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SUPREME COURT

OF THE

PHILIPPINES

FROM

JANUARY 25, 2016 TO JANUARY 27, 2016

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MANILA
2017

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

SECOND DIVISION

[G.R. No. 191018. January 25, 2016]

CARLOS BORROMEO, *petitioner, vs.* **FAMILY CARE HOSPITAL, INC. and RAMON S. INSO, M.D.,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; ONLY QUESTIONS OF LAW SHALL BE RAISED; EXCEPTIONS; WHEN THE FINDINGS OF THE COURT OF APPEALS ARE CONTRARY TO THOSE OF THE TRIAL COURT.— Under Section 1 of Rule 45, a petition for review on *certiorari* shall only raise questions of law. The Supreme Court is not a trier of facts and it is not our function to analyze and weigh evidence that the lower courts had already passed upon. The factual findings of the Court of Appeals are, as a general rule, conclusive upon this Court. However, jurisprudence has also carved out recognized exceptions to this rule, to wit: x x x **(7) when the findings are contrary to those of the trial court's**; x x x Considering that the CA's findings with respect to the cause of Lilian's death contradict those of the RTC, this case falls under one of the exceptions. The Court will thus give due course to the petition to dispel any perception that we denied the petitioner justice.

2. ID.; EVIDENCE; BURDEN OF PROOF; ELEMENTS TO BE ESTABLISHED IN A MEDICAL MALPRACTICE CASE.—

Whoever alleges a fact has the burden of proving it. This is a basic legal principle that equally applies to civil and criminal cases. In a medical malpractice case, the plaintiff has the duty of proving its elements, namely: (1) a *duty* of the defendant to his patient; (2) the defendant's *breach* of this duty; (3) *injury* to the patient; and (4) *proximate causation* between the breach and the injury suffered. In civil cases, the plaintiff must prove these elements by a preponderance of evidence. A medical professional has the duty to observe the *standard of care* and exercise the degree of skill, knowledge, and training ordinarily expected of other similarly trained medical professionals acting under the same circumstances. A breach of the accepted standard of care constitutes negligence or malpractice and renders the defendant liable for the resulting injury to his patient.

3. ID.; ID.; EXPERT WITNESS; IN MEDICAL MALPRACTICE, AN EXPERT WITNESS MUST BE A COMPETENT MEMBER OF THE PROFESSION PRACTICING THE SAME FIELD OF MEDICINE IN ISSUE.— The standard is based on the norm observed by other reasonably competent members of the profession **practicing the same field of medicine**. Because medical malpractice cases are often highly technical, expert testimony is usually essential to establish: (1) the standard of care that the defendant was bound to observe under the circumstances; (2) that the defendant's conduct fell below the acceptable standard; and (3) that the defendant's failure to observe the industry standard caused injury to his patient. The expert witness must be a similarly trained and experienced physician. Thus, a pulmonologist is not qualified to testify as to the standard of care required of an anesthesiologist and an autopsy expert is not qualified to testify as a specialist in infectious diseases.

4. ID.; ID.; *RES IPSA LOQUITUR* USED IN CONJUNCTION WITH THE DOCTRINE OF COMMON KNOWLEDGE; NOT APPLICABLE IN THE MEDICAL MALPRACTICE CASE AT BAR AS THE HOSPITAL AND DOCTOR'S ALLEGED FAILURE TO OBSERVE DUE CARE IS NOT IMMEDIATELY APPARENT TO A LAYMAN.— The petitioner cannot invoke the doctrine of *res ipsa loquitur* to shift the burden of evidence onto the respondent. *Res ipsa loquitur,* literally, "the thing speaks for itself"; is a rule of evidence that presumes negligence from the very nature of the

> accident itself using *common human knowledge* or experience. The application of this rule requires: (1) that the accident was of a kind which does not ordinarily occur unless someone is negligent; (2) that the instrumentality or agency which caused the injury was under the exclusive control of the person charged with negligence; and (3) that the injury suffered must not have been due to any voluntary action or contribution from the injured person. The concurrence of these elements creates a presumption of negligence that, if unrebutted, overcomes the plaintiff's burden of proof. This doctrine is used in conjunction with the *doctrine of common knowledge*. We have applied this doctrine in the [several] cases involving medical practitioners. x x x [But] the rule is not applicable in cases such as the present one where the defendant's alleged failure to observe due care is not immediately apparent to a layman. These instances require expert opinion to establish the culpability of the defendant doctor. It is also not applicable to cases where the actual cause of the injury had been identified or established.

APPEARANCES OF COUNSEL

Christian Joseph Marie F. Fajardo for petitioner.
Jimeno Cope & David Law Offices for respondents.

D E C I S I O N

BRION, *J.*:

Carlos Borromeo lost his wife Lillian when she died after undergoing a routine appendectomy. The hospital and the attending surgeon submit that Lillian bled to death due to a rare, life-threatening condition that prevented her blood from clotting normally. Carlos believes, however, that the hospital and the surgeon were simply negligent in the care of his late wife.

On January 22, 2010, the Court of Appeals (*CA*) in **CA-G.R. CV No. 89096**[1] dismissed Carlos' complaint and thus

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[1] Penned by Associate Justice Isaias Dicdican and concurred in by Associate Justices Romeo F. Barza and Antonio L. Villamor, *rollo*, pp. 9-32.

reversed the April 10, 2007 decision of the Regional Trial Court (*RTC*) in **Civil Case No. 2000-603-MK**[2] which found the respondents liable for medical negligence.

The present petition for review on *certiorari* seeks to reverse the CA's January 22, 2010 decision.

ANTECEDENTS

The petitioner, Carlos Borromeo, was the husband of the late Lilian V. Borromeo (*Lilian*). Lilian was a patient of the respondent Family Care Hospital, Inc. (*Family Care*) under the care of respondent Dr. Ramon Inso (*Dr. Inso*).

On July 13, 1999, the petitioner brought his wife to the Family Care Hospital because she had been complaining of acute pain at the lower stomach area and fever for two days. She was admitted at the hospital and placed under the care of Dr. Inso.

Dr. Inso suspected that Lilian might be suffering from acute appendicitis. However, there was insufficient data to rule out other possible causes and to proceed with an appendectomy. Thus, he ordered Lilian's confinement for testing and evaluation.

Over the next 48 hours, Lilian underwent multiple tests such as complete blood count, urinalysis, stool exam, pelvic ultrasound, and a pregnancy test. However, the tests were not conclusive enough to confirm that she had appendicitis.

Meanwhile, Lilian's condition did not improve. She suffered from spiking fever and her abdominal pain worsened. The increasing tenderness of her stomach, which was previously confined to her lower right side, had also extended to her lower left side. Lilian abruptly developed an *acute surgical abdomen*.

On July 15, 1999, Dr. Inso decided to conduct an exploratory laparotomy on Lilian because of the findings on her abdomen and his fear that she might have a ruptured appendix. Exploratory laparotomy is a surgical procedure involving a large incision on the abdominal wall that would enable Dr. Inso to examine

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[2] Marikina City, Branch 273 through Presiding Judge Manuel S. Quimbo.

the abdominal cavity and identify the cause of Lilian's symptoms. After explaining the situation, Dr. Inso obtained the patient's consent to the laparotomy.

At around 3:45 P.M., Lilian was brought to the operating room where Dr. Inso conducted the surgery. During the operation, Dr. Inso confirmed that Lilian was suffering from acute appendicitis. He proceeded to remove her appendix which was already infected and congested with pus.

The operation was successful. Lilian's appearance and vital signs improved. At around 7:30 P.M., Lilian was brought back to her private room from the recovery room.

At around 1:30 A.M. on July 16, 1999, roughly six hours after Lilian was brought back to her room, Dr. Inso was informed that her blood pressure was low. After assessing her condition, he ordered the infusion of more intravenous (*IV*) fluids which somehow raised her blood pressure.

Despite the late hour, Dr. Inso remained in the hospital to monitor Lilian's condition. Subsequently, a nurse informed him that Lilian was becoming restless. Dr. Inso immediately went to Lilian and saw that she was quite pale. He immediately requested a blood transfusion.

Lilian did not respond to the blood transfusion even after receiving two 500 cc-units of blood. Various drugs, such as adrenaline or epinephrine, were administered.

Eventually, an endotracheal tube connected to an oxygen tank was inserted into Lilian to ensure her airway was clear and to compensate for the lack of circulating oxygen in her body from the loss of red blood cells. Nevertheless, her condition continued to deteriorate.

Dr. Inso observed that Lilian was developing *petechiae* in various parts of her body. *Petechiae* are small bruises caused by bleeding under the skin whose presence indicates a blood-coagulation problem — a defect in the ability of blood to clot. At this point, Dr. Inso suspected that Lilian had *Disseminated Intravascular Coagulation* (*DIC*), a blood disorder characterized

by bleeding in many parts of her body caused by the consumption or the loss of the clotting factors in the blood. However, Dr. Inso did not have the luxury to conduct further tests because the immediate need was to resuscitate Lilian.

Dr. Inso and the nurses performed cardiopulmonary resuscitation (*CPR*) on Lilian. Dr. Inso also informed her family that there may be a need to re-operate on her, but she would have to be put in an Intensive Care Unit (*ICU*). Unfortunately, Family Care did not have an ICU because it was only a secondary hospital and was not required by the Department of Health to have one. Dr. Inso informed the petitioner that Lilian would have to be transferred to another hospital.

At around 3:30 A.M., Dr. Inso personally called the Perpetual Help Medical Center to arrange Lilian's transfer, but the latter had no available bed in its ICU. Dr. Inso then personally coordinated with the Muntinlupa Medical Center (*MMC*) which had an available bed.

At around 4:00 A.M., Lilian was taken to the MMC by ambulance accompanied by the resident doctor on duty and a nurse. Dr. Inso followed closely behind in his own vehicle.

Upon reaching the MMC, a medical team was on hand to resuscitate Lilian. A nasogastric tube (*NGT*) was inserted and IV fluids were immediately administered to her. Dr. Inso asked for a plasma expander. Unfortunately, at around 10:00 A.M., Lilian passed away despite efforts to resuscitate her.

At the request of the petitioner, Lilian's body was autopsied at the Philippine National Police (*PNP*) Camp Crame Crime Laboratory. Dr. Emmanuel Reyes (*Dr. Reyes*), the medico-legal assigned to the laboratory, conducted the autopsy. Dr. Reyes summarized his notable findings as:

> x x x I opened up the body and inside the abdominal cavity which you call peritoneal cavity there were 3,000 ml of clot and unclot blood accumulated thereat. The peritoneal cavity was also free from any adhesion. Then, I opened up the head and the brain revealed paper white in color and the heart revealed abundant petechial hemorrhages from the surface and it was normal. The valvular leaflets were soft and

pliable, and of course, the normal color is reddish brown as noted. And the coronary arteries which supply the heart were normal and unremarkable. Next, the lungs appears [*sic*] hemorrhagic. That was the right lung while the left lung was collapsed and paled. For the intestines, I noted throughout the entire lengths of the small and large intestine were hemorrhagic areas. Noted absent is the appendix at the ileo-colic area but there were continuous suture repair done thereat. However, there was a 0.5 x 0.5 cm opening or left unrepaired at that time. There was an opening on that repair site. Meaning it was not repaired. There were also at that time clot and unclot blood found adherent thereon. The liver and the rest of the visceral organs were noted exhibit [*sic*] some degree of pallor but were otherwise normal. The stomach contains one glassful about 400 to 500 ml.[3]

Dr. Reyes concluded that the cause of Lilian's death was hemorrhage due to bleeding petechial blood vessels: internal bleeding. He further concluded that the internal bleeding was caused by the 0.5 x 0.5 cm opening in the repair site. He opined that the bleeding could have been avoided if the site was repaired with double suturing instead of the single continuous suture repair that he found.

Based on the autopsy, the petitioner filed a complaint for damages against Family Care and against Dr. Inso for medical negligence.

During the trial, the petitioner presented Dr. Reyes as his expert witness. Dr. Reyes testified as to his findings during the autopsy and his opinion that Lilian's death could have been avoided if Dr. Inso had repaired the site with double suture rather than a single suture.

However, Dr. Reyes admitted that he had very little experience in the field of pathology and his only experience was an on-the-job training at the V. Luna Hospital where he was only on observer status. He further admitted that he had no experience in appendicitis or appendectomy and that Lilian's case was his first autopsy involving a death from appendectomy.

Moreover, Dr. Reyes admitted that he was not intelligently guided during the autopsy because he was not furnished with

[3] TSN dated March 5, 2002, p. 14, quoted in the RTC Decision; see *rollo*, pp. 143-144.

clinical, physical, gross, histopath, and laboratory information that were important for an accurate conclusion. Dr. Reyes also admitted that an appendical stump is initially swollen when sutured and that the stitches may loosen during the healing process when the initial swelling subside.

In their defense, Dr. Inso and Family Care presented Dr. Inso, and expert witnesses Dr. Celso Ramos (*Dr. Ramos*) and Dr. Herminio Hernandez (*Dr. Hernandez*).

Dr. Ramos is a practicing pathologist with over 20 years of experience. He is an associate professor at the Department of Surgery of the Fatima Medical Center, the Manila Central University, and the Perpetual Help Medical Center. He is a Fellow of the Philippine College of Surgeons, a Diplomate of the Philippine Board of Surgery, and a Fellow of the Philippine Society of General Surgeons.

Dr. Ramos discredited Dr. Reyes' theory that the 0.5 x 0.5 cm opening at the repair site caused Lilian's internal bleeding. According to Dr. Ramos, appendical vessels measure only 0.1 to 0.15 cm, a claim that was not refuted by the petitioner. If the 0.5 x 0.5 cm opening had caused Lilian's hemorrhage, she would not have survived for over 16 hours; she would have died immediately, within 20 to 30 minutes, after surgery.

Dr. Ramos submitted that the cause of Lilian's death was hemorrhage due to DIC, a blood disorder that leads to the failure of the blood to coagulate. Dr. Ramos considered the abundant petechial hemorrhage in the myocardic sections and the hemorrhagic right lung; the multiple bleeding points indicate that Lilian was afflicted with DIC.

Meanwhile, Dr. Hernandez is a general surgeon and a hospital administrator who had been practicing surgery for twenty years as of the date of his testimony.

Dr. Hernandez testified that Lilian's death could not be attributed to the alleged wrong suturing. He submitted that the presence of blood in the lungs, in the stomach, and in the entire length of the bowels cannot be reconciled with Dr. Reyes' theory

that the hemorrhage resulted from a single-sutured appendix.

Dr. Hernandez testified that Lilian had uncontrollable bleeding in the microcirculation as a result of DIC. In DIC, blood oozes from very small blood vessels because of a problem in the clotting factors of the blood vessels. The microcirculation is too small to be seen by the naked eye; the red cell is even smaller than the tip of a needle. Therefore, the alleged wrong suturing could not have caused the amount of hemorrhaging that caused Lilian's death.

Dr. Hernandez further testified that the procedure that Dr. Inso performed was consistent with the usual surgical procedure and he would not have done anything differently.[4]

The petitioner presented Dr. Rudyard Avila III (*Dr. Avila*) as a rebuttal witness. Dr. Avila, also a lawyer, was presented as an expert in medical jurisprudence. Dr. Avila testified that between Dr. Reyes who autopsied the patient and Dr. Ramos whose findings were based on medical records, greater weight should be given to Dr. Reyes' testimony.

On April 10, 2007, the RTC rendered its decision awarding the petitioner ₱88,077.50 as compensatory damages; ₱50,000.00 as death indemnity; ₱3,607,910.30 as loss of earnings; ₱50,000.00 as moral damages; ₱30,000.00 as exemplary damages; ₱50,000.00 as attorney's fees, and the costs of the suit.

The RTC relied on Dr. Avila's opinion and gave more weight to Dr. Reyes' findings regarding the cause of Lilian's death. It held that Dr. Inso was negligent in using a single suture on the repair site causing Lilian's death by internal hemorrhage. It applied the doctrine of *res ipsa loquitur*, holding that a patient's death does not ordinarily occur during an appendectomy.

The respondents elevated the case to the CA and the appeal was docketed as **CA-G.R. CV No. 89096.**

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[4] TSN dated November 19, 2003, pp. 27, 29 and 36.

On January 22, 2010, the CA reversed the RTC's decision and dismissed the complaint. The CA gave greater weight to the testimonies of Dr. Hernandez and Dr. Ramos over the findings of Dr. Reyes because the latter was not an expert in pathology, appendectomy, nor in surgery. It disregarded Dr. Avila's opinion because the basic premise of his testimony was that the doctor who conducted the autopsy is a pathologist of equal or of greater expertise than Dr. Ramos or Dr. Hernandez.

The CA held that there was no causal connection between the alleged omission of Dr. Inso to use a double suture and the cause of Lilian's death. It also found that Dr. Inso did, in fact, use a double suture ligation with a third silk reinforcement ligation on the repair site which, as Dr. Reyes admitted on cross-examination, loosened up after the initial swelling of the stump subsided.

The CA denied the applicability of the doctrine of *res ipsa loquitur* because the element of causation between the instrumentality under the control and management of Dr. Inso and the injury that caused Lilian's death was absent; the respondents sufficiently established that the cause of Lilian's death was DIC.

On March 18, 2010, the petitioner filed the present petition for review on *certiorari*.

THE PETITION

The petitioner argues: (1) that Dr. Inso and Family Care were negligent in caring for Lilian before, during, and after her appendectomy and were responsible for her death; and (2) that the doctrine of *res ipsa loquitur* is applicable to this case.

In their Comment, the respondents counter: (1) that the issues raised by the petitioner are not pure questions of law; (2) that they exercised utmost care and diligence in the treatment of Lilian; (3) that Dr. Inso did not deviate from the standard of care observed under similar circumstances by other members of the profession in good standing; (4) that *res ipsa loquitur* is not applicable because direct evidence as to the cause of Lilian's

death and the presence/absence of negligence is available; and (5) that doctors are not guarantors of care and cannot be held liable for the death of their patients when they exercised diligence and did everything to save the patient.

OUR RULING

The petition involves factual questions.

Under Section 1 of Rule 45, a petition for review on *certiorari* shall only raise questions of law. The Supreme Court is not a trier of facts and it is not our function to analyze and weigh evidence that the lower courts had already passed upon.

The factual findings of the Court of Appeals are, as a general rule, conclusive upon this Court. However, jurisprudence has also carved out recognized exceptions[5] to this rule, to wit: (1) when the findings are grounded entirely on speculation, surmises, or conjectures;[6] (2) when the inference made is manifestly mistaken, absurd, or impossible;[7] (3) when there is grave abuse of discretion;[8] (4) when the judgment is based on a misapprehension of facts;[9] (5) when the findings of facts are conflicting;[10] (6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee;[11] **(7) when the findings are contrary to those of the trial court's**;[12]

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[5] *New City Builders, Inc. v. NLRC*, 499 Phil. 207, 212-213 (2005), citing *Insular Life Assurance Company, Ltd. v. CA*, 472 Phil. 7 (2004).

[6] *Joaquin v. Navarro*, 93 Phil. 257-270 (1953).

[7] *De Luna v. Linatoc*, 74 Phil. 15 (1942).

[8] *Buyco v. People*, 95 Phil. 453 (1954).

[9] *Cruz v. Sosing*, 94 Phil. 26 (1953).

[10] *Casica v. Villaseca*, 101 Phil. 1205 (1957).

[11] *Lim Yhi Luya v. Court of Appeals*, G.R. No. L-40258, September 11, 1980, 99 SCRA 668-669.

[12] *Sacay v. Sandiganbayan*, G.R. Nos. 66497-98, July 10, 1986, 142 SCRA 593.

(8) when the findings are conclusions without citation of specific evidence on which they are based;[13] (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;[14] (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record;[15] and (11) when the Court of Appeals manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.[16]

Considering that the CA's findings with respect to the cause of Lilian's death contradict those of the RTC, this case falls under one of the exceptions. The Court will thus give due course to the petition to dispel any perception that we denied the petitioner justice.

The requisites of establishing medical malpractice

Whoever alleges a fact has the burden of proving it. This is a basic legal principle that equally applies to civil and criminal cases. In a medical malpractice case, the plaintiff has the duty of proving its elements, namely: (1) a *duty* of the defendant to his patient; (2) the defendant's *breach* of this duty; (3) *injury* to the patient; and (4) *proximate causation* between the breach and the injury suffered.[17] In civil cases, the plaintiff must prove these elements by a preponderance of evidence.

A medical professional has the duty to observe the *standard of care* and exercise the degree of skill, knowledge, and training

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[13] *Universal Motors v. Court of Appeals*, G.R. No. L-47432, January 27, 1992, 205 SCRA 448.

[14] *Alsua-Betts v. Court of Appeals*, G.R. Nos. L-46430-31, July 30, 1979, 92 SCRA 332.

[15] *Medina v. Asistio*, G.R. No. 75450, November 8, 1990, 191 SCRA 218.

[16] *Abellana v. Dosdos*, 121 Phil. 241 (1965).

[17] *Garcia-Rueda v. Pascasio*, 344 Phil. 323, 331-332 (1997); *Sps. Flores v. Sps. Pineda*, 591 Phil. 699, 706 (2008); *Reyes v. Sisters of Mercy Hospital*, 396 Phil. 87, 95-96 (2000).

ordinarily expected of other similarly trained medical professionals acting under the same circumstances.[18] A breach of the accepted standard of care constitutes negligence or malpractice and renders the defendant liable for the resulting injury to his patient.[19]

The standard is based on the norm observed by other reasonably competent members of the profession **practicing the same field of medicine**.[20] Because medical malpractice cases are often highly technical, expert testimony is usually essential to establish: (1) the standard of care that the defendant was bound to observe under the circumstances; (2) that the defendant's conduct fell below the acceptable standard; and (3) that the defendant's failure to observe the industry standard caused injury to his patient.[21]

The expert witness must be a similarly trained and experienced physician. Thus, a pulmonologist is not qualified to testify as to the standard of care required of an anesthesiologist[22] and an autopsy expert is not qualified to testify as a specialist in infectious diseases.[23]

The petitioner failed to present an expert witness.

In ruling against the respondents, the RTC relied on the findings of Dr. Reyes in the light of Dr. Avila's opinion that the former's testimony should be given greater weight than the findings of Dr. Ramos and Dr. Hernandez. On the other

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[18] *Garcia-Rueda v. Pascasio, supra* note 17, at 332; *Dr. Cruz v. CA*, 346 Phil. 872, 883-884 (1997); *Reyes v. Sisters of Mercy Hospital, supra* note 17, at 104.

[19] *Sps. Flores v. Sps. Pineda, supra* note 17.

[20] *Dr. Cruz v. CA, supra* note 18, at 884; *Cabugao v. People of the Philippines*, G.R. No. 163879, July 30, 2014, 731 SCRA 214, 234.

[21] *Dr. Cruz v. CA, supra* note 18, at 885.

[22] *Ramos v. CA*, 378 Phil. 1198, 1236 (1999).

[23] *Reyes v. Sisters of Mercy Hospital, supra* note 17.

hand, the CA did not consider Dr. Reyes or Dr. Avila as expert witnesses and disregarded their testimonies in favor of Dr. Ramos and Dr. Hernandez. The basic issue, therefore, is whose testimonies should carry greater weight?

We join and affirm the ruling of the CA.

Other than their conclusion on the culpability of the respondents, the CA and the RTC have similar factual findings. The RTC ruled against the respondents based primarily on the following testimony of Dr. Reyes.

Witness:	Well, **if I remember right during my residency in my extensive training**, during the operation of the appendix, your Honor, it should really be sutured twice which we call double.
Court:	What would be the result if there is only single?
Witness:	We cannot guarranty [*sic*] the bleeding of the sutured blood vessels, your Honor.
Court:	So, the bleeding of the patient was caused by the single suture?
Witness:	**It is possible**.[24]

Dr. Reyes testified that he graduated from the Manila Central University (*MCU*) College of Medicine and passed the medical board exams in 1994.[25] He established his personal practice at his house clinic before being accepted as an on-the-job trainee in the Department of Pathology at the V. Luna Hospital in 1994. In January 1996, he joined the PNP Medico-Legal Division and was assigned to the Crime Laboratory in Camp Crame. He currently heads the Southern Police District Medico-Legal division.[26] His primary duties are to examine victims of violent crimes and to conduct traumatic autopsies to determine the cause

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[24] TSN dated March 5, 2002, pp. 22-23 (Direct Examination of Dr. Emmanuel Reyes).

[25] Cross Examination, TSN dated March 19, 2002, p. 3.

[26] TSN dated March 5, 2002, pp. 3-11 (Direct Examination of Dr. Emmanuel Reyes).

of death.

After having conducted over a thousand traumatic autopsies, Dr. Reyes can be considered an expert in traumatic autopsies or autopsies involving violent deaths. However, his expertise in traumatic autopsies does not necessarily make him an expert in clinical and pathological autopsies or in surgery.

Moreover, Dr. Reyes' cross-examination reveals that he was less than candid about his qualifications during his initial testimony:

Atty. Castro: Dr. Reyes, you mentioned during your direct testimony last March 5, 2002 that you graduated in March of 1994, is that correct?

Witness: Yes, sir.

Atty. Castro: You were asked by Atty. Fajardo, the counsel for the plaintiff, when did you finish your medical works, and you answered the following year of your graduation which was in 1994?

Witness: **Not in 1994, it was in 1984,** sir.

Atty. Castro: And after you graduated Mr. Witness, were there further study that you undergo after graduation? [*sic*]

Witness: It was during my service only at the police organization that I was given the chance to attend the training, one year course.

Atty. Castro: Did you call that what you call a post graduate internship?

Witness: Residency.

Atty. Castro: Since you call that a post graduate, you were not undergo post graduate? [*sic*]

Witness: I did.

Atty. Castro: Where did you undergo a post graduate internship?

Witness: Before I took the board examination in the year 1984, sir.

Atty. Castro: That was where?

Witness: MCU Hospital, sir.

Atty. Castro: After the post graduate internship that was the time you took the board examination?

Witness: Yes, sir.

Atty. Castro: And I supposed that you did it for the first take?

Witness: Yes, sir.

Atty. Castro: Are you sure of that?

Witness: Yes, sir.

Atty. Castro: After you took the board examination, did you pursue any study?

Witness: During that time, no sir.

Atty. Castro: You also testified during the last hearing that "page 6 of March 5, 2002, answer of the witness: then I was accepted as on the job training at the V. Luna Hospital at the Department of Pathologist in 1994", could you explain briefly all of this Mr. witness?

Witness: I was given an order that I could attend the training only as a civilian not as a member of the AFP because at that time they were already in the process of discharging civilian from undergoing training.

Atty. Castro: So in the Department of Pathology, what were you assigned to?

Witness: **Only as an observer status**.

Atty. Castro: So you only observed.

Witness: Yes, sir.

Atty. Castro: And on the same date during your direct testimony on March 5, 2002, part of which reads "well if I remember right during my residency in my extensive training during the operation of the appendix," what do you mean by that Mr. witness?

Witness: I was referring to my **internship**, sir.

Atty. Castro: So this is **not a residency training**?

Witness: **No, sir**.

Atty. Castro: This is not a specialty training?

Witness: No, sir.

Atty. Castro: This was the time the year before you took the board examination?

Witness: That's right, sir. Yes, sir.

Atty. Castro: You were **not then a license[d] doctor**?

Witness: **No, sir.**

Atty. Castro: And you also mentioned during the last hearing shown by page 8 of the same transcript of the stenographic notes, dated March 5, 2002 and I quote "and that is your residence assignment?", and you answered "yes, sir." What was the meaning of your answer? What do you mean when you say yes, sir?

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Witness: Okay, **I stayed at the barracks of the Southern Police District Fort Bonifacio**.

Atty. Castro: So this is not referring to any kind of training?

Witness: No, sir.

Atty. Castro: This is not in anyway related to appendicitis?

Witness: No, sir.[27]

Atty. Reyes appears to have inflated his qualifications during his direct testimony. First, his "extensive training during [his] residency" was neither extensive actual training, nor part of medical residency. His assignment to the V. Luna Hospital was not as an on-the-job trainee but as a mere *observer*. This assignment was also *before* he was *actually* licensed as a doctor. Dr. Reyes also loosely used the terms "residence" and "residency" — terms that carry a technical meaning with respect to medical

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[27] Cross Examination of Dr. Reyes, TSN dated March 19, 2002, pp. 4-11.

[28] See Direct Examination of Dr. Reyes, TSN dated March 5, 2002, pp. 8 and 22.

practice — during his initial testimony[28] to refer to (1) his physical place of dwelling and (2) his internship before taking the medical board exams. This misled the trial court into believing that he was more qualified to give his opinion on the matter than he actually was.

Perhaps nothing is more telling about Dr. Reyes' lack of expertise in the subject matter than the petitioner's counsel's own admission during Dr. Reyes' cross examination.

Atty. Castro: How long were you assigned to observe with the Department of Pathology?

Witness: Only 6 months, sir.

Atty. Castro: During your studies in the medical school, Mr. Witness, do you recall attending or having participated or [sic] what you call motivity mortality complex?

Atty. Fajardo: Your honor, what is the materiality?

Atty. Castro: That is according to his background, your honor. This is a procedure which could more or less measure his knowledge in autopsy proceedings when he was in medical school and compared to what he is actually doing now.

Atty. Fajardo: **The witness is not an expert witness**, your honor.

Atty. Castro: He is being presented as an expert witness, your honor.[29]

When Atty. Castro attempted to probe Dr. Reyes about his knowledge on the subject of medical or pathological autopsies, Dr. Fajardo objected on the ground that Dr. Reyes was not an expert in the field. His testimony was offered to prove that Dr. Inso was negligent during the surgery without necessarily offering him as an expert witness.

Atty. Fajardo: x x x The purpose of this witness is to establish

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[29] Cross Examination of Dr. Reyes, TSN dated March 19, 2002, pp. 30-31.

> that there was negligence on the surgical operation of the appendix or in the conduct of the appendectomy by the defendant doctor on the deceased Lilian Villaran Borromeo.[30]

Dr. Reyes is not an expert witness who could prove Dr. Inso's alleged negligence. His testimony could not have established the standard of care that Dr. Inso was expected to observe nor assessed Dr. Inso's failure to observe this standard. His testimony cannot be relied upon to determine if Dr. Inso committed errors during the operation, the severity of these errors, their impact on Lilian's probability of survival, and the existence of other diseases/conditions that might or might not have caused or contributed to Lilian's death.

The testimony of Dr. Avila also has no probative value in determining whether Dr. Inso was at fault. Dr. Avila testified in his capacity as an expert in medical jurisprudence, not as an expert in medicine, surgery, or pathology. His testimony fails to shed any light on the actual cause of Lilian's death.

On the other hand, the respondents presented testimonies from Dr. Inso himself and from two expert witnesses in pathology and surgery.

Dr. Ramos graduated from the Far Eastern University, Nicanor Reyes Medical Foundation, in 1975. He took up his post-graduate internship at the Quezon Memorial Hospital in Lucena City, before taking the board exams. After obtaining his professional license, he underwent residency training in pathology at the Jose R. Reyes Memorial Center from 1977 to 1980. He passed the examination in Anatomic, Clinical, and Physical Pathology in 1980 and was inducted in 1981. He also took the examination in anatomic pathology in 1981 and was inducted in 1982.[31]

At the time of his testimony, Dr. Ramos was an associate professor in pathology at the Perpetual Help Medical School in Biñan, Laguna, and at the De La Salle University in

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[30] Direct Examination of Dr. Reyes, TSN dated March 5, 2002, p. 4.

[31] Direct Examination of Dr. Ramos, TSN dated June 6, 2003, p. 13.

Dasmariñas, Cavite. He was the head of the Batangas General Hospital Teaching and Training Hospital where he also headed the Pathology Department. He also headed the Perpetual Help General Hospital Pathology department.[32]

Meanwhile, Dr. Hernandez at that time was a General Surgeon with 27 years of experience as a General Practitioner and 20 years of experience as a General Surgeon. He obtained his medical degree from the University of Santo Tomas before undergoing five years of residency training as a surgeon at the Veterans Memorial Center hospital. He was certified as a surgeon in 1985. He also holds a master's degree in Hospital Administration from the Ateneo de Manila University.[33]

He was a practicing surgeon at the: St. Luke's Medical Center, Fatima Medical Center, Unciano Medical Center in Antipolo, Manila East Medical Center of Taytay, and Perpetual Help Medical Center in Biñan.[34] He was also an associate professor at the Department of Surgery at the Fatima Medical Center, the Manila Central University, and the Perpetual Help Medical Center. He also chaired the Department of Surgery at the Fatima Medical Center.[35]

Dr. Hernandez is a Fellow of the American College of Surgeons, the Philippine College of Surgeons, and the Philippine Society of General Surgeons. He is a Diplomate of the Philippine Board of Surgery and a member of the Philippine Medical Association and the Antipolo City Medical Society.[36]

Dr. Hernandez affirmed that Dr. Inso did not deviate from the usual surgical procedure.[37] Both experts agreed that Lilian could not have died from bleeding of the appendical vessel.

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[32] *Id.* at 14.

[33] Direct Examination of Dr. Hernandez, TSN dated November 19, 2003, pp. 5-10.

[34] *Id.* at 9.

[35] *Id.* at 10.

[36] *Id.* at 11.

[37] *Id.* at 27, 29 and 36.

They identified Lilian's cause of death as massive blood loss resulting from DIC.

To our mind, the testimonies of expert witnesses Dr. Hernandez and Dr. Ramos carry far greater weight than that of Dr. Reyes. The petitioner's failure to present expert witnesses resulted in his failure to prove the respondents' negligence. The preponderance of evidence clearly tilts in favor of the respondents.

***Res ipsa loquitur* is not applicable when the failure to observe due care is not immediately apparent to the layman.**

The petitioner cannot invoke the doctrine of *res ipsa loquitur* to shift the burden of evidence onto the respondent. *Res ipsa loquitur*, literally, "the thing speaks for itself;" is a rule of evidence that presumes negligence from the very nature of the accident itself using *common human knowledge* or experience.

The application of this rule requires: (1) that the accident was of a kind which does not ordinarily occur unless someone is negligent; (2) that the instrumentality or agency which caused the injury was under the exclusive control of the person charged with negligence; and (3) that the injury suffered must not have been due to any voluntary action or contribution from the injured person.[38] The concurrence of these elements creates a presumption of negligence that, if unrebutted, overcomes the plaintiff's burden of proof.

This doctrine is used in conjunction with the *doctrine of common knowledge*. We have applied this doctrine in the following cases involving medical practitioners:

a. Where a patient who was scheduled for a cholecystectomy (removal of gall stones) but was otherwise healthy suffered irreparable brain damage after

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[38] *Malayan Insurance Co. v. Alberto*, G.R. No. 194320, February 1, 2012, 664 SCRA 791, 803-804.

[39] *Ramos v. CA, supra* note 22.

being administered anesthesia prior to the operation.[39]

b. Where after giving birth, a woman woke up with a gaping burn wound close to her left armpit;[40]

c. The removal of the wrong body part during the operation; and

d. Where an operating surgeon left a foreign object (*i.e.*, rubber gloves) inside the body of the patient.[41]

The rule is not applicable in cases such as the present one where the defendant's alleged failure to observe due care is not immediately apparent to a layman.[42] These instances require expert opinion to establish the culpability of the defendant doctor. It is also not applicable to cases where the actual cause of the injury had been identified or established.[43]

While this Court sympathizes with the petitioner's loss, the petitioner failed to present sufficient convincing evidence to establish: (1) the standard of care expected of the respondent and (2) the fact that Dr. Inso fell short of this expected standard. Considering further that the respondents established that the cause of Lilian's uncontrollable bleeding (and, ultimately, her death) was a medical disorder — *Disseminated Intravascular Coagulation* — we find no reversible errors in the CA's dismissal of the complaint on appeal.

WHEREFORE, we hereby **DENY** the petition for lack of merit. No costs.

SO ORDERED.

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

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[40] *Dr. Cantre v. Spouses Go*, 550 Phil. 637 (2007).

[41] *Batiquin v. Court of Appeals*, 327 Phil. 965-971 (1996).

[42] *Reyes v. Sisters of Mercy Hospital, supra* note 17, at 98.

[43] See *Professional Services, Inc. v. Agana,* 542 Phil. 464, 484 (2007).

SECOND DIVISION

[G.R. No. 195477. January 25, 2016]

SPOUSES HERMINIO E. ERORITA and EDITHA C. ERORITA, *petitioners, vs.* **SPOUSES LIGAYA DUMLAO and ANTONIO DUMLAO,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; JURISDICTION; DETERMINED BY THE ALLEGATIONS IN THE COMPLAINT.—** [T]he allegations in the complaint determine the nature of an action and jurisdiction over the case. Jurisdiction does not depend on the complaint's caption. Nor is jurisdiction changed by the defenses in the answer; otherwise, the defendant may easily delay a case by raising other issues, then, claim lack of jurisdiction.

2. **ID.; SPECIAL CIVIL ACTIONS; UNLAWFUL DETAINER; MATTERS THAT MUST BE ALLEGED IN THE COMPLAINT.—** To make a case for unlawful detainer, the complaint must allege that: (a) initially, the defendant lawfully possessed the property, either **by contract or** by plaintiff's **tolerance**; (b) the plaintiff notified the defendant that his right of possession is **terminated**; (c) the defendant **remained in possession** and deprived plaintiff of its enjoyment; and (d) the plaintiff filed a complaint **within one year from the last demand** on defendant to vacate the property. A complaint for *accion publiciana* or recovery of possession of real property will not be considered as an action for unlawful detainer if any of these special jurisdictional facts is omitted.

3. **ID.; JURISDICTION; METROPOLITAN TRIAL COURT; HAS EXCLUSIVE JURISDICTION ON ACTION FOR UNLAWFUL DETAINER REGARDLESS OF THE PROPERTY'S ASSESSED VALUED.—** Under RA 7691, an action for unlawful detainer is within the MTC's exclusive jurisdiction regardless of the property's assessed value. x x x In the present case, the complaint clearly contained the elements of an unlawful detainer case. Thus, the case should have been filed with the MTC. The RTC had no jurisdiction over this

case. Since a decision rendered by a court without jurisdiction is void, the RTC's decision is void.

4. ID.; ID.; LACK OF JURISDICTION OVER THE SUBJECT MATTER MAY BE RAISED ANY TIME; EXCEPTION TO THE RULE IS THE PRINCIPLE OF ESTOPPEL BY LACHES; APPLICATION.— As a general rule, lack of jurisdiction over the subject matter may be raised at any time, or even for the first time on appeal. An exception to this rule is the principle of estoppel by laches. Estoppel by laches may only be invoked to bar the defense of lack of jurisdiction if the factual milieu is analogous to *Tijam v. Sibonghanoy*. In that case, lack of jurisdiction was raised for the first time after almost fifteen (15) years after the questioned ruling had been rendered and after the movant actively participated in several stages of the proceedings. It was only invoked, too, after the CA rendered a decision adverse to the movant. In *Figueroa v. People,* we ruled that the failure to assail jurisdiction during trial is not sufficient for estoppel by laches to apply. When lack of jurisdiction is raised before the appellate court, no considerable length of time had elapsed for laches to apply. Laches refers to the "negligence or omission to assert a right within a reasonable length of time, warranting a presumption that the party entitled to assert it either has abandoned it or declined to assert it."

5. ID.; CIVIL PROCEDURE; APPEALS; ISSUES NOT RAISED BEFORE THE LOWER COURTS CANNOT BE RAISED FOR THE FIRST TIME ON APPEAL.— [I]t is settled that issues that have not been raised before the lower courts cannot be raised for the first time on appeal. Basic consideration of due process dictates this rule.

APPEARANCES OF COUNSEL

Jesus P. Amparo for respondents.

D E C I S I O N

BRION, *J.*:

We resolve the petition for review on *certiorari* filed by petitioners to challenge the July 28, 2010 decision[1] and January 4, 2011 resolution of the Court of Appeals (*CA*) in CA-GR CV No. 92770. The CA affirmed the Regional Trial Court's (*RTC*) decision ordering the petitioners to vacate the property.

THE ANTECEDENTS

Spouses Antonio and Ligaya Dumlao (***Spouses Dumlao***) are the registered owners of a parcel of land located at Barangay San Mariano, Roxas, Oriental Mindoro, and covered by TCT No. T-53000. The San Mariano Academy structures are built on the property.

The Spouses Dumlao bought the property in an extrajudicial foreclosure sale on April 25, 1990. Because the former owners, Spouses Herminio and Editha Erorita (***Spouses Erorita***), failed to redeem it, the title was consolidated in the buyers' name.

The Spouses Dumlao agreed to allow the petitioners to continue to operate the school on the property. The Spouses Erorita appointed ***Hernan*** and ***Susan*** Erorita as the San Mariano Academy's administrators.

The Spouses Dumlao alleged that the Eroritas agreed on a monthly rent of Twenty Thousand Pesos (₱20,000.00), but had failed to pay rentals since 1990. The Spouses Erorita countered that the Dumlaos allowed them to continue to run the school without rental out of goodwill and friendship.

On December 16, 2002, the Spouses Dumlao asked the petitioners to vacate the property. Although the Spouses Erorita wanted to comply, they could not immediately close the school without clearance from the Department of Education, Culture, and Sports to whom they are accountable.

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[1] Penned by Associate Justice Normandie B. Pizarro and concurred in by Associate Justices Amelita G. Tolentino and Ruben C. Ayson; *rollo*, pp. 37-48.

On March 4, 2004, the Spouses Dumlao filed **a complaint for recovery of possession** before the Regional Trial Court (*RTC*) against the defendants Hernan, Susan, and the Spouses Erorita.[2]

In their joint answer, the defendants prayed that the complaint be dismissed because they cannot be forced to vacate and to pay the rentals under their factual circumstances.

After the issues were joined, the case was set for pre-trial. However, the defendants — Eroritas failed to appear despite notice. Thus, the RTC declared them in default and ordered the Spouses Dumlao to present evidence *ex parte*.

On June 4, 2007, the RTC decided in the Spouses Dumlao's favor. It ordered the defendants (1) to immediately vacate the property and turn it over to the Spouses Dumlao, and (2) to pay accumulated rentals, damages, and attorney's fees. The RTC also prohibited the defendants from accepting enrollees to the San Mariano Academy.

The defendants Erorita appealed to the CA arguing that the complaint patently shows a case for unlawful detainer. Thus, the RTC had no jurisdiction over the subject matter of the case.

THE CA RULING

On appeal, the CA affirmed the RTC's decision.

The CA ruled that the applicable law on jurisdiction when the complaint was filed, was Republic Act No. 7691[3] (RA 7691). This law provides that in civil actions involving a real property's title or possession, jurisdiction depends on the property's assessed value and location — if the assessed value exceeds fifty thousand pesos (₱50,000.00) in Metro Manila, and twenty thousand pesos (₱20,000.00) outside of Metro Manila, the RTC has jurisdiction.

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[2] Civil Case No. C-492. *Rollo*, pp. 196-202.

[3] An Act Expanding the Jurisdiction of the Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts, amending for the purpose Batas Pambansa, Blg. 129 [BP 129], Otherwise Known as the "Judiciary Reorganization Act of 1980, March 25, 1994.

If the assessed value does not exceed these amounts, then, the Municipal Trial Court (*MTC*) has jurisdiction.

Because the tax declaration showed that the assessed value of the property and its improvements exceeded ₱20,000.00, the CA concluded that the RTC had jurisdiction.

Citing *Barbosa v. Hernandez*,[4] the CA held that this case involves an action for possession of real property and not unlawful detainer.

The CA denied the petitioners' motion for reconsideration; hence, this petition.

THE PARTIES' ARGUMENTS

In their petition, the Spouses Erorita essentially argue that: (a) the RTC had no jurisdiction because the allegations in the complaint show a case for unlawful detainer; and (b) Hernan and Susan were improperly impleaded as parties to this case.

In their comment, the respondents argue that: (a) the RTC had jurisdiction because this case involves issues other than physical possession; (b) even assuming the RTC initially had no jurisdiction, the petitioners' active participation during the proceedings bar them from attacking jurisdiction; (c) Hernan and Susan are real parties in interest as the lease contract's primary beneficiaries; and (d) this last issue cannot be raised for the first time on appeal.

ISSUES

Based on the parties' positions, the issues for our resolution are:

I. Whether the RTC had jurisdiction; and

II. Whether Hernan and Susan were improperly impleaded.

OUR RULING

The petition is **partly meritorious.**

We hold that: (1) the MTC had jurisdiction; and (2) the second

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[4] G.R. No. 133564, July 10, 2007, 527 SCRA 99.

issue was not raised before the lower courts; thus, it cannot be considered in the present case.

Jurisdiction is based on the allegations in the complaint.

On the first issue, the allegations in the complaint determine the nature of an action and jurisdiction over the case.[5] Jurisdiction does not depend on the complaint's caption.[6] Nor is jurisdiction changed by the defenses in the answer; otherwise, the defendant may easily delay a case by raising other issues, then, claim lack of jurisdiction.[7]

To make a case for unlawful detainer, the complaint must allege that: (a) initially, the defendant lawfully possessed the property, either **by contract or** by plaintiff's **tolerance**; (b) the plaintiff notified the defendant that his right of possession is **terminated**; (c) the defendant **remained in possession** and deprived plaintiff of its enjoyment; and (d) the plaintiff filed a complaint **within one year from the last demand** on defendant to vacate the property.[8] A complaint for *accion publiciana* or recovery of possession of real property will not be considered as an action for unlawful detainer if any of these special jurisdictional facts is omitted.[9]

A review of the complaint shows that: (a) the owners, Spouses Dumlao, agreed to allow the petitioners to continue operating the school on the disputed property; (b) in a demand letter dated

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[5] *Spouses Flores-Cruz v. Spouses Goli-Cruz*, G.R. No. 172217, September 18, 2009, 600 SCRA 545.

[6] *Hilario v. Heirs of Salvador*, G.R. No. 160384, April 29, 2005, 457 SCRA 815.

[7] *Spouses Cruz v. Spouses Torres*, G.R. No. 121939, October 4, 1999, 316 SCRA 193; *Larano v. Calendacion*, G.R. No. 158231, June 19, 2007, 525 SCRA 57.

[8] *Corpuz v. Spouses Agustin*, G.R. No. 183822, January 18, 2012, 663 SCRA 350 citing *Canlas v. Tubil*, G.R. No. 184285, September 25, 2009, 601 SCRA 147.

[9] *Penta Pacific Realty Corporation v. Ley Construction and Development Corporation*, G.R. No. 161589, November 24, 2014.

February 12, 2004, the Spouses Dumlao told the petitioners to pay and/or vacate the property; (c) the respondents refused to vacate the property; and (d) the Spouses Dumlao filed the complaint (March 4, 2004) within a year from the last demand to vacate (February 12, 2004).

Thus, although the complaint bears the caption "recovery of possession," its allegations contain the jurisdictional facts for an unlawful detainer case. Under RA 7691, an action for unlawful detainer is within the MTC's exclusive jurisdiction regardless of the property's assessed value.[10]

The CA incorrectly applied our ruling in *Barbosa*. In that case, the complaint did not state that (i) possession was unlawfully withheld and (ii) the complaint was filed within a year from the last demand. Because these special jurisdictional facts for an unlawful detainer case were lacking, we held that the case should be *accion publiciana* over which the RTC has jurisdiction.

In the present case, however, the complaint clearly contained the elements of an unlawful detainer case. Thus, the case should have been filed with the MTC. The RTC had no jurisdiction over this case.

Since a decision rendered by a court without jurisdiction is void,[11] the RTC's decision is void.

Jurisdiction over the subject matter may be raised at any time.

With the jurisdictional issue resolved, we now examine whether the petitioners timely raised this issue.

As a general rule, lack of jurisdiction over the subject matter may be raised at any time, or even for the first time on appeal.[12] An exception to this rule is the principle of estoppel by laches.[13]

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[10] Section 33 (2) of BP 129 in relation to Section 19 (2) of BP 129, as amended by RA 7691, *supra* note 3; *Penta Pacific Realty Corporation*, *id.* at 7.

[11] *Spouses Flores-Cruz v. Spouses Goli-Cruz, supra* note 5.

[12] *Lopez v. David*, G.R. No. 152145, March 30, 2004, 426 SCRA 535.

Estoppel by laches may only be invoked to bar the defense of lack of jurisdiction if the factual milieu is analogous to *Tijam v. Sibonghanoy*.[14] In that case, lack of jurisdiction was raised for the first time after almost fifteen (15) years after the questioned ruling had been rendered and after the movant actively participated in several stages of the proceedings. It was only invoked, too, after the CA rendered a decision adverse to the movant.

In *Figueroa v. People*,[15] we ruled that the failure to assail jurisdiction during trial is not sufficient for estoppel by laches to apply. When lack of jurisdiction is raised before the appellate court, no considerable length of time had elapsed for laches to apply.[16] Laches refers to the "negligence or omission to assert a right within a reasonable length of time, warranting a presumption that the party entitled to assert it either has abandoned it or declined to assert it."[17]

The factual setting of this present case is not similar to *Tijam* so as to trigger the application of the estoppel by laches doctrine. As in *Figueroa*, the present petitioners assailed the RTC's jurisdiction in their appeal before the CA. Asserting lack of jurisdiction on appeal before the CA does not constitute laches. Furthermore, the filing of an answer and the failure to attend the pre-trial do not constitute the active participation in judicial proceedings contemplated in *Tijam*.

Thus, the general rule should apply. The petitioners timely questioned the RTC's jurisdiction.

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[13] *Boston Equity Resources, Inc. v. Court of Appeals*, G.R. No. 173946, June 19, 2013, 699 SCRA 16 citing REGALADO, *REMEDIAL LAW COMPENDIUM I* 187 (10th edition).

[14] 131 Phil. 556 (1968).

[15] *Figueroa v. People*, G.R. No. 147406, July 14, 2008, 558 SCRA 63, 75.

[16] *Id.*

[17] *Cosco Philippines Shipping, Inc. v. Kemper Insurance Company*,

Issue not raised before the lower court

On the second issue, it is settled that issues that have not been raised before the lower courts cannot be raised for the first time on appeal.[18] Basic consideration of due process dictates this rule.[19]

We note that the second issue raised by the petitioners were not raised before the lower courts. The petitioners only raised this issue in their petition before this Court. Thus, we need not discuss this issue at our level.

WHEREFORE, we hereby **GRANT** the petition. The July 28, 2010 decision and January 4, 2011 resolution of the Court of Appeals in CA-GR CV No. 92770 are hereby **REVERSED** and **SET ASIDE.** Accordingly, we **DECLARE** the June 4, 2007 decision of the RTC in Civil Case No. C-492 void for lack of jurisdiction.

SO ORDERED.

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

G.R. No. 179488, April 23, 2012, 670 SCRA 343 citing *Regalado v. Go*, G.R. No. 167988, February 6, 2007, 514 SCRA 616-617.

[18] *Vda. De Gualberto v. Go*, G.R. No. 139843, July 21, 2005, 463 SCRA 671-672.

[19] *Esteban v. Marcelo*, G.R. No. 197725, July 31, 2013, 703 SCRA 82, 92.

THIRD DIVISION

[G.R. No. 197970. January 25, 2016]

METROPOLITAN BANK AND TRUST COMPANY, *petitioner, vs.* **FADCOR, INC. or THE FLORENCIO CORPORATION, LETICIA D. FLORENCIO, RACHEL FLORENCIO-AGUSTIN, MA. MERCEDES FLORENCIO and ROSENDO CESAR FLORENCIO, JR.,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; ONLY QUESTIONS OF LAW ARE ALLOWED; EXCEPTIONS.—** As a general rule, petitions for review under Rule 45 of the Rules of Civil Procedure filed before this Court may only raise questions of law. However, jurisprudence has recognized several exceptions to this rule. In *Spouses Almendrala v. Spouses Ngo,* we have enumerated several instances when this Court may review findings of fact of the Court of Appeals on appeal by *certiorari,* to wit: x x x (5) when the findings of fact are conflicting; x x x In the present case, the RTC and the CA have conflicting findings of fact. Hence, the need to rule on the matter.

2. **ID.; ID.; PRE-TRIAL; EFFECT OF FAILURE TO APPEAR; RTC CORRECTLY ALLOWED PARTY IN ATTENDANCE TO PRESENT ITS EVIDENCE *EX PARTE* AND RENDER JUDGMENT ON BASIS THEREOF.—** [T]his case involves an *ex parte* presentation of evidence allowed by the RTC after the respondents herein failed to appear at the scheduled pre-trial conference and submit a pre-trial brief despite receipt of the Order of the same court. Section 5, Rule 18 of the Rules of Court, states: Section 5. *Effect of failure to appear.* – The failure of the plaintiff to appear when so required pursuant to the next preceding section shall be cause for dismissal of the action. The dismissal shall be with prejudice, unless otherwise ordered by the court. A similar failure on the part of the defendant shall be cause to allow the plaintiff to present his evidence *ex parte* and the court to render judgment on the basis thereof.

The "next preceding" section mandates that: Section 4. *Appearance of parties.* – It shall be the duty of the parties and their counsel to appear at the pre-trial. The non-appearance of a party may be excused only if a valid cause is shown therefor or if a representative shall appear in his behalf fully authorized in writing to enter into an amicable settlement, to submit to alternative modes of dispute resolution, and to enter into stipulations or admissions of facts and of documents. The RTC, therefore, did not commit an error in allowing the petitioner herein to present its evidence *ex parte* and rendering a judgment on the basis thereof.

3. ID.; ID.; ID.; GUIDELINES IN THE CONDUCT OF PRE-TRIAL AND USE OF DEPOSITION-DISCOVERY MEASURES(AM NO. 03-1-09-SC); DOCUMENTS TO BE PRESENTED; RESPONDENTS WHO FAILED TO APPEAR DURING PRE-TRIAL CANNOT DISPUTE THE EVIDENCE PETITIONER PRESENTED *EX-PARTE*.— The pertinent provisions of A.M. No. 03-1-09-SC, read as follows: GUIDELINES TO BE OBSERVED BY TRIAL COURT JUDGES AND CLERKS OF COURT IN THE CONDUCT OF PRE-TRIAL AND USE OF DEPOSITION-DISCOVERY MEASURES x x x 2. The parties shall submit, at least three (3) days before the pre-trial, pre-trial briefs containing the following: x x x d. The documents or exhibits to be presented, stating the purpose thereof. (**No evidence shall be allowed to be presented and offered during the trial in support of a party's evidence-in-chief other than those that had been earlier identified and pre-marked during the pre-trial, except if allowed by the court for good cause shown**); x x x Under the present case, it is as if there was no pre-trial because the respondents did not appear nor file their pre-trial briefs despite due notice causing the RTC to allow petitioner, after the latter filed its motion, to present its evidence *ex parte* in accordance with Section 5, Rule 18 of the Rules of Court. In effect, the respondents were declared in default. x x x [W]hen respondents failed to appear during the pre-trial despite due notice, they have already acquired the risk of not being able to dispute the evidence presented *ex parte* by petitioner.

APPEARANCES OF COUNSEL

Perez Calima Suratos Maynigo & Roque Law Offices for petitioner.

Armando San Antonio for respondents.

D E C I S I O N

PERALTA, *J.*:

This is to resolve the Petition for Review on *Certiorari*,[1] under Rule 45 of the Rules of Court, dated September 19, 2011 of petitioner Metropolitan Bank and Trust Company (Metrobank) that seeks to reverse the Decision[2] dated May 17, 2011 and Resolution[3] dated August 5, 2011, both of the Court of Appeals (CA) that set aside the Decision[4] dated March 8, 2006 of the Regional Trial Court (RTC), Branch 59, Makati City ordering respondents to pay petitioner ₱17,479,371.86 representing deficiency obligation plus 12 percent interest per annum and ₱50,000.00 as attorney's fees.

The facts follow.

Metrobank granted five (5) loans in the aggregate amount of ₱32,950,000.00 to respondent Fadcor, Inc. or The Florencio Corporation (Fadcor), represented by its President Ms. Leticia D. Florencio and its Executive Vice-President, Ms. Rachel D. Florencio-Agustin. As such, Fadcor executed five (5) Non-negotiable Promissory Notes in favor of Metrobank. In addition, Fadcor through individual respondents President, Ms. Leticia D. Florencio; Exec. Vice-President, Ms. Rachel D. Florencio-Agustin; Treasurer, Ms. Ma. Cecilia D. Florencio; Corporate Secretary, Ms. Ma. Mercedes D. Florencio; and Director, Mr.

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[1] *Rollo*, pp. 15-190.

[2] Penned by Associate Justice Antonio L. Villamor, with Associate Justices Jose C. Reyes, Jr. and Ramon A. Cruz concurring; *id.* at 42-53.

[3] *Id.* at 54-55.

[4] Penned by Judge Winlove M. Dumayas, *id.* at 174-176.

Rosendo Cesar D. Florencio, Jr., executed two (2) Real Estate Mortgages in favor of Metrobank over ten (10) parcels of land as collateral for the loans obtained on August 2, 1995, in the amount of ₱18,000,000.00; ₱10,000,000.00, obtained on September 14, 1995, and an Amendment of Real Estate Mortgage to secure a loan of ₱22,000,000.00, obtained on October 26, 1995. Furthermore, the same respondents executed two (2) Continuing Surety Agreements in favor of Metrobank, binding themselves jointly and severally liable to pay any existing or future obligation in favor of Metrobank up to a maximum amount of Ninety Million Pesos (₱90,000,000.00) only.

Thereafter, respondents defaulted in the payment of their loan amortizations in the total aggregate sum of ₱32,350,594.12, hence, after demands for payment of the arrears were ignored, Metrobank filed on April 20, 2001 an extra-judicial petition for foreclosure of mortgage before the Notary Public for and in the Province of Rizal, of the ten (10) mortgaged parcels of land in accordance with Act No. 3135, as amended. On July 31, 2001, the foreclosed properties were sold at public auction in the amount of ₱32,961,820.72 to Metrobank as the highest bidder. Consequently, the corresponding Certificate of Sale was issued to Metrobank and the proceeds of sale were applied to Fadcor's indebtedness and expenses of foreclosure. Nonetheless, the amount of ₱17,479,371.86 remained unpaid as deficiency obligation, prompting Metrobank to demand from respondents payment of such deficiency obligation. Respondents, on the other hand, failed to pay. Hence, on September 23, 2003, Metrobank filed a Complaint against Fadcor for recovery of the deficiency obligation.

Respondents failed to appear at the scheduled pre-trial. The RTC, therefore, issued an Order directing Metrobank to present its evidence *ex parte*. Metrobank presented as lone witness its Senior Assistant Manager, Ms. Irene Sih-Tan and, thereafter, on September 4, 2004, it filed its Formal Offer of Evidence. Respondents filed a Motion for Reconsideration of the same Order, but on September 21, 2004, the RTC denied the said motion.

The RTC, on March 8, 2006, rendered its Decision, the dispositive portion of which reads:

> WHEREFORE, premises considered, judgment is hereby rendered in favor of plaintiff Metropolitan Bank and Trust Company ordering defendants jointly and severally to pay plaintiff the amount of ₱17,479,371.86 representing deficiency obligation plus interest thereon at the legal rate of 12% per annum computed from August 1, 2001 until the obligation is fully paid, plus the amount of P50,000.00 as and for reasonable attorney's fees.
>
> SO ORDERED.[5]

After the denial of its motion for reconsideration, Metrobank appealed the case to the CA and the latter, on May 17, 2011, granted the appeal, thus, reversing and setting aside the decision of the RTC, thus:

> WHEREFORE, premises considered, the instant appeal is GRANTED. The Decision dated March 8, 2006 of the Regional Trial Court, Branch 59, Makati City, in Civil Case No. 03-1262 ordering defendants to pay plaintiff ₱17,479,371.86 representing deficiency obligation plus 12% interest per annum and ₱50,000.00 as attorney's fees is REVERSED and SET ASIDE,
>
> No pronouncement as to costs.
>
> SO ORDERED.[6]

In reversing the RTC, the CA ruled that during the *ex parte* hearing held on August 24, 2004, the petitioner's lone witness, Irene Sih-Tan identified and marked Exhibits "A" to "DD-4" only as shown in the TSN, however, the RTC admitted Exhibits "A" to "MM," contrary to this Court's resolution in Administrative Matter (A.M.) No. 03-1-09-SC[7] which provides that no evidence shall be allowed to be presented and offered

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[5] *Id.* at 176.

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

[7] Guidelines to be Observed by Trial Court Judges and Clerks of Court in the Conduct of Pre-Trial and Use of Deposition-Discovery Measures, *En Banc* Resolution, August 16, 2004.

during the trial in support of the party's evidence-in-chief other than those that have been identified below and pre-marked during the trial.

The CA, in its Resolution dated August 5, 2011, denied the motion for reconsideration filed by Metrobank, hence, the present petition.

Petitioner argues that the CA erred in reversing the decision of the RTC. It claims that A.M. No. 03-1-09-SC has no application to the proceedings before the RTC because there was no pre-trial conducted as the respondents failed to appear nor filed their pre-trial brief.

As a general rule, petitions for review under Rule 45 of the Rules of Civil Procedure filed before this Court may only raise questions of law.[8] However, jurisprudence has recognized several exceptions to this rule. In *Spouses Almendrala v. Spouses Ngo*, [9] we have enumerated several instances when this Court may review findings of fact of the Court of Appeals on appeal by *certiorari*, to wit: (1) when the findings are grounded entirely on speculation, surmises or conjectures; (2) when the inference made is manifestly mistaken, absurd or impossible; (3) when there is grave abuse of discretion; (4) when the judgment is based on misapprehension of facts; (5) when the findings of fact are conflicting; (6) when in making its findings the Court of Appeals went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (7) when the findings are contrary to that of the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; or (11) when the Court of Appeals manifestly overlooked certain relevant

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[8] *Triumph International (Phils.), Inc. v. Ramon L. Apostol and Ben M. Opulencia*, 607 Phil. 157, 168 (2009).

[9] 508 Phil. 305 (2005).

facts not disputed by the parties, which, if properly considered, would justify a different conclusion.[10] In the present case, the RTC and the CA have conflicting findings of fact. Hence, the need to rule on the matter.

The petition is impressed with merit.

One must not deviate from the fact that this case involves an *ex parte* presentation of evidence allowed by the RTC after the respondents herein failed to appear at the scheduled pre-trial conference and submit a pre-trial brief despite receipt of the Order of the same court. Section 5, Rule 18 of the Rules of Court, states:

> Section 5. *Effect of failure to appear.* — The failure of the plaintiff to appear when so required pursuant to the next preceding section shall be cause for dismissal of the action. The dismissal shall be with prejudice, unless otherwise ordered by the court. A similar failure on the part of the defendant shall be cause to allow the plaintiff to present his evidence *ex parte* and the court to render judgment on the basis thereof.

The "next preceding" section mandates that:

> Section 4. *Appearance of parties.* — It shall be the duty of the parties and their counsel to appear at the pre-trial. The non-appearance of a party may be excused only if a valid cause is shown therefor or if a representative shall appear in his behalf fully authorized in writing to enter into an amicable settlement, to submit to alternative modes of dispute resolution, and to enter into stipulations or admissions of facts and of documents.

The RTC, therefore, did not commit an error in allowing the petitioner herein to present its evidence *ex parte* and rendering a judgment on the basis thereof. The CA, however, found an error in the RTC's admission of the evidence presented or offered by the petitioner. According to the CA, there is no showing in

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[10] *Spouses Almendrala v. Spouses Ngo, supra*, at 316, citing The *Insular Life Assurance Company, Ltd. v. Court of Appeals*, G.R. No. 126850, April 28, 2004, 428 SCRA 79, 86; *Aguirre v. Court of Appeals,* 466 Phil. 32, 42-43 (2004), and *C & S Fishfarm Corporation v. Court of Appeals*, 442 Phil. 279, 288 (2002).

the Transcript of Stenographic Notes (*TSN*) whatsoever that Exhibits "EE" to "MM" were presented and identified by the petitioner's witness during the proceeding. Exhibits "EE" to "MM" were the basis of the RTC in awarding petitioner the amount of ₱17,479,371.86 equivalent to the deficiency obligation of respondents as of July 31, 2001, plus legal interest thereon from August 1, 2001, until fully paid, and attorney's fees in the amount of ₱50,000.00. By admitting those evidence that were not identified or testified to by the petitioner's witness, the CA ruled that the RTC did not follow the provisions of A.M. No. 03-1-09-SC. This is a wrong interpretation.

The pertinent provisions of A.M. No. 03-1-09-SC, read as follows:

GUIDELINES TO BE OBSERVED BY TRIAL COURT JUDGES AND CLERKS OF COURT IN THE CONDUCT OF PRE-TRIAL AND USE OF DEPOSITION-DISCOVERY MEASURES

The use of pre-trial and the deposition-discovery measures are undeniably important and vital components of case management in trial courts. To abbreviate court proceedings, ensure prompt disposition of cases and decongest court dockets, and to further implement the pre-trial guidelines laid down in Administrative Circular No. 3-99 dated January 15, 1999 and except as otherwise specifically provided for in other special rules, the following guidelines are issued for the observance and guidance of trial judges and clerks of court:

I. PRE-TRIAL

A. Civil Cases

1. Within one day from receipt of the complaint:

1.1 Summons shall be prepared and shall contain a reminder to defendant to observe restraint in filing a motion to dismiss and instead allege the grounds thereof as defenses in the Answer, in conformity with IBP-OCA Memorandum on Policy Guidelines dated March 12, 2002. A copy of the summons is hereto attached as Annex "A;" and

1.2 The court shall issue an order requiring the parties to avail of interrogatories to parties under Rule 25 and request for admission by adverse party under Rule 26 or at their discretion

make use of depositions under Rule 23 or other measures under Rules 27 and 28 within five days from the filing of the answer.

A copy of the order shall be served upon the defendant together with the summons and upon the plaintiff.

Within five (5) days from date of filing of the reply, the plaintiff must promptly move *ex parte* that the case be set for pre-trial conference.

If the plaintiff fails to file said motion within the given period, the Branch COC shall issue a notice of pre-trial.

2. The parties shall submit, at least three (3) days before the pre-trial, pre-trial briefs containing the following:

a. A statement of their willingness to enter into an amicable settlement indicating the desired terms thereof or to submit the case to any of the alternative modes of dispute resolution;

b. A summary of admitted facts and proposed stipulation of facts;

c. The issues to be tried or resolved;

d. The documents or exhibits to be presented, stating the purpose thereof. **(No evidence shall be allowed to be presented and offered during the trial in support of a party's evidence-in-chief other than those that had been earlier identified and pre-marked during the pre-trial, except if allowed by the court for good cause shown)**; x x x[11]

Under the present case, it is as if there was no pre-trial because the respondents did not appear nor file their pre-trial briefs despite due notice causing the RTC, on August 9, 2004 to allow petitioner, after the latter filed its motion, to present its evidence *ex parte* in accordance with Section 5, Rule 18 of the Rules of Court. In effect, the respondents were declared in default. Respondents, therefore, filed their Motion for Reconsideration[12] on the RTC's Order allowing petitioner to present its evidence *ex parte* but it was denied in an Order[13] dated September 21,

[11] Emphasis ours.

[12] *Rollo*, pp. 159-162.

[13] *Id.* at 168.

2004. Respondents, thereafter, filed a petition for *certiorari* under Rule 65 of the Rules of Court questioning the Orders dated August 9, 2004 and September 21, 2004 of the RTC. The CA, in its Resolution[14] dated January 12, 2005, dismissed the petition of the respondents. Meanwhile, an *ex parte* hearing was conducted on August 24, 2004 and on September 7, 2004, petitioner filed its Formal Offer of Evidence[15] and the RTC, in its Order dated October 25, 2005 resolved the formal offer stating as follows:

> Acting on the plaintiff's Formal Offer of Evidence, Exhibits "A to Z," "AA to MM" their sub-markings and the testimony of witness Irene Tan are admitted for the purposes for which they are being offered.[16]

Clearly, from the above recital of the facts leading to the rendering of the RTC judgment on March 8, 2006, the proper procedure was followed, to which the RTC, in its decision, narrated as follows:

> x x x x x x x x x

> Records further show that defendants did not file their pre-trial brief and failed to appear during the pre-trial conference despite receipt of the Order of the Court. Hence, upon motion, plaintiff was allowed to present evidence *ex-parte*.
>
> During the presentation of evidence, Irene Tan, Assistant Senior Manager of the plaintiff bank, was presented as lone witness. Together with her testimony, Exhibits A to Z, AA to MM, and their sub-markings were offered in evidence.
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> x x x x x x x x x[17]

The records, therefore, show that the documentary evidence being questioned by respondents in its appeal before the CA (Exhibits "EE" to "MM") were marked during the *ex parte*

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[14] *Id.* at 169-171.

[15] *Id.* at 148-153.

[16] *Id.* at 173.

[17] *Id.* at 174-175.

presentation of evidence and were formally offered and admitted by the RTC before the latter rendered its decision. Thus, the CA's ruling that Exhibits "EE" to "MM" should not have been considered simply because the TSN does not reflect that those evidence were presented and identified is mind-boggling because they could not have been marked had they not been presented during the *ex parte* hearing where the lone witness for the petitioner was able to testify. The fact that the questioned pieces of evidence were formally offered and admitted by the RTC should be the foremost consideration.

Unfortunately, when respondents failed to appear during the pre-trial despite due notice, they have already acquired the risk of not being able to dispute the evidence presented *ex parte* by petitioner. In *The Philippine American Life and General Insurance Company v. Joseph Enario*,[18] this Court ruled that, "[t]he legal ramification of defendant's failure to appear for pre-trial is still detrimental to him while beneficial to the plaintiff. The plaintiff is given the privilege to present his evidence without objection from the defendant, the likelihood being that the court will decide in favor of the plaintiff, the defendant having forfeited the opportunity to rebut or present its own evidence."[19]

WHEREFORE, the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, dated September 19, 2011 of petitioner Metropolitan Bank and Trust Company is **GRANTED.** Consequently, the Decision dated May 17, 2011 and Resolution dated August 5, 2011 of the Court of Appeals are **REVERSED** and **SET ASIDE**, and the Decision dated March 8, 2006 of the Regional Trial Court, Makati City, Branch 59 is **AFFIRMED** *in toto*.

SO ORDERED.

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

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[18] 645 Phil. 166 (2010).

[19] *The Philippine American Life & General Insurance Company v. Enario, supra*, at 175.

SECOND DIVISION

[G.R. No. 198140. January 25, 2016]

IA1 ERWIN L. MAGCAMIT, *petitioner, vs.* **INTERNAL AFFAIRS SERVICE-PHILIPPINE DRUG ENFORCEMENT AGENCY, as represented by SI V ROMEO M. ENRIQUEZ and DIRECTOR GENERAL DIONISIO R. SANTIAGO,** *respondents.*

SYLLABUS

1. **POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE DETERMINATIONS OF CONTESTED CASES ARE QUASI-JUDICIAL; TECHNICAL RULES RELAXED BUT IN DECIDING DISCIPLINARY CASES, FUNDAMENTAL PRINCIPLE OF DUE PROCESS MUST STILL BE COMPLIED.—** Administrative determinations of contested cases are by their nature quasi-judicial; there is no requirement for strict adherence to technical rules that are observed in truly judicial proceedings. x x x Nonetheless, in deciding disciplinary cases pursuant to their quasi-judicial powers, administrative agencies must still comply with the fundamental principle of due process. x x x Due process in administrative cases, in essence, is simply an opportunity to explain one's side or to seek a reconsideration of the action or ruling. For as long as the parties were given fair and reasonable opportunity to be heard before judgment was rendered, the demands of due process were sufficiently met.

2. **ID.; ID.; ADMINISTRATIVE PROCEEDINGS; CARDINAL PRIMARY RIGHTS AND PRINCIPLES.—** The cardinal primary rights and principles in administrative proceedings that must be respected are those outlined in the landmark case of *Ang Tibay v. Court of Industrial Relations,* x x x The first of the enumerated rights pertains to the substantive rights of a party at the **hearing stage** of the proceedings. The second, third, fourth, fifth, and sixth aspects of the *Ang Tibay* requirements are reinforcements of the right to a hearing and are the inviolable rights applicable at the **deliberative stage**, as the decision maker decides on the evidence presented during the hearing. These

standards set forth the guiding considerations in deliberating on the case and are the material and substantial components of decision making. Finally, the last requirement, relating to the form and substance of the decision of a quasi-judicial body, further complements the hearing and decision-making due process rights and is similar in substance to the constitutional requirement that a decision of a court must state distinctly the facts and the law upon which it is based.

3. ID.; ID.; ID.; ID.; NOT VIOLATED IN THE ABSENCE OF FORMAL HEARING AS LONG AS PARTY WAS GIVEN A CHANCE TO EXPLAIN HIS SIDE OF THE CONTROVERSY AND BE INFORMED OF THE SAME.— [T]here is no violation of procedural due process even if no formal or trial-type hearing was conducted, where the party was given a chance to explain his side of the controversy. Before the IAS-PDEA, Magcamit had the opportunity to deny and controvert the complaint against him when he filed his reply to the letter-complaint and his answer to the formal charge. x x x In addition, Magcamit was duly represented by counsel who could properly apprise him of what he is entitled to under law and jurisprudence. Thus, he cannot claim that he was deprived of his right to a formal hearing because the IAS-PDEA failed to inform him of such right.

4. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; QUESTIONS OF FACT; MAY BE REVIEWED WHEN THERE ARE RELEVANT FACTS TO CONSIDER.— [T]he issue involves a question of fact as there is need for a calibration of the evidence, considering mainly the credibility of witnesses and the existence and the relevancy of specific surrounding circumstances, their relation to one another and to the whole, and the probabilities of the situation. In cases brought before us *via* a petition for review on *certiorari*, we are limited to the review of errors of law. We, however, may review the findings of fact when they fail to consider relevant facts that, if properly taken into account, would justify a different conclusion or when there is serious ground to believe that a possible miscarriage of justice would result.

5. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE CASES; REQUIREMENT THAT THE DECISION MUST BE RENDERED ON THE EVIDENCE PRESENTED AT

THE HEARING OR AT LEAST CONTAINED IN THE RECORD AND DISCLOSED TO THE PARTIES AFFECTED, NOT COMPLIED WITH IN CASE AT BAR.— [T]he requirement that "[t]he decision must be rendered on the evidence presented at the hearing, or **at least contained in the record AND disclosed to the parties affected**," was not complied with. Magcamit was not properly apprised of the evidence presented against him, which evidence were eventually made the bases of the decision finding him guilty of grave misconduct and recommending his dismissal. x x x [T]he evidence of Magcamit's participation was made available to him only after he had elevated the case to the CSC. x x x [Further, there is no] showing from [the] allegation that Magcamit extorted money from Jaen, or that he was among those who took part in the division of the money allegedly extorted from Jaen. For conspiracy to exist, it must be proven or at least inferred from the acts of the alleged perpetrator before, during, and after the commission of the crime. It cannot simply be surmised that conspiracy existed because Magcamit was part of the team that took part in the buy-bust operation which resulted in Jaen's arrest.

LEONEN, *J.*, *dissenting opinion*:

1. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE PROCEEDINGS; REQUIREMENT OF DUE PROCESS IS SATISFIED WHERE THERE IS OPPORTUNITY TO BE HEARD; ELEMENTS.— In administrative proceedings, the requirement of due process is satisfied if the party has had the opportunity to be heard. If the party has been given the right to controvert the allegations and evidence against him, as when the party is able to file a motion for reconsideration, there is no deprivation of due process. This court in *Ang Tibay v. Court of Industrial Relations* laid down the cardinal rights in due process. In *Air Manila, Inc. v. Hon. Balatbat, et al.,* due process requirements are satisfied if the following are met: (a) "the right to notice, be it actual or constructive, of the institution of the proceedings that may affect a person's legal rights"; (b) "reasonable opportunity to appear and defend his rights, introduce witnesses and relevant evidence in his favor"; (c) a tribunal so constituted as to give him reasonable assurance of honesty and

impartiality, and one of competent jurisdiction"; and (d) "a finding or decision by that tribunal supported by substantial evidence presented at the hearing, or at least contained in the records or disclosed to the parties affected."

