GRAVELY ERRED IN REJECTING THE ACCUSED-APPELLANT'S DEFENSE.

II.

THE COURT *A QUO* GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANT GUILTY DESPITE THE PROSECUTION'S FAILURE TO PROVE HER GUILT BEYOND REASONABLE DOUBT.

Accused-appellant maintains her denial that she was engaged in the business of recruiting possible workers for jobs abroad. She insists that like all the private complainants, she was also an applicant for a job as an overseas worker and that she merely accompanied them to a recruitment agency. She alleges that private complainant Dela Vega and Dela Cruz conspired together, used her name, and represented themselves to the other applicants as being authorized to collect documents and fees and that she only met the other private complainants in the trainings/seminars she attended. Anent the acknowledgment receipt signed by her and presented by the prosecution as evidence, accused-appellant argues that it does not prove that the money received by her was the consideration for private complainant Garces' placement abroad.

As to the charges of estafa, accused-appellant claims that the prosecution failed to prove that she employed deceit to entice private complainants to part with their money because she did not represent or pass herself off as a licensed recruiter.

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[12] *Id*. at 130-131.

[13] *Id.* at 40-67 (for accused-appellant); 84-108 (for the OSG).

After a careful review of the records, this Court finds no reason to reverse the decision of the CA.

All the elements of the crime of illegal recruitment in large scale are present, namely: (1) the offender has no valid license or authority required by law to enable him to lawfully engage in recruitment and placement of workers; (2) the offender undertakes any of the activities within the meaning of "recruitment and placement" under Article 13 (b)[14] of the Labor Code, or any of the prohibited practices enumerated under Article 34 of the said Code (now Section 6 of R.A. 8042); and (3) the offender committed the same against three (3) or more persons, individually or as a group. More importantly, all the said elements have been established beyond reasonable doubt. Thus, as ruled by the CA:

> First off, the first element is admittedly present. Appellant had no license to recruit or engage in placement activities and she herself had admitted to her lack of authority to do so. The Certification dated 7 April 2006 issued by the POEA also undeniably establishes this fact.
>
> In like manner, the second and third elements also obtain in this case. On separate occasions and under different premises, appellant met with and herself recruited the private complainants, six (6) in number, giving them the impression that she had the capability to facilitate applications for employment as factory workers in Japan. All these complainants testified that appellant had promised them employment for a fee amounting to ₱20,000.00. Their testimonies corroborate each other on material points, such as the amount exacted by appellant as placement fee, the country of destination, the training that they had to undergo to qualify for employment and the submission of documentary requirements needed for the same. The private complainants were positive and categorical in testifying that they personally met the appellant and that she asked for, among others,

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[14] [A]ny act of canvassing, enlisting, contracting, transporting, utilizing, hiring or procuring workers, and includes referrals, contract services, promising or advertising for employment, locally or abroad, whether for profit or not; Provided, That any person or entity which, in any manner, offers or promises for a fee employment to two or more persons shall be deemed engaged in recruitment or placement.

the payment of placement fees in consideration for the promised employment in Japan.[15]

Accused-appellant's defense of denial cannot overcome the positive testimonies of the witnesses presented by the prosecution. As is well-settled in this jurisdiction, greater weight is given to the positive identification of the accused by the prosecution witnesses than the accused's denial and explanation concerning the commission of the crime.[16] Based on the factual findings of the RTC, the combined and corroborative testimonies of the witnesses for the prosecution show that it was appellant herself who informed them of the existence of the job vacancies in Japan and of the requirements needed for the processing of their applications. It was properly established that it was accused-appellant who accompanied the private complainants to undergo training and seminar conducted by a person who represented himself as connected with the Technical Education and Skills Development Authority *(TESDA)*. Evidence was also presented that the private complainants, relying completely on accused-appellant's representations, entrusted their money to her. Finally, since there were six (6) victims, the RTC therefore did not commit any error in convicting accused-appellant of the charge of illegal recruitment in large scale.

This Court is also in agreement with the ruling of the CA that accused- appellant is guilty of six (6) counts of estafa under Article 315, par. 2 (a) or the Revised Penal Code, as amended. It is settled that a person may be charged and convicted separately of illegal recruitment under R.A. 8042, in relation to the Labor Code, and *estafa* under Article 315 (2) (a) of the Revised Penal Code.[17] The elements of *Estafa* are: (a) that the accused defrauded another by abuse of confidence or by means of deceit, and (b) that damage or prejudice capable of pecuniary estimation is caused to the offended party or third person.[18]

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[15] *Rollo*, p. 126.

[16] *People v. Gharbia,* 369 Phil. 942, 953 (1999).

[17] *People v. Gallemit*, G.R. No. 197539, June 2, 2014, 724 SCRA 359, 382.

[18] *People v. Arnaiz*, G.R. No. 205153, September 9, 2015.

As aptly found by the RTC and affirmed by the CA, accused-appellant defrauded the private complainants into believing that she had the authority and capability to send them for overseas employment in Japan and because of such assurances, private complainants each parted with ₱20,000.00 in exchange for said promise of future work abroad. Still, accused-appellant's promise never materialized, thus, private complainants suffered damages to the extent of the sum of money that they had delivered to accused-appellant.

To reiterate, settled is the rule that the findings and conclusion of the trial court on the credibility of witnesses are entitled to great respect because the trial courts have the advantage of observing the demeanor of witnesses as they testify.[19] The determination by the trial court of the credibility of witnesses, when affirmed by the appellate court, as in this case, is accorded full weight and credit as well as great respect, if not conclusive effect.[20]

Anent the CA's modification as to the penalty imposed, this Court finds no reason for its correction. The trial court imposed the indeterminate penalty of six (6) years and one (1) day, as minimum, to eight (8) years, as maximum, for the crime of illegal recruitment in large scale, whereas the proper penalty should have been life imprisonment, as provided under Section 7 (b) of R.A. 8042. As ruled by the CA:

> Be that as it may, this Court finds reversible error on the part of the trial court respecting the penalty imposed on the appellant for the crime of large scale illegal recruitment. Under the last paragraph of Section 6 of R.A. 8042, illegal recruitment shall be considered an offense involving economic sabotage if committed in large scale, *viz.,* committed against three or more persons individually or as a group. In the present case, six (6) private complainants testified against appellant's acts of illegal recruitment, thereby rendering her acts tantamount to economic sabotage. Under Section 7 (b) of R.A. 8042, the penalty of life imprisonment and a fine of not less than

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[19] *People v. Lazaro, Jr.*, 619 Phil. 235, 254 (2009).

[20] *People v. Sabadlab*, 679 Phil 425, 438 (2012).

₱500,000.00 nor more than ₱1,000,000.00 shall be imposed if illegal recruitment constitutes economic sabotage.

Nevertheless, the CA erred in not increasing the amount of fine imposed by the RTC. In modifying the penalty to life imprisonment, the CA cited Section 7 (b) of R.A. 8042 because the present case involves economic sabotage, however, the same provision reads, *[t]he penalty of life imprisonment* ***and a fine of not less than five hundred thousand pesos (₱500,000.00) nor more than one million pesos (₱1,000,000.00)*** *shall be imposed if illegal recruitment constitute economic sabotage*. Hence, the fine imposed should have been not less than five hundred thousand pesos (₱500,000.00) nor more than one million pesos (₱1,000,000.00) and not two hundred thousand pesos (₱200,000.00) as ruled by the RTC and the CA.

WHEREFORE, the appeal is **DISMISSED** and the Court of Appeals Decision dated March 11, 2010 is **AFFIRMED** with the **MODIFICATION** that accused-appellant Ma. Fe Torres Solina a.k.a. Ma Fe Baylon Gallo is **ORDERED** to **PAY** a fine in the amount of Five Hundred Thousand (₱500,000.00) Pesos with subsidiary liability in case of insolvency, instead of the ₱200,000.00 adjudged earlier by the RTC and the CA for the crime of illegal recruitment in large scale. Anent the six (6) counts of Estafa under Article 315, paragraph 2 (a), Revised Penal Code, accused-appellant is **ORDERED** to **RETURN** to each private complainant the amount of Twenty Thousand Pesos (₱20,000.00), plus the legal interest of six percent (6%) per annum from the finality of judgment until fully paid, as actual damages.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 197665. January 13, 2016]

P/S INSP. SAMSON B. BELMONTE, SPOl FERMO R. GALLARDE, PO3 LLOYD F. SORIA, POl HOMER D. GENEROSO, POl SERGS DC. MACEREN, PO3 AVELINO L. GRAVADOR, PO2 FIDEL O. QUEREJERO, and POl JEROME T. NOCHEFRANCA, JR., *petitioners, vs.* **OFFICE OF THE DEPUTY OMBUDSMAN FOR THE MILITARY AND OTHER LAW ENFORCEMENT OFFICES, OFFICE OF THE OMBUDSMAN,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; PROHIBITION; WRIT THEREOF ISSUED AGAINST A TRIBUNAL, CORPORATION, BOARD OR PERSON WHO ACTED WITHOUT OR IN EXCESS OF JURISDICTION OR WITH GRAVE ABUSE OF DISCRETION AND THERE IS NO APPEAL OR ANY OTHER PLAIN, SPEEDY OR ADEQUATE REMEDY IN THE ORDINARY COURSE OF LAW.—** For a party to be entitled to a writ of prohibition, he must establish the following requisites: (a) it must be directed against a tribunal, corporation, board or person exercising functions, judicial or ministerial; (b) the tribunal, corporation, board or person has acted without or in excess of its jurisdiction, or with grave abuse of discretion; and (c) there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law. A cursory reading of the records of the case readily reveals the absence of the second and third requisites. *First,* the Court does not find that public respondent gravely abused its discretion in issuing the subject Decision.

2. **ID.; ID.; ID.; ID.; GRAVE ABUSE OF DISCRETION IS A CAPRICIOUS AND WHIMSICAL EXERCISE OF JUDGMENT SO PATENT AND GROSS AS TO AMOUNT TO AN EVASION OF A POSITIVE DUTY OR A VIRTUAL**

REFUSAL TO PERFORM A DUTY ENJOINED BY LAW.— Grave abuse of discretion is a capricious and whimsical exercise of judgment so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, as where the power is exercised in an arbitrary and despotic manner because of passion or hostility.

3. **ID.; ID.; ID.; ID.; ID.; PROHIBITION IS NOT A PROPER REMEDY IN CASE AT BAR.—** Petitioners, in this case, must prove that public respondent committed not merely reversible error, but grave abuse of discretion amounting to lack or excess of jurisdiction. Mere abuse of discretion is not enough; it must be grave. But the Court observes that in arriving at the assailed Decision, public respondent carefully weighed the rights and interests of the parties *vis-a-vis* the evidence they presented to substantiate the same. x x x *Second,* petitioners filed the instant action when they clearly had some other plain, speedy, and adequate remedy in the ordinary course of law. A remedy is considered plain, speedy and adequate if it will promptly relieve the petitioner from the injurious effects of the judgment or rule, order or resolution of the lower court or agency. As public respondent pointed out, the remedy of a motion for reconsideration was still available to petitioners, as expressly granted by the following Section 8 of Rule III of the Rules of Procedure of the Office of the Ombudsman, as amended by Administrative Order *(AO)* No. 17.

4. **ID.; ID.; ID.; ID.; ID.; ID.; OMBUDSMAN'S DECISION IMMEDIATELY IMPLEMENTING PENALTY OF DISMISSAL FROM SERVICE DOES NOT VIOLATE ANY VESTED RIGHT FOR PETITIONERS WHO ARE CONSIDERED PREVENTIVELY SUSPENDED DURING THEIR APPEAL.—** [T]he mere fact that the Ombudsman's decision imposing the penalty of dismissal from service is immediately executory, alone, does not justify the issuance of an injunctive writ to stay the implementation thereof. x x x This may be so because, as the Court further explained, the immediate implementation of an order of dismissal does not violate any vested right for petitioners who are considered preventively suspended during their appeal.

5. **ID.; ID.; ID.; ID.; ID.; ID.; PROHIBITION IS NOT INTENDED TO PROVIDE A REMEDY FOR ACTS ALREADY**

ACCOMPLISHED; CASE AT BAR.— [E]ven granting the propriety of the instant petition, the same can no longer be given effect under the circumstances availing. Note that the instant petition particularly sought the Court to issue a Writ of Prohibition and Temporary Restraining Order and/or Writ of Preliminary Injunction commanding public respondent to desist from implementing its Decision dated May 24, 2011. But as aptly pointed out by public respondent, the assailed Decision had already been modified by its September 6, 2011 Order finding petitioners guilty, not of Grave Misconduct, but of Conduct Prejudicial to the Best Interest of the Service and imposing the penalty of suspension from office for a period of six (6) months and (1) day without pay, instead of dismissal from service. Accordingly, considering that the act sought to be enjoined has already been modified, there is nothing more to restrain. Indeed, prohibition is a preventive remedy seeking that a judgment be rendered directing the defendant to desist from continuing with the commission of an act perceived to be illegal. Its proper function is to prevent the doing of an act which is about to be done. When, however, under the circumstances, the act sought to be restrained can no longer be committed, resort to such recourse is rendered futile for prohibition is not intended to provide a remedy for acts already accomplished.

APPEARANCES OF COUNSEL

Narzal B. Mallares for petitioners.
Raymund J.A. Mercado for private complainants.
Office of the Solicitor General for public respondent.

D E C I S I O N

PERALTA, *J.*:

Before the Court is a Petition for Prohibition with Prayer for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction under Rule 65 of the Rules of Court seeking to prohibit the Deputy Ombudsman for the Military and Other Law Enforcement Offices from implementing its

Decision[1] dated May 24, 2011 issued in OMB-P-A- 07-1396-L finding petitioners guilty of Grave Misconduct and imposing the penalty of Dismissal from Service, together with its accessory penalties.

The instant case stemmed from a Complaint[2] filed by Sandra Uy Matiao against petitioners P/S Insp. Samson B. Belmonte, SPOl Fermo R. Gallarde, PO3 Lloyd F. Soria, POl Homer D. Generoso, POl Sergs DC. Maceren, PO3 Avelino L. Gravador, PO2 Fidel O. Querejero, POl Jerome T. Nochefranca, Jr., members of the Regional Traffic Management Office-7 *(RTMO-7)* as well as P/Supt. Eleuterio N. Gutierrez, Regional Director of the Traffic Management Group Region 7 *(TMG-R7).* In said Complaint, Sandra alleged that sometime on September 3, 2007 in Dumaguete City, petitioners flagged down her vehicle because the 2007 LTO sticker was not displayed on its windshield. Consequently, petitioners proceeded to seize and impound the subject vehicle without any warrant or existing complaint for theft. Thereafter, Sandra alleged that they asked her if she could shoulder their lodging expenses at the OK Pensionne House and treat them for dinner while an initial macro-etching examination was being conducted on her vehicle. Sandra acceded. While on their way to dinner, however petitioner Belmonte told Sandra to just settle the problem for three hundred thousand pesos (₱300,000.00).[3]

The next day, the macro-etching examination revealed that the engine, chassis and production numbers of Sandra's vehicle were tampered. Because of this, the vehicle was placed under the list of stolen vehicles and was subsequently brought to the PNP-TMG 7 Office in Cebu City under the custody of P/Supt. Gutierrez.

In a demand letter dated September 14, 2007, Sandra requested Gutierrez to release the subject vehicle. Immediately thereafter, she received a phone call from petitioner Belmonte threatening

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[1] Penned by Graft Investigation & Prosecution Officer Yvette Marie S. Evaristo, with Director Dennis L. Garcia, concurring; *rollo,* pp. 21-26.

[2] *Id.* at 47-51.

[3] *Id.* at 21-22.

to file criminal charges against her for violations of Republic Act *(RA)* No. 6539, otherwise known as the *Anti-Carnapping Act* and Presidential Decree *(PD)* No. 1612, otherwise known as the *Anti-Fencing Law.* Despite such threat, Sandra filed a civil case against petitioners for Recovery of Personal Property with Prayer for Issuance of a Writ of Replevin before the RTC of Cebu City. Conversely, petitioners filed the criminal cases they had previously threatened to file against Sandra before the Prosecutor's Office of Dumaguete City, docketed as I.S. No. 2007-443.[4]

On December 12, 2007, Sandra filed the subject Administrative Complaint for Grave Misconduct and Abuse of Authority against petitioners before the Visayas Office of the Ombudsman. In their Counter-Affidavits, petitioners denied the charges and pleaded, as part of their defense, the findings of Prosecutor May Flor V. Duka on the criminal charges for Anti- Carnapping and Anti-Fencing in her Resolution dated December 14, 2007 which upheld, in their favor, the presumption of regularity in their performance of duty. The Resolution noted that petitioners were on official duty at the time when they apprehended and seized the subject motor vehicle for not bearing the 2007 LTO sticker.

Petitioners also invoked good faith as regards the allegation that their hotel accommodation was paid for by Sandra claiming to be in honest belief that it was P/Supt. Manuel Vicente of the Negros Traffic Management Office *(NTMO)* who billeted them at the OK Pensione House at said office's own expense, and without any inkling that it was Sandra who had paid for the same. They further averred that Sandra is guilty of forum shopping due to the fact that she had already filed a civil case for Recovery of Personal Property before the RTC of Cebu City, which contains similar issues with the administrative case except for the allegation of extortion, a mere afterthought.[5]

In her Reply-Affidavit, Sandra denied the forum shopping allegation in stressing that her present cause of action pertains

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[4] *Id.* at 22.

[5] *Id.* at 22-23.

to petitioners' acts of extortion while the civil case for Recovery of Personal Property seeks the recovery of the subject motor vehicle. She also averred that petitioners tried to make it appear that there were irregularities in her vehicle so that they could extort money from her. But when she refused to succumb to their demands, they filed the Anti-Carnapping and Anti-Fencing charges.

On May 24, 2011, the Office of the Ombudsman issued the assailed Decision finding petitioners guilty of Grave Misconduct. It ruled that Sandra presented substantial evidence, such as hotel receipts, to support her allegations that petitioners demanded and received favours from her as consideration for the processing of the macro-etching examination of the subject vehicle. Accordingly, the dispositive portion of the Decision reads:

> WHEREFORE, premises considered, respondents P/S INSP. SAMSON B. BELMONTE, SPO3 LLOYD F. SORIA, POI HOMER D. GENEROSO, POI JEROME T. NOCHEFRANCA, JR., PO3 AVELINO L. GRAVADOR, SPO2 FERMO R. GALLARDE, PO2 FIDEL O. QUEREJERO, PO1 SERGS DC MACEREN are hereby found GUILTY of Grave Misconduct and are meted out the extreme penalty of Dismissal from the Service, together with its accessory penalties. Respondent P/SUPT. ELEUTERIO N. GUTIERREZ, on the other hand, is hereby exonerated of the instant administrative charges.[6]

On July 18, 2011, petitioners filed a Motion for Reconsideration arguing that the Ombudsman's decision is not supported by evidence and that the penalty of dismissal imposed on them is oppressive.

Before the Ombudsman could resolve the said motion, however, petitioners elevated the matter to the Court by filing the instant Petition for Prohibition on August 3, 2011, praying that the Court issue a Writ of Prohibition and Temporary Restraining Order and/or Writ of Preliminary Injunction commanding the Ombudsman to desist from implementing its Decision dated May 24, 2011 ordering their dismissal from service pending resolution of their Motion for Reconsideration with said office or until

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[6] *Id.* at 25.

remedies under the Rules and law have been fully exhausted. Thus, petitioners raised the following grounds:

I.

THE DECISION IN OMB-P-A-07-1396-L WAS ISSUED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION. IT CLEARLY STEMMED FROM THE MANIFESTLY FALSE CHARGES OF COMPLAINANTS WHO WERE MOTIVATED BY THEIR LUST FOR VENGEANCE OCCASIONED BY THE IMPOUNDMENT OF THEIR MOTOR VEHICLE.

II.

PETITIONERS HAVE NO APPEAL OR ANY OTHER PLAIN, SPEEDY, AND ADEQUATE REMEDY IN THE ORDINARY COURSE OF LAW, BUT THIS PETITION CONSIDERING THAT THE DECISION OF THE OFFICE OF THE OMBUDSMAN IS IMMEDIATELY EXECUTORY.

III.

THE EXTREME PENALTY OF DISMISSAL FROM THE SERVICE IMPOSED IN THE DECISION IS TOO HARSH, OPPRESSIVE AND EXCESSIVE. IT ARBITRARILY AND UNJUSTLY STRIPPED PETITIONERS OF THEIR GAINFUL EMPLOYMENT, PROFESSION, TRADE OR CALLING, A PROPERTY RIGHT WITHIN THE CONSTITUTIONAL GUARANTEE OF DUE PROCESS.

The Court notes, however, that on September 6, 2011, a month after the filing of the instant petition, the Office of the Ombudsman issued an Order[7] modifying its Decision by finding petitioners guilty not of Grave Misconduct, but of Conduct Prejudicial to the Best Interest of the Service and further modifying the penalty from dismissal to suspension from office for a period of six (6) months and (1) day without pay. The dispositive portion of said Order provides:

WHEREFORE, premises considered, it is respectfully recommended that the Decision dated 24 May 2011, be RECONSIDERED and MODIFIED. Accordingly, this Office finds

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[7] *Id*. at 152-157.

respondents P/S INSP. SAMSON B. BELMONTE, SPO2 FERMO R. GALLARDE, SPO3 LLOYD F. SORIA, POl HOMER D. GENEROSO, POl SERGS DC MACEREN, PO3 AVELINO L. GRAVADOR, PO2 FIDEL O. QUEREJERO and POl JEROME T. NOCHEFRANCA, JR., guilty of Conduct Prejudicial to the Best Interest of the Service and are hereby meted the penalty of suspension from office for a period of Six (6) months and (1) day without pay. If the penalty of suspension can no longer be served by reason of retirement or resignation, the alternative penalty of FINE equivalent to the SIX (6) MONTHS and ONE (1) DAY salary of the respondents shall be imposed, and shall be deducted from their retirement or separation benefits.

As to the dismissal of the administrative complaint against respondent P/SUPT. ELEUTERIO N. GUTIERREZ, the same is hereby AFFIRMED.[8]

Nevertheless, in filing the instant action, petitioners claim that the assailed May 24, 2011 Decision was issued with grave abuse of discretion amounting to lack or excess of jurisdiction for it was issued without proof that they are indeed guilty of demanding and accepting favours from Sandra. Considering that the Decision of the Ombudsman is immediately effective and executory, petitioners alleged that they were left with no appeal, or any other plain, speedy and adequate remedy but the instant petition. According to them, their Motion for Reconsideration would not operate to stay the implementation of the Decision rendered by the Ombudsman. Thus, they stood to lose their jobs unless the Decision is stayed by the Court.

In its Comment, public respondent Office of the Ombudsman countered that the instant petition is dismissible outright. For a party to be entitled to a writ of prohibition, he must establish that the office or tribunal has acted without or in excess of its jurisdiction or with grave abuse of discretion and that there is no appeal or any other plain, speedy and accurate remedy in the ordinary course of law. Public respondent asserted that, first, petitioners have not shown that it gravely abused its discretion in issuing the assailed Decision. As can be seen in

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[8] *Id.* at 155-156.

said Decision, substantial evidence existed to warrant a finding of administrative culpability on the part of petitioners. Public respondent further noted that, in any event, it issued an Order dated September 6, 2011 modifying the assailed May 24, 2011 Decision and eventually found petitioners guilty, not of grave misconduct, but of conduct prejudicial to the best interest of the service. Second, the remedy of a motion for reconsideration was available and, in fact, availed of by the petitioners. Thus, the instant petition should be dismissed.

Moreover, public respondent posited that petitioners violated the doctrine of hierarchy of courts, for appeals from decisions of the Office of the Ombudsman in administrative disciplinary cases should be brought not directly to the Court but to the Court of Appeals via petition for review under Rule 43 of the Rules of Court. Finally, public respondent submitted that there exists no valid ground to grant petitioners' prayer for the issuance of a temporary restraining order and/or writ of preliminary mandatory injunction for there is no such thing as a vested interest in a public office, let alone an absolute right to hold it.

We rule in favor of public respondent.

The petition for prohibition filed by petitioners is inappropriate. Section 2, Rule 65 of the Rules of Court provides:

> Sec. 2. *Petition for Prohibition.* - When the proceedings of any tribunal, corporation, board, officer or person, whether exercising judicial, quasi-judicial or ministerial functions, are without or in excess of its jurisdiction, or **with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law,** a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent to desist from further proceedings in the action or matter specified therein, or otherwise granting such incidental reliefs as law and justice may require.[9]

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[9] Emphasis supplied.

For a party to be entitled to a writ of prohibition, he must establish the following requisites: (a) it must be directed against a tribunal, corporation, board or person exercising functions, judicial or ministerial; (b) the tribunal, corporation, board or person has acted without or in excess of its jurisdiction, or with grave abuse of discretion; and (c) there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law.[10] A cursory reading of the records of the case readily reveals the absence of the second and third requisites.

First, the Court does not find that public respondent gravely abused its discretion in issuing the subject Decision. Grave abuse of discretion is a capricious and whimsical exercise of judgment so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law, as where the power is exercised in an arbitrary and despotic manner because of passion or hostility. Petitioners, in this case, must prove that public respondent committed not merely reversible error, but grave abuse of discretion amounting to lack or excess of jurisdiction. Mere abuse of discretion is not enough; it must be grave.[11]

But the Court observes that in arriving at the assailed Decision, public respondent carefully weighed the rights and interests of the parties *vis-a-vis* the evidence they presented to substantiate the same. It ruled that Sandra submitted substantial evidence, such as hotel receipts, to support her allegations that petitioners demanded and received favours from her as consideration for the processing of the macro-etching examination of the subject vehicle. Thus, that public respondent's ruling was unfavourable to petitioners' interests does not necessarily mean that it was issued with grave abuse of discretion, especially so when such ruling was aptly corroborated by evidence submitted by the parties.

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[10] *Montes v. Court of Appeals*, 523 Phil. 98, 107 (2006), citing *Longino v. General*, 491 Phil. 600,616 (2005).

[11] *Office of the Ombudsman v. Magno*, 592 Phil. 636, 652 (2008), citing *Suliguin v. COMELEC,* 520 Phil. 92, 107 (2006), and *Natalia Realty, Inc. v. Court of Appeals*, 440 Phil. 1, 20-21 (2002).

Second, petitioners filed the instant action when they clearly had some other plain, speedy, and adequate remedy in the ordinary course of law. A remedy is considered plain, speedy and adequate if it will promptly relieve the petitioner from the injurious effects of the judgment or rule, order or resolution of the lower court or agency.[12] As public respondent pointed out, the remedy of a motion for reconsideration was still available to petitioners, as expressly granted by the following Section 8 of Rule III of the Rules of Procedure of the Office of the Ombudsman, as amended by Administrative Order (AO) No. 17:

> Section 8. Motion for reconsideration or reinvestigation: Grounds— Whenever allowable, a motion for reconsideration or reinvestigation may only be entertained if filed within ten (10) days from receipt of the decision or order by the party on the basis of any of the following grounds:
>
> a) New evidence had been discovered which materially affects the order, directive or decision;
>
> b) Grave errors of facts or laws or serious irregularities have been committed prejudicial to the interest of the movant.
>
> Only one motion for reconsideration or reinvestigation shall be allowed, and the Hearing Officer shall resolve the same within five (5) days from the date of submission for resolution.

In fact, as borne by the records, petitioners actually availed of the same when they filed their Motion for Reconsideration with public respondent on July 18, 2011.

Moreover, the mere fact that the Ombudsman's decision imposing the penalty of dismissal from service is immediately executory, alone, does not justify the issuance of an injunctive writ to stay the implementation thereof. As the Court explained in *Villaseñor v. Ombudsman:*[13]

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[12] *Badiola v. Court of Appeals*, 575 Phil. 514, 531 (2008), citing *San Miguel Corporation v. Court of Appeals*, 425 Phil. 951, 956 (2002).

[13] G.R. No. 202303, June 4, 2014, citing *Ombudsman v. Samaniego*, 646 Phil. 445,449 (2010).

The nature of appealable decisions of the Ombudsman was, in fact, settled in Ombudsman v. Samaniego, where it was held that such are immediately executory pending appeal and may not be stayed by the filing of an appeal or the issuance of an injunctive writ.

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Thus, petitioner Villaseñor's filing of a motion for reconsideration does not stay the immediate implementation of the Ombudsman's order of dismissal, considering that "a decision of the Office of the Ombudsman in administrative cases shall be executed as a matter of course" under Section 7.

x x x x x x x x x

The Ombudsman did not, therefore, err in implementing the orders of suspension of one year and dismissal from the service against the petitioners.

This may be so because, as the Court further explained, the immediate implementation of an order of dismissal does not violate any vested right for petitioners are considered preventively suspended during their appeal, *viz.:*

The Rules of Procedure of the Office of the Ombudsman are procedural in nature and, therefore, may be applied retroactively to petitioners' cases which were pending and unresolved at the time of the passing of A.O. No. 17. **No vested right is violated by the application of Section 7 because the respondent in the administrative case is considered preventively suspended while his case is on appeal and, in the event he wins on appeal, he shall be paid the salary and such other emoluments that he did not receive by reason of the suspension or removal. It is important to note that there is no such thing as a vested interest in an office, or even an absolute right to hold office. Excepting constitutional offices which provide for special immunity as regards salary and tenure, no one can be said to have any vested right in an office.**[14]

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[14] *Villasenor v. Ombudsman, supra,* citing *Facura v. CA*, 658 Phil. 554, 579-580 (2011), citing *Ombudsman v. Samaniego, supra* note 13, citing *In the Matter to Declare in Contempt of Court Hon. Simeon A. Datumanong, Secretary of the DPWH*, 529 Phil. 619, 630-631 (2006). (Emphasis ours)

In view of the foregoing, therefore, the Court cannot give credence to petitioners' assertion that given the immediate effectivity of the assailed Decision, a Writ of Prohibition and Temporary Restraining Order and/or Writ of Preliminary Injunction must be issued to stay the implementation thereof. As clearly held by the Court, they have no vested right which stands to be violated by the execution of the subject decision.

At this point, it must be observed that the instant petition is likewise dismissible for its violation of the doctrine of hierarchy of courts. As previously mentioned, petitioners, without awaiting public respondent's action on their Motion for Reconsideration, immediately filed the instant petition before this Court, instead of the appellate court, as required by said doctrine. In *Vivas v. The Monetary Board of the Bangko Sentral ng Pilipinas,*[15] the Court had occasion to explain:

Even in the absence of such provision, the petition is also dismissible because it simply ignored the doctrine of hierarchy of courts. **True, the Court, the CA and the RTC have original concurrent jurisdiction to issue writs of certiorari, prohibition and mandamus. The concurrence of jurisdiction, however, does not grant the party seeking any of the extraordinary writs the absolute freedom to file a petition in any court of his choice. The petitioner has not advanced any special or important reason which would allow a direct resort to this Court.** Under the Rules of Court, a party may directly appeal to this Court only on pure questions of law. In the case at bench, there are certainly factual issues as Vivas is questioning the findings of the investigating team.

Strict observance of the policy of judicial hierarchy demands that where the issuance of the extraordinary writs is also within the competence of the CA or the RTC, the special action for the obtainment of such writ must be presented to either court. As a rule, the Court will not entertain direct resort to it unless the redress desired cannot be obtained in the appropriate lower courts; or where exceptional and compelling circumstances, such as cases of national interest and with serious implications, justify the availment of the extraordinary remedy of writ of certiorari, prohibition, or mandamus calling for the exercise of its primary jurisdiction. The

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[15] G.R. No. 191424, August 7, 2013.

judicial policy must be observed to prevent an imposition on the precious time and attention of the Court.[16]

However, as in the foregoing pronouncement, petitioners herein directly elevated the instant case before the Court failing to advance any compelling reason for the Court to allow the same. In fact, they even raised issues concerning public respondent's factual findings, contrary to the rule that parties who appeal directly to this Court must only raise questions of law. It is clear, therefore, that the Court has ample reason to dismiss petitioners' recourse.

Besides, even granting the propriety of the instant petition, the same can no longer be given effect under the circumstances availing. Note that the instant petition particularly sought the Court to issue a Writ of Prohibition and Temporary Restraining Order and/or Writ of Preliminary Injunction commanding public respondent to desist from implementing its Decision dated May 24, 2011. But as aptly pointed out by public respondent, the assailed Decision had already been modified by its September 6, 2011 Order finding petitioners guilty, not of Grave Misconduct, but of Conduct Prejudicial to the Best Interest of the Service and imposing the penalty of suspension from office for a period of six (6) months and (1) day without pay, instead of dismissal from service. Accordingly, considering that the act sought to be enjoined has already been modified, there is nothing more to restrain.[17]

Indeed, prohibition is a preventive remedy seeking that a judgment be rendered directing the defendant to desist from continuing with the commission of an act perceived to be illegal.

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[16] *Vivas v. The Monetary Board of the Bangko Sentral ng Pilipinas*, G.R. No. 191424, August 7, 2013, 703 SCRA 290, 304, *Philippine Veterans Bank v. Benjamin Monillas*, 573 Phil. 298, 315 (2008), and *Springfield Development Corp., Inc. v. Hon. Presiding Judge of RTC, Branch 40, Cagayan de Oro City, Misamis Oriental*, 543 Phil. 298, 315 (2007). (Emphasis ours)

[17] *Montes v. Court of Appeals, supra* note 10, citing *Gonzales v. Narvasa*, 392 Phil. 518, 523 (2000).

Its proper function is to prevent the doing of an act which is about to be done. When, however, under the circumstances, the act sought to be restrained can no longer be committed, resort to such recourse is rendered futile for prohibition is not intended to provide a remedy for acts already accomplished.[18]

WHEREFORE, premises considered, the instant petition for Prohibition is **DENIED.**

SO ORDERED.

Velasco, Jr. (Chairperson), Villarama, Jr., Mendoza,[*] and *Reyes, JJ.,* concur.

SECOND DIVISION

[G.R. No. 198627. January 13, 2016]

DST MOVERS CORPORATION, *petitioner, vs.* **PEOPLE'S GENERAL INSURANCE CORPORATION,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI* UNDER RULE 45; THE FINDINGS OF FACT OF THE TRIAL COURT, AS AFFIRMED ON APPEAL BY THE COURT OF APPEALS, ARE CONCLUSIVE ON THE SUPREME COURT.— A Rule

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[18] *Vivas v. The Monetary Board of the Bangko Sentral ng Pilipinas, supra* note 16, citing *Guerrero v. Domingo*, 646 Phil. 175, 179 (2011), *Cabanero v. Torres*, 61 Phil. 522 (1935), *Agustin v. De la Fuente*, 84 Phil. 525 (1949), *Navarro v. Lardizabal*, 134 Phil. 331 (1968), *Heirs of Eugenia V. Roxas, Inc. v. Intermediate Appellate Court*, 255 Phil. 558 (1989).

[*] Designated Additional Member in lieu of Associate Justice Francis H. Jardeleza, per Raffle dated October 27, 2014.

45 petition pertains to questions of law and not to factual issues. x x x Seeking recourse from this court through a petition for review on certiorari under Rule 45 bears significantly on the manner by which this court shall treat findings of fact and evidentiary matters. As a general rule, it becomes improper for this court to consider factual issues: the findings of fact of the trial court, as affirmed on appeal by the Court of Appeals, are conclusive on this court. "The reason behind the rule is that [this] Court is not a trier of facts and it is not its duty to review, evaluate, and weigh the probative value of the evidence adduced before the lower courts." A determination of whether a matter has been established by a preponderance of evidence is, by definition, a question of fact. It entails an appreciation of the relative weight of the competing parties' evidence. Rule 133, Section 1 of the Revised Rules on Evidence provides a guide on what courts may consider in determining where the preponderance of evidence lies x x x.

2. **ID.; ID.; ID.; ID.; ID.; EXCEPTIONS.—** [T]here are exceptions that leave room for this court to make a factual determination for itself and, ultimately, to overturn the factual findings with which it is confronted: "(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."

3. **ID.; EVIDENCE; ADMISSIBILITY OF EVIDENCE; TESTIMONIAL EVIDENCE; HEARSAY RULE; EXCEPTION REGARDING ENTRIES IN OFFICAL RECORDS; REQUISITES.—** Rule 130, Section 36 of the Revised Rules on Evidence provides for the Hearsay Rule. It renders inadmissible as evidence out-of-

court statements made by persons who are not presented as witnesses but are offered as proof of the matters stated. This rule proceeds from the basic rationale of fairness, as the party against whom it is presented is unable to cross-examine the person making the statement x x x. The Hearsay Rule, however, is not absolute. Sections 37 to 47 of Rule 130 of the Revised Rules on Evidence enumerate the exceptions to the Hearsay Rule. Of these, Section 44—regarding entries in official records—is particularly relevant to this case x x x. Precisely as an exception to the Hearsay Rule, Rule 130, Section 44 does away with the need for presenting as witness the public officer or person performing a duty specially enjoined by law who made the entry. This, however, is only true, for as long the following requisites have been satisfied: "(a) that the entry was made by a public officer or by another person specially enjoined by law to do so; (b) that it was made by the public officer in the performance of his duties, or by such other person in the performance of a duty specially enjoined by law; and (c) that the public officer or other person had sufficient knowledge of the facts by him stated, which must have been acquired by him personally or through official information." x x x It is plain to see that the matters indicated in the Report are not matters that were personally known to PO2 Tomas. The Report is candid in admitting that the matters it states were merely reported to PO2 Tomas by "G. Simbahon of PNCC/SLEX." It was this "G. Simbahon," not PO2 Tomas, who had personal knowledge of the facts stated in the Report. Thus, even as the Report embodies entries made by a public officer in the performance of his duties, it fails to satisfy the third requisite for admissibility for entries in official records as an exception to the Hearsay Rule.

4. **ID.; REVISED RULE ON SUMMARY PROCEDURE; AFFIDAVITS AND POSITION PAPERS; TAKE THE PLACE OF ACTUAL TESTIMONY IN COURT AND SERVE TO EXPEDITE THE RESOLUTION OF CASES.—** [W]e are aware that this case was decided by the Metropolitan Trial Court pursuant to the Revised Rule on Summary Procedure (considering that petitioner's total claims amounted to less than ₱200,000.00). Accordingly, no trial was conducted as, after the conduct of a preliminary conference, the parties were made to submit their position papers. There was, thus, no opportunity

to present witnesses during an actual trial. However, Section 9 of the Revised Rule on Summary Procedure calls for the submission of witnesses' affidavits together with a party's position paper and after the conduct of a preliminary conference x x x. These affidavits take the place of actual testimony in court and serve to expedite the resolution of cases covered by the Revised Rule on Summary Procedure. Thus, it was still insufficient for respondent to have merely annexed the Report to its Position Paper. By its lonesome, and unsupported by an affidavit executed by PO2 Tomas, the Report was hearsay and, thus, inadmissible.

APPEARANCES OF COUNSEL

Quiason Makalintal Barot Toress Ibarra & Sison for petitioner.

Jabla Brigola & Gonzales Law Offices for respondent.

D E C I S I O N

LEONEN, *J*.:

A determination of where the preponderance of evidence lies is a factual issue which, as a rule, cannot be entertained in a Rule 45 petition. When, however, the sole basis of the trial court for ruling on this issue is evidence that should not have been admitted for being hearsay, this court will embark on its own factual analysis and will, if necessary, reverse the rulings of the lower courts. A traffic accident investigation report prepared by a police officer relying solely on the account of a supposed eyewitness and not on his or her personal knowledge is not evidence that is admissible as an exception to the Hearsay Rule.

This resolves a Petition for Review on Certiorari[1] under Rule 45 of the 1997 Rules of Civil Procedure praying that the assailed May 11, 2011 Decision[2] and September 8, 2011

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[1] *Rollo*, pp. 13–60.

[2] *Id*. at 62–73. The Decision was penned by Associate Justice Edwin

Resolution[3] of the Court of Appeals Former Twelfth Division in CA-G.R. SP No. 109163 be reversed and set aside, and that a new one be entered dismissing respondent People's General Insurance Corporation's (PGIC) Complaint for Sum of Money.[4]

In its assailed May 11, 2011 Decision, the Court of Appeals affirmed with modification the ruling of Branch 47 of the Regional Trial Court of Manila in Civil Case No. 07-118093 which, in turn, affirmed in toto the ruling of Branch 22 of the Metropolitan Trial Court of Manila in Civil Case No. 181900. In its assailed September 8, 2011 Resolution, the Court of Appeals denied petitioner DST Movers Corporation's (DST Movers) Motion for Reconsideration.[5]

The Metropolitan Trial Court of Manila found DST Movers liable to pay PGIC the amount of ₱90,000.00 by way of actual damages plus interest as well as ₱10,000.00 for attorney's fees and costs of suit.[6] The Court of Appeals ordered DST Movers to pay PGIC the amount of ₱25,000.00 as temperate damages in lieu of the original award of ₱90,000.00 as actual damages.[7]

In a Complaint for Sum of Money filed before the Metropolitan Trial Court of Manila, PGIC alleged that at about 10:30 p.m. on February 28, 2002, along the South Luzon Expressway and in the area of Bilibid, Muntinlupa City, a Honda Civic sedan with plate number URZ-976 (sedan) was hit on the rear by an Isuzu Elf truck with plate number UAL-295 (truck). PGIC underscored that the sedan was on a stop position when it was hit. The sedan was then allegedly pushed forward, thereby hitting

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D. Sorongon and concurred in by Associate Justices Rosalinda Asuncion-Vicente and Romeo F. Barza.

[3] *Id*. at 75-77. The Resolution was penned by Associate Justice Edwin D. Sorongon and concurred in by Associate Justices Rosalinda Asuncion-Vicente and Romeo F. Barza.

[4] *Id* at. 78-84, Complaint.

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

[6] *Id*. at 67.

[7] *Id*.

a Mitsubishi Lancer. The driver of the truck then allegedly escaped.[8]

In support of its recollection of the events of February 28, 2002, PGIC relied on a Traffic Accident Investigation Report (Report) prepared by PO2 Cecilio Grospe Tomas (PO2 Tomas) of the Muntinlupa City Traffic Enforcement Unit of the Philippine National Police. This was attached as Annex "E"[9] of PGIC's Complaint and also as Annex "E"[10] of its Position Paper. It stated:

TRAFFIC ACCIDENT INVESTIGATION REPORT

(Entry No. 805-285-0202)

Time and date : At about 10:30 p.m. February 28, 2002
Place : along SLEX, Bilibid N/B, Muntinlupa City
Weather con : Fair
Nature : RIR/DTP/PI (hit and run)

Inv vehicle (3)

Vehicle-1 : Honda civic
Plate no. : URZ-976
Driver (injured) : MA. ADELINE YUBOCO Y DELA CRUZ
Lic. no. : N03-96-213671
Address : 24 Hernandez st., BF Homes Paranaque City
Reg. Owner : Fidel Yuboco
Address : same as driver
Damage : rear & front portion, whole right side portion

Vehicle-2 : Mits. Lancer
Plate no. : CMM-373
Driver : HARRISON TUQUERO Y VALDEZ
Lic. no. : 014-02-032855
Address : 13-16 Carolina st., Villasol Subd., Angeles City

[8] *Id*. at 79.

[9] *Id*. at 89.

[10] *Id*. at 197.

Reg. Owner	:	Edgardo Tuquero
Address	:	518 Obio st., Villasol Subd., Angeles City
Damage	:	left side rear portion
Vehicle-3	:	Truck
Plate no.	:	UAL-295
Driver	:	Unidentified
Damage	:	Undetermine [sic]
Reportee	:	G. Simbahon of PNCC/SLEX

F A C T S:

It appears that while V1 was on stop position facing north at the aforesaid place of occurrence when the rear portion of the same was allegedly hit/bumped by V3 which was moving same direction on the same place due to strong impact V1 pushed forward and hit the left side rear portion of V2 causing damages and injuries thereon. After the impact, V3 escaped towards undisclosed direction and left V1 & V2 at the place of accident. During investigation V1 & V2 driver gave voluntary handwritten statement and they were advised to submit medical certificate, estimate/photos of damages as annexes.

Status of the case : For follow-up. . . . .

(sgd.)
PO2 Cecilio Grospe Tomas PNP
- on case -[11]

The truck was supposedly subsequently discovered to be owned by DST Movers.[12] The sedan was covered by PGIC's insurance under Policy No. HAL-PC-1314.[13] As a result of the February 28, 2002 incident, the sedan's owner, Fidel Yuboco, filed a total loss claim with PGIC in the amount of ₱320,000.00. PGIC paid Fidel Yuboco the entire amount of ₱320,000.00.[14]

Asserting that it was subrogated to Fidel Yuboco's rights and that the proximate cause of the mishap was the negligence

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[11] *Id*.

[12] *Id*. at 79, Complaint.

[13] *Id*.

[14] *Id*. at 80.

of the driver of the truck, PGIC, through counsel, sent DST Movers demand letters. PGIC demanded from DST Movers the amount of ₱90,000.00, which represented the difference between the ₱320,000.00 paid by PGIC to Yuboco and the salvage price of ₱230,000.00, at which PGIC was supposedly able to sell what remained of the sedan.[15]

Its demands not having been satisfied, PGIC proceeded to file its Complaint[16] for Sum of Money before the Metropolitan Trial Court of Manila. This case was docketed as Civil Case No. 181900.[17]

In its Answer,[18] DST Movers acknowledged that it was the owner of the truck. However, it claimed that the truck did not make any trips on February 28, 2002 as it was undergoing repairs and maintenance.[19] In support of this affirmative defense, DST Movers attached as Annexes "1" to "1-F"[20] copies of invoices, receipts, and cash vouchers relating to repairs and maintenance procedures that were undertaken on the truck on specific dates, which included February 28, 2002.

Following the submission of the parties' position papers, Branch 22 of the Metropolitan Trial Court Manila rendered its Decision[21] favoring PGIC's version of events and finding DST Movers liable. The dispositive portion of this Decision reads:

> WHEREFORE, judgment is hereby rendered in favor of the plaintiff and against the defendant ordering to pay the latter to pay the [sic] of Php90,000.00 as actual damages plus interest of 12% per annum

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[15] *Id*. at 81, and 96–98, Annexes "L" to "M".

[16] *Id*. at 78-83, Complaint.

[17] *Id*.

[18] *Id*. at 103-111.

[19] *Id*. at 104-105, Answer.

[20] *Id*. at 112-118.

[21] The case was decided pursuant to the Revised Rule on Summary Procedure considering that petitioner's total claims amounted to less than ₱200,000.00.

from the date of filing of the complaint and the sum of Php10,000.00 as and for attorney's fees and the costs of suit.

SO ORDERED.[22]

On appeal, the ruling of the Metropolitan Trial Court was affirmed in toto by Branch 47 of the Regional Trial Court of Manila.[23]

DST Movers then filed before the Court of Appeals a Petition for Review under Rule 42 of the 1997 Rules of Civil Procedure.

In its assailed May 11, 2011 Decision, the Court of Appeals affirmed the rulings of the Regional Trial Court and the Metropolitan Trial Court. However, it noted that PGIC failed to prove actual loss with reasonable certainty. As such, the Court of Appeals deleted the award of ₱90,000.00 in actual damages and replaced it with an award of ₱25,000.00 in temperate damages.

In its assailed September 8, 2011 Resolution,[24] the Court of Appeals denied DST Movers' Motion for Reconsideration.

Hence, DST Movers filed the present Petition insisting that its liability was not established by a preponderance of evidence. Specifically, it faults the Metropolitan Trial Court for ruling in favor of PGIC despite how its version of events was supported by nothing more the Traffic Accident Investigation Report. It asserts that reliance on this Report was misplaced as it was supposedly "improperly identified [and] uncorroborated."[25]

For resolution is the issue of whether petitioner DST Movers Corporation's liability was established by a preponderance of evidence. Subsumed in this is whether it was an error for the Metropolitan Trial Court to admit and lend evidentiary weight to the piece of evidence chiefly relied upon by respondent

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[22] *Id*. at 67, Court of Appeals Decision.

[23] *Id*.

[24] *Id*. at 75-77.

[25] *Id*. at 23, Petition.

People's General Insurance Corporation: the Traffic Accident Investigation Report prepared by PO2 Tomas.

I

Petitioner comes to this court through a Petition for Review on Certiorari under Rule 45 of the 1997 Rules of Civil Procedure. It invites this court to reconsider the consistent rulings of the Court of Appeals, the Regional Trial Court, and the Metropolitan Trial Court that petitioner's liability arising from the February 28, 2002 incident was established by a preponderance of evidence.

A Rule 45 petition pertains to questions of law and not to factual issues. Rule 45, Section 1 of the 1997 Rules of Civil Procedure is unequivocal:

> 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.

This court's Decision in *Cheesman v. Intermediate Appellate Court*[26] distinguished questions of law from questions of fact:

> As distinguished from a question of law — which exists "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 the falsehood of alleged facts;" or when the "query necessarily invites calibration of the whole evidence considering mainly the credibility of witnesses, existence and relevancy of specific surrounding circumstances, their relation to each other and to the whole and the probabilities of the situation."[27] (Citations omitted)

Seeking recourse from this court through a petition for review on certiorari under Rule 45 bears significantly on the manner by which this court shall treat findings of fact and evidentiary matters. As a general rule, it becomes improper for this court

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[26] 271 Phil. 89 (1991) [Per *J*. Narvasa, Second Division].

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

to consider factual issues: the findings of fact of the trial court, as affirmed on appeal by the Court of Appeals, are conclusive on this court. "The reason behind the rule is that [this] Court is not a trier of facts and it is not its duty to review, evaluate, and weigh the probative value of the evidence adduced before the lower courts."[28]

A determination of whether a matter has been established by a preponderance of evidence is, by definition, a question of fact. It entails an appreciation of the relative weight of the competing parties' evidence. Rule 133, Section 1 of the Revised Rules on Evidence provides a guide on what courts may consider in determining where the preponderance of evidence lies:

SECTION 1. *Preponderance of evidence, how determined.* — In civil cases, the party having the burden of proof must establish his case by a preponderance of evidence. In determining where the preponderance or superior weight of evidence on the issues involved lies, the court may consider all the facts and circumstances of the case, the witnesses' manner of testifying, their intelligence, their means and opportunity of knowing the facts to which they are testifying, the nature of the facts to which they testify, the probability or improbability of their testimony, their interest or want of interest, and also their personal credibility so far as the same may legitimately appear upon the trial. The court may also consider the number of witnesses, though the preponderance is not necessarily with the greater number.

Consistent with *Cheesman*, such determination is a "query [that] necessarily invites calibration of the whole evidence considering mainly the credibility of witnesses, existence and relevancy of specific surrounding circumstances, their relation to each other and to the whole and the probabilities of the situation."[29]

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[28] *Frondarina v. Malazarte*, 539 Phil. 279, 290-291 (2006) [Per *J*. Velasco, Third Division].

[29] *Cheesman v. Intermediate Appellate Court,* 271 Phil. 89, 97-98 (1991) [Per *J*. Narvasa, Second Division].

On point as regards civil liability for damages, this court in *Caina v. People of the Philippines*[30] explained:

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.[31]

Equally on point, this court has explained in many instances that a determination of the causes of and circumstances relating to vehicular accidents is a factual matter that this court may not revisit when the findings of the trial court and the Court of Appeals are completely in accord.

In *Industrial Insurance Co. v. Bondad*:[32]

Questions regarding the cause of the accident and the persons responsible for it are factual issues which we cannot pass upon. It is jurisprudentially settled that, as a rule, the jurisdiction of this Court is limited to a review of errors of law allegedly committed by the appellate court. It is not bound to analyze and weigh all over again the evidence already considered in the proceedings below.[33]

Likewise, in *Viron Transportation v. Delos Santos*:[34]

The rule is settled that the findings of the trial court especially when affirmed by the Court of Appeals, are conclusive on this Court when supported by the evidence on record. The Supreme Court will not assess and evaluate all over again the evidence, testimonial and documentary adduced by the parties to an appeal particularly where, such as here, the findings of both the trial court and the appellate court on the maker coincide.[35] (Citation omitted)

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[30] G.R. No. 78777, September 2, 1992, 213 SCRA 309 [Per *J*. Gutierrez, Jr., Second Division].

[31] *Id*. at 711.

[32] 386 Phil. 923 (2000) [Per *J*. Panganiban, Third Division].

[33] *Id*. at 931.

[34] 399 Phil. 243 (2000) [Per *J*. Gonzaga-Reyes, Third Division].

[35] *Id*. at 250.

However, there are exceptions that leave room for this court to make a factual determination for itself and, ultimately, to overturn the factual findings with which it is confronted:

(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.[36]

In *Dela Llana v. Biong*,[37] this court conducted its own (re-) examination of the evidence as the findings of the Regional Trial Court conflicted with those of the Court of Appeals. The Regional Trial Court held that the proximate cause of the injuries suffered by the petitioner was the supposed reckless driving of the respondent's employee; the Court of Appeals held otherwise. On review, this court sustained the findings of the Court of Appeals.

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[36] *Cirtek Employees Labor Union v. Cirtek Electronics, Inc.,* 665 Phil. 784, 789 (2011) [Per *J.* Carpio Morales, Third Division].

[37] G.R. No. 182356, December 4, 2013, 711 SCRA 522 [Per *J.* Brion, Second Division].

In *Standard Insurance v. Cuaresma*,[38] the ruling of the Metropolitan Trial Court was reversed by the Regional Trial Court. The latter was then sustained by the Court of Appeals. On review, this court affirmed the decision of the Court of Appeals. This court noted that the Metropolitan Trial Court erroneously gave weight to the traffic accident investigation report presented by the petitioner as proof of the proximate cause of the damage sustained by a motor vehicle.

II

Here, petitioner insists that the Traffic Accident Investigation Report prepared by PO2 Tomas should not have been admitted and accorded weight by the Metropolitan Trial Court as it was "improperly identified [and] uncorroborated."[39] Petitioner, in effect, asserts that the non-presentation in court of PO2 Tomas, the officer who prepared the report, was fatal to respondent's cause.

Unlike in *Dela Llana* and *Standard Insurance*, the findings of the Metropolitan Trial Court, the Regional Trial Court, and the Court of Appeals in this case are all in accord. They consistently ruled that the proximate cause of the damage sustained by the sedan was the negligent driving of a vehicle owned by petitioner. As with *Standard Insurance*, however, this conclusion is founded on the misplaced probative value accorded to a traffic accident investigation report. In the first place, this Report should not have been admitted as evidence for violating the Hearsay Rule. Bereft of evidentiary basis, the conclusion of the lower courts cannot stand as it has been reduced to conjecture. Thus, we reverse this conclusion.

Rule 130, Section 36 of the Revised Rules on Evidence provides for the Hearsay Rule. It renders inadmissible as evidence out-of-court statements made by persons who are not presented as witnesses but are offered as proof of the matters stated. This

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[38] G.R. No. 200055, September 10, 2014, 734 SCRA 709 [Per *J*. Peralta, Third Division].

[39] *Rollo*, p. 23.

rule proceeds from the basic rationale of fairness, as the party against whom it is presented is unable to cross-examine the person making the statement:[40]

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

The Hearsay Rule, however, is not absolute. Sections 37 to 47 of Rule 130 of the Revised Rules on Evidence enumerate the exceptions to the Hearsay Rule. Of these, Section 44—regarding entries in official records— is particularly relevant to this case:

SECTION 44. Entries in official records. — Entries in official records made in the performance of his duty by a public officer of the Philippines, or by a person in the performance of a duty specially enjoined by law, are prima facie evidence of the facts therein stated.

Precisely as an exception to the Hearsay Rule, Rule 130, Section 44 does away with the need for presenting as witness the public officer or person performing a duty specially enjoined by law who made the entry. This, however, is only true, for as long the following requisites have been satisfied:

(a) that the entry was made by a public officer or by another person specially enjoined by law to do so;

(b) that it was made by the public officer in the performance of his duties, or by such other person in the performance of a duty specially enjoined by law; and

(c) that the public officer or other person had sufficient knowledge of the facts by him stated, which must have been acquired by him personally or through official information.[41]

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[40] See *Estrella v. Court of Appeals*, 254 Phil. 618 (1989) [Per *J*. Narvasa, First Division].

[41] *D.M. Consunji, Inc. v. Court of Appeals*, 409 Phil. 275, 286 (2001) [Per *J*. Kapunan, First Division], citing *Africa, et al. vs. Caltex (Phil.), Inc., et al.,* 123 Phil. 272 (1966) [Per *J*. Makalintal, *En Banc*] and *People vs. San Gabriel*, 323 Phil. 102 (1996) [Per *J*. Kapunan, First Division].

Respondent, the Metropolitan Trial Court, the Regional Trial Court, and the Court of Appeals are all of the position that the Report prepared by PO2 Tomas satisfies these requisites. Thus, they maintain that it is admissible as prima facie evidence of the facts it states. This despite the admitted fact that neither PO2 Tomas, nor the person who supposedly reported the events of February 28, 2002 to PO2 Tomas – the person identified as "G. Simbahon of PNCC/SLEX"[42] – gave a testimony in support of the Report.

They are in serious error.

The statements made by this court in *Standard Insurance* are on point:

> [F]or the Traffic Accident Investigation Report to be admissible as prima facie evidence of the facts therein stated, the following requisites must be present:
>
> > . . . (a) that the entry was made by a public officer or by another person specially enjoined by law to do so; (b) that it was made by the public officer in the performance of his duties, or by such other person in the performance of a duty specially enjoined by law; and (c) that the public officer or other person had sufficient knowledge of the facts by him stated, which must have been acquired by him personally or through official information.
>
> Regrettably, in this case, petitioner failed to prove the third requisite cited above. As correctly noted by the courts below, while the Traffic Accident Investigation Report was exhibited as evidence, the investigating officer who prepared the same was not presented in court to testify that he had sufficient knowledge of the facts therein stated, and that he acquired them personally or through official information. Neither was there any explanation as to why such officer was not presented. *We cannot simply assume, in the absence of proof, that the account of the incident stated in the report was based on the personal knowledge of the investigating officer who prepared it.*
>
> Thus, while petitioner presented its assured to testify on the events that transpired during the vehicular collision, his lone testimony,

[42] *Rollo*, p. 89.

unsupported by other preponderant evidence, fails to sufficiently establish petitioner's claim that respondents' negligence was, indeed, the proximate cause of the damage sustained by Cham's vehicle.[43] [Emphasis supplied]

Respondent presented proof of the occurrence of an accident that damaged Fidel Yuboco's Honda Civic sedan,[44] that the sedan was insured by respondent,[45] and that respondent paid Fidel Yuboco's insurance claims.[46] As to the identity, however, of the vehicle or of the person responsible for the damage sustained by the sedan, all that respondent relies on is the Report prepared by PO2 Tomas.

It is plain to see that the matters indicated in the Report are not matters that were personally known to PO2 Tomas. The Report is candid in admitting that the matters it states were merely reported to PO2 Tomas by "G. Simbahon of PNCC/SLEX."[47] It was this "G. Simbahon," not PO2 Tomas, who had personal knowledge of the facts stated in the Report. Thus, even as the Report embodies entries made by a public officer in the performance of his duties, it fails to satisfy the third requisite for admissibility for entries in official records as an exception to the Hearsay Rule.

To be admitted as evidence, it was thus imperative for the person who prepared the Report—PO2 Tomas—to have himself presented as a witness and then testify on his Report. However, even as the Report would have been admitted as evidence, PO2 Tomas' testimony would not have sufficed in establishing the

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[43] *Standard Insurance v. Cuaresma,* G.R. No. 200055, September 10, 2014, 734 SCRA 709 [Per *J.* Peralta, Third Division].

[44] *Rollo,* p. 198, Photographs, Annexes "F" and "G" of respondent's Position Paper.

[45] *Id*. at 196, Private Car Policy, Annex "D" of respondent's Position Paper.

[46] *Id*. at 199-200, Voucher, Annex "H"; and Release of Claim, Annex "I" of respondents Position Paper.

[47] *Id*. at 89.

identity of the motor vehicle and/or the person responsible for the damage sustained by the sedan. For this purpose, the testimony of G. Simbahon was necessary.

Of course, we are aware that this case was decided by the Metropolitan Trial Court pursuant to the Revised Rule on Summary Procedure (considering that petitioner's total claims amounted to less than ₱200,000.00[48]). Accordingly, no trial was conducted as, after the conduct of a preliminary conference, the parties were made to submit their position papers. There was, thus, no opportunity to present witnesses during an actual trial. However, Section 9 of the Revised Rule on Summary Procedure calls for the submission of witnesses' affidavits together with a party's position paper and after the conduct of a preliminary conference:

SECTION 9. Submission of Affidavits and Position Papers. — Within ten (10) days from receipt of the order mentioned in the next preceding section,[49] the parties shall submit the affidavits of their witnesses

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[48] SECTION 1. Scope. — This rule shall govern the summary procedure in the Metropolitan Trial Courts, the Municipal Trial Courts in Cities, the Municipal Trial Courts, and the Municipal Circuit Trial Courts in the following cases falling within their jurisdiction:

A. Civil Cases:

. . . .

(2) All other cases, except probate proceedings, where the total amount of the plaintiff's claim does not exceed one hundred thousand pesos (100,000.00) or, two hundred thousand pesos (₱200,000.00) in Metropolitan Manila, exclusive of interest and costs.

[49] SECTION 8. Record of Preliminary Conference. — Within five (5) days after the termination of the preliminary conference, the court shall issue an order stating the matters taken up therein, including but not limited to:

a) Whether the parties have arrived at an amicable settlement, and if so, the terms thereof;

b) The stipulations or admissions entered into by the parties;

c) Whether, on the basis of the pleadings and the stipulations and admissions made by the parties, judgment may be rendered without the need of further proceedings, in which event the judgment shall be rendered within thirty (30) days from issuance of the order;

and other evidence on the factual issues defined in the order, together with their position papers setting forth the law and the facts relied upon by them.

These affidavits take the place of actual testimony in court and serve to expedite the resolution of cases covered by the Revised Rule on Summary Procedure. Thus, it was still insufficient for respondent to have merely annexed the Report to its Position Paper. By its lonesome, and unsupported by an affidavit executed by PO2 Tomas, the Report was hearsay and, thus, inadmissible.

As the sole evidence relied upon by respondent as to the identity of the responsible motor vehicle or person has been rendered unworthy of even the slightest judicial consideration, there is no basis for holding—as the Metropolitan Trial Court did—that the motor vehicle responsible for the damage sustained by the sedan was owned by petitioner. Not only this, petitioner has even adduced proof that on February 28, 2002, its Isuzu Elf truck with plate number UAL-295 was undergoing repairs and maintenance and, thus, could not have been at the South Luzon Expressway. The weight of evidence is clearly in petitioner's favor.

WHEREFORE, the Petition for Review on Certiorari is **GRANTED.** The assailed May 11, 2011 Decision and September 8, 2011 Resolution of the Court of Appeals Former Twelfth Division in CA-G.R. SP No. 109163 are **REVERSED** and **SET ASIDE.** Respondent People's General Insurance Corporation's Complaint is **DISMISSED.**

No pronouncement as to costs.

SO ORDERED.

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

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d) A clear specification of material facts which remain controverted; and

e) Such other matters intended to expedite the disposition of the case.

obligations, such as maintaining the open space as non-alienable and non-buildable, there is no doubt that the HLURB is empowered to annul the subject mortgage. For if a party may continually interpose the HLURB 's lack of jurisdiction, even raising the same for the first time on appeal, since jurisdictional issues cannot be waived, then BDO is estopped to complain that on appeal SHHA is finally able to present proof of HLURB's jurisdiction over the present action.[33]

The Court has long recognized and upheld the rationale behind P.D. No. 957, which is to protect innocent lot buyers from scheming developers[34] buyers who are by law entitled to the enjoyment of an open space within the subdivision. Thus, this Court has broadly construed HLURB's jurisdiction to include complaints to annul mortgages of condominium or subdivision units.[35] In *The Manila Banking Corp. v. Spouses Rabina, et al.,*[36] the Court said:

> The jurisdiction of the HLURB to regulate the real estate trade is broad enough to include jurisdiction over complaints for annulment of mortgage. To disassociate the issue of nullity of mortgage and lodge it separately with the liquidation court would only cause inconvenience to the parties and would not serve the ends of speedy and inexpensive administration of justice as mandated by the laws vesting quasi-judicial powers in the agency.[37] (citations omitted)

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[33] *Boston Equity Resources, Inc. v. Court of Appeals,* G.R. No. 173946, June 19, 2013, 699 SCRA 16, 30-31.

[34] *Philippine Bank of Communications v. Pridisons Realty Corporation,* G.R. No. 155113, January 9, 2013,688 SCRA 200, 210.

[35] *GSIS v. Board of Commissioners, HLURB (Second Division), et al.,* 634 Phil. 330, 338 (2011); *The Manila Banking Corp. v. Spouses Rabina, et al., supra* note 22; *Union Bank of the Philippines v. Housing and Land Use Regulatory Board,* G.R. No. 95364, June 29, 1992, 210 SCRA 558, 564.

[36] 594 Phil. 422 (2008).

[37] *Id.* at 433.

[38] *Rollo,* p. 156.

THIRD DIVISION

[G.R. No. 198752. January 13, 2016]

ARTURO C. ALBA, JR., duly represented by his attorneys-in-fact, ARNULFO B. ALBA and ALEXANDER C. ALBA, *petitioner, vs.* **RAYMUND D. MALAPAJO, RAMIL D. MALAPAJO and the Register of Deeds for the City of Roxas,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; FILING AND SERVICE OF PLEADINGS, JUDGMENTS AND OTHER PAPERS; PROOF OF SERVICE; SERVICE MADE THROUGH REGISTERED MAIL IS PROVED BY THE REGISTRY RECEIPT ISSUED BY THE MAILING OFFICE AND AN AFFIDAVIT OF THE PERSON MAILING OF FACTS SHOWING COMPLIANCE WITH THE RULE.—** [S]ervice made through registered mail is proved by the registry receipt issued by the mailing office and an affidavit of the person mailing of facts showing compliance with the rule. In this case, Nerissa Aputo, the secretary of petitioner's counsel had executed an affidavit of personal service and service by registered mail which she attached to the petition marked as original filed with the CA. She stated under oath that she personally served a copy of the petition to the RTC of |Roxas City on December 6, 2010, as evidenced by a stamp mark of the RTC on the corresponding page of the petition; that she also served copies of the petition by registered mail to respondents' counsel on December 6, 2010 as evidenced by registery receipts numbers "PST 188" and "PST 189"; both issued by the Roxas City Post Office. The registry receipts issued by the postr office were attached to the petition filed with the CA. Peritioner had indeed complied with the rule on proof of service.

2. **ID.; ID.; PLEADINGS; COUNTERCLAIM; COMPULSORY COUNTERCLAIM AND PERMISSIVE COUNTERCLAIM, DISTINGUISHED; TESTS TO DETERMINE WHETHER A CONTERCLAIM IS COMPULSORY OR PERMISSIVE.—** A cointerclaim is any claim which a defending party may have against an opposing party. A compulsory counterclaim is one

which, being cognizable by the regular courts of justice, arises out of or is connected with the transaction or occurrence constituting the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction. Such a counterclaim must be within the jurisdiction of the court both as to the amount and the nature thereof, except that in an original action before the Regional Trial Court, necessarily connected with the subject matter of the opposing party's claim or even where there is such a connection, the Court has no jurisdiction to entertain the claim or it requires for adjudication the presence of third persons over whom the court acquire jurisdiction.[15] A compulsory counterclaim is barred if not set up in the same action. A counterclaim is permissive if it does not arise out of or is not necessarily connected with the subject matter of the opposing party's claim. It is essentially an independent claim that may be filed separately in another case. To determine whether a counterclaim is compulsory or permissive, we have devised the following tests: (a) Are the issues of fact and law raised by the claim and by the counterclaim largely the same? (b) Would *res judicata* bar a subsequent suit on defendants' claims, absent the compulsory counterclaim rule? (c) Will substantially the same evidence support or refute plaintiffs' claim as well as the defendants' counterclaim? and (d) Is there any logical relation between the claim and the counterclaim? A positive answer to all four questions would indicate that the counterclaim is compulsory.

3. **ID.; ID.; ID.; COMPULSOTY COUNTERCLAIM; MUST BE SET UP IN THE SAME ACTION AND THERE IS NO NEED TO PAY DOCKET FEES AND TO FILE A CERTIFICATION AGAINST FORUM SHOPPING FOR THE COURT TO ACQUIRE JURISDICTION OVER THE COUNTERCLAIM.—** Petitioner seeks to recover the subject property by assailing the validity of the deed of sale on the subject property which he allegedly executed in favor of respondents Malapajo on the ground of forgery. Respondents counterclaimed that, in case the deed of sale is declared null and void, they be paid the loan petitioner obtained from them plus the agreed monthly interest which was covered by a real estate mortgage on the subject property executed by petitioner in favor of respondents. There is a logical relationship between the claim and the counterclaim,

as the counterclaim is connected with the transaction or occurrence constituting the subject matter of the opposing party's claim. Notably, the same evidence to sustain respondents' counterclaim would disprove petitioner's case. In the event that respondents could convincingly establish that petitioner actually executed the promissory note and the real estate mortgage over the subject property in their favor then petitioner's complaint might fail. Petitioner's claim is so related logically to respondents' counterclaim, such that conducting separate trials for the claim and the counterclaim would result in the substantial duplication of the time and effort of the court and the parties. Since respondents' counterclaim is compulsory, it must be set up in the same action; otherwise, it would be barred forever?[21] If it is filed concurrently with the main action but in a different proceeding, it would be abated on the ground of *litis pendentia;* if filed subsequently, it would meet the same fate on the ground of *res judicata.* There is, therefore, no need for respondents to pay docket fees and to file a certification against forum shopping for the court to acquire jurisdiction over the said counterclaim.

APPEARANCES OF COUNSEL

Diaz Law Office for petitioner.

Ilarde Penetrante Tungala & Associates and *Tirol & Tirol Law Office* for respondents Raymund & Ramil D. Malapajo.

D E C I S I O N

PERALTA, *J.*:

Assailed in this petition for review on *certiorari* are the Resolution[1] dated February 28, 2011 and the Resolution[2] dated

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[1] Penned by Associate Justice Eduardo B. Peralta, Jr., with Associate Justices Edgardo L. delos Santos and Agnes Reyes-Carpio concurring; rollo, pp. 140-142.

[2] Penned by Associate Justice Eduardo B. Peralta, Jr., with Associate Justices Edgardo L. delos Santos and Gabriel T. Ingles concurring; *id.* at 162-164.

August 31, 2011 issued by the Court of Appeals (CA) Cebu City, in CA-G.R. SP No. 05594.

The antecedents are as follows:

On October 19, 2009, petitioner Arturo C. Alba, Jr., duly represented by his attorneys-in-fact, Arnulfo B. Alba and Alexander C. Alba, filed with the Regional Trial Court (RTC) of Roxas City, Branch 15, a Complaint[3] against respondents Raymund D. Malapajo, Ramil D. Malapajo and the Register of Deeds of Roxas City for recovery of ownership and/or declaration of nullity or cancellation of title and damages alleging, among others, that he was the previous registered owner of a parcel of land consisting of 98,146 square meters situated in Bolo, Roxas City, covered by TCT No. T-22345; that his title was subsequently canceled by virtue of a deed of sale he allegedly executed in favor of respondents Malapajo for a consideration of Five Hundred Thousand Pesos (₱500,000.00); that new TCT No. T-56840 was issued in the name of respondents Malapajo; that the deed of sale was a forged document which respondents Malapajo were the co-authors of.

Respondents Malapajo filed their Answer with Counterclaim[4] contending that they were innocent purchasers for value and that the deed was a unilateral document which was presented to them already prepared and notarized; that before the sale, petitioner had, on separate occasions, obtained loans from them and their mother which were secured by separate real estate mortgages covering the subject property; that the two real estate mortgages had never been discharged. Respondents counterclaimed for damages and for reimbursement of petitioner's, loan from them plus the agreed monthly interest in the event that the deed of sale is declared null and void on the ground of forgery.

Petitioner filed a Reply to Answer and Answer to (Permissive) Counterclaim[5] stating, among others, that the court had not

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[3] Docketed as Civil Case No. V-49-09; id at 45-50.

[4] *Id* at 55-A-62.

[5] *Id*. at 67-74.

acquired jurisdiction over the nature of respondents' permissive counterclaim; and, that assuming without admitting that the two real estate mortgages are valid, the rate of five percent (5%) per month uniformly stated therein is unconscionable and must be reduced. Respondents filed their Rejoinder[6] thereto.

Petitioner filed a Motion to Set the Case for Preliminary Hearing as if a Motion to Dismiss had been Filed[7] alleging that respondents' counterclaims are in the nature of a permissive counterclaim, thus, there must be payment of docket fees and filing of a certification against forum shopping; and, that the supposed loan extended by respondents' mother to petitioner, must also be dismissed as respondents are not the real parties-in-interest. Respondents filed their Opposition[8] thereto.

On June 4, 2010, the RTC issued an Order[9] denying petitioner's motion finding that respondents' counterclaims are compulsory. Petitioner's motion for reconsideration was denied in an Order[10] dated September 30, 2010.

Petitioner filed a petition for *certiorari* with the CA which sought the annulment of the RTC Orders dated June 4, 2010 and September 30, 2010.

In a Resolution dated February 28, 2011, the CA dismissed the petition for *certiorari* saying that there was no proper proof of service of the petition to the respondents, and that only the last page of the attached copy of the RTC Order was signed and certified as a true copy of the original while the rest of the pages were mere machine copies.

Petitioner filed a motion for reconsideration which the CA denied in a Resolution dated August 31, 2011 based on the

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[6] *Id*. at 76-85.

[7] *Id*. at 86-90.

[8] *Id*. at 91-93.

[9] *Id*. at 94-97; Per Judge Juliana C. Azarraga.

[10] *Id*. at 116.

following findings:

Nevertheless, while petitioner filed with the Petition his Affidavit of Service and incorporated the registry receipts, petitioner still failed to comply with the requirement on proper proof of service. Post office receipt is not the required proof of service by registered mail. Section 10, Rule 13 of the 1997 Rules of Civil Procedure specifically stated that service by registered mail is complete upon actual receipt by the addressee, or after five (5) days from the date he received the first notice of the postmaster, whichever is earlier. Verily, registry receipts cannot be considered sufficient proof of service; they are merely evidence of the mail matter with the post office of the sender, not the delivery of said mail matter by the post office to the addressee. Moreover, Section 13, Rule 13 of the 1997 Rules of Civil Procedure specifically stated that the proof of personal service in the form of an affidavit of the party serving shall contain a full statement of the date, place and manner of service, which was not true in the instant petition.[11]

Petitioner filed the instant petition for review raising the following assignment of errors:

I. CONTRARY TO THE ERRONEOUS RULING OF THE COURT *A QUO,* THE COUNTERCLAIMS INTERPOSED BY RESPONDENTS MALAPAJO IN THEIR ANSWER WITH COUNTERCLAIM ARE, BASED ON APPLICABLE LAW AND JURISPRUDENCE, PERMISSIVE IN NATURE, NOT COMPULSORY, AND THEREFORE, SUCH ANSWER WITH RESPECT TO SUCH COUNTERCLAIMS IS IN REALITY AN INITIATORY PLEADING WHICH SHOULD HAVE BEEN ACCOMPANIED BY A CERTIFICATION AGAINST FORUM SHOPPING AND CORRESPONDING DOCKET FEES, THEREFORE, SHOULD HAVE BEEN PAID, FAILING IN WHICH THE COUNTERCLAIMS SHOULD HAVE BEEN ORDERED DISMISSED. MOREOVER, AS REGARDS THE LOAN ALLEGEDLY EXTENDED BY THEIR MOTHER TO PETITIONER, WHICH UP TO NOW IS SUPPOSEDLY STILL UNPAID, RESPONDENTS MALAPAJO ARE NOT THE REAL PARTIES-IN-INTEREST AND IS, THEREFORE, DISMISSIBLE ON THIS ADDITIONAL GROUND; and

II. THE HONORABLE COURT OF APPEALS COMMITTED A VERY SERIOUS ERROR WHEN IT DISMISSED THE PETITION FOR CERTIORARI BASED ON PURE TECHNICALITY, THEREBY GIVING MORE PREMIUM AND MORE WEIGHT ON TECHNICALITIES ~~RATHER THA~~N SUBSTANCE AND DISREGARDING THE

[11] *Id.* at 163-164. (Italics omitted)

[12] *Id.* at 18.

MERITS OF THE PETITION.[12]

We find that the CA erred in denying petitioner's petition for *certiorari* after the latter had clearly shown compliance with the proof of service of the petition as required under Section 13 of Rule 13 of the 1997 Rules of Civil Procedure, which provides:

Sec. 13. *Proof of service.*

Proof of personal service shall consist of a written admission of the party served, or the official return of the server, or the affidavit of the party serving, containing a full statement of the date, place and manner of service. If the service is by ordinary mail, proof thereof shall consist of an affidavit of the person mailing of facts showing compliance with Section 7 of this Rule. If service is made by registered mail, proof shall be made by such affidavit and the registry receipt issued by the mailing office. The registry return card shall be filed immediately upon its receipt by the sender, or in lieu thereof the unclaimed letter together with the certified or sworn copy of the notice given by the postmaster to the addressee.

Clearly, service made through registered mail is proved by the registry receipt issued by the mailing office and an affidavit of the person mailing of facts showing compliance with the rule. In this case, Nerissa Apuyo, the secretary of petitioner's counsel, had executed an affidavit[13] of personal service and service by registered mail which she attached to the petition marked as original filed with the CA. She stated under oath that she personally served a copy of the petition to the RTC of Roxas City on December 6, 2010, as evidenced by a stamp mark of the RTC on the corresponding page of the petition; that she also served copies of the petition by registered mail to respondents' counsels on December 6, 2010 as evidenced by registry receipts numbers "PST 188" and "PST 189", both issued by the Roxas City Post Office. The registry receipts issued by the post office were attached to the petition filed with the CA. Petitioner had indeed complied with the rule on proof of service.

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[13] *Id*. at 150.

Since the case was dismissed outright on technicality, the arguments raised in the petition for *certiorari* were not at all considered. However, we will now resolve the issue on the merits so as not to delay further the disposition of the case instead of remanding it to the CA.

The issue for resolution is whether respondents' counterclaim, *i.e.,* reimbursement of the loan obtained from them in case the deed of absolute sale is declared null and void on the ground of forgery, is permissive in nature which requires the payment of docket fees and a certification against forum shopping for the trial court to acquire jurisdiction over the same.

A counterclaim is any claim which a defending party may have against an opposing party.[14] A compulsory counterclaim is one which, being cognizable by the regular courts of justice, arises out of or is connected with the transaction or occurrence constituting the subject matter of the opposing party's claim and does not require for its adjudication the presence of third parties of whom the court cannot acquire jurisdiction. Such a counterclaim must be within the jurisdiction of the court both as to the amount and the nature thereof, except that in an original action before the Regional Trial Court, necessarily connected with the subject matter of the opposing party's claim or even where there is such a connection, the Court has no jurisdiction to entertain the claim or it requires for adjudication the presence of third persons over whom the court acquire jurisdiction.[15] A compulsory counterclaim is barred if not set up in the same action.

A counterclaim is permissive if it does not arise out of or is not necessarily connected with the subject matter of the opposing party's claim.[16] It is essentially an independent claim that may be filed separately in another case.

To determine whether a counterclaim is compulsory or

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[14] Rules of Court, Rule 6, Sec. 6.

[15] Rules of Court, Rule 6, Sec. 7.

[16] See *Lafarge Cement Philippines, Inc. v. Continental Cement Corporation*, 486 Phil. 173, 134 (2004), citing *Lopez v. Gloria*, 40 Phil. 26 (1919), per Torres, *J.*

permissive, we have devised the following tests: (a) Are the issues of fact and law raised by the claim and by the counterclaim largely the same? (b) Would *res judicata* bar a subsequent suit on defendants' claims, absent the compulsory counterclaim rule? (c) Will substantially the same evidence support or refute plaintiffs' claim as well as the defendants' counterclaim? and (d) Is there any logical relation between the claim and the counterclaim?[17] A positive answer to all four questions would indicate that the counterclaim is compulsory.[18]

Based on the above-mentioned tests, we shall determine the nature of respondents' counterclaim. Respondents anchored their assailed counterclaim on the following allegations in their affirmative defenses in their Answer with Counterclaim, thus:

x x x x x x x x x

10. The plaintiffs cause of action is based on his allegation that his signature on the Deed of Absolute Sale was forged.

The Deed of Absolute Sale is a unilateral instrument, *i.e.,* it was signed only by the vendor, who is the plaintiff in this case and his instrumental witnesses, who are his parents in this case. It was presented to defendants already completely prepared, accomplished and notarized. Defendants had no hand in its preparation, accomplishment and notarization.

While the plaintiff claims that his signature on the instrument is forged, he never questioned the genuineness of the signatures of his instrumental witnesses, his parents Arturo P. Alba, Sr. and Norma C. Alba, who signed the said instrument below the words "SIGNED IN THE PRESENCE OF" and above the words "Father" and "Mother," respectively.

Furthermore, plaintiff acknowledged in par. 7 of his Complaint that the stated consideration in the Deed of Absolute Sale is ₱500,000.00 and he never categorically denied having received the same.

11.Before the plaintiff sold the property to the defendants, he secured a loan from them in the sum of Six Hundred Thousand Pesos

[17] *Valencia v. Court of Appeals*, 331 Phil. 590, 606 (1996).

[18] *Id.*

(₱600,000.00) payable on or before November 10, 2008. The loan is evidenced by a Promissory Note and secured by a Real Estate Mortgage dated September 11, 2008, both executed by him, covering the parcel of land subject of this case, Lot 2332-D, Psd 06-000738. Like the Deed of Absolute Sale, the Real Estate Mortgage is a unilateral instrument, was signed solely by the plaintiff, and furthermore, his parents affixed their signatures thereon under the heading "WITH MY PARENTAL CONSENT", and above the words, "Father" and "Mother," respectively.

Prior to this, or as early as July 25, 2008, the plaintiff also obtained a loan payable on or before September 6, 2008 from defendants' mother, Alma D. David, and already mortgaged to her Lot 2332-D, Psd 06- 000738. The loan is evidenced by a Promissory Note and a Real Estate Mortgage, both of which were executed by plaintiff. Again, the Real Estate Mortgage is an unilateral instrument, was signed solely by the plaintiff and furthermore, his parents also affixed their signatures thereon under the heading, "WITH MY PARENTAL CONSENT " and above the words, "Father" and "Mother," respectively.

In both instances, the plaintiff was always represented by his parents, who always manifested their authority to transact In behalf of their son the plaintiff.

As in the case with the Deed of Absolute Sale, the defendants or their mother did not have any hand in the preparation, accomplishment or notarization of the two Promissory Notes with accompanying Real Estate Mortgages, x x x.

Neither of the two Real Estate Mortgages have been discharged or extinguished.

12. Considering the foregoing, the plaintiff's allegation that his signature on the Deed of Absolute Sale was forged, and that the defendants are the "co-authors" of the said forgery, are absolutely false and baseless.

13. If the Deed of Absolute Sale is declared null and void on the ground of forgery, then the plaintiff should reimburse the defendants the loan he obtained from them, which he did not deny having obtained, plus the agreed monthly interest.[19]

Petitioner seeks to recover the subject property by assailing the validity of the deed of sale on the subject property which he allegedly executed in favor of respondents Malapajo on the

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[19] *Rollo,* pp. 56-58.

ground of forgery. Respondents counterclaimed that, in case the deed of sale is declared null and void, they be paid the loan petitioner obtained from them plus the agreed monthly interest which was covered by a real estate mortgage on the subject property executed by petitioner in favor of respondents. There is a logical relationship between the claim and the counterclaim, as the counterclaim is connected with the transaction or occurrence constituting the subject matter of the opposing party's claim. Notably, the same evidence to sustain respondents' counterclaim would disprove petitioner's case. In the event that respondents could convincingly establish that petitioner actually executed the promissory note and the real estate mortgage over the subject property in their favor then petitioner's complaint might fail. Petitioner's claim is so related logically to respondents' counterclaim, such that conducting separate trials for the claim and the counterclaim would result in the substantial duplication of the time and effort of the court and the parties.[20]

Since respondents' counterclaim is compulsory, it must be set up in the same action; otherwise, it would be barred forever?[21] If it is filed concurrently with the main action but in a different proceeding, it would be abated on the ground of *litis pendentia;* if filed subsequently, it would meet the same fate on the ground of *res judicata.*[22] There is, therefore, no need for respondents to pay docket fees and to file a certification against forum shopping for the court to acquire jurisdiction over the said counterclaim.

We agree with the RTC's disquisition m finding that respondents' counterclaim is compulsory, to wit:

The arguments of the plaintiffs that this transaction is a permissive counterclaim do not convince.

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[20] *Tan v. Kaakbay Finance Corporation,* 452 Phil. 637,647 (2003).

[21] See *Lafarge Cement Philippines, Inc. v. Continental Cement Corporation, supra* note 16.

[22] *Id.* at 137.

By the manner in which the answer pertaining to this transaction was phrased, the real estate mortgage was the origin of the Deed of Absolute Sale after the loan of ₱600,000.00 using the same property as security for the payment thereof was not settled. In short, it is one of defendants' defenses and controverting evidence against plaintiffs' allegations of falsification of the Deed of Absolute Sale, the property subject of the Deed of Sale being one and the same property subject of the mortgage.[23]

x x x   x x x   x x x

Can the Court adjudicate upon the issues [of whether or not the plaintiff could recover ownership and or whether or not the title to the property in question may be canceled or declared null and void, and damages] without the presence of the mother of defendants in whose favor the Real Estate Mortgage of the property subject of this action was executed?

Definitely, this Court can. That there was an allegation pertaining to the mortgage of the property in question to defendants' mother is only some sort of a backgrounder on why a deed of sale was executed by plaintiff in defendants' favor, the truth or falsity of which will have to be evidentiary on the part of the parties hereto. In short, the Court does not need the presence of defendants' mother before it can adjudicate on whether or not the deed of absolute sale was genuine or falsified and whether or not the title to the property may be cancelled.[24]

WHEREFORE, premises considered, the instant petition is **PARTIALLY GRANTED.** The Resolutions dated February 28, 2011 and August 31, 2011 issued by the Court of Appeals in CA-G.R. SP No. 05594 dismissing the petition for *certiorari* and denying reconsideration thereof, respectively, for failure to show proper proof of service of the petition to respondents, are **SET ASIDE.** Acting on the petition for *certiorari,* we resolve to **DENY** the same and **AFFIRM** the Order dated June 4, 2010 of the Regional Trial Court of Roxas City, Branch 15, denying petitioner's motion to set the case for hearing as if a motion to dismiss had been filed, and the Order dated September 30, 2010 denying reconsideration thereof.

SO ORDERED.

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

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[23] *Rollo,* pp. 125-126.

[24] *Id.* at 126-127.

SECOND DIVISION

[G.R. No. 201417. January 13, 2016]

ORIX METRO LEASING AND FINANCE CORPORATION, *petitioner, vs.* **CARDLINE INC., MARY C. CALUBAD, SONY N. CALUBAD, and NG BENG SHENG**, *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; SPECIAL CIVIL ACTIONS; PROHIBITION; MAY BE AVAILED OF TO CHALLENGE THE ORDER OF EXECUTION WHEN THE TERMS OF THE JUDGMENT ARE NOT CLEAR ENOUGH AND THERE REMAINS ROOM FOR INTERPRETATION.—** As a rule, parties are not allowed to object to the execution of a final judgment. One exception is when the terms of the judgment are not clear enough and there remains room for its interpretation. If the exception applies, the respondents may seek the stay of execution or the quashal of the writ of execution. Although an order of execution is not appealable, an aggrieved party may challenge the order of execution *via* an appropriate special civil action under Rule 65 of the Rules of Court. The special civil action of prohibition is an available remedy against a tribunal exercising judicial, quasi-judicial or ministerial powers if it acted without or in excess of its jurisdiction and there is no other plain, speedy, and adequate remedy in the ordinary course of law.

2. **CIVIL LAW; CIVIL CODE; OBLIGATIONS AND CONTRACTS; GUARANTY; EXCUSSION; A GUARANTOR CAN BE HELD IMMEDIATELY LIABLE WITHOUT THE BENEFIT OF EXCUSSION IF HE AGREED THAT HIS LIABILITY IS DIRECT AND IMMEDIATE.—** The terms of a contract govern the parties' rights and obligations. When a party undertakes to be **"jointly and severally"** liable, it means that the obligation is solidary. Furthermore, even assuming that a party is liable only as a guarantor, he can be held immediately liable without the benefit of excussion if the guarantor agreed that his liability is direct and immediate. In

effect, the guarantor waived the benefit of excussion pursuant to Article 2059(1) of the Civil Code. In the present case, the records show that the individual respondents bound themselves solidarily with Cardline. Section 31.1 of the lease agreements states that the persons who sign separate instruments to secure Cardline's obligations to Orix shall be **jointly and severally** liable with Cardline.

3. **REMEDIAL LAW; CIVIL PROCEDURE; FORUM SHOPPING; ELEMENTS.—** Section 5 Rule 7 of the Rules prohibits forum shopping. The rule against forum shopping seeks to address the great evil of two competent tribunals rendering two separate and contradictory decisions. Forum shopping exists when a party initiates two or more actions, other than appeal or *certiorari,* grounded on the same cause to obtain a more favorable decision from any tribunal. The elements of forum shopping are: (i) identity of parties, or at least such parties representing the same interest; (ii) identity of rights asserted and relief prayed for, the latter founded on the same facts; (iii) any judgment rendered in one action will amount to *res judicata* in the other action.

APPEARANCES OF COUNSEL

Castillo Laman Tan Pantaleon & San Jose for petitioner.
Efren C. Lizardo and David A. Domingo for respondents.

D E C I S I O N

BRION, *J*.:

We resolve the petition for review on *certiorari* challenging the **January 6, 2012** decision[1] and **April 16, 2012** resolution[2] of the Court of Appeals (*CA*) in CA-GR SP No. 118226. The CA annulled the Regional Trial Court's (*RTC*) order to execute the judgment against the respondents. The CA ruled that Cardline

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[1] *Rollo*, pp. 102-110; penned by Associate Justice Stephen C. Cruz and concurred in by Associate Justices Vicente S.E. Veloso and Socorro B. Inting.

[2] *Rollo*, pp. 112-114.

Inc. (*Cardline)* had fully satisfied its outstanding obligation by returning the leased properties to Orix Metro Leasing and Finance Corporation (*Orix*).

THE ANTECEDENTS

Cardline leased four machines (*machines*) from Orix as evidenced by three similarly-worded lease agreements. Cardline's principal stockholders and officers — Mary C. Calubad, Sony N. Calubad, and Ng Beng Sheng (*individual respondents)* – signed the suretyship agreements in their personal capacities to guarantee Cardline's obligations under each lease agreement.

Cardline defaulted in paying the rent: the unpaid obligations amounted to ₱9,369,657.00 as of July 12, 2007. Orix formally demanded payment from Cardline but the latter refused to pay.

Orix filed a **complaint** for replevin, sum of money, and damages with an application for a writ of seizure against Cardline and the individual respondents (collectively, *the respondents*) before the RTC. The case was docketed as Civil Case No. 07-855.

The RTC issued a writ of seizure allowing Orix to recover the machines from Cardline.

Thereafter, the RTC declared the respondents in default for failing to file an answer, and allowed Orix to present evidence *ex parte*. The respondents filed a motion to set aside the order of default, but the RTC denied their motion. On May 6, 2008, the RTC rendered judgment in Orix's favor and ordered the respondents to pay Orix, as follows:

1. **The sum of ₱9,369,657.00** or **whatever may be the balance of defendants' outstanding obligation still owing the plaintiff *after the recovery or sale* of the [machines]** as and by way of actual damages (Section 9, Rule 60), in either case, with interest and penalty charges as stipulated, from 12 July 2007 until fully paid;
2. As stipulated in the Continuing Surety, thirty (30%) percent

of the total amount due as Attorney's fees;

3. As stipulated in the Continuing Surety, twenty-five (25%) percent of the total amount due as liquidated damages; and

4. Expenses incurred in securing the leased properties through manual delivery. (emphasis supplied)

On appeal, the respondents argued that the RTC erred in declaring them in default. The CA,[3] and subsequently this Court,[4] denied the respondents' appeal. Our denial in G.R. No. 189877 became final and executory.

Ng Beng Sheng filed a petition for annulment of judgment.[5] He argued that the RTC had no jurisdiction over his person since the summons was not properly served on him. The CA denied the petition on the grounds of forum shopping and *res judicata*. The CA explained that this issue had been addressed by the RTC in the order denying the motion to set aside the order of default, and by the CA and the Supreme Court on appeal.

In the main case, Orix filed a motion for the issuance of a writ of execution which the RTC granted in its **December 1, 2010 order**. Thereafter, the RTC clerk of court issued a writ of execution commanding the sheriff to enforce the May 8, 2009 judgment. The respondents filed a motion for a *status quo ante* order but the RTC denied the motion.

Thereafter, the respondents filed a **petition for prohibition**[6] under Rule 65 of the Rules of Court before the CA.[7] They assailed the issuance of the December 1, 2010 order, arguing that their rental obligations were offset by the market value of the returned machines and by the guaranty deposit.

THE CA RULING

The CA granted the petition, annulled the RTC's order dated December 1, 2010, and prohibited the sheriff from executing

[3] This was docketed as CA-G.R. CV No. 91626.

[4] This was docketed as G.R. No. 189877, *rollo*, pp. 134-136.

[5] This was docketed as CA-G.R. SP No. 115904.

[6] With an application for temporary restraining order and/or preliminary injunction.

[7] This was docketed as CA-G.R. SP No. 118226.

the judgment dated May 6, 2008.

The CA based its decision on Section 19.2(d)[8] in relation with Section 19.3[9] of the lease agreements. The CA ruled that the respondents' debt amounting to ₱9,369,657.00 had been satisfied when Orix recovered the machines valued at ₱14,481,500.00 and received the security deposit amounting to ₱1,635,638.89. Considering that the judgment had been satisfied in full, the RTC's issuance of a writ of execution was no longer necessary.

The CA denied Orix's motion for reconsideration; hence, this petition.

THE PARTIES' ARGUMENTS

In its petition, Orix argues that: (1) the market value of the returned machines and the guaranty deposit do not offset the outstanding obligations; (2) the individual respondents are solidarily liable to Orix and are not entitled to the benefit of excussion; and (3) the respondents and their counsel engaged in willful and deliberate forum shopping.

After the petition was filed, Atty. Efren C. Lizardo withdrew his appearance and Atty. David A. Domingo entered his appearance as the respondents' counsel.

In their comment, the respondents argue that: (1) the RTC's judgment should be interpreted as follows: if Orix recovers

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[8] 19.2(d): "Subject to the provisions of Section 19.3, after repossessing the PROPERTY, the LESSOR may re-lease or sell the PROPERTY to any third party, in such manner and upon such terms and conditions as the LESSOR may solely deem proper.", *rollo*, p. 195.

[9] 19.3: "The proceeds derived from the sale or re-leasing of the property, shall, as and when received by the LESSOR, be applied first to the expenses incurred by the LESSOR in connection with the repossession, sale, or re-leasing of the PROPERTY, a reasonable compensation for undertaking such sale or re-lease, all legal costs and fees, OTHER AMOUNTS, and the balance, if any, to the rental due from the LESSEE. In case the proceeds from such sale or re-lease are not sufficient to cover all amounts payable by the LESSEE to the LESSOR, the LESSEE shall be liable to the LESSOR for the deficiency.", *rollo*, p. 195.

the properties, their market values should be deducted from the respondents' outstanding obligations; (2) the individual respondents merely acted as guarantors, not as sureties; and (3) the respondents committed no forum shopping because no cases were pending before the courts when they filed the petition for prohibition.

OUR RULING

We find the petition **partly meritorious**.

We note at the outset that the RTC's May 6, 2008 judgment has attained finality and can no longer be altered. Once a judgment becomes final and executory, all that remains is the execution of the decision. Thus, the RTC issued the December 1, 2010 order of execution. An order of execution is not appealable;[10] otherwise, a case would never end.[11]

As a rule, parties are not allowed to object to the execution of a final judgment.[12] One exception is when the terms of the judgment are not clear enough and there remains room for its interpretation.[13] If the exception applies, the respondents may seek the stay of execution or the quashal of the writ of execution.[14] Although an order of execution is not appealable, an aggrieved

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[10] Section 1(f), Rule 41 of the Rules of Court.

[11] *Philippine Amusement and Gaming Corporation v. Aumentado, Jr.*, G.R. No. 173634, July 22, 2010, 625 SCRA 241.

[12] *Vargas v. Cajucom*, G.R. No. 171095, June 22, 2015.

[13] *Id*. and *Reburiano v. Court of Appeals*, G.R. No. 102965, January 21, 1999, 301 SCRA 342. Other exceptions are: (i) the writ of execution varies the judgment; (ii) there has been a change in the situation of the parties making the execution inequitable or unjust; (iii) execution is sought to be enforced against property exempt from execution; (iv) it appears that the controversy has [never] been submitted to the jurisdiction of the court; or (v) it appears that the writ of execution has been improvidently issued, or that it is defective in substance, or issued against the wrong party, or that the judgment debt has been paid or otherwise satisfied, or the writ was issued without authority.

[14] *Abrigo v. Flores*, G.R. No. 160786, June 17, 2013, 698 SCRA 559.

[15] RULES OF COURT, Rule 41, Section 1(f).

party may challenge the order of execution *via* an appropriate special civil action under Rule 65 of the Rules of Court.[15] The special civil action of prohibition is an available remedy against a tribunal exercising judicial, quasi-judicial or ministerial powers if it acted without or in excess of its jurisdiction and there is no other plain, speedy, and adequate remedy in the ordinary course of law.[16]

In the present case, the respondents effectively argued that the terms of the RTC's May 6, 2008 judgment are not clear enough such that the parties' agreement must be examined to arrive at the proper interpretation. The respondents, however, did not give the RTC an opportunity to clarify its judgment. The respondents filed a special civil action for prohibition before the CA without first filing a motion to stay or quash the writ of execution before the RTC. Hence, the petition for prohibition obviously lacked the requirement that no "other plain, speedy, and adequate remedy" is available. Thus, the petition should have been dismissed.

However, the CA gave due course to the petition. In granting the petition, the CA ruled that the judgment had been satisfied; thus, there was no more judgment to execute. To stress, the CA erred in granting the petition despite the availability of a "plain, speedy, and adequate remedy."

Orix comes before us for a review of the CA's decision. The issues for resolution are: (1) whether the CA correctly prohibited the RTC from enforcing the writ of execution; (2) whether the individual respondents can invoke the benefit of excussion; and (3) whether the respondents committed forum shopping.

I. Propriety of the CA's decision

The core issue presented in this case is **whether the CA correctly prohibited the RTC from enforcing the writ of execution.** To resolve this issue, we must determine whether the CA correctly interpreted this portion of the RTC's May 6, 2008 judgment:

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[16] RULES OF COURT, Rule 65, Section 2.

The sum of ₱9,369,657.00 or **whatever may be the balance of defendants' outstanding obligation still owing the plaintiff after the recovery or sale of the [machines]** as and by way of actual damages xxx. (emphasis supplied)

The CA cited Sections 19.2(d) and 19.3 of the lease agreements in interpreting the above-quoted judgment. The CA ruled that the balance of Cardline's debt was ₱9,369,657.00, less the machines' market value and the guaranty deposit. After applying this formula, the CA concluded that Cardline no longer owed Orix any indebtedness so that no judgment needed to be executed.

We disagree with the CA's conclusion.

A review of these agreements shows that the CA erroneously relied on Sections 19.2(d) and 19.3 of the lease agreements. The CA also erred in deducting the guaranty deposit from the outstanding debt, contrary to the provisions of the lease agreements.

We review the lease agreements on two points: ***first,*** on whether the market values of the returned machines were intended to reduce Cardline's debt; and ***second,*** on whether the parties intended to deduct the guaranty deposit from the unpaid obligation.

On the **first point,** the machines' market values were not intended to reduce, much less offset, Cardline's debt.

The lease agreements' default provisions are instructive. Section 19[17] of the agreements provides that if Cardline fails to pay rent, Orix may cancel the agreements and may avail of

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[17] Section 19 Default:

19.1 "The LESSEE shall be deemed in default upon the occurrence of any of the following events: (a) **failure to pay any rentals** and/or OTHER AMOUNTS provided in Section[s] 3.3 and 3.5 when the same becomes due and payable; x x x."

19.2 "Upon default by the LESSEE, the LESSOR shall have the option to cancel this contract without further notice, in which case the following remedies accrue immediately to the LESSOR, **in addition to** *any other remedies* available to it hereunder and under the law: x x x."

the following remedies under Section 19.2:

> a) LESSOR may require LESSEE to **surrender possession** of the property x x x;
>
> x x x x x x x x x
>
> d) Subject to the provisions of Section 19.3, after repossessing the property, the LESSOR ***may*** **re-lease or sell the PROPERTY** to any third person, in such manner and upon such terms as the LESSOR may solely deem proper;
>
> e) **Recovery of all accrued and unpaid rental**, including rentals **up to the time the PROPERTY is actually returned** to the LESSOR xxx;" (emphasis supplied)

Should Orix choose to re-lease or sell the machines after repossessing them pursuant to Section 19.2(d), Section 19.3 shall apply, to wit:

> 19.3 The **<u>proceeds</u>** derived from the sale or re-leasing of the PROPERTY, shall x xx be applied first to the expenses incurred by the LESSOR in connection with the repossession, sale, or re-leasing of the PROPERTY, a reasonable compensation for undertaking such sale or re-lease, all legal costs and fees, OTHER AMOUNTS, and <u>the balance, if any, to the RENTAL due from the LESSEE.</u> x x x. (emphasis supplied)

Applying these provisions, when Cardline defaulted in paying rent, Orix was authorized to: (a) re-possess the machines; and (b) recover all unpaid rent. Considering that Orix neither re-leased nor sold the machines, Sections 19.2(d) and 19.3 are not applicable. Thus, the CA erred in applying these provisions to the present case.

Even assuming that these provisions apply, Section 19.3 states that the net "proceeds" derived from the sale, not the machines' market values, shall be applied to the unpaid rent. **Therefore, these contractual provisions do not support the CA's stance that the machines' market values must be reduced from Cardline's unpaid rent.**

As Orix correctly argued, the CA's decision leads to an absurd situation where Cardline pays for its liabilities to Orix using Orix's own properties. The Court cannot affirm this unreasonable and inequitable interpretation.

On the second point, Sections 6.1 and 19.2(b) of the lease agreements discuss the use of the guaranty deposit, to wit:

> 6.1 The LESSEE shall pay to the LESSOR simultaneously with the execution of this Agreement, an amount by way of deposit (the "GUARANTY DEPOSIT") as specified in the Lease Schedule, which deposit shall be held as security for the faithful and timely performance by the LESSEE of its obligations hereunder, as well as its compliance with all the provisions of this Agreement, or of any extension or renewals thereof. **Should the PROPERTY be returned to the LESSOR for any reason whatsoever including LESSEE's default under Section 19 hereof before the expiration of this Agreement,** then the GUARANTY DEPOSIT shall be **forfeited automatically** in favor of the LESSOR **as additional penalty over and above** those stipulated in Section 3.5 [on interest and penalty], **without prejudice to** the right of the LESSOR to **recover any unpaid RENTAL** as well as the OTHER AMOUNTS for which the LESSEE may be liable under this agreement. (emphasis supplied)
>
> 19.2 (b) The LESSOR may retain all amounts including any advance rental paid to it hereunder as compensation for rent, use and depreciation of the PROPERTY. Furthermore, the LESSOR ***may*** apply the GUARANTY DEPOSIT towards the payment of liquidated damages.[18]

These provisions are relevant to determine the parties' intent with respect to the guaranty deposit. These provisions show that the parties did not intend to deduct the guaranty deposit from Cardline's unpaid rent. On the contrary, the guaranty deposit was intended to be *automatically forfeited* to serve as penalty for Cardline's default. In any case, Orix retained the right to recover the unpaid rent but it had the option to consider the guaranty deposit as liquidated damages. Notably, Orix did not exercise this option. Thus, the CA erred when it deducted

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[18] *Rollo*, pp. 193 and 195.

the guaranty deposit from Cardline's unpaid rent.

After examining the RTC's judgment under the lease agreements' lenses, we rule that the return or recovery of the machines does not reduce Cardline's outstanding obligation unless the returned machines are sold. No sale transpired pursuant to the lease agreements. Moreover, the guaranty deposit was not meant to reduce Cardline's unpaid obligation. Thus, Cardline's actual damages remain at ₱9,369,657.00.

In sum, we rule that the CA erroneously interpreted the RTC's May 6, 2008 judgment. Consequently, the CA erred in preventing the RTC from enforcing the writ of execution.

II. The Benefit of Excussion

The second issue before us is **whether the individual respondents are entitled to the benefit of excussion**. We note that this issue had already been raised before the CA in G.R. 189877. The CA, as affirmed by the Court, ruled that the issue cannot be raised for the first time on appeal.

For clarity, we briefly discuss this issue and rule in favor of Orix.

The terms of a contract govern the parties' rights and obligations. When a party undertakes to be **"jointly and severally"** liable, it means that the obligation is solidary.[19] Furthermore, even assuming that a party is liable only as a guarantor, he can be held immediately liable without the benefit of excussion if the guarantor agreed that his liability is direct and immediate.[20] In effect, the guarantor waived the benefit of

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[19] *International Finance Corporation v. Imperial Textile Mills, Inc.*, G.R. No. 160324, November 15, 2005, 475 SCRA 149-150.

[20] *Tupaz v. Court of Appeals,* G.R. No. 145578, November 18, 2005, 475 SCRA 398-399.

[21] 31.1 "If there is more than one LESSEE or if surety or **sureties** should **sign** this Lease Agreement or **other instrument for the purpose of securing the obligations** of the LESSEE to the LESSOR, it is understood that the **liability** of each and all of such lessees [or] the sureties shall be **joint and several** with that of the principal LESSEE.", *rollo*, p. 197.

excussion pursuant to Article 2059(1) of the Civil Code.

In the present case, the records show that the individual respondents bound themselves solidarily with Cardline. Section 31.1[21] of the lease agreements states that the persons who sign separate instruments to secure Cardline's obligations to Orix shall be **jointly and severally** liable with Cardline.

Even assuming *arguendo* that the individual respondents signed the continuing surety agreements merely as guarantors, they still cannot invoke the benefit of excussion. The surety agreements provide that the individual respondents' liability is "**solidary, direct, and immediate** and not contingent upon"[22] Orix's remedies against Cardline. The continuing suretyship agreements also provide that the individual respondents "individually and collectively **waive**(s) in advance the benefit of excussion xxx under Articles 2058 and 2065 of the Civil Code."[23]

Without any doubt, the individual respondents can no longer avail of the benefit of excussion.

III. Forum-Shopping

We now turn to whether the respondents committed forum shopping when they filed the petition for prohibition before the CA.

Orix asserts that the respondents committed forum shopping by instituting several actions essentially seeking to nullify the RTC's decision.

First, the respondents appealed before the CA to reverse the RTC's judgment which held them liable for the unpaid rent. The CA, and subsequently this Court *via a* **petition for review on *certiorari***,[24] affirmed the RTC's judgment. The decision

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[22] *Rollo*, p. 229.

[23] *Ibid.*

[24] This was docketed as G.R. No. 189877.

[25] This was docketed as CA-G.R. SP No. 115904.

became final and executory.

Second, Ng Beng Sheng filed a **petition for annulment of judgment**,[25] dated September 4, 2010, which the CA dismissed on the grounds of forum shopping and *res judicata*.

Third, the respondents filed the **petition for prohibition,**[26] dated February 21, 2011, to prevent the execution of the RTC's judgment.

We disagree with Orix's assertions.

Section 5 Rule 7 of the Rules prohibits forum shopping. The rule against forum shopping seeks to address the great evil of two competent tribunals rendering two separate and contradictory decisions.[27] Forum shopping exists when a party initiates two or more actions, other than appeal or *certiorari,* grounded on the same cause to obtain a more favorable decision from any tribunal.[28]

The elements of forum shopping are: (i) identity of parties, or at least such parties representing the same interest; (ii) identity of rights asserted and relief prayed for, the latter founded on the same facts; (iii) any judgment rendered in one action will amount to *res judicata* in the other action.[29]

In *Reyes v. Alsons*,[30] the petitioner filed a petition for annulment of judgment raising the issue of the RTC's lack of

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[26] This was docketed as CA-G.R. SP No. 118226.

[27] *Arevalo v. Planters Development Bank*, G.R. No. 193415, April 18, 2012, 670 SCRA 252, 267; citing *Guevara v. BPI Securities Corporation*, G.R. No. 159786, August 15, 2006, 498 SCRA 613, 615.

[28] *Government Service Insurance System (GSIS) v. Group Management Corporation*, G.R. Nos. 167000 and 169971, June 8, 2011, 651 SCRA 281, 283; *Chavez v. Court of Appeals*, G.R. No. 174356, January 20, 2010, 610 SCRA 399.

[29] *Chavez v. Court of Appeals*, *Id.* at 400.

[30] G.R. No. 153936, March 2, 2007, 517 SCRA 244.

[31] *Id.*

jurisdiction to enforce the lower court's judgment. This Court held that this jurisdictional issue has been resolved in the previous cases filed by the petitioner. Thus, the petition for annulment of judgment was barred by *res judicata* and the policy against forum shopping.[31]

In the present case, the CA correctly denied Ng Beng Sheng's petition for annulment of judgment. As in *Reyes,* the CA correctly reasoned out that the issue on jurisdiction had been resolved with finality in the review on *certiorari*. Thus, the issue could no longer be re-litigated.

After the denial of the petition for annulment of judgment, Ng Beng Shen joined the other respondents in filing a petition for prohibition. We are now called upon to ascertain whether the recourse to the petition for prohibition amounted to forum shopping.

We rule in the negative.

The two cases filed collectively by the respondents are similar only in that they involve the same parties. The cases, however, involve different causes of actions. The petition for review on *certiorari* was filed to review the merits of the RTC's judgment. On the other hand, the petition for prohibition respects the finality of the RTC's judgment on the merits but interprets the dispositive portion in a way that would render the execution unnecessary. Thus, the elements of forum shopping are **not present** in the two cases.

Moreover, the resort to a remedy under Rule 65 is expressly allowed by the Rules of Court. Section 1, Rule 41 of the Rules of Court provides that an aggrieved party may file the appropriate civil action under Rule 65 to challenge an order of execution. Accordingly, the respondents filed their petition for prohibition under Rule 65 of the Rules of Court.

With respect to Ng Beng Sheng's petition for annulment of judgment, the CA has already ruled that the filing of the petition constituted forum shopping, specifically due to the jurisdictional issue raised. The petition for prohibition, however, involves a different cause of action. Thus, there is no forum shopping.

To recap, *first,* the CA erred in preventing the execution of the RTC's judgment. Nothing in the lease agreements' provisions supports the CA's ruling that the market value of the returned machines and the guaranty deposit shall be deducted

from Cardline's unpaid rent. *Second,* the individual respondents are solidarily liable for Cardline's obligations and are not entitled to the benefit of excussion. *Finally,* the respondents did not commit forum shopping by filing the petition for prohibition.

With these matters clarified, Orix should no longer be denied the fruits of its victory. The RTC is hereby ordered to execute its long—final judgment.

WHEREFORE, we hereby **GRANT** the petition. The January 6, 2012 decision and April 16, 2012 resolution of the Court of Appeals in CA-GR SP No. 118226 are hereby **REVERSED** and **SET ASIDE**. Costs against the respondents.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 204047. January 13, 2016]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ALEXANDER "SANDER" BANGSOY**, *accused-appellant.*

SYLLABUS

1. **CRIMINAL LAW; REVISED PENAL CODE; RAPE; WHEN COMMITTED AGAINST A WOMAN WHO IS A MENTAL RETARDATE, WHAT NEEDS TO BE PROVEN ARE THE FACTS OF SEXUAL CONGRESS BETWEEN THE ACCUSED AND THE VICTIM, AND THE MENTAL RETARDATION OF THE LATTER.—** For a charge of rape

under Article 266-A of the Revised Penal Code, as amended, the prosecution must prove that (1) the offender had carnal knowledge of a woman; and (2) he accomplished such act through force, threat or intimidation, when she was deprived of reason or otherwise unconscious, or when she was under 12 years of age or was demented. Carnal knowledge of a woman who is a mental retardate is rape under the aforesaid provisions of law. Proof of force or intimidation is not necessary, as a mental retardate is not capable of giving consent to a sexual act. What needs to be proven are the facts of sexual congress between the accused and the victim, and the mental retardation of the latter. In the present case, the prosecution successfully established that the first rape indeed took place and that the appellant was the malefactor. *First*, AAA positively identified the appellant as the person who inserted his penis into her vagina, causing her pain. x x x [T]he prosecution successfully established AAA's mental condition. Maribel Tico, a psychologist from the Philippine Mental Health Association, testified that she conducted a mental status examination on AAA, and found her to be suffering from mild mental retardation "with a corresponding [m]ental [a]ge of 7 years and 1 month."

2. **REMEDIAL LAW; EVIDENCE; ALIBI; CANNOT PROSPER WHEN THERE IS NO PHYSICAL IMPOSSIBILITY FOR THE ACCUSED TO BE AT THE *LOCUS CRIMINIS* ON THE DATE OF THE COMMISSION OF THE OFFENSE.—** Like the courts below, we are not convinced by the appellant's claim that he could not have raped AAA because he was in Honeymoon Road in April 2004. We point out that Honeymoon Road and the place where the rape took place – Brookside – are both located in Baguio City. The appellant even admitted that both places are near each other as Honeymoon Road is just a 10-minute walk from Brookside. Under these circumstances, it was not physically impossible for the appellant to be at the *locus criminis* on the date of the first rape.

3. **CRIMINAL LAW; REVISED PENAL CODE; RAPE; CAN BE COMMITTED EVEN IN PLACES WHERE PEOPLE CONGREGATE.—** Contrary to the appellant's claim, the presence of the victim's father in the room does not negate the commission of the crime. Rape can be committed even in places where people congregate, in parks, along the roadside, within school premises, inside a house where there are other occupants,

and even in the same room where other members of the family are also sleeping. It is not impossible or incredible for the members of the victim's family to be in deep slumber and not to be awakened while a sexual assault is being committed. It is settled that lust is not a respecter of time or place and rape is known to happen in the most unlikely places.

4. **ID.; ID.; ID.; NOT NEGATED BY THE ABSENCE OF HYMENAL LACERATIONS.—** [W]e find no merit in the appellant's contention that the absence of lacerations in the victim's hymen negated sexual intercourse. The rupture of the hymen is not an essential and material fact in rape cases; it only further confirms that the vagina has been penetrated and damaged in the process. Additionally, in the present case, the genital examination on AAA was conducted on May 17, 2005, or *more than one year after the rape took place*. At any rate, Dr. Marjorie Rebujio, Medical Officer III at the Benguet General Hospital, clarified that the lack of hymenal injuries does not mean that no sexual abuse took place. Dr. Rebujio further explained that the hymen could heal fast and that it could go back to its normal structure.

5. **REMEDIAL LAW; EVIDENCE; WEIGHT AND SUFFICIENCY OF EVIDENCE; MORAL CERTAINTY; TO CONVICT A PERSON OF A CRIMINAL CHARGE, THERE MUST AT LEAST BE A MORAL CERTAINTY IN EACH ELEMENT ESSENTIAL TO CONSTITUTE THE OFFENSE AND IN THE RESPONSIBILITY OF THE OFFENDER; CASE AT BAR.—** The Information in Criminal Case No. 24762-R alleged that the appellant ***had carnal knowledge*** with AAA "sometime in the month of April 2004, prior to and subsequent thereto." x x x We find AAA's testimony in this second charge of rape to be overly generalized; it lacks specific details on how the second rape was committed. Her bare statement that the same thing happened as what had transpired during the first time is inadequate to establish beyond reasonable doubt that a succeeding rape took place. The testimony should have mentioned that there was insertion of the penis, or at the very least a touching of the labia of the pudendum. Lacking in these details, we cannot conclude that the victim's testimony constitutes proof beyond reasonable doubt of the appellant's guilt. As we held in *People v. Jampas*, "[a]bsolute guarantee of guilt is not demanded by the law to convict a person of a criminal charge

but there must at least be moral certainty in each element essential to constitute the offense and in the responsibility of the offender." Such certainty is absent in the generalized statement that the victim made.

6. **CRIMINAL LAW; REVISED PENAL CODE; QUALIFIED RAPE; COMMITTED WHEN THE INFORMATION AVERRED THAT THE RAPE VICTIM WAS A MENTAL RETARDATE AND THAT THE ACCUSED KNEW OF THIS MENTAL RETARDATION.—** Sexual intercourse with a woman who is a mental retardate with a mental age of below 12 years old constitutes statutory rape. Notably, AAA was also below 12 years old at the time of the incident, as evidenced by the records showing that she was born on March 1, 1993. Under Article 266-B of the Revised Penal Code, as amended, the death penalty shall be imposed when the victim is below 18 years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim. In the present case, however, the relationship of the appellant to the victim was not alleged. Nonetheless, the Information averred that AAA was a mental retardate and that the appellant knew of this mental retardation. These circumstances raised the crime from statutory rape to qualified rape or statutory rape in its qualified form under Article 266-B of the Revised Penal Code. Since the death penalty cannot be imposed in view of Republic Act No. 9346 (An Act Prohibiting the Imposition of the Death Penalty in the Philippines), the CA correctly affirmed the penalty of *reclusion perpetua* without eligibility for parole imposed by the RTC on the appellant.

APPEARANCES OF COUNSEL

Office of the Solicitor General for plaintiff-appellee.
Abalos Lalwet Addog Laita Martinez & Eustaquio Law Office for accused-appellant.

D E C I S I O N

BRION, *J*.:

We decide the appeal, filed by accused-appellant Alexander Bangsoy *(appellant)*, from the January 17, 2012 decision[1] of the Court of Appeals (*CA*) in CA-G.R. CR.- H.C. No. 04808. The appealed decision affirmed the August 16, 2010 Joint Judgment[2] of the Regional Trial Court (*RTC*), Branch 4, Baguio City, finding the appellant guilty beyond reasonable doubt of two (2) counts of statutory rape,[3] and sentencing him to suffer the penalty of *reclusion perpetua* without eligibility for parole in each count.

The RTC Ruling

In its August 16, 2010 decision, the RTC found the appellant guilty beyond reasonable doubt of two counts of statutory rape. It gave credence to the testimony of AAA[4] that her uncle, herein appellant, inserted his penis inside her vagina on two occasions. The RTC explained that AAA testified clearly despite her mental weakness, and that she never wavered during cross-examination. It further held that the appellant's moral ascendancy over AAA, combined with the former's use of a deadly weapon and threats of bodily harm, was more than enough to cow the victim into submitting to the appellant's desires. Finally, the trial court rejected the appellant's bare denial and uncorroborated alibi.

Accordingly, the RTC sentenced the appellant to suffer

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[1] *Rollo*, pp. 2-23; penned by Associate Justice Ramon R. Garcia, and concurred in by Associate Justices Amelita G. Tolentino and Samuel H. Gaerlan.

[2] CA *rollo*, pp. 22-31; penned by Presiding Judge Mia Joy Ollares-Cawed.

[3] In Criminal Case Nos. 24761-R and 24762-R.

[4] Per *People v. Cabalquinto*, 533 Phil. 703 (2006), the real name of the victim shall be withheld in all cases involving violence against women and their children, and the Court shall use fictitious initials instead to represent her. In addition, the personal circumstances of the victim or any other information tending to establish or compromise her identity, as well those of their immediate family or household members, shall not be disclosed.

the penalty of *reclusion perpetua* without eligibility for parole. It also ordered him to pay the victim the following amounts: ₱75,000.00 as civil indemnity; ₱75,000.00 as moral damages; ₱30,000.00 as exemplary damages, plus six percent (6%) interest on all damages awarded from the date of judgment until fully paid.

The CA Decision

On appellate review, the CA affirmed the RTC's Joint Judgment. The CA held that AAA positively identified the appellant as the person who sexually abused her on two occasions in April 2004, and who threatened to kill her if she would report the incidents to her father. It added that AAA testified in a straightforward and categorical manner despite her mental retardation.

The CA further ruled that the absence of hymenal lacerations did not negate a finding of rape. It added that rape is not always committed in seclusion since lust is no respecter of time and place. The CA also ruled that the inconsistencies in AAA's testimonies refer to only minor details and collateral matters. Finally, the appellate court ruled that AAA's act of returning to the house of her father did not impair her credibility since she should not be "judged by the norms of behavior expected of mature persons."[5]

The Court's Ruling

After due consideration, we resolve to (a) **affirm** the appellant's conviction in Criminal Case No. 24761-R, but ***modify*** the designation of the crime committed, and (b) **grant** his appeal in Criminal Case No. 24762-R.

Elements of Rape in Criminal Case No. 24761-R Established

For a charge of rape under Article 266-A of the Revised Penal Code, as amended, the prosecution must prove that (1) the offender had carnal knowledge of a woman; and (2) he accomplished such act through force, threat or intimidation,

[5] *Rollo,* pp. 20-21.

when she was deprived of reason or otherwise unconscious, or when she was under 12 years of age or was demented. Carnal knowledge of a woman who is a mental retardate is rape under the aforesaid provisions of law. Proof of force or intimidation is not necessary, as a mental retardate is not capable of giving consent to a sexual act.[6] What needs to be proven are the facts of sexual congress between the accused and the victim, and the mental retardation of the latter.[7]

In the present case, the prosecution successfully established that the first rape indeed took place and that the appellant was the malefactor. *First*, AAA positively identified the appellant as the person who inserted his penis into her vagina, causing her pain. As found by the courts below, she never wavered in this identification, thus:

PROSECUTOR MARGARITA DE GUZMAN-MANALO:

Q: And can you tell us what happened when there was a time that you slept at Brookside and your uncle Sander came?

AAA:

A: When I was sleeping, my Uncle Sander came and he put a piece of cloth in my mouth.

Q: Why did he put a piece of cloth in your mouth?

A: He **inserted his penis into my vagina**.

Q: When your uncle inserted his penis in your vagina, did he remove your panty?

A: Yes.

Q: And were you alone sleeping in that room at the time your uncle came?

A: No.

Q: Who was your companion?

A: My father.

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[6] *People v. Dalan*, G.R. No. 203086, June 11, 2014, 726 SCRA 335, 338.

[7] See *People v. Dela Paz*, G.R. No. 177294, February 19, 2008, 546 SCRA 363, 376.

Q: Your father was with you inside the room?

A: Yes.

Q: Now, you said that your uncle placed a cloth on top of your mouth?

A: Yes.

Q: And do you know why he placed this cloth on top of your mouth?

A: So that I could not shout.

Q: And what did you feel when you said that your uncle Sander placed his penis in your vagina?

A: **It was painful**.

Q: And after that, what else happened?

A: No more.

Q: Did he [sic] tell your father about what your uncle did to you?

A: No because I was threatened.

Q: How were you threatened?

A: He pointed a knife at me. x x x[8]

Notably, both the RTC and CA found AAA's testimony credible and convincing. We see no reason to disbelieve the testimony of AAA either with respect to the first rape, which the trial and appellate courts found to be credible and straightforward. Given the victim's mental condition, it is highly improbable that she could have concocted or fabricated a rape charge against the accused. Neither was it possible that she was coached into testifying against appellant considering her limited intellect.

Under these circumstances, only a very startling event would leave a lasting impression on her that she could recall when asked about it.[9] We particularly point out that when AAA pointed to the appellant in the courtroom as her sexual abuser, she even

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[8] TSN, July 25, 2006, pp. 4-5. Emphasis ours.

[9] See *People v. Diunsay-Jalandoni*, 544 Phil. 163, 175 (2007).

stated that she filed a complaint so that "he will not do it to anybody else anymore [sic]."[10]

In the light of AAA's mental state, her simple narration of what transpired, instead of adversely affecting her credibility, was indicative of her honesty and guilelessness. Thus, her straightforward narration should be believed.

Second, the prosecution successfully established AAA's mental condition. Maribel Tico, a psychologist from the Philippine Mental Health Association, testified that she conducted a mental status examination on AAA, and found her to be suffering from mild mental retardation "with a corresponding [m]ental [a]ge of 7 years and 1 month."[11] The pertinent portions of Tico's *Psychological Report*[12] reads:

***Intellectual Evaluation*:**

On the intelligence test administered, [AAA] is classified within the **Mental Retardation** range of intellectual functioning, **Mild** in severity based on an overall estimated IQ score of 65. She has a corresponding Mental Age of **7 years and 1 month**. Compared to her age group, she is performing poorly in terms of mental ability.

x x x x x x x x x

SUMMARY AND RECOMMENDATION:

[AAA] is estimated within the **Mild Mental Retardation** range of intellectual ability with a corresponding Mental Age of **7 years and 1 month.** x x x[13]

The Appellant's Defenses

Like the courts below, we are not convinced by the appellant's claim that he could not have raped AAA because he was in Honeymoon Road in April 2004. We point out that Honeymoon Road and the place where the rape took place – Brookside – are both located in Baguio City. The appellant even admitted

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[10] TSN, July 25, 2006, p. 8.

[11] TSN, March 13, 2007, p. 21.

[12] Records, pp. 11-15.

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

that both places are near each other as Honeymoon Road is just a 10-minute walk from Brookside. Under these circumstances, it was not physically impossible for the appellant to be at the *locus criminis* on the date of the first rape.

Contrary to the appellant's claim, the presence of the victim's father[14] in the room does not negate the commission of the crime. Rape can be committed even in places where people congregate, in parks, along the roadside, within school premises, inside a house where there are other occupants, and even in the same room where other members of the family are also sleeping. It is not impossible or incredible for the members of the victim's family to be in deep slumber and not to be awakened while a sexual assault is being committed. It is settled that lust is not a respecter of time or place and rape is known to happen in the most unlikely places.[15]

While AAA also stated that the lights of the room had been turned off, it was not improbable for her to see the face of the person who removed her panty and inserted his penis into her private part more so since the room was illuminated by the lights coming from the nearby house. At the distance that would allow the described insertion, the parties would be so near each other that they could see and even smell one another. In addition, AAA categorically declared that she saw the appellant's face and was familiar with his voice.

We likewise do not find any merit in the appellant's argument that the victim's act of returning to the place where she was sexually abused tainted her credibility. The place where the rape took place was not the appellant's house, but the house of AAA's father that the victim and her brother usually visited every week; thus, it was not unusual for the victim to be there to visit her father.

At any rate, it is not proper to judge by adult norms of behavior the actions of children who have undergone traumatic experiences. Certainly, a child – more so in the case of AAA

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[14] During the alleged second rape, AAA claimed that her father and brother were sleeping with her inside the room, TSN, July 25, 2006, p. 11.

[15] See *People v. Cabral*, 609 Phil. 160, 165-166 (2009).

who is suffering from mild mental retardation – cannot be expected to act like an adult or do what may be expected of mature people under similar circumstances.[16]

We disagree with the appellant's insistence that the initial reluctance of AAA to reveal the assault tainted her credibility. Young girls usually conceal their ordeal because of threats made by their assailants.[17] In this case, the records showed that the appellant threatened to kill AAA if she would reveal the incident to others.

We are also not persuaded by the appellant's claim that AAA was not a credible witness due to the alleged inconsistencies between her sworn statement (in Ilocano dialect) and her court testimony. Affidavits may be incomplete and inaccurate based as they are on answers prompted by the investigator's questions. There, too, is the question of proper understanding between the affiant and the investigating officer, as well as problems about the proper transcription of the answers made. At any rate, whether AAA saw the appellant at her father's house before the rape is immaterial. The determining factor is that AAA positively identified him as the person who covered her mouth with a piece of cloth; removed her panty; inserted his penis in her vagina; and threatened her bodily harm if she would reveal the rape to others.

Finally, we find no merit in the appellant's contention that the absence of lacerations in the victim's hymen negated sexual intercourse. The rupture of the hymen is not an essential and material fact in rape cases;[18] it only further confirms that the vagina has been penetrated and damaged in the process. Additionally, in the present case, the genital examination on AAA was conducted on May 17, 2005, or *more than one year*

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[16] *People v. Montes*, 461 Phil. 563, 578 (2003).

[17] *Id.* at 573.

[18] See *People v. Ferrer*, G.R. No. 142662, August 14, 2001, 362 SCRA 778, 787.

[19] Dr. Rebujio classified the examination as non-acute since it was made 72 hours after the commission of the rape, TSN, May 10, 2007, p. 33.

after the rape took place.[19] At any rate, Dr. Marjorie Rebujio, Medical Officer III at the Benguet General Hospital, clarified that the lack of hymenal injuries does not mean that no sexual abuse took place. Dr. Rebujio further explained that the hymen could heal fast and that it could go back to its normal structure.

Second rape not proven beyond reasonable doubt

We agree with the appellant's claim that his conviction in Criminal Case No. 24762-R was not proven with moral certainty.

The Information in Criminal Case No. 24762-R alleged that the appellant ***had carnal knowledge*** with AAA "sometime in the month of April 2004, prior to and subsequent thereto." For precision and clarity, we reproduce hereunder AAA's testimony on the incident:

PROSECUTOR MARGARITA DE GUZMAN-MANALO:

Q: And did this happen only once?

AAA:

A: No, ma'am.

Q: Was there a second time?

A: Yes, ma'am.

Q: And where did it happen?

A: At Brookside.

Q: You mean, also in the house of your father?

A: Yes, ma'am.

Q: **And can you tell us what happened during the second time?**

A: **The same as what happened on [at] the first time**.[20]

We find AAA's testimony in this second charge of rape to be overly generalized; it lacks specific details on how the second rape was committed. Her bare statement that the same thing happened as what had transpired during the first time is

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[20] TSN, July 25, 2006, p. 5. Emphasis ours.

inadequate to establish beyond reasonable doubt that a succeeding rape took place. The testimony should have mentioned that there was insertion of the penis, or at the very least a touching of the labia of the pudendum. Lacking in these details, we cannot conclude that the victim's testimony constitutes proof beyond reasonable doubt of the appellant's guilt.

As we held in *People v. Jampas*,[21] "[a]bsolute guarantee of guilt is not demanded by the law to convict a person of a criminal charge but there must at least be moral certainty in each element essential to constitute the offense and in the responsibility of the offender." Such certainty is absent in the generalized statement that the victim made.

The Crime Committed and the Proper Penalty in Criminal Case No. 24761-R

Sexual intercourse with a woman who is a mental retardate with a mental age of below 12 years old constitutes statutory rape.[22] Notably, AAA was also below 12 years old at the time of the incident, as evidenced by the records showing that she was born on March 1, 1993.[23]

Under Article 266-B of the Revised Penal Code, as amended, the death penalty shall be imposed when the victim is below 18 years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law spouse of the parent of the victim. In the present case, however, the relationship of the appellant to the victim was not alleged.

Nonetheless, the Information averred that AAA was a mental

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[21] G.R. No. 177766, July 17, 2009, 593 SCRA 241, 256.

[22] See *People v. Abella*, G.R. No. 177295, January 6, 2010, 610 SCRA 19, 28; *People v. Mateo*, G.R. No. 170569, September 30, 2008, 567 SCRA 244, 259; *People v. Arlee*, 380 Phil. 164, 180 (2000).

[23] Records, p. 7; The defense also admitted AAA's minority, *id.* at 119.

[24] The Information also alleged that the rape was committed with the use of a deadly weapon.

retardate and that the appellant knew of this mental retardation.[24] These circumstances raised the crime from statutory rape to qualified rape or statutory rape in its qualified form under Article 266-B of the Revised Penal Code. Since the death penalty cannot be imposed in view of Republic Act No. 9346 (An Act Prohibiting the Imposition of the Death Penalty in the Philippines), the CA correctly affirmed the penalty of *reclusion perpetua* without eligibility for parole imposed by the RTC on the appellant.

The Proper Indemnities

In *People v. Gambao,*[25] the Court set the minimum indemnity and damages where facts warranted the imposition of the death penalty, if not for prohibition thereof by R.A. No. 9346, as follows: (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.

We thus increase the awarded civil indemnity from ₱75,000.00 to ₱100,000.00; moral damages from ₱75,000.00 to ₱100,000.00; and the exemplary damages from ₱30,000.00 to ₱100,000.00.

WHEREFORE, premises considered, we **AFFIRM** the January 17, 2012 decision of the Court of Appeals in CA-G.R. CR.- H.C. No. 04808 with the following **MODIFICATIONS**:

(a) the appellant is found guilty of QUALIFIED RAPE in Criminal Case No. 24761-R;

(b) civil indemnity, moral damages, and exemplary damages are INCREASED to ₱100,000.00, respectively; and

(c) the appellant is ACQUITTED in Criminal Case No. 24762-R.

SO ORDERED.

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

[25] G.R. No. 172707, October 1, 2013, 706 SCRA 508, 533. This case was for kidnapping for ransom but the ruling on the increased indemnities has been applied by the Court in cases involving other crimes.

SECOND DIVISION

[G.R. No. 206147. January 13, 2016]

MICHAEL C. GUY, *petitioner, vs.* **ATTY. GLENN C. GACOTT,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; JURISDICTION; JURISDICTION OVER THE PERSON OF THE PLAINTIFF AND THE DEFENDANT; HOW ACQUIRED.—** Jurisdiction over the person, or jurisdiction *in personam* – the power of the court to render a personal judgment or to subject the parties in a particular action to the judgment and other rulings rendered in the action – is an element of due process that is essential in all actions, civil as well as criminal, except in actions *in rem* or *quasi in rem*. Jurisdiction over the person of the plaintiff is acquired by the mere filing of the complaint in court. As the initiating party, the plaintiff in a civil action voluntarily submits himself to the jurisdiction of the court. As to the defendant, the court acquires jurisdiction over his person either by the proper service of the summons, or by his voluntary appearance in the action.

2. **ID.; ID.; SUMMONS; THE LACK OF OR DEFECT OF THE SERVICE THEREOF MAY BE CURED BY THE DEFENDANT'S SUBSEQUENT VOLUNTARY SUBMISSION TO THE COURT'S JURISDICTION.—** Under Section 11, Rule 14 of the 1997 Revised Rules of Civil Procedure, when the defendant is a corporation, partnership or association organized under the laws of the Philippines with a juridical personality, the service of summons may be made on the president, managing partner, general manager, corporate secretary, treasurer, or in-house counsel. Jurisprudence is replete with pronouncements that such provision provides an **exclusive enumeration** of the persons authorized to receive summons for juridical entities. The records of this case reveal that QSC was never shown to have been served with the summons through any of the enumerated authorized persons to receive such, namely: president, managing partner, general manager, corporate secretary, treasurer or in-house counsel. Service of summons

upon persons **other than those officers enumerated in Section 11 is invalid**. Even substantial compliance is not sufficient service of summons. x x x Nevertheless, while proper service of summons is necessary to vest the court jurisdiction over the defendant, the same is merely procedural in nature and the lack of or defect in the service of summons may be cured by the defendant's subsequent voluntary submission to the court's jurisdiction through his filing a responsive pleading such as an answer. In this case, it is not disputed that QSC filed its Answer despite the defective summons. Thus, jurisdiction over its person was acquired through voluntary appearance.

3. **CIVIL LAW; CIVIL CODE; PARTNERSHIP; A JUDICIAL ENTITY THAT HAS A DISTINCT AND SEPARATE PERSONALITY FROM THE PERSONS COMPOSING IT.—** Although a partnership is based on *delectus personae* or mutual agency, whereby any partner can generally represent the partnership in its business affairs, it is *non sequitur* that a suit against the partnership is necessarily a suit impleading each and every partner. It must be remembered that a partnership is a juridical entity that has a distinct and separate personality from the persons composing it.