2. ID.; ID.; ID.; SUBSTANTIAL EVIDENCE; AFFIDAVIT RECOMMENDING DISMISSAL FROM PUBLIC OFFICE NOT MENTIONED IN THE MEMORANDUM MAY STILL BE CONSIDERED SO LONG AS THERE IS OPPORTUNITY TO REBUT THE SAME.— The Civil Service Commission and the Court of Appeals correctly relied on the Affidavit dated May 7, 2008 of Compliance Investigator Paner. This piece of evidence related how petitioner consented to the sharing of the ₱200,000.00 exhorted from Luciana M. Jaen x x x It is true that the Affidavit dated May 7, 2008 was considered on appeal before the Civil Service Commission. This Affidavit was not mentioned in the Memorandum recommending petitioner's dismissal. The Internal Affairs Service, in recommending petitioner's dismissal, referred to the April 15 and April 17, 2008 Affidavits of Compliance Investigator Paner. Nevertheless, technical rules of procedure and evidence are not strictly applied in administrative cases. In the National Labor Relations Commission, evidence introduced on appeal may still be considered so long as the adverse party is given the opportunity to rebut the evidence. This rule should equally apply in this administrative case since it involves employment, albeit of a public officer.

APPEARANCES OF COUNSEL

Charlito Martin R. Mendoza for petitioner.
Office of the Solicitor General for public respondents.

D E C I S I O N

BRION, *J.*:

We resolve the **petition for review on *certiorari*** under Rule 45 of the Rules of Court[1] filed by IA1 Erwin L. Magcamit (*Magcamit*) from the March 17, 2011 decision[2] and the August

[1] *Rollo*, pp. 3-17.

9, 2011 Resolution[3] of the Court of Appeals (*CA*) in CA-G.R. SP No. 108281. The CA upheld the March 17, 2009 decision of the Civil Service Commission (*CSC*) denying Magcamit's appeal from the May 20, 2008 memorandum of the Internal Affairs Service of the Philippine Drug Enforcement Agency (*IAS-PDEA*), which found Magcamit guilty of grave misconduct and, consequently, recommending his dismissal from the service.

THE FACTUAL ANTECEDENTS

In a letter dated April 13, 2008, addressed to Director General Dionisio R. Santiago, a person named *Delfin* gave information about an alleged extortion done to his mother by Magcamit and other PDEA agents. The PDEA agents denied the irregularities imputed to them and maintained that the letter-complaint was made only to destroy their reputation.

On May 5, 2008, Magcamit and his co-agents, namely, IO3 Carlo Aldeon, IO2 Renato Infante, IO2 Ryan Alfaro, and IO2 Apolinario Mationg, Jr., were formally charged with Grave Misconduct for demanding and/or obtaining ₱200,000.00 from Luciana M. Jaen (*Jaen*) in exchange for her release after she was apprehended in a buy-bust operation in Lipa City. After they had submitted their Answer, their case was submitted for recommendation and action.

In a memorandum dated **May 20, 2008**, Special Investigator V Romeo M. Enriquez (*SI V Enriquez*) found Magcamit and his co-agents liable for grave misconduct and recommended that they be dismissed from the civil service. Accordingly, they were dismissed on June 5, 2008.

SI V Enriquez gave credence to Jaen's narration of events that when she sought help from the team leader of the buy-bust team, she was referred to SPO1 Peter Sistemio (*SPO1 Sistemio*) as the person who would facilitate her release; that

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[2] *Id.* at 10-27; penned by Associate Justice Mariflor P. Punzalan Castillo, and concurred in by Associate Justice Josefina Guevara-Salonga and Associate Justice Franchito N. Diamante.

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

SPO1 Sistemio bluntly demanded money in exchange; that she had initially offered ₱50,000.00 but SPO1 Sistemio rejected it outright; and that, eventually, they agreed on ₱200,000.00.

After the agreed monetary consideration was produced, the PDEA agents allegedly instructed Jaen's son, Delfin, to wait at the ATM machine outside PDEA. Jaen still remained in detention after a lapse of several hours.

The narration was reinforced by the sworn statements dated **April 15, 2008** and **April 17, 2008**, of Compliance Investigator I Dolorsindo M. Paner (*CI Paner*) who recalled that IO2 Renato Infante (*IO2 Infante*) told him to meet him at the office for an important matter about their operation; and that when IO2 Infante arrived, he handed the money to CI Paner who then counted it on the spot. This incident was allegedly captured by a surveillance camera.

On July 10, 2008, Magcamit filed his motion for reconsideration arguing that the IAS-PDEA committed errors of law and/or irregularities prejudicial to his interest; its decision, too, was not supported by the evidence on record.

Aside from the procedural lapses Magcamit claimed the IAS-PDEA had committed, **he raised the fact that his name never came up in the sworn statements submitted to SI V Enriquez.** Moreover, he argued that the application of the "doctrine of implied conspiracy" was misplaced because the evidence on record did not show any act showing that he participated in the alleged extortion.

On **July 23, 2008**, SI V Enriquez denied the motion for reconsideration of Magcamit and his co-agents as they had been duly afforded administrative due process and had been given a fair and reasonable opportunity to explain their side. He added that the absence of a preliminary investigation was not fatal to their case. Lastly, he maintained that direct proof is not necessary to establish conspiracy as long as it is shown that the parties demonstrate they concur with the criminal design and its objective.

Magcamit responded by filing a notice of appeal and elevating his case to the CSC.

In its **March 17, 2009 decision**, the CSC denied Magcamit's appeal and affirmed his dismissal from the civil service. It ruled that administrative tribunals exercising quasi-judicial powers — such as the IAS-PDEA — are unfettered by the rigidity of certain procedural requirements especially when due process has been fundamentally and essentially observed. It found that Magcamit was positively identified by CI Paner in his sworn statement as the person who identified the members of the group who received their respective shares from the ₱200,000.00, thus, establishing his participation in the extortion. The CSC noted that Magcamit failed to controvert this allegation against him.

Reiterating the grounds he relied upon in his appeal to the CSC, Magcamit filed a petition for review under Rule 43 with the CA, imputing error on the part of the CSC in affirming his dismissal from the service.

THE CA DECISION

In its **March 17, 2011 decision**, the CA denied the petition for review and upheld the March 17, 2009 CSC decision.

The CA held that the CSC, in investigating complaints against civil servants, is not bound by technical rules of procedure and evidence applicable in judicial proceedings; that rules of procedure are to be construed liberally to promote their objective and to assist the parties in obtaining a just, speedy, and inexpensive determination of their respective claims and defenses.

The CA found that the CSC correctly appreciated CI Paner's sworn statement which described Magcamit's link to the extortion. The CA said that apart from his bare and self-serving claim, Magcamit failed to show that CI Paner was actuated by ill motive or hate in imputing a serious offense to him.

On **August 9, 2011**, the CA denied Magcamit's motion for reconsideration; hence, the present petition for review on *certiorari* before this Court.

THE PETITION

Magcamit filed the present petition on the following grounds:

1. his right to due process was denied because gross irregularities attended the administrative investigation conducted by the IAS-PDEA; and

2. the evidence on record does not support his dismissal.

Magcamit contends that the anonymous letter-complaint of a certain *Delfin* should not have been given due course as it was not corroborated by any documentary or direct evidence and there was no obvious truth to it. Worse, the letter-complaint had no narration of relevant and material facts showing the acts or omission allegedly committed by Magcamit and his co-agents. Further, the letter-complaint only referred to him as "Erwin" and did not specifically identify him.

Magcamit claims that he was deprived of his right to seek a formal investigation because the IAS-PDEA deliberately failed to inform him of this right.

Magcamit questions how the IAS-PDEA never presented him with pieces of evidence — specifically CI Paner's sworn statement — that were considered against him. He emphasizes that the CSC and the CA affirmed his dismissal based on an affidavit of complaint executed by CI Paner on **May 7, 2008**, that was only attached to the IAS-PDEA's comment before the CSC.

As to his alleged participation in the extortion, Magcamit alleges that he never had any discussion with CI Paner about each agent's share in the ₱200,000.00. **He argues that he could not have refuted the allegation against him since he was not even aware of CI Paner's sworn statement until the case was brought up before the CSC.**

Magcamit claims support for his case after the dismissal of the criminal complaint filed against him and his co-agents. In its June 18, 2010 resolution, the Quezon City Prosecutor's Office found the evidence against them insufficient to prove that they

requested or received any money from Jaen.

Finally, Magcamit maintains that the purported surveillance video is inadmissible as evidence because it was not authenticated nor shown to him.

OUR RULING

We **GRANT** the present petition because Magcamit's dismissal was unsupported by substantial evidence.

Although Magcamit assails that the letter-complaint should not have been entertained to begin with as it was not in accord with the Revised Rules on Administrative Cases in the Civil Service (RACCS),[4] we do not find any need to dwell on this point. The administrative complaint was initiated when Jaen and Delfin executed sworn statements and filed them with the IAS-PDEA. As the CA correctly pointed out, the letter-complaint did not, by itself, commence the administrative proceedings against Magcamit; it merely triggered a fact-finding investigation by the IAS-PDEA. Accordingly, these sworn statements — together with the letter-complaint — were used as pieces of evidence to build a *prima facie* case for extortion warranting a formal charge for grave misconduct.

Administrative determinations of contested cases are by their nature quasi-judicial; there is no requirement for strict adherence to technical rules that are observed in truly judicial proceedings.[5] As a rule, technical rules of procedure and evidence are relaxed in administrative proceedings in order "to assist the parties in obtaining just, speedy and inexpensive determination of their

[4] Rule 3, Section 10. "x x x No anonymous complaint shall be entertained unless there is obvious truth or merit to the allegations therein or supported by documentary or direct evidence, in which case the person complained of may be required to comment x x x." [then CSC Resolution No. 99-1936, or the Uniform Rules on Administrative Cases in the Civil Service, Rule II, Section 8.]

[5] See *Ocampo v. Office of the Ombudsman*, G.R. No. 114683, January 18, 2000, 322 SCRA 17; *Commissioner of Internal Revenue v. Hantex Trading Co., Inc.*, G.R. No. 136975, March 31, 2005, 454 SCRA 301; *Velasquez v. Hernandez*, G.R. No. 150732, August 31, 2004, 437 SCRA 357.

[6] *Police Commission v. Lood*, G.R. No. L-34637, February 24, 1984,

respective claims and defenses."[6] By relaxing technical rules, administrative agencies are, thus, given leeway in coming up with a decision.

Nonetheless, in deciding disciplinary cases pursuant to their quasi-judicial powers, administrative agencies must still comply with the fundamental principle of due process. Administrative tribunals exercising quasi-judicial powers are unfettered by the rigidity of certain procedural requirements, subject to the observance of fundamental and essential requirements of due process in justiciable cases presented before them.[7]

Due process in administrative cases, in essence, is simply an opportunity to explain one's side or to seek a reconsideration of the action or ruling. For as long as the parties were given fair and reasonable opportunity to be heard before judgment was rendered, the demands of due process were sufficiently met.[8]

The cardinal primary rights and principles in administrative proceedings that must be respected are those outlined in the landmark case of *Ang Tibay v. Court of Industrial Relations*,[9] quoted below:

(1) The first of these rights is the right to a hearing, which includes the right of the party interested or affected to present his own case and submit evidence in support thereof.

(2) Not only must the party be given an opportunity to present his case and to adduce evidence tending to establish the rights which he asserts but the tribunal must consider the evidence presented.

(3) While the duty to deliberate does not impose the obligation to decide right, it does imply a necessity which cannot be disregarded, namely, that of having something to support its decision. A decision with absolutely nothing to support it is a nullity, a place when directly

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127 SCRA 757, 761, citing *Maribojoc v. Hon. Pastor de Guzman*, 109 Phil. 833 (1960).

[7] *Samalio v. Court of Appeals*, G.R. No. 140079, March 31, 2005, 454 SCRA 462, 471.

[8] *Ledesma v. Court of Appeals*, G.R. No. 166780, December 27, 2007, 541 SCRA 444, 452.

[9] 69 Phil. 635, 642-644 (1940).

attached.

(4) Not only must there be some evidence to support a finding or conclusion, but the evidence must be substantial. "Substantial evidence is more than a mere scintilla. It means such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."

(5) The decision must be rendered on the evidence presented at the hearing, or at least contained in the record and disclosed to the parties affected.

(6) The Court of Industrial Relations or any of its judges, therefore, must act on its or his own independent consideration of the law and facts of the controversy, and not simply accept the views of a subordinate in arriving at a decision.

(7) The Court of Industrial Relations should, in all controversial questions, render its decision in such a manner that the parties to the proceeding can know the various issues involved, and the reasons for the decisions rendered. The performance of this duty is inseparable from the authority conferred upon it.

The first of the enumerated rights pertains to the substantive rights of a party at the **hearing stage** of the proceedings.[10]

The second, third, fourth, fifth, and sixth aspects of the *Ang Tibay* requirements are reinforcements of the right to a hearing and are the inviolable rights applicable at the **deliberative stage**, as the decision maker decides on the evidence presented during the hearing.[11] These standards set forth the guiding considerations in deliberating on the case and are the material and substantial components of decision making.[12]

Finally, the last requirement, relating to the form and substance of the decision of a quasi-judicial body, further complements the hearing and decision-making due process rights and is similar in substance to the constitutional requirement that a decision of a court

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[10] *Mendoza v. COMELEC*, G.R. No. 188308, October 15, 2009, 603 SCRA 692, 713.

[11] *Id.*

[12] *Id.*

[13] *Id.*

must state distinctly the facts and the law upon which it is based.[13]

At the hearing stage, while Magcamit was never afforded a formal investigation, we have consistently ruled that there is no violation of procedural due process even if no formal or trial-type hearing was conducted, where the party was given a chance to explain his side of the controversy.

Before the IAS-PDEA, Magcamit had the opportunity to deny and controvert the complaint against him when he filed his reply to the letter-complaint and his answer to the formal charge. Dissatisfied with the IAS-PDEA's decision, he elevated his case to the CSC which likewise found him guilty of conspiring with his co-agents, rendering him liable for gross misconduct. From these developments, it can hardly be said that the IAS-PDEA and the CSC denied Magcamit his opportunity to be heard.

In addition, Magcamit was duly represented by counsel who could properly apprise him of what he is entitled to under law and jurisprudence. Thus, he cannot claim that he was deprived of his right to a formal hearing because the IAS-PDEA failed to inform him of such right.

With the issue on due process at the hearing stage resolved, we now move on to discuss the merits of the petition before us.

Claiming that he was not involved in the extortion, Magcamit argues that the CSC and the CA misappreciated the facts when they considered the affidavit of complaint CI Paner executed on May 7, 2008, as substantial evidence supporting the conclusion that he conspired with his co-agents. This issue involves a question of fact as there is need for a calibration of the evidence, considering mainly the credibility of witnesses and the existence and the relevancy of specific surrounding circumstances, their relation to one another and to the whole, and the probabilities

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[14] *Imperial v. Jaucian*, G.R. No. 149004, April 14, 2004, 427 SCRA 517, 523-524.

[15] RULES OF COURT, Rule 45, Section 1.

of the situation.[14]

In cases brought before us *via* a petition for review on *certiorari*, we are limited to the review of errors of law.[15] We, however, may review the findings of fact when they fail to consider relevant facts that, if properly taken into account, would justify a different conclusion or when there is serious ground to believe that a possible miscarriage of justice would result.[16]

We recall that only the April 17, 2008 affidavit of Jaen and the April 17, 2008 affidavit of Delfin were attached to the formal charge for grave misconduct against Magcamit and four (4)[17] other members of the PDEA-Special Enforcement Service *(SES)*. This formal charge required them to submit their respective position papers on the administrative charge. Notably, both affidavits **never mentioned the name of Magcamit**.

SI V Enriquez's memorandum/decision dated May 20, 2008 — which found Magcamit and his four co-accused guilty of grave misconduct, and recommended their dismissal from the service — relied on the affidavits of CI Paner dated April 15, 2008 and April 17, 2008, respectively, which it considered to have "reinforced the allegations" of Jaen and her son, Delfin. CI Paner's two affidavits **were never shown to Magcamit**. At any rate, **CI Paner's two affidavits, like the affidavits of Jaen and Delfin, did not mention Magcamit**.

Probably realizing that the April 17, 2008 affidavit of Jaen, the April 17, 2008 affidavit of Delfin, and the April 15, 2008 and April 17, 2008 affidavits of CI Paner did not mention the involvement of Magcamit in the extortion, the CSC's Resolution No. 090431 dated March 17, 2009, used as basis *another*

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[16] See *Office of the Ombudsman v. Reyes*, G.R. No. 170512, October 5, 2011, 658 SCRA 626. See also *Hon. Ombudsman Marcelo v. Bungubung*, 575 Phil. 538, 539 (2008).

[17] Namely, IO3 Carlo Aldeon, IO2 Renato Infante, IO2 Ryan Alfaro, and IO2 Apolinario Mationg, Jr., *rollo*, p. 132.

affidavit of CI Paner (dated May 7, 2008) in affirming the May 20, 2008 decision of the IAS-PDEA. Curiously, the CSC termed this affidavit as CI Paner's 'original affidavit' although it was the third affidavit that CI Paner had executed.

The evidence on record shows that CI Paner executed three (3) affidavits with different dates,[18] relating to the manner the members of the PDEA-SES tried to give him a share of the ₱200,000.00 they extorted from Jaen. It must be noted, however, that it was only the Affidavit of Complaint dated May 7, 2008, that linked Magcamit to the scheme. Curiously, this affidavit was never mentioned, despite being a more complete narration of what transpired, in SI V Enriquez' recommendation dated May 20, 2008. In fact, the investigating officer referred only to the affidavits dated April 15, 2008 and April 17, 2008.[19]

Surprisingly, the CSC ruled that the statements of CI Paner in his May 7, 2008 affidavit "was never controverted by Magcamit" although the latter had not been furnished this document. It was only when Magcamit requested for certified true copies of the Comment and the other documents submitted by the IAS-PDEA to the CSC that he discovered the existence of Paner's May 7, 2008 affidavit.

As the CSC did, the CA ruled that Magcamit participated in the extortion on the basis of Paner's May 7, 2008 alone. Accordingly, it affirmed the CSC's resolution.

Under these circumstances, the CA erred in affirming the CSC's dismissal of the respondent on the basis of Paner's May 7, 2008 affidavit — a document that was not part of the proceedings before the IAS-PDEA.

Given how the evidence against him came out, we find that

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[18] Affidavit dated April 15, 2008, *rollo*, p. 145; Affidavit dated April 17, 2008, p. 146; Affidavit of Complaint dated May 7, 2008, pp. 174-175.

[19] *Rollo*, pp. 142-143.

Magcamit could not have adequately and fully disputed the allegations against him since during the administrative investigation he was not properly apprised of all the evidence against him. We point out that Magcamit could not have refuted the May 7, 2008 affidavit of Paner, which was the sole basis of the CSC's and the CA's finding of Magcamit's liability; notably, the formal charge requiring him and his co-accused to file their position papers was dated May 5, 2008. Corollarily, Magcamit and his co-agents were not even furnished a copy of the affidavits of CI Paner dated April 15, 2008 and April 17, 2008 before the recommendation for dismissal came out. Magcamit was thus blindsided and forced to deal with pieces of evidence he did not even know existed.

Thus, the requirement that "[t]he decision must be rendered on the evidence presented at the hearing, or **at least contained in the record AND disclosed to the parties affected**," was not complied with. Magcamit was not properly apprised of the evidence presented against him, which evidence were eventually made the bases of the decision finding him guilty of grave misconduct and recommending his dismissal.

Although, in the past, we have held that the right to due process of a respondent in an administrative case is not violated if he filed a motion for reconsideration to refute the evidence against him, the present case should be carefully examined for purposes of the application of this rule. Here, the evidence of Magcamit's participation was made available to him only after he had elevated the case to the CSC. Prior to that, or when the IAS-PDEA came up with the decision finding him guilty of gross misconduct, there was no substantial evidence proving Magcamit was even involved.

We consider, too, that even if we take into account CI Paner's May 7, 2008 affidavit, we find this document to be inadequate to hold — even by standards of substantial evidence — that Magcamit participated in the PDEA's extortion activities.

We note that the CSC and the CA linked Magcamit to the alleged extortion in paragraph 13 of CI Paner's May 7, 2008 *affidavit of complaint*, which reads:

> 13. That pretending nothing had happened and yet projecting to the group that I am a bit apprehensive as to the evident inequality in the sharing of the extorted money from subject Jaen, I was able to talk with Agent Erwin Magcamit, one of the members of the arresting team, and asked the latter as to how the group came up with the Php21,500.00 sharing for each member out of the Php200,000.00; from which Agent Magcamit simply said to me that such was the sharing and everybody except me seemed to have consented; in addition thereto, Agent Magcamit vividly mentioned all other members who got their share of the Php21,500.00, namely, **[1] Carlo S. Aldeon, [2] PO3 Emerson Adaviles, [3], PO2 Reywin Bariuad, [4] IO2 Renato Infante, [5] IO2 Apolinario Mationg, [6] IO2 Ryan Alfaro, and [7] PO3 Peter Sistemio.**[20]

We discern no showing from this allegation that Magcamit extorted money from Jaen, or that he was among those who took part in the division of the money allegedly extorted from Jaen. For conspiracy to exist, it must be proven or at least inferred from the acts of the alleged perpetrator before, during, and after the commission of the crime. It cannot simply be surmised that conspiracy existed because Magcamit was part of the team that took part in the buy-bust operation which resulted in Jaen's arrest. In other words, respondents failed to pinpoint Magcamit's participation in the extortion that would make him administratively liable.

After evaluating the totality of evidence on record, we find that the records are bereft of substantial evidence to support the conclusion that Magcamit should be held administratively liable for grave misconduct; Magcamit was dismissed from the service based on evidence that had not been disclosed to him. By affirming this dismissal, the CA committed a grave reversible error.

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[20] *Id.* at 175.

WHEREFORE, premises considered, we **GRANT** the present petition. The March 17, 2011 decision and the August 9, 2011 resolution of the Court of Appeals in CA-G.R. SP No. 108281 are hereby **REVERSED** and **SET ASIDE**. The Philippine Drug Enforcement Agency is **ORDERED** to reinstate IA1 Erwin L. Magcamit to his previous position without loss of seniority rights and with full payment of his salaries, backwages, and benefits from the time of his dismissal from the service up to his reinstatement.

SO ORDERED.

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

Del Castillo, J., joins the dissent of *J.* Leonen.

Leonen, J., see dissenting opinion.

DISSENTING OPINION

LEONEN, *J.*:

I respectfully dissent. There was substantial evidence to prove that Investigation Agent 1 Erwin L. Magcamit (IA1 Magcamit) shared in the money extorted from a detainee of the Philippine Drug Enforcement Agency (PDEA). IA1 Magcamit, therefore, was correctly dismissed from the service for grave misconduct.

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[1] *Rollo*, pp. 32-69.

[2] *Id.* at 72-89. The Decision was penned by Associate Justice Mariflor P. Punzalan-Castillo and was concurred in by Associate Justices Josefina Guevara-Salonga and Franchito N. Diamante of the Fourth Division.

[3] *Id.* at 90-91. The Resolution was penned by Associate Justice Mariflor P. Punzalan-Castillo and was concurred in by Associate Justices Josefina Guevara-Salonga and Franchito N. Diamante of the Fourth Division.

[4] *Id.* at 139-144. The Memorandum was penned by Special Investigator V Romeo M. Enriquez.

[5] *Id.* at 72, Court of Appeals Decision.

This is a Petition for Review on Certiorari[1] assailing the Court of Appeals Decision[2] and Resolution,[3] which denied the appeal of IA1 Magcamit. The Court of Appeals affirmed the Civil Service Commission Resolution dated March 17, 2009, which, in turn, affirmed the Memorandum[4] dated May 20, 2008 of the Internal Affairs Service of the PDEA.[5] The Internal Affairs Service found IA1 Magcamit guilty of grave misconduct and recommended his dismissal from the service.[6]

II

Dionisio R. Santiago, Jr. (Director General Santiago), Former Director General of the PDEA, received a letter[7] from a certain "Delfin." According to Delfin, several PDEA agents assigned in the Special Enforcement Service were involved in corrupt activities. Among the PDEA agents named was "Erwin."[8] The Letter reads:

Dear Gen. Santiago[,]

Kagalanggalang na Heneral Santiago ng PDEA ako po ay sumulat sa inyo upang ipaalam ang mga katiwalian na ginagawa ng ilan ninyong mga ahente na nakakasira sa inyong ahensya dahil ako ay biktima at saksi sa mga illegal na Gawain ng inyong mga ahente at particular na naka assign sa S.E.S.

Ang mga sumusunod ay nakilala ko po sa pangalang Caloy, Ryan, Chito, Erwin, Alfaro, PO2 Bariuad, PO3 Peter, at isang Kalbong pulis na kaya kong kilalanin kung sila ay makakaharap ko ng personal.

Ako po ay patuloy na makikipag-ugnayan sa inyong ahensya sa pamamagitan ng pagtawag sa inyong telepono at handa rin akong harapin ang mga taong ito kung inyong mamarapatin upang sila ay aking maituro. Ako po ay patuloy na makikipagugnayan sa inyo hinggil sa usaping ito sa pamamagitan ng pagtawag ko sa inyo. Iiwanan kopo [sic] ang cell number ko, upang magpatuloy po an gating [sic] komunikasyon. Tatawag po ako sa inyong opisina April 24, 2008 sa

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[6] *Id.* at 144, Internal Affairs Service Memorandum.

[7] *Id.* at 128.

[8] *Id.*

[9] *Id.*

eksaktong 11 am, itago niyo po ako sa pangalang Delfin.

Paki tago po ang cell number ko nasa hiwalay na papel na nito [sic].

Gumagalang,

Delfin[9]

On April 14, 2008, Director General Santiago ordered the Director of the Internal Affairs Service to "conduct [the] necessary investigation[.]"[10]

In the Memorandum[11] dated April 25, 2008, Special Investigator V Romeo M. Enriquez, Officer-in-Charge of the Internal Affairs Service, ordered the following PDEA agents to comment on Delfin's letter: IO3 Carlos S. Aldeon, PO3 Emerson Adaviles, PO2 Reywin Bariuad, IA1 Erwin L. Magcamit, IO2 Renato R. Infante, IO2 Apolinario Mationg, Jr.,[12] IO2 Ryan C. Alfaro, and SPO1 Peter Sistemio. All the respondents belonged to the Special Enforcement Service.[13]

Like the other PDEA agents named in the Memorandum, IA1 Magcamit denied Delfin's accusation and maintained that all persons they had arrested for drug-related cases were charged in court. He and the other PDEA agents also referred to an instance when they filed a criminal complaint for bribery against those who attempted to bribe them in exchange for the release of a detainee.[14]

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[10] *Id.*

[11] *Id.* at 129.

[12] *Id.* Inadvertently referred to as "Ationg, Jr." in the Memorandum.

[13] *Id.* at 132, Internal Affairs Service's Formal Charge.

[14] *Id.* at 130, IA1 Erwin L. Magcamit's Comments on the Attached Letter Complaint.

[15] *Id.* at 132, Internal Affairs Service's Formal Charge. The other members were IO3 Aldeon, IO2 Infante, IO2 Alfaro, and IO2 Mationg, Jr.

[16] *Id.*

[17] *Id.*

Nevertheless, IA1 Magcamit and four other members of the Special Enforcement Service were formally charged with grave misconduct.[15] IA1 Magcamit and his co-respondents allegedly demanded ₱200,000.00 from a certain Luciana M. Jaen (Jaen) in exchange for her release from detention.[16] The Formal Charge[17] dated May 5, 2008 reads:

> *"That on or about twelve o'clock in the evening of 9th day of April 2008, in the City of Lipa, Province of Batangas, Philippines, and within the jurisdiction of this Honorable Agency, the above-named respondents, at night time, conspiring and confederating together and mutually helping one another, with intent to gain, with evident premeditation and malicious misrepresentation, did then and there, willfully and unlawfully demanded/obtained under duress upon one,* ***LUCIANA M. JAEN,*** *the amount of* ***TWO HUNDRED THOUSAND PESOS [Php200,000.00]****, in exchange for her release after the latter was apprehended in a buy-bust operation conducted by the members of the Special Enforcement Service of the Philippine Drug Enforcement Agency."*
>
> Acts contrary to law and existing rules and regulations.[18] (Emphasis in the original)

Attached to the Formal Charge were two affidavits both dated April 17, 2008. In her Affidavit,[19] Jaen alleged that she was arrested in a buy-bust operation on April 9, 2008 at about 6:00 p.m. While detained at the PDEA headquarters, she allegedly asked for help on how she could be released. IO3 Carlos S. Aldeon allegedly referred her to another PDEA agent who, in turn, allegedly assured her that he could help her through SPO1 Peter Sistemio. SPO1 Peter Sistemio then approached Jaen and bluntly asked how much she could pay for her release.[20]

Jaen and SPO1 Peter Sistemio eventually agreed on the amount

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[18] *Id.*

[19] *Id.* at 133.

[20] *Id.*

[21] *Id.*

[22] *Id.* at 134, Delfin Magcawas, Jr.'s Affidavit.

of ₱200,000.00. Jaen was later instructed to have the money brought at about 3:00 a.m., and SPO1 Peter Sistemio allegedly received the money as agreed upon.[21]

The other affidavit attached to the Formal Charge was executed by Delfin Magcawas, Jr. (Magcawas, Jr.). Magcawas, Jr. is the son of Jaen[22] and appeared to be the same "Delfin" who wrote to Director General Santiago.

In his Affidavit,[23] Magcawas, Jr. alleged that his mother, Jaen, texted him at about 12:00 m.n. on April 10, 2008. Jaen ordered him to bring ₱200,000.00 to the PDEA headquarters.[24]

Magcawas, Jr. arrived at the PDEA and was allegedly escorted to the Special Enforcement Service office. There, a man asked his mother: "*Kumpleto ba iyan*?" Magcawas, Jr. then handed ₱200,000.00 to the man who turned out to be SPO1 Peter Sistemio. SPO1 Peter Sistemio then directed Magcawas, Jr. to wait for his mother at the nearby automated teller machine. His mother, however, never showed up.[25]

IA1 Magcamit and his co-respondents answered[26] the Formal Charge, "vehemently deny[ing]"[27] the allegations of Jaen and Magcawas, Jr. They maintained that Jaen and Magcawas, Jr. lied in their Affidavits.[28]

In its Memorandum[29] dated May 20, 2008, the Internal Affairs Service gave credence to the allegations of Jaen and Magcawas,

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[23] *Id.*

[24] *Id.*

[25] *Id.*

[26] *Id.* at 135-136.

[27] *Id.* at 135.

[28] *Id.*

[29] *Id.* at 139-144.

[30] *Id.* at 141.

[31] *Id.* at 142-143.

[32] *Id.* at 145.

Jr. and found "cogent reason to pursue [the] administrative complaint."[30] According to the Internal Affairs Service, the statements of Jaen and Magcawas, Jr. were corroborated by Compliance Investigator I Dolorsindo M. Paner (Compliance Investigator Paner), an employee of the PDEA.[31]

Compliance Investigator Paner, in the Affidavit[32] dated April 15, 2008, stated that he was among the PDEA agents who arrested Jaen in a buy-bust operation. He narrated that on April 10, 2008, Jaen complained to him that certain persons demanded ₱200,000.00 from her in exchange for her release. Compliance Investigator Paner informed his superior, the Director of the Compliance Service of the PDEA.[33]

Compliance Investigator Paner was on leave on April 11, 2008 when IO3 Carlos S. Aldeon allegedly called him on the phone and directed him to proceed to the office of the Special Enforcement Service. Compliance Investigator Paner, however, replied that he was out of the office. Nevertheless, IO3 Carlos S. Aldeon told him to drop by at 5:00 p.m.[34]

Compliance Investigator Paner added that IO2 Renato R. Infante texted him on the same day and told him to meet him later that day. Again, Compliance Investigator Paner replied that he was out of town and just told IO2 Renato R. Infante to meet him the following week.[35]

Compliance Investigator Paner supplemented his allegations in the Affidavit[36] dated April 17, 2008. According to Compliance Investigator Paner, IO2 Renato R. Infante approached him on

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[33] *Id.*

[34] *Id.*

[35] *Id.*

[36] *Id.* at 146.

[37] *Id.*

[38] *Id.*

[39] *Id.*

[40] *Id.*

April 16, 2008 at about 6:00 p.m. He told Compliance Investigator Paner to meet him at the Special Enforcement Service office at 7:00 p.m. to discuss an important matter.[37] "Sensing something wrong,"[38] Compliance Investigator Paner informed Major Ferdinand Marcelino (Director Marcelino), Director of the Special Enforcement Service, of his conversation with IO2 Renato R. Infante.[39] Compliance Investigator Paner and Director Marcelino then had a surveillance camera prepared to record the 7:00 p.m. meeting.[40]

At 7:15 p.m., Compliance Investigator Paner went to the office of the Special Enforcement Service. There, IO2 Renato R. Infante handed Compliance Investigator Paner money. This transaction was allegedly recorded by the surveillance camera. Compliance Investigator Paner then went to Director Marcelino to surrender the money.[41]

According to the Internal Affairs Service, the statements of Compliance Investigator Paner, Jaen, and Magcawas, Jr., as

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[41] *Id.*

[42] *Id.* at 143-144, Memorandum dated May 20, 2008.

[43] *Id.* at 147-151.

[44] Uniform Rules on Administrative Cases in the Civil Service, Rule II, Sec. 8 provides:

Section 8. *Complaint*. — A complaint against a civil service official or employee shall not be given due course unless it is in writing and subscribed and sworn to by the complainant. However, in cases initiated by the proper disciplining authority, the complaint need not be under oath.

No anonymous complaint shall be entertained unless there is obvious truth or merit to the allegations therein or supported by documentary or direct evidence, in which case the person complained of may be required to comment.

The complaint should be written in a clear, simple and concise language and in a systematic manner as to apprise the civil servant concerned of the nature and cause of the accusation against him and to enable him to intelligently prepare his defense or answer.

The complaint shall contain the following:

a. full name and address of the complainant;

b. full name and address of the person complained of as well as his position and office of employment;

well as the surveillance footage, prove that respondents conspired to extort money from Jaen. The Internal Affairs Service, thus, found respondents guilty of grave misconduct and recommended their dismissal from the service.[42]

IA1 Magcamit moved for reconsideration[43] of the Internal Affairs Service's Memorandum dated May 20, 2008, raising the following grounds: (a) the letter-complaint of "Delfin" lacked the requirements under Rule II, Section 8 (4)[44] of the Uniform Rules on Administrative Cases in the Civil Service (Civil Service Rules).[45] Specifically, it did not state the full name and address of the persons complained of and the material facts showing the acts or omissions assailed, Moreover, it had no certification of non-forum shopping attached to it; (b) the hearing officer did not conduct a preliminary investigation, in violation of Rule II, Section 14[46] of the Civil Service Rules;[47] (c) IA1 Magcamit was not furnished a copy of the surveillance camera footage as well as the Affidavits of Compliance Investigator Paner, in

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c. a narration of the relevant and material facts which shows the acts or omissions allegedly committed by the civil servant;

d. certified true copies of documentary evidence and affidavits of his witnesses, if any; and

e. certification or statement of non-forum shopping.

In the absence of any one of the aforementioned requirements, the complaint shall be dismissed.

[45] *Rollo*, pp. 148-149, IA1 Erwin L. Magcamit's Motion for Reconsideration before the Internal Affairs Service.

[46] Uniform Rules on Administrative Cases in the Civil Service, Rule II, Sec. 14 provides:

Section 14. *Investigation Report*. — Within five (5) days from the termination of the preliminary investigation, the investigating officer shall submit the Investigation Report and the complete records of the case to the disciplining authority.

[47] *Rollo*, p. 149, IA1 Erwin L. Magcamit's Motion for Reconsideration before the Internal Affairs Service.

[48] *Id.* at 149-150.

[49] *Id.* at 150.

[50] *Id.* at 152-155.

violation of his right to due to process;[48] and (d) the finding of conspiracy was not supported by the evidence on record, as the Affidavits of Jaen, Magcawas, Jr., and Compliance Investigator Paner did not mention his name.[49]

In the Resolution[50] dated July 23, 2008, the Internal Affairs Service denied IA1 Magcamit's Motion for Reconsideration. The Internal Affairs Service held that formal or trial-type hearings are not necessary in administrative cases; hence, the lack of preliminary investigation did not invalidate the proceedings before the Internal Affairs Service.[51]

It added that the essence of due process in administrative cases is the opportunity to be heard. There was no denial of due process because the Internal Affairs Service gave respondent police officers the opportunity to answer the Formal Charge.[52]

Lastly, the Internal Affairs Service held that direct evidence of conspiracy need not be presented. "Proof of the concerted action before, during and after the crime, which demonstrates [the respondents'] unity of design and objective is sufficient."[53]

IA1 Magcamit filed an appeal[54] before the Civil Service Commission, reiterating the arguments he made in his Motion for Reconsideration before the Internal Affairs Service. The PDEA commented[55] on IA1 Magcamit's Memorandum of Appeal.

In the Resolution dated March 17, 2009, the Civil Service Commission dismissed IA1 Magcamit's appeal.[56] The

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[51] *Id.* at 153-154.

[52] *Id.*

[53] *Id.* at 155.

[54] *Id.* at 157-168.

[55] *Id.* at 170-173.

[56] *Id.* at 72, Court of Appeals Decision.

[57] *Id.* at 78.

[58] *Id.* at 79.

Commission agreed with the Internal Affairs Service that IA1 Magcamit was not denied due process considering that he was given several opportunities to refute the allegations against him.[57]

On the merits, the Commission held that there was substantial evidence to prove that IA1 Magcamit was guilty of grave misconduct.[58] The Commission referred to the May 7, 2008 Affidavit executed by Compliance Investigator Paner where the latter identified IA1 Magcamit as one of the agents who shared in the money extorted from Jaen.[59] In this new Affidavit, Compliance Investigator Paner allegedly asked IA1 Magcamit how the sharing of the money was arrived at, to which IA1 Magcamit allegedly replied that "such was the sharing and everybody . . . seemed to have consented.[60]

IA1 Magcamit filed a Petition for Review[61] before the Court of Appeals. The Court of Appeals, however, dismissed IA1 Magcamit's appeal in the Decision dated March 17, 2011. It affirmed the finding that IA1 Magcamit shared in the extorted money; hence, IA1 Magcamit was guilty of grave misconduct.[62]

IA1 Magcamit filed a Motion for Reconsideration,[63] which the Court of Appeals denied in the Resolution dated August 9, 2011.

On September 29, 2011, IA1 Magcamit filed his Petition for Review on Certiorari before this court. The Internal Affairs Service, through the Office of the Solicitor General, filed its Comment,[64] to which IA1 Magcamit replied.[65]

The issues for the court's resolution are the following:

First, whether petitioner Investigation Agent 1 Erwin L.

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[59] *Id.*

[60] *Id.*

[61] *Id.* at 92-124.

[62] *Id.* at 87-88, Court of Appeals Decision.

[63] *Id.* at 190-204.

[64] *Id.* at 224-242.

[65] *Id.* at 245-251.

Magcamit was denied of his right to due process, rendering the proceedings before the Internal Affairs Service void; and

Second, whether there was substantial evidence to prove that petitioner shared in the money extorted from Luciana M. Jaen.

IV

Petitioner maintains that he was denied of his right to due process because the Internal Affairs Service failed to follow the procedure for administrative investigation under the Uniform Rules on Administrative Cases in the Civil Service. Specifically, the letter-complaint of "Delfin" did not allege his full name, address, position, and office of employment; the letter-complaint did not narrate the relevant and material facts that would show the acts or omissions allegedly committed by him; the Internal Affairs Service did not conduct a preliminary investigation before it issued the Formal Charge; and he was allegedly not furnished copies of Compliance Investigator Paner's Affidavits.[66]

On the merits, petitioner maintains that the pieces of evidence presented in this case do not substantially prove that he shared in the money extorted from Luciana M. Jaen.[67]

On the other hand, respondents argue that petitioner was not denied of his right to due process. They maintain that the essence of due process, as applied to administrative proceedings, is the opportunity to be heard. Several opportunities were afforded to petitioner: he was able to file a Comment on the letter-complaint; he answered the Formal Charge; he also filed a Motion for Reconsideration of the Memorandum dated May 20, 2008, which recommended his dismissal.[68]

Moreover, respondents argue that the evidence presented against petitioner sufficiently proved that he is guilty of grave

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[66] *Id.* at 45-55, Petition for Review on *Certiorari*.

[67] *Id.* at 55-66.

[68] *Id.* at 229-235.

[69] *Id.* at 235-240.

[70] *Ponencia*, p. 5.

misconduct and was, therefore, correctly dismissed from the service.[69]

V

The ponencia granted IA1 Magcamit's Petition for Review on Certiorari "because [his] dismissal was unsupported by substantial evidence."[70]

On the issue of due process, the ponencia agreed with respondents that the essence of due process is the "chance to explain [one's] side of the controversy."[71] In this case, petitioner was able to deny and controvert the letter-complaint, the Formal Charge, and the Memorandum dated May 20, 2008 recommending his dismissal. Moreover, the ponencia ruled that formal or trial-type hearings are not required in administrative cases. There was, therefore, no denial of due process.[72]

However, the ponencia found that petitioner was not furnished a copy of the Affidavit dated May 7, 2008 — the only affidavit among the three executed by Compliance Investigator Paner and the only one that specifically named petitioner as one of those who shared in the money extorted from Luciana M. Jaen.[73] The Affidavit dated May 7, 2008 was the basis of the Civil Service Commission to affirm the Internal Affairs Service's Memorandum dated May 20, 2008.[74]

As for the other pieces of evidence presented against petitioner, the ponencia pointed out that none of them specifically named petitioner;[75] hence, there was no substantial evidence to prove that he was involved in the extortion. Although petitioner was part of the buy-bust operation team that apprehended Luciana

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[71] *Id.* at 7.

[72] *Id.*

[73] *Id.* at 8.

[74] *Id.*

[75] *Id.*

[76] *Id.* at 10.

M. Jaen, the ponencia ruled that this in itself does not prove that petitioner shared in the money.[76]

VI

I agree that petitioner was afforded his right to due process.

However, contrary to the finding of the ponencia, there was substantial evidence to prove that petitioner shared in the money extorted from Luciana M. Jaen. Petitioner should be held liable for grave misconduct and be dismissed from the service.

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[77] *Vivo v. Philippine Amusement and Gaming Corporation (PAGCOR),* G.R. No. 187854, November 12, 2013, 709 SCRA 276, 281 [Per *J.* Bersamin, *En Banc*]; *Gannapao v. Civil Service Commission, et al.*, 665 Phil. 60, 70 (2011) [Per *J.* Villarama, Jr., *En Banc*].

[78] *Id.*

[79] 69 Phil. 635 (1940) [Per *J.* Laurel, *En Banc*]. In *Ang Tibay*, this court summarized the fundamental requirements of administrative due process:

"(1) The first of these rights is the right to a hearing, which includes the right of the party interested or affected to present his own case and submit evidence in support thereof. . . .

(2) Not only must the party be given an opportunity to present his case and to adduce evidence tending to establish the rights which he asserts but the tribunal must consider the evidence presented. . . .

(3) 'While the duty to deliberate does not impose the obligation to decide right, it does imply a necessity which cannot be disregarded, namely, that of having something to support its decision. A decision with absolutely nothing to support it is a nullity, a place when directly attached.'. . .

(4) Not only must there be some evidence to support a finding or conclusion. . . but the evidence must be 'substantial.'. . .

(5) The decision must be rendered on the evidence presented at the hearing, or at least contained in the record and disclosed to the parties affected. . . .

(6) [The tribunal] must act on its or his own independent consideration of the law and facts of the controversy, and not simply accept the views of a subordinate in arriving at a decision. . . .

(7) [The tribunal] in all controversial questions, render its decision in such a manner that the parties to the proceeding can know the various issues involved, and the reasons for the decisions rendered. The performance of this duty is inseparable from the authority conferred upon it." (*Id.* at 642-644)

[80] 148 Phil. 502 (1971) [Per *J.* J.B.L. Reyes, *En Banc*].

VI.A.

In administrative proceedings, the requirement of due process is satisfied if the party has had the opportunity to be heard.[77] If the party has been given the right to controvert the allegations and evidence against him, as when the party is able to file a motion for reconsideration, there is no deprivation of due process.[78]

This court in *Ang Tibay v. Court of Industrial Relations*[79] laid down the cardinal rights in due process. In *Air Manila, Inc. v. Hon. Balatbat, et al.*,[80] due process requirements are satisfied if the following are met: (a) "the right to notice, be it actual or constructive, of the institution of the proceedings that may affect a person's legal rights;"[81] (b) "reasonable opportunity to appear and defend his rights, introduce witnesses and relevant evidence in his favor;"[82] (c) a tribunal so constituted as to give him reasonable assurance of honesty and impartiality, and one of competent jurisdiction;"[83] and (d) "a finding or decision by that tribunal supported by substantial evidence presented at the hearing, or at least contained in the records or disclosed to the parties affected."[84]

These requirements have been met in this case.

The Formal Charge dated May 9, 2008, with the Affidavits of Luciana M. Jaen and Delfin Magcawas, Jr. attached to it, notified petitioner of the institution of the administrative proceedings against him. The Internal Affairs Service afforded petitioner reasonable opportunity to defend his rights, as he was able to file an Answer to the Formal Charge as well as a

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[81] *Id.* at 506.

[82] *Id.*

[83] *Id.*

[84] *Id.*

[85] *Ang Tibay v. Court of Industrial Relations*, 69 Phil. 635, 642 (1940) [Per J. Laurel, *En Banc*], citing *Appalachian Electric Power v. National Labor Relations Board*, 4 Cir., 93 F. 2d 985, 989; *National Labor Relations Board v. Thompson Products*, 6 Cir., 97 F. 2d 13, 15; *Ballston-Stillwater Knitting Co. v. National Labor Relations Board*, 2 Cir., 98 F. 2d 758, 760.

Motion for Reconsideration of the Memorandum recommending his dismissal. The recommendation was made by the Internal Affairs Service, the office under the PDEA that has disciplining authority over petitioner.

VI.B.

Even the fourth requisite, which petitioner argues was absent, has been met in this case.

Substantial evidence is "evidence [that] a reasonable mind might accept as adequate to support a conclusion."[85] The Civil Service Commission and the Court of Appeals correctly relied on the Affidavit[86] dated May 7, 2008 of Compliance Investigator Paner. This piece of evidence related how petitioner consented to the sharing of the ₱200,000.00 extorted from Luciana M. Jaen:

> 13. That pretending nothing had happened and yet projecting to the group that I am a bit apprehensive as to the evident inequality in the sharing of the extorted money from subject Jaen, I was able to talk with Agent Erwin Magcamit, one of the members of the arresting team, and asked the latter as to how the group came up with the Php21,500.00 sharing for each member out of the Php200,000.00; *from which Agent Magcamit simply said to me that such was the sharing and everybody except me seemed to have consented; in addition thereto, Agent Magcamit vividly mentioned all other members who got their share of the Php21,500.00, namely, [1] Carlos S. Aldeon, [2] PO3 Emerson Adaviles, [3] PO2 Reywin Bariuad, [4] IO2 Renato Infante, [5] IO2 Apolinario Mationg, [6] IO2 Ryan C. Alfaro, and [7] PO3 Peter Sistemio.*[87] (Emphasis supplied)

It is true that the Affidavit dated May 7, 2008 was considered on appeal before the Civil Service Commission. This Affidavit

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[86] *Rollo*, pp. 174-175.

[87] *Id.* at 175.

[88] Uniform Rules on Administrative Cases in the Civil Service, Rule 1, Sec. 3.

[89] See *Andaya v. National Labor Relations Commission*, 502 Phil. 151, 158 (2005) [Per *J*. Panganiban, Third Division]. See also *Philippine Telegraph*

was not mentioned in the Memorandum recommending petitioner's dismissal. The Internal Affairs Service, in recommending petitioner's dismissal, referred to the April 15 and April 17, 2008 Affidavits of Compliance Investigator Paner.

Nevertheless, technical rules of procedure and evidence are not strictly applied in administrative cases.[88] In the National Labor Relations Commission, evidence introduced on appeal may still be considered so long as the adverse party is given the opportunity to rebut the evidence.[89] This rule should equally apply in this administrative case since it involves employment, albeit of a public officer.

Here, petitioner was able to refute the allegations made by Compliance Investigator Paner in his May 7, 2008 Affidavit. IA1 Magcamit said in his Petition for Review before the Court of Appeals:

> 5.23. The . . . uncorroborated allegations [of Compliance Investigator Paner in his May 7, 2008 Affidavit] are brazen fabrications and falsehoods made by a person with ulterior motives. Petitioner Magcamit never made such statements to CS1 Paner. He never mentioned to him anything about money nor any sharing of money. CS1 Paner has maliciously and perjuriously concocted stories. Whatever conversations Petitioner Magcamit had with CS1 Paner was common and casual, as his conversations with other PDEA employees, considering that they belonged to the same office.[90] (Underscoring in the original)

Petitioner reiterated this argument in his Motion for Reconsideration before the Court of Appeals.[91]

The May 7, 2008 Affidavit is substantial to prove that petitioner consented to and shared in the money extorted from Luciana M. Laen. This constitutes grave misconduct punishable by dismissal from the service.[92] The Internal Affairs Service, the Civil Service Commission, and the Court of Appeals did not err in their respective Decisions.

ACCORDINGLY, I vote to **DENY** this Petition for Review on Certiorari.

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and Telephone Corporation v. National Labor Relations Commission, 262 Phil. 494, 498-499 (1990) [Per J. Regalado, Second Division].

[89] *Rollo*, p. 112, IA1 Erwin L. Magcamit's Petition for Review before the Court of Appeals.

[90] *Id.* at 197, IA1 Erwin L. Magcamit's Motion for Reconsideration before the Court of Appeals.

[91] Uniform Rules on Administrative Cases in the Civil Service, Rule IV, Sec. 52 (A) (3).

SECOND DIVISION

[G.R. No. 198172. January 25, 2016]

REGULUS DEVELOPMENT, INC., *petitioner, vs.* **ANTONIO DELA CRUZ,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; FORUM SHOPPING; DEFECT ON THE VERIFICATION OR CERTIFICATION AGAINST FORUM SHOPPING IS NOT NECESSARILY FATAL.—** [A] defect in the verification does not necessarily render the pleading fatally defective. The court may order its submission or correction, or act on the pleading if the attending circumstances are such that strict compliance with the Rule may be dispensed with in order that the ends of justice may be served. Noncompliance or a defect in a certification against forum shopping, unlike in the case of a verification, is generally not curable by its subsequent submission or correction, unless the covering Rule is relaxed on the ground of "substantial compliance" or based on the presence of "special circumstances or compelling reasons." Although the submission of a certificate against forum shopping is deemed obligatory, it is not however jurisdictional. x x x The rule is that courts should not be unduly strict on procedural lapses that do not really impair the proper administration of justice. The higher objective of procedural rules is to ensure that the substantive rights of the parties are protected. Litigations should, as much as possible, be decided on the merits and not on technicalities. Every party-litigant must be afforded ample opportunity for the proper and just determination of his case, free from the unacceptable plea of technicalities.

2. **ID.; JURISDICTION; THE ISSUE ON JURISDICTION IS A JUSTICIABLE CONTROVERSY THAT PREVENTED THE ASSAILED COURT OF APPEALS (CA) PETITION IN CASE AT BAR FROM BECOMING MOOT AND ACADEMIC.—** A case or issue is considered moot and academic when it ceases to present a justiciable controversy because of supervening events, rendering the adjudication of

the case or the resolution of the issue without any practical use or value. Courts generally decline jurisdiction over such case or dismiss it on the ground of mootness except when, among others, the case is capable of repetition yet evades judicial review. The CA found that there is an issue on whether the RTC had jurisdiction to issue the orders directing the levy of the respondent's property. The issue on jurisdiction is a justiciable controversy that prevented the assailed CA petition from becoming moot and academic. It is well-settled in jurisprudence that jurisdiction is vested by law and cannot be conferred or waived by the parties. "Even on appeal and even if the reviewing parties did not raise the issue of jurisdiction, the reviewing court is not precluded from ruling that the lower court had no jurisdiction over the case." Even assuming that the case has been rendered moot due to the respondent's redemption of the property, the CA may still entertain the jurisdictional issue since it poses a situation capable of repetition yet evading judicial review.

3. ID.; ID.; EQUITY JURISDICTION DISTINGUISHED FROM APPELLATE JURISDICTION; CASE AT BAR.— The appellate jurisdiction of courts is conferred by law. The appellate court acquires jurisdiction over the subject matter and parties when an appeal is perfected. On the other hand, equity jurisdiction aims to provide complete justice in cases where a court of law is unable to adapt its judgments to the special circumstances of a case because of a resulting legal inflexibility when the law is applied to a given situation. The purpose of the exercise of equity jurisdiction, among others, is to prevent unjust enrichment and to ensure restitution. The RTC orders which allowed the withdrawal of the deposited funds for the use and occupation of the subject units were issued pursuant to the RTC's equity jurisdiction, as the CA held in the petition docketed as *CA-G.R. SP No. 81277*. The RTC's equity jurisdiction is separate and distinct from its appellate jurisdiction on the ejectment case. The RTC could not have issued its orders in the exercise of its appellate jurisdiction since there was nothing more to execute on the dismissed ejectment case. As the RTC orders explained, the dismissal of the ejectment case effectively and completely blotted out and cancelled the complaint. Hence, the RTC orders were clearly issued in the exercise of the RTC's equity jurisdiction, not on the basis of its appellate jurisdiction.

4. ID.; ID.; JUDGMENTS; EXECUTION UPON JUDGMENTS OF FINAL ORDERS; SHALL BE APPLIED FOR IN THE COURT OF ORIGIN.— Execution shall be applied for in the court of origin, in accordance with Section 1, Rule 39 of the Rules of Court. The court of origin with respect to the assailed RTC orders is the court which issued these orders. The RTC is the court with jurisdiction to order the execution of the issued RTC orders.

APPEARANCES OF COUNSEL

Esguerra & Blanco for petitioner.
Evaristo Velicaria for respondent.

D E C I S I O N

BRION, *J.*:

Before us is a petition for review on *certiorari* filed by petitioner Regulus Development, Inc. (*petitioner*) to challenge the November 23, 2010 decision[1] and August 10, 2011 resolution[2] of the Court of Appeals (CA) in CA-G.R. SP No. 105290. CA Associate Justice Juan Q. Enriquez, Jr. penned the rulings, concurred in by Associate Justices Ramon M. Bato, Jr. and Florito S. Macalino.

ANTECEDENT FACTS

The petitioner is the owner of an apartment (*San Juan Apartments*) located at San Juan Street, Pasay City. Antonio dela Cruz (*respondent*) leased two units (Unit 2002-A and Unit 2002-B) of the San Juan Apartments in 1993 and 1994. The contract of lease for each of the two units similarly provides a lease period of one (1) month, subject to automatic renewals, unless terminated by the petitioner upon written notice.

The petitioner sent the respondent a letter to terminate the

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[1] *Rollo*, pp. 29-38.

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

lease of the two subject units. Due to the respondent's refusal to vacate the units, the petitioner filed a complaint[3] for ejectment before the Metropolitan Trial Court (*MTC*) of Pasay City, Manila, on May 1, 2001.

The MTC resolved the case in the petitioner's favor and ordered the respondent to ***vacate the premises***, and ***pay the rentals*** due until the respondent actually complies.[4]

The respondent appealed to the Regional Trial Court (*RTC*). Pending appeal, the respondent consigned the monthly rentals to the RTC due to the petitioner's refusal to receive the rentals.

The ***RTC affirmed***[5] ***the decision of the MTC*** *in toto* and denied the motion for reconsideration filed by the respondent.

CA-G.R. SP No. 69504: Dismissal of Ejectment Case

In a Petition for Review filed by the respondent, the ***CA reversed the lower courts' decisions and dismissed the ejectment case.***[6] On March 19, 2003, the ***dismissal of the case became final and executory.***[7]

Orders dated July 25, 2003 and November 28, 2003 for payment of rentals due under lease contracts

The petitioner filed a motion (to withdraw funds deposited by the defendant-appellant as lessee)[8] praying for the withdrawal of the rentals consigned by the respondent with the RTC.

In an **order dated July 25, 2003**,[9] the RTC granted the petitioner's motion. The RTC explained that the effect of the complaint's dismissal would mean that there was no complaint

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[3] *Id.* at 80-83.

[4] *Id.* at 99-102.

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

[6] *Id.* at 110-120.

[7] *Id.* at 121.

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

[9] *Id.* at 126-127.

filed at all. The petitioner, however, is entitled to the amount of rentals for the use and occupation of the subject units, as provided in the executed contracts of lease and on the basis of justice and equity.

The court denied the respondent's motion for reconsideration[10] in an **order dated November 28, 2003.**[11]

On the petitioner's motion, the RTC issued a writ of execution on December 18, 2003, to cause the enforcement of its order dated July 25, 2003.[12]

CA-G.R. SP No. 81277: Affirmed RTC Orders

The respondent filed a petition for *certiorari* under Rule 65 before the CA to assail the RTC Orders dated July 25, 2003 and November 28, 2003 (*RTC orders*), which granted the petitioner's motion to withdraw funds.

The CA dismissed[13] the petition and held that the assailed RTC Orders **were issued pursuant to its equity jurisdiction**,

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

[11] *Id.* at 131.

[12] *Id.* at 141.

[13] *Id.* at 138, 140-144.

[14] **Section 5**. *Effect of reversal of executed judgment.* — Where the executed judgment is reversed totally or partially, or annulled, on appeal or otherwise, the trial court may, on motion, issue such orders of restitution or reparation of damages as equity and justice may warrant under the circumstances. (5a)

[15] **Section 5**. *Inherent powers of court.* — Every court shall have power:

(a) To preserve and enforce order in its immediate presence;

(b) To enforce order in proceedings before it, or before a person or persons empowered to conduct a judicial investigation under its authority;

(c) To compel obedience to its judgments, orders and processes, and to the lawful orders of a judge out of court, in a case pending therein;

(d) To control, in furtherance of justice, the conduct of its ministerial officers, and of all other persons in any manner connected with a case before it, in every manner appertaining thereto;

in accordance with Section 5, Rule 39,[14] and Sections 5[15] and 6[16] of Rule 135 of the Rules of Court. The respondent's motion for reconsideration was similarly denied.

G.R. SP No. 171429: Affirmed CA Ruling on RTC Orders

The respondent filed a petition for review on *certiorari* before this Court to assail the decision of the CA in *CA-G.R. SP No. 81277*. In a resolution dated June 7, 2006,[17] we denied the petition for insufficiency in form and for failure to show any reversible error committed by the CA.

Our resolution became final and executory and an entry of judgment[18] was issued.

Execution of RTC Orders

The petitioner returned to the RTC and moved for the issuance of a writ of execution to allow it to proceed against the *supersedeas* bond the respondent posted, representing rentals for the leased properties from May 2001 to October

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(e) To compel the attendance of persons to testify in a case pending therein;

(f) To administer or cause to be administered oaths in a case pending therein, and in all other cases where it may be necessary in the exercise of its powers;

(g) To amend and control its process and orders so as to make them conformable to law and justice;

(h) To authorize a copy of a lost or destroyed pleading or other paper to be filed and used instead of the original, and to restore, and supply deficiencies in its records and proceedings.

[16] **Section 6.** *Means to carry jurisdiction into effect.* — When by law jurisdiction is conferred on a court or judicial officer, all auxiliary writs, processes and other means necessary to carry it into effect may be employed by such court or officer; and if the procedure to be followed in the exercise of such jurisdiction is not specifically pointed out by law or by these rules, any suitable process or mode of proceeding may be adopted which appears comfortable to the spirit of the said law or rules.

[17] *Rollo*, p. 145.

[18] *Id.* at 146.

2001, and to withdraw the lease payments deposited by respondent from November 2001 until August 2003.[19] The RTC granted the motion.[20]

The RTC issued an Alias Writ of Execution[21] dated April 26, 2007, allowing the withdrawal of the rental deposits and the value of the supersedeas bond.

The petitioner claimed that the withdrawn deposits, *supersedeas* bond, and payments directly made by the respondent to the petitioner, were insufficient to cover rentals due for the period of May 2001 to May 2004. Hence, the petitioner filed a manifestation and motion[22] dated October 23, 2007, praying that the RTC levy upon the respondent's property covered by Transfer Certificate of Title (TCT) No. 136829 to satisfy the judgment credit.

The RTC granted the petitioner's motion in an **order dated June 30, 2008**.[23] The respondent filed a motion for reconsideration which was denied by the RTC in an **order dated August 26, 2008**.[24]

CA-G.R. SP No. 105290: Assailed the levy of the respondent's property

On October 3, 2008, the respondent filed with the CA a Petition for Certiorari[25] with application for issuance of a temporary restraining order. The petition sought to nullify and set aside the orders of the RTC directing the levy of the respondent's real property. The CA dismissed the petition. Thereafter, the respondent filed a motion for reconsideration[26] dated November 3, 2008.

[19] *Id.* at 147-151.

[20] *Id.* at 161.

[21] *Id.* at 162.

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

[23] *Id.* at 192-193.

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

[25] *Id.* at 202-221.

[26] *Id.* at 222-225.

Pursuant to the order dated June 30, 2008, a public auction for the respondent's property covered by TCT No. 136829 was held on November 4, 2008,[27] where the petitioner was declared highest bidder. Subsequently, the Certificate of Sale[28] in favor of the petitioner was registered.

Meanwhile, on January 7, 2010, the respondent redeemed the property with the RTC Clerk of Court, paying the equivalent of the petitioner's bid price with legal interest. The petitioner filed a motion to release funds[29] for the release of the redemption price paid. The RTC granted[30] the motion.

On February 12, 2010, the respondent filed a manifestation and motion[31] before the CA to withdraw the petition for the reason that the redemption of the property and release of the price paid rendered the petition moot and academic.

Thereafter, the petitioner received the CA decision dated November 23, 2010, which reversed and set aside the orders of the RTC directing the levy of the respondent's property. The CA held that while the approval of the petitioner's motion to withdraw the consigned rentals and the posted *supersedeas* bond was within the RTC's jurisdiction, the RTC had no jurisdiction to levy on the respondent's real property.

The CA explained that the approval of the levy on the respondent's real property could not be considered as a case pending appeal, because the decision of the MTC had already become final and executory. As such, the matter of execution of the judgment lies with the MTC where the complaint for ejectment was originally filed and presented.

The CA ordered the RTC to remand the case to the MTC for execution. The petitioner filed its motion for reconsideration which was denied[32] by the CA.

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[27] *Id.* at 226.

[28] *Id.* at 227-228.

[29] *Id.* at 272-274.

[30] *Id.* at 275.

[31] *Id.* at 276-278.

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

THE PETITION

The petitioner filed the present petition for review on *certiorari* to challenge the CA ruling in **CA-G.R. SP No. 105290** which held that the RTC had no jurisdiction to levy on the respondent's real property.

The petitioner argues: *first*, that the RTC's release of the consigned rentals and levy were ordered in the exercise of its equity jurisdiction; *second*, that the respondent's petition in CA-G.R. SP No. 105290 was already moot and academic with the conduct of the auction sale and redemption of the respondent's real property; *third*, that the petition in CA-G.R. SP No. 105290 should have been dismissed outright for lack of signature under oath on the Verification and Certification against Forum Shopping.

The respondent duly filed its comment[33] and refuted the petitioner's arguments. On the *first* argument, respondent merely reiterated the CA's conclusion that the RTC had no jurisdiction to order the levy on respondent's real property as it no longer falls under the allowed execution pending appeal. On the *second* argument, the respondent contended that the levy on execution and sale at public auction were null and void, hence the CA decision is not moot and academic. On the *third* argument, the respondent simply argued that it was too late to raise the alleged formal defect as an issue.

THE ISSUE

The petitioner poses the core issue of whether the RTC had jurisdiction to levy on the respondent's real property.

OUR RULING

We grant the petition.

Procedural issue: Lack of notarial seal on the Verification and Certification against Forum Shopping is not fatal to the petition.

[33] *Id.* at 300-310.

The petitioner alleged that the assailed CA petition should have been dismissed since the notary public failed to affix his seal on the attached Verification and Certification against Forum Shopping.

We cannot uphold the petitioner's argument.

The lack of notarial seal in the notarial certificate[34] is a defect in a document that is required to be executed under oath.

Nevertheless, a defect in the verification does not necessarily render the pleading fatally defective. The court may order its submission or correction, or act on the pleading if the attending circumstances are such that strict compliance with the Rule may be dispensed with in order that the ends of justice may be served.[35]

Noncompliance or a defect in a certification against forum shopping, unlike in the case of a verification, is generally not curable by its subsequent submission or correction, unless the covering Rule is relaxed on the ground of "substantial compliance" or based on the presence of "special circumstances or compelling reasons."[36] Although the submission of a certificate against forum shopping is deemed obligatory, it is not however jurisdictional.[37]

In the present case, the Verification and Certification against Forum Shopping were in fact submitted. An examination of these documents shows that the notary public's signature and stamp were duly affixed. Except for the notarial seal, all the requirements for the verification and certification documents

[34] "Notarial Certificate" refers to the part of, or attachment to, a notarized instrument or document that is completed by the notary public, bears the notary's signature and seal, and states the facts attested to by the notary public in a particular notarization as provided for by these Rules. (Section 8, A.M. No. 02-8-13-SC, 2004 Rules on Notarial Practice).

[35] *Altres, et al. v. Empleo, et al.*, G.R. No. 180986, December 10, 2008, 573 SCRA 583, 596.

[36] *Id.*

[37] *In-N-Out Burger, Inc. v. Sehwani, Incorporated, et al.*, G.R. No. 179127, December 24, 2008, 575 SCRA 535, 536.

were complied with.

The rule is that courts should not be unduly strict on procedural lapses that do not really impair the proper administration of justice. The higher objective of procedural rules is to ensure that the substantive rights of the parties are protected. Litigations should, as much as possible, be decided on the merits and not on technicalities. Every party-litigant must be afforded ample opportunity for the proper and just determination of his case, free from the unacceptable plea of technicalities.[38]

The CA correctly refused to dismiss and instead gave due course to the petition as it substantially complied with the requirements on the Verification and Certification against Forum Shopping.

An issue on jurisdiction prevents the petition from becoming "moot and academic."

The petitioner claims that the assailed CA petition should have been dismissed because the subsequent redemption of the property by the respondent and the release of the price paid to the petitioner rendered the case moot and academic.

A case or issue is considered moot and academic when it ceases to present a justiciable controversy because of supervening events, rendering the adjudication of the case or the resolution of the issue without any practical use or value.[39] Courts generally decline jurisdiction over such case or dismiss it on the ground of mootness except when, among others, the case is capable of repetition yet evades judicial review.[40]

The CA found that there is an issue on whether the RTC had jurisdiction to issue the orders directing the levy of the

[38] *Heirs of Amada A. Zaulda v. Zaulda*, G.R. No. 201234, March 17, 2014, 719 SCRA 308, 310.

[39] *Peñafrancia Sugar Mill, Inc. v. Sugar Regulatory Administration,* G.R. No. 208660, March 5, 2014, 718 SCRA 212.

[40] *Carpio v. CA*, *et al.*, G.R. No. 183102, February 27, 2013, 692 SCRA 162, 163.

respondent's property. The issue on jurisdiction is a justiciable controversy that prevented the assailed CA petition from becoming moot and academic.

It is well-settled in jurisprudence that jurisdiction is vested by law and cannot be conferred or waived by the parties. "Even on appeal and even if the reviewing parties did not raise the issue of jurisdiction, the reviewing court is not precluded from ruling that the lower court had no jurisdiction over the case." [41]

Even assuming that the case has been rendered moot due to the respondent's redemption of the property, the CA may still entertain the jurisdictional issue since it poses a situation capable of repetition yet evading judicial review.

Under this perspective, the CA correctly exercised its jurisdiction over the petition.

Equity jurisdiction versus appellate jurisdiction of the RTC

The appellate jurisdiction of courts is conferred by law. The appellate court acquires jurisdiction over the subject matter and parties when an appeal is perfected.[42]

On the other hand, equity jurisdiction aims to provide complete justice in cases where a court of law is unable to adapt its judgments to the special circumstances of a case because of a resulting legal inflexibility when the law is applied to a given situation. The purpose of the exercise of equity jurisdiction, among others, is to prevent unjust enrichment and to ensure restitution.[43]

The RTC orders which allowed the withdrawal of the deposited funds for the use and occupation of the subject units were issued pursuant to the RTC's equity jurisdiction, as the CA held in

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[41] *Garcia v. Ferro Chemicals, Inc.*, G.R. No. 172505, October 1, 2014, 737 SCRA 252, 266.

[42] *Trans International v. CA, et al.*, 348 Phil. 830, 831 (1998).

[43] *Reyes v. Lim, et al.*, 456 Phil. 1 (2003).

the petition docketed as *CA-G.R. SP No. 81277.*

The RTC's equity jurisdiction is separate and distinct from its appellate jurisdiction on the ejectment case. The RTC could not have issued its orders in the exercise of its appellate jurisdiction since there was nothing more to execute on the dismissed ejectment case. As the RTC orders explained, the dismissal of the ejectment case effectively and completely blotted out and cancelled the complaint. Hence, the RTC orders were clearly issued in the exercise of the RTC's equity jurisdiction, not on the basis of its appellate jurisdiction.

This Court takes judicial notice[44] that the validity of the RTC Orders has been upheld in a separate petition before this Court, under *G.R. SP No. 171429 entitled Antonio Dela Cruz v. Regulus Development, Inc.*

The levy of real property was ordered by the RTC in the exercise of its equity jurisdiction.

The levy of the respondent's property was made pursuant to the RTC orders issued in the exercise of its equity jurisdiction, *independent* of the ejectment case originally filed with the MTC.

An examination of the RTC order dated June 30, 2008, directing the levy of the respondent's real property shows that it was based on the RTC order dated July 25, 2003. The levy of the respondent's property was issued to satisfy the amounts due under the lease contracts, and not as a result of the decision in the ejectment case.

The CA erred when it concluded that the RTC exercised its

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[44] Rule 129, **Section 1**. *Judicial notice, when mandatory*. — A court shall take judicial notice, without the introduction of evidence, of the existence and territorial extent of states, their political history, forms of government and symbols of nationality, the law of nations, the admiralty and maritime courts of the world and their seals, the political constitution and history of the Philippines, **the official acts of legislative, executive and judicial departments of the Philippines,** the laws of nature, the measure of time, and the geographical divisions.

appellate jurisdiction in the ejectment case when it directed the levy of the respondent's property.

Furthermore, the order to levy on the respondent's real property was consistent with the first writ of execution issued by the RTC on December 18, 2003, to implement the RTC orders. The writ of execution states that:

> x x x In case of [*sic*] sufficient personal property of the defendant cannot be found whereof to satisfy the amount of the said judgment, **you are directed to levy [on] the real property of said defendant and to sell the same or so much thereof in the manner provided by law for the satisfaction of the said judgment** and to make return of your proceedings together with this Writ within sixty (60) days from receipt hereof. (emphasis supplied)

The subsequent order of the RTC to levy on the respondent's property was merely a reiteration and an enforcement of the original writ of execution issued.

Since the order of levy is clearly rooted on the RTC Orders, the only question that needs to be resolved is which court has jurisdiction to order the execution of the RTC orders.

The RTC, as the court of origin, has jurisdiction to order the levy of the respondent's real property.

Execution shall be applied for in the court of origin, in accordance with Section 1,[45] Rule 39 of the Rules of Court.

The court of origin with respect to the assailed RTC orders is the court which issued these orders. The RTC is the court with jurisdiction to order the execution of the issued RTC orders.

[45] **Section 1.** *Execution upon judgments or final orders.* – Execution shall issue as a matter of right, or motion, upon a judgment or order that disposes of the action or proceeding upon the expiration of the period to appeal therefrom if no appeal has been duly perfected. (1a)

If the appeal has been duly perfected and finally resolved, the execution may forthwith be applied for in the court of origin, on motion of the judgment obligee, submitting therewith certified true copies of the judgment or judgments or final order or orders sought to be enforced and of the entry thereof, with notice to the adverse party.

The appellate court may, on motion in the same case, when the interest of justice so requires, direct the court of origin to issue the writ of execution. (n)

the servient estate; and insofar as consistent with this rule, where the distance from the dominant estate to a public highway may be the shortest." The immovable in whose favor the easement is established is called the dominant estate, and the property subject to the easement is called the servient estate.

2. ID.; ID.; ID.; ID.; ID.; THE RIGHT-OF-WAY CLAIMED IS LEAST PREJUDICIAL TO THE SERVIENT ESTATE AND THE DISTANCE FROM THE DOMINANT ESTATE TO PUBLIC HIGHWAY MAY BE THE SHORTEST; WHERE THESE TWO CRITERIA DO NOT CONCUR IN A SINGLE TENEMENT, THE FORMER PREVAILS OVER THE LATTER.— Article 650 of the Civil Code provides that the easement of right-of-way shall be established *at the point least prejudicial to the servient estate*, and, insofar as consistent with this rule, where the distance from the dominant estate to a public highway may be the *shortest*. Under this guideline, whenever there are several tenements surrounding the dominant estate, the right-of-way must be established on the tenement where the distance to the public road or highway is shortest *and* where the least damage would be caused. If these two criteria (shortest distance and least damage) do not concur in a single tenement, ***we have held in the past that the least prejudice criterion must prevail over the shortest distance criterion***. x x x We have held that "mere convenience for the dominant estate is not what is required by law as the basis of setting up a compulsory easement"; that "a longer way may be adopted to avoid injury to the servient estate, such as when there are constructions or walls which can be avoided by a round-about way."

APPEARANCES OF COUNSEL

Sombiro Law Office for petitioners.
Victor D. Decida for respondent.

Subdivision Road.

Due to the respondent's allegedly malicious and groundless suit, the petitioners claimed entitlement to the following awards: ₱100,000.00 as moral damages, ₱30,000.00 as exemplary damages, ₱50,000.00 as attorney's fees, ₱1,000.00 as appearance fee, and ₱15,000.00 as litigation expenses.

In a decision dated September 29, 2003, the RTC granted the respondent's complaint and ordered the petitioners to provide the respondent an easement of right-of-way "measuring 14 meters in length and 3 meters in width (42 square meters, more or less) over Lot 1454-B-25, specifically at the *portion adjoining the bank of Sipac Creek.*" Accordingly, the RTC ordered the respondent to pay the petitioners proper indemnity in the amount of "Php1,500.00 per square meter of the portion of the lot subject of the easement." The petitioners appealed the RTC's decision to the CA.

The CA, in its assailed December 15, 2010 decision, affirmed *in toto* the RTC's decision and held that all the requisites for the establishment of a legal or compulsory easement of right-of-way were present in the respondent's case: ***first***, that the subject lot is indeed surrounded by estates owned by different individuals and the respondent has no access to any existing public road; ***second***, that the respondent has offered to compensate the petitioners for the establishment of the right-of-way through the latter's property; ***third***, that the isolation of the subject lot was not caused by the respondent as he purchased the lot without any adequate ingress or egress to a public highway; and, ***fourth and last***, given the available options for the right-of-way, **the route that passes through the petitioners' lot requires the shortest distance to a public road and can be established at a point least prejudicial to the petitioners' property.**

The petitioners moved to reconsider the CA's decision arguing that, while the establishment of the easement through their lot provided for the shortest route, the adjudged right-of-way would cause severe damage not only to the *nipa* hut situated at the

The immovable in whose favor the easement is established is called the dominant estate, and the property subject to the easement is called the servient estate.[8] Here, the respondent's lot is the dominant estate and the petitioners' lot is the servient estate.

That the respondent's lot is surrounded by several estates and has no access to a public road are undisputed. The only question before this Court is whether the right-of-way passing through the petitioners' lot satisfies the fourth requirement of being **established at the point least prejudicial to the servient estate.**

Three options were then available to the respondent for the demanded right-of-way: the ***first option*** is to traverse directly through the petitioners' property, which route has an approximate distance of fourteen (14) meters from the respondent's lot to the Fajardo Subdivision Road; the ***second option*** is to pass through two vacant lots (Lots 1461-B-1 and 1461-B-2) located on the southwest of the respondent's lot, which route has an approximate distance of forty-three (43) meters to another public highway, the Diversion Road; and the ***third option*** is to construct a concrete bridge over ***Sipac*** Creek and ask for a right-of-way on the property of a certain Mr. Basa in order to reach the Fajardo Subdivision Road.

Among the right-of-way alternatives, the CA adopted the first option, *i.e.*, passing through the petitioner's lot, because it offered the *shortest distance* (from the respondent's lot) to the Fajardo Subdivision Road and the right-of-way would only affect the "*nipa* hut" standing on the petitioners' property. The CA held that the establishment of the easement through the petitioners' lot was more practical, economical, and less burdensome to the parties.

Article 650 of the Civil Code provides that the easement of right-of-way shall be established *at the point least prejudicial to the servient estate*, and, insofar as consistent with this rule, where the distance from the dominant estate to a public highway may be the *shortest*. Under this guideline, whenever there are

SECOND DIVISION

[G.R. No. 201595. January 25, 2016]

ALLAN M. MENDOZA, *petitioner, vs.* **OFFICERS OF MANILA WATER EMPLOYEES UNION (MWEU), namely, EDUARDO B. BORELA, BUENAVENTURA QUEBRAL, ELIZABETH COMETA, ALEJANDRO TORRES, AMORSOLO TIERRA, SOLEDAD YEBAN, LUIS RENDON, VIRGINIA APILADO, TERESITA BOLO, ROGELIO BARBERO, JOSE CASAÑAS, ALFREDO MAGA, EMILIO FERNANDEZ, ROSITA BUENAVENTURA, ALMENIO CANCINO, ADELA IMANA, MARIO MANCENIDO, WILFREDO MANDILAG, ROLANDO MANLAPAZ, EFREN MONTEMAYOR, NELSON PAGULAYAN, CARLOS VILLA, RIC BRIONES, and CHITO BERNARDO,** *respondents.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; LABOR ARBITERS; JURISDICTION; INCLUDES UNFAIR LABOR PRACTICES.—** [P]etitioner's charge of unfair labor practices falls within the *original* and *exclusive* jurisdiction of the Labor Arbiters, pursuant to Article 217 of the Labor Code. In addition, Article 247 of the same Code provides that "the civil aspects of all cases involving unfair labor practices, which may include claims for actual, moral, exemplary and other forms of damages, attorney's fees and other affirmative relief, shall be under the jurisdiction of the Labor Arbiters."

2. **ID.; UNFAIR LABOR PRACTICES; MAY BE COMMITTED BY THE LABOR ORGANIZATIONS UNDER ARTICLE 249 OF THE LABOR CODE.—** Unfair labor practices may be committed both by the employer under Article 248 and by labor organizations under Article 249 of the Labor Code, which provides as follows: ART. 249. Unfair labor practices of labor organizations. - It shall be unfair labor practice for a labor organization, its officers, agents or representatives: (a) To restrain

or coerce employees in the exercise of their right to self-organization. However, a labor organization shall have the right to prescribe its own rules with respect to the acquisition or retention of membership; (b) To cause or attempt to cause an employer to discriminate against an employee, including discrimination against an employee with respect to whom membership in such organization has been denied or to terminate an employee on any ground other than the usual terms and conditions under which membership or continuation of membership is made available to other members; (c) To violate the duty, or refuse to bargain collectively with the employer, provided it is the representative of the employees; (d) To cause or attempt to cause an employer to pay or deliver or agree to pay or deliver any money or other things of value, in the nature of an exaction, for services which are not performed or not to be performed, including the demand for fee for union negotiations; (e) To ask for or accept negotiation or attorney's fees from employers as part of the settlement of any issue in collective bargaining or any other dispute; or (f) To violate a collective bargaining agreement. The provisions of the preceding paragraph notwithstanding, only the officers, members of governing boards, representatives or agents or members of labor associations or organizations who have actually participated in, authorized or ratified unfair labor practices shall be held criminally liable. (As amended by Batas Pambansa Bilang 130, August 21, 1981).

3. **ID.; ID.; CONCEPT OF UNFAIR LABOR PRACTICE AND PROCEDURE FOR PROSECUTION THEREOF.—** The primary concept of unfair labor practices is stated in Article 247 of the Labor Code, which states: Article 247. Concept of unfair labor practice and procedure for prosecution thereof. – – Unfair labor practices violate the constitutional right of workers and employees to self-organization, are inimical to the legitimate interests of both labor and management, including their right to bargain collectively and otherwise deal with each other in an atmosphere of freedom and mutual respect, disrupt industrial peace and hinder the promotion of healthy and stable labor-management relations. "In essence, [unfair labor practice] relates to the commission of acts that transgress the workers' right to organize." "[A]ll the prohibited acts constituting unfair labor practice in essence relate to the workers' right to self-

organization." "[T]he term unfair labor practice refers to that gamut of offenses defined in the Labor Code which, at their core, violates the constitutional right of workers and employees to self-organization."

4. **ID.; ID.; REPEATED VIOLATIONS BY THE EMPLOYEE'S UNION GOVERNING BOARD OF THE UNION'S CONSTITUTION AND BY-LAWS, DISREGARDING THE RIGHTS OF PETITIONER UNION MEMBER, CONNOTES BAD FAITH THAT WARRANTS THE AWARD OF MORAL DAMAGES, EXEMPLARY DAMAGES AND ATTORNEY'S FEES.—** As members of the governing board of MWEU, respondents are presumed to know, observe, and apply the union's constitution and by-laws. Thus, their repeated violations thereof and their disregard of petitioner's rights as a union member – their inaction on his two appeals which resulted in his suspension, disqualification from running as MWEU officer, and subsequent expulsion without being accorded the full benefits of due process – connote willfulness and bad faith, a gross disregard of his rights thus causing untold suffering, oppression and, ultimately, ostracism from MWEU. "Bad faith implies breach of faith and willful failure to respond to plain and well understood obligation." This warrants an award of moral damages in the amount of ₱100,000.00. x x x Under the circumstances, an award of exemplary damages in the amount of ₱50,000.00, as prayed for, is likewise proper. "Exemplary damages are designed to permit the courts to mould behavior that has socially deleterious consequences, and their imposition is required by public policy to suppress the wanton acts of the offender." This should prevent respondents from repeating their mistakes, which proved costly for petitioner. x x x Finally, petitioner is also entitled to attorney's fees equivalent to 10 *per cent* (10%) of the total award. The unjustified acts of respondents clearly compelled him to institute an action primarily to vindicate his rights and protect his interest. Indeed, when an employee is forced to litigate and incur expenses to protect his rights and interest, he is entitled to an award of attorney's fees.

APPEARANCES OF COUNSEL

Lameyra Law Office for petitioner.
Dolendo & Associates for respondents.

D E C I S I O N

DEL CASTILLO, *J.*:

This Petition for Review on *Certiorari*[1] assails the April 24, 2012 Decision[2] of the Court of Appeals (CA) which dismissed the Petition for *Certiorari*[3] in CA-G.R. SP No. 115639.

Factual Antecedents

Petitioner was a member of the Manila Water Employees Union (MWEU), a Department of Labor and Employment (DOLE)-registered labor organization consisting of rank-and-file employees within Manila Water Company (MWC). The respondents herein named — Eduardo B. Borela (Borela), Buenaventura Quebral (Quebral), Elizabeth Cometa (Cometa), Alejandro Torres (Torres), Amorsolo Tierra (Tierra), Soledad Yeban (Yeban), Luis Rendon (Rendon), Virginia Apilado (Apilado), Teresita Bolo (Bolo), Rogelio Barbero (Barbero), Jose Casañas (Casañas), Alfredo Maga (Maga), Emilio Fernandez (Fernandez), Rosita Buenaventura (Buenaventura), Almenio Cancino (Cancino), Adela Imana, Mario Mancenido (Mancenido), Wilfredo Mandilag (Mandilag), Rolando Manlapaz (Manlapaz), Efren Montemayor (Montemayor), Nelson Pagulayan, Carlos Villa, Ric Briones, and Chito Bernardo — were MWEU officers during the period material to this Petition, with Borela as President and Chairman of the MWEU Executive Board, Quebral as First Vice-President and Treasurer, and Cometa as Secretary.[4]

In an April 11, 2007 letter,[5] MWEU through Cometa informed petitioner that the union was unable to fully deduct the increased ₱200.00 union dues from his salary due to lack of the required

[1] *Rollo*, pp. 7-42.

[2] *Id.* at 43-54; penned by Associate Justice Mario V. Lopez and concurred in by Associate Justices Fernanda Lampas Peralta and Socorro B. Inting.

[3] *Id.* at 346-369.

[4] *Id.* at 9, 44.

[5] *Id.* at 55.

December 2006 check-off authorization from him. Petitioner was warned that his failure to pay the union dues would result in sanctions upon him. Quebral informed Borela, through a May 2, 2007 letter,[6] that for such failure to pay the union dues, petitioner and several others violated Section 1 (g), Article IX of the MWEU's Constitution and By-Laws.[7] In turn, Borela referred the charge to the MWEU grievance committee for investigation.

On May 21, 2007, a notice of hearing was sent to petitioner, who attended the scheduled hearing. On June 6, 2007, the MWEU grievance committee recommended that petitioner be suspended for 30 days.

In a June 20, 2007 letter,[8] Borela informed petitioner and his co-respondents of the MWEU Executive Board's "unanimous approval"[9] of the grievance committee's recommendation and imposition upon them of a penalty of 30 days suspension, effective June 25, 2007.

[6] *Id.* at 56-57.

[7] *Id.* at 139-176, which provide, as follows:

ARTICLE IX
DISCIPLINARY GROUNDS/OFFENSES

Section 1. The following grounds for disciplinary action, suspension or expulsion of members as acts or deeds inimical to the interests and welfare of the Union and/or its officers and members. Any officer or member may be penalized for committing any following offenses by fines, suspension, or expulsion:

x x x x x x x x x

g. Non-payment of dues and other monetary obligation due the Union for a reasonable period of time:

1st Offense — Letter reprimand

2nd Offense — Suspension of right benefit privileges for 30 days

3rd Offense — Expulsion from Union membership and recommendation for termination of employment

[8] *Rollo*, p. 61.

[9] *Id.* at 188-189; Board Resolution No. 1, series of 2007, approved by respondents Borela, Cancino, Maga, Montemayor, Fernandez, Torres, Mancenido, Bolo, Quebral, Casañas, Pagulayan, Tierra, Cometa, Rendon, and two (2) others who are not respondents herein.

In a June 26, 2007 letter[10] to Borela, petitioner and his co-respondents took exception to the imposition and indicated their intention to appeal the same to the General Membership Assembly in accordance with Section 2 (g), Article V of the union's Constitution and By-Laws,[11] which grants them the right to appeal any arbitrary resolution, policy and rule promulgated by the Executive Board to the General Membership Assembly. In a June 28, 2007 reply,[12] Borela denied petitioner's appeal, stating that the prescribed period for appeal had expired.

Petitioner and his co-respondents sent another letter[13] on July 4, 2007, reiterating their arguments and demanding that the General Membership Assembly be convened in order that their appeal could be taken up. The letter was not acted upon.

Petitioner was once more charged with non-payment of union dues, and was required to attend an August 3, 2007 hearing.[14] Thereafter, petitioner was again penalized with a 30-day suspension through an August 21, 2007 letter[15] by Borela informing petitioner of the Executive Board's "unanimous approval"[16] of the grievance committee recommendation to

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[10] *Id.* at 62.

[11] Stating that:

ARTICLE V
DUTIES, RESPONSIBILITIES, RIGHTS, PRIVILEGES
AND OBLIGATIONS OF UNION MEMBERSHIP

x x x x x x x x x

Section 2. Rights and Privileges. — All Union members in good standing shall have the following rights and privileges:

x x x x x x x x x

g. To appeal to the General Membership Assembly any arbitrary resolution, policy and rule that may be promulgated by the Executive Board;

[12] *Rollo*, p. 63.

[13] *Id.* at 64.

[14] *Id.* at 66.

[15] *Id.* at 68.

[16] *Id.* at 202-203; Board Resolution No. 4, series of 2007, approved by respondents Borela, Tierra, Bolo, Casañas, Fernandez, Rendon, Montemayor,

suspend him effective August 24, 2007, to which he submitted a written reply,[17] invoking his right to appeal through the convening of the General Membership Assembly. However, the respondents did not act on petitioner's plea.

Meanwhile, MWEU scheduled an election of officers on September 14, 2007. Petitioner filed his certificate of candidacy for Vice-President, but he was disqualified for not being a member in good standing on account of his suspension.

On October 2, 2007, petitioner was charged with non-payment of union dues for the third time. He did not attend the scheduled hearing. This time, he was meted the penalty of expulsion from the union, per "unanimous approval"[18] of the members of the Executive Board. His pleas for an appeal to the General Membership Assembly were once more unheeded.[19]

In 2008, during the freedom period and negotiations for a new collective bargaining agreement (CBA) with MWC, petitioner joined another union, the Workers Association for Transparency, Empowerment and Reform, All-Filipino Workers Confederation (WATER-AFWC). He was elected union President. Other MWEU members were inclined to join WATER-AFWC, but MWEU director Torres threatened that they would not get benefits from the new CBA.[20]

The MWEU leadership submitted a proposed CBA which contained provisions to the effect that in the event of retrenchment, non-MWEU members shall be removed first, and

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Torres, Quebral, Pagulayan, Cancino, Maga, Cometa, Mancenido, and two (2) others who are not respondents herein.

[17] *Id.* at 69.

[18] *Id.* at 226-227; Board Resolution No. 7, series of 2007, approved by respondents Borela, Quebral, Tierra, Imana, Rendon, Yeban, Cancino, Torres, Montemayor, Mancenido, Mandilag, Fernandez, Buenaventura, Apilado, Maga, Barbero, Cometa, Bolo, and Manlapaz.

[19] *Id.* at 74-80, 226-227.

[20] *Id.* at 46.

that upon the signing of the CBA, only MWEU members shall receive a signing bonus.[21]

Ruling of the Labor Arbiter

On October 13, 2008, petitioner filed a Complaint[22] against respondents for unfair labor practices, damages, and attorney's fees before the National Labor Relations Commission (NLRC), Quezon City, docketed as NLRC Case No. NCR-10-14255-08. In his Position Paper and other written submissions,[23] petitioner accused the respondents of illegal termination from MWEU in connection with the events relative to his non-payment of union dues; unlawful interference, coercion, and violation of the rights of MWC employees to self-organization — in connection with the proposed CBA submitted by MWEU leadership, which petitioner claims contained provisions that discriminated against non-MWEU members. Petitioner prayed in his Supplemental Position Paper that respondents be held guilty of unfair labor practices and ordered to indemnify him moral damages in the amount of ₱100,000.00, exemplary damages amounting to ₱50,000.00, and 10% attorney's fees.

In their joint Position Paper and other pleadings,[24] respondents claimed that the Labor Arbiter had no jurisdiction over the dispute, which is intra-union in nature; that the Bureau of Labor Relations (BLR) was the proper venue, in accordance with Article 226 of the Labor Code[25] and Section 1, Rule XI of Department

[21] *Id.* at 47.

[22] *Id.* at 87-88.

[23] *Id.* at 89-96, 97-108, 231-238, 254-262.

[24] *Id.* at 109-137, 239-251, 272-277.

[25] ART. 226. Bureau of Labor Relations. — The Bureau of Labor Relations and the Labor Relations Divisions 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.

Order 40-03, series of 2003, of the DOLE;[26] and that they were not guilty of unfair labor practices, discrimination, coercion or restraint.

On May 29, 2009, Labor Arbiter Virginia T. Luyas-Azarraga issued her Decision[27] which decreed as follows:

The Bureau shall have fifteen (15) working days to act on labor cases before it, subject to extension by agreement of the parties. (Art. 226 and other specific provisions of the Labor Code have since been renumbered as a result of the passage of Republic Act No. 10151 [2011]).

[26] RULE XI — INTER/INTRA-UNION DISPUTES AND OTHER RELATED LABOR RELATIONS DISPUTES

SECTION 1. Coverage. — Inter/intra-union disputes shall include:

(a) cancellation of registration of a labor organization filed by its members or by another labor organization;

(b) conduct of election of union and workers association officers/ nullification of election of union and workers association officers;

(c) audit/accounts examination of union or workers association funds;

(d) deregistration of collective bargaining agreements;

(e) validity/invalidity of union affiliation or disaffiliation;

(f) validity/invalidity of acceptance/non-acceptance for union membership;

(g) validity/invalidity of impeachment/expulsion of union and workers association officers and members;

(h) validity/invalidity of voluntary recognition;

(i) opposition to application for union and CBA registration;

(j) violations of or disagreements over any provision in a union or workers association constitution and by-laws;

(k) disagreements over chartering or registration of labor organizations and collective bargaining agreements;

(l) violations of the rights and conditions of union or workers association membership;

(m) violations of the rights of legitimate labor organizations, except interpretation of collective bargaining agreements;

(n) such other disputes or conflicts involving the rights to self-organization, union membership and collective bargaining

(1) between and among legitimate labor organizations;

(2) between and among members of a union or workers association.

[27] *Rollo*, pp. 279-281.

Indeed the filing of the instant case is still premature. Section 5, Article X-Investigation Procedures and Appeal Process of the Union Constitution and By-Laws provides that:

> Section 5. Any dismissed and/or expelled member shall have the rights to appeal to the Executive Board within seven (7) days from the date of notice of the said dismissal and/or expulsion, which in [turn] shall be referred to the General Membership Assembly. In case of an appeal, a simple majority of the decision of the Executive Board is imperative. The same shall be approved/disapproved by a majority vote of the general membership assembly in a meeting duly called for the purpose.

On the basis of the foregoing, the parties shall exhaust first all the administrative remedies before resorting to compulsory arbitration. Thus, instant case is referred back to the Union for the General Assembly to act or deliberate complainant's appeal on the decision of the Executive Board.

WHEREFORE PREMISES CONSIDERED, instant case is referred back to the Union level for the General Assembly to act on complainant's appeal.

SO ORDERED.[28]

Ruling of the National Labor Relations Commission

Petitioner appealed before the NLRC, where the case was docketed as NLRC LAC No. 07-001913-09. On March 15, 2010, the NLRC issued its Decision,[29] declaring as follows:

Complainant[30] imputes serious error to the Labor Arbiter when she decided as follows:

a. Referring back the subject case to the Union level for the General Assembly to act on his appeal.

b. Not ruling that respondents are guilty of ULP as charged.

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[28] *Id.* at 280-281.

[29] *Id.* at 322-326; penned by Commissioner Isabel G. Panganiban-Ortiguerra and concurred in by Presiding Commissioner Benedicto R. Palacol and Commissioner Nieves Vivar-de Castro.

[30] Herein petitioner.

c. Not granting to complainant moral and exemplary damages and attorney's fees.

Complainant, in support of his charges, claims that respondents restrained or coerced him in the exercise of his right as a union member in violation of paragraph "a", Article 249 of the Labor Code,[31] particularly, in denying him the explanation as to whether there was observance of the proper procedure in the increase of the membership dues from ₱100.00 to ₱200.00 per month. Further, complainant avers that he was denied the right to appeal his suspension and expulsion in accordance with the provisions of the Union's Constitution and By-Laws. In addition, complainant claims that respondents attempted to cause the management to discriminate against the members of WATER-AFWC thru the proposed CBA.

Pertinent to the issue then on hand, the Labor Arbiter ordered that the case be referred back to the Union level for the General Assembly to act on complainant's appeal. Hence, these appeals.

After a careful look at all the documents submitted and a meticulous review of the facts, We find that this Commission lacks the jurisdictional competence to act on this case.

Article 217 of the Labor Code,[32] as amended, specifically enumerates the cases over which the Labor Arbiters and the

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[31] ART. 249. Unfair labor practices of labor organizations. — It shall be unfair labor practice for a labor organization, its officers, agents or representatives:

(a) To restrain or coerce employees in the exercise of their right to self-organization. However, a labor organization shall have the right to prescribe its own rules with respect to the acquisition or retention of membership;

(b) x x x

[32] ART. 217. Jurisdiction of the Labor Arbiters and the Commission. — (a) Except as otherwise provided under this Code, the Labor Arbiters shall have original and exclusive jurisdiction to hear and decide, within thirty (30) calendar days after the submission of the case by the parties for decision without extension, even in the absence of stenographic notes, the following cases involving all workers, whether agricultural or non-agricultural:

1. Unfair labor practice cases;

2. Termination disputes;

Commission have original and exclusive jurisdiction. A perusal of the record reveals that the causes of action invoked by complainant do not fall under any of the enumerations therein. Clearly, We have no jurisdiction over the same.

Moreover, pursuant to Section 1, Rule XI, as amended, DOLE Department Order No. 40-03 in particular, Item A, paragraphs (h) and (j) and Item B, paragraph (a)(3), respectively, provide:

"A. Inter-Intra-Union disputes shall include:

"(h) violation of or disagreements over any provision of the Constitution and By-Laws of a Union or workers' association.

"*(j) violation of the rights and conditions of membership in a Union or workers' association.*

"B. Other Labor Relations disputes, not otherwise covered by Article 217 of the Labor Code, shall include —

"3. a labor union and an individual who is not a member of said union."

Clearly, the above-mentioned disputes and conflict fall under the jurisdiction of the Bureau of Labor Relations, as these are inter/intra-union disputes.

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3. If accompanied with a claim for reinstatement, those cases that workers may file involving wages, rates of pay, hours of work and other terms and conditions of employment;

4. Claims for actual, moral, exemplary and other forms of damages arising from the employer-employee relations;

5. Cases arising from any violation of Article 264 of this Code, including questions involving the legality of strikes and lockouts; and

6. Except claims for Employees Compensation, Social Security, Medicare and maternity benefits, all other claims arising from employer-employee relations, including those of persons in domestic or household service, involving an amount exceeding five thousand pesos (₱5,000.00) regardless of whether accompanied with a claim for reinstatement.

(b) The Commission shall have exclusive appellate jurisdiction over all cases decided by Labor Arbiters.

(c) Cases arising from the interpretation or implementation of collective bargaining agreements and those arising from the interpretation or enforcement of company personnel policies shall be disposed of by the Labor Arbiter by referring the same to the grievance machinery and voluntary arbitration as may be provided in said agreements.

WHEREFORE, the decision of the Labor Arbiter a quo dated May 29, 2009 is hereby declared NULL and VOID for being rendered without jurisdiction and the instant complaint is DISMISSED.

SO ORDERED.[33]

Petitioner moved for reconsideration,[34] but in a June 16, 2010 Resolution,[35] the motion was denied and the NLRC sustained its Decision.

Ruling of the Court of Appeals

In a Petition for *Certiorari*[36] filed with the CA and docketed as CA-G.R. SP No. 115639, petitioner sought to reverse the NLRC Decision and be awarded his claim for damages and attorney's fees on account of respondents' unfair labor practices, arguing among others that his charge of unfair labor practices is cognizable by the Labor Arbiter; that the fact that the dispute is inter- or intra-union in nature cannot erase the fact that respondents were guilty of unfair labor practices in interfering and restraining him in the exercise of his right to self-organization as member of both MWEU and WATER-AFWC, and in discriminating against him and other members through the provisions of the proposed 2008 CBA which they drafted; that his failure to pay the increased union dues was proper since the approval of said increase was arrived at without observing the prescribed voting procedure laid down in the Labor Code; that he is entitled to an award of damages and attorney's fees as a result of respondents' illegal acts in discriminating against him; and that in ruling the way it did, the NLRC committed grave abuse of discretion.

On April 24, 2012, the CA issued the assailed Decision containing the following pronouncement:

The petition lacks merit.

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[33] *Rollo*, pp. 323-325.

[34] *Id.* at 327-337.

[35] *Id.* at 343-345.

[36] *Id.* at 346-369.

Petitioner's causes of action against MWEU are inter/intra-union disputes cognizable by the BLR whose functions and jurisdiction are largely confined to union matters, collective bargaining registry, and labor education. Section 1, Rule XI of Department Order (D.O.) No. 40-03, Series of 2003, of the Department of Labor and Employment enumerates instances of inter/intra-union disputes, *viz.*:

Section 1. Coverage. — Inter/intra-union disputes shall include:

x x x x x x x x x

(b) conduct of election of union and workers' association officers/ nullification of election of union and workers' association officers;

(c) audit/accounts examination of union or workers' association funds;

x x x x x x x x x

(g) validity/invalidity of impeachment/expulsion of union and workers' association officers and members;

x x x x x x x x x

(j) violations of or disagreements over any provision in a union or workers' association constitution and by-laws;

x x x x x x x x x

(l) violations of the rights and conditions of union or workers' association membership;

x x x x x x x x x

(n) such other disputes or conflicts involving the rights to self-organization, union membership and collective bargaining —

(1) between and among legitimate labor organizations;

(2) between and among members of a union or workers' association.

In brief, "Inter-Union Dispute" refers to any conflict between and among legitimate labor unions involving representation questions for purposes of collective bargaining or to any other conflict or dispute between legitimate labor unions. "Intra-Union Dispute" refers to any conflict between and among union members, including grievances arising from any violation of the rights and conditions of membership, violation of or disagreement over any provision of the union's

constitution and by-laws, or disputes arising from chartering or affiliation of union. On the other hand, the circumstances of unfair labor practices (ULP) of a labor organization are stated in Article 249 of the Labor Code, to wit:

> Article 249. Unfair labor practices of labor organizations. It shall be unlawful for labor organization, its officers, agents, or representatives to commit any of the following unfair labor practices:
>
> (a) To restrain or coerce employees in the exercise of their right to self-organization; Provided, That the labor organization shall have the right to prescribe its own rules with respect to the acquisition or retention of membership;
>
> (b) To cause or attempt to cause an employer to discriminate against an employee, including discrimination against an employee with respect to whom membership in such organization has been denied or terminated on any ground other than the usual terms and conditions under which membership or continuation of membership is made available to other members;
>
> x x x x x x x x x

Applying the aforementioned rules, We find that the issues arising from petitioner's right to information on the increased membership dues, right to appeal his suspension and expulsion according to CBL provisions, and right to vote and be voted on are essentially intra-union disputes; these involve violations of rights and conditions of union membership. But his claim that a director of MWEU warned that non-MWEU members would not receive CBA benefits is an inter-union dispute. It is more of an "interference" by a rival union to ensure the loyalty of its members and to persuade non-members to join their union. This is not an actionable wrong because interfering in the exercise of the right to organize is itself a function of self-organizing.[37] As long as it does not amount to restraint or coercion, a labor organization may interfere in the employees' right to self-organization.[38] Consequently, a determination of validity or illegality

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[37] Citing *Azucena, Jr., Cesario A., The Labor Code with Comments and Cases*, Vol. II, 2004 5th Edition, p. 256.

[38] *Id.*

of the alleged acts necessarily touches on union matters, not ULPs, and are outside the scope of the labor arbiter's jurisdiction.

As regards petitioner's other accusations, *i.e.*, discrimination in terms of meting out the penalty of expulsion against him alone, and attempt to cause the employer, MWC, to discriminate against non-MWEU members in terms of retrenchment or reduction of personnel, and signing bonus, while We may consider them as falling within the concept of ULP under Article 249(a) and (b), still, petitioner's complaint cannot prosper for lack of substantial evidence. Other than his bare allegation, petitioner offered no proof that MWEU did not penalize some union members who failed to pay the increased dues. On the proposed discriminatory CBA provisions, petitioner merely attached the pages containing the questioned provisions without bothering to reveal the MWEU representatives responsible for the said proposal. Article 249 mandates that "x x x only the officers, members of the governing boards, representatives or agents or members of labor associations or organizations *who have actually participated in, authorized or ratified unfair labor practices shall be held criminally liable*." Plain accusations against all MWEU officers, without specifying their actual participation, do not suffice. Thus, the ULP charges must necessarily fail.

In administrative and quasi-judicial proceedings, only substantial evidence is necessary to establish the case for or against a party. Substantial evidence is that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion. Petitioner failed to discharge the burden of proving, by substantial evidence, the allegations of ULP in his complaint. The NLRC, therefore, properly dismissed the case.

FOR THESE REASONS, the petition is DISMISSED.

SO ORDERED.[39]

Thus, the instant Petition.

Issue

In an August 28, 2013 Resolution,[40] this Court resolved to give due course to the Petition, which claims that the CA erred:

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[39] *Rollo*, pp. 50-54.

[40] *Id.* at 449-450.

A. IN DECLARING THAT THE PRESENCE OF INTER/ INTRA-UNION CONFLICTS NEGATES THE COMPLAINT FOR UNFAIR LABOR PRACTICES AGAINST A LABOR ORGANIZATION AND ITS OFFICERS, AND IN AFFIRMING THAT THE NLRC PROPERLY DISMISSED THE CASE FOR ALLEGED LACK OF JURISDICTION.

B. IN NOT RULING THAT RESPONDENTS ARE GUILTY OF UNFAIR LABOR PRACTICES UNDER ARTICLE 249(a) AND (b) OF THE LABOR CODE.

C. IN DECLARING THAT THE THREATS MADE BY A UNION OFFICER AGAINST MEMBERS OF A RIVAL UNION IS (sic) MERELY AN "INTERFERENCE" AND DO NOT AMOUNT TO "RESTRAINT" OR "COERCION".

D. IN DECLARING THAT PETITIONER FAILED TO PRESENT SUBSTANTIAL EVIDENCE IN PROVING RESPONDENTS' SPECIFIC ACTS OF UNFAIR LABOR PRACTICES.

E. IN NOT RULING THAT RESPONDENTS ARE SOLIDARILY LIABLE TO PETITIONER FOR MORAL AND EXEMPLARY DAMAGES, AND ATTORNEY'S FEES.[41]

Petitioner's Arguments

Praying that the assailed CA dispositions be set aside and that respondents be declared guilty of unfair labor practices under Article 249 (a) and (b) and adjudged liable for damages and attorney's fees as prayed for in his complaint, petitioner maintains in his Petition and Reply[42] that respondents are guilty of unfair labor practices which he clearly enumerated and laid out in his pleadings below; that these unfair labor practices committed by respondents fall within the jurisdiction of the Labor Arbiter; that the Labor Arbiter, the NLRC, and the CA failed to rule on his accusation of unfair labor practices and simply dismissed his complaint on the ground that his causes of action are intra- or inter-union in nature; that admittedly,

[41] *Id.* at 19.

[42] *Id.* at 440-447.

some of his causes of action involved intra- or inter-union disputes, but other acts of respondents constitute unfair labor practices; that he presented substantial evidence to prove that respondents are guilty of unfair labor practices by failing to observe the proper procedure in the imposition of the increased monthly union dues, and in unduly imposing the penalties of suspension and expulsion against him; that under the union's constitution and by-laws, he is given the right to appeal his suspension and expulsion to the general membership assembly; that in denying him his rights as a union member and expelling him, respondents are guilty of malice and evident bad faith; that respondents are equally guilty for violating and curtailing his rights to vote and be voted to a position within the union, and for discriminating against non-MWEU members; and that the totality of respondents' conduct shows that they are guilty of unfair labor practices.

Respondent's Arguments

In their joint Comment,[43] respondents maintain that petitioner raises issues of fact which are beyond the purview of a petition for review on *certiorari*; that the findings of fact of the CA are final and conclusive; that the Labor Arbiter, NLRC, and CA are one in declaring that there is no unfair labor practices committed against petitioner; that petitioner's other allegations fall within the jurisdiction of the BLR, as they refer to intra- or inter-union disputes between the parties; that the issues arising from petitioner's right to information on the increased dues, right to appeal his suspension and expulsion, and right to vote and be voted upon are essentially intra-union in nature; that his allegations regarding supposed coercion and restraint relative to benefits in the proposed CBA do not constitute an actionable wrong; that all of the acts questioned by petitioner are covered by Section 1, Rule XI of Department Order 40-03, series of 2003 as intra-/inter-union disputes which do not fall within the jurisdiction of the Labor Arbiter; that in not paying his union dues, petitioner is guilty of insubordination and deserved

[43] *Id.* at 403-435.

the penalty of expulsion; that petitioner failed to petition to convene the general assembly through the required signature of 30% of the union membership in good standing pursuant to Article VI, Section 2 (a) of MWEU's Constitution and By-Laws or by a petition of the majority of the general membership in good standing under Article VI, Section 3; and that for his failure to resort to said remedies, petitioner can no longer question his suspension or expulsion and avail of his right to appeal.

Our Ruling

The Court partly grants the Petition.

In labor cases, issues of fact are for the labor tribunals and the CA to resolve, as this Court is not a trier of facts. However, when the conclusion arrived at by them is erroneous in certain respects, and would result in injustice as to the parties, this Court must intervene to correct the error. While the Labor Arbiter, NLRC, and CA are one in their conclusion in this case, they erred in failing to resolve petitioner's charge of unfair labor practices against respondents.

It is true that some of petitioner's causes of action constitute intra-union cases cognizable by the BLR under Article 226 of the Labor Code.

> An intra-union dispute refers to any conflict between and among union members, including grievances arising from any violation of the rights and conditions of membership, violation of or disagreement over any provision of the union's constitution and by-laws, or disputes arising from chartering or disaffiliation of the union. Sections 1 and 2, Rule XI of Department Order No. 40-03, Series of 2003 of the DOLE enumerate the following circumstances as inter/intra-union disputes . . . .[44]

However, petitioner's charge of unfair labor practices falls within the *original* and *exclusive* jurisdiction of the Labor Arbiters, pursuant to Article 217 of the Labor Code. In addition,

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[44] *Employees Union of Bayer Phils. v. Bayer Philippines, Inc.*, 651 Phil. 190, 203 (2010), citing C.A. Azucena, Jr., Vol. II, *THE LABOR CODE WITH COMMENTS AND CASES*, 2004 ed., p. 111.

Article 247 of the same Code provides that "the civil aspects of all cases involving unfair labor practices, which may include claims for actual, moral, exemplary and other forms of damages, attorney's fees and other affirmative relief, shall be under the jurisdiction of the Labor Arbiters."

Unfair labor practices may be committed both by the employer under Article 248 and by labor organizations under Article 249 of the Labor Code,[45] which provides as follows:

ART. 249. Unfair labor practices of labor organizations. — It shall be unfair labor practice for a labor organization, its officers, agents or representatives:

(a) To restrain or coerce employees in the exercise of their right to self-organization. However, a labor organization shall have the right to prescribe its own rules with respect to the acquisition or retention of membership;

(b) To cause or attempt to cause an employer to discriminate against an employee, including discrimination against an employee with respect to whom membership in such organization has been denied or to terminate an employee on any ground other than the usual terms and conditions under which membership or continuation of membership is made available to other members;

(c) To violate the duty, or refuse to bargain collectively with the employer, provided it is the representative of the employees;

(d) To cause or attempt to cause an employer to pay or deliver or agree to pay or deliver any money or other things of value, in the nature of an exaction, for services which are not performed or not to be performed, including the demand for fee for union negotiations;

(e) To ask for or accept negotiation or attorney's fees from employers as part of the settlement of any issue in collective bargaining or any other dispute; or

(f) To violate a collective bargaining agreement.

The provisions of the preceding paragraph notwithstanding, only

[45] As earlier stated, provisions of the Labor Code, from Article 156 onward, have since been renumbered as a result of the passage of Republic Act No. 10151.

the officers, members of governing boards, representatives or agents or members of labor associations or organizations who have actually participated in, authorized or ratified unfair labor practices shall be held criminally liable. (As amended by Batas Pambansa Bilang 130, August 21, 1981).

Petitioner contends that respondents committed acts constituting unfair labor practices — which charge was particularly laid out in his pleadings, but that the Labor Arbiter, the NLRC, and the CA ignored it and simply dismissed his complaint on the ground that his causes of action were intra- or inter-union in nature. Specifically, petitioner claims that he was suspended and expelled from MWEU illegally as a result of the denial of his right to appeal his case to the general membership assembly in accordance with the union's constitution and by-laws. On the other hand, respondents counter that such charge is intra-union in nature, and that petitioner lost his right to appeal when he failed to petition to convene the general assembly through the required signature of 30% of the union membership in good standing pursuant to Article VI, Section 2 (a) of MWEU's Constitution and By-Laws or by a petition of the majority of the general membership in good standing under Article VI, Section 3.

Under Article VI, Section 2 (a) of MWEU's Constitution and By-Laws, the general membership assembly has the power to "review revise modify affirm or repeal [sic] resolution and decision of the Executive Board and/or committees upon petition of thirty percent (30%) of the Union in good standing,"[46] and under Section 2 (d), to "revise, modify, affirm or reverse all expulsion cases."[47] Under Section 3 of the same Article, "[t]he decision of the Executive Board may be appealed to the General Membership which by a simple majority vote reverse the decision of said body. If the general Assembly is not in session the decision of the Executive Board may be reversed by a petition of the

[46] *Rollo*, p. 144.

[47] *Id.*

[48] *Id.*

majority of the general membership in good standing."[48] And, in Article X, Section 5, "[a]ny dismissed and/or expelled member shall have the right to appeal to the Executive Board within seven days from notice of said dismissal and/or expulsion which, in [turn] shall be referred to the General membership assembly. In case of an appeal, a simple majority of the decision of the Executive Board is imperative. The same shall be approved/disapproved by a majority vote of the general membership assembly in a meeting duly called for the purpose."[49]

In regard to suspension of a union member, MWEU's Constitution and By-Laws provides under Article X, Section 4 thereof that "[a]ny suspended member shall have the right to appeal within three (3) working days from the date of notice of said suspension. In case of an appeal a simple majority of vote of the Executive Board shall be necessary to nullify the suspension."

Thus, when an MWEU member is suspended, he is given the right to appeal such suspension within three working days from the date of notice of said suspension, which appeal the MWEU Executive Board is obligated to act upon by a simple majority vote. When the penalty imposed is expulsion, the expelled member is given seven days from notice of said dismissal and/or expulsion to appeal to the Executive Board, which is required to act by a simple majority vote of its members. The Board's decision shall then be approved/disapproved by a majority vote of the general membership assembly in a meeting duly called for the purpose.

The documentary evidence is clear that when petitioner received Borela's August 21, 2007 letter informing him of the Executive Board's unanimous approval of the grievance committee recommendation to suspend him for the second time effective August 24, 2007, he immediately and timely filed a written appeal. However, the Executive Board — then consisting of respondents Borela, Tierra, Bolo, Casañas, Fernandez, Rendon, Montemayor, Torres, Quebral, Pagulayan, Cancino, Maga,

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[49] *Id.* at 158.

Cometa, Mancenido, and two others who are not respondents herein — did not act thereon. Then again, when petitioner was charged for the third time and meted the penalty of expulsion from MWEU by the unanimous vote of the Executive Board, his timely appeal was again not acted upon by said board — this time consisting of respondents Borela, Quebral, Tierra, Imana, Rendon, Yeban, Cancino, Torres, Montemayor, Mancenido, Mandilag, Fernandez, Buenaventura, Apilado, Maga, Barbero, Cometa, Bolo, and Manlapaz.

Thus, contrary to respondents' argument that petitioner lost his right to appeal when he failed to petition to convene the general assembly through the required signature of 30% of the union membership in good standing pursuant to Article VI, Section 2 (a) of MWEU's Constitution and By-Laws or by a petition of the majority of the general membership in good standing under Article VI, Section 3, this Court finds that petitioner was illegally suspended for the second time and thereafter unlawfully expelled from MWEU due to respondents' failure to act on his written appeals. The required petition to convene the general assembly through the required signature of 30% (under Article VI, Section 2 [a]) or majority (under Article VI, Section 3) of the union membership does not apply in petitioner's case; the Executive Board must first act on his two appeals before the matter could properly be referred to the general membership. Because respondents did not act on his two appeals, petitioner was unceremoniously suspended, disqualified and deprived of his right to run for the position of MWEU Vice-President in the September 14, 2007 election of officers, expelled from MWEU, and forced to join another union, WATER-AFWC. For these, respondents are guilty of unfair labor practices under Article 249 (a) and (b) — that is, violation of petitioner's right to self-organization, unlawful discrimination, and illegal termination of his union membership — which case falls within the original and exclusive jurisdiction of the Labor Arbiters, in accordance with Article 217 of the Labor Code.

The primary concept of unfair labor practices is stated in

Article 247 of the Labor Code, which states:

> Article 247. Concept of unfair labor practice and procedure for prosecution thereof. — Unfair labor practices violate the constitutional right of workers and employees to self-organization, are inimical to the legitimate interests of both labor and management, including their right to bargain collectively and otherwise deal with each other in an atmosphere of freedom and mutual respect, disrupt industrial peace and hinder the promotion of healthy and stable labor-management relations.

"In essence, [unfair labor practice] relates to the commission of acts that transgress the workers' right to organize."[50] "[A]ll the prohibited acts constituting unfair labor practice in essence relate to the workers' right to self-organization."[51] "[T]he term unfair labor practice refers to that gamut of offenses defined in the Labor Code which, at their core, violates the constitutional right of workers and employees to self-organization."[52]

Guaranteed to all employees or workers is the 'right to self-organization and to form, join, or assist labor organizations of their own choosing for purposes of collective bargaining.' This is made plain by no less than three provisions of the Labor Code of the Philippines. Article 243 of the Code provides as follows:

> ART. 243. Coverage and employees' right to self-organization. — All persons employed in commercial, industrial and agricultural enterprises and in religious, charitable, medical, or educational institutions whether operating for profit or not, shall have the right to self-organization and to form, join, or assist labor organizations of their own choosing for purposes or collective bargaining. Ambulant, intermittent and itinerant workers, self-employed people, rural workers and those without

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[50] *Baptista v. Villanueva*, G.R. No. 194709, July 31, 2013, 703 SCRA 48, 57.

[51] *Culili v. Eastern Telecommunications Philippines, Inc.*, 657 Phil. 342, 368 (2011).

[52] *Pepsi-Cola Products Philippines, Inc. v. Molon*, G.R. No. 175002, February 18, 2013, 691 SCRA 113, 133.

any definite employers may form labor organizations for their mutual aid and protection.

Article 248 (a) declares it to be an unfair labor practice for an employer, among others, to 'interfere with, restrain or coerce employees in the exercise of their right to self-organization.' Similarly, Article 249 (a) makes it an unfair labor practice for a labor organization to 'restrain or coerce employees in the exercise of their rights to self-organization . . .'

x x x x x x x x x

The right of self-organization includes the right to organize or affiliate with a labor union or determine which of two or more unions in an establishment to join, and to engage in concerted activities with co-workers for purposes of collective bargaining through representatives of their own choosing, or for their mutual aid and protection, *i.e.*, the protection, promotion, or enhancement of their rights and interests.[53]

As members of the governing board of MWEU, respondents are presumed to know, observe, and apply the union's constitution and by-laws. Thus, their repeated violations thereof and their disregard of petitioner's rights as a union member — their inaction on his two appeals which resulted in his suspension, disqualification from running as MWEU officer, and subsequent expulsion without being accorded the full benefits of due process — connote willfulness and bad faith, a gross disregard of his rights thus causing untold suffering, oppression and, ultimately, ostracism from MWEU. "Bad faith implies breach of faith and willful failure to respond to plain and well understood obligation." [54] This warrants an award of moral damages in the amount of ₱100,000.00. Moreover, the Civil Code provides:

Art. 32. Any public officer or employee, or any private individual, who directly or indirectly obstructs, defeats, violates or in any manner impedes or impairs any of the following rights and liberties of another

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[53] *Reyes v. Trajano*, G.R. No. 84433, June 2, 1992, 209 SCRA 484, 488-489.

[54] *Sanchez v. Republic*, 618 Phil. 228, 236 (2009).

person shall be liable to the latter for damages:

x x x x x x x x x

(12) The right to become a member of associations or societies for purposes not contrary to law;

In *Vital-Gozon v. Court of Appeals*,[55] this Court declared, as follows:

> Moral damages include physical suffering, mental anguish, fright, serious anxiety, besmirched reputation, wounded feelings, moral shock, social humiliation, and similar injury. They may be recovered if they are the proximate result of the defendant's wrongful act or omission. The instances when moral damages may be recovered are, *inter alia*, 'acts and actions referred to in Articles 21, 26, 27, 28, 29, 30, 32, 34 and 35 of the Civil Code,' which, in turn, are found in the Chapter on Human Relations of the Preliminary Title of the Civil Code. x x x

Under the circumstances, an award of exemplary damages in the amount of ₱50,000.00, as prayed for, is likewise proper. "Exemplary damages are designed to permit the courts to mould behavior that has socially deleterious consequences, and their imposition is required by public policy to suppress the wanton acts of the offender."[56] This should prevent respondents from repeating their mistakes, which proved costly for petitioner.

> Under Article 2229 of the Civil Code, '[e]xemplary or corrective damages are imposed, by way of example or correction for the public good, in addition to the moral, temperate, liquidated or compensatory damages.' As this court has stated in the past: 'Exemplary damages are designed by our civil law to permit the courts to reshape behaviour that is socially deleterious in its consequence by creating negative incentives or deterrents against such behaviour.'[57]

Finally, petitioner is also entitled to attorney's fees equivalent to 10 *per cent* (10%) of the total award. The unjustified acts of respondents clearly compelled him to institute an action primarily to vindicate his rights and protect his interest. Indeed, when an

[55] 354 Phil. 128, 151 (1998).

[56] *U-Bix Corporation v. Bandiola*, 552 Phil. 633, 651 (2007).

[57] *Montinola v. Philippine Airlines*, G.R. No. 198656, September 8, 2014, 734 SCRA 439, 464.

employee is forced to litigate and incur expenses to protect his rights and interest, he is entitled to an award of attorney's fees. [58]

WHEREFORE, the Petition is **PARTIALLY GRANTED.** The assailed April 24, 2012 Decision of the Court of Appeals in CA-G.R. SP No. 115639 is hereby **MODIFIED**, in that all of the respondents — except for Carlos Villa, Ric Briones, and Chito Bernardo — are declared guilty of unfair labor practices and **ORDERED TO INDEMNIFY** petitioner Allan M. Mendoza the amounts of ₱100,000.00 as and by way of moral damages, ₱50,000.00 as exemplary damages, and attorney's fees equivalent to 10 *per cent* (10%) of the total award.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 205472. January 25, 2016]

AMADO I. SARAUM,[1] *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA 9165); ILLEGAL POSSESSION OF PARAPHERNALIA FOR DANGEROUS DRUGS; ELEMENTS.— The elements of illegal possession of

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[58] *Tangga-an v. Philippine Transmarine Carriers, Inc.,* G.R. No. 180636, March 13, 2013, 693 SCRA 340, 356, citing *Kaisahan at Kapatiran ng mga Manggagawa at Kawani sa MWC-East Zone Union v. Manila Water Company, Inc.*, 676 Phil. 262 (2011).

[1] *Rollo*, pp. 73-74, 84.

equipment, instrument, apparatus and other paraphernalia for dangerous drugs under Section 12, Article II of R.A. No. 9165 are: (1) possession or control by the accused of any equipment, apparatus or other paraphernalia fit or intended for smoking, consuming, administering, injecting, ingesting, or introducing any dangerous drug into the body; and (2) such possession is not authorized by law.

2. REMEDIAL LAW; CRIMINAL PROCEDURE; ARREST; LAWFUL ARREST WITHOUT WARRANT (ARREST *IN FLAGRANTE DELICTO)*; REQUISITES.— Saraum was arrested during the commission of a crime, which instance does not require a warrant in accordance with Section 5 (a), Rule 113 of the Revised Rules on Criminal Procedure. In arrest *in flagrante delicto,* the accused is apprehended at the very moment he is committing or attempting to commit or has just committed an offense in the presence of the arresting officer. To constitute a valid *in flagrante delicto* arrest, two requisites must concur: (1) the person to be arrested must execute an overt act indicating that he has just committed, is actually committing, or is attempting to commit a crime; and (2) such overt act is done in the presence or within the view of the arresting officer.

3. ID.; ID.; ID.; ANY OBJECTION THERETO DEEMED WAIVED WHEN NOT RAISED BEFORE ENTERING A PLEA.— "The established rule is that an accused may be estopped from assailing the legality of his arrest if he failed to move for the quashing of the Information against him before his arraignment. Any objection involving the arrest or the procedure in the court's acquisition of jurisdiction over the person of an accused must be made *before he enters his plea*; otherwise the objection is deemed waived."

4. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA 9165); CHAIN OF CUSTODY RULE; FAILURE TO STRICTLY COMPLY DOES NOT NECESSARILY RENDER THE ARREST ILLEGAL OR THE ITEMS SEIZED INADMISSIBLE; THE MOST IMPORTANT FACTOR IS THE PRESERVATION OF THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED ITEMS.— In ascertaining the identity of the illegal drugs and/or drug paraphernalia presented in court as the ones actually seized from the accused, the prosecution must show

that: (a) the prescribed procedure under Section 21(1), Article II of R.A. No. 9165 has been complied with or falls within the saving clause provided in Section 21(a), Article II of the Implementing Rules and Regulations (IRR) of R.A. No. 9165; **and** (b) there was an unbroken link (*not perfect link*) in the chain of custody with respect to the confiscated items. x x x While the procedure on the chain of custody should be perfect and unbroken, in reality, it is almost always impossible to obtain an unbroken chain. Thus, failure to strictly comply with Section 21(1), Article II of R.A. No. 9165 does not necessarily render an accused person's arrest illegal or the items seized or confiscated from him inadmissible. x x x The most important factor is the preservation of the integrity and evidentiary value of the seized items.

5. REMEDIAL LAW; EVIDENCE; PRESUMPTIONS; REGULAR PERFORMANCE OF OFFICIAL DUTIES; THE TESTIMONIES OF POLICE OFFICERS IN A BUY-BUST OPERATION ARE GENERALLY ACCORDED FULL FAITH AND CREDIT AND PREVAILS AS AGAINST DEFENSES OF DENIAL AND *ALIBI*.— Certainly, the testimonies of the police officers who conducted the buy-bust operation are generally accorded full faith and credit in view of the presumption of regularity in the performance of official duties and especially so in the absence of ill-motive that could be attributed to them. The defense failed to show any odious intent on the part of the police officers to impute such a serious crime that would put in jeopardy the life and liberty of an innocent person. Saraum's mere denial cannot prevail over the positive and categorical identification and declarations of the police officers. The defense of denial, frame-up or extortion, like *alibi*, has been invariably viewed by the courts with disfavor for it can easily be concocted and is a common and standard defense ploy in most cases involving violation of the Dangerous Drugs Act.

6. ID.; ID.; CREDIBILITY OF WITNESSES; FINDINGS AND CONCLUSION OF THE TRIAL COURT SUSTAINED BY THE COURT OF APPEALS, RESPECTED.— Settled is the rule that, unless some facts or circumstances of weight and influence have been overlooked or the significance of which has been misinterpreted, the findings and conclusion of the trial court on the credibility of witnesses are entitled to great

respect and will not be disturbed because it has the advantage of hearing the witnesses and observing their deportment and manner of testifying. The rule finds an even more stringent application where said findings are sustained by the CA as in this case.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
Office of the Solicitor General for respondent.

D E C I S I O N

PERALTA, *J.*:

This petition for review on *certiorari* under Rule 45 of the Rules of Court (*Rules*) seeks to reverse the Decision[2] dated September 8, 2011 and Resolution[3] dated December 19, 2012 of the Court of Appeals (*CA*) in CA-G.R. CEB CR No. 01199, which affirmed the judgment of conviction against petitioner Amado I. Saraum (*Saraum*) rendered by the Regional Trial Court (*RTC*), Branch 57, Cebu City, in Criminal Case No. CBU-77737.

Saraum was charged with violation of Section 12, Article II (*Possession of Paraphernalia for Dangerous Drugs*) of Republic Act *(R.A.)* No. 9165, or the *Comprehensive Dangerous Drugs Act of 2002*. The accusatory portion of the Information reads:

That on or about the 17th day of August, 2006, at about 12:45 A.M., in the City of Cebu, Philippines and within the jurisdiction of this Honorable Court, the said accused, with deliberate intent, and without being authorized by law, did then and there have in his possession the following:

1 = One (1) lighter
2 = One (1) rolled tissue paper

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[2] Penned by Associate Justice Eduardo B. Peralta, Jr., with Associate Justices Pampio A. Abarintos and Gabriel T. Ingles concurring, *rollo*, pp. 53-59.

[3] *Rollo*, pp. 67-68.

3 = One (1) aluminum tin foil

which are instruments and/or equipments (*sic*) fit or intended for smoking, consuming, administering, ingesting, or introducing any dangerous drug into the body.

CONTRARY TO LAW.[4]

In his arraignment, Saraum, with the assistance of a counsel, pleaded not guilty to the offense charged.[5] Trial ensued. Meantime, Saraum was released on bail.[6]

PO3 Jeffrey Larrobis and PO1 Romeo Jumalon testified for the prosecution while the defense presented no witness other than Saraum.

According to the prosecution, on August 17, 2006, a telephone call was received by PO3 Larrobis regarding the illegal drug activities in Sitio Camansi, Barangay Lorega, Cebu City. A buy-bust team was then formed composed of PO3 Larrobis, PO1 Jumalon, PO2 Nathaniel Sta. Ana, PO1 Roy Cabahug, and PO1 Julius Aniñon against a certain "Pata." PO2 Sta. Ana was designated as the *poseur*-buyer accompanied by the informant, PO1 Jumalon as the back-up of PO2 Sta. Ana, and the rest of the team as the perimeter security. PO1 Aniñon coordinated with the Philippine Drug Enforcement Agency (*PDEA*) regarding the operation. After preparing all the necessary documents, such as the pre-operation report and submitting the same to the PDEA, the team proceeded to the subject area.

During the operation, "Pata" eluded arrest as he tried to run towards his shanty. Inside the house, which was divided with a curtain as partition, the buy-bust team also saw Saraum and Peter Esperanza, who were holding drug paraphernalia apparently in preparation to have a "shabu" pot session. They recovered from Saraum's possession a lighter, rolled tissue paper, and aluminum tin foil (*tooter*). PO3 Larrobis confiscated the items,

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[4] Records, p. 1.

[5] *Id.* at 22.

[6] *Id.* at 19.

placed them in the plastic pack of misua wrapper, and made initial markings ("A" for Saraum and "P" for Esperanza). At the police station, PO3 Larrobis marked as "AIS-08-17-2006" the paraphernalia recovered from Saraum. After the case was filed, the subject items were turned over to the property custodian of the Office of City Prosecutor.

By way of defense, Saraum denied the commission of the alleged offense. He testified that on the date and time in question, he was passing by Lorega Cemetery on his way to the house of his parents-in-law when he was held by men with firearms. They were already with "Antik" and "Pata," both of whom were his neighbors. Believing that he had not committed anything illegal, he resisted the arrest. He learned of the criminal charge only when he was brought to the court.

On May 5, 2009, the RTC rendered its Decision,[7] the dispositive portion of which states:

> WHEREFORE, the Court finds the accused guilty beyond reasonable doubt of the crime of violation of Section 12, Article II of R.A. 9165 and he is hereby sentenced to suffer the penalty of six (6) months and one (1) day to two (2) years and to pay a fine of Php20,000.00 with subsidiary imprisonment in case of insolvency.
>
> The drug paraphernalias (*sic*) are ordered forfeited in favor of the government.
>
> SO ORDERED.[8]

On appeal, the CA sustained the judgment of conviction; hence, this petition.

We deny.

Considering that Saraum failed to show any arbitrariness, palpable error, or capriciousness on the findings of fact of the trial and appellate courts, such findings deserve great weight and are deemed conclusive and binding.[9] Besides, a review of

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[7] *Rollo*, pp. 34-36.

[8] *Id.* at 35-36.

[9] See *People v. Bontuyan*, G.R. No. 206912, September 10, 2014, 735 SCRA 49, 59-60.

the records reveals that the CA did not err in affirming his conviction.

The elements of illegal possession of equipment, instrument, apparatus and other paraphernalia for dangerous drugs under Section 12, Article II of R.A. No. 9165 are: (1) possession or control by the accused of any equipment, apparatus or other paraphernalia fit or intended for smoking, consuming, administering, injecting, ingesting, or introducing any dangerous drug into the body; and (2) such possession is not authorized by law.[10] In this case, the prosecution has convincingly established that Saraum was in possession of drug paraphernalia, particularly aluminum tin foil, rolled tissue paper, and lighter, all of which were offered and admitted in evidence.

Saraum was arrested during the commission of a crime, which instance does not require a warrant in accordance with Section 5 (a), Rule 113 of the Revised Rules on Criminal Procedure.[11] In arrest *in flagrante delicto*, the accused is apprehended at the very moment he is committing or attempting to commit or has just committed an offense in the presence of the arresting officer. To constitute a valid *in flagrante delicto* arrest, two requisites must concur: (1) the person to be arrested must execute an overt act indicating that he has just committed, is actually committing, or is attempting to commit a crime; and (2) such overt act is

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[10] *People v. Mariano*, 698 Phil. 772, 785 (2012), as cited in *Avila v. People*, G.R. No. 195934, November 27, 2013 (Third Division Resolution) and *People v. Saulo*, G.R. No. 201450, April 7, 2014 (First Division Resolution).

[11] Sec. 5. *Arrest without warrant; when lawful.* — A peace officer or a private person may, without a warrant, arrest a person:

a) When, in his presence, the person to be arrested has committed, is actually committing, or is attempting to commit an offense;

b) When an offense has just been committed, and he has probable cause to believe based on personal knowledge of facts or circumstances that the person to be arrested has committed it; and

c) When the person to be arrested is a prisoner who has escaped from a penal establishment or place where he is serving final judgment or is temporarily confined while his case is pending, or has escaped while being transferred from one confinement to another.

done in the presence or within the view of the arresting officer.[12]

Here, the Court is unconvinced with Saraum's statement that he was not committing a crime at the time of his arrest. PO3 Larrobis described in detail how they were able to apprehend him, who was then holding a disposable lighter in his right hand and a tin foil and a rolled tissue paper in his left hand,[13] while they were in the course of arresting somebody. The case is clearly one of hot pursuit of "Pata," who, in eluding arrest, entered the shanty where Saraum and Esperanza were incidentally caught in possession of the illegal items. Saraum did not proffer any satisfactory explanation with regard to his presence at the vicinity of the buy-bust operation and his possession of the seized items that he claims to have "countless, lawful uses." On the contrary, the prosecution witnesses have adequately explained the respective uses of the items to prove that they were indeed drug paraphernalia.[14] There is, thus, no necessity to make a laboratory examination and finding as to the presence or absence of methamphetamine hydrochloride or any illegal substances on said items since possession itself is the punishable act.

The valid warrantless arrest gave the officers the right to search the shanty for objects relating to the crime and seize the drug paraphernalia they found. In the course of their lawful intrusion, they inadvertently saw the various drug paraphernalia. As these items were plainly visible, the police officers were justified in seizing them. Considering that Saraum's arrest was legal, the search and seizure that resulted from it were likewise lawful. The various drug paraphernalia that the police officers found and seized in the shanty are, therefore, admissible in evidence for having proceeded from a valid search and seizure. Since the confiscated drug paraphernalia are the very *corpus delicti* of the crime charged, the Court has no choice but to sustain the judgment of conviction.

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[12] *Ambre v. People*, 692 Phil. 681, 694 (2012) and *Zalameda v. People*, 614 Phil. 710, 729 (2009).

[13] TSN, July 9, 2008, pp. 15-16.

[14] *Id.* at 9; TSN, February 27, 2008, pp. 17-18, 20-23.

Even if We consider the arrest as invalid, Saraum is deemed to have waived any objection thereto when he did not raise the issue before entering his plea. "The established rule is that an accused may be estopped from assailing the legality of his arrest if he failed to move for the quashing of the Information against him before his arraignment. Any objection involving the arrest or the procedure in the court's acquisition of jurisdiction over the person of an accused must be made *before he enters his plea*; otherwise the objection is deemed waived."[15] In this case, counsel for Saraum manifested its objection to the admission of the seized drug paraphernalia, invoking illegal arrest and search, only during the formal offer of evidence by the prosecution.[16]

In ascertaining the identity of the illegal drugs and/or drug paraphernalia presented in court as the ones actually seized from the accused, the prosecution must show that: (a) the prescribed procedure under Section 21 (1), Article II of R.A. No. 9165 has been complied with or falls within ***the*** saving clause provided in Section 21 (a), Article II of the Implementing Rules and Regulations (IRR) of R.A. No. 9165;[17] ***and*** (b) there

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[15] *Zalameda v. People, supra* note 12, at 729.

[16] TSN, July 9, 2008, p. 22.

[17] The requirements are imposed by Section 21, paragraph 1, Article II of Republic Act No. 9165, whose pertinent portion reads as follows:

Section 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;

x x x x x x x x x

was an unbroken link (*not perfect link*) in the chain of custody with respect to the confiscated items.[18]

Although Section 21 (1) of R.A. No. 9165 mandates that the apprehending team must immediately conduct a physical inventory of the seized items and photograph them, non-compliance therewith is not fatal as long as there is a justifiable ground and as long as the integrity and the evidentiary value of the confiscated/seized items are properly preserved by the apprehending team.[19] While nowhere in the prosecution evidence show the "justifiable ground" which may excuse the police operatives involved in the buy-bust operation from making the physical inventory and taking a photograph of the drug paraphernalia confiscated and/or seized, such omission shall not render Saraum's arrest illegal or the items seized/confiscated from him as inadmissible in evidence. Said "justifiable ground" will remain unknown in the light of the apparent failure of Saraum to specifically challenge the custody and safekeeping or the

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To implement the requirements of Republic Act No. 9165, Section 21 (a), Article II of the IRR relevantly states:

x x x x x x x x x

(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;

x x x (See *People v. Bartolome*, G.R. No. 191726, February 6, 2013, 690 SCRA 159, 175-176).

[18] *People v. Alivio, et al.*, 664 Phil. 565, 576-577 (2011).

[19] *People v. Campomanes, et al.*, 641 Phil. 610, 622 (2010).

issue of disposition and preservation of the subject drug paraphernalia before the trial court. He cannot be allowed too late in the day to question the police officers' alleged non-compliance with Section 21 for the first time on appeal.[20]

The chain of custody rule requires the identification of the persons who handled the confiscated items for the purpose of duly monitoring the authorized movements of the illegal drugs and/or drug paraphernalia from the time they were seized from the accused until the time they are presented in court.[21] Section 1(b) of Dangerous Drugs Board Regulation No. 1, Series of 2002, implementing R.A. No. 9165, defines chain of custody as follows:

> Chain of Custody means the duly recorded authorized movements and custody of seized drugs or controlled chemicals or plant sources of dangerous drugs or laboratory equipment of each stage, from the time of seizure/confiscation to receipt in the forensic laboratory to safekeeping to presentation in court for destruction. 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 *Mallillin v. People*,[22] the Court discussed how the chain of custody of seized items should be established, thus:

> As a method of authenticating evidence, the chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. It would include testimony about every link in the chain, from the moment the item was picked up to the time it is offered into evidence, in such a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition

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[20] *Id.* at 623.

[21] *People v. Alivio, et al., supra* note 18, at 577-578.

[22] 576 Phil. 576 (2008).

in which it was delivered to the next link in the chain. These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same.[23]

While the procedure on the chain of custody should be perfect and unbroken, in reality, it is almost always impossible to obtain an unbroken chain.[24] Thus, failure to strictly comply with Section 21 (1), Article II of R.A. No. 9165 does not necessarily render an accused person's arrest illegal or the items seized or confiscated from him inadmissible.[25]

> x x x Under Section 3 of Rule 128 of the Rules of Court, evidence is admissible when it is relevant to the issue and is *not excluded by the law or these rules*. For evidence to be inadmissible, there should be a law or rule which forbids its reception. If there is no such law or rule, the evidence must be admitted subject only to the evidentiary weight that will be accorded it by the courts. x x x
>
> We do not find any provision or statement in said law or in any rule that will bring about the non-admissibility of the confiscated and/or seized drugs due to non-compliance with Section 21 of Republic Act No. 9165. The issue therefore, if there is non-compliance with said section, is not of admissibility, but of weight — evidentiary merit or probative value — to be given the evidence. The weight to be given by the courts on said evidence depends on the circumstances obtaining in each case.[26]

The most important factor is the preservation of the integrity and evidentiary value of the seized items.[27] In this case, the prosecution was able to demonstrate that the integrity and evidentiary value of the confiscated drug paraphernalia had not been compromised because it established the crucial link in the chain of custody of the seized items from the time they

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[23] *Mallillin v. People, supra*, at 587.

[24] *Ambre v. People, supra* note 12, at 695.

[25] *Zalameda v. People, supra* note 12, at 741.

[26] *Id.* at 741-742.

[27] *Id.* at 741; and *Ambre v. People, supra* note 12, at 695.

were first discovered until they were brought to the court for examination. Even though the prosecution failed to submit in evidence the physical inventory and photograph of the drug paraphernalia, this will not render Saraum's arrest illegal or the items seized from him inadmissible. There is substantial compliance by the police as to the required procedure on the custody and control of the confiscated items. The succession of events established by evidence and the overall handling of the seized items by specified individuals all show that the evidence seized were the same evidence subsequently identified and testified to in open court.

Certainly, the testimonies of the police officers who conducted the buy-bust operation are generally accorded full faith and credit in view of the presumption of regularity in the performance of official duties and especially so in the absence of ill-motive that could be attributed to them.[28] The defense failed to show any odious intent on the part of the police officers to impute such a serious crime that would put in jeopardy the life and liberty of an innocent person.[29] Saraum's mere denial cannot prevail over the positive and categorical identification and declarations of the police officers. The defense of denial, frame-up or extortion, like *alibi*, has been invariably viewed by the courts with disfavor for it can easily be concocted and is a common and standard defense ploy in most cases involving violation of the Dangerous Drugs Act.[30] As evidence that is both negative and self-serving, this defense cannot attain more credibility than the testimonies of prosecution witnesses who testify clearly, providing thereby positive evidence on the various aspects of the crime committed.[31] To merit consideration, it has to be substantiated by strong, clear and convincing evidence,

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[28] See *People v. Posada, et al*., 684 Phil. 20, 34 (2012).

[29] See *People v. Bontuyan, supra* note 9, at 64.

[30] *People v. Mariano, supra* note 10, at 785; *Ambre v. People, supra* note 12, at 697; *People v. Villahermosa*, 665 Phil. 399, 418 (2011); and *Zalameda v. People, supra* note 12, at 733.

[31] *Zalameda v. People, supra* note 12, at 733.

which Saraum failed to do for presenting no corroborative evidence.[32]

Settled is the rule that, unless some facts or circumstances of weight and influence have been overlooked or the significance of which has been misinterpreted, the findings and conclusion of the trial court on the credibility of witnesses are entitled to great respect and will not be disturbed because it has the advantage of hearing the witnesses and observing their deportment and manner of testifying.[33] The rule finds an even more stringent application where said findings are sustained by the CA as in this case.[34] In this case, the quantum of evidence necessary to prove Saraum's guilt beyond reasonable doubt had been sufficiently met since the prosecution stood on its own strength and did not rely on the weakness of the defense. The prosecution was able to overcome the constitutional right of the accused to be presumed innocent until proven guilty.

WHEREFORE, premises considered, the petition is **DENIED.** The Decision dated September 8, 2011 and Resolution dated December 19, 2012 of the Court of Appeals in CA-G.R. CEB CR No. 01199, which sustained the judgment of conviction rendered by the Regional Trial Court, Branch 57, Cebu City, in Criminal Case No. CBU-77737, is **AFFIRMED.**

SO ORDERED.

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

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[32] *Id.*; *People v. Mariano, supra* note 10; *People v. Villahermosa, supra* note 30; and *People v. Saulo, supra* note 10.

[33] *People v. Villahermosa, supra* note 30, at 420; *People v. Campomanes, et al., supra*; note 19, at 621; and *People v. Canaya*, G.R. No. 212173, February 25, 2015 (Third Division Resolution).

[34] *People v. Villahermosa, supra* note 30, at 420.

[*] Designated Additional Member in lieu of Associate Justice Francis H. Jardeleza, per Raffle dated October 13, 2014.

SECOND DIVISION

[G.R. No. 213607. January 25, 2016]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **GLEN PIAD y BORI, RENATO VILLAROSA *y* PLATINO and NILO DAVIS *y* ARTIGA,** *accused-appellants.*

SYLLABUS

1. CRIMINAL LAW; DANGEROUS DRUGS ACT; ILLEGAL POSSESSION OF DANGEROUS DRUGS AND DRUG PARAPHERNALIA DURING A PARTY; PRESENT AS THERE WAS A PROXIMATE COMPANY OF AT LEAST TWO PERSONS WITHOUT ANY LEGAL AUTHORITY TO POSSESS THE ILLICIT ITEMS.— With respect to the crime of illegal possession of dangerous drugs during a party and the crime of illegal possession of drug paraphernalia during a party, the prosecution established that after the arrest of Piad, the team found Villarosa, Carbo and Davis sitting on the floor and surrounded by one (1) heat-sealed sachet and two (2) unsealed sachets. A laboratory report showed that these sachets contained a total of 0.03 gram of *shabu.* The said persons were also found with an aluminum foil, a tooter and disposable lighters, which were considered drug paraphernalia. As correctly held by the RTC, the elements of such crimes were proven because there was a proximate company of at least two (2) persons without any legal authority to possess the illicit items, citing Section 14 of R.A. No. 9165.

2. ID.; ID.; CHAIN OF CUSTODY; SUBSTANTIAL COMPLIANCE IS SUFFICIENT.— The chain of custody requirement is essential to ensure that doubts regarding the identity of the evidence are removed through the monitoring and tracking of the movements of the seized drugs from the accused, to the police, to the forensic chemist, and finally to the court. x x x [T]he law requires "substantial" and not necessarily "perfect adherence" as long as it can be proven that the integrity and the evidentiary value of the seized items were preserved as the same would be utilized in the determination of the guilt or innocence of the accused.

3. REMEDIAL LAW; CRIMINAL PROCEDURE; BAIL; BEFORE CONVICTION, BAIL IS EITHER A MATTER OF RIGHT OR OF DISCRETION; AFTER CONVICTION BY THE TRIAL COURT OF AN OFFENSE NOT PUNISHABLE BY DEATH, *RECLUSION PERPETUA* OR LIFE IMPRISONMENT, ADMISSION TO BAIL IS DISCRETIONARY.— Before conviction, bail is either a matter of right or of discretion. It is a matter of right when the offense charged is punishable by any penalty lower than death, *reclusion perpetua* or life imprisonment. If the offense charged is punishable by death, *reclusion perpetua* or life imprisonment, bail becomes a matter of discretion. In case bail is granted, the accused must appear whenever the court requires his presence; otherwise, his bail shall be forfeited. When a person is finally convicted by the trial court of an offense not punishable by death, *reclusion perpetua*, or life imprisonment, admission to bail is discretionary.

4. ID.; ID.; ID.; BAIL FOR ACCUSED CHARGED OF CRIME NOT PUNISHABLE BY DEATH, *RECLUSION PERPETUA* OR LIFE IMPRISONMENT IS A MATTER OF RIGHT; GRANTED BAIL SHOULD BE CANCELLED IN CASE OF FAILURE TO APPEAR BEFORE THE TRIAL COURT.— Davis was charged with the crimes of illegal possession of dangerous drugs during a party and illegal possession of drug paraphernalia during a party. Both offenses did not have a prescribed penalty of death, *reclusion perpetua* or life imprisonment, thus, bail was a matter of right. Accordingly, Davis secured a surety bond with Summit Guaranty & Insurance Company, Inc. on May 6, 2005. On August 8, 2005, Davis failed to appear before the RTC which considered him to have jumped bail. At that point, the RTC should have cancelled the bailbond.

5. ID.; ID.; ID.; BAIL PENDING APPEAL SHOULD BE DENIED TO CONVICTED OFFENDER WHO VIOLATED CONDITION OF HIS PREVIOUS BAIL; WARRANT OF ARREST SHOULD BE IMMEDIATELY ISSUED; ACCUSED WHO JUMPS BAIL LOSES STANDING IN COURT.— When the RTC promulgated its decision for conviction, Davis and his counsel were present in the courtroom. Yet, they did not file any motion for bail pending appeal before the RTC or the CA. Nonetheless, any motion for bail pending appeal should have

been denied because Davis violated the conditions of his previous bail. Necessarily, as he previously jumped bail and no bail pending appeal was secured, the RTC should have immediately issued a warrant of arrest against him. In the same manner, the CA should not have entertained the appeal of Davis. Once an accused escapes from prison or confinement, jumps bail (as in this case), or flees to a foreign country, he loses his standing in court. Unless he surrenders or submits to the jurisdiction of the court, he is deemed to have waived any right to seek relief from the court. As no such surrender was made in this case, in the eyes of the law, Davis is a fugitive from justice and, therefore, not entitled to seek relief from the courts.

APPEARANCES OF COUNSEL

Office of the Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellants.

D E C I S I ON

MENDOZA, *J.*:

Subject of this appeal is the January 22, 2014 Decision[1] of the Court of Appeals (*CA*) in CA-G.R. CR-HC No. 04780, which affirmed the September 24, 2009 Joint Decision[2] of the Regional Trial Court, Branch 164, Pasig City (*RTC*), finding accused-appellant Glen Piad (*Piad*) guilty of violation of Sections 5 and 11, Article II of Republic Act (R.A.) No. 9165, as amended, in Criminal Case Nos. 14086-D and 14087-D; and accused-appellants Renato Villarosa (*Villarosa*), Agustin Carbo (*Carbo*) and Nilo Davis (*Davis*) all guilty of violation of Sections 13 and 14, Article II of R.A. No. 9165 in Criminal Case Nos. 14088-D and 14089-D.

Accused-appellant Piad was charged in two (2) informations

[1] Penned by Associate Justice Francisco P. Acosta with Associate Justice Fernanda Lampas Peralta and Associate Justice Myra V. Garcia-Fernandez, concurring; *rollo*, pp. 2-17.

[2] CA *rollo*, pp. 119-131.

with the crimes of illegal sale of dangerous drugs weighing 0.05 gram and illegal possession of dangerous drugs weighing 0.06 gram. While accused-appellant Villarosa, Carbo and Davis were charged in two (2) informations with the crimes of illegal possession of dangerous drugs during a party weighing 0.03 gram and illegal possession of drug paraphernalia during a party.

On August 8, 2005, Piad, Villarosa and Carbo were arraigned and they pleaded "Not Guilty." Davis, however, was not arraigned because he had jumped bail.[3]

Pre-trial and trial on the merits ensued. On May 15, 2008, after Davis was arrested, he was arraigned and, with the assistance of a counsel, pleaded "Not Guilty" to the charges against him.