4. **REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; CONCLUSIVE AND BINDING ONLY UPON THE PARTIES AND THEIR SUCCESSORS-IN-INTEREST AFTER THE COMMENCEMENT OF THE ACTION IN COURT.—** In relation to the rules of civil procedure, it is elementary that a judgment of a court is conclusive and binding only upon the parties and their successors-in-interest after the commencement of the action in court. A decision rendered on a complaint in a civil action or proceeding does not bind or prejudice a person not impleaded therein, for no person shall be adversely affected by the outcome of a civil action or proceeding in which he is not a party. The principle that a person cannot be prejudiced by a ruling rendered in an action or proceeding in which he has not been made a party conforms to the constitutional guarantee of due process of law.

5. **ID.; ID.; EXECUTION OF JUDGMENTS; THE POWER OF THE COURT IN EXECUTING JUDGMENTS EXTENDS ONLY TO PROPERTIES UNQUESTIONABLY BELONGING TO THE JUDGMENT DEBTOR ALONE.—** Here, Guy was

never made a party to the case. He did not have any participation in the entire proceeding until his vehicle was levied upon and he suddenly became QSC's "co-defendant debtor" during the judgment execution stage. It is a basic principle of law that money judgments are enforceable only against the property incontrovertibly belonging to the judgment debtor. Indeed, the power of the court in executing judgments extends only to properties unquestionably belonging to the judgment debtor alone. An execution can be issued only against a party and not against one who did not have his day in court. The duty of the sheriff is to levy the property of the judgment debtor not that of a third person. For, as the saying goes, one man's goods shall not be sold for another man's debts.

6. **ID.; ID.; ID.; A PARTNER MUST FIRST BE IMPLEADED BEFORE HE COULD BE PREJUDICED BY THE JUDGMENT AGAINST THE PARTNERSHIP.—** In the spirit of fair play, it is a better rule that a partner must first be impleaded before he could be prejudiced by the judgment against the partnership. x x x [A] partner may raise several defenses during the trial to avoid or mitigate his obligation to the partnership liability. Necessarily, before he could present evidence during the trial, he must first be impleaded and informed of the case against him. It would be the height of injustice to rob an innocent partner of his hard-earned personal belongings without giving him an opportunity to be heard. Without any showing that Guy himself acted maliciously on behalf of the company, causing damage or injury to the complainant, then he and his personal properties cannot be made directly and solely accountable for the liability of QSC, the judgment debtor, because he was not a party to the case. Further, Article 1821 of the Civil Code **does not state that there is no need to implead a partner** in order to be bound by the partnership liability. x x x A careful reading of the provision shows that notice to any partner, under certain circumstances, operates as notice to or knowledge to the partnership only. Evidently, it does not provide for the reverse situation, or that notice to the partnership is notice to the partners. Unless there is an unequivocal law which states that a partner is automatically charged in a complaint against the partnership, the constitutional right to due process takes precedence and a partner must first be impleaded before he can be considered as a judgment debtor. To rule otherwise would be a dangerous

precedent, harping in favor of the deprivation of property without ample notice and hearing, which the Court certainly cannot countenance.

7. **CIVIL LAW; CIVIL CODE; PARTNERSHIP; PARTNERS SHALL ONLY BE LIABLE WITH THEIR PROPERTY AFTER ALL THE PARTNERSHIP ASSETS HAVE BEEN EXHAUSTED.—** [T]he partners' obligation with respect to the partnership liabilities is subsidiary in nature. It provides that the partners shall only be liable with their property after all the partnership assets have been exhausted. To say that one's liability is subsidiary means that it merely becomes secondary and only arises if the one primarily liable fails to sufficiently satisfy the obligation. Resort to the properties of a partner may be made only after efforts in exhausting partnership assets have failed or that such partnership assets are insufficient to cover the entire obligation. The subsidiary nature of the partners' liability with the partnership is one of the valid defenses against a premature execution of judgment directed to a partner. In this case, had he been properly impleaded, Guy's liability would only arise after the properties of QSC would have been exhausted. The records, however, miserably failed to show that the partnership's properties were exhausted. x x x [N]o genuine efforts were made to locate the properties of QSC that could have been attached to satisfy the judgment — contrary to the clear mandate of Article 1816. Being subsidiarily liable, Guy could only be held personally liable if properly impleaded and after all partnership assets had been exhausted.

8. **ID.; ID.; ID.; THE LIABILITY OF THE PARTNERS IS NOT SOLIDARY; EXCEPTIONS.—** Article 1816 provides that the partners' obligation to third persons with respect to the partnership liability is *pro rata* or joint. Liability is *joint* when a debtor is liable only for the payment of only a proportionate part of the debt. In contrast, a *solidary* liability makes a debtor liable for the payment of the entire debt. In the same vein, Article 1207 does not presume solidary liability unless: 1) the **obligation expressly** so states; or 2) the **law or nature requires** solidarity. With regard to partnerships, ordinarily, the liability of the partners is not solidary. The joint liability of the partners is a defense that can be raised by a partner impleaded in a complaint against the partnership. In other words, only in exceptional circumstances shall the partners' liability be solidary in nature. Articles 1822,

1823 and 1824 of the Civil Code provide for these exceptional conditions x x x. In essence, these provisions articulate that it is the **act of a partner** which caused loss or injury to a third person that makes all other partners solidarily liable with the partnership because of the words *"any wrongful act or omission of* ***any partner*** *acting in the ordinary course of the business," "****one partner*** *acting within the scope of his apparent authority"* and *"misapplied by* ***any partner*** *while it is in the custody of the partnership."* The obligation is solidary because the law protects the third person, who in good faith relied upon the authority of a partner, whether such authority is real or apparent.

APPEARANCES OF COUNSEL

Andres Padernal & Paras Law Offices for petitioner.
Glenn C. Gacott for himself as respondent.

D E C I S I O N

MENDOZA, *J.*:

Before this Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court filed by petitioner Michael C. Guy *(Guy)*, assailing the June 25, 2012 Decision[1] and the March 5, 2013 Resolution[2] of the Court of Appeals *(CA)* in CA-G.R. CV No. 94816, which affirmed the June 28, 2009[3] and February 19, 2010[4] Orders of the Regional Trial Court, Branch 52, Puerto Princesa City, Palawan *(RTC),* in Civil Case No. 3108, a case for damages. The assailed RTC orders denied Guy's Motion to Lift Attachment Upon Personalty[5] on the ground that he was not a judgment debtor.

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[1] *Rollo*, pp. 23-38; Penned by Associate Justice Agnes Reyes-Carpio, with Associate Justices Jose C. Reyes, Jr. and Priscilla J. Baltazar-Padilla, concurring.

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

[3] *Id*. at 93-96; Penned by Judge Bienvenido C. Blancaflor.

[4] *Id*. at 106-112.

The Facts

It appears from the records that on March 3, 1997, Atty. Glenn Gacott *(Gacott)* from Palawan purchased two (2) brand new transreceivers from Quantech Systems Corporation *(QSC)* in Manila through its employee Rey Medestomas *(Medestomas),* amounting to a total of ₱18,000.00. On May 10, 1997, due to major defects, Gacott personally returned the transreceivers to QSC and requested that they be replaced. Medestomas received the returned transreceivers and promised to send him the replacement units within two (2) weeks from May 10, 1997.

Time passed and Gacott did not receive the replacement units as promised. QSC informed him that there were no available units and that it could not refund the purchased price. Despite several demands, both oral and written, Gacott was never given a replacement or a refund. The demands caused Gacott to incur expenses in the total amount of ₱40,936.44. Thus, Gacott filed a complaint for damages. Summons was served upon QSC and Medestomas, afterwhich they filed their Answer, verified by Medestomas himself and a certain Elton Ong *(Ong)*. QSC and Medestomas did not present any evidence during the trial.[6]

In a Decision,[7] dated March 16, 2007, the RTC found that the two (2) transreceivers were defective and that QSC and Medestomas failed to replace the same or return Gacott's money. The dispositive portion of the decision reads:

> WHEREFORE, judgment is hereby rendered in favor of the plaintiff, ordering the defendants to jointly and severally pay plaintiff the following:
>
> 1. Purchase price plus 6% per annum from March 3, 1997 up to and until fully paid ——— ₱ 18,000.00
> 2. Actual Damages ——————— 40,000.00

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[5] *Id*. at 66-70.

[6] *Id*. at 25.

[7] *Id*. at 60-62.

3.	Moral Damages ————————	5,000.00
4.	Corrective Damages ———————	100,000.00
5.	Attorney's Fees ————————	60,000.00
6.	Costs.	

SO ORDERED.

The decision became final as QSC and Medestomas did not interpose an appeal. Gacott then secured a Writ of Execution,[8] dated September 26, 2007.

During the execution stage, Gacott learned that QSC was not a corporation, but was in fact a general partnership registered with the Securities and Exchange Commission *(SEC)*. In the articles of partnership,[9] Guy was appointed as General Manager of QSC.

To execute the judgment, Branch Sheriff Ronnie L. Felizarte *(Sheriff Felizarte)* went to the main office of the Department of Transportation and Communications, Land Transportation Office *(DOTC-LTO),* Quezon City, and verified whether Medestomas, QSC and Guy had personal properties registered therein.[10] Upon learning that Guy had vehicles registered in his name, Gacott instructed the sheriff to proceed with the attachment of one of the motor vehicles of Guy based on the certification issued by the DOTC-LTO.[11]

On March 3, 2009, Sheriff Felizarte attached Guy's vehicle by virtue of the Notice of Attachment/Levy upon Personalty[12] served upon the record custodian of the DOTC-LTO of Mandaluyong City. A similar notice was served to Guy through his housemaid at his residence.

Thereafter, Guy filed his Motion to Lift Attachment Upon Personalty, arguing that he was not a judgment debtor and,

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[8] *Id*. at 63.

[9] *Id*. at 173-176.

[10] RTC Records, Sheriff's Report, pp. 243-248.

[11] *Id*. at 247.

[12] *Rollo*, pp. 64-65.

therefore, his vehicle could not be attached.[13] Gacott filed an opposition to the motion.

The RTC Order

On June 28, 2009, the RTC issued an order denying Guy's motion. It explained that considering QSC was not a corporation, but a registered partnership, Guy should be treated as a general partner pursuant to Section 21 of the Corporation Code, and he may be held jointly and severally liable with QSC and Medestomas. The trial court wrote:

> All persons who assume to act as a corporation knowing it to be without authority to do so shall be liable as general partners for all debts, liabilities and damages incurred or arising as a result thereof x x x. Where, by any wrongful act or omission of any partner acting in the ordinary course of the business of the partnership x x x, loss or injury is caused to any person, not being a partner in the partnership, or any penalty is incurred, the partnership is liable therefore to the same extent as the partner so acting or omitting to act. All partners are liable solidarily with the partnership for everything chargeable to the partnership under Article 1822 and 1823.[14]

Accordingly, it disposed:

> WHEREFORE, with the ample discussion of the matter, this Court finds and so holds that the property of movant Michael Guy may be validly attached in satisfaction of the liabilities adjudged by this Court against Quantech Co., the latter being an ostensible Corporation and the movant being considered by this Court as a general partner therein in accordance with the order of this court impressed in its decision to this case imposing joint and several liability to the defendants. The Motion to Lift Attachment Upon Personalty submitted by the movant is therefore DENIED for lack of merit.
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> SO ORDERED.[15]

Not satisfied, Guy moved for reconsideration of the denial

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[13] *Id*. at 26.

[14] *Id*. at 95-96.

[15] *Id*. at 96.

of his motion. He argued that he was neither impleaded as a defendant nor validly served with summons and, thus, the trial court did not acquire jurisdiction over his person; that under Article 1824 of the Civil Code, the partners were only solidarily liable for the partnership liability under exceptional circumstances; and that in order for a partner to be liable for the debts of the partnership, it must be shown that all partnership assets had first been exhausted.[16]

On February 19, 2010, the RTC issued an order[17] denying his motion.

The denial prompted Guy to seek relief before the CA.

The CA Ruling

On June 25, 2012, the CA rendered the assailed decision dismissing Guy's appeal for the same reasons given by the trial court. In addition thereto, the appellate court stated:

> We hold that Michael Guy, being listed as a general partner of QSC during that time, cannot feign ignorance of the existence of the court summons. The verified Answer filed by one of the partners, Elton Ong, binds him as a partner because the Rules of Court does not require that summons be served on all the partners. It is sufficient that service be made on the "president, managing partner, general manager, corporate secretary, treasurer or in-house counsel." To Our mind, it is immaterial whether the summons to QSC was served on the theory that it was a corporation. What is important is that the summons was served on QSC's authorized officer xxx.[18]

The CA stressed that Guy, being a partner in QSC, was bound by the summons served upon QSC based on Article 1821 of the Civil Code. The CA further opined that the law did not require a partner to be actually involved in a suit in order for him to be made liable. He remained "solidarily liable whether he participated or not, whether he ratified it or not, or whether

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[16] *Id.* at 102-103.

[17] Penned by Judge Angelo R. Arizala. *Id*. at 106-112.

[18] *Id*. at 32-33.

he had knowledge of the act or omission."[19]

Aggrieved, Guy filed a motion for reconsideration but it was denied by the CA in its assailed resolution, dated March 5, 2013.

Hence, the present petition raising the following

ISSUE

THE HONORABLE COURT OF APPEALS COMMITTED REVERSIBLE ERROR IN HOLDING THAT PETITIONER GUY IS SOLIDARILY LIABLE WITH THE PARTNERSHIP FOR DAMAGES ARISING FROM THE BREACH OF THE CONTRACT OF SALE WITH RESPONDENT GACOTT.[20]

Guy argues that he is not solidarily liable with the partnership because the solidary liability of the partners under Articles 1822, 1823 and 1824 of the Civil Code only applies when it stemmed from the act of a partner. In this case, the alleged lapses were not attributable to any of the partners. Guy further invokes Article 1816 of the Civil Code which states that the liability of the partners to the partnership is merely joint and subsidiary in nature.

In his Comment,[21] Gacott countered, among others, that because Guy was a general and managing partner of QSC, he could not feign ignorance of the transactions undertaken by QSC. Gacott insisted that notice to one partner must be considered as notice to the whole partnership, which included the pendency of the civil suit against it.

In his Reply,[22] Guy contended that jurisdiction over the person of the partnership was not acquired because the summons was never served upon it or through any of its authorized office. He also reiterated that a partner's liability was joint and

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[19] *Id*. at 36.

[20] *Id*. at 13.

[21] *Id*. at 169-172.

[22] *Id*. at 194-205.

subsidiary, and not solidary.

The Court's Ruling

The petition is meritorious.

The service of summons was flawed; voluntary appearance cured the defect

Jurisdiction over the person, or jurisdiction *in personam* – the power of the court to render a personal judgment or to subject the parties in a particular action to the judgment and other rulings rendered in the action – is an element of due process that is essential in all actions, civil as well as criminal, except in actions *in rem* or *quasi in rem*.[23] Jurisdiction over the person of the plaintiff is acquired by the mere filing of the complaint in court. As the initiating party, the plaintiff in a civil action voluntarily submits himself to the jurisdiction of the court. As to the defendant, the court acquires jurisdiction over his person either by the proper service of the summons, or by his voluntary appearance in the action.[24]

Under Section 11, Rule 14 of the 1997 Revised Rules of Civil Procedure, when the defendant is a corporation, partnership or association organized under the laws of the Philippines with a juridical personality, the service of summons may be made on the president, managing partner, general manager, corporate secretary, treasurer, or in-house counsel. Jurisprudence is replete with pronouncements that such provision provides an **exclusive enumeration** of the persons authorized to receive summons for juridical entities.[25]

The records of this case reveal that QSC was never shown to have been served with the summons through any of the enumerated authorized persons to receive such, namely:

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[23] *Macasaet v. Co, Jr.,* G.R. No. 156759, June 5, 2013, 697 SCRA 187, 198.

[24] *Id.* at 201.

[25] *Cathay Metal Corp. v. Laguna West Multi-Purpose Cooperative, Inc.,* G.R. No. 172204, July 2, 2014, 728 SCRA 482, 504.

president, managing partner, general manager, corporate secretary, treasurer or in-house counsel. Service of summons upon persons **other than those officers enumerated in Section 11 is invalid**. Even substantial compliance is not sufficient service of summons.[26] The CA was obviously mistaken when it opined that it was immaterial whether the summons to QSC was served on the theory that it was a corporation.[27]

Nevertheless, while proper service of summons is necessary to vest the court jurisdiction over the defendant, the same is merely procedural in nature and the lack of or defect in the service of summons may be cured by the defendant's subsequent voluntary submission to the court's jurisdiction through his filing a responsive pleading such as an answer. In this case, it is not disputed that QSC filed its Answer despite the defective summons. Thus, jurisdiction over its person was acquired through voluntary appearance.

A partner must be separately and distinctly impleaded before he can be bound by a judgment

The next question posed is whether the trial court's jurisdiction over QSC extended to the person of Guy insofar as holding him solidarily liable with the partnership. After a thorough study of the relevant laws and jurisprudence, the Court answers in the negative.

Although a partnership is based on *delectus personae* or mutual agency, whereby any partner can generally represent the partnership in its business affairs, it is *non sequitur* that a suit against the partnership is necessarily a suit impleading each and every partner. It must be remembered that a partnership is a juridical entity that has a distinct and separate personality from the persons composing it.[28]

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[26] *Id*.

[27] *Rollo*, p. 33.

[28] Article 1768 of the Civil Code.

In relation to the rules of civil procedure, it is elementary that a judgment of a court is conclusive and binding only upon the parties and their successors-in-interest after the commencement of the action in court.[29] A decision rendered on a complaint in a civil action or proceeding does not bind or prejudice a person not impleaded therein, for no person shall be adversely affected by the outcome of a civil action or proceeding in which he is not a party.[30] The principle that a person cannot be prejudiced by a ruling rendered in an action or proceeding in which he has not been made a party conforms to the constitutional guarantee of due process of law.[31]

In *Muñoz v. Yabut, Jr.,*[32] the Court declared that a person not impleaded and given the opportunity to take part in the proceedings was not bound by the decision declaring as null and void the title from which his title to the property had been derived. The effect of a judgment could not be extended to non-parties by simply issuing an alias writ of execution against them, for no man should be prejudiced by any proceeding to which he was a stranger.

In *Aguila v. Court of Appeals*,[33] the complainant had a cause of action against the partnership. Nevertheless, it was the partners themselves that were impleaded in the complaint. The Court dismissed the complaint and held that it was the partnership, not its partners, officers or agents, which should be impleaded for a cause of action against the partnership itself. The Court added that the partners could not be held liable for the obligations of the partnership unless it was shown that the legal fiction of a different juridical personality was being used for fraudulent, unfair, or illegal purposes.[34]

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[29] *Villanueva v. Velasco,* 399 Phil. 664, 673 (2000).

[30] *Dare Adventure Farm Corporation v. CA*, G.R. No. 161122, September 24, 2012, 681 SCRA 580, 583.

[31] *Id*. at 588.

[32] 665 Phil. 488 (2011).

[33] 377 Phil. 257, 267 (1999).

[34] See *McConnel v. Court of Appeals,* 111 Phil. 310 (1961).

Here, Guy was never made a party to the case. He did not have any participation in the entire proceeding until his vehicle was levied upon and he suddenly became QSC's "co-defendant debtor" during the judgment execution stage. It is a basic principle of law that money judgments are enforceable only against the property incontrovertibly belonging to the judgment debtor.[35] Indeed, the power of the court in executing judgments extends only to properties unquestionably belonging to the judgment debtor alone. An execution can be issued only against a party and not against one who did not have his day in court. The duty of the sheriff is to levy the property of the judgment debtor not that of a third person. For, as the saying goes, one man's goods shall not be sold for another man's debts.[36]

In the spirit of fair play, it is a better rule that a partner must first be impleaded before he could be prejudiced by the judgment against the partnership. As will be discussed later, a partner may raise several defenses during the trial to avoid or mitigate his obligation to the partnership liability. Necessarily, before he could present evidence during the trial, he must first be impleaded and informed of the case against him. It would be the height of injustice to rob an innocent partner of his hard-earned personal belongings without giving him an opportunity to be heard. Without any showing that Guy himself acted maliciously on behalf of the company, causing damage or injury to the complainant, then he and his personal properties cannot be made directly and solely accountable for the liability of QSC, the judgment debtor, because he was not a party to the case.

Further, Article 1821 of the Civil Code **does not state that there is no need to implead a partner** in order to be bound by the partnership liability. It provides that:

Notice to any partner of any matter relating to partnership affairs, **and the knowledge of the partner acting in the particular matter**, acquired while a partner or then present to his mind, and the

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[35] *Villasi v. Garcia*, G.R. No. 190106, January 15, 2014, 713 SCRA 629, 637.

[36] *Id*. at 638.

knowledge of any other partner who reasonably could and should have communicated it to the acting partner, **operate as notice to or knowledge of the partnership**, except in the case of fraud on the partnership, committed by or with the consent of that partner.

[Emphases and Underscoring Supplied]

A careful reading of the provision shows that notice to any partner, under certain circumstances, operates as notice to or knowledge to the partnership only. Evidently, it does not provide for the reverse situation, or that notice to the partnership is notice to the partners. Unless there is an unequivocal law which states that a partner is automatically charged in a complaint against the partnership, the constitutional right to due process takes precedence and a partner must first be impleaded before he can be considered as a judgment debtor. To rule otherwise would be a dangerous precedent, harping in favor of the deprivation of property without ample notice and hearing, which the Court certainly cannot countenance.

Partners' liability is subsidiary and generally joint; immediate levy upon the property of a partner cannot be made

Granting that Guy was properly impleaded in the complaint, the execution of judgment would be improper. Article 1816 of the Civil Code governs the liability of the partners to third persons, which states that:

Article 1816. All partners, including industrial ones, shall be liable ***pro rata*** **with all their property and after all the partnership assets have been exhausted**, for the contracts which may be entered into in the name and for the account of the partnership, under its signature and by a person authorized to act for the partnership. However, any partner may enter into a separate obligation to perform a partnership contract.

[Emphasis Supplied]

This provision clearly states that, *first,* the partners' obligation with respect to the partnership liabilities is subsidiary in nature.

It provides that the partners shall only be liable with their property after all the partnership assets have been exhausted. To say that one's liability is subsidiary means that it merely becomes secondary and only arises if the one primarily liable fails to sufficiently satisfy the obligation. Resort to the properties of a partner may be made only after efforts in exhausting partnership assets have failed or that such partnership assets are insufficient to cover the entire obligation. The subsidiary nature of the partners' liability with the partnership is one of the valid defenses against a premature execution of judgment directed to a partner.

In this case, had he been properly impleaded, Guy's liability would only arise after the properties of QSC would have been exhausted. The records, however, miserably failed to show that the partnership's properties were exhausted. The report[37] of the sheriff showed that the latter went to the main office of the DOTC-LTO in Quezon City and verified whether Medestomas, QSC and Guy had personal properties registered therein. Gacott then instructed the sheriff to proceed with the attachment of one of the motor vehicles of Guy.[38] The sheriff then served the Notice of Attachment/Levy upon Personalty to the record custodian of the DOTC-LTO of Mandaluyong City. A similar notice was served to Guy through his housemaid at his residence.

Clearly, no genuine efforts were made to locate the properties of QSC that could have been attached to satisfy the judgment —contrary to the clear mandate of Article 1816. Being subsidiarily liable, Guy could only be held personally liable if properly impleaded and after all partnership assets had been exhausted.

Second, Article 1816 provides that the partners' obligation to third persons with respect to the partnership liability is *pro rata* or joint. Liability is *joint* when a debtor is liable only for the payment of only a proportionate part of the debt. In contrast, a *solidary* liability makes a debtor liable for the payment of

[37] RTC Records, Sheriff's Report, pp. 243-248.

[38] *Id.* at 247.

the entire debt. In the same vein, Article 1207 does not presume solidary liability unless: 1) the **obligation expressly** so states; or 2) the **law or nature requires** solidarity. With regard to partnerships, ordinarily, the liability of the partners is not solidary.[39] The joint liability of the partners is a defense that can be raised by a partner impleaded in a complaint against the partnership.

In other words, only in exceptional circumstances shall the partners' liability be solidary in nature. Articles 1822, 1823 and 1824 of the Civil Code provide for these exceptional conditions, to wit:

> Article 1822. Where, by any wrongful act or omission of any partner acting in the ordinary course of the business of the partnership or with the authority of his co-partners, loss or injury is caused to any person, not being a partner in the partnership, or any penalty is incurred, the partnership is liable therefor to the same extent as the partner so acting or omitting to act.
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> Article 1823. The partnership is bound to make good the loss:
>
> (1) Where one partner acting within the scope of his apparent authority receives money or property of a third person and misapplies it; and
>
> (2) Where the partnership in the course of its business receives money or property of a third person and the money or property so received is misapplied by any partner while it is in the custody of the partnership.
>
> Article 1824. All partners are **liable solidarily** with the partnership for everything chargeable to the partnership **under Articles 1822 and 1823**.
>
> [Emphases Supplied]

In essence, these provisions articulate that it is the **act of a partner** which caused loss or injury to a third person that makes all other partners solidarily liable with the partnership because of the words *"any wrongful act or omission of* ***any partner***

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[39] *Liwanag v. Workmen's Compensation Commission,* 105 Phil 741, 743 (1959).

acting in the ordinary course of the business," *"**one partner** acting within the scope of his apparent authority"* and *"misapplied by **any partner** while it is in the custody of the partnership."* The obligation is solidary because the law protects the third person, who in good faith relied upon the authority of a partner, whether such authority is real or apparent.[40]

In the case at bench, it was not shown that Guy or the other partners did a wrongful act or misapplied the money or property he or the partnership received from Gacott. A third person who transacted with said partnership can hold the partners solidarily liable for the whole obligation **if the case of the third person falls under Articles 1822 or 1823**.[41] Gacott's claim stemmed from the alleged defective transreceivers he bought from QSC, through the latter's employee, Medestomas. It was for a breach of warranty in a contractual obligation entered into in the name and for the account of QSC, not due to the acts of any of the partners. For said reason, it is the general rule under Article 1816 that governs the joint liability of such breach, and not the exceptions under Articles 1822 to 1824. Thus, it was improper to hold Guy solidarily liable for the obligation of the partnership.

because, as previously stated, **al**
rata with

Finally, Section 21 of the Corporation Code,[42] as invoked by the RTC, cannot be applied to sustain Guy's liability. The said provision states that a general partner shall be liable for all debts, liabilities and damages incurred by an ostensible corporation. It must be read, however, in conjunction with Article 1816 of the Civil Code, which governs the liabilities of partners against third persons. Accordingly, whether QSC was an alleged ostensible corporation or a duly registered partnership, the liability of Guy, if any, would remain to be joint and subsidiary

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[40] *Muñasque v. Court of Appeals*, 224 Phil. 79, 90 (1985).

[41] *Id.* at 89.

[42] All persons who assume to act as a corporation knowing it to be without authority to do so shall be liable as general partners for all debts, liabilities and damages incurred or arising as a result thereof: *Provided*, *however*, That when any such ostensible corporation is sued on any transaction entered by it as a corporation or on any tort committed by it as such, it shall not be allowed to use as a defense its lack of corporate personality.

all their property and after all the partnership assets have been exhausted for the contracts which may be entered into in the name and for the account of the partnership.

WHEREFORE, the petition is **GRANTED**. The June 25, 2012 Decision and the March 5, 2013 Resolution of the Court of Appeals in CA-G.R. CV No. 94816 are hereby **REVERSED** and **SET ASIDE**. Accordingly, the Regional Trial Court, Branch 52, Puerto Princesa City, is **ORDERED TO RELEASE** Michael C. Guy's Suzuki Grand Vitara subject of the Notice of Levy/ Attachment upon Personalty.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 207406. January 13, 2016]

NORBERTO A. VITANGCOL, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. **CRIMINAL LAW; REVISED PENAL CODE; BIGAMY; ELEMENTS.—** Bigamy is punished under Article 349 of the Revised Penal Code x x x. For an accused to be convicted of this crime, the prosecution must prove all of the following elements: "[first,] that the offender has been legally married; [second,] that the first marriage has not been legally dissolved or, in case his or her spouse is absent, the absent spouse could not yet be presumed dead according to the Civil Code; [third,] that he contracts a second or subsequent marriage; and [lastly,]

that the second or subsequent marriage has all the essential requisites for validity."

2. **CIVIL LAW; CIVIL CODE; PERSONS AND FAMILY RELATIONS; MARRIAGE; REQUISITES FOR MARRIAGE CELEBRATED DURING EFFECTIVITY OF CIVIL CODE.—** Article 53 of the Civil Code enumerates the requisites of marriage, the absence of any of which renders the marriage void from the beginning: Article 53. No marriage shall be solemnized unless all these requisites are complied with: "(1) Legal capacity of the contracting parties; (2) Their consent, freely given; (3) Authority of the person performing the marriage; and (4) A marriage license, except in a marriage of exceptional character." The fourth requisite—the marriage license—is issued by the local civil registrar of the municipality where either contracting party habitually resides. The marriage license represents the state's "involvement and participation in every marriage, in the maintenance of which the general public is interested."

3. **ID.; ID.; ID.; ID.; MARRIAGE LICENSE; MARRIAGE SOLEMNIZED WITHOUT A MARRIAGE LICENSE, HOW PROVEN.—** To prove that a marriage was solemnized without a marriage license, "the law requires that the absence of such marriage license must be apparent on the marriage contract, or at the very least, supported by a certification from the local civil registrar that no such marriage license was issued to the parties." Petitioner presents a Certification from the Office of the Civil Registrar of Imus, Cavite x x x. This Certification does not prove that petitioner's first marriage was solemnized without a marriage license. It does not categorically state that Marriage License No. 8683519 does not exist. Moreover, petitioner admitted the authenticity of his signature appearing on the marriage contract between him and his first wife, Gina. The marriage contract between petitioner and Gina is a positive piece of evidence as to the existence of petitioner's first marriage. This "should be given greater credence than documents testifying merely as to [the] absence of any record of the marriage[.]" x x x The appreciation of the probative value of the certification cannot be divorced from the purpose of its presentation, the cause of action in the case, and the context of the presentation of the certification in relation to the other evidence presented in the case. We are not prepared to establish a doctrine that a

certification that a marriage license cannot be found may substitute for a definite statement that no such license existed or was issued. Definitely, the Office of the Civil Registrar of Imus, Cavite should be fully aware of the repercussions of those words. That the license now cannot be found is not basis per se to say that it could not have been issued.

4. **CRIMINAL LAW; REVISED PENAL CODE; BIGAMY; COMMITTED WHEN THE ACCUSED CONTRACTED A SUBSEQUENT MARRIAGE WITHOUT HAVING THE FIRST MARRIAGE JUDICIALLY DECLARED VOID OR WITHOUT HAVING THE FIRST WIFE JUDICIALLY DECLARED PRESUMPTIVELY DEAD.—** Assuming without conceding that petitioner's first marriage was solemnized without a marriage license, petitioner remains liable for bigamy. Petitioner's first marriage was not *judicially declared* void. Nor was his first wife Gina judicially declared presumptively dead under the Civil Code. The second element of the crime of bigamy is, therefore, present in this case. x x x Should the requirement of judicial declaration of nullity be removed as an element of the crime of bigamy, Article 349 of Revised Penal Code becomes useless. "[A]ll that an adventurous bigamist has to do is to . . . contract a subsequent marriage and escape a bigamy charge by simply claiming that the first marriage is void and that the subsequent marriage is equally void for lack of a prior judicial declaration of nullity of the first." Further, "[a] party may even enter into a marriage aware of the absence of a requisite—usually the marriage license—and thereafter contract a subsequent marriage without obtaining a judicial declaration of nullity of the first on the assumption that the first marriage is void."

APPEARANCES OF COUNSEL

Giselle Lou M. Cabahug-Fuguso for petitioner.
Office of the Solicitor General for respondent.

D E C I S I O N

LEONEN, *J.*:

Persons intending to contract a second marriage must first secure a judicial declaration of nullity of their first marriage. If they proceed with the second marriage without the judicial declaration, they are guilty of bigamy regardless of evidence of the nullity of the first marriage.

This resolves a Petition for Review on Certiorari[1] assailing the Court of Appeals Decision[2] dated July 18, 2012 and Resolution[3] dated June 3, 2013. The Court of Appeals affirmed with modification the Decision[4] of Branch 25 of the Regional Trial Court of Manila convicting petitioner Norberto Abella Vitangcol (Norberto) of bigamy punished under Article 349 of the Revised Penal Code.[5] Norberto was sentenced to suffer the indeterminate penalty of two (2) years and four (4) months of *prision correccional* as minimum to eight (8) years and one (1) day of *prision mayor* as maximum.[6]

In the Information dated April 29, 2008, the Office of the City Prosecutor of Manila charged Norberto with bigamy.[7] The accusatory portion of the Information reads:

That on or about December 4, 1994, in the City of Manila,

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[1] *Rollo*, pp. 9-26.

[2] *Id*. at 29-37. The Decision was penned by Associate Justice Stephen C. Cruz and concurred in by Associate Justices Magdangal M. de Leon (Chair) and Myra V. Garcia-Fernandez of the Eleventh Division.

[3] *Id*. at 46-47. The Resolution was penned by Associate Justice Stephen C. Cruz and concurred in by Associate Justices Magdangal M. de Leon (Chair) and Myra V. Garcia-Fernandez of the Eleventh Division.

[4] *Id*. at 48-58. The Decision dated September 1, 2010 was penned by Presiding Judge Aida Rangel-Roque.

[5] *Id*. at 58.

[6] *Id*. at 36-37, Court of Appeals Decision.

[7] *Id*. at 29-30, Court of Appeals Decision, and 48, Regional Trial Court Decision.

Philippines, the said accused, being then legally married to GINA M. GAERLAN, and without such marriage having been legally dissolved, did then and there willfully, unlawfully and feloniously contract a second or subsequent marriage with ALICE G. EDUARDO-VITANGCOL which second marriage has all the legal requisites for its validity with the said accused NORBERTO ABELLA VITANGCOL knowing fully well prior to and at the time of the celebration of the second marriage he was already married to the said GINA M. GAERLAN.

Contrary to law.[8]

Norberto was arraigned, pleading not guilty to the charge. Trial then ensued.[9]

According to the prosecution, on December 4, 1994, Norberto married Alice G. Eduardo (Alice) at the Manila Cathedral in Intramuros. Born into their union were three (3) children.[10]

After some time, Alice "began hearing rumors that [her husband] was previously married to another woman[.]"[11] She eventually discovered that Norberto was previously married to a certain Gina M. Gaerlan (Gina) on July 17, 1987, as evidenced by a marriage contract registered with the National Statistics Office. Alice subsequently filed a criminal Complaint for bigamy against Norberto.[12]

On the other hand, Norberto alleged that he and Alice became romantically involved sometime in 1987.[13] "After much prodding by their friends and relatives, [he and Alice] decided to get married in 1994."[14]

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[8] *Id*. at 48, Regional Trial Court Decision.

[9] *Id*. at 30, Court of Appeals Decision, and 48, Regional Trial Court Decision.

[10] *Id*. at 30, Court of Appeals Decision.

[11] *Id*.

[12] *Id*.

[13] *Id*.

[14] *Id*.

Before finalizing their marriage plans, however, Norberto revealed to Alice that he had a "fake marriage"[15] with his college girlfriend, a certain Gina Gaerlan.[16] Nevertheless, despite Norberto's revelation, Alice convinced him that they proceed with the wedding. Thus, Norberto and Alice were married on December 4, 1994 and, thereafter, had three children.[17]

Sometime in 2007, Norberto heard rumors from their household workers that Alice was having an affair with a married man. He was able to confirm the affair after hearing Alice in a phone conversation with her paramour.[18]

Norberto then sought advice from his business lawyer who later on convinced Alice to end the affair. The lawyer also warned Alice of the possible criminal liability she may incur if she continued seeing her paramour.[19]

Allegedly in retaliation to the threat of criminal action against her, Alice filed the criminal Complaint for bigamy against Norberto.[20]

Finding that Norberto contracted a second marriage with Alice despite his subsisting valid marriage with Gina, Branch 25 of the Regional Trial Court of Manila convicted Norberto of bigamy. The dispositive portion of the Decision dated September 1, 2010 reads:

WHEREFORE, in view of the foregoing, the Court hereby finds accused Norberto Abella Vitangcol GUILTY beyond reasonable doubt of the crime of BIGAMY defined and penalized under Article 349 of the Revised Penal Code. Accused is hereby sentenced to suffer the penalty of six (6) years and one (1) day of *prision mayor* as

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[15] *Id*. at 53, Regional Trial Court Decision.

[16] *Id*.

[17] *Id*. at 30-31, Court of Appeals Decision.

[18] *Id*. at 31.

[19] *Id*.

[20] *Id*.

minimum imprisonment to twelve (12) years of *prision mayor* as maximum imprisonment.

SO ORDERED.[21]

On appeal, the Court of Appeals sustained the guilty verdict against Norberto but modified the penalty imposed in accordance with the Indeterminate Sentence Law. The dispositive portion of the Court of Appeals Decision dated July 18, 2012 reads:

WHEREFORE, premises considered, the assailed Decision of the Regional Trial Court (RTC) of Manila, Branch 25, dated September 1, 2010 is hereby **AFFIRMED with MODIFICATION** of the penalty to which appellant is previously sentenced. Accordingly, he is now meted to suffer an indeterminate penalty of two (2) years and four (4) months of *prision correccional*, as minimum, to eight (8) years and one (1) day of *prision mayor*, as maximum.

SO ORDERED.[22]

Norberto filed a Motion for Reconsideration,[23] which the Court of Appeals denied in the Resolution dated June 3, 2013.[24]

Norberto filed a Petition for Review on Certiorari before this court. The People of the Philippines, through the Office of the Solicitor General, filed a Comment[25] to which Norberto filed a Reply.[26]

Norberto argues that the first element of bigamy is absent in this case.[27] He presents as evidence a Certification[28] from the Office of the Civil Registrar of Imus, Cavite, which states that

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[21] *Id*. at 58, Regional Trial Court Decision.

[22] *Id*. at 36-37, Court of Appeals Decision.

[23] *Id*. at 38-44.

[24] *Id.* at 47, Court of Appeals Resolution.

[25] *Id*. at 168-179.

[26] *Id*. at 195-205.

[27] *Id*. at 19-24, Petition.

[28] *Id*. at 119. The Certification was dated March 19, 2008.

the Office has no record of the marriage license allegedly issued in his favor and his first wife, Gina. He argues that with no proof of existence of an essential requisite of marriage—the marriage license—the prosecution fails to establish the legality of his first marriage.[29]

In addition, Norberto claims that the legal dissolution of the first marriage is not an element of the crime of bigamy. According to Norberto, nothing in Article 349 of the Revised Penal Code that punishes bigamy mentions that requirement.[30] Stating that "[a]ny reasonable doubt must be resolved in favor of the accused[,]"[31] Norberto prays for his acquittal.[32]

The prosecution counters that it has proven the existence of Norberto's prior valid marriage with Gina as evidenced by the marriage contract they had executed. The prosecution likewise proved that the first marriage of Norberto with Gina was not legally dissolved; that while his first marriage was subsisting, Norberto contracted a second marriage with Alice; and that the second marriage would have been valid had it not been for the existence of the first. Norberto, therefore, should be convicted of bigamy.[33]

The issue for our resolution is whether the Certification from the Office of the Civil Registrar that it has no record of the marriage license issued to petitioner Norberto A. Vitangcol and his first wife Gina proves the nullity of petitioner's first marriage and exculpates him from the bigamy charge.

The Certification from the Office of the Civil Registrar that it has no record of the marriage license is suspect. Assuming that it is true, it does not categorically prove that there was no marriage license. Furthermore, marriages are not dissolved

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[29] *Id.* at 19-24, Petition.

[30] *Id.*

[31] *Id.* at 24.

[32] *Id.*

[33] *Id.* at 170-177, Comment.

through mere certifications by the civil registrar. For more than seven (7) years before his second marriage, petitioner did nothing to have his alleged spurious first marriage declared a nullity. Even when this case was pending, he did not present any decision from any trial court nullifying his first marriage.

I

Bigamy is punished under Article 349 of the Revised Penal Code:

> ARTICLE 349. Bigamy. – The penalty of prision mayor shall be imposed upon any person who shall contract a second or subsequent marriage before the former marriage has been legally dissolved, or before the absent spouse has been declared presumptively dead by means of a judgment rendered in the proper proceedings.

For an accused to be convicted of this crime, the prosecution must prove all of the following elements:

> [first,] that the offender has been legally married;
>
> [second,] that the first marriage has not been legally dissolved or, in case his or her spouse is absent, the absent spouse could not yet be presumed dead according to the Civil Code;
>
> [third,] that he contracts a second or subsequent marriage; and
>
> [lastly,] that the second or subsequent marriage has all the essential requisites for validity.[34]

The prosecution allegedly fails to prove the validity of his first marriage with Gina because the civil registrar of the municipality where they were married had no record of the marriage license allegedly issued in their favor.

Contrary to petitioner's claim, all the elements of bigamy are present in this case. Petitioner was still legally married to Gina when he married Alice. Thus, the trial court correctly convicted him of the crime charged.

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[34] *Tenebro v. Court of Appeals*, 467 Phil. 723, 738 (2004) [Per *J*. Ynares-Santiago, *En Banc*].

Based on the marriage contract presented in evidence, petitioner's first marriage was solemnized on July 17, 1987. This was before the Family Code of the Philippines became effective on August 3, 1988.[35] Consequently, provisions of the Civil Code of the Philippines[36] govern the validity of his first marriage.

Article 53 of the Civil Code enumerates the requisites of marriage, the absence of any of which renders the marriage void from the beginning:[37]

Article 53. No marriage shall be solemnized unless all these requisites are complied with:

(1) Legal capacity of the contracting parties;

(2) Their consent, freely given;

(3) Authority of the person performing the marriage; and

(4) A marriage license, except in a marriage of exceptional character.

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[35] Memo. Circ. No. 85 (1988).

[36] Rep. Act No. 386 (1949).

[37] CIVIL CODE, Art. 80 provides:

Article 80. The following marriages shall be void from the beginning:

(1) Those contracted under the ages of sixteen and fourteen years by the male and female respectively, even with the consent of the parents;

(2) Those solemnized by any person not legally authorized to perform marriages;

(3) Those solemnized without a marriage license, save marriages of exceptional character;

(4) Bigamous or polygamous marriages not falling under Article 83, number 2;

(5) Incestuous marriages mentioned in Article 81;

(6) Those where one or both contracting parties have been found guilty of the killing of the spouse of either of them;

(7) Those between stepbrothers and stepsisters and other marriages specified in Article 82.

The fourth requisite—the marriage license—is issued by the local civil registrar of the municipality where either contracting party habitually resides.[38] The marriage license represents the state's "involvement and participation in every marriage, in the maintenance of which the general public is interested."[39]

To prove that a marriage was solemnized without a marriage license, "the law requires that the absence of such marriage license must be apparent on the marriage contract, or at the very least, supported by a certification from the local civil registrar that no such marriage license was issued to the parties."[40]

Petitioner presents a Certification from the Office of the Civil Registrar of Imus, Cavite, which states:

> [A]fter a diligent search on the files of Registry Book on Application for Marriage License and License Issuance available in this office, no record could be found on the alleged issuance of this office of Marriage License No. 8683519 in favor of MR. NORBERTO A. VITANGCOL and MS. GINA M. GAERLAN dated July 17, 1987.[41]

This Certification does not prove that petitioner's first marriage was solemnized without a marriage license. It does not categorically state that Marriage License No. 8683519 does not exist.[42]

Moreover, petitioner admitted the authenticity of his signature appearing on the marriage contract between him and his first

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[38] CIVIL CODE, Art. 58 provides:

Article 58. Save marriages of an exceptional character authorized in Chapter 2 of this Title, but not those under Article 75, no marriage shall be solemnized without a license first being issued by the local civil registrar of the municipality where either contracting party habitually resides.

[39] *Alcantara v. Alcantara*, 558 Phil. 192, 202 (2007) [Per *J*. Chico-Nazario, Third Division].

[40] *Id*. at 203-204.

[41] *Rollo*, p. 119.

[42] See *Sevilla v. Cardenas*, 529 Phil. 419, 429 (2006) [Per *J*. Chico-Nazario, First Division].

wife, Gina.[43] The marriage contract between petitioner and Gina is a positive piece of evidence as to the existence of petitioner's first marriage.[44] This "should be given greater credence than documents testifying merely as to [the] absence of any record of the marriage[.]"[45]

Republic v. Court of Appeals and Castro[46] was originally an action for the declaration of nullity of a marriage.[47] As part of its evidence, the plaintiff presented a certification that states that the marriage license "cannot be located as said license . . . does not appear from [the local civil registrar's] records."[48]

This court held that "[t]he certification . . . enjoys probative value, [the local civil registrar] being the officer charged under the law to keep a record of all data relative to the issuance of a marriage license."[49] This court further said that "[u]naccompanied by any circumstance of suspicion and pursuant to Section 29, Rule 132 of the Rules of Court, a certificate of 'due search and inability to find' sufficiently proved that [the local civil registrar] did not issue [a] marriage license . . . to the contracting parties."[50]

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[43] *Rollo*, p. 48, Regional Trial Court Decision.

[44] See *Tenebro v. Court of Appeals*, 467 Phil. 723, 740 (2004) [Per *J.* Ynares-Santiago, *En Banc*].

[45] *Id*.

[46] G.R. No. 103047, September 2, 1994, 236 SCRA 257 [Per *J.* Puno, Second Division].

[47] *Id*. at 258.

[48] *Id*. at 259.

[49] *Id*. at 262.

[50] *Id*. RULES OF COURT, Rule 132, Sec. 29 is renumbered to Rule 132, Sec. 28.

RULES OF COURT, Rule 132, Sec. 28 provides:

Rule 132. Presentation of Evidence

. . . .

B. Authentication and Proof of Documents

SECTION 28. Proof of lack of record. — A written statement signed

The circumstances in *Castro* and in this case are different. *Castro* involved a civil case for declaration of nullity of marriage that does not involve the possible loss of liberty. The certification in *Castro* was unaccompanied by any circumstance of suspicion, there being no prosecution for bigamy involved. On the other hand, the present case involves a criminal prosecution for bigamy. To our mind, this is a circumstance of suspicion, the Certification having been issued to Norberto for him to evade conviction for bigamy.

The appreciation of the probative value of the certification cannot be divorced from the purpose of its presentation, the cause of action in the case, and the context of the presentation of the certification in relation to the other evidence presented in the case. We are not prepared to establish a doctrine that a certification that a marriage license cannot be found may substitute for a definite statement that no such license existed or was issued. Definitely, the Office of the Civil Registrar of Imus, Cavite should be fully aware of the repercussions of those words. That the license now cannot be found is not basis per se to say that it could not have been issued.

A different view would undermine the stability of our legal order insofar as marriages are concerned. Marriage licenses may be conveniently lost due to negligence or consideration. The motivation to do this becomes greatest when the benefit is to evade prosecution.

This case is likewise different from *Nicdao Cariño v. Yee Cariño*.[51] In Cariño, the marriage contract between Santiago Cariño and his first wife, Susan Nicdao, bore no marriage license number.[52] In addition, the local civil registrar certified that it

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by an officer having the custody of an official record or by his deputy that after diligent search no record or entry of a specified tenor is found to exist in the records of his office, accompanied by a certificate as above provided, is admissible as evidence that the records of his office contain no such record or entry.

[51] 403 Phil. 861 (2001) [Per *J*. Ynares-Santiago, First Division].

[52] *Id*. at 869.

has no record of any marriage license issued to Santiago Cariño and Susan Nicdao.[53] This court declared Santiago Cariño's first marriage void for having been solemnized without a marriage license.[54]

In this case, there is a marriage contract indicating the presence of a marriage license number freely and voluntarily signed and attested to by the parties to the marriage as well as by their solemnizing officer. The first marriage was celebrated on July 17, 1987. The second marriage was entered into on December 4, 1994. Within a span of seven (7) years, four (4) months, and 17 (seventeen) days, petitioner did not procure a judicial declaration of the nullity of his first marriage. Even while the bigamy case was pending, no decision declaring the first marriage as spurious was presented. In other words, petitioner's belief that there was no marriage license is rendered untrue by his own actuations.

This factual context makes the use and issuance of the Certification from the Office of the Civil Registrar suspect. The prosecution has to prove that despite the existence of a valid first marriage, petitioner nevertheless contracted a second or subsequent marriage. The admission of a marriage contract with proof of its authenticity and due execution suffices to discharge the burden of proving beyond reasonable doubt that a prior marriage exists. The burden of evidence will, thus, pass on to the defense. Mere presentation of a certification from the civil registrar that the marriage license cannot be found is not enough to discharge the burden of proving that no such marriage license was issued.

The parties clearly identified Marriage License No. 8683519 in the marriage contract.[55] There is no evidence to show that the number series of that license is spurious or is not likely to have been issued from its source. There is no proof as to whether

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[53] *Id*.

[54] *Id*. at 870.

[55] *Rollo*, p. 52, Regional Trial Court Decision.

the licenses issued before or after the document in question still exists in the custody of the civil registrar. There is no evidence that relates to the procedures for safekeeping of these vital documents. This would have shown whether there was unfettered access to the originals of the license and, therefore, would have contributed to the proper judicial conclusion of what the manifestation by the civil registrar implies.

This court cannot grant the presumption of good faith and regularity in the performance of official functions to the civil registrar for the purposes sought by petitioner. In other words, the presumption of regularity in the performance of official functions is too remotely detached to the conclusion that there is no marriage license.

At best, the presumption of regularity in the performance of the civil registrar's function without the context just discussed can lead to the conclusion that he in good faith could not find the marriage license in his office. This presumption does not mean that the marriage license did not exist. Nor does it mean that the marriage license was issued.

However, even the conclusion of good faith is difficult to accept. There was a marriage contract duly executed by petitioner and his first spouse as well as by the solemnizing officer. The marriage contract is in the custody of the civil registrar. The presumption of regularity in the performance of official functions by a public officer should likewise be applicable to infer a conclusion that the marriage license mentioned in that contract exists.

Conviction in a charge of bigamy will result to a legitimate imposition of a penalty amounting to a deprivation of liberty. It is not a far-fetched conclusion—although this is not always the case—that a well-connected accused will use all means, fair or foul, to achieve an acquittal. Many criminal cases can turn on documentary evidence the issuance of which is within the discretion of a government employee. The temptations for the employee to issue a document, which may be accurate but which he knows the accused will be able to use for a different

purpose, can easily be created by an accused. Much of the bases of this conclusion will depend on how the trial court judge evaluates the demeanor of the witnesses. We can defer to that discretion as much as to make our own judgment based on evidence conclusively admitted and weighed by the trial court. Using both, we have no reason to disturb the conclusions of the trial court.

II

Assuming without conceding that petitioner's first marriage was solemnized without a marriage license, petitioner remains liable for bigamy. Petitioner's first marriage was not *judicially declared* void. Nor was his first wife Gina judicially declared presumptively dead under the Civil Code.[56] The second element of the crime of bigamy is, therefore, present in this case.

As early as 1968, this court held in *Landicho v. Relova, et al.*[57] that

> parties to a marriage should not be permitted to judge for themselves its nullity, only competent courts having such authority. Prior to such declaration of nullity, the validity of the first marriage is beyond question. A party who contracts a second marriage then assumes the risk of being prosecuted for bigamy.[58]

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[56] CIVIL CODE, Art. 83 provides:

Article 83. Any marriage subsequently contracted by any person during the lifetime of the first spouse of such person with any person other than such first spouse shall be illegal and void from its performance, unless:

(1) The first marriage was annulled or dissolved; or

(2) The first spouse had been absent for seven consecutive years at the time of the second marriage without the spouse present having news of the absentee being alive, or if the absentee, though he has been absent for less than seven years, is generally considered as dead and believed to be so by the spouse present at the time of contracting such subsequent marriage, or if the absentee is presumed dead according to Articles 390 and 391. The marriage so contracted shall be valid in any of the three cases until declared null and void by a competent court.

[57] 130 Phil. 745 (1968) [Per *J.* Fernando, *En Banc*].

[58] *Id.* at 750.

The commission that drafted the Family Code considered the *Landicho* ruling in wording Article 40 of the Family Code:[59]

> Art. 40. The absolute nullity of a previous marriage may be invoked for purposes of remarriage on the basis solely of a final judgment declaring such previous marriage void.

Should the requirement of judicial declaration of nullity be removed as an element of the crime of bigamy, Article 349 of Revised Penal Code becomes useless. "[A]ll that an adventurous bigamist has to do is to . . . contract a subsequent marriage and escape a bigamy charge by simply claiming that the first marriage is void and that the subsequent marriage is equally void for lack of a prior judicial declaration of nullity of the first."[60] Further, "[a] party may even enter into a marriage aware of the absence of a requisite—usually the marriage license—and thereafter contract a subsequent marriage without obtaining a judicial declaration of nullity of the first on the assumption that the first marriage is void."[61]

For these reasons, the *Landicho* ruling remains good law. It need not be revisited by this court En Banc as petitioner insists.[62]

The third element of bigamy is likewise present in this case. Petitioner admitted that he subsequently married Alice G. Eduardo on December 4, 1994.[63] As for the last element of bigamy, that the subsequent marriage has all the essential requisites for validity, it is presumed. The crime of bigamy was consummated when petitioner subsequently married Alice without his first marriage to Gina having been judicially declared

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[59] See *Marbella-Bobis v. Bobis*, 391 Phil. 648, 654 (2000) [Per *J.* Ynares-Santiago, First Division].

[60] *Marbella-Bobis v. Bobis*, 391 Phil. 648, 654 (2000) [Per *J.* Ynares-Santiago, First Division].

[61] *Id.*

[62] *Rollo*, pp. 209-216, Motion to Refer the Case to the Honorable Supreme Court *En Banc*.

[63] *Id.* at 48, Regional Trial Court's Decision.

[64] See *Jarillo v. People*, 617 Phil. 45, 53 (2009) [Per *J.* Peralta, Third Division].

void.[64]

With all the elements of bigamy present in this case, petitioner was correctly convicted of the crime charged.

III

Under the Indeterminate Sentence Law, the maximum term of the penalty that may be imposed on petitioner is that which, in view of the attending circumstances, could be properly imposed under the Revised Penal Code. On the other hand, the minimum term of the penalty shall be within the range of the penalty next lower to that prescribed by the Revised Penal Code for the offense. The court then has the discretion to impose a minimum penalty within the range of the penalty next lower to the prescribed penalty. As for the maximum penalty, the attending circumstances are considered.[65]

The imposable penalty for bigamy is *prision mayor*.[66] The penalty next lower to that is *prision correccional*. *Prision correccional* ranges from six (6) months and one (1) day to six (6) years;[67] hence, the minimum penalty can be any period within this range.

As for the maximum penalty, it should be within the range of *prision mayor* in its medium period, there being no mitigating or aggravating circumstances. *Prision mayor* in its medium period ranges from eight (8) years and one (1) day to 10 years.

Petitioner was sentenced to suffer the indeterminate penalty of two (2) years and four (4) months of *prision correccional* as minimum to eight (8) years and one (1) day of *prision mayor* as maximum. The ranges of the minimum and maximum penalties are within the ranges as previously computed. The indeterminate penalty imposed was proper.

Nevertheless, "[k]eeping in mind the basic purpose of the Indeterminate Sentence Law 'to uplift and redeem valuable ~~human materi~~al, and prevent unnecessary and excessive deprivation

[65] Act No. 4103, Sec. 1, as amended by Act No. 4225.

[66] REV. PEN. CODE, Art. 349.

[67] REV. PEN. CODE, Art. 27.

of personal liberty and economic usefulness[,]'"[68] we lower the minimum of the indeterminate penalty to six (6) months and one (1) day of *prision correccional*. Petitioner is, thus, sentenced to suffer the indeterminate penalty of six (6) months and one (1) day of *prision correccional* as minimum to eight (8) years and one (1) day of *prision mayor* as maximum.

WHEREFORE, the Petition for Review on Certiorari is **DENIED**. The Court of Appeals Decision dated July 18, 2012 and Resolution dated June 3, 2013 in CA-G.R. CR No. 33936 are **AFFIRMED with MODIFICATION**. Petitioner Norberto A. Vitangcol is sentenced to suffer the indeterminate penalty of six (6) months and one (1) day of *prision correccional* as minimum to eight (8) years and one (1) day of *prision mayor* as maximum.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 208986. January 13, 2016]

HIJO RESOURCES CORPORATION, *petitioner, vs.* **EPIFANIO P. MEJARES, REMEGIO C. BALURAN, JR., DANTE SAYCON, and CECILIO CUCHARO, represented by NAMABDJERA-HRC,** *respondents.*

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[68] *People v. Ducosin*, 59 Phil. 109, 117 (1933) [Per *J.* Butte, *En Banc*].

SYLLABUS

LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; EMPLOYER-EMPLOYEE RELATIONSHIP; THE RULING IN A CERTIFICATION ELECTION CASE ON THE EXISTENCE OR NON-EXISTENCE OF EMPLOYER-EMPLOYEE RELATIONSHIP BETWEEN THE PARTIES IS NOT BINDING IN THE ILLEGAL DISMISSAL CASE; CASE AT BAR.— There is no question that the Med-Arbiter has the authority to determine the existence of an employer-employee relationship between the parties in a petition for certification election. x x x In this case, the Med-Arbiter issued an Order dated 19 November 2007, dismissing the certification election case because of lack of employer-employee relationship between HRC and the members of the respondent union. The order dismissing the petition was issued after the members of the respondent union were terminated from their employment in September 2007, which led to the filing of the illegal dismissal case before the NLRC on 19 September 2007. Considering their termination from work, it would have been futile for the members of the respondent union to appeal the Med-Arbiter's order in the certification election case to the DOLE Secretary. Instead, they pursued the illegal dismissal case filed before the NLRC. The Court is tasked to resolve the issue of whether the Labor Arbiter, in the illegal dismissal case, is bound by the ruling of the Med-Arbiter regarding the existence or non-existence of employer-employee relationship between the parties in the certification election case. The Court rules in the negative. As found by the Court of Appeals, the facts in this case are very similar to those in the *Sandoval* case, which also involved the issue of whether the ruling in a certification election case on the existence or non-existence of an employer-employee relationship operates as *res judicata* in the illegal dismissal case filed before the NLRC. In *Sandoval*, the x x x Court cited the ruling in the *Manila Golf* case that the decision in a certification election case, by the very nature of that proceeding, does not foreclose all further dispute between the parties as to the existence or non-existence of an employer-employee relationship between them. x x x **[T]he Med-Arbiter's order in this case dismissing the petition for certification election on the basis of non-existence of employer-employee relationship was issued after the members of the respondent**

union were dismissed from their employment. The purpose of a petition for certification election is to determine which organization will represent the **employees** in their collective bargaining with the employer. **The respondent union, without its member-employees, was thus stripped of its personality to challenge the Med-Arbiter's decision in the certification election case. Thus, the members of the respondent union were left with no option but to pursue their illegal dismissal case filed before the Labor Arbiter.** To dismiss the illegal dismissal case filed before the Labor Arbiter on the basis of the pronouncement of the Med-Arbiter in the certification election case that there was no employer-employee relationship between the parties, which the respondent union could not even appeal to the DOLE Secretary because of the dismissal of its members, would be tantamount to denying due process to the complainants in the illegal dismissal case.

APPEARANCES OF COUNSEL

Dominguez Paderna & Tan Law Offices Co. for petitioner.
Jayma Law for respondents.

D E C I S I O N

CARPIO, *J.*:

The Case

This petition for review[1] assails the 29 August 2012 Decision[2] and the 13 August 2013 Resolution[3] of the Court of Appeals in CA-G.R. SP No. 04058-MIN. The Court of Appeals reversed and set aside the Resolutions dated 29 June 2009 and 16 December 2009 of the National Labor Relations Commission

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[1] Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] *Rollo,* pp. 41-54. Penned by Associate Justice Pedro B. Corales, with Associate Justices Romulo V. Borja and Ma. Luisa C. Quijano-Padilla concurring.

[3] *Id.* at 57-60.

(NLRC) in NLRC No. MIC-03-000229-08 (RAB XI-09-00774-2007), and remanded the case to the Regional Arbitration Branch, Region XI, Davao City for further proceedings.

The Facts

Respondents Epifanio P. Mejares, Remegio C. Baluran, Jr., Dante Saycon, and Cecilio Cucharo (respondents) were among the complainants, represented by their labor union named "Nagkahiusang Mamumuo ng Bit, Djevon, at Raquilla Farms sa Hijo Resources Corporation" (NAMABDJERA-HRC), who filed with the NLRC an illegal dismissal case against petitioner Hijo Resources Corporation (HRC).

Complainants (which include the respondents herein) alleged that petitioner HRC, formerly known as Hijo Plantation Incorporated (HPI), is the owner of agricultural lands in Madum, Tagum, Davao del Norte, which were planted primarily with Cavendish bananas. In 2000, HPI was renamed as HRC. In December 2003, HRC's application for the conversion of its agricultural lands into agri-industrial use was approved. The machineries and equipment formerly used by HPI continued to be utilized by HRC.

Complainants claimed that they were employed by HPI as farm workers in HPI's plantations occupying various positions as area harvesters, packing house workers, loaders, or labelers. In 2001, complainants were absorbed by HRC, but they were working under the contractor-growers: Buenaventura Tano (Bit Farm); Djerame Pausa (Djevon Farm); and Ramon Q. Laurente (Raquilla Farm). Complainants asserted that these contractor-growers received compensation from HRC and were under the control of HRC. They further alleged that the contractor-growers did not have their own capitalization, farm machineries, and equipment.

On 1 July 2007, complainants formed their union NAMABDJERA- HRC, which was later registered with the Department of Labor and Employment (DOLE). On 24 August 2007, NAMABDJERA-HRC filed a petition for certification election before the DOLE.

When HRC learned that complainants formed a union, the three contractor-growers filed with the DOLE a notice of cessation of business operations. In September 2007, complainants were terminated from their employment on the ground of cessation of business operations by the contractor-growers of HRC. On 19 September 2007, complainants, represented by NAMABDJERA-HRC, filed a case for unfair labor practices, illegal dismissal, and illegal deductions with prayer for moral and exemplary damages and attorney's fees before the NLRC.

On 19 November 2007, DOLE Med-Arbiter Lito A. Jasa issued an Order,[4] dismissing NAMABDJERA-HRC's petition for certification election on the ground that there was no employer-employee relationship between complainants (members of NAMABDJERA-HRC) and HRC. Complainants did not appeal the Order of Med-Arbiter Jasa but pursued the illegal dismissal case they filed.

On 4 January 2008, HRC filed a motion to inhibit Labor Arbiter Maria Christina S. Sagmit and moved to dismiss the complaint for illegal dismissal. The motion to dismiss was anchored on the following arguments: (1) Lack of jurisdiction under the principle of *res judicata*; and (2) The Order of the Med-Arbiter finding that complainants were not employees of HRC, which complainants did not appeal, had become final and executory.

<u>The Labor Arbiter's Ruling</u>

On 5 February 2008, Labor Arbiter Sagmit denied the motion to inhibit. Labor Arbiter Sagmit likewise denied the motion to dismiss in an Order dated 12 February 2008. Labor Arbiter Sagmit held that *res judicata* does not apply. Citing the cases of *Manila Golf & Country Club, Inc. v. IAC*[5] and *Sandoval Shipyards, Inc. v. Pepito*,[6] the Labor Arbiter ruled that the

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[4] *Id*. at 154-160.

[5] G.R. No. 64948, 27 September 1994, 237 SCRA 207.

[6] 412 Phil. 148 (2001).

decision of the Med-Arbiter in a certification election case, by the nature of that proceedings, does not foreclose further dispute between the parties as to the existence or non-existence of employer-employee relationship between them. Thus, the finding of Med-Arbiter Jasa that no employment relationship exists between HRC and complainants does not bar the Labor Arbiter from making his own independent finding on the same issue. The non-litigious nature of the proceedings before the Med-Arbiter does not prevent the Labor Arbiter from hearing and deciding the case. Thus, Labor Arbiter Sagmit denied the motion to dismiss and ordered the parties to file their position papers.

HRC filed with the NLRC a petition for certiorari with a prayer for temporary restraining order, seeking to nullify the 5 February 2008 and 12 February 2008 Orders of Labor Arbiter Sagmit.

The Ruling of the NLRC

The NLRC granted the petition, holding that Labor Arbiter Sagmit gravely abused her discretion in denying HRC's motion to dismiss. The NLRC held that the Med-Arbiter Order dated 19 November 2007 dismissing the certification election case on the ground of lack of employer-employee relationship between HRC and complainants (members of NAMABDJERA- HRC) constitutes *res judicata* under the concept of conclusiveness of judgment, and thus, warrants the dismissal of the case. The NLRC ruled that the Med-Arbiter exercises quasi-judicial power and the Med-Arbiter's decisions and orders have, upon their finality, the force and effect of a final judgment within the purview of the doctrine of *res judicata*.

On the issue of inhibition, the NLRC found it moot and academic in view of Labor Arbiter Sagmit's voluntary inhibition from the case as per Order dated 11 March 2009.

The Ruling of the Court of Appeals

The Court of Appeals found the ruling in the *Sandoval* case more applicable in this case. The Court of Appeals noted that the *Sandoval* case, which also involved a petition for certification election and an illegal dismissal case filed by the union members

against the alleged employer, is on all fours with this case. The issue in *Sandoval* on the effect of the Med-Arbiter's findings as to the existence of employer-employee relationship is the very same issue raised in this case. On the other hand, the case of *Chris Garments Corp. v. Hon. Sto. Tomas*[7] cited by the NLRC, which involved three petitions for certification election filed by the same union, is of a different factual milieu.

The Court of Appeals held that the certification proceedings before the Med-Arbiter are non-adversarial and merely investigative. On the other hand, under Article 217 of the Labor Code, the Labor Arbiter has original and exclusive jurisdiction over illegal dismissal cases. Although the proceedings before the Labor Arbiter are also described as non-litigious, the Court of Appeals noted that the Labor Arbiter is given wide latitude in ascertaining the existence of employment relationship. Thus, unlike the Med-Artbiter, the Labor Arbiter may conduct clarificatory hearings and even avail of ocular inspection to ascertain facts speedily.

Hence, the Court of Appeals concluded that the decision in a certification election case does not foreclose further dispute as to the existence or non-existence of an employer-employee relationship between HRC and the complainants.

On 29 August 2012, the Court of Appeals promulgated its Decision, the dispositive portion of which reads:

> WHEREFORE, the petition is hereby GRANTED and the assailed Resolutions dated June 29, 2009 and December 16, 2009 of the National Labor Relations Commission are hereby REVERSED AND SET ASIDE. Let NLRC CASE No. RAB-XI-09-00774-0707 be remanded to the Regional Arbitration Branch, Region XI, Davao City for further proceedings.
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> SO ORDERED.[8]

The Issue

Whether the Court of Appeals erred in setting aside the NLRC ruling and remanding the case to the Labor Arbiter for further

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[7] 596 Phil. 14 (2009).

[8] *Rollo*, p. 53.

proceedings.

The Ruling of the Court

We find the petition without merit.

There is no question that the Med-Arbiter has the authority to determine the existence of an employer-employee relationship between the parties in a petition for certification election. As held in *M.Y. San Biscuits, Inc. v. Acting Sec. Laguesma*:[9]

> Under Article 226 of the Labor Code, as amended, the Bureau of Labor Relations (BLR), of which the med-arbiter is an officer, has the following jurisdiction –
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> > "ART. 226. *Bureau of Labor Relations*. – The Bureau of Labor Relations and the Labor Relations Division[s] in the regional offices of the Department of Labor shall have original and exclusive authority to act, at their own initiative or upon request of either or both parties, on all inter-union and intra-union conflicts, *and all disputes, grievances or problems arising from or affecting labor-management relations in all workplaces whether agricultural or non-agricultural*, except those arising from the implementation or interpretation of collective bargaining agreements which shall be the subject of grievance procedure and/or voluntary arbitration.
> >
> > The Bureau shall have fifteen (15) working days to act on labor cases before it, subject to extension by agreement of the parties." (Italics supplied)
>
> From the foregoing, the BLR has the original and exclusive jurisdiction to *inter alia*, decide all disputes, grievances or problems arising from or affecting labor-management relations in all workplaces whether agricultural or non-agricultural. Necessarily, in the exercise of this jurisdiction over labor-management relations, the med-arbiter has the authority, original and exclusive, to determine the existence of an employer-employee relationship between the parties.
>
> Apropos to the present case, once there is a determination as to the existence of such a relationship, the med-arbiter can then decide the certification election case. As the authority to determine the

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[9] 273 Phil. 482 (1991).

employer- employee relationship is necessary and indispensable in the exercise of jurisdiction by the med-arbiter, his finding thereon may only be reviewed and reversed by the Secretary of Labor who exercises appellate jurisdiction under Article 259 of the Labor Code, as amended, which provides –

> "ART. 259. *Appeal from certification election orders.* – Any party to an election may appeal the order or results of the election as determined by the Med-Arbiter directly to the Secretary of Labor and Employment on the ground that the rules and regulations or parts thereof established by the Secretary of Labor and Employment for the conduct of the election have been violated. Such appeal shall be decided within fifteen (15) calendar days."[10]

In this case, the Med-Arbiter issued an Order dated 19 November 2007, dismissing the certification election case because of lack of employer- employee relationship between HRC and the members of the respondent union. The order dismissing the petition was issued after the members of the respondent union were terminated from their employment in September 2007, which led to the filing of the illegal dismissal case before the NLRC on 19 September 2007. Considering their termination from work, it would have been futile for the members of the respondent union to appeal the Med-Arbiter's order in the certification election case to the DOLE Secretary. Instead, they pursued the illegal dismissal case filed before the NLRC.

The Court is tasked to resolve the issue of whether the Labor Arbiter, in the illegal dismissal case, is bound by the ruling of the Med-Arbiter regarding the existence or non-existence of employer-employee relationship between the parties in the certification election case.

The Court rules in the negative. As found by the Court of Appeals, the facts in this case are very similar to those in the *Sandoval* case, which also involved the issue of whether the ruling in a certification election case on the existence or non-existence of an employer-employee relationship operates as *res*

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[10] *Id*. at 485-486.

judicata in the illegal dismissal case filed before the NLRC. In *Sandoval*, the DOLE Undersecretary reversed the finding of the Med-Arbiter in a certification election case and ruled that there was no employer-employee relationship between the members of the petitioner union and Sandoval Shipyards, Inc. (SSI), since the former were employees of the subcontractors. Subsequently, several illegal dismissal cases were filed by some members of the petitioner union against SSI. Both the Labor Arbiter and the NLRC ruled that there was no employer-employee relationship between the parties, citing the resolution of the DOLE Undersecretary in the certification election case. The Court of Appeals reversed the NLRC ruling and held that the members of the petitioner union were employees of SSI. On appeal, this Court affirmed the appellate court's decision and ruled that the Labor Arbiter and the NLRC erred in relying on the pronouncement of the DOLE Undersecretary that there was no employer-employee relationship between the parties. The Court cited the ruling in the *Manila Golf*[11] case that the decision in a certification election case, by the very nature of that proceeding, does not foreclose all further dispute between the parties as to the existence or non-existence of an employer-employee relationship between them.

This case is different from the *Chris Garments* case cited by the NLRC where the Court held that the matter of employer-employee relationship has been resolved with finality by the DOLE Secretary, whose factual findings were not appealed by the losing party. As mentioned earlier, **the Med-Arbiter's order in this case dismissing the petition for certification election on the basis of non-existence of employer-employee relationship was issued after the members of the respondent union were dismissed from their employment.** The purpose of a petition for certification election is to determine which organization will represent the **employees** in their collective bargaining with the employer.[12] **The respondent union, without its member-employees, was thus stripped of its personality**

[11] *Manila Golf & Country Club, Inc. v. IAC*, *supra* note 5, at 214.

[12] *Heritage Hotel Manila v. Secretary of Labor and Employment*, G.R. No. 172132, 23 July 2014, 730 SCRA 400, 413 citing *Rep. of the Phils. v. Kawashima Textile Mfg. Phils., Inc.*, 581 Phil. 359, 380 (2008).

to challenge the Med-Arbiter's decision in the certification election case. Thus, the members of the respondent union were left with no option but to pursue their illegal dismissal case filed before the Labor Arbiter. To dismiss the illegal dismissal case filed before the Labor Arbiter on the basis of the pronouncement of the Med- Arbiter in the certification election case that there was no employer- employee relationship between the parties, which the respondent union could not even appeal to the DOLE Secretary because of the dismissal of its members, would be tantamount to denying due process to the complainants in the illegal dismissal case. This, we cannot allow.

WHEREFORE, we **DENY** the petition. We **AFFIRM** the 29 August 2012 Decision and the 13 August 2013 Resolution of the Court of Appeals in CA-G.R. SP No. 04058-MIN.

SO ORDERED.

Brion, del Castillo, Mendoza, and *Leonen, JJ.,* concur.

SECOND DIVISION

[G.R. No. 209921. January 13, 2016]

EMMA H. QUIRO-QUIRO, *petitioner, vs.* **BALAGTAS CREDIT COOPERATIVE & COMMUNITY DEVELOPMENT, INC.,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR CODE; NATIONAL LABOR RELATIONS COMMISSION RULES OF PROCEDURE; WRIT OF EXECUTION; THE PAYMENT OF THE MONETARY AWARD IN THE CASE AT BAR WAS IN COMPLIANCE WITH THE WRIT OF EXECUTION AND DOES NOT CONSTITUTE A

COMPROMISE AGREEMENT.— Respondent's offer to pay the sum of ₱452,730.34 representing the monetary award of the NLRC is not in the nature of a compromise agreement, which effectively puts an end to this controversy. x x x [S]uch payment was in compliance with the writ of execution issued by the NLRC. Section 14, Rule VII of the NLRC Rules of Procedure provides that "the decisions, resolutions or orders of the Commission shall become final and executory after ten (10) calendar days from receipt thereof x x x." Section 1, Rule XI of the same NLRC Rules provides that "a writ of execution may be issued *motu proprio* or on motion, upon a decision or order that has become final and executory." The execution of the final and executory decision or resolution of the NLRC shall proceed despite the pendency of a petition for *certiorari*, unless it is restrained by the proper court. Since the Court of Appeals did not issue any temporary restraining order or writ of injunction against the NLRC decision, such judgment became final and executory after ten calendar days from its receipt by counsel or party. Consequently, petitioner moved for the issuance of the writ of execution. As pointed out by respondent, the issuance of the writ of execution and notice of garnishment forced respondent to pay the monetary award of the NLRC to avoid its bank account being frozen and to prevent the cessation of its operations. Clearly, there is no intent on the part of respondent to enter into a compromise agreement to put an end to this dispute.

2. **ID.; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; JUST CAUSES; GROSS AND HABITUAL NEGLECT OF DUTY AND LOSS OF TRUST AND CONFIDENCE; DULY ESTABLISHED IN CASE AT BAR.—** As correctly found by the Court of Appeals, respondent was able to prove by substantial evidence that petitioner's dismissal is lawful. Substantial evidence is defined as that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion. x x x We agree with the finding of the Court of Appeals that petitioner's "inability to stop during her watch an over withdrawal by one member, amounting to ₱250,000.00," and followed by a series of monthly withdrawals, "constitutes gross and habitual neglect of duty that is a just cause for her dismissal." The Court of Appeals further found that "her other infractions such as the loss of a certificate of title, the granting of a high interest to pre-terminated deposits,

duplication of JV numbers, and a backlog in her reportings or postings only add to such major infraction and establish a pattern of negligence and inability to fulfill her duty." x x x [T]here is no dispute that petitioner held the sensitive positions of general manager and accountant, which demand respondent's utmost trust and confidence. Her responsibilities as accountant included, among others, the handling and processing of the deposits and withdrawals of the members of the cooperative; installing an effective accounting system within the cooperative; and safekeeping of certificates of title. As general manager, petitioner was in charge of supervising and overseeing the daily operations of the cooperative and was tasked to prepare periodic reports on the financial condition of the cooperative. x x x Clearly, petitioner's act of allowing the over withdrawal of ₱250,000 on the time deposit placement of a member and her subsequent inaction and non-rectification of such misconduct breached respondent's trust and confidence in her, warranting the penalty of dismissal.

3. **ID.; ID.; ID.; THE LACK OF STATUTORY DUE PROCESS DOES NOT NULLIFY THE DISMISSAL OR RENDER IT ILLEGAL OR INEFFECTUAL WHEN THE DISMISSAL WAS FOR JUST CAUSE, BUT IT WILL MERIT THE GRANT OF NOMINAL DAMAGES AS INDEMNIFICATION.—** While petitioner's dismissal is lawful, we sustain the award of ₱30,000 nominal damages in favor of petitioner for respondent's non-observance of the due process requirements in dismissing her. We agree with the Court of Appeals, which in turn upheld the NLRC, that the 48 hours given to petitioner to explain her side was insufficient time to "consult the union official or lawyer, gather data and evidence and decide on [her defenses]." Petitioner should have been given at least five calendar days from receipt of the notice to prepare for her defense. Notwithstanding, the lack of statutory due process does not nullify the dismissal or render it illegal or ineffectual when the dismissal was for just cause, but it will merit the grant of nominal damages as indemnification.

APPEARANCES OF COUNSEL

Ulysses L. Gallego for petitioner.
Tagumpay Ponce for respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

Before this Court is a petition for review on certiorari challenging the 5 June 2013 Decision[1] and 11 November 2013 Resolution[2] of the Court of Appeals in CA G.R. SP No. 124625. The Court of Appeals reversed the decision[3] of the National Labor Relations Commission (NLRC) and reinstated the decision of the Labor Arbiter finding Emma H. Quiro-quiro's (petitioner) dismissal legal, with the modification that petitioner is awarded nominal damages for Balagtas Credit Cooperative & Community Development, Inc.'s (respondent) non-compliance with due process requirements.

The Facts

The facts, as summarized by the Court of Appeals, are as follows:

> Petitioner Balagtas Credit Cooperative and Community Development, Inc. ("petitioner"/"BCCCDI") initially hired respondent Emma H. Quiro-quiro ("respondent/Quiro-quiro) as accountant/ bookkeeper in 1989.
>
> However, sometime in April 2010, BCCCDI terminated the employment of Quiro-quiro, who then held the concurrent posts of General Manager and Accountant, on the grounds of "gross negligence/ violation of company rules" and "gross dishonesty," committed as follows:

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[1] *Rollo,* pp. 324-342. Penned by Associate Justice Rebecca De Guia-Salvador, and concurred in by Associate Justices Apolinario D. Bruselas, Jr. and Samuel H. Gaerlan.

[2] *Id.* at 387. Penned by Associate Justice Rebecca De Guia-Salvador, and concurred in by Associate Justices Apolinario D. Bruselas, Jr. and Samuel H. Gaerlan.

[3] *Id.* at 62-77. Penned by Commissioner Perlita B. Velasco, and concurred in by Presiding Commissioner Gerardo C. Nograles.

GROSS NEGLIGENCE/VIOLATION OF COMPANY RULES.

Over withdrawal of Time Deposit (TD) placement of Josie Subido;
Loss of borrower's title for security in the payment of loan obligations of Rolando Roque;
Over computation of interest on TD placements;
Unfair filing of delinquent accounts;
JV number duplication;
Backlog of schedules and recording/postings.

GROSS DISHONESTY
Concealment of the irregularity regarding the over withdrawal in the TD placement of MS. JOSIE SUBIDO that happened way back 18 July 2007. Were it not for the hiring of an OJT who discovered the said report of MS. DENIZA FUENTES the matter would not have been addressed and resolved by requiring the party concerned to issue check/s in payment of the same; and,
Non-disclosure of the true financial condition of the cooperative.

These charges are allegedly contained in a Resolution of BCCCDI's Board of Directors dated April 20, 2010.

Disputing those charges, Quiro-quiro maintained that it was around January 2010 that she was informed by BCCCDI and its officers of an "overwithdrawal of a certain depositor" that was seen on the records. According to her, the said overwithdrawal was then "remedied with the full consent and acquiescence of respondents." The issue was never brought up again, until four months later, in April 2010, when it was allegedly "resurrected."

Aggrieved, Quiro-quiro filed a complaint for illegal dismissal and damages.

In her position paper before the Labor Arbiter, Quiro-quiro claimed that her termination was not valid nor justified. She argued that "there was no ground that existed for her dismissal from employment" and that her dismissal did not satisfy the requirements of due process, as she was not given "ample opportunity," nor the "natural sequence of notice of charges, hearing and notice of judgment."

In their position paper, on the other hand, BCCCDI and its officers Fe Adrados ("Adrados") and Atty. Tagumpay B. Ponce ("Atty. Ponce") averred that the termination of Quiro-quiro's employment based on the charges against her were "official acts" of the cooperative BCCCDI, as contained in the board Resolution of April 20, 2010. Then, Atty.

Ponce was designated by the said board, as BCCCDI's counsel, to write and send a "Notice to Explain/Show Cause Memo" to Quiro-quiro to explain her side and show cause why she should not be terminated.

BCCCDI alleged that Quiro-quiro responded with her explanation on April 23,2010. Also, Quiro-quiro allegedly sent a letter of apology dated April 29, 2010 admitting her "shortcomings and wrongdoings" but asking for one last chance from the board. On April 30, 2010, the board and officers convened with Quiro-quiro in attendance. There, she explained her side and answered questions from the board. Thereafter, the board put the matter to a vote and unanimously decided to terminate Quiro-quiro's services. The proceedings were reduced in writing through the minutes thereof.

Finally, the decision to terminate Quiro-quiro's employment was communicated to her through a Notice to Terminate prepared by Atty. Ponce upon the board's instruction.

As for the causes of the dismissal, BCCCDI essentially argued that the following infractions of Quiro-quiro were grave enough to merit a legal termination, viz: (1) the alleged overwithdrawal of ₱250,000.00 which was deliberately omitted from being posted or recorded and followed by a "series of withdrawals on a monthly basis;" (2) the alleged loss of a (certificate of) title; (3) the "over-computation of interest on time deposit (TD) placement;" (4) the "unfair filing of delinquent accounts;" and (5) duplication of journal voucher (JV) numbers, and backlog in the schedule of postings. BCCCDI rejected her explanation of "ignorance" in failing to post the withdrawal because "before the TD placement was closed, the same was followed by withdrawals on a monthly basis." To BCCCDI, such was gross dishonesty and conflict of interest. BCCCDI added that the over-computation of interest rate and its application to Quiro-quiro's own account was also gross dishonesty, conflict of interest and resulted in the loss of trust and confidence by the employer.

In support of the charges against Quiro-quiro, BCCCDI also attached the affidavits and/or report of three employees Deniza Fuentes, Rex R. Lim and Susana de la Cruz-Tolentino.

x x x x x x x x x[4]

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[4] *Id*. at 325-328.

In his 31 January 2011 Decision,[5] Labor Arbiter Mariano L. Bactin found that there was substantial evidence showing that petitioner was lawfully dismissed and respondent observed due process in terminating her. The dispositive portion of the Labor Arbiter's decision reads:

WHEREFORE, premises considered, the complaint filed by the complainant, EMMA H. QUIRO-QUIRO is hereby ordered DISMISSED WITH PREJUDICE for lack of merit.

The claims for damages and attorney's fees of the complainant are likewise DISMISSED with prejudice for lack of merit.

SO ORDERED.[6]

In its 25 November 2011 Decision, the NLRC reversed the decision of the Labor Arbiter, and ruled as follows:

WHEREFORE, complainant's appeal is GRANTED and the Decision promulgated on 31 January 2011 is REVERSED and SET ASIDE. Complainant is declared to have been illegally dismissed and respondent Balagtas Credit Cooperative and Community Development, Inc. is ordered to pay complainant the following:

(1) backwages computed from her date of dismissal on 1 May 2010 until the finality of this decision less the amount equivalent to one (1) month salary;

(2) separation pay in lieu of reinstatement equivalent to one month pay for every year of service computed from January 1989 until the finality of this decision.

The computation of the monetary award as of the date of this decision is attached as Annex "A" of this Decision.

SO ORDERED.[7]

In its 29 February 2012 Resolution,[8] the NLRC denied the motion for reconsideration.

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[5] *Id*. at 217-226.

[6] *Id*. at 225-226.

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

[8] *Id*. at 79-83. Penned by Commissioner Perlita B. Velasco, and concurred in by Presiding Commissioner Gerardo C. Nograles. Commissioner Romeo L. Go took no part.

In its 5 June 2013 Decision, the Court of Appeals reversed the decision of the NLRC and reinstated the decision of the Labor Arbiter.

Petitioner filed a motion for reconsideration, arguing among others that the case had already been settled by virtue of an offer from respondent to pay the amount awarded by the NLRC. Petitioner also maintained that her dismissal was invalid.

In its 11 November 2013 Resolution, the Court of Appeals denied the motion for reconsideration.

Hence, this petition.

The Court of Appeals' Ruling

In reversing the NLRC and sustaining the Labor Arbiter, the Court of Appeals found that "there was more than enough substantial evidence presented" to support a valid dismissal. The Court of Appeals gave credence to the following evidence showing petitioner had neglected her duties, had been dishonest and had breached her employer's trust:

(1) Annex "A" of BCCCDI's Position Paper – which is an enumeration from the cooperative's By-laws of the duties and responsibilities of the General Manager and Accountant, both of which positions concurrently were being held by Quiro-quiro at the time of termination. Among the enumerated duties of the general manager was to

b) …. "maintain (her) records and accounts in such manner that the true and correct condition of the business of the cooperative may be ascertained therefrom at any time. (She) shall render annual and periodic statements and reports in the form and in the manner prescribed by the Board of Directors, and preserve the books, documents, correspondence and records of whatever kind pertaining to the business which may come into (her) possession.

Meanwhile, among the duties of the accountant were to:

a) … "install an adequate and effective accounting system in the cooperative;"

b) … "render monthly reports to the Board of Directors on the financial condition and operations of the cooperative....;"

x x x x x x x x x

d) … "assist the Chair(person) in the preservation of the books of accounts documents, vouchers, contracts and record of whatever kind pertaining to the business of the cooperative which may come to (her) possession."

(2) Annexes "B" and "C" of BCCCDI's Position Paper – which are the Resolution of the Board of Directors and Notice to Explain/Show Cause Memo, respectively, enumerating the violations committed by Quiro- quiro, which can all be easily cross-referred with her official duties and responsibilities above. Such violations are:

GROSS NEGLIGENCE/VIOLATION OF COMPANY RULES.

Over withdrawal of Time Deposit (TD) placement of Josie Subido;

Loss of borrower's title for security in the payment of loan obligations of Rolando Roque;

Over computation of interest on TD placements;

Unfair filing of delinquent accounts;

JV number duplication;

Backlog of schedules and recording/postings.

GROSS DISHONESTY

Concealment of the irregularity regarding the over withdrawal in the TD placement of MS. JOSIE SUBIDO that happened way back 18 July 2007. Were it not for the hiring of an OJT who discovered the said report of MS. DENIZA FUENTES the matter would not have been addressed and resolved by requiring the party concerned to issue check/s in payment of the same; and,

Non-disclosure of the true financial condition of the cooperative.

(3) Annexes "D" and "E" of BCCCDI's Position Paper – which are the Explanation Letter and Apology Letter, respectively, of Quiro-quiro. At first, in the explanation, she denied responsibility for the losses and assigned blame for some of the losses on others; in the apology letter, however, she admits wrongdoing but asks for another chance. The apology letter is reproduced hereunder:

29 Abril 2010

Sa lupong patnugutan
BCCCDI
Balagtas, Bulacan

Mahal na lupong patnugutan

Purihin ang Panginoon!

Ako po ay humihingi ng paumanhin sa lahat ng aking nagawang mali dito sa kooperatiba at hindi naman po li[n]gid sa inyo ang mga nangyari sa akin.

Bigyan nyo po ako ng isa pang pagkakataon na mapagpatuloy ko ang aking trabaho sa coop na ito alang-alang sa aking mga maliliit na anak.

Ipinangangako ko po na pagbubutihin ko na ang aking trabaho, magpopocus at dodoblihin ko po ang aking effort para maisaayos po ang lahat.

Kung dumating ang pagkakataon na hindi po talaga kayo masiyahan sa trabaho ay ako na po mismo ang magfifile ng resignation.

Maraming salamat po sa maraming pang-unawa na ibinigay ninyo sa akin.

Sumasainyo,

(Sgd.)
EMMA H. QUIRO-QUIRO

(4) Annexes "F" and "G" of BCCCDI's Position Paper – which are the Minutes of the board's confrontation with Quiro-quiro and its decision to dismiss her, as well as the Termination Letter of Atty. Ponce in behalf of BCCCDI.

(5) Annex "I" of BCCCDI's Position Paper – which is the Affidavit of Deniza E. Fuentes, an employee of BCCCDI, who stated in part,

x x x x x x x x x

> 5. While I was in the office sometime in November 2009, a student who was on-the-job training (OJT) stumbled on some files and it was discovered that there was an over-withdrawal in the amount of TWO HUNDRED FIFTY THOUSAND PESOS (₱250,000.00) from the time deposit (TD) placement of MRS. SUBIDO dating back from 18 July 2007 and which

EMMA as internal accountant failed to post in the ledger which in the first place was her duty to perform.

6. Equally exasperating was the fact that after a year she allowed MRS. SUBIDO to make subsequent withdrawals which resulted to (sic) the over-withdrawal in the said amount. Considering that the subsequent withdrawals by MRS. SUBIDO were made on a monthly basis, it baffles the mind to think why the alleged oversight in the posting of the TWO HUNDRED FIFTY THOUSAND PESOS (₱250,000.00). Her feigned ignorance is highly suspect.

7. Moreover, although I was around when the discovery was made, I gave her opportunity to report the matter to our Chairperson and despite several reminders she did not budge a bit.

8. Forced by her own omission, I reported the matter to MRS. ABRADOS directly who in turn requested EMMA to require MRS. SUBIDO to replace or return the overwithdrawal in the amount of TWO HUNDRED FIFTY THOUSAND PESOS (₱250,000.00). Again, she failed to require MRS. SUBIDO to return the money. x x x.

(6) Annex "J" of BCCCDI's Position Paper – which is the Affidavit of Rex Revilla Lim, another employee of BCCCDI, who testified that he delivered an envelope from Quiro-quiro to the Chairman and back to Quiro-quiro. He could not categorically state, however, who might be responsible for the loss of one of the two titles contained in the said envelope.

(7) Annex "K" of BCCCDI's Position Paper – which is a letter from Susana Dela Cruz-Tolentino of Megasys Computer Center who explained that the confusion in the data of the members in the computer was the result of the use of one "JV number" for different transactions.[9]

The dispositive portion of the Court of Appeals' decision reads:

WHEREFORE, considering the foregoing, the petition is GRANTED. The Decision dated November 25, 2011 and Resolution dated February 29, 2012 of the respondent National Labor Relations Commission in NLRC LAC No. 04-000951-11 (NLRC Case No. RAB-

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[9] *Id.* at 334-338.

III-05-16217-10), are REVERSED and SET ASIDE. The Decision of the Labor Arbiter Mariano L. Bactin, promulgated on January 31, 2011, in NLRC Case No. RAB-III-05-16217-10 is REINSTATED with the MODIFICATION that respondent Emma Quiro-quiro is AWARDED ₱30,000.00 in nominal damages.

SO ORDERED.[10]

The Issues

Petitioner raises the following issues: (1) whether respondent's offer to pay the monetary award of the NLRC constitutes a compromise agreement putting an end to this controversy; and (2) whether petitioner's dismissal was valid and complied with the due process requirements.

The Ruling of the Court

We deny the petition.

Payment of NLRC monetary award does not constitute a compromise agreement.

Petitioner argues that respondent's offer to pay the total amount of ₱452,730.34 representing the monetary award of the NLRC constitutes a compromise agreement that "operates to end litigation and put the case to rest."[11]

We disagree. Respondent's offer to pay the sum of ₱452,730.34 representing the monetary award of the NLRC is not in the nature of a compromise agreement, which effectively puts an end to this controversy. According to respondent, the underlying reason for the offer of payment was petitioner's motion for the issuance of the writ of execution, leaving respondent without any recourse but to pay. In other words, such payment was in compliance with the writ of execution issued by the NLRC.

Section 14, Rule VII of the NLRC Rules of Procedure provides that "the decisions, resolutions or orders of the Commission shall become final and executory after ten (10) calendar days

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[10] *Id*. at 341-342.

[11] *Id*. at 7.

from receipt thereof x x x." Section 1, Rule XI of the same NLRC Rules provides that "a writ of execution may be issued *motu proprio* or on motion, upon a decision or order that has become final and executory." The execution of the final and executory decision or resolution of the NLRC shall proceed despite the pendency of a petition for *certiorari*, unless it is restrained by the proper court.[12] Since the Court of Appeals did not issue any temporary restraining order or writ of injunction against the NLRC decision, such judgment became final and executory after ten calendar days from its receipt by counsel or party. Consequently, petitioner moved for the issuance of the writ of execution. As pointed out by respondent, the issuance of the writ of execution and notice of garnishment forced respondent to pay the monetary award of the NLRC to avoid its bank account being frozen and to prevent the cessation of its operations.

Clearly, there is no intent on the part of respondent to enter into a compromise agreement to put an end to this dispute. Otherwise, respondent could have simply filed a motion to withdraw its petition before the Court of Appeals, specifically manifesting the execution by the parties of a compromise agreement. On the contrary, respondent pursued its appeal before the Court of Appeals and vigorously opposed the petition in this Court.

Petitioner was validly dismissed.

Petitioner insists that she was illegally dismissed since there is no valid ground to terminate her. Petitioner further claims that her dismissal failed to satisfy the due process requirements.

We are not convinced. As correctly found by the Court of Appeals, respondent was able to prove by substantial evidence that petitioner's dismissal is lawful. Substantial evidence is defined as that amount of relevant evidence which a reasonable

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[12] See *Sarona v. National Labor Relations Commission,* 679 Phil. 394, 412 (2012), citing *Leonis Navigation, Co., Inc. v. Villamater,* G.R. No. 179169, 3 March 2010, 614 SCRA 182.

[13] *Skippers United Pacific, Inc. v. NLRC,* 527 Phil. 248, 257 (2006); *Domasig v. NLRC,* 330 Phil. 518, 524 (1996).

mind might accept as adequate to justify a conclusion.[13]

Respondent presented documents and affidavits establishing petitioner's gross negligence and her breach of respondent's trust and confidence in her. Based on the records, it was shown that petitioner committed the following infractions: (1) the over withdrawal of ₱250,000 on the time deposit placement of a member; (2) concealment and non- posting of the over withdrawal; (3) the series of monthly withdrawals after the ₱250,000 over withdrawal on the same time deposit placement; (4) the loss of a certificate of title; (5) the over-computation of interest rate on a time deposit placement; (6) the "unfair filing of delinquent accounts"; (7) duplication of journal voucher numbers, and (8) backlog in the schedule of postings.

We agree with the finding of the Court of Appeals that petitioner's "inability to stop during her watch an over withdrawal by one member, amounting to ₱250,000.00,"[14] and followed by a series of monthly withdrawals, "constitutes gross and habitual neglect of duty that is a just cause for her dismissal."[15] The Court of Appeals further found that "her other infractions such as the loss of a certificate of title, the granting of a high interest to pre-terminated deposits, duplication of JV numbers, and a backlog in her reportings or postings only add to such major infraction and establish a pattern of negligence and inability to fulfill her duty."[16]

Moreover, there is no dispute that petitioner held the sensitive positions of general manager and accountant, which demand respondent's utmost trust and confidence. Her responsibilities as accountant included, among others, the handling and processing of the deposits and withdrawals of the members of the cooperative; installing an effective accounting system within the cooperative; and safekeeping of certificates of title. As general

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[14] *Rollo*, p. 338.

[15] *Id*.

[16] *Id*. at 340.

manager, petitioner was in charge of supervising and overseeing the daily operations of the cooperative[17] and was tasked to prepare periodic reports on the financial condition of the cooperative.

In *Coca-Cola Export Corporation v. Gacayan*,[18] involving a Senior Financial Accountant of petitioner company, the Court upheld the employee's dismissal for loss of trust and confidence, thus:

> In the instant case, respondent Gacayan was the Senior Financial Accountant of petitioner company. While respondent Gacayan denies that she is handling or has custody of petitioner's funds, a re-examination of the records of this case reveals that she indeed handled delicate and confidential matters in the financial analyses and evaluations of the action plans and strategies of petitioner company. Respondent Gacayan was also privy to the strategic and operational decision-making of petitioner company, a sensitive and delicate position requiring the latter's utmost trust and confidence. As such, she should be considered as holding a position of responsibility or of trust and confidence.

Clearly, petitioner's act of allowing the over withdrawal of ₱250,000 on the time deposit placement of a member and her subsequent inaction and non-rectification of such misconduct breached respondent's trust and confidence in her, warranting the penalty of dismissal.

In addition, while respondent painstakingly presented evidence to prove the legality of petitioner's dismissal, petitioner miserably failed to rebut the charges against her. As found by the Court of Appeals, petitioner "did not even attach her own evidence [to her pleadings] or at least refute if not totally contradict the ~~allegations of~~ [respondent]."[19] Petitioner merely denied the

[17] *Id.* at 113. Duties of the General Manager

a) The General Manager shall, under policies set by the General Assembly and the Board of Directors, have general charge of all the phases of the business operations of the cooperative. Upon the appointment of his successor, he shall turn over to him all monies and properties belonging to the cooperative which he has in his possession or over which he has control;

x x x x x x x x x

[18] 667 Phil. 594, 602 (2011).

[19] *Rollo*, p. 338.

allegations against her. In her apology letter, petitioner pleaded for forgiveness and another chance from respondent, which in effect constituted an admission of her wrongdoings.

While petitioner's dismissal is lawful, we sustain the award of ₱30,000 nominal damages in favor of petitioner for respondent's non- observance of the due process requirements in dismissing her. We agree with the Court of Appeals, which in turn upheld the NLRC, that the 48 hours given to petitioner to explain her side was insufficient time to "consult the union official or lawyer, gather data and evidence and decide on [her defenses]."[20] Petitioner should have been given at least five calendar days from receipt of the notice to prepare for her defense. Notwithstanding, the lack of statutory due process does not nullify the dismissal or render it illegal or ineffectual when the dismissal was for just cause,[21] but it will merit the grant of nominal damages as indemnification.

WHEREFORE, we **DENY** the petition and **AFFIRM** the 5 June 2013 Decision and 11 November 2013 Resolution of the Court of Appeals in CA G.R. SP No. 124625.

SO ORDERED.

Brion, del Castillo, Mendoza, and *Leonen, JJ.,* concur.

FIRST DIVISION

[G.R. No. 210454. January 13, 2016]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **RONALDO CASACOP *y* AMIL,** *accused-appellant.*

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[20] *Id*. at 341.

[21] *Samar-Med Distribution v. National Labor Relations Commission*, G.R. No. 162385, 15 July 2013, 701 SCRA 148, 164.

SYLLABUS

1. **CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE OF *SHABU*; ELEMENTS.—** For the successful prosecution of a case for illegal sale of *shabu,* the following elements must be proven: (1) the identity of the buyer and the seller, the object and the consideration; and (2) the delivery of the thing sold and the payment therefor. x x x In this case, all the elements for the illegal sale of *shabu* were established. PO1 Signap, the poseur-buyer, positively identified appellant as the person who sold him the white crystalline substance in one plastic sachet which was later proven to be positive for *shabu.* In exchange for this plastic sachet, PO1 Signap handed the marked money as payment. The delivery of the contraband to the poseur-buyer and the receipt by the seller of the marked money successfully consummated the buy-bust transaction.

2. **ID.; ID.; ILLEGAL POSSESSION OF DANGEROUS DRUGS; ELEMENTS.—** [I]n prosecuting a case for illegal possession of dangerous drugs, the following elements must concur: (1) the accused is in possession of an item or object, which is identified as a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the drug. x x x All the elements in the prosecution for illegal possession of dangerous drugs and paraphernalia were x x x established. Found in appellant's pocket after he was caught in flagrante were two (2) more plastic sachets containing *shabu,* an improvised glass tooter containing *shabu* residue and the rolled aluminum foil with *shabu* residue. Under Rule 126, Section 13, a person lawfully arrested may be searched for anything which may have been used or constitute proof in the commission of an offense without a warrant. There was no showing that appellant had legal authority to possess the *shabu* and its paraphernalia. Moreover, the fact that these contraband were found in his physical possession shows that he freely and consciously possessed them.

3. **ID.; ID.; CUSTODY OF SEIZED ITEMS; WHERE THE PRESERVATION OF THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS TO ESTABLISH THE *CORPUS DELICTI* WERE PROVEN,**

SUBSTANTIAL COMPLIANCE WITH THE PROCEDURE ON THE CUSTODY AND DISPOSITION OF THE SEIZED ITEMS WILL SUFFICE.— The dangerous drug itself, the shabu in this case, constitutes the very *corpus delicti* of the offense and in sustaining a conviction under R.A. No. 9165, the identity and integrity of the *corpus delicti* must definitely be shown to have been preserved. Records show that PO1 Signap recovered from appellant three (3) plastic sachets of *shabu,* a glass tooter and aluminum foil. These items were marked and inventoried in the house of appellant and in his presence. Thereafter, these seized items were brought to the police station where a request for qualitative examination was made. SPO4 Dela Peña signed the request and it was sent to the PNP Crime Laboratory. Police Senior Inspector and forensic Chemist Donna Villa P. Huelgas conducted the examination. Thus, the chain of custody was clearly accounted for. As the preservation of the integrity and evidentiary value of the seized items to establish the *corpus delicti* were proven, substantial compliance with Section 21, paragraph 1, Article II of R.A. No. 9165 will suffice.

APPEARANCES OF COUNSEL

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

R E S O L U T I O N

PEREZ, *J*.:

On appeal is the Decision[1] of the Court of Appeals promulgated on 10 July 2013 in CA-G.R. CR.-H.C. No. 05055 affirming the conviction by the Regional Trial Court (RTC) of San Pedro, Laguna, Branch 93 of appellant Ronaldo Casacop y Amil for violation of Sections 5, 11 and 12 of Article II of Republic Act (R.A.) No. 9165.

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[1] *Rollo,* pp. 2-11; Penned by Associate Justice Sesinando E. Villon with Associate Justices Florito S. Macalino and Pedro B. Corales concurring.

Appellant was charged with the crime following a "buy-bust" operation. The accusatory portion of the Information against appellant reads:

Criminal Case No. 5485-SPL

On July 21, 2005, in the Municipality of San Pedro, Province of Laguna and within the jurisdiction of this Honorable Court the said above-named accused not being authorized/permitted by law, did then and there willfully, unlawfully and feloniously have in his possession, control and custody dangerous drugs paraphernalia such as one (1) rolled aluminum foil strip and one (1) improvised "tooter," both positive of traces 'shabu'.[2]

Criminal Case No. 5486-SPL

On July 21, 2005, in the Municipality of San Pedro, Province of Laguna, Philippines and within the jurisdiction of this Honorable Court above-named accused without the authority of law, did then and there willfully, unlawfully and feloniously have in his possession, custody and control two (2) small heat-sealed transparent plastic sachet containing METHAMPHETAMINE HYDROCHLORIDE, commonly known as shabu, a dangerous drug, with a total weight of zero point nineteen (0.19) gram.[3]

Criminal Case No. 5487-SPL

On July 21, 2005, in the Municipality of San Pedro, Province of Laguna, Philippines and within the jurisdiction of this Honorable Court the said accused without any legal authority, did then and there willfully, unlawfully and feloniously in consideration of three (3) pieces one-hundred peso bill, sell, pass and deliver to a police poseur-buyer one (1) heat-sealed transparent plastic sachet of METHAMPHETAMINE HYDROCHLORIDE weighing zero point zero six (0.06) gram.[4]

When arraigned, appellant pleaded not guilty. Trial ensued.

Acting on a tip from an informant that a certain Edong was selling *shabu* in Quezon Street, Barangay San Antonio, San Pedro, Laguna, the Chief of Police of San Pedro Police Station,

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[2] Records, p. 1.

[3] *Id*. at 16.

[4] *Id*. at 31.

Police Superintendent Sergio Dimandal formed a team to conduct surveillance on appellant. Upon receiving a positive result, Senior Police Officer 4 Melchor Dela Peña (SPO4 Dela Peña) prepared a pre-operation report which was sent to the Philippine Drug Enforcement Agency (PDEA).[5]

SPO 4 Dela Peña then formed a buy-bust team composed of Police Officer 1 Jifford Signap (PO1 Signap) as the poseur-buyer, SPO2 Diosdado Fernandez, SPO1 Jorge Jacob and PO1 Rommel Bautista, as police backup. Thereafter, the buy-bust team proceeded to the target area. PO1 Signap and the informant approached appellant's house. PO1 Signap was introduced to appellant by the informant as the buyer of *shabu.* He handed the marked money, consisting of three (3) ₱100.00 bills, to appellant, who took a plastic sachet from his left pocket and gave it to him. PO1 Signap made the pre- arranged signal of calling SPO4 Dela Peña. The backup team rushed towards appellant's house and arrested him. PO1 Signap frisked appellant and recovered an improvised glass tooter, aluminum foil strip, cigarette lighter, two (2) small heat-sealed transparent plastic sachets, and the marked money. PO1 Signap conducted a physical inventory of the seized items and correspondingly marked them in appellant's house.[6]

Thereafter, appellant was brought to the police station. Thereat, SPO4 Dela Peña prepared a certificate of inventory.[7] A request letter[8] was sent to the Philippine National Police (PNP) Crime laboratory for the examination of the seized items. Forensic Chemist Donna Villa P. Huelgas issued Chemistry Report No. D-808-05[9] which confirmed the seized items as positive for methamphetamine hydrochloride or *shabu.*

Appellant, for his part, denied the charges of possession of *shabu* and its paraphernalia and sale of *shabu.* Appellant testified

[5] TSN, 3 December 2007, pp. 4-8; Testimony of SPO4 Dela Peña.

[6] TSN, 3 August 2009, pp. 5-6; Testimony of PO1 Signap.

[7] Records, p. 26.

[8] *Id*. at 40.

[9] *Id*. at 45.

that he was urinating at the back of his house on 21 July 2005 at around 12:00 pm when five (5) police officers barged into his house. After confirming that he is Edong, appellant was handcuffed and brought to the police station. Appellant claimed that the police only planted evidence against him because they were not able to pin him down in a robbery case.

On 7 January 2011, the RTC rendered a Decision[10] finding appellant guilty of all the charges against him. The dispositive portion of the Decision reads: ·

WHEREFORE, the Court hereby renders judgment:

1) Finding accused Ronaldo Casacop y Amil guilty beyond reasonable doubt of the crime of violation of Section 12 of Republic Act No. 9165 otherwise known as The Comprehensive Dangerous Drugs Act of 2002 in Criminal Case No. 5485-SPL, hereby sentencing him to suffer the penalty of imprisonment from two (2) years as minimum to four (4) years as maximum, to pay a fine in the amount of Twenty Thousand (₱20,000.00) Pesos, and to pay the costs.

2) Finding accused Ronaldo Casacop y Amil guilty beyond reasonable doubt of the crime of violation of violation of Section 11 of Republic Act No. 9165 otherwise known as The Comprehensive Dangerous Drugs Act of 2002 in Criminal Case No. 5486-SPL, hereby sentencing him to suffer an indeterminate penalty of imprisonment from an indeterminate penalty of imprisonment from twelve (12) years and one (1) day as minimum to fifteen (15) years as maximum and to pay a fine in the amount of ₱300,000.00.

3) Finding accused Ronaldo Casacop y Amil guilty beyond reasonable doubt of the crime of violation of Section 5 of Republic Act No. 9165 otherwise known as The Comprehensive Dangerous Drugs Act of 2002 in Criminal Case No. 5487-SPL, and hereby sentencing him to suffer the penalty of life imprisonment and to pay a fine in the amount of Five Hundred Thousand (₱500,000.00) Pesos and to pay the costs.

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[10] *Id.* at 168-171; Presided by Judge Francisco Dizon Paño.

The drugs paraphernalia such as one (1) rolled aluminum foil strip and one (1) improvised "tooter", the 0.19 and 0.06 grams (sic) of Methamphetamine Hydrochloride "shabu" which constitutes the instrument in the commission of the crime is confiscated and forfeited in favor of the government. The Branch Clerk of Court of this Court is hereby directed to immediately transmit the drugs paraphernalia such as one (1) rolled aluminum strip and one (1) improvised "tooter", the 0.19 and 0.06 grams (sic) of Methamphetamine Hydrochloride "shabu" to the Dangerous Drugs Board for proper disposition.[11]

Appellant seasonably filed a Notice of Appeal before the Court of Appeals. On 10 July 2013, the appellate court affirmed *in toto* the judgment of the RTC.

Appellant appealed his conviction before this Court, adopting the same arguments in his Brief [12] before the Court of Appeals.

Appellant asserts that the chain of custody of the object evidence was never established. Moreover, appellant claims that Section 21(a) of the Implementing Rules and Regulations of R.A. No. 9165 was not complied with.

For the successful prosecution of a case for illegal sale of *shabu,* the following elements must be proven: (1) the identity of the buyer and the seller, the object and the consideration; and (2) the delivery of the thing sold and the payment therefor.[13] On the other hand, in prosecuting a case for illegal possession of dangerous drugs, the following elements must concur: (1) the accused is in possession of an item or object, which is identified as a prohibited drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed the drug.[14]

In this case, all the elements for the illegal sale of *shabu* were established. PO1 Signap, the poseur-buyer, positively identified

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[11] *Id*. at 171.

[12] *CA rollo,* pp. 35-53.

[13] *People v. Opiana*, G.R. No. 200797, 12 January 2015.

[14] *People v. Montevirgen*, G.R. No. 189840, 11 December 2013, 712 SCRA 459, 468.

appellant as the person who sold him the white crystalline substance in one plastic sachet which was later proven to be positive for *shabu.* In exchange for this plastic sachet; PO1 Signap handed the marked money as payment. The delivery of the contraband to the poseur-buyer and the receipt by the seller of the marked money successfully consummated the buy-bust transaction.[15]

All the elements in the prosecution for illegal possession of dangerous drugs and paraphernalia were likewise established. Found in appellant's pocket after he was caught in flagrante were two (2) more plastic sachets containing *shabu,* an improvised glass tooter containing *shabu* residue and the rolled aluminum foil with *shabu* residue. Under Rule 126, Section 13, a person lawfully arrested may be searched for anything which may have been used or constitute proof in the commission of an offense without a warrant. There was no showing that appellant had legal authority to possess the *shabu* and its paraphernalia. Moreover, the fact that these contraband were found in his physical possession shows that he freely and consciously possessed them.

The dangerous drug itself, the shabu in this case, constitutes the very *corpus delicti* of the offense and in sustaining a conviction under R.A. No. 9165, the identity and integrity of the *corpus delicti* must definitely be shown to have been preserved.[16]

Records show that PO1 Signap recovered from appellant three (3) plastic sachets of *shabu,* a glass tooter and aluminum foil. These items were marked and inventoried in the house of appellant and in his presence. Thereafter, these seized items were brought to the police station where a request for qualitative examination was made. SPO4 Dela Peña signed the request and

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[15] *People v. Manalao*, G.R. No. 187496, 6 February 2013, 690 SCRA 106, 116 citing *People v. Legaspi*, 677 Phil. 181 (2011).

[16] *People v. Abetong*, G.R. No. 209785, 4 June 2014, 725 SCRA 304, 319 citing *People v. Climaco*, G.R. No. 199403, 13 June 2013,672 SCRA 631, 641.

it was sent to the PNP Crime Laboratory. Police Senior Inspector and Forensic Chemist Donna Villa P. Huelgas conducted the examination. Thus, the chain of custody was clearly accounted for.

As the preservation of the integrity and evidentiary value of the seized items to establish the *corpus delicti* were proven, substantial compliance with Section 21, paragraph 1, Article II of R.A. No. 9165 will suffice.

The Court of Appeals successfully rebutted appellant's argument that the police officers failed to comply with procedure in the seizure and custody of the dangerous drugs, thus:

> Appellant contends that the police officers failed to comply with the provisions of paragraph 1, Section 21 of R.A. No. 9165 for the proper procedure in the custody and disposition of the seized drugs. This cotention is untenable. It appears from the testimony of PO1 Signap during direct and cross-examination, as appreciated and contained in the decision of the court a quo, that after PO1 Signap showed the three (3) marked one hundred peso (₱100.00) bills, appellant brought out a plastic sachet containing white crystalline substance which was later found out to contain "shabu," a dangerous drug. Two (2) more plastic sachets containing "shabu" and other drug paraphernalia were recovered from appellant after he was bodily searched. Thereafter, the apprehending team, before proceeding to the Police Station, had the seized drugs and drug paraphernalia inventoried and marked at appellant's house in his presence. At the said station, SPO4 Dela Pena prepared a Certification of Inventory as to the items seized from appellant. The said certification was signed by one representative from the media by the name of Edward Pelayo. A Booking Sheet/Arrest Report was issued to appellant and a letter request was sent to the PNP, Camp Vicente Lim, Calamba City, Crime Laboratory Office for examination of the seized plastic sachets containing white crystalline substance.[17]

All told, it has been established by proof beyond reasonable doubt that appellant sold and possessed *shabu and shabu paraphernalia.* Under Section 5, Article II of R.A. No. 9165,

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[17] *Rollo,* p. 8.

the penalty of life imprisonment to death and fine ranging from ₱500,000.00 to ₱10,000,000.00 shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute dispatch in transit or transport any dangerous drug, including any and all species of *opium poppy* regardless of the quantity and purity involved. For the crime of illegal sale of *shabu,* appellant was properly sentenced to life imprisonment and ordered to pay a fine of ₱500,000.00.

Appellant was also caught in possession of 0.19 gram of *shabu.* The crime of illegal possession of dangerous drugs is punished under Section 11, paragraph 2(3), Article II of R.A. No. 9165, which provides an imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from Three Hundred Thousand Pesos (₱300,000.00) to Four Hundred Thousand Pesos (₱400,000.00), if the quantities of dangerous drugs are less than five (5) grams of methamphetamine hydrochloride or *shabu.*

Section 12, Article II of R.A. No. 9165 provides that the penalty of imprisonment ranging from six (6) months and one (1) day to four (4) years and a fine ranging from Ten Thousand Pesos (₱10,000.00) to Fifty Thousand Pesos (₱50,000.00) shall be imposed upon any person, who unless authorizedby law, shall possess or have under his/her control any equipment, instrument, apparatus and any other fit or intended for smoking, consuming, administering, injecting, ingesting, or introducing any dangerous drug into the body.

We sustain the penalty imposed by the RTC and affirmed by the Court of Appeals for the crime of illegal possession of *shabu.*

WHEREFORE, the Decision dated 10 July 2013 of the Court of Appeals affirming the conviction of appellant Ronaldo Casacop y Amil by the Regional Trial Court of San Pedro, Laguna, Branch 93, for violation of Sections 5, 11 and 12 of Article II of Republic Act No. 9165 is hereby **AFFIRMED.**

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 211062. January 13, 2016]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **MANUEL MACAL *y* BOLASCO,** *accused-appellant.*

SYLLABUS

1. **CRIMINAL LAW; REVISED PENAL CODE; PARRICIDE; REQUISITES.—** Parricide is committed when: (1) a person is killed; (2) the deceased is killed by the accused; (3) the deceased is the father, mother, or child, whether legitimate or illegitimate, or a legitimate other ascendants or other descendants, or the legitimate spouse of the accused. Among the three requisites, the relationship between the offender and the victim is the most crucial. This relationship is what actually distinguishes the crime of parricide from homicide. In parricide involving spouses, the best proof of the relationship between the offender and victim is their marriage certificate. Oral evidence may also be considered in proving the relationship between the two as long as such proof is not contested.

2. **ID.; ID.; EXEMPTING CIRCUMSTANCES; ACCIDENT; REQUISITES.—** The defense invoked Article 12 paragraph 4 of the Revised Penal Code to release the accused-appellant from criminal liability. Pursuant to said provision, the essential requisites of accident as an exempting circumstance are: (1) a person is performing a lawful act; (2) with due care; (3) he causes an injury to another by mere accident; and (4) without fault or intention of causing it. A close scrutiny of the transcripts of stenographic notes would reveal that the accused-appellant was not performing a lawful act at the time Auria was stabbed. x x x The defense of accident presupposes lack of intention to kill. This certainly does not hold true in the instant case based on the x x x testimony of the accused-appellant. Moreover, the prosecution witnesses, who were then within hearing distance from the bedroom, testified that they distinctly heard Auria screaming that she was going to be killed by the accused-appellant. Given these testimonies, the accused-appellant's defense of accident is negated as he was carrying

out an unlawful act at the time of the incident.

3. **ID.; ID.; ID.; ID.; IN RAISING THE DEFENSE OF ACCIDENT, THE ACCUSED HAS THE BURDEN OF PROVING, BY CLEAR AND CONVINCING EVIDENCE, THE ACCIDENTAL INFLICTION OF THE INJURIES ON THE VICTIM.—** It also bears stressing that in raising the defense of accident, the accused-appellant had the inescapable burden of proving, by clear and convincing evidence, the accidental infliction of injuries on the victim. In so doing, the accused-appellant had to rely on the strength of his own evidence and not on the weakness of the prosecution's evidence. As aptly pointed out by the CA, the defense failed to discharge the burden of proving the elements of the exempting circumstance of accident that would otherwise free the accused-appellant from culpability. Aside from the accused-appellant's self-serving statement, no other proof was adduced that will substantiate his defense of accidental stabbing.

4. **ID.; ID.; DEATH UNDER EXCEPTIONAL CIRCUMSTANCE; ELEMENTS.—** Article 247 is an absolutory cause that recognizes the commission of a crime but for reasons of public policy and sentiment there is no penalty imposed. The defense must prove the concurrence of the following elements: (1) that a legally married person surprises his spouse in the act of committing sexual intercourse with another person; (2) that he kills any of them or both of them in the act or immediately thereafter; and (3) that he has not promoted or facilitated the prostitution of his wife (or daughter) or that he or she has not consented to the infidelity of the other spouse. Among the three elements, the most vital is that the accused-appellant must prove to the court that he killed his wife and her paramour in the act of sexual intercourse or immediately thereafter. Having admitted the stabbing, the burden of proof is shifted to the defense to show the applicability of Article 247. As disclosed by the accused-appellant, when he saw Auria with a man, the two were just seated beside each other and were simply talking. Evidently, the absolutory cause embodied in Article 247 is not applicable in the present case.

APPEARANCES OF COUNSEL

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

DECISION

PEREZ, *J.*:

Violence between husband and wife is nothing new. Marital violence that leads to spousal killing is parricide. Perceived as a horrific kind of killing, penal laws impose a harsher penalty on persons found guilty of parricide compared to those who commit the felony of homicide.

For review is the June 28, 2013 Decision[1] of the Court of Appeals (CA) in CA-G.R. CEB-CR H.C. No. 01209 which affirmed with modification the August 18, 2009 Decision[2] of the Regional Trial Court (RTC) of Tacloban City, Branch 6, convicting Manuel Macal *y* Bolasco (accused-appellant) of the crime of parricide and sentencing him to suffer the penalty of *reclusion perpetua.*

The Facts

For allegedly killing his spouse, Auria Ytac Macal (Auria), the accused-appellant was charged with the crime of parricide in a February 13, 2013 Information[3] that reads:

"That on or about the 12th day of February, 2003, in the City of Tacloban, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, MANUEL MACAL y BOLASO, did, then and there, wilfully, unlawfully and feloniously and with evident premeditation, that is, having conceived and deliberated to kill his wife, AURIA MACAL y YTAC, with whom he was united in lawful wedlock, armed with an improvised bladed weapon (belt

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[1] *Rollo,* pp. 3-12; penned by CA Associate Justice Pamela Ann Abella Maxino and concurred in by Associate Justices Edgardo L. Delos Santos and Maria Elisa Sempio Diy.

[2] CA *rollo,* pp. 31-39; penned by Judge Alphinor C. Serrano.

[3] Records, p. 1.

buckle) and a kitchen knife, stab said Auria Macal on the front portion of her body inflicting a fatal wound which caused her death, which incident happened inside the bedroom of the house they are residing.

CONTRARY TO LAW."

On July 7, 2003, upon arraignment, the accused-appellant, duly assisted by counsel, pleaded not guilty to the charge of parricide.[4] During the pre-trial conference, the parties agreed to stipulate that Auria was the wife of the accused-appellant.[5] Thereafter, trial on the merits ensued.

Version of the Prosecution

To prove the accusation, the prosecution presented Angeles Ytac (Angeles) and Erwin Silvano (Erwin) as witnesses.

Angeles, the mother of Auria, narrated that Auria and the accused- appellant got married in March 2000 and that out of their union, they begot two (2) children. Angeles claimed that, at the time of the incident, they were all living together in a house located in V & G Subdivision, Tacloban City. The said house was entrusted to Angeles by her brother, Quirino Ragub, who was then residing in Canada.

Angeles testified that at around 1:20 in the morning of February 12, 2003, she, her children Catherine, Jessica, Auria and Arvin were walking home after playing bingo at a local *peryahan.* Some friends tagged along with them so that they could all feast on the leftover food prepared for the fiesta that was celebrated the previous day. Along the way, Angeles and her group met Auria's husband, the accused appellant. The latter joined them in walking back to their house.

When they arrived at the house, the group proceeded to the living room except for Auria and the accused-appellant who went straight to their bedroom, about four (4) meters away from the living room. Shortly thereafter, Angeles heard her daughter

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[4] *Id*. at 20.

[5] *Id*. at 25.

Auria shouting, *"mother help me I am going to be killed."*[6] Upon hearing Auria's plea for help, Angeles and the rest of her companions raced towards the bedroom but they found the door of the room locked. Arvin kicked open the door of the bedroom and there they all saw a bloodied Auria on one side of the room. Next to Auria was the accused-appellant who was then trying to stab himself with the use of an improvised bladed weapon (belt buckle). Auria was immediately taken to a hospital, on board a vehicle owned by a neighbor, but was pronounced dead on arrival. Angeles declared that the accused-appellant jumped over the fence and managed to escape before the policemen could reach the crime scene.

Erwin corroborated Angeles' testimony that Auria was killed by the accused-appellant. Erwin claimed that he was part of the group that went to Angeles' residence on that fateful morning. From where he was seated in the living room, Erwin recounted that he heard Auria's screaming for her mother's help. The cry for help prompted him to ran towards the bedroom. Once the door was forcibly opened, Erwin became aware that the accused-appellant stabbed Auria on the upper left portion of her chest with a stainless knife. Erwin testified that the accused-appellant stabbed himself on the chest with a knife-like belt buckle and that soon after, the accused-appellant hurriedly left the house.

The prosecution formally offered in evidence the Certificate of Death wherein it is indicated that Auria died of hemorrhagic shock secondary to stab wound.[7]

Version of the Defense

To substantiate its version of the fact, the defense called to the witness stand the accused-appellant, Benito Billota (Benito) and Nerissa Alcantara (Nerissa).

The accused-appellant did not refute the factual allegations of the prosecution that he stabbed his wife, resulting in the

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[6] TSN, November 17, 2003, p. 16.

[7] Records, p. 8.

latter's death, but seeks exoneration from criminal liability by interposing the defense that the stabbing was accidental and not intentional.

The accused-appellant admitted that he was married to Auria in March 2000 and the wedding was held in Manila. The couple had two children but one of them died. According to the accused-appellant, he was employed as a security guard by Fighter Wing Security Agency which was based in Manila. While the accused-appellant was working in Manila, his family lived with Angeles in Tacloban City. The accused-appellant came home only once a year to his family in Tacloban City.

On February 12, 2003, the accused-appellant arrived home in V & G Subdivision, Tacloban City from Manila. Before the accused-appellant could reach the bedroom, he was warned by Arvin, his brother-in-law, not to go inside the bedroom where his wife was with a man for he might be killed. Ignoring Arvin's admonition, the accused-appellant kicked the door but it was opened from the inside. After the bedroom door was opened, the accused-appellant saw his wife and a man seated beside each other conversing. Furious by what he had seen, the accused-appellant went out of the room, got a knife and delivered a stab blow towards the man but the latter was shielded by Auria. In the process, the stab blow landed on Auria. After Auria was accidentally stabbed, the man ran outside and fled. The accused-appellant testified that out of frustration for not killing the man, he wounded himself on the chest. He then left the house and went to Eastern Visayas Regional Medical Center (EVRMC) for medical treatment.

Benito attested that he came to know the accused-appellant while they were seated next to each other on board a Christopher Bus bound for Tacloban City. The bus they were riding reached Tacloban City past midnight of February 12, 2003. Considering the lateness of the hour and there was no bus available that would take Benito to his final destination, the accused-appellant convinced Benito to simply go home with him. Once they got home, the accused-appellant went inside the house while Benito opted to stay by the main door. The accused-appellant asked

someone from the living room the whereabouts of his wife, Auria. Benito testified that a female informed the accused-appellant that Auria was inside the bedroom but advised him not to go in as Auria was not alone in the room. Undettered, the accused-appellant proceeded to the bedroom and was able to get inside the room. Moments later, Benito heard a thudding sound coming from the bedroom. Then, Benito saw a man running out of the house. Sensing trouble, Benito immediately proceeded to the bus terminal.

To support the accused-appellant's claim that he brought himself to a hospital on February 12, 2003, Nerissa, the Administrative Officer/OIC Records Officer of EVRMC, was presented as witness for the defense. Her testimony focused on the existence of the medical record concerning the examination conducted on the accused-appellant by a physician at EVRMC. Per hospital record, Nerissa confirmed that the accused-appellant sustained a three-centimeter wound located at the left parasternal, level of the 5th ICS non-penetrating and another lacerated wound in the left anterior chest.[8]

The RTC's Ruling

The RTC convicted the accused-appellant of the crime of parricide and the dispositive portion of its judgment reads:

> **WHEREFORE,** in view of the foregoing considerations, this Court finds accused **MANUEL MACAL y BOLASCO** guilty beyond reasonable doubt of the crime of **Parricide,** and sentences him to suffer the penalty of imprisonment of ***RECLUSION PERPETUA;*** to pay the heirs of the victim, Aurea Ytac Macal, ₱50,000.00 as civil indemnity, and ₱50,000.00 for moral damages. And, to pay the Costs.
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> **SO ORDERED.**[9]

The RTC gave full credence to the testimonies of the prosecution witnesses. In contrast, the RTC found accused-appellant's declarations doubtful and contrary to human experience and reason. The RTC was not persuaded by the

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[8] TSN, February 13, 2009, p. 6.

[9] RTC records, p. 197.

accused-appellant's argument that the stabbing incident was purely accidental after it took into account Auria's terrifying wail that she was going to be killed. The RTC also refused to believe accused- appellant's claim that there was a man with Auria inside the bedroom. Logic dictates that a man in that situation would normally run away the first opportunity he had specifically when the accused-appellant stepped out of the bedroom to obtain a knife. The RTC even went further by saying that the accused-appellant injured himself so that he can later on invoke self-defense which he failed to do as there are witnesses who can easily disprove his theory of self-defense.·

The CA's Ruling

On appeal, the CA affirmed with modification the RTC decision. The *fallo* of the CA decision states:

IN LIGHT OF ALL THE FOREGOING, the Court hereby AFFIRMS with MODIFICATION the assailed Decision dated August 18, 2009, of the Regional Trial Court, Branch 6, Tacloban City in Criminal Case No. 2003-02-92. Accused-Appellant MANUEL MACAL y BOLASCO is found GUILTY of parricide committed against his legal wife, Auria Ytac Macal, on February 12, 2003 and is sentenced to suffer the penalty of *reclusion perpetua.* He is further ordered to pay the heirs of Auria Ytac Macal the amounts of Php 50,000.00 as civil indemnity, Php 50,000.00 as moral damages, Php 25,000.00 as temperate damages and Php 30,000.00 as exemplary damages. All monetary awards for damages shall earn interest at the legal rate of six percent (6%) per annum from date of finality of this Decision until fully paid.

SO ORDERED.[10]

The appellate court ruled that all the elements of parricide are present in this case. Moreover, the CA reasoned out that while Angeles did not actually see the accused-appellant stab Auria, the prosecution adduced sufficient circumstantial evidence to sustain his conviction. From the viewpoint of the CA, the prosecution's case against the accused-appellant was strengthened by the latter's own testimony and admission that

[10] CA *rollo,* p. 82.

he stabbed his wife. The CA further held that neither can the act of the accused- appellant be covered under the exempting circumstance of accident under Article 12(4)[11] of the Revised Penal Code nor under absolutory cause found in Article 247[12] of the same Code.

Hence, this appeal.

The Issue

The principal issue before the Court is whether the court *a quo* erred in finding the accused-appellant guilty beyond reasonable doubt of the crime of parricide.

In the resolution of March 10, 2014, the Court required the parties to submit their respective supplemental briefs within thirty (30) days from notice. However, both parties manifested that they will no longer file the required briefs as they had

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[11] Article 12(4) of the Revised Penal Code provides:

Art. 12. *Circumstances which exempt from criminal liability.* — The following are exempt from criminal liability:

x x x x x x x x x

4. Any person who, while performing a lawful act with due care, causes an injury by mere accident without fault or intention of causing it.

x x x x x x x x x

[12] Article 247 of the Revised Penal Code provides:

Art. 247. *Death or physical injuries inflicted under exceptional circumstances.* — Any legally married person who having surprised his spouse in the act of committing sexual intercourse with another person, shall kill any of them or both of them in the act or immediately thereafter, or shall inflict upon them any serious physical injury, shall suffer the penalty of destierro.

If he shall inflict upon them physical injuries of any other kind, he shall be exempt from punishment.

These rules shall be applicable, under the same circumstances, to parents with respect to their daughters under eighteen years of age, and their seducers, while the daughters are living with their parents.

Any person who shall promote or facilitate the prostitution of his wife or daughter, or shall otherwise have consented to the infidelity of the other spouse shall not be entitled to the benefits of this article.

already exhaustively and extensively discussed all the matters and issues of this case in the briefs earlier submitted with the CA.

The Court's Ruling

The Court affirms the conviction of the accused-appellant with modifications.

All the Essential Elements of Parricide Duly Established and Proven by the Prosecution

Parricide is committed when: (1) a person is killed; (2) the deceased is killed by the accused; (3) the deceased is the father, mother, or child, whether legitimate or illegitimate, or a legitimate other ascendants or other descendants, or the legitimate spouse of the accused.[13]

Among the three requisites, the relationship between the offender and the victim is the most crucial.[14] This relationship is what actually distinguishes the crime of parricide from homicide.[15] In parricide involving spouses, the best proof of the relationship between the offender and victim is their marriage certificate.[16] Oral evidence may also be considered in proving the relationship between the two as long as such proof is not contested.[17]

In this case, the spousal relationship between Auria and the accused- appellant is beyond dispute. As previously stated, the defense already admitted that Auria was the legitimate wife of the accused-appellant during the pre-trial conference. Such

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[13] *People v. Malabago,* 333 Phil. 20, 27 (1996).

[14] *People v. Paycana, Jr.*. 574 Phil. 780, 789 (2008).

[15] Article 249 of the Revised Penal Code provides:

Art. 249. *Homicide.* — Any person who, not falling within the provisions of Article 246, shall kill another without the attendance of any of the circumstances enumerated in the next preceding article, shall be deemed guilty of homicide and be punished by *reclusion temporal.*

[16] *Supra* note 13.

[17] *Id*.

admission was even reiterated by the accused- appellant in the course of trial of the case. Nevertheless, the prosecution produced a copy of the couple's marriage certificate which the defense admitted to be a genuine and faithful reproduction of the original.[18] Hence, the key element that qualifies the killing to parricide was satisfactorily demonstrated in this case.

Just like the marital relationship between Auria and the accused- appellant, the fact of Auria's death is incontestable. Witnesses, from both the prosecution and defense, were in agreement that Auria expired on February 12, 2003. As additional proof of her demise, the prosecution presented Auria's Certificate of Death which was admitted by the RTC and the defense did not object to its admissibility.

Anent the remaining element, there is no doubt that Auria was killed by the accused-appellant. The stabbing incident was acknowledged by the accused-appellant himself during his direct examination by defense counsel Emelinda Maquilan, to wit:

x x x x x x x x x

Q: What is the name of your wife?
A: Aurea Ytac.

Q: You said you saw your wife in your room with a man. Now, what was the man doing when you saw this man together with your wife?
A: They were conversing.

Q: They were conversing in what part of your room?
A: At one side of the room.

Q: So, what did you do upon seeing the man, if there was any?
A: Because of my anger, I stabbed the man.

Q: Were you able to hit the man?
A: No, because my wife shielded him.

Q: Since your wife shielded the man, what happened to your wife?
A: My wife got hit.

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[18] CA *rollo,* p. 33.

Q: Now, in what of the body of his wife was hit?
A: I cannot exactly tell where she was hit but he delivered a stabbing blow at the man.

Q: So, after your wife was hit by the stabbing blow to be directed to the man, what happened next?
A: Out of desperation because I was not able to kill the man, I wounded myself.

Q: How about the man whom you wanted to stab, what happened to him?
A: He ran.

Q: Since you said your wife was hit by that stabbing blow, what happen to your wife then?
A: She died.

Q: How about you, what happened to you after you yourself?
A: I left the place.[19]

The outright admission of the accused-appellant in open court that he delivered the fatal stabbing blow that ended Auria's life established his culpability.

Clearly, all the elements of the crime of parricide as defined in Article 246 of the Revised Penal Code are present in this case.

Affirmative Defense of Accident as an Exempting Circumstance Must Fail

The defense invoked Article 12 paragraph 4 of the Revised Penal Code to release the accused-appellant from criminal liability. Pursuant to said provision, the essential requisites of accident as an exempting circumstance are: (1) a person is performing a lawful act; (2) with due care; (3) he causes an injury to another by mere accident; and (4) without fault or intention of causing it.[20]

A close scrutiny of the transcripts of stenographic notes would reveal that the accused-appellant was not performing a lawful

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[19] TSN, May 8, 2007, pp. 6-7.

[20] *Toledo v. People,* 482 Phil. 292, 303 (2004).

act at the time Auria was stabbed. This can be gathered from the narration of the accused- appellant during cross-examination conducted by Prosecutor Percival Dolina:

x x x x x x x x x

Q: Now, of course, when you saw the man and your wife, according to you, they were just conversing with each other, correct?
A: Yes, sir.

Q: How far where they to each other?
A: They were beside each other.

Q: They were sitting?
A: Yes, sir, both were sitting.

Q: Of course, when you saw them, you got angry?
A: I became angry.

Q: That is why you got a knife and stabbed the man?
A: Yes, sir.

Q: And when you stabbed the man, you had the intention to kill him?
A: Yes, my intention was to kill him.

Q: But it was your wife who was hit?
A: My wife was the one hit.[21]

The defense of accident presupposes lack of intention to kill.[22] This certainly does not hold true in the instant case based on the aforequoted testimony of the accused-appellant. Moreover, the prosecution witnesses, who were then within hearing distance from the bedroom, testified that they distinctly heard Auria screaming that she was going to be killed by the accused-appellant.

Given these testimonies, the accused-appellant's defense of accident is negated as he was carrying out an unlawful act at the time of the incident.

It also bears stressing that in raising the defense of accident,

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[21] TSN, May 8, 2007, p. 10.