Evidence of the Prosecution

The prosecution presented PO1 Larry Arevalo (*PO1 Arevalo*), PO1 Joseph Bayot (*PO1 Bayot*), Forensic Chemist PSI Stella Ebuen (*PSI Ebuen*), PO2 Clarence Nipales (*PO2 Nipales*), and P/Insp. Donald Sabio (*P/Insp. Sabio*), as its witnesses. Their combined testimonies tended to prove the following:

On April 23, 2005, the Special Operations Task Force, Pasig City Police Station, Pasig City, received information from a confidential informant that a certain "Gamay," who was later identified as Piad, was selling drugs along Ortigas Bridge, Pasig City. P/Insp. Sabio led the team, composed of PO1 Arevalo, PO1 San Agustin, PO1 Bayot, PO1 Danilo Pacurib, PO2 Nipales, and PO1 Bibit, to conduct a buy-bust operation. PO1 Arevalo was assigned as poseur-buyer and was provided with the marked money — ₱150.00 in ₱100.00 and ₱50.00 peso bills. The Philippine Drug Enforcement Agency (*PDEA*) issued a certificate of coordination authorizing the team to proceed with the operation.

Around 6:45 o'clock in the afternoon, the team arrived at the house of Piad in Lifehomes Subdivision, Rosario, Pasig City. The back-up team took up position about 5 meters away

[3] Records, p. 26.

from Piad's house. The confidential informant, with PO1 Arevalo, knocked on the door. When Piad opened the door, the confidential informant introduced PO1 Arevalo as a buyer of *shabu*. Piad asked PO1 Arevalo how much he wanted and the latter answered ₱150.00. Thereafter, Piad closed the door and returned after a few seconds.

Upon opening the door again, PO1 Arevalo noticed that a group of male individuals were inside the house. PO1 Arevalo handed to Piad the ₱150.00 marked money. In turn, Piad handed to PO1 Arevalo a small plastic sachet containing white crystalline substance. After the transaction was completed, PO1 Arevalo immediately grabbed Piad's right arm and introduced himself as a police officer. Piad, however, struggled to free himself. PO1 Arevalo was eventually forced to enter the house amidst the struggle. The back-up team followed suit and entered the house.

After arresting him, PO1 Arevalo asked Piad to bring out the marked money. Piad complied. PO1 Arevalo also asked him about the source of the drugs he sold. Piad pulled out a metal box from his pocket and it revealed two (2) other plastic sachets containing white crystalline substance. PO1 Arevalo marked all the items confiscated from Piad at the place of the arrest. Meanwhile, the back-up team saw Villarosa, Davis and Carbo inside the house, sitting on the floor. They were surrounded by three (3) sachets of white crystalline substance (one was heat sealed, while the other two were unsealed), aluminum foil, a tooter and disposable lighters. The items were confiscated and were marked by PO1 Bayot thereat.

The team brought Piad, Villarosa, Carbo, and Davis to the police headquarters. There, PO2 Pacurib, PO1 Bayot and PO1 Arevalo executed a joint affidavit on their arrest. P/Insp. Sabio prepared the requests for laboratory examination and drug test, which were brought by SPO1 Bayot to the Eastern Police District Crime Laboratory. PSI Ebuen examined the confiscated items which tested positive for methamphetamine hydrochloride.

Evidence of the Defense

The defense presented Piad, her sister Maria Zennette Piad (*Maria*), Villarosa, Carbo, and Davis as its witnesses. They all testified to establish the following:

On April 23, 2005, Piad, Villarosa, Carbo, and Davis were celebrating a birthday party in the house of Piad. Between 1:00 o'clock and 2:00 o'clock in the afternoon, a tricycle and a vehicle stopped in front of the house at Pilar Apartment, Ortigas Avenue, Pasig City. Two (2) armed men in civilian clothes alighted from the vehicle, while another armed man alighted from the tricycle. All of them suddenly entered the house of Piad, where the accused-appellants were having a drinking spree. Piad, Villarosa, Carbo, and Davis were then ordered to lie down on the floor facing downwards. Thereafter, the armed men searched the house. Subsequently, the accused-appellants were handcuffed and brought to the police station. Piad claimed that the police officers were asking ₱20,000.00 in exchange for their freedom; while Carbo claimed that the officers were demanding ₱10,000.00 for their release.

The RTC Ruling

In its Joint Decision, dated September 24, 2009, the RTC found Piad guilty beyond reasonable doubt of the crimes of illegal sale and illegal possession of dangerous drugs, while Villarosa, Carbo and Davis were found guilty beyond reasonable doubt of the crimes of illegal possession of dangerous drugs during parties and illegal possession of drug paraphernalia during parties.

The RTC held that all the elements of the crime of illegal sale of drugs were established because PO1 Arevalo handed the marked money to Piad, who, in turn, handed the plastic sachet, which was confirmed to contain 0.05 gram of *shabu*. The elements of the crime of illegal possession of drugs were also established because two (2) more sachets of *shabu* weighing 0.06 gram were found in the metal container inside the pocket of Piad immediately after his arrest.

As to Villarosa, Carbo and Davis, the RTC found that they committed the crime of illegal possession of drugs and paraphernalia during a party because they were surrounded by plastic sachets containing 0.03 gram of *shabu* and different drug paraphernalia when the team found them. The elements of such crimes were clearly proven because they were in a proximate company of at least two persons and without any legal authority to possess such illicit items.

The RTC did not give credence to the defense of denial and frame up put up by the accused because their testimonies were inconsistent and self-serving. The dispositive portion of the decision reads:

WHEREFORE:

1. In Criminal Case No. 14086-D, the Court finds the accused Glen Piad alias Gamay guilty beyond reasonable doubt of violation of Section 5, Article II of R.A. 9165, and hereby imposes upon him the penalty of life imprisonment and a fine of Five Hundred Thousand Pesos (PhP500,000.00) with the accessory penalties provided for under Section 35 of said R.A. 9165.

2. In Criminal Case No. 14087-D, the Court finds the accused Glen Piad alias Gamay guilty beyond reasonable doubt of violation of Section 11, Article II of R.A. 9165, and hereby imposes upon him an indeterminate penalty of imprisonment from twelve (12) years and one (1) day, as minimum, to sixteen (16) years, as maximum, and a fine of Three Hundred Thousand Pesos (PhP300,000.00) with all the accessory penalties under the law.

3. In Criminal Case No. 14088-D, their guilt having been established beyond reasonable doubt, accused Renato Villarosa y Platino, Agustin Carbo y Pavillon and Nilo Davis y Artiga are hereby CONVICTED of violation of Section 13, Article II of R.A. 9165 for possessing methylamphetamine hydrochloride weighing less than five grams in the proximate company of at least two persons without legal authority and sentenced to suffer an indeterminate penalty of imprisonment from Twelve (12) years and one (1) day, as minimum, to Twenty (20) years as maximum, and fine of Four Hundred

Thousand Pesos (PhP400,000.00) each.

4. In Criminal Case No. 14089-D their guilt having been established beyond reasonable doubt, accused Renato Villarosa y Platino, Agustin Carbo y Pavilion and Nilo Davis y Artiga are hereby CONVICTED of violation of Section 14, Article II of R.A. 9165 for possessing paraphernalia for dangerous drug in the proximate company of at least two persons without legal authority and hereby sentenced to suffer an indeterminate penalty of imprisonment from six (6) months and one (1) day, as minimum, to four (4) years, as maximum, and fine of Fifty Thousand Pesos (PhP50,000.00) each.

HOWEVER, the four (4) plastic sachets containing white crystalline substance or shabu (Exhs. H, H-1, H-2, and J) and the illegal drug paraphernalia (Exhs. I, K, L, M, N, O, P) are hereby ordered turned over to the Philippine Drug Enforcement Agency for destruction and proper disposition.

SO ORDERED.[4]

Aggrieved, Piad, Villarosa, Carbo, and Davis filed their notices of appeal.[5] Subsequently, Carbo withdrew his appeal,[6] which was granted by the CA in its Resolution,[7] dated October 21, 2011.

In their Appellants' Brief,[8] Piad, Villarosa and Davis argued that the chain of custody rule was not complied with because PSI Ebuen did not testify on the condition of the confiscated items; that it was not shown how the said items were brought before the court; and that no photograph was taken or an inventory of the seized items was conducted.

In its Appellee's Brief,[9] the Office of the Solicitor General (*OSG*) countered that Section 21 of the Implementing Rules and Regulations (*IRR*) of R.A. No. 9165 required only substantial

[4] CA *rollo*, pp. 43-44.

[5] *Id.* at 71 and 73.

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

[7] *Id.* at 91-92.

[8] *Id.* at 100-117.

[9] *Id.* at 146-179.

compliance as long as the integrity and evidentiary value of the items were preserved; and that the testimony of the police officers showed that the items were properly handled.

The CA Ruling

In its assailed decision, dated January 22, 2014, the CA affirmed the conviction of Piad, Villarosa and Davis. The CA held that all the elements of the crimes charged were indeed proven. As to the chain of custody, the appellate court enumerated in detail how the prosecution was able to establish its compliance with Section 21 of R.A. No. 9165. As the chain of custody of the seized items was sufficiently established not to have been broken, then the admissibility and credibility of the said items were appreciated. The CA disposed the appeal in this wise:

> WHEREFORE, the Appeal is DENIED. The RTC Decision in Criminal Cases Nos. 14086-D, 14087-D, 14088-D and 14089-D, finding accused-appellants guilty of the crimes charged is hereby AFFIRMED.
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> SO ORDERED.[10]

Hence, this appeal.

In its Resolution,[11] dated November 19, 2014, the Court required the parties to submit their respective supplemental briefs, if they so desired.

In its Manifestation and Motion,[12] dated January 8, 2015, the OSG manifested that it would no longer submit a supplemental brief because its Brief for the Appellee, dated February 10, 2012, before the CA had extensively and exhaustively discussed all the issues and arguments raised by the accused-appellants.

In their Manifestation (in lieu of Supplemental Brief),[13] dated February 4, 2015, the accused-appellants manifested that they would no longer file a supplemental brief considering that no

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[10] *Rollo*, p. 16.

[11] *Id.* at 25.

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

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

new issues material to the case were raised.

In his Manifestation with Motion to Withdraw Appeal,[14] Villarosa signified his intention to withdraw his appeal, adding that he understood the consequences of his action. In its Resolution,[15] dated April 8, 2015, the Court granted Villarosa's motion to withdraw his appeal.

Meanwhile, in a letter, dated January 13, 2015, the Bureau of Corrections informed the Court that there was no record of confinement of Davis in all the prison facilities of the said Bureau. In the same resolution, dated April 8, 2015, the Court required the Clerk of Court of the RTC to confirm the confinement of Davis within ten (10) days from notice.

In her Manifestation/Compliance,[16] dated May 29, 2015, the RTC Branch Clerk of Court, Atty. Rachel G. Matalang (*Atty. Matalang*), reported that Davis was never committed in any detention or prison facility as he posted bail under a surety bond from Summit Guaranty and Insurance Company, Inc. on May 6, 2005 during the pendency of the trial; that on November 12, 2009, during the promulgation of the judgment, Davis and his counsel appeared before the trial court and manifested that he would file a notice of appeal; that no warrant of arrest or commitment order was issued against him; and that she could not confirm the confinement of Davis.

In its Resolution,[17] dated July 8, 2015, the Court required Davis, the OSG and Summit Guaranty and Insurance Company, Inc., to comment on the manifestation of Atty. Matalang.

In its Comment,[18] dated October 16, 2015, the OSG asserted that when Davis jumped bail on August 8, 2005, the RTC should have immediately cancelled his bailbond; that he should have

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[14] *Id.* at 46-49.

[15] *Id.* at 53-54.

[16] *Id.* at 55-56.

[17] *Id.* at 57.

[18] *Id.* at 74-84.

been placed under custody after the promulgation of the judgment; and that he had become a fugitive from justice who had lost his standing to appeal.

In its Manifestation,[19] dated December 8, 2015, the Public Attorney's Office informed the Court that, despite earnest efforts to locate Davis and the surety company, they were not able to determine their whereabouts; and that his wife informed the office that Davis had received the July 8, 2015 Resolution of the Court.

The Court's Ruling

The appeal lacks merit and Davis has lost his right to appeal.

Elements of the crimes charged were duly established by the prosecution

After a review of the records of the case, the Court holds that Piad was properly convicted of the crime of illegal sale of dangerous drugs. It was proven that, on April 23, 2005, the police went to his house to conduct a buy-bust operation; that PO1 Arevalo acted as the poseur-buyer; and that when PO1 Arevalo gave the marked money to Piad, the latter handed to him a small plastic sachet. A laboratory examination confirmed that the plastic sachet contained 0.05 gram of *shabu*. Clearly, all the elements of the said crime were established.

The prosecution was also able to prove that Piad committed the crime of illegal possession of dangerous drugs. When he was arrested *in flagrante delicto*, he was asked about the source of his drugs. He then brought out a metal box, which contained two (2) more sachets. It was confirmed in a laboratory test that these sachets contained 0.06 gram of *shabu*.

With respect to the crime of illegal possession of dangerous drugs during a party and the crime of illegal possession of drug paraphernalia during a party, the prosecution also established

[19] *Id.* at 114-117.

that after the arrest of Piad, the team found Villarosa, Carbo and Davis sitting on the floor and surrounded by one (1) heat-sealed sachet and two (2) unsealed sachets. A laboratory report showed that these sachets contained a total of 0.03 gram of *shabu*. The said persons were also found with an aluminum foil, a tooter and disposable lighters, which were considered drug paraphernalia. As correctly held by the RTC, the elements of such crimes were proven because there was a proximate company of at least two (2) persons without any legal authority to possess the illicit items, citing Section 14 of R.A. No. 9165.[20]

Substantial compliance with the Chain of Custody Rule

The chain of custody requirement is essential to ensure that doubts regarding the identity of the evidence are removed through the monitoring and tracking of the movements of the seized drugs from the accused, to the police, to the forensic chemist, and finally to the court.[21] Section 21 (a) of the Implementing Rules and Regulations 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

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[20] Sec. 14. Possession of Equipment, Instrument, Apparatus and other Paraphernalia for Dangerous Drugs During Parties, Social Gatherings or Meetings. — The maximum penalty provided for in Section 12 of this Act shall be imposed upon any person, who shall possess or have under his/her control any equipment, instrument, apparatus and other paraphernalia fit of intended for smoking, consuming, administering, injecting, ingesting, or introducing any dangerous drug into the body, during parties, social gatherings or meetings, or in the proximate company of at least two (2) persons.

[21] *People v. Miranda y Feliciano,* G.R. No. 209338, June 29, 2015.

warrantless seizures; **Provided, further, that non-compliance with these requirements under justifiable grounds, as long as the integrity and 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.** (Emphasis supplied)

Evidently, the law requires "substantial" and not necessarily "perfect adherence" as long as it can be proven that the integrity and the evidentiary value of the seized items were preserved as the same would be utilized in the determination of the guilt or innocence of the accused.[22]

In this case, the CA meticulously assessed how the prosecution complied with the chain of custody rule. When Piad was arrested, PO1 Arevalo marked the confiscated drugs at the crime scene. Likewise, when Villarosa, Carbo and Davis were arrested, PO1 Bayot immediately marked the seized items at the crime scene. The items were brought to the Pasig City Police Station where PO1 Bayot was designated as evidence custodian. P/Insp. Sabio then prepared the requests for laboratory examination and drug test, which were brought by PO1 Bayot, together with the drugs, to the Eastern Police District Crime Laboratory. PSI Ebuen, received the confiscated items for examination. The said items tested positive for methylamphetamine hydrochloride. Based on the foregoing, the Court is satisfied that there was substantial compliance with the chain of custody rule.

Davis lost his standing to appeal

Before conviction, bail is either a matter of right or of discretion. It is a matter of right when the offense charged is punishable by any penalty lower than death, *reclusion perpetua* or life imprisonment. If the offense charged is punishable by death, *reclusion perpetua* or life imprisonment, bail becomes a matter of discretion.[23] In case bail is granted, the accused must appear whenever the court requires his presence; otherwise, his bail shall be forfeited.[24]

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[22] *People v. Dahil,* G.R. No. 212196, January 12, 2015.

[23] *Tanog v. Balindong*, G.R. No. 187464, November 25, 2015.

When a person is finally convicted by the trial court of an offense not punishable by death, *reclusion perpetua*, or life imprisonment, admission to bail is discretionary. Section 5, Rule 114 of the Rules of Court provides:

> Sec. 5. *Bail, When Discretionary*. — Upon conviction by the Regional Trial Court of an offense not punishable by death, reclusion perpetua, or life imprisonment, admission to bail is discretionary. The application for bail may be filed and acted upon by the trial court despite the filing of a notice of appeal, provided it has not transmitted the original record to the appellate court.
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> x x x x x x x x x
>
> Should the court grant the application, the accused may be allowed to continue on provisional liberty during the pendency of the appeal under the same bail subject to the consent of the bondsman.x x x

Here, Davis was charged with the crimes of illegal possession of dangerous drugs during a party and illegal possession of drug paraphernalia during a party. Both offenses did not have a prescribed penalty of death, *reclusion perpetua* or life imprisonment, thus, bail was a matter of right. Accordingly, Davis secured a surety bond with Summit Guaranty & Insurance Company, Inc. on May 6, 2005.

On August 8, 2005, Davis failed to appear before the RTC which considered him to have jumped bail. At that point, the RTC should have cancelled the bailbond of Davis with Summit Guaranty & Insurance Company, Inc. Although he was subsequently arrested and arraigned on May 15, 2008, it is alarming that no record of Davis' confinement in any detention facility was ever found.[25]

When the RTC promulgated its decision for conviction, Davis and his counsel were present in the courtroom. Yet, they did not file any motion for bail pending appeal before the RTC or the CA. Nonetheless, any motion for bail pending appeal should have been denied because Davis violated the conditions of his

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[24] See Section 21, Rule 114.

[25] *Rollo*, p. 55.

previous bail. [26] Necessarily, as he previously jumped bail and no bail pending appeal was secured, the RTC should have immediately issued a warrant of arrest against him.

In the same manner, the CA should not have entertained the appeal of Davis. Once an accused escapes from prison or confinement, jumps bail (as in this case), or flees to a foreign country, he loses his standing in court. Unless he surrenders or submits to the jurisdiction of the court, he is deemed to have waived any right to seek relief from the court.[27] As no such surrender was made in this case, in the eyes of the law, Davis is a fugitive from justice and, therefore, not entitled to seek relief from the courts.

WHEREFORE, the Joint Decision, dated September 24, 2009, of the Regional Trial Court, Branch 164, Pasig City in Criminal Case Nos. 14086-D, 14087-D, 14088-D and 14089-D is **AFFIRMED *in toto*.**

For failure to submit to this Court's jurisdiction, the appeal filed by Nilo Davis *y* Artiga is deemed **ABANDONED** and **DISMISSED.** The Regional Trial Court, Branch 164, Pasig City, is hereby **ORDERED** to issue a warrant of arrest for the immediate apprehension and service of sentence of Nilo Davis *y* Artiga.

SO ORDERED.

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

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[26] Sec. 5. x x x

If the penalty imposed by the trial court is imprisonment exceeding six (6) years, the accused shall be denied bail, or his bail shall be cancelled upon a showing by the prosecution, with notice to the accuse, of the following or other similar circumstances:

x x x x x x x x x

(b) That he has previously escaped from legal confinement, evaded sentence, or violated the conditions of his bail without valid justification;

x x x x x x x x x

[27] *Villena v. People*, G.R. No. 184091, January 31, 2011, 641 SCRA 127, 136.

EN BANC

[A.C. No. 8723. January 26, 2016]
(Formerly CBD Case No. 11-2974)

GREGORY FABAY, *complainant, vs.* **ATTY. REX A. RESUENA,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; NOTARIAL LAW AND THE 2004 RULES ON NOTARIAL PRACTICE; A NOTARY PUBLIC SHOULD NOT NOTARIZE A DOCUMENT UNLESS THE PERSONS WHO SIGNED THE SAME ARE THE VERY SAME PERSONS WHO EXECUTED AND PERSONALLY APPEARED BEFORE HIM TO ATTEST TO THE CONTENTS AND TRUTH OF WHAT ARE STATED THEREIN; VIOLATED BY THE RESPONDENT IN CASE AT BAR.— Time and again, we have held that notarization of a document is not an empty act or routine. It is invested with substantive public interest, such that only those who are qualified or authorized may act as notaries public. Notarization converts a private document into a public document thus making that document admissible in evidence without further proof of its authenticity. A notarial document is by law entitled to full faith and credit upon its face. Courts, administrative agencies and the public at large must be able to rely upon the acknowledgment executed by a notary public and appended to a private instrument. For this reason, notaries public must observe with utmost care the basic requirements in the performance of their duties. Otherwise, the confidence of the public in the integrity of this form of conveyance would be undermined. Hence, a notary public should not notarize a document unless the persons who signed the same are the very same persons who executed and personally appeared before him to attest to the contents and truth of what are stated therein. The purpose of this requirement is to enable the notary public to verify the genuineness of the signature of the acknowledging party and to ascertain that the document is the party's free act and deed. Section 2 (b) of Rule IV of the 2004 Rules on Notarial Practice stresses the necessity of the affiant's personal appearance

before the notary public: x x x A person shall not perform a notarial act if the person involved as signatory to the instrument or document – (1) is not in the notary's presence personally at the time of the notarization; and (2) is not personally known to the notary public or otherwise identified by the notary public through competent evidence of identity as defined by these Rules. In the instant case, it is undisputed that Atty. Resuena violated not only the notarial law but also his oath as a lawyer when he notarized the subject SPA without all the affiant's personal appearance.

2. ID.; ID.; ID.; ID.; PHYSICAL APPEARANCE OF THE AFFIANT IS REQUIRED TO ENABLE THE NOTARY PUBLIC TO VERIFY THE GENUINENESS OF THE SIGNATURE OF THE ACKNOWLEDGING PARTY AND TO ASCERTAIN THAT THE DOCUMENT IS THE PARTY'S FREE ACT OR DEED. — We cannot overemphasize that a notary public should not notarize a document unless the person who signed the same is the very same person who executed and personally appeared before him to attest to the contents and the truth of what are stated therein. Without the appearance of the person who actually executed the document in question, the notary public would be unable to verify the genuineness of the signature of the acknowledging party and to ascertain that the document is the party's free act or deed. In *Agbulos v. Atty. Viray* this Court, citing *Dela Cruz-Sillano v. Pangan,* reiterated anew the necessity of personal appearance of the affiants, to wit: The Court is aware of the practice of not a few lawyers commissioned as notary public to authenticate documents without requiring the physical presence of affiants. However, the adverse consequences of this practice far outweigh whatever convenience is afforded to the absent affiants. Doing away with the essential requirement of physical presence of the affiant does not take into account the likelihood that the documents may be spurious or that the affiants may not be who they purport to be. A notary public should not notarize a document unless the persons who signed the same are the very same persons who executed and personally appeared before him to attest to the contents and truth of what are stated therein. The purpose of this requirement is to enable the notary public to verify the genuineness of the signature of the acknowledging party and to ascertain that the document is the party's free act and deed.

3. ID.; ID.; ID.; A NOTARY PUBLIC WHO FAILED TO PERFORM HIS DUTY CAUSED NOT ONLY DAMAGE TO THOSE DIRECTLY AFFECTED BY THE NOTARIZED DOCUMENT BUT ALSO MADE A MOCKERY OF THE INTEGRITY OF A NOTARY PUBLIC AND DEGRADED THE FUNCTION OF NOTARIZATION. — Atty. Resuena's failure to perform his duty as a notary public resulted not only damage to those directly affected by the notarized document but also made a mockery of the integrity of a notary public and degraded the function of notarization. Moreso, in this case, where Atty. Resuena being the counsel of the plaintiffs-affiants can be assumed to have known the circumstances of the subject case, as well as the fact that affiants Amador Perez and Valentino Perez were already deceased at the time of the execution of the subject SPA. Having appeared to have intentionally violated the notarial law, Atty. Resuena has, in fact, allowed himself to be an instrument of fraud which this Court will not tolerate.

4. ID.; ID.; ID.; A DULY-COMMISSIONED NOTARY PUBLIC IS REQUIRED TO MAKE THE PROPER ENTRIES IN HIS NOTARIAL REGISTER AND TO REFRAIN FROM COMMITTING ANY DERELICTION OR ACT WHICH CONSTITUTES GOOD CAUSE FOR THE REVOCATION OF COMMISSION OR IMPOSITION OF ADMINISTRATIVE SANCTION. — A graver responsibility is placed upon Atty. Resuena by reason of his solemn oath to obey the laws and to do no falsehood or consent to the doing of any. The Code of Professional Responsibility also commands lawyers not to engage in unlawful, dishonest, immoral or deceitful conduct and to uphold at all times the integrity and dignity of the legal profession. It requires every lawyer to uphold the Constitution, obey the laws of the land and promote respect for the law and legal processes. Moreover, the Notarial Law and the 2004 Rules on Notarial Practice require a duly-commissioned notary public to make the proper entries in his Notarial Register and to refrain from committing any dereliction or act which constitutes good cause for the revocation of commission or imposition of administrative sanction. Unfortunately, Atty. Resuena failed in both respects.

5. ID.; ID.; CODE OF PROFESSIONAL RESPONSIBILITY; EVERY LAWYER IS EXPECTED TO ACT AT ALL TIMES IN ACCORDANCE WITH LAW AND ETHICS, AND IF

HE DID NOT, HE WOULD NOT ONLY INJURE HIMSELF AND THE PUBLIC BUT ALSO BRING REPROACH UPON AN HONORABLE PROFESSION. — Through his acts, Atty. Resuena committed a serious breach of the fundamental obligation imposed upon him by the Code of Professional Responsibility, particularly Rule 1.01 of Canon 1, which prohibited him from engaging in unlawful, dishonest, immoral or deceitful conduct. As a lawyer and as an officer of the court, it was his duty to serve the ends of justice, not to corrupt it. Oath-bound, he was expected to act at all times in accordance with law and ethics, and if he did not, he would not only injure himself and the public but also bring reproach upon an honorable profession. Atty. Resuena must now accept the consequences of his unwarranted actions.

APPEARANCES OF COUNSEL

Crispo Q. Borja, Jr., for complainant.
Rex A. Resuena for respondent.

D E C I S I O N

***PER CURIAM*:**

Before us is a Complaint for Disbarment filed by Gregory Fabay (*Fabay*) against respondent Atty. Rex A. Resuena (*Atty. Resuena*), docketed as A.C. No. 8723 for Gross Misconduct due to the unauthorized notarization of documents relative to Civil Case No. 2001.[1]

The facts are as follows:

On October 15, 2003, Virginia Perez, Marcella Perez, Amador Perez, Gloria Perez, Gracia Perez and Valentino Perez (*plaintiffs*) filed a complaint for ejectment/forcible entry against Gregory Fabay before the Municipal Trial Court of Pili, Camarines Sur with respondent Atty. Resuena as their counsel.

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[1] *Virginia Perez, Marcella Perez, Amador Perez, Gloria Perez, Gracia Perez, Valentino Perez, represented by their attorney-in-fact Apolo D. Perez v. Gregory and Mildred Fabay*, *rollo*, pp. 40-51.

On the same date, October 15, 2003, Atty. Resuena notarized a special power of attorney (*SPA*) with plaintiffs as grantors, in favor of Apolo D. Perez. However, it appeared that it was only Remedios Perez who actually signed the SPA in behalf of Amador Perez, Valentino Perez, Gloria Perez and Gracia Perez. Said SPA was recorded in Atty. Resuena's notarial book as Doc. No. 126, Page 26, Book 1, Series of 2003.[2]

The ejectment case was later on decided in favor of the client of Atty. Resuena, however, on appeal, the Regional Trial Court of Pili, Camarines Sur, Branch 32, ordered the case to be remanded to the court *a quo* to try the case on the merits.[3] In its Decision[4] dated August 4, 2005, the trial court noted that both Amador Perez and Valentino Perez have already died on September 7, 1988 and April 26, 1976, respectively.

Complainant Fabay alleged that Atty. Resuena violated the provisions of the Notarial Law by notarizing a special power of attorney notwithstanding the fact that two of the principals therein, Amador Perez and Valentino Perez were already dead long before the execution of the SPA. Complainant added that Atty. Resuena likewise notarized a complaint for ejectment in 2003 where Apolo Perez was made to appear as attorney-in-fact of Amador Perez and Valentino Perez when again the latter could not have possibly authorized him as they were already dead. Further, complainant averred that Atty. Resuena, as counsel of the plaintiffs, participated in the barangay conciliations which is prohibited under the law.

Thus, the instant complaint for disbarment for violation of the notarial law and for Atty. Resuena's misconduct as a lawyer.

On October 18, 2010, the Court resolved to require Atty. Resuena to file his comment relative to the complaint filed against him.[5]

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[2] *Rollo*, pp. 8-9.

[3] *Id.* at 11.

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

[5] *Id.* at 13.

In compliance, Atty. Resuena submitted his Comment[6] dated December 20, 2010 wherein he denied the allegations in the complaint and claimed that it was tainted with malice, considering that it was only filed with the Supreme Court on August 20, 2010 when in fact it was allegedly prepared last June 18, 2006.

Atty. Resuena explained that although it was just Remedios Perez who signed the SPA on behalf of Amador Perez, Valentino Perez, Gloria Perez and Gracia Perez, there was no misrepresentation since Remedios Perez is the spouse of Amador Perez and she was likewise previously authorized by the other co-owners, Gloria Perez and Gracia Perez, to represent them.[7] Atty. Resuena, thus, prayed that the complaint against him be dismissed for lack of merit.

On January 19, 2011, the Court then resolved to refer the instant case to the Integrated Bar of the Philippines for investigation, report and recommendation/decision.[8]

On June 16, 2011, a mandatory conference was conducted where complainant was assisted by his counsel Atty. Crispo Borja, Jr., while Atty. Resuena appeared for himself.

Atty. Resuena denied that he participated in the barangay conciliations and presented the certificate issued by the barangay captain showing that there was no record of his attendance during the confrontations of the parties before the barangay. He, however, did not deny that Amador Perez and Valentino Perez were already deceased at the time of the execution and notarization of the SPA, albeit, he argued that in the same SPA, Amador Perez and Valentino Perez were signed by or represented by Remedios Perez. He further insisted that in the acknowledgment portion of the SPA, the names of Amador Perez and Valentino Perez were not included as among the parties who have personally appeared before him. Thus, Atty. Resuena insisted that there was no misrepresentation done in the

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

[7] *Id.* at 28.

[8] *Id.* at 70.

notarization of the SPA.

In its Report and Recommendation, the IBP-CBD found Atty. Resuena to have violated the provisions of the notarial law. The pertinent portion thereof reads as thus:

> A close scrutiny of the evidence submitted would show that respondent notarized a Special Power of Attorney on October 15, 2003 wherein the supposed principals were Virginia Perez, Marcella Perez, Amador Perez, Gloria Perez, Gracia Perez, Valentino Perez, the purpose of which, was to authorize Apolo D. Perez to represent them to sue and be sued in any administrative or judicial tribunal in connection with any suit that may arise out of any and all transactions in their properties covered by TCT No. RT-1118 (14380), 38735, 38737. **In the said document, the signatures of Amado Perez, Gloria Perez, Gracia Perez and Valentino Perez were signed as "BY: REMEDIOS PEREZ".** Remedios Perez is the spouse of Amador Perez and the mother of [Apolo] Perez.
>
> **Evaluating the Special Power of Attorney, two of the parties, namely, Amador Perez and Valentino Perez were already dead during the execution of the Special Power of Attorney. Amador Perez died sometime in September 7, 1988, while Valentino Perez died in April 26, 1976. Despite this fact, respondent allowed them to be represented by Remedios Perez in the signing of the Special Power of Attorney without the proper authority provided for by law.**
>
> On the other hand, the other parties in the Special Power of Attorney, GRACIA PEREZ and GLORIA PEREZ were both residing in the United States of America. **While the respondent alleged that there was a previous authority to sign the Special Power of Attorney, no proof was presented by the respondent to that effect. They also were signed as "BY REMEDIOS PEREZ".**[9]

The IBP-CBD, thus, recommended that his notarial commission be revoked and that he be disqualified to be commissioned as notary public for one (1) year.

In Notice of Resolution No. XX-2013-591 dated May 10,

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[9] *Id.* at 356-357. (Emphasis supplied)

2013, the IBP-Board of Governors adopted and approved *in toto* the Report and Recommendation of the IBP-CBD.

On September 9, 2013, complainant moved for reconsideration of Resolution No. XX-2013-591 and prayed that the same be set aside and instead the penalty of suspension be imposed against Atty. Resuena as an erring member of the bar and not merely as a notary public.

On May 3, 2014, the IBP Board of Governors, in its Resolution No. XXI-2014-293,[10] denied complainant's motion for reconsideration, thus affirming Resolution No. XX-2013-591 but modified the penalty imposed to two (2) years disqualification from notarial practice.

We concur with the findings of the IBP except as to the penalty.

Time and again, we have held that notarization of a document is not an empty act or routine. It is invested with substantive public interest, such that only those who are qualified or authorized may act as notaries public. Notarization converts a private document into a public document thus making that document admissible in evidence without further proof of its authenticity. A notarial document is by law entitled to full faith and credit upon its face. Courts, administrative agencies and the public at large must be able to rely upon the acknowledgment executed by a notary public and appended to a private instrument.[11]

For this reason, notaries public must observe with utmost care the basic requirements in the performance of their duties. Otherwise, the confidence of the public in the integrity of this form of conveyance would be undermined. Hence, a notary public should not notarize a document unless the persons who signed the same are the very same persons who executed and personally appeared before him to attest to the contents and

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[10] *Gregory Fabay v. Atty. Rex A. Resuena*, CBD Case No. 11-2974 (Adm. Case No. 8723), *rollo*, pp. 352-353.

[11] *Bernardo v. Atty. Ramos*, 433 Phil. 8, 15-16 (2002).

[12] *Id.* at 16.

truth of what are stated therein. The purpose of this requirement is to enable the notary public to verify the genuineness of the signature of the acknowledging party and to ascertain that the document is the party's free act and deed.[12]

Section 2 (b) of Rule IV of the 2004 Rules on Notarial Practice stresses the necessity of the affiant's personal appearance before the notary public:

x x x x x x x x x

(b) A person shall not perform a notarial act if the person involved as signatory to the instrument or document —

(1) is not in the notary's presence personally at the time of the notarization; and

(2) is not personally known to the notary public or otherwise identified by the notary public through competent evidence of identity as defined by these Rules.

In the instant case, it is undisputed that Atty. Resuena violated not only the notarial law but also his oath as a lawyer when he notarized the subject SPA without all the affiant's personal appearance. As found by the IBP-CBD, the purpose of the SPA was to authorize a certain Apolo D. Perez to represent the principals "to sue and be sued in any administrative or judicial tribunal in connection with any suit that may arise out of their properties." It is, thus, appalling that Atty. Resuena permitted Remedios Perez to sign on behalf of Amador Perez and Valentino Perez knowing fully well that the two were already dead at that time and more so when he justified that the latter's names were nevertheless not included in the acknowledgment albeit they are signatories of the SPA. Equally deplorable is the fact that Remedios was likewise allowed to sign on behalf of Gracia Perez and Gloria Perez, who were said to be residing abroad. Worse, he deliberately allowed the use of the subject SPA in an ejectment case that was filed in court. In effect, Atty. Resuena, in notarizing the SPA, contented himself with Remedios' representation of four of the six principals of the SPA, doing away with the actual physical appearance of all the parties. There is no question then that Atty. Resuena ignored the basics

of notarial procedure and actually displayed his clear ignorance of the importance of the office of a notary public. Not only did he violate the notarial law, he also did so without thinking of the possible damage that might result from its non-observance.

We cannot overemphasize that a notary public should not notarize a document unless the person who signed the same is the very same person who executed and personally appeared before him to attest to the contents and the truth of what are stated therein. Without the appearance of the person who actually executed the document in question, the notary public would be unable to verify the genuineness of the signature of the acknowledging party and to ascertain that the document is the party's free act or deed.

In *Agbulos v. Atty. Viray*,[13] this Court, citing *Dela Cruz-Sillano v. Pangan*,[14] reiterated anew the necessity of personal appearance of the affiants, to wit:

> The Court is aware of the practice of not a few lawyers commissioned as notary public to authenticate documents without requiring the physical presence of affiants. However, the adverse consequences of this practice far outweigh whatever convenience is afforded to the absent affiants. Doing away with the essential requirement of physical presence of the affiant does not take into account the likelihood that the documents may be spurious or that the affiants may not be who they purport to be. A notary public should not notarize a document unless the persons who signed the same are the very same persons who executed and personally appeared before him to attest to the contents and truth of what are stated therein. The purpose of this requirement is to enable the notary public to verify the genuineness of the signature of the acknowledging party and to ascertain that the document is the party's free act and deed.

Atty. Resuena's failure to perform his duty as a notary public resulted not only damage to those directly affected by the notarized document but also made a mockery of the integrity of a notary public and degraded the function of notarization.

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[13] A.C. No. 7350, February 18, 2013, 691 SCRA 1, 7-8.

[14] 592 Phil. 219, 227 (2008).

Moreso, in this case, where Atty. Resuena being the counsel of the plaintiffs-affiants can be assumed to have known the circumstances of the subject case, as well as the fact that affiants Amador Perez and Valentino Perez were already deceased at the time of the execution of the subject SPA. Having appeared to have intentionally violated the notarial law, Atty. Resuena has, in fact, allowed himself to be an instrument of fraud which this Court will not tolerate.

A graver responsibility is placed upon Atty. Resuena by reason of his solemn oath to obey the laws and to do no falsehood or consent to the doing of any. The Code of Professional Responsibility also commands lawyers not to engage in unlawful, dishonest, immoral or deceitful conduct and to uphold at all times the integrity and dignity of the legal profession.[15] It requires every lawyer to uphold the Constitution, obey the laws of the land and promote respect for the law and legal processes.[16] Moreover, the Notarial Law and the 2004 Rules on Notarial Practice require a duly-commissioned notary public to make

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

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

[17] Sec. 249. *Grounds for revocation of commission*. — The following derelictions of duty on the part of a notary public shall, in the discretion of the proper judge of first instance, be sufficient ground for the revocation of his commission:

(a) The failure of the notary to keep a notarial register.

(b) The failure of the notary to make the proper entry or entries in his notarial register touching his notarial acts in the manner required by law.

(c) The failure of the notary to send the copy of the entries to the proper clerk of Court of First Instance within the first ten days of the month next following.

(d) The failure of the notary to affix to acknowledgments the date of expiration of his commission, as required by law.

(e) The failure of the notary to forward his notarial register, when filled, to the proper clerk of court.

(f) The failure of the notary to make the proper notation regarding cedula certificates.

the proper entries in his Notarial Register and to refrain from committing any dereliction or act which constitutes good cause for the revocation of commission or imposition of administrative sanction.[17] Unfortunately, Atty. Resuena failed in both respects.

Through his acts, Atty. Resuena committed a serious breach of the fundamental obligation imposed upon him by the Code of Professional Responsibility, particularly Rule 1.01 of Canon 1, which prohibited him from engaging in unlawful, dishonest, immoral or deceitful conduct. As a lawyer and as an officer of the court, it was his duty to serve the ends of justice, not to corrupt it. Oath-bound, he was expected to act at all times in accordance with law and ethics, and if he did not, he would not only injure himself and the public but also bring reproach upon an honorable profession.[18] Atty. Resuena must now accept the consequences of his unwarranted actions.

WHEREFORE, Atty. Rex A. Resuena is found **GUILTY** of malpractice as a notary public, and of violating the lawyer's oath as well as Rule 1.01, Canon 1 of the Code of Professional Responsibility. Accordingly, he is **DISBARRED** from the practice of law and likewise **PERPETUALLY DISQUALIFIED** from being commissioned as a notary public.

Let copies of this Resolution be furnished the Office of the Bar Confidant, to be appended to Atty. Resuena's personal record. Further, let copies of this Resolution be furnished the Integrated Bar of the Philippines and the Office of the Court Administrator, which is directed to circulate them to all the courts in the country for their information and guidance.

SO ORDERED.

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

(g) The failure of a notary to make report, within a reasonable time, to the proper judge of first instance concerning the performance of his duties, as may be required by such judge.

(h) Any other dereliction or act which shall appear to the judge to constitute good cause for removal.

[18] *Sicat v. Atty. Ariola, Jr.*, 496 Phil. 7, 10 (2005).

EN BANC

[A.C. No. 10753. January 26, 2016]
(Formerly CBD Case No. 10-2703)

ATTY. PABLO B. FRANCISCO, *complainant, vs.* **ATTY. ROMEO M. FLORES,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; CODE OF PROFESSIONAL RESPONSIBILITY; RESPONDENT FOUND GUILTY OF VIOLATING CANON 10, RULE 10.01 OF THE CODE OF PROFESSIONAL RESPONSIBILITY FOR MAKING UNTRUTHFUL, CONFLICTING AND INCONSISTENT STATEMENTS.— Canon 10, Rule 10.01 of the Code of Professional Responsibility provides: Canon 10 — A lawyer owes candor, fairness and good faith to the court. Rule 10.01 — A lawyer shall not do any falsehood, nor consent to the doing of any in Court; nor shall he mislead or allow the Court to be misled by any artifice. Respondent was not entirely truthful. x x x Respondent did not state the exact date when he received a copy of the Motion for Issuance of a Writ of Execution. The record shows that he received it on June 3, 2009. Respondent then alleges that he immediately informed the Finezas about the matter, but later on contradicted himself when he stated "that he has no personal knowledge as to when the Fineza[s] learned or had knowledge of the denial of the Motion for Reconsideration." x x x. While the Complaint is limited to the allegations in the Petition for Relief from Judgment, this court notes that respondent was also not truthful in his Motion for Reconsideration filed before the Integrated Bar of the Philippines. x x x. Respondent's allegations are conflicting. He initially claimed that he was on vacation from February 9, 2009 to May 2009. He subsequently claimed that his vacation was from February 11, 2009 to June 2009. The glaring inconsistencies in respondent's statements are sufficient to show that he is guilty of violating Canon 10, Rule 10.01.

2. ID.; ID.; ID.; CANON 10, RULE 10.03 THEREOF; VIOLATED BY THE RESPONDENT IN CASE AT BAR.—

This court also finds that respondent violated Rule 10.03 of Canon 10, which provides: Rule 10.03 — A lawyer shall observe the rules of procedure and shall not misuse them to defeat the ends of justice. Respondent admitted that he assisted the Finezas "in filing the petition for relief from judgment." Subsequently, respondent moved to withdraw the Petition for Relief from Judgment after recognizing that it was filed erroneously. xxx. Respondent's attempts to rectify are further evidence that what he did—file a Petition for Relief docketed as a different case before a different trial court—was wrong in the first place.

3. ID.; ID.; ID.; FAILURE TO IMMEDIATELY UPDATE THE CLIENTS AND ACT UPON THE DENIAL OF THE MOTION FOR RECONSIDERATION, WHICH RESULTED IN THE EXPIRATION OF THE PERIOD FOR FILING A PETITION FOR RELIEF FROM JUDGMENT CONSTITUTES NEGLIGENCE IN VIOLATION OF CANON 18, RULE 18.03 OF THE CODE OF PROFESSIONAL RESPONSIBILITY .— This court finds respondent guilty of violating Canon 18, Rule 18.03 of the Code of Professional Responsibility. Canon 18 of the Code of Professional Responsibility provides: Canon 18 — A lawyer shall serve his client with competence and diligence. . . . . Rule 18.03 — A lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable. x x x. Assuming that the Finezas learned about the denial of the Motion for Reconsideration only on June 29, 2009, this would further support the allegations in the Complaint that respondent violated Canon 18. Respondent alleges that he learned about the denial of the Motion for Reconsideration when he received a copy of the Motion for Issuance of Writ of Execution. While he did not state the exact date when he received a copy of the Motion, the record shows that he received it on June 3, 2009. If it were true that the Finezas learned about the denial of the Motion for Reconsideration on June 29, 2009, then it shows that respondent did not immediately inform his clients about the status of the forcible entry case. It took him more than 20 days to inform his clients on the matter. Respondent's failure to immediately update his clients and act upon the denial of the Motion for Reconsideration, which resulted in the expiration of the period for filing a Petition for Relief from Judgment, clearly points to negligence on his part.

APPEARANCES OF COUNSEL

Romeo M. Flores for respondent.

R E S O L U T I O N

LEONEN, *J.*:

Failure of counsel to act upon a client's case resulting in the prescription of available remedies is negligence in violation of Canon 18 of the Code of Professional Responsibility. The general rule is that notice to counsel is notice to client. This rule remains until counsel notifies the court that he or she is withdrawing his or her appearance, or client informs the court of change of counsel. Untruthful statements made in pleadings filed before courts, to make it appear that the pleadings are filed on time, are contrary to a lawyer's duty of committing no falsehood.

Atty. Pablo B. Francisco (Atty. Francisco) filed an administrative Complaint[1] for violation of Canons 10 and 18 of the Code of Professional Responsibility against Atty. Romeo M. Flores (Atty. Flores) before the Integrated Bar of the Philippines, alleging dishonesty and negligence on the part of Atty. Flores.

Atty. Francisco alleged that he filed a Complaint for forcible entry against Rainier Fineza and his mother, Teodora Fineza, (Finezas) before the Municipal Trial Court of Binangonan, Rizal.[2] The Finezas were represented by Atty. Flores.[3]

The Municipal Trial Court ruled in favor of the Finezas.[4] Atty. Francisco filed an appeal before the Regional Trial Court

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[1] *Rollo*, pp. 2-8.

[2] *Id.* at 2. The Complaint for forcible entry was docketed as Civil Case No. 08-001 and was raffled to Branch 2, Municipal Trial Court of Binangonan, Rizal.

[3] *Id.* at 3.

[4] *Id.* at 9-12, Municipal Trial Court Decision. The Decision, promulgated on June 4, 2008, was penned by Presiding Judge Lillian G. Dinulos-

of Binangonan, Rizal.[5] However, the appeal was denied.[6]

Atty. Francisco filed a Motion for Reconsideration,[7] which was granted by the Regional Trial Court in an Order[8] dated January 23, 2009. The Finezas were then ordered to vacate the property and to pay rentals.[9]

Atty. Flores filed a Motion for Reconsideration[10] of the trial court's Order granting Atty. Francisco's Motion for Reconsideration. Atty. Francisco filed an Opposition to the Motion for Reconsideration.[11] In an Order[12] dated March 26, 2009, Judge Dennis Patrick Z. Perez denied the Motion for Reconsideration filed by Atty. Flores.

The registry return receipt shows that Atty. Flores received a copy of the Regional Trial Court's Order denying the Motion for Reconsideration on April 3, 2009, while the Finezas received their copy of the Order on April 7, 2009.[13]

On April 7, 2009, Atty. Francisco filed an Ex-Parte Motion to Remand Records of the case to the Municipal Trial Court for Execution of Judgment. He alleges that a copy of the *Ex-Parte* Motion was served on Atty. Flores through registered mail.[14]

Panontongan of Branch 2, Municipal Trial Court of Binangonan, Rizal.

[5] *Id.* at 13, Regional Trial Court's Decision. The appeal was docketed as SCA No. 08-018.

[6] *Id.* The Decision, promulgated on August 30, 2008, was penned by Presiding Judge Dennis Patrick Z. Perez of Branch 67, Regional Trial Court of Binangonan, Rizal.

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

[8] *Id.* at 29. The Order, promulgated on January 23, 2009, was penned by Presiding Judge Dennis Patrick Z. Perez of Branch 67, Regional Trial Court of Binangonan, Rizal.

[9] *Id.*

[10] *Id.* at 30-33.

[11] *Id.* at 34-35.

[12] *Id.* at 52.

[13] *Id.*, back page.

[14] *Id.* at 168, Atty. Pablo B. Francisco's Position Paper.

On May 20, 2009, Analiza P. Santos, Officer-in-Charge of Branch 67, Regional Trial Court of Binangonan, Rizal, issued a Certification[15] stating that:

> This is to certify that the Order of this Court dated January 23, 2009 relative to the above-entitled case [referring to Pablo B. Francisco *v.* Rainier Fineza and Teddy Fineza] has never been amended, appealed or modified; hence, this Order is now considered final and executory.[16]

Atty. Francisco filed a Motion for Issuance of Writ of Execution[17] on June 3, 2009. Atty. Francisco alleges that a copy of the Motion was personally served on Atty. Flores on the same day.[18]

Atty. Francisco also alleges that hearings on the Motion for Issuance of Writ of Execution were scheduled on June 17 and 24, 2009, which were attended by Atty. Flores and the Finezas. Atty. Francisco's Motion was granted on June 30, 2009, and a writ of execution was issued.[19]

On July 8, 2009, the Finezas filed a Petition[20] for Relief from Judgment with application for temporary restraining order and injunction. They also attached a Joint Affidavit of Merit[21] to the Petition. The Petition was signed by the Finezas and not by Atty. Flores.[22] Atty. Francisco claims that the Petition, while not signed by counsel, "was ostensibly prepared by respondent

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[15] *Id.* at 53.

[16] *Id.*

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

[18] *Id.* at 168, Atty. Pablo B. Francisco's Position Paper.

[19] *Id.*

[20] *Id.* at 61-64.

[21] *Id.* at 65-67.

[22] *Id.* at 63, Rainier Fineza and Teodora Fineza's Petition.

Atty. Romeo M. Flores[.]"[23] The Petition for Relief from Judgment was docketed as SCA 09-015.[24]

The allegations in the Petition for Relief from Judgment stated:

3. *Defendants did not receive a copy or have no knowledge of the Order dated 26 March 2009* denying their motion for reconsideration, hence, was not able to hire the services of other lawyer to seek relief from the adverse consequences of the said Order;

4. *It was only on June 29, 2009 that defendants through their lawyer came to know of the Order* dated March 26, 2009[,] denying their "Motion for Reconsideration" of the decision/Order dated January 15, 2009 reversing the Order of Dismissal by the Municipal Trial Court, Branch 2, Binangonan, Rizal;

5. This petition is being filed within sixty days after the petitioners obtained knowledge on June 29, 2009 of the Order/decision dated March 26, 2009 denying the motion for reconsideration and not more than six (6) months after judgment was entered on May 20, 2009[.][25] (Emphasis supplied)

Atty. Francisco filed a Motion to Dismiss on July 13, 2009, alleging that the Petition for Relief from Judgment was filed out of time.[26] He also alleged that:

2. The petition was filed in SCA No. 09-015, not in SCA No. 08-018 of the same Regional Trial Court, in violation of Section 1, Rule 38 of the Rules of Court;

x x x x x x x x x

4. It can not be that petitioners came to know through their lawyer of the Order, dated March 26, 2009 only on June 29, 2009. That allegation is a travesty of facts because on June 3, 2009, respondent [referring to Atty. Francisco] filed his motion for issuance of writ of execution of the RTC decision with the Municipal Trial Court of Binangonan and furnished a copy of said motion to petitioners'

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[23] *Id.* at 4, Complaint.

[24] *Id.*

[25] *Id.* at 62.

[26] *Id.* at 169, Atty. Pablo B. Francisco's Position Paper.

counsel [referring to Atty. Flores] on the same day of June 3, 2009. Said motion was heard on June 17, 2009, with Atty. Romeo M. Flores in attendance and manifesting before the court that petitioners have vacated the parcel of land in question[.][27]

Atty. Flores entered his appearance in SCA Case No. 09-015 on August 20, 2009. Atty. Francisco claims that Atty. Flores knew about the untruthful allegations and frivolous character of the Petition for Relief from Judgment, yet he sought to pursue the Petition through the filing of a Motion to Admit Supplemental Pleading.[28]

The Petition for Relief from Judgment was dismissed by the Regional Trial Court in an Order[29] dated August 28, 2009.

On February 8, 2010, the Finezas were evicted.[30] Their "personal properties were levied upon, then sold on execution to settle their judgment debt[.]"[31]

Atty. Francisco alleges that Atty. Flores thereafter "induced Rainier Fineza and Teodora Fineza to file a complaint against [Atty. Francisco] [before] the Supreme Court[.]"[32] The case was docketed as Administrative Case No. 8563.[33]

Atty. Francisco contends that Atty. Flores was negligent when he "did not make himself available"[34] during that period when his clients could still question the trial court's denial of the Motion for Reconsideration by filing a Petition for Review before the Court of Appeals.[35]

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[27] *Id.* at 68-69, Motion to Dismiss.

[28] *Id.* at 169-170, Atty. Pablo B. Francisco's Position Paper.

[29] *Id.* at 85. The Order was penned by Presiding Judge Ma. Conchita O. Lucero-De Mesa of Branch 70, Regional Trial Court of Binangonan, Rizal.

[30] *Id.* at 6, Complaint.

[31] *Id.* at 7.

[32] *Id.*

[33] *Id.*

[34] *Id.* at 170, Atty. Pablo B. Francisco's Position Paper.

[35] *Id.*

Atty. Francisco prays that Atty. Flores "be found guilty of violation of Canons 10 and 18 of the Code of Professional Responsibility and be meted the corresponding penalty."[36]

On the other hand, Atty. Flores alleges that he was on vacation from February 9, 2009 until May 2009.[37] The copy of the trial court's Order sent to the Finezas was received by Glen Fineza on April 7, 2009, but allegedly, Glen Fineza did not inform Teodora Fineza and Rainier Fineza that he received the trial court's Order.[38] Atty. Flores claims that he only learned about the Order denying the Motion for Reconsideration when he received a copy of Atty. Francisco's Motion for Issuance of a Writ of Execution.[39]

Regarding the Finezas' Petition for Relief from Judgment, Atty. Flores alleges that he only assisted in the filing of the Petition.[40] He could not act as counsel because he had "no personal knowledge as to when the [Finezas] learned . . . of the denial of the Motion for Reconsideration."[41]

Atty. Flores also argues that he did not violate Canon 18 because in another case, docketed as Civil Case 384-B for Quieting of Title with Prayer for Restraining Order/Injunction, [42] which also involved Atty. Francisco and the Finezas, he was able to prevent the demolition of the Finezas' family home.[43]

In the Report and Recommendation[44] of the Commission on Bar Discipline dated April 15, 2011, the Commission found

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[36] *Id.* at 7, Complaint.

[37] *Id.* at 179, Atty. Romeo M. Flores' Position Paper.

[38] *Id.* at 177.

[39] *Id.* at 178.

[40] *Id.* at 178-179.

[41] *Id.* at 179.

[42] *Id.* at 182, Regional Trial Court Resolution in Civil Case No. 384-B.

[43] *Id.* at 179, Atty. Romeo M. Flores' Position Paper.

[44] *Id.* at 199-201. The Report and Recommendation, dated April 15, 2011, was penned by Atty. Salvador B. Hababag, Investigating Commissioner of the Commission on Bar Discipline.

that the allegations in the Petition for Relief from Judgment were "false and frivolous"[45] because when the Petition for Relief from Judgment was filed, more than 60 days elapsed from the time that Atty. Flores and the Finezas had received copies of the trial court's Order.[46] Atty. Flores received a copy of the trial court's Order dated March 26, 2009, on April 3, 2009, while the Finezas received their copy on April 7, 2009.[47] Glen Fineza, who acknowledged receipt of the trial court's Order, is the son of Teodora Fineza and the brother of Rainier Fineza.[48] When the Petition for Relief from Judgment was filed on July 8, 2009, it was beyond the 60-day period.[49]

The Commission on Bar Discipline recommended that Atty. Flores be found guilty of violating Rules 10.01 and 10.03 of Canon 10, and that the penalty of suspension from the practice of law for three (3) months "with stern warning that a repetition of the same offense shall be dealt with more severely"[50] be imposed.[51] No pronouncement was made on the issue of whether Atty. Flores violated Canon 18.

The Board of Governors of the Integrated Bar of the Philippines adopted and approved the Report and Recommendation of the Commission on Bar Discipline in a Resolution[52] dated June 20, 2013. However, the Board of Governors Resolution is also silent on the issue of whether Atty. Flores violated Canon 18 of the Code of Professional

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[45] *Id.* at 201, Commission on Bar Discipline's Report and Recommendation.

[46] *Id.*

[47] *Id.*

[48] *Id.*

[49] *Id.*

[50] *Id.*

[51] *Id.*

[52] *Id.* at 198. The Resolution is docketed as Resolution No. XX-2013-695.

Responsibility.

Atty. Flores filed an Ex-Parte Motion to Admit Motion for Reconsideration[53] and a Motion for Reconsideration,[54] arguing that he was on vacation from February 11, 2009 up to "June __, 2009[.]"[55] During that period, his staff received the trial court's Order dated March 26, 2009[56] on April 3, 2009.[57] Hence, Atty. Francisco's allegation that he received the trial court's Order on April 31, 2009 is not true.[58] In addition, Glen Fineza did not give a copy of the trial court's Order to Rainier Fineza or Teodora Fineza.[59] Further, the charge of perjury against him, Atty. Flores, was dismissed by the prosecutor.[60] Atty. Flores also argues that he properly observed the rules of procedure in the forcible entry case, thus, he should not be found guilty of violating Canon 10.03 of the Code of Professional Responsibility.[61]

Atty. Flores reiterated that this administrative Complaint originated from a civil case filed before the Regional Trial Court of Binangonan, Rizal, involving Atty. Francisco and the Finezas.[62] While the Finezas lost their property in that case, he, as counsel

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[53] *Id.* at 202-203.

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

[55] *Id.* at 205. The date was left blank in the Motion for Reconsideration.

[56] *Id.*

[57] *Id.* at 52, back page of the Regional Trial Court's Order.

[58] *Id.* at 205, Atty. Romeo M. Flores' Motion for Reconsideration.

[59] *Id.*

[60] *Id.* at 206.

[61] *Id.* at 205.

[62] *Id.* at 206. Atty. Francisco filed a civil case for forcible entry against the Finezas before the Regional Trial Court of Binangonan, Rizal. A copy of the Decision in the forcible entry case is attached to the *rollo* (*Id.* at 9-12).

[63] *Id.*, Atty. Romeo M. Flores' Motion for Reconsideration.

of the Finezas, was able to prevent Atty. Francisco "from implementing the demolition of the Fineza's family home."[63]

The Board of Governors, through Dominic C.M. Solis, Director for Bar Discipline, required Atty. Francisco to submit a Comment on Atty. Flores' Motion for Reconsideration.[64]

Atty. Francisco reiterated in his Comment[65] that the Finezas knew about the trial court's dismissal of their Motion for Reconsideration because they received a copy of the trial court's Order on April 7, 2009.[66] Also, Atty. Flores received a copy of the same Order on April 3, 2009 and not April 31, 2009.[67] Further, when Atty. Francisco sought to execute the trial court's Decision, Atty. Flores and the Finezas attended "the hearing on the motion for execution of the final judgment"[68] on June 17 and 24, 2007.[69]

Atty. Francisco prayed in his Comment that Atty. Flores "be suspended from the practice of law for at least six (6) months."[70]

In a Resolution[71] dated August 9, 2014, the Board of Governors denied Atty. Flores' Motion for Reconsideration but increased the penalty recommended from three (3) months to six (6) months suspension from the practice of law.[72]

The issue in this case is whether respondent Atty. Romeo M. Flores violated Canons 10 and 18 of the Code of Professional Responsibility.

This court accepts the findings of fact of the Integrated Bar

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[64] *Id.* at 216. The Order was dated November 15, 2013.

[65] *Id.* at 217-219.

[66] *Id.* at 217.

[67] *Id.* at 218.

[68] *Id.* at 219.

[69] *Id.* at 218-219.

[70] *Id.* at 219.

[71] *Id.* at 224. The Resolution was docketed as Resolution No. XXI-2014-466.

[72] *Id.*

of the Philippines. Based on the records of this administrative Complaint, respondent is guilty of violating Canon 10, Rules 10.01 and 10.03, and Canon 18, Rule 18.03.

Canon 10, Rule 10.01 of the Code of Professional Responsibility provides:

Canon 10 — A lawyer owes candor, fairness and good faith to the court.

> Rule 10.01 — A lawyer shall not do any falsehood, nor consent to the doing of any in Court; nor shall he mislead or allow the Court to be misled by any artifice.

Respondent was not entirely truthful. He alleged in his Position Paper that:

> 4. *Herein respondent himself only came to know of the denial of their Motion for Reconsideration in June, 2009 when he received a copy of the motion of complainant for issuance of a writ of execution against the FINEZA[S].* This fact was immediately relayed to the FINEZA[S].
>
> xxx xxx xxx
>
> 6. FINEZAS in filing the petition for relief from judgment believe in good faith that they have complied with the requirement of the rule. They learned only of the judgment on June 29, 2009.
>
> Herein RESPONDENT only assisted the FINEZA[S] in filing the petition for relief from judgment. He could not personally act as counsel considering that he has no personal knowledge as to when the FINEZA[S] learned or had knowledge of the denial of the Motion for Reconsideration.
>
> Although the denial of the Motion for Reconsideration was received in his office on April 3, 2009, respondent was in the United States of America (U.S.A.) for a 3-month vacation from February 9, 2009 to May, 2009. He had given instructions to his staff to furnish copies of all court processes to his clients and to refer all legal matters to either Atty. Leonardo C. Aseoche or Atty. Baltazar O. Abasolo as collaborating counsels, both practicing lawyers in Binangonan, Rizal.[73]

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[73] *Id.* at 178-179, Atty. Romeo M. Flores' Position Paper.

(Emphasis supplied)

Respondent did not state the exact date when he received a copy of the Motion for Issuance of a Writ of Execution. The record shows that he received it on June 3, 2009.[74] Respondent then alleges that he immediately informed the Finezas about the matter, but later on contradicted himself when he stated "that he has no personal knowledge as to when the Fineza[s] learned or had knowledge of the denial of the Motion for Reconsideration."[75]

Respondent's statement that he had no knowledge when the Finezas learned about the denial of their Motion for Reconsideration is also contradicted by the Finezas' allegations in their Petition for Relief from Judgment that:

> 4. It was only *on June 29, 2009 that defendants through their lawyer came to know of the Order dated March 26, 2009*[,] denying their "Motion for Reconsideration" of the decision/Order dated January 15, 2009 reversing the Order of Dismissal by the Municipal Trial Court, Branch 2, Binangonan, Rizal[.][76] (Emphasis supplied)

Further, respondent does not deny complainant's allegation that he and the Finezas were present when the Motion for Issuance of a Writ of Execution was heard by the trial court on June 17 and 24, 2009.[77]

From the foregoing, it is clear that respondent and the Finezas knew about the trial court's Order denying their Motion for Reconsideration before June 29, 2009.

While the Complaint is limited to the allegations in the Petition for Relief from Judgment, this court notes that respondent was also not truthful in his Motion for Reconsideration filed before the Integrated Bar of the Philippines. In his Motion for

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[74] *Id.* at 58, Motion for Issuance of Writ of Execution.

[75] *Id.* at 179, Atty. Romeo M. Flores' Position Paper.

[76] *Id.* at 62, Rainier Fineza and Teodora Fineza's Petition.

[77] *Id.* at 168, Atty. Pablo B. Francisco's Position Paper.

Reconsideration, he alleged that:

> The allegation of complainant that respondent received on April 31, 2009 the Order of March 26, 2009 denying his motion for reconsideration is not correct. It was the law office through his staff that received on 26 March 2009 the Order of Denial, per Reg. Receipt No. 190. *Herein respondent was on vacation in U.S.A. from February 11, 2009 up to June __, 2009.*[78] (Emphasis supplied)

Respondent's allegations are conflicting. He initially claimed that he was on vacation from February 9, 2009 to May 2009.[79] He subsequently claimed that his vacation was from February 11, 2009 to June 2009.[80]

The glaring inconsistencies in respondent's statements are sufficient to show that he is guilty of violating Canon 10, Rule 10.01.

The importance of Canon 10, Rule 10.01 was extensively discussed in *Spouses Umaguing v. De Vera*,[81] which involved the submission of a falsified affidavit in an electoral protest. This court discussed that:

> Fundamental is the rule that in his dealings with his client and with the courts, every lawyer is expected to be honest, imbued with integrity, and trustworthy. These expectations, though high and demanding, are the professional and ethical burdens of every member of the Philippine Bar, for they have been given full expression in the Lawyer's Oath that every lawyer of this country has taken upon admission as a *bona fide* member of the Law Profession, thus:
>
> > I, _____, do solemnly swear that I will maintain allegiance to the Republic of the Philippines; I will support its Constitution and obey the laws as well as the legal orders of the duly constituted authorities therein; **I will do no falsehood,**

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[78] *Id.* at 212, Atty. Romeo M. Flores' Motion for Reconsideration.

[79] *Id.* at 179, Atty. Romeo M. Flores' Position Paper.

[80] *Id.* at 205, Atty. Romeo M. Flores' Motion for Reconsideration.

[81] A.C. No. 10451, February 4, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/february2015/10451.pdf> [Per J. Perlas-Bernabe, First Division].

> **nor consent to the doing of any in court**; I will not wittingly or willingly promote or sue any groundless, false or unlawful suit, nor give aid nor consent to the same. I will delay no man for money or malice, and will conduct myself as a lawyer according to the best of my knowledge and discretion with all good fidelity as well to the courts as to my clients; and I impose upon myself this voluntary obligation without any mental reservation or purpose of evasion. So help me God.

The Lawyer's Oath enjoins every lawyer not only to obey the laws of the land but also to refrain from doing any falsehood in or out of court or from consenting to the doing of any in court, and to conduct himself according to the best of his knowledge and discretion with all good fidelity to the courts as well as to his clients. Every lawyer is a servant of the law, and has to observe and maintain the rule of law as well as be an exemplar worthy of emulation by others. It is by no means a coincidence, therefore, that the core values of honesty, integrity, and trustworthiness are emphatically reiterated by the Code of Professional Responsibility. In this light, Rule 10.01, Canon 10 of the Code of Professional Responsibility provides that "[a] lawyer shall not do any falsehood, nor consent to the doing of any in Court; nor shall he mislead, or allow the Court to be misled by any artifice."[82] (Emphasis and underscoring in the original, citations omitted)

This court also finds that respondent violated Rule 10.03 of Canon 10, which provides:

Rule 10.03 — A lawyer shall observe the rules of procedure and shall not misuse them to defeat the ends of justice.

Respondent admitted that he assisted the Finezas "in filing

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[82] *Id.* at 5-6. See also *Bernardino v. Santos*, A.C. No. 10583, February 18, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/february2015/10583.pdf> 12-13 [Per *J.* Leonen, Second Division] and *Villahermosa, Sr. v. Caracol*, A.C. No. 7325, January 21, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/january2015/7325.pdf> 5-6 [Per *J.* Villarama, Jr., Third Division].

[83] *Rollo*, pp. 178-179, Atty. Romeo M. Flores' Position Paper.

[84] *Id.* at 85, Regional Trial Court's Order.

the petition for relief from judgment."[83] Subsequently, respondent moved to withdraw the Petition for Relief from Judgment after recognizing that it was filed erroneously.[84] As stated in the trial court's Order:

> Nevertheless, the court interposed clarificatory questions to the petitioners and as a result of the discussion this morning, *petitioners' counsel moved for the withdrawal of his Petition for Relief from Judgment after realizing that he erroneously filed the petition* before another court and in another case in violation of Section 1 of Rule 38 of the Revised Rules of Court.
>
> WHEREFORE, on motion of the petitioners through counsel, the Court resolved to consider the instant petition for Relief from Judgment docketed as SCA Case No. 09-015 entitled Ranier [sic] B. Fineza and Teodora B. Fineza versus Pablo B. Francisco filed on July 8, 2009 and raffled to this court on July 13, 2009 as WITHDRAWN, and this case is hereby DISMISSED.[85] (Emphasis supplied)

Respondent's attempts to rectify are further evidence that what he did — file a Petition for Relief docketed as a different case before a different trial court — was wrong in the first place.[86]

Furthermore, this court finds respondent guilty of violating Canon 18, Rule 18.03 of the Code of Professional Responsibility.

Canon 18 of the Code of Professional Responsibility provides:

> Canon 18 — A lawyer shall serve his client with competence and diligence.
>
> x x x x x x x x x
>
> Rule 18.03 — A lawyer shall not neglect a legal matter

[85] *Id.*

[86] RULES OF COURT, Rule 38, Sec. 1 provides:

> RULE 38. Relief from Judgments, Orders, or Other Proceedings
> SECTION. 1. Petition for Relief from Judgment, Order, or Other Proceedings. — When a judgment or final order is entered, or any other proceeding is thereafter taken against a party in any court through fraud, accident, mistake, or excusable negligence, he may file a petition in such court and in the same case praying that the judgment, order or proceeding be set aside.

entrusted to him, and his negligence in connection therewith shall render him liable.

Respondent's explanation that he was on vacation is not sufficient. Being the lawyer who filed the Motion for Reconsideration, he should have been prepared for the possibility that his Motion would be acted upon by the trial court during the time that he was on vacation. In addition, he does not deny that his office, through his staff, received by registered mail a copy of the trial court's Order on April 3, 2009.

Respondent argues that he instructed his staff to inform his clients of court processes and to refer legal matters to Atty. Leonardo C. Aseoche or Atty. Baltazar O. Abasolo.[87] However, respondent did not present evidence to support his argument.

Respondent further argues that he was not negligent and explained that in the case docketed as Civil Case 384-B for Quieting of Title with Prayer for Restraining Order/Injunction, he successfully prevented the demolition of the Finezas' family home.[88]

Respondent may not have been negligent in handling Civil Case No. 384-B, but he was negligent in handling SCA No. 08-018. When he allegedly informed the Finezas of the trial court's Order, he should have immediately discussed the matter with his clients. The records of this case show that he did not consult his clients on what legal remedies they would like to avail themselves of after the denial of the Motion for Reconsideration.

Respondent attended the hearing on the Motion for Issuance of a Writ of Execution, and that it was allegedly the Finezas, on their own, who filed the Petition for Relief from Judgment.

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[87] *Rollo*, p. 179, Atty. Romeo M. Flores' Position Paper.

[88] *Id.*

[89] *Id.* at 178-179.

[90] *Id.* at 179.

Respondent claims that he merely assisted the Finezas in filing the Petition for Relief, but was not representing them.[89] He argues that he could not represent the Finezas because "he has no personal knowledge as to when the Fineza[s] learned or had knowledge of the denial of the Motion for Reconsideration."[90]

Respondent also seems to have forgotten the general rule that notice to counsel is also notice to client. Thus, when his office received a copy of the trial court's Order on April 3, 2009, his clients are also deemed as having been notified on the same date.

Manaya v. Alabang Country Club, Inc.[91] involved the dismissal of an appeal before the National Labor Relations Commission due to its late filing.[92] Respondent Alabang Country Club filed a Petition for Certiorari before the Court of Appeals and argued that its lawyer abandoned it, thus, it was "not effectively represented by a competent counsel."[93] The Court of Appeals granted the Petition for Certiorari.[94] Petitioner Fernando G. Manaya then filed a Petition for Review on Certiorari before this court, which was granted.[95] This court explained that:

> *It is axiomatic that when a client is represented by counsel, notice to counsel is notice to client. In the absence of a notice of withdrawal or substitution of counsel, the Court will rightly assume that the counsel of record continues to represent his client and receipt of notice by the former is the reckoning point of the reglementary period.* As heretofore adverted, the original counsel did not file any notice of withdrawal. Neither was there any intimation by respondent at

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[91] 552 Phil. 226 (2007) [Per *J.* Chico-Nazario, Third Division].

[92] *Id.* at 230-231.

[93] *Id.* at 232.

[94] *Id.*

[95] *Id.* at 244.

[96] *Id.* at 233.

[97] *Ramirez v. Buhayang-Margallo*, A.C. No. 10537, February 3, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/february2015/10537.pdf> [Per *J.* Leonen, *En Banc*].

that time that it was terminating the services of its counsel.[96] (Emphasis supplied, citation omitted)

In *Ramirez v. Buhayang-Margallo*,[97] this court found Atty. Mercedes Buhayang-Margallo guilty of violating Rule 18.03 of the Code of Professional Responsibility because she failed to file the appellant's brief within the reglementary period that resulted in the loss of available remedies for her client.[98]

Assuming that the Finezas learned about the denial of the Motion for Reconsideration only on June 29, 2009, this would further support the allegations in the Complaint that respondent violated Canon 18. Respondent alleges that he learned about the denial of the Motion for Reconsideration when he received a copy of the Motion for Issuance of Writ of Execution. While he did not state the exact date when he received a copy of the Motion, the record shows that he received it on June 3, 2009. If it were true that the Finezas learned about the denial of the Motion for Reconsideration on June 29, 2009, then it shows that respondent did not immediately inform his clients about the status of the forcible entry case. It took him more than 20 days to inform his clients on the matter. Respondent's failure to immediately update his clients and act upon the denial of the Motion for Reconsideration, which resulted in the expiration of the period for filing a Petition for Relief from Judgment, clearly points to negligence on his part.

This court takes judicial notice that respondent was previously suspended from the practice of law for two years in *Serzo v. Atty. Flores*[99] because he notarized a Deed of Absolute Sale when the vendor was already deceased.[100] His notarial commission was also revoked, and this court disqualified him from being reappointed as notary public for two years.[101]

It is deplorable that respondent, despite having been sanctioned by this court, once again violated his oath as a lawyer.

WHEREFORE, the findings of fact of the Board of Governors of the Integrated Bar of the Philippines dated 1 June 20, 2013 and August 9, 2014 are **ACCEPTED and APPROVED.** Respondent Atty. Romeo M. Flores is found guilty of violating

[96] *Id.* at 317.

[97] 679 Phil. 310 (2012) [Per J. Carpio Morales, Third Division].

[98] *Id.* at 318.

[99] *Id.* at 321.

Canon 10, Rules 10.01 and 10.03, and Canon 18, Rule 18.03 of the Code of Professional Responsibility.

Respondent Atty. Romeo M. Flores is suspended from the practice of law for two (2) years. He is warned that a repetition of the same or similar act shall be dealt with more severely.

Let a copy of this Resolution be furnished the Office of the Bar Confidant, to be appended to respondent Atty. Romeo M. Flores' personal record as attorney, to the Integrated Bar of the Philippines, and to the Office of the Court Administrator for dissemination to all courts throughout the country for their information and guidance.

SO ORDERED.

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

EN BANC

[A.C. No. 10859. January 26, 2016]
(Formerly CBD Case No. 09-2514)

MARIA FATIMA JAPITANA, *complainant, vs.* **ATTY. SYLVESTER C. PARADO,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; 2004 RULES ON NOTARIAL PRACTICE; WITHOUT A COMMISSION, A LAWYER IS UNAUTHORIZED TO PERFORM ANY OF THE NOTARIAL ACTS AND A LAWYER WHO ACTS AS A NOTARY PUBLIC WITHOUT THE NECESSARY

NOTARIAL COMMISSION IS REMISS IN HIS PROFESSIONAL DUTIES AND RESPONSIBILITIES. — Under the 2004 Rules on Notarial Practice, a person commissioned as a notary public may perform notarial acts in any place within the territorial jurisdiction of the commissioning court for a period of two (2) years commencing the first day of January of the year in which the commissioning is made. Commission either means the grant of authority to perform notarial or the written evidence of authority. Without a commission, a lawyer is unauthorized to perform any of the notarial acts. A lawyer who acts as a notary public without the necessary notarial commission is remiss in his professional duties and responsibilities. In *Re: Violation of Rules on Notarial Practice*, the Court emphasized that notaries public must uphold the requirements in acting as such, to wit: **Under the rule, only persons who are commissioned as notary public may perform notarial acts within the territorial jurisdiction of the court which granted the commission**. x x x. Atty. Parado knowingly performed notarial acts in 2006 in spite of the absence of a notarial commission for the said period. Further, he was dishonest when he testified in court that he had a notarial commission effective until 2008, when, in truth, he had none. Atty. Parado's misdeeds run afoul of his duties and responsibilities, both as a lawyer and a notary public.

2. ID.; ID.; ID.; THE PRESENTATION OF A COMPETENT EVIDENCE OF IDENTITY IS REQUIRED IF THE PERSON APPEARING BEFORE THE NOTARY PUBLIC IS NOT PERSONALLY KNOWN BY HIM; COMPETENT EVIDENCE OF IDENTITY, DEFINED; THE PRESENTATION OF THE COMMUNITY TAX CERTIFICATE (CTC) IS INSUFFICIENT AS THE SAME CANNOT BE CONSIDERED AS COMPETENT EVIDENCE OF IDENTITY, AND RELIANCE ON THE CTC ALONE IS A PUNISHABLE INDISCRETION BY THE NOTARY PUBLIC. — [E]ven if Atty. Parado had a valid notarial commission, he still failed to faithfully observe the Rules on Notarial Practice when he notarized the Real Estate Mortgage and the Affidavit of Conformity with the persons who executed the said documents merely presenting their Residence Certificate or Community Tax Certificate *(CTC)* before him. Section 2(b), Rule IV of the 2004 Rules on NotariaI requires the presentation

of a competent evidence of identity, it the person appearing before the notary public is not personally known by him. Section 12, Rule II of the same Rules defines competent evidence of identity as: (a) at least one current identification document issued by an official agency bearing the photograph and signature of the individual; or (b) the oath or affirmation of one credible witness not privy to the instrument, document or transaction, who is personally known to the notary public and who personally knows the individual, or of two credible witnesses neither of whom is privy to the instrument, document or transaction who each personally knows the individual and shows to the notary public a documentary identification. Atty. Parado did not claim to personally know the persons who executed the said documents. Hence, the presentation of their CTCs was insufficient because those cannot be considered as competent evidence of identity, as defined in the Rules. Reliance on the CTCs alone is a punishable indiscretion by the notary public.

3. ID.; ID.; ID.; SUSPENSION FROM THE PRACTICE OF LAW FOR TWO YEARS AND PERMANENT DISQUALIFICATION FROM BEING COMMISSIONED AS NOTARY PUBLIC IMPOSED FOR VIOLATION OF RULES ON NOTARIAL PRACTICE.— [A]tty. Parado should be held accountable for failing to perform his duties and responsibilities expected of him. The penalty recommended, however, should be increased to put premium on the importance of the duties and responsibilities of a notary public. Pursuant to the pronouncement in *Re: Violation of Rules on Notarial Practice,* Atty. Parado should be suspended for two (2) years from the practice of law and forever barred from becoming a notary public.

APPEARANCES OF COUNSEL

Audie Arnado for complainant.
Sylvester C. Parado for respondent.

D E C I S I O N

***PER CURIAM*:**

This refers to the September 27, 2014 Resolution[1] of the Integrated Bar of the Philippines-Board of Governors (*IBP-BOG*), which adopted and approved with modification, the Report and Recommendation[2] of the Investigating Commissioner.

In her verified complaint,[3] dated April 6, 2009, which was indorsed by the Court to the IBP, complainant Maria Fatima Japitana (*Fatima*) accused respondent Atty. Sylvester C. Parado (*Atty. Parado*) of performing notarial acts without authority to do so, knowingly notarizing forged documents, and notarizing documents without requiring sufficient identification from the signatories.

The Complaint

On June 22, 2006, Atty. Parado notarized the Real Estate Mortgage[4] between RC Lending Investors, Inc. (*RC Lending*), as mortgagee, and Maria Theresa G. Japitana (*Theresa*) and Ma. Nette Japitana (*Nette*), as mortgagors. It was supposedly witnessed by Maria Sallie Japitana (*Sallie*) and Maria Lourdes Japitana-Sibi (*Lourdes*) and her husband Dante Sibi (*Dante*), Fatima's sisters and brother-in-law, respectively. The mortgage covered a parcel of land on which the family home of the Japitanas was constituted. On the same date, Atty. Parado notarized the Affidavit[5] allegedly executed by Theresa, Nette, Lourdes, Dante, and Sallie to show their conformity to the Real Estate Mortgage over the land where their family home was situated.

On October 23, 2006, RC Lending, through Cristeta G. Cuenco (*Cuenco*), filed its Petition for ExtraJudicial Foreclosure of Real

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[1] *Rollo*, pp. 115-116.

[2] *Id.* at 117-120.

[3] *Id.* at 3-6.

[4] *Id.* at 7-9.

[5] *Id.* at 12.

Estate Mortgage.[6] Consequently, the Transfer Certificate of Title (*TCT*) was issued under the name of RC Lending. On February 3, 2009, it filed an *ex-parte* motion[7] for the issuance of a break-open order, for RC Lending to effectively take the possession of the subject property as it was gated and nobody would answer in spite of the sheriff's repeated knocking.

Fatima, however, assailed that the signatures in the Real Estate Mortgage as well as in the Affidavit, both notarized on June 22, 2006, were forgeries. She asserted that Atty. Parado did not require the persons who appeared before him to present any valid identification. Fatima alleged that Atty. Parado manually forged the signatures of Sallie, Lourdes and Dante, as witnesses to the Real Estate Mortgage. She added that her sister, Theresa, was a schizophrenic since 1975. More importantly, Fatima averred that Atty. Parado had no notarial authority, as certified[8] by the Clerk of Court of the Regional Trial Court of Cebu (*RTC*).

Proceedings before the IBP

The IBP Commission on Bar Discipline (*CBD*) issued the order,[9] dated September 17, 2009, directing Atty. Parado to submit his answer to the verified complaint within fifteen (15) days from receipt of the said order. On February 17, 2001, the IBP CBD issued the Notice of Mandatory Conference,[10] requiring both parties to attend the mandatory conference set on March 16, 2011. On the said date, The IBP CBD issued another order, [11] resetting the mandatory conference to April 6, 2011 because Atty. Parado failed to appear before the commission.

On April 6, 2011, Atty. Parado again failed to appear. The

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

[7] *Id.* at 16-18.

[8] *Id.* at 26.

[9] *Id.* at 49.

[10] *Id.* at 50.

[11] *Id.* at 52.

[12] *Id.* at 80.

IBP CBD then issued the order[12] terminating the mandatory conference and directing both parties to submit their respective position papers within ten (10) days from receipt of the order.

In her position paper,[13] Fatima reiterated that Atty. Parado was guilty of unethical conduct for performing notarial acts without the necessary authority, and that he knowingly notarized forged documents. Atty. Parado, on the other hand, failed to submit his position paper.

Report and Recommendation

In his October 31, 2011 Report and Recommendation,[14] Investigating Commissioner Oliver A. Cachapero (*Commissioner Cachapero*) noted that Atty. Parado had previously testified in court that the mortgagors and the witnesses personally appeared before him and that it was he who required them to affix their thumb marks and their signatures — which the parties and the witnesses in the Real Estate Mortgage did. Commissioner Cachapero opined that there was no evidence to support that Atty. Parado lied as the court had not set aside his testimonies. Consequently, he concluded that it was not proven that Atty. Parado forged the assailed documents and notarized the same.

Commissioner Cachapero, however, found that Atty. Parado was dishonest when he testified that he was issued a notarial commission effective until 2008. His claim was belied by the certification issued by the Clerk of Court of the RTC stating that Atty. Parado had not been issued a notarial commission for 2006. As such, he recommended that Atty. Parado be suspended from the practice of law for one (1) year.

On September 27, 2014, the IBP-BOG resolved to revoke Atty. Parado's notarial commission, if presently commissioned, for testifying that he had a notarial commission valid until 2008, contrary to the certification issued by the Clerk of Court of the RTC and for ignoring the notices sent by the Commission on

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[13] *Id.* at 81-91.

[14] *Id.* at 117-120.

Bar Discipline. Likewise, the Board of Governors disqualified Atty. Parado from being commissioned as a notary public for two (2) years and suspended him from the practice of law for six (6) months. Specifically, Resolution No. XXI-2014-616, reads:

> xxx for testifying in Court that Respondent himself was issued notarial commission up to the year 2008 which was belied by the Certificate of the Clerk of Court VII of Cebu City pointing out that Respondent was not issued a Notarial Commission for the year 2006, and for ignoring the notices of the Commission, Atty. Sylvester C. Parado's notarial commission if presently commissioned is immediately **REVOKED**.
>
> FURTHER, he is **DISQUALIFIED** from being Commissioned as Notary Public for two (2) years and **SUSPENDED** from the practice of law for six (6) months.[15]

The Court's Ruling

The Court agrees with the IBP BOG but modifies the penalty imposed.

A close perusal of the records reveals that Atty. Parado had no existing notarial commission when he notarized the documents in question in 2006. This is supported by the certification issued by the Clerk of Court of the RTC stating that based on the Notarial Records, Atty. Parado had not been issued a notarial commission for the year 2006. He failed to refute the same as he neither appeared during the mandatory conference nor filed his position paper.

Under the 2004 Rules on Notarial Practice,[16] a person commissioned as a notary public may perform notarial acts in any place within the territorial jurisdiction of the commissioning court for a period of two (2) years commencing the first day of January of the year in which the commissioning is made. Commission either means the grant of authority to perform ~~notarial or the~~ written evidence of authority.[17]

[15] *Id.* at 115-116.

[16] A.M. No. 02-8-13-SC.

[17] *Id.*, Rule II, Section 3.

Without a commission, a lawyer is unauthorized to perform any of the notarial acts. A lawyer who acts as a notary public without the necessary notarial commission is remiss in his professional duties and responsibilities. In *Re: Violation of Rules on Notarial Practice*,[18] the Court emphasized that notaries public must uphold the requirements in acting as such, to wit:

> **Under the rule, only persons who are commissioned as notary public may perform notarial acts within the territorial jurisdiction of the court which granted the commission.** Clearly, Atty. Siapno could not perform notarial functions in Lingayen, Natividad and Dagupan City of the Province of Pangasinan since he was not commissioned in the said places to perform such act.
>
> Time and again, this Court has stressed that notarization is not an empty, meaningless and routine act. It is invested with substantive public interest that only those who are qualified or authorized may act as notaries public. It must be emphasized that the act of notarization by a notary public converts a private document into a public document making that document admissible in evidence without further proof of authenticity. **A notarial document is by law entitled to full faith and credit upon its face, and for this reason, notaries public must observe with utmost care the basic requirements in the performance of their duties.**
>
> **By performing notarial acts without the necessary commission from the court, Atty. Siapno violated not only his oath to obey the laws particularly the Rules on Notarial Practice but also Canons 1 and 7 of the Code of Professional Responsibility** which proscribes all lawyers from engaging in unlawful, dishonest, immoral or deceitful conduct and directs them to uphold the integrity and dignity of the legal profession, at all times.
>
> In a plethora of cases, the Court has subjected lawyers to disciplinary action for notarizing documents outside their territorial jurisdiction or with an expired commission. x x x
>
> [Emphases Supplied]

Atty. Parado knowingly performed notarial acts in 2006 in spite of the absence of a notarial commission for the said period.

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[18] A.M. No. 09-6-1-SC, January 21, 2015.

Further, he was dishonest when he testified in court that he had a notarial commission effective until 2008, when, in truth, he had none. Atty. Parado's misdeeds run afoul of his duties and responsibilities, both as a lawyer and a notary public.

Moreover, even if Atty. Parado had a valid notarial commission, he still failed to faithfully observe the Rules on Notarial Practice when he notarized the Real Estate Mortgage and the Affidavit of Conformity with the persons who executed the said documents merely presenting their Residence Certificate or Community Tax Certificate (*CTC*) before him.

Section 2 (b), Rule IV of the 2004 Rules on Notarial Practice requires the presentation of a competent evidence of identity, if the person appearing before the notary public is not personally known by him. Section 12, Rule II of the same Rules defines competent evidence of identity as: (a) at least one current identification document issued by an official agency bearing the photograph and signature of the individual; or (b) the oath or affirmation of one credible witness not privy to the instrument, document or transaction, who is personally known to the notary public and who personally knows the individual, or of two credible witnesses neither of whom is privy to the instrument, document or transaction who each personally knows the individual and shows to the notary public a documentary identification.

Atty. Parado did not claim to personally know the persons who executed the said documents. Hence, the presentation of their CTCs was insufficient because those cannot be considered as competent evidence of identity, as defined in the Rules. Reliance on the CTCs alone is a punishable indiscretion by the notary public.[19]

Doubtless, Atty. Parado should be held accountable for failing to perform his duties and responsibilities expected of him. The penalty recommended, however, should be increased to put premium on the importance of the duties and responsibilities of a notary public. Pursuant to the pronouncement in *Re: Violation ~~of Rules on Nota~~rial Practice*,[20] Atty. Parado should be suspended

[19] *Agbulos v. Viray*, A.C. No. 7350, February 18, 2013, 691 SCRA 1.

[20] *Supra* note 18.

for two (2) years from the practice of law and forever barred from becoming a notary public.

WHEREFORE, respondent Atty. Sylvester C. Parado is **SUSPENDED** from the practice of law for two (2) years and **PERMANENTLY DISQUALIFIED** from being commissioned as Notary Public.

This order is **IMMEDIATELY EXECUTORY.**

Let copies of this decision be furnished all courts in the country and the Integrated Bar of the Philippines for their information and guidance. Let a copy of this decision be also appended to the personal record of Atty. Sylvester C. Parado as a member of the Bar.

SO ORDERED.

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

EN BANC

[A.C. No. 10868. January 26, 2016]
(Formerly CBD Case No. 07-2041)

CHERYL E. VASCO-TAMARAY, *complainant, v.* **ATTY. DEBORAH Z. DAQUIS,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; CODE OF PROFESSIONAL RESPONSIBILITY; PRETENDING TO BE COUNSEL FOR COMPLAINANT CONSTITUTES A VIOLATION OF CANON 1, RULE 1.01 OF THE CODE OF PROFESSIONAL

RESPONSIBILITY AND THE LAWYER'S OATH.— By pretending to be counsel for complainant, respondent violated Canon 1, Rule 1.01 of the Code of Professional Responsibility and failed to uphold her duty of doing no falsehood nor consent to the doing of any falsehood in court as stated in the Lawyer's Oath. Canon 1, Rule 1.01 of the Code of Professional Responsibility provides: CANON 1 - A lawyer shall uphold the constitution, obey the laws of the land and promote respect for law and for legal processes. RULE 1.01 - A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct. In this case, respondent merely denied complainant's allegation that she was Leomarte Tamaray's counsel but was unable to rebut the other allegations against her. x x x. When respondent filed the Petition as counsel for complainant when the truth was otherwise, she committed a falsehood against the trial court and complainant.

2. **ID.; ID.; ID.; THE LAWYER'S ACT OF ALLOWING THE USE OF A FORGED SIGNATURE ON A PETITION SHE PREPARED, NOTARIZED AND FILED BEFORE THE COURT CONSTITUTES A VIOLATION OF CANON 7, RULE 7.03 AND CANON 10, RULE 10.01 OF THE CODE OF PROFESSIONAL RESPONSIBILITY AND DEMONSTRATES A LACK OF MORAL FIBER ON HER PART.—** While there is no evidence to prove that respondent forged complainant's signature, the fact remains that respondent allowed a forged signature to be used on a petition she prepared and notarized. In doing so, respondent violated Canon 7, Rule 7.03 and Canon 10, Rule 10.01. x x x. In *Embido v. Pe, Jr.*, Assistant Provincial Prosecutor Salvador N. Pe, Jr. was found guilty of violating Canon 7, Rule 7.03 and was meted the penalty of disbarment for falsifying a court decision "in a non-existent court proceeding." This court discussed that: Gross immorality, conviction of a crime involving moral turpitude, or fraudulent transactions can justify a lawyer's disbarment or suspension from the practice of law. Specifically, the deliberate falsification of the court decision by the respondent was an act that reflected a high degree of moral turpitude on his part. Worse, the act made a mockery of the administration of justice in this country, given the purpose of the falsification, which was to mislead a foreign tribunal on the personal status of a person. He thereby became unworthy of continuing as a member of the Bar. In a

similar manner, respondent's act of allowing the use of a forged signature on a petition she prepared and notarized demonstrates a lack of moral fiber on her part. xxx. Furthermore, allowing the use of a forged signature on a petition filed before a court is tantamount to consenting to the commission of a falsehood before courts, in violation of Canon 10.

3. **ID.; ID.; ID.; ID.; IMPORTANCE OF CANON 10, RULE 10.01 OF THE CODE OF PROFESSIONAL RESPONSIBILITY, DISCUSSED.—** In *Spouses Umaguing v. De Vera*, this court discussed the importance of Canon 10, Rule 10.01, as follows: The Lawyer's Oath enjoins every lawyer not only to obey the laws of the land but also to refrain from doing any falsehood in or out of court or from consenting to the doing of any in court, and to conduct himself according to the best of his knowledge and discretion with all good fidelity to the courts as well as to his clients. Every lawyer is a servant of the law, and has to observe and maintain the rule of law as well as be an exemplar worthy of emulation by others. *It is by no means a coincidence, therefore, that the core values of honesty, integrity, and trustworthiness are emphatically reiterated by the Code of Professional Responsibility. In this light, Rule 1O.01, Canon 10 of the Code of Professional Responsibility provides that "[a] lawyer shall not do any falsehood, nor consent to the doing of any in Court; nor shall he mislead, or allow the Court to be misled by any artifice.*"

4. **ID.; ID.; ID.; IT IS NOT A MERE DUTY, BUT AN OBLIGATION, OF A LAWYER TO ACCORD THE HIGHEST DEGREE OF FIDELITY, ZEAL AND FERVOR IN THE PROTECTION OF THE CLIENT'S INTEREST, AND HIS FAILURE TO PROTECT THE INTERESTS OF HIS CLIENT CONSTITUTE A VIOLATION OF CANON 17 OF THE CODE OF PROFESSIONAL RESPONSIBILITY.—** This court further finds that respondent violated Canon 17, which states 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. Respondent failed to protect the interests of her client when she represented complainant, who is the opposing party of her client Leomarte Tamaray, in the same case. The responsibilities of a lawyer under Canon 17 were discussed in *Penilla v. Alcid, Jr.*: The legal profession dictates that it is

not a mere duty, but an obligation, of a lawyer to accord the highest degree of fidelity, zeal and fervor in the protection of the client's interest. The most thorough groundwork and study must be undertaken in order to safeguard the interest of the client. The honor bestowed on his person to carry the title of a lawyer does not end upon taking the Lawyer's Oath and signing the Roll of Attorneys. Rather, such honor attaches to him for the entire duration of his practice of law and carries with it the consequent responsibility of not only satisfying the basic requirements but also going the extra mile in the protection of the interests of the client and the pursuit of justice[.]

5. ID.; ID.; ID.; DUTIES AND RESPONSIBILITIES OF MEMBERS OF THE LEGAL PROFESSION, DISCUSSED.— Respondent is reminded of the duties and responsibilities of members of the legal profession, as discussed in *Tenoso v. Echanez*: Time and again, this Court emphasizes that the practice of law is imbued with public interest and that "a lawyer owes substantial duties not only to his client, but also to his brethren in the profession, to the courts, and to the nation, and takes part in one of the most important functions of the State —the administration of justice—as an officer of the court." Accordingly, "[l]awyers are bound to maintain not only a high standard of legal proficiency, but also of morality, honesty, integrity and fair dealing."

6. ID.; ID.; ID.; RATIONALE FOR CANON 15 OF THE CODE OF PROFESSIONAL RESPONSIBILITY, DISCUSSED.— Canon 15, Rule 15.03 of the Code of Professional Responsibility provides: CANON 15 — A lawyer shall observe candor, fairness and loyalty in all his dealings and transactions with his client. … Rule 15.03 —A lawyer shall not represent conflicting interest except by written consent of all concerned given after a full disclosure of facts. The rationale for Canon 15 was discussed in *Samson v. Era*: The rule prohibiting conflict of interest was fashioned to prevent situations wherein a lawyer would be representing a client whose interest is directly adverse to any of his present or former clients. In the same way, a lawyer may only be allowed to represent a client involving the same or a substantially related matter that is materially adverse to the former client only if the former client consents to it after consultation. The rule is grounded in the fiduciary obligation

of loyalty. Throughout the course of a lawyer-client relationship, the lawyer learns all the facts connected with the client's case, including the weak and strong points of the case. Knowledge and information gathered in the course of the relationship must be treated as sacred and guarded with care. It behooves lawyers not only to keep inviolate the client's confidence, but also to avoid the appearance of treachery and double-dealing, for only then can litigants be encouraged to entrust their secrets to their lawyers, which is paramount in the administration of justice. The nature of that relationship is, therefore, one of trust and confidence of the highest degree…. The spirit behind this rule is that the client's confidence once given should not be stripped by the mere expiration of the professional employment. Even after the severance of the relation, a lawyer should not do anything that will injuriously affect his former client in any matter in which the lawyer previously represented the client. Nor should the lawyer disclose or use any of the client's confidences acquired in the previous relation.

7. ID.; ID.; ID.; ID.; CONFLICT OF INTEREST, WHEN IT EXISTS; TEST OF THE INCONSISTENCY OF INTEREST; CONFLICT OF INTEREST NOT COMMITTED BY THE RESPONDENT.— The test to determine whether conflict of interest exists was discussed in *Hornilla v. Salunat*: There is conflict of interest when a lawyer represents inconsistent interests of two or more opposing parties. The test is "whether or not in behalf of one client, it is the lawyer's duty to fight for an issue or claim, but it is his duty to oppose it for the other client. In brief, if he argues for one client, this argument will be opposed by him when he argues for the other client." This rule covers not only cases in which confidential communications have been confided, but also those in which no confidence has been bestowed or will be used. *Also, there is conflict of interests if the acceptance of the new retainer will require the attorney to perform an act which will injuriously affect his first client in any matter in which he represents him and also whether he will be called upon in his new relation to use against his first client any knowledge acquired through their connection. Another test of the inconsistency of interests is whether the acceptance of a new relation will prevent an attorney from the full discharge of his duty of undivided fidelity and loyalty to his client or invite suspicion of*

unfaithfulness or double dealing in the performance thereof. Respondent was engaged by Leomarte Tamaray to be his counsel. When the Petition for Declaration of Nullity of Marriage was filed, respondent signed the Petition as counsel for complainant. If respondent was indeed engaged as counsel by complainant, then there is conflict of interest, in violation of canon 15, rule 15,03. However, there is nothing on record to show that respondent was engaged as counsel by complainant. Hence, this court finds that respondent did not commit conflict of interest.

8. ID.; ID.; DISBARMENT AND DISCIPLINE OF ATTORNEYS; THE FACTUAL FINDINGS AND RECOMMENDATIONS OF THE COMMISSION ON BAR DISCIPLINE AND THE BOARD OF GOVERNORS OF THE INTEGRATED BAR OF THE PHILIPPINES ARE RECOMMENDATORY, SUBJECT TO REVIEW BY THE COURT, FOR ONLY THE COURT HAS THE POWER TO IMPOSE DISCIPLINARY ACTION ON MEMBERS OF THE BAR. — Rule 139-B has been amended by Bar Matter No. 1645 dated October 13, 2015. x x x. Under the old rule, the Board of Governors of the Integrated Bar of the Philippines was given the power to "issue a decision" if the lawyer complained of was exonerated or meted a penalty of "less than suspension or disbarment." In addition, the case would be deemed terminated unless an interested party filed a petition before this court. The amendments to Rule 139-B is a reiteration that only this court has the power to impose disciplinary action on members of the bar. The factual findings and recommendations of the Commission on Bar Discipline and the Board of Governors of the Integrated Bar of the Philippines are recommendatory, subject to review by this court.

APPEARANCES OF COUNSEL

Marie Fe V. Garcia for complainant.

R E S O L U T I O N

***PER CURIAM*:**

Pretending to be counsel for a party in a case and using a forged signature in a pleading merit the penalty of disbarment.

Cheryl E. Vasco-Tamaray (Vasco-Tamaray) filed a Complaint- Affidavit before the Integrated Bar of the Philippines on July 30, 2007, alleging that respondent Atty. Deborah Z. Daquis (Atty. Daquis) filed, on her behalf, a Petition for Declaration of Nullity of Marriage without her consent and forged her signature on the Petition.[1] She also alleged that Atty. Daquis signed the Petition for Declaration of Nullity of Marriage as "counsel for petitioner," referring to Vasco-Tamaray.[2]

Vasco- Tamaray stated that Atty. Daquis was not her counsel but that of her husband, Leomarte Regala Tamaray.[3] To support her allegation, she attached the Affidavit[4] of Maritess Marquez-Guerrero. The Affidavit states:

1. Sometime in October 2006, I accompanied Cheryl Tamaray in going to East Cafe at Rustan's Makati to meet with her husband Leomarte Tamaray;

2. We arrived at the said place at around 7:00pm *and Leomarte introduced to us (Cheryl and 1) Atty. Deborah Z. Daquis as his lawyer*. He further told us that Atty. Daquis' husband also worked in Japan and that's how he got to know the latter and got her services;

3. Among other things, Leomarte told Cheryl that the reason for that meeting and the presence of Atty. Daquis *was because he had decided to file a case to annul his marriage* with Cheryl;

4. Cheryl was shocked and just cried. After awhile [sic], Leomarte's brother arrived and shortly after, the group left;

5. The next instance that I saw Atty. Daquis was when we (Cheryl

[1] *Rollo*, pp. 2-3, Complaint-Affidavit.

[2] *Id*. at 5-7, Petition for Declaration of Nullity of Marriage, Annex "A" of Complaint-Affidavit.

[3] *Id*. at 2, Complaint-Affidavit.

[4] *Id*. at 68. Vasco-Tamaray stated that Maritess Marquez-Guerrero is her and her husband's friend. (*Id*. at 77, TSN, May 22, 2008).

> and I) went to McDonald's-Greenbelt where Atty. Daquis tried to convince her not to oppose Leomarte's decision to have their marriage annulled[.][5] (Emphasis supplied)

Vasco-Tamaray narrated that in December 2006, Atty. Daquis informed her "that a Petition for Declaration of Nullity of Marriage was filed before the Regional Trial Court of Muntinlupa City."[6] In February 2007, Atty. Daquis asked her to appear before the City Prosecutor's Office of Muntinlupa City.[7]

On March 5, 2007, Vasco-Tamaray appeared before the City Prosecutor's Office and met Atty. Daquis. She asked Atty. Daquis to give her a copy of the Petition but Atty. Daquis refused.[8]

Vasco- Tamaray stated that she obtained a copy of the Petition for Declaration of Nullity of Marriage from Branch 207 of the Regional Trial Court of Muntinlupa City. She was surprised to see that the Petition was allegedly signed and filed by her.[9]

Vasco- Tamaray alleged that she did not file the Petition, that her signature was forged by Atty. Daquis, and that her purported community tax certificate appearing on the jurat was not hers because she never resided in Muntinlupa City.[10] She attached a Certification issued by the Sangguniang Barangay of Putatan, Muntinlupa City stating that she was "never . . . a resident of #9 Daang Hari Street, Umali Compound, Summitville Subdivision, Barangay Putatan."[11] She also attached a Certification issued by Barangay Talipapa stating that she has been a resident of "#484-J Saguittarius St., Solville Subd., Barangay Talipapa, Novaliches, Quezon City ... from 2000 till

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[5] *Id*.

[6] *Id*. at 2, Complaint-Affidavit.

[7] *Id*.

[8] *Id*.

[9] *Id*. at 58-59, Complainant's Position Paper.

[10] *Id*. at 2-3, Complaint-Affidavit.

[11] *Id*. at 66. Certification issued by the Sangguniang Barangay of Putatan, Muntinlupa City.

present."[12]

Vasco- Tamaray also alleged that the Petition for Declaration of Nullity of Marriage was Atty. Daquis' idea, consented to by Leomarte Tamaray.[13]

She further alleged that she had never received any court process. The Petition states that her postal address is "09 Daang Hari St., Umali Comp., Summitville Subd., Putatan, Muntinlupa City[,]"[14] which is the address of her husband's family. The return slips of the notices sent by the trial court were received by Encarnacion T. Coletraba and Almencis Cumigad, relatives of Leomarte Tamaray.[15]

Atty. Daquis filed an Answer countering that her client was Vasco- Tamaray, complainant herself, and not complainant's husband. She alleged that Vasco-Tamaray knew of the Petition as early as October 2006, not December 2006.[16]

With regard to the community tax certificate, Atty. Daquis explained that when she notarized the Petition, the community tax certificate number was supplied by Vasco- Tamaray.[17] Atty. Daquis' allegation was supported by the Joint Affidavit of her staff, Ma. Dolor E. Purawan (Purawan) and Ludy Lorena (Lorena).[18]

Purawan and Lorena detailed in their Joint Affidavit that they knew Vasco-Tamaray to be a client of Atty. Daquis and

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[12] *Id*. at 67, Barangay Clearance/Certification issued by Barangay Talipapa, Novaliches, Quezon City.

[13] *Id*. at 60, Complainant's Position Paper.

[14] *Id.* at 5, Petition for Declaration of Nullity of Marriage, Annex "A" of Complaint-Affidavit.

[15] *Id*. at 60, Complainant's Position Paper.

[16] *Id*. at 15, Answer.

[17] *Id*. at 16.

[18] *Id*. at 22-23.

that they never saw Atty. Daquis forge Vasco-Tamaray's signature. Purawan stated that she typed the Petition for Declaration of Nullity of Marriage and that the community tax certificate was provided by Vasco- Tamaray.[19]

Atty. Daquis alleged that Vasco-Tamaray wanted her to call and demand money from Leomarte Tamaray but she refused to do so.[20]

Atty. Daquis argued that Vasco- Tamaray had a copy of the Petition. When Vasco- Tamaray requested another copy on March 5, 2007, Atty. Daquis was unable to grant her client's request because she did not have a copy of the Petition with her at that time.[21]

Atty. Daquis further alleged that Vasco-Tamaray conceived an illegitimate son with a certain Reuel Pablo Aranda. The illegitimate son was named Charles Dino Vasco. Reuel Pablo Aranda signed the Affidavit of Acknowledgment/ Admission of Paternity portion of the birth certificate.[22]

The Commission on Bar Discipline required the parties to submit their position papers,[23] but based on the record, only Vasco-Tamaray complied.[24]

The Commission on Bar Discipline recommended the dismissal of the Complaint because Vasco- Tamaray failed to prove her allegations. The Commission on Bar Discipline noted that Vasco- Tamaray should have questioned the Petition or informed the prosecutor that she never filed any petition, but she failed to do so.[25]

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[19] *Id*.

[20] *Id*. at 15, Answer.

[21] *Id*. at 16.

[22] *Id*.

[23] *Id*. at 52, Order of the Commission on Bar Discipline dated May 22, 2008.

[24] *Id*. at 58-62.

The Board of Governors of the Integrated Bar of the Philippines adopted and approved the Report and Recommendation of the Commission on Bar Discipline in the Resolution dated September 27, 2014.[26]

The issue for resolution is whether respondent Atty. Deborah Z. Daquis should be held administratively liable for making it appear that she is counsel for complainant Cheryl Vasco-Tamaray and for the alleged use of a forged signature on the Petition for Declaration of Nullity of Marriage.

This court finds that respondent violated Canons 1, 7, 10, and 17 of the Code of Professional Responsibility. The charge against respondent for violation of Canon 15 is dismissed.

I

By pretending to be counsel for complainant, respondent violated Canon 1, Rule 1.01 of the Code of Professional Responsibility and failed to uphold her duty of doing no falsehood nor consent to the doing of any falsehood in court as stated in the Lawyer's Oath.[27]

Canon 1, Rule 1.01 of the Code of Professional Responsibility provides:

CANON 1 - A lawyer shall uphold the constitution, obey the laws of the land and promote respect for law and for legal processes.

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[25] *Id*. at 108-111, Report and Recommendation of the Commission on Bar Discipline, penned by Commissioner Maria Editha A. Go-Binas.

[26] *Id*. at 107, Notice of Resolution.

[27] The Lawyer's Oath states:

I, _____, do solemnly swear that I will maintain allegiance to the Republic of the Philippines: I will support its Constitution and obey the laws as well as the legal orders of the duly constituted authorities therein; I will do no falsehood, nor consent to the doing of any in court; I will not wittingly or willingly promote or sue any groundless, false or unlawful suit, nor give aid nor consent to the same. I will delay no man for money or malice, and will conduct myself as a lawyer according to the best of my knowledge and discretion with all good fidelity as well to the courts as to my clients; and I impose upon myself this voluntary obligation without any mental reservation or purpose of evasion. So help me God.

RULE 1.01 - A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.

In this case, respondent merely denied complainant's allegation that she was Leomarte Tamaray's counsel[28] but was unable to rebut the other allegations against her.

Respondent admitted that she met complainant in October 2006,[29] but did not refute[30] the statement in Maritess Marquez-Guerrero's Affidavit that Leomarte Tamaray introduced her as his lawyer.[31] Likewise, respondent admitted that she met with complainant subsequently,[32] but did not refute Maritess Marquez- Guerrero's statement that in one of the meetings, she tried to convince complainant not to oppose Leomarte Tamaray's decision to annul their marriage.[33]

Respondent argued in her Answer that she was the counsel for complainant.[34] Yet, there is no explanation how she was referred to complainant or how they were introduced. It appears, then, that respondent was contacted by Leomarte Tamaray to file a Petition for Declaration of Nullity of Marriage on the ground of bigamy. As stated in Maritess Marquez-Guerrero' s Affidavit, "Leomarte told Cheryl that the reason for that meeting and the presence of Atty. Daquis was because *he had decided to file a case to annul his marriage with Cheryl*[.]"[35]

Based on this, it seems Leomarte Tamaray intended to file the petition for declaration of nullity of marriage. However,

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[28] *Rollo* p. 14, Answer.

[29] *Id*. at 15.

[30] *Id*. at 14-19.

[31] *Id*. at 68, Maritess Marquez-Guerrero's Affidavit.

[32] *Id*. at 15, Answer.

[33] *Id*. at 14-19.

[34] *Id*. at 14-15.

[35] *Id*. at 68, Affidavit of Maritess Marquez-Guerrero.

respondent made it appear that complainant, not her client Leomarte Tamaray, was the petitioner. There is a probability that respondent did not want Leomarte Tamaray to be the petitioner because he would have to admit that he entered into a bigamous marriage, the admission of which may subject him to criminal liability.

In addition, if it is true that complainant was respondent's client, then there appears to be no reason for respondent to advise her "not to oppose Leomarte's decision to have their marriage annulled."[36]

The records of this case also support complainant's allegation that she never received any court process because her purported address in the Petition is the address of Leomarte Tamaray. The Petition states that complainant is "of legal age, Filipino citizen, married with postal address at 09 Daang Hari St., Umali Comp., Summitville Subd., Putatan, Muntinlupa City[.]"[37]

The Certificate of Marriage of complainant and Leomarte Tamaray states that Leomarte's residence is at "Summitvil[l]e Subv [sic], Muntinlupa," while complainant's residence is at "Hermosa St. Gagalangin Tondo, Manila."[38] Assuming that complainant lived with her husband after they were married, complainant most likely did not receive court processes because she left their home before the filing of the Petition for Declaration of Nullity of Marriage. As written in the Minutes of the meeting before the Office of the City Prosecutor:

> P[etitioner] & R[espondent] met sometime in 1993 through his secretary. They became sweethearts in 1993 and their relationship as steadies lasted until 1996;
>
> During the 3 years of their union, petitioner knew respondent's family as she even sleeps in their house; Theirs was also a long distance relationship as respondent worked in Japan;

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[36] *Id*.

[37] *Id*. at 5, Petition for Declaration of Nullity of Marriage, Annex "A" of Complaint-Affidavit.

[38] *Id*. at 45.

Upon respondents [sic] return to the Philippines they got married in Feb, 1996. They had no children, as respondent immediately left for Japan on March 11, 1996;

Respondent returned to the Philippines but unfortunately he brought another woman. *As a result, petitioner left their house*.[39] (Emphasis supplied)

Further, complainant cannot be faulted for her failure to inform the prosecutor that she did not file any petition for declaration of nullity of marriage because during the meeting on March 5, 2007, complainant had no knowledge that the Petition was filed in her name.[40] She obtained a copy of the Petition after the March 5, 2007 meeting.[41]

In *Yupangco-Nakpil v. Uy*,[42] this court discussed Canon 1, Rule 1.01, as follows:

Rule 1.01, Canon 1 of the Code, as it is applied to the members of the legal professions, engraves an overriding prohibition against any form of misconduct, viz:

CANON 1 - A LAWYER SHALL UPHOLD THE CONSTITUTION, OBEY THE LAWS OF THE LAND AND PROMOTE RESPECT FOR LAW AND LEGAL PROCESSES

Rule 1.01 - A lawyer shall not engage m unlawful, dishonest, immoral or deceitful conduct.

The gravity of the misconduct— determinative as it is of the errant lawyer's penalty—depends on the factual circumstances of each case.

. . . . . .

. . . Verily, members of the Bar are expected at all times to uphold the integrity and dignity of the legal profession and refrain from any

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[39] *Id*. at 24.

[40] *Id*. at 2. The Complaint-Affidavit states that Vasco-Tamaray obtained a copy of the Petition on March 15, 2007.

[41] *Id*. at 58-59, Complainant's Position Paper.

[42] A.C. No. 9115, September 17, 2014, 735 SCRA 239 [Per *J*. Perlas-Bemabe, First Division].

act or omission which might lessen the trust and confidence reposed by the public in the fidelity, honesty, and integrity of the legal profession. By no insignificant measure, respondent blemished not only his integrity as a member of the Bar, but also that of the legal profession. In other words, his conduct fell short of the exacting standards expected of him as a guardian of law and justice.[43]

When respondent filed the Petition as counsel for complainant when the truth was otherwise, she committed a falsehood against the trial court and complainant.

II

Respondent violated Canon 7, Rule 7.03 and Canon 10, Rule 10.01 when she allowed the use of a forged signature on a petition she prepared and notarized.[44]

Complainant alleged that her signature on the Petition was forged.[45] Respondent merely denied complainant's allegation.[46]

The Petition for Declaration of Nullity of Marriage was signed by a certain "CVasco."[47] The records of this case show that complainant has used two signatures. In her identification cards issued by the University of the East, she used a signature that spelled out "CVasco."[48] In her Complaint-Affidavit against respondent, complainant used a signature that spelled out "CTamaray."[49]

A comparison of the signatures appearing on the Petition for Declaration of Nullity of Marriage and on complainant's

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[43] *Id*. at 243-245.

[44] *Rollo*, p. 7, Petition for Declaration of Nullity of Marriage, Annex "A" of Complaint-Affidavit.

[45] *Id*. at 3, Complaint.

[46] *Id*. at 14, Answer.

[47] *Id*. at 7, Petition for Declaration of Nullity of Marriage, Annex "A" of Complaint-Affidavit.

[48] *Id*. at 69, Photocopies of Cheryl E. Vasco-Tamaray's identification cards.

[49] *Id*. at 3, Complaint-Affidavit.

identification cards show a difference in the stroke of the letters "c" and "o." Further, complainant's signatures in the documents[50] attached to the records consistently appear to be of the same height. On the other hand, her alleged signature on the Petition for Declaration of Nullity of Marriage has a big letter "c."[51] Hence, it seems that complainant's signature on the Petition for Declaration of Nullity of Marriage was forged.

While there is no evidence to prove that respondent forged complainant's signature, the fact remains that respondent allowed a forged signature to be used on a petition she prepared and notarized.[52] In doing so, respondent violated Canon 7, Rule 7.03 and Canon 10, Rule 10.01. These canons state:

CANON 7- A lawyer shall at all times uphold the integrity and dignity of the legal profession, and support the activities of the integrated bar.

RULE 7.03- A lawyer shall not engage in conduct that adversely reflects on his fitness to practice law, nor shall he, whether in public or private life, behave in a scandalous manner to the discredit of the legal profession.

CANON 10-A lawyer owes candor, fairness and good faith to the court.

RULE 10.01 A lawyer shall not do any falsehood, nor consent to the doing of any in Court; nor shall he mislead or allow the Court to be misled by any artifice.

In *Embido v. Pe, Jr.*,[53] Assistant Provincial Prosecutor Salvador

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[50] *Id*. See also the signatures on Barangay Certification issued by Barangay Talipapa, Quezon City *(Id*. at 9), Birth Certificate of Charles Dino Vasco (*Id*. at 21), Minutes of the meeting at the Office of the City Prosecutor, Muntinlupa City (*ld*. at 24), Minutes of the Hearing at the Commission on Bar Discipline dated October 4, 2007 (*Id*. at 27), Complainant's Position Paper (*Id*. at 61), Photocopies of Vasco-Tamaray's identification cards issued by the University of the East *(Id.* at 69), and Notice of Change of Address (*Id.* at 70).

[51] *Id*. at 7, Petition for Declaration of Nullity of Marriage, Annex "A" of Complaint-Affidavit.

[52] *Id*.

N. Pe, Jr. was found guilty of violating Canon 7, Rule 7.03 and was meted the penalty of disbarment for falsifying a court decision "in a non-existent court proceeding."[54] This court discussed that:

> Gross immorality, conviction of a crime involving moral turpitude, or fraudulent transactions can justify a lawyer's disbarment or suspension from the practice of law. Specifically, the deliberate falsification of the court decision by the respondent was an act that reflected a high degree of moral turpitude on his part. Worse, the act made a mockery of the administration of justice in this country, given the purpose of the falsification, which was to mislead a foreign tribunal on the personal status of a person. He thereby became unworthy of continuing as a member of the Bar.[55]

In a similar manner, respondent's act of allowing the use of a forged signature on a petition she prepared and notarized demonstrates a lack of moral fiber on her part.

Other acts that this court has found violative of Canon 7, Rule 7.03 are: engaging in a scuffle inside court chambers;[56] openly doubting paternity of his own son;[57] hurling invectives at a Clerk of Court;[58] harassing occupants of a property; [59] using intemperate language;[60] and engaging in an extramarital affair.[61]

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[53] A.C. No. 6732, October 22, 2013, 708 SCRA 1 [Per *J.* Bersamin, *En Banc*].

[54] *Id.* at 9.

[55] *Id.* at 10.

[56] *Campos v. Campos*, A.C. No. 8644, January 22, 2014, 714 SCRA 347 [Per *J.* Reyes, First Division].

[57] *Id.*

[58] *Dallong-Galicinao v. Castro*, 510 Phil. 478 (2005) [Per *J.* Tinga, Second Division].

[59] *Alitagtag v. Garcia*, 451 Phil. 420 (2003) [*Per Curiam, En Banc*].

[60] *Noble v. Ailes*, A.C. No. 10628, July 1, 2015<http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/20 15/july20 15110628.pdt> [Per *J.* Perlas-Bemabe, First Division].

[61] *Guevarra v. Eala*, 555 Phil. 713 (2007) [*Per Curiam, En Banc*].

Furthermore, allowing the use of a forged signature on a petition filed before a court is tantamount to consenting to the commission of a falsehood before courts, in violation of Canon 10.

In *Spouses Umaguing v. De Dera*,[62] this court discussed the importance of Canon 10, Rule 10.01, as follows:

> The Lawyer's Oath enjoins every lawyer not only to obey the laws of the land but also to refrain from doing any falsehood in or out of court or from consenting to the doing of any in court, and to conduct himself according to the best of his knowledge and discretion with all good fidelity to the courts as well as to his clients. Every lawyer is a servant of the law, and has to observe and maintain the rule of law as well as be an exemplar worthy of emulation by others. *It is by no means a coincidence, therefore, that the core values of honesty, integrity, and trustworthiness are emphatically reiterated by the Code of Professional Responsibility. In this light, Rule 10.01, Canon 10 of the Code of Professional Responsibility provides that "[a] lawyer shall not do any falsehood, nor consent to the doing of any in Court; nor shall he mislead, or allow the Court to be misled by any artifice."*[63] (Emphasis supplied)

III

This court further finds that respondent violated Canon 17, which states:

> 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.

Respondent failed to protect the interests of her client when she represented complainant, who is the opposing party of her client Leomarte Tamaray, in the same case.

The responsibilities of a lawyer under Canon 17 were discussed in *Penilla v. Alcid, Jr.*:[64]

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[62] A.C. No. 10451, February 4, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.htm1?fi1e=/jurisprudence/20 l5/february20 15/10451.pdf> [Per *J*. Perlas-Bemabe, First Division].

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

[64] A.C. No. 9149, September 4, 2013, 705 SCRA 1 [Per *J*. Villarama, Jr., First Division].

The legal profession dictates that it is not a mere duty, but an obligation, of a lawyer to accord the highest degree of fidelity, zeal and fervor in the protection of the client's interest. The most thorough groundwork and study must be undertaken in order to safeguard the interest of the client. The honor bestowed on his person to carry the title of a lawyer does not end upon taking the Lawyer's Oath and signing the Roll of Attorneys. Rather, such honor attaches to him for the entire duration of his practice of law and carries with it the consequent responsibility of not only satisfying the basic requirements but also going the extra mile in the protection of the interests of the client and the pursuit of justice[.] [65]

Respondent is reminded of the duties and responsibilities of members of the legal profession, as discussed in *Tenoso v. Echanez:*[66]

Time and again, this Court emphasizes that the practice of law is imbued with public interest and that "a lawyer owes substantial duties not only to his client, but also to his brethren in the profession, to the courts, and to the nation, and takes part in one of the most important functions of the State the administration of justice-as an officer of the court." Accordingly, "[l]awyers are bound to maintain not only a high standard of legal proficiency, but also of morality, honesty, integrity and fair dealing."[67] (Citations omitted)

IV

This court notes that respondent may have violated Canon 15, Rule 15.03 when she entered her appearance as counsel for complainant[68] even though she was engaged as counsel by Leomarte Tamaray.[69] Canon 15, Rule 15.03 of the Code of Professional Responsibility provides:

CANON 15—A lawyer shall observe candor, fairness and loyalty in all his dealings and transactions with his client.

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[65] *Id*. at 14-15.

[66] A.C. No. 8384, April 11, 2013,696 SCRA 1 [Per *J*. Leonen, *En Banc*].

[67] *Id*. at 6.

[68] *Rollo*, p. 7, Petition for Declaration of Nullity of Marriage, Annex "A" of Complaint-Affidavit.

[69] *Id*. at 68, Affidavit of Maritess Marquez-Guerrero.

. . . . . .

Rule 15.03 - A lawyer shall not represent conflicting interests except by written consent of all concerned given after a full disclosure of the facts.

The rationale for Canon 15 was discussed in *Samson v. Era*:[70]

The rule prohibiting conflict of interest was fashioned to prevent situations wherein a lawyer would be representing a client whose interest is directly adverse to any of his present or former clients. In the same way, a lawyer may only be allowed to represent a client involving the same or a substantially related matter that is materially adverse to the former client only if the former client consents to it after consultation. The rule is grounded in the fiduciary obligation of loyalty. Throughout the course of a lawyer-client relationship, the lawyer learns all the facts connected with the client's case, including the weak and strong points of the case. Knowledge and information gathered in the course of the relationship must be treated as sacred and guarded with care. It behooves lawyers not only to keep inviolate the client's confidence, but also to avoid the appearance of treachery and double-dealing, for only then can litigants be encouraged to entrust their secrets to their lawyers, which is paramount in the administration of justice. The nature of that relationship is, therefore, one of trust and confidence of the highest degree.

. . . . . .

. . . The spirit behind this rule is that the client's confidence once given should not be stripped by the mere expiration of the professional employment. Even after the severance of the relation, a lawyer should not do anything that will injuriously affect his former client in any matter in which the lawyer previously represented the client. Nor should the lawyer disclose or use any of the client's confidences acquired in the previous relation. In this regard, Canon 17 of the *Code of Professional Responsibility* expressly declares that: "A lawyer owes fidelity to the cause of his client and he shall be mindful of the trust and confidence reposed in him."

The lawyer's highest and most unquestioned duty is to protect the client at all hazards and costs even to himself. The protection

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[70] A.C. No. 6664, July 16,2013, 701 SCRA 241 [Per *J*. Bersamin, *En Banc*].

given to the client is perpetual and does not cease with the termination of the litigation, nor is it affected by the client's ceasing to employ the attorney and retaining another, or by any other change of relation between them. It even survives the death of the client.[71]

The test to determine whether conflict of interest exists was discussed in *Hornilla v. Salunat*:[72]

> There is conflict of interest when a lawyer represents inconsistent interests of two or more opposing parties. The test is "whether or not in behalf of one client, it is the lawyer's duty to fight for an issue or claim, but it is his duty to oppose it for the other client. In brief, if he argues for one client, this argument will be opposed by him when he argues for the other client." This rule covers not only cases in which confidential communications have been confided, but also those in which no confidence has been bestowed or will be used. *Also, there is conflict of interests if the acceptance of the new retainer will require the attorney to perform an act which will injuriously affect his first client in any matter in which he represents him and also whether he will be called upon in his new relation to use against his first client any knowledge acquired through their connection. Another test of the inconsistency of interests is whether the acceptance of a new relation will prevent an attorney from the full discharge of his duty of undivided fidelity and loyalty to his client or invite suspicion of unfaithfulness or double dealing in the performance thereof.*[73] (Emphasis supplied, citations omitted)

Respondent was engaged by Leomarte Tamaray to be his counsel.[74] When the Petition for Declaration of Nullity of Marriage was filed, respondent signed the Petition as counsel for complainant.[75] If respondent was indeed engaged as counsel by complainant, then there is conflict of interest, in violation of Canon 15, Rule 15.03.

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[71] *Id*. at 251-253.

[72] 453 Phil. 108 (2003) [Per *J.* Ynares-Santiago, First Division].

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

[74] *Rollo*, p. 68, Affidavit of Maritess Marquez-Guerrero.

[75] *Id*. at 7, Petition for Declaration of Nullity of Marriage, Annex "A" of Complaint-Affidavit.

However, there is nothing on record to show that respondent was engaged as counsel by complainant. Hence, this court finds that respondent did not commit conflict of interest.

V

On a final note, Rule 139-B has been amended by Bar Matter No. 1645 dated October 13, 2015. Section 12 of Rule 139-B now provides that:

> Rule 139-B. Disbarment and Discipline of Attorneys
>
> Section 12. Review and recommendation by the Board of Governors.
>
> (a) Every case heard by an investigator shall be reviewed by the IBP Board of Governors upon the record and evidence transmitted to it by the Investigator with his report.
>
> (b) After its review, the Board, by the vote of a majority of its total membership, shall recommend to the Supreme Court the dismissal of the complaint or the imposition of disciplinary action against the respondent. The Board shall issue a resolution setting forth its findings and recommendations, clearly and distinctly stating the facts and the reasons on which it is based. The resolution shall be issued within a period not exceeding thirty (30) days from the next meeting of the Board following the submission of the Investigator's report.
>
> (c) The Board's resolution, together with the entire records and all evidence presented and submitted, shall be transmitted to the Supreme Court for final action within ten (10) days from issuance of the resolution.
>
> (d) Notice of the resolution shall be given to all parties through their counsel, if any.[76]

Under the old rule, the Board of Governors of the Integrated Bar of the Philippines was given the power to "issue a decision"[77] if the lawyer complained of was exonerated or meted

[76] Bar Matter No. 1645. Re: Amendment of Rule 139-B (2015) [*En Banc*].

[77] Rule 139-B, Sec. 12(c), prior to the amendments introduced by Bar Matter No. 1645.

a penalty of "less than suspension or disbarment."[78] In addition, the case would be deemed terminated unless an interested party filed a petition before this court.[79]

The amendments to Rule 139-B is a reiteration that only this court has the power to impose disciplinary action on members of the bar. The factual findings and recommendations of the Commission on Bar Discipline and the Board of Governors of the Integrated Bar of the Philippines are recommendatory, subject to review by this court.[80]

WHEREFORE, respondent Atty. Deborah Z. Daquis is found **GUILTY** of violating Canon 1, Rule 1.01, Canon 7, Rule 7.03, Canon 10, Rule 10.01, and Canon 17 of the Code of Professional Responsibility.

The charge for violation of Canon 15, Rule 15.03 against respondent Atty. Deborah Z. Daquis is **DISMISSED.**

The penalty of **DISBARMENT** is imposed upon respondent Atty. Deborah Z. Daquis. The Office of the Bar Confidant is directed to remove the name of Deborah Z. Daquis from the Roll of Attorneys.

Let a copy of this Resolution be furnished to the Office of the Bar Confidant to be appended to respondent's personal record as attorney, to the Integrated Bar of the Philippines, and to the Office of the Court Administrator for dissemination to all courts throughout the country for their information and guidance.

This Resolution takes effect immediately.

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[78] Rule 139-B, Sec. 12(c), prior to the amendments introduced by Bar Matter No. 1645.

[79] Rule 139-B, Sec. 12(c), prior to the amendments introduced by Bar Matter No. 1645.

[80] *Ramirez v. Buhayang-Margallo*, A.C. No.10537, February 3, 2015 <http://sc.judiciary .gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/february2015/10537.pdf> [Per *J.* Leonen, *En Banc*].

SO ORDERED.

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

Caguioa, J., on official leave.

EN BANC

[A.C. No. 10952. January 26, 2016]

ENGEL PAUL ACA, *complainant, vs.* **ATTY. RONALDO P. SALVADO,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; A MAN LEARNED IN THE LAW IS EXPECTED TO MAKE TRUTHFUL REPRESENTATIONS WHEN DEALING WITH PERSONS, CLIENTS OR OTHERWISE, AS THE PUBLIC IS INCLINED TO RELY ON REPRESENTATIONS MADE BY LAWYERS. — A perusal of the records reveals that complainant's version deserves credence, not only due to the unambiguous manner by which the narrative of events was laid down, but also by the coherent reasoning the narrative has employed. The public is, indeed, inclined to rely on representations made by lawyers. As a man of law, a lawyer is necessarily a leader of the community, looked up to as a model citizen. A man, learned in the law like Atty. Salvado, is expected to make truthful representations when dealing with persons, clients or otherwise. For the Court, and as the IBP-BOG had observed, complainant's being beguiled to part with his money and believe Atty. Salvado as a lawyer and businessman was typical human behavior worthy of belief. The Court finds

it hard to believe that a person like the complainant would not find the profession of the person on whose businesses he would invest as important to consider. Simply put, Atty. Salvado's stature as a member of the Bar had, in one way or another, influenced complainant's decision to invest.

2. ID.; ID.; A LAWYER WHO ISSUES WORTHLESS CHECKS DISCREDITS THE LEGAL PROFESSION AND CREATES THE PUBLIC IMPRESSION THAT LAWS ARE MERE TOOLS OF CONVENIENCE THAT COULD BE USED, BENDED AND ABUSED TO SATISFY PERSONAL WHIMS AND DESIRES; ISSUANCE OF WORTHLESS CHECKS CONSTITUTES GROSS MISCONDUCT AND A VIOLATION OF THE CODE OF PROFESSIONAL RESPONSIBILITY AND THE LAWYER'S OATH. — It must be pointed out that the denials proffered by Atty. Salvado cannot belie the dishonor of the checks. His strained explanation that the checks were mere securities cannot be countenanced. Of all people, lawyers are expected to fully comprehend the legal import of bouncing checks. In *Lozano v. Martinez,* the Court ruled that the gravamen of the offense punished by *B.P.* 22 is the act of making and issuing a worthless check; that is, a check that is dishonored upon its presentation for payment. The thrust of the law is to prohibit, under pain of penal sanctions, the making and circulation of worthless checks. Because of its deleterious effects on the public interest, the practice is proscribed by the law. Hence, the excuse of "gullibility and inadvertence" deserves scant consideration. Surely, Atty. Salvado is aware that promoting obedience to the Constitution and the laws of the land is the primary obligation of lawyers. When he issued the worthless checks, he discredited the legal profession and created the public impression that laws were mere tools of convenience that could be used, bended and abused to satisfy personal whims and desires. In *Lao v. Medel,* the Court wrote that the issuance of worthless checks constituted gross misconduct, and put the erring lawyer's moral character in serious doubt, though it was not related to his professional duties as a member of the Bar. Covered by this dictum is Atty. Salvado's business relationship with complainant. His issuance of the subject checks display his doubtful fitness as an officer of the court. Clearly, he violated Rule 1.01 and Rule 7.03 of the CPR.

3. ID.; ID.; A LAWYER'S DECEIVING ATTEMPTS TO EVADE

PAYMENT OF HIS OBLIGATIONS DEMONSTRATE LACK OF MORAL CHARACTER TO SATISFY THE RESPONSIBILITIES AND DUTIES IMPOSED ON LAWYERS AS PROFESSIONALS AND AS OFFICERS OF THE COURT, AND CONSTITUTE ACTS UNBECOMING OF A MEMBER OF THE BAR. — [T]he Court cannot overlook Atty. Salvado's deceiving attempts to evade payment of his obligations. Instead of displaying a committed attitude to his creditor, Atty. Salvado refused to answer complainant's demands. He even tried to make the complainant believe that he was no longer residing at his given address. These acts demonstrate lack of moral character to satisfy the responsibilities and duties imposed on lawyers as professionals and as officers of the court. The subsequent offers he had made and the eventual sale of his properties to the complainant, unfortunately cannot overturn his acts unbecoming of a member of the Bar.

4. ID.; ID.; THE ONLY ISSUE IN DISCIPLINARY PROCEEDINGS AGAINST LAWYERS IS THE RESPONDENT'S FITNESS TO REMAIN AS A MEMBER OF THE BAR, AND THE COURT'S FINDINGS HAVE NO MATERIAL BEARING ON OTHER JUDICIAL ACTIONS WHICH THE PARTIES MAY CHOOSE TO FILE AGAINST EACH OTHER. — The Court need not elaborate on the correctness of the Investigating Commissioner's reliance on jurisprudence stating that administrative cases against lawyers belong to a class of their own and may proceed independently of civil and criminal cases, including violations of B.P. 22. Accordingly, the only issue in disciplinary proceedings against lawyers is the respondent's fitness to remain as a member of the Bar. The Court's findings have no material bearing on other judicial actions which the parties may choose to file against each other. [T]he Court finds that Atty. Salvado's reprehensible conduct warrants a penalty commensurate to his violation of the CPR and the Lawyer's Oath.

APPEARANCES OF COUNSEL

Tuazon Ty & Coloma Law Office for complainant.
Lea Gravador Lorenzo for respondent.

D E C I S I O N

***PER CURIAM*:**

This refers to the October 11, 2014 Resolution[1] of the Integrated Bar of the Philippines Board of Governors (*IBP-BOG*) which adopted and approved with modification the Report and Recommendation[2] of the Investigating Commissioner suspending Atty. Ronaldo P. Salvado (*Atty. Salvado*) from the practice of law.

The Complaint:

On May 30, 2012, Engel Paul Aca filed an administrative complaint[3] for disbarment against Atty. Salvado for violation of Canon 1, Rule 1.01[4] and Canon 7, Rule 7.03[5] of the Code of Professional Responsibility (CPR).

Complainant alleged, among others, that sometime in 2010, he met Atty. Salvado through Atty. Samuel Divina (*Atty. Divina*), his childhood friend; that Atty. Salvado introduced himself as a lawyer and a businessman engaged in several businesses including but not limited to the lending business; that on the same occasion, Atty. Salvado enticed the complainant to invest in his business with a guarantee that he would be given a high interest rate of 5% to 6% every month; and that he was assured of a profitable investment due by Atty. Salvado as the latter had various clients and investors.

Because of these representations coupled by the assurance of Atty. Salvado that he would not place his reputation as a lawyer on the line, complainant made an initial investment in

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[1] *Rollo*, p. 143.

[2] *Id.* at 144-148.

[3] *Id.* at 2-11.

[4] "A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct."

[5] "A lawyer shall not engage in conduct that adversely reflects on the fitness to practice law, nor shall he, whether in public or private life, behave in a scandalous manner to the discredit of the legal profession."

his business. This initial investment yielded an amount corresponding to the principal plus the promised interest. On various dates from 2010 to 2011, complainant claimed that he was again induced by Atty. Salvado to invest with promises of high rates of return.

As consideration for these investments, Atty. Salvado issued several post-dated checks in the total amount of ₱6,107,000.00, representing the principal amount plus interests. All checks were drawn from PSBank Account number 040331-00087-9, fully described as follows:

Check Number	Date Issued	Amount
0060144	August 14, 2011	₱657,000.00
0060147	September 29, 2011	₱530,000.00
0060190	September 29, 2011	₱60,000.00
0060194	October 16, 2011	₱90,000.00
0060206	October 17, 2011	₱2,120,000.00
0060191	October 29, 2011	₱1,060,000.00
0060195	November 16, 2011	₱1,590,000.00

Upon presentment, however, complainant was shocked to learn that the aforementioned checks were dishonored as these were drawn from insufficient funds or a closed account.

Complainant made several verbal and written demands upon Atty. Salvado, who at first, openly communicated with him, assuring him that he would not abscond from his obligations and that he was just having difficulty liquidating his assets and collecting from his own creditors. Complainant was even informed by Atty. Salvado that he owned real properties that could serve as payment for his obligations. As time went by, however, Atty. Salvado began to avoid complainant's calls and text messages. Attempts to meet up with him through common friends also proved futile. This prompted complainant to refer the matter to his lawyer Atty. Divina, for appropriate legal action.

On December 26, 2011, Atty. Divina personally served the Notice of Dishonor on Atty. Salvado, directing him to settle

his total obligation in the amount of ₱747,000.00, corresponding to the cash value of the first two (2) PSBank checks, within seven (7) days from receipt of the said notice.[6] Nevertheless, Atty. Salvado refused to receive the said notice when Atty. Divina's messenger attempted to serve it on him.

Sometime in April 2012, complainant yet again engaged the services of Atty. Divina, who, with his filing clerk and the complainant's family, went to Atty. Salvado's house to personally serve the demand letter. A certain "Mark" who opened the gate told the filing clerk that Atty. Salvado was no longer residing there and had been staying in the province already.

As they were about to leave, a red vehicle arrived bearing Atty. Salvado. Complainant quickly alighted from his vehicle and confronted him as he was about to enter the gate of the house. Obviously startled, Atty. Salvado told him that he had not forgotten his debt and invited complainant to enter the house so they could talk. Complainant refused the invitation and instead told Atty. Salvado that they should talk inside his vehicle where his companions were.

During this conversation, Atty. Salvado assured complainant that he was working on "something" to pay his obligations. He still refused to personally receive or, at the least, read the demand letter.

Despite his promises, Atty. Salvado failed to settle his obligations.

For complainant, Atty. Salvado's act of issuing worthless checks not only constituted a violation of *Batas Pambansa Bilang 22 (B.P. 22)* or the "Anti-Bouncing Checks Law," but also reflected his depraved character as a lawyer. Atty. Salvado not only refused to comply with his obligation, but also used his knowledge of the law to evade criminal prosecution. He had obviously instructed his household staff to lie as to his whereabouts and to reject any correspondence sent to him. This resort to deceitful ways showed that Atty. Salvado was not fit to remain as a member of the Bar.

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[6] *Rollo*, pp. 15-16.

The Defense of the Respondent

On July 24, 2012, Atty. Salvado filed his Answer,[7] denying that he told complainant that he had previously entered into various government contracts and that he was previously engaged in some other businesses prior to engaging in the lending and rediscounting business, Atty. Salvado asserted that he never enticed complainant to invest in his business, but it was Atty. Divina's earnings of good interest that attracted him into making an investment. He further stated that during their initial meeting, it was complainant who inquired if he still needed additional investments; that it was Atty. Divina who assured complainant of high returns; and that complainant was fully aware that the money invested in his businesses constituted a loan to his clients and/or borrowers. Thus, from time to time, the return of investment and accrued interest when due — as reflected in the maturity dates of the checks issued to complainant — could be delayed, whenever Atty. Salvado's clients requested for an extension or renewal of their respective loans. In other words, the checks he issued were merely intended as security or evidence of investment.

Atty. Salvado also claimed that, in the past, there were instances when he would request complainant not to deposit a check knowing that it was not backed up by sufficient funds. This arrangement had worked until the dishonor of the checks, for which he readily offered his house and lot located in Marikina City as collateral.

The Reply of Complainant

On August 30, 2012, complainant filed his Reply,[8] pointing out that Atty. Salvado did not deny receiving money from him by way of investment. Thus, he must be deemed to have admitted that he had issued several postdated checks which were eventually dishonored. Atty. Salvado's claim that it was complainant himself who prodded him about making investments must be brushed aside for being self-serving and baseless. Assuming *arguendo*,

[7] *Id.* at 35-40.

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

that complainant indeed made offers of investment, Atty. Salvado should have easily refused knowing fully well that he could not fund the checks that he would be issuing when they become due. If it were true that the checks were issued for complainant's security, Atty. Salvado could have drafted a document evidencing such agreement. His failure to present such document, if one existed at all, only proved that the subject checks were issued as payment for complainant's investment.[9]

Complainant also clarified that his complaint against Atty. Salvado was never meant to harass him. Despite the dishonor of the checks, he still tried to settle the dispute with Atty. Salvado who left him with no choice after he refused to communicate with him properly.

Thereafter, the parties were required to file their respective mandatory conference briefs and position papers. Atty. Salvado insisted that he had acted in all honesty and good faith in his dealings with the complainant. He also emphasized that the title to his house and lot in Greenheights Subdivision, Marikina City, had been transferred in the name of complainant after he executed a deed of sale as an expression of his "desire and willingness to settle whatever is due to the complainant."[10]

Report and Recommendation of Investigating Commissioner

On January 2, 2014, the Investigating Commissioner recommended that Atty. Salvado be meted a penalty of suspension from the practice of law for six (6) months for engaging in a conduct that adversely reflects on his fitness to practice law and for behaving in a scandalous manner to the discredit of the legal profession. Atty. Salvado's act of issuing checks without sufficient funds to cover the same constituted willful dishonesty and immoral conduct which undermine the public confidence in the legal profession.

The IBP-BOG Resolution

On October 11, 2014, the IBP-BOG adopted and approved

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[9] *Id.* at 50.

[10] *Id.* at 119. See also *id.* at 124-132.

the recommendation with modification as to the period of suspension. The IBP-BOG increased the period of Atty. Salvado's suspension from six (6) months to two (2) years.

Neither a motion for reconsideration before the IBP-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.[11]

The Court's Ruling

The parties gave conflicting versions of the controversy. Complainant, claimed to have been lured by Atty. Salvado into investing in his businesses with the promise of yielding high interests, which he believed because he was a lawyer who was expected to protect his public image at all times. Atty. Salvado, on the other hand, denied having enticed the complainant, whom he claimed had invested by virtue of his own desire to gain profits. He insisted that the checks that he issued in favor of complainant were in the form of security or evidence of investment. It followed, according to Atty. Salvado, that he must be considered to have never ensured the payment of the checks upon maturity. Atty. Salvado strongly added that the dishonor of the subject checks was "purely a result of his gullibility and inadvertence, with the unfortunate result that he himself was a victim of failed lending transactions x x x."[12]

The Court sustains the findings of the IBP-BOG and adopts its recommendation in part.

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[11] 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.

[12] *Rollo*, p. 120.

First. A perusal of the records reveals that complainant's version deserves credence, not only due to the unambiguous manner by which the narrative of events was laid down, but also by the coherent reasoning the narrative has employed. The public is, indeed, inclined to rely on representations made by lawyers. As a man of law, a lawyer is necessarily a leader of the community, looked up to as a model citizen.[13] A man, learned in the law like Atty. Salvado, is expected to make truthful representations when dealing with persons, clients or otherwise. For the Court, and as the IBP-BOG had observed, complainant's being beguiled to part with his money and believe Atty. Salvado as a lawyer and businessman was typical human behavior worthy of belief. The Court finds it hard to believe that a person like the complainant would not find the profession of the person on whose businesses he would invest as important to consider. Simply put, Atty. Salvado's stature as a member of the Bar had, in one way or another, influenced complainant's decision to invest.

Second. It must be pointed out that the denials proffered by Atty. Salvado cannot belie the dishonor of the checks. His strained explanation that the checks were mere securities cannot be countenanced. Of all people, lawyers are expected to fully comprehend the legal import of bouncing checks. In *Lozano v. Martinez,*[14] the Court ruled that the gravamen of the offense punished by *B.P.* 22 is the act of making and issuing a worthless check; that is, a check that is dishonored upon its presentation for payment. The thrust of the law is to prohibit, under pain of penal sanctions, the making and circulation of worthless checks. Because of its deleterious effects on the public interest, the practice is proscribed by the law.

Hence, the excuse of "gullibility and inadvertence" deserves scant consideration. Surely, Atty. Salvado is aware that promoting obedience to the Constitution and the laws of the land is the primary obligation of lawyers. When he issued the worthless

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[13] *Blanza v. Arcangel*, A.C. No. 492, September 5, 1967, 21 SCRA 1, 4.

[14] 230 Phil. 406, 421 (1986).

checks, he discredited the legal profession and created the public impression that laws were mere tools of convenience that could be used, bended and abused to satisfy personal whims and desires. In *Lao v. Medel*,[15] the Court wrote that the issuance of worthless checks constituted gross misconduct, and put the erring lawyer's moral character in serious doubt, though it was not related to his professional duties as a member of the Bar. Covered by this dictum is Atty. Salvado's business relationship with complainant. His issuance of the subject checks display his doubtful fitness as an officer of the court. Clearly, he violated Rule 1.01 and Rule 7.03 of the CPR.

Third. Parenthetically, the Court cannot overlook Atty. Salvado's deceiving attempts to evade payment of his obligations. Instead of displaying a committed attitude to his creditor, Atty. Salvado refused to answer complainant's demands. He even tried to make the complainant believe that he was no longer residing at his given address. These acts demonstrate lack of moral character to satisfy the responsibilities and duties imposed on lawyers as professionals and as officers of the court. The subsequent offers he had made and the eventual sale of his properties to the complainant, unfortunately cannot overturn his acts unbecoming of a member of the Bar.

Fourth. The Court need not elaborate on the correctness of the Investigating Commissioner's reliance on jurisprudence stating that administrative cases against lawyers belong to a class of their own and may proceed independently of civil and criminal cases, including violations of B.P. 22.

Accordingly, the only issue in disciplinary proceedings against lawyers is the respondent's fitness to remain as a member of the Bar. The Court's findings have no material bearing on other judicial actions which the parties may choose to file against each other.[16]

All told, the Court finds that Atty. Salvado's reprehensible conduct warrants a penalty commensurate to his violation of the CPR and the Lawyer's Oath.

[15] 455 Phil. 115 (2003).

[16] *Roa v. Moreno*, 633 Phil. 1, 8 (2010).

WHEREFORE, the Court finds Atty. Ronaldo P. Salvado **GUILTY** of violating Rule 1.01, Canon 1 and Rule 7.03 of the Code of Professional Responsibility. Accordingly, the Court **SUSPENDS** him from the practice of law for a period of two (2) years.

Let copies of this decision be furnished the Office of the Bar Confidant, the Integrated Bar of the Philippines, and all courts all over the country. Let a copy of this decision be attached to the personal records of the respondent.

SO ORDERED.

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

EN BANC

[G.R. No. 213472, January 26, 2016]

ZAMBOANGA CITY WATER DISTRICT, REPRESENTED BY ITS GENERAL MANAGER, LEONARDO REY D. VASQUEZ, ZAMBOANGA CITY WATER DISTRICT-EMPLOYEES UNION, REPRESENTED BY ITS PRESIDENT, NOEL A. FABIAN, LOPE IRINGAN, ALEJO S. ROJAS, JR., EDWIN N. MAKASIAR, RODOLFO CARTAGENA, ROBERTO R. MENDOZA, GREGORIO R. MOLINA, ARNULFO A. ALFONSO, LUCENA R. BUSCAS, LUIS A. WEE, LEILA M. MONTEJO, FELECITA G. REBOLLOS, ERIC A. DELGADO, NORMA L. VILLAFRANCA, ABNER C. PADUA, SATURNINO M. ALVIAR, FELIPE S. SALCEDO, JULIUS P. CARPITANOS, HANLEY ALBAÑA, JOHNY D.

DEMAYO, ARCHILES A. BRAULIO, ELIZA MAY R. BRAULIO, TEDILITO R. SARMIENTO, SUSANA C. BONGHANOY, LUZ A. BIADO, ERIC V. SALARITAN, RYAN ED C. ESTRADA, NOEL MASA KAWAGUCHI, TEOTIMO REYES, JR., EUGENE DOMINGO, AND ALEX ACOSTA, represented by LUIS A. WEE, *petitioners, vs.* **COMMISSION ON AUDIT,** *respondent*.

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; PROVINCIAL WATER UTILITIES ACT OF 1973 (P.D. No. 198), AS AMENDED BY REPUBLIC ACT NO. 9286; THE BOARD OF DIRECTORS OF THE LOCAL WATER DISTRICTS HAS THE DISCRETION TO FIX THE COMPENSATION OF THE GENERAL MANAGER, BUT THE RATES APPROVED MUST NOT BE IN EXCESS OF THE AMOUNTS ALLOWED BY LAW UNDER THE SALARY STANDARDIZATION LAW (SSL).— ZCWD's contention that, pursuant to Section 23 of P.D. No. 198, as amended by R.A. No. 9286, the BOD has the discretion to fix the compensation of the GM is misplaced. As held in *Mendoza v. COA* (*Mendoza*), unless specifically exempted by its charter, GOCCs are covered by the provisions of the SSL. The Court in *Mendoza* recognized the power of the BOD to fix the compensation of the GM but limited the same to the extent that the rates approved must be in accordance with the position classification system under the SSL. Here in this case, the salary increase of GM Bucoy, including the corresponding increase in her monetized leave credits, was properly disallowed for being in excess of the amounts allowed under the SSL.

2. ID.; ID.; ID.; THE NON-INTEGRATED BENEFITS, SUCH AS THE REPRESENTATION ALLOWANCE AND TRANSPORTATION ALLOWANCE (RATA) AND THE REPRESENTATION ALLOWANCE (RA), ARE ALLOWED TO BE CONTINUED ONLY FOR INCUMBENTS OF POSITIONS AS OF JULY 1, 1989 AND THOSE WHO WERE ACTUALLY RECEIVING THE SAID ALLOWANCES AS OF THE SAID DATE BASED ON THE RATES UNDER

LETTER OF IMPLEMENTATION (LOI) NO. 97.— The Court agrees with ZCWD that LWDs are within the coverage of LOI No. 97. Nevertheless, the payment of RATA and RA in favor of the GM and Assistant GMs of ZCWD based on the rates under LOI No. 97 is inappropriate. In *Ambros v. COA (Ambros)*, the Court stated that non-integrated benefits, such as the RATA, are allowed to be continued only for (1) for incumbents of positions as of July 1, 1989; and (2) those who were actually receiving the said allowances as of the said date, in consonance with Section 12 of the SSL. In the case at bench, GM Bucoy and the assistant GMs of ZCWD, although incumbent as of July 1, 1989, were not receiving RATA, a non-integrated benefit, based on the rates provided in LOI No. 97. Consequently, they are no longer entitled to enjoy the RATA benefit given by LOI No. 97.

3. ID.; ID.; ID.; THE COST OF LIVING ALLOWANCE (COLA) AND THE AMELIORATION ALLOWANCE (AA) ARE DEEMED INTEGRATED INTO THE SALARY; THE EMPLOYEES OF THE PETITIONER-ZAMBOANGA CITY WATER DISTRICT (ZCWD) ARE NOT ENTITLED TO BACK PAYMENT OF COLA AND AA.— Pursuant to Section 12 of the SSL, employee benefits, save for some exceptions, are deemed integrated into the salary. In *Maritime Industry Authority v. CO A (MIA)*, the Court emphasized that the general rule was that all allowances were deemed included in the standardized salary and the issuance of the DBM was required only if additional non-integrated allowances would be identified. In accordance with the *MIA* ruling, the COLA and AA were already deemed integrated in the standardized salary. Further, ZCWD cannot rely on the case of *PPA Employees*. As clarified by *MIA*, the *PPA Employees* ruling was only limited to distinguishing the benefits that may be received by government employees who were hired before and after the effectivity of the SSL x x x. n the case at bench, the incumbency of the employees was not contested, rather, the back payment of COLA and AA was not properly justified as payable obligations, which ZCWD paid after its financial conditions improved in 2005. Clearly, the *PPA Employees* case is inapplicable.