[22] *Aradillos v. Court of Appeals,* 464 Phil. 650, 662 (2004).

the accused-appellant had the inescapable burden of proving, by clear and convincing evidence, of accidental infliction of injuries on the victim.[23] In so doing, the accused-appellant had to rely on the strength of his own evidence and not on the weakness of the prosecution's evidence.[24] As aptly pointed out by the CA, the defense failed to discharge the burden of proving the elements of the exempting circumstance of accident that would otherwise free the accused-appellant from culpability. Aside from the accused- appellant's self-serving statement, no other proof was adduced that will substantiate his defense of accidental stabbing.

Further, contrary to what the accused-appellant wants the Court to believe, his actuations closely after Auria was stabbed tell a different story. If Auria was really accidentally stabbed by him, the accused-appellant's natural reaction would have been to take the lead in bringing his wife to a hospital. Instead, his priority was to come up with an improvised bladed weapon that he could use to hurt himself. Additionally, the fact that the accused-appellant ran away from the crime scene leaving Auria's relatives and neighbors to tend to his dying wife is indicative of his guilt.

The CA took one step further when it examined the applicability of Article 247 of the Revised Penal Code in this case. For this purpose, the CA assumed *arguendo* that there is another man inside the bedroom with Auria.

Article 247 is an absolutory cause that recognizes the commission of a crime but for reasons of public policy and sentiment there is no penalty imposed.[25] The defense must prove the concurrence of the following elements: (1) that a legally married person surprises his spouse in the act of committing sexual intercourse with another person; (2) that he kills any of them or both of them in the act or immediately thereafter; and

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[23] *People v. Genita, Jr.,* 469 Phil. 334 (2004).

[24] *People v. Castillo,* 553 Phil. 197, 208 (2007).

[25] *People v. Oyanib,* 406 Phil. 650, 660 (2001).

(3) that he has not promoted or facilitated the prostitution of his wife (or daughter) or that he or she has not consented to the infidelity of the other spouse.[26] Among the three elements, the most vital is that the accused-appellant must prove to the court that he killed his wife and her paramour in the act of sexual intercourse or immediately thereafter.[27]

Having admitted the stabbing, the burden of proof is shifted to the defense to show the applicability of Article 247.[28] As disclosed by the accused-appellant, when he saw Auria with a man, the two were just seated beside each other and were simply talking. Evidently, the absolutory cause embodied in Article 247 is not applicable in the present case.

In sum, the Court agrees with the trial and appellate courts that the evidence of the prosecution has established the guilt of the accused-appellant beyond reasonable doubt.

Penalty and Pecuniary Liability

Article 246 of the Revised Penal Code provides that the imposable penalty for parricide is *reclusion perpetua* to death. With the enactment of Republic Act No. 9346 (RA 9346), the imposition of the penalty of death is prohibited. Likewise significant is the provision found in Article 63 of the Revised Penal Code stating that in the absence of mitigating and aggravating circumstances in the commission of the crime, the lesser penalty shall be imposed. Applying these to the case at bar and considering that there are no mitigating and aggravating circumstances present, the penalty of *reclusion perpetua* was correctly imposed by the RTC and CA.

Civil indemnity is automatically awarded upon proof of the fact of death of the victim and the commission by the accused-

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[26] *Id*. at 661.

[27] *Id.*

[28] *People v. Talisic,* 344 Phil. 51, 59 (1997).

[29] *People v. Gamez,* G.R. No. 202847, October 23, 2013, 708 SCRA 625, 638.

appellant of the crime of parricide.[29] Current jurisprudence sets civil indemnity in the amount of ₱75,000.00. As such, the Court finds it necessary to increase the civil indemnity awarded by the trial and appellate courts from ₱50,000.00 to ₱75,000.00.

There is no question that Auria's heirs suffered mental anguish by reason of her violent death. Consequently, the award of moral damages is in order. Similar to civil indemnity, prevailing jurisprudence pegs moral damages in the amount of ₱75,000.00. On that account, the Court must also adjust the moral damages from ₱50,000.00 to ₱75,000.00.

Given that this is a case of a husband killing his wife where relationship is a qualifying circumstance, the award of exemplary damages is justified. The exemplary damages of ₱30,000.00 awarded by the CA is maintained as it is consistent with the latest rulings of the Court.

Temperate damages may be recovered when some pecuniary loss has been suffered but definite proof of its amount was not presented in court.[30] In *People v. De Leon,*[31] the Court awarded ₱25,000.00 as temperate damages where the expenses for the funeral cannot be determined with certainty because of the absence of receipts to prove them. In keeping with the said ruling, the Court affirms the CA's award of ₱25,000.00 as temperate damages.

On a final note, the Court upholds the imposition of interest at the legal rate of 6% *per annum* on all the monetary awards for damages reckoned from the date of finality of this Decision until fully paid.[32] This is in accordance with the Court's discretionary authority to levy interest as part of the damages and in conformity with the latest Court policy on the matter.

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[30] Article 2224 of the Civil Code provides:

Art. 2224. Temperate or moderate damages, which are more than nominal but less than compensatory damages, may be recovered when the court finds that some pecuniary loss has been suffered but its amount can not, from the nature of the case, be provided with certainty.

[31] 608 Phil. 701, 726, (2009).

[32] *People v. Sales,* 674 Phil. 150, 165-166 (2011).

WHEREFORE, the CA's decision dated June 28, 2013 in CA-G.R. CEB-CR H.C. No. 01209, finding accused-appellant, Manuel Macal *y* Bolasco, guilty beyond reasonable doubt of the crime of Parricide, is hereby **AFFIRMED** with **MODIFICATIONS.** Accused-appellant is sentenced to suffer the penalty of *reclusion perpetua* and to pay the heirs of the victim, Auria Ytac Macal, the amounts of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, ₱30,000.00 as exemplary damages, and ₱25,000.00 as temperate damages. In addition, all the monetary awards shall earn an interest at the legal rate of 6% *per annum* from the date of finality of this Decision until fully paid.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 211737. January 13, 2016]

SERGIO R. OSMEÑA III, *petitioner, vs.* **DEPARTMENT OF TRANSPORTATION AND COMMUNICATIONS SECRETARY JOSEPH EMILIO A. ABAYA, MACTAN-CEBU INTERNATIONAL AIRPORT AUTHORITY (MCIAA), THE PRE-QUALIFICATION, BIDS AND AWARDS COMMITTEE (PBAC) FOR THE MACTAN-CEBU INTERNATIONAL AIRPORT PROJECT THROUGH ITS CHAIRMAN, UNDERSECRETARY JOSE PERPETUO M. LOTILLA, GMR INFRASTRUCTURE, LTD. and MEGAWIDE CONSTRUCTION CORPORATION,** *respondents.*

[G.R. No. 214756. January 13, 2016]

BUSINESS FOR PROGRESS MOVEMENT as represented by MEDARDO C. DEACOSTA, JR., *petitioner, vs.* **DEPARTMENT OF TRANSPORTATION AND COMMUNICATIONS, GMR-MEGAWIDE CEBU AIRPORT CORPORATION,** *respondents.*

SYLLABUS

1. **POLITICAL LAW; JUDICIAL DEPARTMENT; JUDICIAL REVIEW; LEGAL STANDING; REQUISITES; LEGAL STANDING REFERS TO A PERSONAL AND SUBSTANTIAL INTEREST IN A CASE SUCH THAT THE PARTY HAS SUSTAINED OR WILL SUSTAIN DIRECT INJURY BECAUSE OF THE CHALLENGED GOVERNMENTAL ACT.—** Legal standing or *locus standi* refers to a personal and substantial interest in a case such that the party has sustained or will sustain direct injury because of the challenged governmental act. The requirement of standing, which necessarily sharpens the presentation of issues, relates to the constitutional mandate that this Court settle only actual cases or controversies. Thus, generally, a party will be allowed to litigate only when (1) he can show that he has personally suffered some actual or threatened injury because of the allegedly illegal conduct of the government; (2) the injury is fairly traceable to the challenged action; and (3) the injury is likely to be redressed by a favorable action.

2. **ID.; ID.; ID.; ID.; THE RULES THEREON MAY BE RELAXED WHEN THE ISSUES INVOLVED IS OF TRANSCENDENTAL IMPORTANCE TO THE PUBLIC; MATTER OF TRANSCENDENTAL IMPORTANCE, HOW DETERMINED.—** In any case, *locus standi* being a mere procedural technicality, the Court has, in the exercise of its discretion, relaxed the rules on standing when the issues involved is of "transcendental importance" to the public. The Court, through Associate Justice Florentino P. Feliciano (retired and now deceased), provided the following instructive guides as determinants in determining whether a matter is of transcendental importance: (1) the character of the funds or other assets involved

in the case; (2) the presence of a clear case of disregard of a constitutional or statutory prohibition by the public respondent agency or instrumentality of the government; and (3) the lack of any other party with a more direct and specific interest in the questions being raised.

3. **REMEDIAL LAW; COURTS; HIERARCHY OF COURTS; IN PETITIONS FOR *CERTIORARI*, PROHIBITION, *MANDAMUS*, *QUO WARRANTO*, AND *HABEAS CORPUS*, DIRECT RESORT TO THE SUPREME COURT WILL NOT BE ENTERTAINED UNLESS THE REDRESS DESIRED CANNOT BE OBTAINED IN THE APPROPRIATE COURTS, AND EXCEPTIONAL AND COMPELLING CIRCUMSTANCES JUSTIFY THE DIRECT INVOCATION OF ITS JURISDICTION.—** While this Court has original jurisdiction over petitions for certiorari, prohibition, *mandamus*, *quo warranto*, and *habeas corpus*, such jurisdiction is shared with the Court of Appeals and the Regional Trial Courts. x x x The Court thus declared in *Heirs of Bertuldo Hinog v. Melicor,* that it will not entertain direct resort to it unless the redress desired cannot be obtained in the appropriate courts, and exceptional and compelling circumstances, such as cases of national interest and of serious implications, justify the availment of the extraordinary remedy of writ of certiorari, calling for the exercise of its primary jurisdiction. After a thorough study and evaluation of the issues involved, the Court is of the view that exceptional circumstances exist in this case to warrant the relaxation of the rule.

4. **ID.; ACTIONS; MOOT AND ACADEMIC CASE; IN CASES WHERE THE SUPERVENING EVENTS HAD MADE THE CASES MOOT, THE SUPREME COURT MAY RESOLVE THE LEGAL OR CONSTITUTIONAL ISSUES RAISED TO FORMULATE CONTROLLING PRINCIPLES TO GUIDE THE BENCH AND THE BAR, AND THE PUBLIC.—** Respondents' contention that the case was mooted by the Notice of Award and turnover of operations of the MCIA to GMCAC likewise deserves scant consideration. For even in cases where the supervening events had made the cases moot, the Court did not hesitate to resolve the legal or constitutional issues raised to formulate controlling principles to guide the bench and the bar, and the public. Hence, the subsequent issuance of Notice

of Award, execution of the Concession Agreement and turn-over to GMCAC of the operation and maintenance of MCIA, did not remove the issue of GMCAC's qualifications from the ambit of judicial review.

5. **POLITICAL LAW; ADMINISTRATIVE LAW; BUILD-OPERATE-AND-TRANSFER LAW; PUBLIC BIDDINGS; EVALUATION OF BIDS; STAGES.—** For public biddings of PPP contracts under the BOT Law and Implementing Rules and Regulations (IRR), the evaluation of bids is undertaken in two stages. The first-stage evaluation involves the assessment of the technical, operational, environmental and financing viability of the proposal as contained in the bidder's first envelopes vis-à-vis the prescribed requirements and criteria/ minimum standards and basic parameters prescribed in the bidding documents. The second stage evaluation shall involve the assessment and comparison of the financial proposals of the bidders. Within three days from completion of the financial evaluation, the PBAC submits its recommendation to the head of the Implementing Agency (IA) or Local Government Unit (LGU). Upon approval of the recommendation, the head of the IA or LGU will issue a notice of award to a winning proponent. Subject to compliance with the post-award requirements in the notice of award, the PPP contract shall be executed and signed by the winning bidder and the head of the IA or LGU.

6. **ID.; ID.; GOVERNMENT CONTRACTS; PUBLIC BIDDING; THE COURTS WILL NOT INTERFERE WITH THE BROAD DISCRETION OF THE GOVERNMENT IN CHOOSING WHO AMONG THE BIDDERS CAN OFFER THE MOST ADVANTAGEOUS TERMS, EXCEPT WHEN IN THE EXERCISE OF ITS AUTHORITY, IT GRAVELY ABUSES OR EXCEEDS ITS JURISDICTION, OR COMMITS INJUSTICE OR FRAUDULENT ACTS.—** It is well-settled in our jurisprudence that the government is granted broad discretion in choosing who among the bidders can offer the most advantageous terms and courts will not interfere therewith or direct the committee on bids to do a particular act or to enjoin such act within its prerogatives, except when in the exercise of its authority, it gravely abuses or exceeds its jurisdiction, or otherwise commits injustice, unfairness, arbitrariness or fraudulent acts. We have recognized that the

exercise of that discretion is a policy decision that necessitates prior inquiry, investigation, comparison, evaluation, and deliberation. This task can best be discharged by the concerned government agencies, not by the courts. x x x Under the ITPB, the PBAC reserves the right to waive any minor defects in the Qualification Documents, and accept the offer it deems most advantageous to the government. Verily, a reservation of the government of its right to reject any bid, generally vests in the authorities a wide discretion as to who is the best and most advantageous bidder. The exercise of such discretion involves inquiry, investigation, comparison, deliberation and decision, which are quasi-judicial functions, and when honestly exercised, may not be reviewed by the court.

7. **REMEDIAL LAW; CIVIL PROCEDURE; SPECIAL CIVIL ACTIONS; INJUNCTION; WILL NOT ISSUE TO PROTECT A RIGHT NOT *IN ESSE* AND WHICH MAY NEVER ARISE OR TO RESTRAIN AN ACT WHICH DOES NOT GIVE RISE TO A CAUSE OF ACTION.—** For the writ of injunction to issue, the existence of a clear and positive right especially calling for judicial protection must be shown; injunction is not to protect contingent or future rights; nor is it a remedy to enforce an abstract right. An injunction will not issue to a protect a right not *in esse* and which may never arise or to restrain an act which does not give rise to a cause of action. There must exist an actual right. Petitioners failed to establish such actual right that needs to be protected by injunctive relief. There being no violation of any law, regulation or the bidding rules, nor any arbitrariness or unfairness committed by public respondents, the presumption of regularity of the bidding for the MCIA Project must stand.

APPEARANCES OF COUNSEL

Michelle D. Trinidad for petitioner Business for Progress Movement.

Office of the Solicitor General for public respondents.

Angara Abello Concepcion Regala & Cruz for respondent Megawide Construction Corp. & GMR Megawide Cebu Airport Corp.

Quasha Ancheta Pena and *Nolasco* co-counsel for respondent

Megawide Construction Corp. & GMR Megawide Cebu Airport Corp.

Bernas Law Office for petitioner Sen. Sergio Osmeña III.

Poblador Bautista & Reyes for respondent GMR Infrastructure, Ltd.

D E C I S I O N

VILLARAMA, JR., *J.*:

Before us are the consolidated petitions for certiorari and injunction to restrain public respondents from awarding the Mactan-Cebu International Airport (MCIA) Project to private respondents GMR Infrastructure Limited (GMR) and Megawide Construction Corporation (MCC). Petitioners subsequently prayed for invalidation of the award after private respondents won the public bidding.

The Facts

The MCIA Project consists of the construction of a new passenger terminal with all associated infrastructure facilities; construction of apron for the new passenger terminal; rehabilitation and expansion of the existing terminal along with all associated infrastructure and facilities; installation of all the required equipment and other associated facilities; installation of the required information technology and other equipment commensurate with the operations; and operation and maintenance of both passenger terminals during the concession period.[1] The project is being implemented by the Department of Transportation and Communications (DOTC) under the provisions of Republic Act (R.A.) No. 6957 as amended by R.A. No. 7718, otherwise known as the "Build-Operate-and-Transfer (BOT) Law."

On December 21, 2012, the Pre-qualification, Bids and Awards Committee (PBAC) caused the publication of the invitation to pre-qualify and bid for the MCIA Project.[2] PBAC sets as criteria

[1] *Rollo* (G.R. No. 211737), Vol. I, p. 786.

[2] *Id*. at 54.

the following: (1) legal qualification; (2) technical qualification; and (3) financial capability requirements.[3] On December 27, 2012, the DOTC and Mactan-Cebu International Airport Authority (MCIAA) issued the Instructions to Prospective Bidders (ITPB).[4]

On February 13, 2013, the PBAC conducted a Pre-Qualification Conference. In its Resolution[5] dated May 14, 2013, the PBAC recommended the pre-qualification of the following prospective bidders:

1. AAA Airport Partners;
2. Filinvest-CAI Consortium;
3. First Philippine Airports;
4. GMR Infrastructure & Megawide Consortium;
5. MPIC-JGS Airport Consortium;
6. Premier Airport Group; and
7. San Miguel & Incheon Airport Consortium.

After the submission and approval of the technical proposals submitted by the pre-qualified bidders, the PBAC proceeded with accepting their financial proposals. The financial bids were ranked in terms of "premium" to the government such that "[a]ll bids received by the DOTC were 'premium' offers, meaning the money would go directly to the government and would come on top of the cost to develop the airport."[6] The seven bids, from highest to lowest, are:

1	GMR-Megawide Consortium	Php 14,404,570,002.00
2	Filinvest-Changi Airport Consortium	Php 13,999,999,999.99
3	Premier Airport Group	Php 12,500,088,888.88
4	MPIC-JGS Airport Holdings, Inc.	Php 11,230,000.000.00
5	AAA Airport Partners	Php 11,088,888,889.00

[3] *Rollo* (G.R. No. 211737), Vol. IV, pp. 2209-2212.

[4] *Rollo* (G.R. No. 211737), Vol. II, pp. 783-853.

[5] *Rollo* (G.R. No. 211737), Vol. III, pp. 1972-1976.

[6] Page 3 of Consolidated Comment filed by DOTC and MCIAA, *id*. at 1897.

6	San Miguel & Incheon Airport	Php 9,050,000,000.00
7	First Philippine Airports	Php 4,700,000,000.00[7]

On April 3, 2014, PBAC issued a Resolution[8] recommending GMR-Megawide Consortium as the winning bidder for the MCIA Project. The resolution reads in part:

WHEREAS, the GMR Infrastructure & Megawide Consortium, formed by Megawide Construction Corporation ("Megawide") and GMR Infrastructure Limited ("GMR") qualified under the Technical and Financial Qualification requirements, through the following entities:

Development Experience	
* Delhi International Airport (P) Limited (DIAL)	Affiliate of GMR Infrastructure Limited
* GMR Hyderabad International Airport Limited (GHIAL)	Affiliate of GMR Infrastructure Limited
Operation and Maintenance	
* Delhi International Airport (P) Limited (DIAL)	Affiliate of GMR Infrastructure Limited
* GMR Hyderabad International Airport Limited (GHIAL)	Affiliate of GMR Infrastructure Limited
Financial Qualification	
* Megawide Construction Corp.	Consortium Member

x x x x x x x x x

WHEREAS, upon completion of verification of the information, representations and statements made in its Qualification Documents, Bid Letter, Technical Proposal and Financial Proposal and recommendation of the TWG [Technical Working Group] under its report dated 2 April 2014, (i) the PBAC has not found any deficiency in the Financial Proposal, (ii) nor has any misrepresentation been found in the information, representations and statements made by the GMR Infrastructure & Megawide Consortium in its Qualification Documents, Technical Proposal, Financial Proposal, and (iii) nor has the Consortium been found to have engaged in any Corrupt Practice,

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[7] *Id*.

[8] *Rollo* (G.R. No. 211737), Vol. IV, pp. 2279-2300.

Fraud, Collusion, Coercion, Undesirable and Restrictive Practice, Conflict of Interest, or violated the Lock-up Rules. A copy of the TWG Report dated 2 April 2014 is attached as Annex "DD";

NOW THEREFORE, upon review and deliberation, pursuant to and in accordance with the provisions, constraints and limitations under the BOT Law, BOT Law IRR, and the rules under the ITPB and ITB, the PBAC hereby resolves to recommend to the Honorable Secretary of the DOTC and the Board of the MCIAA: (i) to designate GMR Infrastructure & Megawide Consortium as the Winning Bidder for the Project, and (ii) to consequently issue the Notice of Award to GMR Infrastructure & Megawide Consortium.[9]

On the same day, Senator Sergio R. Osmeña III (petitioner Osmeña III) filed in this Court a petition for certiorari and prohibition with application for temporary restraining order and/or writ of preliminary injunction (G.R. No. 211737) praying that this Court (a) immediately issue an order restraining the public respondents from further acting on the bid of private respondents; (b) issue an order enjoining public respondents, their agents, representatives or assigns from issuing a Notice of Award and executing a Concession Agreement for the MCIA Project for private respondents; and (c) give due course to his petition, and after due proceedings to render judgment declaring private respondents as unqualified bidder and making the injunction permanent.

On April 4, 2014, DOTC and MCIAA issued the Notice of Award[10] to GMR-Megawide Consortium. Pursuant to Section 8.1 of the Instruction to Bidders (ITB), private respondents were directed to submit the required documents and pay the Bid Amount to MCIAA.

On April 7, 2014, petitioner Osmeña III filed a Supplemental Petition reiterating his prayer for injunctive reliefs and for this Court to further restrain the implementation of the Notice of Award and render judgment declaring the same as null and void.

[9] *Id*. at 2283, 2298-2299.

[10] *Id*. at 2302-2304.

Private respondents GMR and MCC, and public respondents DOTC, MCIAA and PBAC filed their respective Comments.

Meanwhile, private respondents complied with the post-award requirements, including the payment of the Php 14.4 Billion bid amount to MCIAA. On April 22, 2014, the Concession Agreement was executed between DOTC and MCIAA, and GMR-Megawide Consortium.

On October 31, 2014, a petition for injunction was filed by Business for Progress Movement (BPM), represented by Medardo C. Deacosta, Jr. (G.R. No. 214756). Petitioner BPM sought to restrain the turn-over of the operation and maintenance of the MCIA to GMR-Megawide Consortium. With the simultaneous imposition of increased terminal fees, BPM claims that it stands to suffer great and irreparable damage and injury once GMR-Megawide Consortium takes over the operation and management of the MCIA.

On November 1, 2014, DOTC turned over to GMR-Megawide Consortium the operation and maintenance of the MCIA.

Petitioners' Arguments

G.R. No. 211737

The following grounds are set forth in the petition:

I

THE PBAC ILLEGALLY QUALIFIED THE GMR-MEGAWIDE CONSORTIUM DESPITE ITS PATENT VIOLATION OF THE CONFLICT OF INTEREST RULE.

II

THE PBAC ILLEGALLY REFUSED TO DISQUALIFY THE GMR-MEGAWIDE CONSORTIUM IN THE FACE OF UNREFUTED EVIDENCE OF GMR'S POOR FINANCIAL HEALTH AND TRACK RECORD IN ITS INTERNATIONAL AIRPORT OPERATIONS.

III

PUBLIC RESPONDENTS ILLEGALLY FAILED TO AND LATER REFUSED TO DISQUALIFY PRIVATE RESPONDENTS FOR

VIOLATING THE CONFLICT OF INTEREST RULE AND THEIR OTHER INCAPACITIES EVEN IF IT WAS THEIR MINISTERIAL DUTY TO DO SO.

IV

THE PUBLIC RESPONDENTS ILLEGALLY ACCORDED PRIVATE RESPONDENTS AN UNDUE ADVANTAGE AND/OR ACTED WITH UNDUE BIAS IN FAVOR OF PRIVATE RESPONDENTS.

Petitioner Osmeña III argues that PBAC should have disqualified GMR-Megawide Consortium because it violated the *conflict of interest* rule when it failed to disclose that Mr. Tan Shri Bashir Ahmad bin Abdul Majid was a director of two subsidiaries of the GMR-Megawide Consortium, and is also the Managing Director of Malaysia Airport Holdings Berhad (MAHB), which joined the bidding for MCIA Project as member of the First Philippine Airports Consortium. He asserts that this rule is *mala prohibita*; hence, it does not matter whether the violation was intentional or not, and the penalty of disqualification should be imposed. GMR-Megawide's violation disadvantaged the other bidders as they were restricted from entering into similar arrangements, and thus deprived them of an even playing field or a fair and competitive bidding.

Another ground of disqualification raised by petitioner Osmeña III concerns the financial and technical capabilities of GMR as his investigation and online research showed that GMR was in dire financial health and has been offloading several assets and its stake in various infrastructure projects to meet its financial obligations. He likewise discovered GMR's unsavory record involving the Delhi International Airport Pvt. Ltd. (DIAL), which is the concessionaire for GMR's Indira Gandhi International Airport at Delhi. According to the Auditor General of India, (i) 27% of the project cost for Delhi Airport was not funded by DIAL but charged to the travelling public; (ii) outsourcing of contracts to GMR joint venture companies was not on arms-length basis in violation of contract; and (iii) DIAL violated the master plan and incurred delay in the completion of the project. The Male International Airport (MIA) case also proves

GMR's lack of technical qualification to undertake the MCIA Project. GMR Male International Airport Pvt. Ltd. (GMIAL), an indirect subsidiary of GMR, through its direct subsidiary GMR Infrastructure (Mauritius) Limited, entered into a Concession Agreement dated June 28, 2010 with the Maldives Airport Company Ltd. (MACL) and the Maldives Government Ministry of Finance and Treasury for the Rehabilitation, Expansion, Modernization, Operation and Maintenance of Male International Airport for a period of 25 years. However, on November 27, 2012, the Maldives Government and MACL declared the Concession Agreement void *ab initio* and gave GMIAL seven days to vacate the MIA, which prompted GMIAL to initiate arbitration proceedings. GMIAL sought a declaration that it was entitled to adjust the fees payable to MACL by virtue of the invalidity of portions of the Concession Agreement, while MACL sought the declaration of the Concession Agreement as void *ab initio*. GMIAL had applied for an injunction before the courts of Singapore to restrain the Maldives Government from interfering with the performance of the Concession Agreement pending arbitration proceedings. On appeal, the Singapore Court of Appeal set aside the preliminary injunction issued by a High Court judge of Singapore. Thus, effective December 8, 2012, the Maldives Government and MACL took control of the MIA.

Following a privilege speech he delivered at the Senate, petitioner Osmeña III said that the Senate Committee on Public Services, in fact, conducted two hearings on the matter where all the respondents were represented. It was alleged that during these hearings, it was established that: (a) PBAC did not compare the submissions of the various members of consortia or bidders in order to determine the existence of conflict of interest; (b) public respondents did not look into cross-directorships or conflict of interest violations of GMR even if the rules compel an inspection based on the submission of private respondents, and even refused to impose the penalty of disqualification when the violation was pointed out; (c) GMR admitted that MAHB is GMR's partner in several of its airport operations and that the Managing Director of MAHB is indeed a member of at

least two subsidiaries of GMR; and (d) granting there was doubt in the existence of a violation of the conflict of interest rule, public respondents did not take the precaution of asking for the opinion of the Department of Justice (DOJ).

Citing the case of *Agan v. PIATCO*,[11] petitioner Osmeña III claims the parallelisms between said case and the present controversy are too uncanny to ignore, and as in *Agan*, the Court should exercise its solemn constitutional duty to nullify the award of the MCIA Project to private respondents and avert serious damage to a project that the Province of Cebu looks forward to. GMR also confirmed its operating losses during the Senate hearings, and its present financial situation indicates that GMR Infra may not be earning enough money to meet its interest payments on time. As to the Airport Development Fund being levied by DIAL, the Supreme Court of India found that the levy made by DIAL during the period March 1, 2009 to April 23, 2010, prior to the notice from Airport Economic Regulatory Authority (AERA) permitting DIAL to subsequently continue the levy, was made contrary to law.

Petitioner Osmeña III further avers that during the hearing conducted by the House of Representatives on the MCIA Project on March 12, 2014, it was revealed that MCC failed to complete its school building project despite two extensions granted to it. This is relevant because under the Procurement Law (R.A. No. 9184), if a bidder is more than 15% delayed in any of its infrastructure projects, it cannot be awarded a new contract. While the MCIA Project is under the BOT Law, the underlying principle still holds for the simple reason that what is involved is a public contract. The foregoing negative findings affecting both partners in the GMR-Megawide Consortium should have compelled the PBAC, at the very least, to disqualify said consortium during the post-qualification as they were unable to demonstrate viable commercial operations.

G.R. No. 214756

Petitioner BPM also expressed doubts on the financial capacity

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[11] 450 Phil. 744 (2003).

of the winning bidder, GMR-Megawide Consortium, to undertake the construction, development, operation and maintenance of the MCIA in view of several news reports about GMR Infrastructure's state of being "debt-ridden," as it had to raise funds through sale, equity issue and divest a few road and power plants in order to pay its corporate loans. It was also reported that GMR asked the US private equity firm KKR & Co. LP to provide about $175 Million in a debt and equity deal. Apparently, the cancellation by the Maldives Government of GMR's contract for modernizing the MIA had greatly affected GMR's revenues coming from its airport business.

With GMR's lack of financial capacity, BPM contends that the GMR-Megawide Consortium had come up with a scheme of imposing increased terminal fees to cover the operating costs and expansion of the MCIA. From a news report published in the *Business Mirror* on October 13, 2014, BPM learned that the MCIA board approved on October 10, 2014 higher passenger service charge (PSC) rates, commonly known as terminal fees, "to help fund the expansion and cover increasing operating costs as well as comply with the 25-year concession agreement between MCIAA and private airport operator GMR-Megawide Cebu Airport Corp. (GMCAC)," and that effective November 1, a domestic passenger would have to pay Php220, Php20 more than the current Php200 fee, while an international passenger would have to shell out Php750, or Php200 more than the current Php550; the domestic PSC rate will increase further to Php300 effective January 1, 2016.[12]

Petitioner maintains that all the requisites for the issuance of a writ of preliminary injunction are present in this case. Petitioner as taxpayer has a clear and unmistakable right to be protected as the imposition of the terminal fees in the increased amount as well as the turn-over of the MCIA to private respondents despite the fact that the latter has no financial capacity will be prejudicial to petitioners. There is also an urgent

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[12] "MACTAN-Cebu airport upgrade set," posted on October 13, 2014, <http://www.bworldonline.com/content.php?section=TopStory&title=mactan-cebu-airport-upgrade-set&id=96020> (visited last January 4, 2016).

and paramount necessity for the issuance of the writ considering the scheduled turn-over on November 1, 2014, and petitioner has no other plain, speedy and adequate remedy in the course of law except this petition, for which purpose it is ready, able and willing to post the necessary bond in the amount that this Court may determine. BMP claims that there appears a clear and present danger that the instant petition will be rendered nugatory and ineffectual, and that the highest interest of justice will not be served if the act complained of – that is, the immediate turn-over of the operations of the MCIA to private respondents, would not be enjoined.

In its Consolidated Reply, BPM argues that the petition has not been mooted by the actual turnover of MCIA's operation to private respondents since the terminal fees will continue to increase in 2016 to defray the cost of the project. GMR's financial incapacity, as confirmed by online articles on GMR's moves to bring down its debt burden and finance its projects, will thus continue to cause grave and irreparable damage to BPM. Direct injury is being suffered by BPM members who are taxpayers frequently travelling to Cebu and Mactan from the increased terminal fees.

Respondents' Arguments

G.R. No. 211737

Megawide Construction Corp.

On procedural grounds, MCC contends that the petition should be dismissed for fatal defects or infirmities. First, the petition raises several factual questions which this Court is not required to entertain, particularly in a petition for certiorari and prohibition. Second, the petition for certiorari under Rule 65 of the Rules of Court is improper and cannot be pursued against the public respondents, more so against GMR and MCC, which do not exercise quasi-judicial or ministerial functions *vis-à-vis* the bidding process for the MCIA Project. And third, petitioner has no *locus standi* to file the petition, and neither has he shown any justification for this Court to disregard his lack of personality to maintain this suit.

MCC argues that the petition lacks merit considering that: (a) the petition assails matters which require to be left to the sole determination of the executive department, particularly the PBAC and DOTC, and thus is beyond judicial cognizance; (b) petitioner's prayer to enjoin the public respondents from issuing a Notice of Award or executing a Concession Agreement – both of which have already occurred – is already moot and thus is not a proper subject of controversy; (c) even assuming that this Court can take cognizance of the petition, petitioner failed to allege, much less establish a violation of law but rather, merely relies on DOTC and MCIAA issuances – the ITPB and ITB – both of which the PBAC has faithfully applied in this instance, in accordance with its intent and interpretation, thus negating any grave abuse of discretion; (d) contrary to petitioner's own interpretation of PBAC's ITPB and ITB, which interpretation finds no basis therein and in law, there is no conflict of interest; and (e) contrary to petitioner's allegations, GMR-Megawide Consortium is financially and technically capable of undertaking the MCIA Project, and developing, maintaining, and operating the renovated MCIA.

Opposing the application for a writ of preliminary injunction, MCC asserts that petitioner failed to show (1) a clear, unmistakable legal right that demands protection nor a *prima facie* entitlement to the relief demanded in the petition, and hence no injunctive relief must issue; and (2) that he, or even the other bidders, the public and the State, will suffer grave and irreparable injury from the continuation of the Award, the execution of the Concession Agreement, and/or the MCIA Project. On the contrary, grave and irreparable injury will result should the bidding process be enjoined and, consequently, the project be delayed. MCC contends that under previous and existing laws, the policy has been that a national government infrastructure project may not be enjoined save for exceptional circumstances, in order to avoid unnecessary costs and, more importantly, delay in the enjoyment of benefits from such project. In this case, the government agencies have regularly performed their duty and the winning Consortium is eager to comply with their orders. All the queries raised by the other bidders have

been addressed by private respondents and what remains to be done is the work that ought to be the result from the bidding procedure. The MCIA Project, among the present administration's Public-Private Partnership (PPP) projects should not be delayed any further on the basis of unsubstantiated allegations.

GMR Infrastructure Ltd.

GMR points out similar defects in the petition such as the failure to attach certified true copy of the assailed order, judgment or resolution since petitioner only attached the transcripts of stenographic notes taken during the Senate hearings which are mere recording of the proceedings therein; lack of requisite standing of petitioner who has not raised any constitutional issue nor alleged any violation of application of a law, but merely points to a supposed unequal enforcement of PBAC's instructions to the bidders; non-submission of his income tax return, having sued as a taxpayer; no other Filipino, local or foreign bidder, joined his petition despite his self-serving claim that the petition involves issues of transcendental importance; and lack of any allegation whatsoever that respondents usurped legislative powers.

On the merits of the case, GMR emphasizes that the assailed acts involve policy decisions that are not subject to judicial review. The situation in *Agan v. PIATCO* is also not the same herein because the public respondents did not disregard any legal requirement when they determined that GMR-Megawide was the most qualified to undertake the MCIA Project. Assuming that the assailed acts can be reviewed by this Court, petitioner nevertheless chose an improper remedy as his petition raises several questions of fact while relying merely on online/internet sources. This notwithstanding, GMR addressed the concerns regarding its financial capability in its letter to PBAC dated December 20, 2013 and also during the Senate hearings attended by its representatives. Notably, GMR-Megawide already paid the upfront premium to the government in the amount of Php14,404,570,002.99 which shows the consortium has the financial strength and capacity to deliver the Project.

On the conflict of interest issue, GMR explains that this was already clarified by public respondents during the Senate hearings. It points out that having a "common director" is obviously not the same as a director of one Consortium member being "also directly involved in any capacity related to the Bidding Process" for another Bidder. Citing the verified petition of Osmeña III, GMR avers that petitioner could not truthfully allege having information and personal knowledge that Mr. Bashir was also directly involved in the Bidding Process for the GMR-Megawide Consortium, because he was not. To remove all doubts and as required by PBAC, GMR submitted sworn certifications to that effect. GMR maintains that the conflict of interest rule and the examples/instances cited therein do not apply automatically, but are always subject to discretion and evaluation by the PBAC, and more importantly, there has to be a finding by the DOTC/MCIAA that a conflict of interest exists before any Bidder is disqualified.

On petitioner's claim that respondents violated the Equal Protection Clause, GMR argues that concededly there is no statute or law here that infringed the constitutional principle. What clearly emerges is petitioner's grievance that the Conflict of Interest provision in the bidding rules was supposedly not followed, and on that premise private respondents should be disqualified and the award in their favor set aside. These consequences are not only harsh but unwarranted. For assuming the said rule may be considered as "statute" that public respondents had breached, such breach is not a violation of the Equal Protection Clause that will give rise to a constitutional issue. Citing jurisprudence, GMR asserts that "an erroneous or mistaken performance of a statutory duty, although a violation of the statute, is not without more a denial of the equal protection of the laws." Public respondents' acts in this regard do not amount to violation of the Equal Protection Clause, as the facts do not show there was "intentional or purposeful discrimination" when they determined that no conflict of interest exists for GMR-Megawide Consortium.

GMR further contends that petitioner is not entitled to a writ

of preliminary injunction, as petitioner Osmeña III has no clear and unmistakable right, not being a bidder himself and having failed to establish any grave abuse of discretion committed by the public respondents in the performance of their duty. The alleged grave and irreparable injury, what petitioner feared as "bad precedent" in public bidding, is not irreparable but imaginary. On the contrary, it is the government and the public who will suffer irreparable injury if an injunction is issued that will further delay the project for the expansion and development of an international airport in the Province of Cebu.

G.R. No. 214756

GMR and Megawide (GMR-Megawide Cebu Airport Corp.)

The consortium now called the GMR-Megawide Cebu Airport Corp. (GMCAC), reiterates its previous arguments, given the similar procedural infirmities of the present petition, and those addressing the issue of its alleged lack of financial capacity. The consortium's financial capability has already been evaluated by the PBAC — including the controversies or issues raised by the other bidders — which finally determined that GMR-Megawide Consortium is the most qualified to undertake the MCIA Project.

GMCAC asserts that BMP's prayer to enjoin the turn-over of MCIA's operation and maintenance to GMCAC and the imposition of the increased PSC rates have already occurred. Hence, this issue is already moot and academic, and not the proper subject of this petition for injunction. More, there is no grave and irreparable injury that will be inflicted upon the State and the general public should the turn-over of the MCIA and increased PSC rates be implemented as these are part of the MCIA Project and in pursuance of the Concession Agreement. Since the alleged financial incapacity of GMR was unfounded, based merely on news reports and online materials, in contrast to official documents submitted to and evaluated by the PBAC,

petitioner's fear that it will be prejudiced by GMR's financial incapacity is likewise baseless.

G.R. Nos. 211737 & 214756

DOTC, MCIAA and PBAC

Public respondents argue that a direct resort to this Court is premature and improper under the doctrine of hierarchy of courts. Having failed to establish special and important reasons to support petitioners' invocation of this Court's original jurisdiction, the petitions should be dismissed. It is likewise asserted that the mere claim that the case is of transcendental importance or that it has an economic impact would not present a special and important ground that would justify the exercise of this Court's original jurisdiction and ignoring the hierarchy of courts.

There is also no showing that Medardo Deacosta, Jr. was authorized to file the petition in behalf of petitioner BPM. The certification of non-forum shopping submitted by Deacosta did not include proof of his authority to sign the said certificate for BPM.

Both petitioners have no legal standing to institute the present petitions. The petition in G.R. No. 211737 does not identify any specific constitutional question or issue, the principal requirement for legal standing in public suits. The invocation of violation of the equal protection clause does not qualify as a constitutional question or issue. Neither has petitioner Osmeña III sufficiently shown that the funds to be expended are derived from taxation and that he will be directly injured by the award of the MCIA Project to GMCAC, and eventually, by the implementation thereof. Further, there is no allegation of disregard of specific constitutional or statutory prohibition, nor of direct injury to be sustained by petitioner.

G.R. No. 214756 should also be dismissed on the same ground as BPM failed to show how the increase in terminal fees will constitute an illegal disbursement of public funds. Besides, the petition has become moot and academic with the turn-over of

the MCIA to GMCAC on November 1, 2014. Hence, there is nothing more to enjoin and there is no more justiciable controversy to be resolved. Even assuming that this case has not become moot, injunction is clearly not proper as the requisites for the issuance of the writ have not been satisfied.

On the merits of the case, public respondents contend that petitioner Osmeña's reliance on *Agan v. PIATCO* is improper as the ruling therein is not on all fours with the present case. This Court ruled in *Agan* that "the crucial issues submitted for resolution are of first impression and they entail the proper legal interpretation of key provisions of the Constitution, the BOT Law and its Implementing Rules and Regulations"[13] and hence, the specific provisions of law violated by PIATCO were identified. In stark contrast, the present case does not present constitutional issues. Moreover, this Court in *Agan* ruled that the PBAC erroneously evaluated PIATCO's financial ability to fund the subject project when it speculated on PIATCO's future financial ability on the basis of the documents it submitted. Here, however, the proper procedure was observed in evaluating the qualifications of all the bidders.

Public respondents maintain that they exercised due diligence and strictly complied with the rules in evaluating the submitted bids. In concluding that GMR-Megawide Consortium did not violate Conflict of Interest Rule, they applied the clear words of the ITPB, ITB and Special Bid Bulletins. The interpretation of the rule is lodged in the DOTC being the government agency tasked to implement the MCIA Project. No advantage was given to GMR-Megawide Consortium or to First Philippine Airports Consortium which had in fact given the lowest bid in terms of premium.

As to GMR-Megawide Consortium's qualifications for the MCIA Project, public respondents assert that they exercised due diligence and acted within jurisdiction when the PBAC determined that GMR-Megawide Consortium is the most qualified in terms of technical experience and financial capability. It was stressed that under the ITPB, the detailed evaluation of

[13] *Supra* note 11, at 805.

the compliance by the Prospective Bidder with the Legal, Technical and Financial Qualification Requirements shall be based solely upon the qualification documents submitted.

As to the issues concerning GMR's dispute with the Maldives Government over the Male International Airport, as well as the alleged violations of DIAL, the concessionaire for the Indira Gandhi International Airport, these have already been threshed out and addressed by GMR during the post-qualification stage. On the other hand, petitioner's reference to online articles that pertain to MCC deserves no consideration. Said materials are hearsay and unofficial and do not warrant the disqualification of a Bidder. As between those online articles and the official submissions – certifications, qualifications, documents and financial statements submitted by the bidders, respondent PBAC is mandated by law to give preference and weight to the latter in determining the track record or technical qualifications of a prospective bidder. Indeed, PBAC would do injustice against a prospective bidder if, notwithstanding that it passed all the qualifications provided by law and the applicable rules, it will be disqualified merely on the basis of hearsay evidence. While PBAC has the right to seek clarifications and make inquiries regarding information supplied by the prospective bidders in the qualification documents, it cannot be expected to consider every possible allegation as it would just delay the entire bidding process. Having exercised its function within the parameters of the law, relevant rules and regulations and the ITPB, the PBAC cannot be faulted if it finds that GMR passed all the qualifications requirements provided by the rules and the ITPB. Hence, there is no merit in petitioner Osmeña's argument that public respondents "illegally refused to disqualify" the GMR-Megawide Consortium.

Issues

From the foregoing, the core issues to be resolved in the present controversy are: (1) whether GMR-Megawide Consortium is a qualified bidder; (2) whether the increased terminal fees imposed by the winning bidder, GMCAC, is legal; (3) whether petitioners are entitled to injunctive relief.

Our Ruling

The petitions are without merit.

Preliminaries

A. Legal Standing

Legal standing or *locus standi* refers to a personal and substantial interest in a case such that the party has sustained or will sustain direct injury because of the challenged governmental act.[14] The requirement of standing, which necessarily sharpens the presentation of issues, relates to the constitutional mandate that this Court settle only actual cases or controversies.[15] Thus, generally, a party will be allowed to litigate only when (1) he can show that he has personally suffered some actual or threatened injury because of the allegedly illegal conduct of the government; (2) the injury is fairly traceable to the challenged action; and (3) the injury is likely to be redressed by a favorable action.[16]

In *David v. Macapagal-Arroyo*,[17] we explained the rules on *locus standi,* as follows:

> *Locus standi* is defined as "a right of appearance in a court of justice on a given question." In private suits, standing is governed by the "real-parties-in interest rule" as contained in Section 2, Rule 3 of the 1997 Rules of Civil Procedure, as amended. It provides that "*every action must be prosecuted or defended in the name of the real party in interest.*" Accordingly, the "real-party-in interest" *is "the party who stands to be benefited or injured by the judgment*

[14] *Tolentino v. Commission on Elections,* 465 Phil. 385, 402 (2004), citing *Joya v. Presidential Commission on Good Government,* G.R. No. 96541, August 24, 1993, 225 SCRA 568, 576.

[15] *Id.*, citing *Kilosbayan v. Morato,* 316 Phil. 652 (1995) and Article VIII, Sections 1 and 5(2), 1987 CONSTITUTION.

[16] *Id.*, citing *Telecommunications and Broadcast Attorneys of the Philippines, Inc. v. Commission on Elections,* 352 Phil. 153, 168 (1998).

[17] 522 Phil. 705 (2006).

in the suit or the party entitled to the avails of the suit." Succinctly put, the plaintiff's standing is based on his own right to the relief sought.

The difficulty of determining *locus standi* arises in *public suits*. Here, **the plaintiff who asserts a "public right" in assailing an allegedly illegal official action, does so as a representative of the general public**. He may be a person who is affected no differently from any other person. He could be suing as a "stranger," or in the category of a "citizen," or "taxpayer." In either case, he has to adequately show that he is entitled to seek judicial protection. In other words, **he has to make out a sufficient interest in the vindication of the public order and the securing of relief as a "citizen" or "taxpayer."**

Case law in most jurisdictions now allows both "citizen" and "taxpayer" standing in public actions. The distinction was first laid down in *Beauchamp v. Silk*, where it was held that the plaintiff in a taxpayer's suit is in a different category from the plaintiff in a citizen's suit. *In the former, the plaintiff is affected by the expenditure of public funds, while in the latter, he is but the mere instrument of the public concern.* As held by the New York Supreme Court in *People ex rel Case v. Collins*: "*In matter of mere public right, however … the people are the real parties…. It is at least the right, if not the duty, of every citizen to interfere and see that a public offence be properly pursued and punished, and that a public grievance be remedied.*" With respect to taxpayer's suits, *Terr v. Jordan* held that "*the right of a citizen and a taxpayer to maintain an action in courts to restrain the unlawful use of public funds to his injury cannot be denied.*"

However, to prevent just about any person from seeking judicial interference in any official policy or act with which he disagreed with, and thus hinders the activities of governmental agencies engaged in public service, the United State Supreme Court laid down the more stringent *"direct injury" test* in *Ex Parte Levitt*, later reaffirmed in *Tileston v. Ullman*. The same Court ruled that **for a private individual to invoke the judicial power to determine the validity of an executive or legislative action, *he must show that he has sustained a direct injury as a result of that action, and it is not sufficient that he has a general interest common to all members of the public*.**

This Court adopted the ***"direct injury" test*** in <u>our jurisdiction</u>.

In *People v. Vera*, it held that the person who impugns the validity of a statute must have "***a personal and substantial interest in the case such that he has sustained, or will sustain direct injury as a result***." The *Vera* doctrine was upheld in a litany of cases, such as, *Custodio v. President of the Senate*, *Manila Race Horse Trainers' Association v. De la Fuente*, *Pascual v. Secretary of Public Works* and *Anti-Chinese League of the Philippines v. Felix.*[18] (Italics in the original; emphasis and underscoring supplied)

The nature of personal interest in public suits was summarized as follows:

For a party to have *locus standi*, one must allege "such a personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court so largely depends for illumination of difficult constitutional questions."

Because constitutional cases are often public actions in which the relief sought is likely to affect other persons, a preliminary question frequently arises as to this interest in the constitutional question raised.

When suing as a *citizen*, the person complaining must allege that he has been or is about to be denied some right or privilege to which he is lawfully entitled or that **he is about to be subjected to some burdens or penalties by reason of the statute or act complained of**. When the issue concerns a public right, it is sufficient that the petitioner is a citizen and has an interest in the execution of the laws.

For a *taxpayer*, one is allowed to sue where there is an assertion that public funds are illegally disbursed or deflected to an illegal purpose, or that there is a wastage of public funds through the enforcement of an invalid or unconstitutional law. The Court retains discretion whether or not to allow a taxpayer's suit.

In the case of a *legislator or member of Congress*, an act of the Executive that injures the institution of Congress causes a derivative but nonetheless substantial injury that can be questioned by legislators. A member of the House of Representatives has standing to maintain inviolate the prerogatives, powers and privileges vested

[18] *Id.* at 755-757.

by the Constitution in his office.

An *organization* may be granted standing to assert the rights of its members, but the mere invocation by the *Integrated Bar of the Philippines or any member of the legal profession* of the duty to preserve the rule of law does not suffice to clothe it with standing.

As regards a *local government unit* (LGU), it can seek relief in order to protect or vindicate an interest of its own, and of the other LGUs.[19] (Emphasis supplied; citations omitted)

Here, BPM alleges a direct personal injury for its members who as frequent travelers to Cebu and Mactan will be burdened by the increased terminal fees imposed by the private respondents upon taking over the operation and management of MCIA. On the other hand, petitioner Osmeña III claims to be suing as a legislator, taxpayer and citizen asserting a public right in the stringent application of the bidding rules on the qualifications of private respondents for the MCIA Project.

In any case, *locus standi* being a mere procedural technicality,[20] the Court has, in the exercise of its discretion, relaxed the rules on standing when the issues involved is of "transcendental importance" to the public.[21] The Court, through Associate Justice Florentino P. Feliciano (retired and now deceased), provided the following instructive guides as determinants in determining whether a matter is of transcendental importance: (1) the character of the funds or other assets involved in the case; (2) the presence

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[19] *Province of North Cotabato v. Government of Republic of the Phils. Peace Panel on Ancestral Domain (GRP),* 589 Phil. 387, 486-487 (2008).

[20] *De Castro v. Judicial and Bar Council,* 629 Phil. 629, 678 (2010).

[21] *David v. Macapagal-Arroyo, supra* note 17, at 757; *Francisco, Jr. v. The House of Representatives*, 460 Phil. 830, 899 (2003), citing *Kilosbayan, Inc. v. Morato,* 320 Phil. 171 (1995).

[22] *Chamber of Real Estate and Builders' Associations, Inc. (CREBA) v. Energy Regulatory Commission*, 638 Phil. 542, 556-557 (2010), citing *Senate of the Philippines v. Ermita*, 522 Phil. 1, 31 (2006); and *Francisco, Jr. v. The House of Representatives*, *id.*, citing *Kilosbayan, Incorporated v. Guingona, Jr.*, G.R. No. 113375, May 5, 1994, 232 SCRA 110.

of a clear case of disregard of a constitutional or statutory prohibition by the public respondent agency or instrumentality of the government; and (3) the lack of any other party with a more direct and specific interest in the questions being raised.[22]

In not a few cases, the Court, in keeping with its duty under the Constitution to determine whether the other branches of government have kept themselves within the limits of the Constitution and the laws and have not abused the discretion given them, has brushed aside technical rules of procedure.[23]

In *Agan v. PIATCO*, also involving a controversy in the qualifications of the winning bidder for the construction and operation of the country's premier international airport, the Court resolved to grant standing to the petitioners in view of "the serious legal questions involved and their impact on public interest."[24] Although the factual milieu in this case is not similar and no constitutional issue was raised by petitioners, we hold that the same rationale in *Agan* justifies the relaxation of the rules on standing.

B. *Hierarchy of Courts*

While this Court has original jurisdiction over petitions for certiorari, prohibition, *mandamus*, *quo warranto*, and *habeas corpus*, such jurisdiction is shared with the Court of Appeals and the Regional Trial Courts. It is judicial policy that —

> x x x **a direct invocation of the Supreme Court's jurisdiction is allowed only when there are special and important reasons therefor, clearly and especially set out in the petition.** Reasons of practicality, dictated by an increasingly overcrowded docket and the need to prioritize in favor of matters within our exclusive

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[23] *Province of North Cotabato v. Government of Republic of the Phils. Peace Panel on Ancestral Domain (GRP), supra* note 19, at 488, citing *Tatad v. Secretary of the Department of Energy*, 346 Phil. 321, 359 (1997).

[24] *Supra* note 11, at 804.

[25] *Bagabuyo v. Commission on Elections,* 593 Phil. 678, 689 (2008).

jurisdiction, justify the existence of this rule otherwise known as the "**principle of hierarchy of courts**." More generally stated, the principle requires that recourse must first be made to the lower-ranked court exercising concurrent jurisdiction with a higher court.[25] (Italics omitted; emphasis supplied)

The Court thus declared in *Heirs of Bertuldo Hinog v. Melicor,*[26] that it will not entertain direct resort to it unless the redress desired cannot be obtained in the appropriate courts, and exceptional and compelling circumstances, such as cases of national interest and of serious implications, justify the availment of the extraordinary remedy of writ of certiorari, calling for the exercise of its primary jurisdiction.[27]

After a thorough study and evaluation of the issues involved, the Court is of the view that exceptional circumstances exist in this case to warrant the relaxation of the rule. The Court can resolve the factual issues from the available evidence on record.

Mactan-Cebu International Airport is the second busiest airport in the country after the Ninoy Aquino International Airport, handling millions of passengers and thousands of aircraft movements every year. Opened in the mid-1960s, it is owned by the DOTC and managed by the MCIAA.[28] The multi-billion expansion and development project for MCIA is being implemented through the PPP program. The Government's PPP program has two objectives: (1) increase private investment in infrastructure through solicited mode; and (2) follow good governance practices in preparing, bidding and implementing the PPP projects.[29] There is no dispute then that this case is of paramount national interest for it raises serious questions on

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[26] 495 Phil. 422, 433 (2005).

[27] *Holy Spirit Homeowners Association, Inc. v. Defensor,* 529 Phil. 573, 586 (2006).

[28] "*Mactan-Cebu International Airport, Philippines*," <http://www.airport-technology.com/projects/mactan-cebu-international-airport/> (visited last January 4, 2016).

[29] "*Strengthening Public-Private Partnerships in the Philippines*," *Performance Overview,* March 2012 (Asian Development Bank Project Document), <http://www.adb.org/projects/documents/strengthening-public-private-partnerships-philippines> (visited last January 4, 2016).

the *evaluation* of bids by the public respondents.

C. *Mootness*

Respondents' contention that the case was mooted by the Notice of Award and turnover of operations of the MCIA to GMCAC likewise deserves scant consideration. For even in cases where the supervening events had made the cases moot, the Court did not hesitate to resolve the legal or constitutional issues raised to formulate controlling principles to guide the bench and the bar, and the public.[30] Hence, the subsequent issuance of Notice of Award, execution of the Concession Agreement and turn-over to GMCAC of the operation and maintenance of MCIA, did not remove the issue of GMCAC's qualifications from the ambit of judicial review.

Substantive Issues

No Grave Abuse of Discretion in PBAC's Determination that GMR-Megawide Consortium was a Qualified Bidder

For public biddings of PPP contracts under the BOT Law and Implementing Rules and Regulations (IRR), the evaluation of bids is undertaken in two stages. The first-stage evaluation involves the assessment of the technical, operational, environmental and financing viability of the proposal as contained in the bidder's first envelopes vis-à-vis the prescribed requirements and criteria/minimum standards and basic parameters prescribed in the bidding documents. The second stage evaluation shall involve the assessment and comparison of the financial proposals of the bidders. Within three days from completion of the financial evaluation, the PBAC submits its recommendation to the head of the Implementing Agency

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[30] *Chavez v. Public Estates Authority*, 433 Phil. 506, 522 (2002), citing *Salonga v. Paño,* G.R. No. 59524, February 18, 1985, 134 SCRA 438; *Gonzales v. Marcos,* 160 Phil. 637 (1975); *Aquino v. Enrile,* 158-A Phil. 1 (1974); and *De la Camara v. Enage,* 148-B Phil. 502 (1971).

[31] Revised BOT Law Implementing Rules and Regulations (2012), Sections 8.1, 8.2, 11.1, 11.2 and 11.3.

(IA) or Local Government Unit (LGU). Upon approval of the recommendation, the head of the IA or LGU will issue a notice of award to a winning proponent. Subject to compliance with the post-award requirements in the notice of award, the PPP contract shall be executed and signed by the winning bidder and the head of the IA or LGU.[31]

During the post-qualification evaluation and prior to the final award to GMR-Megawide Consortium as the Highest Bidder, the latter's disqualification was sought by the Second Highest Bidder, Filinvest Development Corporation (FDC), on the following grounds: (a) GMR's questionable record in airport construction and development; (2) GMR's financial incapacity; and (3) violation of the Conflict of Interest Rule.

In its letters[32] dated December 13, 2013 and December 16, 2013 addressed to PBAC Chairman Undersecretary Jose Perpetuo M. Lotilla, FDC, citing published newspaper reports, brought up the following issues: (1) cancellation by the Maldives Government of the GMR Group's contract for modernizing the Male Ibrahim Nasir International Airport (Male International Airport) and which cancellation was affirmed in a Singapore court; (2) the rapid rise of GMR's debt level and MCC's equity of only roughly ₱8 Billion; (3) GMR's exit from the management of Istanbul Gokcen International Airport in Istanbul, Turkey, supposedly as part of the GMR Group's articulated strategy of "develop-build-create value-divest," which does not augur well for the long-term commitment intended for the 25-year concession period of the MCIA Project; (4) critical findings of the Comptroller and Auditor General of India based on the performance audit of the implementation of the public-private partnership for the Indira Gandhi International Airport at Delhi, India, including the development fee imposed on travelers which was used by DIAL (Delhi Airport concessionaire) to finance 27% of the project cost, outsourcing of numerous contracts which are not arms-length transactions and in violation of the Operation Management and Development Agreement (OMDA)

[32] Annexes "7" and "7-A," *rollo* (G.R. No. 211737), Vol. III, pp. 1496-1507.

because these were given to joint venture companies in which DIAL had substantial equity interest, violation of the Master Plan and delay in project completion, financial documents showing GMR posting net loss from operations in the last three years and debt levels increasing in relation to its equity; and (4) concern as to MCC's equity in view of several PPP projects awarded to it which involve substantial amount in project costs.

As part of the Technical Qualifications, the ITPB mandates compliance with certain supporting documents from entities who fulfill the requirements for Development Experience, and Operation and Maintenance Experience:

> 3. The entity whose experience is being submitted in fulfillment of this requirement – whether the Prospective Bidder or a Consortium Member and any Affiliates of any of these entities, should submit a **certificate from an Auditor**, as per the format provided at Annex QD-11 to satisfactorily establish its claim.
>
> 4. The entity, whose experience is being submitted in fulfillment of this requirement – whether the Prospective Bidder or a Consortium Member and any Affiliates of any of these entities **must certify that they have no Unsatisfactory Performance Record** as per the format provided at Annex QD-4A or Annex QD-4B.[33] (Emphasis supplied)

The certificate from an Auditor, as per the format provided in Annex QD-11, serves as evidence of having the claimed Development Experience, and in Annex QD-13, a certificate for details of eligible projects for Operation and Maintenance Experience, such as the number of years in operation of the airport and the annual passenger throughout registered by the airport.[34] The more relevant document is the certificate from the entities whose experience is being submitted in fulfillment of the Development Experience, and Operation and Maintenance Experience, of "No Unsatisfactory Performance Record."

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[33] *Rollo* (G.R. No. 211737), Vol. II, p. 795.

[34] *Id.* at 844, 846.

As per the format prescribed in Annex QD-4A, the Notarized Certification of Absence of Unsatisfactory Performance Record, the entity fulfilling the Development Experience, and Operation and Maintenance Experience, certifies that it does not have any record of unsatisfactory performance in any of its projects and contracts.

x x x "Unsatisfactory Performance" means any of the following:

1. within the last five (5) years prior to the Qualification Documents Submission Date –

    a. failure to satisfactorily perform any of its material obligations on any contract, as evidenced by an imposition of a judicial pronouncement or arbitration award;

    b. expulsion from any project or contract;

    c. termination or suspension of any of its projects or contracts due to breach of its obligations; or

    d. material violations of laws and/or regulations applicable to any of its projects or contracts x x x.[35]

Evaluating the information provided by FDC and the explanation given by private respondents concerning the latter's performance record, PBAC in its Resolution dated April 3, 2014, stated its findings and conclusion, *viz.*:

I. Existence of Unsatisfactory Performance in relation to GMR-Male

Pursuant to QD-4A of the ITPB, the relevant project or contract refers to any project or contract of the entity or entities whose experience is being used to meet any of the Technical Qualification Requirements which was commenced or in the process of implementation within the last five (5) years before the Qualification Documents Submission Date, and not just to the particular projects or contracts being submitted to meet such Technical Qualification Requirements. Based on the clear reading of the provisions under QD-4A, the performance record of GMR-Male is <u>not relevant</u> to the Project, considering its credentials were not used to satisfy any qualification requirement. The PBAC

[35] *Id.* at 824-828.

also appreciated that –

- the information pertaining to the Male Airport Contract was disclosed by GMR during the Pre-qualification process, even if it was not a required submission; and

- in a letter dated 23 December 2013 addressed to the DOTC, through Undersecretary Rene K. Limcaoco, Isabel Chaterton of the International Finance Corporation ("IFC") Public-Private Partnership Advisory Services for South Asia said that "IFC has been consistently of the view that the sanctity of the Male airport concession agreement should be upheld and have noted publicly our strong belief that the process leading to the award of the concession for that project was conducted in an open and transparent manner and in accordance with international best practice. We understand the matter is now under arbitration which is the appropriate dispute resolution mechanism provided for in the concession agreement. We should also point out, that in June 2013, the Anti-Corruption Commission of the Maldives concluded that there was no corruption involved in the award and concession of the Male airport to GMR-MAHB." IFC is a member of the World Bank Group and the largest global development institution focused exclusively on the private sector in developing countries. A copy of IFC's letter dated 20 December 2013 is attached hereto as Annex "AA."

II. Misrepresentation as to the Absence of Unsatisfactory Performance of DIAL

Based on the definition of unsatisfactory performance under the ITPB and ITB, absence of unsatisfactory performance must be evidenced by the imposition of a judicial pronouncement or arbitration award. The CAG Report is neither a judicial pronouncement nor an arbitration award. Therefore, based on the definition, the CAG Report is not sufficient basis for an adverse finding. On further evaluation of the documentary submissions and at the close of several discussions, it was determined that the CAG Report is primarily addressed to the relevant government agencies of India. The PBAC noted, among others, that the charging of development fee and outsourcing to service

providers through a procurement process is allowed under the contract.

It has been reported as well that the Ministry of Civil Aviation has contested the findings under the CAG Report. Briefly, the Ministry has said that: (i) the charging of the development fee is authorized under the relevant law and known to all bidders prior to bid submission, (ii) there was no deviation from the Master Plan, particularly as regards the extent of permissible commercial development as follows:

"Ministry of Civil Aviation has gone through the report of the CAG on Indira Gandhi International Airport, Delhi as tabled in Parliament today and strongly refutes the loss figures and other allegations as made in the report.

"The calculation of presumptive gain from the commercial use of land at the Delhi Airport is totally erroneous and misleading as it simply adds the nominal value of the projected revenue, without taking the net present value. In fact the net present value of the figure quoted by CAG is Rs 13795 crores only. CAG has further failed to appreciate that 46% of this amount would be payable to AAI as revenue share.

"It is also pointed out that the levy of Development Fee is under Section 22 (A) of AAI Act, 1994 and was in the knowledge of all the bidders prior to the bidding process. Hence, contrary to what the CAG has said, the levy of Development Fee by DIAL was not a post contractual benefit provided to DIAL at the cost of passengers. Further, the levy of the Development Fee has been upheld by the Supreme Court, which has already examined and rejected all the issues now being raised by CAG in its report.

"On the issue of lease of Airport land, it is clarified that the land has not been given to DIAL on rental basis. Rs100 is just a token amount for the purpose of the Conveyance Deed. The determining factor for grant of concession to the bidder was the Gross Revenue share quoted by the bidders. As a result, Airports Authority of India (AAI) now receives 45.99% share of Gross Revenues of DIAL and 26% of all Dividends. Benefit to AAI is likely to be more than Rs 3 lakh crores in this process during the entire Concession period. AAI has already got its revenue share of Rs.2936 crores in the last 6 years and likely to get Rs. 1770 crores in the year 2012-13 and Rs. 2287 crores in the year 2013-14. The AAI share of revenue from DIAL is further going to constantly rise every year in the balance concession period.

"It may also be noted that the right to use 5% of Airport land for commercial purpose was also defined in the bid and known to all bidders."

III. Misrepresentation as to financial capacity of GMR Infrastructure & Megawide Consortium

Pursuant to the ITPB and ITB, to be financially qualified to bid for the Project, a bidder must meet the following Financial Qualification requirements: (a) (i) Net Worth of at least Php 2.0 billion, or its equivalent as of its latest audited financial statements, which must be for financial year ending not earlier than 31 December 2011, or (ii) a Set-Aside Deposit equivalent to the same amount, and (b) a letter testimonial from a domestic universal/commercial bank or an international bank with a subsidiary/branch in the Philippines or any international bank recognized by the BSP attesting that the Prospective Bidder and/or members of the Consortium are banking with them, and that they are in good financial standing and/or are qualified to obtain credit accommodations from such banks to finance the Project. These parameters for the determination of financial qualification requirements are consistent with Section 5.4(c) of the BOT Law IRR.

On further evaluation, the PBAC determined that, for purposes of meeting the Financial Qualification requirement, QD-8, with supporting information, was submitted by Megawide for the GMR Infrastructure & Megawide Consortium. Megawide's submission was previously determined to have fulfilled these requirements. Furthermore, in the course of completing the financial evaluation, the PBAC examined the Financial Proposal comprising the Bid Amount and the Final Draft Concession Agreement signed and executed by the Authorized Representative of the GMR Infrastructure & Megawide Consortium pursuant to the ITB, and the PBAC has not found any deficiency in the financial proposal.

IV. Long term commitment to Project

Filinvest-CAI Consortium also shared its observation that it doubts the long term commitment of GMR Infrastructure & Megawide Consortium to the Project in view of its reported intention to withdraw from the ISGIA. The PBAC noted this observation and resolved that the reported divestment from Istanbul Airport does not affect the evaluation of GMR Infrastructure & Megawide Consortium's qualification to undertake the Project under the terms of the Concession Agreement. Divestment or withdrawal by a Consortium Member

from the Project is permitted, subject to the applicable Lock-up Rules under V-05 and V-06 of the ITPB, as well, as under the Concession Agreement. This is an important provision in the ITB, ITPB and Concession Agreement, validated in the course of the market sounding exercise undertaken for the Project and in keeping with the declared policy under the BOT Law to provide the most appropriate incentives to mobilize private resources for the purpose of financing the construction, operation and maintenance of infrastructure and development projects. Further, under Annex BL-1, GMR Infrastructure & Megawide Consortium has certified that it will undertake the project in accordance with the Concession Agreement, including the applicable Lock-up Rules, which undertaking was affirmed in a letter addressed to PBAC dated 20 December 2013.

There is no reason to doubt the commitment in view of the certificate of good standing from the Ministry of Defence of Turkey, which states that the operating company founded by Limak Holding, GMR Infrastructure Limited and MAHB has been operating the Istanbul Sabiha Gocken International Airport Terminal satisfactorily per the provisions of the Implementation Agreement executed in 2008 and that the transfer of the forty percent (40%) shares held by GMR and its affiliates to Malaysia Airports MSC Sdn Bhd has been duly approved by the Undersecretary for Defense Industries on 20 March 2014, consistent with the terms of the Implementation Agreement.

V. Violation of Conflict of Interest

The ITB, in Section 5.6(c) states in part:

> *Each Bidder may submit only one Bid Proposal. To ensure a level playing field and a competitive Bidding Process, Bidders (in the case of Consortia, each Consortium Members), including their Affiliates, must not have any Conflict of Interest. Without limiting the generality of what would constitute a Conflict of Interest, any of the following will be considered a Conflict of Interest:*
>
> x x x x x x x x x
>
> *c. a member of the board of directors, partner, officer, employee or agent of a Bidder, any Consortium Member, or any of their Affiliates (of either the Bidder or any of its Consortium Members), is also directly involved in any capacity related to the Bidding Process for the Project for another Bidder, any Consortium Member of any other*

> *Bidder, or any of their Affiliates (of either the Bidder or any of its Consortium Members), within a period of two (2) years prior to the publication of the Invitation to Pre-Qualify and Bid and one (1) year after award of the Project.*
>
> *The same conflict of interest arises in case of professional advisors except when prior written disclosure was made to their client-Bidders, DOTC/MCIAA and the Public-Private Partnership Center, including the submission of a Conflict Management Plan for this purpose. A written consent or clearance to this effect shall likewise be secured from DOTC.*

x x x x x x x x x

(This is similar to the Conflict of Interest provision appearing in the ITPB, Section V04-d.)

Consequently, in Annex BL-1 of the ITB, or the Form of Bid Letter, a bidder is required to state under oath that it "including all of its Consortium Members, and all of the entities it has proposed to comply with the Qualification Requirements under the ITPB, have not at any time (i) engaged in any Corrupt Practice, Fraud, Collusion, Coercion, Undesirable Practice, or Restrictive Practice, (ii) have a Conflict of Interest (iii) violated the Lock-Up Rules or (iv) has Unsatisfactory Performance Record."

During the pre-qualification stage, a question was submitted seeking clarification on Section V04-d of the ITPB on Conflict of Interest. In its answer to the query under SBB No. 06-2013, the PBAC stated that "without limiting the discretion of the PBAC to determine what constitutes Conflict of Interest, direct involvement shall mean actual participation in the deliberations and decision-making for the bidding process of the Prospective Bidder that would give the director knowledge / information regarding the bid of such Prospective Bidder."

In June 2013, GMR Infrastructure & Megawide Consortium submitted the following query:

> *PBAC to please confirm our understanding that a conflict of interest shall arise with respect to a director, partner, officer, advisor, employee, or agent if:*
>
> *1. such director, partner, officer, advisor, employee, or agent of a Bidder (Bidder "A") is directly involved in the Bidding Process for the Project; and*

2. such director, partner, officer, advisor, employee, or agent is also directly involved in any capacity related to the Bidding Process for the Project for another Bidder ("Bidder B"), any Consortium Member of Bidder B, or any of their Affiliates.

Accordingly, a conflict of interest will arise only if such director, partner, officer, advisor, employee, or agent is directly involved in the Bidding Process for the Project with respect to both Bidders A and B.

PBAC to further confirm that for purposes of Section 5.6(c) of the Instructions to Bidders, "direct involvement" shall mean actual participation in the deliberations and decision-making for the bidding process of the Bidder that would give the director, officer, advisor, employee or agent knowledge or information regarding the bid of the Bidder, as previously clarified by the PBAC in SBB 6-2013, Query 4.

The Consortium, further suggested the following revision to the ITB:

A member of the board of directors, partner, officer, employee or agent of a Bidder, any Consortium Member, or any of their Affiliates (of either the Bidder or any of Consortium Members), who is directly involved in the Bidding Process for the Project with respect to a Bidder, is also directly involved in any capacity related to the Bidding Process for the Project for another Bidder, any Consortium Member of any other Bidder, or any of their Affiliates (of either the Bidder or any of its Consortium Members), within a period of two (2) years prior to the publication of the Invitation to Pre-Qualify and Bid and one (1) year after award of the Project.

The same conflict of interest arises in case of professional advisors except when prior written disclosure was made to their client-Bidders, DOTC/MCIAA, and the Public-Private Partnership Centre, including the submission of a Conflict Management Plan for this purpose. A written consent or clearance to this effect shall likewise be secured from DOTC.

For purposes of this provision, direct involvement shall mean actual participation in the deliberations and decision-making for the bidding process of the Bidder that would give the director, officer, advisor, employee, or agent knowledge or information regarding the bid of the Bidder.

The PBAC, under SBB No. 11-2013 Query No. 5 released in August 2013, replied as follows:

> *Please be guided that in cases of conflict of interest under ITB, Sec. 5.6(c), Bidders who may be affected are advised to comply with SBB02-2013, Amendments to the ITPB, No. 10, with respect to the compliance requirements for professional advisors. Thus, Bidder, is advised, so that there will be no conflict of interest, to make a prior written disclosure to the affected Bidders, DOTC, and the PPPC, and submit a Conflict Management Plan. A written consent or clearance must be likewise secured from DOTC.*

Based on the relevant rule, there must be direct involvement or participation in the deliberations and decision-making as to the Bid Process of two or more bidders and that mere partnership or common directorship, or direct involvement in one bidder is not enough.

The rule under Section 5.6(c), as previously explained under SBB No. 06-2013 (Query No. 4), is that the existence of common partners, directors or officers between two Bidders is not of itself ground for a finding of Conflict of Interest. In SBB No. 07-2013 (Query No. 36), the PBAC reiterated that "[t]he position in the ITPB is reiterated. However, please note that Section V-04(d) shall only apply if the common director is directly involved in the bidding process for another Prospective Bidder. The PBAC provided guidance as to what would constitute direct involvement in our response to Query No. 4 in SBB No. 06-ANNEX A." There must be (1) common partner, director, officer, or employee and (2) direct involvement by such partner, director, officer, or employee, which consists of actual participation in the deliberations and decision-making for the Bidding Process of both Bidders affected, that would give the director knowledge or information regarding the bid of such Bidder.

The PBAC adopted and approved the Conflict of Interest provision in the ITPB(V04-d) and later in the ITB (5.6c) pursuant to its authority and function under the BOT Law IRR, Section 3.2, which states that the PBAC shall be responsible for all aspects of the pre-bidding and bidding process, including among others, the interpretation of the rules regarding the bidding. In adopting the ITPB and ITB provisions on conflict of interest, the PBAC was aware that in its implementation it would require direct involvement or actual participation in the deliberations and decision-making process as to the Bid for both

affected bidders, for the following reasons.

- The clear expression of this intention in the use of the adverb "also," indicating similarity and further action of the same nature, in the qualifying phrase "is also directly involved," meaning that in requiring such action on the part of one bidder, the same action should have been taken in behalf of or in relation to another bidder.
- The PBAC also noted that this meaning has been carried in the language of the provision as used in several other PPP projects implemented prior to the Project and from which reference documents the provision was drawn. Significant in this regard is SBB No. 3, Response No. 4 to Metro Pacific Tollways Corporation (see attached), issued in September 2012 for the NAIA Expressway Project, where it is clear that for conflict of interest to arise there has to be actual participation for or in both bidders involved. The meaning of the provision as explained in the SBB No. 3 has been retained and carried in its use in the Project's ITB and ITPB. A copy of SBB No. 3 issued in September 2012 for the NAIA Expressway Project is attached hereto as Annex "BB."

That this is the proper interpretation is supported by the PBAC's application of the same principle in the treatment of professional advisers. The ITPB and ITB in stating that "the same conflict of interest arises in case of professional advisors" has been implemented by the PBAC by requiring the disclosure and clearance where the professional adviser is under "the same conflict of interest," meaning they are involved in that capacity for two or more bidders. A written consent, clearance and compliance with conflict management plan was required in the case of a professional adviser who was understood to have taken such a role for two bidders in the Project. Otherwise, if at least two bidders are not involved, the PBAC would not have required a conflict management plan for the simple reason that a conflict of interest, in that case, would not exist.

In relation to the history of the conflict of interest provision, the PBAC also discussed that, due to the numerous interlocking directors prevalent among the Philippine conglomerates, an interpretation not requiring direct participation in both companies may possibly lead to the disqualification of a large number of bidders. The result would be extremely detrimental for the government, and surely this cannot be the purpose of the provision.

The purpose of specifying Section 5.6(c) as a form of Conflict of Interest is to prevent collusion among the bidders that may arise from the specific conflict of interest scenarios (as differentiated from Collusion as defined under the ITPB and ITB), which may prejudice or defeat competition in the Bidding Process. Particularly, Section 5.6(c) seeks to prevent a situation in which the common partner, director, or officer of two (or more) Bidders will have information and involvement in the preparation of the bids of both Bidders. By actual participation, the common partner, director, or officer can influence the bids of both bidders, which will not be achieved if a common director does not have direct involvement in both bids.

It is, therefore erroneous, to conclude that the PBAC has taken a different view solely on the basis of the response given under SBB No. 11-2013, Query No. 5. The PBAC responded only to the query with regard to professional advisers without taking action on the rest considering the lack of concrete factual scenario to support the query, apart from the fact that it is not necessary to adopt the proposed revision by the bidder under Query No. 5. The provision as it appears in the ITPB and ITB sufficiently conveys the meaning that for Conflict of Interest to arise under Section 5.6(c) of the ITB there must be direct involvement or participation in the deliberations and decision-making as to the Bid Process of two or more bidders. Mere partnership or common directorship, or direct involvement in only one bidder is not enough. It is worth recalling Section 6.1 of the BOT Law IRR, which states that the implementing agency concerned shall not assume any responsibility regarding erroneous interpretations or conclusions by the prospective bidder out of data furnished or indicated in the bidding documents.

Applying the foregoing interpretation, therefore, the sworn certifications submitted by GMR Infrastructure & Megawide Consortium set out the required certification on facts which indicate compliance with the rules on Conflict of Interest.

Upon further consideration of this issue, the PBAC noted that GMR Infrastructure & Megawide Consortium, in its comment on Filinvest-CA Consortium's letters dated 2 and 3 January, confirmed that Mr. Tansri Bashir Ahmad bin Abdul Majid ("Mr. Tansri Bashir Ahmad") is the Managing Director of MAHB, but not a member of the board of directors of GMR. While Mr. Tansri Bashir Ahmad sits on the board of DIAL, GHIAL, and GMR-Male, as well as ISGIA, GMR

Infrastructure & Megawide Consortium, in its letter dated 6 January 2014, explained that "[a]side from using the Hyderabad and Delhi airports for meeting the technical requirements for the bid, DIAL, GHIAL, [GMR-Male] or ISGIA themselves were never involved in the bidding process and anything remotely connected with the bid was never discussed in the boards of these companies."

It is also worth noting that at the time the GMR Infrastructure & Megawide Consortium submitted its Qualification Documents on 22 April 2013, when it indicated that it is fulfilling the Qualification Requirements through Affiliates of GMR, namely DIAL and GHIAL, First Philippine Airport Consortium had as its members First Philippine Holdings Corporation and Infratil (of New Zealand). The First Philippine Airports Consortium requested the change in its consortium membership, with the replacement of Infratil by MAHB was approved only in September 2013, following the evaluation of the pre-qualification documents submitted by MAHB. In their respective Bid Letters (Annex BL-1), each of the GMR Infrastructure & Megawide Consortium and First Philippine Airport Consortium declared under oath the absence of Conflict of Interest. The PBAC further noted that the respective boards of DIAL and GHIAL authorized their respective Chief Financial Officers ("CFO") to sign and execute relevant documents on their behalf from a board meeting back in 2011 and 2012, way before the bid for the MCIA was published. The same CFOs signed on behalf of each of their boards for the use of their O&M experience as an affiliate of GMR.

The PBAC, in its meeting on 6 January 2013, resolved to require GMR Infrastructure & Megawide to submit within three (3) days a certification affirming under oath the absence of conflict of interest, specifically that neither MAHB nor Mr. Tansri Bashir Ahmad was directly involved in any capacity related to the Bidding Process for the Project for both GMR-Megawide Consortium and the Consortium of First Philippine Holdings Corporation and MAHB at the same time, or any of their respective Consortium members, or any of their respective Affiliates, through actual participation in the deliberations and decision-making for the Bidding Process of both GMR-Megawide Consortium and First Philippine Airports Consortium that would give MAHB or Mr. Tansri Bashir Ahmad knowledge / information regarding the bid of both GMR Infrastructure & Megawide Consortium and First Philippine Airports Consortium, within a period of two (2) years

[36] *Rollo* (G.R. No. 211737), Vol. II, pp. 2289-2298.

prior to the publication of the Invitation to Pre-Qualify and Bid. Through its letter dated 8 January 2013, GMR Infrastructure & Megawide Consortium submitted the requested certification.[36]

On the basis of the foregoing, the PBAC resolved to recommend to public respondents to designate GMR-Megawide Consortium as the Winning Bidder for the MCIA Project, and to issue the corresponding Notice of Award.

It is well-settled in our jurisprudence that the government is granted broad discretion in choosing who among the bidders can offer the most advantageous terms and courts will not interfere therewith or direct the committee on bids to do a particular act or to enjoin such act within its prerogatives, except when in the exercise of its authority, it gravely abuses or exceeds its jurisdiction,[37] or otherwise commits injustice, unfairness, arbitrariness or fraudulent acts.[38] We have recognized that the exercise of that discretion is a policy decision that necessitates prior inquiry, investigation, comparison, evaluation, and deliberation. This task can best be discharged by the concerned government agencies, not by the courts.[39]

The Court thus expounded at length in *Bureau Veritas v. Office of the President:*[40]

x x x It must be stressed, as held in the case of A.C. Esguerra & Sons v. Aytona, et al., (L-18751, 28 April 1962, 4 SCRA 1245), that in an "invitation to bid, there is a condition imposed upon the bidders to the effect that the bidding shall be subject to the right of the government to reject any and all bids subject to its discretion. In the

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[37] *Public Estates Authority v. Bolinao Security and Investigation Service, Inc.,* 509 Phil. 157, 176 (2005), citing *Republic v. Silerio*, 338 Phil. 784, 793 (1997).

[38] *Id.*, citing *National Power Corporation v. Court of Appeals,* 339 Phil. 605, 635 (1997).

[39] *National Power Corporation v. Pinatubo Commercial,* 630 Phil. 599, 608 (2010), citing *Albay Accredited Constructors Association, Inc. v. Desierto,* 516 Phil. 308, 322 (2006).

[40] G.R. No. 101678, February 3, 1992, 205 SCRA 705.

case at bar, the government has made its choice and unless an unfairness or injustice is shown, the losing bidders have no cause to complain nor right to dispute that choice. This is a well-settled doctrine in this jurisdiction and elsewhere."

The discretion to accept or reject a bid and award contracts is vested in the Government agencies entrusted with that function. The discretion given to the authorities on this matter is of such wide latitude that the Courts will not interfere therewith, unless it is apparent that it is used as a shield to a fraudulent award (Jalandoni v. NARRA, 108 Phil. 486 [1960]). x x x The choice of who among the bidders is best qualified to perform this task should be left to the sound discretion of the proper Government authorities in the executive branch since they are in a better position than the Courts to make the determination owing to the experience and knowledge that they have acquired by virtue of their functions. The exercise of this discretion is a policy decision that necessitates prior inquiry, investigation, comparison, evaluation, and deliberation. This task can best be discharged by the Government agencies concerned, not by the Courts. The role of the Courts is to ascertain whether a branch or instrumentality of the Government has transgressed its constitutional boundaries. But the Courts will not interfere with executive or legislative discretion exercised within those boundaries. Otherwise, it strays into the realm of policy decision-making.

It is only upon a clear showing of grave abuse of discretion that the Courts will set aside the award of a contract made by a government entity. Grave abuse of discretion implies a capricious, arbitrary and whimsical exercise of power (Filinvest Credit Corp. v. Intermediate Appellate Court, No. 65935, 30 September 1988, 166 SCRA 155). The abuse of discretion must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform a duty enjoined by law, as to act at all in contemplation of law, where the power is exercised in an arbitrary and despotic manner by reason of passion or hostility (Litton Mills, Inc. v. Galleon Trader, Inc., et al., L-40867, 26 July 1988, 163 SCRA 489).[41] (Emphasis supplied)

Under the ITPB, the PBAC reserves the right to waive any minor defects in the Qualification Documents, and accept the

[41] *Id.* at 717-718.

[42] Sec. V-09, ITPB, *rollo* (G.R. No. 211737), Vol. II, p. 812.

offer it deems most advantageous to the government.[42] Verily, a reservation of the government of its right to reject any bid, generally vests in the authorities a wide discretion as to who is the best and most advantageous bidder. The exercise of such discretion involves inquiry, investigation, comparison, deliberation and decision, which are quasi-judicial functions, and when honestly exercised, may not be reviewed by the court.[43]

We find no patent error or arbitrariness in the DOTC's decision to award the contract to private respondents after the PBAC had carefully verified and evaluated FDC's allegations regarding GMR's expulsion from the Male International Airport by the Maldives Government, DIAL's financing and operation of the Delhi Airport, GMR's poor financial health and violation of the Conflict of Interest Rule.

On GMR's supposed fiasco from the cancellation of the concession agreement of its subsidiary, GMR Male International Airport Private Ltd. (GMIAL), with the Maldives Government in 2010, more recent online news reports showed that GMIAL had won the arbitration case and is seeking compensation from the wrongful termination of its contract. Two of such published articles/reports reads:

GMR wins maldives airport case, seeks compensation

Anirban Chowdhury, ET Bureau Jun 20, 2014, 04.26AM IST

MUMBAI: GMR Infra on Thursday said it has won a more than 18-month long legal battle with the Maldives government which started after the government cancelled the company's contract to develop and operate the country's main airport.

According to GMR's filing on the National Stock Exchange, a Maldives' tribunal has judged the government's rejection of the contract "wrongful".

The tribunal has directed Maldives and the state-owned Maldives Airports Company (MACL) to pay $4 million legal damages to GMR

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[43] *National Power Corporation v. Philipp Brothers Oceanic, Inc.,* 421 Phil. 532, 546 (2001).

within 42 days.

GMR has in addition, demanded a compensation of $1.4 billion for losses incurred in the last one year on its bid amount and investments in developing the airport.

Hassan Areef, a spokesman for the MACL didn't immediately respond to emailed queries.

The ruling and possible compensation will bring much-needed relief for GMR whose international airport projects have been facing trouble.

After winning its latest project the Phillipines Mactan-Cebu International airport last year, the company had faced trouble when a rival bidder raised issues of conflict of interest. GMR, however, subsequently bagged the project.

Last December, the company sold its 40% stake in its second Turkey's Istanbul Sabiha Gokcen International Airport for 220 million. The company had invested 90 million (.'737 crore) in the airport but lost.'123 crore on it in 2012-13.

On July 28, 2010, a joint venture between GMR Infra (77%) and Malaysia Airports (Labuan) Private Limited (23%) bagged a development and operations contract for Ibrahim Nasir International Airport a brownfield airport at Male. The venture had bid $511 million.

The new terminal development project was on track for an early 2014 commercial opening date before it had to be halted due to a 'Stop-Work' order by the Maldives aviation ministry in August, 2012, according to GMR's latest annual report.[44]

GMR's Maldives airport concession pact was not void: Singapore-based tribunal

The tribunal has said that Maldives government and MACL should pay GMR $4 million as compensation within 42 days.

BY ANURADHA VERMA

GMR Infrastructure Limited's subsidiary GMR Male International

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[44] "*GMR wins Maldives airport case, seeks compensation,*" <http://articles.economictimes.indiatimes.com/2014-06-20/news/50739360_1_maldives-airports-company-gmr-infra-macl> (visited last January 4, 2016).

Airport Ltd (GMIAL), whose contract for modernisation of Male international airport was unilaterally terminated by the Maldives government in 2012, has got relief as an international tribunal has declared its concession agreement for Maldives airport as valid.

In a filing to the stock exchanges, GMR Infrastructure said that the Singapore-based Rt Hon Hoffman's Tribunal declared that the concession agreement "was not void for any mistake of law or discharged by frustration".

"Government of Maldives and Maldives Airport Co. Ltd (MACL) are jointly and severally liable in damages to GMIAL for loss caused by wrongful repudiation of the agreement as per the concession agreement," GMR Infrastructure said.

After detailed proceedings lasting more than 18 months, the tribunal has said that Maldives government and MACL should pay GMR $4 million of compensation within 42 days.

GMIAL had signed a concession agreement with the government of Maldives and MACL for the $500 million modernisation and operation of Ibrahim Nasir International Airport in 2010.

However, the Maldives government terminated the contract and subsequently started off arbitration proceedings on November 29, 2012, seeking a declaration that the concession agreement was void ab initio. GMIAL had disputed this termination.

Shares of the GMR Infrastructure were trading at Rs 33.15, up 0.91 per cent on the BSE from their previous close, in a flat Mumbai market on Thursday. GMR Infrastructure runs airports in Hyderabad and New Delhi. *(Edited by Joby Puthuparampil Johnson)*[45]

While the foregoing information was not yet available during the post-qualification stage, we find no unfairness or arbitrariness on the part of public respondents when they relied on the opinion of the IFC PPP Services for Southeast Asia that the Male project "was conducted in an open and transparent manner and in accordance with international best practice," citing the June

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[45] "*GMR's Maldives airport concession pact was not void: Singapore-based tribunal,*" <http://www.vccircle.com/news/infrastructure/2014/06/19/gmrs-maldives-airport-concession-pact-was-not-void-singapore-based> (visited last January 4, 2016).

2013 report of the Anti-Corruption Commission of the Maldives which concluded that "there was no corruption involved in the award and concession of the Male airport to GMR-MAHB." As the lead advisor for the project, IFC has in fact, included the Male International Airport as among the successful PPPs in various infrastructure sectors.[46] Public respondents thus committed no grave abuse of discretion in determining that GMR has complied with the technical qualifications insofar as the absence of Unsatisfactory Performance Record is concerned.

As to the financial incapacity of private respondents, this, too, has been sufficiently addressed by PBAC when it further evaluated the financial proposal of MCC prior to the execution of the Final Concession Agreement. And contrary to the claims of petitioner Osmeña III, representatives from GMR have satisfactorily answered the issue raised on their financial capability for the MCIA Project during the Senate hearing held on March 25, 2014. What petitioner Osmeña III chiefly assailed was DOTC's due diligence which to him, fell short because they did not "dig in" and made a more in-depth investigation into GMR's background, specifically on the negative findings of India's Comptroller and General Auditor. Herein reproduced are relevant portions of the transcript taken during said hearing:

THE ACTING CHAIRMAN (SEN. OSMEÑA). All right. Now, let's go to GMR so that they'll have a chance to explain.

You wanted to react to a certain point we raised earlier. You're Mr. Kapur?

MR. KAPUR. Yes, sir.

THE ACTING CHAIRMAN (SEN. OSMEÑA). Yes. Yes, please.

MR. KAPUR. I think there have been three points which were raised. One was about the financial.

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[46] Success Stories Public-Private Partnerships, "*Maldives: Male International Airport,*" <http://www.pidg.org/resource-library/case-studies/successstories-maleairport.pdf> (visited last January 4, 2016).

And just to react to that point, as far as GMR is concerned, as I had mentioned in my last hearing also, the group is absolutely financially sound. It's rated BBB investment grade by the rating agencies. It has not departed to any lender. It has got letters of good standing from Asian Development Bank and Standard Chartered Bank which have been submitted at the time of our submission. That was primarily about the GMR Group. And, in fact, last time, I had also made a very detailed submission about its financials, its operating profits and its cash profits and the group is very much profitable. It has the ability to meet the finances required to complete this project.

Having said that, the prime criteria of financial capability was that of Megawide because they were the 60 percent partner as far as this project is concerned.

x x x x x x x x x

THE ACTING CHAIRMAN (SEN. OSMEÑA).

x x x x x x x x x

Your net losses increased — surged to 10.7 billion rupees during the nine-month period ending December 31st 2013, is that correct?

x x x x x x x x x

MR. KAPUR. … Just give me a moment.

Our GMR's consolidated net loss for the 9-month period ending December of 2013 was about 4 billion Indian rupees.

THE ACTING CHAIRMAN (SEN. OSMEÑA). That's your net loss.

MR. KAPUR. Net loss. This is the net loss.

THE ACTING CHAIRMAN (SEN. OSMEÑA). Okay. And your EBITDA increased to 18 billion–

MR. KAPUR. Yeah. It is about 7 billion profit. There's a positive of 7 billion Indian rupees.

THE ACTING CHAIRMAN (SEN. OSMEÑA). No. I'm giving you more. I'm giving you 18 billion in EBITDA. That's Earnings Before Income Tax, Depreciation and Amortization.

MR. KAPUR. Ah, okay. That is 17 billion. Nine months is 17

billion—It's about 18.8 billion.

THE ACTING CHAIRMAN (SEN. OSMEÑA). Eighteen point eight billion. And your interest expenses jumped to 20.5 billion in that same period.

MR. KAPUR. That's right, that's right.

THE ACTING CHAIRMAN (SEN. OSMEÑA). So, therefore, you don't even have–generate enough cash, operating profit to cover your interest expense?

It's just a simple question. Twenty billion is more than 18 billion, right?

MR. KAPUR. Your Honor, I think one has to understand this is a consolidated balance sheet.

THE ACTING CHAIRMAN (SEN. OSMEÑA). I'm just asking. I know it's a consolidated balance sheet, I know it's a mother company.

MR. KAPUR. So, I think what is really the element is that the GMR has the ability to implement this project whether it is credit rating because everybody has their own discretion to analyze what the profitability is and come to their own subjective judgment. But the subjective judgment has to be based upon a credible third party. And the credible third party in this case are the rating agencies who continuously rate any listed entity. And if found giving that information in public domain, other purpose of consumption of people who are going to deal with that entity. And the rating of GMR is something which is the most important and should be relied upon. Because if any point of time, GMR is potentially and financially distressed, it would impact the rating. And automatically, the rating agencies are going to come back and change the rating, and that has not happened. **The rating agencies have maintained consistently the investment credit rating of GMR Group. And I would just like to reiterate that the GMR Group is not in financial distress. It is robust, it has got the ability to meet its long-term debt as well as the short-term debt**.

THE ACTING CHAIRMAN (SEN. OSMEÑA). By borrowing some more.

MR. KAPUR. I think, sir, that is the–

THE ACTING CHAIRMAN (SEN. OSMEÑA). I'm not saying

you're going belly up. What I am saying is that there are always warnings that those of us who understand the–how to read financial statements can always come to preliminary conclusions. We do ratios, we do analysis. And right here, this is very clear that you're spending more in interest than what you are earning. So, if things were to stand still today, you wouldn't be able to pay 2 billion in interest, 2 billion rupees interest.

That's all I'm saying. I'm not saying you're not going to pay it because you can always borrow some more tomorrow. But this is a situation that's been obtaining for some time. This is not just 2013. This happened in 2012, this happened in 2011. So, you've had operating losses for three years running.

MR. KAPUR. The EBITDA is before other income also. If you actually see the financial statement, there is another income also which is below the line after EBITDA. And that is also used to meet the interest and the payment liabilities.

THE ACTING CHAIRMAN (SEN. OSMEÑA). I understand what's below the line. Thank you for that. Anyway–

MR. KAPUR. And sir, I think can I also respond on the CAG report which you raised?

THE ACTING CHAIRMAN (SEN. OSMEÑA). On the…?

MR. KAPUR. The report of the Comptroller and Auditor General–Indian government audited.

THE ACTING CHAIRMAN (SEN. OSMEÑA). I think you responded to that already in the previous hearing.

MR. KAPUR. We have not responded. Last time we did not respond. It was not an issue raised last time.

THE ACTING CHAIRMAN (SEN. OSMEÑA). All right. Please respond to it.

MR. KAPUR. Let me explain the process of–

THE ACTING CHAIRMAN (SEN. OSMEÑA). You know, the whole point I'm trying to make is that there's always a response to any charge that's made. There are two sides in a question: There is the prosecutor; there is the defense. You can always come up with a defense. It will always sound very rational and very logical. **But what I am questioning is that why the DOTC did not exercise**

the due diligence to pick up the Comptroller and Auditor General's Report with regard to the performance of GMR. That's all I am saying. Whether it's valid or not, whether you will dispute it or not, we expected you to dispute that, we expected you to have answers, and we have read your answers. But what I am saying is why didn't you know about it? Why didn't you take the effort to do more in-depth due diligence on whoever bidders came before you in order to protect the interest of the Filipino people. That's what I am saying. So, whether you can answer it or not is really beside the point. It's why did they not pick it up? And you can answer that, you can answer me **why DOTC didn't pick it up?**

MR. KAPUR. No, sir.

THE ACTING CHAIRMAN (SEN. OSMEÑA). So, I think you'll have to hold your comments first, Mr. Kapur, because we know what you're going to say, and we are not saying that they're not valid answers. My concern is why didn't they pick it up.

MR. KAPUR. Can I respond to that?

THE ACTING CHAIRMAN (SEN. OSMEÑA). I don't think you can answer that question why they didn't pick it up. That's the DOTC's question.

MR. KAPUR. No, sir. I just wanted to say something which is relevant for that purpose. He had submitted **a letter which is dated 19 December from the government of India, Ministry of Civil Aviation to the DOTC and PBAC, which actually is that DIAL has been operating the airport from May 2006 satisfactorily as per the provisions of the UNDA, executed between DIAL and airport authority.** Further, we have also been operating the Hyderabad Airport, and the airport also has been operating satisfactorily.

THE ACTING CHAIRMAN (SEN. OSMEÑA). Yes. That's a good side. Did you disclose it? Did you disclose the CAG findings to DOTC?

MR. KAPUR. That is for the letter of good standing from the government of India.

THE ACTING CHAIRMAN (SEN. OSMEÑA). And you disclosed that we were charged by the Comptroller and Auditor General of India with this, and this is our response. Did you disclose that you were charged?

MR. KAPUR. Sir, let me make a correction here, sir, may I request?

THE ACTING CHAIRMAN (SEN. OSMEÑA). No. Just answer the question. Yes or no. Did you disclose it?

MR. KAPUR. We were not charged by the CAG.

THE ACTING CHAIRMAN (SEN. OSMEÑA). Did you disclose the existence of the CAG report?

MR. KAPUR. No, we were not required to disclose.

THE ACTING CHAIRMAN (SEN. OSMEÑA). You're not required.

MR. KAPUR. The charge is not on us.[47] (Emphasis supplied)

The issues raised against DIAL, as contained in the CAG's report had been addressed and resolved by the PBAC. In the same vein, GMR's alleged violation of the conflict of interest rule was found to be non-existent. Contrary to petitioners' asseveration, the interpretation made by PBAC on this bidding rule was reasonable, fair and practical. Under the BOT Law IRR, the PBAC shall be responsible for all aspects of the bidding process, including the interpretation of the rules regarding the bidding, the conduct of bidding, evaluation of bids, resolution of disputes between bidders, and recommendation for the acceptance of the bid award and/or for the award of the project.[48]

Petitioner Osmeña contends that the DOTC may not apply its own bidding rules in a manner that puts bidders on unequal footing. He emphasizes that the grounds raised to disqualify private respondents are not minor defects that may be waived by the PBAC in order to qualify a disqualified bidder. He points out that the arbitrariness of PBAC is apparent because despite its knowledge of grounds to disqualify private respondents, *i.e.,* the existence of a violation of the rule on conflict of interest and a showing of private respondents' poor financial health

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[47] *Rollo* (G.R. No. 211737), Vol. III, pp. 1792-1802.

[48] Rule 3, Sec. 3.2, BOT Law Implementing Rules and Regulations.

[49] *Rollo* (G.R. No. 211737), Vol. IV, pp. 2416-2419 (Consolidated Reply dated November 25, 2015).

and track record, the resulting decision nevertheless declared them as qualified bidders.[49]

The contention has no merit.

As earlier stated, PBAC's interpretation of the Conflict of Interest provision requiring direct involvement or participation in the deliberations and decision-making related to the bidding for the MCIA Project was fair, reasonable and practical. The issues regarding GMR's Male airport case and MCC's financial capability have been fully ventilated during the post-qualification stage. Both private respondents and the second highest bidder, FDC, argued their respective positions which were duly considered, including a detailed evaluation of their technical and financial qualification documents. That PBAC's own inquiry did not yield any concrete evidence of GMR's unsatisfactory performance, as defined in the ITPB, and MCC's poor financial health does not necessarily indicate preference for one bidder over the others, especially as the bidding in this case was conducted with transparency.

Increased Terminal Fees Valid and Legal

On the legality of the increased terminal fees imposed by GMCAC, this is based on the right granted under the Concession Agreement to collect such fees. For this kind of BOT projects, the law expressly provides that the project proponent operates the facility over a fixed term during which it is allowed to charge facility users appropriate tolls, fees, rentals and charges not exceeding those proposed in its bid or as negotiated and incorporated in the contract to enable the project proponent to recover its investment and operating and maintenance expenses in the project.[50]

At any rate, the Concession Agreement provided for a formula and procedure to be applied should there be an increase in Passenger Service Charge, Aircraft Parking Fees and Tacking Fees, thus:

[50] Sec. 2 (b), R.A. No. 7718.

24.2.c Unless otherwise provided by any Relevant Rules and Procedure promulgated by MCIAA or by any Government Authority, the following procedure shall apply for every increase in the Passenger Service Charge, aircraft Parking Fees, and Tacking Fees, after the expiration of the first (1st) Contract Year:

24.2.c (1) The Concessionaire shall file with the MCIAA an application for such increase no later than six (6) months prior to the date that the relevant increase in the Passenger Service Charge, Aircraft Parking Fees, and Tacking Fees shall take effect.

24.2.c (2) The Concessionaire shall publish the application in a newspaper of general circulation at least two (2) weeks before the first hearing on the application.

24.2.c (3) MCIAA shall conduct a public hearing on the said application in accordance with any rule of procedure that it may promulgate.

24.2.c (4) The Concessionaire shall comply with all other requirements of Relevant Rules and Procedures that may be promulgated by MCIAA or any Government Authority for the increase of the Passenger Service Charge, Aircraft Parking Fees, and Tacking Fees.

24.2.c (5) The Grantors and the Concessionaire shall conduct the procedure for implementing the increase in Passenger Service Charge, Aircraft Parking Fees, and Tacking Fees in such a manner as to ensure that all Relevant Consents are secured promptly to enable the Concessionaire to implement a timely increase in Passenger Service Charge, Aircraft Parking Fees, and Tacking Fees in

> accordance with the parametric formula and at such times as contemplated in Annex 21-A (*Parametric Formula for Passenger Service Charge*) or Annex 21-B (*Parametric Formula for Aircraft Parking Fee and Tacking Fee*), as the case may be.[51]

Petitioners Not Entitled to Preliminary Injunction

For the writ of injunction to issue, the existence of a clear and positive right especially calling for judicial protection must be shown; injunction is not to protect contingent or future rights; nor is it a remedy to enforce an abstract right. An injunction will not issue to protect a right not *in esse* and which may never arise or to restrain an act which does not give rise to a cause of action. There must exist an actual right.[52]

Petitioners failed to establish such actual right that needs to be protected by injunctive relief. There being no violation of any law, regulation or the bidding rules, nor any arbitrariness or unfairness committed by public respondents, the presumption of regularity of the bidding for the MCIA Project must stand.

WHEREFORE, the petition in G.R. No. 211737 is hereby **DISMISSED** for lack of merit. The petition in G.R. No. 214756 is **DENIED** for lack of sufficient legal and factual bases.

No pronouncement as to costs.

SO ORDERED.

Velasco, Jr. (Chair~~person), Peral~~ta, Reyes, and *Perlas-Bernabe, JJ.,* concur.

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[51] *Rollo* (G.R. No. 214756), pp. 483-484.

[52] *Philippine Ports Authority v. Court of Appeals,* 323 Phil. 260, 291-292 (1996), citing *Prado v. Veridiano II,* G.R. No. 98118, December 6, 1991, 204 SCRA 654, 672.

FIRST DIVISION

[G.R. No. 214241. January 13, 2016]

SPOUSES RAMON and LIGAYA GONZALES, *petitioners, vs.* **MARMAINE REALTY CORPORATION, represented by MARIANO MANALO,** *respondent.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; DOCTRINE OF EXHAUSTION OF ADMINISTRATIVE REMEDIES; BEFORE A PARTY IS ALLOWED TO SEEK THE INTERVENTION OF COURTS, IT IS A PRE-CONDITION THAT HE AVAIL HIMSELF OF ALL ADMINISTRATIVE PROCESSES AFFORDED HIM; EXCEPTION.—** The doctrine of exhaustion of administrative remedies is a cornerstone of our judicial system. The thrust of the rule is that courts must allow administrative agencies to carry out their functions and discharge their responsibilities within the specialized areas of their respective competence. The rationale for this doctrine is obvious. It entails lesser expenses and provides for the speedier resolution of controversies. Comity and convenience also impel courts of justice to shy away from a dispute until the system of administrative redress has been completed. In view of this doctrine, jurisprudence instructs that before a party is allowed to seek the intervention of the courts, it is a pre-condition that he avail himself of all administrative processes afforded him. Hence, if a remedy within the administrative machinery can be resorted to by giving the administrative officer every opportunity to decide on a matter that comes within his jurisdiction, then such remedy must be exhausted first before the court's power of judicial review can be sought. The premature resort to the court is fatal to one's cause of action. Accordingly, absent any finding of waiver or *estoppel*, the case may be dismissed for lack of action. However, it must be clarified that the aforementioned doctrine is not absolute as it is subject to certain exceptions, one of which is when the question involved is purely legal and will ultimately have to be decided by the courts of justice. In *Vigilar v. Aquino*, the Court had the opportunity to explain the rationale behind this exception x x x.

2. **REMEDIAL LAW; CIVIL PROCEDURE; FILING AND SERVICE OF PLEADINGS, JUDGMENTS AND OTHER PAPERS; *LIS PENDENS;* EFFECTS; *LIS PENDENS* REFERS TO THE JURISDICTION, POWER OR CONTROL WHICH A COURT ACQUIRES OVER A PROPERTY INVOLVED IN A SUIT, PENDING THE CONTINUANCE OF THE ACTION, AND UNTIL FINAL JUDGMENT.—** "*Lis pendens*," which literally means pending suit, refers to the jurisdiction, power or control which a court acquires over a property involved in a suit, pending the continuance of the action, and until final judgment. Founded upon public policy and necessity, *lis pendens* is intended to keep the properties in litigation within the power of the court until the litigation is terminated; and to prevent the defeat of the judgment or decree by subsequent alienation. Its notice is an announcement to the whole world that a particular property is in litigation and serves as a warning that one who acquires an interest over said property does so at his own risk or that he gambles on the result of the litigation over said property. The filing of a notice of *lis pendens* has a two-fold effect: (*a*) to keep the subject matter of the litigation within the power of the court until the entry of the final judgment to prevent the defeat of the final judgment by successive alienations; and (*b*) to bind a purchaser, *bona fide* or not, of the land subject of the litigation to the judgment or decree that the court will promulgate subsequently.

3. **ID.; ID.; ID.; ID.; NOTICE OF *LIS PENDENS*; WHEN CANCELLED.—** Under Section 14, Rule 13 of the Rules of Court, a notice of *lis pendens* may be cancelled "after proper showing that the notice is for the purpose of molesting the adverse party, or that it is not necessary to protect the rights of the party who caused it to be recorded." In the same vein, case law likewise instructs that a notice of *lis pendens* may be cancelled in situations where: (*a*) there are exceptional circumstances imputable to the party who caused the annotation; (*b*) the litigation was unduly prolonged to the prejudice of the other party because of several continuances procured by petitioner; (*c*) the case which is the basis for the *lis pendens* notation was dismissed for *non-prosequitur* on the part of the plaintiff; or (*d*) judgment was rendered against the party who caused such a notation.

APPEARANCES OF COUNSEL

De Guia De Guia Law Office for petitioners.
Mark Lester G. Manalo for respondent.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Resolutions dated April 24, 2014[2] and September 10, 2014[3] of the Court of Appeals (CA) in CA-G.R. SP No. 132871, which dismissed the petition for review filed by herein petitioners-spouses Ramon and Ligaya Gonzales (Sps. Gonzales) before it on the ground of non-exhaustion of administrative remedies.

The Facts

The instant case arose from a Complaint[4] dated October 30, 1997 for Recognition as Tenant with Damages and Temporary Restraining Order filed by Sps. Gonzales against herein respondent Marmaine Realty Corporation (Marmaine) before the Office of the Provincial Adjudicator, Department of Agrarian Reform Adjudication Board (DARAB), Region IV (Tenancy Case). After initially filing a Motion to Dismiss,[5] Marmaine seasonably filed an Answer with Counterclaim[6] and, thereafter, trial ensued.

On January 6, 1998, the Provincial Agrarian Reform Adjudicator (PARAD) issued a Resolution[7] ordering the issuance

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[1] *Rollo,* pp. 10-33.

[2] *Id*. at 35-40. Penned by Associate Justice Melchor Q.C. Sadang with Associate Justices Celia C. Librea-Leagogo and Franchito N. Diamante concurring.

[3] *Id*. at 42-44.

[4] *Id*. at 52-58.

[5] Dated November 19, 1997. *Id.* at 60-62.

[6] Dated November 29, 1997. *Id.* at 68-74.

[7] *Id*. at 99-100. Penned by Provincial Adjudicator Antonio C. Cabili.

of a writ of preliminary injunction in Sps. Gonzales' favor. In view thereof, Sps. Gonzales filed a Notice of *Lis Pendens*[8] dated September 26, 2000 before the Register of Deeds of Batangas, which was then annotated on the certificates of title of Marmaine's properties.

After due proceedings, the PARAD issued a Decision[9] dated June 27, 2002 in the Tenancy Case, dismissing Sps. Gonzales' complaint for lack of merit. Sps. Gonzales moved for reconsideration,[10] which was, however, denied in an Order[11] dated August 7, 2002. Aggrieved, they appealed[12] to the DARAB, but the latter affirmed the PARAD ruling in a Decision[13] dated October 17, 2008. Dissatisfied, Sps. Gonzales moved for reconsideration[14] of the DARAB's October 17, 2008 Decision, but the same was denied in a Resolution[15] dated March 23, 2009. Due to the failure on the part of Sps. Gonzales to further appeal, the DARAB Decision became final and executory on May 7, 2009, and an Entry of Judgment[16] was issued on January 19, 2012.

In view of the finality of the ruling in the Tenancy Case, Marmaine filed a Motion for Cancellation of Notice of *Lis Pendens*[17] dated January 31, 2012.

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[8] *Id*. at 138-145.

[9] *Id*. at 146-148.

[10] Dated July 4, 2002. *Id*. at 149-156.

[11] *Id.* at 164.

[12] See Notice of Appeal dated August 12, 2002; *id*. at 165-166.

[13] *Id*. at 189-196. Penned by Assistant Secretary Edgar A. Igano with Assistant Secretaries Augusto P. Quijano, Ma. Patricia Rualo-Bello, and Delfin B. Samson concurring.

[14] Not attached to the *rollo.*

[15] *Rollo,* pp. 199-200. Penned by Assistant Secretary Edgar A. Igano with OIC-Assistant Secretary Jim G. Coleto and Assistant Secretaries Ma. Patricia Rualo-Bello and Ambrosio B. De Luna concurring.

[16] *Id*. at 201-202. Signed by OIC-Executive Director, DARAB Secretariat, Atty. Roland C. Manalaysay.

[17] *Id*. at 203-204.

The PARAD Ruling

In an Order[18] dated May 15, 2012, the PARAD initially denied Marmaine' s motion on the ground of, *inter alia,* prematurity because a civil case involving the same parties is still pending before the Regional Trial Court of Rosario, Batangas, Branch 87, docketed as Civil Case No. RY2K-052. However, on Marmaine's motion for reeonsideration,[19] the PARAD issued an Order[20] dated December 4, 2012 setting aside its earlier Order and, accordingly, directed the Register of Deeds of Batangas to cancel the notice of *lis pendens* annotated on Marmaine's certificates of title.[21] The PARAD held that such cancellation is warranted in view of the final and executory judgment in the Tenancy Case in Marmaine's favor. In this relation, the PARAD pointed out that the cancellation of the notice of *lis pendens* only pertains to the Tenancy Case and does not involve Civil Case No. RY2K- 052.[22]

Sps. Gonzales moved for reconsideration[23] which was, however, denied in a Resolution[24] dated October 16, 2013. Dissatisfied, petitioners went straight to the CA *via* a petition for review under Rule 43 of the Rules of Court.[25]

The CA Ruling

In a Resolution[26] dated April 24, 2014, the CA dismissed the petition on the ground of non-exhaustion of administrative remedies. It held that Sps. Gonzales improperly elevated the case to it *via* a petition for review under Rule 43 of the Rules of Court, pointing out that the proper remedy from a PARAD's

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[18] *Id*. at 206. Penned by Provincial Adjudicator Pacito M. Canonoy, Jr.

[19] Dated May 2012. *Id*. at 207-210.

[20] *Id.* at 45-46. Penned by Provincial Adjudicator Pacito M. Canonoy, Jr.

[21] *Id*. at 46.

[22] *ld*.

[23] See motion for reconsideration dated January 22, 2013; *id*. at 212-214.

[24] *Id*. at 47. Penned by Provincial Adjudicator Pacito M. Canonoy, Jr.

[25] Dated December 13, 2013. *Id.* at 223-234.

[26] *Id*. at 35-40.

denial of a motion for reconsideration is an appeal to the DARAB, and not a petition for review under Rule 43 of the Rules of Court.[27]

Undaunted, Sps. Gonzales moved for reconsideration,[28] but was denied in a Resolution[29] dated September 10, 2014; hence, this petition.

The Issue Before the Court

The issues raised for the Court's resolution are as follows: *(a)* whether or not the CA erred in dismissing the petition for review before it due to petitioners' failure to exhaust administrative remedies; and *(b)* whether or not the PARAD correctly ordered the cancellation of the notice of *lis pendens* annotated on the certificates of title of Marmaine's properties.

The Court's Ruling

The doctrine of exhaustion of administrative remedies is a cornerstone of our judicial system. The thrust of the rule is that courts must allow administrative agencies to carry out their functions and discharge their responsibilities within the specialized areas of their respective competence. The rationale for this doctrine is obvious. It entails lesser expenses and provides for the speedier resolution of controversies. Comity and convenience also impel courts of justice to shy away from a dispute until the system of administrative redress has been completed.[30] In view of this doctrine, jurisprudence instructs that before a party is allowed to seek the intervention of the courts, it is a pre-condition that he avail himself of all administrative processes afforded him. Hence, if a remedy within the administrative machinery can be resorted to by giving the administrative officer every opportunity to decide on a matter that comes within his jurisdiction, then such

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[27] See *id.* at 38-39.

[28] See motion for reconsideration dated May 22, 2014; *id.* at 48-51.

[29] *Id.* at 42-44.

[30] *Universal Robina Corp. (Corn Division) v. Laguna Lake Development Authority,* 664 Phil. 754, 759-760 (2011).

remedy must be exhausted first before the court's power of judicial review can be sought. The premature resort to the court is fatal to one's cause of action. Accordingly, absent any finding of waiver or *estoppel,* the case may be dismissed for lack of cause of action.[31]

However, it must be clarified that the aforementioned doctrine is not absolute as it is subject to certain exceptions; one of which is when the question involved is purely legal and will ultimately have to be decided by the courts of justice.[32] In *Vigilar v. Aquino,*[33] the Court had the opportunity to explain the rationale behind this exception, to wit:

> It does not involve an examination of the probative value of the evidence presented by the parties. There is a question of law when the doubt or difference arises as to what the law is on a certain state of facts, and not as to the truth or the falsehood of alleged facts. **Said question at best could be resolved tentativelv by the administrative authorities. The final decision on the matter rests not with them but with the courts of justice. Exhaustion of administrative remedies does not apply, because nothing of an administrative nature is to be or can be done. The issue does not require technical knowledge and experience but one that would involve the interpretation and application of law.**[34] (Emphasis and underscoring supplied)

In the case at bar, Sps. Gonzales correctly pointed out that the issue they raised before the CA, *i.e.,* the propriety of the cancellation of the Notice of *Lis Pendens,* falls within the aforesaid exception as the same is a purely legal question, considering that the resolution of the same would not involve an examination of the probative value presented by the litigants and must rest solely on what the law provides on the given set

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[31] *Samar II Electric Cooperative v. Seludo, Jr.,* G.R. No. 173840, April 25, 2012, 671 SCRA 78, 88; citations omitted.

[32] See *id*. at 89.

[33] 654 Phil. 755 (2011).

[34] *Id*. at 761-762, citing *Republic of the Philippines v. Lacap,* 546 Phil. 87, 98 (2007).

[35] See *Tongonan Holdings and Dev't. Corp. v. Escano, Jr.,* 672 Phil.

of circumstances.[35]

Verily, the CA erred in dismissing Sps. Gonzales' petition for review before it, considering that the matter at issue - a question of law - falls within the known exceptions of the doctrine of exhaustion of administrative remedies. In such a case, court procedure dictates that the instant case be remanded to the CA for a resolution on the merits. However, when there is already enough basis on which a proper evaluation of the merits may be had, as in this case, the Court may dispense with the time-consuming procedure of remand in order to prevent further delays in the disposition of the case and to better serve the ends of justice.[36] In view of the foregoing- as well as the fact that Sps. Gonzales prayed for a resolution of the issue on the merits[37]— the Court finds it appropriate to finally settle the conflicting claims of the parties.

"Lis pendens," which literally means pending suit, refers to the jurisdiction, power or control which a court acquires over a property involved in a suit, pending the continuance of the action, and until final judgment. Founded upon public policy and necessity, *lis pendens* is intended to keep the properties in litigation within the power of the court until the litigation is terminated; and to prevent the defeat of the judgment or decree by subsequent alienation. Its notice is an announcement to the whole world that a particular property is in litigation and serves as a warning that one who acquires an interest over said property does so at his own risk or that he gambles on the result of the litigation over said property. The filing of a notice of *lis pendens* has a two-fold effect: *(a)* to keep the subject matter of the litigation within the power of the court until the entry of the final judgment to prevent the

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747,756 (2011), citing *Republic of the Philippines v. Malabanan,* 646 Phil. 631, 637-638 (2010).

[36] See *Real v. Sangu Philippines, Inc.,* 655 Phil. 68, 90 (2011), citing *Alcantara v. The Philippine Commercial and International Bank,* 648 Phil. 267, 280 (2010).

[37] See *rollo,* p. 29.

defeat of the final judgment by successive alienations; and *(b)* to bind a purchaser, *bona fide* or not, of the land subject of the litigation to the judgment or decree that the court will promulgate subsequently.[38]

Under Section 14, Rule 13 of the Rules of Court, a notice of *lis pendens* may be cancelled "after proper showing that the notice is for the purpose of molesting the adverse party, or that it is not necessary to protect the rights of the party who caused it to be recorded." In the same vein, case law likewise instructs that a notice of *lis pendens* may be cancelled in situations where: *(a)* there are exceptional circumstances imputable to the party who caused the annotation; *(b)* the litigation was unduly prolonged to the prejudice of the other party because of several continuances procured by petitioner; (c) the case which is the basis for the *lis pendens* notation was dismissed for *non-prosequitur* on the part of the plaintiff; or *(d)* judgment was rendered against the party who caused such a notation.[39]

In the case at bar, records show that the notice of *lis pendens* that Sps. Gonzales caused to be annotated on Marmaine's certificates of title stemmed from the Tenancy Case filed by the former against the latter. Since the Tenancy Case had already been decided against Sps. Gonzales with finality, it is but proper that the PARAD order the cancellation of the notice of *lis pendens* subject of this case. In this relation, the PARAD correctly ruled that its cancellation of the aforementioned notice of *lis pendens* only pertains to the Tenancy Case and, thus, would not affect any other case involving the same parties, such as Civil Case No. RY2K-052 pending before the Regional Trial Court of Rosario, Batangas, Branch 87.

In sum, the PARAD properly ordered the cancellation of the notice of *lis pendens* that Sps. Gonzales caused to be annotated on Marmaine's certificates of title in view of the finality of the decision in the Tenancy Case.

WHEREFORE, the petition is hereby **DENIED** for lack of merit.

[38] *Sps. Romero v. CA,* 497 Phil. 775, 784-785 (2005); citations omitted.

[39] See *Fernandez v. CA*, 397 Phil. 205, 217 (2000).

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 214490. January 13, 2016]

HOWARD LESCANO *y* CARREON @ "TISOY", *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. **CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS.—** The elements that must be established to sustain convictions for illegal sale of dangerous drugs are settled: "In actions involving the illegal sale of dangerous drugs, the following elements must first be 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."

2. **ID.; ID.; CUSTODY AND DISPOSITION OF SEIZED ITEMS; NON-COMPLIANCE WITH THE PROCEDURE THEREON WITHOUT JUSTIFIABLE GROUNDS IS TANTAMOUNT TO FAILURE IN ESTABLISHING THE IDENTITY OF THE *CORPUS DELICTI*, AN ESSENTIAL ELEMENT OF THE OFFENSES OF ILLEGAL SALE AND ILLEGAL POSSESSION OF DANGEROUS DRUGS.—** As regards *corpus delicti*, Section 21 of the Comprehensive Dangerous Drugs Act of 2002, as amended by Republic Act No. 10640 stipulates requirements for the custody and disposition of confiscated, seized, and/or surrendered drugs and/or drug paraphernalia. x x x Compliance with Section 21's requirements

is critical. "Non-compliance is tantamount to failure in establishing identity *of corpus delicti,* an essential element of the offenses of illegal sale and illegal possession of dangerous drugs. By failing to establish an element of these offenses, non-compliance will, thus, engender the acquittal of an accused. x x x As regards the items seized and subjected to marking, Section 21(1) of the Comprehensive Dangerous Drugs Act, as amended, requires the performance of two (2) actions: physical inventory and photographing. Section 21(1) is specific as to when and where these actions must be done. As to when, it must be "immediately after seizure and confiscation." As to where, it depends on whether the seizure was supported by a search warrant. If a search warrant was served, the physical inventory and photographing must be done at the exact same place that the search warrant is served. In case of warrantless seizures, these actions must be done "at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable." Moreover, Section 21(1) requires at least three (3) persons to be present during the physical inventory and photographing. These persons are: first, the accused or the person/s from whom the items were seized; second, an elected public official; and third, a representative of the National Prosecution Service. There are, however, alternatives to the first and the third. As to the first (i.e., the accused or the person/s from whom items were seized), there are two (2) alternatives: first, his or her representative; and second, his or her counsel. As to the representative of the National Prosecution Service, a representative of the media may be present in his or her place. Section 21 spells out matters that are imperative. "Even the doing of acts which ostensibly approximate compliance but do not *actually* comply with the requirements of Section 21 does not suffice." This is especially so when the prosecution claims that the seizure of drugs and drug paraphernalia is the result of carefully planned operations, as is the case here. x x x It is glaring that despite the prosecution's allegations that a buy-bust operation was carefully planned and carried out, it admitted that Section 21(1) of the Comprehensive Dangerous Drugs Act was not faithfully complied with. x x x Section 21(1) of the Comprehensive Dangerous Drugs Act, as amended, leaves room for deviating from its own requirements. It includes a proviso stating that "noncompliance of [sic] 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 and custody over said items." However, the prosecution failed to establish the existence of any such justifiable grounds. If at all, its own claims that the buy-bust operation was carefully conceived of and carried out make its position even more dubious. These claims are all the more reason to expect that Section 21(1) shall be complied with meticulously.

APPEARANCES OF COUNSEL

Pineda Pineda Mastura Valencia & Associates for petitioner.
Office of the Solicitor General for respondent.

D E C I S I O N

LEONEN, *J*.:

"Law enforcers should not trifle with the legal requirement to ensure integrity in the chain of custody of seized dangerous drugs and drug paraphernalia. This is especially true when only a miniscule amount of dangerous drugs is alleged to have been taken from the accused."[1]

This resolves an appeal of a conviction for illegal sale of dangerous drugs or for violation of Section 5[2] of Republic Act No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

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[1] *People v. Holgado*, G.R. No. 207992, August 11, 2014, 732 SCRA 554, 556 [Per *J.* Leonen, Third Division].

[2] SEC. 5. *Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals*. — The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.

On July 10, 2008, an Information charging petitioner Howard Lescano (Lescano) with illegal sale of dangerous drugs was filed. This Information read:

> That on or about the eight[h] (8th) day of July, 2008, in the City of Olongapo, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, while being under the influence of illegal drug, particularly THC-metabolites, did then and there wil[l]fully, and unlawfully and knowingly deliver and sell during a buy-bust operation, conducted at Tabacuhan Road, corner Tulio St., Sta. Rita, Olongapo City, to PO3 Hortencio Javier [one hundred pesos] ₱100.00 . . . worth of marijuana fruiting tops, which is a dangerous drug in one (1) heat[-]sealed transparent plastic sachet weighing one gram and four[-]tenths (1.4) of a gram.
>
> CONTRARY TO LAW.[3]

The penalty of imprisonment ranging from twelve (12) years and one (1) day to twenty (20) years and a fine ranging from One hundred thousand pesos (₱100,000.00) to Five hundred thousand pesos (₱500,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any controlled precursor and essential chemical, or shall act as a broker in such transactions.

If the sale, trading, administration, dispensation, delivery, distribution or transportation of any dangerous drug and/or controlled precursor and essential chemical transpires within one hundred (100) meters from the school, the maximum penalty shall be imposed in every case.

For drug pushers who use minors or mentally incapacitated individuals as runners, couriers and messengers, or in any other capacity directly connected to the dangerous drugs and/or controlled precursors and essential chemicals trade, the maximum penalty shall be imposed in every case.

If the victim of the offense is a minor or a mentally incapacitated individual, or should a dangerous drug and/or a controlled precursor and essential chemical involved in any offense herein provided be the proximate cause of death of a victim thereof, the maximum penalty provided for under this Section shall be imposed.

The maximum penalty provided for under this Section shall be imposed upon any person who organizes, manages or acts as a "financier" of any of the illegal activities prescribed in this Section.

The penalty of twelve (12) years and one (1) day to twenty (20) years of imprisonment and a fine ranging from One hundred thousand pesos (₱100,000.00) to Five hundred thousand pesos (₱500,000.00) shall be imposed upon any person, who acts as a "protector/coddler" of any violator of the provisions under this Section.

[3] *Rollo*, p. 49, Court of Appeals Decision dated November 13, 2013.

According to the prosecution, on July 6, 2008, an informant sought the assistance of the City Anti-Illegal Drug Special Operation Team (CAIDSOT) of Olongapo City. The informant alleged that drug-pushing activities were taking place at the corner of Tulio and Tabacuhan Streets.[4]

Acting on this tip, the CAIDSOT monitored the area and allegedly found the informant's claims to be true. CAIDSOT operatives relayed the results of their surveillance to their Chief, P/Insp. Julius Javier (P/Insp. Javier). P/Insp. Javier then instructed them to conduct a buy-bust operation.[5]

A briefing for the operation took place. It was decided that PO3 Hortencio Javier (PO3 Javier) would be the poseur buyer and that he would be introduced by the informant to Lescano. In addition to PO3 Javier, the buy-bust team was composed of: PO1 Ferdinand Mataverde (PO1 Mataverde) as immediate back-up, PO1 Lawrence Reyes, PO1 Sherwin Tan, and P/Insp. Javier. SPO1 Allan Delos Reyes (SPO1 Delos Reyes) was assigned as the investigator and PO1 Lowela Buscas was designated as the recorder.[6] A ₱100.00 bill with serial number CM283073 was set aside for the operation. PO3 Javier marked it by placing the letters "HJ" on its upper left corner.[7] The team further agreed that PO3 Javier would remove his cap as a signal to the buy-bust team that the sale had already been consummated.[8]

PO3 Javier and the informant arrived at the corner of Tulio and Tabacuhan Streets at 4:40 p.m. on July 8, 2008. By then, the other members of the team were already within the area.[9]

While walking towards Tulio Street, the informant pointed to Lescano who was standing alone, about three (3) meters away,

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[4] *Id.*

[5] *Id.*

[6] *Id.* at 50.

[7] *Id.*

[8] *Id.*

[9] *Id.*

allegedly waiting for a prospective customer. PO1 Mataverde stayed behind about seven (7) meters from PO3 Javier and the informant.[10]

The informant introduced PO3 Javier to Lescano. Lescano asked PO3 Javier how much marijuana he was willing to buy. PO3 Javier responded by handing the marked ₱100 bill to Lescano.[11] Lescano then gave PO3 Javier a medium-sized plastic sachet supposedly containing marijuana.[12] At this, PO3 Javier gave the pre-arranged signal to the buy-bust team. PO1 Mataverde approached them and introduced himself as a police officer. He then frisked Lescano and recovered the buy-bust money.[13]

The rest of the buy-bust team arrived as Lescano was about to be handcuffed. PO3 Javier marked the medium-sized plastic sachet with the initials "HJ" and turned it over to SPO1 Delos Reyes. Lescano was then brought to the CAIDSOT office for investigation.[14]

Inside the CAIDSOT office, an inventory was allegedly conducted and photographs of the marked money and the sachet were taken. The sachet allegedly containing marijuana weighed 1.4 grams.[15]

A Receipt of Evidence was prepared. P/Insp. Javier asked the Hospital Administrator of the James L. Gordon Memorial Hospital to conduct a physical examination on Lescano. He also asked the Philippine National Police Crime Laboratory to examine Lescano's urine and the contents of the sachet seized during the buy-bust operation.[16] PO3 Javier and PO1 Mataverde also executed a Joint Affidavit of Apprehension.[17]

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[10] *Id.*

[11] *Id.*

[12] *Id.* at 51.

[13] *Id.*

[14] *Id.*

[15] *Id.* at 51-52.

[16] *Id.*

[17] *Id.* at 53.

Testifying during trial, PO3 Javier positively identified the drug specimen.[18] The Philippine National Police Crime Laboratory also issued a report on Lescano's urine stating that dangerous drugs were present in Lescano's system.[19] The laboratory examination on the sachet also yielded a positive result for marijuana.[20]

Lescano was then charged for violating Section 5 of the Comprehensive Dangerous Drugs Act of 2002.

Upon arraignment, Lescano entered a plea of not guilty. Thereafter, trial ensued.[21]

The prosecution presented the following pieces of evidence to support its allegations: (1) the testimony of PO3 Javier; (2) the corroborative testimony of SPO1 Allan Delos Reyes; (3) Letter Request for Laboratory Examination; (4) Letter Request for Drug Test; (5) Chemistry Report No. DT-080-2008-OCCLO; (6) the sachet allegedly seized from Lescano; (7) the Joint Affidavit of PO3 Javier and PO1 Mataverde; (8) the Coordination Form; (9) the PDEA Certification of Coordination; (10) the Receipt of Evidence; (11) photographs of the marijuana; and (12) the ₱100.00 bill with serial number CM283073 marked with the initials "HJ."[22]

In his testimony, Lescano denied that he was selling marijuana. He claimed that on July 8, 2008, at around 5:00 p.m., he was at Tulio Street just sitting and passing time when P/Insp. Julius Javier arrived and introduced himself as a police officer. P/Insp. Javier then frisked Lescano but the search turned out futile as nothing was recovered from him. Other police officers arrived. PO1 Mataverde and PO3 Javier then told him that something was confiscated during the frisking. Lescano insisted that there was nothing confiscated from him. The officers, however, replied

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[18] *Id*.

[19] *Id*. at 51-52.

[20] *Id*.

[21] *Id*. at 49.

[22] *Id*. at 53-54.

by stating: "Don't worry, tomorrow there will be."[23] He was then charged with illegal sale of prohibited drugs.[24]

In support of Lescano's testimony, the defense also presented the testimony of Rogelio Jacobo (Jacobo), Lescano's neighbor. According to Jacobo, he was waiting for his niece at a nearby store along Tulio Street, about six (6) to seven (7) meters away from where Lescano was standing when he saw the latter being accosted by a police officer. Jacobo then approached them and asked what the problem was. The officer replied by saying: "*Baka pati ikaw isama namin*." Jacobo then informed the relatives of Lescano that he had been arrested.[25]

In the Decision[26] dated September 30, 2011, the Regional Trial Court found Lescano guilty beyond reasonable doubt of illegal sale of prohibited drugs. Lescano was sentenced to suffer the penalty of life imprisonment and to pay a fine of ₱500,000.00. The dispositive portion of the trial court Decision reads:

> ***WHEREFORE,*** the Court finds the accused ***HOWARD LESCANO Y CARREON*** **GUILTY** beyond reasonable doubt of violation of Section 5, RA 9165 and hereby sentences him to suffer the penalty of ***life imprisonment*** and to pay a fine of ***₱500,000.00 plus costs***, and to suffer the accessory penalties under Section 35 thereof.
>
> The accused being under detention shall be credited in the service of his sentence with the full time during which he has undergone preventive imprisonment subject to the conditions imposed under Article 29 of the Revised Penal Code, as amended.
>
> The one (1) heat-sealed transparent plastic sachet of marijuana fruiting tops weighing 1.4 grams is forfeited in favor of the government and to be disposed of in accordance with law.
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> SO DECIDED.[27]

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[23] *Id.*

[24] *Id.*

[25] *Id.* at 54-55.

[26] *Id.* at 64-74. The Decision was penned by Judge Raymond C. Viray.

[27] *Id.* at 74.

In the Decision[28] dated November 13, 2013, the Court of Appeals affirmed the ruling of the trial court. In the Resolution dated September 18, 2014, the Court of Appeals denied Lescano's Motion for Reconsideration.

Hence, this appeal was filed.

For resolution is the issue of whether petitioner Howard Lescano's guilt beyond reasonable doubt for violating Section 5 of Republic Act No. 9165 was established. Subsumed in the resolution of this issue is the question of whether the prosecution was able to establish compliance with the requisites of Section 21 of Republic Act No. 9165.

I

The elements that must be established to sustain convictions for illegal sale of dangerous drugs are settled:

> In actions involving the illegal sale of dangerous drugs, the following elements must first be 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.[29]

As regards *corpus delicti*, Section 21 of the Comprehensive Dangerous Drugs Act of 2002, as amended by Republic Act No. 10640 stipulates requirements for the custody and disposition of confiscated, seized, and/or surrendered drugs and/or drug paraphernalia. Specifically, with respect to custody before the filing of a criminal case, Section 21, as amended, provides:

> SEC. 21. *Custody and Disposition of Confiscated, Seized, and/or Surrendered Dangerous Drugs, Plant Sources of Dangerous Drugs, Controlled Precursors and Essential Chemicals, Instruments/*

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[28] *Id*. at 48-61. The Decision was penned by Associate Justice Agnes Reyes-Carpio and concurred in by Associate Justices Rosalinda Asuncion-Vicente and Priscilla J. Baltazar-Padilla.

[29] *People v. Morales*, 630 Phil. 215, 228 (2010) [Per *J.* Del Castillo, Second Division], citing *People v. Darisan, et al.*, 597 Phil. 479, 485 (2009) [Per *J.* Corona, First Division] and *People v. Partoza*, 605 Phil. 883, 890 (2009) [Per *J.* Tinga, Second Division].

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 dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment ***shall, immediately after seizure and confiscation,*** *conduct a physical inventory of the seized items 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, with an elected public official and a representative of the National Prosecution Service or the media who shall be required to sign the copies of the inventory and be given a copy thereof:* Provided, That the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures: Provided, finally, That *noncompliance of 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 and custody over said items.*

(2) Within twenty-four (24) hours upon confiscation/seizure of dangerous drugs, plant sources of dangerous drugs, controlled precursors and essential chemicals, as well as instruments/paraphernalia and/or laboratory equipment, the same shall be submitted to the PDEA Forensic Laboratory for a qualitative and quantitative examination;

(3) A certification of the forensic laboratory examination results, which shall be done by the forensic laboratory examiner, shall be issued immediately upon the receipt of the subject item/s: Provided, That when the volume of dangerous drugs, plant sources of dangerous drugs, and controlled precursors and essential chemicals does not allow the completion of testing within the time frame, a partial laboratory examination report shall be provisionally issued stating therein the quantities of

> dangerous drugs still to be examined by the forensic laboratory: Provided, however, That a final certification shall be issued immediately upon completion of the said examination and certification[.] (Emphasis supplied)

Compliance with Section 21's requirements is critical. "Non-compliance is tantamount to failure in establishing identity of *corpus delicti*, an essential element of the offenses of illegal sale and illegal possession of dangerous drugs. By failing to establish an element of these offenses, non-compliance will, thus, engender the acquittal of an accused."[30]

We reiterate our extensive discussion on this matter in *People v. Holgado*:[31]

As this court declared in *People v. Morales*, "failure to comply with Paragraph 1, Section 21, Article II of RA 9165 implie[s] a concomitant failure on the part of the prosecution to establish the identity of the *corpus delicti*." It "produce[s] doubts as to the origins of the [seized paraphernalia]."

The significance of ensuring the integrity of drugs and drug paraphernalia in prosecutions under Republic Act No. 9165 is discussed in *People v. Belocura*:

> Worse, the Prosecution failed to establish the identity of the prohibited drug that constituted the *corpus delicti* itself. The omission naturally raises grave doubt about any search being actually conducted and warrants the suspicion that the prohibited drugs were planted evidence.
>
> In every criminal prosecution for possession of illegal drugs, the Prosecution must account for the custody of the incriminating evidence from the moment of seizure and confiscation until the moment it is offered in evidence. That account goes to the weight of evidence. *It is not enough that the evidence offered*

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[30] *People of the Philippines v. Garry Dela Cruz y De Guzman*, G.R. No. 205821, October 1, 2014 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/october2014/205821.pdf> [Per *J.* Leonen, Second Division].

[31] G.R. No. 207992, August 11, 2014, 732 SCRA 554 [Per *J.* Leonen, Third Division].

> *has probative value on the issues, for the evidence must also be sufficiently connected to and tied with the facts in issue. The evidence is not relevant merely because it is available but that it has an* ***actual connection with the transaction involved and with the parties thereto***. This is the reason why authentication and laying a foundation for the introduction of evidence are important.

In *Malilin v. People*, this court explained that the exactitude required by Section 21 goes into the very nature of narcotics as the subject of prosecutions under Republic Act No. 9165:

> Indeed, *the likelihood of tampering, loss or mistake with respect to an exhibit is greatest when the exhibit is small and is one that has physical characteristics fungible in nature and similar in form to substances familiar to people in their daily lives. Graham vs. State* positively acknowledged this danger. In that case where a substance later analyzed as heroin—was handled by two police officers prior to examination who however did not testify in court on the condition and whereabouts of the exhibit at the time it was in their possession—was excluded from the prosecution evidence, the court pointing out that the white powder seized could have been indeed heroin or it could have been sugar or baking powder. It ruled that unless the state can show by records or testimony, the continuous whereabouts of the exhibit at least between the time it came into the possession of police officers until it was tested in the laboratory to determine its composition, testimony of the state as to the laboratory's findings is inadmissible.
>
> *A unique characteristic of narcotic substances is that they are not readily identifiable as in fact they are subject to scientific analysis to determine their composition and nature.* The Court cannot reluctantly close its eyes to the likelihood, or at least the possibility, that at any of the links in the chain of custody over the same there could have been tampering, alteration or substitution of substances from other cases—by accident or otherwise—in which similar evidence was seized or in which similar evidence was submitted for laboratory testing. Hence, in authenticating the same, *a standard more stringent than that applied to cases involving objects which are readily identifiable must be applied,* a more exacting standard that entails a chain of custody of the item with sufficient completeness if only to

> render it improbable that the original item has either been exchanged with another or been contaminated or tampered with.

Compliance with the chain of custody requirement provided by Section 21, therefore, ensures the integrity of confiscated, seized, and/or surrendered drugs and/or drug paraphernalia in four (4) respects: first, the nature of the substances or items seized; second, the quantity (e.g., weight) of the substances or items seized; third, the relation of the substances or items seized to the incident allegedly causing their seizure; and fourth, the relation of the substances or items seized to the person/s alleged to have been in possession of or peddling them. Compliance with this requirement forecloses opportunities for planting, contaminating, or tampering of evidence in any manner.

By failing to establish identity of *corpus delicti*, non-compliance with Section 21 indicates a failure to establish an element of the offense of illegal sale of dangerous drugs. It follows that this non-compliance suffices as a ground for acquittal. As this court stated in *People v. Lorenzo*:

> In both illegal sale and illegal possession of prohibited drugs, *conviction cannot be sustained if there is a persistent doubt on the identity of the drug.* The identity of the prohibited drug must be established with moral certainty. Apart from showing that the elements of possession or sale are present, *the fact that the substance illegally possessed and sold in the first place is the same substance offered in court as exhibit must likewise be established with the same degree of certitude as that needed to sustain a guilty verdict.*

The prosecution's sweeping guarantees as to the identity and integrity of seized drugs and drug paraphernalia will not secure a conviction. Not even the presumption of regularity in the performance of official duties will suffice. In fact, whatever presumption there is as to the regularity of the manner by which officers took and maintained custody of the seized items is "negated." Republic Act No. 9165 requires compliance with Section 21.

Even the doing of acts which ostensibly approximate compliance but do not *actually* comply with the requirements of Section 21 does not suffice. In *People v. Magat*, for instance, this court had occasion to emphasize the inadequacy of merely marking the items supposedly seized: "Marking of the seized drugs alone by the law enforcers is not enough to comply with the clear and unequivocal procedures

prescribed in Section 21 of R.A. No. 9165."

The exactitude which the state requires in handling seized narcotics and drug paraphernalia is bolstered by the amendments made to Section 21 by Republic Act No. 10640. Section 21(1), as amended, now includes the following proviso, thereby making it even more stringent than as originally worded:

> Provided, That the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures:

In *People v. Nandi*, this court explained that four (4) links "should be established in the chain of custody of the confiscated item: *first*, the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; *second*, the turnover of the illegal drug seized by the apprehending officer to the investigating officer; *third*, the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and *fourth*, the turnover and submission of the marked illegal drug seized from the forensic chemist to the court."

In *Nandi*, where the prosecution failed to show how the seized items were handled following the actual seizure and, thereafter, turned over for examination, this court held that the accused must be acquitted:

> After a closer look, the Court finds that the linkages in the chain of custody of the subject item were not clearly established. As can be gleaned from his forequoted testimony, PO1 Collado failed to provide informative details on how the subject shabu was handled immediately after the seizure. He just claimed that the item was handed to him by the accused in the course of the transaction and, thereafter, he handed it to the investigator.
>
> There is no evidence either on how the item was stored, preserved, labeled, and recorded. PO1 Collado could not even provide the court with the name of the investigator. He admitted that he was not present when it was delivered to the crime laboratory. It was Forensic Chemist Bernardino M. Banac, Jr. who identified the person who delivered the specimen to the crime laboratory. He disclosed that he received the specimen from one PO1 Cuadra, who was not even a member of the buy-

bust team. Per their record, PO1 Cuadra delivered the letter-request with the attached seized item to the CPD Crime Laboratory Office where a certain PO2 Semacio recorded it and turned it over to the Chemistry Section.

In view of the foregoing, the Court is of the considered view that chain of custody of the illicit drug seized was compromised. Hence, the presumption of regularity in the performance of duties cannot be applied in this case.

> Given the flagrant procedural lapses the police committed in handling the seized shabu and the obvious evidentiary gaps in the chain of its custody, a presumption of regularity in the performance of duties cannot be made in this case. A presumption of regularity in the performance of official duty is made in the context of an existing rule of law or statute authorizing the performance of an act or duty or prescribing a procedure in the performance thereof. The presumption applies when nothing in the record suggests that the law enforcers deviated from the standard conduct of official duty required by law; where the official act is irregular on its face, the presumption cannot arise. In light of the flagrant lapses we noted, the lower courts were obviously wrong when they relied on the presumption of regularity in the performance of official duty.

With the chain of custody in serious question, the Court cannot gloss over the argument of the accused regarding the weight of the seized drug. The standard procedure is that after the confiscation of the dangerous substance, it is brought to the crime laboratory for a series of tests. The result thereof becomes one of the bases of the charge to be filed.[32] (Emphases in the original)

II

As regards the items seized and subjected to marking, Section

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[32] *Id*. at 567-573, citing *People v. Morales*, 630 Phil. 215, 228 (2010) [Per *J.* Del Castillo, Second Division]; *People v. Laxa*, 414 Phil. 156, 170 (2001) [Per *J*. Mendoza, Second Division], as cited *in People v. Orteza*, 555 Phil. 700, 708 (2007) [Per *J*. Tinga, Second Division]; *People v. Belocura*, G.R. No. 173474, August 29, 2012, 693 SCRA 476, 495-496 [Per *J*. Bersamin, First Division]; *Malilin v. People*, 576 Phil. 576, 588–589 (2008)

21(1) of the Comprehensive Dangerous Drugs Act, as amended, requires the performance of two (2) actions: physical inventory and photographing. Section 21(1) is specific as to when and where these actions must be done. As to when, it must be "immediately after seizure and confiscation." As to where, it depends on whether the seizure was supported by a search warrant. If a search warrant was served, the physical inventory and photographing must be done at the exact same place that the search warrant is served. In case of warrantless seizures, these actions must be done "at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable."

Moreover, Section 21(1) requires at least three (3) persons to be present during the physical inventory and photographing. These persons are: first, the accused or the person/s from whom the items were seized; second, an elected public official; and third, a representative of the National Prosecution Service. There are, however, alternatives to the first and the third. As to the first (i.e., the accused or the person/s from whom items were seized), there are two (2) alternatives: first, his or her representative; and second, his or her counsel. As to the representative of the National Prosecution Service, a representative of the media may be present in his or her place.

Section 21 spells out matters that are imperative. "Even the doing of acts which ostensibly approximate compliance but do not *actually* comply with the requirements of Section 21 does not suffice."[33] This is especially so when the prosecution claims that the seizure of drugs and drug paraphernalia is the result of carefully planned operations, as is the case here.

[Per *J.* Tinga, Second Division]; *People v. Lorenzo*, 633 Phil. 393, 403 (2010) [Per *J.* Perez, Second Division]; *People v. Navarrete*, 665 Phil. 738, 748 (2011) [Per *J.* Carpio Morales, Third Division]; *People v. Magat*, 588 Phil. 395, 405 (2008) [Per *J.* Tinga, Second Division]; and *People v. Nandi*, 639 Phil. 134, 144-145 (2010) [Per *J.* Mendoza, Second Division]. See also *People v. Ulat*, 674 Phil. 484 (2011) [Per *J.* Leonardo–de Castro, First Division]; and *People v. Zaida Kamad*, 624 Phil. 289 (2010) [Per *J.* Brion, Second Division].

People v. Garcia[34] underscored that the mere marking of seized paraphernalia, unsupported by a physical inventory and taking of photographs, and in the absence of the persons required by Section 21 to be present, does not suffice:

> Thus, other than the markings made by PO1 Garcia and the police investigator (whose identity was not disclosed), no physical inventory was ever made, and no photograph of the seized items was taken under the circumstances required by R.A. No. 9165 and its implementing rules. We observe that while there was testimony with respect to the marking of the seized items at the police station, no mention whatsoever was made on whether the marking had been done in the presence of Ruiz or his representatives. There was likewise no mention that any representative from the media and the Department of Justice, or any elected official had been present during this inventory, or that any of these people had been required to sign the copies of the inventory.[35] (Citations omitted)

III

The flaws noted in *Garcia* are precisely the same errors that taint the integrity of the operations of the buy-bust team and, ultimately, of the *corpus delicti* of the offense allegedly committed by petitioner.

It is glaring that despite the prosecution's allegations that a buy-bust operation was carefully planned and carried out, it admitted that Section 21(1) of the Comprehensive Dangerous Drugs Act was not faithfully complied with. While an inventory was supposed to have been conducted, this was done neither in the presence of petitioner, the person from whom the drugs were supposedly seized, nor in the presence of his counsel or representative. Likewise, not one of the persons required to be present (an elected public official, and a representative of

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[33] *People v. Holgado*, G.R. No. 207992, August 11, 2014 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/august2014/207992.pdf> [Per *J*. Leonen, Third Division].

[34] 599 Phil. 416 (2009) [Per *J*. Brion, Second Division].

[35] *Id*. at 429.

the National Prosecution Service or the media) was shown to have been around during the inventory and photographing.

We are, in effect, left with no other assurance of the integrity of the seized item other than the self-serving claims of the prosecution and of its witnesses. These claims cannot sustain a conviction. As in *Garcia*, the mere marking of seized items, done in violation of the safeguards of the Comprehensive Dangerous Drugs Act, cannot be the basis of a finding of guilt.

The Court of Appeals made much of the presumption of regularity in the performance of official functions. It intimated that this presumption trumped the presumption of innocence of an accused in light of how "all the evidence [supposedly] points to the conclusion that [petitioner] sold the marijuana."[36] This is a serious error. Again, as we stated in *Holgado*:

> The prosecution's sweeping guarantees as to the identity and integrity of seized drugs and drug paraphernalia will not secure a conviction. Not even the presumption of regularity in the performance of official duties will suffice. In fact, whatever presumption there is as to the regularity of the manner by which officers took and maintained custody of the seized items is "negated." [The Comprehensive Dangerous Drugs Act] requires compliance with Section 21.[37]

Section 21(1) of the Comprehensive Dangerous Drugs Act, as amended, leaves room for deviating from its own requirements. It includes a proviso stating that "noncompliance of [sic] 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 and custody over said items." However, the prosecution failed to establish the existence of any such justifiable grounds. If at all, its own claims that the buy-bust operation was carefully conceived of and carried out

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[36] *Rollo*, p. 59.

[37] *People v. Holgado*, G.R. No. 207992, August 11, 2014, 732 SCRA 554 [Per *J.* Leonen, Third Division].

make its position even more dubious. These claims are all the more reason to expect that Section 21(1) shall be complied with meticulously. Again, our observations in *Holgado* are on point:

> It is true that Section 21(1), as amended, now includes a proviso to the effect that "noncompliance of [sic] 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 and custody over said items." However, the prosecution has not shown that when the buy-bust operation was allegedly conducted on January 17, 2007 and the sachet was supposedly seized and marked, there were "justifiable grounds" for dispensing with compliance with Section 21. Rather, it merely insisted on its self-serving assertion that the integrity of the seized sachet has nevertheless been, supposedly, preserved. The omission became more glaring considering that the prosecution asserted that the events of January 17, 2007 entailed a carefully planned operation, engendered by reports of drug-related activities along C. Raymundo Street. This planning even led to the application for and issuance of a search warrant.

IV

As this court has also previously observed in decisions involving analogous circumstances, "[t]he miniscule amount of narcotics supposedly seized . . . amplifies the doubts on their integrity."[38] What is involved here is all but a single sachet of 1.4 grams of plant material alleged to have been marijuana.

In *People v. Dela Cruz*,[39] we noted that the seizure of seven (7) sachets supposedly containing 0.1405 gram of shabu (a quantity which, we emphasized, was "so miniscule it amount[ed] to little more than 7% of the weight of a five-centavo coin . . . or a one-centavo coin") lent itself to dubiety.

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[38] *People of the Philippines v. Garry Dela Cruz y De Guzman*, G.R. No. 205821, October 1, 2014 http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/october2014/205821.pdf. [Per *J.* Leonen, Second Division].

[39] *Id.*

In *Holgado*:

While the miniscule amount of narcotics seized is by itself not a ground for acquittal, this circumstance underscores the need for more exacting compliance with Section 21. In *Malilin v. People*, this court said that "the likelihood of tampering, loss or mistake with respect to an exhibit is greatest when the exhibit is small and is one that has physical characteristics fungible in nature and similar in form to substances familiar to people in their daily lives."

. . . .

Trial courts should meticulously consider the factual intricacies of cases involving violations of Republic Act No. 9165. All details that factor into an ostensibly uncomplicated and barefaced narrative must be scrupulously considered. Courts must employ heightened scrutiny, consistent with the requirement of proof beyond reasonable doubt, in evaluating cases involving miniscule amounts of drugs. These can be readily planted and tampered[.][40] (Citations omitted)

With the integrity of the *corpus delicti* of the crime for which petitioner was charged is cast in doubt, it follows that there is no basis for finding him guilty beyond reasonable doubt. Petitioner must be acquitted.

We echo the same words with which we ended *Holgado*:

It is lamentable that while our dockets are clogged with prosecutions under Republic Act No. 9165 involving small-time drug users and retailers, we are seriously short of prosecutions involving the proverbial "big fish." We are swamped with cases involving small fry who have been arrested for miniscule amounts. While they are certainly a bane to our society, small retailers are but low-lying fruits in an exceedingly vast network of drug cartels. Both law enforcers and prosecutors should realize that the more effective and efficient strategy is to focus resources more on the source and true leadership of these nefarious organizations. Otherwise, all these executive and judicial resources expended to attempt to convict an accused for 0.05 gram of shabu under doubtful custodial arrangements will hardly make a dent in the overall picture. It might in fact be distracting our law enforcers from their more challenging task: to uproot the causes of

[40] G.R. No. 207992, August 11, 2014, 732 SCRA 554, 576-577 [Per *J.* Leonen, Third Division].

this drug menace. We stand ready to assess cases involving greater amounts of drugs and the leadership of these cartels.[41]

WHEREFORE, premises considered, the Decision dated November 13, 2013 and Resolution dated September 18, 2014 of the Court of Appeals in CA-G.R. CR-HC No. 05391 are **REVERSED and SET ASIDE**. Petitioner Howard Lescano y Carreon is hereby **ACQUITTED** for failure of the prosecution to prove his guilt beyond reasonable doubt. He is ordered immediately **RELEASED** from detention, unless he is confined for any other lawful cause.

Let a copy of this Decision be furnished to the Director of the Bureau of Corrections, Muntinlupa City, for immediate implementation. The Director of the Bureau of Corrections is directed to report to this court, within five (5) days from receipt of this Decision, the action he has taken. Copies shall also be furnished to the Director General of Philippine National Police and the Director General of Philippine Drugs Enforcement Agency for their information.

SO ORDERED.

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

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[41] G.R. No. 207992, August 11, 2014, 732 SCRA 554, 577 [Per *J.* Leonen, Third Division].

FIRST DIVISION

[G.R. No. 216920. January 13, 2016]

GIRLIE M. QUISAY, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CRIMINAL PROCEDURE; MOTION TO QUASH; COMPLAINTS OR INFORMATIONS FILED BEFORE THE COURTS WITHOUT THE WRITTEN AUTHORITY OR APPROVAL OF THE AUTHORIZED OFFICERS RENDERS THE SAME DEFECTIVE AND SUBJECT TO QUASHAL.—** Section 4, Rule 112 of the 2000 Revised Rules on Criminal Procedure states that the filing of a complaint or information requires a prior written authority or approval of the named officers therein before a complaint or information may be filed before the courts x x x. Thus, as a general rule, complaints or informations filed before the courts without the prior written authority or approval of the x x x authorized officers renders the same defective and, therefore, subject to quashal pursuant to Section 3 (d), Rule 117 of the same Rules x x x. In this relation, *People v. Garfin* firmly instructs that the filing of an Information by an officer without the requisite authority to file the same constitutes a jurisdictional infirmity which cannot be cured by silence, waiver, acquiescence, or even by express consent. Hence, such ground may be raised at any stage of the proceedings." x x x [T]here was no showing that x x x [the *Pabatid Sakdal* or Information] was approved by either the City Prosecutor of Makati or any of the OCP-Makati's division chiefs or review prosecutors. All it contained was a Certification from ACP De La Cruz which stated, among others, that *"DAGDAG KO PANG PINATUTUNAYAN na ang paghahain ng sakdal na ito ay may nakasulat na naunang pahintulot o pagpapatibay ng Panlunsod na Taga-Usig"* — which translates to "and that the filing of the Information is with the prior authority and approval of the City Prosecutor." x x x Here, aside from the bare and self-serving Certification, there was no proof that ACP De La Cruz was authorized to file the *Pabatid Sakdal* or Information before

the RTC by himself. Records are bereft of any showing that the City Prosecutor of Makati had authorized ACP De La Cruz to do so by giving him prior written authority or by designating him as a division chief or review prosecutor of OCP-Makati. There is likewise nothing that would indicate that ACP De La Cruz sought the approval of either the City Prosecutor or any of those authorized pursuant to OCP-Makati Office Order No. 32 in filing the *Pabatid Sakdal.* x x x In view of the foregoing circumstances, the CA erred in according the *Pabatid Sakdal* the presumption of regularity in the performance of official functions solely on the basis of the Certification made by ACP De La Cruz considering the absence of any evidence on record clearly showing that ACP De La Cruz: *(a)* had any authority to file the same on his own; or *(b)* did seek the prior written approval from those authorized to do so before filing the Information before the RTC. In conclusion, the CA erred in affirming the RTC's dismissal of petitioner's motion to quash as the *Pabatid Sakdal* or Information suffers from an incurable infirmity — that the officer who filed the same before the RTC had no authority to do so. Hence, the *Pabatid Sakdal* must be quashed, resulting in the dismissal of the criminal case against petitioner.

2. **ID.; REPUBLIC ACT 10071; CITY PROSECUTOR; MAY DELEGATE HIS POWER TO HIS SUBORDINATES AS HE MAY DEEM NECESSARY IN THE INTEREST OF THE PROSECUTION SERVICE.—** The CA correctly held that based on the wordings of Section 9 of RA 10071, which gave the City Prosecutor the power to "[i]nvestigate and/or ***cause to be investigated*** all charges of crimes, misdemeanors and violations of penal laws and ordinances within their respective jurisdictions, ***and have the necessary information or complaint prepared or made and filed*** against the persons accused," he may indeed delegate his power to his subordinates as he may deem necessary in the interest of the prosecution service. The CA also correctly stressed that it is under the auspice of this provision that the City Prosecutor of Makati issued OCP-Makati Office Order No. 32, which gave division chiefs or review prosecutors "authority to approve or act on any resolution, order, issuance, other action, and any information recommended by any prosecutor for approval," without necessarily diminishing the City Prosecutor's authority to act directly in appropriate

cases. By virtue of the foregoing issuances, the City Prosecutor validly designated SACP Hirang, Deputy City Prosecutor Emmanuel D. Medina, and Senior Assistant City Prosecutor William Celestino T. Uy as review prosecutors for the OCP-Makati. In this light, the *Pasiya* or Resolution finding probable cause to indict petitioner of the crime charged, was validly made as it bore the approval of one of the designated review prosecutors for OCP-Makati, SACP Hirang, as evidenced by his signature therein.

APPEARANCES OF COUNSEL

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

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated October 10, 2014 and the Resolution[3] dated January 30, 2015 of the Court of Appeals (CA) in CA-G.R. SP No. 131968, which affirmed the denial of petitioner Girlie M. Quisay's (petitioner) Motion to Quash before the Regional Trial Court of Makati, Branch 144 (RTC).

The Facts

On December 28, 2012, the Office of the City Prosecutor of Makati City (OCP-Makati) issued a *Pasiya*[4] or Resolution finding probable cause against petitioner for violation of Section 10

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[1] *Rollo,* pp. 23-41.

[2] *Id.* at 126-134. Penned by Associate Justice Rebecca De Guia-Salvador with Associate Justices Ricardo R. Rosario and Leoncia R. Dimagiba concurring.

[3] *Id.* at 149-150.

[4] *Id.* at 69-71. Penned by Assistant City Prosecutor Estefano H. De La Cruz and approved by Senior Assistant City Prosecutor Edgardo G. Hirang.

of Republic Act No. (RA) 7610,[5] otherwise known as the "Special Protection of Children Against Abuse, Exploitation and Discrimination Act." Consequently, a *Pabatid Sakdal*[6] or Information was filed before the RTC on January 11, 2013 charging petitioner of such crime.

On April 12, 2013, petitioner moved for the quashal of the Information against her on the ground of lack of authority of the person who filed the same before the RTC. In support of her motion, petitioner pointed out that the *Pasiya* issued by the OCP-Makati was penned by Assistant City Prosecutor Estefano H. De La Cruz (ACP De La Cruz) and approved by Senior Assistant City Prosecutor Edgardo G. Hirang (SACP Hirang), while the *Pabatid Sakdal* was penned by ACP De La Cruz, without any approval from any higher authority, albeit with a Certification claiming that ACP De La Cruz has prior written authority or approval from the City Prosecutor in filing the said Information. In this regard, petitioner claimed that nothing in the aforesaid *Pasiya* and *Pabatid Sakdal* would show that ACP De La Cruz and/or SACP Hirang had prior written authority or approval from the City Prosecutor to file or approve the filing of the Information against her. As such, the Information must be quashed for being tainted with a jurisdictional defect that cannot be cured.[7]

In its Comment and Opposition,[8] the OCP-Makati countered that the review prosecutor, SACP Hirang, was authorized to approve the *Pasiya* pursuant to OCP-Makati Office Order No. 32.[9] Further, it maintained that the *Pabatid Sakdal* was filed

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[5] Entitled "AN ACT PROVIDING FOR STRONGER DETERRENCE AND SPECIAL PROTECTION AGAINST CHILD ABUSE, EXPLOITATION AND DISCRIMINATION, PROVIDING PENALTIES FOR ITS VIOLATION, AND FOR OTHER PURPOSES" (approved on June 17, 1992).

[6] *Rollo,* pp. 72-73. Signed by Assistant City Prosecutor Estefano H. De La Cruz.

[7] See Motion to Quash dated April 12, 2013; *id.* at 74-76.

[8] *Id*. at 77.

[9] Issued on July 29, 2011. *ld*. at 78.

with the prior approval of the City Prosecutor as shown in the Certification in the Information itself.[10]

The RTC Ruling

In an Order[11] dated May 8, 2013, the RTC denied petitioner's motion to quash for lack of merit. It found the Certification attached to the *Pabatid Sakdal* to have sufficiently complied with Section 4, Rule 112 of the Rules of Court which requires the prior written authority or approval by, among others, the City Prosecutor, in the filing of Informations.[12]

Petitioner moved for reconsideration,[13] which was, however, denied in an Order[14] dated July 10, 2013. Aggrieved, petitioner elevated the matter to the CA *via* a petition for *certiorari.*[15]

The CA Ruling

In a Decision[16] dated October 10, 2014, the CA affirmed the RTC ruling. It held that pursuant to Section 9 of RA 10071,[17] otherwise known as the "Prosecution Service Act of 2010," as well as OCP-Makati Office Order No. 32, the City Prosecutor of Makati authorized SACP Hirang to approve the issuance of, *inter alia,* resolutions finding probable cause and the filing of Informations before the courts. As such, SACP Hirang may, on behalf of the City Prosecutor, approve the *Pasiya* which found probable cause to indict petitioner of violation of Section 10 of RA 7610.[18]

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[10] *Id*. at 77.

[11] *Id*. at 79. Penned by Presiding Judge Liza Marie R. Picardal-Tecson.

[12] *Id*.

[13] See motion for reconsideration dated May 20, 2013; *id.* at 80-81.

[14] *Id*. at 82.

[15] *Id*. at 47-65.

[16] *Id*. at 126-134.

[17] Entitled "AN ACT STRENGTHENING AND RATIONALIZING THE NATIONAL PROSECUTION SERVICE" (approved on April 8, 2010).

[18] *Id*. at 128-131.

Further, it held that the Certification made by ACP De La Cruz in the *Pabatid Sakdal* clearly indicated that the same was filed after the requisite preliminary investigation and with the prior written authority or approval of the City Prosecutor. In this regard, the CA opined that such Certification enjoys the presumption of regularity accorded to a public officer's performance of official functions, in the absence of convincing evidence to the contrary.[19]

Undaunted, petitioner moved for reconsideration, [20] but was denied in a Resolution[21] dated January 30, 2015; hence, this petition.

The Issue Before the Court

The core issue for the Court's resolution is whether or not the CA correctly held that the RTC did not gravely abuse its discretion in dismissing petitioner's motion to quash.

The Court's Ruling

The petition is meritorious.

Section 4, Rule 112 of the 2000 Revised Rules on Criminal Procedure states that the filing of a complaint or information requires a prior written authority or approval of the named officers therein before a complaint or information may be filed before the courts, *viz.*:

> SECTION 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

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[19] *Id.* at 132-133.

[20] See motion for reconsideration dated November 18, 2014; *id.* at 135-143.

[21] *Id.* at 149-150.

evidence submitted against him; and that he was given an opportunity to submit controverting evidence. Otherwise, he shall recommend the dismissal of the complaint.

Within five (5) days from his resolution, he shall forward the record of the case to the provincial or city prosecutor or chief state prosecutor, or to the Ombudsman or his deputy in cases of offenses cognizable by the *Sandiganbayan* in the exercise of its original jurisdiction. They shall act on the resolution within ten (10) days from their receipt thereof and shall immediately inform the parties of such action.

No complaint or **information may be filed** or dismissed by an investigating prosecutor **without the prior written authority or approval of the** provincial or **city prosecutor** or chief state prosecutor or the Ombudsman or his deputy.

x x x x x x x x x (Emphases and underscoring supplied)

Thus, as a general rule, complaints or informations filed before the courts without the prior written authority or approval of the foregoing authorized officers renders the same defective and, therefore, subject to quashal pursuant to Section 3 (d), Rule 117 of the same Rules, to wit:

SECTION 3. *Grounds.* — The accused may move to quash the complaint or information on any of the following grounds:

xxx x x x x x x

(d) **That the officer who filed the information had no authority to do so;**

x x x x x x x x x (Emphasis and underscoring supplied)

In this relation, *People v. Garfin*[22] firmly instructs that the filing of an Information by an officer without the requisite authority to file the same constitutes a jurisdictional infirmity which cannot be cured by silence, waiver, acquiescence, or even by express consent. Hence, such ground may be raised at any stage of the proceedings.[23]

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[22] G.R. No. 153176, March 29, 2004, 426 SCRA 393.

[23] See *id.* at 407, citing *Villa v. Ibañez,* 88 Phil. 402 (1951).

In the case at bar, the CA affirmed the denial of petitioner's motion to quash on the grounds that: *(a)* the City Prosecutor of Makati may delegate its authority to approve the filing of the *Pabatid Sakdal* pursuant to Section 9 of RA 10071, as well as OCP-Makati Office Order No. 32; and *(b)* the *Pabatid Sakdal* contained a Certification stating that its filing before the RTC was with the prior written authority or approval from the City Prosecutor.

The CA correctly held that based on the wordings of Section 9 of RA 10071, which gave the City Prosecutor the power to "[i]nvestigate and/or ***cause to be investigated*** all charges of crimes, misdemeanors and violations of penal laws and ordinances within their respective jurisdictions, ***and have the necessary information or complaint prepared or made and filed*** against the persons accused,"[24] he may indeed delegate his power to his subordinates as he may deem necessary in the interest of the prosecution service. The CA also correctly stressed that it is under the auspice of this provision that the City Prosecutor of Makati issued OCP-Makati Office Order No. 32, which gave division chiefs or review prosecutors "authority to approve or act on any resolution, order, issuance, other action,

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[24] Section 9 of RA 10071 states in full:

Section 9. *Powers and Functions of the Provincial Prosecutor or City Prosecutor.* — The provincial prosecutor shall:

(a) Be the law officer of the province or city, as the case may be:

(b) Investigate and/or cause to be investigated all charges of crimes, misdemeanors and violations of penal laws and ordinances within their respective jurisdictions, and have the necessary information or complaint prepared or made and filed against the persons accused. In the conduct of such investigations he or any of his/her assistants shall receive the statements under oath or take oral evidence of witnesses, and for this purpose may by subpoena summon witnesses to appear and testify under oath before him/her, and the attendance or evidence of an absent or recalcitrant witness may be enforced by application to any trial court;

(c) Have charge of the prosecution of all crimes, misdemeanors and violations of city or municipal ordinances in the courts at the province or city and therein discharge all the duties incident to the institution of criminal actions, subject to the provisions of second paragraph of Section 5 hereof.

and any information recommended by any prosecutor for approval,"[25] without necessarily diminishing the City Prosecutor's authority to act directly in appropriate cases.[26] By virtue of the foregoing issuances, the City Prosecutor validly designated SACP Hirang, Deputy City Prosecutor Emmanuel D. Medina, and Senior Assistant City Prosecutor William Celestino T. Uy as review prosecutors for the OCP-Makati.[27]

In this light, the *Pasiya* or Resolution finding probable cause to indict petitioner of the crime charged, was validly made as it bore the approval of one of the designated review prosecutors for OCP-Makati, SACP Hirang, as evidenced by his signature therein.

Unfortunately, the same could not be said of the *Pabatid Sakdal* or Information filed before the RTC, as there was no showing that it was approved by either the City Prosecutor of Makati or any of the OCP—Makati's division chiefs or review prosecutors. All it contained was a Certification from ACP De La Cruz which stated, among others, that *"DAGDAG KO PANG PINATUTUNAYAN na ang paghahain ng sakdal na ito ay may nakasulat na naunang pahintulot o pagpapatibay ng Panlunsod na Taga-Usig"*[28] —which translates to "and that the filing of

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[25] See Section 2 of OCP-Makati Office Order No. 32 *(rollo,* p. 78), which provides:

SEC. 2. *Approval of Resolution, issuance, action, and motion and filing of information.* — Subject to Section 4 hereof, a division chief or review prosecutor shall have authority to approve or act on any resolution, order, issuance, other action, and any information recommended by any prosecutor for approval and assigned to him or her for review, unless in the assignment it is indicated that the same is subject to the approval of the City Prosecutor.

[26] See Section 4 of OCP-Makati Office Order No. 32 (*id.*), which reads:

SEC. 4. *Authority of City Prosecutor to act directly.* — Nothing in this Order shall diminish the authority of the City Prosecutor to act directly on any resolution or order disposing of complaints or cases, and motions pending in the Office of the City Prosecutor for Makati and on any pleading, motion or any other action to be filed by the Office in courts or other office.

[27] See OCP-Makati Administrative Order Nos. 10-038, 11-030, and 12-007; *id.* at 95-97.

[28] *Id.* at 73.

the Information is with the prior authority and approval of the City Prosecutor."

In the cases of *People v. Garfin,*[29] *Turingan v. Garfin,*[30] and *Tolentino v. Paqueo,*[31] the Court had already rejected similarly-worded certifications, uniformly holding that despite such certifications, the Informations were defective as it was shown that the officers filing the same in court either lacked the authority to do so or failed to show that they obtained prior written authority from any of those authorized officers enumerated in Section 4, Rule 112 of the 2000 Revised Rules of Criminal Procedure.

Here, aside from the bare and self-serving Certification, there was no proof that ACP De La Cruz was authorized to file the *Pabatid Sakdal* or Information before the RTC by himself. Records are bereft of any showing that the City Prosecutor of Makati had authorized ACP De La Cruz to do so by giving him prior written authority or by designating him as a division chief or review prosecutor of OCP-Makati. There is likewise nothing that would indicate that ACP De La Cruz sought the approval of either the City Prosecutor or any of those authorized pursuant to OCP-Makati Office Order No. 32 in filing the *Pabatid Sakdal*. Quite frankly, it is simply baffling how ACP De La Cruz was able to have the *Pasiya* approved by designated review prosecutor SACP Hirang but failed to have the *Pabatid Sakdal* approved by the same person or any other authorized officer in the OCP- Makati.

In view of the foregoing circumstances, the CA erred in according the *Pabatid Sakdal* the presumption of regularity in the performance of official functions solely on the basis of the Certification made by ACP De La Cruz considering the absence of any evidence on record clearly showing that ACP De La Cruz: *(a)* had any authority to file the same on his own; or *(b)* did seek the prior written approval from those authorized to do so before filing the Information before the RTC.

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[29] *Supra* note 22.

[30] 549 Phil. 903 (2007).

[31] 551 Phil. 355 (2007).

In conclusion, the CA erred in affirming the RTC's dismissal of petitioner's motion to quash as the *Pabatid Sakdal* or Information suffers from an incurable infirmity -— that the officer who filed the same before the RTC had no authority to do so. Hence, the *Pabatid Sakdal* must be quashed, resulting in the dismissal of the criminal case against petitioner.

As a final note, it must be stressed that "[t]he Rules of Court governs the pleading, practice, and procedure in all courts of the Philippines. For the orderly administration of justice, the provisions contained therein should be followed by all litigants, but especially by the prosecution arm of the Government. "[32]

WHEREFORE, the petition is **GRANTED.** The Decision dated October 10, 2014 and the Resolution dated January 30, 2015 of the Court of Appeals in CA-G.R. SP No. 131968 are hereby **REVERSED** and **SET ASIDE.** Accordingly, the Information against petitioner Girlie M. Quisay is **QUASHED** and the criminal case against her is **DISMISSED.**

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 199440. January 18, 2016]

MARY LOU GETURBOS TORRES, *petitioner, vs.* **CORAZON ALMA G. DE LEON, in her capacity as Secretary General of the Philippine National Red Cross and THE BOARD OF GOVERNORS of the**

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[32] *Id*. at 367.

PHILIPPINE NATIONAL RED CROSS, National Headquarters, *respondents.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE BODIES; PHILIPPINE NATIONAL RED CROSS; *SUI GENERIS* IN CHARACTER.—** As ruled by this Court in *Liban, et al. v. Gordon*, the PNRC, although not a GOCC, is *sui generis* in character, thus, requiring this Court to approach controversies involving the PNRC on a case-to-case basis. x x x In this particular case, the CA did not err in ruling that the CSC has jurisdiction over the PNRC because the issue at hand is the enforcement of labor laws and penal statutes, thus, in this particular matter, the PNRC can be treated as a GOCC, and as such, it is within the ambit of Rule I, Section 1 of the Implementing Rules of Republic Act 6713 x x x. Thus, having jurisdiction over the PNRC, the CSC had authority to modify the penalty and order the dismissal of petitioner from the service. Under the Administrative Code of 1987, as well as decisions of this Court, the CSC has appellate jurisdiction on administrative disciplinary cases involving the imposition of a penalty of suspension for more than thirty (30) days, or fine in an amount exceeding thirty (30) days salary. The CA, therefore, did not err when it agreed with the CSC that the latter had appellate jurisdiction x x x.

2. **REMEDIAL LAW; CIVIL PROCEDURE; VERIFICATION AND FORUM SHOPPING; INTENDED TO COVER AN INITIATORY PLEADING.—** Anent the issue that respondents' Comment filed before the CA lacks verification and a certificate of non-forum shopping, such is inconsequential because a comment is not an initiatory pleading but a responsive pleading. [T]he required certification against forum shopping is intended to cover an "initiatory pleading," meaning an "incipient application of a party asserting a claim for relief." A comment, required by an appellate tribunal, to a petition filed with it is not a pleading but merely an expression of the views and observations of the respondent for the purpose of giving the court sufficient information as to whether the petition is legally proper as a remedy to the acts complained of.

APPEARANCES OF COUNSEL

Joseph Arnold K. Calonzo for petitioner.
Athena M. Zosa for respondents.

D E C I S I O N

PERALTA, *J.*:

For this Court's consideration is the Petition for Review on *Certiorari,*[1] under Rule 45 of the Rules of Court, dated December 23, 2011 of petitioner Mary Lou Geturbos Torres seeking the reversal of the Decision[2] of the Court of Appeals (*CA),* dated June 30, 2011 that affirmed Resolution No. 080691 dated April 21, 2008 and Resolution No. 081845 dated September 26, 2008, both of the Civil Service Commission (*CSC*) that imposed upon her the penalty of dismissal from service as Chapter Administrator of the Philippine National Red Cross *(PNRC),* General Santos City Chapter for grave misconduct.

The facts follow.

When petitioner was the Chapter Administrator of the PNRC, General Santos City Chapter, the PNRC Internal Auditing Office conducted an audit of the funds and accounts of the PNRC, General Santos City Chapter for the period November 6, 2002 to March 14, 2006, and based on the audit report submitted to respondent Corazon Alma G. De Leon *(De Leon),* petitioner incurred a "technical shortage" in the amount of ₱4,306,574.23.

Hence, respondent De Leon in a Memorandum dated January 3, 2007, formally charged petitioner with Grave Misconduct for violating PNRC Financial Policies on Oversubscription, Remittances and Disbursement of Funds.

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[1] *Rollo,* pp. 12-95.

[2] Penned by Associate Justice Edgardo T. Lloren with Associate Justices Romulo V. Borja and Carmelita Salandanan-Manahan, concurring; *id.* at 82-92.

After the completion of the investigation of the case against petitioner, respondent issued a Memorandum dated June 12, 2007 imposing upon petitioner the penalties of one month suspension effective July 1-31, 2007 and transfer to the National Headquarters effective August 1, 2007.

Petitioner filed a motion for reconsideration, but it was denied in a Memorandum dated June 28, 2007.

Thereafter, petitioner filed a Notice of Appeal addressed to the Board of Governors of the PNRC through respondent and furnished a copy thereof to the CSC. Petitioner addressed her appeal memorandum to the CSC and sent copies thereof to the PNRC and the CSC. Respondent, in a memorandum dated August 13, 2007, denied petitioner's appeal.

The CSC, on April 21, 2008, promulgated a Resolution dismissing petitioner's appeal and imposing upon her the penalty of dismissal from service. Petitioner filed a motion for reconsideration with the CSC, but the same was denied.

Thus, petitioner filed a petition for review under Rule 43 with the CA, and in its assailed Decision dated June 30, 2011, the CA denied the said petition. Petitioner's motion for reconsideration was likewise denied on October 6, 2011.

Hence, the present petition with the following grounds relied upon:

GROUNDS FOR THE PETITION

1

THE COURT *A QUO* ERRED IN NOT FINDING THAT THE CIVIL SERVICE COMMISSION (*CSC)* HAS NO APPELLATE JURISDICTION OVER THE CASE;

2

THE COURT *A QUO* SERIOUSLY ERRED IN FAILING TO REALIZE THAT RESPONDENT DE LEON HAS NO INTENTION TO DISMISS PETITIONER FROM THE SERVICE AND IT WAS SERIOUS ERROR ON THE PART OF THE CSC TO MODIFY THE SAME OR TERMINATE PETITIONER FROM THE SERVICE WITHOUT ANY AUTHORITY;

3

GRANTING *ARGUENDO* THAT THE CSC HAS CONSTITUTIONAL CONTROL OVER THE PNRC, THE COURT *A QUO* ERRED IN NOT FINDING THAT THE CSC DID NOT ACQUIRE OR HAD LOST APPELLATE JURISDICTION OVER THE CASE; [and]

4

THE COURT *A QUO* ERRED IN NOT FINDING THAT THE COMMENT (INITIATORY PLEADING) FILED BY THE KAPUNAN LOTILLA FLORES GARCIA & CASTILLO LAW FIRM IN BEHALF OF THE RESPONDENTS, DATED MARCH 31, 2009, IS NOT VERIFIED NOR ACCOMPANIED BY A CERTIFICATION AGAINST FORUM SHOPPING.

According to petitioner, this Court has decided that PNRC is not a government-owned and controlled corporation (*GOCC*), hence, the CSC has no jurisdiction or authority to review the appeal that she herself filed. As such, she insists that the CSC committed grave abuse of discretion in modifying the decision of respondent De Leon. She further argues that the PNRC did not give due course to her notice of appeal since petitioner's counsel erroneously addressed and filed her notice of appeal to the office of respondent PNRC NHQ BOGs through the office of respondent De Leon instead of filing it directly with the CSC, and respondent De Leon denied due course to the notice of appeal, thus, according to petitioner, there was no more appeal to speak of. Petitioner also claims that she voluntarily served the sentence of one month suspension and transfer of assignment before her counsel erroneously filed the notice of appeal, hence, when the notice of appeal was filed, the decision of respondent De Leon was already final. Finally, petitioner asserts that the CA erred in not finding that the comment filed by the law firm in behalf of the respondents, dated March 31, 2009, violated the rules against forum shopping.

The petition lacks merit.

As ruled by this Court in *Liban, et al. v. Gordon,*[3] the PNRC, although not a GOCC, is *sui generis* in character, thus, requiring

[3] 654 Phil. 680, 708-709 (2011).

this Court to approach controversies involving the PNRC on a case-to-case basis. As discussed:

> A closer look at the nature of the PNRC would show that there is none like it not just in terms or structure, but also in terms or history, public service and official status accorded to it by the State and the international community. There is merit in PNRC's contention that its structure is ***sui generis.***
>
> x x x x x x x x x
>
> National Societies such as the PNRC act as auxiliaries to the public authorities of their own countries in the humanitarian field and provide a range of services including disaster relief and health and social programmes.
>
> The International Federation of Red Cross (IFRC) and Red Crescent Societies (RCS) Position Paper, submitted by the PNRC, is instructive with regard to the elements of the specific nature of the National Societies such as the PNRC, to wit:
>
> > National Societies, such as the Philippine National Red Cross and its sister Red Cross and Red Crescent Societies, have certain specificities deriving from the 1949 Geneva Convention and the Statutes of the International Red Cross and Red Crescent Movement (the Movement). They are also guided by the seven Fundamental Principles of the Red Cross and Red Crescent Movement: Humanity, Impartiality, Neutrality, Independence, Voluntary Service, Unity and Universality.
> >
> > **A National Society partakes of a *sui generis* character.** It is a protected component of the Red Cross movement under Articles 24 and 26 of the First Geneva Convention, especially in times of armed conflict. These provisions require that the staff of a National Society shall be respected and protected in all circumstances. Such protection is not ordinarily afforded by an international treaty to ordinary private entities or even non-governmental organizations (NGOs). This *sui generis* character is also emphasized by the Fourth Geneva Convention which holds that an Occupying Power cannot require any change in the personnel or structure of a National Society. National societies are therefore organizations that are directly regulated by international humanitarian law, in contrast to other ordinary private entities, including NGOs.

x x x x x x x x x

In addition, National Societies are not only officially recognized by their public authorities as voluntary aid societies, auxiliary to the public authorities in the humanitarian field, but also benefit from recognition at the International level This is considered to be an element distinguishing National Societies from other organizations (mainly NGOs) and other forms of humanitarian response.

x x x No other organization belongs to a world-wide Movement in which all Societies have equal status and share equal responsibilities and duties in helping each other. This is considered to be the essence of the Fundamental Principle of Universality.

Furthermore, the National Societies are considered to be auxiliaries to the public authorities in the humanitarian field. x x x.

The auxiliary status of [a] Red Cross Society means that it is at one and the same time a private institution and a public service organization because the very nature of its work implies cooperation with the authorities, a link with the State. In carrying out their major functions, Red Cross Societies give their humanitarian support to official bodies, in general having larger resources than the Societies, working towards comparable ends in a given sector.

x x x No other organization has a duty to be its government's humanitarian partner while remaining independent.

It is in recognition of this *sui generis* character of the PNRC that R.A. No. 95 has remained valid and effective from the time of its enactment in March 22, 1947 under the 1935 Constitution and during the effectivity of the 1973 Constitution and the 1987 Constitution.

The PNRC Charter and its amendatory laws have not been questioned or challenged on constitutional grounds, not even in this case before the Court now.

x x x x x x x x x

By requiring the PNRC to organize under the Corporation Code just like any other private corporation, the Decision of July 15, 2009 lost sight of the PNRC's special status under international

humanitarian law and as an auxiliary of the State, designated to assist it in discharging its obligations under the Geneva Conventions. Although the PNRC is called to be independent under its Fundamental Principles, it interprets such independence as inclusive of its duty to be the government's humanitarian partner. To be recognized in the International Committee, the PNRC must have an autonomous status, and carry out its humanitarian mission in a neutral and impartial manner.

However, in accordance with the Fundamental Principle of Voluntary Service of National Societies of the Movement, the PNRC must be distinguished from private and profit-making entities. It is the main characteristic of National Societies that they "are not inspired by the desire for financial gain but by individual commitment and devotion to a humanitarian purpose freely chosen or accepted as part of the service that National Societies through its volunteers and/or members render to the Community."

The PNRC, as a National Society of the International Red Cross and Red Crescent Movement, can neither "be classified as an instrumentality of the State, so as not to lose its character of neutrality" as well as its independence, nor strictly as a private corporation since it is regulated by international humanitarian law and is treated as an auxiliary of the State.

Based on the above, the *sui generis* status of the PNRC is now sufficiently established. Although it is neither a subdivision, agency, or instrumentality of the government, nor a government-owned or -controlled corporation or a subsidiary thereof, as succinctly explained in the Decision of July 15, 2009, so much so that respondent, under the Decision, was correctly allowed to hold his position as Chairman thereof concurrently while he served as a Senator, such a conclusion does not *ipso facto* imply that the PNRC is a "private corporation" within the contemplation of the provision of the Constitution, that must be organized under the Corporation Code. As correctly mentioned by Justice Roberto A. Abad, **the *sui generis* character of PNRC requires us to approach controversies involving the PNRC on a case-to-case basis.**[4]

In this particular case, the CA did not err in ruling that the CSC has jurisdiction over the PNRC because the issue at hand is the enforcement of labor laws and penal statutes, thus, in

[4] *Liban, et al. v. Gordon, supra,* at 701-709. (Emphasis ours; citations omitted)

this particular matter, the PNRC can be treated as a GOCC, and as such, it is within the ambit of Rule 1, Section I of the Implementing Rules of Republic Act 6713,[5] stating that:

Section 1. These Rules shall cover all officials and employees in the government, elective and appointive, permanent or temporary, whether in the career or non-career service, including military and police personnel, whether or not they receive compensation, regardless or amount.

Thus, having jurisdiction over the PNRC, the CSC had authority to modify the penalty and order the dismissal of petitioner from the service. Under the Administrative Code of 1987,[6] as well as decisions[7] of this Court, the CSC has appellate jurisdiction on administrative disciplinary cases involving the imposition of a penalty of suspension for more than thirty (30) days, or fine in an amount exceeding thirty (30) days salary. The CA, therefore, did not err when it agreed with the CSC that the latter had appellate jurisdiction, thus:

The Court cites with approval the disquisition of the CSC in this regard:

> The Commission is fully aware that under the Civil Service Law and rules and jurisprudence, it has appellate jurisdiction only on administrative disciplinary cases involving the imposition of a penalty of suspension for more than thirty (30) days, or

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[5] *AN ACT ESTABLISHING A CODE OF CONDUCT AND ETHICAL STANDARDS FOR PUBLIC OFFICIALS AND EMPLOYEES, TO UPHOLD THE TIME-HONORED PRINCIPLE OF PUBLIC OFFICE BEING A PUBLIC TRUST; GRANTING INCENTIVES AND REWARDS FOR EXEMPLARY SERVICE, ENUMERATING PROHIBITED ACTS AND TRANSACTIONS AND PROVIDING PENALTIES FOR VIOLATIONS THEREOF AND FOR OTHER PURPOSES.*

[6] Book V, Title I, Subtitle A, Sec. 47.

[7] *University of the Philippines v. Civil Service Commission, et al.,* G.R. No. 108740, December 1, 1993, 228 SCRA 207, 211-212, citing *Paredes v. Civil Service Commission, et al.,* G.R. No. 88177, December 4, 1990, 192 SCRA 84, and *Mendez v. Civil Service Commission,* G.R. No. 95575, December 23, 1991, 204 SCRA 965.

fine in an amount exceeding thirty (30) days' salary.

In the instant case, although the decision appealed from states that Torres was imposed the penalty of "one month" suspension from the service, it is unequivocally spelled out therein that the period of her suspension is from July 1-31, 2007." This specifically written period unmistakably indicates that Torres was actually imposed the penalty of thirty-one (31) days and not merely thirty (30) days or one (1) month.

Petitioner submits that the actual duration of the period of her suspension was only thirty (30) days since July 1, 2007 was a legal holiday, it being a Sunday. This submission, however, is flawed considering that she was imposed the penalty of "One Month Suspension effective July 1-31, 2007" or for a period of thirty-one (31) days.

Even granting that petitioner was imposed the penalty of suspension for thirty (30) days only, it should be noted that she was also imposed another penalty of "Transfer to the NHQ effective August 01, 2007." Hence, the CSC would still have appellate jurisdiction.[8]

Neither can it be considered that the CSC had lost its appellate jurisdiction because, as claimed by petitioner, she voluntarily served the sentence of one month suspension and transfer of assignment before her counsel filed the notice of appeal, hence, the decision of the PNRC was already final even before a notice of appeal was filed with the CSC. The CA was correct in finding that petitioner's appeal was properly and timely made with the CSC under the Uniform Rules on Administrative Cases in the Civil Service *(URACCS).* It ruled:

As enunciated in the cases cited by petitioner, a decision becomes final even before the lapse of the fifteen-day period to appeal when the defendant voluntarily submits to the execution of the sentence. In the present case, however, **it cannot be said that she voluntarily served her penalty in view of the fact that she appealed therefrom.** Moreover, **the service of the penalty is pursuant to Section 47 of the Uniform Rules on Administrative Cases in the Civil Service (URACCS)** which reads:

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[8] *Rollo,* pp. 86-87.

Section 47. Effect of filing. - An appeal shall not stop the decision from being executory, and in case the penalty is suspension or removal, the respondent shall be considered as having been under preventive suspension during the pendency of the appeal in the event he wins the appeal.

Petitioner's claim that the Notice of Appeal and the Appeal Memorandum were filed with the PNRC and not with the CSC deserves scant consideration. Section 43 of the URACCS pertinently provides:

Section 43. Filing of Appeals.—

x x x x x x x x x

A notice of appeal including the appeal memorandum shall be filed with the appellate authority, copy furnished the disciplining office. The latter shall submit the records of the case, which shall be systematically and chronologically arranged, paged and securely bound to prevent loss, with its comment. within fifteen (15) days, to the appellate authority.

An examination of the Notice of Appeal shows that the same was addressed to the PNRC and copy furnished the CSC. On the other hand, an examination of the Appeal Memorandum shows that the same was addressed to the CSC and copies thereof were sent to both the PNRC and the CSC. It is thus clear that a copy of the Notice of Appeal was furnished the CSC and the Appeal Memorandum was filed with it. While the rules required that the notice of appeal including the appeal memorandum shall be filed with the CSC, it is undeniable that furnishing a copy of the Notice of Appeal with the CSC and filing with it the Appeal Memorandum substantially complied with the rule. **The important thing is that the Appeal Memorandum was clearly addressed to the CSC**.[9]

Anent the issue that respondents' Comment filed before the CA lacks verification and a certificate of non-forum shopping, such is inconsequential because a comment is not an initiatory pleading but a responsive pleading. [T]he required certification against forum shopping is intended to cover an "initiatory

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[9] *Id.* at 87-89. (Emphasis ours)

pleading," meaning an "incipient application of a party asserting a claim for relief."[10] A comment, required by an appellate tribunal, to a petition filed with it is not a pleading but merely an expression of the views and observations of the respondent for the purpose of giving the court sufficient information as to whether the petition is legally proper as a remedy to the acts complained of. [11]

Based on the above disquisitions, all other issues presented by petitioner are rendered immaterial.

WHEREFORE, the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court dated December 23, 2011 of petitioner Mary Lou Geturbos Torres is **DENIED** for lack of merit. The Decision of the Court of Appeals, dated June 30, 2011, is therefore **AFFIRMED.**

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 205639. January 18, 2016]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **ANITA MIRANDA *y* BELTRAN,** *appellant.*

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[10] *Spouses Carpio v. Rural Bank of Sto. Tomas (Batangas), Inc.,* 523 Phil. 158, 163 (2006), citing *Santo Tomas University Hospital v. Surla,* 355 Phil. 804, 813-814 (1998).

[11] Federico B. Moreno, *Philippine Law Dictionary* (3rd Edition) (1988), citing *Lepanto Consolidated Mining Co. v. Commercial Union Assurance Co., Ltd.,* 555948-R, May 23, 1975, p. l69.

SYLLABUS

CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); CHAIN OF CUSTODY REQUIREMENT; PERFORMS THE FUNCTION OF ESTABLISHING THE FACT THAT THE SUBSTANCE BOUGHT DURING THE BUY-BUST OPERATION IN ILLEGAL SALE OF PROHIBITED DRUGS IS THE SAME SUBSTANCE OFFERED IN COURT AS EXHIBIT.— It is material in every prosecution for the illegal sale of a prohibited drug that the drug, which is the *corpus delicti*, be presented as evidence in court. Hence, the identity of the prohibited drug must be established without any doubt. Even more than this, what must also be established is the fact that the substance bought during the buy-bust operation is the same substance offered in court as exhibit. The chain of custody requirement performs this function in that it ensures that unnecessary doubts concerning the identity of the evidence are removed. x x x In this case, we find that the prosecution was able to establish the crucial links in the chain of custody of the seized sachet of shabu. x x x There is no doubt that the sachet of shabu, which was bought and confiscated from appellant, brought to the police station, and was submitted to the crime laboratory for a qualitative examination, was the very same shabu presented and identified in court. The police had sufficiently preserved the integrity and evidentiary value of the seized item, thus, complying with the prescribed procedure in the custody and control of the confiscated drugs.

APPEARANCES OF COUNSEL

Office of the Solicitor General for appellee.
Public Attorney's Office for appellant.

D E C I S I O N

PERALTA, *J.*:

Appellant was charged before the Regional Trial Court *(RTC)* of Calapan City, Oriental Mindoro, Branch 39, with violation of Section 5, Article II of Republic Act (R.A.) No. 9165,

otherwise known as the *Comprehensive Dangerous Drugs Act of 2002.*[1] When arraigned, she pleaded not guilty to the charge.

The prosecution's evidence established that after a surveillance conducted outside appellant's house located in Barangay Ibaba West, Calapan City, it was confirmed that she was engaged in the illegal sale of shabu. Thus, at 12:00 noon of May 6, 2005, the police formed a buy-bust team designating PO2 Mariel D. Rodil *(PO2 Rodil)* to act as the poseur-buyer, SPO1 Noel Buhay *(SPO1 Buhay)* and PO2 Ritchie Chan *(PO2 Chan)* as the arresting officers and the other team members as back up. Marked and given to PO2 Rodil were four (4) one hundred peso bills. At 2:00 p.m., the buy-bust team arrived in Barangay lbaba West and PO2 Rodil proceeded to appellant's house, while the rest of the team hid somewhere near appellant's house. PO2 Rodil saw appellant outside her house and after a brief conversation, told her that she was buying shabu worth ₱400.00. Appellant then went inside her house and upon her return; handed to PO2 Rodil one (1) transparent plastic sachet containing white crystalline substance. After PO2 Rodil gave appellant the marked money as payment, she then made a missed call to PO2 Chan's cell phone as a pre-arranged signal. SPO1 Buhay and PO2 Chan effected appellant's arrest. PO2 Chan got the marked money from appellant, while PO2 Rodil held on to the plastic sachet containing white crystalline substance. The team then informed Arnel Almazan, Barangay Councilor of Barangay Ibaba West, about the operation and they all brought appellant to the Calapan Police Station.[2]

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[1] Records, p. 1.

The Information reads:

That on or about [the] 6th day of May 2005, at around 2:00 o'clock in the afternoon, more or less, at Barangay Ibaba West, City of Calapan, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, without any legal authority nor corresponding license or prescription, did then and there, wilfully, unlawfully and feloniously sell, deliver, transport or distribute to a poseur-buyer, methamphetamine hydrochloride (shabu), a dangerous drug, weighing 0.04 gram, more or less.

CONTRARY TO LAW.

[2] TSN, March 7, 2006, pp. 6-15; TSN, March 21, 2007, pp. 7-13.

Both the inventory of the seized item and the taking of appellant's photos were made at the police station. PO2 Rodil marked the seized item and submitted the same for laboratory examination on the same day.[3] The Forensic Chemist, Police Inspector Rhea Fe DC Alviar *(PI Alviar)* confirmed the specimen submitted positive for methamphetamine hydrochloride *(shabu).*

Appellant denied selling illegal drugs saying that at 2:00 p.m. of May 6, 2005, she was at home watching TV when the police officers entered her house, frisked her and searched her house. She was later brought to the Calapan Police Station where she was asked to point to the shabu placed on top of a table; and that she was also subjected to a drug test.[4]

On March 9, 2010, the RTC rendered its Decision[5] as follows:

> ACCORDINGLY, in view of the foregoing, this Court finds the accused ANITA MIRANDA y BELTRAN GUILTY beyond reasonable doubt as principal of the crime charged in the aforequoted information and in default of any modifying circumstances attendant, hereby sentences her to suffer the penalty of LIFE IMPRISONMENT and a fine of FIVE HUNDRED THOUSAND (₱500,000.00) PESOS, with the accessories provided by law and with credit for preventive imprisonment undergone, if any.
>
> The 0.04 gram of methamphetamine hydrochloride (shabu) subject matter of this case is hereby ordered confiscated in favor of the government to be disposed of in accordance with the law.[6]

Appellant filed her appeal with the CA, which in a Decision[7] dated July 4, 2012, denied the same and affirmed the RTC decision *in toto.*

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[3] TSN, March 7, 2005, pp. 15-18.

[4] TSN, July 20, 2009, pp. 4-8.

[5] CA *rollo,* pp. 11-15-A; Per Judge Manuel C. Luna, Jr.; Docketed as Criminal Case No. CR-05-8044.

[6] *Id.* at 15-A.

[7] Penned by Associate Justice Rodil V. Zalameda, with Associate Justices Rebecca de Guia-Salvador and Normandie B. Pizarro, concurring; *rollo,* pp. 2-14.

Dissatisfied, appellant is now before us seeking a reversal of her conviction. We required the parties to submit their Supplemental Briefs if they so desire. Appellant filed a Supplemental Brief, while the OSG representing the People did not, saying that it had already exhaustively discussed the issues in its Appellee's Brief filed with the CA.

In her Supplemental Brief,[8] appellant insists that: (1) the prosecution evidence showed no indication of full compliance with Section 21(1) of Republic Act *(RA)* 9165 on the custody and disposition of confiscated, seized, and/or surrendered dangerous drugs; (2) PO2 Rodil failed to establish that the shabu presented in court was the very item seized from her at the time of her arrest; and (3) the person who received the seized item from PO2 Rodil, as well as the person who was tasked to bring the illegal drug from the laboratory to the court, were never presented in court nor their testimonies offered in evidence.

We find no merit in this appeal.

It is material in every prosecution for the illegal sale of a prohibited drug that the drug, which is the *corpus delicti,* be presented as evidence in court. Hence, the identity of the prohibited drug must be established without any doubt. Even more than this, what must also be established is the fact that the substance bought during the buy-bust operation is the same substance offered in court as exhibit.[9] The chain of custody requirement performs this function in that it ensures that unnecessary doubts concerning the identity of the evidence are removed.[10]

Chain of custody, as defined under Section 1(b) of Dangerous Drugs Board Regulation No. 1, series of 2002, which implements RA 9165, states:

Chain of Custody means the duly recorded authorized movements

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[8] *Rollo,* pp. 21-26.

[9] *People v. Brainer,* G.R. No. 188571, October 20, 2012, 683 SCRA 505, 523.

[10] *Id.,* citing *People v. Guiara,* 616 Phil. 290, 307 (2009).

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. Such record of movements and custody of seized item shall include the identity and signature of the person who held temporary custody of the seized item, the date and time when such transfer of custody were made in the course of safekeeping and use in court as evidence, and the final disposition.

In this case, we find that the prosecution was able to establish the crucial links in the chain of custody of the seized sachet of shabu. After PO2 Rodil received the plastic sachet of white crystalline substance from appellant, she was in possession of the shabu up to the time appellant was brought to the police station for investigation. With the buy-bust team and appellant at the police station were the Kill Droga Provincial President, Nicanor Ocampo, Sr. and Barangay Councilor Almazan. PO2 Rodil made an inventor[11] of the seized item which was attested by Ocampo. She also marked the seized item with her initials "MDR".[12] Appellant's photos were also taken pointing to the plastic sachet.[13]

PO2 Rodil prepared and signed the request[14] for laboratory examination and brought the letter request and the seized item to the Regional Crime Laboratory Office-4B Mimaropa, Suqui, Calapan City for qualitative analysis. The specimen was received at the laboratory at 5:00 p.m. of the same day.[15] PI Alviar examined the white crystalline substance contained in a heat-sealed plastic transparent plastic sachet with marking "MDR" on the same right and issued Chemistry Report No. D-025-05 wherein she stated that the specimen was tested positive

[11] Records, p. 33.

[12] TSN, March 7, 2006, p. 16.

[13] Records, pp. 36-38.

[14] *Id.* at 24.

[15] *Id*.

[16] *Id*. at 215.

for methamphetamine hydrochloride (shabu).[16] The staple-sealed brown envelope with markings D-025-05 RFDCA (PI Alviar's initials), which contained one rectangular transparent plastic sachet sealed with masking tape with the same marking, was offered in evidence and identified in court by PI Alviar.[17]

There is no doubt that the sachet of shabu, which was bought and confiscated from appellant, brought to the police station, and was submitted to the crime laboratory for a qualitative examination, was the very same shabu presented and identified in court. The police had sufficiently preserved the integrity and evidentiary value of the seized item, thus, complying with the prescribed procedure in the custody and control of the confiscated drugs.[18]

We find that the penalty imposed by the RTC and affirmed by the CA is proper under the law.[19]

WHEREFORE, the instant appeal is **DISMISSED.** The Decision dated July 4, 2012 of the Court of Appeals in CA-G.R. CR HC No. 04416, which affirmed *in toto* the Decision dated March 9, 2010 of the Regional Trial Court of Calapan City, Oriental Mindoro, Branch 39, finding appellant Anita Miranda y Beltran guilty of violation of Article II, Section 5 of Republic Act No. 9165, is hereby **AFFIRMED.**

SO ORDERED.

Velasco, Jr. (Chairperson), Perez, Reyes, and *Leonen,*[*] *JJ.*, concur.

[17] TSN, February 6, 2007, p. 5; Exhibit "N-N-1."

[18] *People v. Bara,* 676 Phil. 39, 45-46 (2011).

[19] **Section 5**. *Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals* - The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit, or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.

[*] Designated Additional Member in lieu of Associate Justice Francis H. Jardeleza, per Raffle dated October 1, 2014.

THIRD DIVISION

[G.R. No. 206224. January 18, 2016]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JUAN ASISLO *y* MATIO,** *accused-appellant.*

SYLLABUS

1. **CRIMINAL LAW; DANGEROUS DRUGS ACT OF 2002 (RA 9165); RULE ON THE CUSTODY OF DANGEROUS DRUGS; THE MOST IMPORTANT FACTOR IS THE PRESERVATION OF THE INTEGRITY AND EVIDENTIAL VALUE OF THE SEIZED ITEMS.—** In many cases, this Court has held that "while the chain of custody should ideally be perfect, in reality it is not, as it is almost always impossible to obtain an unbroken chain." x x x In the prosecution of a case for illegal sale of dangerous drugs, the primary consideration is to ensure that the identity and integrity of the seized drugs have been preserved from the time they were confiscated from the accused until their presentation as evidence in court. The prosecution must establish with moral certainty that the specimen submitted to the crime laboratory and found positive for dangerous drugs, and finally introduced in evidence against the accused was the same illegal drug that was confiscated from him.

2. **ID.; ID.; ILLEGAL DELIVERY AND TRANSPORTATION OF MARIJUANA; PRESENT WHEN THERE IS MOVEMENT OF THE DANGEROUS DRUG FROM ONE PLACE TO ANOTHER.—** The essential element of the charge of illegal transportation of dangerous drugs is the movement of the dangerous drug from one place to another. As defined in the case of *People v. Mariacos*, "transport" means "to carry or convey from one place to another." There is no definitive moment when an accused "transports" a prohibited drug. When the circumstances establish the purpose of an accused to transport and the fact of transportation itself, there should be no question as to the perpetration of the criminal act. The fact that there is actual conveyance suffices to support a finding that the act of transporting was committed.

3. **ID.; ID.; ID.; INTENTION TO SELL, DISTRIBUTE OR DELIVER THE PROHIBITED DRUGS STRONGLY INDICATED BY POSSESSION OF A NON-DRUG USER.—** In the case at bar, Asislo was found in possession of 110 kilograms of dried marijuana leaves contained in five sacks and a plastic bag, and that his drug test yielded negative result. The following circumstances strongly indicate that he has the intention to sell, distribute, deliver or transport the said marijuana. Records reveal that the prosecution has proven in the trial the purpose of the accused in the transportation of marijuana, and the fact of transportation itself.

4. **ID.; ID.; ID.; PENALTY FOR ILLEGAL DELIVERY AND TRANSPORTATION OF 110 KILOGRAMS OF MARIJUANA IS LIFE IMPRISONMENT AND FINE OF ONE MILLION PESOS.—** Article II, Section 5 of R.A. No. 9165 prescribes that the penalties for the illegal delivery and transportation of dangerous drugs shall be life imprisonment to death and a fine ranging from Five Hundred Thousand Pesos (₱500,000.00) to Ten Million Pesos (₱10,000,000.00). Thus, accused-appellant Asislo, for his illegal delivery and transportation of 110 kilograms of marijuana in Criminal Case No. 28307-R, is sentenced to life imprisonment, and ordered to pay a fine of One Million Pesos (₱1,000,000.00).

APPEARANCES OF COUNSEL

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

D E C I S I O N

PERALTA, *J.*:

Before Us is a Notice of Appeal assailing the Decision[1] dated June 1, 2012 of the Court of Appeals *(CA)* in CA-G.R. CR-HC No. 04081, which affirmed the Decision[2] dated July 21, 2009

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[1] Penned by Associate Justice Danton Q. Bueser, with Associate Justices Rosmari D. Carandang and Ricardo R. Rosario, concurring, *rollo,* pp. 2-15.

[2] Penned by Presiding Judge Antonio C. Reyes, CA *rollo,* pp. 34-41.

of the Regional Trial Court *(RTC),* Branch 61, Baguio City, finding the accused-appellant Juan Asislo *y* Matio guilty of illegal sale of marijuana, a dangerous drug, in violation of Section 5 of Republic Act *(R.A.)* No. 9165, otherwise known as the *Comprehensive Dangerous Drugs Act of 2002.*

On May 14, 2008, accused-appellant Asislo, Jose Astudillo, and Samuel Pal-iwen were similarly charged with the violation of Section 5 of R.A. No. 9165, to wit:

> That on or about the 13th day of May, 2008 in the City of Baguio, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, conspiring, confederating and mutually aiding one another, did then and there, willfully, unlawfully and feloniously deliver and transport NINETY-ONE (91) BRICKS and TWO (2) TUBE TYPE OF DRIED MARIJUANA LEAVES, a dangerous drug, in different sizes, thickness, and weight, weighing a total of ONE HUNDRED TEN (110) KILOGRAMS, to PDEA undercover agents, knowing fully well that said "marijuana dried leaves" are dangerous drugs, in violation of the abovementioned provision of law.[3]

During the arraignment, all of the accused entered a plea of not guilty. Thereafter, the trial on the merits ensued.

As found by the trial court, the prosecution presented the following version of the events leading to the arrest of all the accused:

Sometime in the second week of April 2008, the Philippine Drug Enforcement Agency-Cordillera Administrative Region *(PDEA-CAR)* Office received intelligence information from PDEA-La Union about the proliferation and distribution of marijuana in La Union, and the same revealed that the accused Juan Asislo had delivered a huge volume of marijuana in Baguio City to an unidentified buyer sometime in the first week of April 2008. Regional Director PCI Edgar S. Apalla directed IAl Ferdinand Natividad to coordinate and communicate with PDEA-La Union to build a case against Asislo.[4]

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[3] *Id*. at 34.

[4] *Id.*

In the third week of April 2008, the confidential informant, "Jojo", arrived at the Office of PDEA-CAR in Baguio City and introduced himself. Natividad instructed him to continue dealing with Asislo, and to inform them of any developments regarding Asislo's alleged illicit activities. On April 28, 2008, Jojo reported that he met Asislo along with his unidentified companions. Asislo asked him to look for a buyer of the 300 kilos of marijuana in exchange for a commission. Natividad ordered Jojo to inform Asislo that a buyer from Manila was interested to purchase 200 kilos of marijuana.[5]

On May 2, 2008, Jojo reported that Asislo disclosed that the prevailing price of marijuana was ₱1,500.00 per kilo. Per Natividad's instruction, Jojo apprised Asislo that the buyer from Manila who was willing to buy 200 kilos of marijuana will be in Baguio for a vacation. In a phone call, Asislo insisted in talking with the buyer. Natividad talked with him through the phone and reiterated to him his interest to buy 200 kilos of dried marijuana leaves. However, Asislo notified him that he only had around 100 kilos of marijuana leaves. Natividad settled with Asislo, and asked the latter to wait for his call for the delivery of the marijuana.[6]

On May 8, 2008, Asislo called Natividad that they were prepared to deliver about 110 kilos of marijuana on May 13, 2008. Upon learning the negotiations of Natividad with Asislo, PCI Apalla formed the team for the entrapment operation composing of Natividad as the poseur-buyer, SPO4 Romeo Abordo as the team leader, and SPO2 Cabily Agbayani and SPO1 Emerson Lingbawan as the members of the back-up team and arresting officers.[7]

In the evening of May 12, 2008, they agreed to have their transaction within the vicinity of Dontogan, Green Valley, Baguio City, near a certain "car wash" area between 7 o'clock and 8 o'clock in the morning on May 13, 2008.[8]

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[5] *Id.* at 35.

[6] *Id.*

[7] *Id.*

[8] *Id.*

Around 5 o'clock in the morning on May 13, 2008, the entrapment and arresting team proceeded to the area. Asislo related to Natividad that he was with other four individuals on board a dark blue Kia Besta van with plate number XFC 682. At 7:30 in the morning, the Besta van stopped at about 30 meters from the agreed place of transaction. Two men alighted from the vehicle and approached Natividad. One of them was Jojo, who then introduced the other as Asislo. Natividad asked Asislo to see the marijuana before he pays. Thereafter, Asislo ordered the van's driver, Jose Astudillo, to open the compartment. Natividad saw five sacks and a plastic bag. Asislo asked his other companion, Samuel Pal-iwen, to help him pull out one sack and opened the same in front of Natividad. The sack was loaded with bricks of marijuana.[9]

Natividad removed his ball cap, their pre-arranged signal, and held Asislo in a tight embrace. He removed his service firearm and introduced himself as a PDEA agent. The back-up team rushed to the scene and arrested the other accused. SPO2 Agbayani recited to Asislo and his companions their constitutional rights. SPO1 Lingbawan searched the van, and found four sacks containing bricks of marijuana and a plastic bag with two pieces of tube type of marijuana leaves inside. SPO4 Abordo seized Asislo's cell phone. The van used in transporting the marijuana was impounded at the PDEA-CAR Office.[10]

Because of the volume of the confiscated dangerous drugs, the team brought the sacks of marijuana to the PDEA-CAR Field Office for proper markings and documentations. Thereafter, the drugs were turned over to the Philippine National Police *(PNP)* Crime Laboratory Office at Camp Bado Dangwa, La Trinidad, Benguet for chemical analysis. Asislo and his two companions were subjected to urine examination, which

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[9] *Id.* at 35-36.

[10] *Id.* at 36.

[11] *Id.*

yielded negative results, at the PNP Laboratory Office.[11]

On the other hand, the version of the defense is as follows:

At about 4 o'clock in the afternoon on May 11, 2008, Astudillo, after a day's work of driving a passenger jeepney, was watching a billiards game inside a building at the jeepney station at Sasaba, Santol, La Union. The store where the other accused, Asislo and Pal-iwen, worked as broom makers was also in the same building.[12]

Around that time, Astudillo saw Jojo conversing with Asislo. While busy making brooms, Pal-iwen was nearby and within hearing distance. Astudillo heard Jojo inquiring about anyone who leases any closed vehicle for transportation of brooms and bananas. Asislo suggested one Jimmy Tad-o. He accompanied Asislo and Jojo when they proceeded to Tad-o's place. After reaching an agreement, Tad-o asked Astudillo to travel with Asislo and to return the vehicle at Sasaba.[13]

Around 1 o'clock in the morning on May 13, 2008, Pal-iwen saw Jojo and some companions load brooms and sacks in the van. With Pal-iwen and Asislo, Jojo drove the van bound for Baguio City. Jojo unloaded the brooms and bananas at the San Fernando City Market. Then, Astudillo showed up after Asislo called him on the cell phone.

Astudillo then drove the van to Dontogan, Green Valley, Baguio City. Upon arrival, Asislo and Jojo alighted from the van and proceeded to the construction site of Asislo' s uncle for coffee. The PDEA agents suddenly arrived and arrested them. They were brought to the PDEA-CAR Office at the Melvin Jones, Burnham Park, Baguio City where they were accused of delivering marijuana.

On July 21, 2009, the Baguio City RTC convicted Asislo of the crime of illegal sale, while it acquitted Astudillo and Pal-iwen due to insufficiency of evidence against them and the

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[12] *Id.*

[13] *Id.*

failure of prosecution to establish conspiracy. In convicting accused-appellant Asislo, the RTC ratiocinated that the sale of illegal drugs, like any other sale, is perfected upon the meeting of the minds between the vendor and the vendee with respect to the subject matter and as regards the cause or consideration.[14] The dispositive portion of the decision reads:

WHEREFORE, this Court renders judgment finding the accused Juan Asislo GUILTY beyond reasonable doubt and he is sentenced to suffer Life Imprisonment and to pay a fine of ₱5,000,000.00.

Accused Jose Astudillo and Samuel Pal-iwen are hereby ACQUITTED for insufficiency of evidence and they are ordered RELEASED from custody unless being held for some other lawful reasons which require their continued detention.

SO ORDERED.[15]

Accused-appellant Asislo, through the Public Attorney's Office, appealed before the CA arguing that the RTC erred in convicting him due to the lapses in the chain of custody of the seized dangerous drugs, and the failure of the prosecution to establish his guilt beyond reasonable doubt. The CA, in affirming the decision of the RTC, held that the presentation of the buy-bust money is not indispensable to the prosecution of a drug case.[16] However, the CA reduced the fine to ₱1,000,000.00, the *fallo* of the decision reads:

WHEREFORE, in view of the foregoing, the Decision dated July 21, 2009 rendered by the Regional Trial Court of Baguio City, Branch 61, is, except for the amount of fine imposed which is REDUCED to One Million (₱1,000,000.00) Pesos, hereby AFFIRMED.

SO ORDERED.[17]

Aggrieved, accused-appellant Asislo now seeks his acquittal before this Court lamenting that the prosecution failed to establish

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[14] *Id.* at 37.

[15] *Id.* at 41.

[16] *Rollo,* p. 9.

[17] *Id.* at 14-15.

an unbroken link in the chain of custody. He avers that the PDEA agents did not comply with the procedures mandated by Section 21 of R.A. No. 9165, since there was a lapse of time from the seizure of the illicit drugs to the marking and inventory. In his Supplemental Brief, Asislo maintains that the fact that it was only Natividad who marked the confiscated drugs casts a shadow of doubt to the authenticity of the evidence presented before the court.

The appeal lacks merit.

Section 21 (1), Article II of R.A. No. 9165 provides:

> 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 drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof;

Correlatively, Section 21(a) of the Implementing Rules and Regulations *(IRR)* of R.A. No. 9165 provides:

> (a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/ or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof; Provided, that the physical inventory and photograph shall be conducted at the place where the search warrant

is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; **Provided, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items [.]**[18]

In many cases, this Court has held that "while the chain of custody should ideally be perfect, in reality it is not, as it is almost always impossible to obtain an unbroken chain."[19] Since the law itself provided exceptions to its requirements, the non-compliance with Section 21 of the IRR is not fatal and does not make the items seized inadmissible.[20] The most important factor is "the preservation of the integrity and the evidential value of the seized items as the same would be utilized in the determination of the guilt or innocence of the accused."[21]

In the prosecution of a case for illegal sale of dangerous drugs, the primary consideration is to ensure that the identity and integrity of the seized drugs have been preserved from the time they were confiscated from the accused until their presentation as evidence in court.[22] The prosecution must establish with moral certainty that the specimen submitted to the crime laboratory and found positive for dangerous drugs, and finally introduced in evidence against the accused was the same illegal drug that was confiscated from him.[23]

The records of the case show that the authorities were able to preserve the integrity of the seized marijuana, and establish in the trial that the links in the chain of custody of the same

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[18] Emphasis supplied.

[19] *People v. Amy Dasigan y Oliva,* G.R. No. 206229, February 4, 2015.

[20] *People v. Efren Basal Cayas,* G.R. No. 215714, August 12, 2015.

[21] *Id.*

[22] *Id.*

[23] *Id.*

were not compromised. While it is true that the drugs were not marked immediately after its seizure and not in the presence of the accused, the prosecution was able to prove, however, that the bricks of marijuana contained in five sacks and a plastic bag confiscated during the buy-bust operation were the same items presented and identified before the court.

After the seizure of the marijuana and the arrest of the accused, IA1 Natividad called PCI Apalla through mobile phone and reported the operation. Due to the volume of the confiscated drugs, PCI Apalla ordered IA1 Natividad and his companions to bring the sacks of marijuana to their field office for proper markings and documentations. Thereafter, IA1 Natividad, SPO2 Agbayani and SPO1 Lingbawan rode the Besta van with Asislo, Pal-iwen and Astudillo. IA1 Natividad stayed at the back of the van beside the confiscated drugs. Upon reaching the office, they placed the three accused in jail and then unloaded the five sacks and the plastic bag. Then, IA1 Natividad marked each of the sacks and on top of each brick with "Exhibit A," his initials "FTN," his signature and the date "5-13-08." After the marking, the sacks were stored in their stockroom, which Natividad locked. He then prepared the documents such as the inventory of the items and the request for physical examination. In the afternoon of the same day, the authorities conducted an inventory of the seized drugs and photographed the same while witnessed by the assistant city prosecutor, an elected official and a member of the media. PCI Apalla requested for the physical examination of the three accused and for the laboratory examination of the drugs. The confiscated items were then turned over to the evidence custodian who then brought the same, together with the three accused, to Camp Dangwa for examination. The PNP Regional Crime Laboratory received the seized items at 4:30 in the afternoon of the same day.[24] After the examination, the submitted items tested positive for the presence of marijuana,

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[24] Records, pp. 53A-53F.

[25] *Id*.

[26] *Id.* at 149.

as reflected in the Chemistry Report No. D-023-2008 prepared by Forensic Chemical Officer Edward Gayados.[25] The items were then submitted to the RTC for safekeeping.[26] Subsequently, IAl Natividad identified in court the marked items as the one he seized from Asislo during the operation.

Although it was not specified who received the items in the laboratory in the testimony of the prosecution witnesses, the fact that the minute details of the seized items described in the chemistry report coincide with the specifications in the inventory prepared by the PDEA leaves no doubt that the bricks of marijuana received by the laboratory for examination were the same drugs seized by the PDEA agents from Asislo.

This Court, therefore, finds that the court *a quo* and the CA aptly held that the requirements under R.A. No. 9165 had been sufficiently complied with. The prosecution successfully established the unbroken chain of custody over the recovered marijuana, from the time the apprehending officers seized the drugs, to the time it was brought to the PDEA Office, then to the crime laboratory for testing, until the time the same was offered in evidence before the court.

The RTC, which the CA affirmed, convicted accused-appellant with the crime of illegal sale of dangerous drugs. Article II, Section 5 of R.A. No. 9165 provides:

SECTION 5. *Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals.* — The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten million pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall **sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport** any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.[27]

The acts, such as deliver and sell, enumerated in the foregoing

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[27] Emphasis supplied.

provision have been explicitly defined under Article I, Section 3 of the same statute, to wit:

> Section 3. *Definitions.*— As used in this Act, the following terms shall mean:
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> x x x x x x x x x
>
> (k) *Deliver.* Any act of knowingly passing a dangerous drug to another, personally or otherwise, and by any means, with or without consideration.
>
> x x x x x x x x x
>
> (ii) *Sell.* - Any act of giving away any dangerous drug and/or controlled precursor and essential chemical whether for money or any other consideration.
>
> x x x x x x x x x

A review of the allegations in the Information in Criminal Case No. 28307-R readily reveals that accused-appellant Asislo is charged with "delivery and transport" of marijuana although the Information charges the accused with violation of Section 5, R.A. No. 9165.

Accused-appellant Asislo could still be convicted for violation of Article II, Section 5 of R.A. No. 9165, because the evidence on record clearly establish "delivery and transport" although prosecution witness IA1 Natividad admitted, during the direct[28] and cross[29] examination, the lack of consideration/payment for the 110 kilograms of marijuana:

PROS. ESPINOSA:
Q: Mr. witness, you said that ₱1,500.00 per kilo?
A: Yes, ma'am.

Q: Did you prepare for marked money for the buying of [this] marijuana?
A: Actually we do not have that big amount of money, as an

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[28] TSN, September 9, 2008, pp. 27-28.

[29] TSN, September 10, 2008, pp. 20-21; 27.

arrangement before our dispatch for that operation I will make a trick with the suspect Juan that I will first see the items before I will [hand] to him the money, ma'am.

Q: So you didn't prepare for any ₱l,500.00 money or fake money?
A: No, ma'am.

x x x x x x x x x

Q: You mean you talk about the ₱150,000.00 only 3 hours before the operation?
A: Yes, ma'am.

Q: You did not [think] of that even the first meeting with the suspect of preparing the ₱1,500.00?
A: No, ma'am because this is only delivery.

ATTY. AWISAN:
Q: So this was a buy-bust operation, is that correct?
A: Actually, Sir.

Q: Did you prepare any buy-bust money for that operation?
A: Actually this is not purely a buy-bust operation[,] this is a mere delivery of item, Sir.

Q: And when you say delivery[,] how would you differentiate that from a buy-bust operation?
A: In a buy-bust operation[,] there is an exchange for [monetary] consideration between poseur-buyer and the suspect[,] whereas in delivery there is no monetary consideration but the items... the item was shown to the poseur-buyer there is no need to show him the supposed money, Sir.

x x x x x x x x x

Q: But you mentioned earlier that the agreement between you and Juan was for the sale of marijuana at the price of ₱1,500.00 per kilo?
A: If they could not deliver the item if there is no monetary consideration, Sir.

Q: So actually there is a buy-bust operation?
A: Yes, Sir.

Q: But you did not prepare for the buy-bust operation?
A: Yes, Sir.

Q: And you proceeded to the place without any buy-bust money?
A: Yes, Sir.

x x x x x x x x x

Q: During that short span of time you were only about to talk a little?
A: Yes, Sir.

Q: And Juan asked for the money?
A: No[,] I was the one who asked the item before I will give the money to him, Sir.

Q: So Juan did not ask from you the payment of any item during the conversation?
A: Yes because there was already an arrangement, Sir.

x x x x x x x x x

In the crime of illegal sale of dangerous drugs, the delivery of the illicit drug to the poseur-buyer and the receipt by the seller of the marked money consummate the illegal transaction.[30] In the case at bar, the sale was not consummated since there was no receipt of the consideration. IA1 Natividad arrested Asislo immediately after the latter opened one of the sacks loaded with bricks of marijuana. It was also admitted that the agents did not prepare marked money for the buy-bust operation.

Nevertheless, Asislo can still be liable for violation of Article II, Section 5 of R.A. No. 9165 for illegal delivery and transportation of marijuana.

The essential element of the charge of illegal transportation of dangerous drugs is the movement of the dangerous drug from one place to another.[31] As defined in the case of *People v.*

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[30] *People v. Efren Basal Cayas, supra* note 20.

[31] *People v. Laba,* G.R. No. 199938, January 28, 2013, 689 SCRA 367, 374.

[32] 635 Phil. 315 (2010).

[33] *People v. Mariacos, supra,* at 333.

Mariacos,[32] "transport" means "to carry or convey from one place to another."[33]

There is no definitive moment when an accused "transports" a prohibited drug. When the circumstances establish the purpose of an accused to transport and the fact of transportation itself, there should be no question as to the perpetration of the criminal act.[34] The fact that there is actual conveyance suffices to support a finding that the act of transporting was committed.[35]

In the instant case, records established beyond any doubt that accused-appellant Asislo was found in possession of the sacks containing marijuana, and was arrested while in the act of delivering or transporting such illegal drugs to Natividad, the poseur-buyer, at the agreed place in Dontogan, Green Valley, Baguio City, near a certain "car wash."

It is undisputed that Asislo, who was a farmer and a broom maker at the time of his arrest,[36] had no authority under the law to deliver the marijuana, a dangerous drug. The testimony of IA1 Natividad provided the following details in his direct testimony:

PROS. ESPINOSA

Q: Before contacting the delivery of marijuana bricks, Mr. witness how did you come about with the delivery of the marijuana?
A: Sometime on the second week of April 2008[,] our office received an intelligence information relayed to us by our intelligence counterpart in La Union, ma'am.

x x x x x x x x x

Q: So what happened after Apalla received these information, Mr. witness?
A: PCI Apalla designated me as the case officer and instructed me also that I keep in touch with our counterpart in La Union for purposes of strengthening the case against the suspect personalities,

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[34] *Id.*

[35] *Id.* at 333-334.

[36] TSN, February 23, 2009, p. 5.

ma'am.

x x x x x x x x x

Q: So what happened after that, Mr. witness when Apalla tell you that you will now coordinate with the intelligence officer counterpart in La Union?
A: I coordinated with our counterpart in La Union between 2nd and 3rd week of April, I personally contacted PDEA Region 1 regarding the illicit activity of the suspects and one of the leader of the group is with an alias Juan from Sasaba, Santol, La Union and he has also an unidentified cohorts, ma'am.

Q: This Juan you are telling me is Juan Asislo, am I right, Mr. witness?
A: Yes, ma'am.

x x x x x x x x x

Q: When the CI introduced himself to you, did he not mention about the activities of the suspects, who are the suspects, he did not made mention of that?
A: He did mention, ma'am.

Q: So what did he tell you about the activities of these persons?
A: That they were involved in the proliferation and distribution of marijuana in La Union and other provinces like Benguet and Baguio, ma'am.

x x x x x x x x x

Q: What are these drug activities then?
A: They deliver undetermined volume of marijuana to the unidentified buyers of marijuana in La Union and nearby provinces, ma'am.

x x x x x x x x x

Q: So what did they talk about?
A: The CI relayed to the suspect that his prospective buyer from Manila is willing to buy 200 kilos of marijuana in that agreed price, ma'am.

Q: So what was the response of the suspect?
A: During the conversation, the suspect advise[d] the CI that he wants also to talk with the prospective buyer, ma'am.

x x x x x x x x x

Q: So what happened after that?
A: So as per request by suspect Juan the CI gave to me his mobile

phone and I talked with suspect Juan regarding the transaction, ma'am.

x x x x x x x x x

Q: You talked immediately about the transaction, you did not even introduce yourself to the suspect, Mr. witness?
A: I introduced myself as the buyer of marijuana, ma'am.

Q: How did you introduce yourself to him, did you use any name?
A: No, ma'am I just told him that I am the buyer of Jojo, the name of the Cl.

Q: So what did you tell the suspect, that you are interested to buy 200 kilos of marijuana?
A: Yes, ma'am.

Q: What was the reaction of the suspect?
A: He agreed with the transaction but I advise him that I would agree with the prevailing price provided that they should deliver the items in Baguio City because I was still here in Baguio for vacation for 2 weeks, I pretended that I was here in Baguio City for 2 weeks vacation, ma'am.

Q: So what was the reaction of the suspect when you told him that the marijuana should be delivered here in Baguio City?
A: He agreed, ma'am but he insisted that the 200 kilos I ordered is not available because other stocks have been ordered by the other buyers.

x x x x x x x x x

Q: While the Besta van was already approaching, what happened again?
A: I notice that they stopped in front of the car wash and there were 2 men who alighted from the Besta van, ma'am.

Q: And who were these 2 persons?
A: I recognized that the one of the persons who alighted from that Besta van is our CI Jojo so I walk towards and closer with them, ma'am.

Q: Who was with Jojo that time?
A: Juan Asislo, ma'am.

Q: How do you know that fact?
A: Jojo or the CI introduced me to Juan Asislo, ma'am.

Q: How were you introduced?
A: That I am the buyer of their stuff, ma'am.

x x x x x x x x x

Q: When this Juan Asislo told you that he was really Asislo, what happened after that?
A: I talked with Asislo about the transaction and I asked him the whereabouts of the stuff that I ordered from them, ma'am.

Q: So what was the response of Asislo?
A: He told me that the [stuff] were placed at the back of the Besta van, ma'am.

Q: When Asislo told you that the [stuff] were at the back of the van, what was your response?
A: I told him that before I give the money I should see first the stuff, ma'am.

Q: What was the reaction of Asislo?
A: Asislo agreed to my proposal, ma'am.

Q: So what did you do?
A: Juan advise his driver to alight from the van and he will open the back of the Besta van, ma'am.

xxx x x x x x x

Q: Who pulled one of the sacks?
A: His companion, Samuel Pal-iwen, Ma'am.

Q: He pulled out one of the white sacks with NFA markings, is it not?
A: Yes, Ma'am.

Q: When he pulled out the white sack having the NFA markings what happened after that?
A: When he pulled out one of the sacks with NFA markings from the Besta Van I requested suspect Juan to open it and when he opened the sack I saw personally the tens of bricks of marijuana dried in the form of bricks so upon seeing the contents of that sack subsequently I removed my ball cap from my head as the pre-arranged signal that the transaction was consummated, Ma'am.

x x x x x x x x x[37]

It was settled in *People v. Hoble*[38] that "possession of

[37] TSN, February 9, 2008, pp. 6-8; 14-15; 21-23; 50-52; TSN, February 10, 2008, pp. 4-5.

[38] G.R. No. 96091, July 22, 1992, 211 SCRA 675, 682.

prohibited drugs, coupled with the fact that the possessor is not a user thereof, cannot indicate anything else but the intention to sell, distribute or deliver the prohibited stuff." In an earlier case, the Court considered three plastic bags of marijuana leaves and seeds as considerable quantity of drugs, such that possession of similar amount of drugs and the fact that the accused is not a user of prohibited drugs clearly demonstrates his intent to sell, distribute and deliver the same.[39]

In the case at bar, Asislo was found in possession of 110 kilograms of dried marijuana leaves contained in five sacks and a plastic bag, and that his drug test yielded negative result. The following circumstances strongly indicate that he has the intention to sell, distribute, deliver or transport the said marijuana.

Records reveal that the prosecution has proven in the trial the purpose of the accused in the transportation of marijuana, and the fact of transportation itself. Particularly, the following circumstances establish that the crime of illegal transportation of dangerous drugs has been committed:

a. There was a prior unlawful arrangement between Natividad and the accused-appellant Asislo that the former will buy marijuana from the latter;

b. There is a designated place of delivery, which is Dontogan, Green Valley, Baguio City, near a certain "car wash," and a specified time frame, on May 13, 2008 between 7 o'clock and 8 o'clock in the morning, and limited to a particular person whom Natividad himself has transacted with through the cell phone, such that whoever would appear thereat would be it.

c. Asislo leased the van for ₱2,000.00 from Tad-o for transportation from Santol, La Union to Baguio City.[40]

d. Asislo was apprehended on the street, immediately after he opened the sack loaded with blocks of marijuana, and while he was in the act of delivering the drugs to Natividad.

e. The agents found a substantial volume of marijuana

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[39] *People v. Claudio,* 243 Phil. 795, 803. (Emphasis supplied).

[40] Records, p. 58.

loaded at the back of the leased vehicle.

Asislo' s denial deserves scant consideration. His claim that it was the informant Jojo who leased the van to transport bananas and brooms was belied by the owner himself in his motion to recover the vehicle wherein he alleged that it was Asislo who hired the van from him. Furthermore, when Natividad approached Asislo, was introduced by Jojo as the buyer of marijuana, and asked where his order was, Asislo immediately understood who Natividad was and what he meant about the order.

Based on the charges against Asislo and the evidence presented by the prosecution, accused-appellant Asislo is guilty beyond reasonable doubt of **illegal delivery and transportation of marijuana** under Article II, Section 5 of R.A. No. 9165.

As to the penalty, Article II, Section 5 of R.A. No. 9165 prescribes that the penalties for the illegal delivery and transportation of dangerous drugs shall be life imprisonment to death and a fine ranging from Five Hundred Thousand Pesos (₱500,000.00) to Ten Million Pesos (₱10,000,000.00). Thus, accused-appellant Asislo, for his illegal delivery and transportation of 110 kilograms of marijuana in Criminal Case No. 28307-R, is sentenced to life imprisonment, and ordered to pay a fine of One Million Pesos (₱1,000,000.00).

WHEREFORE, the appealed Decision in CA-G.R. CR-HC No. 04081 is hereby **AFFIRMED.** The accused-appellant Juan Asislo y Matio, in Criminal Case No. 28307-R, is found **GUILTY** beyond reasonable doubt of illegal delivery and transportation of 110 kilograms of marijuana penalized under Article II, Section 5 of R.A. No. 9165, and is sentenced to **LIFE IMPRISONMENT,** and **ORDERED** to **PAY** a **FINE** of One Million Pesos (₱1,000,000.00).

SO ORDERED.

Velasco, Jr. (Chairperson), Brion,[*] *Perez,* and *Reyes, JJ.,* concur.

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[*] Designated Additional Member in lieu of Associate Justice Francis H. Jardeleza, per Raffle dated October l, 2014.

THIRD DIVISION

[G.R. No. 206291. January 18, 2016]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **ZALDY SALAHUDDIN and Three (3) other UNIDENTIFIED COMPANIONS,** *appellants.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS OF TRIAL COURT AFFIRMED BY THE COURT OF APPEALS, RESPECTED.—** It is well settled that the trial court's evaluation of the credibility of witnesses is entitled to great respect because it is more competent to so conclude, having had the opportunity to observe the witnesses' demeanor and deportment on the stand, and the manner in which they gave their testimonies. The trial judge, therefore, can better determine if such witnesses were telling the truth, being in the ideal position to weigh conflicting testimonies. Further, factual findings of the trial court as regards its assessment of the witnesses' credibility are entitled to great weight and respect by the Court, particularly when the Court of Appeals affirms the said findings, and will not be disturbed absent any showing that the trial court overlooked certain facts and circumstances which could substantially affect the outcome of the case.

2. **CRIMINAL LAW; MURDER; QUALIFYING CIRCUMSTANCES; TREACHERY; CONDITIONS; PRESENT IN CASE AT BAR AS THE VICTIM WAS SHOT WITH A DEADLY WEAPON SUDDENLY AND WITHOUT ANY WARNING.—** Murder is defined under Article 248 of the Revised Penal Code as the unlawful killing of a person, which is not parricide or infanticide, attended by circumstances such as treachery or evident premeditation. The essence of treachery is the sudden attack by the aggressor without the slightest provocation on the part of the victim, depriving the latter of any real chance to defend himself, thereby ensuring the commission of the crime without risk to the aggressor. Two conditions must concur for treachery to exist, namely, (a) the

employment of means of execution gave the person attacked no opportunity to defend himself or to retaliate; and (b) the means or method of execution was deliberately and consciously adopted. x x x In this case, the trial court correctly ruled that the fatal shooting of Atty. Segundo was attended by treachery because appellant shot the said victim suddenly and without any warning with a deadly weapon.

3. **ID.; ID.; ID.; EVIDENT PREMEDITATION; ELEMENTS.—** The essence of evident premeditation that the execution of the criminal act must be preceded by cool thought and reflection upon the resolution to carry out the criminal intent during a space of time sufficient to arrive at a calm judgment. For it to be appreciated, the following must be proven beyond reasonable doubt: (1) the time when the accused determined to commit the crime; (2) an act manifestly indicating that the accused clung to his determination; and (3) sufficient lapse of time between such determination and execution to allow him to reflect upon the circumstances of his act.

4. **REMEDIAL LAW; EVIDENCE; DENIAL AND *ALIBI*; WEAK DEFENSE IN THE ABSENCE OF SUFFICIENT SUPPORTING EVIDENCE.—** In seeking his acquittal, appellant raises the defenses of denial and *alibi*. However, such defenses, if not substantiated by clear and convincing evidence, are negative and self-serving evidence undeserving of weight in law. They are considered with suspicion and always received with caution, not only because they are inherently weak and unreliable but also because they are easily fabricated and concocted. Denial cannot prevail over the positive testimony of prosecution witnesses who were not shown to have any ill-motive to testify against the appellants. x x x In order for the defense of *alibi* to prosper, it is also not enough to prove that the accused was somewhere else when the offense was committed, but it must likewise be shown that he was so far away that it was not possible for him to have been physically present at the place of the crime or its immediate vicinity at the time of its commission.

5. **CRIMINAL LAW; AGGRAVATING CIRCUMSTANCES; USE OF UNLICENSED FIREARM; INCLUDES THE UNAUTHORIZED USE OF LICENSED FIREARM IN THE COMMISSION OF THE CRIME.—** [T]he term unlicensed

firearm includes the unauthorized use of licensed firearm in the commission of the crime, under Section 5 of Republic Act (*RA*) No. 8294. Assuming *arguendo* that the actual firearm used by appellant was licensed, he still failed to prove that he was so authorized to use it by the duly licensed owner.

6. **ID.; ID.; USE OF MOTOR VEHICLE; PRESENT WHEN IT IS USED TO COMMIT THE CRIME OR TO FACILITATE ESCAPE.—** [T]he use of a motor vehicle is aggravating when it is used either to commit the crime or to facilitate escape, but not when the use thereof was merely incidental and was not purposely sought to facilitate the commission of the offense or to render the escape of the offender easier and his apprehension difficult.

7. **ID.; MURDER; PENALTY WHEN THERE ARE TWO AGGRAVATING CIRCUMSTANCES IS *RECLUSION PERPETUA* WITHOUT ELIGIBILITY FOR PAROLE.—** The penalty for murder under Article 248 of the Revised Penal Code is *reclusion perpetua* to death. Article 63 of the same Code provides that, in all cases in which the law prescribes a penalty composed of two indivisible penalties, the greater penalty shall be applied when the commission of the deed is attended by one aggravating circumstance. [As the] aggravating circumstances of use of unlicensed firearm and use of motor vehicle in the commission thereof were alleged in the Information and proven during the trial, the imposition of the death penalty was warranted. However, in view of the enactment of RA No. 9346, the death penalty should be reduced to *reclusion perpetua* "without eligibility for parole" pursuant to A.M. No. 15-08-02-SC.

8. **ID.; ID.; DAMAGES; ACTUAL DAMAGES, CIVIL INDEMNITY, MORAL DAMAGES AND EXEMPLARY DAMAGES PROPER IN CASE AT BAR.—** Anent the civil liability of appellant, the award of actual damages in the amount of ₱197,548.25 (funeral expenses supported by receipts) is in order. x x x In addition, the award of civil indemnity is mandatory and granted to the heirs of the victim without need of proof other than the commission of the crime. Even if the penalty of death is not to be imposed because of the prohibition in R.A. No. 9346, the award of civil indemnity of ₱75,000.00 is proper, because it is not dependent on the actual imposition

of the death penalty but on the fact that qualifying circumstances warranting the imposition of the death penalty attended the commission of the offense. In recent jurisprudence, the Court has increased the award of civil indemnity from ₱75,000.00 to ₱100,000.00. Moreover, in line with current jurisprudence on heinous crimes where the imposable penalty is death but reduced to *reclusion perpetua* pursuant to R.A. No. 9346, the award for moral damages has been increased from ₱75,000.00 to ₱100,000.00, while the award for exemplary damages has likewise been increased from ₱30,000.00 to ₱100,000.00. x x x The award for moral damages is called for in view of the violent death of the victim, and these do not require any allegation or proof of the emotional sufferings of the heirs. The award of exemplary damages is also proper because of the presence of the aggravating circumstances of use of unlicensed firearm and use of a motor vehicle in the commission of the crime.

9. **ID.; ID.; ID.; LOSS OF EARNING CAPACITY AS A RULE, MUST BE SUFFICIENTLY SUBSTANTIATED; TEMPERATE DAMAGES AWARDED IN LIEU THEREOF.—** The rule is that documentary evidence should be presented to substantiate a claim for loss of earning capacity. By the way of exception, damages for loss of earning capacity may be awarded despite the absence of documentary evidence when: (1) the deceased is self-employed and earning less than the minimum wage under current labor laws, in which case, judicial notice may be taken of the fact that in the deceased's line of work, no documentary evidence is available; or (2) the deceased is employed as a daily wage worker earning less than the minimum wage under current labor laws. None of such exceptions was shown to obtain in this case. x x x Be that as it may, in light of settled jurisprudence and of Gloria's undisputed testimony, the Court finds it reasonable to award ₱1,000,000.00 as temperate damages *in lieu* of actual damages for loss of earning capacity. x x x Finally, all the damages awarded shall incur legal interest at the rate of six percent (6%) *per annum* from the finality of judgment until fully paid.

APPEARANCES OF COUNSEL

Office of the Solicitor General for appellee.
Public Attorney's Office for appellants.

DECISION

PERALTA, *J*.:

This is an appeal from the Decision[1] dated October 25, 2011 of the Court of Appeals in CA-G.R. CR-HC No. 00638-MIN, which affirmed the decision[2] of the Regional Trial Court *(RTC)* of Zamboanga City, Branch 16, finding Zaldy Salahuddin guilty beyond reasonable doubt of the crime of murder in Criminal Case No. 20664.

Appellant Zaldy Salahuddin was charged with the crime of murder in the Information dated June 9, 2004, the accusatory portion of which reads:

> That on or about February 10, 2004, in the City of Zamboanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, being then armed with a .45 caliber pistol and other handguns, conspiring and confederating (sic) together, mutually aiding and assisting one another, by means of treachery, evident premeditation and abuse of superior strength, and with intent to kill, did then and there, wilfully, unlawfully and feloniously, assault, attack and shoot with the use of said weapons ATTY. SEGUNDO SOTTO, JR. y GONZALO, employing means, manner and form which tended directly and specially to insure its execution without any danger to the persons of the herein accused, as a result of which attack, said Atty. Segundo Sotto, Jr. y Gonzalo sustained mortal gunshot wounds on the vital parts of his body which directly caused his death, to the damage and prejudice of the heirs of said victim;
>
> That the commission of the above-stated offense has been attended by the following aggravating circumstances, to wit:
>
> 1. Use of unlicensed firearm; and
> 2. Use of motorcycle to facilitate not only the commission of the crime but also the escape of the accused from the scene of the crime.
> 3. That the crime be committed at night time.

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[1] Penned by Associate Justice Abraham B. Borreta, with Associate Justices Edgardo A. Camello and Melchor Q. C. Sadang, concurring.

[2] Penned by Presiding Judge Jesus C. Carbon, Jr.

CONTRARY TO LAW.[3]

Upon arraignment, appellant pleaded not guilty to the murder charge. Trial ensued afterwards.

Appellant was also charged with frustrated murder in Criminal Case No. 20665 for having fatally wounded Liezel Mae Java, the niece or the victim, during the same shooting incident. Since Java was alleged in the Information to be a minor, the said case was transferred to Branch I5 of the RTC of Zamboanga City, which is the only designated family court in the city.

To establish its murder case against appellant, the prosecution presented the testimonies of nine (9) witnesses, namely: (1) Juanchito Vicente Delos Reyes, the security guard who witnessed the shooting incident; (2) Dr. Melvin Sotto Talaver, the one who assisted the doctor who examined the victim's cadaver; (3) Java, the niece and companion of the victim at the time of the incident; (4) Michal Maya, the secretary or the victim in his law office; (5) Vicente Essex Minguez, the National Bureau of' Investigation Agent who investigated the incident; (6) SPO3 Ronnie Eleuterio, a police officer attending to records of firearms and licenses; (7) Police Chief Inspector Constante Sonido, the one who conducted ballistic examination over the 2 empty shells; (8) Atty. Wendell Sotto, the son of the victim; and (9) Gloria Sotto, the victim's wife.

As summarized by the Court of Appeals *(CA),* the facts established by the evidence for the prosecution are as follows:

On February 10, 2004, at around 5:30 in the afternoon, Atty. Segundo Sotto Jr., a prominent law practitioner in Zamboanga City, together with his niece, Liezel Mae Java[,] left the former's law office and went home driving an owner[-]type jeep. On the way towards their house at Farmer's Drive, Sta. Maria, Zamboanga City, they passed by Nunez Street, then turned left going to Governor Camins Street and through Barangay Sta. Maria. When the jeep was nearing Farmer's Drive, the jeep slowed down, then, there were two gun shots. Liezel Mae, the one sitting at the right side of the jeep felt her

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[3] Records, p. 1.

shoulder get numb. Thinking that they were the ones being fired at, she bent forward and turned left towards her uncle. While bending downwards, she heard a sound of a motorcycle at her right side. Then, she heard another three (3) [gunshots] from the person in the motorcycle. After that, the motorcycle left.

While Liezel's head was touching the abdomen of her uncle, she was crying and calling out his name. A few minutes later, rescuers arrived. Liezel and Atty. Segundo, with the use of tricycles, were brought to Western Mindanao Medical Center (WMMC).

Juanchito Vicente Delos Reyes, a Security Guard at the house of George Camins, located in Brgy. Sta. Maria, while seated on a stool at the inner side of the gate, facing the road, noticed that in the early evening of February 10, 2004, he saw a man driving a jeep, with a woman inside. He then heard two [gunshots]. Immediately after that, the jeep bumped at an interlink wire at the left side of the road, going to the entrance of Farmer's Drive. He peeped through the jeep and saw the face of the person in the driver's seat slammed on the steering wheel. He thereafter saw the motorcycle in front of the victim and the latter was shot again. The motorcycle went to the right side of the jeep and the backrider again shot the victim. Seeing the shooting incident, Delos Reyes aimed his gun at the person shooting. When the latter saw this, he made a sign - with his extended left hand, moving his left with open palms sidewards. To Delos Reyes' mind, the sign means that the assailant does not want to be interfered [with]. When the motorcycle was about to leave, the assailant fired again.

After the motorcycle left, Delos Reyes called two tricycles in the highway to bring the wounded victims to the hospital. After the tricycles left, three (3) policemen from Sta. Maria Police Station arrived. Delos Reyes right away contacted the manager of WW Security Agency, Mr. Wilfredo Manlangit and told him about the incident. When the police officers were already in the crime scene, Delos Reyes told them that he still cannot relay everything that happened for he was still in a state of shock. lt was his first time to see such an incident.

Atty. Wendell Sotto, the son of the victim, on the date of the incident, came from the law office and went home to their house at Farmer's Drive ten (10) minutes after the victim and his niece left the office. When Atty. Wendell was about to turn right to Farmer's Drive, he saw his father's jeep stalled at the left side of the said street. Upon seeing his father's jeep, he stopped his car and saw his father already slouching on the steering wheel of the jeep and his cousin slouching

on his father's side. He noticed that his father was already full of blood. He went to the left side of the jeep, tried to pull his father out and shouted for help. Atty. Wendell brought his father to the Operating Room or WMMC. Dr. Lim and Dr. Melvin Talaver attended to the victim, but they pronounced the victim to be dead on arrival.

Dr. Melvin Sotto Talaver, the one who assisted Dr. Lim in the examination of the cadaver testified that on February 10, 2004, at around 5:30 in the afternoon, he was at home, taking a rest from his duty. At around 6 o'clock, he was culled by a staff of the Emergency Room or WMMC informing him about what happened to his relative, Atty. Segundo. Immediately thereafter, he went to the hospital. When he arrived there, Dr. Lim already declared the patient to be dead. After that announcement, the deceased was transferred to a smaller room. Dr. Talaver and Dr. Lim examined the body and made the recording of the entry and exit wounds. Dr. Talaver witnessed how Dr. Lim used a sketch of the human body, front and back, to document her findings.

As seen in the Physical Examination Form, there were four wounds in the front anatomy — one in the neck area, another on the chest above the left nipple, the third one was in the solarplexus — between the two breasts, and the last is somewhere in the abdominal area. For the back anatomy, they discovered exit wounds, from where they recovered the two (2) slugs, which they gave to Atty. Wendell, the son of the victim. Based on the Medical Certificate issued by Dr. Lim, the diagnosis stated Dead on Arrival — Cardiorespiratory arrest, secondary to hypovolemia, secondary to multiple gunshot wounds.

Vicente Essex Minguez, an NBI agent assigned at Western Mindanao Regional Office, Zamboanga City stated under oath that on February 13, 2004, Mayor Sotto of the Municipality of Siay, Zamboanga Sibugay, the brother of the deceased, filed a complaint before the NBI Office. On March 17, 2004, the NBI Office also received a Resolution from the City Government of Zamboanga City requesting the said agency to conduct an investigation regarding the killer of Atty. Segundo Sotto. Upon receipt of the resolution, NBI Agent Minguez then coordinated with his civilian agents to gather information about the death of Atty. Segundo. He also went to Sta. Maria Police Station and asked the police officers the progress of the investigation that they conducted. Sta. Maria Police then gave him a copy of the Report and told him that the empty shells were turned over to the crime laboratory. Subsequently, he tacked

(sic) some investigation agents to look for witnesses of the said crime. When they came to know the name of the Security Guard Delos Reyes, they asked him to be a witness.

On March 3, 2004, Delos Reyes was brought by his manager Manlangit at the NBI Office, and there he gave a statement as to what happened during the incident on February 10, 2004. Delos Reyes also mentioned in his testimony that on February 17, 2004, at around 10 o'clock in the evening, while he was at the side of the gate inside the fence of the residence of George Camins, a motorcycle with two (2) males riding on it stopped. Delos Reyes called on the two (2) maids of George Camins to peep through the persons outside. After that, the maids returned and told him that they saw the backrider holding something and demonstrated the left or right hand pulling something backward and pulled it again forward, as if making a cocking action. The next day after the said incident, Delos Reyes stopped reporting for work, with the permission of his manager, because it came to his mind that those were the people who killed Atty. Segundo.

On March 16, 2004, Delos Reyes was again at the NBI Office, and was asked to piece together the eyes, ears, mouth and nose of the accused. After having the sketch of the assailant, NBI Agent Minguez designated it to his informants to gather more information. During the later part of March 2004, an informant told Agent Minguez that he can identify the gunman. On March 28, 2004, the NBI then conducted a surveillance in Barangay Dita where the assailant was residing, as informed by the informant. In the said area, the NBI spotted the gunman riding a motorcycle.

On April 1, 2004, NBI agents, about ten (10) of them, together with Delos Reyes, disguised themselves as campaigners of the late Fernando Poe Jr. During that time, accused was spotted in a shop talking to two (2) women agents. Agent Minguez asked confirmation from Delos Reyes if the person in the sketch was the same person that they saw in the shop. Thereafter, the agents backed out, Minguez went to the NBI Office and prepared into writing the surveillance that was conducted.

On April 22, 2004, NBI filed the case with the Office of the City Prosecutor. Thereafter, a warrant of arrest was issued. On July 22, 2004, Minguez and some of the NBI agents served the warrant at Barangay Vitali and arrested the accused. Upon his arrest, the agents

recovered a .45 caliber firearm from the accused.

On the next day, Agent Minguez invited Delos Reyes and Liezel Mae to identify if the person that they arrested was the same person whom they saw kill the victim. Both [eyewitnesses] positively identified the person to be the gunman.

Michal Macaya, the secretary of the law office of deceased Atty. Segundo, testified that on February 10, 2004, at about 10:30 in the morning, while Atty. Segundo was having a hearing at Branch 13, two men arrived at the office, looked for Atty. Segundo and asked where he was having a hearing. They left but returned thirty (30) minutes later. Macaya told them to come inside the office, but they refused to do so. They left again, and when they came back at past eleven, there were already four (4) of them, looking for Atty. Segundo. The four (4) men left and came back at about 12 o'clock in the morning. After the accused was arrested, Macaya was asked to come to the NBI Office to identify the accused. She stated that the accused and the person who went to the law office four (4) times have the same shape of the face.

Mrs. Gloria Sotto, the wife of the deceased, testified that at the time of the incident, she was at home. She came to know about what happened to her husband when her neighbors came shouting that Atty. Segundo was shot outside. She trembled and her children cried, but still she managed to go to the crime scene, and found that her husband was no longer there. She immediately went to the hospital and saw her husband already dead. The body of the victim was released at around 7:30 to 8 o'clock on that same night. The body of her husband was made to lie at La Merced Memorial Homes for nine (9) days and was buried at Forest Lake.

SPO3 Ronnie Eleuterio, a Police Office[r] attending records pertaining to firearms and licenses, testified that on August 5, 2004, he received a request for verification from the Fiscal Office to issue a Certification whether accused Zaldy Salahuddin has a licensed firearm. He checked the records and found that accused has no existing record or any firearms license, permit to transport or permit to carry firearms outside of his residence.

Police Chief Inspector Constante Sonido, Regional Chief and Firearm Examiner of the Regional Crime Laboratory, Region IX, testified that on February 11, 2004, he received a request from Sta. Maria Police Station for the conduct of a ballistic examination on

the 2 empty shells. Based on his examination and as seen in the Firearms Identification Section Report No. FAIS-003-04, the two (2) cartridge cases were part from the same .45 caliber firearm.[4]

To substantiate appellant's defenses of denial and *alibi,* on the other hand, the defense presented the testimonies of 9 witnesses, namely: (1) appellant; (2) Sarabi Hussin; (3) Jauhari Hussin; (4) Sairaya Temong; (5) SPO1 Vicente Alama y Tanauan; (6) PO2 Donato Acosta y Mendoza; (7) Wilfredo Manlangit; (8) P/Sr. Ins. Hado Edding; and (9) P/Chief Insp. Roman Cornel Arugay.

As summarized by the CA, the facts established by the evidence for the defense are as follows:

The accused, on the other hand, interposed the defense of denial. He averred that on February 10, 2004, he was on duty as a Barangay Tanod, together with Jauhari Hussin, a Barangay Kagawad. On that day, he reported for duty at 7 o'clock in the morning until 5 o'clock in the afternoon, and stayed, during the whole day, in the barangay hall, and in some instances at the nearby elementary school. After 5 o'clock P.M. or that clay, he passed by the house of Barangay Chairman, Sarabi Hussin, the brother of the above-named Kagawad. He stayed there and had a long conversation with the Barangay Chief and went home at around 9 o'clock in the evening. He claimed that he does not know about any participation in the killing of Atty. Segundo. During the time of the incident, accused insisted that he was at the house of the Barangay Captain for the latter did not go to the Barangay Hall.

Major Wilfredo Manlangit, a Major of the Philippine Army and Operator of WW Security Agency testified that based on the Monthly Disposition Report of WW Security Agency for the month of February 2004, no name of Juanchito Delos Reyes appears as one of the security guards for the month of February. A Certification dated September 30, 2004 stated that Juanchito Delos Reyes was on active duty at "Tu Casa" residence under the residence of Mrs. Corazon Camins as of March 3, 2004 only. However, on cross-examination, Major Manlangit affirmed that Delos Reyes was already one of the Security Guards of the agency. He remembered that Delos Reyes had already

[4] *Rollo,* pp. 5-11. (Citations omitted.)

started working as one of its security guards in February 2004. He explained that Delos Reyes' name did not appear in the report because he did not complete the 30[-]day period in one month. It was required that he completes the 30-day period because the names in the report reflected only the names of the guards who completed the whole month.

Another defense witness Police Officer Donato Acosta, the assigned duty investigator for the killing of Atty. Segundo testified that he, together with his assistant PO1 Alama, under the supervision of Police Chief Edding, tried to find witnesses on the incident. He spoke with a certain Bayot, the seller of the store, near the place of the incident. The seller told the investigator that she saw the driver wearing a closed helmet, and the one riding at the back wore a shade. The result of their investigation was that a certain Toto Amping is the alleged assailant. These findings were written down by another defense witness PO1 Vicente Alama, who prepared a Special Investigation Report dated February 25, 2004, which was submitted to NBI Agent Minguez, but was unsigned by Chief of Police Edding.

Chief of Police Hado Edding testified that he did not sign the Special Investigation Report because the name mentioned in the report, purporting to be the assailant, was not supported by witnesses. He stated that the Special Investigation Report could not be taken as an official report of the Sta. Maria Police Station because as a matter of procedure, a report is considered official when the Chief of Police approves it. x x x.

Sarabi Hussin, the Barangay Chairman of Barangay Dita, testified that on February 10, 2004, he was at the Barangay Hall of Barangay Dita from 7 o'clock in the morning until 5 o'clock in the afternoon. He affirmed that he and accused Zaldy just stayed at the Barangay hall the whole day. He left the barangay hall at around 5 o'clock in the afternoon with the accused Salahuddin, through a motorcycle. Accused Zaldy, and Kagawad Jauhari Hussi[n] stayed at the house of the barangay chairman, ate there and left at around 8 o'clock in the evening.

Jauhari Hussin, a Barangay Kagawad of Barangay Dita corroborated the testimony of the barangay chairman. He declared that on February 10, 2004, he reported for duty with accused Salahuddin. Accused and the barangay chairman went home together,

with the use of a motorcycle. He just walked home a little later.

Another defense witness, Saiyara Temong, the barangay secretary of Dita supported the testimony of the barangay chairman, kagawad and accused. She declared that the persons present on February 10, 2004 were Brgy. Kagawad, Jauhari Hussin, Brgy. Chairman Sarabi Hussin and accused Barangay Tanod Salahuddin.

Chief of Firearm Explosive Security Agencies and Guard Section (FESAGS) Roman Arungay, testified that he received a request from Atty. Mendoza of the Public Attorney's Office to submit some data regarding a Security Guard named Juanchito Delos Reyes. He issued a Certification stating that Delos Reyes was not included in the monthly disposition of the guards of WW Security Agency Specialist Services covering the period from 01 to 29 February 2004. Delos Reyes was, however, included in the list of security guards employed under the said agency.[5]

After trial, the RTC convicted appellant of the crime of murder. The dispositive portion of its Decision dated March 28, 2008 states:

WHEREFORE, the Court finds accused ZALDY SALAHUDDIN y MUSU GUILTY BEYOND REASONABLE DOUBT of the crime of Murder, as principal, for the unjustified killing of Atty. Segundo Sotto, Jr. y Gonzalo with the qualifying circumstances of treachery and evident premeditation and the ordinary aggravating circumstances of use of unlicensed firearm and use of motor vehicle which facilitated the commission or the crime and the escape of the accused and his companion from the crime scene, and SENTENCES said accused to suffer the penalty of RECLUSION PERPETUA and its accessory penalties; to pay the heirs of the late Atty. Segundo G. Sotto, Jr. the amount or Php50,000.00 indemnity for his death; Php100,000.00 as moral damages; Php50,000.00 as exemplary damages; Php197,548.25 as actual damages; and Php4,378,000.00 for loss of earning capacity; and to pay the costs.

SO ORDERED.[6]

The trial court found that two (2) eyewitnesses positively and categorically identified appellant as the gunman who shot Atty. Segundo and Java at around 6:00 p.m. on February 10,

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[5] *Id.* at 11-14.

[6] CA *rollo,* pp. 102-103.

2004 at Farmer's Drive, Sta. Maria, Zamboanga City. The trial court stressed that Java could not have been mistaken in identifying appellant as the gunman as he was just a meter away when he shot Atty. Segundo, while Juanchito Delos Reyes, a security guard on-duty at an establishment near the crime scene, also positively identified appellant as the gunman, and could not be mistaken as to the latter's identity because they had an eye-to-eye contact for about 5 seconds at a distance of 6 meters. The trial court added that the testimonies of the defense witnesses were replete with inconsistencies and contradictions, and were incredible when ranged against the positive testimonies of the prosecution witnesses who were not shown to have any improper motive to falsely testify against appellant.

On appeal, the CA affirmed with modification the trial court's decision by increasing the civil indemnity from ₱50,000.00 to ₱75,000.00, and reducing the award of exemplary damages from ₱50,000.00 to ₱30,000.00. The dispositive portion of the CA decision reads:

> **WHEREFORE**, the appeal is **DENIED**. We affirm the Regional Trial Court Branch 16 of Zamboanga City Decision dated March 28, 2008 in Criminal Case No. 20664, finding ZALDY SALAHUDDIN y MUSU guilty of Murder and sentencing him to suffer *Reclusion Perpetua* and its accessory penalties, subject to the modification that he is held liable to pay the heirs of [the] late Atty. Segundo G. Sotto, Jr., death indemnity of PhP75,000.00, moral damages of PhP100,000.00, Php30,000.00 as exemplary damages, Php 197,548.25 as actual damages and PhP4,378,000.00 for loss of earning capacity and to pay the costs.
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> SO ORDERED.[7]

The CA found that Java, Atty. Segundo's niece, positively identified appellant as the gunman, as it was not yet dark and she was just about 1 meter away from him, while Delos Reyes, a security guard at a nearby establishment, was about 4 to 6 meters away from the crime scene when he aimed his service firearm at the appellant who, in turn, made a hand sign at him

[7] *Rollo,* p. 22.

not to interfere. The CA ruled that appellant failed to present convincing evidence that he was indeed at the barangay hall the whole day of February 10, 2004, and that his defenses were anchored on the testimonies of the Barangay Chairman, Kagawad and Secretary, which were all inconsistent from his very own testimony. Even if appellant's denial and *alibi* were corroborated by said defense witnesses, the CA rejected such defenses as unworthy of belief and credence, as they were established mainly by appellant himself, his friends and comrades-in-arms. The CA also found that it was not physically impossible for appellant to be present at the crime scene because the barangay hall where he supposedly stayed the whole day was just about 44 kilometers away and can be reached within a travel time of about 1 hour and 30 minutes.

On the issue of whether the crime was committed with evident premeditation, the CA noted that although the prosecution has clearly established the second element of overt act indicating that appellant had clung to his determination to commit the crime, no evidence was adduced to prove the first and third elements, *i.e.,* the time when the appellant had determined to commit the crime, and the sufficient lapse of time between the decision to commit and the execution of such crime. Nevertheless, the CA upheld appellant's conviction for murder, as the prosecution has established beyond reasonable doubt that the killing of the victim was qualified by treachery.

Hence, this appeal.

In support of his theory that the trial court gravely erred in convicting him despite the failure of the prosecution to provide evidence of his guilt beyond reasonable doubt, appellant reiterates the same arguments he raised before the CA.

According to appellant, he was at the barangay hall on February 10, 2004 at 7:00 a.m. and rendered duty together with Barangay Kagawad Jauhari Hussin until 5:00 p.m. Thereafter, he passed by the house of Barangay Chairman Sarabi Hussin, who was his neighbor and stayed there until 9:00 p.m. before he finally went home. For his part, Barangay Chairman Sarabi corroborated appellant's *alibi,* and testified that appellant had

reported for duty on February 10, 2004 from 7:00a.m. to 5:00p.m., and that they went home together afterwards. Barangay Kagawad Jaurai Hussin and Barangay Secretary Saiyara Temong also confirmed that appellant had indeed reported for duty on even date. They added that appellant and the Barangay Chairman rode a motorcycle and went home together at 5:00 p.m. The barangay logbook showed that appellant timed in at 7:30 a.m. and timed out at 5:00p.m. on February 10, 2004.

Considering the foregoing evidence that he was at the barangay hall from 7:30 a.m. to 5:00 p.m. on February 10, 2004, appellant insists that the defense has shown that it was impossible for him to have committed the crime by going to Atty. Segundo's law office which is about 44 kilometers away or 1 ½ hour-ride from the city proper. He asserts that the said barangay officials are credible witnesses, and that their testimonies are worthy of full faith and credit, since they testified in a categorical and frank manner, and were not shown to have any improper motive to falsely testify in court. He concedes that there are a few discrepancies and inconsistencies in the testimonies of the defense witnesses, which pertain only to minor details, and are not of a nature and magnitude that would impair their credibility.

The appeal lacks merit.

It is well settled that the trial court's evaluation of the credibility of witnesses is entitled to great respect because it is more competent to so conclude, having had the opportunity to observe the witnesses' demeanor and deportment on the stand, and the manner in which they gave their testimonies.[8] The trial judge, therefore, can better determine if such witnesses were telling the truth, being in the ideal position to weigh conflicting testimonies. Further, factual findings of the trial court as regards its assessment of the witnesses' credibility are entitled to great weight and respect by the Court, particularly when the Court of Appeals affirms the said findings, and will not be disturbed absent any showing that the trial court overlooked certain facts and circumstances which could substantially affect the outcome

[8] *People v. Tagudar,* 600 Phil. 565, 583 (2009).

of the case. After a careful review of the records, the Court finds that no compelling reason exists to warrant a deviation from the foregoing principles, and that the RTC and the CA committed no error in giving credence to the testimonies of the prosecution witnesses.

Prosecution witnesses Java and Delos Reyes were clear and consistent in the identification of appellant as the one who fatally shot Atty. Segundo several times. As aptly held by the CA:

> In the case at bar, eyewitnesses Liezel Mae Java and Juanchito Delos Reyes positively and categorically identified the accused-appellant to be the assailant of the murder (sic). Liezel Mae Java, in her testimony, stated that she was one hundred percent (100%) sure that the accused-appellant was the man who shot her uncle. She could not forget the man because even if it was around 6 o'clock in the evening it was not yet totally dark and she was only about one meter from the accused. Juanchito Delos Reyes also declared that he was about four (4) to six (6) meters away from the scene of the crime and he saw the accused making a sign at him, by the time he aimed his gun at the assailant. These direct, straightforward and positive testimonies of the aforesaid witnesses pointing to the accused appellant as the gunman created strong and credible evidence against him, thus no weight can be given to the alibi of the accused.[9]

Murder is defined under Article 248[10] of the Revised Penal Code as the unlawful killing of a person, which is not parricide or infanticide, attended by circumstances such as treachery or evident premeditation.[11] The essence of treachery is the sudden attack by the aggressor without the slightest provocation on

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[9] CA *rollo,* pp. 256-257. (Citations omitted.)

[10] Art. 248. *Murder.* — Any person who, not falling within the provisions of Article 246 shall kill another, shall be guilty of murder and shall be punished by *reclusion perpetua* to death, if committed with any of the following attendant circumstances:

l. With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense or of means or persons to insure or afford impunity.

2. In consideration of a price, reward, or promise.

the part of the victim, depriving the latter of any real chance to defend himself, thereby ensuring the commission of the crime without risk to the aggressor.[12] Two conditions must concur for treachery to exist, namely, (a) the employment of means of execution gave the person attacked no opportunity to defend himself or to retaliate; and (b) the means or method of execution was deliberately and consciously adopted.[13] In *People v. Biglete,*[14] the Court ruled:

> x x x Indeed, the victim had no inkling of any harm that would befall him that fateful night of August 27, 2001. He was merely plying his regular [jeepney] route. He was unarmed. The attack was swift and unexpected. The victim's arms were on the steering wheel; his focus and attention on the traffic before him. All these showed that the victim was not forewarned of any danger; he also had no opportunity to offer any resistance or to defend himself from any attack.[15]

In this case, the trial court correctly ruled that the fatal shooting of Atty. Segundo was attended by treachery because appellant shot the said victim suddenly and without any warning with a deadly weapon, thus:

> x x x Atty. Segundo G. Sotto, Jr., who was driving his jeep with his teenage niece as passenger sitting on his right side on the front

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3. By means of inundation, fire, poison, explosion, shipwreck, stranding of a vessel, derailment or assault upon a street car or locomotive, fall of an airship, by means of motor vehicles, or with the use of any other means involving great waste and ruin.

4. On occasion of any of the calamities enumerated in the preceding paragraph, or of an earthquake, eruption of a volcano, destructive cyclone, epidemic or other public calamity.

5. With evident premeditation.

6. With cruelty, by deliberately and inhumanly augmenting the suffering of the victim, or outraging or scoffing at his person or corpse.

[11] *People v. Adviento, et al.,* 684 Phil. 507, 519 (2012).

[12] *Id.,* citing *People v. Sanchez,* 636 Phil. 560, 576 (2010).

[13] *People v. Anticamara, et al.,* 666 Phil. 484, 508 (2011).

[14] 690 Phil. (2012).

[15] *Id.* at 558.

seat. was totally unaware that he will be treacherously shot just 200 meters away from his residence. He was unarmed and was not given any opportunity to defend himself [or to escape from the deadly assault. After he was hit when the gunman fired the first two shots at him and his niece and after he lost control of his jeep which bumped an interlink wire fence and stopped, he was again shot three times by the gunman. x x x[16]

The essence of evident premeditation, on the other hand, is that the execution of the criminal act must be preceded by cool thought and reflection upon the resolution to carry out the criminal intent during a space of time sufficient to arrive at a calm judgment.[17] For it to be appreciated, the following must be proven beyond reasonable doubt: (1) the time when the accused determined to commit the crime; (2) an act manifestly indicating that the accused clung to his determination; and (3) sufficient lapse of time between such determination and execution to allow him to reflect upon the circumstances of his act.[18] As aptly pointed out by the Office of the Solicitor General, the trial court conceded that the specific time when the accused determined to commit the crime, and the interval between such determination and execution, cannot be determined. [19] After a careful review of the records, the Court agrees with the CA's finding that no evidence was adduced to prove the first and third elements of evident premeditation.

In seeking his acquittal, appellant raises the defenses of denial and *alibi.* However, such defenses, if not substantiated by clear and convincing evidence, are negative and self-serving evidence undeserving of weight in law.[20] They are considered with suspicion and always received with caution, not only because they are inherently weak and unreliable but also because they are easily fabricated and concocted.

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

[17] *People v. Anticamara, et al., supra* note 13, at 510.

[18] *People v. Duavis,* 678 Phil. 166, 177 (2011).

[19] CA *rollo,* p. 234.

Denial cannot prevail over the positive testimony of prosecution witnesses who were not shown to have any ill-motive to testify against the appellants.[21] Between the categorical statements of the prosecution eyewitnesses Java and Delos Reyes, on one hand, and the bare denial of the appellant, on the other, the former must prevail. After all, an affirmative testimony is far stronger than a negative testimony especially when it comes from the mouth of a credible witness. In order for the defense of *alibi* to prosper, it is also not enough to prove that the accused was somewhere else when the offense was committed, but it must likewise be shown that he was so far away that it was not possible for him to have been physically present at the place of the crime or its immediate vicinity at the time of its commission.[22] The Court sustains the CA in rejecting appellant's defenses of denial and *alibi,* as follows:

> In the instant case, accused-appellant failed to present convincing evidence that he was indeed at the barangay hall the whole day or February 10, 2004. Accused anchored his defense from the testimonies of [the] Barangay Chairman, Barangay Kagawad and Barangay Secretary, which were all inconsistent from his very own statements in court. First, accused claimed that on February 10, 2004, he just stayed at the Barangay Hall and then did some rounds at the school nearby. However, Barangay Chairman Hussin claimed that accused just stayed only at the barangay hall for the whole day. Second, accused claimed that at around 5 o'clock in the afternoon, he went home walking together with Barangay Kagawad Jauhari Hussin. On the other hand, Barangay Chairman testified that he went home together with the accused at around 5 o'clock in the afternoon of that day. Jauhari Hussin corroborated [the] Barangay Chairman's statement saying that accused and the latter went home together with the accused driving the motorcycle. Third, accused claimed that they did not eat at the house of the Barangay Captain, for they only had long conversations and he only ate at their house, at around 9 o'clock. Conversely, Barangay Captain Hussin testified

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[20] *People v. Anticamara, et al., supra* note 13, at 507.

[21] *Id.*

[22] *Id.* at 507-508.

that accused stayed at their house and ate dinner there. Fourth, accused claimed that he does not know how to drive a motorcycle for he was just learning the skill. On the other hand, the barangay captain, corroborated by the testimony of his brother Barangay Kagawad affirmed that the accused and the former went home together by the use of a motorcycle, with the accused driving it. All of these are declarations of the defense witnesses which, instead of corroborating accused's defense or *alibi* and denial, tend to diminish the credibility of the accused.

Furthermore, even if the defense of *alibi* was corroborated by [the] testimonies of the Barangay Chairman, Barangay Kagawad, and Barangay Secretary, it is undeserving of belief because it has been held that *alibi* becomes more unworthy of merit where it is established mainly by the accused himself and his or her relatives, friends, and comrades-in-arms, and not by credible persons.[23]

In contrast to the credible testimonies of the prosecution witnesses Delos Reyes and Java who positively identified appellant as the gunman, the testimonies of the defense witnesses in support of appellant's denial and *alibi,* are tainted with material inconsistencies.

On the one hand, Barangay Chairman Sarabi Hussin testified that he, together with appellant, reported for work at the Barangay Hall of Dita on February 10, 2004 at 7 o'clock in the morning and left at 5 o'clock in the afternoon, and that he let appellant drive his motorcycle from his home, to the barangay hall, and back.[24] Despite his insistence that he signed the attendance logbook on February 10, 2004, Sarabi later admitted that his signature does not appear thereon.[25] On the other hand, appellant testified that Sarabi did not report for work that day, and that aside from himself the two (2) other persons at the Barangay Hall that day were Barangay Kagawad Jauhari Hussin and Barangay Secretary Sairaya Temong.[26] Appellant added that after 5 o'clock in the afternoon of February 10, 2004, his companion

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[23] *Rollo,* pp. 16-17. (Citations omitted.)