4. ID.; ID.; ID.; PAYMENT OF COLLECTIVE NEGOTIATION AGREEMENT (CNA) INCENTIVES SHALL BE DISALLOWED

ABSENT ANY SAVINGS.— PSLMC Resolution No. 2 provides for the guidelines in connection with the payment of CNA incentives to rank-and-file employees of GOCCs. Section 2 thereof requires that the CNA must include cost-cutting measures that shall be undertaken by both the management and the union. The COA was correct in finding that ZCWD failed to identify the specific cost-cutting measures undertaken, pursuant to the CNA. The Certification issued by ZCWD merely stated that there was a decrease in expenses but it did not specify the cost-cutting measures resorted to. Moreover, the said certification, as well as the Certification of Savings,[23] did not cover the period in which the CNA incentives were supposedly given, which ran contrary to Section 8[24] of PSLMC Resolution No. 2. ZCWD failed to establish that there were savings in 2005 to justify the payment of CNA incentives during the said year.

5. ID.; ID.; ID.; THE 14TH MONTH PAY IS IN THE NATURE OF AN ADDITIONAL BENEFIT, A NON-INTEGRATED BENEFIT, WHICH IS GIVEN ON TOP OF AN EMPLOYEE'S USUAL SALARY, AND IN ORDER THAT IT MAY BE CONTINUOUSLY ENJOYED, IT MUST HAVE BEEN GIVEN SINCE JULY 1, 1989 TO INCUMBENTS AS OF THE SAID DATE BUT IT COULD NOT BE EXTENDED TO EMPLOYEES HIRED AFTER JULY 1, 1989 OR TO THOSE WHICH HAD REPLACED THE INCUMBENTS AS OF JULY 1, 1989; DISALLOWANCE OF 14TH MONTH PAY, UPHELD.— The Court agrees with the COA that the documents presented by ZCWD did not unequivocally show that it had paid its employees the 14th month pay because the "Year-end Christmas Bonus" could have referred to the usual year-end benefit equivalent to one (1) month salary as provided by Memorandum Order No. 324. Even if ZCWD could prove that it had granted the 14th month pay to its employees, it could not insist that the same should be given to the employees hired after July 1, 1989. The 14th month pay was in the nature of an additional benefit, a non-integrated benefit, which had been given on top of an employee's usual salary. As discussed above, in order for a non-integrated benefit to be continuously enjoyed, it must have been given since July 1, 1989 to incumbents as of the said date. It could not be extended to employees hired after July 1, 1989 or to those which had replaced the incumbents as of July 1, 1989.

6. ID.; ID.; ID.; THE DIFFERENT TREATMENT ACCORDED TO THE INCUMBENTS AS OF 1 JULY 1989, ON ONE HAND, AND THOSE EMPLOYEES HIRED ON OR AFTER THE SAID DATE, ON THE OTHER, WITH RESPECT TO THE GRANT OF NON-INTEGRATED BENEFITS DOES NOT INFRINGE THE EQUAL PROTECTION CLAUSE OF THE CONSTITUTION AS IT IS BASED ON REASONABLE CLASSIFICATION INTENDED TO PROTECT THE RIGHTS OF THE INCUMBENTS AGAINST DIMINUTION OF THEIR PAY AND BENEFITS.— ZCWD is mistaken in arguing that such treatment violated the equal protection clause enshrined in the Constitution. The equal protection clause allows classification provided that it is based on real and substantial differences having a reasonable relation to the subject of the particular legislation. As explained in *Aquino v. Philippine Ports Authority*, the distinction between employees hired before and after July 1, 1989 was based on reasonable differences which was germane to the objective of the SSL to standardize the salaries of government employees, to wit: As explained earlier, the different treatment accorded the second sentence (first paragraph) of Section 12 of RA 6758 to the incumbents as of 1 July 1989, on one hand, and those employees hired on or after the said date, on the other, with respect to the grant of non-integrated benefits lies in the fact that the legislature intended to gradually phase out the said benefits without, however, upsetting its policy of non-diminution of pay and benefits. The consequential outcome under Sections 12 and 17 is that if the incumbent resigns or is promoted to a higher position, his successor is no longer entitled to his predecessor's RATA privilege or to the transition allowance. After 1 July 1989, the additional financial incentives such as RATA may no longer be given by the GOCCs with the exemption of those which were authorized to be continued under Section 12 of RA 6758. Therefore, the aforesaid provision does not infringe the equal protection clause of the Constitution as it is based on reasonable classification intended to protect the rights of the incumbents against diminution of their pay and benefits.

7. ID.; ID.; ID.; SECTION 3 OF ADMINISTRATIVE ORDER (A.O.) NO. 103 DID NOT DIVEST THE LOCAL WATER UTILITIES ADMINISTRATION (LWUA) OF ITS AUTHORITY TO FIX THE *PER DIEM* OF BOARD OF

DIRECTORS OF LOCAL WATER DISTRICTS (LWDs), BUT IT LIMITS THE SAME TO AN AMOUNT NOT BEYOND WHAT IS ALLOWED UNDER THE SSL.— Although ZCWD is correct in arguing that A.O. No. 103 did not repeal R.A. No. 9286, it is, however, mistaken, that the LWUA resolution is a sufficient basis to justify the grant of *per diem* in the amount beyond what is allowed under A.O. No. 103. Section 3 of A.O. No. 103 instructs all GOCCs to reduce the combined total of *per diems*, honoraria and benefits to a maximum of ₱20,000.00. The said provision did not divest LWUA of its authority to fix the *per diem* of BODs of LWDs. It, nonetheless, limits the same in order to implement austerity measures, as directed by A.O. No. 103, to meet the country's fiscal targets. Under R.A. No. 9275, the LWUA is an attached agency of the Department of Public Works and Highway *(DPWH)*. The President, exercising his power of control over the executive department, including attached agencies, may limit the authority of the LWUA over the amounts of *per diem* it may allow.

8. ID.; ID.; ID.; AN EMPLOYEE MAY BE ABSOLVED FROM REFUNDING THE DISALLOWED BENEFITS OR ALLOWANCES IF IT IS SHOWN THAT THEY WERE MADE IN GOOD FAITH; TERM "GOOD FAITH," CONSTRUED.—Although the disbursements made by ZCWD may have been made without legal basis, the petitioner may be absolved from refunding the disbursements if it is shown that they were made in good faith. Good faith, in relation to the requirement of refund of disallowed benefits or allowances, is "that state of mind denoting 'honesty of intention, and freedom from knowledge of circumstances which ought to put the holder upon inquiry; an honest intention to abstain from taking any unconscientious advantage of another, even though technicalities of law, together with absence of all information, notice, or benefit or belief of facts which render transactions unconscientious.'" It is noteworthy that in Mendoza, the Court excused the GM therein from refunding the amounts he received, which were the subject of the ND. x x x Similar to *Mendoza*, the increase in GM Bucoy's salary was disallowed by the COA for being in excess of the maximum amount allowed under the SSL. When the disbursements were made, no categorical pronouncement similar to that in Mendoza had been made that the LWDs were

subject to the provisions of the SSL. As such, GM Bucoy is excused from refunding the amount she received corresponding to her salary and increased monetized leave credits on the basis of good faith.

9. ID.; ID.; ID.; THE APPROVING OFFICERS MAY BE EXCUSED FROM BEING PERSONALLY LIABLE TO REFUND THE DISALLOWED AMOUNT PROVIDED THAT THEY HAD ACTED IN GOOD FAITH.— [A] thorough reaching of *Mendoza* and the cases cited therein would lead to the conclusion that ZCWD officers who approved the increase of GM Bucoy's are also not obliged either to refund the same. In *de Jesus v. Commission on Audit*, the Court absolved the petitioner therein from refunding the disallowed amount on the basis of good faith, pursuant to *de Jesus and the Interim Board of Directors, Catbalogan Water District v. Commission on Audit*. In the latter case, the Court absolved the Board of Directors from refunding the allowances they received because at the time they were disbursed, no ruling from the Court prohibiting the same had been made. Applying the ruling in *Blaquera v. Alcala (Blaquera)*, the Court reasoned that the Board of Directors need not make a refund on the basis of good faith, because they had no knowledge that the payment was without a legal basis. In *Blaquera*, the Court did not require government officials who approved the disallowed disbursements to refund the same on the basis of good faith. x x x. A careful reading of the above-cited jurisprudence shows that even approving officers may be excused from being personally liable to refund the amounts disallowed in a COA audit, provided that they had acted in good faith. Moreover, lack of knowledge of a similar ruling by this Court prohibiting a particular disbursement is a badge of good faith.

10. ID.; ID.; ID.; EMPLOYEES WHO HAD NO PARTICIPATION IN APPROVING THE RELEASE OF THE *PER DIEM* BUT MERELY RECEIVED THE DISALLOWED AMOUNTS ARE NOT OBLIGED TO REFUND THE SAME, AS THEY WERE MERELY PASSIVE RECIPIENTS WHO HONESTLY BELIEVED THEY WERE ENTITLED TO THE SAID BENEFITS AS THEIR PAYMENT WAS RATIFIED BY THEIR OFFICERS AND ARE UNAWARE THAT THE BENEFITS

THEY RECEIVED WERE EITHER WITHOUT BASIS OR HAD FAILED TO COMPLY WITH THE REQUIREMENTS OF THE LAW.— The ZCWD employees who merely received the disallowed amounts, are not obliged to refund the same because they had no participation in approving the release of the *per diem.* In *Silang v. Commission on Audit*, the Court cleared the employees who received the disallowed benefits on the basis of good faith. x x x. Unlike the officers of ZCWD who authorized the payment of the disallowed disbursements, these employees were merely passive recipients who honestly believed they were entitled to the said benefits as their payment was ratified by their officers. They were in good faith as they were unaware that the benefits they received were either without basis or had failed to comply with the requirements of the law. Thus, the employees who received the CNA incentives and the 14th month pay and the employees who were covered by the life insurance program other than the GSIS need not refund the amounts paid out for these benefits.

APPEARANCES OF COUNSEL

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D E C I S I O N

MENDOZA, *J.*:

This is a petition for certiorari[1] under Rule 64 of the Revised Rules of Court seeking to reverse and set aside the October 28, 2010 Decision[2] and the June 6, 2014 Resolution[3] of the Commission on Audit *(COA)* which affirmed the October 14,

[1] *Rollo*, pp. 3-50.

2008 Decision[4] of the Legal and Adjudication Sector, Legal and Adjudication Office-Corporate *(LAO).*

Petitioner Zamboanga City Water District (ZCWD) is a government-owned and/and controlled orporation (GOCC) which was created pursuant to the provisions of Presidential Decree (P.D.) No. 198 or the Provincial Water Utilities Act of 1973 (PWUA), as amended by Republic Act (R.A.) No. 9286.[5]

On January 9, 2007, Catalino S. Genel, Audit Team Leader for ZCWD, Zamboanga City, issued the following Notices of Disallowance (ND) for ZCWD's various payments:[6]

The NDs covered the disbursements made during the tenure

ND No.	Particulars	Amount
2006-001 (2005)	Claim for salary increase of GM Juanita L. Bucoy lacks the Department of Budget and Management (DBM) guideline and is over and above the DBM approved rate per audited plantilla.	₱523.760.00
2006-002 (2005)	Claim of Representation Allowance and Transportation Allowance (*RATA*)is not in accordance with DBM-approved rates pursuant to the General Appropriations Act (GAA), Republic Act (R.A.) Nos. 8760 and 9206 and DBM Circulars.	₱88,911.60
2006-003 (2005)	Computation of monetization of leave credits is without legal basis being	P21,910.28

[2] Concurred in by Chairman Reynaldo A. Villar, Commissioner Juanito G. Espino Jr. and Commissioner Evelyn R. San Buenaventura; *rollo*, pp. 75-95.

[3] *Id*. at 97-100.

[4] Penned by Director Janet D. Nacion; *id*. at 101-113.

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

[6] *Id*. at 75-77.

	based on the new rate instead of the standardized rate under the DBM audited plantilla.	
2006-004 (2005)	Payment of back Cost of Living Allowance (COLA) and Amelioration Allowance (AA) is in violation of Section 12, R.A. No. 6758, and DBM Budget Circular Nos. 2001-02 and 2005-02, dated November 12, 2001 and October 24, 2005, respectively	₱15,435,121.92.
2006-005 (2005)	Payment of one month Mid-year incentive has no legal basis pursuant to R.A. No. 6886, as amended by R.A. No. 8441. The Civil Service Commission (CSC) has no jurisdiction to determine the rates of government personnel, for the same is vested with the DBM. Further, the said benefit is not among those contemplated in Sections 5 to 7 of the Implementing Rules and Regulations (IRR) of Rule X, Book V, Executive Order (E.O.) No. 292, which is the basis of the CSC in adopting the Program on Awards and Incentives for Service Excellence (*PRAISE*)	₱3,915,068.00
2006-006 (2005)	Payment of 14th month pay has no legal basis pursuant to R.A. No. 6886, as amended. The CSC has no jurisdiction to determine the rates of government personnel, for the same is vested with the DBM. Further, the said benefit is not among those contemplated in Sections 5 to 7 of the IRR of Rule X, Book V, E.O. No. 292, which is the basis of the CSC in adopting the PRAISE	₱3,964,770.00
2006-07 (2005)	The grant of Collective Negotiation Agreement (CNA) incentive does not conform with the provisions of Public Sector Labor Management Council(PSLMC) Resolution No. 2,	₱1,680,000.00

	series of 2003. The grant of CNA incentives does not show any proof of cost cutting measures adopted by management and the union, and the savings generated as the sole source of the incentives as required under the said resolution. The amount of incentive should not be predetermined and should be given only at year end	
2006-008 (2005) to 2006-012 (2005)	Payment of per diem of the members of the Board of Directors (BOD) is in excess of what is allowed under Section 3, (c-III), Administrative Order (A.O.) No. 103, dated August 31, 2004	₱301,440.00 (Total - 1,507, 200.00)
2006-013 (2005)	Excess payment of Representation Allowance (RA) in violation of DBM Budget Circular Nos. 18 and 498, dated November 18, 2000 and April 11, 2005, respectively. Claims of RATA based on 40% basic pay under Letter of Implementation (LOImp) No. 97 shall no longer be valid and payment thereof shall not be allowed pursuant to Section 40, R.A. No. 9206, dated August 12, 2003.	₱22,014.60
2006-14 (2005)	Availment of a separate life insurance program other than that of the Government Service Insurance System (GSIS) is contrary to the principle of prudent spending of government funds	₱134,865.00

of then General Manager Juanita L. Bucoy (GM Bucoy).[7] On April 12, 2007, ZCWD filed its omnibus appeal before the LAO.[8]

[7] *Id*. at 9.

[8] *Id*. at 104.

The LAO Ruling

On October 14, 2008, the LAO rendered a decision upholding all the NDs in the aggregate amount of ₱27,293,621.40.

First, the LAO disagreed with the contention of the ZCWD that its Board of Directors *(BOD)* had the right to fix the compensation of its GM pursuant to R.A. No. 9286.[9] It stated that the compensation of the GMs of Local Water Districts *(LWDs)* was still subject to the provisions of R.A. No. 6758 or the Salary Standardization Law *(SSL)*. Further, it emphasized that any salary increase of government employees must be authorized through a legislative enactment or pronouncement from the President, through the DBM.

Second, the LAO opined that the payment of the Representation Allowance and Transportation Allowance (*RATA*) of the GM and the Representation Allowance (RA) of the Assistant GMs and the back payment of the Cost of Living Allowance *(COLA)* and the Amelioration Allowance *(AA)* were correctly disallowed because LWDs were not covered by Letter of Implementation *(LOI)* No. 97. Further, even if LWDs were covered by LOI No. 97, the payment of RATA and RA should still be disallowed because they were receiving the RATA at the rate of 20% of their basic salary, and not the rate provided for by LOI No. 97.

Third, the LAO also insisted that the payments corresponding to the midyear incentive and the Collective Negotiation Agreement *(CNA)*incentives were improper because they were without basis. It opined that ZCWD could not rely on the CSC approval[10] of its Program on Awards and Incentives for Service Excellence *(PRAISE)* because it had no authority to do so. Likewise, it noted that ZCWD failed to establish compliance with Public Sector Labor Management Council *(PSLMC)* Resolution No. 2 to warrant the payment of CNA incentives. Moreover, the

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[9] An act further amending Presidential Decree (P.D.) No. 198 or the "Local Water Utilities Act of 1973."

[10] *Rollo*, p. 140.

LAO pointed out that the payment of life insurance benefits other than that provided by the GSIS was contrary to Section 28(b) of Commonwealth Act *(C.A.)* No. 186,[11] as amended by R.A. No.4968.

Lastly, the LAO found that the per diems paid to the BOD, as well as the 14th month pay given to ZCWD employees, were in excess of the amount allowed by law. The LOA stated that the per diems granted to the members of the BOD were in excess of the amount allowed by Administrative Order *(A.O.)* No. 103 and the 14th month pay was in excess of the amount authorized under R.A. No. 8441.

Undaunted, ZCWD appealed before the COA.

The COA Ruling

On October 28, 2010, the COA rendered the assailed decision affirming the LAO ruling. The dispositive portion of which reads:

WHEREFORE, in view of the foregoing, the herein appeal is hereby **DENIED** and ND Nos. 2006-001(2005) to 2006-014(2005), in the total amount of ₱27,293,621.40 are hereby **AFFIRMED**.[12]

In the said decision, the COA highlighted that the CNA incentives should not be paid because ZCWD failed to prove compliance with PSLMC Resolution No. 2, particularly: (a) identifying specific cost-cutting measures; and (b) proof that the funds for the incentives were taken from savings as a result of the cost-saving measures.

Aggrieved, ZCWD moved for reconsideration but its motion was denied by the COA in its assailed resolution, dated June 6, 2014.

Hence, this present petition, raising the following

GROUNDS

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[11] Government Service Insurance Act.

[12] *Rollo*, p. 95.

A. IN AFFIRMING NOTICE OF DISALLOWANCE (ND) NOS. 2006- 001(2005) TO 2006-03(2005), ALL DATED 09 JANUARY 2007 CONCERNING THE SALARIES AND BENEFITS OF THE FORMER GENERAL MANAGER OF PETITIONER ZCWD, BY HOLDING THAT ITS BOARD OF DIRECTORS DID NOT HAVE THE POWER TO FIX THE GENERAL MANAGER'S SALARY AND BENEFITS DESPITE THE CLEAR MANDATE OF SECTION 23 OF P.D. NO. 198, AS AMENDED BY R.A. NO. 9286;

B. IN AFFIRMING NOTICE OF DISALLOWANCE (ND) NO. 2006- 004(2005) DATED 09 JANUARY 2007 CONCERNING THE BACK PAYMENT OF COST OF LIVING ALLOWANCE (COLA) AND AMELIORATION ALLOWANCE DIFFERENTIALS, BY HOLDING THAT THE EMPLOYEES OF PETITIONER ZCWD ARE NOT ENTITLED TO THE COLA AND AMELIORATION ALLOWANCE SINCE THEY ARE NOT COVERED BY LOI NO. 97 DATED 01 MAY 1979, AND THAT FROM THE PERIOD OF 01 JULY 1989 TO 16 MARCH 1999, PETITIONER'S EMPLOYEES WERE ALREADY PAID THEIR COLA AND AMELIORATION ALLOWANCE;

C. IN AFFIRMING NOTICE OF DISALLOWANCE (ND) NO. 2006- 006(2005) DATED 09 JANUARY 2007 CONCERNING THE PAYMENT OF 14TH-MONTH PAY BY HOLDING THAT PETITTIONERS ZCWD EMPLOYEES HAVE NOT BEEN PAID THE 14th MONTH PAY PRIOR TO 01 JULY 1989 DESPITE EVIDENCE TO THE CONTRARY, AND ASSUMING THAT THE PAYMENT WAS FOR THE USUAL BONUS REGULARLY RECEIVED BY EMPLOYEES UNDER M.O. NO. 324 DATED 05 OCTOBER 1990;

D. IN AFFIRMING NOTICE OF DISALLOWANCE (ND) NO. 2006- 007(2005) DATED 09 JANUARY 2007 COVERING PAYMENTS OF THE CAN INCENTIVE BENEFITS, BY HOLDING THAT PETITTIONER ZCWD DID NOT COMPLY WITH THE REQUIREMENTS OF PSLMC RESOLUTION NO. 2, SERIES OF 2003 DESPITE CLEAR EVIDENCE OF COMPLIANCE WITH THE SAME;

E. IN AFFIRMING NOTICE OF DISALLOWANCE (ND) NOS. 2006- 008(2005) TO 2006-012(2005), ALL DATED 09

JANUARY 2007 COVERING PAYMENTS OF THE PER DIEMS OF THE MEMBERS OF THE BOARD OF DIRECTORS OF PETITIONER ZCWD, BY HOLDING THAT THE LWUA DOES NOT HAVE THE AUTHORITY TO FIX THE PER DIEMS OF THE BOARD OF DIRECTORS DESPITE ITS CLEAR MANDATE UNDER P.D. NO. 198 AS AMENDED BY R.A. NO. 9268.

Essentially, the Court is tasked to resolve (1) Whether or not the disbursements under the NDs were improper; and (2) in the event the disbursements were improper, whether or not petitioner is liable to refund the same.

Petitioner ZCWD insists that its BOD has the power to determine and fix the salaries and compensation of its GM, in accordance with Section 23 of P.D. No. 198, as amended. It contends that its employees were entitled to COLA and AA pursuant to the ruling of the Court in *PPA Employees hired after July 1, 1989 v. COA (PPA Employees)*,[13] which stated that the government employees were entitled to the said allowances as the integration of benefits took place only on March 16, 1999 when Department of Budget and Management *(DBM)* Corporate Compensation Circular *(CCC)* No. 10 took effect.

Moreover, ZCWD claims that the payment of the CNA incentives was in accordance with the requirements of PSLMC Resolution No. 2. It pointed out that its employees had always been paid the 14th month pay since July 1, 1989 and that disallowing the payment of the 14thmonth pay to employees hired after July 1, 1989 would violate the equal protection clause.

Furthermore, ZCWD argues that the payment of the *per diems* to its BOD was in order because, prior to the passage of A.O. No. 103, its BOD had a fixed right to the new rate of *per diems.*

In its Comment,[14] dated November 21, 2014, the CO A reiterated its reasons for upholding the disallowance of ZCWD's various payments.

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[13] 506 Phil. 382 (2005).

[14] *Rollo*, pp. 296-318.

[15] *Id*. at 325-346.

In its Reply,[15] dated February 17, 2015, ZCWD insisted that its BOD was vested with the authority to fix the compensation of its GM, pursuant to R.A. No. 9286. Further, it argued that ZCWD employees were entitled to the back payment of COLA and AA as LWDs were covered by LOI No. 97. ZCWD also stated that it could not be faulted for relying on R.A. No. 9286 and Local Water Utilities Administration(LWUA) Board Resolution No. 120 in paying the per diems of its BOD without any advice from the LWUA as the same were subservient to A.O. No. 103. ZCWD also prayed that, in the event that the disallowances were upheld, it need not be made to reimburse the payment because they were done in good faith.

The Court's Ruling

Limited power of the BOD to fix the salary of the GM

ZCWD's contention that, pursuant to Section 23 of P.D. No. 198, as amended by R.A. No. 9286, the BOD has the discretion to fix the compensation of the GM is misplaced. As held in *Mendoza v. COAX*[16] *(Mendoza)*, unless specifically exempted by its charter, GOCCs are covered by the provisions of the SSL. The Court in *Mendoza* recognized the power of the BOD to fix the compensation of the GM but limited the same to the extent that the rates approved must be in accordance with the position classification system under the SSL. Here in this case, the salary increase of GM Bucoy, including the corresponding increase in her monetized leave credits, was properly disallowed for being in excess of the amounts allowed under the SSL.

Payment of RATA and RA based on the rates under LOI No. 97 is improper

The Court agrees with ZCWD that LWDs are within the coverage of LOI No. 97. Nevertheless, the payment of RATA

[16] G.R. No. 195395, September 10, 2013, 705 SCRA 306.

and RA in favor of the GM and Assistant GMs of ZCWD based on the rates under LOI No. 97 is inappropriate. In *Ambros v. COA (Ambros)*,[17] the Court stated that non-integrated benefits, such as the RATA, are allowed to be continued only for (1) for incumbents of positions as of July 1, 1989; and (2) those who were actually receiving the said allowances as of the said date, in consonance with Section 12[18] of the SSL.

In the case at bench, GM Bucoy and the assistant GMs of ZCWD, although incumbent as of July 1, 1989, were not receiving RATA, a non-integrated benefit, based on the rates provided in LOI No. 97. Consequently, they are no longer entitled to enjoy the RATA benefit given by LOI No. 97. In *Philippine Ports Authority v. COA (PPA)*,[19] the Court explained:

Now, under the second sentence of Section 12, first paragraph, the RATA enjoyed by these PPA officials shall continue to be authorized only if they are "being received by incumbents only as of July 1, 1989." RA 6758 has therefore, to this extent, *amended* LOI No. 97. By limiting the benefit of the RATA granted by LOI No. 97 to incumbents, Congress has manifested its intent to gradually phase out this RATA privilege under LOI No. 97 without upsetting its policy of non-diminution of pay.

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We have earlier classified the petitioners officials into two. The first category is composed of those who, pursuant to LOI No. 97 and Memorandum Circular No. 57-87 dated October 1, 1987, were

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[17] 501 Phil. 255 (2005).

[18] All allowances, except for representation and transportation allowances; clothing and laundry allowances; subsistence allowance of marine officers and crew on board government vessels and hospital personnel; hazard pay; allowances of foreign service personnel stationed abroad; and such other additional compensation not otherwise specified herein as may be determined by the DBM, shall be included in the standardized salary rates herein prescribed. **Such other additional compensation, whether in cash or in kind, being received by incumbents only as of July 1, 1989, not integrated into the standardized salary rates shall continue to be authorized**. (Emphasis supplied)

[19] G.R. No. 100773, October 16, 1992, 214 SCRA 653.

granted and were receiving RATA equivalent to 40% salary prior to July 1,1989, the effectivity of RA 6758. **The second category consists of those who as of July 1,1989 were not receiving the RATA privilege under LOI No. 97.** These officials were given RATA after July 1, 1989, pursuant to Memorandum Circular No. 36-89 dated October 23, 1989. Said circular, however, provided for a retroactive grant of RATA from June 1, 1989. Under Memorandum Circular No. 46-90 dated November 14,1990, the RATA of this second set of officials was increased from 20% to 40% of standardized salary.

Applying the provisions of Section 12 to the petitioners' case, we rule that only the first category officials are entitled to the continued RATA benefit under LOI No. 97. **The first category officials were incumbents as of July 1, 1989 and more importantly, they were receiving the RATA provided by LOI No. 97 as of July 1, 1989.**

While the second category officials were incumbents as of July 1,1989, they were not receiving RATA as of July 1, 1989.

True, LOI No. 97 provides that these second category officials may likewise be given RATA not exceeding 40% basic salary, but this provision did not create a vested right in their favor, xxx The grant of RATA under LOI No. 97 to these officials was still discretionary on the part of the PPA management. It was not absolute nor was it unconditional. **Unfortunately, when the PPA management finally authorized the giving of RATA to these second category officials, such was no longer allowed under RA 6758**.[20]

[Emphases Supplied]

Similarly, the ZCWD officials were not entitled to the benefit of RATA based on the rates provided in LOI No. 97. They fail to meet the criteria set in Ambros because although they were incumbents as of July 1, 1989, they were not receiving their RATA based on the rates under LOI No. 97 on the said date.

ZCWD employees not entitled to back payment

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[20] *Id.* at 660-661.

of COLA and AA

Pursuant to Section 12 of the SSL, employee benefits, save for some exceptions, are deemed integrated into the salary. In *Maritime Industry Authority v. COA (MIA)*,[21] the Court emphasized that the general rule was that all allowances were deemed included in the standardized salary and the issuance of the DBM was required only if additional non-integrated allowances would be identified. In accordance with the MIA ruling, the COLA and AA were already deemed integrated in the standardized salary.

Further, ZCWD cannot rely on the case of PPA Employees. As clarified by MIA, the PPA Employees ruling was only limited to distinguishing the benefits that may be received by government employees who were hired before and after the effectivity of the SSL, to wit:

> Petitioner Maritime Industry Authority's reliance on *Philippine Ports Authority Employees Hired After July 1, 1989 v. Commission on Audit* is misplaced. As this court clarified in *Napocor Employees Consolidated Union v. National Power Corporation*, the ruling in *Philippine Ports Authority Employees Hired After July 1, 1989* was limited to distinguishing the benefits that may be received by government employees who were hired before and after the effectivity of Republic Act No. 6758. Thus:
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> > [t]he Court has, to be sure, taken stock of its recent ruling in *Philippine Ports Authority (PPA) Employees Hired After July 1, 1989 vs. Commission on Audit.* Sadly, however, our pronouncement therein is not on all fours applicable owing to the differing factual milieu. There, the Commission on Audit allowed the payment of back cost of living allowance (COLA) and amelioration allowance previously withheld from PPA employees pursuant to the heretofore ineffective DBM — CCC No. 10, but limited the back payment only to incumbents as of July 1, 1989 who were already then receiving both allowances. COA considered the COLA and amelioration allowance of PPA employees as "*not integrated*" within the purview of the second sentence of Section 12 of Rep. Act No. 6758, which, according to COA confines the payment of "not integrated" benefits only

[21] G.R. No. 185812, January 13, 2015.

to July 1,1989 incumbents already enjoying the allowances.

In setting aside COA's ruling, we held in *PPA Employees* that there was no basis to use the elements of incumbency and prior receipt as standards to discriminate against the petitioners therein. For, DBM-CCC No. 10, upon which the incumbency and prior receipt requirements are contextually predicated, was in legal limbo from July 1, 1989 (effective date of the unpublished DBM-CCC No. 10) to March 16, 1999 (date of effectivity of the heretofore unpublished DBM circular). And being in legal limbo, the benefits otherwise covered by the circular, if properly published, were likewise in legal limbo as they cannot be classified either as effectively integrated or not integrated benefits.

Similar to what was stated in *Napocor Employees Consolidated Union*, the "element of discrimination between incumbents as of July 1,1989 and those joining the force thereafter is not obtaining in this case." The second sentence of the first paragraph of Section 12, Republic Act No. 6758 is not in issue.

In the case at bench, the incumbency of the employees was not contested, rather, the back payment of COLA and AA was not properly justified as payable obligations, which ZCWD paid after its financial conditions improved in 2005. Clearly, the PPA Employees case is inapplicable.

Disallowance of CNA Incentives correct

PSLMC Resolution No. 2 provides for the guidelines in connection with the payment of CNA incentives to rank-and-file employees of GOCCs. Section 2 thereof requires that the CNA must include cost-cutting measures that shall be undertaken by both the management and the union.

The COA was correct in finding that ZCWD failed to identify the specific cost-cutting measures undertaken, pursuant to the CNA. The Certification[22] issued by ZCWD merely stated that there was a decrease in expenses but it did not specify the cost-

[22] *Rollo*, p. 162.

[23] *Id*. at 163.

[24] The CNA incentive may be granted every year that savings are generated the life of the CNA.

cutting measures resorted to. Moreover, the said certification, as well as the Certification of Savings,[23] did not cover the period in which the CNA incentives were supposedly given, which ran contrary to Section 8[24] of PSLMC Resolution No. 2. ZCWD failed to establish that there were savings in 2005 to justify the payment of CNA incentives during the said year.

ZCWD employees not entitled to 14th month pay

The COA disallowed the 14th month pay on the ground that ZCWD failed to prove that it had granted the same to its employees since July 1, 1989 and even it were true, it could not be extended to employees hired after the said date. ZCWD is adamant that it submitted documentary evidence to support the payment of 14th month pay even before July 1, 1989. It asserts that the documents it presented showed that what was paid to the employees was the "Year-end Christmas Bonus" but it claims that the same was the 14th month pay.

The Court agrees with the COA that the documents presented by ZCWD did not unequivocally show that it had paid its employees the 14th month pay because the "Year-end Christmas Bonus" could have referred to the usual year-end benefit equivalent to one (1) month salary as provided by Memorandum Order No. 324.

Even if ZCWD could prove that it had granted the 14th month pay to its employees, it could not insist that the same should be given to the employees hired after July 1, 1989. The 14th month pay was in the nature of an additional benefit, a non-integrated benefit, which had been given on top of an employee's usual salary. As discussed above, in order for a non-integrated benefit to be continuously enjoyed, it must have been given since July 1, 1989 to incumbents as of the said date. It could not be extended to employees hired after July 1, 1989 or to those which had replaced the incumbents as of July 1, 1989.

ZCWD is mistaken in arguing that such treatment violated the equal protection clause enshrined in the Constitution. The equal protection clause allows classification provided that it is based on real and substantial differences having a reasonable relation to the subject of the particular legislation.[25] As explained in *Aquino v. Philippine Ports Authority*,[26] the distinction between employees hired before and after July 1, 1989 was based on reasonable differences which was germane to the objective of the SSL to standardize the salaries of government employees, to wit:

> As explained earlier, the different treatment accorded the second sentence (first paragraph) of Section 12 of RA 6758 to the incumbents as of 1 July 1989, on one hand, and those employees hired on or after the said date, on the other, with respect to the grant of non-integrated benefits lies in the fact that the legislature intended to gradually phase out the said benefits without, however, upsetting its policy of non-diminution of pay and benefits.
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> The consequential outcome under Sections 12 and 17 is that if the incumbent resigns or is promoted to a higher position, his successor is no longer entitled to his predecessor's RATA privilege or to the transition allowance. After 1 July 1989, the additional financial incentives such as RATA may no longer be given by the GOCCs with the exemption of those which were authorized to be continued under Section 12 of RA 6758.
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> Therefore, the aforesaid provision does not infringe the equal protection clause of the Constitution as it is based on reasonable classification intended to protect the rights of the incumbents against diminution of their pay and benefits.

Per diems granted to the Board beyond the amount allowed by law

ZCWD asserts that pursuant to R.A. No. 9286, it is the LWUA which is authorized to fix the *per diem* of its BOD and that

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[25] *Remman Enterprises Inc. v. Professional Regulatory Board of Real Estate Service*, G.R. No. 197676, February 4, 2014, 715 SCRA 293, 316.

[26] G.R. No. 181973, April 17, 2013. 696 SCRA 666.

A.O. No. 103 did not impliedly repeal R.A. No. 9286, hence, the latter remains to be in effect. It insists that it could rely on LWUA Board Resolution No. 120, which approved the *per diem* beyond the rates allowed by A.O. No. 103.

Although ZCWD is correct in arguing that A.O. No. 103 did not repeal R.A. No. 9286, it is, however, mistaken, that the LWUA resolution is a sufficient basis to justify the grant of *per diem* in the amount beyond what is allowed under A.O. No. 103. Section 3 of A.O. No. 103 instructs all GOCCs to reduce the combined total of *per diems*, honoraria and benefits to a maximum of ₱20,000.00.

The said provision did not divest LWUA of its authority to fix the *per diem* of BODs of LWDs. It, nonetheless, limits the same in order to implement austerity measures, as directed by A.O. No. 103, to meet the country's fiscal targets. Under R.A. No. 9275, the LWUA is an attached agency of the Department of Public Works and Highway *(DPWH)*. The President, exercising his power of control over the executive department, including attached agencies, may limit the authority of the LWUA over the amounts of per diem it may allow.

Refund not necessary if the disbursements were made in good faith

Although the disbursements made by ZCWD may have been made without legal basis, the petitioner may be absolved from refunding the disbursements if it is shown that they were made in good faith. Good faith, in relation to the requirement of refund of disallowed benefits or allowances, is "that state of mind denoting 'honesty of intention, and freedom from knowledge of circumstances which ought to put the holder upon inquiry; an honest intention to abstain from taking any unconscientious advantage of another, even though technicalities of law, together with absence of all information, notice, or benefit or belief of

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[27] *PEZA v. COA*, 690 Phil. 104, 115 (2012), as cited in *MIA*, *supra* note 21.

facts which render transactions unconscientious.'"[27]

It is noteworthy that in *Mendoza*, the Court excused the GM therein from refunding the amounts he received, which were the subject of the ND, to wit:

> The salaries petitioner Mendoza received were fixed by the Talisay Water District's board of directors pursuant to Section 23 of the Presidential Decree No. 198. Petitioner Mendoza had no hand in fixing the amount of compensation he received. Moreover, at the time petitioner Mendoza received the disputed amount in 2005 and 2006, there was no jurisprudence yet ruling that water utilities are not exempted from the Salary Standardization Law.
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> Pursuant to *De Jesus v. Commission on Audit*, petitioner Mendoza received the disallowed salaries in good faith. He need not refund the disallowed amount.

Similar to *Mendoza*, the increase in GM Bucoy's salary was disallowed by the COA for being in excess of the maximum amount allowed under the SSL. When the disbursements were made, no categorical pronouncement similar to that in *Mendoza* had been made that the LWDs were subject to the provisions of the SSL. As such, GM Bucoy is excused from refunding the amount she received corresponding to her salary and increased monetized leave credits on the basis of good faith.

Further, a thorough reaching of *Mendoza* and the cases cited therein would lead to the conclusion that ZCWD officers who approved the increase of GM Bucoy's are also not obliged either to refund the same. In d*e Jesus v. Commission on Audit*,[28] the Court absolved the petitioner therein from refunding the disallowed amount on the basis of good faith, pursuant to *de Jesus and the Interim Board of Directors, Catbalogan Water District v. Commission on Audit.*[29] In the latter case, the Court absolved the Board of Directors from refunding the allowances they received because at the time they were disbursed, no ruling

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[28] 466 Phil. 912 (2004).

[29] 451 Phil. 812 (2003).

[30] 356 Phil. 678 (1998).

from the Court prohibiting the same had been made. Applying the ruling in *Blaquera v. Alcala (Blaquera)*,[30] the Court reasoned that the Board of Directors need not make a refund on the basis of good faith, because they had no knowledge that the payment was without a legal basis.

In *Blaquera*, the Court did not require government officials who approved the disallowed disbursements to refund the same on the basis of good faith, to wit:

> Untenable is petitioners' contention that the herein respondents be held personally liable for the refund in question. Absent a showing of bad faith or malice, public officers are not personally liable for damages resulting from the performance of official duties.
>
> Every public official is entitled to the presumption of good faith in the discharge of official duties. Absent any showing of bad faith or malice, there is likewise a presumption of regularity in the performance of official duties.
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> x x x x x x x x x
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> **Considering, however, that all the parties here acted in good faith, we cannot countenance the refund of subject incentive benefits for the year 1992, which amounts the petitioners have already received.** Indeed, no *indicia* of bad faith can be detected under the attendant facts and circumstances. **The officials and chiefs of offices concerned disbursed such incentive benefits in the honest belief that the amounts given were due to the recipients** and the latter accepted the same with gratitude, confident that they richly deserve such benefits.
>
> [Emphases Supplied]

A careful reading of the above-cited jurisprudence shows that even approving officers may be excused from being personally liable to refund the amounts disallowed in a COA audit, provided that they had acted in good faith. Moreover, lack of knowledge of a similar ruling by this Court prohibiting a particular disbursement is a badge of good faith.

In the case at bench, there are several items that need not be refunded based on good faith. *First*, the BOD of ZCWD are

not obliged to refund the amounts corresponding to GM Bucoy's salary and monetized leaved credits because at the time they were paid, no ruling similar to Mendoza — unequivocally declaring that LWDs are bound by the provisions of the SSL — had been made.

Second, the back payment of the COLA and AA need not be refunded because at the time they were paid, there was no similar ruling like the MIA case, where it was held that integration was the general rule and, therefore, benefits were deemed integrated notwithstanding the absence of a DBM issuance. Prior to MIA, there had been no categorical pronouncement that, by virtue of Section 12 of the SSL, benefits were deemed integrated, without a need of a subsequent issuance from the DBM. Consequently, the officers who authorized the back payment of the COLA and AA and the employees who received them believing to be entitled thereto need not refund the same. They were in good faith as they were oblivious that the said payments were improper.

Lastly, ZCWD cannot be faulted for paying the midyear incentives granted under its PRAISE Program because it merely relied on the authorization granted by the CSC, which found the same compliant with the CSC guidelines and approved its implementation. The same need not be refunded on the basis of good faith. The BOD of ZCWD allowed the payment of mid-year incentives believing that the supposed CSC authorization was sufficient basis, while the employees received them under the impression that they rightfully deserved them.

Good faith, however, cannot be appreciated in the other release of funds made by ZCWD. First, it is noteworthy that as early as 1992, the Court has ruled in PPA that the. RAT A under the rates provided in LOI No. 97 must have been enjoyed since July 1, 1989 by incumbent employees as of the said date. ZCWD admitted that its employees were receiving RATA not based on the rates provided by LOI No. 97.

Second, ZCWD authorized the release of CNA incentives, in spite of its failure to strictly comply with PSLMC Resolution

No. 2. ZCWD also failed to justify why it paid for a separate life insurance program other than the GSIS. Therefore, officers of ZCWD who were responsible for the release the aforementioned disbursements are bound to refund the same.

Lastly, good faith cannot absolve the ZCWD from refunding the per diems granted to the BOD. ZCWD insists that it merely relied on the LWUA Board Resolution which authorized the payment of the *per diems* that exceed the amount authorized under A.O. No. 103. The justification falls short of the standard of good faith required to be exempt from refunding disallowed benefits or allowances. ZCWD does not deny its awareness of the limits provided under A.O. No. 103. It nonetheless opted to simply depend on the LWUA issuance. In order for good faith to be appreciated, ZCWD must be without any knowledge of circumstances that would have placed it on guard.

ZCWD, being aware of the existence of A.O. No. 103 which placed a cap on the maximum *per diems* granted to the BOD of GOCCs, could have been more prudent to discontinue the grant of per diems based on the rates provided by the LWUA resolution, and instead, complied with the limitations set by A.O. No. 103. Thus, its BOD is bound to refund the amount of the surplus *per diems*, which they had authorized and received.

The ZCWD employees who merely received the disallowed amounts, are not obliged to refund the same because they had no participation in approving the release of the *per diem.* In *Silang v. Commission on Audit*,[31] the Court cleared the employees who received the disallowed benefits on the basis of good faith, to wit:

> In this case, the majority of the petitioners are the LGU of Tayabas, Quezon's rank-and-file employees and *bona fide* members of UNGKAT (named-below) who received the 2008 and 2009 CNA Incentives on the honest belief that UNGKAT was fully clothed with the authority to represent them in the CNA negotiations. As the records bear out, there was no indication that these rank-and-file employees, except the UNGKAT officers or members of its Board of Directors named below, had participated in any of the negotiations or were, in

[31] G.R. No. 213189, September 8, 2015.

any manner, privy to the internal workings related to the approval of said incentives; **hence, under such limitation, the reasonable conclusion is that they were mere passive recipients who cannot be charged with knowledge of any irregularity attending the disallowed disbursement. Verily, good faith is anchored on an honest belief that one is legally entitled to the benefit, as said employees did so believe in this case**. **Therefore, said petitioners should not be held liable to refund what they had unwittingly received.**

[Emphasis Supplied]

Unlike the officers of ZCWD who authorized the payment of the disallowed disbursements, these employees were merely passive recipients who honestly believed they were entitled to the said benefits as their payment was ratified by their officers. They were in good faith as they were unaware that the benefits they received were either without basis or had failed to comply with the requirements of the law. Thus, the employees who received the CNA incentives and the 14th month pay and the employees who were covered by the life insurance program other than the GSIS need not refund the amounts paid out for these benefits.

WHEREFORE, the October 28, 2010 Decision and the June 6, 2014 Resolution of the Commission on Audit are **AFFIRMED** with **MODIFICATION** in that the recipients and the officers who had authorized the following disbursements be absolved from refunding the amounts paid in connection with the following: (1) the salary increase of GM Bucoy and the corresponding increase in her monetized leave credits; (2) the back payment of the COLA and AA; and (3) the midyear incentives, pursuant to its PRAISE Program. As to the other items, only the officers who authorized their release are bound to refund the same.

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Brion, Peralta, Bersamin, del Castillo, Perez, Reyes, Perlas-Bernabe, Leonen, and *Jardeleza, JJ.,* concur.

EN BANC

[G.R. No. 218536. January 26, 2016]

ROLANDO P. TOLENTINO, *petitioner, vs.* **COMMISSION ON ELECTIONS (FIRST DIVISION), ATTY. CRISTINA T. GUIAO-GARCIA, and HENRY MANALO,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI;* AN EXTRAORDINARY REMEDY OF LAST RESORT DESIGNED TO CORRECT ERRORS OF JURISDICTION; GRAVE ABUSE OF DISCRETION, WHEN PRESENT.—** *Certiorari* is available when a court or other tribunal exercising quasi- judicial powers acts without or in excess of its jurisdiction or with grave abuse of discretion amounting to lack of jurisdiction. It is an extraordinary remedy of last resort designed to correct errors of jurisdiction. There is grave abuse of discretion justifying the issuance of the writ of *certiorari* when there is such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction; where power is exercised arbitrarily or in a despotic manner by reason of passion, prejudice; or where action is impelled by personal hostility amounting to an evasion of positive duty, or to virtual refusal to perform the duty enjoined, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility. After evaluating the facts, this Court fails to see any action on the part of the Commission that constitutes grave abuse of discretion or absence of jurisdiction.

2. **POLITICAL LAW; ADMINISTRATIVE LAW; ELECTIONS; THE COMMISSION ON ELECTIONS (COMELEC) HAS THE POWER AND JURISDICTION TO ISSUE ORDERS TO ITS EMPLOYEES TO CARRY OUT ITS MANDATE AND MAY DISCIPLINE OR RELIEVE ANY OFFICER OR EMPLOYEE WHO FAILS TO COMPLY WITH ITS INSTRUCTIONS. —** [T]he assailed Order dated May 25, 2015, was directed to City Election Officer IV Atty. Guiao-Garcia.

As an agent of the Commission, an election officer is under the Commission's direct and immediate control and supervision. The Commission clearly has the power and jurisdiction to issue orders to its employees to carry out its mandate. It is even clothed with the power to discipline or relieve any officer or employee who fails to comply with its instructions.

3. ID.; ID.; ID.; THE COMMISSION ON ELECTIONS IS AUTHORIZED TO ENFORCE ITS DIRECTIVES AND ORDERS THAT, BY LAW, ENJOY PRECEDENCE OVER THAT OF THE MUNICIPAL TRIAL COURT IN CITIES (MTCC).— [T]he Commission is authorized to enforce its directives and orders that, by law, enjoy precedence over that of the MTCC. The Omnibus Election Code explicitly states: **Omnibus Election Code Article VII The Commission on Elections.** Sec. 52 Powers and functions of the Commission on Elections. – In addition to the powers and functions conferred upon it by the Constitution, the Commission shall have exclusive charge of the enforcement and administration of all laws relative to the conduct of elections for the purpose of ensuring free, orderly and honest elections, and shall: x x x (f) Enforce and execute its decisions, directives, orders and instructions **which shall have precedence over those emanating from any other authority,** except the Supreme Court and those issued in *habeas corpus* proceedings.

4. REMEDIAL LAW; JUDGMENTS; EXECUTION PENDING APPEAL; THE WRIT OF EXECUTION PENDING APPEAL ISSUED BY THE MTCC CANNOT BE ENFORCED WHERE THE SAME WAS ISSUED AFTER IT HAD ALREADY LOST ITS RESIDUAL JURISDICTION OVER THE CASE. — [T]he MTCC's writ of execution pending appeal cannot be enforced because it was issued after the MTCC had already lost its residual jurisdiction. xxx. Rule 14, Section 11 of AM No. 07-4-15-SC provides the window of time when the MTCC retains residual powers to order execution pending appeal x x x. Under this Rule, the MTCC retains residual jurisdiction while two conditions concur: (1) records of the case have not yet been transmitted to the Commission; and (2) the period to appeal has not yet expired. The MTCC ordered execution pending appeal on **December 16, 2014.** At this point in time, the five-day period to appeal had already expired. Moreover, under the

presumption of regularity in the performance of their duties, the clerk of court was presumed to have already transmitted the records of the case to the Electoral Contests Adjudication Department of the Commission. Thus, the MTCC had already lost complete jurisdiction of the case when it issued the writ of execution pending appeal. At this point, the proper forum that could have granted execution pending appeal was the Commission itself which already acquired jurisdiction over the case. It is a fundamental legal tenet that any order issued without jurisdiction is void and without legal effect – a lawless thing which can be treated as an outlaw and slain on sight.

5. **POLITICAL LAW; ADMINISTRATIVE LAW; ELECTIONS; THE COMELEC HAS THE POWER AND JURISDICTION TO AFFIRM, REVERSE, VACATE, OR ANNUL THE MTCC'S JUDGMENT, AND TO RESTRAIN THE IMPLEMENTATION THEREOF THROUGH INJUNCTIVE WRITS.—** [E]ven assuming that the writ of execution was issued before the MTCC lost jurisdiction, the MTCC is still subject to the Commission's appellate jurisdiction. The Commission has the power and jurisdiction to affirm, reverse, vacate, or annul the MTCC's judgment. The Commission also has jurisdiction to restrain implementation of the MTCC's judgment through injunctive writs. Tolentino cannot argue that the Commission's refusal to implement the decision pending appeal is beyond the latter's jurisdiction.

6. **ID.; ID.; ID.; THE COMELEC HAS THE PREROGATIVE TO TREAT THE PETITION FOR *CERTIORARI* AS AN APPEAL AND THE COURT WILL NOT INTERFERE IN THE COMELEC'S EXERCISE OF THIS PREROGATIVE. —** We note that despite Manalo's notice of appeal, he filed a petition for *certiorari* with the Commission rather than an appeal brief. Nevertheless, we glean an intention from the Commission to treat the petition as an appeal. This Court is mindful of the liberal spirit pervading the Commission's rules of procedure and the Commission's authority to suspend any portion of its rules in the interest of justice. Thus, the Commission has the prerogative to treat the petition for *certiorari* as an appeal, as this Court has done in the past in the interest of justice. This Court will not interfere in the Commission's exercise of this prerogative.

7. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; A REMEDY OF LAST RESORT AND IS NOT AVAILABLE IF A PARTY STILL HAS ANOTHER SPEEDY AND ADEQUATE REMEDY AVAILABLE.— [*C*]*ertiorari* is a remedy of last resort. It is not available if a party still has another speedy and adequate remedy available. The petition is premature because Tolentino could still have moved for reconsideration. Tolentino sought relief from everywhere (particularly, from the MTCC, the local COMELEC office) except from the proper body that had jurisdiction to order execution pending appeal.

8. LEGAL ETHICS; ATTORNEYS; CODE OF PROFESSIONAL RESPONSIBILITY; WHILE LAWYERS OWE THEIR ENTIRE DEVOTION TO THE INTEREST OF THEIR CLIENTS AND ZEAL IN THE DEFENSE OF THEIR CLIENT'S RIGHT, THEY SHOULD NOT FORGET THAT THEY ARE, FIRST AND FOREMOST, OFFICERS OF THE COURT, BOUND TO EXERT EVERY EFFORT TO ASSIST IN THE SPEEDY AND EFFICIENT ADMINISTRATION OF JUSTICE.— [T]his Court deems it necessary to admonish the petitioner and his counsel for their thinly veiled threat against the respondent City Election Officer Atty. Guiao-Garcia. xxx. Atty. Ramon D. Facun already knew that the MTCC refused to enforce the writ of execution pending appeal after having lost jurisdiction over the case. The matter, too, was already before the Commission, in Division. Yet in his zeal to advance the interests of his client, Atty. Facun threatened an election officer with the filing of a baseless contempt charge in violation of Canon 19.01 of the Code of Professional Responsibility in relation with Section 261(f) of the Omnibus Election Code. While we cannot usurp the Commission's prerogative of prosecuting election offenses, this Court retains disciplinary authority over all members of the Bar. x x x. Canon 19 of the Code of Professional Responsibility demands that a lawyer represent his client with zeal; but the same Canon provides that a lawyer's performance of his duties towards his client must be within the bounds of the law. Rule 19.01 of the same Canon requires, among others, that a lawyer shall employ only fair and honest means to attain the lawful objectives of his client. Canon 15, Rule 15.07 also obliges lawyers to impress upon their clients compliance with the laws

and the principle of fairness. For lawyers to resort to unscrupulous practices for the protection of the supposed rights of their clients defeats one of the purposes of the state — the administration of justice. While lawyers owe their entire devotion to the interest of their clients and zeal in the defense of their client's right, they should not forget that they are, first and foremost, officers of the court, bound to exert every effort to assist in the speedy and efficient administration of justice.

APPEARANCES OF COUNSEL

Ramon D. Facun for petitioner.
The Solicitor General for public respondents.
Rodil L. Millado for respondent *Henry Manalo.*

D E C I S I O N

BRION, *J.*:

This is a petition for *certiorari* filed by Rolando P. Tolentino from the May 25, 2015 Order of the Commission on Elections (*Comelec/the Commission*) in **SPR (BRGY) No. 03-2015.**[1] Tolentino questions the Commission's order *advising* the Election Officer of Tarlac City to await its resolution of the case before implementing the writ of execution issued by the Municipal Trial Court in Cities (*MTCC*), Tarlac City, in Election Case No. 03-2013.

Antecedents

During the 2013 barangay elections, Tolentino and respondent Henry Manalo both ran for the position of Barangay Captain in Barangay Calingcuan, Tarlac City.

The election was held on October 28, 2013. Manalo was proclaimed the winner after garnering 441 votes compared to Tolentino's 440. Tolentino immediately filed an election protest

[1] *Rollo*, pp. 426-427. Issued by the COMELEC, First Division, through Presiding Commissioner Christian Robert S. Lim.

before the MTCC on October 30, 2013. The protest was docketed as **Election Case No. 03-2013.**

During the revision of votes, the MTCC's initial tally was 439 votes for Tolentino and 442 votes for Manalo. However, the MTCC invalidated six (6) of the ballots cast for Manalo and one (1) ballot cast for Tolentino. Thus, Tolentino came out ahead.

On November 26, 2014, the MTCC proclaimed Tolentino as the winner with 438 votes compared to Manalo's 436. On the very same day, Manalo filed a Notice of Appeal with the MTCC.

The following day, November 27, 2014, Tolentino moved for execution pending appeal. Manalo opposed the motion.

On December 16, 2014, the MTCC issued a Special Order granting Tolentino's motion for execution pending appeal [pursuant to Rule 14, Section 11 (b)[2] of the Rules of Procedure in Election Contests Before the Courts Involving Elective Municipal and Barangay Officials], but held the issuance of the writ in abeyance. The MTCC also gave due course to Manalo's appeal.

On January 8, 2015, Manalo filed with the COMELEC a Petition for *Certiorari*, with a corresponding application for the issuance of a temporary restraining order (*TRO*), a *status quo ante* order, or a writ of preliminary injunction. Manalo

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[2] **Sec. 11.** ***Execution pending appeal.*** — On motion of the prevailing party with notice to the adverse party, the court, while still in possession of the original records, may, at its discretion, order the execution of the decision in an election contest before the expiration of the period to appeal, subject to the following rules: x x x

(b) If the court grants an execution pending appeal, an aggrieved party shall have twenty working days from notice of the special order within which to secure a restraining order or *status quo order* from the Supreme Court or the Commission on Elections. The corresponding writ of execution shall issue after twenty days, if no restraining order or status quo order is issued. During such period, the writ of execution pending appeal shall be stayed.

argued that the MTCC issued the Special Order with grave abuse of discretion because: (1) an execution pending appeal was not justified, and (2) Manalo, not Tolentino, was the clear winner in the election. The petition was docketed as **SPR (BRGY) No. 03-2015.**

On January 30, 2015, the MTCC issued the writ of execution.

On the same day, the COMELEC, First Division, issued a 60-day TRO prohibiting the MTCC from implementing its Special Order in Election Protest Case No. 03-2013. The Commission also required Tolentino to file his answer to the petition.

On February 5, 2015, Tolentino filed his answer and moved for the reconsideration of the TRO.

On February 9, 2015, the Commission required Manalo to file his Comment/Opposition to the motion for reconsideration. Manalo complied on February 17, 2015.

On February 27, 2015, Tolentino filed an urgent motion for the Commission to resolve his pending motion for reconsideration. Acting on the urgent motion, the Commission resolved to include the matter in the hearing of the main petition scheduled on March 4, 2015.

After hearing the parties on March 4, 2015, the Commission directed both parties to submit their respective memoranda within 10 days, after which the case shall be deemed submitted for resolution.

The 60-day TRO lapsed on April 1, 2015, without the Commission issuing a writ of preliminary injunction or rendering a decision. Thus, on April 10, 2015, Tolentino wrote the MTCC requesting the implementation of the writ of execution pending appeal. Tolentino also wrote to the City Election Officer of Tarlac requesting the implementation of the writ of execution pending appeal.[3]

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[3] *Rollo*, p. 412.

On April 27, 2015, the MTCC denied Tolentino's request/motion because it no longer had jurisdiction to entertain any further motions after it had transmitted the records of the case to the Commission.

Despite the MTCC's denial, Tolentino, through Atty. Ramon D. Facun, wrote a "Final Request" to the COMELEC City Election Office demanding the implementation of the writ of execution pending appeal with an accompanying threat that he would file contempt charges if immediate implementation would not take place:

> In view of the foregoing, protestant Rolando Tolentino respectfully request, [sic] again, for the immediate implementation of the Writ of Execution Pending appeal dated January 30, 2015 within five (5) days from receipt hereof. **Otherwise, much to my regret my client will file contempt charge [sic] and other charges necessary for your non-action to the Writ of Execution Pending Appeal for implementation.**[4] (emphasis supplied)

Respondent Atty. Cristina R. Guiao-Garcia, Election Officer IV, endorsed the matter to the Commission's Law Department which, in turn, made its own endorsement to the First Division where the case was pending.

Acting on the endorsement, the Commission issued the assailed order on May 25, 2015. The relevant portion reads:

> Acting thereon and considering that the instant case is now deemed submitted for resolution per Order dated March 4, 2015 issued by the Commission (First Division) and the main case, the Election Appeal Case, docketed as EAC (BRGY) No. 07-2015 [sic] entitled "*Rolando Tolentino, protestant-appellee vs. Henry Manalo, protestee-appellant*," is likewise submitted for resolution, the Commission (First Division) hereby **ADVISES** herein Atty. Cristina T. Guiao-Garcia, Election Officer IV, Tarlac City, Tarlac, to await the Order and Resolution, of the case by the Commission (First Division).
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> **SO ORDERED**.[5]

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[4] *Id.* at 416.

[5] *Id.* at 427.

On June 26, 2015, Tolentino filed the present petition.

The Petition

Tolentino protests: (1) that the Commission committed grave abuse of discretion in issuing the Order dated May 25, 2015, pursuant to the endorsement of the Law Department; (2) that the order was issued without giving him the benefit of a hearing; (3) that the order effectively prohibited the implementation of the writ of execution pending appeal without the issuance of a writ of injunction; and (4) that Atty. Guiao-Garcia's refusal to implement the writ of execution pending appeal amounted to willful disobedience and is unethical for a lawyer.

Manalo counters: (1) that nothing in the assailed Order constitutes grave abuse of discretion on the part of the Commission; (2) that Tolentino was trying to subvert the Commission's authority, in blatant disregard of the pendency of the case, by seeking relief from another forum: the local COMELEC office; and (3) that Tolentino failed to exhaust his available remedies because he did not move for the reconsideration of the Comelec's Order.

Finally, the Commission maintains: (1) that the present petition is premature because Tolentino has a plain, speedy, and adequate remedy available — a motion for reconsideration of the May 25 Order; and (2) that the petition failed to show that Atty. Guiao-Garcia, who even sought guidance from the Commission, brazenly disregarded the appropriate processes.

Our Ruling

We dismiss the petition for patent lack of merit.

Certiorari is available when a court or other tribunal exercising quasi-judicial powers acts without or in excess of its jurisdiction or with grave abuse of discretion amounting to lack of jurisdiction. It is an extraordinary remedy of last resort designed to correct errors of jurisdiction.

There is grave abuse of discretion justifying the issuance of

the writ of *certiorari* when there is such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction;[6] where power is exercised arbitrarily or in a despotic manner by reason of passion, prejudice; or where action is impelled by personal hostility amounting to an evasion of positive duty, or to virtual refusal to perform the duty enjoined, or to act at all in contemplation of law, as where the power is exercised in an arbitrary and despotic manner by reason of passion and hostility.[7]

After evaluating the facts, this Court fails to see any action on the part of the Commission that constitutes grave abuse of discretion or absence of jurisdiction.

First, the assailed Order dated May 25, 2015, was directed to City Election Officer IV Atty. Guiao-Garcia. As an agent of the Commission, an election officer is under the Commission's direct and immediate control and supervision.[8] The Commission clearly has the power and jurisdiction to issue orders to its employees to carry out its mandate. It is even clothed with the power to discipline or relieve any officer or employee who fails to comply with its instructions.[9]

Second, the Commission is authorized to enforce its directives and orders that, by law, enjoy precedence over that of the MTCC. The Omnibus Election Code explicitly states:

Omnibus Election Code
Article VII
The Commission on Elections

Sec. 52. Powers and functions of the Commission on Elections. — In addition to the powers and functions conferred upon it by the Constitution, the Commission shall have exclusive charge of the

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[6] *Abad Santos v. The Province of Tarlac*, 67 Phil. 480-481 (1939); *Tan v. People*, 88 Phil. 609 (1951); *Pajo v. Ago*, 108 Phil. 905, 916 (1960).

[7] *Tavera-Luna, Inc. v. Nable*, 67 Phil. 340-341 (1939); *Alafriz v. Nable,* 72 Phil. 278-279 (1941); *Liwanag v. Castillo*, 106 Phil. 375 (1959).

[8] OMNIBUS ELECTION CODE, Section 52 (a), Batas Pambansa Blg. 881 (1985).

[9] *Id.*

enforcement and administration of all laws relative to the conduct of elections for the purpose of ensuring free, orderly and honest elections, and shall: .x x x

(f) Enforce and execute its decisions, directives, orders and instructions which shall have precedence over those emanating from any other authority, except the Supreme Court and those issued in habeas corpus proceedings.[10]

Third, the MTCC's writ of execution pending appeal cannot be enforced because it was issued after the MTCC had already lost its residual jurisdiction.

The MTCC rendered its decision on November 26, 2014. Both parties received copies of the judgment on the same day. Pursuant to Rule 14, Section 5 of AM No. 07-4-15-SC, Manalo had a reglementary period of five days, **or until December 1**, to file his notice of appeal.

Manalo filed his notice of appeal on the very same day. Pursuant to Rule 14, Section 10 of AM No. 07-14-15-SC, the MTCC clerk of court was duty bound to transmit the records of the case to the Commission **within fifteen days, or until December 11**.[11] Tolentino moved for execution pending appeal on November 27, 2014.

Rule 14, Section 11 of AM No. 07-4-15-SC provides the window of time when the MTCC retains residual powers to order execution pending appeal:

Sec. 11. ***Execution pending appeal.*** — On motion of the prevailing party with notice to the adverse party, the court, **while still in possession of the original records**, may, at its discretion, order the execution of the decision in an election contest **before the expiration of the period to appeal,** subject to the following rules: x x x. (emphasis

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[10] OMNIBUS ELECTION CODE, Section 52 (f).

[11] **Sec. 10.** ***Immediate transmittal of records of the case.*** — The clerk of court shall, within fifteen days from the filing of the notice of appeal, transmit to the Electoral Contests Adjudication Department, Commission of Elections, the complete records of the case, together with all the evidence, including the original and three copies of the transcript of stenographic notes of the proceedings.

supplied)

Under this Rule, the MTCC retains residual jurisdiction while two conditions concur: (1) records of the case have not yet been transmitted to the Commission; and (2) the period to appeal has not yet expired.

The MTCC ordered execution pending appeal on **December 16, 2014.** At this point in time, the five-day period to appeal had already expired. Moreover, under the presumption of regularity in the performance of their duties, the clerk of court was presumed to have already transmitted the records of the case to the Electoral Contests Adjudication Department of the Commission.

Thus, the MTCC had already lost complete jurisdiction of the case when it issued the writ of execution pending appeal. At this point, the proper forum that could have granted execution pending appeal was the Commission itself which already acquired jurisdiction over the case. It is a fundamental legal tenet that any order issued without jurisdiction is void and without legal effect — a lawless thing which can be treated as an outlaw and slain on sight.[12]

Fourth, even assuming that the writ of execution was issued before the MTCC lost jurisdiction, the MTCC is still subject to the Commission's appellate jurisdiction. The Commission has the power and jurisdiction to affirm, reverse, vacate, or annul the MTCC's judgment. The Commission also has jurisdiction to restrain implementation of the MTCC's judgment through injunctive writs. Tolentino cannot argue that the Commission's refusal to implement the decision pending appeal is beyond the latter's jurisdiction.

We note that despite Manalo's notice of appeal, he filed a petition for *certiorari* with the Commission rather than an appeal brief. Nevertheless, we glean an intention from the Commission

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[12] *Nazareno v. Court of Appeals*, 428 Phil. 32, 42 (2002).

[13] Rule 1 — Introductory Provisions

Sec. 3. ***Construction***. — These rules shall be ***liberally construed*** in order

to treat the petition as an appeal. This Court is mindful of the liberal spirit pervading the Commission's rules of procedure [13] and the Commission's authority to suspend any portion of its rules in the interest of justice.[14] Thus, the Commission has the prerogative to treat the petition for *certiorari* as an appeal, as this Court has done in the past in the interest of justice. This Court will not interfere in the Commission's exercise of this prerogative.

Fifth, Tolentino insists that he was not given notice nor the opportunity to be heard. However, the records (and even in Tolentino's pleadings) indicate otherwise: (1) Tolentino filed his answer to the petition and motion for reconsideration of the Commission's TRO on February 5, 2015; (2) the Commission heard Tolentino's motion for reconsideration of the TRO on March 4, 2015; and (3) the Commission even allowed Tolentino to file his memoranda.

Thus, we find no basis in Tolentino's allegation that he was denied the right to notice and hearing. All things considered, we fail to see how the Commission allegedly exceeded its jurisdiction or acted with grave abuse of discretion.

Lastly, *certiorari* is a remedy of last resort. It is not available if a party still has another speedy and adequate remedy available. The petition is premature because Tolentino could still have moved for reconsideration. Tolentino sought relief from everywhere (particularly, from the MTCC, the local COMELEC office) except from the proper body that had jurisdiction to order execution pending appeal.

As a final word, this Court deems it necessary to admonish the petitioner and his counsel for their thinly veiled threat against the respondent City Election Officer Atty. Guiao-Garcia. Section

to promote the effective and efficient implementation of the objectives of ensuring the holding of free, orderly, honest, peaceful and credible elections and to achieve just, expeditious and inexpensive determination and disposition of every action and proceeding brought before the Commission.

[14] Rule 1 — Introductory Provisions

Sec. 4. *Suspension of the Rules*. — In the interest of justice and in order to obtain speedy disposition of all matters pending before the Commission, these rules or any portion thereof may be suspended by the Commission.

261 (f) of the Omnibus Election Code provides:

Article XXII.
Election Offenses

Sec. 261. *Prohibited Acts.* — The following shall be guilty of an election offense: x x x

(f) Coercion of election officials and employees. — Any person who, **directly or indirectly, threatens, intimidates**, terrorizes or coerces any election official or employee in the performance of his election functions or duties.[15]

Atty. Ramon D. Facun already knew that the MTCC refused to enforce the writ of execution pending appeal after having lost jurisdiction over the case. The matter, too, was already before the Commission, in Division. Yet in his zeal to advance the interests of his client, Atty. Facun threatened an election officer with the filing of a baseless contempt charge in violation of Rule 19.01 of the Code of Professional Responsibility in relation with Section 261 (f) of the Omnibus Election Code.

While we cannot usurp the Commission's prerogative of prosecuting election offenses, this Court retains disciplinary authority over all members of the Bar.[16] Canon 19 of the Code of Professional Responsibility for Lawyers provides:

CANON 19 — A LAWYER SHALL REPRESENT HIS CLIENT WITH ZEAL WITHIN THE BOUNDS OF THE LAW.

Rule 19.01 — A lawyer shall employ only fair and honest means to attain the lawful objectives of his client and shall not present, participate in presenting or threaten to present unfounded criminal charges to obtain an improper advantage in any case or proceeding.

Canon 19 of the Code of Professional Responsibility demands that a lawyer represent his client with zeal; but the same Canon provides that a lawyer's performance of his duties towards his client must be within the bounds of the law. Rule 19.01 of the

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[15] OMNIBUS ELECTION CODE, Section 261.

[16] CONSTITUTION, Art. VIII, Section 5 (5).

same Canon requires, among others, that a lawyer shall employ only fair and honest means to attain the lawful objectives of his client. Canon 15, Rule 15.07 also obliges lawyers to impress upon their clients compliance with the laws and the principle of fairness.[17]

For lawyers to resort to unscrupulous practices for the protection of the supposed rights of their clients defeats one of the purposes of the state — the administration of justice. While lawyers owe their entire devotion to the interest of their clients and zeal in the defense of their client's right, they should not forget that they are, first and foremost, officers of the court, bound to exert every effort to assist in the speedy and efficient administration of justice.[18]

WHEREFORE, we hereby **DISMISS** the petition for lack of merit. Further, Atty. Ramon D. Facun is **WARNED** that his threatening action in this case dangerously lies at the margins of Rule 19.01 of the Code of Professional Responsibility, and did not spill over into a violation of this Rule only because of the liberality of this Court. Given this warning, any repetition of this or other similar acts shall not be liberally dealt with.

Costs against the petitioner.

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.

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[17] Rule 15.07. — A lawyer shall impress upon his client compliance with the laws and the principles of fairness.

[18] *Atty. Briones v. Atty. Jimenez*, 550 Phil. 402, 408 (2007) citing *Suzuki v. Atty. Tiamson*, 508 Phil. 130, 140-141 (2005).

EN BANC

[G.R. No. 219603. January 26, 2016]

MARY ELIZABETH TY-DELGADO, *petitioner, vs.* **HOUSE OF REPRESENTATIVES ELECTORAL TRIBUNAL and PHILIP ARREZA PICHAY,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ELECTIONS; OMNIBUS ELECTION CODE; DISQUALIFICATIONS; A SENTENCE BY FINAL JUDGMENT FOR A CRIME INVOLVING MORAL TURPITUDE IS A GROUND FOR DISQUALIFICATION; MORAL TURPITUDE, DEFINED; LIBEL IS A CRIME INVOLVING MORAL TURPITUDE.— A sentence by final judgment for a crime involving moral turpitude is a ground for disqualification under Section 12 of the Omnibus Election Code: x x x. Moral turpitude is defined as everything which is done contrary to justice, modesty, or good morals; an act of baseness, vileness or depravity in the private and social duties which a man owes his fellowmen, or to society in general. Although not every criminal act involves moral turpitude, the Court is guided by one of the general rules that crimes *mala in se* involve moral turpitude while crimes *mala prohibita* do not. x x x. In *Zari v. Flores*, we likewise listed libel as one of the crimes involving moral turpitude.

2. CRIMINAL LAW; LIBEL; DEFINED; ELEMENTS.— The Revised Penal Code defines libel as a "public and malicious imputation of a crime, or of a vice or defect, real or imaginary, or any act, omission, condition, status or circumstance tending to cause the dishonor, discredit, or contempt of a natural or juridical person, or to blacken the memory of one who is dead." The law recognizes that the enjoyment of a private reputation is as much a constitutional right as the possession of life, liberty or property. To be liable for libel, the following elements must be shown to exist: (a) the allegation of a discreditable act or condition concerning another; (b) publication of the charge; (c) identity of the person defamed; and (d) existence of malice. Malice connotes ill will or spite and speaks not in response to

duty but merely to injure the reputation of the person defamed, and implies an intention to do ulterior and unjustifiable harm. Malice is bad faith or bad motive and it is the essence of the crime of libel. To determine actual malice, a libelous statement must be shown to have been written or published with the knowledge that it is false or in reckless disregard of whether it is false or not. Reckless disregard of what is false or not means that the defendant entertains serious doubt as to the truth of the publication or possesses a high degree of awareness of its probable falsity.

3. ID.; ID.; THE CRIMINAL LIABILITY OF THE PUBLISHER OF THE LIBELOUS ARTICLES IS THE SAME AS THAT OF THE AUTHOR OF THE LIBELOUS ARTICLES, AS ONE WHO FURNISHES THE MEANS FOR CARRYING ON THE PUBLICATION OF A NEWSPAPER AND ENTRUSTS ITS MANAGEMENT TO SERVANTS OR EMPLOYEES WHOM HE SELECTS AND CONTROLS MAY BE SAID TO CAUSE TO BE PUBLISHED WHAT ACTUALLY APPEARS, AND SHOULD BE HELD RESPONSIBLE THEREFOR, WHETHER HE WAS INDIVIDUALLY CONCERNED IN THE PUBLICATION OR NOT.— In the present case, Pichay admits his conviction for four counts of libel. *In Tulfo v. People of the Philippines*, the Court found Pichay liable for publishing the four defamatory articles, which are libelous *per se*, with reckless disregard of whether they were false or not. xxx. The Revised Penal Code provides that: "Any person who shall publish, exhibit, or cause the publication or exhibition of any defamation in writing or by similar means, shall be responsible for the same. The author or editor of a book or pamphlet, or the editor or business manager of a daily newspaper, magazine or serial publication, shall be responsible for the defamations contained therein to the **same extent** as if he were the author thereof." The provision did not distinguish or graduate the penalty according to the nature or degree of the participation of the persons involved in the crime of libel. It is basic in statutory construction that where the law does not distinguish, we should not distinguish. Accordingly, we cannot distinguish Pichay's criminal liability from the others' criminal liability only because he was the president of the company that published the libelous articles instead of being their author. Pichay's criminal liability was the same as that of

the others, such that he was even meted the same penalty as that imposed on the author of the libelous articles. The crime of libel would not even be consummated without his participation as publisher of the libelous articles. One who furnishes the means for carrying on the publication of a newspaper and entrusts its management to servants or employees whom he selects and controls may be said to cause to be published what actually appears, and should be held responsible therefor, whether he was individually concerned in the publication or not. Although the participation of each felon in the crime of libel differs in point in time and in degree, both author and publisher reneged on the private duties they owe their fellow men or society in a manner contrary to the accepted and customary rule of right and duty, justice, honesty, or good morals.

4. POLITICAL LAW; ELECTIONS; OMNIBUS ELECTION CODE; DISQUALIFICATIONS; THE IMPOSITION OF A FINE DOES NOT DETERMINE WHETHER THE CRIME INVOLVES MORAL TURPITUDE OR NOT.— Contrary to Pichay's argument, the imposition of a fine does not determine whether the crime involves moral turpitude or not. In *Villaber v. Commission on Elections*, we held that a crime still involves moral turpitude even if the penalty of imprisonment imposed is reduced to a fine. In *Tulfo v. People of the Philippines,* we explained that a fine was imposed on the accused since they were first time offenders.

5. ID.; ID.; ID.; ID.; THE DISQUALIFICATION TO BE A CANDIDATE AND TO HOLD ANY OFFICE SHALL BE REMOVED AFTER THE EXPIRATION OF A PERIOD OF FIVE YEARS FROM THE SERVICE OF SENTENCE.— Having been convicted of the crime of libel, Pichay is disqualified under Section 12 of the Omnibus Election Code for his conviction for a crime involving moral turpitude. Under Section 12, the disqualification shall be removed after the expiration of a period of five years from his service of sentence. In *Teves v. Comelec*, we held that the five-year period of disqualification would end only on 25 May 2010 or five years from 24 May 2005, the day petitioner paid the fine he was sentenced to pay in *Teves v. Sandiganbayan*. In this case, since Pichay served his sentence when he paid the fine on 17 February 2011, the five-year period shall end only on 16 February 2016. Thus, Pichay is disqualified

to become a Member of the House of Representatives until then.