[24] TSN, July 24, 2006, pp. 23-24.

[25] *Id.* at 34-38.

in going home was Barangay Kagawad Jauhari, and not Sarabi.

With respect to the aggravating circumstances alleged in the Information, the Court finds that the trial court duly appreciated the presence of the use of unlicensed firearm in the commission of the crime, as well as the use of motor vehicle to facilitate its commission and escape of the accused from the crime scene.

To establish the special aggravating circumstance of use of unlicensed firearm in the fatal shooting of Atty. Segundo, the prosecution presented the following evidence: (1) testimony of Delos Reyes that the gun used by appellant was a "short gun";[27] (2) the testimony of SPO3 Ronnie Eleuterio and the Certification[28] from the Firearms, Explosives, Security Agencies and Guards Section *(FESAGS)* of the Police Regional Office 9 of the Philippine National Police *(PNP)* to the effect that records of the said office do not show that a firearms license, permit to carry or permit to transport firearms outside of residence were issued to appellant; (3) the request[29] for ballistics examination of two pieces .45 caliber slugs recovered by the attending physicians on the body of the victim and two pieces of .45 caliber slugs that were test-fired from the .45 caliber pistol recovered from appellant when he was arrested by NBI operatives; and (4) FID Report No. 192-2-2-8-2004[30] dated September 15, 2004 which contain the result of the said examination.

In *People v. Dulay,*[31] the Court ruled that the existence of the firearm can be established by testimony even without the presentation of the firearm. In the said case, it was established that the victims sustained and died from gunshot wounds, and the ballistic examinations of the slugs recovered from the place

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[26] TSN, May 12, 2006, pp. 31-32.

[27] TSN, February 27, 2006, p. 30.

[28] Exhibit "O".

[29] Exhibit "T-2".

[30] Exhibit "T-3".

[31] 561 Phil. 764, 771-772 (2007).

of the incident showed that they were fired from a .30 carbine rifle and a .38 caliber firearm. The prosecution witnesses positively identified appellant therein as one of those who were holding a long firearm, and it was also proven that he was not a licensed firearm holder. Hence, the trial court and the CA correctly appreciated the use of unlicensed firearm as a special aggravating circumstance.

In contrast, in *People v. De Leon,*[32] the Court found that the said aggravating circumstance was not proven by the prosecution because it failed to present written or testimonial evidence to prove that appellant did not have a license to carry or own a firearm. Although jurisprudence dictates that the existence of the firearm can be established by mere testimony, the fact that appellant therein was not a licensed firearm holder must still be established.[33]

Despite the result of the ballistic examination that the slugs test-fired from the gun recovered from appellant when he was arrested, were different from the 2 slugs recovered from the body of the victim, the prosecution was still able to establish the special aggravating circumstance of use of unlicensed firearm in the commission of the crime. Given that the actual firearm used by appellant in shooting the victim was not presented in court, the prosecution has nonetheless proven through the testimony of Delos Reyes that the firearm used by appellant was a "short gun."[34] It has also established through the testimony of SPO3 Ronnie Eleuterio and the Certification[35] from the FESAGS of the PNP that appellant was not issued a firearms license, a permit to carry or permit to transport firearms outside of residence.

Notably, the term unlicensed firearm includes the unauthorized use of licensed firearm in the commission of the crime, under

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[32] 608 Phil. 701 (2009).

[33] *People v. De Leon, supra,* at 725.

[34] TSN, February 27, 2006, p. 30.

[35] Exhibit "O".

Section 5[36] or Republic Act *(RA)* No. 8294.[37] Assuming *arguendo* that the actual firearm used by appellant was licensed, he still failed to prove that he was so authorized to use it by the duly licensed owner. The prosecution having proven that appellant was not issued a firearms license or permit to carry or permit to transport firearms, the burden of evidence is then shifted to appellant to prove his authorization to use the firearm. All told, the trial court correctly appreciated the presence of the said aggravating circumstance in imposing the penalty against appellant.

Meanwhile, the use of a motor vehicle is aggravating when it is used either to commit the crime or facilitate escape,[38]but not when the use thereof was merely incidental and was not purposely sought to facilitate the commission of the offense or to render the escape of the offender easier and his apprehension difficult.[39] In *People v. Herbias,*[40] the Court held:

> The use of motor vehicle may likewise he considered as an aggravating circumstance that attended the commission of the crime. The records show that assailants used a motorcycle in trailing and overtaking the jeepney driven by Saladio after which appellant's back rider mercilessly riddled with his bullets the body of Jeremias. There is no doubt that the motorcycle was used as a means to commit the crime and to facilitate their escape after they accomplished their mission.[41]

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[36] Section 5. *Coverage of the Term Unlicensed Firearm.—* The term unlicensed firearm shall include:

1) firearms with expired license; or

2) unauthorized use of licensed firearm in the commission of the crime.

[37] *An Act Amending the provisions of Presidential Decree No. 1866, as amended, entitled "Codifying the laws on Illegal/Unlawful Possession, Manufacture, Dealing in, Acquisition or Disposition of Firearms, Ammunition or Explosives or Instruments used in the Manufacture of Firearms, Ammunition or Explosives, and Imposing stiffer penalties for certain violations thereof, and relevant purposes."*

[38] *People v. Lozada,* 454 Phil. 241, 255 (2003).

[39] *People v. Astudillo,* 449 Phil. 778, 796 (2003).

[40] 333 Phil. 422 (1996).

The prosecution has proven through the testimonies of Java and Delos Reyes that appellant was riding a motorcycle behind the unknown driver when he twice shot Atty. Segundo who thus lost control of his owner-type jeep and crashed into the interlink wire fence beside the road. The motorcycle then stopped near the jeep, and appellant shot Atty. Segundo again thrice, before leaving the crime scene aboard the motorcycle. Clearly, the trial court correctly appreciated the generic aggravating circumstance of use of motor vehicle in the commission of the crime.

Since the fatal shooting of the victim was attended by the qualifying circumstance of treachery, the Court upholds the trial court in convicting appellant of the crime of murder. The penalty for murder under Article 248 of the Revised Penal Code is *reclusion perpetua* to death. Article 63 of the same Code provides that, in all cases in which the law prescribes a penalty composed of two indivisible penalties, the greater penalty shall be applied when the commission of the deed is attended by one aggravating circumstance. Although evident premeditation was not established, the other aggravating circumstances of use of unlicensed firearm and use of motor vehicle in the commission thereof; were alleged in the Information and proven during the trial. The presence of such aggravating circumstances warrants the imposition of the death penalty. However, in view of the enactment of RA No. 9346,[42] the death penalty should be reduced to *reclusion perpetua* "without eligibility for parole" pursuant to A.M No. 15-08-02-SC.[43]

Anent the civil liability of appellant, the award of actual damages in the amount of ₱197,548.25 is in order because the

[41] *People v. Herbias, supra,* at 432-433.

[42] Entitled *An Act Prohibiting the Imposition of Death Penalty in the Philippines.*

[43] Guidelines for the Proper Use of the Phrase "Without Eligibility for Parole" in Indivisible penalties. II. (2) When circumstances are present warranting the imposition of the death penalty, but this penalty is not imposed because of R.A. 9346, the qualification "without eligibility for parole" shall be used to qualify *reclusion perpertua* in order to emphasize that the accused should have been sentenced to suffer the death penalty had it not been for R.A. 9346.

victim's spouse, Gloria Sotto, had testified that funeral expenses were incurred and they were duly supported by official receipts.[44]

In addition, the award of civil indemnity is mandatory and granted to the heirs of the victim without need of proof other than the commission of the crime.[45] Even if the penalty of death is not to be imposed because of the prohibition in R.A. No. 9346, the award of civil indemnity of ₱75,000.00 is proper, because it is not dependent on the actual imposition of the death penalty but on the fact that qualifying circumstances warranting the imposition of the death penalty attended the commission of the offense.[46] In recent jurisprudence,[47] the Court has increased the award of civil indemnity from ₱75,000.00 to ₱100,000.00.

Moreover, in line with current jurisprudence[48] on heinous crimes where the imposable penalty is death but reduced to *reclusion perpetua* pursuant to R.A. No. 9346, the award for moral damages has been increased from ₱75,000.00 to ₱100,000.00, while the award for exemplary damages has likewise been increased from ₱30,000.00 to ₱100,000.00. Hence, while the CA correctly affirmed the trial court's award of ₱100,000.00 as moral damages, the award of civil indemnity and exemplary damages in the amounts of ₱50,000.00 each should be both increased to ₱100,000.00. The award of moral damages is called for in view of the violent death of the victim, and these do not require any allegation or proof of the emotional sufferings of the heirs.[49] The award of exemplary damages is also proper because of the presence of the aggravating circumstances of use of unlicensed firearm and use of a motor vehicle in the commission of the crime.

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[44] Exhibits "S" to "S-6".

[45] *People v. Anticamara, et al., supra* note 13, at 515.

[46] *Id.*

[47] *People of the Philippines v. Eddie Salibad y Dilo,* G.R. No. 210616, November 25, 2015 and *People v. Gambao,* G.R. No 172707, October 1, 2013,706 SCRA 508, 533.

[48] *Id.*

[49] *People v. Del Rosario,* 657 Phil. 635, 646 (2011).

However, the Court is constrained to disallow the award or ₱4,398,000.00 as compensation for loss of earning capacity for insufficiency of evidence. The rule is that documentary evidence should be presented to substantiate a claim for loss of earning capacity.[50] By way of exception, damages for loss of earning capacity may be awarded despite the absence of documentary evidence when: (1) the deceased is self-employed and earning less than the minimum wage under current labor laws, in which case, judicial notice may be taken of the fact that in the deceased's line of work, no documentary evidence is available; or (2) the deceased is employed as a daily wage worker earning less than the minimum wage under current labor laws.[51] None of such exceptions was shown to obtain in this case.

Even if the testimony of Gloria Sotto, the victim's spouse, was not disputed by the defense, the prosecution failed to present any documentary evidence to prove the victim's monthly income. Thus, the Court disagrees with the trial court in awarding ₱4,398,000.00 as compensation for loss of earning capacity based on the unsubstantiated testimony of Gloria that her husband had a good law practice and earned at least ₱50,000.00 a month or ₱600,000.00, as one of the prominent law practitioners in Zamboanga City with almost daily appearance in court. Be that as it may, in light of settled jurisprudence and of Gloria's undisputed testimony, the Court finds it reasonable to award ₱1 ,000,000.00 as temperate damages *in lieu* of actual damages for loss of earning capacity. As held in *Tan, et al. v. OMC Carrier, Inc., et al.*[52]

In the past, we awarded temperate damages in lieu or actual damages for loss of earning capacity where earning capacity is plainly established but no evidence was presented to support the allegation or the injured party's actual income.

In *Pleno v. Court of Appeals,* we sustained the award of temperate

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[50] *People v. Lopez,* 658 Phil. 647, 651 (2011).

[51] *Tan, et al. v. OMC Carriers, Inc., et al.,* 654 Phil. 443, 456 (2011).

[52] *Id.*

damages in the amount of ₱200,000.00 instead of actual damages for loss of earning capacity because the plaintiffs' income was not sufficiently proven.

We did the same in *People v. Singh,* and *People v. Almedilla,* granting temperate damages in place of actual damages for the failure or the prosecution to present sufficient evidence of the deceased's income.

Similarly, in *Victory Liner, Inc. v. Gammad,* we deleted the award of damages for loss of earning capacity for lack of evidentiary basis of the actual extent of the loss. Nevertheless, because the income-earning capacity lost was clearly established, we awarded the heirs ₱500,000.00 as temperate damages.[53]

Finally, all the damages awarded shall incur legal interest at the rate of six percent (6%) *per annum* from the finality of judgment until fully paid.[54]

WHEREFORE, the appeal is **DISMISSED**. The Decision dated October 25, 2011 of the Court of Appeals in CA-G.R. CR-HC No. 00638-MIN is **AFFIRMED** with the following **MODIFICATIONS**: (1) to qualify the penalty of *reclusion perpetua* to be "without eligibility for parole"; (2) to increase the award of civil indemnity from ₱75,000.00 to ₱100,000.00; (3) to increase the award of exemplary damages from ₱30,000.00 to ₱100,000.00; (4) to award ₱1,000,000.00 as temperate damages *in lieu* of the award of ₱4,398,000.00 as compensation for loss of earning capacity of Atty. Segundo G. Sotto Jr.; and (5) to impose the legal interest rate of six percent (6%) *per annum* on all the damages awarded from the finality of judgment until fully paid.

SO ORDERED.

Velasco, Jr. (Chairperson), del Castillo, Perez, and *Reyes, JJ.,* concur.

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[53] *Id.* at 457. (Citations omitted.)

[54] *People of the Philippines v. Edgardo Zabala y Balada and Romeo Albius, Jr. y Bautista,* G.R. No. 203087, November 23, 2015.

EN BANC

[A.C. No. 10912. January 19, 2016]

PAULINA T. YU, *complainant, vs.* **ATTY. BERLIN R. DELA CRUZ,** *respondent.*

SYLLABUS

1. **LEGAL ETHICS; LAWYERS; DISBARMENT PROCEEDINGS; LAWYER'S FAILURE OR REFUSAL TO PARTICIPATE IN THE INTEGRATED BAR OF THE PHILIPPINES – COMMISSION ON BAR DISCIPLINE (IBP-CBD) PROCEEDINGS DOES NOT HINDER THE COURT FROM ACTING ON THE CASE.—** "Disbarment of lawyers is a proceeding that aims to purge the law profession of unworthy members of the bar. It is intended to preserve the nobility and honor of the legal profession." Surely, respondent lawyer's failure or refusal to participate in the Integrated Bar of the Philippines-Commission on Bar Discipline (IBP-CBD) proceedings does not hinder the Court from determining the full extent of his liability and imposing an appropriate sanction, if any.

2. **ID.; ID.; CODE OF PROFESSIONAL RESPONSIBILITIES (CPR); PROHIBITION AGAINST BORROWING MONEY FROM HIS CLIENT; VIOLATED WHEN LAWYER BORROWED CLIENT'S JEWELRY FOR THE PURPOSE OF PAWNING IT, REGARDLESS OF CLIENT'S ACQUIESCENCE THEREIN.—** [T]he complaint stemmed from the use by respondent lawyer of his client's property. He had, indeed, come into possession of valuable pieces of jewelry which he presented as security in a contract of pledge. Complainant voluntarily and willingly delivered her jewelry worth ₱135,000.00 to respondent lawyer who meant to borrow it and pawn it thereafter. This act alone shows respondent lawyer's blatant disregard of Rule 16.04. Complainant's acquiescence to the "pawning" of her jewelry becomes immaterial considering that the CPR is clear in that lawyers are proscribed from borrowing money or property from clients, unless the latter's interests are fully protected by the nature of the case or by independent advice. x x x The Court has repeatedly

emphasized that the relationship between a lawyer and his client is one imbued with trust and confidence. And as true as any natural tendency goes, this "trust and confidence" is prone to abuse. The rule against borrowing of money by a lawyer from his client is intended to prevent the lawyer from taking advantage of his influence over his client. The rule presumes that the client is disadvantaged by the lawyer's ability to use all the legal maneuverings to renege on his obligation. Suffice it to say, the borrowing of money or property from a client outside the limits laid down in the CPR is an unethical act that warrants sanction.

3. **ID.; ID.; ID.; PROHIBITION AGAINST ENGAGING IN UNLAWFUL, DISHONEST, IMMORAL OR DECEITFUL CONDUCT; VIOLATED WHEN LAWYER ISSUED WORTHLESS CHECKS.—** Given the circumstances, the Court does not harbor any doubt in favor of respondent lawyer. Obviously, his unfulfilled promise to facilitate the redemption of the jewelry and his act of issuing a worthless check constitute grave violations of the CPR and the lawyer's oath. These shortcomings on his part have seriously breached the highly fiduciary relationship between lawyers and clients. Specifically, his act of issuing worthless checks patently violated Rule 1.01 of Canon 1 of the CPR which requires that "[a] lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct." This indicates a lawyer's unfitness for the trust and confidence reposed on him, shows such lack of personal honesty and good moral character as to render him unworthy of public confidence, and constitutes a ground for disciplinary action, and thus seriously and irreparably tarnishes the image of the profession.

4. **ID.; ID.; DISBARMENT; NOT TO BE DECREED WHERE ANY PUNISHMENT LESS SEVERE WOULD ACCOMPLISH THE END DESIRED.—** As to the penalty commensurate to respondent lawyer's actions, the Court takes heed of the guidepost provided by jurisprudence, *viz.*: "Disbarment should not be decreed where any punishment less severe, such as reprimand, suspension, or fine, would accomplish the end desired. This is as it should be considering the consequence of disbarment on the economic life and honor of the erring person." Hence, caution is called for amidst the Court's plenary power to discipline erring lawyers. In line with prevailing jurisprudence,

the Court finds it proper to impose the penalty of three-year suspension against respondent lawyer, with a stern warning that a repetition of any of the infractions attributed to him in this case, or any similar act, shall merit a heavier penalty.

5. **ID.; ID.; ATTORNEY'S FEE AND ACCEPTANCE FEE, DISTINGUISHED.—** There is a distinction between attorney's fee and acceptance fee. It is well-settled that attorney's fee is understood both in its ordinary and extraordinary concept. In its ordinary sense, attorney's fee refers to the reasonable compensation paid to a lawyer by his client for legal services rendered. Meanwhile, in its extraordinary concept, attorney's fee is awarded by the court to the successful litigant to be paid by the losing party as indemnity for damages. On the other hand, acceptance fee refers to the charge imposed by the lawyer for merely accepting the case. This is because once the lawyer agrees to represent a client, he is precluded from handling cases of the opposing party based on the prohibition on conflict of interest. Thus, this incurs an opportunity cost by merely accepting the case of the client which is therefore indemnified by the payment of acceptance fee. Since the acceptance fee only seeks to compensate the lawyer for the lost opportunity, it is not measured by the nature and extent of the legal services rendered.

APPEARANCES OF COUNSEL

Francisco C. Miralles for complainant.

D E C I S I O N

***PER CURIAM*:**

Subject of this disposition is the September 28, 2014 Resolution[1] of the Integrated Bar of the Philippines Board of Governors *(IBP-BOG)* which adopted and approved the findings and the recommendation of the Investigating Commissioner for the disbarment of Atty. Berlin Dela Cruz *(respondent lawyer).*

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

It appears from the records that respondent lawyer agreed to represent Paulina T. Yu *(complainant)* in several cases after having received various amounts as acceptance fees, to wit:

Case Title	Acceptance Fees
People v. Tortona for attempted homicide (Case No. 06-359) filed with the Metropolitan Trial Court, Bacoor, Cavite	₱20,000.00
Paulina T. Yu v. Pablo and Rodel Gamboa for qualified theft/estafa (I.S. No. XV-07-INV-116-05339) filed with the City Prosecutor of Manila	₱8,000.00
Paulino T. Yu v. Roberto Tuazon et al. (Civil Case No. LP-00-0087) filed before the Regional Trial Court of Las Piñas[2]	₱15,000.00

On November 29, 2011, while the lawyer-client relationship was subsisting, respondent lawyer borrowed pieces of jewelry from complainant and pledged the same with the Citystate Savings Bank, Inc. for the amount of ₱29,945.50, as shown in the Promissory Note with Deed of Pledge.[3] Respondent lawyer appropriated the proceeds of the pledge to his personal use. In order to facilitate the redemption of the said jewelry, respondent lawyer issued to complainant, Citystate Savings Bank Check No. 0088551, dated August 31, 2011, in the amount of ₱34,500.00. Upon presentment, however, complainant was shocked to learn that the check was dishonored for the reason, "Account Closed."[4] Complainant immediately notified respondent lawyer of the dishonor of the check.

In a letter,[5] dated March 23, 2012, complainant demanded

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[2] *Id*. at 10-13, as shown in an Emplyment Contract between the parties, dated September 6, 2011.

[3] *Id.* at 12.

[4] *Id*. at 13.

for the refund of the acceptance fees received by respondent lawyer prior to the "abandonment" of the cases and the payment of the value of the jewelry, but to no avail.

In another letter,[6] dated April 18, 2012, this time represented by another lawyer, Atty. Francisco C. Miralles, complainant yet again demanded the redemption of the check in cash within five days from notice; the refund of the paid acceptance fees, in exchange for which no service was rendered; the payment of the value of the pledged jewelry in the amount of ₱100,000.00 in order to avoid the interests due and the possible foreclosure of the pledge; and moral damages of ₱300,000.00.

For his failure to heed the repeated demands, a criminal case for violation of Batas Pambansa Blg. 22 was filed with the Office of the City Prosecutor, Las Piñas City, against him.[7]

On June 7, 2012, a verified complaint was filed with the IBP-Commission on Bar Discipline (IBP-CBD),[8] where complainant prayed for the disbarment of respondent lawyer on account of grave misconduct, conduct unbecoming of a lawyer and commission of acts in violation of the lawyer's oath. The IBP-CBD required respondent lawyer to submit his answer to the complaint.[9] Despite having been duly served with a copy of the complaint and the order to file his answer, as shown in a certification[10] issued by the Post Master of the Las Piñas Central Post Office, respondent still failed to file an answer.

Respondent lawyer was likewise notified of the scheduled mandatory conference/hearing on November 23, 2012, but only the complainant and her counsel appeared on the said day. The IBP-CBD then ordered the resetting of the mandatory conference

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[5] *Id*. at 9.

[6] *Id*. at 7-8.

[7] *Id*. at 6, docketed as XV-04-INV-12-00435.

[8] *Id*. at 2-5.

[9] *Id*. at 17.

[10] *Id.* at 19.

for the last time to January 11, 2013 and the personal service of the notice thereof to respondent lawyer's given address.[11] Notwithstanding the receipt of the notice by respondent lawyer's mother,[12] he still failed to appear during the conference, prompting complainant to move for the termination of the conference and the submission of the case for report and recommendation.

On June 7, 2013, the Investigating Commissioner recommended the disbarment of respondent lawyer from the practice of law.[13] Based on the evidence on record, respondent lawyer was found to have violated Rule 16.04 of the Code of Professional Responsibility *(CPR),* which proscribed the borrowing of money from a client, unless the latter's interests were fully protected by the nature of the case or by independent advice. Worse, respondent lawyer had clearly issued a worthless check in violation of law which was against Rule 1.01 of Canon 1 of the CPR stating that, "[a] lawyer shall not engage in unlawful, dishonest and immoral or deceitful conduct."

On September 28, 2014, the IBP-BOG affirmed the said recommendation in Resolution No. XXI-2014-698.[14]

Neither a motion for reconsideration before the BOG nor a petition for review before this Court was filed. Nonetheless, the IBP elevated to this Court the entire records of the case for appropriate action with the IBP Resolution being merely recommendatory and, therefore, would not attain finality, pursuant to par. (b), Section 12, Rule 139-B of the Rules of Court.[15]

[11] *Id*. at 27.

[12] *Id*. at 28.

[13] *Id.* at 37-41.

[14] *Id*. at 35-36.

[15] Section 12. Review and decision by the Board of Governors.

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b) If the Board, by the vote of a majority of its total membership, determines that the respondent should be suspended from the practice of law or disbarred, it shall issue a resolution setting forth its findings and recommendations which, together with the whole record of the case, shall forthwith be transmitted to the Supreme Court for final action.

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The Court acknowledges the fact that respondent lawyer failed to refute the accusations against him despite the numerous opportunities afforded to him to explain his side. All means were exhausted to give respondent lawyer a chance to oppose the charges against him but to no avail and for reasons only for known to him. Whether respondent lawyer had personally read the orders by the IBP-CBD or his mother failed to forward the same for his personal consideration may only be an object of surmise in which the Court cannot indulge. "Disbarment of lawyers is a proceeding that aims to purge the law profession of unworthy members of the bar. It is intended to preserve the nobility and honor of the legal profession."[16] Surely, respondent lawyer's failure or refusal to participate in the IBP-CBD proceedings does not hinder the Court from determining the full extent of his liability and imposing an appropriate sanction, if any.

After a judicious review of the records, the Court finds no reason to deviate from the findings of the Investigating Commissioner with respect to respondent lawyer's violation of Canons 1,[17] 16,[18] 17,[19] and Rules 1.01,[20] 16.04[21] of the CPR.

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[16] *Foronda v. Alvarez, Jr.,* A.C. No. 9976, June 25, 2014, 727 SCRA 155, 164, citing *Arma v. Montevilla,* 581 Phil. 1, 8 (2008).

[17] CANON 1 — A lawyer shall uphold the constitution, obey the laws of the land and promote respect for law and legal processes.

[18] CANON 16 — A lawyer shall hold in trust all moneys and properties of his client that may come into his possession.

[19] CANON 17 — A lawyer owes fidelity to the cause of his client and he shall be mindful of the trust and confidence reposed in him.

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

[21] Rule 16.04 — A lawyer shall not borrow money from his client unless the client's interests are fully protected by the nature of the case or by independent advice. Neither shall a lawyer lend money to a client except, when in the interest of justice, he has to advance necessary expenses in a legal matter he is handling for the client.

In the case at bench, the complaint stemmed from the use by respondent lawyer of his client's property. He had, indeed, come into possession of valuable pieces of jewelry which he presented as security in a contract of pledge. Complainant voluntarily and willingly delivered her jewelry worth ₱135,000.00 to respondent lawyer who meant to borrow it and pawn it thereafter. This act alone shows respondent lawyer's blatant disregard of Rule 16.04. Complainant's acquiescence to the "pawning" of her jewelry becomes immaterial considering that the CPR is clear in that lawyers are proscribed from borrowing money or property from clients, unless the latter's interests are fully protected by the nature of the case or by independent advice. Here, respondent lawyer's act of borrowing does not constitute an exception. Respondent lawyer used his client's jewelry in order to obtain, and then appropriate for himself, the proceeds from the pledge. In so doing, he had abused the trust and confidence reposed upon him by his client. That he might have intended to subsequently pay his client the value of the jewelry is inconsequential. What deserves detestation was the very act of his exercising influence and persuasion over his client in order to gain undue benefits from the latter's property. The Court has repeatedly emphasized that the relationship between a lawyer and his client is one imbued with trust and confidence. And as true as any natural tendency goes, this "trust and confidence" is prone to abuse.[22] The rule against borrowing of money by a lawyer from his client is intended to prevent the lawyer from taking advantage of his influence over his client.[23] The rule presumes that the client is disadvantaged by the lawyer's ability to use all the legal maneuverings to renege on his obligation.[24] Suffice it to say, the borrowing of money or property from a client outside the limits laid down in the CPR is an unethical act that warrants sanction.

Due to complainant's respect for respondent lawyer, she trusted his representation that the subject jewelry would be

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[22] *Spouses Concepcion v. Dela Rosa,* A.C. No. 10681, February 3, 2015.

[23] *Junio v. Grupo,* 423 Phil. 808, 816 (2001).

[24] *Frias v. Lozada,* 513 Phil. 512, 521-522 (2005).

redeemed upon maturity. She accepted respondent lawyer's check, which was eventually dishonored upon presentment. Despite notice of the dishonor, respondent lawyer did not take steps to remedy the situation and, on the whole, reneged on his obligation, constraining complainant to avail of legal remedies against him.

Given the circumstances, the Court does not harbor any doubt in favor of respondent lawyer. Obviously, his unfulfilled promise to facilitate the redemption of the jewelry and his act of issuing a worthless check constitute grave violations of the CPR and the lawyer's oath. These shortcomings on his part have seriously breached the highly fiduciary relationship between lawyers and clients. Specifically, his act of issuing worthless checks patently violated Rule 1.01 of Canon 1 of the CPR which requires that "[a] lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct." This indicates a lawyer's unfitness for the trust and confidence reposed on him, shows such lack of personal honesty and good moral character as to render him unworthy of public confidence, and constitutes a ground for disciplinary action,[25] and thus seriously and irreparably tarnishes the image of the profession.[26] Such conduct, while already off-putting when attributed to an ordinary person, is much more abhorrent when exhibited by a member of the Bar.[27] In this case, respondent lawyer turned his back from the promise that he once made upon admission to the Bar. As "vanguards of the law and the legal system, lawyers must at all times conduct themselves, especially in their dealings with their clients and the public at large, with honesty and integrity in a manner beyond reproach."[28]

As to the penalty commensurate to respondent lawyer's actions, the Court takes heed of the guidepost provided by

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[25] *Wong v. Moya II,* 590 Phil. 279, 289 (2008).

[26] *Dizon v. De Taza,* A.C. No. 7676, June 10, 2014, 726 SCRA 70, 80, citing *Wilkie v. Limos,* 591 Phil. 1, 8 (2008).

[27] *Id.*

[28] *Resurreccion v. Sayson,* 360 Phil. 313, 322 (1998).

jurisprudence, *viz.:* "Disbarment should not be decreed where any punishment less severe, such as reprimand, suspension, or fine, would accomplish the end desired. This is as it should be considering the consequence of disbarment on the economic life and honor of the erring person."[29] Hence, caution is called for amidst the Court's plenary power to discipline erring lawyers. In line with prevailing jurisprudence, [30] the Court finds it proper to impose the penalty of three-year suspension against respondent lawyer, with a stem warning that a repetition of any of the infractions attributed to him in this case, or any similar act, shall merit a heavier penalty.

Anent the monetary demands made by complainant, the Court reiterates the rule that in disciplinary proceedings against lawyers, the only issue is whether the officer of the court is still fit to be allowed to continue as a member of the Bar.[31] Thus, the Court is not concerned with the erring lawyer's civil liability for money received from his client in a transaction separate, distinct, and not intrinsically linked to his professional engagement. Accordingly, it cannot order respondent lawyer to make the payment for the subject jewelry he pawned, the value of which is yet to be determined in the appropriate proceeding.

As to the return of acceptance fees, a clarification is in order. The Investigating Commissioner erred in referring to them as "attorney's fees"—

> As to the charge that respondent abandoned the cases he accepted after payment of attorney's fees, this commission is not fully satisfied that the complainant was able to prove it with substantial or clear evidence. It was not fully explained in the complaint how or in what manner were the cases "abandoned" by the respondent; and what prejudice was caused to the complainant. This Commission noted

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[29] *Anacta v. Resurreccion,* 692 Phil. 488, 499 (2012).

[30] *Junio v. Grupo, supra* note 23, *Wong v. Atty. Moya II,* 590 Phil. 279 (2008), *Lao v. Medel,* 453 Phil. 115 (2003), *Barrientos v. Libiran-Meteoro,* 480 Phil. 661 (2004).

[31] *Roa v. Moreno,* 633 Phil. l, 8 (2010).

that not a single document or order coming from the court of prosecutor's office was appended to the Complaint-Affidavit that would at least apprise this body of what the respondent actually did with the cases he represented.[32]

There is a distinction between attorney's fee and acceptance fee. It is well-settled that attorney's fee is understood both in its ordinary and extraordinary concept.[33] In its ordinary sense, attorney's fee refers to the reasonable compensation paid to a lawyer by his client for legal services rendered. Meanwhile, in its extraordinary concept, attorney's fee is awarded by the court to the successful litigant to be paid by the losing party as indemnity for damages.[34] On the other hand, acceptance fee refers to the charge imposed by the lawyer for merely accepting the case. This is because once the lawyer agrees to represent a client, he is precluded from handling cases of the opposing party based on the prohibition on conflict of interest. Thus, this incurs an opportunity cost by merely accepting the case of the client which is therefore indemnified by the payment of acceptance fee. Since the acceptance fee only seeks to compensate the lawyer for the lost opportunity, it is not measured by the nature and extent of the legal services rendered.[35]

In the case at bench, the amounts of ₱20,000.00, ₱18,000.00, and ₱15,000.00 , respectively, were in the nature of acceptance fees for cases in which respondent lawyer agreed to represent complainant. Despite this oversight of the Investigating Commissioner, the Court affirms the finding that aside from her bare allegations, complainant failed to present any evidence showing that respondent lawyer committed abandonment or neglect of duty in handling of cases. Hence, the Court sees no legal basis for the return of the subject acceptance fees.

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[32] *Rollo,* pp. 40-41.

[33] *Traders Royal Bank Employees Union-Independent v. NLRC,* 336 Phil. 705, 712 (1997).

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

[35] *Dalupan v. Gacott*, A.C. No. 5067, June 29, 2015.

16.04 of the Code of Professional Responsibility, the Court hereby **SUSPENDS** him from the practice of law for **THREE YEARS** with a **STERN WARNING** that a repetition of the same or similar act would be dealt with more severely.

Let copies of this decision be furnished the Bar Confidant to be entered in the personal record of the respondent as a member of the Philippine Bar; the Integrated Bar of the Philippines for distribution to all its chapters; and the Office of the Court Administrator for circulation to all courts throughout the country.

SO ORDERED.

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

Brion, J., on leave.

EN BANC

[G.R. No. 215995. January 19, 2016]

VICE-MAYOR MARCELINA S. ENGLE, *petitioner, vs.* **COMMISSION ON ELECTIONS EN BANC and WINSTON B. MENZON,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ELECTION LAWS; OMNIBUS ELECTION CODE (OEC); PETITION TO DENY DUE COURSE TO OR CANCEL A CERTIFICATE OF CANDIDACY (COC) MAY BE FILED ON THE EXCLUSIVE GROUND OF FALSE MATERIAL REPRESENTATION IN THE COC.—

Under Section 78 of the OEC, a petition to deny due course to, or cancel a COC may be filed on the exclusive ground of false material representation in said COC. x x x Section 74 of the OEC in turn enumerates the items that should be stated in a COC.

2. **ID.; ID.; ID.; ID.; FALSE MATERIAL REPRESENTATION REFERS TO QUALIFICATIONS FOR THE ELECTIVE OFFICE.—** Petitioner x x x vied for the position of Vice-Mayor of the Municipality of Babatngon, Province of Leyte in the May 13, 2013 Automated Synchronized National, Local and ARMM Regional Elections x x x as substitute candidate for her deceased spouse, [James L. Engle who was originally a candidate for the contested position]. [P]rivate respondent filed x x x a Petition to Deny Due Course and/or Cancel the Certificate of Candidacy (COC) of petitioner arguing in the main that the latter misrepresented that she is qualified to substitute her husband, who was declared an independent candidate by the COMELEC. It would appear that James L. Engle's Certificate of Nomination and Acceptance (CONA) was signed by Lakas Christian Muslim Democrats (Lakas-CMD) Leyte Chapter President, Ferdinand Martin G. Romualdez (Romualdez). However, Lakas-CMD failed to submit to the COMELEC Law Department the authorization of Romualdez to sign the CONAs of Lakas-CMD candidates in Babatngon as prescribed by Section 6(3) of COMELEC Resolution No. 9518. Thus, the COMELEC Law Department considered all Lakas-CMD candidates whose CONAs were signed by Romualdez as independent candidates. For this reason, private respondent charged petitioner with violation of Section 15, COMELEC Resolution No. 9518 which disallows the substitution of an independent candidate. x x x [T]here was no false material representation in petitioner's COC under Section 78, in relation to Section 74, of the OEC. x x x [I]n order to justify the cancellation of the certificate of candidacy under Section 78, it is essential **that the false representation mentioned therein pertain[s] to a material matter** x x x [I]t may be concluded that the material misrepresentation contemplated by Section 78 of the Code **refer[s] to qualifications for elective office.** x x x [Also,][t]he records show that when petitioner's husband filed his certificate of candidacy x x x he clearly indicated therein that he was a nominee of Lakas-CMD and attached

thereto not only the Certificate of Nomination and Acceptance (CONA) signed by Romualdez but also the Authority to Sign Certificates of Nomination and Acceptance x x x in favor of Romualdez signed by Lakas-CMD President Revilla and Lakas-CMD Secretary-General Aquino. x x x There was no evidence on record that the party or petitioner had notice or knowledge of the COMELEC's classification of James L. Engle as an independent candidate prior to February 22, 2013 when petitioner filed her COC as a substitute for her deceased husband.

3. **ID.; ID.; RULES AND REGULATIONS FOR THE CONDUCT OF ELECTIONS ARE MANDATORY BEFORE THE ELECTION BUT DIRECTORY ONLY AFTER THE ELECTION LEST INNOCENT VOTERS WILL BE DEPRIVED OF THEIR VOTES WITHOUT FAULT ON THEIR PART; CASE AT BAR.—** Despite finding that there was no false material representation in petitioner's COC, the COMELEC nonetheless cancelled the same on the ground of invalidity of petitioner's substitution for her husband as candidate for Vice-Mayor of Babatngon, Leyte. The COMELEC anchored its action on the fact that [Lakas-CMD Leyte Chapter President] Romualdez's authority to sign James L. Engle's CONA was belatedly submitted and thus, the latter should be considered an independent candidate who cannot be substituted under Section 77 of the OEC and Section 15 of COMELEC Resolution No. 9518. x x x This Court recognizes that the COMELEC is empowered by law to prescribe such rules so as to make efficacious and successful the conduct of elections. However, it is a long standing principle in jurisprudence that rules and regulations for the conduct of elections are mandatory before the election, but when they are sought to be enforced after the election they are held to be directory only, if that is possible, especially where, if they are held to be mandatory, innocent voters will be deprived of their votes without any fault on their part. x x x [T]he late submission of Romualdez's authority to sign the CONA of James L. Engle to the COMELEC was a mere technicality that cannot be used to defeat the will of the electorate in a fair and honest election.

APPEARANCES OF COUNSEL

George Erwin M. Garcia for petitioner.

The Solicitor General for public respondent *Commission on Elections.*

Aurelio D. Menzon for private respondent.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

Challenged in this petition for *certiorari* and prohibition under Rule 64 in relation to Rule 65 of the 1997 Rules of Civil Procedure is the Resolution[1] of the Commission on Elections (COMELEC) *En Banc* dated January 20, 2015 which upheld the Resolution[2] of the COMELEC Second Division dated July 5, 2013, denying due course to and/or cancelling petitioner's certificate of candidacy; annulling her proclamation as the duly-elected Vice-Mayor of Babatngon, Leyte; and proclaiming private respondent in her stead.

Petitioner and private respondent vied for the position of Vice-Mayor of the Municipality of Babatngon, Province of Leyte in the May 13, 2013 Automated Synchronized National, Local and ARMM Regional Elections (the May 13, 20I3 Elections, for brevity). Petitioner's late husband, James L. Engle, was originally a candidate for said contested position; however, he died of cardiogenic shock on February 2, 2013.[3] Due to this development, petitioner filed her certificate of candidacy[4] on February 22, 2013 as a substitute candidate for her deceased spouse.

In response, private respondent filed, on February 25, 2013, a Petition to Deny Due Course and/or Cancel the Certificate of Candidacy[5] (COC) of petitioner arguing in the main that the

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[1] *Rollo,* pp. 42-54.

[2] *Id*. at 55-68.

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

[4] *Id*. at 81.

latter misrepresented that she is qualified to substitute her husband, who was declared an independent candidate by the COMELEC. It would appear that James L. Engle's Certificate of Nomination and Acceptance (CONA) was signed by Lakas Christian Muslim Democrats (Lakas-CMD) Leyte Chapter President, Ferdinand Martin G. Romualdez (Romualdez). However, Lakas-CMD failed to submit to the COMELEC Law Department the authorization of Romualdez to sign the CONAs of Lakas-CMD candidates in Babatngon as prescribed by Section 6(3) of COMELEC Resolution No. 9518. Thus, the COMELEC Law Department considered all Lakas-CMD candidates whose CONAs were signed by Romualdez as independent candidates.[6] For this reason, private respondent charged petitioner with violation of Section 15, COMELEC Resolution No. 9518 which disallows the substitution of an independent candidate. He argued that petitioner's declaration that she was a member of the political party, Lakas-CMD, was intended to deceive the electorate that she was qualified to substitute her husband. Additionally, private respondent claimed that "[t]he false representation of the [petitioner] that she is qualified for public office consisted of a deliberate attempt to mislead, misinform, or hide a fact that would otherwise render a candidate ineligible."[7]

In petitioner's Verified Answer,[8] she countered that: (1) the ground relied upon in private respondent's petition was not the ground contemplated by Section 1, Rule 23 of COMELEC Resolution No. 9523; (2) the COMELEC did not issue an official declaration that petitioner's husband was an independent candidate; and (3) James L. Engle's CONA was signed by an authorized person acting on behalf of LAKAS-CMD.

With regard to her first counter-argument, petitioner posited that, under Section 1, Rule 23 of COMELEC Resolution No. 9523, the exclusive ground for denial or cancellation of a COC

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[5] *Id*. at 69-76.

[6] *Id*. at 145-146.

[7] *Id*. at 72.

[8] *Id*. at 86-96.

is the falsity of a material representation contained therein that is required by law. Private respondent's assertion that petitioner's statement in her COC regarding her affiliation with a political party was such a false representation is "absurd" considering that her CONA was signed by Senator Ramon "Bong" Revilla, Jr. and Mr. Raul L. Lambino, President and Senior Deputy Secretary-General of Lakas-CMD, respectively. Assuming the veracity of private respondent's allegations, his contention that petitioner is disqualified to run as a substitute is not a proper subject of a petition to deny due course or to cancel a COC. The qualification or disqualification of a candidate is allegedly covered by Sections 12, 68, 69 and 78 of the Omnibus Election Code. In petitioner's view, the petition to cancel her COC is dismissible according to the second paragraph of Section 1 of COMELEC Resolution No. 9523 which provides that "[a] petition to Deny Due Course to or Cancel Certificate of Candidacy invoking grounds other than those stated above or grounds for disqualification, or combining grounds for a separate remedy, shall be summarily dismissed."

As for petitioner's counter-arguments on the substantive issues, she contended that there was no official declaration from the COMELEC that her deceased husband was an independent candidate. Private respondent's reliance on a mere print out of the COMELEC website listing her husband as an independent candidate was misplaced as the same cannot be considered authoritative as opposed to official documents that showed James L. Engle's nomination by Lakas-CMD and his acceptance of said nomination to run for the position of Vice-Mayor of Babatngon, Leyte under the banner of Lakas- CMD. Moreover, petitioner stressed that Romualdez was authorized to sign James L. Engle's CONA. She attached to her Verified Answer a copy of the Authority to Sign Certificates of Nomination and Acceptance dated September 11, 2012 which was signed by Ramon "Bong" Revilla, Jr. (National President) and Jose S. Aquino II (Secretary-General) of Lakas-CMD in favor of Romualdez.

The petition to deny due course or cancel petitioner's COC

was still pending with the COMELEC Second Division when the May 13, 2013 Elections were held. James L. Engle's name remained on the ballot. On May 15, 2013, the Municipal Board of Canvassers issued a certificate of canvass of votes and proclamation of winning candidates for Babatngon Mayor and Vice-Mayor[9] wherein petitioner was declared as the duly-elected Vice-Mayor of Babatngon, Leyte. Petitioner was credited with the Six Thousand Six Hundred Fifty Seven (6,657) votes cast for her husband as against private respondent's Three Thousand Five Hundred Fifteen (3,515) votes.[10]

It was only on July 5, 2013 did the COMELEC Second Division promulgate the assailed Resolution which denied due course to and cancelled petitioner's COC resulting in the annulment of petitioner's previous proclamation as duly-elected Vice-Mayor of Babatngon, Leyte and the declaration of private respondent as winner of the contested position. The dispositive portion of the July 5, 2013 Resolution is reproduced here:

> **WHEREFORE,** premises considered, this Commission hereby **RESOLVES** to **DENY DUE COURSE** to and/or **CANCEL** the Certificate of Candidacy filed by Respondent **MARCELINA S. ENGLE** for the position of Vice-Mayor of Babatngon, Leyte, for the 13 May 2013 National and Local Elections. Moreover, Respondent **MARCELINA S. ENGLE's** proclamation as the duly-elected Vice-Mayor of Babatngon, Leyte is hereby **ANNULLED**. Accordingly:
>
> 1. The Executive Director is ordered to constitute a Special Municipal Board of Canvassers for the municipality of Babatngon, Leyte; and
>
> 2. The Special Municipal Board of Canvassers is ordered to immediately notify the parties, reconvene and proclaim Petitioner **WINSTON B. MENZON** as the duly-elected Vice-Mayor of Babatngon, Leyte.
>
> Let the Executive Director implement this Resolution.[11]

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[9] Records, p. 134.

[10] *Rollo,* p. 44.

[11] *Id.* at 63-64.

According to the COMELEC Second Division, the substitution of petitioner as a candidate in place of her deceased husband for the position of Vice-Mayor of Babatngon, Leyte was not a material misrepresentation which may be a ground for cancellation of her COC under Section 78, in relation to Section 74, of the Omnibus Election Code (OEC). Citing jurisprudence, the COMELEC Second Division ruled that the false representation contemplated under the law refers to a material fact affecting a candidate's qualification for office such as citizenship or residence.

Despite the foregoing finding, the COMELEC Second Division nonetheless found sufficient basis to cancel petitioner's COC on the ground that she could not have validly substituted her husband, who was deemed an independent candidate for failure of Lakas-CMD to submit to the COMELEC Law Department Romualdez's authority to sign CONAs for and on behalf of the party on or before October 1, 2012 in violation of Section 6 (3) of COMELEC Resolution No. 9518. The COMELEC Second Division noted that the purported authorization of Romualdez to sign CONAs for Lakas-CMD candidates in Leyte was belatedly submitted in connection with the proceedings on the petition to deny due course to, or cancel petitioner's COC.

Finally, on the point on who should be declared the winning candidate for the position of Vice-Mayor of Babatngon, the COMELEC Second Division held that private respondent, the second placer, should be declared the winner in line with jurisprudence stating that if the COC of the winning candidate is void *ab initio* then the votes of the disqualified or ineligible candidate should be considered stray.

Aggrieved, petitioner moved for reconsideration of the aforementioned ruling of the COMELEC Second Division with the COMELEC *En Banc*. However, the latter tribunal denied petitioner's plea in the assailed January 20, 2015 Resolution, the dispositive portion of which reads:

WHEREFORE, premises considered, the Motion for Reconsideration is **DENIED** for **LACK OF MERIT.** The Resolution of the Commission *(Second Division)* is **AFFIRMED.** [12]

Appealing now to this Court for relief, petitioner offers the following arguments in support of her petition:

I

PUBLIC RESPONDENT COMELEC *EN BANC* AND ITS *SECOND DIVISION* ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT GRANTED THE PETITION FILED BY MENZON DESPITE ITS FINDING THAT ENGLE DID NOT COMMIT ANY MATERIAL MISREPRESENTATION IN HER CERTIFICATE OF CANDIDACY.

II

PUBLIC RESPONDENT COMELEC *EN BANC* AND ITS *SECOND DIVISION* ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT GRANTED THE PETITION FILED BY MENZON EVEN THOUGH NO LEGAL GROUND EXISTS TO DENY DUE COURSE TO OR CANCEL ENGLE'S CERTIFICATE OF CANDIDACY GIVEN THE ABSENCE OF MATERIAL MISREPRESENTATION IN THIS CASE.

III

PUBLIC RESPONDENT COMELEC *EN BANC* AND ITS *SECOND DIVISION* ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT DENIED DUE COURSE TO AND CANCELLED PETITIONER'S CERTIFICATE OF CANDIDACY EVEN THOUGH THE PETITION FILED BY MENZON IS CLEARLY THE WRONG LEGAL REMEDY TO ASSAIL THE SUPPOSED INVALIDITY OF PETITIONER'S SUBSTITUTION THUS VIOLATING ENGLE'S CONSTITUTIONAL RIGHT TO DUE PROCESS OF LAW.

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[12] *Id*. at 53.

IV

PUBLIC RESPONDENT COMELEC *EN BANC* AND ITS *SECOND DIVISION* ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT DECLARED THAT ROMUALDEZ HAS NO AUTHORITY TO SIGN THE CONA OF LAKAS-CMD's CANDIDATES IN LEYTE.

V

PUBLIC RESPONDENT COMELEC *EN BANC* AND ITS *SECOND DIVISION* ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT GRANTED THE PETITION FILED BY MENZON AND PENALIZED THE PETITIONER FOR AN OMISSION DONE BY ANOTHER PARTY AS THIS RUN CONTRARY TO THE PRINCIPLE OF *RES INTER ALIOS ACTA*.

VI

PUBLIC RESPONDENT COMELEC *EN BANC* AND ITS *SECOND DIVISION* ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT DECLARED THAT PETITIONER ENGLE CANNOT VALIDLY SUBSTITUTE HER DECEASED HUSBAND, JAMES L. ENGLE, AS THE LAKAS-CMD CANDIDATE FOR THE POSITION OF VICE-MAYOR OF BABATNGON, LEYTE.

VII

PUBLIC RESPONDENT COMELEC *EN BANC* AND ITS *SECOND DIVISION* ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT DISREGARDED AND BYPASSED THE WILL OF THE ELECTORATE BY IGNORING THE OVERWHELMING AND PROMINENT NUMBER OF VOTES OBTAINED BY ENGLE DURING THE RECENTLY CONCLUDED MAY 13, 2013 NATIONAL AND LOCAL ELECTIONS.

VIII

PUBLIC RESPONDENT COMELEC *EN BANC* AND ITS *SECOND DIVISION* ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION WHEN IT ORDERED THE PROCLAMATION OF MENZON, THE CANDIDATE WHO OBTAINED THE SECOND HIGHEST

NUMBER OF VOTES, FOR THE POSITION OF VICE-MAYOR OF BABATNGON, LEYTE.[13]

During the pendency of this petition, the COMELEC *En Banc* issued on February 3, 2015 a Writ of Execution[14] in SPA Case No. 13-232 (DC) (F) in response to a motion filed by private respondent which set the stage for the immediate implementation of the assailed COMELEC Resolutions which are the subject matter of this case.

On February 26, 2015, the COMELEC filed its Comment[15] wherein it raised the following counter-arguments:

I.

THE NAME AND SPECIMEN SIGNATURES OF THE PARTY OFFICIAL AUTHORIZED TO SIGN THE CONA SHOULD BE TRANSMITTED TO THE COMELEC WITHIN THE PERIOD PROVIDED IN RESOLUTION NO. [9518].

II.

POLITICAL PARTIES AND THE CANDIDATES THEMSELVES KNEW OF RESOLUTION NO. 9518 AS IT WAS THE GUIDELINES PROMULGATED FOR THE CONDUCT OF THE MAY 2013 NATIONAL AND LOCAL ELECTIONS.

III.

OTHER CANDIDATES WERE SIMILARLY DEEMED INDEPENDENT CANDIDATES FOR FAILURE TO COMPLY WITH RESOLUTION NO. 9518.

IV.

THE PROSCRIPTION AGAINST THE SUBSTITUTION OF AN INDEPENDENT CANDIDATE WHO DIES PRIOR TO THE ELECTION IS A LEGAL PRINCIPLE.

V.

PETITIONER COULD NOT BE VOTED FOR IN THE MAY 2013 NATIONAL AND LOCAL ELECTIONS.

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[13] *Id*. at 14-16.

[14] *Id*. at 190-193.

[15] *Id*. at 207-225.

VI.

PETITIONER WAS NOT DENIED DUE PROCESS WHEN HER COC WAS CANCELLED BY THE COMELEC.

VII.

NO GRAVE ABUSE OF DISCRETION WAS COMMITTED BY COMELEC IN CANCELLING PETITIONER'S COC.[16]

Private respondent likewise filed his Comment/Opposition[17] on March 17, 2015. In his pleading, private respondent identified the following issues that should be resolved in this case:

I. Whether or not petitioner Engle can validly substitute for her late husband James Engle who was an independent candidate for Vice-Mayor of Babatngon, Leyte;

II. Whether or not private respondent (sic) the Commission En Banc erred in ordering the proclamation of private respondent Menzon as the candidate who obtained the second highest number of votes, for the position of Vice-Mayor of Babatngon, Leyte;

III. Whether or not the Commission En Banc erred in granting private respondent's Petition in the absence of a finding of material misrepresentation of this case; [and]

IV. Whether or not petitioner's prayer for issuance of temporary restraining order and/or status quo ante order and/or preliminary injunction is meritorious.[18]

From the parties' submissions, it is apparent that this case rests upon the resolution of the following core issues:

I

WHETHER OR NOT PETITIONER'S COC WAS VALIDLY CANCELLED BY THE COMELEC

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[16] *Id*. at 212-213.

[17] *Id*. at 228-244.

[18] *Id*. at 232.

II

WHETHER OR NOT PETITIONER CAN VALIDLY SUBSTITUTE HER HUSBAND JAMES L. ENGLE AFTER HIS UNEXPECTED DEMISE

III

WHETHER OR NOT PRIVATE RESPONDENT CAN BE VALIDLY PROCLAIMED AS VICE-MAYOR OF BABATNGON, LEYTE DESPITE HAVING PLACED ONLY SECOND IN THE MAY 13, 2013 ELECTIONS

We grant the petition.

Under Section 78 of the OEC, a petition to deny due course to, or cancel a COC may be filed on the exclusive ground of false material representation in said COC. For reference, we quote the full provision here:

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

Section 74 of the OEC in turn enumerates the items that should be stated in a COC, to wit:

> Section 74. *Contents of certificate of candidacy.* —The certificate of candidacy shall state that the person filing it is announcing his candidacy for the office stated therein and that he is eligible for said office; if for Member of the Batasang Pambansa, the province, including its component cities, highly urbanized city or district or sector which he seeks to represent; the political party to which he belongs; civil status; his date of birth; residence; his post office address for all election purposes; his profession or occupation; that he will support and defend the Constitution of the Philippines and will maintain true faith and allegiance thereto; that he will obey the laws, legal orders, and decrees promulgated by the duly constituted authorities;

that he is not a permanent resident or immigrant to a foreign country; that the obligation imposed by his oath is assumed voluntarily, without mental reservation or purpose of evasion; and that the facts stated in the certificate of candidacy are true to the best of his knowledge.

Unless a candidate has officially changed his name through a court approved proceeding, a [candidate] shall use in a certificate of candidacy the name by which he has been baptized, or if has not been baptized in any church or religion, the name registered in the office of the local civil registrar or any other name allowed under the provisions of existing law or, in the case of a Muslim, his Hadji name after performing the prescribed religious pilgrimage: Provided, That when there are two or more candidates for an office with the same name and surname, each candidate, upon being made aware or such fact, shall state his paternal and maternal surname, except the incumbent who may continue to use the name and surname stated in his certificate of candidacy when he was elected. He may also include one nickname or stage name by which he is generally or popularly known in the locality.

The person filing a certificate of candidacy shall also affix his latest photograph, passport size; a statement in duplicate containing his bio-data and program of government not exceeding one hundred words, if he so desires.

Based on the letter of the foregoing provisions, we agree with the COMELEC Second Division finding, implicitly affirmed by the COMELEC *En Banc,* that there was no false material representation in petitioner's COC under Section 78, in relation to Section 74, of the OEC.

We quote with approval the following disquisition in the COMELEC Second Division's Resolution dated July 5, 2013:

The false representation which is a ground for a denial of due course to and/or cancellation of a candidate's COC refers to a material fact relating to the candidate's qualification for office such as one's citizenship or residence. Thus, citing *Salcedo II v. COMELEC* and *Lluz v. COMELEC,* the Supreme Court, in the case of *[Ugdoracion], Jr. v. COMELEC, et al.,* ruled as follows:

> In case there is a material misrepresentation in the certificate of candidacy, the Comelec is authorized to deny due course to or cancel such certificate upon the filing of a petition by any

person pursuant to Section 78. x x x.

x x x x x x x x x

As stated in the law, in order to justify the cancellation of the certificate of candidacy under Section 78, it is essential that **the false representation mentioned therein pertain[s] to a material matter** for the sanction imposed by this provision would affect the substantive rights of a candidate the right to run for the elective post for which he filed the certificate of candidacy. Although the law does not specify what would be considered as a material representation, the court has interpreted this phrase in a line of decisions applying Section 78 of [B.P. 881].

x x x x x x x x x

Therefore, it may be concluded that the material misrepresentation contemplated by Section 78 of the Code **refer[s] to qualifications for elective office.** This conclusion is strengthened by the fact that the consequences imposed upon a candidate guilty of having made a false representation in [the] certificate of candidacy are grave to prevent the candidate from running or, if elected, from serving, or to prosecute him for violation of the election laws. It could not have been the intention of the law to deprive a person of such a basic and substantive political right to be voted for a public office upon just any innocuous mistake.[19]

Undeniably, private respondent failed to demonstrate that petitioner made a false statement regarding her qualifications or concealed any disqualification for the office to which she sought to be elected in her COC to warrant its cancellation under Section 78.

The records also show that when petitioner's husband filed his certificate of candidacy on October 4, 2012 with the Office of the Election Officer in Babatngon, Leyte he clearly indicated therein that he was a nominee of Lakas-CMD and attached thereto not only the CONA signed by Romualdez but also the Authority to Sign Certificates of Nomination and Acceptance dated

[19] *Id*. at 59.

September 12, 2012 in favor of Romualdez signed by Lakas-CMD President Revilla and Lakas-CMD Secretary-General Aquino. In *Sinaca v. Mula,*[20] we held:

> A certificate of candidacy is in the nature of a formal manifestation to the whole world of the candidate's political creed or lack of political creed. It is a statement of a person seeking to run for a public office certifying that he announces his candidacy for the office mentioned and that he is eligible for the office, the name of the political party to which he belongs, if he belongs to any, and his post-office address for all election purposes being as well stated.

Verily, it was publicly known that James L. Engle was a member of Lakas-CMD. As far as the party and his wife were concerned, James L. Engle, as a member of Lakas-CMD, may be substituted as a candidate upon his death. There was no evidence on record that the party or petitioner had notice or knowledge of the COMELEC's classification of James L. Engle as an independent candidate prior to February 22, 2013 when petitioner filed her COC as a substitute for her deceased husband. The only document in the record indicating that Lakas-CMD had been notified of James L. Engle's designation as an independent candidate is the Letter dated March 21, 2013 sent by the COMELEC Law Department to Romualdez[21] stating that James L. Engle was declared an independent candidate due to the failure of Lakas-CMD to submit the authority of Romualdez to sign James L. Engle's CONA to the Law Department as required under Section 6(3) of COMELEC Resolution No. 9518 and in view thereof petitioner's COC as her husband's substitute was denied due course.

First, the COMELEC Law Department's "ruling" was issued only after the filing of petitioner's COC. Second, with respect to the denial of due course to James L. Engle's COC as a

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[20] 373 Phil. 896, 908 (1999).

[21] Romualdez had previously sent a letter to the Municipal Election Officer of Babatngon, Leyte informing the latter of the death of James L. Engle and submitting the certificate of candidacy of petitioner as a substitute candidate. Romualdez's letter was forwarded by the Municipal Election Officer to the COMELEC Law Department.

nominee of Lakas-CMD and to petitioner's COC as his substitute, the COMELEC Law Department's letter is not binding and at most, recommendatory. It is settled in jurisprudence that the denial of due course or cancellation of one's COC is not within the administrative powers of the COMELEC, but rather calls for the exercise of its quasi-judicial functions.[22] We have also previously held that the COMELEC, in the exercise of its adjudicatory or quasi-judicial powers, is mandated by the Constitution to hear and decide such cases first by Division and, upon motion for reconsideration, by the *En Banc*.[23] In resolving cases to deny due course to or cancel certificates of candidacy, the COMELEC cannot merely rely on the recommendations of its Law Department but must conduct due proceedings through one of its divisions.[24] Returning to the case at bar, the COMELEC Second Division only formally ruled on the status of James L. Engle as an independent candidate and the invalidity of petitioner's substitution on July 5, 2013, months after the May 13, 2013 Elections.

Under these premises, the COMELEC correctly did not cancel petitioner's COC on the ground of false material representation as there was none.

This brings us to the second issue. Despite finding that there was no false material representation in petitioner's COC, the COMELEC nonetheless cancelled the same on the ground of invalidity of petitioner's substitution for her husband as candidate for Vice-Mayor of Babatngon, Leyte. The COMELEC anchored its action on the fact that Romualdez's authority to sign James L. Engle's CONA was belatedly submitted and thus, the latter should be considered an independent candidate who cannot be substituted under Section 77[25] of the OEC and

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[22] *Cipriano v. Commission on Elections,* 479 Phil. 677, 690 (2004).

[23] *Cerafica v. Commission on Elections,* G.R. No. 205136, December 2, 2014.

[24] *Id*.

Section 15 of COMELEC Resolution No. 9518.[26]

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[25] Section 77 provides:

Sec. 77. *Candidates in case of death, disqualification or withdrawal of another.*—If after the last day for the filing of certificates of candidacy, an official candidate of a registered or accredited political party dies, withdraws or is disqualified for any cause, **only a person belonging to, and certified by, the same political party may file a certificate of candidacy to replace the candidate who died,** withdrew or was disqualified. The substitute candidate nominated by the political party concerned may file his certificate of candidacy for the office affected in accordance with the preceding sections not later than mid-day of the day of the election. If the death, withdrawal or disqualification should occur between the day before the election and mid-day of election day, said certificate may be filed with any board of election inspectors in the political subdivision where he is a candidate, or, in the case of candidates to be voted for by the entire electorate of the country, with the Commission. (Emphasis supplied.)

[26] Section 15 of COMELEC Resolution No. 9518 provides:

Sec. 15. Substitution of Candidates in case of death, disqualification or withdrawal of another. — If after the last day for the filing of Certificates of Candidacy, an official candidate of a duly registered political party or coalition of political parties dies, withdraws or is disqualified for any cause, he may be substituted by a candidate belonging to, and nominated by, the same political party. **No substitute shall be allowed for any independent candidate.**

The substitute of a candidate who has withdrawn on or before December 21, 2012 may file his Certificate of Candidacy for the office affected not later than December 2I, 2012, so that the name of the substitute will be reflected on the official ballots.

No substitution due to withdrawal shall be allowed after December 21, 2012.

The substitute for a candidate who died or is disqualified by final judgment, may file his Certificate of Candidacy up to mid-day of election day, provided that the substitute and the substituted have the same surnames.

If the death or disqualification should occur between the day before the election and mid-day of election day, the substitute candidate may file his Certificate of Candidacy with any Board of Election Inspectors in the political subdivision where he is a candidate, or in the case of a candidate for Senator, with the Law Department of the Commission on Elections in Manila, provided that the substitute and the substituted candidate have the same surnames. (Emphasis supplied.)

It is on this point that the Court sees fit to overturn the COMELEC's disposition of the present case.

The COMELEC relies heavily on Section 6 of COMELEC Resolution No. 9518, which reads:

> Section 6. **Filing of Certificate of Nomination and Acceptance of Official Candidates of a Political Party *I* Coalition of Political Parties.** — The Certificate of Nomination and Acceptance (CONA) of the official candidates of the duly registered political party or coalition of political parties shall be, in five (5) legible copies, attached to and filed simultaneously with the Certificate of Candidacy. The CONA shall also be stamped received in the same manner as the Certificate of Candidacy.
>
> **The CONA,** sample form attached, **shall be duly signed and attested to under oath, either by the Party President, Chairman, Secretary-General or any other duly authorized officer of the nominating party** and shall bear the acceptance of the nominee as shown by his signature in the space provided therein.
>
> **For this purpose, all duly registered political parties or coalition of political parties shall, not later than October 1, 2012, submit to the Law Department, the names and specimen signatures of the authorized signatories of their official party nominations.**
>
> No duly registered political party or coalition of political parties shall be allowed to nominate more than the number of candidates required to be voted for in a particular elective position; otherwise, in such a situation, all of the nominations shall be denied due course by the Commission. (Emphases supplied.)

The Commission stressed that the belated filing of Romualdez's authority to sign James L. Engle's COC only in connection with the proceedings for cancellation of petitioner's own COC is fatal to petitioner's cause in view of the categorical directive in the above provision that said authority must be submitted to its Law Department on or before October 1, 2012.

This Court recognizes that the COMELEC is empowered by law to prescribe such rules so as to make efficacious and successful the conduct of elections.[27] However, it is a long

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[27] *Federico v. Commission on Elections,* G.R. No. 199612, January 22, 2013, 689 SCRA 134, 148.

standing principle in jurisprudence that rules and regulations for the conduct of elections are mandatory before the election, but when they are sought to be enforced after the election they are held to be directory only, if that is possible, especially where, if they are held to be mandatory, innocent voters will be deprived of their votes without any fault on their part.[28] Over time, we have qualified this doctrine to refer only to **matters of form** and cannot be applied to the substantial qualifications of candidates. This was discussed at length in *Mitra v. Commission on Elections,*[29] thus:

> We have applied in past cases the principle that the manifest will of the people as expressed through the ballot must be given fullest effect; in case of doubt, political laws must be interpreted to give life and spirit to the popular mandate. Thus, we have held that *while provisions relating to certificates of candidacy are in mandatory terms, it is an established rule of interpretation as regards election laws, that mandatory provisions, requiring certain steps before elections, will be construed as directory after the elections, to give effect to the will of the people.*
>
> Quite recently, however, we warned against a blanket and unqualified reading and application of this ruling, as it may carry dangerous significance to the rule of law and the integrity of our elections. For one, such blanket/unqualified reading may provide a way around the law that effectively negates election requirements aimed at providing the electorate with the basic information for an informed choice about a candidate's eligibility and fitness for office. Short of adopting a clear cut standard, we thus made the following clarification:
>
> > We distinguish our ruling in this case from others that we have made in the past by the clarification that COC defects *beyond matters of form* and that involve *material misrepresentations* cannot avail of the benefit of our ruling that COC mandatory requirements before elections are considered merely directory after the people shall have spoken. A mandatory and material election law requirement involves more than the will of the

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[28] *Luna v. Rodriguez,* 39 Phil. 208, 214 (1918).

[29] 636 Phil. 753, 792-793 (2010); reiterated in *Jalover v. Osmeña,* G.R. No. 209286, September 23, 2014, 736 SCRA 267, 288.

> people in any given locality. Where a *material COC misrepresentation under oath* is made, thereby violating both our election and criminal laws, we are faced as well with an assault on the will of the people of the Philippines as expressed in our laws. In a choice between provisions on material qualifications of elected officials, on the one hand, and the will of the electorate in any given locality, on the other, we believe and so hold that we cannot choose the electorate will.

Earlier, *Frivaldo v. COMELEC* provided the following test:

> [T]his Court has repeatedly stressed the importance of giving effect to the sovereign will in order to ensure the survival of our democracy. In any action involving the possibility of a reversal of the popular electoral choice, this Court must exert utmost effort to resolve the issues in a manner that would give effect to the will of the majority, for it is merely sound public policy to cause elective offices to be filled by those who are the choice of the majority. **To successfully challenge a winning candidate's qualifications, the petitioner must clearly demonstrate that the ineligibility is so patently antagonistic to constitutional and legal principles that overriding such ineligibility and thereby giving effect to the apparent will of the people would ultimately create greater prejudice to the very democratic institutions and juristic traditions that our Constitution and laws so zealously protect and promote.** (Citations omitted, underscoring supplied.)

As may be recalled, petitioner's deceased husband's name remained on the ballot notwithstanding his death even before the campaign period for the local elections began on March 29, 2013.[30] Yet, he received almost twice the number of votes as the second placer, private respondent, in a decisive victory. Since the people of Babatngon, Leyte could not have possibly meant to waste their votes on a deceased candidate, we conclude that petitioner was the undisputed choice of the electorate as Vice-Mayor on the apparent belief that she may validly substitute her husband. That belief was not contradicted by any official or formal ruling by the COMELEC ***prior*** to the elections.

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[30] COMELEC Resolution No. 9385 issued on April 3, 2012.

We held in *Rulloda v. Commission on Elections*[31] that:

> Technicalities and procedural niceties in election cases should not be made to stand in the way of the true will of the electorate. Laws governing election contests must be liberally construed to the end that the will of the people in the choice of public officials may not be defeated by mere technical objections.
>
> Election contests involve public interest, and technicalities and procedural barriers must yield if they constitute an obstacle to the determination of the true will of the electorate in the choice of their elective officials. The Court frowns upon any interpretation of the law that would hinder in any way not only the free and intelligent casting of the votes in an election but also the correct ascertainment of the results.

We had the occasion to rule in *Sinaca* that "an election in which the voters have fully, fairly, and honestly expressed their will is not invalid even though an improper method is followed in the nomination of candidates."[32] In the same case, we proceeded to enumerate examples of formal defects in a COC that may be treated with liberality once the electorate has spoken in an election, to wit:

> It has been held that the provisions of the election law regarding certificates of candidacy, such as signing and swearing on the same, as well as the information required to be stated therein, are considered mandatory prior to the elections. Thereafter, they are regarded as merely directory. With respect to election laws, it is an established rule of interpretation that mandatory provisions requiring certain steps before election will be construed as directory after the elections, to give effect to the will of the electorate. Thus, even if the certificate of candidacy was not duly signed or if it does not contain the required data, the proclamation of the candidate as winner may not be nullified on such ground. The defects in the certificate should have been questioned before the election; they may not be questioned after the election without invalidating the will of the electorate, which should not be done. In *Guzman v. Board of Canvassers,* the Court held that the "will of the people cannot be frustrated by a technicality that the

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[31] 443 Phil. 649, 655-656 (2003).

[32] *Sinaca v. Mula, supra* note 20 at 912.

certificate of candidacy had not been properly sworn to. This legal provision is mandatory and non-compliance therewith before the election would be fatal to the status of the candidate before the [election], but after the people have expressed their will, the result of the election cannot be defeated by the fact that the candidate has not sworn to his certificate of candidacy."[33]

Applying these jurisprudential precedents, we find that the late submission of Romualdez's authority to sign the CONA of James L. Engle to the COMELEC was a mere technicality that cannot be used to defeat the will of the electorate in a fair and honest election.

The Court has likewise ruled in the past that non-compliance with formal requirements laid down in election laws when not used as a means for fraudulent practice will be considered a harmless irregularity.[34] Allowing the belated submission of Romualdez's authority to sign CONAs will not result in the situation proscribed by Section 77 of the OEC — that an independent candidate will be invalidly substituted. In the case at bar, neither the COMELEC nor private respondent contended that James L. Engle was not in fact a *bona fide* member of Lakas-CMD. The record is bereft of any allegation that the authority in favor of Romualdez was inexistent, forged or in any way defective. The only issue was that it was not submitted within the prescribed deadline. Nonetheless, said authority was submitted as early as October 4, 2012 to the local election officer and subsequently to the COMELEC itself in the course of the proceedings on private respondent's petition to deny due course to, or cancel petitioner's COC, thereby putting election officials on notice that such authority exists even before the conduct of the May 13, 2013 Elections.

We distinguish this case from *Federico v. Commission on Elections,*[35] wherein we strictly applied election rules on

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[33] *Id.* at 913-914.

[34] See, for example, *Alialy v. Commission on Elections,* 112 Phil. 856, 860 (1961).

[35] *Supra* note 27.

substitution, particularly the deadline to file certificates of candidacy for substitutes of candidates who voluntarily withdraw from the electoral race. In *Federico,* a liberal interpretation of the rule would have led to a violation of the clear policy that no substitution for a voluntarily withdrawing candidate can be made beyond the mandated deadline. In the case at bar, the intention behind setting a deadline for the filing by political parties of an authority to sign CONAs was to give the COMELEC reasonable opportunity to determine who are members of political parties and who are independent candidates. This is so the COMELEC may prevent a violation of Section 77 of the OEC which reserves the right to field a substitute candidate to duly registered political parties. A relaxation of the rules in the present case would not result in the evil sought to be prevented. On the contrary, it is the strict application of the rules that would lead to the iniquitous situation that a candidate who was in fact a member of a political party would be considered an independent, thus infringing the right of the nominating political party to replace him in the event of death, withdrawal or disqualification pursuant to election laws.

To be sure, we have held that a political party has the right to identify who its members are.[36] From the evidence it can be concluded that James L. Engle was not an independent candidate but indeed a nominee of Lakas-CMD and he may be validly substituted by his wife, who was nominated by the same political party, in light of his unexpected demise prior to the elections.

The COMELEC *En Banc* in its Resolution dated January 20, 2015 asserted that it cannot ignore Lakas-CMD's non-compliance with Section 6 of COMELEC Resolution No. 9518 since the COMELEC *En Banc* issued Minute Resolution No. 12-1133 dated December 11, 2012 applying said provision strictly against the Liberal Party in the case of its local candidates for Camiguin who were similarly declared independent candidates for failure to submit the authority to sign CONAs before October 1, 2012. While we laud the COMELEC's attempt to apply the

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[36] *Sinaca v. Mula, supra* note 20 at 912.

rule equally among the political parties, it has only itself to blame for the present situation. It bears stressing here that election rules regarding formal matters are deemed mandatory before the elections and only directory after the elections. In the case of the Liberal Party candidates in Camiguin, the COMELEC *En Banc* rendered a formal ruling on their status as independent candidates, months before the election, such that the Liberal Party was officially notified that its candidates in Camiguin can no longer be substituted in the event of their death, withdrawal or disqualification. Thus, the mandatory application of the rules was justified. In petitioner's case, no official pronouncement was made by the COMELEC regarding her husband's status as an independent candidate and the validity of her filing a COC as his substitute until July 5, 2013, long after the elections were held. Indeed, it behooved the COMELEC to similarly resolve petitioner's case prior to the elections had it wanted to treat all political parties equally.

In light of the foregoing discussion that petitioner may validly substitute her husband in the May 13, 2013 Elections, it is no longer necessary to resolve the third issue on whether the COMELEC properly proclaimed private respondent, the second-placer in the vice-mayoral race of Babatngon, in place of petitioner, as well as the rest of the issues raised in the pleadings.

WHEREFORE, premises considered, the petition is **GRANTED**. The assailed Resolution dated July 5, 2013 of the COMELEC Second Division and the Resolution dated January 20, 2015 of the COMELEC *En Banc* in SPA 13-232 (DC) (F) are **REVERSED and SET ASIDE.** Petitioner Marcelina S. Engle is declared the duly-elected Vice-Mayor of Babatngon, Leyte during the May 13, 2013 Elections.

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Peralta, Bersamin, del Castillo, Perez, Mendoza, Reyes, Perlas-Bernabe, Leonen, and *Jardeleza, JJ.,* concur.

Brion, J., on leave.

FIRST DIVISION

[G.R. No. 171303. January 20, 2016]

ELIZABETH L. DIAZ, *petitioner, vs.* **GEORGINA R. ENCANTO, ERNESTO G. TABUJARA, GEMINO H. ABAD and UNIVERSITY OF THE PHILIPPINES,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; APPEALS; NOT THE PROPER REMEDY FOR THE ISSUE OF BAD FAITH WHICH IS A QUESTION OF FACT AND IS EVIDENTIARY; RULE LIBERALLY APPLIED AS THE TRIAL COURT AND THE COURT OF APPEALS ARRIVED AT DIFFERENT CONCLUSIONS.—** The resolution of this case hinges on the question of bad faith on the part of the respondents in denying petitioner Diaz's sabbatical leave application and withholding of her salaries. Bad faith, however, is a question of fact and is evidentiary. x x x Nonetheless, the Court makes an exception in this case especially so that both the RTC and the Court of Appeals have the same findings of fact, but they arrived at different conclusions.

2. **CIVIL LAW; PERSONS; PRIMORDIAL LIMITATION ON ALL RIGHTS; ABUSE OF RIGHTS PRESENT WHEN THERE IS LEGAL RIGHT OR DUTY EXERCISED IN BAD FAITH FOR THE SOLE INTENT OF INJURING ANOTHER; BAD FAITH, EXPOUNDED.—** Article 19 of the Civil Code "prescribes a 'primordial limitation on all rights' by setting certain standards that must be observed in the exercise thereof." Abuse of right under Article 19 exists when the following elements are present: (1) there is a legal right or duty; (2) which is exercised in bad faith; (3) for the sole intent of prejudicing or injuring another. This Court, expounding on the concept of bad faith under Article 19, held: Malice or bad faith is at the core of Article 19 of the Civil Code. Good faith refers to the state of mind which is manifested by the acts of the individual concerned. It consists of the intention to abstain from taking an unconscionable and unscrupulous advantage of another. It is presumed. Thus, he who alleges bad faith has the duty to

prove the same. Bad faith does not simply connote bad judgment or simple negligence; it involves a dishonest purpose or some moral obloquy and conscious doing of a wrong, a breach of known duty due to some motives or interest or ill will that partakes of the nature of fraud. Malice connotes ill will or spite and speaks not in response to duty. It implies an intention to do ulterior and unjustifiable harm. Malice is bad faith or bad motive.

3. **ID.; ID.; ID.; ID.; BAD FAITH MUST BE ESTABLISHED BY THE PARTY ALLEGING THE SAME.—** [W]hether or not there was bad faith in the delay of the resolution of petitioner Diaz's sabbatical leave application, the Court rules in the negative. "It is an elementary rule in this jurisdiction that good faith is presumed and that the burden of proving bad faith rests upon the party alleging the same." Petitioner Diaz has failed to prove bad faith on the part of the respondents. There· is nothing in the records to show that the respondents purposely delayed the resolution of her application to prejudice and injure her. She has not even shown that the delay of six months in resolving a sabbatical leave application has never happened prior to her case. On the contrary, any delay that occurred was due to the fact that petitioner Diaz's application for sabbatical leave did not follow the usual procedure; hence, the processing of said application took time.

4. **ID.; DAMAGES; NOT PROPER IN THE ABSENCE OF BAD FAITH.—** Given that the respondents have not abused their rights, they should not be held liable for any damages sustained by petitioner Diaz. "The law affords no remedy for damages resulting from an act which does not amount to a legal wrong. Situations like this have been appropriately denominated *damnum absque injuria.*" Similarly, the Court cannot grant petitioner Diaz's claim for attorney's fees as no premium should be placed on the right to litigate. "Even when a claimant is compelled to litigate or to incur expenses to protect his rights, still attorney's fees may not be awarded where there is no sufficient showing of bad faith in a party's persistence in a case other than an erroneous conviction of the righteousness of his cause."

APPEARANCES OF COUNSEL

Juan J. Diaz for petitioner.

Encanto Grasparil Catapang Guzman & Associates Law Offices for respondent G. Encanto.

Office of Legal Services for respondents Tabujara, Abad, and University of the Philippines.

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

This is a Petition for Review on *Certiorari* under Rule 45 of the 1997 Rules of Court, as amended, which seeks to reverse and set aside the April 28, 2005 Decision[1] and January 20, 2006 Resolution[2] of the Court of Appeals in CA-G.R. CV No. 55165,[3] which reversed the April 17, 1996 Decision[4] and September 17, 1996 Order[5] of the Regional Trial Court (RTC), Branch 71, Pasig City, in Civil Case No. 58397.

The undisputed facts as narrated by the Court of Appeals are as follows:

> Plaintiff-appellant [Elizabeth L. Diaz] has been in the service of [the University of the Philippines] U.P. since 1963. In 1987, she was an associate professor in the College of Mass Communication (CMC). During the second semester for Academic Year (AY) 1987-1988, she was a full time member of the faculty and taught 12 units on full load. After 2 to 3 weeks of teaching, she applied for sick leave effective November 23, 1987 until March 1, 1988. She returned on March 2, 1988 and submitted a Report for Duty Form.

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[1] *Rollo,* pp. 70-88; penned by Associate Justice Magdangal M. de Leon with Associate Justices Mariano C. del Castillo (now a member of this Court) and Regalado E. Maambong concurring.

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

[3] Entitled *Elizabeth Diaz v. Georgina R. Encanto, Ernesto G. Tabujara, Gemino H. Abad, Jose V. Abueva and University of the Philippines.*

[4] *Rollo,* pp. 109-167.

[5] *Id.* at 168-170.

On May 3, 1988, Diaz filed a letter-application directly with U.P.'s "Office of the President (Abueva) for sabbatical leave with pay for one (1) year effective June 1988 to May 1989, for "rest, renewal and study." Cecilia Lazaro, Chair of the Broadcast Department, initially recommended to CMC Dean Encanto that Diaz's sabbatical application be granted. After they discussed the options available to the CMC, Lazaro, on May 10, 1988, recommended instead that Diaz be granted any leave of absence she may be qualified for. In her May 2, 1988 letter, Diaz indicated her unwillingness to teach. Considering the CMC's experience with Diaz who dropped her courses in the previous semester, Lazaro deleted Diaz's name in the final schedule of classes for the 1st semester of AY 1988-89 beginning June 6, 1988. Incidentally, Diaz received her salary for June 1988, indicating that her sabbatical might be approved.

Thereafter, Encanto referred Diaz's sabbatical application to the Secretary of U.P., recommending its denial. When requested by (Chancellor) Tabujara, Encanto transmitted to the former a Reference Slip together with her comments thereon. Meanwhile, Encanto requested Ermelina Kalagayan to hold Diaz's salary effective July 1, 1988 until further notice considering that her sabbatical application has not yet been approved and that she did not teach that semester. Consequently, Diaz's name was deleted in the payroll from September 1988 to January 1989.

On July 4, 1988, Tabujara recommended instead that Diaz be granted a leave without pay in order to enable the CMC to hire a substitute. The next day, the U.P.'s Secretary referred to Abad, Vice- President (VP) for Academic Affairs, the fact of denial of such sabbatical request, for his own comment/recommendation to the U.P. President. Meantime, Diaz confessed her problems to Abad. On July 8, 1988, Abad returned the Reference Slip indicating therein that Diaz had promised him earlier "to put down in writing, from her point of view, the historical backdrop as it were to the latest denial of her sabbatical leave." With comments, Abad then referred the matter to the U.P. President.

Pursuant to Administrative Order No. 42 issued by the U.P. President, the Academic Policy Coordinating Committee (APCC), on July 21, 1988, reviewed the case of Diaz. When reminded by Abad, Diaz again promised to give the background information.

On Diaz's request to teach for that semester, AY 1988-89, the Vice Chancellor for Academic Affairs, Edgardo Pacheco, and the HRDO Director, Atty. Pio Frago, instructed Encanto that "Until Prof.

Diaz officially reports for duty, accomplishes the Certificate of Report for Duty, and the Dean of CMC confirms her date of actual report for duty, she is considered absent without official leave (AWOL) for the University."

On November 8, 1988, Abad, then as OIC, issued a Memorandum to Diaz to confirm as valid Encanto's reason of shortage of teaching staff in denying her sabbatical. Later, he also informed Diaz of her lack of service during the first semester of AY 1988-89, hence, she is not entitled to be paid and asked her to clarify her status of being on leave without pay.

[While Diaz was able to teach during the second semester of AY 1988-89, she was not able to claim her salaries for her refusal to submit the Report for Duty Form.[6] She received her salaries for June to July 15, 1989, but could no longer claim her salary after July 15, 1989, when Encanto reminded the University Cashier, in a letter dated July 26, 1989,[7] that Diaz had to "accomplish the Report for Duty Form to entitle her to salaries and make official her return to the service of the University."[8] Diaz's name was subsequently included in the payroll starting July 1990, when she submitted a Report for Duty after her return from compulsory summer leave.[9]

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In the meantime, on January 3, 1989, Diaz filed a complaint with the Office of the Ombudsman (OMB-00-89-0049), against Gemino H. Abad, Ernesto G. Tabujara and Georgina R. Encanto, all officials of the University of the Philippines, for the alleged violation of Section 3(e) of R.A. 3019, involving the legality of a Report for Duty Form as a prerequisite to the payment of her salary.

On May 4, 1989, the Ombudsman dismissed the said complaint and ruled, inter alia:

> Considering that Prof. Diaz was rightfully considered on leave without pay during the first semester of AY 1988-1989, to make official her return to the service of the University, it

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[6] *Id*. at 124-125.

[7] Exhibits of Defendants, Exh. 69, p. 2251.

[8] *Id.*

[9] *Rollo,* p. 73.

> is advised that she accomplish the Report for Duty Form which will then be the basis to establish the date of her actual return to the service. However, if possible, the University authorities can perhaps dispense with the requirement and pay her salaries for actual services rendered from November 3, 1988.

Diaz's initial Petition for Certiorari in the Supreme Court (G.R. No. 88834) assailing the above-quoted Ombudsman's ruling was subsequently dismissed. She filed another Petition (G.R. No. 89207) raising exactly the same issued found in G.R. No. 88834.

Meanwhile, on July 18, 1989, Diaz instituted a complaint against the U.P., Abueva, Encanto, Tabujara and Abad with the Regional Trial Court, Pasig, Metro Manila praying that the latter be adjudged, jointly and severally to pay her damages. She claimed, among others, that [respondents] conspired together as joint tortfeasors, in not paying her salaries from July 1, 1988 in the first semester of academic year 1988-89, for the entire period when her sabbatical application was left unresolved, as well as the salaries she earned from teaching in the second semester from November 1988 to May 1989. She likewise claimed moral and exemplary damages and attorney's fees.

On August 31, 1989, the Supreme Court *En Banc* dismissed Diaz's Petition in G.R. No. 89207, *viz.*:

> It is noted that the Ombudsman found no manifest partiality, evident bad faith, or gross inexcusable negligence on the part of the private respondents in denying the application for sabbatical leave of petitioner (Diaz) and in requiring her to fill up a Report for Duty Form as a requisite for her entitlement to salary.
>
> To the petitioner's contentions, the Ombudsman observed, among others, the following: that, the denial of her sabbatical leave application was due to the exigencies of the service; that petitioner was not given a teaching assignment for the first semester of AY 1988-1989, because she did not want to teach then; that the delay in action on her leave application was due to petitioner's own fault for not following the usual procedures in the processing of her application; and that there is no malice on the part of the private respondents in requiring petitioner to accomplish the Report for Duty Form which is the basis of the date of her actual return to the service. [10] (Citations omitted.)

In a Decision dated April 17, 1996, the RTC ruled in favor of petitioner Diaz, the dispositive portion of which reads:

WHEREFORE, judgment is hereby rendered in favor of plaintiff and against defendants:

1. Ordering defendants, except Abueva, to pay plaintiff, jointly and severally, the amount of ₱133,665.50 representing the total unpaid salaries from July 1, 1988 to May 31, 1989 and from July 16, 1989 to May 31, 1990 to be covered by corresponding certificate of service, with legal rate of interest from the date of this Decision until its full payment.

2. Ordering defendants, except the University and Abueva, to pay plaintiff, jointly and severally, the amount of ₱300,000.00 as moral damages.

3. Ordering defendants, except the University and Abueva, to pay plaintiff, jointly and severally, the amount of ₱60,000.00 as exemplary damages.

4. Ordering defendants, except the University and Abueva, to pay plaintiff, jointly and severally, the reduced amount of ₱50,000.00 as and by way of attorney's fees.

5. Costs of suit.

The counterclaims filed by defendant Tabujara are DISMISSED.[11]

The RTC, ruling that a sabbatical leave is not a right but a privilege, held that petitioner Diaz was entitled to such privilege and found that **the delay in the resolution of her application was unreasonable and unconscionable.**

However, on September 17, 1996, the RTC, in denying the *Motions for Reconsideration* of the respondents in said case, also amended its earlier decision by absolving respondent Encanto from any liability, to wit:

WHEREFORE, judgment is hereby rendered in favor of plaintiff and against defendants:

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[10] *Id*. at 71-75.

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

1. Ordering defendants, except Abueva and Encanto, to pay plaintiff, jointly and severally, the amount of ₱133,665.50 representing the total unpaid salaries from July 1, 1988 to May 31, 1989 and from July 16, 1989 to May 31, 1990 to be covered by corresponding certificate of service, with legal rate of interest from the date of this Decision until its full payment.

2. Ordering defendants, except the University, Abueva and Encanto, to pay plaintiff, jointly and severally, the amount of ₱300,000.00 as moral damages.

3. Ordering defendants, except the University, Abueva and Encanto, to pay plaintiff, jointly and severally, the amount of ₱60,000.00 as exemplary damages.

4. Ordering defendants, except University, Abueva and Encanto, to pay plaintiff, jointly and severally, the reduced amount of ₱50,000.00 as and by way of attorney's fees.

5. Costs of suit.

The counterclaims filed by defendant Tabujara are DISMISSED.[12]

The RTC dismissed the claim of petitioner Diaz against respondent Encanto on the ground that her function was purely recommendatory in nature. It held that she was not instrumental in the unreasonable and unconscionable delay in the resolution of petitioner Diaz's sabbatical application as she transmitted her recommendation to Abueva within eighteen days from her receipt of such application.[13]

Petitioner Diaz[14] and respondents Tabujara,[15] U.P., Abad[16] and even Encanto[17] appealed the RTC's ruling to the Court of Appeals.

As respondent Encanto was absolved of liability by the RTC in its September 17, 1996 Order, the Court of Appeals admitted

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[12] *Id*. at 169-170.

[13] *Id*. at 169.

[14] Records, pp. 2,575-2,576.

[15] *Id*. at 2,361-2,362.

[16] *Id*. at 2,577-2,576.

[17] *Id*. at 2,580-2,581.

her Brief,[18] as an incorporation to the other respondents' Brief,[19] and as a comment on petitioner Diaz's appeal.[20]

The respondents mainly argued that the RTC erred in holding them liable for damages despite the absence of bad faith on their part, as held by both the Ombudsman in OMB-00-89-0049 and the Supreme Court in G.R. No. 89207.

Petitioner Diaz, on the other hand, questioned the reversal of the RTC ruling **only** with respect to the liability of respondent Encanto, in a lone assignment of error, *viz.*:

THE LOWER COURT GRAVELY ERRED IN REVERSING ITS ORIGINAL DECISION WITH REGARD TO PRINCIPAL DEFENDANT GEORGINA R. ENCANTO BY ABSOLVING HER OF LIABILITY FOR DAMAGES TO PLAINTIFF-APPELLANT ELIZABETH L. DIAZ WITHOUT ALTERING IN ANY MATERIAL RESPECT WHATSOEVER THE FINDINGS OF FACT IN THE ORIGINAL DECISION SHOWING CLEARLY THE RESPONSIBILITY OF DEFENDANT ENCANTO FOR (I) THE WRONGFUL DISAPPROVAL OF PLAINTIFF'S SABBATICAL APPLICATION; (II) THE UNJUST DEPRIVATION OF SALARIES DUE THE PLAINTIFF FOR ALMOST ONE WHOLE SEMESTER DURING WHICH HER SABBATICAL APPLICATION REMAINED UNRESOLVED; AND (III) THE WRONGFUL WITHHOLDING OF PLAINTIFF'S EARNED SALARIES IN THE THREE SUCCEEDING SEMESTERS DURING WHICH THE PLAINTIFF TAUGHT WITHOUT BEING PAID.[21]

Ruling of the Court of Appeals

The Court of Appeals trimmed down the issue to whether or not respondents U.P., Tabujara and Abad were negligent or acted in bad faith in denying petitioner Diaz's application for sabbatical leave and in withholding her salaries. In its Decision promulgated on April 28, 2005, it effectively reversed the

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[18] CA *rollo,* pp. 62-174.

[19] *Id.* at 251-326.

[20] *Rollo,* p. 71.

[21] CA *rollo,* pp. 421-422.

decision of the RTC, *viz.*:

> **WHEREFORE,** the appealed Decision is **REVERSED** and **SET ASIDE** and a **NEW JUDGMENT** is **RENDERED,** as follows: (1) defendant-appellant University of the Philippines, through its appropriate officials, is **DIRECTED** to pay plaintiff-appellant Elizabeth Diaz the sum of Twenty-One Thousand, Eight Hundred Seventy-Nine and 64/100 (₱21,879.64) as unpaid salaries and allowances, and (2) the sums awarded as moral and exemplary damages and attorney's fees are hereby **DELETED**. This is without prejudice to the enforcement of valid rules and regulations of the University of the Philippines pertaining to Diaz's employment status.[22]

The Court of Appeals found neither negligence nor bad faith on the part of the respondents in their denial of petitioner Diaz's sabbatical leave application and in withholding her salaries.

The Court of Appeals emphasized that a sabbatical leave is not a right which could be demanded at will, even by petitioner Diaz who has been a veteran professor of 24 years at U.P. Moreover, the Court of Appeals said that the eventual denial of her sabbatical leave application was not actionable in view of the fact that *(i)* it would be unfair to impute negligence to respondents in the regular discharge of their functions; and *(ii)* assuming that there was delay in the resolution of her application, she herself caused such delay.[23]

The Court of Appeals also held that petitioner Diaz's own recalcitrance and defiance to comply with certain documentary requirements was the reason her salaries were withheld.[24]

Petitioner Diaz filed a *Motion for Reconsideration* to the aforementioned decision, which was subsequently denied for lack of merit in a Resolution dated January 20, 2006.

Issues

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[22] *Rollo,* p. 87.

[23] *Id*. at 81.

[24] *Id*. at 84.

Undaunted, petitioner Diaz is again before this Court, with the following Assignments of Error:

FIRST ASSIGNMENT OF ERROR

WITHOUT DISTURBING THE FINDINGS OF FACT OF THE TRIAL COURT BASED ON OVERWHELMING EVIDENCE REVEALING THE COMMISSION BY RESPONDENTS OF THE TORTIOUS ACTS COMPLAINED OF BY PETITIONER IN DENYING HER SABBATICAL LEAVE, THE COURT OF APPEALS GRIEVOUSLY ERRED IN IGNORING THOSE FINDINGS AND ADOPTING AND TREATING AS VALID THE FLIMSY EXCUSES OF RESPONDENTS TO AVOID THE LEGAL CONSEQUENCES OF THEIR ACTS.

SECOND ASSIGNMENT OF ERROR

THE COURT OF APPEALS ERRED IN HOLDING CONTRARY TO THE EVIDENCE ON RECORD, THAT "THERE WAS JUDICIOUS EXERCISE" BY RESPONDENTS "OF THEIR DISCRETIONARY POWER WITH RESPECT TO THE DENIAL OF THE SUBJECT SABBATICAL LEAVE."

THIRD ASSIGNMENT OF ERROR

THE COURT OF APPEALS ERRED IN TREATING AS LAWFUL THE WITHHOLDING OF PETITIONER'S SALARIES, CONTRARY TO THE EVIDENCE ON RECORD.

FOURTH ASSIGNMENT OF ERROR

THE COURT OF APPEALS ERRED IN CONCLUDING, CONTRARY TO THE EVIDENCE ON RECORD, THAT PETITIONER "FAILED TO SHOW BY A PREPONDERANCE OF EVIDENCE THE NEGLIGENCE OF RESPONDENTS SO AS TO BE ENTITLED TO THE DAMAGES SOUGHT."

FIFTH ASSIGNMENT OF ERROR

THE COURT OF APPEALS ERRED IN NOT CORRECTLY COMPUTING THE SUM OF PETITIONER'S UNPAID AND EARNED SALARIES, IN UTTER DISREGARD OF THE EVIDENCE ON RECORD.

SIXTH ASSIGNMENT OF ERROR

THE COURT OF APPEALS ERRED IN NOT FINDING, CONTRARY TO THE EVIDENCE ON RECORD, THAT RESPONDENTS ENCANTO, TABUJARA AND ABAD ARE JOINTLY AND SEVERALLY LIABLE TO PETITIONER FOR ACTUAL, MORAL AND EXEMPLARY DAMAGES AS JOINT TORTFEASORS UNDER THE LAW.[25]

The issue in this case boils down to whether or not the respondents acted in bad faith when they resolved petitioner Diaz's application for sabbatical leave and withheld her salaries.

Ruling of the Court

The resolution of this case hinges on the question of bad faith on the part of the respondents in denying petitioner Diaz's sabbatical leave application and withholding of her salaries. Bad faith, however, is a question of fact and is evidentiary.[26] Thus, contrary to petitioner Diaz's belief that "[w]hat is involved in this stage of the case is the legal interpretation or the legal consequence of the material facts of this case," the resolution of the issue at hand involves a question of fact, which the respondents rightly assert, is not within the province of a Rule 45 petition.[27] Nonetheless, the Court makes an exception in this case especially so that both the RTC and the Court of Appeals have the same findings of fact, but they arrived at different conclusions.[28]

Application for Sabbatical Leave

Petitioner Diaz's complaint[29] for recovery of damages before the RTC was based on the alleged bad faith of the respondents in denying her application for sabbatical leave *vis-a-vis* Articles 19 and 20 of the Civil Code.[30]

Articles 19 and 20 read as follows:

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[25] *Id*. at 21-22.

[26] *McLeod v. National Labor Relations Commission,* 541 Phil. 214, 242 (2007).

[27] *Rollo,* pp. 204; 239.

[28] *Jarantilla, Jr. v. Jarantilla,* 651 Phil. 13, 26 (2010).

[29] Records, pp. 1-13.

[30] *Id*. at 85.

Art. 19. Every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith.

Art. 20. Every person who, contrary to law, willfully or negligently causes damage to another, shall indemnity the latter for the same.

Article 19 of the Civil Code "prescribes a 'primordial limitation on all rights' by setting certain standards that must be observed in the exercise thereof."[31] Abuse of right under Article 19 exists when the following elements are present: (1) there is a legal right or duty; (2) which is exercised in bad faith; (3) for the sole intent of prejudicing or injuring another.[32]

This Court, expounding on the concept of bad faith under Article 19, held:

Malice or bad faith is at the core of Article 19 of the Civil Code. Good faith refers to the state of mind which is manifested by the acts of the individual concerned. It consists of the intention to abstain from taking an unconscionable and unscrupulous advantage of another. It is presumed. Thus, he who alleges bad faith has the duty to prove the same. Bad faith does not simply connote bad judgment or simple negligence; it involves a dishonest purpose or some moral obloquy and conscious doing of a wrong, a breach of known duty due to some motives or interest or ill will that partakes of the nature of fraud. Malice connotes ill will or spite and speaks not in response to duty. It implies an intention to do ulterior and unjustifiable harm. Malice is bad faith or bad motive.[33] (Citations omitted.)

Undoubtedly, the respondents had a duty to resolve petitioner Diaz's sabbatical leave application. The crucial question is if they did so with the intention of prejudicing or injuring petitioner Diaz.

We hold in the negative.

There is no dispute, and both the RTC and the Court of Appeals

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[31] *Barons Marketing Corp. v. Court of Appeals and Phelps Dodge Phils., Inc.,* 349 Phil. 769, 775 (1998).

[32] *Dart Philippines, Inc. v. Calogcog,* 613 Phil. 224, 234 (2009).

[33] *Id.* at 235.

agree, that the grant of a sabbatical leave is not a matter of right, but a privilege. Moreover, the issue of whether or not the respondents acted in bad faith when they denied petitioner Diaz's application for sabbatical leave has been answered several times, in separate jurisdictions.

On May 4, 1989, the Ombudsman issued a Resolution[34] in Case No. OMB-0-89-0049 on the complaint filed by petitioner Diaz against respondents Encanto, Tabujara, and Abad for violation of Section 3(e) of Republic Act No. 3019, recommending the dismissal of the complaint for lack of merit. It found no manifest partiality, evident bad faith, or gross inexcusable negligence on the part of the respondents in their denial of petitioner Diaz's application for sabbatical leave and in requiring her to accomplish a Report for Duty form as a prerequisite for her entitlement to salary.

Petitioner Diaz protested the outcome of this resolution by filing a special civil action for *certiorari* with this Court, on two occasions. When G.R. No. 88834 was dismissed for non-compliance with Circular No. 1-88,[35] petitioner Diaz re-filed her petition, raising exactly the same issues, and this was docketed as G.R. No. 89207.[36]

On August 31, 1989, this Court issued a Resolution,[37] dismissing petitioner Diaz's petition in G.R. No. 89207. This Court noted the Ombudsman's findings and observations and found them to be supported by substantial evidence.

On April 28, 2005, the Court of Appeals had the same findings and held that the denial of petitioner Diaz's application for sabbatical leave was *"a collegial decision based on U.P.'s*

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[34] Records, pp. 1077-1083.

[35] Implementation of Sec. 12, Art. XVIII of the 1987 Constitution and complementing Administrative Circular No. 1 of January 28, 1988 on Expeditious Disposition of Cases Pending in the Supreme Court; November 8, 1988.

[36] Records, p. 177.

[37] *Id*. at 175-179.

established rules, the grant of which is subject to the exigencies of the service, like acute shortage in teaching staff." It added that *"the U.P. officials' eventual denial of [Diaz's] application is not actionable x x x it is unfair to impute negligence to [respondents] in the regular discharge of their official functions."*[38]

The Ombudsman and all three courts, starting from the RTC to this Court, have already established that a sabbatical leave is not a right and therefore petitioner Diaz cannot demand its grant. It does not matter that there was only one reason for the denial of her application, as the approving authorities found that such reason was enough. Moreover, not only the Court of Appeals but also the Ombudsman, and this Court, have ruled that the respondents did not act in bad faith when petitioner Diaz's sabbatical leave application was denied. Those three separate rulings verily must be given great weight in the case at bar.

The Court does not find any reason to disregard those findings, especially when our own perusal of the evidence showed no traces of bad faith or malice in the respondents' denial of petitioner Diaz's application for sabbatical leave. They processed her application in accordance with their usual procedure- with more leeway, in fact, since petitioner Diaz was given the chance to support her application when she was asked to submit a historical background; and the denial was based on the recommendation of respondent Encanto, who was in the best position to know whether petitioner Diaz's application should be granted or not.

While the RTC declared that petitioner Diaz should have been granted a sabbatical leave, it is important to note that the RTC awarded damages to petitioner Diaz **merely for the unreasonable and unconscionable delay in the resolution of her sabbatical leave application**,[39] and not its denial *per se*. Thus, petitioner Diaz's entitlement to a sabbatical leave

[38] *Rollo,* pp. 80-81.

[39] *Id.* at 164 and 169.

should no longer be an issue in this case. This is supported by petitioner Diaz's own action when she did not move for the reconsideration of the April 17, 1996 Decision of the RTC for awarding her damages due only to the **delay** in the resolution of her sabbatical leave application and not for its denial; and more so by the prayer in her petition to this Court wherein she asked that the April 17, 1996 Decision of the RTC be "reinstated and affirmed *in toto.*"[40]

Nevertheless, on the question of whether or not there was bad faith in the delay of the resolution of petitioner Diaz's sabbatical leave application, the Court still rules in the negative. "It is an elementary rule in this jurisdiction that good faith is presumed and that the burden of proving bad faith rests upon the party alleging the same."[41] Petitioner Diaz has failed to prove bad faith on the part of the respondents. There is nothing in the records to show that the respondents purposely delayed the resolution of her application to prejudice and injure her. She has not even shown that the delay of six months in resolving a sabbatical leave application has never happened prior to her case. On the contrary, any delay that occurred was due to the fact that petitioner Diaz's application for sabbatical leave did not follow the usual procedure; hence, the processing of said application took time.[42]

In petitioner Diaz's petition, she criticized the Court of Appeals for imputing the cause of delay to her, arguing that as the requirement that a sabbatical leave application be filed at least one semester before its intended date of effectivity was only imposed in 1990, long after she had filed hers in 1988.[43] But, precisely, this rule may have been imposed by U.P. to address any untoward delays and to likewise provide a time frame for the approving authorities in resolving sabbatical leave applications.

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[40] *Id.* at 66.

[41] *Barons Marketing Corp. v. Court of Appeals and Phelps Dodge Phils., Inc., supra* note 31 at 778.

[42] *Rollo,* p. 81; Records, p. 178.

[43] *Id.* at 32.

This Court understands petitioner Diaz's frustration, but she cannot keep on arguing that the facts, as established, and which she herself does not dispute, had been misappreciated in different occasions.

Petitioner Diaz's Withheld Salaries

Petitioner Diaz is entitled to her withheld salaries from July 1, 1988 to October 31, 1988, and from November 1, 1988 to May 31, 1989, and July 16, 1989 to May 31, 1990, upon submission of the required documents.

The denial of petitioner Diaz's salaries during the first semester of Academic Year (AY) 1988-1989 was due to the fact that she did not teach that semester. But when respondent Lazaro removed petitioner Diaz's name from the final schedule of teaching assignments in CMC for the first semester of AY 1988-89, it was without petitioner Diaz's prior knowledge, as admitted by respondent Lazaro herself, to wit:

ATTY. DIAZ: Now, did Prof. Diaz ask you to remove her from [the] schedule of classes?

LAZARO: I did it.

Q: Because you said you did it on your own?

A: Yes.

x x x x x x x x x

Q: She did not [ask] you?

A: No.[44]

The Court, however, observes that respondent Lazaro, in so doing, did not act in bad faith as she expected petitioner Diaz's application for leave, of whatever nature, to be granted. As such, she did not want Diaz to have to drop the classes she was already handling once her sabbatical leave was approved, as was the case the semester before, when petitioner Diaz dropped her classes, three weeks into the start of the semester, when her application for sick leave was approved, *viz.*:

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[44] TSN, September 13, 1994, p. 31.

ATTY. GUNO:	You mentioned a while ago that you deleted the name of Professor Diaz from this final schedule of classes. Why did you delete it?
LAZARO:	I presumed in good faith that based on the letter she sent which was routed to me where she stated she could no longer be efficient and effective as a teacher and she was suffering from fatigue and that she could no longer work under those circumstances, I felt, as a gesture of sympathy to her that this should be granted suggesting that she be given a leave of absence of whatever kind she was qualified for and based on my previous experience on the second semester where two to three weeks into the course she dropped her courses, I did not want that to happen again.[45]
ATTY. GUNO:	You also testified that because of the application for sabbatical leave and the reasons she gave in that letter, you deleted her name in the final list of class schedule for school year 1988-89 first semester?
LAZARO:	Yes.
Q:	Why did you delete her name, will you tell the Court?
A:	She had applied for sabbatical leave for the whole year of 1988-89 and based on the experience of her sick leave during the previous semester which was the second semester of the previous school year where three (3) weeks into classes she filed for a sick leave and did not teach, based on that experience, I did not include her name in the class list because the same thing could happen again.[46]

[45] TSN, August 24, 1994, pp. 35-36.

[46] TSN, September 27, 1994, pp. 6-7.

While petitioner Diaz was not consulted about the removal of her name from the class schedule, she did not contest such upon the belief that her application for sabbatical leave would be approved, as in fact, she was given her salary in June 1988. As such, this Court believes, in the interest of equity and fairness, that petitioner Diaz should be entitled to her salary during the semester when her name was dropped from the final list of schedule of classes, without her knowledge and consent, and while action on her application for sabbatical leave was still pending.[47]

On the matter of her salaries from the second semester of AY 1988-89 up until AY 1989-1990, the respondents legally withheld such, as found by the Ombudsman and the Court of Appeals for petitioner Diaz's own refusal to comply with the documentary requirements of U.P. Even the RTC, in its Omnibus Order of January 12, 1990, denied petitioner Diaz's petition for mandatory injunction upon the finding that the Report for Duty Form required of her is a basic and standard requirement that is asked from all employees of U.P. The RTC held:

> It is therefore clear that the acts sought to be enjoined [by Diaz] are in fact pursuant to the proper observance of administrative or internal rules of the University. This Court sympathizes with [Diaz] for not being able to receive her salaries after July 15, 1989. However, such predicament cannot be outrightly attributable to the defendants, as their withholding of her salaries appears to be in accordance with existing University regulations.
>
> Apart from such reasons, this Court believes that petitioner Diaz failed to show why she should be spared from the Report for Duty requirement, which remains a standard practice even in other offices or institutions. To be entitled to an injunctive writ, one must show an unquestionable right and/or blatant violation of said right to be entitled to its issuance.[48]

But it cannot be denied that during the periods of November 1, 1988 to May 31, 1988 and July 16, 1989 to May 31, 1990,

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[47] *Rollo,* pp. 46-47.

[48] Records, p. 289.

petitioner Diaz rendered service to U.P. for which she should be compensated.

Given the foregoing, petitioner Diaz should be paid, as the RTC had computed, her salaries from July 1, 1988 to October 1988, the semester when petitioner Diaz's name was dropped from the final list of schedule of classes, without her prior knowledge and consent; and for the periods of November 1, 1988 to May 31, 1989 and July 16, 1989 to May 31, 1990, **for the work she rendered during said periods, but upon petitioner Diaz's submission of the documents required by U.P.**

No Payment of Other Damages

Given that the respondents have not abused their rights, they should not be held liable for any damages sustained by petitioner Diaz. "The law affords no remedy for damages resulting from an act which does not amount to a legal wrong. Situations like this have been appropriately denominated *damnum absque injuria."*[49] Similarly, the Court cannot grant petitioner Diaz's claim for attorney's fees as no premium should be placed on the right to litigate. "Even when a claimant is compelled to litigate or to incur expenses to protect his rights, still attorney's fees may not be awarded where there is no sufficient showing of bad faith in a party's persistence in a case other than an erroneous conviction of the righteousness of his cause."[50]

Legal Interest Due on the Salaries Withheld

Pursuant to *Nacar v. Gallery Frames,*[51] the applicable rate of legal interest due on petitioner Diaz's withheld salaries — (*i*) from July 1, 1988 to October 31, 1988, the period corresponding to the first semester of AY 1988- 89, when her name was removed from the final list of class schedule without her prior knowledge and consent, less the amount she had received in June 198—will be from April 17, 1996, the date of the Decision

[49] *Dart Philippines, Inc. v. Calogcog, supra* note 32 at 237.

[50] *Id.* at 238.

[51] G.R. No. 189871, August 13, 2013, 703 SCRA 439.

of the RTC, up to the full satisfaction thereof, is 6% per annum; and *(ii)* from November 1, 1988 to May 31, 1989, and July 16, 1989 to May 31, 1990, the periods when she was refused payment of her salaries for not accomplishing a Report for Duty Form — will be from the time petitioner Diaz submits the required Report for Duty Form up to the full satisfaction thereof, is 6% per annum.

WHEREFORE, the instant petition is **DENIED**. The assailed Decision of the Court of Appeals in CA-G.R. CV No. 55165 is hereby **AFFIRMED with MODIFICATION** in that the University of the Philippines, through its appropriate officials, is directed to pay petitioner Elizabeth L. Diaz her withheld salaries 1) from July 1, 1988 to October 31, 1988, with legal interest at the rate of six percent (6%) per annum, computed from the date of the Decision of the RTC on April17, 1996 until fully paid; and 2) from November 1, 1988 to May 31, 1989 and July 16, 1989 to May 31, 1990, with legal interest at the rate of six percent (6%) per annum computed from the date petitioner Elizabeth L. Diaz submits the documents required by the University of the Philippines until fully paid.

SO ORDERED.

Peralta,[*] *Bersamin, Perlas-Bernabe,* and *Jardeleza, JJ.,* concur.

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[*] Per Raffle dated January 18, 2016.

SECOND DIVISION

[G.R. No. 174909. January 20, 2016]

MARCELINO M. FLORETE, JR., MARIA ELENA F. MUYCO and RAUL A. MUYCO, *petitioners, vs.* **ROGELIO M. FLORETE, SR., IMELDA C. FLORETE, DIAMEL CORPORATION, ROGELIO C. FLORETE JR., and MARGARET RUTH C. FLORETE,** *respondents.*

[G.R. No. 177275. January 20, 2016]

ROGELIO M. FLORETE, SR., *petitioner, vs.* **MARCELINO M. FLORETE, JR., MARIA ELENA F. MUYCO and RAUL A. MUYCO,** *respondents.*

SYLLABUS

1. **COMMERCIAL LAW; CORPORATIONS; A STOCKHOLDER SUING WRONGFUL CORPORATE ACTIONS MAY SUE AS AN INDIVIDUAL OR AS PART OF A GROUP OF STOCKHOLDERS OR AS A REPRESENTATIVE OF THE CORPORATION.—** A stockholder suing on account of wrongful or fraudulent corporate actions (undertaken through directors, associates, officers, or other persons) may sue in any of three (3) capacities: as an individual; as part of a group or specific class of stockholders; or as a representative of the corporation. *Villamor v. Umale* distinguished individual suits from class or representative suits: Individual suits are filed when the cause of action belongs to the individual stockholder personally, and not to the stockholders as a group or to the corporation, e.g., denial of right to inspection and denial of dividends to a stockholder. If the cause of action belongs to a group of stockholders, such as when the rights violated belong to preferred stockholders, a class or representative suit may be filed to protect the stockholders in the group.

2. **ID.; ID.; ID.; DERIVATIVE SUIT IS AN ACTION FILED BY STOCKHOLDERS TO ENFORCE A CORPORATE**

ACTION; DISCUSSED.— *Villamor* explained that a derivative suit "is an action filed by stockholders to enforce a corporate action." A derivative suit, therefore, concerns "a wrong to the corporation itself." The real party in interest is the corporation, not the stockholders filing the suit. The stockholders are technically nominal parties but are nonetheless the active persons who pursue the action for and on behalf of the corporation. Remedies through derivative suits are not expressly provided for in our statutes—more specifically, in the Corporation Code and the Securities Regulation Code—but they are "impliedly recognized when the said laws make corporate directors or officers liable for damages suffered by the corporation and its stockholders for violation of their fiduciary duties." They are intended to afford reliefs to stockholders in instances where those responsible for running the affairs of a corporation would not otherwise act.

3. **ID.; ID.; ID.; INDIVIDUAL AND CLASS SUIT AT ONE HAND DISTINGUISHED FROM DERIVATIVE SUIT AS THEY ARE NOT DISCRETIONARY ALTERNATIVES.—** The distinction between individual and class/representative suits on one hand and derivative suits on the other is crucial. These are not discretionary alternatives. *The fact that stockholders suffer from a wrong done to or involving a corporation does not vest in them a sweeping license to sue in their own capacity*. The recognition of derivative suits as a vehicle for redress distinct from individual and representative suits is an acknowledgment that certain wrongs may be addressed only through acts brought for the corporation: Although in most every case of wrong to the corporation, each stockholder is necessarily affected because the value of his interest therein would be impaired, this fact of itself is not sufficient to give him an individual cause of action since the corporation is a person distinct and separate from him, and can and should itself sue the wrongdoer. In *Asset Privatization Trust v. Court of Appeals*, the reasons for disallowing a direct individual suit were further explained. x x x The avenues for relief are, thus, mutually exclusive. *The determination of the appropriate remedy hinges on the object of the wrong done*. When the object is a specific stockholder or a definite class of stockholders, an individual suit or class/ representative suit *must* be resorted to. When the object of the wrong done is the corporation itself or "the whole body of its stock and property without any severance or distribution among

individual holders," it is a derivative suit that a stockholder *must* resort to.

4. **ID.; ID.; ID.; DERIVATIVE SUITS; MORE PREVALENT IN CORPORATE ACTIONS TAKEN IN RELATION TO THIRD PERSONS BUT CAN ARISE WITH RESPECT TO CONFLICTS AMONG A CORPORATION'S DIRECTORS, OFFICERS, AND STOCKHOLDERS.—** The greater number of cases that sustained stockholders' recourse to derivative suits involved corporate acts amounting to mismanagement by either the corporation's directors or officers in relations to third persons. x x x However, this does not mean that derivative suits cannot arise with respect to conflicts among a corporation's directors, officers, and stockholders.

5. **ID.; ID.; ID.; DERIVATIVE SUIT PROPER FOR THE ULTIMATE PRAYER OF RECONFIGURING THE CORPORATION'S CAPITAL STRUCTURE.—** In this case, the Marcelino, Jr. Group anchored their Complaint on violations of and liabilities arising from the Corporation Code, x x x What the Marcelino, Jr. Group asks is the complete reversal of a number of corporate acts undertaken by People's Broadcasting's different board of directors. These boards supposedly engaged in outright fraud or, at the very least, acted in such a manner that amounts to wanton mismanagement of People's Broadcasting's affairs. The ultimate effect of the remedy they seek is the reconfiguration of People's Broadcasting's capital structure. The remedies that the Marcelino, Jr. Group seeks are for People's Broadcasting itself to avail. Ordinarily, these reliefs may be unavailing because objecting stockholders such as those in the Marcelino, Jr. Group do not hold the controlling interest in People's Broadcasting. This is precisely the siutation that the rule permitting derivative suits contemplates: minority shareholders having no other recourse "whenever the directors or officers of the corporation refuse to sue to vindicate the rights of the corporation or are the ones to be sued and are in control of the corporation." The Marcelino, Jr. Group points to violations of specific provisions of the Corporation Code that supposedly attest to how their rights as stockholders have been besmirched. However, this is not enough to sustain a claim that the Marcelino, Jr. Group initiated a valid individual or class suit. x x x While stockholders in the Marcelino, Jr. Group were permitted to seek relief, they should have done so

not in their unique capacity as individuals or as a group of stockholders but in place of the corporation itself through a derivative suit. As they, instead, sought relief in their individual capacity, they did so bereft of a cause of action. Likewise, they did so without even the slightest averment that the requisites for the filing of a derivative suit, as spelled out in Rule 8, Section 1 of the Interim Rules of Procedure for Intra-Corporate Controversies, have been satisfied.

6. ID.; ID.; ID.; THE CORPORATION CONCERNED MUST BE IMPLEADED AS AN INDISPENSABLE PARTY; FAILURE THEREOF RENDERS THE DECISION VOID.— In derivative suits, the corporation concerned must be impleaded as a party. As explained in *Asset Privatization Trust*: Not only is the corporation an indispensible party, but it is also the present rule that it must be served with process. The reason given is that the judgment must be made binding upon the corporation in order that the corporation may get the benefit of the suit and may not bring a subsequent suit against the same defendants for the same cause of action. In other words the corporation must be joined as party because it is its cause of action that is being litigated and because judgment must be a res ajudicata [sic] against it. x x x There are two consequences of a finding on appeal that indispensable parties have not been joined. First, all subsequent actions of the lower courts are null and void for lack of jurisdiction. Second, the case should be remanded to the trial court for the inclusion of indispensable parties. It is only upon the plaintiff's refusal to comply with an order to join indispensable parties that the case may be dismissed. All subsequent actions of lower courts are void as to both the absent and present parties. To reiterate, the inclusion of an indispensable party is a *jurisdictional* requirement.

APPEARANCES OF COUNSEL

Gregorio M. Rubias for respondent Rogelio M. Florete, Sr., *et al.*

Joseph Vincent T. Go for Marcelino M. Florete, Jr., *et al.*

D E C I S I O N

LEONEN, *J.*:

A stockholder may suffer from a wrong done to or involving a corporation, but this does not vest in the aggrieved stockholder a sweeping license to sue in his or her own capacity. The determination of the stockholder's appropriate remedy—whether it is an individual suit, a class suit, or a derivative suit—hinges on the object of the wrong done. When the object of the wrong done is the corporation itself or "the whole body of its stock and property without any severance or distribution among individual holders,"[1] it is a derivative suit, not an individual suit or class/ representative suit, that a stockholder *must* resort to.

This resolves consolidated cases involving a Complaint for Declaration of Nullity of Issuances, Transfers and Sale of Shares in People's Broadcasting Service, Inc. and All Posterior Subscriptions and Increases thereto with Damages.[2] The Complaint did not implead as parties the concerned corporation, some of the transferees, transferors and other parties involved in the assailed transactions. The Petition[3] docketed as G.R. No. 174909 assails the Court of Appeals Decision affirming the dismissal of the Complaint and sustaining the award of ₱25,000,000.00 as moral damages and ₱5,000,000.00 as exemplary damages in favor of Rogelio Florete, Sr. The Petition[4] docketed as G.R. No. 177275 assails the Court of Appeals Decision that disallowed the immediate execution of the same award of damages.

Spouses Marcelino Florete, Sr. and Salome Florete (now both deceased) had four (4) children: Marcelino Florete, Jr. (Marcelino, Jr.), Maria Elena Muyco (Ma. Elena), Rogelio Florete, Sr. (Rogelio, Sr.), and Teresita Menchavez (Teresita),

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[1] *Cua v. Tan,* 622 Phil. 661, 717 (2009) [Per *J.* Leonardo-de Castro, First Division], citing *Oakland Raiders v. National Football League*, 131 Cal. App. 4th 621, 32 Cal. Rptr. 3d 266, Cal. App. 6 Dist., 2005, 28 July 2005.

[2] *Rollo* (G.R. No. 174909), p. 546.

[3] *Id.* at 42-159.

[4] *Rollo* (G.R. No. 177275), pp. 9-24.

[5] *Id.* at 60, Court of Appeals Decision.

now deceased.[5]

People's Broadcasting Service, Inc. (People's Broadcasting) is a private corporation authorized to operate, own, maintain, install, and construct radio and television stations in the Philippines.[6] In its incorporation on March 8, 1966,[7] it had an authorized capital stock of ₱250,000.00 divided into 2,500 shares at ₱100.00 par value per share.[8] Twenty-five percent (25%) of the corporation's authorized capital stock were then subscribed to as follows:

Stockholder	Number of Shares
Marcelino Florete, Sr. (Marcelino, Sr.)	250 shares
Salome Florete (Salome)	100 shares
Ricardo Berlin (Berlin)	50 shares
Pacifico Sudario (Sudario)	50 shares
Atty. Santiago Divinagracia (Divinagracia), now deceased[9]	50 shares[10]

On November 17, 1967, Berlin and Sudario resigned from their positions as General Manager and Station Supervisor, respectively.[11] Berlin and Sudario each transferred 20 shares to Raul Muyco and Estrella Mirasol.[12]

Salome died on November 22, 1980.[13] Marcelino, Sr. suffered a stroke on July 12, 1982, which left him paralyzed and bedridden until

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

[7] *Id*. at 60.

[8] *Id*. at 61.

[9] *Rollo* (G.R. No. 174909), p. 1479, Petitioners' Memorandum.

[10] *Rollo* (G.R. No. 177275), p. 61, Court of Appeals Decision.

[11] *Id*.

[12] *Id*.

[13] *Id*. at 62.

[14] *Id*.

[15] *Rollo* (G.R. No. 174909), p. 49, Petition.

his death on October 3, 1990.[14] After Marcelino, Sr.'s stroke, their son, Rogelio, Sr. started managing the affairs of People's Broadcasting.[15]

In October 1993, People's Broadcasting sought the services of the accounting and auditing firm Sycip Gorres Velayo and Co. in order to determine the ownership of equity in the corporation.[16] On November 2, 1994, Sycip Gorres Velayo and Co. submitted a report detailing the movements of the corporation's shares from November 23, 1967 to December 8, 1989.[17] The relevant portion of this report reads:

B. PEOPLE'S BROADCASTING SERVICE, INC. (PBS)

Beneficial Stockholder	Shareholdings Nov. 27, 1967 (A)	Additional Subscription Sept. 1, 1982 (B)	Transfer of Shares of Stock March 1, 1983 (C)	Transfer of Shares of Stock (D)	Transfer of Shares of Stock June 5, 1987 (E)	Increase (F)	Shareholdings Oct. 31, 1993
Marcelino M. Florete, Sr.	560	-	750	(680)	-	62,344.19	62,974.19
Salome M. Florete	30	(30)	-	-	-		
Rogelio M. Florete	20	5	1110	370	(5)	149,624.75	151,124.75
Ma. Elena F. Muyco	20	5	-	-	(25)	2,493.68	2,493.68
Teresita F. Menchavez	-	5	-	20	(25)	2,493.69	2,493.69
Marcelino M. Florete, Jr.	-	5	-	20	(20)	2,439.44	2,439.44
Santiago C. Divinagracia	20	-	G	270	75	29,925.25	30,290.25
Newsound Broadcasting[18]	610	-	(610)				

[16] *Id.* at 483, Placitum.

[17] *Rollo* (G.R. No. 177275), p. 63, Court of Appeals Decision.

[18] Newsound Broadcasting is sometimes referred to as *Newsounds* Broadcasting Network, Inc. For uniformity, *Newsounds* Broadcasting Network, Inc. will be used.

Consolidated	C	1,250	(1,250)				
	1,260	1,250				249,375.00	251,875.00

The movements in the capital stock accounts (by beneficial stockholders) are as follows:

(A) The People's Broadcasting Service, Inc. was incorporated in 1965 with an authorized capital stock of ₱250,000 divided into 2,500 shares at P100 par value. As of November 23, 1967, the total subscribed shares of stock was [sic] 1,260. The 610 shares issued in the name of [Newsounds Broadcasting Network, Inc.] was [sic] authorized by the Board of Directors in payment for the obligation of the Corporation to [Newsounds Broadcasting Network, Inc.].

. . . .

(B) On August 5, 1982, the Board of Directors passed Resolution No. 4 which authorized Atty. Divinagracia to negotiate the purchase of two stations of Consolidated Broadcasting System, Inc. (CBS), DYMF and DXMF in Cebu and Davao, respectively. In consideration thereof, [People's Broadcasting Service, Inc.] shall issue 1,250 shares of stock in favor of [Consolidated Broadcasting System, Inc.]. In pursuance thereof, on September 1, 1982, the Corporation issued the remaining 1,240 shares of unissued capital stock to [Consolidated Broadcasting System, Inc.]. To complete the consideration of 1,250 shares, it was explained that [Salome] transferred her 10 shares to [Consolidated Broadcasting System, Inc.] and distributed her remaining 20 shares to her children, at 5 shares each.

(C) On March 1, 1983, all the 610 shares of [Newsounds Broadcasting Network, Inc.] were transferred to [Rogelio, Sr.]. We were not able to determine the person who endorsed the certificate in [sic] behalf [of] [Newsounds Broadcasting Network, Inc.] as the certificate was not found on file. On the same day, the entire investment of [Consolidated

Broadcasting System, Inc.] were transferred to [Marcelino, Sr.] and [Rogelio, Sr.] at the proportion of 750 shares and 500 shares, respectively. The cancelled certificates of [Consolidated Broadcasting System, Inc.] were endorsed by [Rogelio, Sr.] in [sic] its behalf.

(D) On February 28 and August 1, 1983, [Marcelino, Sr.] transferred 680 shares from his block to the following:

Transferee	No. of Shares	Date of Transfer
Rogelio M. Florete [Sr.]	370	February 28, 1983
Santiago C. Divinagracia	270	August 1, 1983
Marcelino M. Florete, Jr.	20	August 1, 1983
Teresita F. Menchavez	20	August 1, 1983
Total	680	

(E) On June 3, 1987, the Corporation effected the transfer of 75 shares to [Divinagracia] by virtue of the deeds of sale executed by the transferors concerned in his favor.

(F) On December 8, 1989, the [Securities and Exchange Commission] approved the application of the Corporation to increase the authorized capital stock to ₱100,000,000.00 divided into 1,000,000 shares at ₱100 par value. Of the increase, 249,375 shares were subscribed for ₱24,937,500 and ₱6,234,375 thereof was paid-up. The subscribers to the increase were as indicated in the foregoing.

There were no other transactions affecting the interest of the beneficial stockholders up to October 31, 1993 except transfers to and from designated nominees[.][19]

Even as it tracked the movements of shares, Sycip Gorres Velayo and Co. declined to give a categorical statement on equity ownership as People's Broadcasting's corporate records

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[19] *Rollo* (G.R. No. 174909), pp. 646–647, Sycip Gorres and Velayo, Co. Report.

[20] *Id.* at 483, Placitum.

were incomplete.[20] The report contained the following disclaimer on the findings regarding the corporation's capital structure:

Because the procedures *included certain assumptions* as represented by the corporate secretaries mentioned in Attachment I and *we have not verified the documents supporting some of the transactions*, we do not express an opinion on the capital stock accounts of the respective companies [including People's Broadcasting] as at October 31, 1993.[21] (Emphasis supplied)

On February 1, 1997, the Board of Directors of People's Broadcasting approved Sycip Gorres Velayo and Co.'s report.[22]

In the meantime, Rogelio, Sr. transferred a portion of his shareholdings to the members of his immediate family, namely: Imelda Florete, Rogelio Florete, Jr., and Margaret Ruth Florete, as well as to Diamel Corporation, a corporation owned by

Stockholder	No. of Shares
1. Diamel Corporation	30,000.00
2. Rogelio Florete [Sr.]	153,881.53
3. Marcelino Florete, Jr.	18,240.99
4. Ma. Elena Muyco	18,227.23
5. Santiago Divinagracia	30,289.25
6. Imelda Florete	1,000.00
7. Rogelio Florete, Jr.	100.00
8. Margaret Ruth Florete	100.00
9. Raul Muyco	10.00
10. Manuel Villa, Jr.	10.00
11. Gregorio Rubias	1.00

[21] *Id.* at 640, Sycip Gorres and Velayo, Co. Report.

[22] *Rollo* (G.R. No. 177275), p. 63, Court of Appeals Decision.

[23] *Id.*

[24] *Rollo* (G.R. No. 174909), pp. 1455-1456, Petitioners' Memorandum.

12. Cyril Regaldao	1.00
13. Jose Mari Treñas	1.00
14. Enrico Jacomille	1.00
15. Joseph Vincent Go	1.00
16. Jerry Treñas	1.00
17. Efrain Treñas	10.00

Rogelio, Sr.'s family.[23]

As of April 27, 2002, the stockholders of record of People's Broadcasting were the following:[24]

On June 23, 2003, Marcelino, Jr., Ma. Elena, and Raul Muyco (Marcelino, Jr. Group) filed before the Regional Trial Court a Complaint[25] for Declaration of Nullity of Issuances, Transfers and Sale of Shares in People's Broadcasting Service, Inc. and All Posterior Subscriptions and Increases thereto with Damages[26] against Diamel Corporation, Rogelio, Sr., Imelda Florete, Margaret Florete, and Rogelio Florete, Jr. (Rogelio, Sr. Group).

On July 25, 2003, the Rogelio, Sr. Group filed their Answer with compulsory counterclaim.[27]

On August 2, 2005, the Regional Trial Court issued a Decision (which it called a "Placitum") dismissing the Marcelino, Jr. Group's Complaint. It ruled that the Marcelino, Jr. Group did not have a cause of action against the Rogelio, Sr. Group and that the former is estopped from questioning the assailed movement of shares of People's Broadcasting. It also ruled that indispensible parties were not joined in their Complaint.

According to the trial court, the indispensable parties would include:

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[25] *Id.* at 546–603.

[26] *Id.* at 546, Complaint.

[27] *Rollo* (G.R. No. 177275), p. 64, Court of Appeals Decision.

[Marcelino, Sr.] and/or his estate and/or his heirs, [Salome] and/or her estate and/or her heirs, [Divinagracia] and/or his estate and/or his successors-in-interest, [Teresita] and/or her estate and/or her own successors-in-interest, the other [People's Broadcasting Service, Inc.] stockholders who may be actually beneficial owners and not purely nominees, all the so called nominal stockholders. . . [and] the various [People's Broadcasting Service, Inc.] Corporate Secretaries[.]"[28]

The Regional Trial Court granted Rogelio, Sr.'s compulsory counterclaim for moral and exemplary damages amounting to ₱25,000,000.00 and ₱5,000,000.00, respectively, reasoning that Rogelio, Sr. suffered from the besmirching of his personal and commercial reputation.[29]

The dispositive portion of the Regional Trial Court Decision reads:

WHEREFORE, premises duly considered, the instant "Complaint" of the plaintiffs is hereby DISMISSED for lack of merit.

The "Counterclaim" of defendant Rogelio Florete Sr. is hereby given DUE COURSE but only insofar as the claims for moral and exemplary damages are concerned. Consequently, the plaintiffs herein are hereby ordered to pay, jointly and severally, defendant Rogelio Florete Sr., the following sums, to wit:

1. TWENTY FIVE MILLION PESOS (₱25,000,000.00) as and for MORAL DAMAGES; and,

2. FIVE MILLION PESOS (₱5,000,000.00) as and for EXEMPLARY DAMAGES.

The "Counterclaim(s)" of the other defendants and the prayer for the recovery of attorney's fees and litigation expenses of defendant Rogelio Florete, Sr. are hereby DISMISSED likewise for lack of

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[28] *Id*. at 504.

[29] *Id*. at 545.

[30] *Id.* The case was docketed as SCC Case No. 03-002. The *Placitum* was penned by Judge J. Cedric O. Ruiz of Branch 39, Regional Trial Court Iloilo.

merit.

SO ORDERED.[30]

On August 15, 2005, Rogelio, Sr. filed a Motion for the immediate execution of the award of moral and exemplary damages pursuant to Rule I, Section 4[31] of the Interim Rules of Procedure Governing Intra-Corporate Controversies.[32]

On September 8, 2005, the Marcelino, Jr. Group filed before the Court of Appeals a Petition for Review[33] with a prayer for the issuance of a temporary restraining order and/or writ of preliminary injunction to deter the immediate execution of the trial court Decision awarding damages to Rogelio, Sr.[34] The Court of Appeals issued a temporary restraining order and, subsequently, a writ of preliminary injunction.[35]

In its Decision[36] dated March 29, 2006, the Court of Appeals denied the Marcelino, Jr. Group's Petition and affirmed the trial court Decision.[37] It also lifted the temporary restraining order and writ of preliminary injunction.[38]

The Court of Appeals ruled that the Marcelino, Jr. Group did not have a cause of action against those whom they have

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[31] Sec. 4. Executory Nature of Decisions and Orders.—All decisions and orders issued under these Rules shall immediately be executory. No appeal or petition taken therefrom shall stay the enforcement or implementation of the decision or order, unless restrained by an appellate court. Interlocutory orders shall not be subject to appeal.

[32] *Rollo* (G.R. No. 177275), p. 130, Comment.

[33] The Petition was filed under Rule 43 of the Rules of Court.

[34] *Rollo* (G.R. No. 177275), p. 130, Comment.

[35] *Id.* at 109, Court of Appeals Decision.

[36] *Id.* at 59-86. The case was docketed as CA-G.R. SP No. 00994. The Decision was penned by Associate Justice Apolinario D. Bruselas, Jr. and concurred in by Associate Justices Arsenio Magpale and Vicente Yap of the Eighteenth Division, Court of Appeals Cebu.

[37] *Id.* at 83.

[38] *Id.*

impleaded as defendants. It also noted that the principal obligors in or perpetrators of the assailed transactions were persons other than those in the Rogelio, Sr. Group who have not been impleaded as parties. Thus, the Court of Appeals emphasized that the following parties were indispensable to the case: People's Broadcasting; Marcelino, Sr.; Consolidated Broadcasting System, Inc.; Salome; Divinagracia; Teresita; and "other stockholders of [People's Broadcasting] to whom the shares were transferred or the nominees of the stockholders."[39]

The Court of Appeals further emphasized that the estates of Marcelino, Sr. and Salome had long been settled, with those in the Marcelino, Jr. Group participating (in their capacity as heirs). As the Marcelino, Jr. Group failed to act to protect their supposed interests in shares originally accruing to Marcelino, Sr. and Salome, the group is estopped from questioning the distribution of Marcelino, Sr.'s and Salome's assets.[40] Furthering the conclusion that the Marcelino, Jr. Group was bound by estoppel, the Court of Appeals noted that the Marcelino, Jr. Group was well aware of the matters stated in the report furnished by Sycip Gorres Velayo and Co. but failed to act on any supposed error in the report. Instead, the Marcelino, Jr. Group waited ten (10) years before filing their Complaint. In the interim, they even participated in the affairs of People's Broadcasting, voting their shares and electing members of the Board of Directors.[41]

On April 26, 2006, the Marcelino, Jr. Group filed a Motion for Reconsideration dated April 24, 2006.[42]

Pending resolution of the Marcelino, Jr. Group's Motion for Reconsideration, Rogelio, Sr. filed before the Regional Trial Court a Motion to resolve his earlier motion for the immediate

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[39] *Id*. at 67.

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

[41] *Id*. at 70.

[42] *Rollo* (G.R. No. 174909), pp. 187-258.

[43] *Rollo* (G.R. No. 177275), p. 131, Comment.