6. ID.; ID.; ID.; SECTION 78 THEREOF; IF A CANDIDATE IS NOT ACTUALLY ELIGIBLE BECAUSE HE IS BARRED BY FINAL JUDGMENT IN A CRIMINAL CASE FROM RUNNING FOR PUBLIC OFFICE, AND HE STILL STATES UNDER OATH IN HIS CERTIFICATE OF CANDIDACY THAT HE IS ELIGIBLE TO RUN FOR PUBLIC OFFICE, THE CANDIDATE CLEARLY MAKES A FALSE MATERIAL REPRESENTATION THAT IS A GROUND FOR PETITION TO DENY DUE COURSE TO AND/OR CANCEL A CERTIFICATE OF CANDIDACY.— Considering his ineligibility due to his disqualification under Section 12, which became final on 1 June 2009, Pichay made a false material representation as to his eligibility when he filed his certificate of candidacy on 9 October 2012 for the 2013 elections. Pichay's disqualification under Section 12 is a material fact involving the eligibility of a candidate under Sections 74 and 78 of the Omnibus Election Code. x x x. Under Section 78, a proceeding to deny due course to and/or cancel a certificate of candidacy is premised on a person's misrepresentation of any of the material qualifications required for the elective office. This is to be read in relation to the constitutional and statutory provisions on qualifications or eligibility for public office. In *Jalosjos v. Commission on Elections*, we held that if a candidate is not actually eligible because he is barred by final judgment in a criminal case from running for public office, and he still states under oath in his certificate of candidacy that he is eligible to run for public office, then the candidate clearly makes a false material representation that is a ground for a petition under Section 78. In the present case, Pichay misrepresented his eligibility in his certificate of candidacy because he knew that he had been convicted by final judgment for a crime involving moral turpitude. Thus, his representation that he was eligible for elective public office constitutes false material representation as to his qualification or eligibility for the office.

7. ID.; ID.; ID.; A PERSON WHOSE CERTIFICATE OF CANDIDACY HAD BEEN DENIED DUE COURSE AND/OR CANCELLED IS DEEMED TO HAVE NOT BEEN A CANDIDATE AT ALL, BECAUSE HIS CERTIFICATE OF

CANDIDACY IS CONSIDERED VOID AB INITIO AND THUS, CANNOT GIVE RISE TO A VALID CANDIDACY AND NECESSARILY TO VALID VOTES.— A person whose certificate of candidacy had been denied due course and/or cancelled under Section 78 is deemed to have not been a candidate at all, because his certificate of candidacy is considered void *ab initio* and thus, cannot give rise to a valid candidacy and necessarily to valid votes. In both *Jalosjos, Jr. v. Commission on Elections* and *Aratea v. Commission on Elections*, we proclaimed the second placer, the only qualified candidate who actually garnered the highest number of votes, for the position of Mayor. We found that since the certificate of candidacy of the candidate with the highest number of votes was void *ab initio*, he was never a candidate at all, and all his votes were considered stray votes. Accordingly, we find that the HRET committed grave abuse of discretion amounting to lack of or excess of jurisdiction when it failed to disqualify Pichay for his conviction for libel, a crime involving moral turpitude. Since Pichay's ineligibility existed on the day he filed his certificate of candidacy and he was never a valid candidate for the position of Member of the House of Representatives, the votes cast for him were considered stray votes. Thus, the qualified candidate for the position of Member of the House of Representatives for the First Legislative District of Surigao del Sur in the 13 May 2013 elections who received the highest number of valid votes shall be declared the winner.

8. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI;* GRAVE ABUSE OF DISCRETION; WHEN IT ARISES; COMMITTED BY THE HOUSE OF REPRESENTATIVES ELECTORAL TRIBUNAL (HRET) WHEN IT UTTERLY DISREGARDED THE LAW AND SETTLED PRECEDENTS ON THE MATTER BEFORE IT.— Fundamental is the rule that grave abuse of discretion arises when a lower court or tribunal patently violates the Constitution, the law or existing jurisprudence. While it is well-recognized that the HRET has been empowered by the Constitution to be the "sole judge" of all contests relating to the election, returns, and qualifications of the members of the House of Representatives, the Court maintains jurisdiction over it to check "whether or not there has been grave abuse of discretion amounting to lack or excess of jurisdiction" on the part of the latter. In other

words, when the HRET utterly disregards the law and settled precedents on the matter before it, it commits grave abuse of discretion.

APPEARANCES OF COUNSEL

Juanito G. Arcilla for petitioner.
Lyle LSP Surtida co-counsel for petitioner.
The Solicitor General for public respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

This special civil action for certiorari[1] assails the Decision dated 18 March 2015[2] and Resolution dated 3 August 2015[3] of the House of Representatives Electoral Tribunal (HRET), in HRET Case No. 13-022, declaring respondent Philip A. Pichay (Pichay) eligible to hold and serve the office of Member of the House of Representatives for the First Legislative District of Surigao del Sur.

The Facts

On 16 September 2008, the Court promulgated its Decision in G.R. Nos. 161032 and 161176, entitled "*Tulfo v. People of the Philippines*," convicting Pichay by final judgment of four counts of libel.[4] In lieu of imprisonment, he was sentenced to pay a fine in the amount of Six Thousand Pesos (₱6,000.00)

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[1] Under Rule 65 of the 1997 Rules of Civil Procedure. *Rollo*, pp. 3-49.

[2] Signed by Supreme Court Associate Justices Presbitero J. Velasco, Jr., (took no part for being the *ponente* of *Tulfo v. People of the Philippines*), Diosdado M. Peralta (dissented) and Lucas P. Bersamin (dissented), Representatives Franklin P. Bautista, Joselito Andrew R. Mendoza, Ma. Theresa B. Bonoan, Wilfrido Mark M. Enverga, Jerry P. Treñas, and Luzviminda C. Ilagan. *Id.* at 51-69.

[3] *Id.* at 79. Notice issued by the House of Representatives Electoral Tribunal.

for each count of libel and One Million Pesos (₱1,000,000.00) as moral damages. This Decision became final and executory on 1 June 2009. On 17 February 2011, Pichay paid One Million Pesos (₱1,000,000.00) as moral damages and Six Thousand Pesos (₱6,000.00) as fine for each count of libel.

On 9 October 2012, Pichay filed his certificate of candidacy for the position of Member of the House of Representatives for the First Legislative District of Surigao del Sur for the 13 May 2013 elections.

On 18 February 2013, petitioner Mary Elizabeth Ty-Delgado (Ty-Delgado) filed a petition for disqualification under Section 12 of the Omnibus Election Code against Pichay before the Commission on Elections (Comelec), on the ground that Pichay

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[4] 587 Phil. 64, 99-100 (2008). The dispositive portion of the Decision reads:

WHEREFORE, in view of the foregoing, the petitions in G.R. Nos. 161032 and 161176 are DISMISSED. The CA Decision dated June 17, 2003 in CA-G.R. CR No. 25318 is hereby AFFIRMED with the MODIFICATIONS that in lieu of imprisonment, the penalty to be imposed upon petitioners shall be a fine of six thousand pesos (PhP6,000) for each count of libel, with subsidiary imprisonment in case of insolvency, while the award of actual damages and exemplary damages is DELETED. The Decision dated November 17, 2000 of the RTC, Branch 112 in Pasay City in Criminal Case Nos. 99-1597 to 99-1600 is modified to read as follows:

WHEREFORE, the Court finds the accused ERWIN TULFO, SUSAN CAMBRI, REY SALAO, JOCELYN BARLIZO, and **PHILIP PICHAY guilty beyond reasonable doubt of four (4) counts of the crime of LIBEL**, as defined in Article 353 of the Revised Penal Code, and sentences EACH of the accused to pay a fine of SIX THOUSAND PESOS (PhP6,000) per count of libel with subsidiary imprisonment, in case of insolvency.

Considering that the accused Erwin Tulfo, Susan Cambri, Rey Salao, Jocelyn Barlizo, and **Philip Pichay wrote and published the four (4) defamatory articles with reckless disregard whether it was false or not, the said articles being libelous *per se*, they are hereby ordered to pay complainant** Atty. Carlos T. So, jointly and severally, the sum of ONE MILLION PESOS (PhP1,000,000) **as moral damages**. The claim of actual and exemplary damages is denied for lack of merit.

Costs against petitioners.

SO ORDERED. (Emphasis supplied)

was convicted of libel, a crime involving moral turpitude. Ty-Delgado argued that when Pichay paid the fine on 17 February 2011, the five-year period barring him to be a candidate had yet to lapse.

In his Answer dated 4 March 2013, Pichay, through his counsel, alleged that the petition for disqualification was actually a petition to deny due course to or cancel certificate of candidacy under Section 78, in relation to Section 74, of the Omnibus Election Code, and it was filed out of time. He admitted his conviction by final judgment for four counts of libel, but claimed that libel does not necessarily involve moral turpitude. He argued that he did not personally perform the acts prohibited and his conviction for libel was only because of his presumed responsibility as president of the publishing company.

On 14 May 2013, Ty-Delgado filed a motion to suspend the proclamation of Pichay before the Comelec.

On 16 May 2013, the Provincial Board of Canvassers of Surigao del Sur proclaimed Pichay as the duly elected Member of the House of Representatives for the First Legislative District of Surigao del Sur, obtaining a total of seventy-six thousand eight hundred seventy (76,870) votes.

On 31 May 2013, Ty-Delgado filed an *ad cautelam* petition for *quo warranto* before the HRET reiterating that Pichay is ineligible to serve as Member of the House of Representatives because: (1) he was convicted by final judgment of four counts of libel, a crime involving moral turpitude; and (2) only two years have passed since he served his sentence or paid on 17 February 2011 the penalty imposed on him. In his Answer, Pichay claimed that his conviction for the crime of libel did not make him ineligible because ineligibility only pertained to lack of the qualifications under the Constitution.

In its Resolution dated 4 June 2013, the Comelec First Division dismissed the petition for disqualification filed against Pichay because of lack of jurisdiction.

On 16 July 2013, Ty-Delgado manifested her amenability

to convert the *ad cautelam* petition into a regular petition for *quo warranto.*

On 22 October 2013, the preliminary conference took place and the parties waived the presentation of their evidence upon agreement that their case only involved legal issues.

The HRET Decision

In a Decision dated 18 March 2015, the HRET held that it had jurisdiction over the present *quo warranto* petition since it involved the eligibility of a Member of the House of Representatives due to a disqualification under Section 12 of the Omnibus Election Code. However, the HRET held that there is nothing in *Tulfo v. People of the Philippines* which found that Pichay directly participated in any way in writing the libelous articles, aside from being the president of the publishing company. Thus, the HRET concluded that the circumstances surrounding Pichay's conviction for libel showed that the crime did not involve moral turpitude.

The dispositive portion of the Decision reads:

> WHEREFORE, premises considered, the instant Petition (for Quo Warranto) is DISMISSED, and respondent Philip A. Pichay is DECLARED ELIGIBLE to hold and serve the office of Member of the House of Representatives for the First Legislative District of Surigao del Sur.
>
> No pronouncement as to costs.
>
> SO ORDERED.[5]

In Resolution No. 15-031 dated 3 August 2015, the HRET denied Ty-Delgado's motion for reconsideration for lack of merit considering that no new matter was raised which justified the reversal or modification of the Decision.

Hence, this petition.

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[5] *Rollo*, p. 67.

The Issues

Ty-Delgado raises the following issues for resolution:

[I]

THE HOUSE OF REPRESENTATIVES ELECTORAL TRIBUNAL GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OF OR EXCESS OF JURISDICTION WHEN IT RULED THAT THE CIRCUMSTANCES SURROUNDING RESPONDENT PICHAY'S CONVICTION OF LIBEL DID NOT SHOW THAT MORAL TURPITUDE IS INVOLVED, WHICH IS CONTRARY TO THE FACTUAL AND LEGAL FINDINGS OF THE SUPREME COURT IN G.R. NO. 161032 ENTITLED "*ERWIN TULFO V. PEOPLE AND ATTY. CARLOS T. SO*" AND IN G.R. NO. 161176 ENTITLED "*SUSAN CAMBRI, ET AL. V. COURT OF APPEALS, ET AL.*"

[II]

THE HOUSE OF REPRESENTATIVES ELECTORAL TRIBUNAL GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OF OR EXCESS OF JURISDICTION IN FAILING TO DECLARE RESPONDENT PICHAY INELIGIBLE OR DISQUALIFIED FROM HOLDING THE POSITION OF MEMBER OF THE HOUSE OF REPRESENTATIVES BY REASON OF HIS CONVICTION OF LIBEL, A CRIME INVOLVING MORAL TURPITUDE.

[III]

THE HOUSE OF REPRESENTATIVES ELECTORAL TRIBUNAL GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OF OR EXCESS OF JURISDICTION IN FAILING TO DECLARE THAT RESPONDENT PICHAY FALSELY REPRESENTED IN HIS CERTIFICATE OF CANDIDACY THAT HE IS ELIGIBLE TO RUN FOR CONGRESSMAN BECAUSE HIS CONVICTION OF A CRIME INVOLVING MORAL TURPITUDE RENDERED HIM INELIGIBLE OR DISQUALIFIED.

[IV]

THE HOUSE OF REPRESENTATIVES ELECTORAL TRIBUNAL GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OF OR EXCESS OF JURISDICTION IN FAILING TO DECLARE THAT RESPONDENT PICHAY SHOULD BE DEEMED TO HAVE

NEVER BECOME A CANDIDATE SINCE HIS CERTIFICATE OF CANDIDACY IS VOID AB INITIO.

[V]

THE HOUSE OF REPRESENTATIVES ELECTORAL TRIBUNAL GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OF OR EXCESS OF JURISDICTION IN FAILING TO DECLARE THAT SINCE THE PETITION FOR QUO WARRANTO QUESTIONED THE VALIDITY OF RESPONDENT PICHAY'S CANDIDACY, THE JURISPRUDENCE ON A "SECOND PLACER" BEING PROCLAIMED AS WINNER SHOULD THE CERTIFICATE OF CANDIDACY OF A "FIRST PLACER" IS CANCELLED, SHOULD APPLY.

[VI]

THE HOUSE OF REPRESENTATIVES ELECTORAL TRIBUNAL GRAVELY ABUSED ITS DISCRETION AMOUNTING TO LACK OF OR EXCESS OF JURISDICTION BY FAILING TO DECLARE THAT PETITIONER DELGADO WAS THE SOLE LEGITIMATE CANDIDATE FOR MEMBER, HOUSE OF REPRESENTATIVES OF THE FIRST LEGISLATIVE DISTRICT OF SURIGAO DEL SUR, THUS SHE MUST BE DECLARED THE RIGHTFUL WINNER IN THE 2013 ELECTIONS AND MUST BE MADE TO ASSUME THE SAID POSITION.[6]

The Ruling of the Court

We find merit in the petition.

A sentence by final judgment for a crime involving moral turpitude is a ground for disqualification under Section 12 of the Omnibus Election Code:

Sec. 12. *Disqualifications.* — Any person who has been declared by competent authority insane or incompetent, or has been **sentenced by final judgment** for subversion, insurrection, rebellion or for any offense for which he was sentenced to a penalty of more than eighteen months or **for a crime involving moral turpitude, shall be disqualified to be a candidate and to hold any office,** unless he has been given plenary pardon or granted amnesty.

[6] *Id.* at 11-13.

The disqualifications to be a candidate herein provided shall be deemed removed upon the declaration by competent authority that said insanity or incompetence had been removed or after the expiration of a period of five years from his service of sentence, unless within the same period he again becomes disqualified. (Emphasis supplied)

Moral turpitude is defined as everything which is done contrary to justice, modesty, or good morals; an act of baseness, vileness or depravity in the private and social duties which a man owes his fellowmen, or to society in general.[7] Although not every criminal act involves moral turpitude, the Court is guided by one of the general rules that crimes *mala in se* involve moral turpitude while crimes *mala prohibita* do not.[8]

In *Villaber v. Commission on Elections*,[9] we held that violation of *Batas Pambansa Blg*. 22 is a crime involving moral turpitude because a drawer who issues an unfunded check deliberately reneges on the private duties he owes his fellow men or society in a manner contrary to accepted and customary rule of right and duty, justice, honesty or good morals. In *Dela Torre v. Commission on Elections*,[10] we held that the crime of fencing involves moral turpitude because actual knowledge by the "fence" that property received is stolen displays the same degree of malicious deprivation of one's rightful property as that which animated the robbery or theft which, by their very nature, are crimes of moral turpitude. In *Magno v. Commission on Elections*, [11] we ruled that direct bribery involves moral turpitude, because the fact that the offender agrees to accept a promise or gift and deliberately commits an unjust act or refrains from performing

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[7] *Teves v. Commission on Elections*, 604 Phil. 717 (2009); *Villaber v. Commission on Elections*, 420 Phil. 930 (2001); *Dela Torre v. Commission on Elections*, 327 Phil. 1144 (1996) citing *Zari v. Flores*, 183 Phil. 27 (1979); *International Rice Research Institute v. NLRC*, G.R. No. 97239, 12 May 1993, 221 SCRA 760.

[8] *Id.*

[9] *Villaber v. Commission on Elections, supra.*

[10] *Dela Torre v. Commission on Elections, supra.*

[11] 439 Phil. 339 (2002).

an official duty in exchange for some favors denotes a malicious intent on the part of the offender to renege on the duties which he owes his fellowmen and society in general.

In *Zari v. Flores*,[12] we likewise listed libel as one of the crimes involving moral turpitude. The Revised Penal Code defines libel as a "public and malicious imputation of a crime, or of a vice or defect, real or imaginary, or any act, omission, condition, status or circumstance tending to cause the dishonor, discredit, or contempt of a natural or juridical person, or to blacken the memory of one who is dead."[13] The law recognizes that the enjoyment of a private reputation is as much a constitutional right as the possession of life, liberty or property.[14]

To be liable for libel, the following elements must be shown to exist: (a) the allegation of a discreditable act or condition concerning another; (b) publication of the charge; (c) identity of the person defamed; and (d) existence of malice.[15] Malice connotes ill will or spite and speaks not in response to duty but merely to injure the reputation of the person defamed, and implies an intention to do ulterior and unjustifiable harm.[16] Malice is bad faith or bad motive and it is the essence of the crime of libel.[17] To determine actual malice, a libelous statement must be shown to have been written or published with the knowledge that it is false or in reckless disregard of whether it is false or not.[18] Reckless disregard of what is false or not means that the defendant entertains serious doubt as to the truth of the publication or possesses a high degree of awareness of its probable

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[12] 183 Phil. 27 (1979).

[13] THE REVISED PENAL CODE, Article 353.

[14] *Worcester v. Ocampo*, 22 Phil. 42 (1912).

[15] *Brillante v. Court of Appeals*, 483 Phil. 568 (2004).

[16] *Borjal v. Court of Appeals*, 361 Phil. 1 (1999).

[17] *Id.*

[18] *Id.*

[19] *Id.*

falsity.[19]

In the present case, Pichay admits his conviction for four counts of libel. In *Tulfo v. People of the Philippines*,[20] the Court found Pichay liable for publishing the four defamatory articles, which are libelous *per se,* with reckless disregard of whether they were false or not. The fact that another libelous article was published after the filing of the complaint can be considered as further evidence of malice.[21] Thus, Pichay clearly acted with actual malice, and intention to do ulterior and unjustifiable harm. He committed an "act of baseness, vileness, or depravity in the private duties which he owes his fellow men, or society in general," and an act which is "contrary to justice, honesty, or good morals."

The dissenting opinion before the HRET even considered it "significant that [Pichay] has raised no issue against libel being a crime involving moral turpitude, and has taken issue only against ascribing moral turpitude to him despite his being only the President of the publishing company."[22] Thus, Pichay insists that, since he was only the publisher of the libelous articles and the penalty for his conviction was reduced to payment of fine, the circumstances of his conviction for libel did not amount to moral turpitude.

The Revised Penal Code provides that: "Any person who shall publish, exhibit, or cause the publication or exhibition of any defamation in writing or by similar means, shall be responsible for the same. The author or editor of a book or pamphlet, or the editor or business manager of a daily newspaper, magazine or serial publication, shall be responsible for the defamations contained therein to the **same extent** as if he were the author thereof."[23]

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[20] *Tulfo v. People of the Philippines, supra* note 4.

[21] *Id.* citing *United States v. Montalvo*, 29 Phil. 595 (1915).

[22] *Rollo*, p. 76. Justice Lucas P. Bersamin penned the dissenting opinion in the HRET and Justice Diosdado M. Peralta joined the dissent.

[23] THE REVISED PENAL CODE, Article 360.

The provision did not distinguish or graduate the penalty according to the nature or degree of the participation of the persons involved in the crime of libel. It is basic in statutory construction that where the law does not distinguish, we should not distinguish. Accordingly, we cannot distinguish Pichay's criminal liability from the others' criminal liability only because he was the president of the company that published the libelous articles instead of being their author. Pichay's criminal liability was the same as that of the others, such that he was even meted the same penalty as that imposed on the author of the libelous articles.

The crime of libel would not even be consummated without his participation as publisher of the libelous articles. One who furnishes the means for carrying on the publication of a newspaper and entrusts its management to servants or employees whom he selects and controls may be said to cause to be published what actually appears, and should be held responsible therefor, whether he was individually concerned in the publication or not.[24]

Although the participation of each felon in the crime of libel differs in point in time and in degree, both author and publisher reneged on the private duties they owe their fellow men or society in a manner contrary to the accepted and customary rule of right and duty, justice, honesty, or good morals.

Contrary to Pichay's argument, the imposition of a fine does not determine whether the crime involves moral turpitude or not. In *Villaber v. Commission on Elections*,[25] we held that a crime still involves moral turpitude even if the penalty of imprisonment imposed is reduced to a fine. In *Tulfo v. People of the Philippines*,[26] we explained that a fine was imposed on the accused since they were first time offenders.

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[24] *United States v. Ocampo*, 18 Phil. 1 (1910).

[25] *Villaber v. Commission on Elections, supra* note 7.

[26] *Tulfo v. People of the Philippines, supra* note 4.

Having been convicted of the crime of libel, Pichay is disqualified under Section 12 of the Omnibus Election Code for his conviction for a crime involving moral turpitude.

Under Section 12, the disqualification shall be removed after the expiration of a period of five years from his service of sentence. In *Teves v. Comelec*,[27] we held that the five-year period of disqualification would end only on 25 May 2010 or five years from 24 May 2005, the day petitioner paid the fine he was sentenced to pay in *Teves v. Sandiganbayan*. In this case, since Pichay served his sentence when he paid the fine on 17 February 2011, the five-year period shall end only on 16 February 2016. Thus, Pichay is disqualified to become a Member of the House of Representatives until then.

Considering his ineligibility due to his disqualification under Section 12, which became final on 1 June 2009, Pichay made a false material representation as to his eligibility when he filed his certificate of candidacy on 9 October 2012 for the 2013 elections. Pichay's disqualification under Section 12 is a material fact involving the eligibility of a candidate under Sections 74 and 78 of the Omnibus Election Code. The pertinent provisions read:

Sec. 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

[27] *Teves v. Commission on Elections, supra* note 7.

the certificate of candidacy are true to the best of his knowledge.

x x x x x x x x x

Sec. 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 the 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. (Emphases supplied)

In *Fermin v. Comelec*,[28] we likened a proceeding under Section 78 to a *quo warranto* proceeding under Section 253 of the Omnibus Election Code since they both deal with the eligibility or qualification of a candidate, with the distinction mainly in the fact that a Section 78 petition is filed before proclamation, while a petition for *quo warranto* is filed after proclamation of the winning candidate. This is also similar to a *quo warranto* petition contesting the election of a Member of the House of Representatives on the ground of ineligibility or disloyalty to the Republic of the Philippines filed before the HRET.[29]

Under Section 78, a proceeding to deny due course to and/or cancel a certificate of candidacy is premised on a person's

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[28] 595 Phil. 449 (2008).

[29] Rule 17 of the 2011 HRET Rules provides: "RULE 17. *Quo Warranto*. — A verified petition for quo warranto contesting the election of a Member of the House of Representatives on the ground of ineligibility or of disloyalty to the Republic of the Philippines shall be filed by any registered voter of the district concerned within fifteen (15) days from the date of the proclamation of the winner. The party filing the petition shall be designated as the petitioner while the adverse party shall be known as the respondent.

The provisions of the preceding paragraph to the contrary notwithstanding, a petition for quo warranto may be filed by any registered voter of the district concerned against a member of the House of Representatives, on the ground of citizenship, at any time during his tenure."

[30] *Tagolino v. House of Representatives Electoral Tribunal*, 706 Phil. 534 (2013); *Fermin v. Comelec, supra*.

misrepresentation of any of the material qualifications required for the elective office.[30] This is to be read in relation to the constitutional and statutory provisions on qualifications or eligibility for public office.[31] In *Jalosjos v. Commission on Elections,*[32] we held that if a candidate is not actually eligible because he is barred by final judgment in a criminal case from running for public office, and he still states under oath in his certificate of candidacy that he is eligible to run for public office, then the candidate clearly makes a false material representation that is a ground for a petition under Section 78.

In the present case, Pichay misrepresented his eligibility in his certificate of candidacy because he knew that he had been convicted by final judgment for a crime involving moral turpitude. Thus, his representation that he was eligible for elective public office constitutes false material representation as to his qualification or eligibility for the office.

A person whose certificate of candidacy had been denied due course and/or cancelled under Section 78 is deemed to have not been a candidate at all, because his certificate of candidacy is considered void *ab initio* and thus, cannot give rise to a valid candidacy and necessarily to valid votes.[33] In both *Jalosjos, Jr. v. Commission on Elections*[34] and *Aratea v. Commission on Elections*,[35] we proclaimed the second placer, the only qualified candidate who actually garnered the highest number of votes, for the position of Mayor. We found that since the certificate of candidacy of the candidate with the highest number of votes was void *ab initio*, he was never a candidate at all, and all his votes were considered stray votes.

Accordingly, we find that the HRET committed grave abuse of discretion amounting to lack of or excess of jurisdiction when

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[31] *Fermin v. Comelec, supra.*

[32] 696 Phil. 601 (2012).

[33] *Id.*; *Aratea v. Commission on Elections*, 696 Phil. 700 (2012).

[34] *Supra.*

[35] *Aratea v. Commission on Elections, supra.*

it failed to disqualify Pichay for his conviction for libel, a crime involving moral turpitude. Since Pichay's ineligibility existed on the day he filed his certificate of candidacy and he was never a valid candidate for the position of Member of the House of Representatives, the votes cast for him were considered stray votes. Thus, the qualified candidate for the position of Member of the House of Representatives for the First Legislative District of Surigao del Sur in the 13 May 2013 elections who received the highest number of valid votes shall be declared the winner. Based on the Provincial Canvass Report, the qualified candidate for the position of Member of the House of Representatives for the First Legislative District of Surigao del Sur in the 13 May 2013 elections who received the highest number of valid votes is petitioner Mary Elizabeth Ty-Delgado.[36]

Fundamental is the rule that grave abuse of discretion arises when a lower court or tribunal patently violates the Constitution, the law or existing jurisprudence. While it is well-recognized that the HRET has been empowered by the Constitution to be the "sole judge" of all contests relating to the election, returns, and qualifications of the members of the House of Representatives, the Court maintains jurisdiction over it to check "whether or not there has been grave abuse of discretion amounting to lack or excess of jurisdiction" on the part of the latter. In other words, when the HRET utterly disregards the law and settled precedents on the matter before it, it commits grave abuse of discretion.[37]

WHEREFORE, we **GRANT** the petition. We **REVERSE** and **SET ASIDE** the Decision dated 18 March 2015 and Resolution dated 3 August 2015 of the House of Representatives Electoral Tribunal in HRET Case No. 13-022. Respondent Philip A. Pichay is ineligible to hold and serve the office of Member of the House of Representatives for the First Legislative District of Surigao del Sur. Petitioner Mary Elizabeth Ty-Delgado is **DECLARED** the winner for the position of Member of the House.

[36] *Rollo*, p. 183. The candidates for the position of Member of the House of Representatives for the First Legislative District of Surigao del Sur for the 13 May 2013 elections are the following: (1) Mary Elizabeth Ty-Delgado, who garnered a total of 55,489 votes; (2) Victor T. Murillo, who garnered a total of 1,777 votes; and (3) Philip A. Pichay, who garnered a total of 76,870 votes.

[37] *Tagolino v. House of Representatives Electoral Tribunal, supra.*

of Representatives for the First Legislative District of Surigao del Sur in the 13 May 2013 elections. Considering that the term of the present House of Representatives will end on 30 June 2016, this Decision is immediately executory.

SO ORDERED.

Sereno, C.J., Leonardo-de Castro, Brion, del Castillo, Perez, Mendoza, Reyes, Perlas-Bernabe, Leonen, and *Jardeleza, JJ.,* concur.

Velasco, Jr., Peralta, and *Bersamin, JJ.*, no part.

SECOND DIVISION

[G.R. No. 158622. January 27, 2016]

SPOUSES ROBERT ALAN L. and NANCY LEE LIMSO, *petitioners, vs.* **PHILIPPINE NATIONAL BANK and THE REGISTER OF DEEDS OF DAVAO CITY,** *respondents.*

[G.R. No. 169441. January 27, 2016]

DAVAO SUNRISE INVESTMENT AND DEVELOPMENT CORPORATION and SPOUSES ROBERT ALAN and NANCY LIMSO, *petitioners, vs.* **HON. JESUS V. QUITAIN, in his capacity as Presiding Judge of Regional Trial Court, Davao City, Branch 15 and PHILIPPINE NATIONAL BANK,** *respondents.*

[G.R. No. 172958. January 27, 2016]

DAVAO SUNRISE INVESTMENT AND DEVELOPMENT CORPORATION represented by its President ROBERT

ALAN L. LIMSO, and SPOUSES ROBERT ALAN and NANCY LEE LIMSO, *petitioners, vs.* **HON. JESUS V. QUITAIN, in his capacity as Presiding Judge of Regional Trial Court, Davao City, Branch 15 and PHILIPPINE NATIONAL BANK,** *respondents.*

[G.R. No. 173194. January 27, 2016]

PHILIPPINE NATIONAL BANK, *petitioner, vs.* **DAVAO SUNRISE INVESTMENT AND DEVELOPMENT CORPORATION and SPOUSES ROBERT ALAN LIMSO and NANCY LEE LIMSO,** *respondents.*

[G.R. No. 196958. January 27, 2016]

PHILIPPINE NATIONAL BANK, *petitioner, vs.* **DAVAO SUNRISE INVESTMENT AND DEVELOPMENT CORPORATION and SPOUSES ROBERT ALAN L. LIMSO and NANCY LEE LIMSO,** *respondents.*

[G.R. No. 197120. January 27, 2016]

DAVAO SUNRISE INVESTMENT AND DEVELOPMENT CORPORATION and SPOUSES ROBERT ALAN and NANCY LEE LIMSO, *petitioners, vs.* **PHILIPPINE NATIONAL BANK**, *respondent.*

[G.R. No. 205463. January 27, 2016]

IN THE MATTER OF THE PETITION EX-PARTE FOR THE ISSUANCE OF THE WRIT OF POSSESSION UNDER LRC RECORD NO. 12973, 18031 AND LRC RECORD NO. 317, PHILIPPINE NATIONAL BANK

SYLLABUS

1. REMEDIAL LAW; ORDERS; INTERLOCUTORY ORDER; THE RESOLUTIONS DENYING THE APPLICATIONS FOR DAMAGES ON THE INJUNCTION BOND AND TO BE APPOINTED AS RECEIVER ARE INTERLOCUTORY ORDERS AND ARE NOT APPEALABLE; THE PROPER REMEDY IS TO FILE A PETITION FOR CERTIORARI UNDER RULE 65 OR, IN THE ALTERNATIVE, TO AWAIT THE OUTCOME OF THE MAIN CASE AND FILE AN APPEAL. — The Petition docketed as G.R. No. 173194, filed by Philippine National Bank, questions the Court of Appeals Resolutions in CA-G.R. CV No. 79732-MIN dated March 2, 2006 and May 26, 2006, which denied Philippine National Bank's applications for damages on the injunction bond and to be appointed as receiver. The assailed Resolutions in G.R. No. 173194 are interlocutory orders and are not appealable. x x x The Resolutions denying Philippine National Bank's applications were interlocutory orders since the Resolutions did not dispose of the merits of the main case. CA-G.R. CV No. 79732-MIN originated from Civil Case No. 28,170- 2000, which involved the issues regarding the interest rates imposed by Philippine National Bank. Hence, the denial of Philippine National Bank's applications did not determine the issues on the interest rates imposed by Philippine National Bank. The proper remedy for Philippine National Bank would have been to file a petition for certiorari under Rule 65 or, in the alternative, to await the outcome of the main case and file an appeal, raising the denial of its applications as an assignment of error.

2. ID.; ID.; ID.; DISTINGUISHED FROM A FINAL ORDER.— The difference between an interlocutory order and a final order was discussed in *United Overseas Bank v. Judge Ros*: The word interlocutory refers to something intervening between the commencement and the end of the suit which decides some point or matter but is not a final decision of the whole controversy. This Court had the occasion to distinguish a final order or resolution from an interlocutory one in the case of *Investments, Inc. v. Court of Appeals*, thus: x x x A "final" judgment or order is one that finally disposes of a case, leaving nothing more to be done by the Court in respect thereto, e.g., an adjudication on the merits which, on the basis of the evidence

presented on the trial, declares categorically what the rights and obligations of the parties are and which party is in the right; or a judgment or order that dismisses an action on the ground, for instance, of *res judicata* or prescription. Once rendered, the task of the Court is ended, as far as deciding the controversy or determining the rights and liabilities of the litigants is concerned. Nothing more remains to be done by the Court except to await the parties' next move (which among others, may consist of the filing of a motion for new trial or reconsideration, or the taking of an appeal) and ultimately, of course, to cause the execution of the judgment once it becomes "final" or, to use the established and more distinctive term, "final and executory." x x x Conversely, an order that does not finally dispose of the case, and does not end the Court's task of adjudicating the parties' contentions and determining their rights and liabilities as regards each other, but obviously indicates that other things remain to be done by the Court, is "interlocutory" *e.g.*, an order denying motion to dismiss under Rule 16 of the Rules, or granting of motion on extension of time to file a pleading, or authorizing amendment thereof, or granting or denying applications for postponement, or production or inspection of documents or things, etc. Unlike a "final" judgment or order, which is appealable, as above pointed out, an "interlocutory" order may not be questioned on appeal except only as part of an appeal that may eventually be taken from the final judgment rendered in the case.

3. ID.; PROVISIONAL REMEDIES; PRELIMINARY ATTACHMENT; THE APPLICATION TO HOLD THE INJUNCTION BOND LIABLE FOR DAMAGES MUST BE FILED AT ANY TIME BEFORE THE JUDGMENT BECOMES EXECUTORY AND IT SHOULD BE FILED IN THE SAME CASE THAT IS THE MAIN ACTION, AND CANNOT BE INSTITUTED SEPARATELY; THE APPLICATION TO HOLD THE INJUNCTION BOND LIABLE FOR DAMAGES WAS TIMELY FILED IN CASE AT BAR.— The judgment referred to in Section 20 of Rule 57 [of the Rules of Civil Procedure] should mean the judgment in the main case. In *Carlos v. Sandoval*: Section 20 essentially allows the application to be filed at any time before the judgment becomes executory. It should be filed in the same case that is the main action, and cannot be instituted separately. It should be filed with the court

having jurisdiction over the case at the time of the application. The remedy provided by law is exclusive and by failing to file a motion for the determination of the damages on time and while the judgment is still under the control of the court, the claimant loses his right to damages. In this case, Philippine National Bank filed its application during the pendency of the appeal before the Court of Appeals. The application was dated January 12, 2005, while the appeal in the main case, docketed as CA-G.R. CV No. 79732-MIN, was decided on August 13, 2009. Hence, Philippine National Bank's application to hold the injunction bond liable for damages was filed on time.

4. ID.; ID.; RECEIVERSHIP; APPOINTMENT OF RECEIVER; NEITHER PARTY TO A LITIGATION SHOULD BE APPOINTED AS RECEIVER WITHOUT THE CONSENT OF THE OTHER BECAUSE A RECEIVER SHOULD BE A PERSON INDIFFERENT TO THE PARTIES AND SHOULD BE IMPARTIAL AND DISINTERESTED; THE APPOINTMENT OF A RECEIVER IS PREMATURE WHERE THE TRIAL COURT'S DECISION IS PENDING APPEAL.— The Court of Appeals properly denied Philippine National Bank's application to be appointed as a receiver. Rule 59, Section 1 provides the grounds when a receiver may be appointed: x x x. In c*ommodities Storage & Ice Plant Corporation v. Court of Appeals*: The general rule is that neither party to a litigation should be appointed as receiver without the consent of the other because a receiver should be a person indifferent to the parties and should be impartial and disinterested. The receiver is not the representative of any of the parties but of all of them to the end that their interests may be equally protected with the least possible inconvenience and expense. The Court of Appeals cited Spouses Limso and Davao Sunrise's objection to Philippine National Bank's application to be appointed as receiver as one of the grounds why the application should fail. Also, the Court of Appeals found that the mortgaged properties of Spouses Limso and Davao Sunrise were earning approximately ₱12,000,000.00 per month. This proves that the properties were being administered properly and did not require the appointment of a receiver. Also, to appoint Philippine National Bank as receiver would be premature since the trial court's Decision was pending appeal.

5. ID.; ACTIONS; FORUM SHOPPING; ELEMENTS; NOT

PRESENT.— Philippine National Bank did not commit forum shopping when it filed an ex-parte Petition for the issuance of a writ of possession and an application for appointment as receiver. The elements of forum shopping are: (a) identity of parties, or at least such parties as represent the same interests in both actions; (b) identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) the identity of the two preceding particulars, such that any judgment rendered in the other action will, regardless of which party is successful, amount to *res judicata* in the action under consideration. There is no identity of parties because the party to the Petition for Issuance of Writ of Possession is Philippine National Bank only, while there are two parties to application for appointment as receiver: Philippine National Bank on one hand, and Spouses Limso and Davao Sunrise on the other. The causes of action are also different. In the Petition for Issuance of Writ of Possession, Philippine National Bank prays that it be granted a writ of possession over the foreclosed properties because it is the winning bidder in the foreclosure sale. On the other hand, Philippine National Bank's application to be appointed as receiver is for the purpose of preserving these properties pending the resolution of CA-G.R. CV No. 79732. While the issuance of a writ of possession or the appointment as receiver would have the same result of granting possession of the foreclosed properties to Philippine National Bank, Philippine National Bank's right to possess these properties as the winning bidder in the foreclosure sale is different from its interest as creditor to preserve these properties.

6. CIVIL LAW; OBLIGATIONS AND CONTRACTS; PRINCIPLE OF MUTUALITY OF CONTRACTS; THERE IS NO MUTUALITY OF CONTRACTS WHEN THE DETERMINATION OR IMPOSITION OF INTEREST RATES IS AT THE SOLE DISCRETION OF A PARTY TO THE CONTRACT, AND ESCALATION CLAUSES IN CONTRACTS ARE VOID WHEN THEY ALLOW THE CREDITOR TO UNILATERALLY ADJUST THE INTEREST RATES WITHOUT THE CONSENT OF THE DEBTOR. — There is no mutuality of contracts when the determination or imposition of interest rates is at the sole discretion of a party to the contract. Further, escalation clauses in contracts are void when they allow

the creditor to unilaterally adjust the interest rates without the consent of the debtor. x x x. We rule that there was no mutuality of contract between the parties since the interest rates imposed were based on the sole discretion of Philippine National Bank. Further, the escalation clauses in the real estate mortgage "[did] not specify a fixed or base interest[.]" Thus, the interest rates are invalid.

7. ID.; ID.; PRINCIPLE OF MUTUALITY OF CONTRACTS, IMPORTANCE THEREOF, DISCUSSED.—The importance of the principle of mutuality of contracts was discussed in *Juico v. China Banking Corporation*: The binding effect of any agreement between parties to a contract is premised on two settled principles: (1) that any obligation arising from contract has the force of law between the parties; and (2) that there must be mutuality between the parties based on their essential equality. Any contract which appears to be heavily weighed in favor of one of the parties so as to lead to an unconscionable result is void. Any stipulation regarding the validity or compliance of the contract which is left solely to the will of one of the parties, is likewise, invalid. When there is no mutuality between the parties to a contract, it means that the parties were not on equal footing when the terms of the contract were negotiated. Thus, the principle of mutuality of contracts dictates that a contract must be rendered void when the execution of its terms is skewed in favor of one party.

8. ID.; ID.; CONTRACTS; REQUISITES; THE MEETING OF THE MINDS BETWEEN PARTIES TO A CONTRACT IS MANIFESTED WHEN THE ELEMENTS OF A VALID CONTRACT ARE ALL PRESENT; ABSENT MEETING OF THE MINDS BETWEEN THE PARTIES, THE INCREASES IN THE INTEREST RATES ARE INVALID.— There was no meeting of the minds between Spouses Limso, Davao Sunrise, and Philippine National Bank because the increases in the interest rates were imposed on them unilaterally. Meeting of the minds between parties to a contract is manifested when the elements of a valid contract are all present. Article 1318 of the Civil Code provides: Article 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. When

one of the elements is wanting, no contract can be perfected. In this case, no consent was given by Spouses Limso and Davao Sunrise as to the increase in the interest rates. Consequently, the increases in the interest rates are not valid.

9. ID.; ID.; INTERESTS; THE SUSPENSION OF THE USURY LAW DOES NOT GIVE CREDITORS AN UNBRIDLED RIGHT TO IMPOSE ARBITRARY INTEREST RATES; INTEREST RATES, WHEN UNCONSCIONABLE. — Assuming that Davao Sunrise and Spouses Limso agreed to the increase in interest rates, the interest rates are still null and void for being unreasonable. This court has held that while the Usury Law was suspended by Central Bank Circular No. 905, Series of 1982, unconscionable interest rates may be declared illegal. The suspension of the Usury Law did not give creditors an unbridled right to impose arbitrary interest rates. To determine whether an interest rate is unconscionable, we are guided by the following pronouncement: In determining whether the rate of interest is unconscionable, the mechanical application of pre-established floors would be wanting. The lowest rates that have previously been considered unconscionable need not be an impenetrable minimum. What is more crucial is a consideration of the parties' contexts. Moreover, interest rates must be appreciated in light of the fundamental nature of interest as compensation to the creditor for money lent to another, which he or she could otherwise have used for his or her own purposes at the time it was lent. It is not the default vehicle for predatory gain. As such, interest need only be reasonable. It ought not be a supine mechanism for the creditor's unjust enrichment at the expense of another. A reading of the interest provisions in the original agreement and the Conversion, Restructuring and Extension Agreement shows that the interest rates imposed by Philippine National Bank were usurious and unconscionable.

10. ID.; ID.; ID.; ESCALATION CLAUSES ARE NOT ALWAYS VOID, BUT AN ESCALATION CLAUSE WHICH GRANTS THE CREDITOR AN UNBRIDLED RIGHT TO ADJUST THE INTEREST INDEPENDENTLY AND UPWARDLY, COMPLETELY DEPRIVING THE DEBTOR OF THE RIGHT TO ASSENT TO AN IMPORTANT MODIFICATION IN THE AGREEMENT IS VOID, AS THE SAME VIOLATES THE PRINCIPLE OF

MUTUALITY OF CONTRACTS. **—** From the terms of the loan agreements, there was no way for Spouses Limso and Davao Sunrise to determine the interest rate imposed on their loan because it was always at the discretion of Philippine National Bank. Nor could Spouses Limso and Davao Sunrise determine the exact amount of their obligation because of the frequent changes in the interest rates imposed. As found by the Court of Appeals, the loan agreements merely stated that interest rates would be imposed. However, the specific interest rates were not stipulated, and the subsequent increases in the interest rates were all at the discretion of Philippine National Bank. Also invalid are the escalation clauses in the real estate mortgage and promissory notes. x x x. This court has held that escalation clauses are not always void since they serve "to maintain fiscal stability and to retain the value of money in long term contracts." However: [A]n escalation clause "which grants the creditor an unbridled right to adjust the interest independently and upwardly, completely depriving the debtor of the right to assent to an important modification in the agreement" is void. A stipulation of such nature violates the principle of mutuality of contracts. Thus, this Court has previously nullified the unilateral determination and imposition by creditor banks of increases in the rate of interest provided in loan contracts.

11. ID.; ID.; ID.; ID.; ONLY THE VOID INTEREST RATE PROVISIONS IN THE LOAN AGREEMENT SHALL BE NULLIFIED AND DEEMED NOT WRITTEN IN THE CONTRACT, BUT THE AGREEMENT ON PAYMENT OF INTEREST ON THE PRINCIPAL LOAN OBLIGATION REMAINS.— The interest rate provisions in Philippine National Bank's loan agreements and real estate mortgage contracts have been nullified by this court in several cases. Even the escalation clauses in Philippine National Bank's contracts were noted to be violative of the principle of mutuality of contracts. x x x. However, only the interest rate imposed is nullified; hence, it is deemed not written in the contract. The agreement on payment of interest on the principal loan obligation remains. It is a basic rule that a contract is the law between contracting parties. In the original loan agreement and the Conversion, Restructuring and Extension Agreement, Spouses Limso and Davao Sunrise agreed to pay interest on the loan they obtained from Philippine National Bank. Such obligation was not nullified by this court.

Thus, their obligation to pay interest in their loan obligation subsists.

12. ID.; ID.; ID.; ABSENT INTEREST RATE PROVISIONS IN THE LOAN AGREEMENT, THE LEGAL RATE OF INTEREST SHALL BE APPLIED, WHICH IS THE PREVAILING RATE AT THE TIME WHEN THE AGREEMENT WAS ENTERED INTO; RATIONALE; THE LEGAL RATE OF INTEREST, WHEN APPLIED AS CONVENTIONAL INTEREST, SHALL ALWAYS BE THE LEGAL RATE AT THE TIME THE AGREEMENT WAS EXECUTED AND SHALL NOT BE SUSCEPTIBLE TO SHIFTS IN RATE.— *Spouses Abella v. Spouses Abella* involved a simple loan with an agreement to pay interest. Unfortunately, the applicable interest rate was not stipulated by the parties. This court discussed that in cases where the parties fail to specify the applicable interest rate, the legal rate of interest applies. This court also discussed that the applicable legal rate of interest shall be the prevailing rate at the time when the agreement was entered into: This is so because interest in this respect is used as a surrogate for the parties' intent, as expressed as of the time of the execution of their contract. In this sense, the legal rate of interest is an affirmation of the contracting parties' intent; that is, by their contract's silence on a specific rate, the then prevailing legal rate of interest shall be the cost of borrowing money. This rate, which by their contract the parties have settled on, is deemed to persist regardless of shifts in the legal rate of interest. Stated otherwise, the legal rate of interest, when applied as conventional interest, shall always be the legal rate at the time the agreement was executed and shall not be susceptible to shifts in rate.

13. ID.; ID.; ID.; ID.; INTEREST DUE SHALL ITSELF EARN LEGAL INTEREST FROM THE TIME IT IS JUDICIALLY DEMANDED; CASE AT BAR.— *[S]pouses Abella* cited Article 2212 of the Civil Code and the ruling in *Nacar v. Gallery Frames*, which both state that "interest due shall itself earn legal interest from the time it is judicially demanded:" [T]he interest due on conventional interest shall be at the rate of 12% per annum from [date of judicial demand] to June 30, 2013. Thereafter, or starting July 1, 2013, this shall be at the rate of 6% per annum. In this case, the Conversion, Restructuring and Extension Agreement was executed on January 28, 1999. Thus,

the applicable interest rate on the principal loan obligation (conventional interest) is at 12% per annum. With regard to the interest due on the conventional interest, judicial demand was made on August 21, 2000 when Philippine National Bank filed a Petition for Extrajudicial Foreclosure of Real Estate Mortgage. Thus, from August 21, 2000 to June 30, 2013, the interest rate on conventional interest shall be at 12%. From July 1, 2013 until full payment, the applicable interest rate on conventional interest shall be at 6%.

14. ID.; ID.; EXTINGUISHMENT OF OBLIGATIONS; NOVATION; DEFINED; REQUISITES. — Novation has been defined as: Novation may either be express, when the new obligation declares in unequivocal terms that the old obligation is extinguished, or implied, when the new obligation is on every point incompatible with the old one. The test of incompatibility lies on whether the two obligations can stand together, each one with its own independent existence. For novation, as a mode of extinguishing or modifying an obligation, to apply, the following requisites must concur: 1) There must be a previous valid obligation. 2) The parties concerned must agree to a new contract. 3) The old contract must be extinguished. 4) There must be a valid new contract.

15. ID.; ID.; ID.; ID.; THE CONVERSION, RESTRUCTURING AND EXTENSION AGREEMENT NOVATED THE ORIGINAL LOAN AGREEMENT IN THE CASE AT BAR.— In this case, the previous valid obligation of Spouses Limso and Davao Sunrise was the payment of a loan in the total amount of ₱700 million, plus interest. Upon the request of Spouses Limso and Davao Sunrise, Philippine National Bank agreed to restructure the original loan agreement. x x x. When the loan agreement was restructured, the principal obligation of Spouses Limso and Davao Sunrise became ₱1.067 billion. The Conversion, Restructuring and Extension Agreement novated the original credit agreement because the principal obligation itself changed. Important provisions of the original agreement were altered. For example, the penalty charges were waived and the terms of payment were extended. Further, the preambular clauses of the Conversion, Restructuring and Extension Agreement show that Spouses Limso and Davao Sunrise sought to change the terms of the original agreement and that they

themselves acknowledged their obligation to be ₱1.067 billion. They are now estopped from claiming that their obligation should be based on the original agreement when it was through their own actions that the loan was restructured. Thus, the Court of Appeals in CA-G.R. CV No. 79732-MIN erred in not declaring that the Conversion, Restructuring and Extension Agreement novated the original agreement and in computing Spouses Limso and Davao Sunrise's obligation based on the original agreement.

16. REMEDIAL LAW; JUDGMENTS; DISPOSITIVE PART; WHERE THERE IS A CONFLICT BETWEEN THE DISPOSITIVE PART AND THE OPINION OF THE COURT CONTAINED IN THE TEXT OR BODY OF THE DECISION, THE FORMER MUST PREVAIL OVER THE LATTER. — Since the Conversion, Restructuring and Extension Agreement novated the original credit agreement, we modify the Court of Appeals Decision in that the outstanding obligation of Spouses Limso and Davao Sunrise should be computed on the basis of the Conversion, Restructuring and Extension Agreement. Notably, in the body of the Court of Appeals Decision, Spouses Limso and Davao Sunrise's obligation was computed on the basis of the original loan agreement, while in the dispositive portion, the Court of Appeals cited both the original loan agreement and the Conversion, Restructuring and Extension Agreement. The general rule is that: Where there is a conflict between the dispositive part and the opinion of the court contained in the text or body of the decision, the former must prevail over the latter on the theory that the dispositive portion is the final order, while the opinion is merely a statement ordering nothing.

17. CIVIL LAW; OBLIGATIONS AND CONTRACTS; INTERESTS; VOID INTEREST RATE PROVISIONS IN THE ORIGINAL LOAN AGREEMENT CANNOT BE RATIFIED. — [W]e also rule that the interest rate provisions and the escalation clauses in the Conversion, Restructuring and Extension Agreement are nullified insofar as they allow Philippine National Bank to unilaterally determine and increase the imposable interest rates. Article 1409 of the Civil Code provides that void contracts cannot be ratified. Hence, the void interest rate provisions in the original loan agreement could not have been ratified by the execution of the Conversion,

Restructuring and Extension Agreement.

18. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON CERTIORARI UNDER RULE 45; PROPER REMEDY TO ASSAIL A DECISION ON PURE QUESTIONS OF LAW; QUESTIONS OF LAW AND QUESTIONS OF FACT, DISTINGUISHED.— The proper remedy to assail a decision on pure questions of law is to file a petition for review on certiorari under Rule 45, not an appeal under Rule 41 of the 1997 Rules of Civil Procedure. x x x. In *Land Bank of the Philippines v. Yatco Agricultural Enterprises*, this court discussed the difference between questions of law and questions of fact: As a general rule, the Court's jurisdiction in a Rule 45 petition is limited to the review of pure questions of law. A question of law arises when the doubt or difference exists as to what the law is on a certain state of facts. Negatively put, Rule 45 does not allow the review of questions of fact. A question of fact exists when the doubt or difference arises as to the truth or falsity of the alleged facts. The test in determining whether a question is one of law or of fact is "whether the appellate court can determine the issue raised without reviewing or evaluating the evidence, in which case, it is a question of law[.]" Any question that invites calibration of the whole evidence, as well as their relation to each other and to the whole, is a question of fact and thus proscribed in a Rule 45 petition. Based on the foregoing, there was no error on the part of the Court of Appeals when it dismissed Philippine National Bank's Petition for being the wrong remedy. Indeed, Philippine National Bank was not questioning the probative value of the evidence. Instead, it was questioning the conclusion of the trial court that registration had not been perfected based on the evidence presented.

19. CIVIL LAW; LAND REGISTRATION; IT IS A MINISTERIAL DUTY ON THE PART OF THE REGISTER OF DEEDS TO ANNOTATE THE INSTRUMENT ON THE CERTIFICATE OF SALE AFTER A VALID ENTRY IN THE PRIMARY ENTRY BOOK; THE REFUSAL OF THE REGISTER OF DEEDS TO ANNOTATE THE REGISTRATION ON THE TITLES OF THE PROPERTIES SHOULD NOT AFFECT RESPONDENT-PNB'S RIGHT TO POSSESS THE PROPERTIES IN CASE AT BAR.— This court explained that a Sheriff's Certificate of Sale is an involuntary instrument and that a writ of injunction will no

longer lie because of the following reasons: [F]or the registration of an involuntary instrument, the law does not require the presentation of the owner's duplicate certificate of title and *considers the annotation of such instrument upon the entry book, as sufficient to affect the real estate to which it relates. . . . It is a ministerial duty on the part of the Register of Deeds to annotate the instrument on the certificate of sale after a valid entry in the primary entry book*. x x x. Based on the records of this case, the Sheriff's Certificate of Sale filed by Philippine National Bank was already recorded in the Primary Entry Book. The refusal of the Register of Deeds to annotate the registration on the titles of the properties should not affect Philippine National Bank's right to possess the properties. As to the argument that Philippine National Bank admitted in open court that the Certificate of Sale was not registered, it is evident from Spouses Limso and Davao Sunrise's Memorandum that Philippine National Bank immediately explained that the non-registration was due to the Register of Deeds' refusal. Thus, the alleged non-registration was not due to Philippine National Bank's fault. It appears on record that Philippine National Bank already complied with the requirements for registration. Thus, there was no reason for the Register of Deeds to persistently refuse the registration of the Certificate of Sale.

20. ID.; SPECIAL CONTRACTS; MORTGAGES; AN ACT TO REGULATE THE SALE OF PROPERTY UNDER SPECIAL POWERS INSERTED IN OR ANNEXED TO REAL ESTATE MORTGAGES (ACT NO. 3135); DURING THE ONE-YEAR REDEMPTION PERIOD, A PURCHASER MAY APPLY FOR A WRIT OF POSSESSION BY FILING AN *EX PARTE* MOTION UNDER OATH IN THE REGISTRATION OR CADASTRAL PROCEEDINGS IF THE PROPERTY IS REGISTERED, OR IN SPECIAL PROCEEDINGS IN CASE THE PROPERTY IS REGISTERED UNDER THE MORTGAGE LAW, BUT A BOND IS REQUIRED BEFORE THE COURT MAY ISSUE A WRIT OF POSSESSION. — Philippine National Bank is applying for the writ of possession on the ground that it is the winning bidder during the auction sale, and not because it consolidated titles in its name. As such, the applicable provisions of law are Section 47 of Republic Act No. 8791 and Section 7 of Act No. 3135. x x x. The rule under Section 7 of Act No. 3135 was

restated in *Nagtalon v. United Coconut Planters Bank*: During the one-year redemption period, as contemplated by Section 7 of the above-mentioned law, a purchaser may apply for a writ of possession by filing an *ex parte* motion under oath in the registration or cadastral proceedings if the property is registered, or in special proceedings in case the property is registered under the Mortgage Law. In this case, a bond is required before the court may issue a writ of possession. On the other hand, a writ of possession may be issued as a matter of right when the title has been consolidated in the buyer's name due to nonredemption by the mortgagor. Under this situation, the basis for the writ of possession is ownership of the property. The Sheriff's Provisional Certificate of Sale should be deemed registered. However, Philippine National Bank must still file a bond before the writ of possession may be issued.

21. ID.; ID.; THE GENERAL BANKING LAW OF 2000 (R.A. NO. 8791); WHERE NATURAL AND JURIDICAL PERSONS ARE CO-DEBTORS, AND THE JURIDICAL PERSONS OWN THE PROPERTIES MORTGAGED TO SECURE THE LOAN, THE PERIOD OF REDEMPTION SHOULD BE NOT MORE THAN THREE (3) MONTHS. — In the loan agreement, natural and juridical persons are co-debtors, while the properties mortgaged to secure the loan are owned by Davao Sunrise. Act No. 3135 provides that the period of redemption is one (1) year after the sale. On the other hand, Republic Act No. 8791 provides a shorter period of three (3) months to redeem in cases involving juridical persons. We rule that the period of redemption for this case should be not more than three (3) months in accordance with Section 47 of Republic Act No. 8791. The mortgaged properties are all owned by Davao Sunrise. Section 47 of Republic Act No. 8791 states: "the mortgagor or debtor whose real property has been sold" and "juridical persons whose property is being sold[.]" Clearly, the law itself provides that the right to redeem belongs to the owner of the property mortgaged. As the mortgaged properties all belong to Davao Sunrise, the shorter period of three (3) months is the applicable redemption period.

22. ID.; ID.; ID.; ID.; RATIONALE.— The policy behind the shorter redemption period was explained in *Goldenway Merchandising Corporation v. Equitable PCI Bank*: The difference in the treatment of juridical persons and natural persons was based

on the nature of the properties foreclosed—whether these are used as residence, for which the more liberal one-year redemption period is retained, or used for industrial or commercial purposes, in which case a shorter term is deemed necessary to reduce the period of uncertainty in the ownership of property and enable mortgagee- banks to dispose sooner of these acquired assets. It must be underscored that the General Banking Law of 2000, crafted in the aftermath of the 1997 Southeast Asian financial crisis, sought to reform the General Banking Act of 1949 by fashioning a legal framework for maintaining a safe and sound banking system. In this context, the amendment introduced by Section 47 embodied one of such safe and sound practices aimed at ensuring the solvency and liquidity of our banks. To grant a longer period of redemption on the ground that a co-debtor is a natural person defeats the purpose of Republic Act No. 8791. In addition, the real properties mortgaged by Davao Sunrise appear to be used for commercial purposes.

APPEARANCES OF COUNSEL

Padlan Sutton and Associates for Philippine National Bank.

Chavez Miranda and Aseoche for DSIDC and Nancy Lee Limso.

D E C I S I O N

LEONEN, *J.*:

There is no mutuality of contract when the interest rate in a loan agreement is set at the sole discretion of one party. Nor is there any mutuality when there is no reasonable means by which the other party can determine the applicable interest rate. These types of interest rates stipulated in the loan agreement are null and void. However, the nullity of the stipulated interest rate does not automatically nullify the provision requiring payment of interest. Certainly, it does not nullify the obligation to pay the principal loan obligation.

These consolidated cases arose from three related actions filed before the trial courts of Davao City.

In 1993, Spouses Robert Alan L. Limso and Nancy Lee Limso (Spouses Limso)[1] and Davao Sunrise Investment and Development Corporation (Davao Sunrise) took out a loan secured by real estate mortgages from Philippine National Bank.[2]

The loan was in the total amount of ₱700 million, divided into two (2) kinds of loan accommodations: a revolving credit line of ₱300 million, and a seven-year long-term loan of ₱400 million.[3]

To secure the loan, real estate mortgages were constituted on four (4) parcels of land registered with the Registry of Deeds of Davao City.[4] The parcels of land covered by TCT Nos. T-147820, T-151138, and T-147821 were registered in the name of Davao Sunrise, while the parcel of land covered by TCT No. T-140122 was registered in the name of Spouses Limso.[5]

In 1995, Spouses Limso sold the parcel of land covered by TCT No. T-140122 to Davao Sunrise.[6]

Spouses Limso and Davao Sunrise had difficulty in paying their loan. In 1999, they requested that their loan be restructured. After negotiations, Spouses Limso, Davao Sunrise, and Philippine National Bank executed a Conversion, Restructuring and Extension Agreement.[7]

The principal obligation in the restructured agreement totalled ₱1.067 billion. This included ₱217.15 million unpaid interest.[8]

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[1] Spouses Robert Alan L. Limso and Nancy Lee Limso were co-debtors in their personal capacities and as officers of Davao Sunrise Investment and Development Corporation.

[2] *Rollo* (G.R. No. 158622, Vol. I), p. 284, Amended Petition for Declaratory Relief docketed as Civil Case No. 29,036-2002.

[3] *Id.* at 6-7, Petition for Review on *Certiorari.*

[4] *Id.* at 7, Petition for Review on *Certiorari*, and 423-446, Transfer Certificates of Title with Memorandum of Encumbrances.

[5] *Rollo* (G.R. No. 205463), p. 226, Credit Agreement.

[6] *Rollo* (G.R. No. 158622, Vol. II), p. 133, Conveyance in Payment of Subscription to Increase of Capital Stock of a Corporation.

The restructured loan was divided into two (2) parts. Loan I was for the principal amount of ₱583.18 million, while Loan II was for the principal amount of ₱483.78 million.[9] The restructured loan was secured by the same real estate mortgage over four (4) parcels of land in the original loan agreement. All the properties were registered in the name of Davao Sunrise.[10]

The terms of the restructured loan agreement state:

SECTION 1. TERMS OF THE CONVERSION, RESTRUCTURING AND EXTENSION

1.01 The Conversion/Restructuring/Extension. Upon compliance by the Borrowers with the conditions precedent provided herein, the Obligations shall be converted, restructured and/or its term extended effective January 1, 1999 (the "Effectivity Date") in the form of term loans (the "Loans") as follows:

(a) The Credit Line portion of the Obligations is hereby converted and restructured into a Seven-Year Long Term Loan (the "Loan I") in the principal amount of ₱583.18 Million;

(b) The original term of the Loan is hereby extended for another four (4) years (from September 1, 2001 to December 31, 2005), and interest portion of the Obligations (including the interest accruing on the Credit Line and Loan up to December 31, 1998 estimated at ₱49.83 Million) are hereby capitalized. Accordingly, both the Loan and Interest portions of the Obligations are hereby consolidated into a Term Loan (the "Loan II") in the aggregate principal amount of ₱483.78 Million;

SECTION 2. TERMS OF LOAN I

2.01 Amount of Loan I. Loan I shall be in the principal amount not exceeding PESOS: FIVE HUNDRED EIGHTY THREE MILLION ONE HUNDRED EIGHTY THOUSAND (₱583,180,000.00).

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[7] *Rollo* (G.R. No. 158622, Vol. I), p. 7.

[8] *Rollo* (G.R. No. 173194), p. 50, Petition for Review.

[9] *Id.*

[10] *Rollo* (G.R. No. 205463), p. 274, Conversion, Restructuring and Extension Agreement.

2.02 Promissory Note. Loan I shall be evidenced by a promissory note (the "Note I") to be issued by the Borrowers in favor of the Bank in form and substance satisfactory to the Bank.

2.03 Principal Repayment. The Borrowers agree to repay Loan I within a period of seven (7) years (inclusive of a one (1) year grace period) in monthly amortizations with the first amortization to commence on January 2000 and a balloon payment on or before the end of the 7th year on December 2005.

2.04 Interest. (a) The Borrowers agree to pay the Bank interest on Loan I from the Effective Date, until the date of full payment thereof at the rate per annum to be set by the Bank. The interest rate shall be reset by the Bank every month.

(b) The interest provided in clause (a) above shall be payable monthly in arrears to commence on January, 1999.

SECTION 3. TERMS OF LOAN II

3.01 Amount of Loan II. Loan II shall be in the principal amount not exceeding PESOS: FOUR HUNDRED EIGHTY THREE MILLION SEVEN HUNDRED EIGHTY THOUSAND (₱483,780,000.00).

3.02 Promissory Note. Loan II shall be evidenced by a promissory note (the "Note II") to be issued by the Borrowers in favor of the Bank in form and substance satisfactory to the Bank.

3.03 Principal Repayment. The Borrowers agree to repay Loan II within a period of seven (7) years (inclusive of a one (1) year grace period) in monthly amortizations with the first amortization to commence on January 2000 and a balloon payment on or before December 2005.

3.04 Interest. (a) The Borrowers agree to pay the Bank interest on Loan II from the Effective Date, until the date of full payment thereof at the rate per annum to be set by the Bank. The interest rate shall be reset by the Bank every month.

(b) The interest provided in clause (a) above shall be payable monthly in arrears to commence on January 1999.[11] (Emphasis provided)

Spouses Limso and Davao Sunrise executed promissory notes, both dated January 5, 1999, in Philippine National Bank's favor. The promissory notes bore the amounts of ₱583,183,333.34

and ₱483,811,798.93.[12] The promissory note for Loan II includes interest charges because one of the preambular clauses of the Conversion, Restructuring and Extension Agreement states that:

> WHEREAS, the Borrowers acknowledge that they have outstanding obligations (the "Obligations") with the Bank broken down as follows:
>
> (i) Credit Line — ₱583.18 Million (as of September 30, 1998);
>
> (ii) Loan — ₱266.67 Million (as of September 30, 1998); and
>
> (iii) Interest — ₱217.15 Million (as of December 31, 1998)[.][13]

Spouses Limso and Davao Sunrise encountered financial difficulties. Despite the restructuring of their loan, they were still unable to pay.[14] Philippine National Bank sent demand letters. Still, Spouses Limso and Davao Sunrise failed to pay.[15]

On August 21, 2000, Philippine National Bank filed a Petition for Extrajudicial Foreclosure of Real Estate Mortgage before the Sheriff's Office in Davao City.[16] The Notice of Foreclosure was published. The bank allegedly complied with all the other legal requirements under Act No. 3135.[17] The auction sale was held on October 26, 2000. Ball Park Realty Corporation, through its representative Samson G. To, submitted its bid in the amount of ₱1,521,045,331.49.[18] Philippine National Bank's bid was in the amount of ₱1,521,055,331.49. Thus, it was declared the highest bidder.[19]

After the foreclosure sale, but before the Sheriff could issue the Provisional Certificate of Sale,[20] Spouses Limso and Davao

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[11] *Rollo* (G.R. No. 173194), pp. 93-94, Conversion, Restructuring and Extension Agreement.

[12] *Id.* at 51-52, Petition for Review.

[13] *Id.* at 93, Conversion, Restructuring and Extension Agreement.

[14] *Rollo* (G.R. No. 158622, Vol. I), p. 8.

[15] *Rollo* (G.R. No. 173194), p. 52, Petition for Review.

[16] *Id.*

[17] *Id.*

Sunrise filed a Complaint for Reformation or Annulment of contract against Philippine National Bank, Atty. Marilou D. Aldevera, in her capacity as Ex-Officio Provincial Sheriff of Davao City, and the Register of Deeds of Davao City.[21] The Complaint was filed on October 30, 2000, raffled to Branch 17 of the Regional Trial Court of Davao City, and docketed as Civil Case No. 28,170-2000.[22] It prayed for:

> [the] declaration of nullity of unilateral imposition and increases of interest rates, crediting of illegal interests collected to [Spouses Limso and Davao Sunrise's] account; elimination of all uncollected illegal interests; reimposition of new interest rates at 12% per annum only from date of filing of Complaint, total elimination of penalties; elimination also of attorney's fees or its reduction; declaration of nullity of auction sale and the foreclosure proceedings; reduction of both loan accounts; reformation or annulment of contract, reconveyance, damages and injunction and restraining order.[23]

Immediately after the Complaint was filed, the Executive Judge[24] of the Regional Trial Court of Davao City issued a 72-hour restraining order preventing Philippine National Bank from taking possession and selling the foreclosed properties.[25]

Spouses Limso subsequently filed an amended Complaint.[26] The prayer in the amended Complaint stated:

PRAYER

WHEREFORE, it is respectfully prayed that judgment issue in

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[18] *Id.* at 209, Court of Appeals Decision in CA G.R. SP No. 63351.

[19] *Id.*

[20] *Rollo* (G.R. No. 205463), p. 13, Petition for Review on *Certiorari.*

[21] *Rollo* (G.R. No. 158622, Vol. I), p. 9.

[22] *Id.*

[23] *Id.* at 106, Amended Complaint.

[24] *Rollo* (G.R. No. 173194), p. 204, Court of Appeals Decision in CA G.R. SP No. 63351. The Executive Judge at that time was Hon. Virginia Hofileña-Europa.

favor of plaintiffs and against the defendants:

ON THE TEMPORARY
RESTRAINING ORDER

1. That, upon the filing of the above-entitled case, a TEMPORARY RESTRAINING ORDER be maintained enjoining the defendants from executing the provisional Certificate of Sale and final Deed of Absolute Sale; confirmation of such sale; taking immediate possession thereof and from selling to third parties those properties covered by TCT Nos. T-147820, T-147821, T-246386 and T-247012 and its improvements nor to mortgage or pledge the same prior to the final outcome of the above-entitled case, including other additional acts of foreclosure;

2. That, plaintiffs' application for the issuance of the [Writ of Preliminary Injunction] be concluded within the 20 days lifetime period of the [Temporary Restraining Order], and

AFTER TRIAL ON THE MERITS

3. To declare the injunction as final;

4. Declaring that the unilateral increases of interest rates imposed by the defendant bank over and above the stipulated interest rates provided for in the Promissory Notes, be also considered as null and void and thereafter lowering the same to 12% per annum only, from the date of the filing of the Complaint;

5. Declaring also that all illegally imposed interest rates and penalty charges be considered eliminated and/or deducted from any account balance of plaintiffs;

6. Declaring also either the complete elimination of attorney's fees, or in the alternative, reducing the same to ₱500,000.00 only;

7. Declaring the reduction of the loan account balance to ₱827,012,149.50 only;

8. That subsequent thereto, ordering a complete reformation of the loan agreement and Real Estate Mortgage which will now

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[25] *Rollo* (G.R. No. 158622, Vol. I), p. 241, Regional Trial Court Order in Civil Case No. 28,170-2000.

[26] *Id.* at 10, Petition for Review on *Certiorari.*

embody the lawful terms and conditions adjudicated by this Honorable Court, or in the alternative, ordering its annulment, as may be warranted under the provision of Article 1359 of the New Civil Code;

9. Ordering the defendant Register of Deeds to refrain from issuing a new title in favor of third parties, and to execute the necessary documents necessary for the reconveyance of the properties now covered by TCT Nos. T-147820, T-147821, T-246386 and T-247012 from the defendant bank in favor of the plaintiffs upon payment of the recomputed loan accounts;

10. Ordering also the defendant bank to pay to the plaintiffs the sum of at least ₱500,000.00 representing business losses and loss of income by the later [sic] arising from the improvident and premature institution of extrajudicial foreclosure proceedings against the plaintiffs;

11. Ordering again the defendant bank to pay to the plaintiffs the sum of ₱400,000.00 as attorney's fees and the additional sum of ₱100,000.00 for expenses incident to litigation; and

12. To pay the costs and for such other reliefs just and proper under the circumstances.[27] (Underscoring in the original)

Through the Order[28] dated November 20, 2000, Branch 17 of the Regional Trial Court of Davao City denied Spouses Limso's application for the issuance of a writ of preliminary injunction.[29]

Spouses Limso moved for reconsideration. On December 4, 2000, Branch 17 of the Regional Trial Court of Davao City set aside its November 20, 2000 Order and issued a writ of preliminary injunction.[30]

Philippine National Bank then moved for reconsideration of the trial court's December 4, 2000 Order. The bank's Motion was denied on December 21, 2000. Hence, Philippine National

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

[28] *Rollo* (G.R. No. 173194), pp. 149-156. The Order was issued by Judge Renato A. Fuentes of Branch 17, Regional Trial Court, Davao City.

[29] *Id.* at 156.

Bank filed before the Court of Appeals a Petition for Certiorari assailing the December 4, 2000 and December 21, 2000 Orders of the trial court. This was docketed as CA G.R. SP. No. 63351.[31]

In the meantime, Branch 17 continued with the trial of the Complaint for Reformation or Annulment of Contract with Damages.[32]

On January 10, 2002, the Court of Appeals issued the Decision[33] in CA G.R. SP. No. 63351 setting aside and annulling the Orders dated December 4, 2000 and December 21, 2000 and dissolving the writ of preliminary injunction.[34]

Spouses Limso and Davao Sunrise moved for reconsideration of the Court of Appeals' January 2, 2002 Resolution in CA G.R. SP No. 63351 but the motion was denied.[35] They then filed a Petition for Review on Certiorari before this court.[36] Their Petition was docketed as G.R. No. 152812, which was denied on procedural grounds.[37]

In view of the dissolution of the writ of preliminary injunction, Acting Clerk of Court and Ex-officio Provincial Sheriff Rosemarie T. Cabaguio issued the Sheriff's Provisional Certificate of Sale dated February 4, 2002 in the amount of ₱1,521,055,331.49.[38] However, the Sheriff's Provisional

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[30] *Id.* at 164, Regional Trial Court Order in Civil Case No. 28,170-2000. The Order was issued by Judge Renato A. Fuentes of Branch 17, Regional Trial Court, Davao City.

[31] *Rollo* (G.R. No. 158622, Vol. I), pp. 11-12, Petition for Review on *Certiorari.*

[32] *Id.* at 12.

[33] *Rollo* (G.R. No. 173194), pp. 201-215. The Decision was penned by Associate Justice Salvador J. Valdez, Jr. (Chair) and concurred in by Associate Justices Mercedes Gozo-Dadole and Sergio L. Pestaño of the Fifteenth Division.

[34] *Rollo* (G.R. No. 158622, Vol. I), p. 12, Petition for Review on *Certiorari.*

[35] *Id.*

[36] *Id.*

[37] *Rollo* (G.R. No. 173194), p. 216. The Resolution states:

Certificate of Sale[39] did not state the applicable redemption period and the redemption price payable by the mortgagor or redemptioner.[40]

On the same date, Philippine National Bank presented the Sheriff's Provisional Certificate of Sale to the Register of Deeds of Davao City in order that the title to the foreclosed properties could be consolidated and registered in Philippine National Bank's name. The presentation was recorded in the Primary Entry Book of Davao City's Registry of Deeds under Act No. 496 and entered as Entry Nos. 4762 to 4765.[41]

On February 5, 2002, the registration of the Certificate of Sale was elevated en consulta by Atty. Florenda T. Patriarca (Atty. Patriarca), Acting Register of Deeds of Davao City, to the Land Registration Authority in Manila. This was docketed as Consulta No. 3405.[42]

Acting on the consulta, the Land Registration Authority issued the Resolution dated May 21, 2002, which states:[43]

G.R. No. 152812 (*Davao Sunrise Investment and Development Corporation, et al. vs. Court of Appeals, et al.*). — The Court Resolves to DENY the motions of petitioner for second and third extensions totalling thirty (30) days from May 7, 2002 within which to file a petition for review on *certiorari:*

(a) considering that the first motion for extension of time to file the petition for review on *certiorari* was granted with warning; and

(b) for failing to submit proof of service of the motions (*e.g.*, the affidavits of the party serving) as required under Sec. 13, Rule 13, 1997 Rules of Civil Procedure.

The Court further Resolves to DENY the petition for review on *certiorari* of the decision and resolution of the Court of Appeals dated January 10, 2002 and March 15, 2002, respectively, for late filing in view of the denial of the motions for extensions of time to file the same.