[44] *Id*. at. 109-110.

execution of the awards of moral and exemplary damages, which was filed on August 15, 2005.[43] The Regional Trial Court granted the Motion in its Order dated May 18, 2006.[44] On May 23, 2006, a Writ of Execution was issued to enforce the award of moral and exemplary damages.[45]

The Marcelino, Jr. Group filed a Petition for Certiorari[46] before the Court of Appeals questioning the Regional Trial Court Order to immediately execute its Decision.[47] On June 13, 2006, the Court of Appeals issued a temporary restraining order and, subsequently, a writ of preliminary injunction.[48] The Court of Appeals reversed the trial court Order of immediate execution in the Decision promulgated on November 28, 2006.[49] It also annulled the writ of execution issued pursuant to the Order of immediate execution. Rogelio, Sr. filed a Motion for Reconsideration,[50] but it was denied on February 23, 2007.[51]

On September 15, 2006, the Court of Appeals denied the Marcelino, Jr. Group's Motion for Reconsideration dated April 24, 2006.[52]

Hence, on November 17, 2006, the Marcelino, Jr. Group filed the Petition[53] docketed as G.R. No. 174909.

Since the Court of Appeals Decision disallowed the immediate execution of the Regional Trial Court Decision, Rogelio, Sr.

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[45] *Id*. at 131.

[46] *Id*. at 132. The Petition was filed pursuant to Rule 65 of the Rules of Court.

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

[48] *Id*. at 132.

[49] The case was docketed as CA-G.R. CEB-SP No. 01818.

[50] *Rollo* (G.R. No. 177275), pp. 115-123.

[51] *Id*. at 124-125.

[52] *Id*. at 85-86.

[53] *Rollo* (G.R. No. 174909), pp. 42-159.

[54] *Rollo* (G.R. No. 177275), pp. 9-24.

filed on May 7, 2007 the Petition[54] docketed as G.R. No. 177275.

On March 16, 2009, this court ordered the consolidation of the Petitions docketed as G.R. No. 174909 and G.R. No. 177275.

For resolution are the following issues:

First, whether it was proper for the Regional Trial Court to dismiss the Complaint filed by the Marcelino, Jr. Group;

Second, assuming that it was error for the Regional Trial Court to dismiss the Complaint and that the case may be decided on the merits, whether the transfers of shares assailed by the Marcelino, Jr. Group should be nullified; and

Lastly, whether the Regional Trial Court's award of moral and exemplary damages in favor of Rogelio, Sr. may be executed at this juncture of the proceedings.

The Marcelino, Jr. Group insists that they have sufficiently established causes of action accruing to them and against the Rogelio, Sr. Group.[55] They add that they have impleaded all indispensable parties.[56] Thus, they claim that it was an error for the Regional Trial Court to dismiss their Complaint. They assert that a resolution of the case on the merits must ensue.

The Marcelino, Jr. Group seeks to nullify the following transactions on the shares of stock of People's Broadcasting, as noted in the report of Sycip Gorres Velayo and Co.:

(a) Issuance of 1,240 shares to Consolidated Broadcasting System, Inc. on September 1, 1982,

(b) Transfer of 10 shares from Salome to Consolidated Broadcasting System, Inc. on September 1, 1982,

(c) Issuance of 610 shares to Newsounds Broadcasting Network, Inc. on November 17, 1967,

(d) Transfer of 610 shares from Newsounds Broadcasting Network, Inc. to Rogelio, Sr. on March 1, 1983,

(e) Transfer of 750 shares from Consolidated Broadcasting

[55] *Rollo* (G.R. No. 174909), p. 1472, Petitioners' Memorandum.

[56] *Id*. at 1478-1480.

System, Inc. to Marcelino, Sr. on March 1, 1983,

(f) Transfer of 500 shares from Consolidated Broadcasting System, Inc. to Rogelio, Sr.,

(g) Transfer of 680 shares from Marcelino, Sr. to the following: 370 shares to Rogelio, Sr., 270 shares to Divinagracia, 20 shares to Marcelino, Jr., and 20 shares to Teresita, and

(h) Increase in the authorized capital stock to 100,000,000.00 divided into 1,000,000 shares with a par value of 100.00 per share on December 8, 1989, and the resulting subscriptions.[57]

For the issuance of 1,250 shares to Consolidated Broadcasting System, Inc., the Marcelino, Jr. Group argues that Board Resolution No. 4 dated August 5, 1982, the basis for the issuance of the 1,250 shares in favor of Consolidated Broadcasting System, Inc., was a forgery: it was simulated, unauthorized, and issued without a quorum as required under Section 25 of the Corporation Code.[58] They add that Salome, who allegedly transferred her 10 shares to complete the 1,250 share transfer, was already dead at the time of the alleged transfer on September 1, 1982.[59] The Marcelino, Jr. Group claims that no member of the Board attended the meeting referred to in Board Resolution No. 4.[60] They further allege that the signature of Marcelino, Sr. in Board Resolution No. 4 is a forgery.[61] They argue that Marcelino, Sr. could not have attended the meeting on August 5, 1982 because from July 12, 1982 to August 26, 1982,[62] he was confined

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[57] *Id*. at 1553-1554.

[58] *Id*. at 1506.

[59] *Id*.

[60] *Id*.

[61] *Id*. at 1508.

[62] *Id*. at 1507.

[63] *Id*. at 1508.

[64] *Id*. at 1511.

in Gov. B. Lopez Memorial Hospital for quadriparesis and motor aphasia.[63] They also supplied the trial court with specimen signatures of Marcelino, Sr. to prove that the signature appearing on Board Resolution No. 4 was forged.[64]

The Marcelino, Jr. Group alleges that from the time Marcelino, Sr. suffered a stroke on July 12, 1982 until his death on October 3, 1990, he was no longer capable of giving consent because of his quadriparesis and motor aphasia.[65] As they emphasized, "[q]uadriparesis means weakness of the upper and lower extremities with spasticity and tremors. Motor aphasia means that the patient could not communicate, unable to talk, nor responds [sic] to question or simple commands."[66] Thus, they conclude that all of the issuances of shares in favor of Marcelino, Sr. and all of the transfers of shares to and from Marcelino, Sr. from July 12, 1982 are void for lack of consent.

With respect to the issuance of 610 shares to Newsounds Broadcasting Network, Inc. and the subsequent transfer of 610 shares to Rogelio, Sr., the Marcelino, Jr. Group argues that

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[65] *Id.* at 1511-1512.

[66] *Id*. at 1508-1510. The Marcelino, Jr. Group quoted from the testimony of Dr. Matias T. Apistar, a specialist on Adult Cardiology, Heart Diseases, Cardiac Rehabilitation, and Echocardiography, and the attending physician of Marcelino, Sr.

[67] *Id*. at 1531-1532.

SEC. 63. *Certificate of stock and transfer of shares*.—The capital stock of stock corporations shall be divided into shares for which certificates signed by the president or vice president, countersigned by the secretary or assistant secretary, and sealed with the seal of the corporation shall be issued in accordance with the by-laws. Shares of stock so issued are personal property and *may be transferred by delivery of the certificate or certificates indorsed by the owner or his attorney-in-fact or other person legally authorized to make the transfer*. No transfer, however, shall be valid, except as between the parties, until the transfer is recorded in the books of the corporation showing the names of the parties to the transaction, the date of the transfer, the number of the certificate or certificates and the number of shares transferred.

No shares of stock against which the corporation holds any unpaid claim shall be transferable in the books of the corporation.

there is no deed of conveyance to support the transfer and that the stock certificates representing the 610 shares are missing. They conclude that because of the absence of the stock certificates, there is no valid delivery and endorsement as required by Section 63 of the Corporation Code.[67] Hence, the transfer is invalid.

Regarding the increase in the authorized capital stock of People's Broadcasting, the Marcelino, Jr. Group argues that the increase was procured by fraud because it was made "by the new Board of Directors who were elected by stockholders who were transferees of the illegal, fraudulent and anomalous transfers, and therefore have no power and authority to procure such increase."[68] They also pray that the subscriptions to the increase be nullified.[69]

After a declaration that the issuances and transfers are void, the Marcelino, Jr. Group prays that the capital structure of People's Broadcasting System be corrected to reflect the following:[70]

Beneficial Stockholder	No. of Shares	%
Marcelino Florete, Sr.	660	81.48
Salome Florete	100	12.35
Santiago Divinagracia	50	6.17
Total	810	100.00

[68] *Id*. at 1537-1538.

[69] *Id*. at 576-577, Complaint. The Marcelino, Jr., Group enumerated the subscribers to the increase as the following: Elsa Marie Divinagracia, Ruth Marie Divinagracia, Llane Grace Divinagracia, Ricardo Divinagracia, Fe Emily Divinagracia, Liza Roquero, Tessie Bañares, Santiago Divinagracia, Jerry Lucero, Lorenzo Caperonce, Estarella Mirasol, Francisco Jamili, Emmanuel Billones, Ignacio Debuque, Oscar Leo Billena, Rodrigo Jagorin, Rodrigo Martirizar, Ricardo Badilles, and Marie Julie Sancho.

[70] *Id*. at 597 and 601.

[71] *Id*. at 1540, Petitioners' Memorandum.

[72] *Id*. at 1549.

The Marcelino, Jr. Group further claims that the award of moral and exemplary damages is erroneous.[71] They add that the amounts of ₱25,000,000.00 as moral damages and ₱5,000,000.00 as exemplary damages are excessive.[72]

The Rogelio, Sr. Group seeks the denial of the Petition filed by the Marcelino, Jr. Group, claiming that it raises factual questions that may not be taken cognizance of in a petition for review on certiorari under Rule 45.[73]

They further argue that the Marcelino, Jr. Group has no cause of action against them.[74] They insist that indispensable parties have not been impleaded[75] and that the Marcelino Jr. Group's claims should have been raised during the settlement of the estates of deceased Spouses Marcelino, Sr. and Salome Florete.[76] They also argue that the Marcelino, Jr. Group is already estopped from questioning Sycip Gorres Velayo and Co.'s report because they allowed 10 years to lapse before questioning the truthfulness of the report. They add that the Marcelino, Jr. Group's members have been voting their shares since 1963 without making any reservation.[77]

In G.R. No. 177275, Rogelio, Sr. argues that the Court of Appeals erred in disallowing the immediate execution of the Regional Trial Court Decision. He argues that the Petition filed by the Marcelino, Jr. Group before the Court of Appeals should not have been accepted because Rule 65 petitions require

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[73] *Id*. at 1423.

[74] *Id*. at 1426.

[75] *Id*. at 1427.

[76] *Id*. at 1423.

[77] *Id*. at 1431.

[78] *Rollo* (G.R. No. 177275), pp. 14-15, Petition for Review.

[79] *Id*. at 14.

[80] *Id*. at 18.

that there no longer be any appeal nor any plain, speedy, and adequate remedy in the ordinary course of law.[78] He alleges that when the Petition was filed by the Marcelino, Jr. Group, there was still a pending appeal before the Court of Appeals to resolve the main case.[79] Rogelio, Sr. adds that the filing of a new petition despite the pendency of the main case is a violation of the rule against forum shopping.[80]

I

The sufficiency of the Marcelino, Jr. Group's plea for relief, through their Complaint for Declaration of Nullity of Issuances, Transfers and Sale of Shares in People's Broadcasting Service, Inc. and All Posterior Subscriptions and Increases thereto with Damages,[81] hinges on a characterization of the suit or action they initiated. This characterization requires a determination of the cause of action through which the Marcelino, Jr. Group came to court for relief. It will, thus, clarify the parties who must be included in their action and the procedural and substantive requirements they must satisfy if their action is to prosper.

A stockholder suing on account of wrongful or fraudulent corporate actions (undertaken through directors, associates, officers, or other persons) may sue in any of three (3) capacities: as an individual; as part of a group or specific class of stockholders; or as a representative of the corporation.

Villamor v. Umale[82] distinguished individual suits from class or representative suits:

Individual suits are filed when the cause of action belongs to the

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[81] *Rollo* (G.R. 174909), p. 546.

[82] G.R. Nos. 172843, 172881, September 24, 2014, 736 SCRA 325 [Per *J*. Leonen, Second Division].

[83] *Id*. at 348, citing *Cua, Jr. v. Tan*, 622 Phil. 661 (2009) [Per *J*. Chico-Nazario, Third Division], *in turn citing* 1 J. CAMPOS, JR. AND M. C. L. CAMPOS, *THE CORPORATION CODE: COMMENTS, NOTES AND SELECTED CASES* 819 (1990 ed.).

[84] *Id*. at 340, citing *Hi-Yield Realty, Incorporated v. Court of Appeals*,

individual stockholder personally, and not to the stockholders as a group or to the corporation, e.g., denial of right to inspection and denial of dividends to a stockholder. If the cause of action belongs to a group of stockholders, such as when the rights violated belong to preferred stockholders, a class or representative suit may be filed to protect the stockholders in the group.[83]

Villamor further explained that a derivative suit "is an action filed by stockholders to enforce a corporate action."[84] A derivative suit, therefore, concerns "a wrong to the corporation itself."[85] The real party in interest is the corporation, not the stockholders filing the suit. The stockholders are technically nominal parties but are nonetheless the active persons who pursue the action for and on behalf of the corporation.

Remedies through derivative suits are not expressly provided for in our statutes—more specifically, in the Corporation Code and the Securities Regulation Code—but they are "impliedly recognized when the said laws make corporate directors or officers liable for damages suffered by the corporation and its stockholders for violation of their fiduciary duties."[86] They are intended to afford reliefs to stockholders in instances where those responsible for running the affairs of a corporation would not otherwise act:

However, in cases of mismanagement where the wrongful acts are committed by the directors or trustees themselves, a stockholder or member may find that he has no redress because the former are vested by law with the right to decide whether or not the corporation should sue, and they will never be willing to sue themselves. The corporation would thus be helpless to seek remedy. Because of the frequent occurrence of such a situation, the common law gradually ~~recognized the rig~~ht of a stockholder to sue on behalf of a corporation

608 Phil. 350, 358 (2009) [Per *J.* Quisumbing, Second Division], in turn citing *R.N. Symaco Trading Corporation v. Santos*, 504 Phil. 573, 589 (2005) [Per *J.* Callejo, Sr., Second Division].

[85] *Cua, Jr. v. Tan*, 622 Phil. 661, 715 (2009) [Per *J.* Chico-Nazario, Third Division], citing I JOSE CAMPOS, JR. AND MARIA CLARA L. CAMPOS, THE CORPORATION CODE: *COMMENTS, NOTES AND SELECTED CASES* 819-820 (1990 ed.).

[86] *Id.* at 721.

[87] *Id.* at 715-716.

in what eventually became known as a "derivative suit." It has been proven to be an effective remedy of the minority against the abuses of management. Thus, an individual stockholder is permitted to institute a derivative suit on behalf of the corporation wherein he holds stock in order to protect or vindicate corporate rights, whenever officials of the corporation refuse to sue or are the ones to be sued or hold the control of the corporation. In such actions, the suing stockholder is regarded as the nominal party, with the corporation as the party in interest.[87]

The distinction between individual and class/representative suits on one hand and derivative suits on the other is crucial. These are not discretionary alternatives. *The fact that stockholders suffer from a wrong done to or involving a corporation does not vest in them a sweeping license to sue in their own capacity*. The recognition of derivative suits as a vehicle for redress distinct from individual and representative suits is an acknowledgment that certain wrongs may be addressed only through acts brought for the corporation:

Although in most every case of wrong to the corporation, each stockholder is necessarily affected because the value of his interest therein would be impaired, this fact of itself is not sufficient to give him an individual cause of action since the corporation is a person distinct and separate from him, and can and should itself sue the wrongdoer.[88]

In *Asset Privatization Trust v. Court of Appeals*,[89] the reasons for disallowing a direct individual suit were further explained:

The reasons given for not allowing direct individual suit are:

(1) . . . "the universally recognized doctrine that a stockholder in a corporation has no title legal or equitable to the corporate property; that both of these are in the corporation itself for the benefit of the stockholders." In other words, to allow shareholders to sue separately

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[88] *Id*. at 715, citing I JOSE CAMPOS, JR. AND MARIA CLARA L. CAMPOS, THE CORPORATION CODE: *COMMENTS, NOTES AND SELECTED CASES* 819-820 (1990 ed.).

[89] 360 Phil. 768 (1998) [Per *J*. Kapunan, Third Division].

would conflict with the separate corporate entity principle;

(2) . . . that the prior rights of the creditors may be prejudiced. Thus, our Supreme Court held in the case of *Evangelista v. Santos*, that 'the stockholders may not directly claim those damages for themselves for that would result in the appropriation by, and the distribution among them of part of the corporate assets before the dissolution of the corporation and the liquidation of its debts and liabilities, something which cannot be legally done in view of Section 16 of the Corporation Law. . .";

(3) the filing of such suits would conflict with the duty of the management to sue for the protection of all concerned;

(4) it would produce wasteful multiplicity of suits; and

(5) it would involve confusion in ascertaining the effect of partial recovery by an individual on the damages recoverable by the corporation for the same act.[90]

The avenues for relief are, thus, mutually exclusive. *The determination of the appropriate remedy hinges on the object of the wrong done*. When the object is a specific stockholder or a definite class of stockholders, an individual suit or class/representative suit *must* be resorted to. When the object of the wrong done is the corporation itself or "the whole body of its stock and property without any severance or distribution among individual holders,"[91] it is a derivative suit that a stockholder *must* resort to. In *Cua, Jr. v. Tan*:[92]

Indeed, the Court notes American jurisprudence to the effect that a derivative suit, on one hand, and individual and class suits, on the other, are mutually exclusive, viz.:

As the Supreme Court has explained: "A shareholder's

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[90] *Id*. at 805–806, citing III A. F. AGBAYANI, *COMMERCIAL LAW OF THE PHILIPPINES* 565–566.

[91] *Cua, Jr. v. Tan,* 622 Phil. 661, 717 (2009) [Per *J*. Chico-Nazario, Third Division], citing *Oakland Raiders v. National Football League*, 131 Cal. App. 4th 621, 32 Cal. Rptr. 3d 266, Cal. App. 6 Dist., 2005, 28 July 2005.

[92] 622 Phil. 661 (2009) [Per *J*. Chico-Nazario, Third Division].

derivative suit seeks to recover for the benefit of the corporation and its whole body of shareholders when injury is caused to the corporation that may not otherwise be redressed because of failure of the corporation to act. *Thus, 'the action is derivative, i.e., in the corporate right, if the gravamen of the complaint is injury to the corporation, or to the whole body of its stock and property without any severance or distribution among individual holders*, or it seeks to recover assets for the corporation or to prevent the dissipation of its assets.'" In contrast, "a direct action [is one] filed by the shareholder individually (or on behalf of a class of shareholders to which he or she belongs) for injury to his or her interest as a shareholder. . . . [T]he two actions are mutually exclusive: i.e., the right of action and recovery belongs to either the shareholders (direct action) or the corporation (derivative action)."

Thus, in *Nelson v. Anderson*, the minority shareholder alleged that the other shareholder of the corporation negligently managed the business, resulting in its total failure. The appellate court concluded that the plaintiff could not maintain the suit as a direct action: "*Because the gravamen of the complaint is injury to the whole body of its stockholders, it was for the corporation to institute and maintain a remedial action*. A derivative action would have been appropriate if its responsible officials had refused or failed to act." The court went on to note that the damages shown at trial were the loss of corporate profits. Since "[s]hareholders own neither the property nor the earnings of the corporation," any damages that the plaintiff alleged that resulted from such loss of corporate profits "were incidental to the injury to the corporation."[93] (Emphasis supplied, citations omitted)

Villamor recalls the requisites for filing derivative suits:

Rule 8, Section 1 of the Interim Rules of Procedure for Intra Corporate Controversies (Interim Rules) provides the five (5) requisites for filing derivative suits:

SECTION 1. Derivative action.—A stockholder or member may

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[93] *Id*. at 717–718, citing *Oakland Raiders v. National Football League*, 131 Cal. App. 4th 621, 32 Cal. Rptr. 3d 266, Cal. App. 6 Dist., 2005, 28 July 2005.

bring an action in the name of a corporation or association, as the case may be, *provided*, that:

(1) He was a stockholder or member at the time the acts or transactions subject of the action occurred and at the time the action was filed;

(2) He exerted all reasonable efforts, and alleges the same with particularity in the complaint, to exhaust all remedies available under the articles of incorporation, by-laws, laws or rules governing the corporation or partnership to obtain the relief he desires;

(3) No appraisal rights are available for the act or acts complained of; and

(4) The suit is not a nuisance or harassment suit.

In case of nuisance or harassment suit, the court shall forthwith dismiss the case.

The fifth requisite for filing derivative suits, while not included in the enumeration, is implied in the first paragraph of Rule 8, Section 1 of the Interim Rules: The action brought by the stockholder or member must be "in the name of [the] corporation or association. . . ." This requirement has already been settled in jurisprudence.

Thus, in *Western Institute of Technology, Inc., et al. v. Salas, et al.*, this court said that "[a]mong the basic requirements for a derivative suit to prosper is that the minority shareholder who is suing for and on behalf of the corporation must allege in his complaint before the proper forum that he is suing on a derivative cause of action on behalf of the corporation and all other shareholders similarly situated who wish to join [him]." . . .

Moreover, it is important that the corporation be made a party to the case.[94] (Citations omitted)

II

[94] *Villamor v. Umale*, G.R. Nos. 172843, 172881, September 24, 2014, 736 SCRA 325, 341-343 [Per *J.* Leonen, Second Division].

[95] 608 Phil. 350 (2009) [Per *J.* Quisumbing, Second Division].

[96] *Id.* at 354.

The greater number of cases that sustained stockholders' recourse to derivative suits involved corporate acts amounting to mismanagement by either the corporation's directors or officers in relations to third persons. Several cases serve as examples.

Hi-Yield Realty v. Court of Appeals[95] affirmed the Regional Trial Court's and Court of Appeals' characterization of a Petition for Annulment of Real Estate Mortgage and Foreclosure Sale[96] as a derivative suit. The Petition was initiated by private respondent Roberto H. Torres, a stockholder, on behalf of the corporation Honorio Torres & Sons, Inc. Petitioner Hi-Yield Realty, Inc. was among the defendants to the Petition, along with the related parties, Leonora, Ma. Theresa, Glenn, and Stephanie, all surnamed Torres, as well as the Registers of Deeds of Marikina and of Quezon City. Against Hi-Yield Realty, Inc.'s claims, this court sustained the respondent's position that the Petition was "primarily a derivative suit to redress the alleged unauthorized acts of its corporate officers and major stockholders in connection with the lands."[97]

Cua, Jr. considered two corporate acts to be valid objects of a derivative suit. The first was a resolution of the Board of Directors of the corporation Philippine Racing Club, Inc. to acquire up to 100% of the common shares of another corporation, JTH Davies Holdings, Inc., as well as to appoint Santiago Cua, Jr. "to act as attorney-in-fact and proxy who could vote all the shares of [Philippine Racing Club, Inc.] in [JTH Davies Holdings, Inc.], as well as nominate, appoint, and vote into office directors and/or officers during regular and special stockholders meetings of [JTH Davies Holdings, Inc.]."[98] The second was another resolution of Philippine Racing Club, Inc.'s Board of Directors "approving the property-for-shares exchange between P[hilippine] R[acing] C[lub], I[nc]. and [JTH Davies Holdings, Inc.]."[99]

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[97] *Id*. at 356.

[98] 622 Phil. 661, 719 (2009) [Per *J.* Chico-Nazario, Third Division].

[99] *Id*. at 726.

[100] *Id*. at 719.

[101] *Id*. at 722.

In *Cua, Jr.,* the derivative suit grounded on the first was dismissed by this court for being moot and academic.[100] The suit grounded on the second was similarly dismissed for failure to comply with one of the requisites for instituting a derivative suit. The plaintiffs "made no mention at all of appraisal rights, which could or could not have been available to them[,]" thereby violating Rule 8, Section 1 of the Interim Rules of Procedure for Intra-Corporate Controversies.[101]

As with *Hi-Yield Realty* and *Cua*, *Go v. Distinction Properties Development and Construction, Inc.*[102] concerned a corporate action taken in relation to a third person.

Petitioners Philip L. Go, Pacifico Q. Lim and Andrew Q. Lim filed before the Housing and Land Use Regulatory Board a Complaint, which they claimed was one for specific performance intended to compel the developer of Phoenix Heights Condominium, Distinction Properties Development and Construction, Inc. (Distinction Properties), to fulfill its contractual obligations. The Complaint was filed in the wake of an agreement entered into by Distinction Properties with the condominium corporation Phoenix Heights Condominium Corporation (PHCC). PHCC "approved a settlement offer from [Distinction Properties] for the set-off of the latter's association dues arrears with the assignment [from Distinction Properties] of title over [two saleable commercial units/spaces originally held by Distinction Properties] and their conversion into common areas."[103]

This court clarified that the true purpose of the petitioners' action was not to compel Distinction Properties to fulfill its contractual obligations. Instead, "petitioners [we]re actually seeking to nullify and invalidate the duly constituted acts of PHCC - the April 29, 2005 Agreement entered into by PHCC with DPDCI and its Board Resolution which authorized the

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[102] 686 Phil. 1160 (2012) [Per *J*. Mendoza, Third Division].

[103] *Id*. at 1166.

[104] *Id*. at 1178.

acceptance of the proposed offsetting/settlement of DPDCI's indebtedness and approval of the conversion of certain units from saleable to common areas." This court thereby concluded that "the cause of action rightfully pertains to PHCC [and that] [p]etitioners cannot exercise the same except through a derivative suit."[104]

The prevalence of derivative suits arising from corporate actions taken in relation to third persons is to be expected. After all, it is easier to perceive the wrong done to a corporation when third persons unduly gain an advantage. However, this does not mean that derivative suits cannot arise with respect to conflicts among a corporation's directors, officers, and stockholders.

Ching and Wellington v. Subic Bay Golf and Country Club[105] sustained the Regional Trial Court's and Court of Appeals' characterization of the Complaint filed by stockholders against officers of the corporation as a derivative suit. Nestor Ching and Andrew Wellington filed a Complaint in their own names and in their right as individual stockholders assailing an amendment introduced into Subic Bay Golf and Country Club's articles of incorporation, which supposedly "takes away the right of the shareholders to participate in the pro-rata distribution

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[105] G.R. No. 174353, September 10, 2014, 734 SCRA 569 [Per *J*. Leonardo-de Castro, First Division].

[106] *Id*. at 573.

[107] Sec. 5. In addition to the regulatory and adjudicative functions of the Securities and Exchange Commission over corporations, partnerships and other forms of associations registered with it as expressly granted under existing laws and decrees, it shall have original and exclusive jurisdiction to hear and decide cases involving:

(a) Devices or schemes employed by or any acts of the board of directors, business associates, its officers or partners, amounting to fraud and misrepresentation which may be detrimental to the interest of the public and/or of the stockholders, partners, members of associations or organizations registered with the Commission.

[108] *Ching and Wellington v. Subic Bay Golf and Country Club*, G.R. No. 174353, September 10, 2014, 734 SCRA 569, 580 [Per *J*. Leonardo-de Castro, First Division].

of the assets of the corporation after its dissolution."[106] They anchored their action on Section 5(a) of Presidential Decree No. 902-A.[107] They claimed that this statutory provision "allows any stockholder to file a complaint against the Board of Directors for employing devices or schemes amounting to fraud and misrepresentation which is detrimental to the interest of the public and/or the stockholders."[108]

This court did not sustain Nestor Ching's and Andrew Wellington's claim of a right to sue in their own capacity. Concluding that the petitioners' action was a derivative suit, this court explained:

> The reliefs sought in the Complaint, namely that of enjoining defendants from acting as officers and Board of Directors of the corporation, the appointment of a receiver, and the prayer for damages in the amount of the decrease in the value of the shares of stock, clearly show that the Complaint was filed to curb the alleged mismanagement of [Subic Bay Gold and Country Club]. *The causes of action pleaded by petitioners do not accrue to a single shareholder or a class of shareholders but to the corporation itself.*[109] (Emphasis supplied)

We are mindful that in 1979, in *Gamboa v. Victoriano*,[110] this court characterized an action to nullify the sale of 823 unissued shares on the ground of violating the plaintiffs' pre-emptive rights and in violation of the voting requirement for the Board of Directors as *not* a derivative suit. This court characterized the action as one in which "the plaintiffs are alleging and vindicating their own individual interests or prejudice, and not that of the corporation."[111]

This pronouncement cannot be considered as a binding precedent for holding actions of the sort filed by the plaintiffs therein to not be derivative suit. This point in *Gamboa* was mere obiter dictum. The main issue in *Gamboa* was the validity

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[109] *Id*. at 584.

[110] 179 Phil. 36 (1979) [Per *J*. Concepcion, Jr., Second Division].

[111] *Id*. at 43.

of the trial court's denial of the Motion to Dismiss filed by four of the seven defendants after the plaintiffs entered into a compromise agreement with the three other defendants. The resolution of this issue was contingent on the determination of whether the compromise amounted to the plaintiff's waiver and estoppel for having conceded the validity of the sale. Besides, this court itself acknowledged that the statement it made characterizing the action brought by the plaintiffs was premature. Immediately after saying that "the plaintiffs are alleging and

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[112] *Id.* at 43.

[113] *Id.* The entirety of the relevant portion in the Decision reads: "The petitioners further contend that the proper remedy of the plaintiffs would be to institute a derivative suit against the petitioners in the name of the corporation in order to secure a binding relief after exhausting all the possible remedies available within the corporation.

"An individual stockholder is permitted to institute a derivative suit on behalf of the corporation wherein he holds stock in order to protect or vindicate corporate rights, whenever the officials of the corporation refuse to sue, or are the ones to be sued or hold the control of the corporation. In such actions, the suing stockholder is regarded as a nominal party, with the corporation as the real party in interest. In the case at bar, however, the plaintiffs are alleging and vindicating their own individual interests or prejudice, and not that of the corporation. At any rate, it is yet too early in the proceedings since the issues have not been joined. Besides, misjoinder of parties is not a ground to dismiss an action" (*Id.*).

[114] 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 until their successors are elected and qualified. (28a)

Every director must own at least one (1) share of the capital stock of the corporation of which he is a director, which share shall stand in his name on the books of the corporation. Any director who ceases to be the owner of at least one (1) share of the capital stock of the corporation of which he is a director shall thereby cease to be a director. Trustees of non-stock corporations must be members thereof. A majority of the directors or trustees of all corporations organized under this Code must be residents of the Philippines.

vindicating their own individual interests or prejudice, and not that of the corporation[,]"[112] this court stated: "At any rate, it is yet too early in the proceedings since the issues have not been joined."[113]

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[115] SEC. 25. *Corporate Officers, Quorum*.—Immediately after their election, the directors of a corporation must formally organize by the election of a president, who shall be a director, a treasurer who may or may not be a director, a secretary who shall be a resident and citizen of the Philippines, and such other officers as may be provided for in the by-laws. Any two (2) or more positions may be held concurrently by the same person, except that no one shall act as president and secretary or as president and treasurer at the same time.

The directors or trustees and officers to be elected shall perform the duties enjoined on them by law and the by-laws of the corporation. Unless the articles of incorporation or the by-laws provide for a greater majority, a majority of the number of directors or trustees as fixed in the articles of incorporation shall constitute a quorum for the transaction of corporate business, and every decision of at least a majority of the directors or trustees present at a meeting at which there is a quorum shall be valid as a corporate act, except for the election of officers which shall require the vote of a majority of all the members of the board.

Directors or trustees cannot attend or vote by proxy at board meetings.

[116] SEC. 39. *Power to Deny Pre-emptive Right*.—All stockholders of a stock corporation shall enjoy pre-emptive right to subscribe to all issues or disposition of shares of any class, in proportion to their respective shareholdings, unless such right is denied by the articles of incorporation or an amendment thereto: Provided, That such pre-emptive right shall not extend to shares to be issued in compliance with laws requiring stock offerings or minimum stock ownership by the public; or to shares to be issued in good faith with the approval of the stockholders representing two-thirds (2/3) of the outstanding capital stock, in exchange for property needed for corporate purposes or in payment of a previously contracted debt.

[117] SEC. 102. *Pre-emptive Right in Close Corporations*.—The pre-emptive right of stockholders in close corporations shall extend to all stock to be issued, including reissuance of treasury shares, whether for money or for property or personal services, or in payment of corporate debts, unless the articles of incorporation provide otherwise.

[118] SEC. 62. *Consideration for stocks*.—Stocks shall not be issued for a consideration less than the par or issued price thereof. Consideration for the issuance of stock may be any or a combination of any two or more of the following:

III

In this case, the Marcelino, Jr. Group anchored their Complaint

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1. Actual cash paid to the corporation;

2. Property, tangible or intangible, actually received by the corporation and necessary or convenient for its use and lawful purposes at a fair valuation equal to the par or issued value of the stock issued;

3. Labor performed for or services actually rendered to the corporation;

4. Previously incurred indebtedness of the corporation;

5. Amounts transferred from unrestricted retained earnings to stated capital; and

6. Outstanding shares exchanged for stocks in the event of reclassification or conversion.

Where the consideration is other than actual cash, or consists of intangible property such as patents of copyrights, the valuation thereof shall initially be determined by the incorporators or the board of directors, subject to approval by the Securities and Exchange Commission.

Shares of stock shall not be issued in exchange for promissory notes or future service.

The same considerations provided for in this section, insofar as they may be applicable, may be used for the issuance of bonds by the corporation.

The issued price of no-par value shares may be fixed in the articles of incorporation or by the board of directors pursuant to authority conferred upon it by the articles of incorporation or the by-laws, or in the absence thereof, by the stockholders representing at least a majority of the outstanding capital stock at a meeting duly called for the purpose.

[119] SEC. 63. *Certificate of Stock and Transfer of Shares*.—The capital stock of stock corporations shall be divided into shares for which certificates signed by the president or vice-president, countersigned by the secretary or assistant secretary, and sealed with the seal of the corporation shall be issued in accordance with the by-laws. Shares of stock so issued are personal property and may be transferred by delivery of the certificate or certificates indorsed by the owner or his attorney-in-fact or other person legally authorized to make the transfer. No transfer, however, shall be valid, except as between the parties, until the transfer is recorded in the books of the corporation so as to show the names of the parties to the transaction, the date of the transfer, the number of the certificate or certificates and the number of shares transferred.

No shares of stock against which the corporation holds any unpaid claim shall be transferable in the books of the corporation.

on violations of and liabilities arising from the Corporation Code, specifically: Section 23[114] (on corporate decision-making being vested in the board of directors), Section 25[115] (quorum requirement for the transaction of corporate business), Sections 39[116] and 102[117] (both on stockholders' pre-emptive rights), Section 62[118] (stipulating the consideration for which stocks must be issued), Section 63[119] (stipulating that no transfer of shares "shall be valid, except as between the parties, until the transfer is recorded in the books of the corporation"), and Section 65[120] (on liabilities of directors and officers "*to the corporation* and its creditors" for the issuance of watered stocks) in relation to provisions in People's Broadcasting's Articles of Incorporation and By-Laws as regards conditions for issuances of and subscription to shares. The Marcelino, Jr. Group ultimately prays that People's Broadcasting's entire capital structure be reconfigured to reflect a status quo ante.[121]

As with *Ching and Wellington*, the actions being assailed by the Marcelino, Jr. Group pertain to parties that are not extraneous to People's Broadcasting. They assail and seek to nullify acts taken by various iterations of People's Broadcasting's Board of Directors. All these acts and incidents concern the capital structure of People's Broadcasting. These acts reconfigured, through redistribution and enlargement, the structure of People's Broadcasting's equity ownership. These acts also admitted into People's Broadcasting new equity holders

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[120] SEC. 65. *Liability of directors for watered stocks*.—Any director or officer of a corporation consenting to the issuance of stocks for a consideration less than its par or issued value or for a consideration in any form other than cash, valued in excess of its fair value, or who, having knowledge thereof, does not forthwith express his objection in writing and file the same with the corporate secretary, shall be solidarily, liable with the stockholder concerned to the corporation and its creditors for the difference between the fair value received at the time of issuance of the stock and the par or issued value of the same.

[121] *Rollo* (G.R. No. 174909), p. 601. That is, situations as they were "before the liquidation of the estates of the late Marcelino, Sr. and Salome and before the exercise of pre-emptive rights by the beneficial stockholders" (*Id.*).

such as Consolidated Broadcasting System, Inc. and Newsounds Broadcasting Network, Inc.

As *Ching and Wellington* exemplifies, the action should be a proper derivative suit even if the assailed acts do not pertain to a corporation's transactions with third persons. *Cua, Jr.* established that the pivotal consideration is whether the wrong done as well as the cause of action arising from it accrues to the corporation itself or to the whole body of its stockholders. *Ching and Wellington* states that if "[t]he causes of action pleaded . . . do not accrue to a single shareholder or a class of shareholders but to the corporation itself,"[122] the action should be deemed a derivative suit. Also, in *Go*, an action "seeking to nullify and invalidate the duly constituted acts [of a corporation]" entails a cause of action that "rightfully pertains to [the corporation itself and which stockholders] cannot exercise . . . except through a derivative suit."[123]

These are the same conditions in this case. What the Marcelino, Jr. Group asks is the complete reversal of a number of corporate acts undertaken by People' Broadcasting's different boards of directors. These boards supposedly engaged in outright fraud or, at the very least, acted in such a manner that amounts to wanton mismanagement of People's Broadcasting's affairs. The ultimate effect of the remedy they seek is the reconfiguration of People's Broadcasting's capital structure.

The remedies that the Marcelino, Jr. Group seeks are for People's Broadcasting itself to avail. Ordinarily, these reliefs may be unavailing because objecting stockholders such as those in the Marcelino, Jr. Group do not hold the controlling interest in People's Broadcasting. This is precisely the situation that

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[122] *Ching and Wellington v. Subic Bay Golf and Country Club,* G.R. No. 174353, September 10, 2014, 734 SCRA 569, 584 [Per *J.* Leonardo-de Castro, First Division].

[123] *Go v. Distinction Properties Development and Construction, Inc.*, 686 Phil. 1160, 1174 (2012) [Per *J*. Mendoza, Third Division].

[124] *Villamor v. Umale*, G.R. Nos. 172843, 172881, September 24, 2014, 736 SCRA 325, 340 [Per *J*. Leonen, Second Division].

the rule permitting derivative suits contemplates: minority shareholders having no other recourse "whenever the directors or officers of the corporation refuse to sue to vindicate the rights of the corporation or are the ones to be sued and are in control of the corporation."[124]

The Marcelino, Jr. Group points to violations of specific provisions of the Corporation Code that supposedly attest to how their rights as stockholders have been besmirched. However, this is not enough to sustain a claim that the Marcelino, Jr. Group initiated a valid individual or class suit. To reiterate, whether stockholders suffer from a wrong done to or involving a corporation does not readily vest in them a sweeping license to sue in their own capacity.

The specific provisions adverted to by the Marcelino, Jr. Group signify alleged wrongdoing committed against the corporation itself and not uniquely to those stockholders who now comprise the Marcelino, Jr. Group. A violation of Sections 23 and 25 of the Corporation Code—on how decision-making is vested in the board of directors and on the board's quorum requirement—implies that a decision was wrongly made for the entire corporation, not just with respect to a handful of stockholders. Section 65 specifically mentions that a director's or officer's liability for the issuance of watered stocks in violation of Section 62 is solidary "*to the corporation* and its creditors," not to any specific stockholder. Transfers of shares made in violation of the registration requirement in Section 63 are invalid and, thus, enable the corporation to impugn the transfer. Notably, those in the Marcelino, Jr. Group have not shown any specific interest in, or unique entitlement or right to, the shares supposedly transferred in violation of Section 63.

Also, the damage inflicted upon People's Broadcasting's individual stockholders, if any, was indiscriminate. It was not unique to those in the Marcelino, Jr. Group. It pertained to

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[125] To paraphrase *Oakland Raiders v. National Football League*, 131 Cal. App. 4th 621, 32 Cal. Rptr. 3d 266, Cal. App. 6 Dist., 2005, 28 July 2005, as cited in *Cua, Jr. v. Tan,* 622 Phil. 661, 717 (2009) [Per *J.* Chico-Nazario, Third Division].

"the whole body of [People's Broadcasting's] stock."[125] Accordingly, it was upon People's Broadcasting itself that the causes of action now claimed by the Marcelino Jr. Group accrued. While stockholders in the Marcelino, Jr. Group were permitted to seek relief, they should have done so not in their unique capacity as individuals or as a group of stockholders but in place of the corporation itself through a derivative suit. As they, instead, sought relief in their individual capacity, they did so bereft of a cause of action. Likewise, they did so without even the slightest averment that the requisites for the filing of a derivative suit, as spelled out in Rule 8, Section 1 of the Interim Rules of Procedure for Intra-Corporate Controversies, have been satisfied. Since the Complaint lacked a cause of action and failed to comply with the requirements of the Marcelino, Jr. Group's vehicle for relief, it was only proper for the Complaint to have been dismissed.

IV

Erroneously pursuing a derivative suit as a class suit not only meant that the Marcelino, Jr. Group lacked a cause of action; it also meant that they failed to implead an indispensable party.

In derivative suits, the corporation concerned must be impleaded as a party. As explained in *Asset Privatization Trust*:

> Not only is the corporation an indispensible party, but it is also the present rule that it must be served with process. The reason given is that the judgment must be made binding upon the corporation in order that the corporation may get the benefit of the suit and may not bring a subsequent suit against the same defendants for the same cause of action. In other words the corporation must be joined as party because it is its cause of action that is being litigated and because judgment must be a res ajudicata [sic] against it.[126]

We have already discussed *Go* where this court concluded that an action brought by three individual stockholders was, in truth, a derivative suit. There, this court further explained that

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[126] *Asset Privatization Trust v. Court of Appeals*, 360 Phil. 768, 805-806 (1998) [Per *J.* Kapunan, Third Division], citing III A. F. AGBAYANI, *COMMERCIAL LAW OF THE PHILIPPINES* 565-566.

a case cannot prosper when the proper party is not impleaded:

As it is clear that the acts being assailed are those of PHHC, this case cannot prosper for failure to implead the proper party, PHCC.

An indispensable party is defined as one who has such an interest in the controversy or subject matter that a final adjudication cannot be made, in his absence, without injuring or affecting that interest. In the recent case of *Nagkakaisang Lakas ng Manggagawa sa Keihin (NLMK-OLALIA-KMU) v. Keihin Philippines Corporation*, the Court had the occasion to state that:

> Under Section 7, Rule 3 of the Rules of Court, "parties in interest without whom no final determination can be had of an action shall be joined as plaintiffs or defendants." If there is a failure to implead an indispensable party, any judgment rendered would have no effectiveness. It is "precisely 'when an indispensable party is not before the court (that) an action should be dismissed.' The absence of an indispensable party renders all subsequent actions of the court null and void for want of authority to act, not only as to the absent parties but even to those present." The purpose of the rules on joinder of indispensable parties is a complete determination of all issues not only between the parties themselves, but also as regards other persons who may be affected by the judgment. A decision valid on its face cannot attain real finality where there is want of indispensable parties.

Similarly, in the case of *Plasabas v. Court of Appeals*, the Court held that a final decree would necessarily affect the rights of indispensable parties so that the Court could not proceed without their presence. In support thereof, the Court in *Plasabas* cited the following authorities, thus:

> The general rule with reference to the making of parties in a civil action requires the joinder of all indispensable parties under any and all conditions, their presence being a sine qua non of the exercise of judicial power. For this reason, our Supreme Court has held that when it appears of record that there are other persons interested in the subject matter of the litigation, who are not made parties to the action, it is the duty of the court to suspend the trial until such parties are made either plaintiffs or defendants. x x x Where the petition failed to join as party defendant the person interested in sustaining

> the proceeding in the court, the same should be dismissed. x x x When an indispensable party is not before the court, the action should be dismissed.
>
> Parties in interest without whom no final determination can be had of an action shall be joined either as plaintiffs or defendants. The burden of procuring the presence of all indispensable parties is on the plaintiff. The evident purpose of the rule is to prevent the multiplicity of suits by requiring the person arresting a right against the defendant to include with him, either as co-plaintiffs or as co-defendants, all persons standing in the same position, so that the whole matter in dispute may be determined once and for all in one litigation.

From all indications, PHCC is an indispensable party and should have been impleaded, either as a plaintiff or as a defendant, in the complaint filed before the HLURB as it would be directly and adversely affected by any determination therein. To belabor the point, the causes of action, or the acts complained of, were the acts of PHCC as a corporate body[.][127] (Citations omitted)

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There are two consequences of a finding on appeal that indispensable parties have not been joined. First, all subsequent actions of the lower courts are null and void for lack of jurisdiction.[128] Second, the case should be remanded to the trial court for the inclusion of indispensable parties. It is only

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[127] *Go v. Distinction Properties Development and Construction, Inc.*, 686 Phil. 1160, 1175-1177 (2012) [Per *J.* Mendoza, Third Division].

[128] *Arcelona v. Court of Appeals*, 345 Phil. 250, 267–268 (1997) [Per *J.* Panganiban, Third Division]. See also *People of the Philippines v. Go*, G.R. No. 201644, September 24, 2014, 736 SCRA 501, 506-507 [Per *J.* Perlas-Bernabe, First Division].

[129] *Divinagracia v. Parilla*, G.R. No. 196750, March 11, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/march2015/196750.pdf> [Per *J.* Perlas-Bernabe, First Division].

[130] *Arcelona v. Court of Appeals*, 345 Phil. 250, 267–268 (1997) [Per *J.* Panganiban, Third Division]. See also *People of the Philippines v. Go*, G.R. No. 201644, September 24, 2014, 736 SCRA 501, 506 [Per *J.* Perlas-Bernabe, First Division].

upon the plaintiff's refusal to comply with an order to join indispensable parties that the case may be dismissed.[129]

All subsequent actions of lower courts are void as to both the absent and present parties.[130] To reiterate, the inclusion of an indispensable party is a *jurisdictional* requirement:

While the failure to implead an indispensable party is not per se a ground for the dismissal of an action, considering that said party may still be added by order of the court, on motion of the party or on its own initiative at any stage of the action and/or such times as are just, it remains essential — *as it is jurisdictional* — that any indispensable party be impleaded in the proceedings *before the court renders judgment*. This is because the absence of such indispensable party renders all subsequent actions of the court null and void for want of authority to act, not only as to the absent parties but even as to those present.[131] (Emphasis supplied, citation omitted)

In *Metropolitan Bank and Trust Co. v. Alejo*[132] and *Arcelona v. Court of Appeals*,[133] this court clarified that the courts must first acquire *jurisdiction over the person* of an indispensable party. Any decision rendered by a court without first obtaining the required jurisdiction over indispensable parties is null and void for want of jurisdiction: "the presence of indispensable parties is necessary to vest the court with jurisdiction, which

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[131] *People of the Philippines v. Go*, G.R. No. 201644, September 24, 2014, 736 SCRA 501, 506 [Per *J*. Perlas-Bernabe, First Division].

[132] 417 Phil. 303 (2001) [Per *J*. Panganiban, Third Division].

[133] 345 Phil. 250 (1997) [Per *J*. Panganiban, Third Division].

[134] *People of the Philippines v. Go*, G.R. No. 201644, September 24, 2014, 736 SCRA 501, 506 [Per *J*. Perlas-Bernabe, First Division].

[135] G.R. No. 196750, March 11, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/march2015/196750.pdf> [Per *J*. Perlas-Bernabe, First Division].

[136] G.R. No. 186610, July 29, 2013, 702 SCRA 496 [Per *J*. Peralta, Third Division].

[137] G.R. No. 201644, September 24, 2014, 736 SCRA 501 [Per *J*. Perlas-Bernabe, First Division].

[138] 620 Phil. 268 (2009) [Per *J*. Abad, Second Division].

is 'the authority to hear and determine a cause, the right to act in a case.'"[134]

In *Divinagracia v. Parilla*,[135] *Macawadib v. Philippine National Police Directorate for Personnel and Records Management*,[136] *People v. Go*,[137] and *Valdez-Tallorin v. Heirs of Tarona*,[138] among others, this court annulled judgments rendered by lower courts in the absence of indispensible parties.

The second consequence is unavailing in this case. While "[n]either misjoinder nor non-joinder of parties is ground for dismissal of an action"[139] and is, thus, not fatal to the Marcelino, Jr. Group's action, we have shown that they lack a cause of action. This warrants the dismissal of their Complaint.

The first consequence, however, is crucial. It determines the validity of the Regional Trial Court's award of damages to Rogelio, Sr.

Since the Regional Trial Court did not have jurisdiction, the decision awarding damages in favor of Rogelio, Sr. is void.

Apart from this, there is no basis in jurisprudence for awarding moral and exemplary damages in cases where individual suits that were erroneously filed were dismissed. In the analogous cases that we previously discussed—*Hi-Yield Realty*, *Cua, Jr.*, *Go*, and *Ching and Wellington*—the dismissal alone of the erroneously filed complaints sufficed. This court never saw the need to award moral and exemplary damages. This is in keeping with the Civil Code provisions that stipulate when the award of such damages is proper. We find no reason to conclude that the Marcelino, Jr. Group acted in so malevolent, oppressive, or reckless a manner that moral and exemplary damages must be awarded in such huge amounts as the Regional Trial Court

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[139] RULES OF COURT, Rule 3, Sec. 11 states:

Section 11. Misjoinder and non-joinder of parties. — Neither misjoinder nor non-joinder of parties is ground for dismissal of an action. Parties may be dropped or added by order of the court on motion of any party or on its own initiative at any stage the action and on such terms as are just. Any claim against a misjoined party may be severed and proceeded with separately.

did.

From the conclusion that the Decision awarding damages is void and unwarranted, it necessarily follows that the Order of the Regional Trial Court to immediately execute its Decision is likewise null and void. In *Arcelona*, the Decision sought to be annulled was already being executed. However, this court found that the assailed Decision was promulgated without indispensable parties being impleaded. Hence, the Decision was ruled to have been made without jurisdiction. This court nullified the judgment and declared:

> *A void judgment for want of jurisdiction is no judgment at all.* ***It cannot be the source of any right nor the creator of any obligation.*** All acts performed pursuant to it and all claims emanating from it have no legal effect. *Hence, it can never become final and* ***any writ of execution based on it is void***: x x x it may be said to be a lawless thing which can be treated as an outlaw and slain at sight, or ignored wherever and whenever it exhibits its head.[140] (Emphasis supplied)

Accordingly, the subsequent Order of the Decision's immediate execution is also void for lack of jurisdiction. Contrary to Rogelio Sr.'s claim in its Petition, execution cannot ensue. For this reason, the Petition docketed as G.R. No. 177275 must be denied.

WHEREFORE, the Petition docketed as G.R. No. 174909 is **PARTLY GRANTED** and the Petition docketed as G.R. No. 177275 is **DENIED**.

The Complaint filed by Marcelino M. Florete, Jr., Maria Elena F. Muyco, and Raul A. Muyco for Declaration of Nullity of Issuances, Transfers and Sale of Shares in People's Broadcasting Service, Inc. and All Posterior Subscriptions and Increases thereto with Damages is dismissed as the complainants have no cause of action. The award of ₱25,000,000.00 as moral damages and ₱5,000,000.00 as exemplary damages in favor of Rogelio Florete, Sr. is deleted. The Regional Trial Court Order dated May 18, 2006 ordering the immediate execution of its Decision dated August 2, 2005 is set aside.

SO ORDERED.

Carpio (Chairperson), del Castillo, Mendoza, and *Perlas-Bernabe, JJ.,* concur.

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[140] *Arcelona v. Court of Appeals*, 345 Phil. 250, 287 (1997) [Per *J.* Panganiban, Third Division], citing *Leonor v. Court of Appeals*, 326 Phil. 74 (1996) [Per *J.* Panganiban, Third Division].

THIRD DIVISION

[G.R. No. 176549. January 20, 2016]

DEPARTMENT OF AGRARIAN REFORM, QUEZON CITY & PABLO MENDOZA, *petitioners, vs.* **ROMEO C. CARRIEDO,** *respondent.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; COMPREHENSIVE AGRARIAN REFORM LAW (RA 6657); LANDOWNER RETENTION RIGHTS; UNDER SECTION 6 OF DAR 02-03, THE DISPOSITION OF AGRICULTURAL LAND IS NOT AN ACT CONSTITUTING WAIVER OF THE RIGHT OF RETENTION.—** The subject land was originally part of the agricultural land covered by Transfer Certificate of Title (TCT) No. 17680, which in turn, formed part of the total of 73.3157 hectares of agricultural land owned by Roman De Jesus (Roman). On May 23, 1972, petitioner Pablo Mendoza (Mendoza) became the tenant of the land. x x x On June 26, 1986, Mario [De Jesus, son of then deceased Roman] sold approximately 70.4788 hectares of the land to Romeo C. Carriedo (Carriedo) x x x [which] included the land tenanted by Mendoza (part of the area covered by TCT No. 17680). x x x In June of 1990, Carriedo sold all the landholdings to the Peoples' Livelihood Foundation, Inc. (PLFI). x x x On October 5, 1999, the landholding covered by TCT No. 17680 was divided into sub-lots. x x x The Lots consisting of approximately 5.0001 hectares and which is the land being occupied by Mendoza, were registered in the name of Carriedo. x x x [Mendoza] filed a Petition for Coverage of the land under RA No. 6657. x x x. The petition was granted by the Regional Director (RD), affirmed by the Department of Agrarian Reform – Central Office (DAR-CO) x x x [ruling] that Carriedo was no longer allowed to retain the land due to his violation of the provisions of RA No. 6657. His act of disposing his agricultural landholdings was tantamount to the exercise of his retention right, or an act amounting to a valid waiver of such right in accordance with applicable laws and jurisprudence. x x x Whether Carriedo has the right to retain the land, we rule in the affirmative. Carriedo

did not waive his right of retention over the land. Section 6 of DAR AO 02-03 provides for the instances when a landowner is deemed to have waived his right of retention, x x x Section 6 shows that the disposition of agricultural land is not an act constituting waiver of the right of retention. x x x [T]he Records of the present case is bereft of any showing that the herein petitioner expressly waived (in writing) his right of retention as required under sub-section 6.3, Section 6, DAR Administrative Order No. 02-S.2003."

2. **ID.; ID.; ID.; SECTION 4 OF DAR AO 02-03 ON PERIOD TO EXERCISE RIGHT OF RETENTION; ANY TIME BEFORE RECEIPT OF THE NOTICE OF COVERAGE OR IF UNDER COMPULSORY ACQUISITION, WITHIN 60 DAYS FROM RECEIPT OF THE NOTICE OF COVERAGE.—** Section 4 of DAR AO 02-03 provides [for the] *Period to Exercise Right of Retention under RA 6657* x x x The rules give Carriedo any time before receipt of the notice of coverage to exercise his right of retention, or if under compulsory acquisition (as in this case), within sixty (60) days from receipt of the notice of coverage. The validity of the notice of coverage is the very subject of the controversy before this court. Thus, the period within which Carriedo should exercise his right of retention cannot commence until final resolution of this case.

3. **ID.; ID.; ID.; MULTIPLE OR SERIES OF TRANSFERS/ SALES OF LAND WILL NOT RESULT IN LOSS OF RETENTION RIGHTS NOR AMOUNTS TO WAIVER OF SUCH RIGHT.—** [N]owhere in the relevant provisions of RA No. 6657 does it indicate that a multiple or series of transfers/ sales of land would result in the loss of retention rights. Neither do they provide that the multiple or series of transfers or sales amounts to the waiver of such right. x x x Sections 6 and 70 are clear in stating that any sale and disposition of agricultural lands in violation of the RA No. 6657 shall be null and void. Under the facts of this case, the reasonable reading of these three provisions (including Sec. 73(a)) in relation to the constitutional right of retention should be that the consequence of nullity pertains to the area/s which were sold, or owned by the transferee, in excess of the 5-hectare land ceiling.

4. **ID.; ID.; ITEM 4 OF DAR AO 05-06 WHICH ALTERS RA 6657, GIVING PENALTY WHERE NONE IS PROVIDED, IS INVALID FOR BEING *ULTRA VIRES*.—** Item no. 4 of DAR AO 05-06 attempts to defeat the above reading by providing that, under the principle of *estoppel*, the sale of the first five hectares is valid. But, it hastens to add that the first five hectares sold corresponds to the transferor/s' retained area. Thus, since the sale of the first five hectares is valid, therefore, the landowner loses the five hectares because it happens to be, at the same time, the retained area limit. In reality, Item No. 4 of DAR AO 05-06 operates as a forfeiture provision in the guise of *estoppel.* It punishes the landowner who sells in excess of five hectares. Forfeitures, however, partake of a criminal penalty. x x x Sections 6, 70 and 73 (a) of RA No. 6657 clearly do not provide that a sale or disposition of land in excess of 5 hectares results in a forfeiture of the five hectare retention area. Item no. 4 of DAR AO 05-06 imposes a penalty where none was provided by law. x x x The invalidity of this provision constrains us to strike it down for being *ultra vires.*

5. **ID.; ID.; CERTIFICATE OF LAND OWNERSHIP AWARDS (CLOAs) ARE NOT EQUIVALENT TO A TORRENS CERTIFICATE OF TITLE (TCT).—** [T]he Certificate of Land Ownership Awards (CLOAs) allegedly granted [under RA 6657] x x x are not equivalent to a Torrens certificate of title, and thus are not indefeasible. CLOAs and Emancipation Patents (EPs) are similar in nature to a Certificate of Land Transfer (CLT) in ordinary land registration proceedings. CLTs, and in turn the CLOAs and EPs, are issued merely as preparatory steps for the eventual issuance of a certificate of title. They do not possess the indefeasibility of certificates of title. Justice Oswald D. Agcaoili, in *Property Registration Decree and Related Laws (Land Titles and Deeds),* notes, to wit: x x x The issuance of BPs or CLOAs to beneficiaries does not absolutely bar the landowner from retaining the area covered thereby. Under AO No. 2, series of 1994, an EP or CLOA may be cancelled if the land covered is later found to be part of the landowner's retained area. The issue, however, involving the issuance, recall or cancellation of EPs or CLOAs, is lodged with the DAR, which has the primary jurisdiction over the matter.

APPEARANCES OF COUNSEL

Kenneth B. Yambao for petitioners.
Atienza and Atienza Law Office for respondent.

JARDELEZA, *J*.:

This is a Petition for Review on *Certiorari*[1] assailing the Court of Appeals Decision dated October 5, 2006[2] and Resolution dated January 10, 2007[3] in CA-G.R. SP No. 88935. The Decision and Resolution reversed the Order dated February 22, 2005[4] issued by the Department of Agrarian Reform-Central Office (DAR-CO) in Administrative Case No. A-9999-03-CV-008-03 which directed that a 5.0001 hectare piece of agricultural land (land) be placed under the Comprehensive Agrarian Reform Program pursuant to Republic Act (RA) No. 6657 or the Comprehensive Agrarian Reform Law.

The Facts

The land originally formed part of the agricultural land covered by Transfer Certificate of Title (TCT) No. 17680,[5] which in turn, formed part of the total of 73.3157 hectares of agricultural land owned by Roman De Jesus (Roman).[6]

On May 23, 1972, petitioner Pablo Mendoza (Mendoza) became the tenant of the land by virtue of a *Contrato King Pamamuisan*[7] executed between him and Roman. Pursuant to

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[1] *Rollo,* pp. 14-22.

[2] Penned by Associate Justice Jose L. Sabio Jr. with Associate Justices Regalado E. Maambong and Ramon M. Bato, Jr. concurring, *id.* at 164-179.

[3] Penned by Associate Justice Jose L. Sabio, Jr. with Associate Justices Regalado E. Maambong and Ramon M. Bato, Jr. concurring, *id*. at 28-29.

[4] CA *Rollo,* pp. 56-61.

[5] Comprising a total of 12.1065 hectares. DAR-CO Records, pp. 537-539.

[6] CA *rollo,* p. 57.

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

the *Contrato,* Mendoza has been paying twenty-five (25) piculs of sugar every crop year as lease rental to Roman. It was later changed to Two Thousand Pesos (₱2,000.00) per crop year, the land being no longer devoted to sugarcane.[8]

On November 7, 1979, Roman died leaving the entire 73.3157 hectares to his surviving wife Alberta Constales (Alberta), and their two sons Mario De Jesus (Mario) and Antonio De Jesus (Antonio).[9] On August 23, 1984, Antonio executed a Deed of Extrajudicial Succession with Waiver of Right[10] which made Alberta and Mario co-owners in equal proportion of the agricultural land left by Roman.[11]

On June 26, 1986, Mario sold[12] approximately 70.4788 hectares to respondent Romeo C. Carriedo (Carriedo), covered by the following titles and tax declarations, to wit:

1. TCT No. 35055
2. (Tax Declaration) TD No. 48354
3. TCT No. 17681
4. TCT No. 56897
5. TCT No. 17680

The area sold to Carriedo included the land tenanted by Mendoza (forming part of the area covered by TCT No. 17680). Mendoza alleged that the sale took place without his knowledge and consent.

In June of 1990, Carriedo sold all of these landholdings to the Peoples' Livelihood Foundation, lnc. (PLFI) represented by its president, Bernabe Buscayno.[13] All the lands, except that covered by TCT No. 17680, were subjected to Voluntary Land

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[8] *Rollo,* p. 165.

[9] *Id.* at 166.

[10] *Id.;* DAR-CO Records (A-9999-03-CV-008-03), pp. 500-503.

[11] *Rollo,* p. 166.

[12] CA *rollo,* pp. 75-78.

[13] DAR-CO Records (A-9999-03-CV-008-03), pp. 493-495.

Transfer/Direct Payment Scheme and were awarded to agrarian reform beneficiaries in 1997.[14]

The parties to this case were involved in three cases concerning the land, to wit:

The Ejectment Case (DARAB Case No. 163-T-90 | CA-G.R. SP No. 44521 | G.R. No. 143416)

On October 1, 1990, Carriedo filed a Complaint for Ejectment and Collection of Unpaid Rentals against Mendoza before the Provincial Agrarian Reform Adjudication Board (PARAD) of Tarlac docketed as DARAB Case No. 163-T-90. He subsequently filed an Amended Complaint on October 30, 1990.[15]

In a Decision dated June 4, 1992,[16] the PARAD ruled that Mendoza had knowledge of the sale, hence, he could not deny the fact nor assail the validity of the conveyance. Mendoza violated Section 2 of Presidential Decree (PD) No. 816,[17] Section 50 of RA No. 1199[18] and Section 36 of RA No.

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[14] *Id.* at 571-572, *rollo,* p. 166.

[15] CA *rollo,* pp. 69-72.

[16] *Id.* at 62-75.

[17] Providing That Tenant-farmers/ Agricultural Lessees Shall Pay the Leasehold Rentals When They Fall Due and Providing Penalties Therefor (1975). Section 2 of PD No. 816 reads:

> Section 2. That any agricultural lessee of a rice or corn land under Presidential Decree No. 27 who deliberately refuses and/or continues to refuse to pay the rentals or amortization payments when they fall due for a period of two (2) years shall, upon hearing and final judgment, forfeit the Certificate of Land Transfer issued in his favor, if his farmholding is already covered by such Certificate of Land Transfer, and his farmholding.

[18] Agricultural Tenancy Act of the Philippines. Section 50 of RA No. 1199 reads:

Section 50. *Causes for the Dispossession of a Tenant.*— Any of the following shall be a sufficient cause for the dispossession of a tenant from his holdings:

(a) The *bona fide* intention of the landholder to cultivate the

3844,[19] and thus, the PARAD declared the leasehold contract terminated, and ordered Mendoza to vacate the premises.[20]

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land himself personally or through the employment of farm machinery and implements: *Provided, however,* That should the landholder not cultivate the land himself or should fail to employ mechanical farm implements for a period of one year after the dispossession of the tenant, it shall be presumed that he acted in bad faith and the land and damages for any loss incurred by him because of said dispossession: *Provided, further,* That the land-holder shall, at least one year but not more than two years prior to the date of his petition to dispossess the tenant under this subsection, file notice with the court and shall inform the tenant in wiring in a language or dialect known to the latter of his intention to cultivate the land himself, either personally or through the employment of mechanical implements, together with a certification of the Secretary of Agriculture and Natural Resources that the land is suited for mechanization: *Provided, further,* That the dispossessed tenant and the members of his immediate household shall be preferred in the employment of necessary laborers under the new set-up.

(b) When the current tenant violates or fails to comply with any of the terms and conditions of the contract or any of the provisions of this Act: *Provided, however,* That this subsection shall not apply when the tenant has substantially complied with the contract or with the provisions of this Act.

(c) The tenant's failure to pay the agreed rental or to deliver the landholder's share: *Provided, however,* That this shall not apply when the tenant's failure is caused by a fortuitous event or *force majeure.*
(d) When the tenant uses the land for purpose other than that specified by agreement of the parties.

(e) When a share-tenant fails to follow those proven farm practices which will contribute towards the proper care of the land and increased agricultural production.

(f) When the tenant through negligence permits serious injury to the land which will impair its productive capacity.

(g) Conviction by a competent court of a tenant or any member of his immediate family or farm household of a crime against the landholder or a member of his immediate family.

[19] Agricultural Land Reform Code. Section 36 of RA No. 3844 reads:
Section 36. *Possession of Landholding; Exceptions.* — Notwithstanding any agreement as to the period or future surrender, of the land, an agricultural lessee shall continue in the enjoyment and possession of his landholding except when his dispossession has been authorized by the Court in a judgment that is final and executory if after due hearing it is shown that:

(l) The agricultural lessor-owner or a member of his immediate family will personally cultivate the landholding or will convert the landholding, if suitably located, into residential, factory, hospital or school site

Mendoza filed an appeal with the Department of Agrarian Reform Adjudication Board (DARAB). In a decision dated February 8, 1996,[21] the DARAB affirmed the PARAD Decision *in toto*. The DARAB ruled that ownership of the land belongs to Carriedo. That the deed of sale was unregistered did not affect Carriedo's title to the land. By virtue of his ownership, Carriedo was subrogated to the rights and obligation of the former landowner, Roman.[22]

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or other useful non-agricultural purposes: *Provided;* That the agricultural lessee shall be entitled to disturbance compensation equivalent to five years rental on his landholding in addition to his rights under Sections twenty-five and thirty-four, except when the land owned and leased by the agricultural lessor, is not more than five hectares, in which case instead of disturbance compensation the lessee may be entitled to an advanced notice of at least one agricultural year before ejectment proceedings are filed against him: *Provided, further,* That should the landholder not cultivate the land himself for three years or fail to substantially carry out such conversion within one year after the dispossession of the tenant, it shall be presumed that he acted in bad faith and the tenant shall have the right to demand possession of the land and recover damages for any loss incurred by him because of said dispossessions.

(2) The agricultural lessee failed to substantially comply with any of· the terms and conditions of the contract or any of the provisions of this Code unless his failure is caused by fortuitous event or *force majeure;*

(3) The agricultural lessee planted crops or used the landholding for a purpose other than what had been previously agreed upon;

(4) The agricultural lessee failed to adopt proven farm practices as determined under paragraph 3 of Section twenty-nine;

(5) The land or other substantial permanent improvement thereon is substantially damaged or destroyed or has unreasonably deteriorated through the fault or negligence of the agricultural lessee;

(6) The agricultural lessee does not pay the lease rental when it falls due: *Provided,* That if the non-payment of the rental shall be due to crop failure to the extent or seventy-five *per centum* as a result of a fortuitous event, the non-payment shall not be a ground for dispossession, although the obligation to pay the rental due that particular crop is not thereby extinguished; or

(7) The lessee employed a sub-lessee on his landholding in violation of the terms of paragraph 2 of Section twenty-seven.

[20] *Rollo,* p. 75.

[21] *Id.* at 76-83.

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

Mendoza then filed a Petition for Review with the Court of Appeals (CA). The case was docketed as CA-G.R. SP No. 44521. In a Decision dated September 7, 1998,[23] the CA affirmed the DARAB decision *in toto.* The CA ruled that Mendoza's reliance on Section 6 of RA No. 6657 as ground to nullify the sale between De Jesus and Carriedo was misplaced, the section being limited to retention limits. It reiterated that registration was not a condition for the validity of the contract of sale between the parties.[24] Mendoza's Motions for Reconsideration and New Trial were subsequently denied.[25]

Mendoza thus filed a Petition for Review on *Certiorari* with this Court, docketed as G.R. No. 143416. In a Resolution dated August 9, 2000,[26] this Court denied the petition for failure to comply with the requirements under Rule 45 of the Rules of Court. An Entry of Judgment was issued on October 25, 2000.[27] In effect, the Decision of the CA was affirmed, and the following issues were settled with finality:

1) Carriedo is the absolute owner of the five (5) hectare land;
2) Mendoza had knowledge of the sale between Carriedo and Mario De Jesus, hence he is bound by the sale; and
3) Due to his failure and refusal to pay the lease rentals, the tenancy relationship between Carriedo and Mendoza had been terminated.

Meanwhile, on October 5, 1999, the landholding covered by TCT No. 17680 with an area of 12.1065 hectares was divided into sub-lots. 7.1065 hectares was transferred to Bernabe Buscayno, *et al.* through a Deed of Transfer[28] under PD No.

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[23] *Id.* at 89-95.

[24] *Id.* at 92-93.

[25] CA *rollo,* p. 113.

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

[27] *Id.* at 98.

[28] DAR-CO Records (A-9999-03-CV -008-03), pp. 451-452.

27.[29] Eventually, TCT No. 17680 was partially cancelled, and in lieu thereof, emancipation patents (EPs) were issued to Bernabe, Rod and Juanito, all surnamed Buscayno. These lots were identified as Lots C, D and E covered by TCT Nos. 44384 to 44386 issued on September 10, 1999.[30] Lots A and B, consisting of approximately 5.0001 hectares and which is the land being occupied by Mendoza, were registered in the name of Carriedo and covered by TCT No. 344281[31] and TCT No. 344282.[32]

The Redemption Case
(DARAB 111-T-1476-97/ CA-G.R. SP
No. 88936)

On July 21, 1997, Mendoza filed a Petition for Redemption[33] with the PARAD. In an Order dated January 15, 2001,[34] the PARAD dismissed his petition on the grounds of *litis pendentia* and lack of the required certification against forum-shopping. It dismissed the petition so that the pending appeal ofDARAB Case No. 163-T-90 (the ejectment case discussed above) with the CA can run its full course, since its outcome partakes of a prejudicial question determinative of the tenability of Mendoza's right to redeem the land under tenancy.[35]

Mendoza appealed to the DARAB which reversed the PARAD Order in a Decision dated November 12, 2003.[36] The DARAB

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[29] Decreeing the Emancipation of Tenants from the Bondage of the Soil, Transferring to Them the Ownership of the Land They Till and Providing the Instruments and Mechanism Therefor (1972).

[30] DAR-CO Records (A-9999-03-CV-008-03), pp. 553-555.

[31] *Id.* at 511.

[32] *Id*. at 510.

[33] *Rollo,* pp. 84-87.

[34] *Id.* at 99-104.

[35] *Id.* at 101.

[36] *Id.* at 105-116.

granted Mendoza redemption rights over the land. It ruled that at the time Carriedo filed his complaint for ejectment on October 1, 1990, he was no longer the owner of the land, having sold the land to PLFI in June of 1990. Hence, the cause of action pertains to PLFI and not to him.[37] It also ruled that Mendoza was not notified of the sale of the land to Carriedo and of the latter's subsequent sale of it to PLFI. The absence of the mandatory requirement of notice did not stop the running of the 180 day-period within which Mendoza could exercise his right of redemption.[38] Carriedo's Motion for Reconsideration was subsequently denied.[39]

Carriedo filed a Petition for Review with the CA. In a Decision dated December 29, 2006,[40] the CA reversed the DARAB Decision. It ruled that Carriedo's ownership of the land had been conclusively established and even affirmed by this Court. Mendoza was not able to substantiate his claim that Carriedo was no longer the owner of the land at the time the latter filed his complaint for ejectment. It held that the DARAB erred when it ruled that Mendoza was not guilty of forum-shopping.[41] Mendoza did not appeal the decision of the CA.

The Coverage Case
(ADM Case No. A-9999-03-CV-008-
031 CA-G.R. SP No. 88935)

On February 26, 2002, Mendoza, his daughter Corazon Mendoza (Corazon) and Orlando Gomez (Orlando) filed a Petition for Coverage[42] of the land under RA No. 6657. They

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[37] *Id.* at 112-113.

[38] *Id.* at 113-114.

[39] *Id*. at l21.

[40] Penned by Associate Justice Aurora Santiago-Lagman with Associate Justices Juan Q. Enriquez, Jr. and Normandie B. Pizarro concurring, *id.,* at 118-127.

[41] *Id.* at 123-126.

[42] CA *rollo,* pp. 127-130.

claimed that they had been in physical and material possession of the land as tenants since 1956, and made the land productive.[43] They prayed (1) that an order be issued placing the land under Comprehensive Agrarian Reform Program (CARP); and (2) that the DAR, the Provincial Agrarian Reform Officer (PARO) and the Municipal Agrarian Reform Officer (MARO) of Tarlac City be ordered to proceed with the acquisition and distribution of the land in their favor.[44] The petition was granted by the Regional Director (RD) in an Order dated October 2, 2002,[45] the dispositive portion of which reads:

> WHEREFORE, foregoing premises considered, the petition for coverage under CARP filed by Pablo Mendoza, et al[.], is given due course. Accordingly, the MARO and PARO are hereby directed to place within the ambit of RA 6657 the landholding registered in the name of Romeo Carriedo covered and embraced by TCT Nos. 334281 and 334282, with an aggregate area of 45,000 and 5,001 square meters, respectively, and to distribute the same to qualified farmer-beneficiaries.
>
> SO ORDERED.[46]

On October 23, 2002, Carriedo filed a Protest with Motion to Reconsider the Order dated October 2, 2002 and to Lift Coverage[47] on the ground that he was denied his constitutional right to due process. He alleged that he was not notified of the filing of the Petition for Coverage, and became aware of the same only upon receipt of the challenged Order.

On October 24, 2002, Carriedo received a copy of a Notice of Coverage dated October 21, 2002[48] from MARO Maximo

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[43] *Id.* at 128.

[44] *Id.* at 130.

[45] *Id.* at 48-51.

[46] *Id.* at 50.

[47] *Id.* at 150-170.

[48] *Id.* at 171.

E. Santiago informing him that the land had been placed under the coverage of the CARP.[49] On December 16, 2002, the RD denied Carriedo's protest in an Order dated December 5, 2002.[50] Carriedo filed an appeal to the DAR-CO.

In an Order dated February 22, 2005, [51] the DAR-CO, through Secretary Rene C. Villa, affirmed the Order of the RD granting coverage. The DAR-CO ruled that Carriedo was no longer allowed to retain the land due to his violation of the provisions of RA No. 6657. His act of disposing his agricultural landholdings was tantamount to the exercise of his retention right, or an act amounting to a valid waiver of such right in accordance with applicable laws and jurisprudence.[52] However, it did not rule whether Mendoza was qualified to be a farmer-beneficiary of the land. The dispositive portion of the Order reads:

> **WHEREFORE,** premises considered, the instant appeal is hereby **DISMISSED** for lack of merit. Consequently, the Order dated 2 October 2002 of the Regional Director of DAR III, is hereby **AFFIRMED**.
>
> **SO ORDERED.**[53]

Carriedo filed a Petition for Review[54] with the CA assailing the DAR- CO Order. The appeal was docketed as CA-G.R. SP No. 88935. In a Decision dated October 5, 2006, the CA reversed the DAR-CO, and declared the land as Carriedo's retained area. The CA ruled that the right of retention is a constitutionally-guaranteed right, subject to certain qualifications specified by the legislature.[55] It serves to mitigate the effects of compulsory land acquisition by balancing the rights of the landowner and

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[49] *Id*. at 26.

[50] *Id.* at 27, 52-54.

[51] *Id.* at 56-61.

[52] *Id.* at 59-60.

[53] *Id.* at 61.

[54] *Id.* at 11-47.

[55] *Rollo,* pp. 170-171.

the tenant by implementing the doctrine that social justice was not meant to perpetrate an injustice against the landowner.[56] It held that Carriedo did not commit any of the acts which would constitute waiver of his retention rights found under Section 6 of DAR Administrative Order No. 02, S.2003.[57] The dispositive portion of the Decision reads:

WHEREFORE, premises considered and pursuant to applicable law and jurisprudence on the matter, the present Petition is hereby **GRANTED**. Accordingly, the assailed Order of the Department of Agrarian Reform-Central Office, Elliptical Road, Diliman, Quezon City (dated February 22, 2005) is hereby **REVERSED** and **SET ASIDE** and a new one entered—**DECLARING** the subject landholding as the Petitioner's retained area. No pronouncements as to costs.

SO ORDERED.[58]

Hence, this petition.

Petitioners maintain that the CA committed a reversible error in declaring the land as Carriedo's retained area.[59]

They claim that Paragraph 4, Section 6 of RA No. 6657 prohibits any sale, disposition, lease, management contract or transfer of possession of private lands upon effectivity of the law.[60] Thus, Regional Director Renato Herrera correctly observed that Carriedo's act of disposing his agricultural property would be tantamount to his exercise of retention under the law. By violating the law, Carriedo could no longer retain what was left of his property. "To rule otherwise would be a roundabout way of rewarding a landowner who has violated the explicit

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[56] *Id.* at 171.

[57] *Id.* at 173-175; 2003 Rules and Procedure Governing Landowner Retention Rights.

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

[59] *Id*. at l7.

[60] *Id.* at 18.

[61] *Id.*

provisions of the Comprehensive Agrarian Reform Law."[61]

They also assert that Carriedo waived his right to retain for failure or neglect for an unreasonable length of time to do that which he may have done earlier by exercising due diligence, warranting a presumption that he abandoned his right or declined to assert it.[62] Petitioners claim that Carriedo has not filed an Application for Retention over the subject land over a considerable passage of time since the same was acquired for distribution to qualified farmer beneficiaries.[63]

Lastly, they argue that Certificates of Land Ownership Awards (CLOAs) already generated in favor of his co-petitioners Corazon Mendoza and Rolando Gomez cannot be set aside. CLOAs under RA No. 6657 are enrolled in the Torrens system of registration which makes them indefeasible as certificates of title issued in registration proceedings.[64]

The Issue

The sole issue for our consideration is whether Carriedo has the right to retain the land.

Our Ruling

We rule in the affirmative. Carriedo did not waive his right of retention over the land.

The 1987 Constitution expressly recognizes landowner retention rights under Article XIII, Section 4, to wit:

> Section 4. The State shall, by law, undertake an agrarian reform program founded on the right of farmers and regular farmworkers, who are landless, to own directly or collectively the lands they till or, in the case of other farmworkers, to receive a just share of the fruits thereof. **To this end, the State shall encourage and undertake the just distribution of all agricultural lands, subject to such priorities and reasonable retention limits as the Congress may**

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[62] *Rollo,* pp. 19-20.

[63] *Id.* at 20.

[64] *Id.* at 21.

prescribe, taking into account ecological, developmental, or equity considerations, and subject to the payment of just compensation. In determining retention limits, the State shall respect the right of small landowners. The State shall further provide incentives Jor voluntary land-sharing. (Emphasis supplied.)

RA No. 6657 implements this directive, thus:

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

x x x x x x x x x

The right to choose the area to be retained, which shall be compact or contiguous, shall pertain to the landowner: Provided, however, That in case the area selected for retention by the landowner is tenanted, the tenant shall have the option to choose whether to remain therein or be a beneficiary in the same or another agricultural land with similar or comparable features. In case the tenant chooses to remain in the retained area, he shall be considered a leaseholder and shall lose his right to be a beneficiary under this Act. In case the tenant chooses to be a beneficiary in another agricultural land, he loses his right as a leaseholder to the land retained by the landowner. The tenant must exercise this option within a period of one (1) year from the time the landowner manifests his choice of the area for retention. In all cases, the security of tenure of the farmers or farm workers on the land prior to the approval of this Act shall be respected. xxx (Emphasis supplied.)

In *Danan v. Court of Appeals,* [65] we explained the rationale for the grant of the right of retention under agrarian reform laws such as RA No. 6657 and its predecessor PD No. 27, to wit:

The right of retention is a constitutionally guaranteed right, which

[65] G.R. No. 132759, October 25, 2005, 474 SCRA 113.

is subject to qualification by the legislature. It serves to mitigate the effects of compulsory land acquisition by balancing the rights of the landowner and the tenant and by implementing the doctrine that social justice was not meant to perpetrate an injustice against the landowner. A retained area, as its name denotes, is land which is not supposed to anymore leave the landowner's dominion, thus sparing the government from the inconvenience of taking land only to return it to the landowner afterwards, which would be a pointless process. For as long as the area to be retained is compact or contiguous and does not exceed the retention ceiling of five (5) hectares, a landowner's choice of the area to be retained must prevail. xxx[66]

To interpret Section 6 of RA No. 6657, DAR issued Administrative Order No. 02, Series of 2003 (DAR AO 02-03). Section 6 of DAR AO 02-03 provides for the instances when a landowner is deemed to have waived his right of retention, to wit:

Section 6. *Waiver of the Right of Retention.* - The landowner waives his right to retain by committing any of the following act or omission:

6.1 Failure to manifest an intention to exercise his right to retain within sixty (60) calendar days from receipt of notice of CARP coverage.

6.2 Failure to state such intention upon offer to sell or application under the [Voluntary Land Transfer (VLT)]/[Direct Payment Scheme (DPS)] scheme.

6.3 Execution of any document stating that he expressly waives his right to retain. The MARO and/or PARO and/or Regional Director shall attest to the due execution of such document.

6.4 Execution of a *Landowner Tenant Production Agreement and Farmer's Undertaking* (LTPA-FU) or *Application to Purchase and Farmer's Undertaking* (APFU) covering subject property.

6.5 Entering into a VLT/DPS or [Voluntary Offer to Sell (VOS)] but failing to manifest an intention to exercise his right to

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[66] *Id.* at 128 citing *Daez v. Court of Appeals,* G.R. No. 133507, February 17, 2000, 325 SCRA 856.

retain upon filing of the application for VLT/DPS or VOS.

6.6 Execution and submission of any document indicating that he is consenting to the CARP coverage of his entire landholding.

6.7 Performing any act constituting estoppel by laches which is the failure or neglect for an unreasonable length of time to do that which he may have done earlier by exercising due diligence, warranting a presumption that he abandoned his right or declined to assert it.

Petitioners cannot rely on the RD's Order dated October 2, 2002 which granted Mendoza's petition for coverage on the ground that Carriedo violated paragraph 4 Section 6[67] of RA No. 6657 for disposing of his agricultural land, consequently losing his right of retention. At the time when the Order was rendered, up to the time when it was affirmed by the DAR-CO in its Order dated February 22, 2005, the applicable law is Section 6 of DAR 02-03. Section 6 clearly shows that the disposition of agricultural land is not an act constituting waiver of the right of retention.

Thus, as correctly held by the CA, Carriedo "[n]ever committed any of the acts or omissions above-stated (DAR AO 02-03). Not even the sale made by the herein petitioner in favor of PLFI can be considered as a waiver of his right of retention. Likewise, the Records of the present case is bereft of any showing that the herein petitioner expressly waived (in writing) his right of retention as required under sub-section 6.3, Section 6, DAR

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[67] Paragraph 4, Section 6 of RA No. 6657 provides:

Upon the effectivity of this Act, any sale, disposition, lease, management, contract or transfer of possession of private lands executed by the original landowner in violation of the Act shall be null and void: Provided, however, That those executed prior to this Act shall be valid only when registered with the Register of Deeds within a period of three (3) months after the effectivity of this Act. Thereafter, all Registers of Deeds shall inform the Department of Agrarian Reform (DAR) within thirty (30) days of any transaction involving agricultural lands in excess of five (5) hectares.

[68] *Rollo,* p. 140.

Administrative Order No. 02-S.2003."[68]

Petitioners claim that Carriedo's alleged failure to exercise his right of retention after a long period of time constituted a waiver of his retention rights, as envisioned in Item 6.7 of DAR AO 02-03.

We disagree.

Laches is defined as the failure or neglect for an unreasonable and unexplained length of time, to do that which by exercising due diligence could or should have been done earlier; it is negligence or omission to assert a right within a reasonable time, warranting a presumption that the party entitled to assert it either has abandoned it or declined to assert it.[69] Where a party sleeps on his rights and allows laches to set in, the same is fatal to his case.[70]

Section 4 of DAR AO 02-03 provides:

> Section 4. *Period to Exercise Right of Retention under RA 6657*
>
> 4.1 The landowner may exercise his right of retention at any time before receipt of notice of coverage.
>
> 4.2 Under the Compulsory Acquisition (CA) scheme, the landowner shall exercise his right of retention within sixty (60) days from receipt of notice of coverage.
>
> 4.3 Under the Voluntary Offer to Sell (VOS) and the Voluntary Land Transfer VLT/Direct Payment Scheme (DPS), the landowner shall exercise his right of retention simultaneously at the time of offer for sale or transfer.

The foregoing rules give Carriedo any time before receipt of the notice of coverage to exercise his right of retention, or if under compulsory acquisition (as in this case), within sixty (60) days from receipt of the notice of coverage. The validity

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[69] *Olizon v. Court of Appeals,* G.R. No. 107075, September 1, 1994. 236 SCRA 148, 157-158.

[70] *Periquet, Jr. v. Intermediate Appellate Court,* G.R. No. 69996, December 5, 1994, 238 SCRA 697.

of the notice of coverage is the very subject of the controversy before this court. Thus, the period within which Carriedo should exercise his right of retention cannot commence until final resolution of this case.

Even assuming that the period within which Carriedo could exercise his right of retention has commenced, Carriedo cannot be said to have neglected to assert his right of retention over the land. The records show that per Legal Report dated December 13, 1999[71] prepared by Legal Officer Ariel Reyes, Carriedo filed an application for retention which was even contested by Pablo Mendoza's son, Fernando.[72] Though Carriedo subsequently withdrew his application, his act of filing an application for retention belies the allegation that he abandoned his right of retention or declined to assert it.

In their Memorandum[73] however, petitioners, *for the first time,* invoke *estoppel,* citing DAR Administrative Order No.05 Series of 2006[74] (DAR AO 05-06) to support their argument that Carriedo waived his right of retention[75] DAR AO 05-06 provides for the rules and regulations

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[71] DARAB Records (A-9999-03-CV-008-03), pp. 445-448.

[72] *Id.* at 448.

[73] *Rollo,* pp. 237-251.

[74] Guidelines on the Acquisition and Distribution of Agricultural lands Subject of Conveyance Under Sections 6, 70 and 73 (a) of RA No. 6657.

[75] *Rollo,* pp. 241-245.

[76] Section 70 of RA No. 6657 reads:

Section 70. *Disposition of Private Agricultural Lands.*—The sale or disposition of agricultural lands retained by a landowner as a consequence of Section 6 hereof shall be valid as long as the total landholdings that shall be owned by the transferee thereof inclusive of the land to be acquired shall not exceed the landholding ceilings provided for in this Act. Any sale or disposition of agricultural lands after the effectivity of this Act found to be contrary to the provisions hereof shall be null and void. Transferees of agricultural lands shall furnish the appropriate Register of Deeds and the [Barangay Agrarian Reform Committee (BARC)] an affidavit

governing the acquisition and distribution of agricultural lands subject of conveyances under Sections 6, 70[76] and 73 (a)[77] of RA No. 6657. Petitioners particularly cite Item no. 4 of the Statement of Policies of DAR AO 05-06, to wit:

II. Statement of Policies

4. Where the transfer/sale involves more than the five (5) hectares retention area, the transfer is considered violative of Sec. 6 of R.A. No. 6657.

In case of multiple or series of transfers/sales, the first five (5) hectares sold/conveyed without DAR clearance and the corresponding titles issued by the Register of Deeds (ROD) in the name of the transferee shall, **under the principle of estoppel, be considered valid and shall be treated as the transferor/s' retained area** but in no case shall the transferee exceed the five-hectare landholding ceiling pursuant to Sections 6, 70 and 73(a) of R.A. No. 6657. Insofar as the excess area is concerned, the same shall likewise be covered considering that the transferor has no right of disposition since CARP coverage has been vested as of 15 June 1988. Any landholding still registered in the name of the landowner after earlier dispositions totaling an aggregate of five (5) hectares can no longer be part of his retention area and therefore shall be covered under CARP. (Emphasis supplied.)

Citing this provision, petitioners argue that Carriedo lost his right of retention over the land because he had already sold or disposed, after the effectivity of RA No. 6657, more than

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attesting that his total landholdings as a result of the said acquisition do not exceed the landholding ceiling. The Register of Deeds shall not register the transfer of any agricultural land without the submission of this sworn statement together with proof of service of a copy thereof to the BARC.

[77] Section 73 (a) of RA No. 6657 reads:

Section 73. *Prohibited Acts and Omissions.*—The following are prohibited:

(a) The ownership or possession, for the purpose of circumventing the provisions of this Act, of agricultural lands in excess of the total retention limits or award ceilings by any person, natural or juridical, except those under collective ownership by farmer-beneficiaries;

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[78] *Rollo,* p. 245.

fifty (50) hectares of land in favor of another.[78]

In his Memorandum,[79] Carriedo maintains that petitioners cannot invoke any administrative regulation to defeat his right of retention. He argues that "administrative regulation must be in harmony with the provisions of law otherwise the latter prevails."[80]

We cannot sustain petitioners' argument. Their reliance on DAR AO 05-06 is misplaced. As will be seen below, nowhere in the relevant provisions of RA No. 6657 does it indicate that a multiple or series of transfers/sales of land would result in the loss of retention rights. Neither do they provide that the multiple or series of transfers or sales amounts to the waiver of such right.

The relevant portion of Section 6 of RA No. 6657 referred to in Item no. 4 of DAR AO 05-06 provides:

> Section 6. *Retention Limits.* — Except as otherwise provided in this Act, no person may own or retain, directly or indirectly, any public or private agricultural land, the size of which shall vary according to factors governing a viable family-size farm, such as the commodity produced, terrain, infrastructure, and soil fertility as determined by the Presidential Agrarian Reform Council (PARC) created hereunder, but in no case shall retention by the landowner exceed five (5) hectares. xxx
>
> Upon the effectivity of this Act, **any sale, disposition, lease, management, contract or transfer of possession of private lands executed by the original landowner in violation of the Act shall be null and void:** Provided, however, That those executed prior to this Act shall be valid only when registered with the Register of Deeds within a period of three (3) months after the effectivity of this Act. Thereafter, all Registers of Deeds shall inform the Department of Agrarian Reform (DAR) within thirty (30) days of any transaction involving agricultural lands in excess of five (5) hectares. (Emphasis supplied.)

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[79] *Id.* at 214-236.

[80] *Id.* at 227, citing *Philippine Petroleum Corp. v. Municipality of Pililia, Rizal,* G.R. No. 90776, June 3, 1991, 198 SCRA 82.

Section 70 of RA No. 6657, also referred to in Item no. 4 of DAR AO 05-06 partly provides:

> The sale or disposition of agricultural lands retained by a landowner as a consequence of Section 6 hereof shall be valid as long as the total landholdings that shall be owned by the transferee thereof inclusive of the land to be acquired shall not exceed the landholding ceilings provided for in this Act. **Any sale or disposition of agricultural lands after the effectivity of this Act found to be contrary to the provisions hereof <u>shall be null and void</u>.** xxx (Emphasis supplied.)

Finally, Section 73 (a) of RA No. 6657 as referred to in Item No. 4 of DAR AO 05-06 provides,

> Section 73. *Prohibited Acts and Omissions.* — The following are prohibited:
>
> (a) The ownership or possession, for the purpose of circumventing the provisions of this Act, of agricultural lands in excess of the total retention limits or award ceilings by any person, natural or juridical, except those under collective ownership by farmer-beneficiaries; xxx

Sections 6 and 70 are clear in stating that any sale and disposition of agricultural lands in violation of the RA No. 6657 shall be null and void. Under the facts of this case, the reasonable reading of these three provisions in relation to the constitutional right of retention should be that the consequence of nullity pertains to the area/s which were sold, or owned by the transferee, in excess of the 5-hectare land ceiling. Thus, the CA was correct in declaring that the land is Carriedo's retained area.[81]

Item no. 4 of DAR AO 05-06 attempts to defeat the above reading by providing that, under the principle of *estoppel,* the sale of the first five hectares is valid. But, it hastens to add that the first five hectares sold corresponds to the transferor/s' retained area. Thus, since the sale of the first five hectares is

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[81] *Rollo,* pp. 142-143.

valid, therefore, the landowner loses the five hectares because it happens to be, at the same time, the retained area limit. In reality, Item No. 4 of DAR AO 05-06 operates as a forfeiture provision in the guise of *estoppel.* It punishes the landowner who sells in excess of five hectares. Forfeitures, however, partake of a criminal penalty.[82]

In *Perez v. LPG Refillers Association of the Philippines, Inc.,*[83] this Court said that for an administrative regulation to have the force of a penal law, (1) the violation of the administrative regulation must be made a crime by the delegating statute itself; and (2) the penalty for such violation must be provided by the statute itself.[84]

Sections 6, 70 and 73 (a) of RA No. 6657 clearly do not provide that a sale or disposition of land in excess of 5 hectares results in a forfeiture of the five hectare retention area. Item no. 4 of DAR AO 05-06 imposes a penalty where none was provided by law.

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[82] See *Cabal vs. Kapunan, Jr.,* G.R. No. L-19052, December 29, 1962, 6 SCRA 1059, 1064:

Such forfeiture has been held, however, to partake the nature of a penalty. "In a strict signification, a forfeiture is a divestiture of property without compensation, in consequence of a default or an offense, and the term is used in such a sense in this article. A forfeiture, as thus defined, is imposed by way or *punishment,* not by the mere convention of the parties, but by the lawmaking power, to insure a prescribed course of conduct. It is a method deemed necessary by the legislature to restrain the *commission of an offense* and to *aid in the prevention of such an offense.* The effect of such a forfeiture is to transfer the title to the specific thing from the owner to the sovereign power. (23 Am. Jur. 599)

In Black's Law Dictionary, a 'forfeiture' is defined to the 'the incurring of a liability to pay a definite sum of money as the consequence of violating the provisions of some statute or refusal to comply with some requirement of law.' It may be said to be a *penalty* imposed for misconduct or breach of duty." (Com. vs. French, 114 S.W. 255)

[83] G.R. No. 159149, June 26, 2006, 492 SCRA 638.

[84] *Id.* at 649.

[85] G.R. No. L-32166, October 18, 1977, 79 SCRA 450.

As this Court also held in *People v. Maceren,*[85] to wit:

The reason is that the Fisheries law does not expressly prohibit electro fishing. As electro fishing is not banned under the law, the Secretary of Agriculture and Natural Resources and the Natural Resources and the Commissioner of Fisheries are powerless to penalize it. ln other words, Administrative Order Nos. 84 and 84-1, in penalizing electro fishing, are devoid of any legal basis.

Had the lawmaking body intended to punish electro fishing, a penal provision to that effect could have been easily embodied in the old Fisheries Law.[86]

The repugnancy between the law and Item no. 4 of DAR AO 05-06 is apparent by a simple comparison of their texts. The conflict undermines the statutorily-guaranteed right of the landowner to choose the land he shall retain, and DAR AO 05-06, in effect, amends RA No. 6657.

In *Romulo, Mabanta, Buenaventura, Sayoc & De Los Angeles* (RMBSA) *v. Home Development Mutual Fund* (HDMF),[87] this Court was confronted with the issue of the validity of the amendments to the rules and regulations implementing PD No. 1752.[88] In that case, PD No. 1752 (as amended by RA No. 7742) exempted RMBSA from the Pag-Ibig Fund coverage for the period January 1 to December 31, 1995. In September 1995, however, the HDMF Board of Trustees issued a board resolution amending and modifying the rules and regulations implementing RA No. 7742. As amended, the rules now required that for a company to be entitled to a waiver or suspension of fund coverage, it must have a plan providing for both provident/ retirement *and* housing benefits superior to those provided in the Pag-Ibig Fund. In ruling against the amendment and modification of the rules, this Court held that—

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[86] *Id.* at 456.

[87] G.R. No. 131082, June 19, 2000, 333 SCRA 777.

[88] Amending the Act Creating the Home Development Mutual Fund (1980).

In the present case, when the Board of Trustees of the HDMF required in Section 1, Rule VII of the 1995 Amendments to the Rules and Regulations Implementing R.A. No. 7742 that employers should have both provident/retirement and housing benefits for all its employees in order to qualify for exemption from the Fund, it effectively amended Section 19 of P.D. No. 1752. And when the Board subsequently abolished that exemption through the 1996 Amendments, it repealed Section 19 of P.D. No. 1752. Such amendment and subsequent repeal of Section 19 are both invalid, as they are not within the delegated power of the Board. The HDMF cannot, in the exercise of its rule-making power, issue a regulation not consistent with the law it seeks to apply. Indeed, administrative issuances must not override, supplant or modify the law, but must remain consistent with the law they intend to carry out. Only Congress can repeal or amend the law.[89] (Citations omitted; underscoring supplied.)

Laws, as well as the issuances promulgated to implement them, enjoy the presumption of validity.[90] However, administrative regulations that alter or amend the statute or enlarge or impair its scope are void, and courts not only may, but it is their obligation to strike down such regulations.[91] Thus, in this case, because Item no. 4 of DAR AO 05-06 is patently null and void, the presumption of validity cannot be accorded to it. The invalidity of this provision constrains us to strike it down for being *ultra vires*.

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[89] *Supra* note 88 at 786.

[90] *Dasmariñas Water District v. Monterey Foods Corporation,* G.R. No. 175550, September 17, 2008, 565 SCRA 624 citing *Tan v. Bausch & Lomb Inc.,* G.R. No. 148420, December 15, 2005, 478 SCRA 115, 123-124, citing *Walter E. Olsen & Co. v. Aldanese and Trinidad,* 43 Phil. 259 (1922) and *San Miguel Brewery, Inc. v. Magno,* G.R. No. L-21879, September 29, 1967, 21 SCRA 292.

[91] *California Assn. of Psychology Providers v. Rank,* 51 Cal 3d 1, 270 Cal Rptr 796, 793 P2 2 (1980) citing *Dyna-med, Inc. v. Fair Employment & Housing Com.,* 43 Cal.3d 1379, 1388-1389 (1987) and *Hittle v. Santa Barbara County Employees Retirement Assn.,* 39 Cal.3d 374, 387 (1985).

[92] G.R. No. 116422, November 4, 1996, 264 SCRA 19.

In *Conte v. Commission on Audit*,[92] the sole issue of whether the Commission on Audit (COA) acted in grave abuse of discretion when it disallowed in audit therein petitioners' claim of financial assistance under Social Security System (SSS) Resolution No. 56 was presented before this Court. The COA disallowed the claims because the financial assistance under the challenged resolution is similar to a separate retirement plan which results in the increase of benefits beyond what is allowed under existing laws. This Court, sitting *en banc*, upheld the findings of the COA, and invalidated SSS Resolution No. 56 for being *ultra vires*, to wit:

> xxx Said Sec. 28 (b) as amended by RA 4968 in no uncertain terms bars the creation of any insurance or retirement plan -other than the GSIS -for government officers and employees, in order to prevent the undue and [iniquitous] proliferation of such plans. It is beyond cavil that Res. 56 contravenes the said provision of law and is therefore invalid, void and of no effect. xxx
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> We are not unmindful of the laudable purposes for promulgating Res. 56, and the positive results it must have had xxx. But it is simply beyond dispute that the SSS had no authority to maintain and implement such retirement plan, particularly in the face of the statutory prohibition. The SSS cannot, in the guise of rule-making, legislate or amend laws or worse, render them nugatory.
>
> It is doctrinal that in case of conflict between a statute and an administrative order, the former must prevail. A rule or regulation must conform to and be consistent with the provisions of the enabling statute in order for such rule or regulation to be valid. The rule-making power of a public administrative body is a delegated legislative power, which it may not use either to abridge the authority given it by the Congress or the Constitution or to enlarge its power beyond the scope intended. xxx Though well-settled is the rule that retirement laws are liberally interpreted in favor of the retiree, nevertheless, there is really *nothing to interpret* in either RA 4968 or Res. 56, and correspondingly, **the absence of any doubt as to the *ultra-vires* nature and illegality of the disputed resolution constrains us to rule against petitioners**.[93] (Citations omitted; emphasis and

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[93] *Id*. at 30-31.

[94] *Landbank of the Philippines v. Court of Appeals*, G.R. Nos. 118712 & 118745, October 6, 1995, 249 SCRA 149.

underscoring supplied.)

Administrative regulations must be in harmony with the provisions of the law for administrative regulations cannot extend the law or amend a legislative enactment.[94] Administrative issuances must not override, but must remain consistent with the law they seek to apply and implement. They are intended to carry out, not to supplant or modify the law.[95] Administrative or executive acts, orders and regulations shall be valid only when they are not contrary to the laws or the Constitution.[96] Administrative regulations issued by a Department Head in conformity with law have the force of law.[97] As he exercises the rule-making power by delegation of the lawmaking body, it is a requisite that he should not transcend the bounds demarcated by the statute for the exercise of that power; otherwise, he would be improperly exercising legislative power in his own right and not as a surrogate of the lawmaking body.[98]

If the implementing rules and regulations are issued in excess of the rule-making authority of the administrative agency, they are without binding effect upon the courts. At best, the same may be treated as administrative interpretations of the law and as such, they may be set aside by the Supreme Court in the final determination of what the law means.[99]

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[95] *Commissioner of Internal Revenue v. Court of Appeals*, G.R. No. 108358, January 20, 1995, 240 SCRA 368.

[96] CIVIL CODE OF THE PHILIPPINES, Article 7.

[97] *Valerio v. Secretary of Agriculture and Natural Resources*, G.R. No. L-18587, April 23, 1963, 7 SCRA 719.

[98] *People v. Maceren, supra* note 86 at 459.

[99] *Cebu Institute of Technology v. Ople*, G.R. No. 58870, December 18, 1987, 156 SCRA 629, 658.

[100] *Radio Communications of the Philippines, Inc. v. Santiago*, G.R. Nos. L-29236 & L-29247, August 21, 1974, 58 SCRA 493, 498.

[101] *Villegas v. Subido*, G.R. No. L-26534, November 28, 1969, 30 SCRA 498, 511.

While this Court is mindful of the DAR's commitment to the implementation of agrarian reform, it must be conceded that departmental zeal may not be permitted to outrun the authority conferred by statute.[100] Neither the high dignity of the office nor the righteousness of the motive then is an acceptable substitute; otherwise the rule of law becomes a myth.[101]

As a necessary consequence of the invalidity of Item no. 4 of DAR AO 05-06 for being *ultra vires*, we hold that Carriedo did not waive his right to retain the land, nor can he be considered to be in *estoppel*.

Finally, petitioners cannot argue that the CLOAs allegedly granted in favor of his co-petitioners Corazon and Orlando cannot be set aside. They claim that CLOAs under RA No. 6657 are enrolled in the Torrens system of registration which makes them indefeasible as certificates of title issued in registration proceedings.[102] Even as these allegedly issued CLOAs are not in the records, we hold that CLOAs are not equivalent to a Torrens certificate of title, and thus are not indefeasible.

CLOAs and EPs are similar in nature to a Certificate of Land Transfer (CLT) in ordinary land registration proceedings. CLTs, and in turn the CLOAs and EPs, are issued merely as preparatory steps for the eventual issuance of a certificate of title. They do not possess the indefeasibility of certificates of title. Justice Oswald D. Agcaoili, in *Property Registration Decree and Related Laws (Land Titles and Deeds)*,[103] notes, to wit:

> Under PD No. 27, beneficiaries are issued certificates of land transfers (CLTs) to entitle them to possess lands. Thereafter, they are issued emancipation patents (EPs) after compliance with all necessary conditions. Such EPs, upon their presentation to the Register of Deeds, shall be the basis for the issuance of the corresponding transfer certificates of title (TCTs) in favor of the corresponding beneficiaries.
>
> Under RA No. 6657, the procedure has been simplified. Only certificates of land ownership award (CLOAs) are issued, in lieu of EPs, after compliance with all prerequisites. Upon presentation of the CLOAs to the Register of Deeds, TCTs are issued to the designated beneficiaries. CLTs are no longer issued.
>
> The issuance of EPs or CLOAs to beneficiaries does not absolutely bar the landowner from retaining the area covered thereby. Under AO No. 2, series of 1994, an EP or CLOA may be cancelled if the

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[102] *Rollo*, p. 21.

[103] 2011 ED., p. 758.

land covered is later found to be part of the landowner's retained area. (Citations omitted; underscoring supplied.)

The issue, however, involving the issuance, recall or cancellation of EPs or CLOAs, is lodged with the DAR,[104] which has the primary jurisdiction over the matter.[105]

WHEREFORE, premises considered, the Petition is hereby **DENIED** for lack of merit. The assailed Decision of the Court of Appeals dated October 5, 2006 is **AFFIRMED**. Item no. 4 of DAR Administrative Order No. 05, Series of 2006 is hereby declared **INVALID, VOID and OF NO EFFECT** for being *ultra vires*.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 180235. January 20, 2016]

ALTA VISTA GOLF AND COUNTRY CLUB, *petitioner, vs.* **THE CITY OF CEBU, HON. MAYOR TOMAS R. OSMEÑA, in his capacity as Mayor of Cebu, and TERESITA C. CAMARILLO, in her capacity as the City Treasurer,** *respondents.*

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[104] *Aninao v. Asturias Chemical Industries, Inc.,* G.R. No. 160420, July 28, 2005, 464 SCRA 526.

[105] *Bagongahasa v. Romualdez,* G.R. No. 179844, March 23, 2011, 646 SCRA 338.

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEAL FROM THE REGIONAL TRIAL COURTS; RTC JUDGMENT ON PURE QUESTIONS OF LAW MAY BE DIRECTLY APPEALED TO THE SUPREME COURT *VIA* A PETITION FOR REVIEW ON *CERTIORARI*.—** It is incontestable that petitioner may directly appeal to this Court from the judgment of the RTC on pure questions of law via its Petition for Review on *Certiorari*. Rule 41, Section 2(c) of the Rules of Court provides that "[i]n all cases where only questions of law are raised or involved, the appeal shall be to the Supreme Court by petition for review on *certiorari* in accordance with Rule 45." x x x "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[;]" and it may be brought directly before this Court, the undisputed final arbiter of all questions of law.

2. **POLITICAL LAW; ADMINISTRATIVE LAW; LOCAL GOVERNMENT CODE; PROVISION UNDER SECTION 187 THAT ANY QUESTION ON THE LEGALITY OF TAX ORDINANCES MAY BE RAISED ON APPEAL WITHIN THIRTY (30) DAYS FROM THE EFFECTIVITY THEREOF TO THE SECRETARY OF JUSTICE; EXCEPTION; WHERE THE ISSUE RAISED IS A PURELY LEGAL QUESTION WELL WITHIN THE COMPETENCE OF THE COURT.—** Under Section 187 of the Local Government Code x x x any question on the constitutionality or legality of tax ordinances or revenue measures may be raised on appeal within thirty (30) days from the effectivity thereof to the Secretary of Justice. x x x [However,] the Court recognized exceptional circumstances that justify noncompliance by a taxpayer with Section 187 of the Local Government Code. The Court ratiocinated in *Ongsuco v. Malones*: x x x Thus, **a case where the issue raised is a purely legal question, well within the competence; and the jurisdiction of the court and not the administrative agency, would clearly constitute an exception. Resolving questions of law, which involve the interpretation and application of laws, constitutes essentially**

an exercise of judicial power that is exclusively allocated to the Supreme Court and such lower courts the Legislature may establish.

3. **ID.; ID.; ID.; AMUSEMENT TAX; NOT PROPER FOR GOLF COURSE AS IT IS NOT AN AMUSEMENT PLACE AND IT IS BEYOND THE RESIDUAL POWER TO TAX GRANTED TO LOCAL GOVERNMENT UNITS.—** The Local Government Code authorizes the imposition by local government units of amusement tax under Section 140 x x x "Amusement places," as defined in Section 131(c) of the Local Government Code, "include theaters, cinemas, concert halls, circuses and other places of amusement where one seeks admission to entertain oneself by seeing or viewing the show or performance." The pronouncements of the Court in *Pelizloy Realty Corporation v. The Province of Benguet* are of particular significance to this case. The Court, in *Pelizloy Realty,* declared null and void the second paragraph of Article X, Section 59 of the Benguet Provincial Code, in so far as it imposes amusement taxes on admission fees to resorts, swimming pools, bath houses, hot springs, and tourist spots. x x x In light of *Pelizloy Realty,* a golf course cannot be considered a place of amusement. As petitioner asserted, people do not enter a golf course to see or view a show or performance. x x x People go to a golf course to engage themselves in a physical sport activity. x x x [Although] Section 186 of the Local Government Code expressly grants local government units [of] residual power to tax, x x x [a] local government unit may exercise its residual power to tax when there is neither a grant nor a prohibition by statute; or when such taxes, fees, or charges are not otherwise specifically enumerated in the Local Government Code, National Internal Revenue Code, as amended, or other applicable laws. In the present case, Section 140, in relation to Section 131(c), of the Local Government Code already explicitly and clearly cover amusement tax and respondent Cebu City must exercise its authority to impose amusement tax within the limitations and guidelines as set forth in said statutory provisions.

APPEARANCES OF COUNSEL

Baduel Espina and Associates for petitioner.
Lyndon B.J. Basan for respondents.

DECISION

LEONARDO-DE CASTRO, *J.*:

Before the Court is a Petition for Review on *Certiorari* of the Resolution[1] dated March 14, 2007 and the Order[2] dated October 3, 2007 of the Regional Trial Court (RTC), Cebu City, Branch 9 in Civil Case No. CEB-31988, dismissing the Petition for Injunction, Prohibition, Mandamus, Declaration of Nullity of Closure Order, Declaration of Nullity of Assessment, and Declaration of Nullity of Section 42 of Cebu City Tax Ordinance, with Prayer for Temporary Restraining Order and Writ of Preliminary Injunction[3] filed by petitioner Alta Vista Golf and Country Club against respondents City of Cebu (Cebu City), then Cebu City Mayor Tomas R. Osmeña (Osmeña), and then Cebu City Treasurer Teresita Camarillo (Camarillo).

Petitioner is a non-stock and non-profit corporation operating a golf course in Cebu City.

On June 21, 1993, the *Sangguniang Panlungsod* of Cebu City enacted City Tax Ordinance No. LXIX, otherwise known as the "Revised Omnibus Tax Ordinance of the City of Cebu" (Revised Omnibus Tax Ordinance). Section 42 of the said tax ordinance on amusement tax was amended by City Tax Ordinance Nos. LXXXII[4] and LXXXIV[5] (which were enacted by the *Sangguniang Panlungsod* of Cebu City on December 2, 1996 and April 20, 1998, respectively)[6] to read as follows:

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[1] *Rollo*, pp. 29-33; penned by Presiding Judge Geraldine A. Econg.

[2] *Id.* at 36-38.

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

[4] Records, pp. 588-597.

[5] *Id.* at 585-587.

[6] Section 4 of City Tax Ordinance No. LXXXIV expressly provides that its effectivity shall retroact to October 9, 1997 when City Tax Ordinance No. LXXXII was signed by then Mayor Alvin B. Garcia (Garcia). City Tax Ordinance No. LXXXIV, in turn, was signed by Mayor Garcia on May 4, 1998.

Section 42. Rate of Tax. — There shall be paid to the Office of the City Treasurer by the **proprietors, lessees or operators** of theaters, cinemas, concert halls, circuses and other similar places of entertainment, an amusement tax at the rate of thirty percent (30%), **golf courses and polo grounds at the rate of twenty percent (20%), of their gross receipts on entrance, playing green, and/or admission fees**; PROVIDED, HOWEVER, That in case of movie premieres or gala shows for the benefit of a charitable institution/foundation or any government institution where higher admission fees are charged, the aforementioned rate of thirty percent (30%) shall be levied against the gross receipts based on the regular admission fees, subject to the approval of the Sangguniang Panlungsod; PROVIDED FURTHER, That in case payment of the amusement tax is made promptly on or before the date hereinbelow prescribed, a rebate of five percent (5%) on the aforementioned gross receipts shall be given to the proprietors, lessees or operators of theaters; PROVIDED FURTHERMORE, that as an incentive to theater operators who own the real property and/or building where the theater is located, an additional one percent (1%) rebate shall be given to said operator/real property owner concerned for as long as their theater/movie houses are then (10) years old or older or the theater or movie house is located at the city's redevelopment area bounded on the north by Gen. Maxilom Street up to the port area; on the south by V. Rama Avenue up to San Nicolas area; and on the west by B. Rodriguez St. and General Maxilom Avenue; PROVIDED FINALLY, that the proceeds of this additional one percent (1%) rebate shall be used by the building/property owner-theater operator to modernize their theater facilities. (Emphases supplied.)

In an Assessment Sheet[7] dated August 6, 1998, prepared by Cebu City Assessor Sandra I. Po, petitioner was originally assessed deficiency business taxes, fees, and other charges for the year 1998, in the total amount of ₱3,820,095.68, which included amusement tax on its golf course amounting to ₱2,612,961.24 based on gross receipts of ₱13,064,806.20.[8]

Through the succeeding years, respondent Cebu City repeatedly attempted to collect from petitioner its deficiency

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[7] Records, p. 20.

[8] The amusement tax and the other deficiency business taxes, fees, and charges were subjected to surcharge of 25% and interest of 16%.

business taxes, fees, and charges for 1998, a substantial portion of which consisted of the amusement tax on the golf course. Petitioner steadfastly refused to pay the amusement tax arguing that the imposition of said tax by Section 42 of the Revised Omnibus Tax Ordinance, as amended, was irregular, improper, and illegal. Petitioner reasoned that under the Local Government Code, amusement tax can only be imposed on operators of theaters, cinemas, concert halls, or places where one seeks to entertain himself by seeing or viewing a show or performance. Petitioner further cited the ruling in *Philippine Basketball Association (PBA) v. Court of Appeals*[9] that under Presidential Decree No. 231, otherwise known as the Local Tax Code of 1973, the province could only impose amusement tax on admission from the proprietors, lessees, or operators of theaters, cinematographs, concert halls, circuses, and other places of amusement, but not professional basketball games. Professional basketball games did not fall under the same category as theaters, cinematographs, concert halls, and circuses as the latter basically belong to artistic forms of entertainment while the former catered to sports and gaming.

Through a letter dated October 11, 2005, respondent Camarillo sought to collect once more from petitioner deficiency business taxes, fees, and charges for the year 1998, totaling ₱2,981,441.52, computed as follows:

Restaurant-P4,021,830.65	₱ 40,950.00
Permit Fee	2,000.00
Liquor – -₱1,940,283.80	20,160.00
Permit Fee	2,000.00
Commission/Other Income	14,950.00
₱1,262,764.28	
Permit Fee	1,874.00
Retail Cigarettes-₱42,076.11-Permit	84.15
Non-Securing of Permit	979.33
Sub-Total	₱82,997.98
Less: Payment based on computer assessment	74,858.61
Short payment	₱12,723.18
25% surcharge	3,180.80
72% interest	11,450.00

[9] 392 Phil. 133, 139-141 (2000).

Penalty for understatement		500.00
Amount Due		₱27,854.85
Add: Amusement Tax on golf course	**₱1,373,761.24**	
25% surcharge (₱6,868,806.20 x 20%)	**343,440.31**	
72% Interest	**1,236,385.12**	**2,953,586.67**
GRAND TOTAL		₱2,981,441.52[10]

(Emphasis supplied.)

Petitioner, through counsel, wrote respondent Camarillo a letter[11] dated October 17, 2005 still disputing the amusement tax assessment on its golf course for 1998 for being illegal. Petitioner, in a subsequent letter dated November 30, 2005, proposed that:

> While the question of the legality of the amusement tax on golf courses is still unresolved, may we propose that Alta Vista Golf and Country Club settle first the other assessments contained in your Assessment Sheet issued on October 11, 2005.
>
> At this early stage, we also request that pending resolution of the legality of the amusement tax imposition on golf courses in [the Revised Omnibus Tax Ordinance, as amended], Alta Vista Golf and Country Club be issued the required Mayor's and/or Business Permit.[12]

Respondent Camarillo treated the letter dated October 17, 2005 of petitioner as a Protest of Assessment and rendered on December 5, 2005 her ruling denying said Protest on the following grounds: (a) a more thorough and comprehensive reading of the *PBA* case would reveal that the Court actually ruled therein that PBA was liable to pay amusement tax, but to the national government, not the local government; (b) Section 42 of the Revised Omnibus Tax Ordinance, as amended, enjoyed the presumption of constitutionality and petitioner failed to avail itself of the remedy under Section 187 of the Local Government Code to challenge the legality or validity of Section 42 of the Revised Omnibus Tax Ordinance, as amended, by filing an appeal with the Secretary of Justice within 30 days from effectivity of

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[10] Records, p. 45.

[11] *Id.*

[12] *Id.* at 87.

said ordinance; and (c) the Office of the City Attorney issued a letter dated July 9, 2004 affirming respondent Camarillo's position that petitioner was liable to pay amusement tax on its golf course.[13] Ultimately, respondent Camarillo held:

> **WHEREFORE,** upon consideration of the legal grounds as above-mentioned, we reiterate our previous stand on the validity of the ASSESSMENT SHEET pertaining to the Tax Deficiencies for CY 1998 and this ruling serve as the FINAL DEMAND for immediate settlement and payment of your amusement tax liabilities and/or delinquencies otherwise we will constrained (sic) the non-issuance of a Mayor's Business Permit for nonpayment of the said deficiency on amusement tax and/or other tax liabilities as well as to file the appropriate filing of administrative and judicial remedies for the collection of the said tax liability and the letter treated as a Protest of Assessment that was duly submitted before this office is hereby **DENIED.**[14]

Shortly after, on January 12, 2006, petitioner was served with a Closure Order[15] dated December 28, 2005 issued by respondent City Mayor Osmeña. According to the Closure Order, petitioner committed blatant violations of the laws and Cebu City Ordinances, to wit:

1. **Operating a business without a business permit for five (5) years, from year 2001-2005**, in relation to Chapters I and II and the penalty clauses under Sections 4, 6, 8, 66 (f) and 114 of the City Tax Ordinance No. 69, otherwise known as the REVISED CITY TAX ORDINANCE OF THE CITY OF CEBU, as amended by C.O. 75;

2. **Nonpayment of deficiency on Business Taxes and Fees amounting to Seventeen Thousand Four Hundred Ninety-Nine Pesos and Sixty-Four Centavos (Php17,499.64)**, as adjusted, despite repeated demands in violation [of] Sections 4 and 8 of City Tax Ordinance No. 69, as amended;

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[13] *Id.* at 83-86.

[14] *Id.* at 86.

[15] *Id.* at 69-70.

3. **Nonpayment of deficiency on Amusement Tax and the penalties relative therewith totaling Two Million Nine Hundred Fifty-Three Thousand Five Hundred Eighty-Six Pesos and Eighty-Six Centavos (Php2,953,586.86)** in violation of Sections 4 and 8 in relation to Section 42 of City Tax Ordinance No. 69, as amended, business permit-violation of the Article 172, Revised Penal Code of the Philippines. (Emphases supplied.)

The Closure Order established respondent Mayor Osmeña's authority for issuance of the same and contained the following directive:

As the chief executive of the City, the Mayor has the power and duty to: Enforce all laws and ordinances relative to the governance of the city x x x and, in addition to the foregoing, shall x x x Issue such executive orders for the faithful and appropriate enforcement and execution of laws and ordinances x x x. These are undeniable in the LOCAL GOVERNMENT CODE, Section 455, par. (2) and par. (2)(iii).

Not only that, these powers can be exercised under the general welfare clause of the Code, particularly Section 16 thereof, where it is irrefutable that "every government unit shall exercise the powers expressly granted, those necessarily implied therefrom, as well as powers necessary, appropriate, or incidental of its efficient and effective governance, and those which are essential to the promotion of the general welfare."

This CLOSURE ORDER precisely satisfies these legal precedents. Hence now, in view whereof, your business establishment is hereby declared closed in direct contravention of the above-specified laws and city ordinances. Please cease and desist from further operating your business immediately upon receipt of this order.

This closure order is without prejudice to the constitutional/statutory right of the City to file criminal cases against corporate officers, who act for and its behalf, for violations of Section 114 of the REVISED CITY TAX ORDINANCE OF THE CITY OF CEBU and Section 516 of the LOCAL GOVERNMENT CODE, with penalties of imprisonment and/or fine.

FOR STRICT AND IMMEDIATE COMPLIANCE.[16]

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[16] *Id.*

The foregoing developments prompted petitioner to file with the RTC on January 13, 2006 a Petition for Injunction, Prohibition, Mandamus, Declaration of Nullity of Closure Order, Declaration of Nullity of Assessment, and Declaration of Nullity of Section 42 of Cebu City Tax Ordinance, with Prayer for Temporary Restraining Order and Writ of Preliminary Injunction, against respondents, which was docketed as Civil Case No. CEB-31988.[17] Petitioner eventually filed an Amended Petition on January 19, 2006.[18] Petitioner argued that the Closure Order is unconstitutional as it had been summarily issued in violation of its right to due process; a city mayor has no power under the Local Government Code to deny the issuance of a business permit and order the closure of a business for nonpayment of taxes; Section 42 of the Revised Omnibus Tax Ordinance, as amended, is null and void for being *ultra vires* or beyond the taxing authority of respondent Cebu City, and consequently, the assessment against petitioner for amusement tax for 1998 based on said Section 42 is illegal and unconstitutional; and assuming *arguendo* that respondent Cebu City has the power to impose amusement tax on petitioner, such tax for 1998 already prescribed and could no longer be enforced.

Respondents filed a Motion to Dismiss based on the grounds of (a) lack of jurisdiction of the RTC over the subject matter; (b) non-exhaustion of administrative remedies; (c) noncompliance with Section 187 of the Local Government Code, which provides the procedure and prescriptive periods for challenging the validity of a local tax ordinance; (d) noncompliance with Section 252 of the Local Government Code and Section 75 of Republic Act No. 3857, otherwise known as the Revised Charter of the City of Cebu, requiring payment under protest of the tax assessed; and (e) failure to establish the authority of Ma. Theresa Ozoa (Ozoa) to institute the case on behalf of petitioner.[19]

In its Opposition to the Motion to Dismiss, petitioner countered

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[17] *Id.* at 2-17.

[18] *Id.* at 51-68.

[19] *Id.* at 173-181.

that the RTC, a court of general jurisdiction, could take cognizance of its Petition in Civil Case No. CEB-31988, which not only involved the issue of legality or illegality of a tax ordinance, but also sought the declaration of nullity of the Closure Order and the issuance of writs of injunction and prohibition. Petitioner likewise asserted that Section 195 of the Local Government Code on the protest of assessment does not require payment under protest. Section 252 of the same Code invoked by respondents applies only to real property taxes. In addition, petitioner maintained that its Petition in Civil Case No. CEB-31988 could not be barred by prescription. There is nothing in the Local Government Code that could deprive the courts of the power to determine the constitutionality or validity of a tax ordinance due to prescription. It is the constitutional duty of the courts to pass upon the validity of a tax ordinance and such duty cannot be limited or restricted. Petitioner further contended that there is no need for exhaustion of administrative remedies given that the issues involved are purely legal; the notice of closure is patently illegal for having been issued without due process; and there is an urgent need for judicial intervention. Lastly, petitioner pointed out that there were sufficient allegations in the Petition that its filing was duly authorized by petitioner. At any rate, petitioner already attached to its Opposition its Board Resolution No. 104 authorizing Ozoa to file a case to nullify the Closure Order. Thus, petitioner prayed for the denial of the Motion to Dismiss.[20]

Respondents, in their Rejoinder to Petitioner's Opposition to the Motion to Dismiss,[21] asserted that the Closure Order was just a necessary consequence of the nonpayment by petitioner of the amusement tax assessed against it. The Revised Omnibus Tax Ordinance of respondent Cebu City directs that no permit shall be issued to a business enterprise which made no proper payment of tax and, correspondingly, no business enterprise may be allowed to operate or continue to operate without a business permit. The fundamental issue in the case was still

[20] *Id.* at 183-193.

[21] *Id.* at 196-204.

the nonpayment by petitioner of amusement tax. Respondents relied on *Reyes v. Court of Appeals*,[22] in which the Court categorically ruled that the prescriptive periods fixed in Section 187 of the Local Government Code are mandatory and prerequisites before seeking redress from a competent court. Section 42 of the Revised Omnibus Tax Ordinance, as amended, was passed on April 20, 1998, so the institution by petitioner of Civil Case No. CEB-31988 before the RTC on January 13, 2006 — without payment under protest of the assessed amusement tax and filing of an appeal before the Secretary of Justice within 30 days from the effectivity of the Ordinance — was long barred by prescription.

After filing by the parties of their respective Memorandum, the RTC issued an Order[23] dated March 16, 2006 denying the prayer of petitioner for issuance of a Temporary Restraining Order (TRO). The RTC found that when the business permit of petitioner expired and it was operating without a business permit, it ceased to have a legal right to do business. The RTC affirmed respondent Mayor Osmeña's authority to issue or grant business licenses and permits pursuant to the police power inherent in his office; and such authority to issue or grant business licenses and permits necessarily included the authority to suspend or revoke or even refuse the issuance of the said business licenses and permits in case of violation of the conditions for the issuance of the same. The RTC went on to hold that:

> [Petitioner] was given opportunities to be heard when it filed a protest [of] the assessment which was subsequently denied. To the mind of this court, this already constitutes the observance of due process and that [petitioner] had already been given the opportunity to be heard. Due process and opportunity to be heard does not necessarily mean winning the argument in one's favor but to be given the fair chance to explain one's side or views with regards [to] the matter in issue, which in this case is the legality of the tax assessment.
>
> It is therefore clear that when this case was filed, [petitioner] had no more legal right in its favor for the courts to protect. It would

[22] 378 Phil. 232, 237-238 (1999).

[23] Records, pp. 249-253.

have been a different story altogether had [petitioner] paid the tax assessment for the green fees even under protest and despite payment and [respondent] Mayor refused the issuance of the business permit because all the requisites for the issuance of the said permit are all complied with.[24]

On March 20, 2006, petitioner paid under protest to respondent Cebu City, through respondent Camarillo, the assessed amusement tax, plus penalties, interest, and surcharges, in the total amount of ₱2,750,249.17.[25]

Since the parties agreed that the issues raised in Civil Case No. CEB-31988 were all legal in nature, the RTC already considered the case submitted for resolution after the parties filed their respective Memorandum.[26]

On March 14, 2007, the RTC issued a Resolution granting the Motion to Dismiss of respondents. Quoting from *Reyes* and *Hagonoy Market Vendor Association v. Municipality of Hagonoy, Bulacan*,[27] the RTC sustained the position of respondents that Section 187 of the Local Government Code is mandatory. Thus, the RTC adjudged:

From the above cited cases, it can be gleaned that the period in the filing of the protests is important. In other words, it is the considered opinion of this court [that] when a taxpayer questions the validity of a tax ordinance passed by a local government legislative body, a different procedure directed in Section 187 is to be followed. The reason for this could be because the tax ordinance is clearly different from a law passed by Congress. The local government code has set several limitations on the taxing power of the local government legislative bodies including the issue of what should be taxed.

In this case, since the Petitioner failed to comply with the procedure outlined in Section 187 of the Local Government Code and the fact that this case was filed way beyond the period to file a case in court, then this court believes that the action must fail.

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[24] *Id.* at 253.

[25] *Id.* at 255-259.

[26] *Id.* at 280.

[27] 426 Phil. 769 (2002).

Because of the procedural infirmity in bringing about this case to the court, then the substantial issue of the propriety of imposing amusement taxes on the green fees could no longer be determined.

WHEREFORE, in view of the aforegoing, this case is hereby DISMISSED.[28]

The RTC denied the Motion for Reconsideration of petitioner in an Order dated October 3, 2007.

Petitioner is presently before the Court on pure questions of law, *viz.*:

I. WHETHER OR NOT THE POWER OF JUDICIAL REVIEW OVER THE VALIDITY OF A LOCAL TAX ORDINANCE HAS BEEN RESTRICTED BY SECTION 187 OF THE LOCAL GOVERNMENT CODE.

II. WHETHER OR NOT THE CITY OF CEBU OR ANY LOCAL GOVERNMENT CAN VALIDLY IMPOSE AMUSEMENT TAX TO THE ACT OF PLAYING GOLF.[29]

There is merit in the instant Petition.

The RTC judgment on pure questions of law may be directly appealed to this Court via a petition for review on certiorari.

Even before the RTC, the parties already acknowledged that the case between them involved only questions of law; hence, they no longer presented evidence and agreed to submit the case for resolution upon submission of their respective memorandum.

It is incontestable that petitioner may directly appeal to this Court from the judgment of the RTC on pure questions of law via its Petition for Review on *Certiorari*. Rule 41, Section 2 (c) of the Rules of Court provides that "[i]n all cases where only questions of law are raised or involved, the appeal shall

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[28] *Rollo*, p. 33.

[29] *Id.* at 15.

be to the Supreme Court by petition for review on *certiorari* in accordance with Rule 45." As the Court declared in *Bonifacio v. Regional Trial Court of Makati, Branch 149:*[30]

The established policy of strict observance of the judicial hierarchy of courts, as a rule, requires that recourse must first be made to the lower-ranked court exercising concurrent jurisdiction with a higher court. A regard for judicial hierarchy clearly indicates that petitions for the issuance of extraordinary writs against first level courts should be filed in the RTC and those against the latter should be filed in the Court of Appeals. The rule is not iron-clad, however, as it admits of certain exceptions.

Thus, a strict application of the rule is unnecessary when cases brought before the appellate courts do not involve factual but purely legal questions. (Citations omitted.)

"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[;]" and it may be brought directly before this Court, the undisputed final arbiter of all questions of law.[31]

The present case is an exception to Section 187 of the Local Government Code and the doctrine of exhaustion of administrative remedies.

Section 187 of the Local Government Code reads:

Sec. 187. *Procedure for Approval and Effectivity of Tax Ordinances and Revenue Measures; Mandatory Public Hearings*. — The procedure for approval of local tax ordinances and revenue measures shall be in accordance with the provisions of this Code: *Provided*, That public hearings shall be conducted for the purpose prior to the enactment thereof: *Provided, further*, That any question on the constitutionality or legality of tax ordinances or revenue measures may be raised on appeal within thirty (30) days from the effectivity thereof to the

[30] 634 Phil. 348, 358-359 (2010).

[31] *Chua v. Ang*, 614 Phil. 416, 427 (2009).

Secretary of Justice who shall render a decision within sixty (60) days from the date of receipt of the appeal: *Provided, however*, That such appeal shall not have the effect of suspending the effectivity of the ordinance and the accrual and payment of the tax, fee, or charge levied therein: *Provided, finally*, That within thirty (30) days after receipt of the decision or the lapse of the sixty-day period without the Secretary of Justice acting upon the appeal, the aggrieved party may file appropriate proceedings with a court of competent jurisdiction.

Indeed, the Court established in *Reyes* that the aforequoted provision is a significant procedural requisite and, therefore, mandatory:

Clearly, the law requires that the dissatisfied taxpayer who questions the validity or legality of a tax ordinance must file his appeal to the Secretary of Justice, within 30 days from effectivity thereof. In case the Secretary decides the appeal, a period also of 30 days is allowed for an aggrieved party to go to court. But if the Secretary does not act thereon, after the lapse of 60 days, a party could already proceed to seek relief in court. These three separate periods are clearly given for compliance as a prerequisite before seeking redress in a competent court. Such statutory periods are set to prevent delays as well as enhance the orderly and speedy discharge of judicial functions. For this reason the courts construe these provisions of statutes as mandatory.

A municipal tax ordinance empowers a local government unit to impose taxes. The power to tax is the most effective instrument to raise needed revenues to finance and support the myriad activities of local government units for the delivery of basic services essential to the promotion of the general welfare and enhancement of peace, progress, and prosperity of the people. Consequently, any delay in implementing tax measures would be to the detriment of the public. It is for this reason that protests over tax ordinances are required to be done within certain time frames. In the instant case, it is our view that the failure of petitioners to appeal to the Secretary of Justice within 30 days as required by Sec. 187 of R.A. 7160 is fatal to their cause.[32] (Citations omitted.)

The Court further affirmed in *Hagonoy* that:

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[32] *Reyes v. Court of Appeals, supra* note 21 at 238.

At this point, it is apropos to state that the timeframe fixed by law for parties to avail of their legal remedies before competent courts is not a "mere technicality" that can be easily brushed aside. *The periods stated in Section 187 of the Local Government Code are mandatory.* Ordinance No. 28 is a revenue measure adopted by the municipality of Hagonoy to fix and collect public market stall rentals. Being its lifeblood, collection of revenues by the government is of paramount importance. The funds for the operation of its agencies and provision of basic services to its inhabitants are largely derived from its revenues and collections. Thus, it is essential that *the validity of revenue measures is not left uncertain for a considerable length of time.* Hence, the law provided a time limit for an aggrieved party to assail the legality of revenue measures and tax ordinances.[33] (Citations omitted.)

Nevertheless, in later cases, the Court recognized exceptional circumstances that justify noncompliance by a taxpayer with Section 187 of the Local Government Code.

The Court ratiocinated in *Ongsuco v. Malones*,[34] thus:

It is true that the general rule is that before a party is allowed to seek the intervention of the court, he or she should have availed himself or herself of all the means of administrative processes afforded him or her. Hence, if resort to a remedy within the administrative machinery can still be made by giving the administrative officer concerned every opportunity to decide on a matter that comes within his or her jurisdiction, then such remedy should be exhausted first before the court's judicial power can be sought. The premature invocation of the intervention of the court is fatal to one's cause of action. The doctrine of exhaustion of administrative remedies is based on practical and legal reasons. The availment of administrative remedy entails lesser expenses and provides for a speedier disposition of controversies. Furthermore, the courts of justice, for reasons of comity and convenience, will shy away from a dispute until the system of administrative redress has been completed and complied with, so as to give the administrative agency concerned every opportunity to correct its error and dispose of the case. However, there are several exceptions to this rule.

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[33] *Hagonoy Market Vendor Association v. Municipality of Hagonoy, Bulacan, supra* note 27 at 778.

[34] 619 Phil. 492, 504-506 (2009).

The rule on the exhaustion of administrative remedies is intended to preclude a court from arrogating unto itself the authority to resolve a controversy, the jurisdiction over which is initially lodged with an administrative body of special competence. Thus, **a case where the issue raised is a purely legal question, well within the competence; and the jurisdiction of the court and not the administrative agency, would clearly constitute an exception. Resolving questions of law, which involve the interpretation and application of laws, constitutes essentially an exercise of judicial power that is exclusively allocated to the Supreme Court and such lower courts the Legislature may establish.**

In this case, the parties are not disputing any factual matter on which they still need to present evidence. The sole issue petitioners raised before the RTC in Civil Case No. 25843 was whether Municipal Ordinance No. 98-01 was valid and enforceable despite the absence, prior to its enactment, of a public hearing held in accordance with Article 276 of the Implementing Rules and Regulations of the Local Government Code. **This is undoubtedly a pure question of law, within the competence and jurisdiction of the RTC to resolve.**

Paragraph 2(a) of Section 5, Article VIII of the Constitution, expressly establishes the appellate jurisdiction of this Court, and impliedly recognizes the original jurisdiction of lower courts over cases involving the constitutionality or validity of an ordinance:

> Section 5. The Supreme Court shall have the following powers:
>
> x x x x x x x x x
>
> (2) Review, revise, reverse, modify or affirm on appeal or *certiorari*, as the law or the Rules of Court may provide, final judgments and orders of *lower courts* in:
>
> (a) All cases in which the *constitutionality or validity* of any treaty, international or executive agreement, law, presidential decree, proclamation, order, instruction, *ordinance*, or regulation is in question.

In *J.M. Tuason and Co., Inc. v. Court of Appeals, Ynot v. Intermediate Appellate Court,* and *Commissioner of Internal Revenue v. Santos*, the Court has affirmed the jurisdiction of the RTC to resolve questions of constitutionality and validity of laws (deemed to include local ordinances) in the first instance, without deciding questions

which pertain to legislative policy. (Emphases supplied, citations omitted.)

In *Cagayan Electric Power and Light Co., Inc. (CEPALCO) v. City of Cagayan De Oro*,[35] the Court initially conceded that as in *Reyes*, the failure of taxpayer CEPALCO to appeal to the Secretary of Justice within the statutory period of 30 days from the effectivity of the ordinance should have been fatal to its cause. However, the Court purposefully relaxed the application of the rules in view of the more substantive matters.

Similar to *Ongsuco and CEPALCO*, the case at bar constitutes an exception to the general rule. Not only does the instant Petition raise pure questions of law, but it also involves substantive matters imperative for the Court to resolve.

Section 42 of the Revised Omnibus Tax Ordinance, as amended, imposing amusement tax on golf courses is null and void as it is beyond the authority of respondent Cebu City to enact under the Local Government Code.

The Local Government Code authorizes the imposition by local government units of amusement tax under Section 140, which provides:

Sec. 140. Amusement Tax. — (a) The province may levy an amusement tax to be collected **from the proprietors, lessees, or operators of theaters, cinemas, concert halls, circuses, boxing stadia, and other places of amusement** at a rate of not more than thirty percent (30%) of the gross receipts from admission fees.

(b) In the case of theaters or cinemas, the tax shall first be deducted and withheld by their proprietors, lessees, or operators and paid to the provincial treasurer before the gross receipts are divided between said proprietors, lessees, or operators and the distributors of the cinematographic films.

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[35] G.R. No. 191761, November 14, 2012, 685 SCRA 609, 622.

(c) The holding of operas, concerts, dramas, recitals, painting, and art exhibitions, flower shows, musical programs, literary and oratorical presentations, except pop, rock, or similar concerts shall be exempt from the payment of the tax hereon imposed.

(d) The *sangguniang panlalawigan* may prescribe the time, manner, terms and conditions for the payment of tax. In case of fraud or failure to pay the tax, the *sangguniang panlalawigan* may impose such surcharges, interests and penalties as it may deem appropriate.

(e) The proceeds from the amusement tax shall be shared equally by the province and the municipality where such amusement places are located. (Emphasis supplied.)

"Amusement places," as defined in Section 131 (c) of the Local Government Code, "include theaters, cinemas, concert halls, circuses and other places of amusement where one seeks admission to entertain oneself by seeing or viewing the show or performance."

The pronouncements of the Court in *Pelizloy Realty Corporation v. The Province of Benguet*[36] are of particular significance to this case. The Court, in *Pelizloy Realty*, declared null and void the second paragraph of Article X, Section 59 of the Benguet Provincial Code, in so far as it imposes amusement taxes on admission fees to resorts, swimming pools, bath houses, hot springs, and tourist spots. Applying the principle of *ejusdem generis*, as well as the ruling in the *PBA* case, the Court expounded on the authority of local government units to impose amusement tax under Section 140, in relation to Section 131 (c), of the Local Government Code, as follows:

Under the principle of *ejusdem generis*, "where a general word or phrase follows an enumeration of particular and specific words of the same class or where the latter follow the former, the general word or phrase is to be construed to include, or to be restricted to persons, things or cases akin to, resembling, or of the same kind or class as those specifically mentioned."

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[36] G.R. No. 183137, April 10, 2013, 695 SCRA 491.

The purpose and rationale of the principle was explained by the Court in *National Power Corporation v. Angas* as follows:

> The purpose of the rule on *ejusdem generis* is to give effect to both the particular and general words, by treating the particular words as indicating the class and the general words as including all that is embraced in said class, although not specifically named by the particular words. This is justified on the ground that if the lawmaking body intended the general terms to be used in their unrestricted sense, it would have not made an enumeration of particular subjects but would have used only general terms. [2 Sutherland, Statutory Construction, 3rd ed., pp. 395-400].

In *Philippine Basketball Association v. Court of Appeals*, the Supreme Court had an opportunity to interpret a starkly similar provision or the counterpart provision of Section 140 of the LGC in the Local Tax Code then in effect. Petitioner Philippine Basketball Association (PBA) contended that it was subject to the imposition by LGUs of amusement taxes (as opposed to amusement taxes imposed by the national government). In support of its contentions, it cited Section 13 of Presidential Decree No. 231, otherwise known as the Local Tax Code of 1973, (which is analogous to Section 140 of the LGC) providing the following:

> Section 13. *Amusement tax on admission*. — The province shall impose a tax on admission to be collected from the proprietors, lessees, or operators of theaters, cinematographs, concert halls, circuses and other places of amusement x x x.

Applying the principle of *ejusdem generis*, the Supreme Court rejected PBA's assertions and noted that:

> [I]n determining the meaning of the phrase 'other places of amusement,' one must refer to the prior enumeration of theaters, cinematographs, concert halls and circuses with <u>artistic expression as their common characteristic</u>. Professional basketball games do not fall under the same category as theaters, cinematographs, concert halls and circuses as the latter basically belong to artistic forms of entertainment while the former caters to sports and gaming.

However, even as the phrase 'other places of amusement' was already clarified in *Philippine Basketball Association*, Section 140 of the LGC adds to the enumeration of 'places of amusement' which may properly be subject to amusement tax. Section 140 specifically

mentions 'boxing stadia' in addition to "theaters, cinematographs, concert halls [and] circuses" which were already mentioned in PD No. 231. Also, 'artistic expression' as a characteristic does not pertain to 'boxing stadia'.

In the present case, the Court need not embark on a laborious effort at statutory construction. Section 131(c) of the LGC already provides a clear definition of 'amusement places':

x x x x x x x x x

Indeed, theaters, cinemas, concert halls, circuses, and boxing stadia are bound by a common typifying characteristic in that they are all venues primarily for the staging of spectacles or the holding of public shows, exhibitions, performances, and other events meant to be viewed by an audience. Accordingly, 'other places of amusement' must be interpreted in light of the typifying characteristic of being venues "where one seeks admission to entertain oneself by seeing or viewing the show or performances" or being venues primarily used to stage spectacles or hold public shows, exhibitions, performances, and other events meant to be viewed by an audience.

As defined in The New Oxford American Dictionary, 'show' means "a spectacle or display of something, typically an impressive one"; while 'performance' means "an act of staging or presenting a play, a concert, or other form of entertainment." As such, **the ordinary definitions of the words 'show' and 'performance' denote not only visual engagement (*i.e.*, the seeing or viewing of things) but also active doing (*e.g.*, displaying, staging or presenting) such that actions are manifested to, and (correspondingly) perceived by an audience.**

Considering these, it is clear that resorts, swimming pools, bath houses, hot springs and tourist spots cannot be considered venues primarily "where one seeks admission to entertain oneself by seeing or viewing the show or performances". While it is true that they may be venues where people are visually engaged, they are not primarily venues for their proprietors or operators to actively display, stage or present shows and/or performances.

Thus, resorts, swimming pools, bath houses, hot springs and tourist spots do not belong to the same category or class as theaters, cinemas, concert halls, circuses, and boxing stadia. It follows that they cannot be considered as among the 'other places of amusement' contemplated

by Section 140 of the LGC and which may properly be subject to amusement taxes.[37] (Emphases supplied, citations omitted.)

In light of *Pelizloy Realty*, a golf course cannot be considered a place of amusement. As petitioner asserted, people do not enter a golf course to see or view a show or performance. Petitioner also, as proprietor or operator of the golf course, does not actively display, stage, or present a show or performance. People go to a golf course to engage themselves in a physical sport activity, *i.e.*, to play golf; the same reason why people go to a gym or court to play badminton or tennis or to a shooting range for target practice, yet there is no showing herein that such gym, court, or shooting range is similarly considered an amusement place subject to amusement tax. There is no basis for singling out golf courses for amusement tax purposes from other places where people go to play sports. This is in contravention of one of the fundamental principles of local taxation: that the "[t]axation shall be uniform in each local government unit."[38] Uniformity of taxation, like the kindred concept of equal protection, requires that all subjects or objects of taxation, similarly situated, are to be treated alike both in privileges and liabilities.[39]

Not lost on the Court is its declaration in *Manila Electric Co. v. Province of Laguna*[40] that under the 1987 Constitution, "where there is neither a grant nor a prohibition by statute, the tax power [of local government units] must be deemed to exist although Congress may provide statutory limitations and guidelines." Section 186 of the Local Government Code also expressly grants local government units the following residual power to tax:

Sec. 186. *Power to Levy Other Taxes, Fees, or Charges*. — Local government units may exercise the **power to levy taxes, fees, or**

[37] *Id.* at 505-508.

[38] Section 130(a) of the Local Government Code.

[39] *Tan v. Del Rosario, Jr.*, G.R. Nos. 109289 and 109446, October 3, 1994, 237 SCRA 324, 331.

[40] 366 Phil. 428, 434 (1999).

charges on any base or subject not otherwise specifically enumerated herein or taxed under the provisions of the National Internal Revenue Code, as amended, or other applicable laws: *Provided*, that the taxes, fees, or charges shall not be unjust, excessive, oppressive, confiscatory or contrary to declared national policy: *Provided, further*, That the ordinance levying such taxes, fees or charges shall not be enacted without any prior public hearing conducted for the purpose. (Emphasis supplied.)

Respondents, however, cannot claim that Section 42 of the Revised Omnibus Tax Ordinance, as amended, imposing amusement tax on golf courses, was enacted pursuant to the residual power to tax of respondent Cebu City. A local government unit may exercise its residual power to tax when there is neither a grant nor a prohibition by statute; or when such taxes, fees, or charges are not otherwise specifically enumerated in the Local Government Code, National Internal Revenue Code, as amended, or other applicable laws. In the present case, Section 140, in relation to Section 131 (c), of the Local Government Code already explicitly and clearly cover amusement tax and respondent Cebu City must exercise its authority to impose amusement tax within the limitations and guidelines as set forth in said statutory provisions.

WHEREFORE, in view of all the foregoing, the Court **GRANTS** the instant Petition, and **REVERSES and SETS ASIDE** the Resolution dated March 14, 2007 and the Order dated October 3, 2007 of the Regional Trial Court, Cebu City, Branch 9 in Civil Case No. CEB-31988. The Court **DECLARES NULL and VOID** the following: (a) Section 42 of the Revised Omnibus Tax Ordinance of the City of Cebu, as amended by City Tax Ordinance Nos. LXXXII and LXXXIV, insofar as it imposes amusement tax of 20% on the gross receipts on entrance, playing green, and/or admission fees of golf courses; (b) the tax assessment against petitioner for amusement tax on its golf course for the year 1998 in the amount of ₱1,373,761.24, plus surcharges and interest pertaining to said amount, issued by the Office of the City Treasurer, City of Cebu; and (c) the Closure Order dated December 28, 2005 issued against Alta Vista Golf

and Country Club by the Office of the Mayor, City of Cebu. The Court also **ORDERS** the City of Cebu to refund to Alta Vista Golf and Country Club the amusement tax, penalties, surcharge, and interest paid under protest by the latter in the total amount of ₱2,750,249.17 or to apply the same amount as tax credit against existing or future tax liability of said Club.

SO ORDERED.

Sereno, C.J. (Chairperson), Bersamin, Perlas-Bernabe, and *Jardeleza, JJ.,* concur.

THIRD DIVISION

[G.R. No. 180434. January 20, 2016]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **MIRANT PAGBILAO CORPORATION (now Team Energy Corporation),*** *respondent.*

SYLLABUS

1. **TAXATION; NATIONAL INTERNAL REVENUE CODE; VALUE-ADDED TAX (VAT); REFUNDS OR TAX CREDITS OF INPUT TAX; THE PREMATURE FILING OF A CLAIM FOR REFUND OR CREDIT INPUT VAT BEFORE THE COURT OF TAX APPEALS WARRANTS A DISMISSAL, INASMUCH AS NO JURISDICTION IS ACQUIRED BY THE TAX COURT.—** The Court shall first address the issue on jurisdiction. While the matter was not raised by the CIR in its petition, it is settled that a jurisdictional issue may be invoked by either party or even the Court *motu proprio*, and may be raised at any stage of the proceedings, even on appeal. x x x In the present dispute, compliance with the

* Per Resolution dated June 18, 2008; *rollo*, p. 133.

requirements on administrative claims with the CIR, which are to precede judicial actions with the CTA, indubitably impinge on the tax court's jurisdiction. In *CIR v. Aichi Forging Company of Asia, Inc.*, the Court ruled that the premature filing of a claim for refund or credit of input VAT before the CTA warrants a dismissal, inasmuch as no jurisdiction is acquired by the tax court. Pertinent thereto are the provisions of Section 112 of the NIRC at the time of MPC's filing of the administrative and judicial claims, and which prescribe the periods within which to file and resolve such claims x x x.

2. **ID.; ID.; ID.; ID.; THE 120-DAY PERIOD IS MANDATORY AND JURISDICTIONAL, AND THE COURT OF TAX APPEALS DOES NOT ACQUIRE JURISDICTION OVER A JUDICIAL CLAIM THAT IS FILED BEFORE THE EXPIRATION OF THE 120-DAY PERIOD.—** Contrary to the specified periods, specifically those that are provided in the second paragraph of Section 112(D), MPC filed its petition for review with the CTA on March 26, 2002, or a mere 15 days after it filed an administrative claim for refund with the CIR on March 11, 2002. It then did not wait for the lapse of the 120-day period expressly provided for by law within which the CIR shall grant or deny the application for refund. The Court's pronouncement in *CIR v. San Roque Power Corporation* is instructive on the effect of such failure to comply with the 120-day waiting period x x x. The x x x exception to the general rule, which came as a result of the issuance of BIR Ruling No. DA-489-03, does not apply to MPC's case as its administrative and judicial claims were both filed in March 2002. The doctrine laid down in *San Roque* was reiterated in subsequent cases. In *CIR v. Aichi Forging Company of Asia, Inc.*, the Court cited the general rule that parties must observe the mandatory 120-day waiting period to give the CIR an opportunity to act on administrative claims; otherwise, their judicial claims are prematurely filed. In *Team Energy Corporation (formerly MPC) v. CIR*, the Court again emphasized the rule stating that "the 120-day period is crucial in filing an appeal with the CTA." "[T]he 120-day period is mandatory and jurisdictional, and that the CTA does not acquire jurisdiction over a judicial claim that is filed before the expiration of the 120-day period." Clearly, MPC's failure to observe the mandatory 120-day period under the law was fatal to its immediate filing

of a judicial claim before the CTA. It rendered the filing of the CTA petition premature, and barred the tax court from acquiring jurisdiction over the same. Thus, the dismissal of the petition is in order. "[T]ax refunds or tax credits – just like tax exemptions – are strictly construed against taxpayers, the latter having the burden to prove strict compliance with the conditions for the grant of the tax refund or credit."

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
Jose R. Matibag for respondent.

D E C I S I O N

REYES, *J*.:

This appeal by Petition for Review on *Certiorari*[1] seeks to reverse and set aside the Decision[2] dated September 11, 2007 and Resolution[3] dated November 7, 2007 of the Court of Tax Appeals (CTA) *en banc* in E.B. Case Nos. 216 and 225, affirming the Decision[4] dated August 31, 2005 of the CTA Second Division in CTA Case No. 6417, ordering petitioner Commissioner of Internal Revenue (CIR) to issue a refund or a tax credit certificate in the amount of ₱118,756,640.97 in favor of Mirant Pagbilao Corporation[5] (MPC).

The Facts

MPC is a duly-registered Philippine corporation located at Pagbilao Grande Island in Pagbilao, Quezon, and primarily

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[1] *Id.* at 13-33.

[2] *Id.* at 35-49.

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

[4] Penned by Associate Justice Erlinda P. Uy, with Chairman Juanito C. Castañeda, Jr. and Associate Justice Olga Palanca-Enriquez concurring; *id.* at 184-200.

[5] Formerly known as Hopewell Power (Philippines) Corporation and Southern Energy Quezon, Inc., *id.* at 17.

engaged in the generation and distribution of electricity to the National Power Corporation (NAPOCOR) under a Build, Operate, Transfer Scheme. As such, it is registered with the Bureau of Internal Revenue (BIR) as a Value-Added Tax (VAT) taxpayer in accordance with Section 236 of the National Internal Revenue Code (NIRC) of 1997, with Taxpayer Identification No. 0001-726-870, and registered under RDO Control No. 96-600-002498.[6]

On November 26, 1999, the BIR approved MPC's application for Effective Zero-Rating for the construction and operation of its power plant.[7]

For taxable year 2000, the quarterly VAT returns filed by MPC on April 25, 2000, July 25, 2000, October 24, 2000, and August 27, 2001 showed an excess input VAT paid on domestic purchases of goods, services and importation of goods in the amount of ₱127,140,331.85.[8]

On March 11, 2002, MPC filed before the BIR an administrative claim for refund of its input VAT covering the taxable year of 2000, in accordance with Section 112, subsections (A) and (B) of the NIRC. Thereafter, or on March 26, 2002, fearing that the period for filing a judicial claim for refund was about to expire, MPC proceeded to file a petition for review before the CTA, docketed as CTA Case No. 6417,[9] without waiting for the CIR's action on the administrative claim.

On August 31, 2005, the CTA Second Division rendered a Decision[10] partially granting MPC's claim for refund, and ordering the CIR to grant a refund or a tax credit certificate, but only in the reduced amount of ₱118,749,001.55, representing MPC's unutilized input VAT incurred for the second, third and fourth quarters of taxable year 2000.

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[6] *Id.* at 185.

[7] *Id.* at 186.

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

[9] *Id.* at 187.

[10] *Id.* at 184-200.

The CTA Second Division held that by virtue of NAPOCOR's exemption from direct and indirect taxes as provided for in Section 13[11] of Republic Act No. 6395,[12] MPC's sale of services to NAPOCOR is subject to VAT at 0% rate. The Secretary of Finance even issued a Memorandum dated January 28, 1998, addressed to the CIR, espousing the Court's ruling that purchases by NAPOCOR of electricity from independent power producers are subject to VAT at 0% rate, to wit:

> As explained by the Supreme Court, the rationale for the [NAPOCOR's] tax exemption is to ensure cheaper power. If the BIR's recent view is to be implemented, the VAT being an indirect tax, may be passed on by the seller of electricity to [NAPOCOR]. Effectively, this means that electricity will be sold at a higher rate to the consumers. Estimates show that a 10% VAT on electricity

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[11] **Sec. 13. Non-profit Character of the Corporation; Exemption from all Taxes, Duties, Fees, Imposts and Other Charges by the Government and Government Instrumentalities.** — The Corporation shall be non-profit and shall devote all its returns from its capital investment, as well as excess revenues from its operations, for expansion. To enable the Corporation to pay its indebtedness and obligations and in furtherance and effective implementation of the policy enunciated in Section One of this Act, the Corporation is hereby declared exempt:

a. From the payment of all taxes, duties, fees, imposts, charges, costs and service fees in any court or administrative proceedings in which it may be a party, restrictions and duties to the Republic of the Philippines, its provinces, cities, municipalities and other government agencies and instrumentalities;

b. From all income taxes, franchise taxes and realty taxes to be paid to the National Government, its provinces, cities, municipalities and other government agencies and instrumentalities;

c. From all import duties, compensating taxes and advanced sales tax, and wharfage fees on import of foreign goods required for its operations and projects; and

d. From all taxes, duties, fees, imposts, and all other charges imposed by the Republic of the Philippines, its provinces, cities, municipalities and other government agencies and instrumentalities, on all petroleum products used by the Corporation in the generation, transmission, utilization, and sale of electric power.

[12] AN ACT REVISING THE CHARTER OF THE NATIONAL POWER CORPORATION.

which is purchased by [NAPOCOR] from its independent power producers will increase power cost by about ₱1.30 billion a year. The effect on the consumer is an additional charge of ₱0.59 per kilowatt-hour. The recognition of [NAPOCOR's] broad privilege will inure to the benefit of the Filipino consumer.

In view of the foregoing and using the power of review granted to the Secretary of Finance under Section 4 of Republic Act No. 8424, the DOF upholds the ruling of the Supreme Court that the [NAPOCOR] is exempt under its charter and subsequent laws from all direct and indirect taxes on its purchases of petroleum products and electricity. Thus, the purchases by [NAPOCOR] of electricity from independent power producers are subject to VAT at zero-rate.[13]

In arriving at the reduced amount of ₱118,749,001.55, the CTA Second Division found out that: (a) ₱2,116,851.79 input taxes claimed should be disallowed because MPC failed to validate by VAT official receipts and invoices the excess payment of input taxes; (b) ₱6,274,478.51 of input taxes was not properly documented; and (c) the input taxes of ₱127,140,331.85 for the year 2000 were already deducted by MPC from the total available input VAT as of April 25, 2002 as evidenced by the 2002 first quarterly VAT return. Thus, the input taxes sought to be refunded were not applied by MPC against its output VAT liability as of April 25, 2002 and can no longer be used as credit against its future output VAT liability.[14]

Undaunted, MPC filed a motion for partial reconsideration and new trial in view of the additional amount it sought to be approved.

In an Amended Decision dated August 30, 2006, the CTA Second Division found that MPC is entitled to a modified amount of ₱118,756,640.97 input VAT, upon allowing the amount of ₱7,639.42 in addition to the VAT input tax. However, MPC's motion for new trial was denied. Dissatisfied, MPC elevated the matter to the CTA *en banc*, particularly in E.B. Case No. 216.[15]

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[13] *Rollo*, pp. 191-192.

[14] *Id.* at 193-199.

[15] *Id.* at 36.

Meanwhile, the CIR filed a motion for reconsideration of the amended decision. However, on November 13, 2006, the CTA Second Division issued a Resolution denying the motion. Thereafter, the CIR filed a petition for review before the CTA *en banc*, docketed as E.B. Case No. 225.[16]

In a Decision[17] dated September 11, 2007, the CTA *en banc* affirmed *in toto* the assailed amended decision and resolved the issues presented in E.B. Case Nos. 216 and 225.

In sustaining the decision of the CTA Second Division in E.B. Case No. 216, the CTA *en banc* ruled that:

(a) MPC's claim for the refund of ₱810,047.31 is disallowed for lack of supporting documents. Tax refunds, being in the nature of tax exemptions, are construed in *strictissimi juris* against the claimant. Thus, a mere summary list submitted by MPC is considered immaterial to prove the amount of its claimed unutilized input taxes.[18]

(b) MPC's claim for the refund of ₱836,768.00 as input taxes is denied due to lack of proof of payment. As a rule, "input tax on importations should be supported with Import Entry and Internal Revenue Declarations (IEIRDs) duly validated for actual payment of input tax" and that other documents may be adduced to determine its payment.[19] Here, the IEIRDs presented by MPC did not show payment of the input taxes and the amounts indicated therein differed from the bank debit advice. More so, the bank debit advice did not properly describe the mode of payment of the input tax which made it difficult to determine which payee, and to what kind of payment did the bank debit advices pertain to.[20]

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

[17] *Id.* at 35-49.

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

[19] *Id.* at 43.

[20] *Id.*

(c) The denial of MPC's motion for new trial was correct since it was pointless to require MPC to submit additional documents in support of the unutilized input tax of ₱3,310,109.20, in view of MPC's admission that the VAT official receipts and invoices were not even pre-marked and proffered before the court. Regrettably, without such documents, the CTA could not in any way properly verify the correctness of the certified public accountant's conclusion.[21]

As regards E.B. Case No. 225, the CTA *en banc* upheld the ruling of the CTA Second Division that VAT at 0% rate may be imposed on the sale of services of MPC to NAPOCOR on the basis of NAPOCOR's exemption from direct and indirect taxes.[22]

Disagreeing with the CTA *en banc*'s decision, both parties filed their respective motions for reconsideration, which were denied in the CTA *en banc* Resolution[23] dated November 7, 2007.

Feeling aggrieved by the adverse ruling of the CTA *en banc*, the CIR now seeks recourse to the Court *via* a petition for review on *certiorari*.

The Issues

The CIR raises in the petition the sole issue of whether or not the CTA erred in granting MPC's claim for refund of its excess input VAT payments on domestic purchases of goods, services and importation of goods attributable to zero-rated sales for taxable year 2000.[24]

The Court, however, points out that given the factual antecedents, the case also raises a jurisdictional issue inasmuch as MPC instituted the CTA action 15 days from the filing of its administrative claim for refund and without waiting for the CIR's action thereon. Thus, towards a full and proper resolution of the issue on the tax court's action on MPC's case, the Court

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[21] *Id.* at 44.

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

[23] *Id.* at 50-52.

[24] *Id.* at 21-22.

finds it necessary to likewise resolve the issue of whether or not the CTA had jurisdiction to entertain MPC's judicial claim.

Ruling of the Court

The Court shall first address the issue on jurisdiction. While the matter was not raised by the CIR in its petition, it is settled that a jurisdictional issue may be invoked by either party or even the Court *motu proprio*, and may be raised at any stage of the proceedings, even on appeal. Thus, the Court emphasized in *Sales, et al. v. Barro*:[25]

> It is well-settled that a court's jurisdiction may be raised at any stage of the proceedings, even on appeal. The reason is that jurisdiction is conferred by law, and lack of it affects the very authority of the court to take cognizance of and to render judgment on the action. x x x [E]ven if [a party] did not raise the issue of jurisdiction, the reviewing court is not precluded from ruling that it has no jurisdiction over the case. In this sense, dismissal for lack of jurisdiction may even be ordered by the court *motu proprio*.[26] (Citations omitted)

In the present dispute, compliance with the requirements on administrative claims with the CIR, which are to precede judicial actions with the CTA, indubitably impinge on the tax court's jurisdiction. In *CIR v. Aichi Forging Company of Asia, Inc.*,[27] the Court ruled that the premature filing of a claim for refund or credit of input VAT before the CTA warrants a dismissal, inasmuch as no jurisdiction is acquired by the tax court.[28] Pertinent thereto are the provisions of Section 112 of the NIRC at the time of MPC's filing of the administrative and judicial claims, and which prescribe the periods within which to file and resolve such claims, to wit:

Sec. 112. *Refunds or Tax Credits of Input Tax.* —

(A) *Zero-Rated or Effectively Zero-Rated Sales.* — Any VAT-

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[25] 594 Phil. 116 (2008).

[26] *Id.* at 123.

[27] 646 Phil. 710 (2010).

[28] *Id.* at 732.

registered person, whose sales are zero-rated or effectively zero-rated may, **within two (2) years after the close of the taxable quarter** when the sales were made, apply for the issuance of a tax credit certificate or refund of creditable input tax due or paid attributable to such sales x x x.

x x x x x x x x x

(D) *Period within which Refund or Tax Credit of Input Taxes shall be Made*. — In proper cases, **the Commissioner shall grant a refund or issue the tax credit certificate for creditable input taxes within one hundred twenty (120) days from the date of submission of complete documents** in support of the application filed in accordance with Subsections (A) and (B) hereof.

In case of full or partial denial of the claim for tax refund or tax credit, or the failure on the part of the Commissioner to act on the application within the period prescribed above, **the taxpayer affected may, within thirty (30) days from the receipt of the decision denying the claim or after the expiration of the one hundred twenty-day period, appeal the decision or the unacted claim** with the [CTA].

x x x x x x x x x

Contrary to the specified periods, specifically those that are provided in the second paragraph of Section 112 (D), MPC filed its petition for review with the CTA on March 26, 2002, or a mere 15 days after it filed an administrative claim for refund with the CIR on March 11, 2002. It then did not wait for the lapse of the 120-day period expressly provided for by law within which the CIR shall grant or deny the application for refund. The Court's pronouncement in *CIR v. San Roque Power Corporation*[29] is instructive on the effect of such failure to comply with the 120-day waiting period, to wit:

1. **<u>Application of the 120+30-Day Periods</u>**

x x x x x x x x x

It is indisputable that compliance with the 120-day waiting period is **mandatory and jurisdictional**. The waiting period, originally fixed at 60 days only, was part of the provisions of the first VAT

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[29] G.R. No. 187485, February 12, 2013, 690 SCRA 336.

law, Executive Order No. 273, which took effect on 1 January 1988. The waiting period was extended to 120 days effective 1 January 1998 under RA 8424 or the Tax Reform Act of 1997. **Thus, the waiting period has been in our statute books for more than fifteen (15) years *before* San Roque filed its judicial claim.**

Failure to comply with the 120-day waiting period violates a mandatory provision of law. It violates the doctrine of exhaustion of administrative remedies and renders the petition premature and thus without a cause of action, with the effect that the CTA does not acquire jurisdiction over the taxpayer's petition. Philippine jurisprudence is replete with cases upholding and reiterating these doctrinal principles.

The charter of the CTA expressly provides that its jurisdiction is to review on appeal "**decisions** of the [CIR] in cases involving x x x refunds of internal revenue taxes." When a taxpayer prematurely files a judicial claim for tax refund or credit with the CTA without waiting for the decision of the Commissioner, there is no "decision" of the Commissioner to review and thus the CTA as a court of special jurisdiction has no jurisdiction over the appeal. The charter of the CTA also expressly provides that if the Commissioner fails to decide within "**a specific period**" required by law, such "**inaction shall be deemed a denial**" of the application for tax refund or credit. It is the Commissioner's decision, or inaction "deemed a denial," that the taxpayer can take to the CTA for review. Without a decision or an "inaction x x x deemed a denial" of the Commissioner, the CTA has no jurisdiction over a petition for review.[30] (Citations omitted, emphasis in the original and underscoring ours)

The Court explained further:

The old rule that the taxpayer may file the judicial claim, without waiting for the Commissioner's decision if the two-year prescriptive period is about to expire, cannot apply because that rule was adopted before the enactment of the 30-day period. **The 30-day period was adopted precisely to do away with the old rule, so that under the VAT System the taxpayer will always have 30 days to file the judicial claim even if the Commissioner acts only on the 120th day, or does not act at all during the 120-day period.** With the

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[30] *Id.* at 380-382.

30-day period always available to the taxpayer, the taxpayer can no longer file a judicial claim for refund or credit of input VAT without waiting for the Commissioner to decide until the expiration of the 120-day period.

To repeat, a claim for tax refund or credit, like a claim for tax exemption, is construed strictly against the taxpayer. One of the conditions for a judicial claim of refund or credit under the VAT System is compliance with the 120+30 day mandatory and jurisdictional periods. Thus, strict compliance with the 120+30 day periods is necessary for such a claim to prosper, whether before, during or after the effectivity of the *Atlas* doctrine, except for the period from the issuance of BIR Ruling No. DA-489-03 on 10 December 2003 to 6 October 2010 when the *Aichi* doctrine was adopted, which again reinstated the 120+30 day periods as mandatory and jurisdictional.[31] (Citations omitted and emphasis in the original)

The cited exception to the general rule, which came as a result of the issuance of BIR Ruling No. DA-489-03, does not apply to MPC's case as its administrative and judicial claims were both filed in March 2002.

The doctrine laid down in *San Roque* was reiterated in subsequent cases. In *CIR v. Aichi Forging Company of Asia, Inc.*,[32] the Court cited the general rule that parties must observe the mandatory 120-day waiting period to give the CIR an opportunity to act on administrative claims; otherwise, their judicial claims are prematurely filed.[33] In *Team Energy Corporation (formerly MPC) v. CIR*,[34] the Court again emphasized the rule stating that "the 120-day period is crucial in filing an appeal with the CTA."[35] "[T]he 120-day period is mandatory and jurisdictional, and that the CTA does not acquire

[31] *Id.* at 398-399.

[32] G.R. No. 183421, October 22, 2014.

[33] *Id.*

[34] G.R. No. 197760, January 13, 2014, 713 SCRA 142.

[35] *Id.* at 153-154, citing *CIR v. Aichi Forging Company of Asia, Inc., supra* note 27, at 732.

[36] *Supra* note 29, at 401.

jurisdiction over a judicial claim that is filed before the expiration of the 120-day period."[36]

Clearly, MPC's failure to observe the mandatory 120-day period under the law was fatal to its immediate filing of a judicial claim before the CTA. It rendered the filing of the CTA petition premature, and barred the tax court from acquiring jurisdiction over the same. Thus, the dismissal of the petition is in order. "[T]ax refunds or tax credits — just like tax exemptions — are strictly construed against taxpayers, the latter having the burden to prove strict compliance with the conditions for the grant of the tax refund or credit."[37]

With the CTA being barren of jurisdiction to entertain MPC's petition, the Court finds it unnecessary, even inappropriate, to still discuss the main issue of MPC's entitlement to the disputed tax refund. The petition filed by MPC with the CTA instead warrants a dismissal. It is settled that "a void judgment for want of jurisdiction is no judgment at all."[38]

WHEREFORE, the Decision dated September 11, 2007 and Resolution dated November 7, 2007 of the Court of Tax Appeals *en banc* in E.B. Case Nos. 216 and 225 are **SET ASIDE**, as the CTA Case No. 6417 was prematurely filed, and therefore, the CTA lacked jurisdiction to entertain Mirant Pagbilao Corporation's judicial claim.

SO ORDERED.

Velasco, Jr. (Chairperson), Peralta, Perez, and *Jardeleza, JJ.,* concur.

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[37] *Applied Food Ingredients Company, Inc. v. CIR*, G.R. No. 184266, November 11, 2013, 709 SCRA 164, 169.

[38] *Zacarias v. Anacay*, G.R. No. 202354, September 24, 2014, 736 SCRA 508, 522.

THIRD DIVISION

[G.R. No. 180559. January 20, 2016]

ANECITA GREGORIO, *petitioner, vs.* **MARIA CRISOLOGO VDA. DE CULIG, THRU HER ATTORNEY-IN-FACT ALFREDO CULIG, JR.,** *respondent.*

SYLLABUS

1. **POLITICAL LAW; PUBLIC LAND ACT; HOMESTEAD PATENT SALE; REPURCHASE OF PROPERTY; CONSIGNATION OF REDEMPTION PRICE IN COURT IS NOT ESSENTIAL AS THE FILING OF THE ACTION ITSELF IS EQUIVALENT TO A FORMAL OFFER TO REDEEM.—** Respondent Maria Crisologo Vda. De Culig (respondent) is the widow of Alfredo Culig, Sr. (Alfredo). During his lifetime, Alfredo was granted a homestead patent under the Public Land Act (C.A. 141). x x x [T]he property [was later sold] in favor of spouses Andres Seguritan and Anecita Gregorio (petitioner). x x x Thereafter, respondent filed a complaint demanding the repurchase of the property under the provisions of the Public Land Act. x x x [P]etitioner argues that consignment is necessary to validly exercise the right of redemption. The argument fails. In *Hulganza v. Court of Appeals,* we held that the *bona fide* tender of the redemption price or its equivalent — consignation of said price in court is not essential or necessary where the filing of the action itself is equivalent to a formal offer to redeem. x x x [Thus] it is immaterial that the repurchase price was not deposited with the Clerk of Court.

2. **ID.; ID.; ID.; ID.; ARTICLE 1616 OF THE CIVIL CODE WHICH REFERS ONLY TO THE AMOUNT TO BE TENDERED WHEN EXERCISING THE RIGHT TO REPURCHASE BUT DOES NOT STATE THE PROCEDURE TO BE FOLLOWED IN EXERCISING THE RIGHT, NOT APPLICABLE.—** Article 1616 of the Civil Code x x x speaks of the amount to be tendered when exercising the right to repurchase, but it does not state the procedure to be followed in exercising the right.

In fact, in *Peralta v. Alipio,* we rejected the argument that the provisions on conventional redemption apply as supplementary law to the Public Land Act, and clarified that: x x x. The Public Land Law does not fix the form and manner in which reconveyance may be enforced, nor prescribe the method and manner in which demand therefor should be made; any act which should amount to a demand for reconveyance should, therefore, be sufficient. x x x As ruled in *Hulganza*, the filing of the complaint is the formal offer to redeem recognized by law.

3. **ID.; ID., ID.; ID.; RIGHT TO REPURCHASE OF A PATENTEE SHOULD FAIL IF THE PURPOSE WAS ONLY SPECULATIVE AND FOR PROFIT.—** Indeed, the main purpose in the grant of a free patent or homestead is to preserve and keep in the family of the homesteader that portion of public land which the State has given to him so he may have a place to live with his family and become a happy citizen and a useful member of the society. We have ruled in several instances, that the right to repurchase of a patentee should fail if the purpose was only speculative and for profit, or "to dispose of it again for greater profit" or "to recover the land only to dispose of it again to amass a hefty profit to themselves." In all these instances, we found basis for ruling that there was intent to sell the property for a higher profit. We find no such purpose in this case.

4. **LEGAL ETHICS; CLIENT-COUNSEL RELATIONSHIP; CLIENT IS BOUND BY THE NEGLIGENCE OF HIS COUNSEL; EXCEPTIONS; GROSS NEGLIGENCE OF THE COUNSEL DEPRIVES THE CLIENT OF DUE PROCESS OF LAW UNLESS ACCOMPANIED BY CLIENT'S OWN NEGLIGENCE; CASE AT BAR.—** A client is bound by the negligence of his counsel. A counsel, once retained, holds the implied authority to do all acts necessary or, at least, incidental to the prosecution and management of the suit in behalf of his client, such that any act or omission by counsel within the scope of the authority is regarded, in the eyes of the law, as the act or omission of the client himself. A recognized exception to the rule is when the reckless or gross negligence of the counsel deprives the client of due process of law. For the exception to apply, however, the gross negligence should not be accompanied by the client's own negligence or malice, considering that the client has the duty to be vigilant

in respect of his interests by keeping himself up-to-date on the status of the case. Failing in this duty, the client should suffer whatever adverse judgment is rendered against him.

APPEARANCES OF COUNSEL

Ritzel C. Rabor-Polinar for petitioner.
Eugene S. Seron for respondent.

D E C I S I O N

JARDELEZA, *J.*:

The issues in this petition are neither novel nor complicated. Petitioner questions the ruling of the Court of Appeals that tender of payment is not a requisite for the valid exercise of redemption, and that the failure of counsel to file a motion for reconsideration does not amount to gross negligence.

Respondent Maria Crisologo Vda. de Culig (respondent) is the widow of Alfredo Culig, Sr. (Alfredo). During his lifetime, Alfredo was granted a homestead patent under the Public Land Act (C.A. 141) over a 54,730-square meter parcel of land (the property) in Nuangan, Kidapawan, North Cotabato.[1] Alfredo died sometime in 1971, and on October 9, 1974, his heirs, including respondent, executed an extra-judicial settlement of estate with simultaneous sale of the property in favor of spouses Andres Seguritan and Anecita Gregorio (petitioner). The property was sold for ₱25,000.00, and title to the property was issued in the name of the spouses.[2]

On September 26, 1979, respondent filed a complaint demanding the repurchase of the property under the provisions of the Public Land Act. She alleged that she first approached

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[1] Designated as Lot No. 5119 (Portion of Lot No. 24, Blk-25, Kidapawan, Pls-59) covered by Original Certificate of Title No. V-5628, RTC records, pp. 5-7.

[2] *Rollo*, pp. 6-7.

the spouses personally and offered to pay back the purchase price of ₱25,000.00 but the latter refused. Subsequently, respondent and her son, Alfredo Culig, Jr. (petitioner's attorney-in-fact) wrote letters reiterating their desire to repurchase the property but the spouses did not answer.[3]

For their part, the spouses Seguritan countered that the respondent had no right to repurchase the property since the latter only wanted to redeem the property to sell it for a greater profit.[4] Meanwhile, Andres Seguritan died on May 15, 1981, and was substituted by petitioner.[5]

Before trial could commence, the parties made the following stipulations:

1. That the property subject of the complaint was acquired as homestead during the existence of the marriage between plaintiff and her deceased husband, and, therefore, it is admittedly a conjugal property;
2. That the plaintiff and six of her eight children executed an extra-judicial settlement and simultaneous sale in favor of the defendants and title was transferred to them;
3. That the complaint was filed within the [reglementary] period of five (5) years;
4. That the amount of ₱25,000.00 was fully paid at the time of the extra-judicial settlement and sale;
5. That there was no consignment with the Court of the repurchase price of ₱25,000.00.[6]

On January 5, 1998, the Regional Trial Court (RTC), Branch 17, Kidapawan, North Cotabato (the trial court) rendered its decision dismissing the complaint.[7] The trial court, relying on the case of *Lee Chuy Realty Corporation v. Court of Appeals*[8]

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[3] Complaint, RTC records, pp. 1-4.

[4] Answer with Counterclaim, *id.* at 15-19.

[5] *Rollo*, p. 28.

[6] Order, RTC records, pp. 46-47.

[7] RTC Decision, *id.* at 398-411.

ruled that a formal offer alone, or the filing of a case alone, within the prescribed period of five (5) years is not sufficient to effect a valid offer to redeem — either must or should be coupled with consignation of the repurchase price if *bona fide* tender of payment has been refused.[9] The dispositive portion of the decision reads:

WHEREFORE, prescinding from all of the foregoing considerations, the Court finds and so holds that plaintiffs failed to validly exercise their right of legal redemption or repurchase within the reglementary period of five (5) years from the execution of their sale and consequently DISMISSES this case, with costs of suit against plaintiffs. In the absence of any evidence, the court likewise dismiss defendants' counterclaim.

SO ORDERED.[10] (Emphasis in the original.)

Aggrieved, respondent appealed to the Court of Appeals (CA).

In its decision[11] dated July 11, 2006, the CA granted the appeal. It ruled that the *Lee Chuy* case is not applicable because: 1.) it does not involve the exercise of the right of redemption of homestead or free patent lots, but instead the right of legal pre-emption or redemption in relation to the rights of co-owners under the Civil Code;[12] 2.) the Civil Code provisions on conventional and legal redemption do not apply, even suppletorily, to the legal redemption of homestead or free patent lands under the Public Land Act;[13] and 3.) the conclusions of the trial court is contrary to the doctrine in *Hulganza v. Court of Appeals*,[14] which is the case cited in *Lee Chuy*.[15]

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[8] G.R. No. 104114, December 4, 1995, 250 SCRA 596.

[9] RTC records, p. 409.

[10] *Id.* at 411.

[11] Penned by Associate Justice Romulo V. Borja, with Associate Justices Ramon R. Garcia and Antonio L. Villamor, concurring, *rollo*, pp. 25-39.

[12] *Rollo*, p. 31.

[13] *Id.*

[14] G.R. No. 56196, January 7, 1986, 147 SCRA 77.

[15] *Rollo*, p. 32.

According to the CA, consignation should not be considered a requisite element for the repurchase of homestead or free patent lots, citing *Adelfa Properties, Inc. v. Court of Appeals*,[16] wherein this Court held that consignation is not necessary in a sale with right of repurchase because it involves "an exercise of a right or privilege . . . rather than the discharge of an obligation, hence tender of payment would be sufficient to preserve [a] right or [a] privilege."[17]

The CA thus held:

IN FINE, We hold that appellants have validly exercised the right of redemption. The decision of the trial [court] will be reversed. Upon returning the purchase price of ₱25,000.00 and, in addition, the expenses enumerated under Article 1616 of the Civil Code, the appellant may avail of the right of repurchase.

ACCORDINGLY, the assailed decision is hereby REVERSED. Appellants are hereby declared to have exercised their right to repurchase the subject property within the period established by law for them to do so. The case is hereby REMANDED to the court of origin for further proceedings to determine the amounts appellant is to return to appellees, namely, the price appellees paid for the property and, in addition, the expenses of the contract and any other legitimate payments made by reason of the sale, and the necessary and useful expenses made on the property. Upon the return of the said amount, appellees are hereby ORDERED to reconvey the property to appellant.[18]

Petitioner[19] filed her motion for reconsideration[20] on March 19, 2007, way beyond the fifteen (15) day reglementary period. She alleged that she and the other heirs learned of the July 11, 2006 decision only on March 5, 2007 when they personally

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[16] G.R. No. 111238, January 25, 1995, 240 SCRA 565.

[17] *Rollo*, p. 35.

[18] *Id.* at 38.

[19] Although the pleadings state "petitioners," only Aniceta survived as petitioner, Andres having died in 1981, *rollo*, pp. 7-8.

[20] *Rollo*, pp. 45-49.

verified with the records of the CA.[21] She also assailed the decision of the CA for being contrary to law, jurisprudence and facts of the case.[22]

On September 27, 2007, the CA denied the motion, holding that "notice to counsel is notice to client." The CA noted that then counsel of record of the petitioner received the decision on July 31, 2006, thus the 15-day period for filing a motion for reconsideration should be reckoned from this date. Her counsel allowed the period to lapse and the motion for reconsideration filed by petitioner's new counsel is seven months late.[23]

Before us, petitioner submits that the CA resolved the case in a manner contrary to law and settled rulings of this court, particularly: a.) its decision holding that respondent validly exercised the right of redemption; b.) its act of remanding the case to the court of origin for further proceedings and subsequent reconveyance of the property to the respondent; and c.) its outright dismissal of the motion for reconsideration for being filed out of time.[24]

Petitioner insists that there was no valid redemption since there was no valid tender of payment nor consignation of the amount of repurchase made by the respondent.[25] Citing *Lee v. Court of Appeals*,[26] which in turn cites Article 1616 of the Civil Code,[27] petitioner maintains that tender of payment of the repurchase price is necessary to exercise the right of redemption. Thus, when respondent filed to tender payment of the repurchase price, and admitted her failure to consign the amount in court,

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[21] Petition for Review on *Certiorari*, *id.* at 17.

[22] *Id.* at 42.

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

[24] *Id.* at 8-9.

[25] *Id.* at 12.

[26] G.R. No. L-28126, November 28, 1975, 68 SCRA 196.

[27] Art. 1616. The vendor cannot avail himself of the right to repurchase without returning to the vendee the price of the sale, x x x; *rollo*, p. 12.

she lost her right to repurchase the property.[28] Petitioner also states that respondent is not entitled to the right of repurchase because the latter's aim in redeeming the land is purely for speculation and profit.[29] She points out that respondent and her siblings are professionals and most are living in Canada, and cannot possibly comply with the express provision of the law that the land must be cultivated personally by the holder of the homestead.[30]

Section 119 of the Public Land Act provides:

> Sec. 119. Every conveyance of land acquired under the free patent or homestead provisions, when proper, shall be subject to repurchase by the applicant, his widow, or legal heirs, within a period of five years from the date of the conveyance.

It is undisputed, in fact, the parties already stipulated, that the complaint for repurchase was filed within the reglementary period of five years. The parties also agreed that there was no consignment of the repurchase price.[31] However, petitioner argues that consignment is necessary to validly exercise the right of redemption.

The argument fails.

In *Hulganza v. Court of Appeals*,[32] we held that the *bona fide* tender of the redemption price or its equivalent — consignation of said price in court is not essential or necessary where the filing of the action itself is equivalent to a formal offer to redeem.[33] As explained in the said case,

> "The formal offer to redeem, accompanied by a *bona fide* tender of the redemption price, within the period of redemption prescribed

[28] *Rollo*, p. 12.

[29] *Id.* at 16.

[30] *Id.*

[31] RTC records, pp. 46-47.

[32] G.R. No. 56196, January 7, 1986, 147 SCRA 77.

[33] *Id.* at 81.

by law, is only essential to preserve the right of redemption for future enforcement beyond such period of redemption and within the period prescribed for the action by the statute of limitations. Where, as in the instant case, the right to redeem is exercised thru the filing of judicial action within the period of redemption prescribed by the law, the formal offer to redeem, accompanied by a *bona fide* tender of the redemption price, might be proper, but is not essential. The filing of the action itself, within the period of redemption, is equivalent to a formal offer to redeem. x x x"[34]

The case of *Vda. de Panaligan v. Court of Appeals*[35] further clarified that tender of payment of the repurchase price is not among the requisites, and thus unnecessary for redemption under the Public Land Act. Citing *Philippine National Bank v. De los Reyes*,[36] we ruled that it is not even necessary for the preservation of the right of redemption to make an offer to redeem or tender of payment of purchase price within five years. The filing of an action to redeem within that period is equivalent to a formal offer to redeem, and that there is even no need for consignation of the redemption price.[37] Thus, even in the case before us, it is immaterial that the repurchase price was not deposited with the Clerk of Court.

We also do not agree with petitioner's insistence that Article 1616 of the Civil Code applies in this case. As found by the CA, the provision only speaks of the amount to be tendered when exercising the right to repurchase, but it does not state the procedure to be followed in exercising the right. In fact, in *Peralta v. Alipio*,[38] we rejected the argument that the provisions on conventional redemption apply as supplementary law to the Public Land Act, and clarified that:

x x x. The Public Land Law does not fix the form and manner in which reconveyance may be enforced, nor prescribe the method and

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[34] *Id.*, citations omitted.

[35] G.R. No. 112611, July 31, 1996, 260 SCRA 127.

[36] G.R. Nos. L-46898-99, November 28, 1989, 179 SCRA 619.

[37] *Supra* note 35 at 132.

[38] G.R. No. L-8273, 97 Phil. 719 (1955).

manner in which demand therefor should be made; any act which should amount to a demand for reconveyance should, therefore, be sufficient.[39] (Underscoring supplied.)

In *Lee v. Court of Appeals*,[40] the case cited by petitioner, we held that the mere sending of letters expressing the desire to repurchase is not sufficient to exercise the right of redemption. In the said case, the original owners of a homestead lot sought to compel the buyers to resell the property to them by writing demand letters within the five-year period. The latter refused, but the former filed a case for redemption after the lapse of the five-year period. We ruled that the letters did not preserve the former owners' right to redeem. The case finds no application in this case because while respondent also sent letters to the petitioner, she also filed a complaint for repurchase within the five-year period. As ruled in *Hulganza*, the filing of the complaint is the formal offer to redeem recognized by law.

Petitioner claims that even if the redemption is timely made, respondent is not entitled to the right of repurchase because respondent intends to resell the property again for profit, and that her "aim in redeeming the land is purely for speculation and profit." To support her claim, petitioner states that respondent and her heirs are professionals and her siblings are residing in Canada.

Indeed, the main purpose in the grant of a free patent or homestead is to preserve and keep in the family of the homesteader that portion of public land which the State has given to him so he may have a place to live with his family and become a happy citizen and a useful member of the society.[41] We have ruled in several instances, that the right to repurchase of a patentee should fail if the purpose was only speculative

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[39] *Id.* at 723.

[40] *Supra* note 26.

[41] *Metropolitan Bank and Trust Company v. Viray*, G.R. No. 162218, February 25, 2010, 613 SCRA 581, 590.

[42] *Vargas v. Court of Appeals*, G.R. No. L-35666, June 29, 1979, 91 SCRA 195, 200 citing *Simeon v. Peña*, G.R. No. L-29049, December 29, 1970, 36 SCRA 610, 618.

and for profit,[42] or "to dispose of it again for greater profit"[43] or "to recover the land only to dispose of it again to amass a hefty profit to themselves."[44] In all these instances, we found basis for ruling that there was intent to sell the property for a higher profit. We find no such purpose in this case.

The lower courts did not make any definitive finding that the intent to repurchase was for profit. In its decision, the RTC merely glossed over the issue of intent, anchoring its dismissal on the respondent's failure to consign the purchase price. Even the CA observed that the RTC found that the claim of speculative repurchase is insufficient to warrant the denial of the redemption, as the latter's denial of the redemption was based on the lack of a formal offer of redemption and consignation.[45]

The burden of proof of such speculative intent is on the petitioner. Petitioner's bare allegations as to respondent's "manifestation of the affluence,"[46] "bulging coffers,"[47] their being "professionals"[48] and "most of them are residing in Canada"[49] are not enough to show that petitioner intended to resell the property for profit.

We also do not find merit in petitioner's claim that the CA should not have dismissed her motion for reconsideration.

Petitioner claims that her previous counsel failed to file the motion for reconsideration due to gross neglect of duties. Her counsel, Atty. Jeorge D. Zerrudo did not inform her of the appeal filed by the respondent and the subsequent proceedings which

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[43] *Santana v. Mariñas*, G.R. No. L-35537, December 27, 1979, 94 SCRA 853, 962.

[44] *Heirs of Venancio Bajenting v. Bañez*, G.R. No. 166190, September 20, 2006, 502 SCRA 531, 553.

[45] *Rollo*, p. 38.

[46] *Id.* at 13.

[47] *Id.*

[48] *Rollo*, p. 16.

[49] *Id.*

took place after the RTC decision issued in 1998, all the while thinking that the RTC decision became final and binding. In 2007, she was informed by Atty. Zerrudo that they have lost the case and should just enter into a compromise with the respondent, as "nothing can be done."[50] It was only upon personal verification with the CA that petitioner learned of the CA decision against her. Thus, petitioner maintains that she should not be made responsible for the gross negligence of her counsel.

While Atty. Zerrudo's failure to file a motion for reconsideration may be considered as negligence, we see no reason to modify the CA's resolution. Petitioner is still bound by her counsel's acts.

A client is bound by the negligence of his counsel. A counsel, once retained, holds the implied authority to do all acts necessary or, at least, incidental to the prosecution and management of the suit in behalf of his client, such that any act or omission by counsel within the scope of the authority is regarded, in the eyes of the law, as the act or omission of the client himself. A recognized exception to the rule is when the reckless or gross negligence of the counsel deprives the client of due process of law. For the exception to apply, however, the gross negligence should not be accompanied by the client's own negligence or malice, considering that the client has the duty to be vigilant in respect of his interests by keeping himself up-to-date on the status of the case. Failing in this duty, the client should suffer whatever adverse judgment is rendered against him.[51]

In *Pasiona, Jr. v. Court of Appeals*,[52] we declared that the failure to file a motion for reconsideration is only simple negligence, since it did not necessarily deny due process to his client party who had the opportunity to be heard at some point of the proceedings. In *Victory Liner, Inc. v. Gammad*,[53] we held

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[50] *Rollo*, pp. 17-18.

[51] *Bejarasco, Jr. v. People*, G.R. No. 159781, February 2, 2011, 641 SCRA 328, 331.

[52] G.R. No. 165471, July 21, 2008, 559 SCRA 137, 149.

[53] G.R. No. 159636, November 25, 2004, 444 SCRA 355, 363.

that the question is not whether petitioner succeeded in defending its rights and interests, but simply, whether it had the opportunity to present its side of the controversy. Verily, as petitioner retained the services of counsel of its choice, it should, as far as this suit is concerned, bear the consequences of its choice of a faulty option.[54]

Moreover, petitioner is also guilty of negligence. By her own admission, she had no knowledge about the subsequent proceedings after the trial court rendered its decision in 1998, and she just assumed that the decision was final and binding. A litigant bears the responsibility to monitor the status of his case, for no prudent party leaves the fate of his case entirely in the hands of his lawyer.[55] Petitioner should have maintained contact with her counsel from time to time, and informed herself of the progress of their case, thereby exercising that standard of care "which an ordinarily prudent man bestows upon his business."[56] It took nine years before petitioner showed interest in her own case. Had she vigilantly monitored the case, she would have sooner discovered the adverse decision and avoided her plight.[57]

WHEREFORE, the petition is **DENIED**. The Decision and Resolution of the Court of Appeals in CA-G.R. CV No. 62401 dated July 11, 2006 and September 27, 2007, respectively are **AFFIRMED**.

SO ORDERED.

Velasco, Jr. (Chairperson), Peralta, Perez,[*] and *Reyes, JJ.,* concur.

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[54] *Id.*

[55] *Delos Santos v. Elizalde*, G.R. Nos. 141810 & 141812, February 2, 2007, 514 SCRA 14, 31.

[56] *Tan v. Court of Appeals*, G.R. No. 157194, June 20, 2006, 491 SCRA 452, 461.

[57] *Sofio v. Valenzuela*, G.R. No. 157810, February 15, 2012, 666 SCRA 55, 70.

[*] Designated as Regular Member of the Third Division per Special Order No. 2311 dated January 14, 2016.

THIRD DIVISION

[G.R. No. 185746. January 20, 2016]

LUCITA TIOROSIO-ESPINOSA, *petitioner, vs.* **HONORABLE PRESIDING JUDGE VIRGINIA HOFILEÑA-EUROPA, in her capacity as Presiding Judge of the Regional Trial Court of Davao City, Branch 11, 11th Judicial Region, Davao City, NICOLAS L. SUMAPIG, in his capacity as Sheriff IV of the Office of the Provincial Sheriff, Office of the Clerk of Court, 11th Judicial Region, Davao City and NECEFERO JOVERO,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; ORIGINAL CASES FILED IN THE COURT OF APPEALS (CA);CONTENTS AND FILING OF PETITION; EXACT DATE OF RECEIPT OF THE ASSAILED RTC ORDER ON AN ACTION FILED UNDER RULE 65; VALID EXPLANATION FOR FAILURE TO INDICATE THE SAME SHOULD BE CONSIDERED.—** Under Section 3 of Rule 46 of the Rules of Court, the CA has the prerogative to dismiss the case outright for failure to comply with the formal requirements of an action filed under Rule 65. The formal requirements include, among others, a statement by the petitioner indicating the material dates when the order or resolution subject of the petition was received. The CA identified Spouses Espinosa's failure to [indicate the exact date of receipt of the assailed RTC order] as the primary ground for dismissing the petition outright. x x x However, the CA should have considered Spouses Espinosa's explanation regarding this omission, which was apparent on the face of the petition.
2. **ID.; SPECIAL CIVIL ACTIONS; *CERTIORARI*; REQUIRES PRIOR FILING OF MOTION FOR RECONSIDERATION; COMPLIED WITH WHEN MOTION TO STAY EXECUTION WAS FILED IN CASE AT BAR.—** A petition for *certiorari* before a higher court will generally not prosper unless the inferior court has been given, through a motion for reconsideration, a chance to correct the errors imputed to it.

This is because a motion for reconsideration is the plain, speedy, and adequate remedy in the ordinary course of law alluded to in Section 1, Rule 65 of the 1997 Rules of Civil Procedure. A motion for reconsideration is required in order to grant the lower court an opportunity to correct any actual or perceived error attributed to it by the re-examination of the legal and factual circumstances of the case. Contrary to the CA's findings, however, Spouses Espinosa already complied with this requirement. Their motion to stay execution is, in fact, a motion for reconsideration of the RTC order dated April 12, 2007 which granted Jovero's motion for execution pending appeal. Although not captioned as a "motion for reconsideration," Spouses Espinosa's motion to stay execution directly challenged the RTC's order of execution pending appeal insofar as it allowed the inclusion of the awards for moral and exemplary damages.

3. **ID.; EXECUTION OF JUDGMENTS; EXECUTION PENDING APPEAL OF AWARDS OF MORAL AND EXEMPLARY DAMAGES AND ATTORNEY'S FEES IS NOT ALLOWED.—** Jurisprudence is replete with pronouncements that execution pending appeal of awards of moral and exemplary damages, and attorney's fees is not allowed. In *Radio Communications of the Philippines, Inc. (RCPI) v. Lantin*, we explained [that the] execution of any award for moral and exemplary damages is dependent on the outcome of the main case. x x x [**L**]**iabilities with respect to moral and exemplary damages as well as the exact amounts remain uncertain and indefinite pending resolution by the Intermediate Appellate Court and eventually the Supreme Court.**

4. **ID.; SPECIAL CIVIL ACTIONS; PROHIBITION; APPROPRIATE REMEDY FOR THE CORRECTION OF ACTS PERFORMED BY A SHERIFF DURING THE EXECUTION PROCESS.—** [*Certiorari*] is not available as a remedy for the correction of acts performed by a sheriff during the execution process, which acts are neither judicial nor quasi-judicial but are purely ministerial functions. The more appropriate remedy would have been a petition for prohibition filed under Section 2 of Rule 65. Moreover, the matters being raised by the petitioner are factual in nature and, hence, not proper for this Court to resolve at the first instance.

APPEARANCES OF COUNSEL

Into Pantojan Feliciano-Braceros & Pantojan Law Offices for petitioner.

Office of the Solicitor General for public respondents.

Amado L. Cantos for private respondent.

D E C I S I O N

JARDELEZA, *J.*:

We consider the propriety of the Court of Appeals' outright dismissal of a petition for *certiorari* on procedural grounds and whether the awards of moral damages, exemplary damages, and attorney's fees may be included in an execution pending appeal.

I

Private respondent Necefero Jovero (Jovero) filed an action for damages against spouses Pompiniano Espinosa[1] and petitioner Lucita Tiorosio-Espinosa[2] (Spouses Espinosa) before the Regional Trial Court of Davao City (RTC). In the complaint, Jovero alleged that Spouses Espinosa maliciously filed several cases for theft, *estafa* and perjury against him for the sole purpose of vexing, harassing, and humiliating him. Accordingly, Jovero prayed that Spouses Espinosa be ordered to pay compensatory damages, moral damages, exemplary damages, attorney's fees, and costs of suit.[3]

After trial, the RTC rendered a decision[4] dated November 21, 2005 in favor of Jovero. The dispositive portion reads:

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[1] Pompiniano Espinosa, also referred to as Pompeniano Espinosa in his Death Certificate, was the husband of the petitioner. He died while the case was pending in the Court of Appeals, *rollo*, p. 71.

[2] Petitioner Lucita Tiorosio-Espinosa died during the pendency of the case before this Court and was substituted by her children, namely: Pompeniano Tiorosio Espinosa, Jr., Erlinda Tiorosio Espinosa, Elsa Tiorosio Espinosa, Elbert Toralba Espinosa, Edwin Tiorosio Espinosa, and Elizabeth Tiorosio Espinosa, *id.* at 408.

[3] *Id.* at 146-157.

[4] *Id.* at 103-107.

WHEREFORE, in view of all the foregoing, judgment is hereby rendered in favor of the plaintiff Necefero Jovero, ordering defendants to pay Jovero:

1. The sum of One Hundred Thousand Pesos (₱100,000.00) as compensatory damages;
2. The sum of Five Hundred Thousand Pesos (₱500,000.00) as moral damages;
3. The sum of One Hundred Thousand Pesos (₱100,000.00) as exemplary damages;
4. The sum of One Hundred Thousand Pesos (₱100,000.00) for and as attorney's fees; and
5. The costs of suit.

SO ORDERED.[5]

Consequently, Jovero moved for execution pending appeal, citing his advanced age and failing health.[6] Meanwhile, Spouses Espinosa moved for reconsideration of the RTC decision.[7] On April 12, 2007, the RTC granted Jovero's motion for execution pending appeal and denied Spouses Espinosa's motion for reconsideration.[8] The RTC subsequently issued a writ of execution pending appeal on April 19, 2007 which covered the entire amount stated in the decision.[9]

Aggrieved by the denial of their motion for reconsideration, Spouses Espinosa filed their notice of appeal of the main RTC decision.[10]

They also filed a separate motion to stay execution pending appeal and to approve/fix the *supersedeas* bond. They contended that execution pending appeal involving awards of moral and exemplary damages is improper because it is contrary to the

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

[6] *Id.* at 124-128.

[7] *Id.* at 108-117.

[8] *Id.* at 97-99.

[9] *Id.* at 225.

[10] *Id.* at 139.

decisions of the Supreme Court.[11] The RTC denied the motion to stay execution pending appeal in an order dated September 14, 2007.[12]

On November 19, 2007,[13] Spouses Espinosa filed a petition for *certiorari* with the Court of Appeals (CA) assailing the September 14, 2007 order.[14] In a resolution dated December 14, 2007, the CA dismissed outright the petition for *certiorari* for failure to state the date when the assailed order was received.[15] Spouses Espinosa filed their motion for reconsideration alleging that their previous counsel received the assailed order on October 4, 2007, attaching as proof a certified photocopy of postal registry return card.[16] Thus, they filed the petition for *certiorari* on time. They explained that the return card was not yet available with the RTC at the time they filed the petition for *certiorari*, and that they disclosed this fact to the CA in the petition with an undertaking to submit it as soon as it was available. On November 18, 2008, however, the CA denied the motion for reconsideration. This time, it cited Spouses Espinosa's failure to file a motion for reconsideration of the RTC's September 14, 2007 order to sustain its earlier dismissal of the petition for *certiorari*.[17]

Lucita Tiorosio-Espinosa (Lucita) filed this petition for review on *certiorari* under Rule 45 to appeal the CA's dismissal of the case.[18] She argues that the motion to stay execution was in fact a motion for reconsideration of the RTC's grant of Jovero's motion for execution pending appeal. She also reiterates that the petition for *certiorari* with the CA was timely filed, and that the reason for the omission of the date of receipt of the

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[11] *Id.* at 140-142.

[12] *Id.* at 100-101.

[13] *Id.* at 25.

[14] *Id.* at 74-96.

[15] *Id.* at 63A-63B.

[16] *Id.* at 267-268, 274.

[17] *Id.* at 66-69.

[18] See footnote 1; *rollo*, pp. 20-45.

assailed RTC order in the petition was the unavailability of the registry return card at that time. On the substantive aspect, Lucita asserts that the RTC acted with grave abuse of discretion when it ordered the execution pending appeal of the awards of moral and exemplary damages. Lucita also questions the sheriff's issuance of the notice of public sale because the properties to be levied were excessive, and were part of the pool of properties that included their family home.[19] She likewise prayed for the issuance of a temporary restraining order, which we granted on February 9, 2009.[20] At the time she posted the surety bond, Lucita concurrently filed an amended petition[21] for the purpose of converting the petition for review to a petition for *certiorari* and impleading thereto as public respondents the presiding RTC judge and sheriff.[22] We admitted the amended petition on April 20, 2009.[23]

In his comment, Jovero claims that the issues raised by Lucita are not germane to the CA resolutions subject of the present petition. He posits that the issues being raised in the petition for review properly pertain to the alleged errors of the RTC, not the CA. In any case, Jovero maintains that the RTC correctly granted the motion for execution pending appeal because of his advanced age and frail health.[24]

II

The CA erred in dismissing outright the petition for *certiorari* on tenuous procedural grounds.

A

Under Section 3 of Rule 46[25] of the Rules of Court, the CA has the prerogative to dismiss the case outright for failure to

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[19] *Rollo*, pp. 31-42.

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

[21] *Id.* at 297-324.

[22] *Id.* at 289-291.

[23] *Id.* at 326-327.

[24] *Id.* at 379-394.

[25] Rule 46, Section 3. *Contents and filing of petition; effect of non-*

comply with the formal requirements of an action filed under Rule 65. The formal requirements include, among others, a statement by the petitioner indicating the material dates when the order or resolution subject of the petition was received. The CA identified Spouses Espinosa's failure to comply with this requirement as the primary ground for dismissing the petition outright.

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compliance with requirements. — The petition shall contain the full names and actual addresses of all the petitioners and respondents, a concise statement of the matters involved, the factual background of the case, and the grounds relied upon for the relief prayed for.

In actions filed under Rule 65, the petition shall further indicate the material dates showing when notice of the judgment or final order or resolution subject thereof was received, when a motion for new trial or reconsideration, if any, was filed and when notice of the denial thereof was received.

It shall be filed in seven (7) clearly legible copies together with proof of service thereof on the respondent with the original copy intended for the court indicated as such by the petitioner, and shall be accompanied by a clearly legible duplicate original or certified true copy of the judgment, order, resolution, or ruling subject thereof, such material portions of the record as are referred to therein, and other documents relevant or pertinent thereto. The certification shall be accomplished by the proper clerk of court or by his duly authorized representative, or by the proper officer of the court, tribunal, agency or office involved or by his duly authorized representative. The other requisite number of copies of the petition shall be accompanied by clearly legible plain copies of all documents attached to the Original.

The petitioner shall also submit together with the petition a sworn certification that he has not theretofore commenced any other action involving the same issues in the Supreme Court, the Court of Appeals or different divisions thereof, or any other tribunal or agency; if there is such other action or proceeding, he must state the status of the same; and if he should thereafter learn that a similar action or proceeding has been filed or is pending before the Supreme Court, the Court of Appeals, or different divisions thereof, or any other tribunal or agency, he undertakes to promptly inform the aforesaid courts and other tribunal or agency thereof within five (5) days therefrom.

The petitioner shall pay the corresponding docket and other lawful fees to the clerk of court and deposit the amount of ₱500.00 for costs at the time of the filing of the petition.

The failure of the petitioner to comply any of the requirements shall be sufficient ground for the dismissal of the petition.

An examination of the petition for *certiorari* filed with the CA shows that the CA is technically correct with respect to its finding that Spouses Espinosa failed to indicate the exact date of receipt of the assailed RTC order. However, the CA should have considered Spouses Espinosa's explanation regarding this omission, which was apparent on the face of the petition. In paragraph 8(g), Spouses Espinosa stated:

> On 18 September 2007, the Regional Trial Court, Branch 11, Davao City, has released for mailing to petitioners' former counsel, Atty. Eufracio Dayaday, the Order dated 14 September 2007, denying their "Motion to Stay Execution Pending Appeal and to Approve/Fix Supersedeas Bond". . . The records surrendered by Atty. Eufracio Dayaday to petitioners after he withdrew his appearance as counsel for the latter does not bear the Order dated 14 September 2007. Upon verification made by petitioners, the records of the said case with the Regional Trial Court, Branch 11, Davao City, do not have the Postal Registry Return Card for the mailing of the Order dated 14 September 2007. Nevertheless, petitioners herein undertake to submit a certified photocopy of the postal registry return card, as soon as the same be made available in the records of the case.[26]

Spouses Espinosa likewise executed a "Joint-Affidavit of Material Dates,"[27] which was attached to the petition for *certiorari* filed with the CA, attesting to the fact that the September 14, 2007 order was not among the documents turned over to them by their former counsel, and that the registry return card had not been returned to the RTC.[28]

It is therefore apparent that Spouses Espinosa attempted to comply with the material date requirement. Unfortunately, they themselves could not ascertain when the subject order was received by their former counsel and thereby make an accurate statement as to such fact. Moreover, the best evidence to prove receipt of the RTC order, *i.e.*, the registry return card, was not yet available when they elevated the case to the CA. But, as a

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[26] *Rollo*, p. 78.

[27] *Id.* at 144-145.

[28] *Id.* at 144.

sign of good faith, Spouses Espinosa undertook to submit the return card as soon as it was available — which they subsequently did on January 30, 2008.[29] Given the foregoing circumstances, it may be deduced that the basic reason why no precise date of receipt was given by Spouses Espinosa is because they did not want to misrepresent the date in their petition. In fine, we find Spouses Espinosa's failure to indicate the date of receipt excusable; the CA's outright dismissal of their petition is not commensurate with the degree of their non-compliance with the prescribed procedure. In any case, the return card showed that the order was received on October 4, 2007, which means that when Spouses Espinosa filed the petition for *certiorari* on November 19, 2007, they did so well within the sixty (60) day reglementary period.

Although it is true that procedural rules should be treated with utmost respect and due regard, since they are designed to facilitate the adjudication of cases to remedy the worsening problem of delay in the resolution of rival claims and in the administration of justice, this is not an inflexible tenet. After all, rules of procedure are mere tools designed to facilitate the attainment of justice. Their strict and rigid application especially on technical matters, which tends to frustrate rather than promote substantial justice, must be avoided.[30]

B

In denying Spouses Espinosa's motion for reconsideration of the dismissal of their petition for *certiorari*, the CA held that their failure to first file a motion for reconsideration of the RTC order, which denied their motion to stay execution, was fatal to their petition. While the CA's legal proposition is correct, the rule was misapplied in the present case.

A petition for *certiorari* before a higher court will generally not prosper unless the inferior court has been given, through

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[29] *Id.* at 302, see footnote 16.

[30] *Samala v. Court of Appeals*, G.R. No. 128628, August 23, 2001, 363 SCRA 535, 541.

a motion for reconsideration, a chance to correct the errors imputed to it. This is because a motion for reconsideration is the plain, speedy, and adequate remedy in the ordinary course of law alluded to in Section 1, Rule 65 of the 1997 Rules of Civil Procedure.[31] A motion for reconsideration is required in order to grant the lower court an opportunity to correct any actual or perceived error attributed to it by the re-examination of the legal and factual circumstances of the case.[32] Contrary to the CA's findings, however, Spouses Espinosa already complied with this requirement. Their motion to stay execution is, in fact, a motion for reconsideration of the RTC order dated April 12, 2007 which granted Jovero's motion for execution pending appeal.

Although not captioned as a "motion for reconsideration," Spouses Espinosa's motion to stay execution directly challenged the RTC's order of execution pending appeal insofar as it allowed the inclusion of the awards for moral and exemplary damages.[33] Thus, when the RTC denied Spouses Espinosa's motion to stay execution on September 14, 2007, it was already the second time the trial court had passed upon the issue of execution pending appeal. Both the April 12, 2007 and September 14, 2007 orders dealt with the same issue, *i.e.*, the propriety of execution pending appeal. In the first instance, the RTC allowed the execution pending appeal; in the latter, it denied Spouses Espinosa's motion to stay execution and, thus, sustained its earlier ruling. On both occasions, the parties had been accorded ample opportunity to squarely argue their positions and the RTC more than enough opportunity to study the matter and to deliberate upon the issues raised by the parties. Under these circumstances, the filing of a motion for reconsideration of the order denying the stay of

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[31] *Madarang v. Morales*, G.R. No. 199283, June 9, 2014, 725 SCRA 480, 495-496.

[32] *Id.* at 496.

[33] *Rollo*, p. 141.

[34] See *JP Latex Technology, Inc. v. Ballons Granger Balloons, Inc.*, G.R. No. 177121, March 16, 2009, 581 SCRA 553, 561.

execution pending appeal by Spouses Espinosa could not be considered a plain and adequate remedy but a mere superfluity.[34]

III

Having disposed of the procedural issues, we now proceed to the main substantive issue of whether the awards of moral and exemplary damages, as well as attorney's fees, may be the subject of execution pending appeal.[35]

The resolution of this issue is straightforward. Jurisprudence is replete with pronouncements that execution pending appeal of awards of moral and exemplary damages, and attorney's fees is not allowed. In *Radio Communications of the Philippines, Inc. (RCPI) v. Lantin*,[36] we explained why these cannot be the subject of execution pending appeal:

> . . . The execution of any award for moral and exemplary damages is dependent on the outcome of the main case. **Unlike actual damages for which the petitioners may clearly be held liable if they breach a specific contract and the amounts of which are fixed and certain, liabilities with respect to moral and exemplary damages as well as the exact amounts remain uncertain and indefinite pending resolution by the Intermediate Appellate Court and eventually the Supreme Court. The existence of the factual bases of these types of damages and their causal relation to the petitioners' act will have to be determined in the light of the assignments of errors on appeal.** It is possible that the petitioners, after all, while liable for actual damages may not be liable for moral and exemplary damages. Or as in some cases elevated to the

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[35] RULES OF COURT, Rule 39, Sec. 2 (a). *Execution of a judgment or final order pending appeal.* — On motion of the prevailing party with notice to the adverse party filed in the trial court while it has jurisdiction over the case and is in possession of either the original record or the record on appeal, as the case may be, at the time of the filing of such motion, said court may, in its discretion, order execution of a judgment or final order even before the expiration of the period to appeal.

After the trial court has lost jurisdiction, the motion for execution pending appeal may be filed in the appellate court.

Discretionary execution may only issue upon good reasons to be stated in a special order after due hearing.

[36] G.R. Nos. 59311 & 59320, January 31, 1985, 134 SCRA 395.

[37] *Id.* at 400-401.

Supreme Court, the awards may be reduced.[37] (Emphasis supplied.)

In *Engineering Construction, Inc. v. National Power Corporation,*[38] we expanded the *RCPI* doctrine to likewise exclude consequential damages and attorney's fees from execution pending appeal.[39] The doctrine has since been reiterated in *Heirs of Santiago C. Divinagracia v. Ruiz*,[40] *International School, Inc. (Manila) v. Court of Appeals*,[41] *Echauz v. Court of Appeals*,[42] and *Valencia v. Court of Appeals*.[43] Clearly, the RTC committed legal error when it ordered the premature execution of the awards of moral damages, exemplary damages, and attorney's fees. Nonetheless, we recognize that the RTC had the power to order the execution pending appeal of actual or compensatory damages in accordance with the cited authorities.

IV

The rest of petitioner's arguments are devoted to assailing the sheriff's levy of her properties. However, a petition for *certiorari* is not the proper remedy to question the sheriff's actions. The special civil action of *certiorari* is directed only against a tribunal, board or officer exercising judicial or quasi-judicial functions.[44] It is not available as a remedy for the correction of acts performed by a sheriff during the execution process, which acts are neither judicial nor quasi-judicial but are purely ministerial functions.[45] The more appropriate remedy would have been a petition for prohibition filed under Section 2 of Rule 65. Moreover, the matters being raised by the petitioner are factual in nature and, hence, not proper for this Court to resolve at the first instance.

[38] G.R. Nos. L-34589 & L-34656, June 29, 1988, 163 SCRA 9.

[39] *Id.* at 15-17.

[40] G.R. No. 172508, January 12, 2011, 639 SCRA 361.

[41] G.R. No. 131109, June 29, 1999, 309 SCRA 474.

[42] G.R. No. 79516, July 18, 1991, 199 SCRA 381.

[43] G.R. No. 89431, April 25, 1990, 184 SCRA 561.

[44] RULES OF COURT, Rule 65, Sec. 1.

[45] *PAMANA, Inc. v. Court of Appeals*, G.R. No. 133033, June 15, 2005, 460 SCRA 133, 141.

WHEREFORE, the petition is **PARTIALLY GRANTED.** The resolutions dated December 14, 2007 and November 18, 2008 of the Court of Appeals in CA-G.R. SP No. 02061-MIN are **SET ASIDE**. The orders dated April 12, 2007 and September 14, 2007 of the Regional Trial Court, Branch 11, Davao City are **MODIFIED** to exclude moral damages, exemplary damages, and attorney's fees in the execution pending appeal. The temporary restraining order issued on February 9, 2009 is **LIFTED**.

SO ORDERED.

Velasco, Jr.(Chairperson), Peralta, Perez,[*] and *Reyes, JJ.*, concur.

FIRST DIVISION

[G.R. No. 195666. January 20, 2016]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **FE ABELLA *y* BUHAIN,** *accused-appellant.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; ILLEGAL RECRUITMENT IN LARGE SCALE AND ILLEGAL RECRUITMENT BY SYNDICATE; ELEMENTS.—** To constitute illegal recruitment in large scale, three elements must concur: (a) the offender has no valid license or authority required by law to enable him to lawfully engage in recruitment placement of workers; (b) the offender undertakes any of the activities within the meaning of "recruitment and placement" under Article 13(b) of the Labor Code, or any of the prohibited practices enumerated under Article 34 of the same Code (now Section

[*] Designated as Regular Member of the Third Division per Special Order No. 2311 dated January 14, 2016.

6 of Republic Act No. 8042, otherwise known as the Migrant Workers and Overseas Filipinos Act of 1995); and (c) the offender committed the same against three or more persons, individually or as a group. x x x Illegal recruitment is deemed committed by a syndicate if carried out by a group of three (3) or more persons conspiring and/or confederating with one another.

2. **ID.; RECRUITMENT AND PLACEMENT; DEFINED.—** Article 13(b) of the Labor Code defines "recruitment and placement" as "any act of canvassing, enlisting, contracting, transporting, utilizing, hiring or procuring workers, and includes referrals, contract services, promising or advertising for employment, locally or abroad, whether for profit or not." It also provides that "any person or entity which, in any manner, offers or promises for a fee, employment to two or more persons shall be deemed engaged in recruitment and placement."

3. **ID.; ILLEGAL RECRUITMENT; INCLUDES FAILURE TO REIMBURSE EXPENSES INCURRED BY THE WORKER FOR DEPLOYMENT WHICH DOES NOT ACTUALLY TAKE PLACE WITHOUT THE WORKER'S FAULT.—** Under Section 6 of Republic Act No. 8042, the following acts constitute "illegal recruitment": x x x **(m) Failure to reimburse expenses incurred by the worker in connection with his documentation and processing for purposes of deployment, in cases where the deployment does not actually take place without the worker's fault. Illegal recruitment when committed by a syndicate or in large scale shall be considered an offense involving economic sabotage.**

4. **ID.; ID.; ID.; RECEIPT OF PLACEMENT FEES MAY BE PROVED BY TESTIMONIAL EVIDENCE, EVEN IN THE ABSENCE OF DOCUMENTARY EVIDENCE.—** Abella is challenging the probative value of the x x x handwritten agreement [Abella making representations that she had the power to send private complainants abroad to work] on the ground that it is a mere photocopy. x x x The non-presentation of the original copy of the handwritten agreement is not fatal to the prosecution's case. Miguel personally testified before the RTC as to the circumstances of her recruitment by Abella. Abella made verbal, and not only written, promises to Miguel of employment abroad. The handwritten agreement merely substantiates Miguel's testimony at best. In *People v. Pabalan*,

we affirmed the sufficiency of testimonial evidence to prove receipt by therein accused-appellant of placement fees, even in the absence of documentary evidence such as receipts issued by accused-appellant.

5. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FINDINGS OF TRIAL COURT, RESPECTED.—** Well-settled is the rule that the trial court, having the opportunity to observe the witnesses and their demeanor during the trial, can best assess the credibility of the witnesses and their testimonies. Abella's mere denial cannot prevail over the positive and categorical testimonies of the private complainants. The findings of the trial court are accorded great respect unless the trial court has overlooked or misconstrued some substantial facts, which, if considered, might affect the result of the case. Furthermore, factual findings of the trial court, when affirmed by the Court of Appeals, are deemed binding and conclusive.

6. **LABOR AND SOCIAL LEGISLATION; ILLEGAL RECRUITMENT IN LARGE SCALE; PENALTY.—** Section 7(b) of Republic Act No. 8042 provides that "[t]he penalty of life imprisonment and a fine of not less than Five hundred thousand pesos (₱500,000.00) nor more than One million pesos (₱1,000,000.00) shall be imposed if illegal recruitment constitutes economic sabotage as defined herein." Hence, we sustain the penalty of life imprisonment and a fine of ₱500,000.00 imposed on Abella by the Court of Appeals.

APPEARANCES OF COUNSEL

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

D E C I S I O N

LEONARDO-DE CASTRO, *J.*:

For Our consideration is an appeal from the Decision[1] dated September 30, 2010 of the Court of Appeals in CA-G.R. CR.-H.C.

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[1] *Rollo*, pp. 2-31; penned by Associate Justice Celia C. Librea-Leagogo with Associate Justices Remedios A. Salazar-Fernando and Michael P. Elbinias concurring.

No. 03974, which affirmed with modification the Decision[2] dated March 26, 2009 of the Regional Trial Court (RTC), Manila City, Branch 52, in Criminal Case No. 04-225062, which found accused-appellant Fe Abella *y* Buhain (Abella) guilty of Illegal Recruitment in Large Scale.

The Information[3] reads:

That in or about and during the period comprised between October 8, 2003 and March 18, 2004, inclusive, in the City of Manila, Philippines, the said accused conspiring and confederating with another whose true name, real identity and present whereabouts is still unknown, and mutually helping each other, representing herself to have the capacity to contract, enlist and transport Filipino workers for employment abroad, did then and there willfully, unlawfully, and feloniously for a fee, recruit and promise employment/job placement to the following persons:

Mary Jean Mateo *y* Sanchez
Grace Marcelino *y* dela Peña
Nobella Castro *y* Fernandez
Imelda Miguel *y* Factor
Lolita Pansoy *y* Garcia
Ester Castro *y* Pamisttan
Janice Belvis *y* Morales
Ruby Badua *y* Cabacungan
Visitacion Rosete *y* Cedron
Generoso Gumpal *y* Bangloy
Fernando Callang *y* Buhanget
Joselito Danver Huta *y* Cataño

as Laundrywomen/Laundrymen and Waiter in Istanbul, Turkey and Dubai, without first having secured the required license or authority from the Department of Labor and Employment, charged or accept directly or indirectly from said complainants amounts which are in excess of or greater than those specified in the schedule of allowable fees prescribed by the Department of Labor and Employment under Memorandum Order No. 5, Series of 1985 and having failed to deploy aforesaid complainants, continuously fails to reimburse despite

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[2] CA *rollo*, pp. 14-26; penned by Presiding Judge Antonio M. Rosales.

[3] Records, pp. 1-2.

demands, the expenses they incurred in connection with the documentation and processing for their deployment.

Upon arraignment, Abella, assisted by counsel, pleaded not guilty to the offense charge.

In the course of the trial, the prosecution presented Imelda F. Miguel (Miguel), Grace P. Marcelino (Marcelino), Fernando B. Callang (Callang), Mildred Versoza (Versoza), and Senior Police Officer (SPO) 1 Jaime Bunag (Bunag) as witnesses.

Miguel testified that she came to know Abella through Zeny Agpalza (Agpalza) and Lina Mateo (Mateo), who informed her that Abella could help her get work abroad. Interested, Miguel met Abella at the latter's office, bearing the name Rofema Business Consultancy (RBC), at 1807 Nakpil St., Barangay 697, Malate, Manila. During their meeting, Abella offered Miguel work as a laundrywoman in Istanbul, Turkey, with a salary of $600.00 to $700.00 but Miguel must undergo training in laundry service and pay a placement fee of ₱100,000.00. Miguel, however, was able to raise and pay only ₱30,000.00[4] as placement fee on November 17, 2003 for which Abella issued a cash voucher signed by Abella herself in Miguel's presence. Miguel also claimed that she underwent training in laundry service for five days at the Executive Technical Consultants Trade Test and Training Center, valued at ₱5,000.00, which was sponsored by Abella. Miguel was issued a certification after said training. Abella discussed with Miguel the details of the latter's job abroad and provided Miguel with a photocopy of their written agreement, together with the certificate evidencing registration by Abella of the business name of RBC. Until the day that Miguel gave her testimony before the RTC, Abella, contrary to her representation and promise, was not able to deploy Miguel as a laundrywoman in Istanbul, Turkey, and neither did Abella return the placement fee of ₱30,000.00 which Miguel had paid.[5]

Marcelino narrated that she came to know Abella through Rosette Danao (Danao). Danao first recruited Marcelino to work

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[4] *Id.* at 27.

[5] TSN, November 9, 2004, pp. 1-30.

as a domestic helper in Saipan, but later turned over Marcelino's application to Agpalza who was in charge of those applying for jobs in Turkey. Danao and Agpalza both referred to Abella as their Manager. Marcelino paid a total of ₱50,000.00[6] for the processing of her papers in four installments: ₱10,000.00 on November 24, 2003; ₱15,000.00 on December 3, 2003; ₱10,000.00 on December 23, 2003, and ₱15,000.00 on January 15, 2004, all personally received by Abella either at the RBC office or at McDonald's, Ermita, and evidenced by vouchers signed by Abella. Nothing happened to Marcelino's application and the amounts she had paid to Abella were not returned to her.[7]

According to Callang, he was recruited by Danao, Abella's agent, who brought him to the RBC office in Malate, Manila. At the RBC office, Abella told Callang of the job order for laundryman in Istanbul, Turkey with a monthly salary of $600.00 and for which the placement fee was ₱65,000.00. Callang paid to Abella ₱10,000.00 on November 17, 2003; ₱10,000.00 on December 23, 2003; and ₱20,000.00 on January 9, 2004, for a total of ₱40,000.00,[8] evidenced by a voucher signed by Abella in Callang's presence. The first two payments were made at the RBC office while the last payment was at McDonald's, Ermita. Callang was not deployed for employment abroad, neither was he able to recover the amount he paid to Abella.

Versoza was an employee at the Licensing Division of the Philippine Overseas Employment Administration (POEA). Versoza recounted that upon the instruction of Yolanda Paragua (Paragua), Officer-in-Charge (OIC) of the POEA Licensing Division, she verified from the database and other records of their office whether Abella/RBC had license to recruit workers for employment abroad. Versoza found out that Abella/RBC had no such license and she prepared a Certification to that effect, which was signed by OIC Paragua in her presence. In

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[6] Records, p. 22.

[7] TSN, December 16, 2004, pp. 5-22.

[8] Records, p. 24.

compliance with the *subpoena duces tecum* issued by the RTC, Versoza personally appeared before the trial court to identify OIC Paragua's signature on the Certification.[9]

SPO1 Bunag was the investigator assigned to the case and affirmed on the witness stand that he was the one who took down the private complainants' *Sinumpang Salaysay Pag-aresto*, and prepared Abella's Booking Sheet and Arrest Report and letter of referral for inquest dated March 19, 2004.

Only Abella herself testified for the defense.

Before Abella took the witness stand, her counsel, Atty. Rodrigo Mariñas, moved that the following private complainants: Mary Jean S. Mateo, Nobella F. Castro, Lolito G. Pansoy, Ester P. Castro, Janice M. Belvis, Ruby C. Badua, Generoso B. Gumpal, and Joselito Danver C. Huta, be provisionally dropped as such from the Information for their repeated failure to appear and testify in support of their complaints.[10] Without objection from Assistant City Prosecutor Francisco L. Salomon, the RTC granted the defense's motion, thus, leaving Miguel, Marcelino, and Callang as private complainants.

Abella anchored her defense on denial. Abella alleged that she had been working as a cashier since November 11, 2004 at RBC, a travel agency registered with the Department of Trade and Industry. As cashier at RBC, Abella's main duty was to receive payments from clients for which she issued cash vouchers. Abella claimed that she did not personally meet the clients nor did she directly receive money from them, as the clients coursed their payments through Agpalza, an RBC agent. Agpalza would then turn over the payments to Abella, for which the latter issued cash vouchers; and Abella would subsequently hand over the payments to RBC owner, Elizabeth Reyes (Reyes). Abella disputed private complainants' assertion and insisted that she did not promise private complainants employment abroad. During her re-direct examination, Abella refuted her purported arrest and confrontation with private complainants. Abella maintained

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[9] TSN, May 24, 2005, pp. 6-12.

[10] Records, p. 228.

that she voluntarily went with Agpalza to the police headquarters and that she and Agpalza were detained at the second floor while private complainants were kept at the ground floor of the police headquarters.

On March 26, 2009, the RTC rendered a Decision with the following verdict:

> **WHEREFORE**, the Court finds the accused FE ABELLA *y* BUHAIN guilty beyond reasonable doubt of the crime of Illegal Recruitment in large scale and imposes upon her the penalty of life imprisonment and a fine of Php100,000.00.
>
> FE ABELLA *y* BUHAIN is also ordered to return to, or refund the sums of money she had received from the following private complainants: a) Imelda Miguel the sum of Php30,000.00; b) Fernando Callang the amount of Php40,000.00; and c) Grace Marcelino the amount of Php50,000.00.
>
> With costs against the accused.[11]

Aggrieved, Abella appealed before the Court of Appeals.

The Court of Appeals, in a Decision dated September 30, 2010, affirmed the RTC judgment of conviction but with the modification increasing the amount of fine imposed against Abella. The dispositive portion of the said Decision reads:

> **WHEREFORE,** premises considered, the appeal is **DENIED**. The Decision dated 26 March 2009 of the Regional Trial Court of Manila, Branch 52, in Criminal Case No. 04-225062 finding accused-appellant Fe Abella *y* Buhain guilty beyond reasonable doubt of illegal recruitment in large scale, sentencing her to suffer the penalty of life imprisonment and ordering her to pay a fine and to return to private complainants Imelda Miguel, Fernando Callang and Grace Marcelino the amounts of Php30,000.00, Php40,000.00 and Php50,000.00, respectively, is hereby **AFFIRMED** with **MODIFICATION** in that the amount of fine is increased from Php100,000.00 to Php500,000.00. Costs against accused-appellant.[12]

Hence, the present appeal.

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[11] CA *rollo*, p. 26.

[12] *Rollo*, p. 27.

In her Supplemental Brief, Abella contends that the prosecution failed to prove her guilt beyond reasonable doubt as the first element of illegal recruitment in large scale, *i.e.*, the accused undertook a recruitment activity under Article 13(b) of the Labor Code or any prohibited practice under Article 34 of the same Code, is wanting. Abella points out that: (a) it was not Abella who enticed private complainants to apply for work overseas given that by private complainants' own testimonies, they learned about the job opportunities abroad not from Abella, but from Agpalza, Mateo, and Danao, who were so persuasive that private complainants travelled from their respective provinces to Manila just to meet Abella; (b) if it were true that Abella received money from private complainants, she would have already fled after getting private complainants' money so as to evade arrest; and (c) the prosecution presented a mere photocopy of the handwritten agreement supposedly executed by Abella in Miguel's favor, and considering that the contents of such agreement are in issue in this case, the RTC wrongfully accorded much weight to such evidence.

We find no merit in the instant appeal.

To constitute illegal recruitment in large scale, three elements must concur: (a) the offender has no valid license or authority required by law to enable him to lawfully engage in recruitment placement of workers: (b) the offender undertakes any of the activities within the meaning of "recruitment and placement" under Article 13(b) of the Labor Code, or any of the prohibited practices enumerated under Article 34 of the same Code (now Section 6 of Republic Act No. 8042, otherwise known as the Migrant Workers and Overseas Filipinos Act of 1995); and (c) the offender committed the same against three or more persons, individually or as a group.[13]

Article 13(b) of the Labor Code defines "recruitment and placement" as "any act of canvassing, enlisting, contracting, transporting, utilizing, hiring or procuring workers, and includes referrals, contract services, promising or advertising for employment, locally or abroad, whether for profit or not." It

[13] *People v. Gamboa*, 395 Phil. 675, 684 (2000).

also provides that "any person or entity which, in any manner, offers or promises for a fee, employment to two or more persons shall be deemed engaged in recruitment and placement."

Article 38 of the same Code particularly defines "illegal recruitment" as follows:

ART. 38. *Illegal Recruitment*. — (a) Any recruitment activities, including the prohibited practices enumerated under Article 34 of this Code, to be undertaken by non-licensees or non-holders of authority, shall be deemed illegal and punishable under Article 39 of this Code. The Department of Labor and Employment or any law enforcement officer may initiate complaints under this Article.

(b) Illegal recruitment when committed by a syndicate or in large scale shall be considered an offense involving economic sabotage and shall be penalized in accordance with Article 39 hereof.

Illegal recruitment is deemed committed by a syndicate if carried out by a group of three (3) or more persons conspiring and/or confederating with one another in carrying out any unlawful or illegal transaction, enterprise or scheme defined under the first paragraph hereof. Illegal recruitment is deemed committed in large scale if committed against three (3) or more persons individually or as a group.

Republic Act No. 8042 broadened the concept of illegal recruitment under the Labor Code and provided stiffer penalties, especially if it constitutes economic sabotage, either illegal recruitment in large scale or illegal recruitment committed by a syndicate. Under Section 6 of Republic Act No. 8042, the following acts constitute "illegal recruitment":

SEC. 6. *Definition*. — For purposes of this Act, illegal recruitment shall mean **any act of canvassing, enlisting, contracting, transporting, utilizing, hiring, or procuring workers and includes referring, contract services, promising or advertising for employment abroad, whether for profit or not, when undertaken by a non-licensee or non-holder of authority** contemplated under Article 13(f) of Presidential Decree No, 442, as amended, otherwise known as the Labor Code of the Philippines: *Provided*, **That any such non-licensee or non-holder who, in any manner, offers or promises for a fee employment abroad to two or more persons shall be deemed so engaged. It shall likewise include the following**

acts, whether committed by any person, whether a non-licensee, non-holder, licensee or holder of authority:

(a) To charge or accept directly or indirectly any amount greater than that specified in the schedule of allowable fees prescribed by the Secretary of Labor and Employment, or to make a worker pay any amount greater than that actually received by him as a loan or advance;

(b) To furnish or publish any false notice or information or document in relation to recruitment or employment;

(c) To give any false notice, testimony, information or document or commit any act of misrepresentation for the purpose of securing a license or authority under the Labor Code;

(d) To induce or attempt to induce a worker already employed to quit his employment in order to offer him another unless the transfer is designed to liberate a worker from oppressive terms and conditions of employment;

(e) To influence or attempt to influence any person or entity not to employ any worker who has not applied for employment through his agency;

(f) To engage in the recruitment or placement of workers in jobs harmful to public health or morality or to the dignity of the Republic of the Philippines;

(g) To obstruct or attempt to obstruct inspection by the Secretary of Labor and Employment or by his duly authorized representative;

(h) To fail to submit reports on the status of employment, placement vacancies, remittance of foreign exchange earnings, separation from jobs, departures and such other matters or information as may be required by the Secretary of Labor and Employment;

(i) To substitute or alter to the prejudice of the worker, employment contracts approved and verified by the Department of Labor and Employment from the time of actual signing thereof by the parties up to and including the period of the expiration of the same without the approval of the Department of Labor and Employment;

(j) For an officer or agent of a recruitment or placement agency to become an officer or member of the Board of any corporation engaged in travel agency or to be engaged directly or indirectly in the management of a travel agency;

(k) To withhold or deny travel documents from applicant workers before departure for monetary or financial considerations other than those authorized under the Labor Code and its implementing rules and regulations;

(l) Failure to actually deploy without valid reason as determined by the Department of Labor and Employment; and

(m) Failure to reimburse expenses incurred by the worker in connection with his documentation and processing for purposes of deployment, in cases where the deployment does not actually take place without the worker's fault. Illegal recruitment when committed by a syndicate or in large scale shall be considered an offense involving economic sabotage.

Illegal recruitment is deemed committed by a syndicate if carried out by a group of three (3) or more persons conspiring or confederating with one another. **It is deemed committed in large scale if committed against three (3) or more persons individually or as a group.** (Emphases ours.)

The elements of illegal recruitment in large scale are all obtaining in this case and that the prosecution had sufficiently proved that Abella is guilty of said offense.

First, it is undisputed that neither Abella nor RBC was licensed as a recruitment agency. The Certification[14] dated May 17, 2005 signed by OIC Paragua of the POEA Licensing Division states that "per available records of this Office, Fe Abella *y* Buhain, in her personal capacity, and ROFEMA BUSINESS CONSULTANCY with address at 1807 Nakpil St., Brgy. 697, Malate, Manila, are not licensed by this Administration to recruit workers for overseas employment. Any recruitment activity undertaken by the above-named person/entity is deemed illegal." Versoza, the POEA Licensing Division employee who actually perused the database and other records of their office, prepared the Certification for OIC Paragua's signature, and personally witnessed OIC Paragua signing the said Certification, appeared as witness before the RTC to authenticate the Certification as one of the documentary evidence for the prosecution. A POEA

[14] Records, p. 135.

certification is a public document issued by a public officer in the performance of an official duty; hence, it is *prima facie* evidence of the facts therein stated pursuant to Section 23, Rule 132 of the Rules of Court.[15] Public documents are entitled to a presumption of regularity, consequently, the burden of proof rests upon the person who alleges the contrary. Abella does not negate the contents of the Certification but merely argues that it has no bearing on whether or not she represented herself to the private complainants as someone authorized to recruit for overseas employment.

Second, both the RTC and the Court of Appeals found that Abella had engaged in recruitment activities. The trial and appellate courts accorded weight and credence to the consistent testimonies of private complainants Miguel, Marcelino, and Callang that at separate instances, Agpalza, Mateo, and/or Danao brought private complainants to the RBC office and introduced them to Abella, and it was Abella herself who offered and promised private complainants jobs in Istanbul, Turkey, in consideration of placement fees. Miguel's testimony is further supported by a handwritten agreement[16] signed by Abella, stating in detail the terms of Miguel's alleged overseas employment, and we quote:

1. Salary is $400 excluding overtime. There is a probationary period of 3 months.
2. Free board and lodging, one yr. contract renewable, 8 working hrs.
3. Total placement is ₱100TH, ₱50TH cash out and ₱50TH salary deduction. Training fee of ₱4,500 & PDOS is included in the placement fee.
4. Downpayment of ₱25,000 to be used in the stamping of visa in the passport. After 1 week, applicant will receive a xeroxed

[15] 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.

[16] Records, p. 88.

copy of his/her passport with stamped visa.

5. After downpayment, applicant will start training for 5 days, 8:00 AM-5:00 PM.
6. Remaining balance of ₱25TH will be given upon signing of the contract.
7. Downpayment is refundable in case of failure to process papers within the time frame agreed upon which is within 2 months time. In case of refund certain charges will be deducted so the applicant cannot get the full amount of downpayment.
8. Every payday, the applicant should deposit certain amount which they can afford to the ATM account of the company.
9. Before departure, an Attorney's Affidavit will be prepared signed by Ms. Fe Abella, the applicant, one member of the applicant[']s family particularly the nearest kin and the Agent handling the applicant. In case the applicant does not comply with the payment of the remaining placement (₱50TH), the member of the family will be answerable for his/her obligation.
10. Ms. Fe Abella will be the one answerable for expired medical certificate.
11. In case problems arise in Turkey, applicant should approach the Philippine Embassy.

Abella is challenging the probative value of the above handwritten agreement on the ground that it is a mere photocopy. Abella reasons that since the contents of said agreement are in issue, the best evidence rule applies. The original of the agreement is the best evidence of Abella making representations that she had the power to send private complainants abroad to work.

The non-presentation of the original copy of the handwritten agreement is not fatal to the prosecution's case. Miguel personally testified before the RTC as to the circumstances of her recruitment by Abella. Abella made verbal, and not only written, promises to Miguel of employment abroad. The handwritten agreement merely substantiates Miguel's testimony at best. In *People v.*

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[17] 331 Phil. 64, 77-78 (1996).

Pabalan,[17] we affirmed the sufficiency of testimonial evidence to prove receipt by therein accused-appellant of placement fees, even in the absence of documentary evidence such as receipts issued by accused-appellant, thus:

> [T]he absence of receipts for some of the amounts delivered to the accused did not mean that the appellant did not accept or receive such payments. Neither in the Statute of Frauds nor in the rules of evidence is the presentation of receipts required in order to prove the existence of a recruitment agreement and the procurement of fees in illegal recruitment cases. Such proof may come from the testimonies of witnesses.[18]

Abella denies representing to private complainants that she was capable of deploying workers to Istanbul, Turkey. Abella avows that she was a mere cashier at RBC who issued vouchers for payments made by clients and that she subsequently turned over such payments to Reyes, the true owner of RBC.

We are not swayed by Abella's bare allegations, which conspicuously lacked any corroborative evidence. If Abella was really a mere employee at RBC, then she could have presented basic evidence of her employment, such as appointment papers, an identification card, or payslips. Also, the vouchers for the placement fees paid by private complainants were issued and signed by Abella herself, without any indication that she issued and signed the same on behalf of Reyes, the purported true owner of RBC. There is likewise absence of any proof of Abella's turnover to or Reyes's receipt of the amounts received from private complainants.

In contrast, the private complainants Miguel, Marcelino, and Callang were positive and categorical in their testimonies that Abella promised them employment abroad in exchange for their payment of placement fees. Abella herself provided Miguel with a Certification proving Abella's registration of the business name RBC; hence, negating Abella's claim that RBC is actually owned by another person, Reyes. The private complainants'

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[18] *People v. Alvarez*, 436 Phil. 255, 273 (2002).

testimonies were consistent and corroborative of one another on material points, such as the placement fees asked of them, the nature of work available, and their employment destination, which is, Istanbul, Turkey.

Well-settled is the rule that the trial court, having the opportunity to observe the witnesses and their demeanor during the trial, can best assess the credibility of the witnesses and their testimonies. Abella's mere denial cannot prevail over the positive and categorical testimonies of the private complainants. The findings of the trial court are accorded great respect unless the trial court has overlooked or misconstrued some substantial facts, which, if considered, might affect the result of the case. Furthermore, factual findings of the trial court, when affirmed by the Court of Appeals, are deemed binding and conclusive.[19]

Lastly, it was established that there were at least three victims in this case, namely, Miguel, Marcelino, and Callang, who all testified before the RTC in support of their respective complaints.

Based on the foregoing, there is no doubt, as the RTC found and the Court of Appeals affirmed, that Abella is guilty of illegal recruitment in large scale, which constitutes economic sabotage under the last paragraph of Section 6 of Republic Act No. 8042.

Section 7(b) of Republic Act No. 8042 provides that "[t]he penalty of life imprisonment and a fine of not less than Five hundred thousand pesos (₱500,000.00) nor more than One million pesos (₱1,000,000.00) shall be imposed if illegal recruitment constitutes economic sabotage as defined herein." Hence, we sustain the penalty of life imprisonment and a fine of ₱500,000.00 imposed on Abella by the Court of Appeals.

WHEREFORE, we **AFFIRM** ***in toto*** the Decision dated September 30, 2010 of the Court of Appeals in CA-G.R. CR.-H.C. No. 03974.

SO ORDERED.

Sereno, C.J.(Chairperson), Bersamin, Perlas-Bernabe, and *Jardeleza, JJ.,* concur.

[19] *People v. Tolentino*, G.R. No. 208686, July 1, 2015.

FIRST DIVISION

[G.R. No. 198889. January 20, 2016]

UFC PHILIPPINES, INC. (now merged with NUTRI-ASIA, INC., with NUTRI-ASIA, INC. as the surviving entity), *petitioner, vs.* **BARRIO FIESTA MANUFACTURING CORPORATION,** *respondent.*

SYLLABUS

1. **COMMERCIAL LAW; TRADEMARK, DEFINED.—** In *Dermaline, Inc. v. Myra Pharmaceuticals, Inc.,* we defined a trademark as "any distinctive word, name, symbol, emblem, sign, or device, or any combination thereof, adopted and used by a manufacturer or merchant on his goods to identify and distinguish them from those manufactured, sold, or dealt by others." We held that a trademark is "an intellectual property deserving protection by law."

2. **ID.; INTELLECTUAL PROPERTY CODE; RIGHTS OF THE TRADEMARK OWNER.—** The rights of the trademark owner are found in the Intellectual Property Code, which provides: **Section 147.** ***Rights Conferred.*** **- 147.1.** The owner of a registered mark shall have the exclusive right to prevent all third parties not having the owner's consent from using in the course of trade identical or similar signs or containers for goods or services which are identical or similar to those in respect of which the trademark is registered where such use would result in a likelihood of confusion. In case of the use of an identical sign for identical goods or services, a likelihood of confusion shall be presumed. **Section 168.** ***Unfair Competition, Rights, Regulation and Remedies.*** **- 168.1.** A person who has identified in the mind of the public the goods he manufactures or deals in, his business or services from those of others, whether or not a registered mark is employed, has a property right in the goodwill of the said goods, business or services so identified, which will be protected in the same manner as other property rights.

3. **ID.; TRADEMARK CONTROVERSIES; DETERMINING LIKELIHOOD OF CONFUSION; DOMINANCY TEST**

USED BY THE INTELLECTUAL PROPERTY OFFICE (IPO); DISCUSSED.— The guideline for courts in determining likelihood of confusion is found in A.M. No. 10-3-10-SC, or the Rules of Procedure for Intellectual Property Rights Cases, Rule 18, x x x In trademark controversies, each case must be scrutinized according to its peculiar circumstances, such that jurisprudential precedents should only be made to apply if they are specifically in point. x x x In *Skechers, U.S.A., Inc. v. Inter Pacific Industrial Trading Corp.*, we held: The essential element of infringement under R.A. No. 8293 is that the infringing mark is likely to cause confusion. In determining similarity and likelihood of confusion, jurisprudence has developed tests – the Dominancy Test and the Holistic or Totality Test. The Dominancy Test focuses on the similarity of the prevalent or dominant features of the competing trademarks that might cause confusion, mistake, and deception in the mind of the purchasing public. Duplication or imitation is not necessary; neither is it required that the mark sought to be registered suggests an effort to imitate. Given more consideration are the aural and visual impressions created by the marks on the buyers of goods, giving little weight to factors like prices, quality, sales outlets, and market segments. x x x Relative to the question on confusion of marks and trade names, jurisprudence has noted two (2) types of confusion, *viz.:* (1) confusion of goods (product confusion), where the ordinarily prudent purchaser would be induced to purchase one product in the belief that he was purchasing the other; and (2) confusion of business (source or origin confusion), where, although the goods of the parties are different, the product, the mark of which registration is applied for by one party, is such as might reasonably be assumed to originate with the registrant of an earlier product, and the public would then be deceived either into that belief or into the belief that there is some connection between the two parties, though inexistent.

APPEARANCES OF COUNSEL

Poblador Bautista and Reyes for petitioner.
Sapalo Velez Bundang & Bulilan for respondent.

DECISION

LEONARDO-DE CASTRO, *J.*:

For our disposition is a petition for review on *certiorari* under Rule 45 seeking to annul and set aside the June 23, 2011 **Decision**[1] and the October 4, 2011 **Resolution**[2] of the Court of Appeals in CA-G.R. SP No. 107570, which reversed and set aside the March 26, 2008 **Decision**[3] of the Bureau of Legal Affairs of the Intellectual Property Office (IPO-BLA) and the January 29, 2009 **Decision**[4] of the Director General of the IPO.

Petitioner Nutri-Asia, Inc. (petitioner) is a corporation duly organized and existing under Philippine laws.[5] It is the emergent entity in a merger with UFC Philippines, Inc. that was completed on February 11, 2009.[6] Respondent Barrio Fiesta Manufacturing Corporation (respondent) is likewise a corporation organized and existing under Philippine laws.

On April 4, 2002, respondent filed Application No. 4-2002-002757 for the mark "PAPA BOY & DEVICE" for goods under

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[1] *Rollo*, pp. 49-62; penned by Associate Justice Franchito N. Diamante with Associate Justices Josefina Guevara-Salonga and Mariflor P. Punzalan Castillo concurring.

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

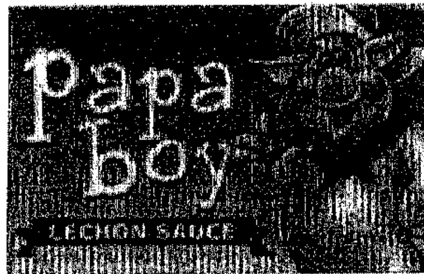
[3] CA *rollo*, pp. 234-246.

[4] *Id.* at 34-44.

[5] In its Certificate of Filing of the Articles and Plan of Merger, it is stated that NUTRI-ASIA, INC. is the "Surviving Corporation" and UFC PHILIPPINES, INC. is the "Absorbed Corporation" and that "the entire assets and liabilities of UFC PHILIPPINES, INC. will be transferred to and absorbed by NUTRI-ASIA, INC." (*Rollo*, p. 66.)

[6] In its Amended Articles of Incorporation, it is stated that Nutri-Asia, Inc. was formed to "engage in, operate, conduct and maintain the business of manufacturing, importing, exporting, buying, selling, distributing or otherwise dealing in, at wholesale, food products, such as but not limited to food sauces and condiments which are banana and tomato-based, vinegar, fish sauce, convenience meals and foodservice products and brewed soy sauce." (*Rollo*, p. 84.)

Class 30, specifically for "lechon sauce."[7] The Intellectual Property Office (IPO) published said application for opposition in the IP Phil. e-Gazette released on September 8, 2006. The mark appears as follows:



On December 11, 2006, petitioner filed with the IPO-BLA a Verified Notice of Opposition to the above-mentioned application and alleged that:

1. The mark "PAPA" for use on banana catsup and other similar goods was first used [in] 1954 by Neri Papa, and thus, was taken from his surname;

2. After using the mark "PAPA" for about twenty-seven (27) years, Neri Papa subsequently assigned the mark "PAPA" to Hernan D. Reyes who, on September 17, 1981, filed an application to register said mark "PAPA" for use on banana catsup, chili sauce, achara, banana chips, and instant ube powder;

3. On August 14, 1983, Hernan D. Reyes was issued Certificate of Registration No. 32416;

4. [Certificate of] Registration No. 32416 was subsequently assigned to the following in successive fashion: Acres & Acres Food, Inc., Southeast Asia Food, Inc., Heinz-UFC Philippines, Inc., and Opposer UFC Philippines, Inc.;

5. Last October 28, 2005, Heinz-UFC Philippines, Inc. filed Application Serial No. 4-2005-010788 which, in effect, is

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[7] CA *rollo*, p. 46.

a re-registration of Registration No. 32416 which expired on August 11, 2003;

6. Hernan D. Reyes also filed on March 04, 1982 an application to register in the Supplemental Register the "PAPA BANANA CATSUP Label";

7. On August 11, 1983, Hernan D. Reyes was issued Certificate of Registration No. SR-6282 which was subsequently assigned to Acres & Acres Food, Inc., Southeast Asia Food, Inc., Heinz-UFC Philippines, Inc.;

8. After its expiration, Opposer filed on November 15, 2006 Trademark Application Serial No. 4-2006-012346 for the re-registration of the "PAPA Label Design";

9. The mark "PAPA KETSARAP" for use on banana sauce falling under Class 30 was also registered in favor of Acres & Acres Food, Inc. under Registration No. 34681 issued on August 23, 1985 and renewed last August 23, 2005 by Heinz-UFC Philippines, Inc. for ten (10) years;

10. On November 07, 2006, Registration No. 34681 was assigned to Opposer;

11. Opposer has not abandoned the use of the mark "PAPA" and the variations thereof as Opposer has continued their use up to the present;

12. The mark "PAPA BOY & DEVICE" is identical to the mark "PAPA" owned by Opposer and duly registered in its favor, particularly the dominant feature thereof;

13. [With the] dominant feature of respondent-applicant's mark "PAPA BOY & DEVICE", which is Opposer's "PAPA" and the variations thereof, confusion and deception is likely to result: The consuming public, particularly the unwary customers, will be deceived, confused, and mistaken into believing that respondent-applicant's goods come from Opposer or are authorized by Opposer to Opposer's prejudice, which is particularly true considering that Opposer's sister company, Southeast Asia Food, Inc., and its predecessors-in-interest have been major manufacturers and distributors of lechon sauce and other table sauces since 1965 under its registered mark "Mang Tomas";

14. Respondent-applicant's mark "PAPA BOY & DEVICE" which nearly resembles Opposer's mark "PAPA" and the variations thereof will impress upon the gullible or unsuspecting public that it is the same or related to Opposer as to source because its dominant part is the same as Opposer's mark and, thus, will likely be mistaken to be the mark, or related to, or a derivative or variation of, Opposer's mark;

15. The goods covered by respondent-applicant's application fall under Class 30, the same Class under which Opposer's goods enumerated in its earlier issued registrations;

16. The test of dominancy is now explicitly incorporated into law in Section 155.1 of the IP Code which defines infringement as the colorable imitation of a registered mark or a dominant feature thereof, and is provided for by jurisprudence;

17. As a corporation also engaged in the food business, Respondent-applicant knew and/or ought to know that Opposer and its predecessors-in-interest have been using the mark "PAPA" and the variations thereof for the last fifty-two (52) years while its sister company is engaged in the business of manufacturing and distributing "lechon sauce" and other table sauces for the last forty-one (41) years;

18. The approval of the subject application will violate Opposer's right to the exclusive use of its registered mark "PAPA" and the variations thereof per Section 138 of the IP Code;

19. The approval of the subject application has caused and will continue to cause great and irreparable damage and injury to Opposer;

20. Respondent-applicant filed the subject application fraudulently and in bad faith; and

21. Respondent-applicant is not entitled to register the subject mark in its favor.[8]

In its verified opposition before the IPO, petitioner contended that "PAPA BOY & DEVICE" is confusingly similar with its "PAPA" marks inasmuch as the former incorporates the term

[8] *Id.* at 235-238.

"PAPA," which is the dominant feature of petitioner's "PAPA" marks. Petitioner averred that respondent's use of "PAPA BOY & DEVICE" mark for its lechon sauce product, if allowed, would likely lead the consuming public to believe that said lechon sauce product originates from or is authorized by petitioner, and that the "PAPA BOY & DEVICE" mark is a variation or derivative of petitioner's "PAPA" marks. Petitioner argued that this was especially true considering that petitioner's ketchup product and respondent's lechon sauce product are related articles that fall under the same Class 30.[9]

Petitioner alleged that the registration of respondent's challenged mark was also likely to damage the petitioner, considering that its former sister company, Southeast Asia Food, Inc., and the latter's predecessors-in-interest, had been major manufacturers and distributors of lechon and other table sauces since 1965, such as products employing the registered "Mang Tomas" mark.

In its Verified Answer, respondent argued that there is no likelihood of confusion between petitioner's family of "PAPA" trademarks and respondent's "PAPA BOY & DEVICE" trademark. Respondent raised affirmative defenses and we quote the relevant ones below:

3. Opposer cites several of its following marks in support of its opposition to the application but an examination of said marks [reveals] that these have already expired and/or that no confusing similarity exists x x x;

4. Assuming that the mark "PAPA KETSARAP" had been timely renewed on August 23, 2005 for "banana sauce" under Class 30, the same is not a hindrance to the successful registration of the mark "PAPA BOY & DEVICE": Jurisprudence provides that a certificate of registration confers upon the trademark owner the exclusive right to use its own symbol only to those goods specified in the certificate subject to the conditions and limitations stated therein;

5. As a result, Opposer's right to use the mark "PAPAKETSARAP" is limited to the products covered by its certificate of registration which is Class 30 for banana sauce;

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

6. Contrary to Opposer's belief, the dominant features of Respondent-applicant's mark "PAPA BOY & DEVICE" are the words "PAPA BOY" and the representation of a smiling hog-like character gesturing the thumbs-up sign and wearing a traditional Filipino hat and scarf while the dominant feature of Opposer's mark "PAPA KETSARAP" are the words "Papa" and "Ketsarap", not the word "Papa"; and the word "Ketsarap" is more prominently printed and displayed in the foreground than the word "Papa" for which reasons opposer's reference to the Dominancy Test fails;

7. Opposer's allegation that the registration of Respondent-applicant's mark "PAPA BOY & DEVICE" will damage and prejudice the mark "MANG TOMAS" is irrelevant considering that Opposer's basis for filing this opposition is the alleged confusing similarity between Respondent-applicant's mark and Opposer's mark "PAPA KETSARAP", not the mark "MANG TOMAS";

8. Respondent-applicant's mark "PAPA BOY & DEVICE" is neither identical nor confusingly similar to Opposer's mark "PAPA KETSARAP": Respondent-applicant's mark "PAPABOY & DEVICE" is an arbitrary mark which differs in overall sound, spelling, meaning, style, configuration, presentation, and appearance from Opposer's mark "PAPA KETSARAP";

9. The dissimilarities between the marks are so distinct, thus, confusion is very unlikely: While Opposer's mark is a plain word mark, Respondent-applicant's mark "PAPA BOY & DEVICE" is much more intricate and distinctive such as Opposer's mark not having the words "Lechon Sauce" printed inside a blue ribbon-like device which is illustrated below the words "PAPA BOY", Opposer's mark not having a prominent smiling hog-like character gesturing a thumbs-up sign and wearing a Filipino hat and scarf stands beside the words "PAPA BOY", and Opposer's mark not having the words "Barrio Fiesta" albeit conspicuously displayed above the mark, all which leave no doubt in the consumer's mind on the product that he is purchasing;

10. Aside from the fact that Respondent-applicant's mark "PAPA BOY & DEVICE" is distinct and different in appearance, spelling, sound, meaning, and style from Opposer's mark "PAPA KETSARAP", the difference in the goods covered by both marks is obvious: Since the goods covered by Respondent-applicant's mark is unrelated and non-competing to those covered by Opposer's mark, the doctrine allowing the registrations of marks covering unrelated and non-

competing goods as enunciated by the Supreme Court is therefore applicable in this case;

11. Respondent-applicant's mark cannot be confusingly similar to Opposer's mark considering that the products covered by these marks are different: While Respondent-applicant's mark "PAPA BOY & DEVICE" covers lechon sauce under Class 30, Opposer's mark "PAPA KETSARAP" covers banana sauce;

12. If a consumer is in the market for banana sauce, he will not buy lechon sauce and vice-versa and as a result, the margin of error in the acquisition of one from the other is simply remote;

13. Respondent-applicant is the exclusive owner of the mark "PAPA BOY & DEVICE" for lechon sauce under Class 30: The words "PAPA BOY" is a combination of the nickname of Bonifacio Ongpauco who is one of Respondent-applicant's incorporators and founders-"BOY"- and the word "PAPA" as Bonifacio Ongpauco's mother, Sixta P. Evangelista, had been fondly known as "Mama Chit", making Respondent-applicant the prior adopter, user, and applicant of the mark "PAPA BOY & DEVICE" in the Philippines;

14. To protect its ownership over the mark "PAPA BOY & DEVICE" considering that it is the first to adopt and use said mark, Respondent-applicant applied for its registration under Application Serial No. 4-2002-002757 for Class 30, and said application was found registrable by the Examiner as a consequence of which the same was recommended for allowance after undergoing a thorough process of examination, which recommendation was then approved by the Director of the Bureau of Trademarks (BOT);

15. Respondent-applicant's mark "PAPA BOY & DEVICE" has been commercially used in the Philippines;

16. Respondent-applicant's mark "PAPA BOY & DEVICE" has been promoted and advertised for a considerable duration of time and over wide geographical areas: Respondent-applicant has invested tremendous amount of resources in the promotion of its mark "PAPA BOY & DEVICE" through various media including print publications and promotional materials;

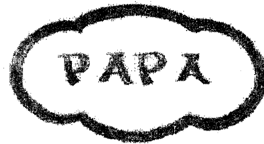
17. The widespread local commercial use of the subject mark by Respondent-applicant to distinguish and identify its various high-quality consumer products has earned Respondent-applicant a well-deserved business reputation and goodwill;

18. Respondent-applicant's mark is distinctive and capable of identifying its goods and distinguishing them from those offered for sale by others in the market including Opposer's goods for which reason no confusion will result because Respondent-applicant's mark is for lechon sauce while Opposer's mark is for banana sauce; and

19. The presence of a common prefix "PAPA" in the marks of both parties does not render said marks identical or confusingly similar: Opposer cannot exclusively appropriate said prefix considering that other marks such as "Papa Heinz Pizza", "Papa Heinz Sausage", "Papa Beaver", "Papa Pop", "Pizza Papa John's & Design", "Papadoods", and "Papa in Wine and Device" are valid and active.[10]

Petitioner's mark and its variations appear as follows:

1. "PAPA" under Registration No. **32416** for Class 29 goods;[11]



2. The mark "PAPA" as it appeared upon re-registration of Certificate No. 32416, under Application No. 4-2005-010788 for Classes 29 and 30 goods;[12]

[10] CA *rollo*, pp. 238-242.

[11] *Id.* at 242.

[12] *Id.* at 243.

3. "PAPA LABEL DESIGN" under Registration No. 4-2006-012364;[13] and

4. "PAPA KETSARAP" under Certificate of Registration No. 34681, for banana sauce (Class 30).[14]

PROCEEDINGS BEFORE THE INTELLECTUAL PROPERTY OFFICE

The case was referred to mediation but the parties failed to arrive at an amicable settlement. The case was thus set for preliminary conference. Subsequently, the IPO-BLA directed the parties to file their respective position papers and draft decisions.

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[13] *Id.*

[14] *Id.*

The IPO-BLA rendered a Decision on March 26, 2008 sustaining petitioner's Opposition and rejecting respondent's application for "PAPA BOY & DEVICE." The *fallo* of said decision reads as follows:

> WHEREFORE, the VERIFIED NOTICE OF OPPOSITION filed by UFC Philippines, Inc. is, as it is hereby, SUSTAINED. Consequently, Application Serial No. 4-2002-002757 for the mark "PAPA BOY & DEVICE" for lechon sauce under Class 30 filed on April 04, 2002 by Barrio Fiesta Manufacturing Corporation, is, as it is hereby, REJECTED.
>
> Let the file wrapper of PAPA BOY & Device subject matter of this case be forwarded to the Bureau of Trademarks (BOT) for appropriate action in accordance with this Decision.[15]

Respondent filed an appeal before the IPO Director General, who found it unmeritorious, and disposed of the case in the following manner:

> WHEREFORE, the instant appeal is hereby DISMISSED. Let a copy of this Decision as well as the trademark application and records be furnished and returned to the Director of the Bureau of Legal Affairs for appropriate action. Further, let also the Director of the Bureau of Trademarks and the library of the Documentation, Information and Technology Transfer Bureau be furnished a copy of this Decision for information, guidance, and records purposes."[16]

DECISION OF THE COURT OF APPEALS

Respondent then filed a petition with the Court of Appeals, questioning the above decision of the IPO Director General that affirmed the decision of the IPO Bureau of Legal Affairs Director, which disallowed respondent's application for trademark registration. Respondent's arguments before the Court of Appeals are quoted below:

A.

REGISTRATION NOS. 32416 AND 42005010788 ISSUED FOR THE "PAPA" MARK AND REGISTRATION NOS. SR-6282 AND

[15] *Id.* at 246.

[16] *Id.* at 44.

42006012364 ISSUED FOR THE TRADEMARK "PAPA BANANA CATSUP LABEL/PAPA LABEL DESIGN" SHOULD NOT BE USED AS BASIS IN DETERMINING THE EXISTENCE OF CONFUSING SIMILARITY.

B.

THERE IS NO CONFUSING SIMILARITY BETWEEN PETITIONER-APPLICANT'S "PAPA BOY & DEVICE" AND RESPONDENT'S "PAPA KETSARAP" MARK.

C.

PETITIONER-APPLICANT IS ENTITLED TO THE REGISTRATION OF THE MARK "PAPA BOY & DEVICE."

D.

THE OPPOSITION STATES NO CAUSE OF ACTION, AND HENCE, SHOULD BE DENIED OUTRIGHT.[17]

As regards the first ground, the Court of Appeals held:

> Records show that respondent UFC has Certificates of Registration for the trademarks PAPA, PAPA BANANA CATSUP label and PAPA KETSARAP. A closer look at the respective Certificate[s] of Registration of the aforementioned marks, however, reveals that at the time the trademark application of petitioner was published in the IPO e-Gazette on September 8, 2006, the duration of the trademark registration of respondent over the marks PAPA and PAPA BANANA CATSUP have already expired. On the other hand, **the mark PAPA KETSARAP was timely renewed by respondent as shown by the Certificate of Renewal of Registration issued on September 1, 2006 by the Director of the Bureau of Trademarks.**
>
> Under R.A. No. 8293, as amended by R.A. No. 9150, the duration of a trademark registration is 10 years, renewable for periods of 10 years each renewal. The request for renewal must be made within 6 months before or after the expiration of the registration. Respondent's PAPA mark was not renewed within the period provided for under RA No. 8293. Its registered term ended on August 11, 2003 but was reapplied for registration only on April 4, 2005. Meanwhile, the mark PAPA BANANA CATSUP was registered by respondent only in the Supplemental Register, hence, was not provided any protection.

[17] *Rollo*, p. 53.

x x x. It is noted that the PAPA BANANA CATSUP label was applied for registration on November 15, 2006, over three years after the expiration of its registration in the Supplemental Register of the Philippine Patent Office on August 11, 2003. **Thus, while petitioner has a point that the marks PAPA and PAPA BANANA CATSUP have already expired and the latter having been afforded no protection at all and should not be juxtaposed with petitioner's trademark, respondent can still use the marks PAPA KETSARAP and PAPA BANANA CATSUP, it appearing that the Intellectual Property Office issued a Certificate of Registration No. 4-2006-012364 for the latter on April 30, 2007, to bar the registration of petitioner's "PAPA BOY & DEVICE" mark.**[18] (Emphases supplied, citations omitted.)

Anent the second ground, the Court of Appeals ruled in the following manner:

After taking into account the aforementioned doctrines and the factual circumstances of the case at bar, this Court, after considering the trademarks involved as a whole, is of the view that petitioner's trademark "PAPA BOY & DEVICE" is <u>not confusingly similar to</u> respondent's "PAPA KETSARAP" and "PAPA BANANA CATSUP" trademark. Petitioner's trademark is "PAPA BOY" as a whole as opposed to respondent's "PAPA". Although on its label the word "PAPA" is prominent, the trademark should be taken as a whole and not piecemeal. The difference between the two marks are conspicuous and noticeable. While respondent's products are both labeled as banana sauces, that of petitioner Barrio Fiesta is labeled as lechon sauce.

Moreover, it appears on the label of petitioner's product that the said lechon sauce is manufactured by Barrio Fiesta thus, clearly informing the public [of] the identity of the manufacturer of the lechon sauce. As claimed by respondent, its products have been in commercial use for decades. It is safe to assume then that the consumers are already aware that "PAPA KETSARAP" and "PAPA BANANA CATSUP" are products of UFC and not of petitioner or the other way around. In addition, as correctly pointed out by petitioner, if a consumer is in the market for banana sauce, he will not buy lechon sauce and vice-versa because aside from the fact that the labels of both parties' products contain the kind of sauce they are marketing,

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[18] *Id.* at 55-56.

the color of the products is visibly different. An ordinary consumer is familiar with the fact that the color of a banana sauce is red while a lechon sauce is dark brown. There can be no deception as both products are marketed in bottles making the distinction visible to the eye of the consumer and the likelihood of acquiring a wrong sauce, remote. Even if the products are placed side by side, the dissimilarities between the two marks are conspicuous, noticeable and substantial enough to matter especially in the light of the following variables that must be factored in.

Lastly, respondent avers that the word "PAPA" was coined after the surname of the person who first created and made use of the mark. Admittedly, while "PAPA" is a surname, it is more widely known as a term of endearment for one's father. Respondent cannot, therefore, claim exclusive ownership over and singular use of [the] term. Petitioner was able to explain that it adopted the word "PAPA" in parallel to the nickname of the founder of Barrio fiesta which is "MAMA CHIT". "PAPA BOY" was derived from the nickname of one of the incorporators of herein petitioner, a certain Bonifacio Ongpauco, son of Mama Chit.[19] (Emphasis ours, citation omitted.)

THEORY OF PETITIONER

Thus, petitioner came to this Court, seeking the reversal of the questioned decision and resolution of the Court of Appeals, and the reinstatement of the decision of the IPO Director General affirming the decision of the IPO-BLA. Petitioner raises the following grounds:

I.

The court *a quo* erred in applying the "holistic test" to determine whether there is confusing similarity between the contending marks, and in reversing the IPO-BLA and the Director General's application of the "dominancy test."

II.

The court *a quo* erred in holding that there is no likelihood of confusion between the contending marks given that the "PAPA BOY & DEVICE" mark is used on lechon sauce, as opposed to ketchup products.

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

III.

The court *a quo* erred in holding that Petitioner cannot claim exclusive ownership and use of the "PAPA" mark for its sauce products because "PAPA" is supposedly a common term of endearment for one's father.[20]

Under the first ground, petitioner submitted the following arguments:

1. The findings of administrative agencies, if supported by substantial evidence, are binding upon the courts.[21]

Petitioner alleges that the Court of Appeals should have respected the ruling of the IPO Director General, which was consistent with the ruling of the IPO-BLA and supported by substantial evidence, instead of substituting its findings of fact for those of the Director General and the IPO-BLA.

2. The dominancy test should have been applied to determine if there is confusing similarity between the competing marks.[22]

Petitioner points out that the Director General and the IPO-BLA found that the dominant feature of the competing marks is the word "PAPA" and the minor additions to respondent's "PAPA BOY & DEVICE" mark do not negate likelihood of confusion caused by the latter's use of the dominant word "PAPA." Petitioner claims that even compared solely to petitioner's "PAPA KETSARAP" mark (Registration No. 34681), which is conceded to have been timely renewed and to have never expired, respondent's "PAPA BOY & DEVICE" would still create the likelihood of confusion.[23]

According to petitioner, the Court of Appeals based its decision on *Mead Johnson & Co. v. N.V.J. Van Dorp, Ltd.*,[24] a case decided almost five decades ago, long before Republic Act No. 8293

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[20] *Id.* at 22.

[21] *Id.* at 22.

[22] *Id.* at 24.

[23] *Id.* at 26.

[24] 117 Phil. 779 (1963).

or the 1998 Intellectual Property Code was enforced. Thus, the Court of Appeals erroneously applied the holistic test since given the nature of the products bearing the competing marks, the dominancy test should have been applied.

Petitioner claims that "[k]etchup and lechon sauce are common and inexpensive household products that are sold in groceries and regularly encountered by the ordinary or common purchaser who is not expected to examine, scrutinize, and compare the details of the competing marks."[25]

Petitioner distinguishes this case from *Mead Johnson* and claims that the ordinary purchaser of ketchup or lechon sauce is not likely to closely scrutinize each mark as a whole, for the latter is "undiscerningly rash" and usually in a hurry, and cannot be expected to take note of the smiling hog-like character or the blue ribbon-like device with the words "Lechon Sauce." Petitioner argues that under the Intellectual Property Code, it is not necessary for one to colorably imitate the competing trademark as a whole. It is sufficient that one imitates a "dominant feature" of the mark to constitute trademark infringement.

Petitioner asserts that as the IPO-BLA and the Director General observed that the ordinary purchaser is most likely to notice the words "PAPA BOY," which, in turn, may lead him to believe that there is a connection between respondent's lechon sauce and petitioner's ketchup products.

Under the second ground, petitioner argues that the Court of Appeals seemed to be unmindful that two kinds of confusion may arise from the use of similar or colorable imitation marks, *i.e.*, confusion of goods (product confusion) and confusion of business (source or origin confusion). Petitioner claims that it is reasonable to assume that it may expand its business to producing lechon sauce, inasmuch as it already produces food sauce products and its Articles of Incorporation authorizes it to do so.

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[25] *Rollo*, pp. 27-28.

Petitioner alleges that the IPO-BLA recognized that confusion of business may arise from respondent's use of its "PAPA BOY & DEVICE" mark for lechon sauce products, and that the Director-General agreed with the IPO-BLA's findings on this issue.

Petitioner asserts that ketchup and lechon sauce are undeniably related goods; that they belong to the same class, *i.e.*, Class 30 of the Nice Classifications; that they serve practically the same purpose, *i.e.*, to spice up dishes; and that they are sold in similar bottles in the same shelves in grocery stores. Petitioner argues that the Court of Appeals had absolutely no basis for stating that a person who is out to buy ketchup is not likely to buy lechon sauce by mistake, as this analysis allegedly only applies to "product confusion" and does not consider confusion of business. Petitioner alleges that "[t]here equally is actionable confusion when a buyer purchases Respondent's 'PAPA BOY' lechon sauce believing that the said product is related to or associated with the famous 'PAPA KETSUP' makers." Petitioner further alleges that "it is reasonable and likely for a consumer to believe that Respondent's 'PAPA BOY' lechon sauce originated from or is otherwise connected with Petitioner's line of sauces" and that this is "the precise evil that recognition of confusion of business seeks to prevent."[26]

Petitioner avers that "PAPA" is a well-known mark and that it has been in commercial use as early as 1954 on banana ketchup and similar goods. The "PAPA" mark is also registered as a trademark and in commercial use in other parts of the world such as the United States of America and the Middle East. Petitioner claims that "[b]eing a trademark that is registered and well-known both locally and internationally, Petitioner's 'PAPA' marks cannot be appropriated by another person or entity not only with respect to goods similar to those with respect to which it is registered, but also with respect to goods which are not similar to those for which the 'PAPA' marks are registered."[27]

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

[27] *Id.* at 39.

Under the third ground, petitioner claims that the fact that the word "PAPA" is a known term of endearment for fathers does not preclude it from being used as a mark to identify goods. Petitioner claims that their mark falls under a type of mark known as "arbitrary or fanciful marks," which are "marks that bear no logical relation to the actual characteristics of the products they represent," are "highly distinctive and valid," and "are entitled to the greatest protection."[28]

Petitioner claims that the mark "PAPA" falls under this class of arbitrary marks, even if "PAPA" is also a common term of endearment for one's father. Petitioner states that there is no logical connection between one's father and food sauces, such as ketchup; thus, with respect to ketchup, food sauces, and their related products, and for the purpose of identifying its products, petitioner claims exclusive ownership of the term "PAPA" as an arbitrary mark.

Petitioner alleges that if respondent "has a good faith and proud desire to unmistakably and distinctly identify its lechon sauce product out in the market, it should have coined a mark that departs from and is distinguished from those of its competitors." Petitioner claims that respondent, with full knowledge of the fame and the decades-long commercial use of petitioner's "PAPA" marks, opted for "PAPA BOY & DEVICE," which obviously is just a "colorable imitation."[29]

THEORY OF RESPONDENT

In its **Comment**,[30] respondent claims that petitioner's marks have either expired and/or "that no confusing similarity exists between them and respondent's "PAPA BOY & DEVICE' mark." Respondent alleges that under Section 15 of Republic Act No. 166, a renewal application should be filed within six months before the expiration of the period or within three months after such expiration. Respondent avers that the expiration of the

[28] *Id.* at 41.

[29] *Id.* at 43.

[30] *Id.* at 106-136.

20-year term for the "PAPA" mark under Registration No. 32416 issued on August 11, 1983 was August 11, 2003. The sixth month before August 11, 2003 was February 11, 2003 and the third month after August 11, 2003 was November 11, 2003. Respondent claims that the application that petitioner filed on October 28, 2005 was almost two years late. Thus, it was not a renewal application, but could only be considered a new application under the new Trademark Law, with the filing date reckoned on October 28, 2005. The registrability of the mark under the new application was examined again, and any certificate issued for the registration of "PAPA" could not have been a renewal certificate.

As for petitioner's other mark "PAPA BANANA CATSUP LABEL," respondent claims that its 20-year term also expired on August 11, 2003 and that petitioner only filed its application for the new "PAPA LABEL DESIGN" on November 15, 2006. Having been filed three years beyond the renewal application deadline, petitioner was not able to renew its application on time, and cannot claim a "continuous existence of its rights over the 'PAPA BANANA CATSUP LABEL.'" Respondent claims that the two marks are different from each other and that the registration of one is independent of the other. Respondent concludes that the certificate of registration issued for "PAPA LABEL DESIGN" is "not and will never be a renewal certificate."[31]

Respondent also avers as follows:

> 1.3. With regard to the two new registrations of petitioner namely: "PAPA" (Reg. No. 4-2005-010788) and "PAPA LABEL DESIGN" (Reg. No. 4-2006-012364), these were filed on October 28, 2005 and November 15, 2006, respectively, under the Intellectual Property Code (RA 8293), which follows the "first to file" rule, and were obviously filed later than respondent's "PAPA BOY & DEVICE" mark filed on April 4, 2002. These new marks filed much later than the opposed "PAPA BOY & DEVICE" mark cannot, therefore, be used as basis for the opposition and should in fact, be denied outrightly.

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[31] *Id.* at 108.

x x x x x x x x x

A search of the Online Trademark Database of Intellectual Property Office (IPO) will show that only Registration No. 34681 issued for "PAPA KETSARAP" was properly renewed on August 23, 2005. x x x Clearly, the registrations of "PAPA" and "PAPA BANANA CATSUP LABEL" marks under registration nos. 32416 and SR-6282 respectively, have already expired when Petitioner filed its opposition proceeding against Respondent's trademark on December 11, 2006. Having expired, and therefore, no longer legally existing, the "PAPA" and "PAPA BANANA CATSUP LABEL" marks CANNOT BAR the registration of respondent's mark. To allow petitioner's expired marks to prevent respondent's distinct "PAPA BOY & DEVICE" mark from being registered would be the ultimate absurdity.[32]

Respondent posits that the Court of Appeals did not err in reversing the decisions of the administrative agencies, alleging that "[while] it is true that the general rule is that the factual findings of administrative bodies deserve utmost respect when supported by evidence, the same is subject to exceptions,"[33] and that the Court of Appeals had justifiable reasons to disregard the factual finding of the IPO. Here, the Court of Appeals wisely identified certain material facts that were overlooked by the IPO-BLA and the IPO Director General which it opined, when correctly appreciated, would alter the result of the case.

Respondent alleges that the IPO-BLA erroneously considered petitioner's marks "PAPA" and "PAPA BANANA CATSUP LABEL" when it applied the dominancy test in determining whether petitioner's marks are confusingly similar to those of respondent's mark "PAPA BOY & DEVICE."

Respondent avers that the IPO-BLA absurdly took emphasis on the mark "PAPA" to arrive at its decision and did not take into consideration that petitioner's mark was already expired when respondent applied for the registration of its "PAPA BOY & DEVICE" mark. Respondent compares its "PAPA BOY &

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[32] *Id.* at 108-109.

[33] *Id.* at 110.

DEVICE" with the only mark that respondent allegedly has, "PAPA KETSARAP," and found no confusing similarity between the two.

We quote below respondent's discussion of its application of the dominancy test to the marks in question:

> Applying the Dominancy test, as correctly emphasized by the Court of Appeals, the dominant feature in respondent's mark is "PAPA BOY" and not "PAPA". It can be gleaned from respondent's mark that the word "PAPA" was written in the same font, style and color as the word "BOY". There is also the presence of a "smiling hog-like character" which is positioned very prominently, both in size and location in said mark, at glance (*sic*) even more dominant than the word "PAPA BOY".
>
> x x x x x x x x x
>
> On the other hand, the dominant feature in petitioner's mark is "KETSARAP", not "PAPA". Even an ordinary examiner could observe that the word "KETSARAP" in petitioner's mark is more prominently printed than the word "PAPA".
>
> x x x x x x x x x
>
> In a dominancy test, the prominent feature of the competing trademarks must be similar to cause confusion or deception. x x x. [34]
>
> Verily, respondent's dominant feature "PAPA BOY" and the smiling hog-like character and petitioner's dominant feature "KETSARAP", being the word written in a larger font, are neither confusing nor deceiving to the public. In fact, the differences between their dominant marks are very noticeable and conspicuous to every purchaser.
>
> Furthermore, the Supreme Court in *Societe des Produits Nestle, S.A. v. Dy*, [641 Phil. 345], applied the dominancy test by taking into account the aural effects of the words and letters contained in the marks in determining the issue of confusing similarity. Obviously, petitioners' "PAPA KETSARAP" mark does not in any way sounds (*sic*) like respondent's "PAPA BOY" mark. The common prefix "PAPA" does not render the marks aurally the same. As discussed above, the dominant feature in petitioner's mark is "KETSARAP" and the dominant feature in respondent's mark is "PAPA BOY".

[34] *Id.* at 115.

Thus, the words "KETSARAP" and "PAPA BOY" in petitioner's and respondent's respective marks are obviously different in sound, making "PAPA BOY & DEVICE" even more distinct from petitioner's "PAPA KETSARAP" mark.[35]

Using the holistic test, respondent further discusses the differences in the marks in this wise:

Even the use of the holistic test x x x takes into consideration the entirety of the marks in question [to] be considered in resolving confusing similarity. The differences are again very obvious. Respondent's mark has (1) the word "lechon sauce" printed inside a blue ribbon-like device which is illustrated below the word "PAPA BOY": (2) a prominent smiling hog-like character gesturing a thumbs-up sign and wearing a Filipino hat and scarf stands beside the word "PAPA BOY"; and the word "BARRIO FIESTA" conspicuously displayed above the said trademark which leaves no doubt in the consumer's mind on the product that he or she is purchasing. On the other hand, petitioner's mark is the word "PAPA" enclosed by a cloud on top of the word "KETSARAP" enclosed by a geometrical figure.

x x x x x x x x x

In the instant case, the respective marks are obviously different in color scheme, logo, spelling, sound, meaning and connotation. Thus, yet again, under the holistic test there can be no confusion or deception between these marks.

It also bears stressing that petitioner's "PAPA KETSARAP" mark covers "banana catsup" while respondent's "PAPA BOY & DEVICE" covers "lechon sauce", thereby obliterating any confusion of products of both marks as they travel different channels of trade. If a consumer is in the market for banana catsup, he or she will not buy lechon sauce and vice-versa. As a result, the margin of error in the acquisition of one for the other is simply remote. Lechon sauce which is liver sauce is distinct from catsup extracted/made from banana fruit. The flavor and taste of a lechon sauce are far from those of a banana catsup. Lechon sauce is sauce for "lechon" while banana catsup is apparently catsup made from banana.[36]

Respondent also contends that "PAPA BOY & DEVICE"

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[35] *Id.* at 114-117.

[36] *Id.* at 117-118.

mark is not confusingly similar to petitioner's trademark "PAPA KETSARAP" in terms of appearance, sound, spelling and meaning. The difference in nature, usage, taste and appearance of products decreases the possibility of deception among buyers.[37]

Respondent alleges that since petitioner merely included banana catsup as its product in its certificate, it cannot claim any further right to the mark "PAPA KETSARAP" on products other than banana catsup. Respondent also alleges that petitioner cannot raise "international notoriety of the mark" for the first time on appeal and that there is no proof that petitioner's mark is internationally well-known.[38]

Furthermore, respondent argues that petitioner cannot claim exclusive ownership over the use of the word "PAPA," a term of endearment for one's father. Respondent points out that there are several other valid and active marks owned by third parties which use the word "PAPA," even in classes of goods similar to those of petitioner's. Respondent avers that petitioner's claim that its "PAPA" mark is an arbitrary mark is belatedly raised in the instant petition, and cannot be allowed because the "PAPA KETSARAP" mark would immediately bring the consuming public to thinking that the product involved is catsup and the description of said catsup is "*masarap*" (delicious) and due to the logical relation of the petitioner's mark to the actual product, it being descriptive or generic, it is far from being arbitrary or fanciful.[39]

Lastly, respondent claims that the Court of Appeals correctly ruled that respondent's product cannot be confused as originating from the petitioner. Since it clearly appears in the product label of the respondent that it is manufactured by Barrio Fiesta, the public is dutifully informed of the identity of the lechon sauce manufacturer. The Court of Appeals further took into account the fact that petitioner's products have been in commercial use

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

[38] *Id.* at 120-123.

[39] *Id.* at 127-128.

for decades.[40]

Petitioner, in its **Reply**[41] to respondent's Comment, contends that respondent cannot invoke a prior filing date for the "PAPA BOY" mark as against Petitioner's "PAPA" and "PAPA BANANA CATSUP LABEL" marks, because the latter marks were still registered when respondent applied for registration of its "PAPA BOY" mark. Thus, the IPO-BLA and Director General correctly considered them in deciding whether the "PAPA BOY" mark should be registered, using the "first to file" rule under Section 123.1 (d) of Republic Act No. 8293, or the Intellectual Property Code (IP Code).

Petitioner reiterates its argument that the Court of Appeals erred in applying the holistic test and that the proper test under the circumstances is the dominancy test, which was correctly applied by the IPO-BLA and the Director General.[42]

THIS COURT'S RULING

The petition has merit.

We find that the Court of Appeals erred in applying the holistic test and in reversing and setting aside the decision of the IPO-BLA and that of the IPO Director General, both of which rejected respondent's application for the mark "PAPA BOY & DEVICE."

In *Dermaline, Inc. v. Myra Pharmaceuticals, Inc.*,[43] we defined a trademark as "any distinctive word, name, symbol, emblem, sign, or device, or any combination thereof, adopted and used by a manufacturer or merchant on his goods to identify and distinguish them from those manufactured, sold, or dealt by others." We held that a trademark is "an intellectual property deserving protection by law."

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[40] *Id.* at 128.

[41] *Id.* at 143-168.

[42] *Id.* at 147.

[43] 642 Phil. 503, 510-511 (2010).

The rights of the trademark owner are found in the Intellectual Property Code, which provides:

Section 147. ***Rights Conferred.* — 147.1.** The owner of a registered mark shall have the exclusive right to prevent all third parties not having the owner's consent from using in the course of trade identical or similar signs or containers for goods or services which are identical or similar to those in respect of which the trademark is registered where such use would result in a likelihood of confusion. In case of the use of an identical sign for identical goods or services, a likelihood of confusion shall be presumed.

Section 168. ***Unfair Competition, Rights, Regulation and Remedies*. — 168.1**. A person who has identified in the mind of the public the goods he manufactures or deals in, his business or services from those of others, whether or not a registered mark is employed, has a property right in the goodwill of the said goods, business or services so identified, which will be protected in the same manner as other property rights.

The guideline for courts in determining likelihood of confusion is found in A.M. No. 10-3-10-SC, or the Rules of Procedure for Intellectual Property Rights Cases, Rule 18, which provides:

RULE 18

Evidence in Trademark Infringement and Unfair Competition Cases

SECTION 1. *Certificate of Registration*. — A certificate of registration of a mark shall be *prima facie* evidence of:

a) the validity of the registration;

b) the registrant's ownership of the mark; and

c) the registrant's exclusive right to use the same in connection with the goods or services and those that are related thereto specified in the certificate.

x x x x x x x x x

SECTION 3. *Presumption of Likelihood of Confusion*. — Likelihood of confusion shall be presumed in case an identical sign or mark is used for identical goods or services.

SECTION 4. *Likelihood of Confusion in Other Cases*. — In

determining whether one trademark is confusingly similar to or is a colorable imitation of another, the court must consider the general impression of the ordinary purchaser, buying under the normally prevalent conditions in trade and giving the attention such purchasers usually give in buying that class of goods. Visual, aural, connotative comparisons and overall impressions engendered by the marks in controversy as they are encountered in the realities of the marketplace must be taken into account. Where there are both similarities and differences in the marks, these must be weighed against one another to see which predominates.

In determining likelihood of confusion between marks used on non-identical goods or services, several factors may be taken into account, such as, but not limited to:

a) the strength of plaintiff's mark;

b) the degree of similarity between the plaintiff's and the defendant's marks;

c) the proximity of the products or services;

d) the likelihood that the plaintiff will bridge the gap;

e) evidence of actual confusion;

f) the defendant's good faith in adopting the mark;

g) the quality of defendant's product or service; and/or

h) the sophistication of the buyers.

"Colorable imitation" denotes such a close or ingenious imitation as to be calculated to deceive ordinary persons, or such a resemblance to the original as to deceive an ordinary purchaser giving such attention as a purchaser usually gives, as to cause him to purchase the one supposing it to be the other.

SECTION 5. *Determination of Similar and Dissimilar Goods or Services.* — Goods or services may not be considered as being similar or dissimilar to each other on the ground that, in any registration or publication by the Office, they appear in different classes of the Nice Classification.

In this case, the findings of fact of the highly technical agency, the Intellectual Property Office, which has the expertise in this field, should have been given great weight by the Court of

Appeals. As we held in *Berris Agricultural Co., Inc. v. Abyadang*:[44]

R.A. No. 8293 defines a "mark" as any visible sign capable of distinguishing the goods (trademark) or services (service mark) of an enterprise and shall include a stamped or marked container of goods. It also defines a "collective mark" as any visible sign designated as such in the application for registration and capable of distinguishing the origin or any other common characteristic, including the quality of goods or services of different enterprises which use the sign under the control of the registered owner of the collective mark.

On the other hand, R.A. No. 166 defines a "trademark" as any distinctive word, name, symbol, emblem, sign, or device, or any combination thereof, adopted and used by a manufacturer or merchant on his goods to identify and distinguish them from those manufactured, sold, or dealt by another. A trademark, being a special property, is afforded protection by law. But for one to enjoy this legal protection, legal protection ownership of the trademark should rightly be established.

The ownership of a trademark is acquired by its registration and its actual use by the manufacturer or distributor of the goods made available to the purchasing public. Section 122 of R.A. No. 8293 provides that the rights in a mark shall be acquired by means of its valid registration with the IPO. A certificate of registration of a mark, once issued, constitutes *prima facie* evidence of the validity of the registration, of the registrant's ownership of the mark, and of the registrant's exclusive right to use the same in connection with the goods or services and those that are related thereto specified in the certificate. R.A. No. 8293, however, requires the applicant for registration or the registrant to file a declaration of actual use (DAU) of the mark, with evidence to that effect, within three (3) years from the filing of the application for registration; otherwise, the application shall be refused or the mark shall be removed from the register. In other words, the *prima facie* presumption brought about by the registration of a mark may be challenged and overcome, in an appropriate action, by proof of the nullity of the registration or of non-use of the mark, except when excused. Moreover, the presumption may likewise be defeated by evidence of prior use by another person, *i.e.*, it will controvert a claim of legal appropriation or of ownership

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[44] 647 Phil. 517, 525-533 (2010).

based on registration by a subsequent user. This is because a trademark is a creation of use and belongs to one who first used it in trade or commerce.

The determination of priority of use of a mark is a question of fact. Adoption of the mark alone does not suffice. One may make advertisements, issue circulars, distribute price lists on certain goods, but these alone will not inure to the claim of ownership of the mark until the goods bearing the mark are sold to the public in the market. Accordingly, receipts, sales invoices, and testimonies of witnesses as customers, or orders of buyers, best prove the actual use of a mark in trade and commerce during a certain period of time.

x x x x x x x x x

Verily, the protection of trademarks as intellectual property is intended not only to preserve the goodwill and reputation of the business established on the goods bearing the mark through actual use over a period of time, but also to safeguard the public as consumers against confusion on these goods. **On this matter of particular concern, administrative agencies, such as the IPO, by reason of their special knowledge and expertise over matters falling under their jurisdiction, are in a better position to pass judgment thereon. Thus, their findings of fact in that regard are generally accorded great respect, if not finality by the courts, as long as they are supported by substantial evidence, even if such evidence might not be overwhelming or even preponderant. It is not the task of the appellate court to weigh once more the evidence submitted before the administrative body and to substitute its own judgment for that of the administrative agency in respect to sufficiency of evidence.** (Emphasis added, citations omitted.)

In trademark controversies, each case must be scrutinized according to its peculiar circumstances, such that jurisprudential precedents should only be made to apply if they are specifically in point.[45] The cases discussed below are mentioned only for purposes of lifting the applicable doctrines, laws, and concepts, but not for their factual circumstances, because of the uniqueness of each case in controversies such as this one.

There are two tests used in jurisprudence to determine likelihood of confusion, namely the dominancy test used by

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[45] *Dermaline, Inc. v. Myra Pharmaceuticals, Inc., supra* note 43 at 511.

the IPO, and the holistic test adopted by the Court of Appeals. In *Skechers, U.S.A., Inc. v. Inter Pacific Industrial Trading Corp.*,[46] we held:

> The essential element of infringement under R.A. No. 8293 is that the infringing mark is likely to cause confusion. In determining similarity and likelihood of confusion, jurisprudence has developed tests — the Dominancy Test and the Holistic or Totality Test. The Dominancy Test focuses on the similarity of the prevalent or dominant features of the competing trademarks that might cause confusion, mistake, and deception in the mind of the purchasing public. Duplication or imitation is not necessary; neither is it required that the mark sought to be registered suggests an effort to imitate. Given more consideration are the aural and visual impressions created by the marks on the buyers of goods, giving little weight to factors like prices, quality, sales outlets, and market segments.
>
> x x x x x x x x x
>
> Relative to the question on confusion of marks and trade names, jurisprudence has noted two (2) types of confusion, viz.: (1) confusion of goods (product confusion), where the ordinarily prudent purchaser would be induced to purchase one product in the belief that he was purchasing the other; and (2) confusion of business (source or origin confusion), where, although the goods of the parties are different, the product, the mark of which registration is applied for by one party, is such as might reasonably be assumed to originate with the registrant of an earlier product, and the public would then be deceived either into that belief or into the belief that there is some connection between the two parties, though inexistent.
>
> Applying the Dominancy Test to the case at bar, this Court finds that the use of the stylized "S" by respondent in its Strong rubber shoes infringes on the mark already registered by petitioner with the IPO. While it is undisputed that petitioner's stylized "S" is within an oval design, to this Court's mind, the dominant feature of the trademark is the stylized "S," as it is precisely the stylized "S" which catches the eye of the purchaser. Thus, even if respondent did not use an oval design, the mere fact that it used the same stylized "S", the same being the dominant feature of petitioner's trademark, already constitutes infringement under the Dominancy Test.

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[46] 662 Phil. 11, 19-24 (2011).

This Court cannot agree with the observation of the CA that the use of the letter "S" could hardly be considered as highly identifiable to the products of petitioner alone. The CA even supported its conclusion by stating that the letter "S" has been used in so many existing trademarks, the most popular of which is the trademark "S" enclosed by an inverted triangle, which the CA says is identifiable to Superman. Such reasoning, however, misses the entire point, which is that respondent had used a stylized "S," which is the same stylized "S" which petitioner has a registered trademark for. The letter "S" used in the Superman logo, on the other hand, has a block-like tip on the upper portion and a round elongated tip on the lower portion. Accordingly, the comparison made by the CA of the letter "S" used in the Superman trademark with petitioner's stylized "S" is not appropriate to the case at bar.

Furthermore, respondent did not simply use the letter "S," but it appears to this Court that based on the font and the size of the lettering, the stylized "S" utilized by respondent is the very same stylized "S" used by petitioner; a stylized "S" which is unique and distinguishes petitioner's trademark. Indubitably, the likelihood of confusion is present as purchasers will associate the respondent's use of the stylized "S" as having been authorized by petitioner or that respondent's product is connected with petitioner's business.

x x x x x x x x x

While there may be dissimilarities between the appearances of the shoes, to this Court's mind such dissimilarities do not outweigh the stark and blatant similarities in their general features. x x x.

Based on the foregoing, this Court is at a loss as to how the RTC and the CA, in applying the holistic test, ruled that there was no colorable imitation, when it cannot be any more clear and apparent to this Court that there is colorable imitation. The dissimilarities between the shoes are too trifling and frivolous that it is indubitable that respondent's products will cause confusion and mistake in the eyes of the public. Respondent's shoes may not be an exact replica of petitioner's shoes, but the features and overall design are so similar and alike that confusion is highly likely.

x x x x x x x x x

Neither can the difference in price be a complete defense in trademark infringement. In *McDonald's Corporation v. L.C. Big Mak Burger, Inc.*, this Court held:

> Modern law recognizes that the protection to which the owner of a trademark is entitled is not limited to guarding his goods or business from actual market competition with identical or similar products of the parties, but extends to all cases in which the use by a junior appropriator of a trade-mark or trade-name is likely to lead to a confusion of source, as where prospective purchasers would be misled into thinking that the complaining party has extended his business into the field (see 148 ALR 56 *et seq*; 53 Am. Jur. 576) or is in any way connected with the activities of the infringer; or when it forestalls the normal potential expansion of his business (v. 148 ALR 77, 84; 52 Am. Jur. 576, 577). x x x.

Indeed, the registered trademark owner may use its mark on the same or similar products, in different segments of the market, and at different price levels depending on variations of the products for specific segments of the market. The purchasing public might be mistaken in thinking that petitioner had ventured into a lower market segment such that it is not inconceivable for the public to think that Strong or Strong Sport Trail might be associated or connected with petitioner's brand, which scenario is plausible especially since both petitioner and respondent manufacture rubber shoes.

Withal, the protection of trademarks as intellectual property is intended not only to preserve the goodwill and reputation of the business established on the goods bearing the mark through actual use over a period of time, but also to safeguard the public as consumers against confusion on these goods. While respondent's shoes contain some dissimilarities with petitioner's shoes, this Court cannot close its eye to the fact that for all intents and purpose, respondent had deliberately attempted to copy petitioner's mark and overall design and features of the shoes. Let it be remembered, that defendants in cases of infringement do not normally copy but only make colorable changes. The most successful form of copying is to employ enough points of similarity to confuse the public, with enough points of difference to confuse the courts. (Citations omitted.)

The Court discussed the concept of confusion of business in the case of *Societe Des Produits Nestle, S.A. v. Dy, Jr.*,[47] as quoted below:

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[47] 641 Phil. 345, 358-367 (2010).

Among the elements, the element of likelihood of confusion is the gravamen of trademark infringement. There are two types of confusion in trademark infringement: confusion of goods and confusion of business. In *Sterling Products International, Inc. v. Farbenfabriken Bayer Aktiengesellschaft,* the Court distinguished the two types of confusion:

> Callman notes two types of confusion. The first is the *confusion of goods* "in which event the ordinarily prudent purchaser would be induced to purchase one product in the belief that he was purchasing the other." In which case, "defendant's goods are then bought as the plaintiff's, and the poorer quality of the former reflects adversely on the plaintiff's reputation." The other is the *confusion of business*: "Here though the goods of the parties are different, the defendant's product is such as might reasonably be assumed to originate with the plaintiff, and the public would then be deceived either into that belief or into the belief that there is some connection between the plaintiff and defendant which, in fact, does not exist."

There are two tests to determine likelihood of confusion: the dominancy test and holistic test. The dominancy test focuses on the similarity of the main, prevalent or essential features of the competing trademarks that might cause confusion. Infringement takes place when the competing trademark contains the essential features of another. Imitation or an effort to imitate is unnecessary. The question is whether the use of the marks is likely to cause confusion or deceive purchasers.

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In cases involving trademark infringement, no set of rules can be deduced. Each case must be decided on its own merits. Jurisprudential precedents must be studied in the light of the facts of each particular case. In *McDonald's Corporation v. MacJoy Fastfood Corporation*, the Court held:

> In trademark cases, particularly in ascertaining whether one trademark is confusingly similar to another, no set rules can be deduced because each case must be decided on its merits. In such cases, even more than in any other litigation, precedent

must be studied in the light of the facts of the particular case. That is the reason why in trademark cases, jurisprudential precedents should be applied only to a case if they are specifically in point.

In the light of the facts of the present case, the Court holds that the dominancy test is applicable. In recent cases with similar factual milieus, the Court has consistently applied the dominancy test. x x x.

x x x x x x x x x

In *McDonald's Corporation v. MacJoy Fastfood Corporation*, the Court applied the dominancy test in holding that "MACJOY" is confusingly similar to "MCDONALD'S." The Court held:

> While we agree with the CA's detailed enumeration of differences between the two (2) competing trademarks herein involved, we believe that the holistic test is not the one applicable in this case, the dominancy test being the one more suitable. In recent cases with a similar factual milieu as here, the Court has consistently used and applied the dominancy test in determining confusing similarity or likelihood of confusion between competing trademarks.
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> x x x x x x x x x
>
> Applying the dominancy test to the instant case, the Court finds that herein petitioner's "MCDONALD'S" and respondent's "MACJOY" marks are confusingly similar with each other that an ordinary purchaser can conclude an association or relation between the marks.
>
> To begin with, both marks use the corporate "M" design logo and the prefixes "Mc" and/or "Mac" as dominant features. x x x.
>
> For sure, it is the prefix "Mc," and abbreviation of "Mac," which visually and aurally catches the attention of the consuming public. Verily, the word "MACJOY" attracts attention the same way as did "McDonalds," "Mac Fries," "Mc Spaghetti," "McDo," "Big Mac" and the rest of the MCDONALD'S marks which all

use the prefixes Mc and/or Mac.

Besides and most importantly, both trademarks are used in the sale of fastfood products. Indisputably, the respondent's trademark application for the "MACJOY & DEVICE" trademark covers goods under Classes 29 and 30 of the International Classification of Goods, namely, fried chicken, chicken barbeque, burgers, fries, spaghetti, etc. Likewise, the petitioner's trademark registration for the MCDONALD'S marks in the Philippines covers goods which are similar if not identical to those covered by the respondent's application.

In *McDonald's Corporation v. L.C. Big Mak Burger, Inc.*, the Court applied the dominancy test in holding that "BIG MAK" is confusingly similar to "BIG MAC." The Court held:

This Court x x x has relied on the dominancy test rather than the holistic test. The dominancy test considers the dominant features in the competing marks in determining whether they are confusingly similar. Under the dominancy test, courts give greater weight to the similarity of the appearance of the product arising from the adoption of the dominant features of the registered mark, disregarding minor differences. Courts will consider more the aural and visual impressions created by the marks in the public mind, giving little weight to factors like prices, quality, sales outlets and market segments.

Thus, in the 1954 case of *Co Tiong Sa v. Director of Patents*, the Court ruled:

x x x It has been consistently held that the question of infringement of a trademark is to be determined by the test of dominancy. Similarity in size, form and color, while relevant, is not conclusive. If the competing trademark contains the main or essential or dominant features of another, and confusion and deception is likely to result, infringement takes place. Duplication or imitation is not necessary; nor is it necessary that the infringing label should suggest an effort to imitate. (*G. Heilman Brewing Co. vs. Independent Brewing Co.*, 191 F., 489, 495, citing *Eagle White Lead Co. vs. Pflugh (CC)* 180 Fed. 579). The question

> at issue in cases of infringement of trademarks is whether the use of the marks involved would be likely to cause confusion or mistakes in the mind of the public or deceive purchasers. (*Auburn Rubber Corporation vs. Honover Rubber Co.*, 107 F. 2d 588; x x x)
>
> x x x x x x x x x
>
> The test of dominancy is now explicitly incorporated into law in Section 155.1 of the Intellectual Property Code which defines infringement as the "colorable imitation of a registered mark x x x or a *dominant feature* thereof."
>
> Applying the dominancy test, the Court finds that respondents' use of the "Big Mak" mark results in likelihood of confusion. First, "Big Mak" sounds exactly the same as "Big Mac." Second, the first word in "Big Mak" is exactly the same as the first word in "Big Mac." Third, the first two letters in "Mak" are the same as the first two letters in "Mac." Fourth, the last letter "Mak" while a "k" sounds the same as "c" when the word "Mak" is pronounced. Fifth, in Filipino, the letter "k" replaces "c" in spelling, thus "Caloocan" is spelled "Kalookan."

In *Societe Des Produits Nestle, S.A. v. Court of Appeals*, the Court applied the dominancy test in holding that "FLAVOR MASTER" is confusingly similar to "MASTER ROAST" and "MASTER BLEND." The Court held:

> While this Court agrees with the Court of Appeals' detailed enumeration of differences between the respective trademarks of the two coffee products, this Court cannot agree that totality test is the one applicable in this case. Rather, this Court believes that the dominancy test is more suitable to this case in light of its peculiar factual milieu.
>
> Moreover, the totality or holistic test is contrary to the elementary postulate of the law on trademarks and unfair competition that confusing similarity is to be determined on the basis of visual, aural, connotative comparisons and overall impressions engendered by the marks in controversy as they are encountered in the realities of the marketplace. The totality

or holistic test only relies on visual comparison between two trademarks whereas the dominancy test relies not only on the visual but also on the aural and connotative comparisons and overall impressions between the two trademarks.

For this reason, this Court agrees with the BPTTT when it applied the test of dominancy and held that:

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The scope of protection afforded to registered trademark owners is not limited to protection from infringers with identical goods. The scope of protection extends to protection from infringers with related goods, and to market areas that are the normal expansion of business of the registered trademark owners. Section 138 of R.A. No. 8293 states:

Certificates of Registration. — A certificate of registration of a mark shall be *prima facie* evidence of validity of the registration, the registrant's ownership of the mark, and of the registrant's exclusive right to use the same in connection with the goods or services and those that are related thereto specified in the certificate. x x x.

In *Mighty Corporation v. E. & J. Gallo Winery*, the Court held that, "Non-competing goods may be those which, though they are not in actual competition, are so related to each other that it can reasonably be assumed that they originate from one manufacturer, in which case, confusion of business can arise out of the use of similar marks." In that case, the Court enumerated factors in determining whether goods are related: (1) classification of the goods; (2) nature of the goods; (3) descriptive properties, physical attributes or essential characteristics of the goods, with reference to their form, composition, texture or quality; and (4) style of distribution and marketing of the goods, including how the goods are displayed and sold.

x x x x x x x x x

x x x. However, **as the registered owner of the "NAN" mark, Nestle should be free to use its mark on similar products, in different segments of the market, and at different price levels**.

In *McDonald's Corporation v. L.C. Big Mak Burger, Inc.*, the Court held that the scope of protection afforded to registered trademark owners extends to market areas that are the normal expansion of business:

x x x x x x x x x

Even respondent's use of the "Big Mak" mark on non-hamburger food products cannot excuse their infringement of petitioners' registered mark, otherwise registered marks will lose their protection under the law.

The registered trademark owner may use his mark on the same or similar products, in different segments of the market, and at different price levels depending on variations of the products for specific segments of the market. The Court has recognized that the registered trademark owner enjoys protection in product and market areas that are the *normal potential expansion of his business*. Thus, the Court has declared:

> Modern law recognizes that the protection to which the owner of a trademark is entitled is not limited to guarding his goods or business from actual market competition with identical or similar products of the parties, but extends to all cases in which the use by a junior appropriator of a trade-mark or trade-name is likely to lead to a confusion of source, as where prospective purchasers would be misled into thinking that the complaining party has extended his business into the field (see 148 ALR 56 *et sq*; 53 Am. Jur. 576) or is in any way connected with the activities of the infringer; or when it forestalls the normal potential expansion of his business (*v.* 148 ALR, 77, 84; 52 Am. Jur. 576, 577). (Emphases supplied, citations omitted.)

Again, this Court discussed the dominancy test and confusion of business in *Dermaline, Inc. v. Myra Pharmaceuticals, Inc.*,[48] and we quote:

The Dominancy Test focuses on the similarity of the prevalent features of the competing trademarks that might cause confusion or

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[48] *Supra* note 43 at 511-515.

deception. It is applied when the trademark sought to be registered contains the main, essential and dominant features of the earlier registered trademark, and confusion or deception is likely to result. Duplication or imitation is not even required; neither is it necessary that the label of the applied mark for registration should suggest an effort to imitate. The important issue is whether the use of the marks involved would likely cause confusion or mistake in the mind of or deceive the ordinary purchaser, or one who is accustomed to buy, and therefore to some extent familiar with, the goods in question. Given greater consideration are the aural and visual impressions created by the marks in the public mind, giving little weight to factors like prices, quality, sales outlets, and market segments. The test of dominancy is now explicitly incorporated into law in Section 155.1 of R.A. No. 8293 which provides —

> 155.1. Use in commerce any reproduction, counterfeit, copy, or **colorable imitation** of a registered mark or the same container or a **dominant feature** thereof in connection with the sale, offering for sale, distribution, advertising of any goods or services including other preparatory steps necessary to carry out the sale of any goods or services on or in connection with which such use is likely to cause confusion, or to cause mistake, or to deceive x x x.

x x x x x x x x x

Relative to the question on confusion of marks and trade names, jurisprudence has noted two (2) types of confusion, *viz.*: (1) confusion of goods (product confusion), where the ordinarily prudent purchaser would be induced to purchase one product in the belief that he was purchasing the other; and (2) confusion of business (source or origin confusion), where, although the goods of the parties are different, the product, the mark of which registration is applied for by one party, is such as might reasonably be assumed to originate with the registrant of an earlier product, and the public would then be deceived either into that belief or into the belief that there is some connection between the two parties, though inexistent.

x x x x x x x x x

We agree with the findings of the IPO. As correctly applied by the IPO in this case, while there are no set rules that can be deduced as what constitutes a dominant feature with respect to trademarks applied for registration; usually, what are taken into account are signs, color, design, peculiar shape or name, or some special, easily

remembered earmarks of the brand that readily attracts and catches the attention of the ordinary consumer.

x x x x x x x x x

Further, Dermaline's stance that its product belongs to a separate and different classification from Myra's products with the registered trademark does not eradicate the possibility of mistake on the part of the purchasing public to associate the former with the latter, especially considering that both classifications pertain to treatments for the skin.

Indeed, the registered trademark owner may use its mark on the same or similar products, in different segments of the market, and at different price levels depending on variations of the products for specific segments of the market. The Court is cognizant that the registered trademark owner enjoys protection in product and market areas that are the *normal potential expansion of his business*. Thus, we have held —

> Modern law recognizes that the protection to which the owner of a trademark is entitled is not limited to guarding his goods or business from *actual* market competition with identical or similar products of the parties, but extends to all cases in which the use by a junior appropriator of a trade-mark or trade-name is **likely to lead to a confusion of source, as where prospective purchasers would be misled into thinking that the complaining party has extended his business into the field** (see 148 ALR 56 *et seq*; 53 Am Jur. 576) or is in *any* way connected with the activities of the infringer, **or when it forestalls the normal potential expansion of his business** (v. 148 ALR 77, 84; 52 Am. Jur. 576, 577).

Thus, the public may mistakenly think that Dermaline is connected to or associated with Myra, such that, considering the current proliferation of health and beauty products in the market, the purchasers would likely be misled that Myra has already expanded its business through Dermaline from merely carrying pharmaceutical topical applications for the skin to health and beauty services.

Verily, when one applies for the registration of a trademark or label which is almost the same or that very closely resembles one already used and registered by another, the application should be rejected and dismissed outright, even without any opposition on the part of the owner and user of a previously registered label or trademark.

This is intended not only to avoid confusion on the part of the public, but also to protect an already used and registered trademark and an established goodwill. (Citations omitted.)

Section 123.1 (d) of the IP Code provides:

A mark cannot be registered if it:

x x x x x x x x x

(d) Is identical with a registered mark belonging to a different proprietor or a mark with an earlier filing or priority date, in respect of:

i. The same goods or services, or

ii. Closely related goods or services, or

iii. If it nearly resembles such a mark as to be likely to deceive or cause confusion[.]

A scrutiny of petitioner's and respondent's respective marks would show that the IPO-BLA and the IPO Director General correctly found the word "PAPA" as the dominant feature of petitioner's mark "PAPA KETSARAP." Contrary to respondent's contention, "KETSARAP" cannot be the dominant feature of the mark as it is merely descriptive of the product. Furthermore, it is the "PAPA" mark that has been in commercial use for decades and has established awareness and goodwill among consumers.

We likewise agree with the IPO-BLA that the word "PAPA" is also the dominant feature of respondent's "PAPA BOY & DEVICE" mark subject of the application, such that "the word 'PAPA' is written on top of and before the other words such that it is the first word/figure that catches the eyes."[49] Furthermore, as the IPO Director General put it, the part of respondent's mark which appears prominently to the eyes and ears is the phrase "PAPA BOY" and that is what a purchaser of respondent's product would immediately recall, not the smiling hog.

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[49] CA *rollo*, p. 244.

We quote the relevant portion of the IPO-BLA decision on this point below:

> A careful examination of Opposer's and Respondent-applicant's respective marks shows that the word "PAPA" is the dominant feature: In Opposer's marks, the word "PAPA" is either the mark by itself or the predominant word considering its stylized font and the conspicuous placement of the word "PAPA" before the other words. In Respondent-applicant's mark, the word "PAPA" is written on top of and before the other words such that it is the first word figure that catches the eyes. The visual and aural impressions created by such dominant word "PAPA" at the least is that the respective goods of the parties originated from the other, or that one party has permitted or has been given license to the other to use the word "PAPA" for the other party's product, or that there is a relation/connection between the two parties when, in fact, there is none. This is especially true considering that the products of both parties belong to the same class and are closely related: Catsup and lechon sauce or liver sauce are both gravy-like condiments used to spice up dishes. Thus, confusion of goods and of business may likely result.
>
> Under the Dominancy Test, the dominant features of the competing marks are considered in determining whether these competing marks are confusingly similar. Greater weight is given to the similarity of the appearance of the products arising from the adoption of the dominant features of the registered mark, disregarding minor differences. The visual, aural, connotative, and overall comparisons and impressions engendered by the marks in controversy as they are encountered in the realities of the marketplace are the main considerations (McDonald's Corporation, et al. v. L.C. Big Mak Burger, Inc., et al., G.R. No. 143993, August 18, 2004; Societe Des Produits Nestle, S.A., et al. v. Court of Appeals, et al., G.R. No. 112012, April 4, 2001). If the competing trademark contains the main or essential or dominant features of another, and confusion and deception is likely to result, infringement takes place. (Lim Hoa v. Director of Patents, 100 Phil. 214 [1956]); Co Tiong Sa v. Director of Patents, et al., G.R. No. L-5378, May 24, 1954). Duplication or imitation is not necessary; nor is it necessary that the infringing label should suggest an effort to imitate (*Lim Hoa v. Director of Patents, supra, and Co Liong Sa v. Director of Patents*, *supra*). Actual confusion is not required: Only likelihood of confusion on the part of the buying public is necessary so as to render two marks confusingly similar so as to deny the registration of the junior mark (*Sterling Products*

International, Inc. v. Farbenfabriken Bayer Aktiengesellschaft, 137 Phil. 838 [1969]).

As to the first issue of whether PAPA BOY is confusingly similar to Opposer's PAPA mark, this Bureau rules in the affirmative.

The records bear the following:

1. Registration No. 32416 issued for the mark "PAPA" under Class 29 goods was deemed expired as of February 11, 2004 (Exhibit "A" attached to the VERIFIED NOTICE OF OPPOSITION). Application Serial No. 4-2005-010788 was filed on October 28, 2005 for the same mark "PAPA" for Class 30 goods and Registration No. 42005010788 was issued on March 19, 2007;

2. Opposer was issued for the mark "PAPA BANANA CATSUP LABEL" on August 11, 1983 Registration No. SR-6282 for Class 30 goods in the Supplemental Register, which registration expired in 2003. Application Serial No. 4-2006-012364 was filed for the mark "PAPA LABEL DESIGN" for Class 30 goods on November 15, 2006, and Registration No. 42006012364 was issued on April 30, 2007; and

3. Lastly, Registration No. 34681 for the mark "PAPA KETSARAP" for Class 30 goods was issued on August 23, 1985 and was renewed on August 23, 2005.

Though Respondent-applicant was first to file the subject application on April 04, 2002 vis-a-vis the mark "PAPA" the filing date of which is reckoned on October 28, 2005, and the mark "PAPA LABEL DESIGN" the filing date of which is reckoned on November 15, 2006, Opposer was able to secure a registration for the mark "PAPA KETSARAP" on August 23, 1985 considering that Opposer was the prior registrant and that its renewal application timely filed on August 23, 2005.

x x x x x x x x x

Pursuant to [Section 123.1(d) of the IP Code], the application for registration of the subject mark cannot be allowed considering that Opposer was earlier registrant of the marks PAPA and PAPA KETSARAP which registrations were timely renewed upon its expiration. Respondent-applicant's mark "PAPA BOY & DEVICE" is confusingly similar to Opposer's mark "PAPA KETSARAP" and is applied to goods that are related to Opposer's goods, but Opposer's mark "PAPA KETSARAP" was registered on August 23, 1985 per

Certificate of Registration No. 34681, which registration was renewed for a period of 10 years counted from August 23, 2005 per Certificate of Renewal of Registration No. 34681 issued on August 23, 2005. To repeat, Opposer has already registered a mark which Respondent-applicant's mark nearly resembles as to likely deceive or cause confusion as to origin and which is applied to goods to which respondent-applicant's goods under Class 30 are closely related.

Section 138 of the IP Code provides that a certificate of registration of a mark is *prima facie* evidence of the validity of the registration, the registrant's ownership of the mark, and of the registrant's exclusive right to use the same in connection with the goods and those that are related thereto specified in the certificate.[50]

We agree that respondent's mark cannot be registered. Respondent's mark is related to a product, lechon sauce, an everyday all-purpose condiment and sauce, that is not subjected to great scrutiny and care by the casual purchaser, who knows from regular visits to the grocery store under what aisle to find it, in which bottle it is contained, and approximately how much it costs. Since petitioner's product, catsup, is also a household product found on the same grocery aisle, in similar packaging, the public could think that petitioner had expanded its product mix to include lechon sauce, and that the "PAPA BOY" lechon sauce is now part of the "PAPA" family of sauces, which is not unlikely considering the nature of business that petitioner is in. Thus, if allowed registration, confusion of business may set in, and petitioner's hard-earned goodwill may be associated to the newer product introduced by respondent, all because of the use of the dominant feature of petitioner's mark on respondent's mark, which is the word "PAPA." The words "Barrio Fiesta" are not included in the mark, and although printed on the label of respondent's lechon sauce packaging, still do not remove the impression that "PAPA BOY" is a product owned by the manufacturer of "PAPA" catsup, by virtue of the use of the dominant feature. It is possible that petitioner could expand its business to include lechon sauce, and that would be well within petitioner's rights, but the existence of a "PAPA BOY" lechon sauce would already eliminate this possibility and deprive

[50] *Id.* at 244-246.

petitioner of its rights as an owner of a valid mark included in the Intellectual Property Code.

The Court of Appeals likewise erred in finding that "PAPA," being a common term of endearment for one's father, is a word over which petitioner could not claim exclusive use and ownership. The Merriam-Webster dictionary defines "Papa" simply as "a person's father." True, a person's father has no logical connection with catsup products, and that precisely makes "PAPA" as an arbitrary mark capable of being registered, as it is distinctive, coming from a family name that started the brand several decades ago. What was registered was not the word "Papa" as defined in the dictionary, but the word "Papa" as the last name of the original owner of the brand. In fact, being part of several of petitioner's marks, there is no question that the IPO has found "PAPA" to be a registrable mark.

Respondent had an infinite field of words and combinations of words to choose from to coin a mark for its lechon sauce. While its claim as to the origin of the term "PAPA BOY" is plausible, it is not a strong enough claim to overrule the rights of the owner of an existing and valid mark. Furthermore, this Court cannot equitably allow respondent to profit by the name and reputation carefully built by petitioner without running afoul of the basic demands of fair play.[51]

WHEREFORE, we hereby **GRANT** the petition. We **SET ASIDE** the June 23, 2011 **Decision** and the October 4, 2011 **Resolution** of the Court of Appeals in CA-G.R. SP No. 107570, and **REINSTATE** the March 26, 2008 **Decision** of the Bureau of Legal Affairs of the Intellectual Property Office (IPO-BLA) and the January 29, 2009 **Decision** of the Director General of the IPO.

SO ORDERED.

Sereno, C.J.(Chairperson), Bersamin, Perlas-Bernabe, and *Jardeleza, JJ.*, concur.

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[51] *Coffee Partners, Inc. v. San Francisco Coffee & Roastery, Inc.*, 628 Phil. 13 (2010).

SECOND DIVISION

[G.R. No. 202885. January 20, 2016]

WALLEM MARITIME SERVICES, INC., REGINALDO A. OBEN and WALLEM SHIPMANAGEMENT, LTD., *petitioners, vs.* **EDWINITO V. QUILLAO,** *respondent.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; EMPLOYMENT; PERMANENT AND TOTAL DISABILITY BENEFITS; WHERE COMPLAINT FOR DISABILITY BENEFITS FILED AFTER OCTOBER 6, 2008, THE 240-DAY MAXIMUM PERIOD FOR TREATMENT RULE APPLIES.—** [A]t the time of filing of the Complaint, respondent has no cause of action because the company-designated physician has not yet issued an assessment on respondent's medical condition; moreover the 240-day maximum period for treatment has not yet lapsed. As reiterated by the Court in the recent case of *C.F. Sharp Crew Management, Inc. v. Obligado*, the 120-day rule applies only when the complaint was filed prior to October 6, 2008; however, if the complaint was filed from October 6, 2008 onwards, the 240-day rule applies. Here, it is beyond dispute that the complaint for disability benefits was filed after October 6, 2008. Hence, the 240-day rule should apply. x x x Moreover, [in this case, respondent] has no basis for claiming permanent and total disability benefits because he has not yet consulted his doctor-of-choice. x x x Further, in *Ace Navigation Co. v. Garcia* and *Carcedo v. Maine Marine Phils., Inc.*, the Court pointed out that the 120 or 240-day period to determine the seafarer's disability or fitness to work is reckoned from his repatriation. x x x [And] [n]ot only did respondent prematurely file his Complaint, he reneged on his duties to continue his treatment as necessary to improve his condition.

2. **ID.; PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION-STANDARD EMPLOYMENT CONTRACT (POEA-SEC); SECTION 20-D; NO COMPENSATION AND BENEFITS PAYABLE TO SEAFARER ON ANY DISABILITY RESULTING FROM INTENTIONAL BREACH OF HIS**

DUTIES.— Under Section 20(D) of the POEA-SEC "[n]o compensation and benefits shall be payable in respect of any injury, incapacity, disability or death of the seafarer resulting from his willful or criminal act or **intentional breach of his duties**, provided however, that the employer can prove that such injury, incapacity, disability or death is directly attributable to the seafarer." Respondent was duty-bound to comply with his medical treatment, PT sessions, including the recommended consultation to an orthopedic specialist in order to give the company-designated doctor the opportunity to determine his fitness to work or to assess the degree of his disability. His inability to continue his treatment after November 12, 2009 until January 9, 2010, without any valid explanation proves that he neglected his corresponding duty to continue his medical treatment. Consequently, respondent's inability to regularly return for his treatment caused the regress of his condition, as shown by the statement of the company-designated doctor on January 9, 2010 x x x Moreover, on April 20, 2010, the company-designated physician reported that had respondent "been cooperative with his treatment and shown interest in improving his medical condition, it is possible to declare him fit to work on board as a fitter and in any capacity. For this reason, [he advised] that the permanent unfitness clause does not apply in his case."

APPEARANCES OF COUNSEL

Del Rosario & Del Rosario Law Office for petitioners.
Romulo P. Valmores for respondent.

D E C I S I O N

DEL CASTILLO, *J*.:

This Petition for Review on *Certiorari* assails the May 15, 2012 Decision[1] of the Court of Appeals (CA) in CA-G.R. SP

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[1] CA *rollo*, pp. 447-466; penned by Associate Justice Celia C. Librea-Leagogo and concurred in by Associate Justices Elihu A. Ybañez and Samuel H. Gaerlan.

No. 122787. The CA affirmed the December 8, 2011 Decision[2] of the Panel of Voluntary Arbitrators (PVA), National Conciliation and Mediation Board in AC-0809-NCR-46-04-07-11, with modification that the amount to be jointly and severally paid by Wallem Maritime Services, Inc. (WMS) and Wallem Shipmanagement Ltd. (WSL) to Edwinito V. Quillao (respondent) is US$98,010.00 or its peso equivalent at the time of payment, instead of US$98,110.00. Also challenged is the August 1, 2012 CA Resolution[3] denying reconsideration of its Decision.

Factual Antecedents

WMS is a local manning agency, with Reginaldo A. Oben (Oben) as its President and Manager.[4] On September 30, 2008, WMS, for and in behalf of its foreign principal, WSL, hired respondent as fitter aboard the vessel Crown Garnet for a period of nine months with a monthly salary of US$698.00.[5]

Respondent alleged that his employment was covered by a collective bargaining agreement (CBA) between the Associated Marine Officers' and Seamen's Union of the Philippines (AMOSUP) and WSL — Hong Kong, represented by WMS.[6] He stated that after undergoing pre-employment medical examination, he was declared fit to work. He joined the vessel on October 4, 2008.[7]

Respondent averred that in January 2009, he started experiencing neck and lower back pain. In April 2009, he purportedly noticed numbness and weakness of his left hand.

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[2] *Id.* at 43-68; the Panel of Voluntary Arbitrators was composed of Chairman Herminigildo C. Javen, with Hon. Leonardo B. Saulog and Hon. Allan S. Montano, as Members.

[3] *Id.* at 520-521.

[4] *Id.* at 72.

[5] *Id.* at 154.

[6] *Id.* at 143, 155-192.

[7] *Id.* at 143.

Respondent stated that towards the end of his contract, the Chief Engineer tried to convince him to extend his contract but he declined. The Chief Engineer then told him that he would report to their Superintendent respondent's ailment.[8]

Respondent further stated that he signed off from the vessel on July 13, 2009. Upon arrival in the Philippines on July 15, 2009, he was referred to the company-designated physician Dr. Ramon S. Estrada (Dr. Estrada) and was diagnosed of cervical radiculopathy, thoracic and lumbar spondylosis, as well as carpal tunnel syndrome of the left, and trigger finger, third digit of his right hand. He was also referred to Dr. Arnel V. Malaya (Dr. Malaya) for back rehabilitation and to Dr. Ida Tacata, a specialist for hand surgery orthopedics.[9] He underwent carpal tunnel surgery on his left hand, and physical therapy (PT) sessions for his cervical and lumbar condition.[10]

On September 9, 2009, Dr. Estrada reported that respondent's carpal tunnel surgery was healing well. Respondent followed up with Dr. Malaya, his physiatrist, for his shoulder pain.[11] As of November 12, 2009, respondent had completed 24 PT sessions for his shoulder, upper back and cervical pain. However, the company-designated doctor declared that respondent was complaining of pain in these areas with poor response to therapy and medications. And because of complaint for low back pain, he advised respondent to defer PT sessions and seek the opinion of an orthopedic specialist.[12]

However, on November 23, 2009, the Legal Affairs Department of AMOSUP informed WMS of respondent's claim for disability benefits[13] and the clarificatory conference scheduled

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[8] *Id.* at 144.

[9] *Id.* at 45.

[10] *Id.* at 145.

[11] *Id.* at 131.

[12] *Id.* at 132.

[13] *Id.* at 134.

on November 27, 2009.

On November 24, 2009, respondent requested from the company-designated doctor the final assessment of his health condition but to no avail.[14]

Thereafter, grievance proceedings were held at the AMOSUP office regarding respondent's claim. Respondent admitted that after several meetings, he was advised to continue his PT sessions until March 15, 2010.[15]

On January 9, 2010, the company-designated doctor opined that respondent's chance of being declared fit to work was "quite good" provided he completes his remaining physical therapy sessions for about 4-6 weeks for his left hand pain and back pain. He also reported that respondent failed to return for his consultation since November 12, 2009.[16]

On February 5, 2010, upon referral of Dr. Malaya, respondent underwent EMG-NCV[17] test which revealed that: "1.) A severe chronic distal focal neuropathy of the left median nerve as in carpal tunnel syndrome. A moderately severe CTS is also seen on the left[; and,] 2.) Findings compatible with a chronic lumbar radiculopathy involving the right L4-5 spinal roots."[18]

On March 12, 2010, the company-designated doctor gave respondent a final disability rating of Grade 10, and made the following pronouncements:

x x x [Respondent] was seen and re-evaluated by the physiatrist Dr. Malaya and with findings of no apparent improvement in his pain symptoms which is not compatible with all the tests and clinical evaluation/findings. He still complains of pain [on] the upper back and both hands, apparently with no significant improvement after

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[14] *Id.* at 133, 145.

[15] *Id.* at 145.

[16] *Id.* at 135.

[17] Electromyogram and Nerve Conduction Velocity.

[18] *Id.* at 217.

several sessions of intensive physical therapy. Discontinuation of his rehabilitation program was advised by the specialist. With those developments, [I would declare that respondent's] condition is already at the stage of maximum medical wellness and no further treatment will improve his pain perception. Disability Grade 10 will be applicable to his present physical status under the POEA guidelines. x x x.[19]

On August 2, 2011, respondent consulted Dr. Renato P. Runas (Dr. Runas), an independent orthopedic surgeon. Dr. Runas diagnosed him of being afflicted with cervical and lumbar spondylosis with nerve root compression.[20] On August 15, 2011, Dr. Runas opined that respondent "is not fit for further sea duty permanently in whatever capacity with a status equivalent to Grade 8" Impediment — moderate rigidity or 2/3 loss of trunk motion or lifting power.[21]

Respondent posited that he was entitled to permanent and total disability benefits because: he was declared fit to work prior to his last contract with petitioners; he sustained his illness in the course of and by reason of his work; despite surgery and PT, his condition did not improve; the company-designated physician did not assess the degree of his disability; his chosen physician declared him permanently unfit for sea duty; and, since repatriation, he had never been employed and his earning capacity had since then been impaired.[22]

For their part, WMS, WSL and Oben (petitioners) confirmed that respondent's employment with them was covered by a CBA; and that while he was aboard the vessel he complained of pain and finger numbness on his left hand. They affirmed that upon repatriation, they referred him to the company-designated physician, Dr. Estrada, as well as to Dr. Malaya for back rehabilitation, and to Dr. Ida Tacata for hand surgery.[23]

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[19] *Id.* at 136.

[20] *Id.* at 146, 218-219.

[21] *Id.* at 221-222.

[22] *Id.* at 148-150.

[23] *Id.* at 73.

Petitioners stressed that when respondent filed a complaint before the AMOSUP on November 23, 2009, he was still undergoing treatment; and during which the company-designated physician had not yet given him a final disability assessment.[24] They insisted that the company-designated doctor failed to give an assessment within 120 days because respondent failed to appear for his consultations with the company-designated doctors.[25] They explained that although no assessment was issued within the 120-day period, respondent was given a final assessment on March 12, 2010, or within the 240-day maximum period for treatment.[26]

Ruling of the Panel of Voluntary Arbitrators

On December 8, 2011, the PVA rendered its Decision[27] for respondent, the dispositive portion of which reads:

> WHEREFORE, premises considered, a decision is hereby rendered, ORDERING herein respondents Wallem Maritime Services[,] Inc. and/or Wallem Shipmanagement Ltd., to jointly and severally pay complainant Edwinito V. Quillao, the amount of Eighty Nine Thousands [sic] One Hundred US Dollars (US$89,100.00) as disability benefits, plus ten percent thereof as attorney's fees, or a total of Ninety Eight Thousands [sic] One Hundred Ten US Dollars (US$98,110.00) or its peso equivalent converted at the time of payment.
>
> The complainant's prayer for exemplary [damages], moral damages and reimbursement of medical expenses are dismissed for sheer lack of merit.
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> x x x x x x x x x
>
> SO ORDERED.[28]

In ruling that respondent is entitled to permanent and total

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[24] *Id.* at 74, 78.

[25] *Id.* at 80.

[26] *Id.* at 82.

[27] *Id.* at 27.

[28] *Id.* at 68.

disability benefits, the PVA held that despite the lapse of 120 days, the company-designated doctor neither gave respondent an assessment on his condition nor issued a certificate on his fitness or unfitness for sea duty. The PVA also declared that the amount of disability should not be based on the schedule of disability gradings in the Standard Terms and Conditions Governing the Overseas Employment of Filipino Seafarers On-Board Ocean-Going Vessels of the Philippine Overseas Employment Administration (POEA-SEC) considering that despite continuous treatment, he was not restored to his former health condition. The PVA disregarded petitioner's allegation of prematurity or lack of cause of action and medical abandonment reasoning that no final assessment was issued within 120 days and that Dr. Estrada discontinued respondent's rehabilitation based on his opinion that the latter already reached the maximum level of medical wellness. Moreover, the PVA lent more credence to the assessment of Dr. Runas ratiocinating that he is "an orthopedic surgeon specialist" vis-à-vis Dr. Estrada "who was not an orthopedic surgeon but a general and colorectal surgeon."[29] Finally, it also decreed that respondent was covered by the CBA from which his entitlement for disability benefits must be based.

Ruling of the Court of Appeals

Petitioners filed a Petition for Review with the CA arguing that the PVA seriously erred in finding them liable to pay respondent total disability benefits and attorney's fees.

On May 15, 2012, the CA rendered the assailed Decision,[30] the decretal portion of which reads:

> WHEREFORE, premises considered, the Petition is DENIED for lack of merit. The Decision dated 08 December 2011 of the Panel of Voluntary Arbitrators, National Conciliation and Mediation Board in *AC-0809-NCR-46-04-07-11* is AFFIRMED with the correction that total amount to be jointly and severally paid by petitioners Wallem Maritime Services, Inc. and Wallem Shipmanagement Ltd. to

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[29] *Id.* at 64.

[30] *Id.* at 447-466.

respondent Edwinito V. Quillao is Ninety Eight Thousand and Ten US Dollars (US$98,010.00) or its peso equivalent converted at the time of payment, and not US$98,110.00.

Costs against petitioners.

SO ORDERED.[31]

Like the PVA, the CA gave more weight to the opinion of Dr. Runas explaining thus:

While the company-designated physician Dr. Estrada, a general and colorectal surgeon, gave respondent a Grade 10 disability, he, however, utterly failed to issue any certification as to the fitness or unfitness of respondent to render further sea duties in any capacity. It was respondent's personal physician Dr. Runas, an orthopedic surgeon, who declared him as not fit for further sea duty permanently in whatever capacity, and assessed that he has an impediment Grade 8 (33.59%) moderate rigidity or 2/3 loss of trunk motion or lifting power.[32]

Moreover, the CA affirmed the PVA's ruling that respondent has a cause of action against petitioners "because they failed to pay his disability benefits."[33] It also agreed with the PVA that respondent is not guilty of medical abandonment because he was already pronounced to have reached the maximum level of wellness.[34] Finally, it held that in case of conflict between the medical opinion of the company-designated doctor and that of the seafarer's doctor-of-choice, the latter's opinion shall prevail because the "law looks tenderly on the laborer."[35]

On August 1, 2012, the CA denied petitioners' Motion for Reconsideration.[36]

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[31] *Id.* at 463-464.

[32] *Id.* at 461.

[33] *Id.*

[34] *Id.* at 462.

[35] *Id.* at 463.

[36] *Id.* at 520-521.

Thus, petitioners filed this Petition stating that:

I. x x x the Court of Appeals [erred] in awarding disability benefits in favor of respondent x x x despite the ruling of this Honorable Court in the recent case of CF Sharp Crew Management, Inc. x x x *vs.* x x x Taok x x x wherein this Honorable Court dismissed the complaint of seafarer Taok for lack of a cause of action. At the time of the filing of the complaint, the seafarer had no cause of action as he was still being treated and it was still undetermined whether he would be declared fit or permanently disabled by the company doctor.[37]

II. Assuming x x x respondent is entitled to disability benefits x x x his entitlement to disability benefits should be limited to Grade 10 as subsequently assessed by the company-designated physician.[38]

III. x x x the Court of Appeals [erred] in awarding disability benefits in favor of respondent x x x when it set aside the disability assessments given by the company-designated physician and gave credence to the assessment of respondent's own physician in clear contradiction of this Honorable Court's ruling in Santiago vs. Pacbasin x x x upholding the disability grading assessment of the company-designated physician in the absence of an examination by a third doctor whose finding shall be final and binding. As the company-designated physician assessed respondent with a final disability assessment of Grade 10, respondent is only entitled to [US]$17,954.00 under the CBA.[39]

IV. x x x the Court of Appeals [erred] in awarding attorney's fees in favor of respondent x x x. No bad faith attended the denial of respondent's claims as the denial was based on just and legal grounds, to wit: respondent has no cause of action against petitioners as he was still undergoing treatment when he commenced his claim for permanent total disability

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[37] *Rollo*, p. 47.

[38] *Id.* at 50.

[39] *Id.* at 55-56.

[40] *Id.* at 61.

> benefits, he was guilty of medical abandonment and assuming respondent is still entitled to disability benefits despite the foregoing, he was only assessed a disability of Grade 10 by the company-designated physician.[40]

Issue

Is respondent entitled to permanent and total disability benefits?

Petitioners' Arguments

Petitioners maintain that respondent's right to permanent and total disability benefits only arises from the moment the company-designated doctor declares him permanently and totally disabled. Since the company-designated physician has not yet issued any certification when this case was filed, then, respondent has no cause of action against them. They assert that assuming they are liable, their liability is limited only to the disability rating as assessed by the company-designated doctor.

Moreover, petitioners insist that respondent was guilty of medical abandonment because after November 12, 2009, he stopped reporting to the company-designated physician. They add that at that time, the company-designated doctor opined that it was possible for respondent to be declared fit to work had he continued his remaining PT sessions.

Lastly, petitioners assert that they are not in bad faith in denying respondent's disability claims, thus, they should not be held liable for attorney's fees.

Respondent's Arguments

Respondent counters that he has a cause of action against petitioners. He claims that the lack of declaration from the company-designated physician prompted him to file a Complaint for disability benefits.

Respondent states that he is entitled to permanent and total disability benefits because the company-designated physician only arrived at a final assessment of his condition after more than 240 days from his repatriation. He argues that

notwithstanding the assessments of the company-designated doctor and his chosen physician, his disability is deemed permanent and total by reason of his inability to perform customary work for more than 120 days; and his disability remained beyond 240 days.

Finally, respondent states that the award of attorney's fees is proper as he was compelled to litigate to protect his interest.

Our Ruling

The Court finds merit in the Petition.

We agree with petitioners' contention that at the time of filing of the Complaint, respondent has no cause of action because the company-designated physician has not yet issued an assessment on respondent's medical condition; moreover the 240-day maximum period for treatment has not yet lapsed. As reiterated by the Court in the recent case of *C.F. Sharp Crew Management, Inc. v. Obligado*,[41] the 120-day rule applies only when the complaint was filed prior to October 6, 2008; however, if the complaint was filed from October 6, 2008 onwards, the 240-day rule applies. Here, it is beyond dispute that the complaint for disability benefits was filed after October 6, 2008. Hence, the 240-day rule should apply. It was thus error on the part of the PVA to reckon respondent's entitlement to permanent and total disability benefits based on the 120-day rule.

The records clearly show that respondent was still undergoing treatment when he filed the complaint. On November 12, 2009, the physiatrist even advised respondent to seek the opinion of an orthopedic specialist.[42] Respondent, however, did not heed the advice, instead, he proceeded to file a Complaint on November 23, 2009 for disability benefits. And, it was only a day after its filing (or on November 24, 2009) that respondent requested from the company-designated doctor the latter's assessment on his medical condition.

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[41] G.R. No. 192389, September 23, 2015.

[42] CA *rollo*, p. 132.

Stated differently, respondent filed the Complaint within the 240-day period while he was still under the care of the company-designated doctor. Significantly, we note that respondent has not even consulted his doctor-of-choice before instituting his Complaint for disability benefits.

Clearly, the Complaint was premature. Respondent has no cause of action yet at the time of its filing as the company-designated doctor has no opportunity to definitely assess his condition because he was still undergoing treatment; and the 240-day period had not lapsed.[43] Moreover, he has no basis for claiming permanent and total disability benefits because he has not yet consulted his doctor-of-choice.

In addition, it is unclear if respondent was in fact medically repatriated or that he returned home under a finished contract. Respondent commenced his work aboard the vessel on October 4, 2008. He signed off from the vessel on July 12, 2009 (or July 13, 2009, as claimed by respondent) and arrived in the country on July 15, 2009. At any rate, considering that petitioners acknowledged that while still on the vessel, respondent complained of pain and numbness of hand, and upon his return, they referred him to the company-designated doctor for treatment, then we hold that petitioners considered respondent as a medically repatriated seafarer. Under these circumstances, the pertinent provisions of the Labor Code on disability benefits, including its Implementing Rules and Regulations, as well as those of the POEA-SEC apply here.

Accordingly, citing *Vergara v. Hammonia Maritime Services, Inc.*,[44] the Court in *Magsaysay Maritime Corporation v. National Labor Relations Commission*[45] harmonized the application of the Labor Code, its Rules and Regulations and the POEA-SEC in the determination of permanent and total disability in this manner:

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[43] *New Filipino Maritime Agencies, Inc. v. Despabeladeras*, G.R. No. 209201, November 19, 2014.

[44] 588 Phil. 895, 912 (2008).

[45] G.R. No. 191903, June 19, 2013, 699 SCRA 197, 211-212.

[T]he seafarer, upon sign-off from his vessel, must report to the company-designated physician within three (3) days from arrival for diagnosis and treatment. For the duration of the treatment but in no case to exceed 120 days, the seaman is on *temporary total disability* as he is totally unable to work. He receives his basic wage during this period until he is declared fit to work or his temporary disability is acknowledged by the company to be permanent, either partially or totally, as his condition is defined under the POEA Standard Employment Contract and by applicable Philippine laws. If the 120 days initial period is exceeded and no such declaration is made because the seafarer requires further medical attention, then the temporary total disability period may be extended up to a maximum of 240 days, subject to the right of the employer to declare within this period that a partial or total disability already exists. The seaman may of course also be declared fit to work at any time such declaration is justified by his medical condition.

Further, in *Ace Navigation Co. v. Garcia*[46] and *Carcedo v. Maine Marine Phils., Inc.*,[47] the Court pointed out that the 120 or 240-day period to determine the seafarer's disability or fitness to work is reckoned from his repatriation.

Here, respondent reported to the company-designated physician within three days from his arrival and was given medical attention. He was also referred to a physiatrist and to a surgeon for his hand operation. The company-designated physiatrist later advised him to consult an orthopedic specialist. Respondent, nonetheless, failed to abide by the rule that the company-designated physician is to determine his fitness to return to work or the degree of his disability within 240 days from his repatriation. As already discussed, respondent prematurely filed his Complaint for disability benefits prior to the lapse of the 240-day period.

Not only did respondent prematurely file his Complaint, he reneged on his duties to continue his treatment as necessary to improve his condition. In his Report dated January 9, 2010, the company-designated doctor made the following

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[46] G.R. No. 207804, June 17, 2015.

[47] G.R. No. 203804, April 15, 2015.

pronouncements:

> x x x [T]he chance of [respondent's] being declared fit to work is quite good on the premise that he [complete] his remaining therapy sessions (about 4-6 weeks more) for the left hand pain and back pain. However, in my 8th medical report dated November 12, 2009, I mentioned that during follow-up evaluation and interview with him, he complained of pain [on] the neck and additional pain of the lower back which was not originally present at the start of the treatment. I have also mentioned this to the physiatrist, Dr. Malaya[,] and there seem[s] to be an intent to prolong treatment and seek disability. [Respondent] did not report to my clinic after that day until the present time.[48]

As we ruled in *Magsaysay*,[49] the Court cannot blame petitioners for holding that respondent abandoned his treatment. Respondent failed to reasonably explain his failure to report to the company-designated physician after November 12, 2009 until January 9, 2010. The only clear circumstance that transpired between these periods is that he already filed his Complaint on November 23, 2009.

Under Section 20 (D) of the POEA-SEC "[n]o compensation and benefits shall be payable in respect of any injury, incapacity, disability or death of the seafarer resulting from his willful or criminal act or **intentional breach of his duties,** provided however, that the employer can prove that such injury, incapacity, disability or death is directly attributable to the seafarer." Respondent was duty-bound to comply with his medical treatment, PT sessions, including the recommended consultation to an orthopedic specialist in order to give the company-designated doctor the opportunity to determine his fitness to work or to assess the degree of his disability. His inability to continue his treatment after November 12, 2009 until January 9, 2010, without any valid explanation proves that he neglected his corresponding duty to continue his medical treatment.[50]

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[48] CA *rollo*, p. 135.

[49] *Supra* note 45 at 213-214.

[50] *New Filipino Maritime Agencies, Inc. v. Despabeladeras, supra* note 43.

Consequently, respondent's inability to regularly return for his treatment caused the regress of his condition, as shown by the statement of the company-designated doctor on January 9, 2010 as follows:

> On your query about the effect of the delay in the treatment program, this can prolong the period of treatment due to the fact that the physical therapy will have to start in accordance with his functional capacity at the present time.[51]

Moreover, on April 20, 2010, the company-designated physician reported that had respondent "been cooperative with his treatment and shown interest in improving his medical condition, it is possible to declare him fit to work on board as a fitter and in any capacity. For this reason, [he advised] that the permanent unfitness clause does not apply in his case."[52]

Furthermore, in his Affidavit[53] dated September 10, 2011, the company-designated physiatrist, Dr. Malaya, averred that respondent failed to report to him and to the company-designated doctor for the completion of his PT sessions. He added that respondent was referred to him for re-evaluation and resumption of therapy until March 8, 2010 but respondent did not report to him. He also shared the view of the company-designated doctor that had respondent been cooperative with his treatment and shown interest in improving his condition, it was possible to declare him fit to work as a fitter.

Respondent was well aware of the need for him to undergo and continue his PT sessions. He even admitted during the grievance proceedings on his disability claim that he was advised to continue his PT until March 15, 2010.[54]

Indeed, respondent did not comply with the terms of the POEA-SEC. The failure of the company-designated doctor to issue an assessment was not of his doing but resulted from respondent's refusal to cooperate and undergo further treatment. Such failure to abide with the procedure under the POEA-SEC results in his non-entitlement to disability benefits.[55]

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[51] CA *rollo*, p. 135.

[52] *Id.* at 137.

[53] *Id.* at 138-139.

[54] *Id.* at 145.

[55] *Splash Phils., Inc. v. Ruizo*, G.R. No. 193628, March 19, 2014, 719 SCRA 496, 509-510.

Given these, the Court finds that the CA erred in affirming the PVA Decision that respondent is entitled to permanent and total disability benefits.

WHEREFORE, the Petition is **GRANTED.** The May 15, 2012 Decision and August 1, 2012 Resolution of the Court of Appeals in CA-G.R. SP No. 122787 are **REVERSED** and **SET ASIDE**. Accordingly, the Complaint is **DISMISSED** for lack of merit.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 205785. January 20, 2016]

HELEN B. LUKBAN, *petitioner, vs.* **OPTIMUM DEVELOPMENT BANK,** *respondent.*

SYLLABUS

POLITICAL LAW; LOCAL GOVERNMENT CODE OF 1991 (RA 7160); AUCTION SALE OF TAX DELINQUENT REAL PROPERTIES; ONLY THE REGISTERED OWNER OF THE PROPERTY IS DEEMED THE TAXPAYER WHO IS ENTITLED TO A NOTICE OF DELINQUENCY AND OTHER PROCEEDINGS RELATIVE TO THE TAX SALE, INCLUDING NOTICE OF SALE.— On 18 August 2005, the City Treasurer's Office of Marikina (City Treasurer) conducted an auction sale of tax delinquent real properties, which included the real property of Melba T. Atienza (Atienza)

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[*] Per Special Order No. 2312 dated January 19, 2016.

under Transfer Certificate of Title (TCT) No. 234408 x x x Petitioner Helen B. Lukban (Lukban) was the highest and winning bidder of the property during the public auction. x x x Thereafter, Lukban filed a petition for the cancellation of TCT No. 234408 and the issuance by the Register of Deeds of Marikina City (Marikina Register of Deeds) of a new TCT in her favor. The case was raffled to the Regional Trial Court of Marikina City, Branch 272 (trial court) [and] found that there was an entry on TCT No. 234408 annotating a prior Notice of Levy in favor of Capitol Bank (now Optimum Bank) x x x In its Decision dated 16 February 2010, the trial court granted Lukban's petition. x x x In its assailed 28 August 2012 Decision, the Court of Appeals granted the appeal [of Optimum Bank] and set aside the trial court's 16 February 2010 Decision. x x x Instead of ruling solely on the issues raised by Optimum Bank, the Court of Appeals ruled on the basis of the lack of notice of the auction sale on Atienza under Section 260 of R.A. No. 7160. x x x Whether Atienza received the Notice of Public Auction is a factual issue that was not raised by Optimum Bank because it is an issue that only Atienza, being the registered owner, can raise. x x x We do not subscribe to Optimum Bank's view that it is entitled to the Notice of Sale so that it may exercise its right to redeem the property.

APPEARANCES OF COUNSEL

Florentino & Esmaquel Law Office for petitioner.
Christian M. Chavez for respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

Before the Court is a petition for review on certiorari assailing the 28 August 2012 Decision[1] and the 7 February

[1] *Rollo*, pp. 47-57. Penned by Associate Justice Japar B. Dimaampao, with Associate Justices Elihu A. Ybañez and Victoria Isabel A. Paredes concurring.

2013 Resolution[2] of the Court of Appeals in CA-G.R. CV No. 95150.

The Antecedent Facts

On 18 August 2005, the City Treasurer's Office of Marikina (City Treasurer) conducted an auction sale of tax delinquent real properties, which included the real property of Melba T. Atienza (Atienza) under Transfer Certificate of Title (TCT) No. 234408 particularly described as follows:

> A parcel of land (Lot 8 of the conso-subd., plan (LRA) Pcs-30783, approved as non subd., project, being a portion of the conso- of Lots 7 & 9, Blk. 87, Pcs-4259, LRC Rec. No. 7672), in the Bo. of Concepcion, (Bayanbayanan), Mun. of Marikina, MM., Is. of Luzon. Bounded on the NE., points 4-1 by Lot 5, Blk. 87, Pcs-4259; on the SE., points 1-2 by Lot 9; on the SW., points 2-3 by Lot 6; both of the conso-subd., plan; on the NW., points 4-5 by ST. Lot 66, Pcs-4259 (Katipunan St.). Beginning at a point marked "1" on plan, being S. 45 deg. 39' E., 1704.37 m. from BLBM 1, Bayanbayanan, Marikina, MM., thence S. 20 deg. 06' W., 8.00 m. to point 2; thence N. 69 deg. 54' W., 12.75 m. to point 3; thence [N]. 20 deg. 06' E., 8.00 m. to point 4; thence S. 69 deg. 54' E., 12.75 m. to (OVER) MELBA T. ATIENZA, of legal age, Filipino; married to Franco Mariano Atienza, the point of beginning; containing an area of ONE HUNDRED TWO (102) SQUARE METERS, more or less. All points referred to are indicated on the plan and are marked on the ground by as follows: point 4, by Old PLS/Ps cyl.conc. [m]ons., 15x60 bearings true; date of the original survey, De[c]. 1910-June 1911 and that of the conso-subd., survey, executed by D.F. Caparas, GE on June 22, 1991.[3]

Petitioner Helen B. Lukban (Lukban) was the highest and winning bidder of the property during the public auction. She paid the amount of ₱47,265.60[4] inclusive of penalties and publication fees. On 25 August 2005, the City Treasurer issued Lukban a Certificate of Sale of Delinquent Real Property to

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

[3] *Id.* at 48.

[4] Records, p. 10. In the Court of Appeals' Decision, the amount stated is ₱45,265.

Purchaser, acknowledging receipt of her payment. Lukban then paid the realty taxes, capital gains tax, documentary stamp tax, and all other internal revenue taxes due on the property.

On 10 June 2008, Lukban filed a petition for the cancellation of TCT No. 234408 and the issuance by the Register of Deeds of Marikina City (Marikina Register of Deeds) of a new TCT in her favor. The case was raffled to the Regional Trial Court of Marikina City, Branch 272 (trial court) and docketed as LRC Case No. R-08-1010-MK. In an Order[5] dated 22 July 2008, the trial court found that there was an entry on TCT No. 234408 annotating a prior Notice of Levy in favor of Capitol Bank, denominated as Entry No. 285574/T-No. 234408 — Mortgage. It was annotated more than 12 years ahead of the Notice of Levy for tax delinquency. The trial court noted that there was a possibility that the owner's duplicate certificate of title was not with Atienza but with Capitol Bank. The trial court further noted that while Lukban provided it with Atienza's address, she did not furnish the trial court with Capitol Bank's address. The trial court ordered Lukban to provide it with Capitol Bank's correct address so that it could be notified of the case as a party in interest. Lukban sought the help of the Marikina Register of Deeds but it could not provide her with Capitol Bank's address.

On 23 October 2008, Atty. Aleta I. Lopez (Atty. Lopez) appeared as counsel of Rizal Commercial Banking Corporation (RCBC) and manifested that RCBC had acquired a portion of the shares of Capitol Bank. Atty. Lopez further manifested that RCBC did not have the TCT of the property in its possession. Atty. Lopez informed the trial court that Capitol Bank already changed its name to Optimum Development Bank (Optimum Bank). During the hearing, Atty. Felix S. Caballes, Lukban's counsel, moved for the marking of exhibits to establish jurisdictional requirements. The exhibits included the following:

(1) Order of the trial court dated 22 July 2008;

(2) Order dated 9 September 2008 setting the initial hearing on 23 October 2008;

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[5] *Rollo*, p. 49.

(3) Registry return slips showing that Lukban, Lukban's counsel, the Marikina Register of Deeds, and RCBC separately received copies of the 9 September 2008 Order and the petition; and

(4) Certificate of posting.

The trial court then issued an Order setting the continuance of the proceedings on 27 November 2008 and the initial presentation of evidence on 3 December 2008.

After the termination of the lone witness' testimony but before Lukban's offer of evidence, Optimum Bank filed an Urgent Manifestation and Motion to Admit as well as its Opposition to Lukban's petition on the ground that its rights would be affected should the petition be granted. Optimum Bank alleged that while it was the registered mortgagee of the property, it was not aware that it was sold by the City Treasurer in a public auction and that Lukban was the highest bidder. Optimum Bank further alleged that the bid was too low compared to the actual market value of the property and the mortgage debt amounting to ₱340,000. Optimum Bank manifested that it had the original duplicate title of the property in its possession. Optimum Bank also reserved its right to present documentary evidence of its rights as mortgagee.

On 4 February 2009, Optimum Bank filed a motion for extension of time to submit its supplemental opposition and to attach proof of its interest in the property. On 4 March 2009, Lukban filed her Formal Offer of Evidence. On 25 March 2009, Optimum Bank filed a certified true copy of the Loan and Mortgage Agreement in its favor. During the hearing of 25 June 2009, Atty. Restituto Mendoza (Atty. Mendoza), Optimum Bank's counsel, failed to appear for the presentation of Optimum Bank's evidence. The hearing was reset to 17 July 2009. However, on 15 July 2009, Atty. Mendoza filed an Urgent Motion to Reset date of hearing from 17 July 2009 to 28 August 2009. The trial court denied the motion in its 17 July 2009 Order, deemed Optimum Bank to have waived its right to present evidence, and submitted the case for decision. Optimum Bank

filed a motion for reconsideration but the trial court denied the motion in its Order of 30 October 2009.

Optimum Bank filed a petition for certiorari and prohibition before the Court of Appeals assailing the 17 July 2009 and 30 October 2009 Orders of the trial court. The case was docketed as CA-G.R. SP No. 111764. In a Decision[6] dated 30 November 2010, the Court of Appeals dismissed the petition and upheld the trial court's ruling that Optimum Bank had waived its right to present evidence.

Meanwhile, the trial court granted Lukban's petition.

The Decision of the Trial Court

In its Decision[7] dated 16 February 2010, the trial court granted Lukban's petition. The trial court ruled that Lukban was able to satisfactorily prove that she acquired the property from a public auction sale, that the one-year redemption period lapsed without Atienza redeeming the property, and that a Final Deed of Sale was issued in her favor. The trial court noted that the City of Marikina complied with the requirements of notice and publication in accordance with Republic Act No. 7160[8] (R.A. No. 7160). The trial court further noted that Lukban paid the capital gains tax and that the Bureau of Internal Revenue issued a Tax Clearance and a Certificate Authorizing Registration in her favor.

The dispositive portion of the Decision reads:

> WHEREFORE, finding merit in the herein petition, the same is hereby GRANTED. Pursuant to Section 107 of PD 1529 also known as the Property Registration Decree, Melba T. Atienza married to Franco Mariano Atienza, the registered owner of the property covered by TCT No. 234408 of the Registry of Deeds of Marikina City, or any person withholding the same is hereby ordered to surrender the said title to the Register of Deeds of Marikina City within THIRTY

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[6] *Id.* at 115-122.

[7] *Id.* at 85-88. Penned by Judge Felix P. Reyes.

[8] The Local Government Code of 1991.

(30) DAYS upon receipt hereof. In case of non-compliance, the Register of Deeds of Marikina City is hereby ordered to cancel TCT No. 234408 and to issue, in lieu thereof, a new title in the name of herein petitioner, HELEN B. LUKBAN of No. 6 Remuda St., Rancho I, Marikina City, upon payment of the prescribed taxes and fees therefor. The mortgage annotated on the subject title shall be incorporated in or carried over to the new transfer certificate of title and its duplicates and shall also contain a memorandum of the annulment of the outstanding duplicate.

SO ORDERED.[9]

Optimum Bank appealed from the trial court's Decision.

The Decision of the Court of Appeals

In its assailed 28 August 2012 Decision, the Court of Appeals granted the appeal and set aside the trial court's 16 February 2010 Decision.

The Court of Appeals ruled that actual notice to the registered owner of the real property is a condition *sine qua non* for the validity of the auction sale. The Court of Appeals ruled that the records of the case did not show that Atienza actually received a notice of the auction sale. According to the Court of Appeals, such failure invalidated the auction sale and as a consequence, Lukban did not acquire any right therefrom. However, Optimum Bank, not being the registered owner of the property, was not entitled to the notice of sale. The Court of Appeals then ruled that it was no longer necessary to rule on Optimum Bank's arguments that the issuance of a new TCT to Lukban would impair its rights as a mortgagee and that Lukban had the burden to prove that the mortgage debt had been paid.

The dispositive portion of the Decision reads:

WHEREFORE, the Appeal is hereby GRANTED. The Decision dated 16 February 2010 of the Regional Trial Court of Marikina City, Branch 272 granting the Petition for Cancellation of Transfer Certificate of Title (TCT) No. 234408 and Issuance of a New One and ordering the issuance of a new TCT in favor of appellee Helen

[9] *Rollo*, p. 88.

B. Lukban, in LRC Case No. 08-1010-MK, is SET ASIDE. The public auction sale conducted on 18 August 2005 is declared VOID for lack of notice to Melba T. Atienza, the registered owner of the subject property.

SO ORDERED.[10]

Lukban filed a motion for reconsideration. In its 7 February 2013 Resolution, the Court of Appeals denied the motion for lack of merit.

Hence, the petition before this Court.

Lukban argued that:

A. The Honorable Court of Appeals committed serious error of law in setting aside the 16 February 2010 Decision of the Honorable Regional Trial Court and declaring void the public auction sale conducted on 18 August 2005 by the City Treasurer of Marikina City because the Decision dated 16 February 2010 (the "Decision" for short) was issued in accordance with applicable law, jurisprudence and the rules of evidence, and the public auction sale on 18 August 2005 (the "auction sale" for short) was performed in accordance with what Sections 254, 258 and 260 of Republic Act No. 7610, as amended, or the Local Government Code of 1991 (RA No. 7610 for short) provides insofar as the procedure in public auction sale of delinquent real property is concerned.

B. The Honorable Court of Appeals committed reversible error of law in the interpretation and application of the law when it ruled to invalidate the public auction sale notwithstanding the fact that the appeal of respondent was premised only on the following so-called arguments:

a. That petitioner did not adduce evidence that the so-called loan of Melba T. Atienza had been paid;

b. That petitioner has the burden of proving that Melba T. Atienza had paid her so-called loan; and

c. That respondent was entitled to personal notice of the public auction sale.[11]

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[10] *Id.* at 56.

[11] *Id.* at 31-32.

The Issues

We can sum up the issues of this case as follows:

(1) Whether the Court of Appeals committed a reversible error in setting aside the trial court's Decision based on an issue that was not raised by the parties; and

(2) Whether the Court of Appeals committed a reversible error in setting aside the trial court's Decision on the ground that the registered owner did not receive a copy of the notice of auction sale.

The Ruling of this Court

In its petition before the Court of Appeals, Optimum Bank argued that Lukban did not proffer any proof that the mortgage debt had been paid. It alleged that since the annotation of the mortgage on the property had not been cancelled, the presumption was that the mortgage amount of ₱340,000 in its favor was still unpaid. Optimum Bank likewise argued that it should have been notified of the delinquency sale because as a person having legal interest in the property, it should have been given the right to redeem the property under Section 261 of R.A. No. 7160. It further argued that the cancellation of TCT No. 234408 would effectively extinguish its interest in the property.

In resolving the issue before it, the Court of Appeals premised its Decision on an issue that was not raised in the petition. Instead of ruling solely on the issues raised by Optimum Bank, the Court of Appeals ruled on the basis of the lack of notice of the auction sale on Atienza under Section 260 of R.A. No. 7160. According to the Court of Appeals, the records failed to disclose that Atienza actually received a notice of the auction sale from the City Treasurer.

We must point out here that Atienza is not a party to the case before the Court of Appeals and in the present case before this Court. On 9 September 2008, the trial court issued an Order which states:

This is a verified Petition for the Cancellation of Transfer Certificate of Title No. 234408 and Issuance of New One filed by petitioner Helen B. Lukban on June 10, 2008.

WHEREFORE, notice is hereby given that the said petition will be heard by this Court on October 23, 2008 at 8:30 in the morning.

Let this Order together with the petition be posted for three (3) consecutive weeks prior to the date of hearing in three (3) conspicuous public places in this city where the said land is situated and on the land itself at the expense of the petitioner.

Likewise, let a copy of this Order together with copy of the petition be served upon: 1) the Office of the Registry of Deeds of Marikina City; 2) the registered owner Melba T. Atienza at her address stated in T.C.T. 234408, i.e., Rm. A-1, 992 Halili Complex, Quezon City; and 3) the registered mortgagee Capitol Bank, now RCBC Savings Bank at its main office Tektite Bldg., West Tower, Exchange Road, Ortigas Center, Pasig City and at its Marikina Branch, J.P. Rizal St., San Roque, Marikina City.[12]

The records showed that the copies of the Order and the Petition sent to Atienza remained unserved despite several attempts to serve them on her. At the back of the envelope containing the 9 September 2008 Order were written notations of the attempts made on 18 September, 22 September and 23 September 2008 while the notations at the back of the envelope of the 23 October 2008 Order showed that attempts to serve were made on 3 November, 4 November, and 7 November 2008. The copies were returned to sender with the notation "unclaimed."[13] Thus, Atienza did not participate in the proceedings before the trial court. The only oppositor before the trial court was Optimum Bank.

Only the registered owner of the property is deemed the taxpayer who is entitled to a notice of delinquency and other proceedings relative to the tax sale.[14] In this case, Atienza received

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[12] Folder of Exhibits, p. 3.

[13] Records, pp. 30-H and 30-I.

[14] *Talusan v. Tayag*, 408 Phil. 373 (2001).

[15] Folder of Exhibits, p. 15.

[16] *Id.* at 17.

the Warrant of Levy[15] and the Notice of Sale.[16] Whether Atienza received the Notice of Public Auction is a factual issue that was not raised by Optimum Bank because it is an issue that only Atienza, being the registered owner, can raise.

We do not find merit in the claim of Optimum Bank that the issuance of a new TCT in favor of Lukban will impair its rights as a mortgagee. The trial court made a clear ruling on this. It stated:

> As for the opposition interposed in the instant petition by the oppositor, Optimum Development Bank, the Court deemed that in the issuance of a new title under petitioner's name, the oppositor's rights as a mortgagee should be annotated in the new title. This is in line with the pronouncement in *Ligon v. CA* that, "It (the mortgage) is inseparable from the property mortgaged as it is a right in rem — a lien on the property whoever its owner may be. It subsists notwithstanding a change in ownership; in short, the personality of the owner is disregarded. Thus, all subsequent purchasers must respect the mortgage whether the transfer to them be with or without the consent of the mortgage[e], for such mortgage until discharged follows the property."[17]

In the dispositive portion of its Decision, the trial court mandated that "[t]he mortgage annotated on the subject title shall be incorporated in or carried over to the new transfer certificate of title and its duplicates and shall also contain a memorandum of the annulment of the outstanding duplicate."[18] In short, the rights of Optimum Bank as a mortgagee are amply protected, both by the Decision and by Section 180 of R.A. No. 7160,[19] despite the cancellation of the old TCT and the

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[17] *Rollo*, p. 88.

[18] *Id.*

[19] Section 180 of R.A. No. 7160 provides:

Sec. 180. *Final Deed to Purchaser*. — In case the taxpayer fails to redeem the property as provided herein, the local treasurer shall execute a deed conveying to the purchaser so much of the property as has been sold, free from liens of any taxes, fees, or charges, related surcharges, interests, and penalties. The deed shall succinctly recite all the proceedings upon which the validity of the sale depends.

issuance of a new TCT in favor of Lukban. Even in the petition before this Court, Lukban stressed that she never alleged and prayed for the cancellation of the encumbrances on TCT No. 234408.

We do not subscribe to Optimum Bank's view that it is entitled to the Notice of Sale so that it may exercise its right to redeem the property. Section 260 of R.A. No. 7160 states:

Section 260. *Advertisement and Sale*. — x x x.

Within thirty (30) days after the sale, the local treasurer or his deputy shall make a report of the sale to the *sanggunian* concerned, and which shall form part of his records. The local treasurer shall likewise prepare and deliver to the purchaser a certificate of sale which shall contain the name of the purchaser, a description of the property sold, the amount of the delinquent tax, the interest due thereon, the expenses of sale and a brief description of the proceedings: *Provided, however*, That proceeds of the sale in excess of the delinquent tax, the interest due thereon, and the expenses of sale shall be remitted to the owner of the real property or person having legal interest therein.

x x x x x x x x x

Clearly, only the registered owner is entitled to the Notice of Sale.

Under Section 180, the treasurer's conveyance to the purchaser shall be free from tax liens or their charges and penalties. All other liens are not extinguished. Section 180 repealed Section 80 of Presidential Decree No. 464 (Real Property Tax Code) where the final bill of sale is issued free from any encumbrance or third party claim. Section 80 states:

Sec. 80. *Issuance of final bill of sale*. — In case the delinquent taxpayer or his representative, or any person holding a lien or claim over the property, fails to redeem the same within the period of one year from the date of sale as provided in Section seventy-eight hereof, the provincial or city treasurer shall make an instrument sufficient in form and effect to convey to the purchaser the property purchased by him, free from any encumbrance or third party claim whatsoever, and the said instrument shall succinctly set forth all proceedings upon which the validity of the sale depends. Any balance of the proceeds of the sale left after deducting the amount of the taxes and penalties due and the costs of sale shall be returned to the owner or his representative.

WHEREFORE, we **GRANT** the petition. We **SET ASIDE** the 28 August 2012 Decision and the 7 February 2013 Resolution of the Court of Appeals in CA-G.R. CV No. 95150 and **REINSTATE** the trial court's 16 February 2010 Decision in LRC Case No. R-08-1010-MK.

SO ORDERED.

Del Castillo, Mendoza, Perlas-Bernabe,[*] and *Leonen, JJ.,* concur.

FIRST DIVISION

[G.R. No. 207970. January 20, 2016]

FERNANDO MEDICAL ENTERPRISES, INC., *petitioner, vs.* **WESLEYAN UNIVERSITY PHILIPPINES, INC.,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENT ON THE PLEADINGS; THE ESSENTIAL QUERY IS WHETHER OR NOT THERE ARE ISSUES OF FACT GENERATED IN THE PLEADINGS.—** The rule on judgment based on the pleadings is Section 1, Rule 34 of the *Rules of Court*, which provides thus: Section 1. *Judgment on the pleadings*. – Where an answer fails to tender an issue, or otherwise admits the material allegations of the adverse party's pleading, the court may, on motion of that party, direct judgment on such pleading. x x x The essential query in resolving a motion for judgment on the pleadings is whether or not

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[*] Designated acting member per Special Order No. 2312 dated 19 January 2016.

there are issues of fact generated by the pleadings. Whether issues of fact exist in a case or not depends on how the defending party's answer has dealt with the ultimate facts alleged in the complaint. The defending party's answer either admits or denies the allegations of ultimate facts in the complaint or other initiatory pleading. The allegations of ultimate facts the answer admit, being undisputed, will not require evidence to establish the truth of such facts, but the allegations of ultimate facts the answer properly denies, being disputed, will require evidence. The answer admits the material allegations of ultimate facts of the adverse party's pleadings not only when it expressly confesses the truth of such allegations but also when it omits to deal with them at all. The controversion of the ultimate facts must only be by specific denial.

2. **ID.; ID.; ANSWER; ANY MATERIAL AVERMENT IN THE COMPLAINT NOT SPECIFICALLY DENIED IN THE ANSWER ARE DEEMED ADMITTED EXCEPT AN AVERMENT OF THE AMOUNT OF UNLIQUIDATED DAMAGES.—** Section 10, Rule 8 of the *Rules of Court* recognizes only three modes by which the denial in the answer raises an issue of fact. The first is by the defending party specifying each material allegation of fact the truth of which he does not admit and, whenever practicable, setting forth the substance of the matters upon which he relies to support his denial. The second applies to the defending party who desires to deny only a part of an averment, and the denial is done by the defending party specifying so much of the material allegation of ultimate facts as is true and material and denying only the remainder. The third is done by the defending party who is without knowledge or information sufficient to form a belief as to the truth of a material averment made in the complaint by stating so in the answer. Any material averment in the complaint not so specifically denied are deemed admitted except an averment of the amount of unliquidated damages.

3. **ID.; ID.; ID.; ID.; RULE WHERE THE ACTION OR DEFENSE WAS BASED ON DOCUMENT; HOW TO PLEAD AND HOW TO CONTEST SUCH ACTIONABLE DOCUMENT.—** In the case of a written instrument or document upon which an action or defense is based, which is also known

as the actionable document, the pleader of such document is required either to set forth the substance of such instrument or document in the pleading, and to attach the original or a copy thereof to the pleading as an exhibit, which shall then be deemed to be a part of the pleading, or to set forth a copy in the pleading. The adverse party is deemed to admit the genuineness and due execution of the actionable document unless he specifically denies them under oath, and sets forth what he claims to be the facts, but the requirement of an oath does not apply when the adverse party does not appear to be a party to the instrument or when compliance with an order for an inspection of the original instrument is refused.

4. **ID.; ID.; JUDGMENT ON THE PLEADINGS; PROPER UPON EXPRESS ADMISSION OF THE ALLEGATIONS IN THE COMPLAINT.—** In Civil Case No. 09-122116, the respondent *expressly admitted* paragraphs no. 2, 3, 4, 5, 9 and 10 of the complaint. x x x Upon the express admission of the genuineness and due execution of the February 11, 2009 agreement, judgment on the pleadings became proper. As held in *Santos v. Alcazar*: There is no need for proof of execution and authenticity with respect to documents and genuineness and due execution which are admitted by the adverse party.

5. **ID.; ID.; ID.; ID.; DENIALS BASED ON LACK OF KNOWLEDGE OF MATTERS CLEARLY KNOWN TO THE PLEADER OR OUGHT TO BE KNOWN OR COULD HAVE EASILY BEEN KNOWN TO THE PLEADER, ARE INEFFECTIVE DENIALS WHICH DO NOT NEGATE THE MATERIAL AVERMENTS OF THE COMPLAINT; CASE AT BAR.—** The respondent *denied* paragraphs no. 6, 7 and 8 of the complaint "for lack of knowledge or information sufficient to form a belief as to the truth or falsity thereof" x x x. Considering that paragraphs no. 6, 7 and 8 of the complaint averred matters that the respondent ought to know or could have easily known, the answer did not specifically deny such material averments. It is settled that denials based on lack of knowledge or information of matters clearly known to the pleader, or ought to be known to it, or could have easily been known by it are insufficient, and constitute ineffective or sham denials. That the respondent qualified its admissions and denials by subjecting them to its special and affirmative

defenses of lack of jurisdiction over its person, improper venue, *litis pendentia* and forum shopping was of no consequence because the affirmative defenses, by their nature, involved matters extrinsic to the merits of the petitioner's claim, and thus did not negate the material averments of the complaint.

APPEARANCES OF COUNSEL

Mañacop Law Office for petitioner.
J.V. Bautista Law Offices for respondent.

D E C I S I O N

BERSAMIN, *J.*:

The trial court may render a judgment on the pleadings upon motion of the claiming party when the defending party's answer fails to tender an issue, or otherwise admits the material allegations of the adverse party's pleading. For that purpose, only the pleadings of the parties in the action are considered. It is error for the trial court to deny the motion for judgment on the pleadings because the defending party's pleading in another case supposedly tendered an issue of fact.

The Case

The petitioner appeals the decision promulgated on July 2, 2013,[1] whereby the Court of Appeals (CA) affirmed the order issued on November 23, 2011 by the Regional Trial Court (RTC), Branch 1, in Manila, denying its motion for judgment on the pleadings in Civil Case No. 09-122116 entitled *Fernando Medical Enterprises, Inc. v. Wesleyan University-Philippines*.[2]

Antecedents

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[1] *Rollo*, pp. 91-100; penned by Associate Justice Florito S. Macalino, with the concurrence of Associate Justice Sesinando E. Villon and Associate Justice Pedro B. Corales.

[2] CA *rollo*, pp. 106-107.

From January 9, 2006 until February 2, 2007, the petitioner, a domestic corporation dealing with medical equipment and supplies, delivered to and installed medical equipment and supplies at the respondent's hospital under the following contracts:

a. Memorandum of Agreement dated January 9, 2006 for the supply of medical equipment in the total amount of ₱18,625,000.00;[3]

b. Deed of Undertaking dated July 5, 2006 for the installation of medical gas pipeline system valued at ₱8,500,000.00;[4]

c. Deed of Undertaking dated July 27, 2006 for the supply of one unit of Diamond Select Slice CT and one unit of Diamond Select CV-P costing ₱65,000,000.00;[5] and

d. Deed of Undertaking dated February 2, 2007 for the supply of furnishings and equipment worth ₱32,926,650.00.[6]

According to the petitioner, the respondent paid only ₱67,357,683.23 of its total obligation of ₱123,901,650.00, leaving unpaid the sum of ₱54,654,195.54.[7] However, on February 11, 2009, the petitioner and the respondent, respectively represented by Rafael P. Fernando and Guillermo T. Maglaya, Sr., entered into an agreement,[8] whereby the former agreed to reduce its claim to only ₱50,400,000.00, and allowed the latter to pay the adjusted obligation on installment basis within 36 months.[9]

In the letter dated May 27, 2009,[10] the respondent notified

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[3] *Id.* at 21-22.

[4] *Id.* at 23-25.

[5] *Id.* at 26-28.

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

[7] *Rollo*, p. 3.

[8] CA *rollo*, pp. 36-39.

[9] *Rollo*, p. 4.

[10] CA *rollo*, pp. 41-42.

the petitioner that its new administration had reviewed their contracts and had found the contracts defective and rescissible due to economic prejudice or lesion; and that it was consequently declining to recognize the February 11, 2009 agreement because of the lack of approval by its Board of Trustees and for having been signed by Maglaya whose term of office had expired.

On June 24, 2009, the petitioner sent a demand letter to the respondent.[11]

Due to the respondent's failure to pay as demanded, the petitioner filed its complaint for sum of money in the RTC,[12] averring as follows:

x x x x x x x x x

2. On January 9, 2006, plaintiff supplied defendant with hospital medical equipment for an in consideration of ₱18,625,000.00 payable in the following manner: (2.1) For nos. 1 to 9 of items to be sourced from Fernando Medical Equipment, Inc. (FMEI) — 30% down payment of ₱17,475,000 or ₱5,242,500 with the balance of ₱12,232,500 or 70% payable in 24 equal monthly instalments of ₱509,687.50 and (2.2.) cash transaction amounting to ₱1,150,000.00 (2.3) or an initial cash payment of ₱6,392,500.00 with the remaining balance payable in 24 equal monthly installments every 20th day of each month until paid, as stated in the Memorandum of Agreement, copy of which is hereto attached as Annex "A";

3. On July 5, 2006, plaintiff installed defendants medical gas pipeline system in the latter's hospital building complex for and in consideration of ₱8,500,000.00 payable upon installation thereof under a Deed of Undertaking, copy of which is hereto attached as **Annex "B"**;

4. On July 27, 2006, plaintiff supplied defendant one (1) unit Diamond Select Slice CT and one (1) unit Diamond Select CV-9 for and in consideration of ₱65,000,000.00 thirty percent (30%) of which shall be paid as down payment and the balance in 30 equal monthly instalments as provided in that Deed of Undertaking, copy of which

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[11] *Id.* at 43.

[12] *Rollo*, pp. 14-17.

is hereto attached as **Annex "C"**;

5. On February 2, 2007, plaintiff supplied defendants hospital furnishings and equipment for an in consideration of ₱32,926,650.00 twenty percent (20%) of which was to be paid as downpayment and the balance in 30 months under a Deed of Undertaking, copy of which is hereto attached as Annex **"D"**;

6. Defendant's total obligation to plaintiff was ₱123,901,650.00 as of February 15, 2009, but defendant was able to pay plaintiff the sum of ₱67,357,683.23 thus leaving a balance ₱54,654,195.54 which has become overdue and demandable;

7. On February 11, 2009, plaintiff agreed to reduce its claim to only ₱50,400,000.00 and extended its payment for 36 months provided defendants shall pay the same within 36 months and to issue 36 postdated checks therefor in the amount of ₱1,400,000.00 each to which defendant agreed under an Agreement, copy of which is hereto attached as **Annex "E"**;

8. Accordingly, defendant issued in favor of plaintiff 36 postdated checks each in the [a]mount of ₱1,400,000.00 but after four (4) of the said checks in the sum of ₱5,600,000.00 were honored defendant stopped their payment thus making the entire obligation of defendant due and demandable under the February 11, 2009 agreement;

9. In a letter dated May 27, 2009, defendant claimed that all of the first four (4) agreements may be rescissible and one of them is unenforceable while the Agreement dated February 11, 2009 was without the requisite board approval as it was signed by an agent whose term of office already expired, copy of which letter is hereto attached as **Annex "F"**.

10. Consequently, plaintiff told defendant that if it does not want to honor the February 11, 2009 contract then plaintiff will insists [sic] on its original claim which is ₱54,654,195.54 and made a demand for the payment thereof within 10 days from receipt of its letter copy of which is hereto attached as **Annex "G"**;

11. Defendant received the aforesaid letter on July 6, 2009 but to date it has not paid plaintiff any amount, either in the first four contracts nor in the February 11, 2009 agreement, hence, the latter was constrained to institute the instant suit and thus incurred attorney's fee equivalent to 10% of the overdue account but only after

endeavouring to resolve the dispute amicable and in a spirit of friendship[;]

12. Under the February 11, 2009 agreement the parties agreed to bring all actions or proceedings thereunder or characterized therewith in the City of Manila to the exclusion of other courts and for defendant to pay plaintiff 3% per months of delay without need of demand;[13]

x x x x x x x x x

The respondent moved to dismiss the complaint upon the following grounds,[14] namely: (*a*) lack of jurisdiction over the person of the defendant; (*b*) improper venue; (*c*) *litis pendentia*; and (*d*) forum shopping. In support of the ground of *litis pendentia*, it stated that it had earlier filed a complaint for the rescission of the four contracts and of the February 11, 2009 agreement in the RTC in Cabanatuan City; and that the resolution of that case would be determinative of the petitioner's action for collection.[15]

After the RTC denied the motion to dismiss on July 19, 2009,[16] the respondent filed its answer (*ad cautelam*),[17] averring thusly:

x x x x x x x x x

2. The allegations in Paragraphs Nos. 2, 3, 4, and 5 of the complaint are ADMITTED subject to the special and affirmative defenses hereafter pleaded;

3. The allegations in Paragraphs Nos. 6, 7 and 8 of the complaint are DENIED for lack of knowledge or information sufficient to form a belief as to the truth or falsity thereof, inasmuch as the alleged transactions were undertaken during the term of office of the past officers of defendant Wesleyan University-Philippines. At any rate, these allegations are subject to the special and affirmative defenses

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[13] *Id.* at 14-17.

[14] *Id.* at 20-26.

[15] *Id.* at 23.

[16] *Id.* at 36-39.

[17] *Id.* at 40-46.

hereafter pleaded;

4. The allegations in Paragraphs Nos. 9 and 10 of the complaint are ADMITTED subject to the special and affirmative defenses hereafter pleaded;

5. The allegations in Paragraphs Nos. 11 and 12 of the complaint are DENIED for being conclusions of law.[18]

x x x x x x x x x

The petitioner filed its reply to the answer.[19]

On September 28, 2011, the petitioner filed its *Motion for Judgment Based on the Pleadings*,[20] stating that the respondent had admitted the material allegations of its complaint and thus did not tender any issue as to such allegations.

The respondent opposed the *Motion for Judgment Based on the Pleadings*, arguing that it had specifically denied the material allegations in the complaint, particularly paragraphs 6, 7, 8, 11 and 12.[21]

On November 23, 2011, the RTC issued the order denying the *Motion for Judgment Based on the Pleadings* of the petitioner, to wit:

At the hearing of the "Motion for Judgment Based on the Pleadings" filed by the plaintiff thru counsel, Atty. Jose Mañacop on September 28, 2011, the court issued an Order dated October 27, 2011 which read in part as follows:

x x x x x x x x x

Considering that the allegations stated on the Motion for Judgment Based on the Pleadings, are evidentiary in nature, the Court, instead of acting on the same, hereby sets this case for pre-trial, considering that with the Answer and the Reply, issues have been joined.

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[18] *Id.* at 40-41.

[19] CA *rollo*, pp. 87-89.

[20] *Rollo*, pp. 47-48.

[21] *Id.* at 49-50.

x x x x x x x x x

In view therefore of the Order of the Court dated October 27, 2011, let the Motion for Judgment Based on the Pleadings be hereby ordered DENIED on reasons as abovestated and hereto reiterated.

x x x x x x x x x

SO ORDERED.[22]

The petitioner moved for reconsideration,[23] but its motion was denied on December 29, 2011.[24]

The petitioner assailed the denial in the CA on *certiorari*.[25]

Judgment of the CA

On July 2, 2013, the CA promulgated its decision. Although observing that the respondent had admitted the contracts as well as the February 11, 2009 agreement, *viz.*:

It must be remembered that Private Respondent admitted the existence of the subject contracts, including Petitioner's fulfilment of its obligations under the same, but subjected the said admission to the "special and affirmative defenses" earlier raised in its Motion to Dismiss.

x x x x x x x x x

Obviously, Private Respondent's special and affirmative defenses are not of such character as to avoid Petitioner's claim. The same special and affirmative defenses have been passed upon by the RTC in its Order dated July 19, 2010 when it denied Private Respondent's Motion to Dismiss. As correctly found by the RTC, Private Respondent's special and affirmative defenses of lack of jurisdiction over its person, improper venue, litis pendentia and wilful and deliberate forum shopping are not meritorious and cannot operate to dismiss Petitioner's Complaint. Hence, when Private Respondent

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[22] CA *rollo*, p. 106.

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

[24] *Id.* at 102.

[25] *Id.* at 3-20.

subjected its admission to the said defenses, it is as though it raised no defense at all.

Not even is Private Respondent's contention that the rescission case must take precedence over Petitioner's Complaint for Sum of Money tenable. To begin with, Private Respondent had not yet proven that the subject contracts are rescissible. And even if the subject contracts are indeed rescissible, it is well-settled that rescissible contracts are valid contracts until they are rescinded. Since the subject contracts have not yet been rescinded, they are deemed valid contracts which may be enforced in legal contemplation.

In effect, Private Respondent admitted that it entered into the subject contracts and that Petitioner had performed its obligations under the same.

As regards Private Respondent's denial by disavowal of knowledge of the Agreement dated February 11, 2009, We agree with Petitioner that such denial was made in bad faith because such allegations are plainly and necessarily within its knowledge.

In its letter dated May 27, 2009, Private Respondent made reference to the Agreement dated February 11, 2009, *viz.*:

> "The Agreement dated 11 February 2009, in particular, was entered into by an Agent of the University without the requisite authority from the Board of Trustees, and executed when said agent's term of office had already expired. Consequently, such contract is, being an unenforceable contract."

Also, Private Respondent averred in page 5 of its Complaint for Rescission, which it attached to its Motion to Dismiss, that:

> "13. On 6 February 2009, when the terms of office of plaintiff's Board of Trustess chaired by Dominador Cabasal, as well as of Atty. Guillermo C. Maglaya as President, had already expired, thereby rendering them on a hold-over capacity, the said Board once again authorized Atty. Maglaya to enter into another contract with defendant FMEI, whereby the plaintiff was obligated to pay and deliver to defendant FMEI the amount of Fifty Million Four Hundred Thousand Pesos (Php50,400,000.00) in thirty five (35) monthly instalments of One Million Four Hundred Thousand Pesos (Php1,400,000.00), representing the balance of the payment for the medical equipment supplied under the afore-cited rescissible contracts.

> This side agreement, executed five (5) days later, or on 11 February 2009, and denominated as "AGREEMENT", had no object as a contract, but was entered into solely for the purpose of getting the plaintiff locked-in to the payment of the balance price under the rescissible contracts; x x x"
>
> From the above averments, Private Respondent cannot deny knowledge of the Agreement dated February 11, 2009. In one case, it was held that when a respondent makes a "specific denial" of a material allegation of the petition without setting forth the substance of the matters relied upon to support its general denial, when such matters *where plainly within its knowledge and the defendant could not logically pretend ignorance as to the same, said defendant fails to properly tender an issue.*[26]

the CA ruled that a judgment on the pleadings would be improper because the outstanding balance due to the petitioner remained to be an issue in the face of the allegations of the respondent in its complaint for rescission in the RTC in Cabanatuan City, to wit:

> However, Private Respondent's disavowal of knowledge of its outstanding balance is well-taken. Paragraph 6 of Petitioner's Complaint states that Private Respondent was able to pay only the amount of ₱67,357,683.23. Taken together with paragraph 8, which states that Private Respondent was only able to make good four (4) check payments worth ₱1,400,000.00 or a total of ₱5,600,000.00, Private Respondent's total payments would be, in Petitioner's view, **₱72,957,683.23**. However, in its Complaint for Rescission, attached to its Motion to Dismiss Petitioner's Complaint for Sum of Money, Private Respondent alleged that:
>
> > "16. To date, plaintiff had already paid defendant the amount of Seventy Eight Million Four Hundred One Thousand Six Hundred Fifty Pesos (₱78,401,650.00)"
>
> It is apparent that Private Respondent's computation and Petitioner's computation of the total payments made by Private Respondent are different. Thus, Private Respondent tendered an issue as to the amount of the balance due to Petitioner under the subject contracts.[27]

Hence, this appeal.

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[26] *Rollo*, pp. 97-99.

[27] *Id.*

Issue

The petitioner posits that the CA erred in going outside of the respondent's answer by relying on the allegations contained in the latter's complaint for rescission; and insists that the CA should have confined itself to the respondent's answer in the action in order to resolve the petitioner's motion for judgment based on the pleadings.

In contrast, the respondent contends that it had specifically denied the material allegations of the petitioner's complaint, including the amount claimed; and that the CA only affirmed the previous ruling of the RTC that the pleadings submitted by the parties tendered an issue as to the balance owing to the petitioner.

Did the CA commit reversible error in affirming the RTC's denial of the petitioner's motion for judgment on the pleadings?

Ruling of the Court

The appeal is meritorious.

The rule on judgment based on the pleadings is Section 1, Rule 34 of the *Rules of Court*, which provides thus:

> Section 1. *Judgment on the pleadings.* — Where an answer fails to tender an issue, or otherwise admits the material allegations of the adverse party's pleading, the court may, on motion of that party, direct judgment on such pleading. x x x

The essential query in resolving a motion for judgment on the pleadings is whether or not there are issues of fact generated by the pleadings.[28] Whether issues of fact exist in a case or not depends on how the defending party's answer has dealt with the ultimate facts alleged in the complaint. The defending party's answer either admits or denies the allegations of ultimate facts in the complaint or other initiatory pleading. The allegations of ultimate facts the answer admit, being undisputed, will not require evidence to establish the truth of such facts, but the

[28] *Wood Technology Corporation v. Equitable Banking Corporation,* G.R. No. 153867, February 17, 2005, 451 SCRA 724, 731.

allegations of ultimate facts the answer properly denies, being disputed, will require evidence.

The answer admits the material allegations of ultimate facts of the adverse party's pleadings not only when it expressly confesses the truth of such allegations but also when it omits to deal with them at all.[29] The controversion of the ultimate facts must only be by specific denial. Section 10, Rule 8 of the *Rules of Court* recognizes only three modes by which the denial in the answer raises an issue of fact. The first is by the defending party specifying each material allegation of fact the truth of which he does not admit and, whenever practicable, setting forth the substance of the matters upon which he relies to support his denial. The second applies to the defending party who desires to deny only a part of an averment, and the denial is done by the defending party specifying so much of the material allegation of ultimate facts as is true and material and denying only the remainder. The third is done by the defending party who is without knowledge or information sufficient to form a belief as to the truth of a material averment made in the complaint by stating so in the answer. Any material averment in the complaint not so specifically denied are deemed admitted except an averment of the amount of unliquidated damages.[30]

In the case of a written instrument or document upon which an action or defense is based, which is also known as the actionable document, the pleader of such document is required either to set forth the substance of such instrument or document in the pleading, and to attach the original or a copy thereof to the pleading as an exhibit, which shall then be deemed to be a part of the pleading, or to set forth a copy in the pleading.[31] The adverse party is deemed to admit the genuineness and due execution of the actionable document unless he specifically denies them under oath, and sets forth what he claims to be the facts, but the requirement of an oath does not apply when the

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[29] *Mongao v. Pryce Properties Corporation*, G.R. No. 156474, August 16, 2005, 467 SCRA 201, 214.

[30] Section 11, Rule 8 of the *Rules of Court*.

[31] Section 7, *id.*

adverse party does not appear to be a party to the instrument or when compliance with an order for an inspection of the original instrument is refused.[32]

In Civil Case No. 09-122116, the respondent *expressly admitted* paragraphs no. 2, 3, 4, 5, 9 and 10 of the complaint. The admission related to the petitioner's allegations on: (*a*) the four transactions for the delivery and installation of various hospital equipment; (*b*) the total liability of the respondent; (*c*) the payments made by the respondents; (*d*) the balance still due to the petitioner; and (*e*) the execution of the February 11, 2009 agreement. The admission of the various agreements, especially the February 11, 2009 agreement, significantly admitted the petitioner's complaint. To recall, the petitioner's cause of action was based on the February 11, 2009 agreement, which was the actionable document in the case. The complaint properly alleged the substance of the February 11, 2009 agreement, and contained a copy thereof as an annex. Upon the express admission of the genuineness and due execution of the February 11, 2009 agreement, judgment on the pleadings became proper.[33] As held in *Santos v. Alcazar*:[34]

There is no need for proof of execution and authenticity with respect to documents the genuineness and due execution of which are admitted by the adverse party. With the consequent admission engendered by petitioners' failure to properly deny the Acknowledgment in their Answer, coupled with its proper authentication, identification and offer by the respondent, not to mention petitioners' admissions in paragraphs 4 to 6 of their Answer that they are indeed indebted to respondent, the Court believes that judgment may be had solely on the document, and there is no need to present receipts and other documents to prove the claimed indebtedness. The Acknowledgment, just as an ordinary acknowledgment receipt, is valid and binding between the parties who executed it, as a document evidencing the loan agreement they had entered into. The absence of rebutting evidence occasioned by petitioners' waiver of their right to present evidence renders the Acknowledgment as the best evidence of the transactions

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[32] Section 8, *id.*

[33] *Dino v. Valencia*, G.R. No. L-43886, July 19, 1989, 175 SCRA 406, 414.

[34] G.R. No. 183034, March 12, 2014, 718 SCRA 636.

between the parties and the consequential indebtedness incurred. Indeed, the effect of the admission is such that a *prima facie* case is made for the plaintiff which dispenses with the necessity of evidence on his part and entitled him to a judgment on the pleadings unless a special defense of new matter, such as payment, is interposed by the defendant.[35] (citations omitted)

The respondent *denied* paragraphs no. 6, 7 and 8 of the complaint "for lack of knowledge or information sufficient to form a belief as to the truth or falsity thereof, inasmuch as the alleged transactions were undertaken during the term of office of the past officers of defendant Wesleyan University-Philippines." Was the manner of denial effective as a specific denial?

We answer the query in the negative. Paragraph no. 6 alleged that the respondent's total obligation as of February 15, 2009 was ₱123,901,650.00, but its balance thereafter became only ₱54,654,195.54 because it had since then paid ₱67,357,683.23 to the petitioner. Paragraph no. 7 stated that the petitioner had agreed with the respondent on February 11, 2009 to reduce the balance to only ₱50,400,000.00, which the respondent would pay in 36 months through 36 postdated checks of ₱1,400,000.00 each, which the respondent then issued for the purpose. Paragraph no. 8 averred that after four of the checks totalling ₱5,600,000.00 were paid the respondent stopped payment of the rest, rendering the entire obligation due and demandable pursuant to the February 11, 2009 agreement. Considering that paragraphs no. 6, 7 and 8 of the complaint averred matters that the respondent ought to know or could have easily known, the answer did not specifically deny such material averments. It is settled that denials based on lack of knowledge or information of matters clearly known to the pleader, or ought to be known to it, or could have easily been known by it are insufficient, and constitute

[35] *Id.* at 652-653.

[36] *J.P. Juan & Sons, Inc. v. Lianga Industries, Inc.*, G.R. No. L-25137, July 28, 1969, 28 SCRA 807, 809-812.

[37] *Manufacturer's Bank & Trust Co. v. Diversified Industries, Inc.*, G.R. No. L-33695, May 15, 1989, 173 SCRA 357, 364.

ineffective[36] or sham denials.[37]

That the respondent qualified its admissions and denials by subjecting them to its special and affirmative defenses of lack of jurisdiction over its person, improper venue, *litis pendentia* and forum shopping was of no consequence because the affirmative defenses, by their nature, involved matters extrinsic to the merits of the petitioner's claim, and thus did not negate the material averments of the complaint.

Lastly, we should emphasize that in order to resolve the petitioner's *Motion for Judgment Based on the Pleadings*, the trial court could rely only on the answer of the respondent filed in Civil Case No. 09-122116. Under Section 1, Rule 34 of the *Rules of Court*, the answer was the sole basis for ascertaining whether the complaint's material allegations were admitted or properly denied. As such, the respondent's averment of payment of the total of ₱78,401,650.00 to the petitioner made in its complaint for rescission had no relevance to the resolution of the *Motion for Judgment Based on the Pleadings*. The CA thus wrongly held that a factual issue on the total liability of the respondent remained to be settled through trial on the merits. It should have openly wondered why the respondent's answer in Civil Case No. 09-122116 did not allege the supposed payment of the ₱78,401,650.00, if the payment was true, if only to buttress the specific denial of its alleged liability. The omission exposed the respondent's denial of liability as insincere.

WHEREFORE, the Court **REVERSES** and **SETS ASIDE** the decision promulgated on July 2, 2013; **DIRECTS** the Regional Trial Court, Branch 1, in Manila to resume its proceedings in Civil Case No. 09-122116 entitled *Fernando Medical Enterprises, Inc. v. Wesleyan University-Philippines*, and to forthwith act on and grant the *Motion for Judgment Based on the Pleadings* by rendering the proper judgment on the pleadings; and **ORDERS** the respondent to pay the costs of suit.

SO ORDERED.

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

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* Pursuant to Special Order No. 2311, effective January 16, 2016.

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–– To justify the dismissal of an employee, the employer must prove that the dismissal was for a just cause, and that the employee was afforded due process prior to dismissal. (*Id.*)

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Section 187 — Provision under Sec. 187 that any question on the legality of tax ordinances may be raised on appeal within thirty (30) days from the effectivity thereof to the Secretary of Justice; exception. (Alta Vista Golf and Country Club *vs.* The City of Cebu, G.R. No. 180235, Jan. 20, 2016) p. 685

MARRIAGE

Marriage license –– Marriage solemnized without a marriage license, how proven. (Vitangcol *vs.* People, G.R. No. 207406, Jan. 13, 2016) p. 326

Requisites –– Enumerated. (Vitangcol *vs.* People, G.R. No. 207406, Jan. 13, 2016) p. 326

MIGRANT WORKERS AND OVERSEAS FILIPINOS ACT OF 1995 (R.A. NO. 8042)

Illegal recruitment — Includes failure to reimburse expenses incurred by the worker for deployment which does not actually take place without the worker's fault. (People *vs.* Abella *y* Buhain, G.R. No. 195666, Jan. 20, 2016) p. 747

–– Penalty. (*Id.*)

–– Receipt of placement fees may be proved by testimonial evidence, even in the absence of documentary evidence. (*Id.*)

Illegal recruitment in large scale — Elements. (People *vs.* Solina, G.R. No. 196784, Jan. 13, 2016) p. 207

Illegal recruitment in large scale and illegal recruitment by syndicate — Elements. (People *vs.* Abella *y* Buhain, G.R. No. 195666, Jan. 20, 2016) p. 747

MORTGAGES

Extrajudicial foreclosure of — One-year redemption period; general rule; exception. (Cahayag *vs.* Commercial Credit Corp., G.R. No. 168078, Jan. 13, 2016) p. 8

–– The one-year redemption period is applicable in case at bar. (*Id.*)

Registration of — Case of Dela Merced vs. GSIS is not applicable in case at bar. (Cahayag *vs.* Commercial Credit Corp., G.R. No. 168078, Jan. 13, 2016) p. 8

–– Registration of the mortgage bound the buyers under the contracts to sell. (*Id.*)

MOTION TO QUASH

Nature of — Complaints or informations filed before the courts without the written authority or approval of the authorized officers renders the same defective and subject to quashal. (Quisay *vs.* People, G.R. No. 216920, Jan. 13, 2016) p. 481

NATIONAL LABOR RELATIONS COMMISSION RULES OF PROCEDURE

Writ of execution — The payment of the monetary award was in compliance with the writ of execution and does not constitute a compromise agreement. (Quiro-Quiro *vs.* Balagtas Credit Cooperative & Community Dev't., Inc., G.R. No. 209921, Jan. 13, 2016) p. 354

OMNIBUS ELECTION CODE

Certificate of Candidacy — False material representation refers to qualifications for the elective office. (Vice-Mayor Engle *vs.* COMELEC, G.R. No. 215995, Jan. 19, 2016) p. 568

–– Petition to deny due course to or cancel a Certificate of Candidacy (COC) may be filed on the exclusive ground of false material representation in the COC. (*Id.*)

OVERSEAS EMPLOYMENT

Intentional breach of duties — No compensation and benefits payable to seafarer on any disability resulting from intentional breach of his duties. (Wallem Maritime Services, Inc. *vs.* Quillao, G.R. No. 202885, Jan. 20, 2016) p. 808

Permanent and total disability benefits — Where complaint for disability benefits was filed after Oct. 6, 2008, the 240-day maximum period for treatment rule applies. (Wallem Maritime Services, Inc. *vs.* Quillao, G.R. No. 202885, Jan. 20, 2016) p. 808

PARRICIDE

Requisites –– Enumerated. (People *vs.* Macal *y* Bolasco, G.R. No. 211062, Jan. 13, 2016) p. 379

PARTIES TO CIVIL ACTIONS

Indispensable party — Defined as a party in interest without whom no final determination can be had of an action. (Heirs of Jose Ma. Gepuela *vs.* Meñez-Andres, G.R. No. 173636, Jan. 13, 2016) p. 97

PARTNERSHIP

Liability of partners –– Partners shall only be liable with their property after all the partnership assets have been exhausted. (Guy *vs.* Atty. Gacott, G.R. No. 206147, Jan. 13, 2016) p. 308

–– The liability of the partners is not solidary; exceptions. (*Id.*)

Nature of — A judicial entity that has a distinct and separate personality from the persons composing it. (Guy *vs.* Atty. Gacott, G.R. No. 206147, Jan. 13, 2016) p. 308

PERSONS

Abuse of rights –– Bad faith must be established by the party alleging the same. (Diaz *vs.* Encanto, G.R. No. 171303, Jan. 20, 2016) p. 593

–– Present when there is legal right or duty exercised in bad faith for the sole intent of injuring another; bad faith, expounded. (Diaz *vs.* Encanto, G.R. No. 171303, Jan. 20, 2016) p. 593

PHILIPPINE NATIONAL RED CROSS

Nature of — *Sui generis* in character. (Torres *vs.* De Leon, G.R. No. 199440, Jan. 18, 2016) p. 491

PLEADINGS

Actionable document — Rule where the action or defense was based on the document; how to plead and how to contest such actionable document. (Fernando Medical Enterprises, Inc. *vs.* Wesleyan University Philippines, Inc., G.R. No. 207970, Jan. 20, 2016) p. 836

Answer –– Any material averment in the complaint not specifically denied in the answer is deemed admitted except an averment of the amount of unliquidated damages. (Fernando Medical Enterprises, Inc. *vs.* Wesleyan University Philippines, Inc., G.R. No. 207970, Jan. 20, 2016) p. 836

Counterclaims –– Compulsory counterclaim and permissive counterclaim, distinguished; tests to determine whether a counterclaim is compulsory or permissive. (Alba, Jr. *vs.* Malapajo, G.R. No. 198752, Jan. 13, 2016) p. 268

–– Compulsory counterclaim must be set up in the same action and there is no need to pay docket fees and to file a certification against forum shopping for the court to acquire jurisdiction over the counterclaim. (*Id.*)

Denials –– Denials based on lack of knowledge of matters clearly known to the pleader or ought to be known or could have easily been known to the pleader, are ineffective denials which do not negate the material averments of the complaint. (Fernando Medical Enterprises, Inc. *vs.* Wesleyan University Philippines, Inc., G.R. No. 207970, Jan. 20, 2016) p. 836

Judgments on the pleadings — Proper upon express admission of the allegations in the complaint. (Fernando Medical Enterprises, Inc. *vs.* Wesleyan University Philippines, Inc., G.R. No. 207970, Jan. 20, 2016) p. 836

Lis pendens — Notice of *lis pendens*, when cancelled. (Sps. Gonzales *vs.* Marmaine Realty Corp., G.R. No. 214241, Jan. 13, 2016) p. 451

— Refers to the jurisdiction, power or control which a court acquires over a property involved in a suit, pending the continuance of the action, and until final judgment; effects. (*Id.*)

Original cases filed in the Court of Appeals — Exact date of receipt of the assailed RTC order should be indicated; CA has the prerogative to dismiss the case outright for failure to comply with the formal requirements of an action filed under Rule 65. (Tiorosio-Espinosa *vs.* Judge Hofileña-Europa, G.R. No. 185746, Jan. 20, 2016) p. 735

Proof of service — Service made through registered mail is proved by the registry receipt issued by the mailing office and an affidavit of the person mailing of facts showing compliance with the rule. (Alba, Jr. *vs.* Malapajo, G.R. No. 198752, Jan. 13, 2016) p. 268

PROHIBITION

Petition for — Appropriate remedy for the correction of acts performed by a sheriff during the execution process. (Tiorosio-Espinosa *vs.* Judge Hofileña-Europa, G.R. No. 185746, Jan. 20, 2016) p. 735

Preventive suspension — Ombudsman's decision immediately implementing penalty of dismissal from service does not violate any vested right for petitioners who are considered preventively suspended during their appeal. (P/S Insp. Belmonte *vs.* Office of the Deputy Ombudsman for the Military and Other Law Enforcement Offices, Office of the Ombudsman, G.R. No. 197665, Jan. 13, 2016) p. 221

Writ of — Grave abuse of discretion is a capricious and whimsical exercise of judgment so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law. (P/S Insp. Belmonte *vs.* Office of the Deputy Ombudsman for the Military and Other Law Enforcement Offices, Office of the Ombudsman, G.R. No. 197665, Jan. 13, 2016) p. 221

–– May be availed of to challenge the order of execution when the terms of the judgment are not clear enough and there remains room for interpretation. (Orix Metro Leasing and Finance Corp. *vs.* Cardline, Inc., G.R. No. 201417, Jan. 13, 2016) p. 280

–– Prohibition is not a proper remedy in case at bar. (P/S Insp. Belmonte *vs.* Office of the Deputy Ombudsman for the Military and Other Law Enforcement Offices, Office of the Ombudsman, G.R. No. 197665, Jan. 13, 2016) p. 221

–– Prohibition is not intended to provide a remedy for acts already accomplished. (*Id.*)

–– Writ thereof issued against a tribunal, corporation, board or person who acted without or in excess of jurisdiction or with grave abuse of discretion and there is no appeal or any other plain, speedy or adequate remedy in the ordinary course of law. (*Id.*)

PUBLIC LAND ACT (C.A. NO. 141)

Homestead patent sale –– Art. 1616 of the Civil Code which refers only to the amount to be tendered when exercising the right to repurchase but does not state the procedure to be followed in exercising the right, not applicable. (Gregorio *vs.* Crisologo *Vda. de* Culig, G.R. No. 180559, Jan. 20, 2016) p. 722

–– Consignation of redemption price in court is not essential as the filing of the action itself is equivalent to a formal offer to redeem. (*Id.*)

—— Right to repurchase of a patentee should fail if the purpose was only speculative and for profit. (*Id.*)

QUALIFIED RAPE

Commission of — Committed when the information averred that the rape victim was a mental retardate and that the accused knew of this mental retardation. (People *vs.* Bangsoy, G.R. No. 204047, Jan. 13, 2016) p. 294

QUALIFYING CIRCUMSTANCES

Evident premeditation — Elements. (People *vs.* Salahuddin, G.R. No. 206291, Jan. 18, 2016) p. 529

RAPE

Commission of — Can be committed even in places where people congregate. (People *vs.* Bangsoy, G.R. No. 204047, Jan. 13, 2016) p. 294

—— Not negated by the absence of hymenal lacerations. (*Id.*)

Prosecution of rape cases — When committed against a person who is a mental retardate, what needs to be proven are the facts of sexual congress between the accused and the victim, and the mental retardation of the latter. (People *vs.* Bangsoy, G.R. No. 204047, Jan. 13, 2016) p. 294

RES JUDICATA

Bar by prior judgment — Requisites. (Heirs of Jose Ma. Gepuela *vs.* Meñez-Andres, G.R. No. 173636, Jan. 13, 2016) p. 97

—— Substantial identity of parties and causes of actions is sufficient. (*Id.*)

RESCISSION

Extrajudicial rescission — An aggrieved party is not prevented from extrajudicially rescinding a contract to protect its interest even in the absence of any provision expressly providing for such right. (Nissan Car Lease Phils., Inc. *vs.* Lica Mgm't., Inc., G.R. No. 176986, Jan. 13, 2016) p. 146

Remedy of –– Always available as a remedy against a defaulting party whether a contract provides for it or not. (Nissan Car Lease Phils., Inc. *vs.* Lica Mgm't., Inc., G.R. No. 176986, Jan. 13, 2016) p. 146

SALES

Perfection of –– Proper place of *Nemo dat quod non habet* rule in the law on sales; application. (Cahayag *vs.* Commercial Credit Corp., G.R. No. 168078, Jan. 13, 2016) p. 8

Validity of –– The nullity of the deed of sale cannot be affected by the subsequent waiver of a party. (Hapitan *vs.* Sps. Lagradilla, G.R. No. 170004, Jan. 13, 2016) p. 42

–– Where there is no consideration, the sale is null and void *ab initio*. (Bacalso *vs.* Aca-ac, G.R. No. 172919, Jan. 13, 2016) p. 61

STARE DECISIS

Principle of –– Defined; the principle does not apply when there is no doctrine of law that is similarly applicable in both the present and an earlier case. (Olympia Housing, Inc. *vs.* Lapastora, G.R. No. 187691, Jan. 13, 2016) p. 189

SUCCESSION

Voluntary heirs –– Voluntary heirs to the free portion have no right to claim any specific property of the estate until after the estate has been settled and distributed in accordance with law. (Heirs of Jose Ma. Gepuela *vs.* Meñez-Andres, G.R. No. 173636, Jan. 13, 2016) p. 97

SUMMARY PROCEDURE, REVISED RULE ON

Affidavits and position papers –– Take the place of actual testimony in court and serve to expedite the resolution of cases. (DST Movers Corp. *vs.* People's Gen. Insurance Corp., G.R. No. 198627, Jan. 13, 2016) p. 235

SUMMONS

Service of –– The lack of or defect of the service of summons may be cured by the defendant's subsequent voluntary

submission to the court's jurisdiction. (Guy *vs.* Atty. Gacott, G.R. No. 206147, Jan. 13, 2016) p. 308

TREACHERY

Existence of — Present when the victim was shot with a deadly weapon suddenly and without any warning. (People *vs.* Salahuddin, G.R. No. 206291, Jan. 18, 2016) p. 529

VALUE-ADDED TAX (VAT)

Refunds or tax credits of input tax — The 120-day period is mandatory and jurisdictional, and the Court of Tax Appeals does not acquire jurisdiction over a judicial claim that is filed before the expiration of the 120-day period. (Commissioner of Internal Revenue *vs.* Mirant Pagbilao Corp., G.R. No. 180434, Jan. 20, 2016) p. 709

–– The premature filing of a claim for refund or credit input VAT before the Court of Tax Appeals warrants a dismissal, inasmuch as no jurisdiction is acquired by the tax court. (*Id.*)

WITNESSES

Credibility of — Findings of trial court affirmed by the Court of Appeals, respected. (People *vs.* Abella *y* Buhain, G.R. No. 195666, Jan. 20, 2016) p. 747

(People *vs.* Salahuddin, G.R. No. 206291, Jan. 18, 2016) p. 529

–– Findings of the trial court thereon are entitled to great respect because it has the advantage of observing the demeanor of witnesses as they testify. (People *vs.* Solina, G.R. No. 196784, Jan. 13, 2016) p. 207

–– Greater weight is given to the positive identification of the accused by the prosecution witnesses than the accused's denial. (*Id.*)

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1 J. Campos, Jr. and M. C. L. Campos, The Corporation Code: Comments, Notes And Selected Cases 819-820 (1990 Ed.) 634-636
Guevara, Commentaries on the Revised Penal Code, Fourth Ed., Revised and Enlarged, Filipino Book Dealers' Association, Manila, 1946, p. 646; 649-651 143
Federico B. Moreno, Philippine Law Dictionary (3rd Edition) (1988) 502

II. FOREIGN AUTHORITIES

A. STATUTES

B. BOOKS

Black's Law Dictionary 995 (8th Ed. 2004) 26