[38] *Rollo* (G.R. No. 158622, Vol. I), p. 12, Petition for Review on *Certiorari; rollo* (G.R. No. 205463) p. 14, Petition for Review on *Certiorari*.

[39] *Rollo* (G.R. No. 173194), pp. 220-227.

[40] *Rollo* (G.R. No. 158622, Vol. I), p. 13, Petition for Review on *Certiorari.*

[41] *Rollo* (G.R. No. 205463), p. 14, Petition for Review on *Certiorari*.

[42] *Id.*

"WHEREFORE, in view of the foregoing, the Sheriff's Provisional Certificate of Sale dated February 4, 2002 is registrable on TCT Nos. T-147820, T-147386, T-247012 provided all other registration requirements are complied with."[44]

Meanwhile, on March 25, 2002, the Spouses Limso filed a Petition for Declaratory Relief with Prayer for Temporary Restraining Order/Injunction on March 25, 2002 against Philippine National Bank, Atty. Rosemarie T. Cabaguio, in her capacity as Ex-Officio Provincial Sheriff, and the Register of Deeds of Davao City (Petition for Declaratory Relief). The Sheriff's Provisional Certificate of Sale allegedly did not state any redemption price and period for redemption. This case was raffled to Branch 14 of the Regional Trial Court of Davao City and docketed as Civil Case No. 29,036-2002.[45]

The Petition for Declaratory Relief was filed while the Complaint for Reformation or Annulment with Damages was still pending before Branch 17 of the Regional Trial Court of Davao City.

Spouses Limso subsequently filed an Amended Petition for Declaratory Relief, alleging:

6. That Petitioners with the continuing crisis and the unstable interest rates imposed by respondent PNB admittedly failed to pay their loan, the demand letters were sent to both debtors-mortgagors separately, one addressed to the Petitioners and another addressed to DSIDC, the last of which was dated April 12, 2000 xxx;

7. That on August 21, 200(0), respondent PNB filed a Petition for Extrajudicial Foreclosure of the mortgaged properties against the petitioners-mortgagors-debtors and DSIDC;

8. That on October 26, 2000, the mortgaged properties were auctioned with the respondent PNB as the highest bidder;

9. That on February 4, 2002, a Sheriff's Provisional Certificate of Sale was issued by respondent Sheriff who certified x x x

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[43] *Id.*

[44] *Id.*

[45] *Rollo* (G.R. No. 158622, Vol. I), p. 13, Petition for Review on *Certiorari.*

10. That the said Sheriff's Provisional Certificate of Sale did not contain a provision usually contained in a regular Sheriff's Provisional Certificate of Sale as regards the period of redemption and the redemption price to be raised within the ONE (1) YEAR redemption period in accordance with Act 3135, under which same law the extrajudicial petition for sale was conducted as mentioned in the Certificate;

11. That the Sheriff's Provisional Certificate of Sale has not yet been registered with the office of respondent Register of Deeds yet; that petitioners and DSIDC are still in actual possession of the subject properties;

12. That sometime in the middle part of year 2000, Republic Act No. 8791 otherwise known as General Banking Laws of 2000 was approved and finally passed on April 12, 2000 and took effect sometime thereafter;

13. That among the provisions of the said law particularly, Section 47 dealt with Foreclosure of Real Estate Mortgage, quoted verbatim hereunder as follows:

> "Sec. 47. Foreclosure of Real Estate Mortgage. — In the event of foreclosure, whether judicially or extra-judicially, or any mortgage on real estate which is security for any loan or other credit accommodation granted, the mortgagor or debtor whose real property has been sold for the full or partial payment of his obligation shall have the right within one year after the sale of the real estate, to redeem the property by paying the amount due under the mortgage deed, with interest thereon at rate specified in the mortgage, and all the costs and expenses incurred by the bank or institution from the sale and custody of said property less the income derived therefrom. However, the purchaser at the auction sale concerned whether in a judicial or extra-judicial foreclosure shall have the right to enter upon and take possession of such property immediately after the date of the confirmation of the auction sale and administer the same in accordance with law. Any petition in court to enjoin or restrain the conduct of foreclosure proceedings instituted pursuant to this provision shall be given due course only upon the filing by the petitioner of a bond in an amount fixed by the court conditioned that he will pay all the damages which the bank may suffer by the enjoining or the restraint of the foreclosure proceeding.

> 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."

14. That it is clear and evident that the absence of provisions as to redemption period and price in the Sheriff's Provisional Certificate of Sale issued by respondent Sheriff, that respondent PNB and Sheriff intended to apply the provisions of Section 47 of Republic Act No. 8791 which reduced the period of redemption of a juridical person whose property is being sold pursuant to an extrajudicial foreclosure sale until but not after the registration of the Certificate of Sale with the applicable Register of Deeds which in no case shall be more than three (3) months after foreclosure, whichever is earlier;

15. That Petitioners in this subject mortgage are Natural Persons who are principal mortgagors-debtors and at the same time registered owners of some properties at the time of the mortgage;

16. That the provisions of Republic Act No. 8791 do not make mention nor exceptions to this situation where the Real Estate Mortgage is executed by both Juridical and Natural Persons; hence, the need to file this instant case of Declaratory Relief under Rule 63 of the Revised Rules of Court of the Philippines;

x x x x x x x x x

PRAYER

WHEREFORE, it is respectfully prayed that judgment in favor of petitioners and against the respondent-PNB;

> 1. That upon the filing of the above-entitled case, a TEMPORARY RESTRAINING INJUNCTION be issued immediately ordering a status quo, enjoining the Register of Deeds and defendant-PNB from registering the subject Provisional Certificate of Sale from consolidating the title of the property covered by Transfer Certificate of Title Nos. T-147820, T-147821, T-246386, T-24712 and Land Improvement, Etc.

2. That petitioners' application of the issuance of the Writ of Preliminary Injunctions be considered and granted within 20 days lifetime period of the TRO.

AFTER TRIAL ON THE MERITS

3. To declare the injunction as final;

4. Ordering the Register of Deeds to refrain from registering the Sheriff's Certificate of Sale and further from consolidating the titles of the said properties in its name and offering to sell the same to interested buyers during the pendency of the above entitled case, while setting the date of hearing on the propriety of the issuance of such Writ of Preliminary Injunction.

ON THE MAIN CASE

5. To declare the petitioners' right as principal mortgagors/ owner jointly with a juridical person to redeem within a period of 1 year the properties foreclosed by respondent PNB still protected and covered by Act 3135.

6. To declare the provisions on Foreclosure of Real Estate Mortgage under Republic Act 8791 or General Banking Laws of 2000 discriminating and therefore unconstitutional.

OTHER RELIEFS AND REMEDIES are likewise prayed for.[46]

Branch 14 of the Regional Trial Court of Davao City issued a temporary restraining order[47] on April 10, 2002. This temporary restraining order enjoined the Register of Deeds from registering the Sheriff's Provisional Certificate of Sale.[48]

The temporary restraining order was issued without first hearing the parties to the case. Hence, the temporary restraining order was recalled by the same trial court in the Order[49] dated April 16, 2002.

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[46] *Id.* at 13-17.

[47] *Id.* at 295-296. The temporary restraining order was issued by Presiding Judge William M. Layague of Branch 14, Regional Trial Court, Davao City.

[48] *Id.* at 17, Petition for Review on *Certiorari.*

During the hearing for the issuance of a temporary restraining order in the Petition for Declaratory Relief, Spouses Limso presented several exhibits, which included: Philippine National Bank's demand letter dated April 12, 2000; Philippine National Bank's letter to the Acting Register of Deeds of Davao City dated February 4, 2002 requesting the immediate registration of the Sheriff's Provisional Certificate of Sale; and the Notice of Foreclosure dated September 5, 2000.[50]

Counsel for Philippine National Bank objected to the purpose of the presentation of the exhibits and argued that since Spouses Limso were Davao Sunrise's co-debtors, they "were notified as a matter of formality[.]"[51]

On May 3, 2002, Branch 14 granted the prayer for the issuance of the writ of preliminary injunction enjoining the registration of the Sheriff's Provisional Certificate of Sale.[52]

Branch 14 reasoned as follows:

This Court finds no merit in the claims advanced by private respondent Bank for the following reasons:

1. That the primary ground why the Court of Appeals dissolved the preliminary injunction granted by Branch 17 of this Court was because the ground upon which the same was issued was based on a pleading which was not verified;

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[49] *Id.* at 297, Regional Trial Court Order in SP. Civil Case No. 29,036-2002. The Order states:

"Considering that under Par. (d), Section 4 of the 1997 Rules of Civil Procedure which is based on Administrative Circular No. 20-95 as interpreted by the Supreme Court in A.M. No. MTJ-00-1250, February 28, 2001, the application for a Temporary Restraining Order can be acted upon only after all parties are heard in a summary hearing which shall be conducted within twenty-four (24) hours after the Sheriff's Return of Service, the Temporary Restraining Order issued by this Court dated April 10, 2002 pursuant to the first paragraph of Section 5 of the same Rules of Civil Procedure is hereby RECALLED and set aside."

[50] *Id.* at 17-18, Petition for Review on Certiorari.

[51] *Id.* at 18.

[52] *Id.* at 142, Regional Trial Court Order in SP. Civil Case No. 29,036-2002.

2. That Civil Case No. 28,170-2000 and Civil Case No. 29,036-2002 while involving substantially the same parties, the same do not involved [sic] the same issues as the former involves nullity of unilateral imposition and increases of interest rates, etc. nullity of foreclosure proceedings, reduction of both loan accounts, reformation or annulment of contract, reconveyance and damages, whereas the issues raised in the instant petition before this Court is the right and duty of the petitioners under the last paragraph of Sec. 47, Republic Act No. 8791 and whether the said section of said law is applicable to the petitioners considering that the mortgage contract was executed when Act No. 3135 was the controlling law and was in fact made part of the contract;

3. That the petition, contrary to the claim of private respondent Bank, clearly states a cause of action; and

4. That since petitioners are parties to the mortgage contract they, therefore, have locus standi to file the instant petition.

If Section 7 of Republic Act 8791 were made to apply to the petitioners, the latter would have a shorter period of three (3) months to exercise the right of redemption after the registration of the Certificate of Sale, hence, the registration of the Sheriff's Provisional Certificate of Sale would cause great and irreparable injury to them as their rights to the properties sold at public auction would be lost forever if the registration of the same is not enjoined.[53]

Spouses Limso posted an injunction bond that was approved by the trial court in the Order dated May 6, 2002. Thus, the writ of preliminary prohibitory injunction was issued.[54]

Philippine National Bank moved for reconsideration of the Orders dated May 3, 2002 and May 6, 2002.[55]

Around this time, Judge William M. Layague (Judge Layague), Presiding Judge of Branch 14, was on leave.[56] Philippine National Bank's Motion for Reconsideration was granted by the Pairing

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[53] *Id.* at 141-142.

[54] *Id.* at 20, Petition for Review on *Certiorari.*

[55] *Id.*

Judge, Judge Jesus V. Quitain (Judge Quitain),[57] and the writ of preliminary prohibitory injunction was dissolved in the Order dated May 23, 2002.[58]

On May 30, 2002, Philippine National Bank's lawyers went to the Register of Deeds of Davao City "to inquire on the status of the registration of the Sheriff's Provisional Certificate of Sale."[59]

Philippine National Bank's lawyers were informed that the documents they needed "could not be found and that the person in charge thereof, Deputy Register of Deeds Jorlyn Paralisan, was absent."[60]

Philippine National Bank contacted Jorlyn Paralisan at her residence. She informed Philippine National Bank that the documents they were looking for were all inside Atty. Patriarca's office.[61]

Subsequently, Atty. Patriarca informed the representatives of Philippine National Bank that the Register of Deeds "would not honor certified copies of [Land Registration Authority] resolutions even if an official copy of the [Land Registration Authority] Resolution was already received by that Office through mail."[62]

On May 31, 2002, Philippine National Bank's representatives returned to the Register of Deeds of Davao City and learned that Atty. Patriarca, the Acting Register of Deeds, had not affixed her signature, which was necessary to complete the registration of the Sheriff's Certificate of Sale.[63]

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[56] *Rollo* (G.R. No. 169441), p. 11, Petition for Review.

[57] *Id.*

[58] *Rollo* (G.R. No. 158622, Vol. I), p. 20, Petition for Review on *Certiorari.*

[59] *Rollo* (G.R. No. 205463), p. 15, Petition for Review on *Certiorari.*

[60] *Id.*

[61] *Id.*

[62] *Id.*

Subsequently, Judge Layague reinstated the writ of preliminary prohibitory injunction in the Order[64] dated June 24, 2002.

Aggrieved, Philippine National Bank filed before the Court of Appeals a Petition for Certiorari, Prohibition and Mandamus with Prayer for Temporary Restraining Order and Writ of Preliminary Injunction, both Prohibitory and Mandatory, docketed as CA G.R. SP No. 71527. The Petition assailed the June 24, 2002 Order of Branch 14 of the Regional Trial Court, which reinstated the writ of preliminary prohibitory injunction.[65]

On July 3, 2002, Philippine National Bank inspected the titles and found that correction fluid had been applied over Atty. Patriarca's signature on the titles.[66]

Also on July 3, 2002, Philippine National Bank filed before the Regional Trial Court of Davao City a Petition for Issuance of the Writ of Possession under Act No. 3135, as amended, and Section 47 of Republic Act No. 8791.[67] This was docketed as Other Case No. 124-2002 and raffled to Branch 15 of the Regional Trial Court of Davao City, presided by Judge Quitain.[68]

Davao Sunrise filed a Motion to Expunge and/or Dismiss Petition for Issuance of Writ of Possession dated July 12, 2002.[69] In the Motion to Expunge, Davao Sunrise pointed out that Branch 14[70] (in the Petition for Declaratory Relief docketed as Civil Case No. 29,036-2002) issued a writ of preliminary injunction "enjoining the Provincial Sheriff, the Register of Deeds of Davao

[63] *Id.*

[64] *Rollo* (G.R. No. 158622, Vol. I), pp. 144-150, Regional Trial Court Order in SP. Civil Case No. 29,036-2002.

[65] *Id.* at 21-22, Petition for Review on *Certiorari*. CA G.R. SP No. 71527 was brought up to this court under Rule 45 and was docketed as G.R. No. 158622 (*Id.* at 3).

[66] *Rollo* (G.R. No. 205463), p. 16, Petition for Review on *Certiorari.*

[67] *Id.* at 10 and 16. The Petition for Issuance of the Writ of Possession is entitled *In the Matter of the Petition Ex-Parte for the Issuance of Writ of Possession under L.R.C. Record No. 12973; 18031; and LRC Cadastral Record No. 317, Philippine National Bank.*

[68] *Rollo* (G.R. No. 169441), p. 16, Petition for Review.

[69] *Id.* at 17.

City[,] and [Philippine National Bank] from registering the Sheriff's Provisional Certificate of Sale and, if registered, enjoining [Philippine National Bank] to refrain from consolidating the title of the said property in its name and/or offering to sell the same to interested buyers during the pendency of the case."[71]

On July 18, 2002, Spouses Limso filed a Motion to Intervene[72] in Other Case No. 124-2002.[73]

In the Resolution dated August 13, 2002, the Court of Appeals granted the temporary restraining order prayed for by Philippine National Bank (in CA G.R. SP No. 71527) enjoining the implementation of Judge Layague's Orders dated May 3, 2002 and June 24, 2002. These Orders pertained to the writ of preliminary injunction enjoining the registration of the Sheriff's Provisional Certificate of Sale.[74]

Spouses Limso filed a Motion for Reconsideration with Prayers for the Dissolution of Temporary Restraining Order and to Post Counter Bond.[75]

The Court of Appeals granted Philippine National Bank's Petition for Certiorari in the Decision[76] dated December 11, 2002. The dispositive portion of the Decision states:

WHEREFORE, premises considered, the writ prayed for in the herein petition is GRANTED and the assailed Orders of respondent

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[70] The Petition docketed as G.R. No. 169441 states Branch 17, but it may be deemed a typographical error as Civil Case No. 29,036-2002 was raffled to Branch 14 of the Regional Trial Court of Davao City.

[71] *Rollo* (G.R. No. 169441), pp. 17-18, Petition for Review.

[72] *Rollo* (G.R. No. 169441), pp. 752-756.

[73] *Rollo* (G.R. No. 169441), p. 18, Petition for Review; *rollo* (G.R No. 205463), p. 112, Omnibus Motion for Leave to Intervene; to File/Admit herein attached Comment-in-Intervention; and to Consolidate Cases, and 128, Regional Trial Court Order in Other Case No. 124-2002.

[74] *Rollo* (G.R. No. 158622, Vol. I), p. 22, Petition for Review on *Certiorari.*

[75] *Id.* at 22-23.

[76] *Id.* at 75-95. The Decision was penned by Associate Justice Eubulo

judge dated May 3 and June 24, 2002 granting the writ of preliminary injunction are SET ASIDE. Civil Case No. 29,036-2002 is hereby ordered DISMISSED and respondent Register of Deeds of Davao City is hereby ordered to register petitioner PNB's Sheriff's Provisional Certificate of Sale and cause its annotation on TCT Nos. T-147820, T-147821, T-246386 and T-247012.[77]

Spouses Limso filed a Motion to Reconsider Decision and to Call Case for Hearing on Oral Argument, which was opposed by Philippine National Bank.[78] Oral arguments were conducted on March 19, 2003.[79]

On June 10, 2003, the Court of Appeals denied Spouses Limso's Motion for Reconsideration.[80]

Spouses Limso then filed a Petition for Review on Certiorari[81] before this court, questioning the Decision in CA G.R. SP No. 71527, which ordered the Register of Deeds to register the Sheriff's Provisional Certificate of Sale. This was docketed as G.R. No. 158622.[82]

With regard to the Complaint for Reformation or Annulment of Contract with Damages, Branch 17 of the Regional Trial Court of Davao City promulgated its Decision[83] on June 19, 2002.

Branch 17 ruled in favor of Spouses Limso and Davao Sunrise. It found the interest rate provisions in the loan agreement to be

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G. Verzola (Chair) and concurred in by Associate Justices Eugenio S. Labitoria and Candido V. Rivera of the Special Third Division.

[77] *Id.* at 29, Petition for Review on *Certiorari*.

[78] *Id.*

[79] *Id.*

[80] *Id.* at 105, Court of Appeals Resolution in CA G.R. SP. No. 71527. The Resolution was penned by Associate Justice Eugenio S. Labitoria (Chair) and concurred in by Associate Justices Andres B. Reyes, Jr. and Regalado E. Maambong of the Fifth Division.

[81] *Id.* at 3-71.

[82] *Id.* at 3.

[83] *Id.* at 787-804. The Decision was penned by Presiding Judge Renato A. Fuentes of Branch 17, Regional Trial Court, Davao City.

unreasonable and unjust because the imposable interest rates were to be solely determined by Philippine National Bank. The arbitrary imposition of interest rates also had the effect of increasing the total loan obligation of Spouses Limso and Davao Sunrise to an amount that would be beyond their capacity to pay.[84]

The dispositive portion of the Decision in the Complaint for Reformation or Annulment with Damages states:

> **WHEREFORE,** finding the evidence of plaintiffs corporation through counsel, more than sufficient, to constitute a preponderance to prove the various unilateral impositions of increased interest rates by defendant bank, such usurious, unreasonable, arbitrary, unilateral imposition of interest rates, are declared, null and void.
>
> Accordingly, decision is issued in favor of the defendant bank, in a reduced amount based on the following:
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> 1. The amount of One Hundred Twenty Seven Million, One Hundred Fifty Thousand (₱127,150,000.00) Pesos, representing illegal interest rate, the amount of One Hundred Seventy Six Million, Ninety Eight Thousand, Forty Five and 95/100 (₱176,098,045.95) Pesos, representing illegal penalty charges and the amount of One Hundred Thirty Six Million, Nine Hundred Thousand, Nine Hundred Twenty Eight and 85/100 (₱136,900,928.85) Pesos, as unreasonable 10% Attorney's fees or in the total amount of Four Hundred Forty Million, One Hundred Forty Eight Thousand, Nine Hundred Seventy Four and 79/100 (₱440,148,974.79) Pesos, are declared null and void, rescending [sic] and/or altering the loan agreement of parties, on the ground of fraud, collusion, mutual mistake, breach of trust, misconduct, resulting to gross inadequacy of consideration, in favor of plaintiffs corporation, whose total reduced and remaining principal loan obligation with defendant bank, shall only be the amount of Eight Hundred Eighty Two Million, Twelve Thousand, One Hundred Forty Nine and 50/100 (₱882,012,149.50) Pesos, as outstanding remaining loan obligation of plaintiffs corporation, with defendant bank, to be deducted from the total payments so far paid by plaintiffs corporation with

[84] *Id.* at 791-803.

defendant bank as already stated in this decision.

2. That thereafter, the above-amount as ordered reduced, shall earn an interest of 12% per annum, the lawful rate of interest that should legitimately be imposed by defendant bank to the outstanding remaining reduced principal loan obligation of plaintiffs corporation.

3. Notwithstanding, defendant bank, is entitled to a reduced Attorney's fees of Five Hundred Thousand (₱500,000.00) Pesos, as a reasonable Attorney's fees, subject to subsequent pronouncement as to the real status of defendant bank, on whether or not, said institution is now a private agency or still a government instrumentality in its capacity to be entitled or not of the said Attorney's fees.

4. The prayer of defendant bank for award of moral damages and exemplary damages, are denied, for lack of factual and legal basis.

SO ORDERED.[85] (Emphasis in the original)

Philippine National Bank moved for reconsideration of the Decision, while Spouses Limso and Davao Sunrise filed a Motion for partial clarification of the Decision.[86]

Branch 17 of the Regional Trial Court of Davao City subsequently issued the Order[87] dated August 13, 2002 clarifying the correct amount of Spouses Limso and Davao Sunrise's obligation, thus:

WHEREFORE, finding the motion for reconsideration of defendant bank through counsel, to the decision of the court, grossly bereft of merit, merely a reiteration and rehash of the arguments already set forth during the hearing, including therein matters not proved during the trial on the merits, and considered admitted, is denied.

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[85] *Id.* at 803-804.

[86] *Id.* at 805, Regional Trial Court Order in Civil Case No. 28,170-2000.

[87] *Rollo* (G.R. No. 158622, Vol. I), pp. 805-810. The Order was issued by Presiding Judge Renato A. Fuentes of Branch 17, Regional Trial Court, Davao City.

To provide a clarification of the decision of this court, relative to plaintiffs motion for partial clarification with comment of defendant bank through counsel, the correct remaining balance of plaintiffs account with defendant bank, pursuant to the decision of this court, in pages 17 and 18, dated June 19, 2002, is Two Hundred Five Million Eighty Four Thousand Six Hundred Eighty Two Pesos & 61/100 (₱205,084,682.61), as above-clarified.

SO ORDERED.[88]

Philippine National Bank appealed the Decision and Order in the Complaint for Reconstruction or Annulment with Damages by filing a Notice of Appeal on August 16, 2002.[89] The Notice of Appeal was approved by the trial court in the Order dated September 25, 2002.[90] The appeal was docketed as CA-G.R. CV No. 79732.[91]

On August 20, 2002,[92] Spouses Limso and Davao Sunrise filed, in Other Case No. 124-2002 (Petition for Issuance of Writ of Possession), a Motion to inhibit the Presiding Judge (referring to Judge Quitain, before whom the Petition for Issuance of Writ of Possession was pending) because his wife, Gladys Isla Quitain, was a long-time Philippine National Bank employee who had retired.[93] Spouses Limso and Davao Sunrise also heard rumors that Gladys Isla Quitain had been serving as consultant for Philippine National Bank even after retirement.[94] Davao Sunrise also filed a Motion to Expunge and/or Dismiss Petition and argued that the person who signed for Philippine National Bank was not authorized because no Board Resolution was

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[88] *Id.* at 810.

[89] *Rollo* (G.R. No. 196958), p. 21, Petition for Review.

[90] *Id.*

[91] *Rollo* (G.R. No. 169441), p. 16, Petition for Review.

[92] The Petition in G.R. No. 169441 states August 20, 2003, but it may be deemed a typographical error. Based on the allegations in the Petition, the proper date would be August 20, 2002.

[93] *Rollo* (G.R. No. 169441), p. 18, Petition for Review.

[94] *Id.*

attached to the Verification and Certification against Forum Shopping.

In the Order[95] dated March 21, 2003, Judge Quitain denied three motions:

(1) The Motion to Intervene filed by Spouses Robert Alan Limso and Nancy Limso;

(2) The Motion to Expunge and/or Dismiss Petition for the Issuance of Writ of Possession filed by Davao Sunrise Investment and Development Corporation; and

(3) The Motion for Voluntary Inhibition filed by Davao Sunrise Investment and Development Corporation.[96]

Judge Quitain denied the Motion to Inhibit on the ground that the allegations against him were mere suspicions and conjectures.[97] The Motion to Intervene was denied on the ground that Spouses Limso have no interest in the case, not being the owners of the property.[98]

The Motion to Expunge and/or Dismiss filed by Davao Sunrise was also denied for lack of merit. Judge Quitain ruled that "PNB Vice President Leopoldo is clearly clothed with authority to represent and sign in behalf of the petitioner [referring to Philippine National Bank] as shown by the Verification and Certification of the said petition as well as the Secretary's Certificate."[99]

Spouses Limso and Davao Sunrise filed a Motion for Reconsideration[100] of the Order dated March 21, 2003. Judge

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[95] *Id.* at 824-826.

[96] *Id.* at 824-825.

[97] *Id.* at 20, Petition for Review. The Order states: "There is no basis for the Presiding Judge to inhibit himself considering that the allegation of bias and partiality is based merely on suspicion and conjecture."

[98] *Id.* at 824-825.

[99] *Id.* at 825.

Quitain denied the Motion for Reconsideration in an Order dated September 1, 2003, only with regard to the Motion to Intervene and Motion for Voluntary Inhibition. The Motion to Expunge and/or Dismiss was not mentioned in the September 1, 2003 Order.[101]

Spouses Limso and Davao Sunrise questioned the denial of the Motion for Inhibition by filing a Petition for Certiorari before the Court of Appeals on September 26, 2003. This was docketed as CA G.R. SP No. 79500.[102] Spouses Limso and Davao Sunrise subsequently filed a Supplemental Petition for Certiorari before the Court of Appeals on October 3, 2003.[103]

In the meantime, Other Case No. 124-2002 (Petition for Issuance of Writ of Possession) was set for an ex-parte hearing on October 10, 2003.[104]

However, on October 8, 2003, the Court of Appeals granted the prayer for the issuance of a temporary restraining order in CA G.R. SP No. 79500 "enjoining public respondent Judge Quitain from proceeding with Other Case No. 124-2002 for a period of sixty (60) days from receipt by respondents thereof."[105]

The temporary restraining order was effective from October 10, 2003 to December 9, 2003.[106]

On December 12, 2003, Judge Quitain issued the Order allowing Philippine National Bank to present evidence ex-parte on December 18, 2003 despite the pendency of other incidents to be resolved.[107]

Spouses Limso and Davao Sunrise filed an Urgent Motion for Cancellation of the December 18, 2003 hearing due to the

[100] *Id.* at 827-852.

[101] *Id.* at 827-852.

[102] *Id.* at 22.

[103] *Id.*

[104] *Id.*

[105] *Id.* at 23.

[106] *Id.*

[107] *Id.*

pendency of CA G.R. SP No. 79500.[108]

Judge Quitain reset the hearing for Other Case No. 124-2002 to January 23, 2004. The hearing was subsequently reset to January 30, 2004. In the January 30, 2004 hearing, Judge Quitain heard the arguments of parties regarding the Urgent Motion to Cancel Hearing.[109]

In the Order dated March 12, 2004, Judge Quitain "resolved the pending Urgent Motion to Cancel Hearing and [Davao Sunrise's] Motion to Re-schedule Newly Scheduled Hearing Date."[110]

The March 12, 2004 Order also stated that "the Spouses Limso have no right to intervene because they are no longer owners of the subject foreclosed property."[111]

Spouses Limso treated the March 12, 2004 Order as a denial of their Motion for Reconsideration regarding their Motion to Intervene. Thus, they, together with Davao Sunrise, filed a Petition for Certiorari before the Court of Appeals, which was docketed as CA G.R. SP No. 84279.[112]

CA G.R. SP No. 84279 was denied by the Court of Appeals in the Decision[113] dated September 20, 2004.

Spouses Limso and Davao Sunrise filed a Motion for Reconsideration[114] dated September 13, 2004, which was denied in the Resolution[115] dated July 8, 2005.

Spouses Limso and Davao Sunrise then filed a Petition for Review on Certiorari dated July 26, 2005 before this court.

[108] *Id.*

[109] *Id.* at 24.

[110] *Id.*

[111] *Id.* at 25.

[112] *Id.*

[113] *Id.* at 1129-1162. The Decision was penned by Associate Justice Teresita Dy-Liacco Flores (Chair) and concurred in by Associate Justices Romulo V. Borja and Rodrigo F. Lim, Jr. of the Twenty-Third Division.

[114] *Id.* at 1163-1193.

[115] *Id.* at 1197. The Resolution was penned by Associate Justice Teresita

This was docketed as G.R. No. 168947.[116]

Despite the pendency of Spouses Limso and Davao Sunrise's Motion for Reconsideration of the Order denying Davao Sunrise's Motion to Expunge and/or Dismiss, Philippine National Bank filed a Motion for Reception of Evidence and/or Resume Hearing dated March 30, 2004 in Other Case No. 124-2002.[117]

Judge Quitain granted the Motion "and set the hearing for reception of petitioner's evidence on 06 April 2004 at 2:00 p.m."[118]

Spouses Limso and Davao Sunrise filed an Extremely Urgent Manifestation and Motion dated April 5, 2004. They prayed for the cancellation of the hearing for the reason that the March 12, 2004 Order was not yet final and that Davao Sunrise had a pending Motion for Reconsideration of the Order denying its Motion to Expunge and/or Dismiss.[119]

Judge Quitain cancelled the April 6, 2004 hearing due to the Manifestation and Motion filed by Spouses Limso and Davao Sunrise.[120]

Spouses Limso filed a Motion for Reconsideration of the March 12, 2004 Order because it addressed issues other than those raised in the Motion for Intervention.[121]

On April 20, 2004, Judge Quitain issued the Order and reset the case for hearing to May 7, 2004, even though the Motion for Reconsideration of the Order denying the Motion to Expunge

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Dy-Liacco Flores (Chair) and concurred in by Associate Justices Romulo V. Borja and Rodrigo F. Lim, Jr. of the Former Twenty-Third Division.

[116] *Id.* at 26, Petition for Review. Upon checking with the Judgment Division, G.R. No. 168947 was dismissed on August 17, 2005 for failure to show reversible error on the part of the Court of Appeals. Entry of Judgment was made on April 27, 2006.

[117] *Id.*

[118] *Id.*

[119] *Id.*

[120] *Id.* at 27.

[121] *Id.*

and/or Dismiss had not been acted upon.[122]

During the May 7, 2004 hearing, counsel for Spouses Limso and Davao Sunrise pointed out to Judge Quitain the pendency of the Motion for Reconsideration of the Order denying the Motion to Expunge and/or Dismiss.[123]

Judge Quitain issued the Order dated July 5, 2004 denying Spouses Limso and Davao Sunrise's Motion for Reconsideration to the March 12, 2004 Order (referring to the denial of Spouses Limso's Motion to Intervene). Judge Quitain also set hearing dates on August 4 and 5, 2004 for the reception of Philippine National Bank's evidence. Once again, the hearings were scheduled even though the Motion to Expunge and/or Dismiss had yet to be resolved.[124]

Davao Sunrise then filed a Motion to Transfer Case or in the Alternative to Dismiss the Same on July 30, 2004. Davao Sunrise reiterated the arguments in its Motion to Expunge and/or Dismiss.[125]

Subsequently, Spouses Limso and Davao Sunrise filed an Extremely Urgent Manifestation and Motion dated August 3, 2004 asking that the hearings scheduled for August 4 and 5, 2004 be cancelled, considering that Davao Sunrise's Motion to Dismiss/Expunge the Petition was still unresolved.[126]

On August 4, 2004, Judge Quitain took cognizance of the Extremely Urgent Manifestation and Motion dated August 3, 2004 and a Very Urgent Motion for Intervention filed by a third party. Thus, Judge Quitain cancelled the hearings scheduled on August 4 and 5, 2004, reset the hearing to August 11, 2004, and "impressed upon the parties that he would be able to resolve

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[122] *Id.*

[123] *Id.*

[124] *Id.* at 27-28.

[125] *Id.* at 28.

[126] *Id.*

all pending incidents by that time."[127]

Spouses Limso and Davao Sunrise alleged that the pending incidents were hastily acted upon by Judge Quitain, as follows:

> [O]n 11 August 2004, at around 11:45 a.m., petitioners' counsel was furnished a copy of public respondent's *Order* allegedly dated 06 August 2004 which declared as submitted for resolution the following incidents, to wit: (a) petitioner DSIDC's Motion to Transfer the Case to Branch 17; (b) Petitioner DSIDC's *Motion to Postpone Hearing*; (c) *Motion for Intervention* filed by a certain Karlan Lou Ong; (d) petitioners' (DSIDC and Spouses Limso) *Extremely Urgent Manifestation and Motion*; and (e) Petitioner DSIDC's *Manifestation*.
>
> . . . And then, at around 2:10 p.m. of the same day, 11 August 2004, when petitioners' counsel was already in court for the said hearing, he was furnished by a staff of public respondent Judge Quitain a copy of an *Order* dated 11 August 2004 and consisting of two (2) pages, the dispositive portion of which reads as follows:
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> > "WHEREFOREM(sic), the Court hereby resolves the following motions: 1) DSIDC's motion to transfer case to Branch 17 or dismiss the same is denied for lack of merit. 2) DSIDC's (sic) motion to postpone the hearing is denied for lack of merit. 3) The motion of Karla Ong to intervene is denied for lack of merit. 4) The August 5 manifestation of DSIDC is noted."[128] (Emphasis in the original)

Spouses Limso and Davao Sunrise also claimed that the Order dated August 11, 2004 was done hastily so that Philippine National Bank would be able to present its evidence without objection.[129]

Spouses Limso and Davao Sunrise alleged that the August 11, 2004 Order contained factual findings not supported by the record. When counsel for Spouses Limso and Davao Sunrise pointed out the errors, Judge Quitain acknowledged the mistake and reset the August 11, 2004 hearing to August 27, 2004.[130]

Because of Judge Quitain's actions, Spouses Limso and Davao

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

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

[129] *Id.* at 30.

[130] *Id.* at 30-31.

Sunrise filed a Motion for Compulsory Disqualification on the ground that Judge Quitain was biased in Philippine National Bank's favor.[131]

In the Order[132] dated March 10, 2005, Judge Quitain denied the Motion for Compulsory Disqualification.

Spouses Limso and Davao Sunrise moved for reconsideration of the March 10, 2005 Order, while Philippine National Bank filed an Opposition to the Motion for Reconsideration.[133]

The August 11, 2004 Order also denied Davao Sunrise's Motion to Transfer Case to Branch 17 or Dismiss the Same. Since the Motion to Transfer is a rehash of Davao Sunrise's Motion to Expunge and/or Dismiss Petition, the denial of the Motion to Transfer is tantamount to the denial of Davao Sunrise's Motion to Expunge and/or Dismiss.[134] The August 11, 2004 Order did not specifically state that Spouses Limso and Davao Sunrise's Motion for Reconsideration dated March 28, 2003 was denied, but since the issues raised in the Motion to Reconsideration were also raised in the Motion to Expunge, the August 11, 2004 Order also effectively denied the Motion for Reconsideration.[135]

Thus, Spouses Limso and Davao Sunrise filed a Petition[136] for Certiorari before the Court of Appeals, which was docketed as CA G.R. SP No. 85847.[137] Spouses Limso and Davao Sunrise assailed the March 21, 2003 Order denying Davao Sunrise's Motion to Expunge and/or Dismiss Petition for Issuance of Writ of Possession, as well as the August 11, 2004 Order denying

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[131] *Id.* at 32.

[132] *Id.* at 1447. The Order was issued by Judge Jesus V. Quitain of Branch 15, Regional Trial Court, Davao City.

[133] *Id.* at 32, Petition for Review.

[134] *Id.*

[135] *Id.*

[136] *Id.* at 1465-1514.

[137] *Id.* at 33, Petition for Review.

Davao Sunrise's Motion to Dismiss.[138]

On September 1, 2004, the Court of Appeals promulgated its Decision[139] in CA G.R. No. 79500[140] denying Spouses Limso and Davao Sunrise's Petition, which assailed Judge Quitain's denial of their Motion to Inhibit.[141] The Court of Appeals ruled that Judge Quitain's reversal of Judge Layague's Orders "may constitute an error of judgment . . . but it is not necessarily an evidence of bias and partiality."[142]

Spouses Limso and Davao Sunrise moved for reconsideration on September 23, 2004. The Motion was denied in the Resolution[143] dated August 11, 2005.[144]

While the cases between Spouses Limso, Davao Sunrise, and Philippine National Bank were pending, Philippine National Bank, through counsel, filed administrative[145] and criminal complaints[146] against Atty. Patriarca.

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[138] *Id.* at 1465-1466, Petition docketed as CA G.R. SP No. 85847.

[139] *Id.* at 63-70. The Decision was penned by Associate Justice Mariflor P. Punzalan Castillo (Chair) and concurred in by Associate Justices Sesinando E. Villon and Edgardo A. Camello of the Special Twenty-Second Division.

[140] *Id.* at 64. CA G.R. SP No. 79500 is a Petition for *Certiorari* questioning the trial court's denial of the Motion for Inhibition.

[141] *Id.* at 33, Petition for Review.

[142] *Id.* at 69, Court of Appeals Decision in CA G.R. SP No. 79500.

[143] *Id.* at 72-73. The Resolution was penned by Associate Justice Edgardo A. Camello and concurred in by Associate Justices Teresita Dy-Liacco Flores (Chair) and Myrna Dimaranan-Vidal of the Twenty-First Division.

[144] *Id.* at 33-34, Petition for Review.

[145] *Rollo* (G.R. No. 205463), p. 87, Land Registration Authority's Resolution in Adm. Case No. 02-13. The administrative case was for Grave Misconduct and Conduct Unbecoming of a Public Official. The complaints against Atty. Patriarca were filed in 2002. The Resolution of the Land Registration Authority in the administrative case against Atty. Patriarca states that in a directive dated July 31, 2002, she was directed to show cause why disciplinary action should not be taken against her.

[146] *Id.* at 16, Petition for Review on *Certiorari*. The criminal Complaint

The administrative case against Atty. Patriarca was docketed as Administrative Case No. 02-13.[147]

In the Resolution[148] dated January 12, 2005, the Land Registration Authority found Atty. Patriarca guilty of grave misconduct and dismissed her from the service.[149] Included in the Resolution are the following pronouncements:

> The registration of these documents became complete when respondent affixed her signature below these annotations. Whatever information belatedly gathered thereafter relative to the circumstances as to the registrability of these documents, respondent cannot unilaterally take judicial notice thereof and proceed to lift at her whims and caprices what has already been officially in force and effective, by erasing thereon her signature. With her years of experience in the Registry, not to mention her being a lawyer, respondent should have taken the appropriate steps in filing a query to this Authority regarding the matter or should have consulted Section 117 of PD 1529 in relation to Section 12 of Rule 43. The deplorable act of Respondent was fraught with partiality to favor the DSIDC and Sps. Limso.[150]

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was filed before the Office of the Ombudsman-Mindanao for violation of Rep. Act No. 3019, Sec. 3 (f), which provides:

SECTION 3. Corrupt practices of public officers. — In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:

x x x x x x x x x

(f) Neglecting or refusing, after due demand or request, without sufficient justification, to act within a reasonable time on any matter pending before him for the purpose of obtaining, directly or indirectly, from any person interested in the matter some pecuniary or material benefit or advantage, or for the purpose of favoring his own interest or giving undue advantage in favor of or discriminating against any other interested party.

[147] *Id.* at 16, Petition for Review on *Certiorari*. The administrative case against Atty. Patriarca was entitled *Ma. L. Pesayco v. Florenda F.T. Patriarca.*

[148] *Id.* at 87-90.

[149] *Id.* at 90.

[150] *Id.* at 17, Petition for Review on *Certiorari.*

Atty. Asteria E. Cruzabra (Atty. Cruzabra) replaced Atty. Patriarca as Register of Deeds of Davao City.[151] Philippine National Bank wrote a letter to Atty. Cruzabra, arguing "that the Sheriff's Provisional Certificate of Sale was already validly registered[,]"[152] and the unauthorized application of correction fluid[153] to cover the original signature of the Acting Register of Deeds "did not deprive the Bank of its rights under the registered documents."[154]

Meanwhile, on February 10, 2005, as CA-G.R. CV No. 79732, which was an appeal from Civil Case No. 28,170-2000 (Petition for Reformation and Annulment of Contract with Damages), was still pending, Philippine National Bank filed the following applications before the Court of Appeals Nineteenth Division:[155]

a. Application to Hold Davao Sunrise Investment and Development Corporation, the Spouses Robert Alan L. Limso and Nancy Lee Limso and Wellington Insurance Company, Inc. Jointly and Severally liable for Damages on the Injunction Bond; and

b. Application for the Appointment of PNB as Receiver[.][156]

Spouses Limso and Davao Sunrise filed their opposition to Philippine National Bank's application on March 29, 2005.[157] Philippine National Bank filed its Reply to the Opposition on May 5, 2005.[158]

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[151] *Id.*

[152] *Id.*

[153] The parties used the term "snowpake." "Snowpake" is a colloquial term describing the white correction fluid used to cover errors written or printed on paper. In this case, a signature was erased using correction fluid.

[154] *Rollo* (G.R. No. 205463), p. 17, Petition for Review on *Certiorari.*

[155] *Rollo* (G.R. No. 173194), pp. 262 and 317.

[156] *Id.* at 58, Petition for Review.

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

[158] *Id.* at 59.

On March 2, 2006, the Court of Appeals denied Philippine National Bank's applications, reasoning that:

It is a settled rule that the procedure for claiming damages on account of an injunction wrongfully issued shall be the same as that prescribed in Section 20 of Rule 57 of the Revised Rules of Court. Section 20 provides:

> Sec. 20. Claim for damages on account of improper, irregular or excessive attachment. — An application for damages on account of improper, irregular or excessive attachment must be filed before the trial or before appeal is perfected or before the judgment becomes executory, with due notice to the attaching obligee or his surety or sureties, setting forth the facts showing his right to damages and the amount thereof. Such damages may be awarded only after proper hearing and shall be included in the judgment on the main case.
>
> If the judgment of the appellate court be favorable to the party against whom the attachment was issued, he must claim damages sustained during the pendency of the appeal by filing an application in the appellate court with notice to the party in whose favor the attachment was issued or his surety or sureties, before the judgment of the appellate court becomes executory. The appellate court may allow the application to be heard and decided by the trial court.
>
> Nothing herein contained shall prevent the party against whom the attachment was issued from recovering in the same action the damages awarded to him from any property of the attaching obligee not exempt from execution should the bond or deposit given by the latter be insufficient or fail to fully satisfy the award.

Records show that when this Court annulled the RTC's order of injunction, Davao Sunrise thereafter elevated the matter to the Supreme Court. On July 24, 2002, the Supreme Court denied its petition for having been filed out of time and an Entry of Judgment was issued on Sept. 11, 2002.

PNB's instant application however was filed only on February 17, 2005 and/or in the course of its appeal on the main case — about two (2) years and five (5) months after the judgment annulling the injunction order attained finality.

Clearly, despite that it already obtained a favorable judgment on the injunction matter, PNB failed to file (before the court a quo) an application for damages against the bond before judgment was rendered in the main case by the court a quo. Thus, even for this reason alone, Davao Sunrise and its bondsman are relieved of further liability thereunder.[159] (Citations omitted)

The Court of Appeals also denied Philippine National Bank's application to be appointed as receiver for failure to fulfill the requirements to be appointed as receiver and for failure to prove the grounds for receivership.[160] It discussed that to appoint Philippine National Bank as receiver would violate the rule that "neither party to a litigation should be appointed as receiver without the consent of the other because a receiver should be a person indifferent to the parties and should be impartial and disinterested."[161] The Court of Appeals noted that Philippine National Bank was not an impartial and disinterested party, and Davao Sunrise objected to Philippine National Bank's appointment as receiver.[162]

In addition, Rule 59, Section 1 (a)[163] of the 1997 Rules of Court requires that the "property or fund involved is in danger

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[159] *Id.* at 79-80, Court of Appeals Resolution in CA-G.R. CV. No. 79732.

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

[161] *Id.* at 80, citing *Commodities Storage & Ice Plant Corporation v. Court of Appeals*, 340 Phil. 551, 559 (1997) [Per *J.* Puno, Second Division].

[162] *Id.* at 80.

[163] RULES OF COURT, Rule 59, Sec. 1 (a) provides:

Rule 59. Receivership

SECTION 1. Appointment of Receiver. — Upon a verified application, one or more receivers of the property subject of the action or proceeding may be appointed by the court where the action is pending, or by the Court of Appeals or by the Supreme Court, or a member thereof, in the following cases:

(a) When it appears from the verified application, and such other proof as the court may require, that the party applying for the appointment of a receiver has an interest in the property or fund which is the subject of the action or proceeding, and that such property or fund is in danger of being lost, removed, or materially injured unless a receiver be appointed to administer and preserve it[.]

of being lost, removed, or materially injured." The Court of Appeals found that the properties involved were "not in danger of being lost, removed[,] or materially injured."[164] Further, Philippine National Bank's application was premature since the loan agreement was still pending appeal and "a receiver should not be appointed to deprive a party who is in possession of the property in litigation."[165]

The dispositive portion of the Court of Appeals Resolution[166] states:

> WHEREFORE, above premises considered, the Philippine National Bank's Application to Hold Davao Sunrise Investment and Development Corporation, the Spouses Robert Alan L. Limso and Nancy Lee Limso and Wellington Insurance Company, Inc. Jointly and Severally Liable for Damages on the Injunction Bond and its Application for the Appointment of PNB as Receiver are hereby both DENIED. And, for the reasons above set forth, the Plaintiff-Appellees' Motion to Dismiss is likewise DENIED.
>
> With the filing of the Appellants' and the Appellees' respective Brief(s), this case is considered SUBMITTED for Decision and ORDERED re-raffled to another justice for study and report.
>
> SO ORDERED.[167]

Philippine National Bank filed a Motion for Reconsideration on March 28, 2006, which was denied in the Resolution[168] dated May 26, 2006.[169]

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[164] *Rollo* (G.R. No. 173194), p. 81, Court of Appeals Resolution in CA-G.R. CV. No. 79732.

[165] *Id.*

[166] *Id.* at 77-82. The Resolution was penned by Associate Justice Normandie B. Pizarro and was concurred in by Associate Justices Edgardo A. Camello (Chair) and Ricardo R. Rosario of the Twenty-Third Division.

[167] *Id.* at 82.

[168] *Id.* at 84-86. The Resolution was penned by Associate Justice Normandie B. Pizarro and was concurred in by Associate Justices Edgardo A. Camello (Chair) and Ramon R. Garcia, of the Special Twenty-Third Division.

[169] *Id.* at 59, Petition for Review.

Thus, on July 21, 2006, Philippine National Bank filed before this court a Petition for Review[170] on Certiorari questioning the Court of Appeals' denial of its applications.[171] This was docketed as G.R. No. 173194.[172]

On February 16, 2007, Philippine National Bank's Ex-Parte Petition for Issuance of a Writ of Possession docketed as Other Case No. 124-2002 was dismissed[173] based on the following grounds:

(1) For purposes of the issuance of the writ of possession, Petitioner should complete the entire process in extrajudicial foreclosure . . .

(2) The records disclose the [sic] contrary to petitioner's claim, the Certificate of Sale covering the subject properties has not been registered with the Registry of Deeds of Davao City as the Court finds no annotation thereof. As such, the sale is not considered perfected to entitled petitioner to the writ of possession as a matter of rights [sic].[174]

Philippine National Bank filed a Motion for Reconsideration with Motion for Evidentiary Hearing.[175]

Acting on the Motion for Reconsideration, the trial court required the Registry of Deeds to comment on the matter.[176]

The trial court eventually denied the Motion for Reconsideration.[177]

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[170] *Id.* at 45-75.

[171] *Id.* at 59.

[172] *Id.* at 45.

[173] *Id.* at 558-561. Other Case No. 124-2002 was re-raffled to Branch 16 of the Regional Trial Court of Davao City. The Order was issued by Presiding Judge Emmanuel C. Carpio.

[174] *Rollo* (G.R. No. 205463), p. 19, Petition for Review on *Certiorari; Rollo* (G.R. No. 173194), p. 561, Order in Other Case No. 124-2002.

[175] *Rollo* (G.R. No. 205463), p. 19, Petition for Review on *Certiorari.*

[176] *Id.* at 21.

[177] *Id.* at 23.

Philippine National Bank appealed the trial court Decision dismissing the Petition for Issuance of a Writ of Possession by filing a Rule 41 Petition before the Court of Appeals, which was docketed as CA-G.R. CV No. 01464-MIN.[178]

Meanwhile, when CA-G.R. CV No. 79732 was re-raffled,[179] it was re-docketed as CA-G.R. CV No. 79732-MIN.[180]

In CA-G.R. CV No. 79732-MIN, the Court of Appeals resolved the issue of "whether or not there has been mutuality between the parties, based on their essential equality, on the subject imposition of interest rates on plaintiffs-appellees' loan obligation, i.e., the original loan and the restructured loan."[181]

On August 13, 2009, the Court of Appeals promulgated its Decision[182] in CA-G.R. CV No. 79732-MIN. It held that there was no mutuality between the parties because the interest rates were unilaterally determined and imposed by Philippine National Bank.[183]

The Court of Appeals further explained that the contracts between Spouses Limso and Davao Sunrise, on one hand, and Philippine National Bank, on the other, did not specify the applicable interest rates. The contracts merely stated the interest

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[178] *Id.* at 23, Petition for Review on Certiorari, and 55, Court of Appeals Decision in CA-G.R. CV No. 01464-MIN.

[179] *Rollo* (G.R. No. 173194), p. 82, Court of Appeals Resolution in CA-G.R. CV No. 79732.

[180] *Rollo* (G.R. No. 196958), p. 98, Court of Appeals Decision in CA-G.R. CV No. 79732-MIN.

[181] *Rollo* (G.R. No. 196958), p. 111, Court of Appeals Decision in CA-G.R. CV No. 79732-MIN.

[182] *Id.* at 98-127. The Decision was penned by Associate Justice Ruben C. Ayson, concurred in by Associate Justices Romulo V. Borja (Chair) and Edgardo A. Camello, and dissented from by Associate Justices Rodrigo F. Lim, Jr. and Michael P. Elbinias, of the Special Division of Five, Mindanao Station. Associate Justice Camello penned a Concurring Opinion. Associate Justice Lim, Jr. penned a Separate Dissenting Opinion.

[183] *Id.* at 111-114.

rate to be "at a rate per annum that is determined by the bank[;]"[184] "at the rate that is determined by the Bank to be the Bank's prime rate in effect at the Date of Drawdown[;]"[185] and "at the rate per annum to be set by the Bank. The interest rate shall be reset by the Bank every month."[186] In addition, the interest rate would depend on the prime rate, which was "to be determined by the bank[.]"[187] It was also discussed that:

> But it even gets worse. After appellant bank had unilaterally determined the imposable interest on plaintiffs-appellees loans and after the latter had been notified thereof, appellant bank unilaterally increased the interest rates. Further aggravating the matter, appellant bank did not increase the interest rate only once but on numerous occasions. Appellant bank unilaterally and arbitrarily increased the already arbitrarily imposed interest rate within intervals of only seven (7) days and/or one (1) month.
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> x x x x x x x x x
>
> The interests imposed under the *Conversion, Restructuring and Extension Agreement*, is not a valid imposition. DSIDC and Spouses Limso have no choice except to assent to the conditions therein as they are heavily indebted to PNB. In fact, the possibility of the foreclosure of their mortgage securities is right in their doorsteps. Thus it cannot be considered "*contracts*" between the parties, as the borrower's participation thereat has been reduced to an unreasonable alternative that is to "*take it or leave it*." It has been used by PNB to raise interest rates to levels which have enslaved appellees or have led to a hemorrhaging of the latter's assets. Hence, for being an exploitation of the weaker party, the borrower, the alleged letter-contracts should also be struck down for being violative of the principle of mutuality of contracts under Article 1308.[188] (Emphasis in the original)

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[184] *Id.* at 111, citing par. 1.04 of the original revolving credit line agreement.

[185] *Id.* at 112, citing par. 1.03 of the original loan agreement.

[186] *Id.*, citing par. 2.04 of the interest provision of Loan I.

[187] *Id.* at 118.

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

Thus, the Court of Appeals nullified the interest rates imposed by Philippine National Bank:

> We reiterate that since the unilateral imposition of rates of interest by appellant bank is not only violative of the principle of mutuality of contracts, but also were found to be unconscionable, iniquitous and unreasonable, it is as if there was no express contract thereon. Thus, the interest provisions on the (a) revolving credit line in the amount of three hundred (300) million pesos, (b) seven-year long term loan in the amount of four hundred (400) million pesos; and (c) Conversions, Restructuring and Extension Agreement, Real Estate Mortgage, promissory notes, and all other loan documents executed contemporaneous with or subsequent to the execution of the said agreements are hereby declared null and void.
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> Such being the case, We apply the ruling of the Supreme Court in the case of *United Coconut Planters Bank vs. Spouses Samuel and Odette Beluso* which stated:
>
> > "We see, however, sufficient basis to impose a 12% legal interest in favor of petitioner in the case at bar, as what we have voided is merely the stipulated rate of interest and not the stipulation that the loan shall earn interest."[189] (Citation omitted)

As to the trial court's reduction of the penalty charges and attorney's fees, the Court of Appeals affirmed the trial court's ruling and stated that Article 1229[190] of the Civil Code allows for the reduction of penalty charges that are unconscionable.[191] The Court of Appeals discussed that:

> The penalties imposed by PNB are clearly unconscionable. Any doubt as to this fact can be removed by simply glancing at the penalties charged by defendant-appellant which . . . already amounted to an incredibly huge amount of ₱176,098,045.94 despite payments that already exceeded the amount of the loan as of 1998.
>
> With respect to attorney's fees, the Supreme Court had consistently

[189] *Id.* at 124.

[190] CIVIL CODE, Art. 1229 provides:

> Article 1229. The judge shall equitable reduce the penalty when the principal obligation has been partly or irregularly complied with by the debtor. Even if there has been no performance, the penalty may also be reduced by the courts if it is iniquitous or unconscionable.

[191] *Rollo* (G.R. No. 196958), pp. 125-126.

and invariably ruled that even with the presence of an agreement between the parties, the court may nevertheless reduce attorney's fees though fixed in the contract when the amount thereof appears to be unconscionable or unreasonable. Again, the fact that the attorney's fees imposed by PNB are unconscionable and unreasonable can clearly be seen. The attorney's fees imposed similarly points to an incredibly huge sum of ₱136,900,928.85 as of October 30, 2000. Therefore, its reduction in the assailed decision is well-grounded.[192] (Citation omitted)

The dispositive portion of the Court of Appeals Decision states:

WHEREFORE, the assailed Decision dated June 19, 2002 and Order dated August 13, 2002 of the Regional Trial Court of Davao City, Branch 17 in Civil Case No. 28,170-2000 declaring the unilateral imposition of interest rates by defendant-appellant PNB as null and void appealed from are **AFFIRMED with the MODIFICATION** that the obligation of plaintiffs-appellees arising from the Loan and Revolving Credit Line and subsequent *Conversion, Restructuring and Extension Agreement* as Loan I and Loan II shall earn interest at the legal rate of twelve percent (12%) per annum computed from September 1, 1993, until fully paid and satisfied.

SO ORDERED.[193] (Emphasis in the original)

Philippine National Bank moved for reconsideration on September 3, 2009,[194] arguing that the interest rates were "mutually agreed upon[;]"[195] that Spouses Limso and Davao Sunrise "never questioned the . . . interest rates[;]"[196] and that they "acknowledged the total amount of their debt (inclusive of loan principal and accrued interest) to [Philippine National Bank] in the Conversion, Restructuring and Extension Agreement which restructured their obligation to [Philippine National Bank]

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[192] *Id.*

[193] *Id.* at 126-127.

[194] *Id.* at 45, Petition for Review.

[195] *Id.* at 154, Court of Appeals Resolution in CA-G.R. CV No. 79732-MIN.

[196] *Id.*

in the amount of P1.067 Billion[.]"[197]

Spouses Limso and Davao Sunrise moved for partial reconsideration on September 9, 2009,[198] pointing out that their obligation to Philippine National Bank was only ₱205,084,682.61, as stated in the trial court's Order dated August 13, 2002 in Civil Case No. 28,170-2000.[199]

Both Motions were denied by the Court of Appeals in the Resolution[200] dated May 18, 2011.

The Court of Appeals held that Philippine National Bank's Motion for Reconsideration raised issues that were a mere rehash of the issues already ruled upon.[201]

With regard to Spouses Limso and Davao Sunrise's Motion for Partial Reconsideration, the Court of Appeals ruled that:

> Since the appellees did not appeal from the decision of the lower court, they are not entitled to any award of affirmative relief. It is well settled that an appellee who has not himself appealed cannot obtain from the appellate court any affirmative relief other than those granted in the decision of the court below. The appellee can only advance any argument that he may deem necessary to defeat the appellant's claim or to uphold the decision that is being disputed. . . . Thus, the lower court's finding that the appellees have an unpaid obligation with PNB, and not the other way around, should stand. It bears stressing that appellees even acknowledged their outstanding indebtedness with the PNB when they filed their "Urgent Motion

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[197] *Id.*

[198] *Id.* at 45, Petition for Review.

[199] *Id.* at 160, Court of Appeals Resolution in CA-G.R. CV No. 79732-MIN.

[200] *Id.* at 153-168. The Resolution was penned by Associate Justice Romulo V. Borja (Chair), concurred in by Associate Justices Edgardo A. Camello and Zenaida Galapate Laguilles, and dissented from by Associate Justices Rodrigo F. Lim, Jr. and Edgardo T. Lloren, of the Special Former Special Twenty-Second Division, Mindanao Station. Associate Justice Lim, Jr. penned a Dissenting Opinion.

[201] *Id.* at 160.

for Execution Pending Appeal" of the August 13, 2002 Order of the lower court decreeing that appellees' remaining obligation with PNB is ₱205,084,682.61. They cannot now claim that PNB is the one indebted to them in the amount of ₱15,915,588.89.[202]

Philippine National Bank filed a Petition for Review on Certiorari[203] assailing the Decision in CA-G.R. CV No. 79732-MIN. Philippine National Bank argues that there was mutuality of contracts between the parties, and that the interest rates imposed were valid in view of the escalation clauses in their contract.[204] Philippine National Bank's Petition for Review was docketed as G.R. No. 196958.[205]

Spouses Limso and Davao Sunrise also filed a Petition for Review[206] on Certiorari questioning the ruling of the Court of Appeals in CA-G.R. CV No. 79732-MIN that their outstanding obligation was ₱803,185,411.11.[207] Spouses Limso and Davao Sunrise argue that they "made overpayments in the amount of ₱15,915,588.89."[208] This was docketed as G.R. No. 197120.[209]

On January 21, 2013, the Court of Appeals dismissed Philippine National Bank's appeal docketed as CA-G.R. CV No. 01464-MIN (referring to the Petition for the Issuance of a Writ of Possession) on the ground that Philippine National Bank availed itself of the wrong remedy.[210] What the Philippine National Bank should have filed was a "petition for review under Rule 45 and not an appeal under Rule 41[.]"[211]

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[202] *Id.* at 167.

[203] *Id.* at 8-96.

[204] *Id.* at 56-75.

[205] *Id.* at 8.

[206] *Rollo* (G.R. No. 197120), pp. 3-39.

[207] *Id.* at 4.

[208] *Id.*

[209] *Id.* at 3.

[210] *Rollo* (G.R. No. 205463), pp. 65-66, Court of Appeals Decision in CA-G.R. CV No. 01464-MIN.

On March 15, 2013, the Philippine National Bank filed a Petition for Review on Certiorari[212] before this court, assailing the dismissal of its appeal before the Court of Appeals and praying that the Decision of the trial court — that the Sheriff's Provisional Certificate of Sale was not signed by the Register of Deeds and was not registered — be reversed and set aside. The Petition was docketed as G.R. No. 205463.[213]

G.R. No. 158622 was filed on July 1, 2003;[214] G.R. No. 169441 was filed on September 14, 2005;[215] G.R. No. 172958 was filed on June 26, 2006;[216] G.R. No. 173194 was filed on July 21, 2006;[217] G.R. No. 196958 was filed on June 17, 2011;[218] G.R. No. 197120 was filed on June 22, 2011;[219] and G.R. No. 205463 was filed on March 15, 2013.[220]

In the Manifestation and Motion[245] dated May 26, 2006, Davao Sunrise prayed that it be allowed to withdraw G.R. No. 169441

Docket Number	Original Case	Assailed Order/ Decision
G.R. No. 158622	Petition for Declaratory Relief with Prayer for Issuance of Preliminary Injunction and Application for Temporary Restraining Order[221]	Court of Appeals Decision dated December 11, 2002 dismissing the Petition for Certiorari filed by Philippine National

[211] *Id.* at 23-24, Petition for Review on *Certiorari.*

[212] *Id.* at 8-52.

[213] *Id.* at 8.

[214] *Rollo* (G.R. No. 158622, Vol. I), p. 3, Petition for Review on *Certiorari.*

[215] *Rollo* (G.R. No. 169441), p. 3, Petition for Review.

[216] *Rollo* (G.R. No. 172958), p. 66, Petition for Review.

[217] *Rollo* (G.R. No. 173194), p. 45, Petition for Review.

[218] *Rollo* (G.R. No. 196958), p. 8, Petition for Review.

[219] *Rollo* (G.R. No. 197120), p. 3, Petition for Review.

[220] *Rollo* (G.R. No. 205463), p. 8, Petition for Review on *Certiorari.*

[221] *Rollo* (G.R. No. 158622, Vol. I), p. 205, Regional Trial Court Order in SP. Civil Case No. 29,036-2002.

		Bank. The Petition for Certiorari questioned the issuance of a writ of preliminary injunction in favor of Spouses Limso and Davao Sunrise.[222]
G.R. No. 169441	Ex-Parte Petition[223] for Issuance of Writ of Possession under Act No. 3135 filed by Philippine National Bank, praying that it be granted possession over four (4) parcels of land owned by Davao Sunrise	Court of Appeals Decision dated September 1, 2004 and Resolution dated August 11, 2005.[224] Spouses Limso and Davao Sunrise filed a Motion to Inhibit Judge Quitain, which was denied by Judge Quitain. Thus, Spouses Limso and Davao Sunrise questioned the denial of their Motion before the Court of Appeals.[225]
G.R. No. 172958	Ex-Parte Petition[226] for Issuance of the Writ of Possession under Act No.	Court of Appeals Decision[227] dated September 1, 2005 and Resolution[228] dated May 26, 2006. The Petition for Certiorari

[222] *Id.* at 94, Court of Appeals Decision in CA G.R. SP. No. 71527.

[223] *Rollo* (G.R. No. 169441), pp. 640-647.

[224] *Id.* at 3, Petition for Review.

[225] *Id.* at 18-20 and 22.

[226] *Rollo* (G.R. No. 169441), pp. 640-647.

[227] *Rollo* (G.R. No. 172958), pp. 131-149. The Decision was penned by Associate Justice Edgardo A. Camello and concurred in by Associate Justices Teresita Dy-Liacco Flores (Chair) and Myrna Dimaranan-Vidal of the Twenty-First Division.

[228] *Id.* at 150-156. The Resolution was penned by Associate Justice Edgardo A. Camello and concurred in by Associate Justices Teresita Dy-

	3135 filed by Philippine National Bank, praying that it be granted possession over four (4) parcels of land owned by Davao Sunrise	and Prohibition filed by Spouses Limso and Davao Sunrise assailed two Orders of Judge Quitain, which denied their Motion to Expunge and/orDismiss Petition for Issuance of Writ of Possession.[229]
G.R. No. 173194	Petition for Reformation or Annulment of Contract with Damages filed by Spouses Limso and Davao Sunrise[230]	Court of Appeals Resolution[231] dated March 2, 2006, which denied Philippine National Bank's (1) Application to Hold [Spouses Limso and Davao Sunrise] and the Surety Bond Company Jointly and Severally Liable for Damages on the Injunction Bond, and (2) Application for the Appointment of [Philippine National Bank] as Receiver.

Liacco Flores (Chair) and Myrna Dimaranan-Vidal of the Former Twenty-First Division.

[229] *Id.* at 132, Court of Appeals Decision in CA G.R. SP No. 85847.

[230] *Rollo* (G.R. No. 173194), pp. 131-148, Amended Complaint in Civil Case No. 28,170-2000.

[231] *Id.* at 77-82. The Resolution was penned by Associate Justice Normandie B. Pizarro and concurred in by Associate Justices Edgardo A. Camello (Chair) and Ricardo R. Rosario of the Twenty-Third Division.

		Also assailed was the Court of Appeals Resolution[232] dated May 26, 2006, which denied the Motion for Reconsideration filed by Philippine National Bank.
G.R. No. 196958	Petition for Reformation or Annulment of Contract with Damages filed by Davao Sunrise and Spouses Limso[233]	Court of Appeals Decision[234] dated August 13, 2009 and Court of Appeals Resolution[235] dated May 18, 2011 docketed as CA-G.R. CV No. 79732-Min.

[232] *Id.* at 84-86. The Resolution was penned by Associate Justice Normandie B. Pizarro and concurred in by Associate Justices Edgardo A. Camello (Chair) and Ramon R. Garcia of the Special Twenty-Third Division.

[233] *Rollo* (G.R. No. 196958), p. 16. Petition for Review.

[234] *Id.* at 98-127, Court of Appeals Decision in CA-G.R. CV No. 79732-MIN. The Decision was penned by Associate Justice Ruben C. Ayson, concurred in by Associate Justices Romulo V. Borja (Chair) and Edgardo A. Camello, and dissented from by Associate Justices Rodrigo F. Lim, Jr. and Michael P. Elbinias of the Special Division of Five, Mindanao Station. Associate Justice Camello penned a Concurring Opinion. Associate Justice Lim, Jr. penned a Separate Dissenting Opinion. The dispositive portion of the Court of Appeals decision stated:

> Wherefore, the assailed Decision dated June 19, 2002 and Order dated August 13, 2002 of the Regional Trial Court of Davao City, Branch 17 in Civil Case No. 28, 170-2000 declaring the unilateral imposition of interest rates by defendant-appellant PNB as null and void appealed from are affirmed with the modification that the obligation of plaintiffs-appellees arising from the Loan and Revolving Credit Line and subsequent Conversion, Restructuring and Extension Agreement as Loan I and Loan II should earn interest at the legal rate of twelve percent (12%) per annum computed from September 1, 1993 until fully paid and satisfied.

[235] *Id.* at 153-168, Court of Appeals Resolution in CA-G.R. CV No. 79732-MIN. The Resolution was penned by Associate Justice Romulo V. Borja (Chair), concurred in by Associate Justices Edgardo A. Camello and Zenaida Galapate Laguilles, and dissented from by Associate Justices Rodrigo

		The decision dated August 13, 2009 affirmed with modification the decision of the trial court in Civil Case No. 28,170-2000.[236] The Resolution dated May 18, 2011 in CA-G.R. CV No. 79732-Min denied the Motion for Reconsideration filed by Philippine National Bank and also denied the Motion for Partial Reconsideration filed by Spouses Limso and Davao Sunrise.[237] The Rule 41 appeal was filed by Philippine National Bank.[238]
G.R. No. 197120	Petition[239] for Reformation or Annulment of Contract	Court of Appeals Decision[240] dated

F. Lim, Jr. and Edgardo T. Lloren of the Special Former Special Twenty-Second Division, Mindanao Station. Associate Justice Lim, Jr. penned a Dissenting Opinion. The dispositive portion of the Resolution states:

> Wherefore, the Motion for Reconsideration dated September 3, 2009 filed by defendant-appellant, Philippine National Bank and the Motion for Partial Reconsideration dated September 4, 2009 filed by plaintiffs-appellees Davao Sunrise Investment and Development Corporation and Spouses Robert Alan L. Limso and Nancy Lee Limso, are BOTH DENIED for lack of merit.
>
> SO ORDERED.

[236] *Rollo* (G.R. No. 196958), pp. 98-127.

[237] *Id.* at 153-168.

[238] *Id.* at 98.

[239] *Rollo* (G.R. No. 197120), pp. 235-252.

[240] *Id.* at 44-73. The Decision was penned by Associate Justice Ruben C. Ayson, concurred in by Associate Justices Romulo V. Borja (Chair) and

	with Damages filed by Spouses Limso and Davao Sunrise	August 13, 2009 and Court of Appeals Resolution[241] dated May 18, 2011. Spouses Limso and Davao Sunrise assailed the portion of the Court of Appeals Decision stating that their outstanding obligation was ₱803,185,411.11.[242]
G.R. No. 205463	Ex-Parte Petition for Issuance of the Writ of Possession under Act No. 3135 filed by Philippine National Bank, praying that it be granted possession over four parcels of land owned by Davao Sunrise[243]	Court of Appeals Decision[244] dated January 21, 2013 dismissing the appeal under Rule 41 filed by Philippine National Bank for being the wrong remedy.

Edgardo A. Camello, and dissented from by Associate Justices Rodrigo F. Lim, Jr. and Michael P. Elbinias of the Special Division of Five, Mindanao Station. Associate Justice Camello penned a Concurring Opinion. Associate Justice Lim, Jr. penned a Separate Dissenting Opinion.

241 *Id.* at 99-114. The Resolution was penned by Associate Justice Romulo V. Borja (Chair), concurred in by Associate Justices Edgardo A. Camello and Zenaida Galapate Laguilles, and dissented from by Associate Justices Rodrigo F. Lim, Jr. and Edgardo T. Lloren, of the Special Former Special Twenty-Second Division, Mindanao Station. Associate Justice Lim, Jr. penned a Dissenting Opinion.

242 *Id.* at 4, Petition for Review.

243 *Rollo* (G.R. No. 205463), p. 56, Court of Appeals Decision in CA-G.R. CV No. 01464-MIN.

244 *Id.* at 55-66. The Decision was penned by Associate Justice Romulo V. Borja and concurred in by Associate Justices Ma. Luisa Quijano-Padilla and Marie Christine Azcarraga-Jacob of the Twenty-First Division.

since the issues in the Petition had become moot and academic.

In the Resolution[246] dated August 7, 2006, this court consolidated G.R. Nos. 172958, 173194, and 169441, with G.R. No. 158622 as the lowest-numbered case.

Davao Sunrise's Manifestation and Motion dated May 26, 2006, which prayed that it be allowed to withdraw G.R. No. 169441, was granted in the Resolution[247] dated October 16, 2006. Thus, G.R. No. 169441 was deemed closed and terminated as of October 16, 2006.[248]

In the Resolution[249] dated March 7, 2007 in G.R. No. 173194, this court required respondents Spouses Limso and Davao Sunrise to file their comment.

In the Resolution[250] dated July 4, 2011, G.R. No. 197120 was consolidated with G.R. No. 196958.

On May 17, 2012, counsel for Spouses Limso and Davao Sunrise notified this court of the death of Robert Alan L. Limso.[251]

On October 9, 2013, Spouses Limso and Davao Sunrise filed a Motion to Withdraw Petitions in G.R. Nos. 172958, 169441 and 158622.[252] Davao Sunrise and Spouses Limso, through counsel, explained that G.R. No. 169441 had been mooted by Judge Quitain's voluntary inhibition from hearing and deciding Other Case No. 124-2002.[253]

After Judge Quitain had inhibited, Other Case No. 124-

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[245] *Rollo* (G.R. No. 169441), pp. 3000-3003.

[246] *Rollo* (G.R. No. 158622, Vol. I), pp. 1422-1423.

[247] *Rollo* (G.R. No. 169441), pp. 1775-1776.

[248] *Id.* at 1776.

[249] *Rollo* (G.R. No. 173194), pp. 470A-470B.

[250] *Rollo* (G.R. No. 197120), pp. 565-566.

[251] *Rollo* (G.R. No. 196958), pp. 381-382, Notice of Death.

[252] *Rollo* (G.R. No. 158622, Vol. II), pp. 1140-1149.

[253] *Id.* at 1142-1143.

2002 was re-raffled to Branch 16 of the Regional Trial Court of Davao City.[254] Other Case No. 124-2002 was dismissed in the Order[255] dated February 16, 2007. Since Other Case No. 124-2002 was dismissed, G.R. No. 172958 was mooted as well.[256]

With regard to G.R. No. 158622, counsel for Spouses Limso and Davao Sunrise explained:

> It is clear, however, that the ruling of the Regional Trial Court of Davao City in Civil Case No. 28,170-2000 and the Court of Appeals in CA G.R. No. 79732 already rendered Civil Case No. 29,036-2002 moot and academic. Under the premises, there is no need for this Honorable Court to rule on the propriety of the dismissal of the said action for *Declaratory Relief* as the loan agreements — from which the entire case stemmed — had already been declared **NULL AND VOID**.[257] (Emphasis in the original)

In the Resolution[258] dated March 12, 2014, this court granted the Motion to Withdraw Petitions with regard to G.R. Nos. 172958 and 158622. The prayer for the withdrawal of G.R. No. 169441 was noted without action since G.R. No. 169441 was deemed closed and terminated in this court's Resolution dated October 16, 2006.[259]

On April 2, 2014, Spouses Limso and Davao Sunrise filed an "Omnibus Motion for Leave [1] To Intervene; [2] To File/Admit Herein Attached Comment-in-Intervention; and [3] To

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[254] *Id.* at 1158, Regional Trial Court Order in Other Case No. 124-2002.

[255] *Id.* at 1158-1160. The Order was penned by Presiding Judge Emmanuel C. Carpio of Branch 16, Regional Trial Court, Davao City.

[256] *Id.* at 1143-1144, Spouses Limso and Davao Sunrise's Motion to Withdraw Petitions in G.R. Nos. 172958, 169441, and 158622.

[257] *Id.* at 1147.

[258] *Rollo* (G.R. No. 205463), p. 1087.

[259] *Id.*

Consolidate Cases"[260] in G.R. No. 205463.

Spouses Limso and Davao Sunrise argue that they were allowed to participate in Other Case No. 124-2002, and that Philippine National Bank was in bad faith when it did not furnish Nancy Limso and Davao Sunrise copies of the Petition for Review it had filed.[261]

In the Resolution[262] dated April 2, 2014, this court gave due course to the Petition and required the parties to submit their memoranda.

On April 15, 2014, Spouses Limso and Davao Sunrise filed a Motion to Dismiss the Petition in G.R. No. 173194 on the ground that the issues raised by Philippine National Bank are moot and academic. Spouses Limso and Davao Sunrise also reiterated that Philippine National Bank availed of the wrong remedy.[263]

In the Resolution[264] dated July 9, 2014, this court recommended the consolidation of G.R. No. 205463 with G.R. Nos. 158622, 169441, 172958, 173194, 196958, and 197120.

In the Resolution[265] dated October 13, 2014, this court noted and granted the Omnibus Motion for Leave to Intervene filed by counsel for Nancy Limso and Davao Sunrise.[266] This court also noted the memoranda filed by counsel for Philippine National Bank, the Office of the Solicitor General, and counsel for Spouses Limso and Davao Sunrise.[267]

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[260] *Id.* at 111-125.

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

[262] *Id.* at 108-109.

[263] *Id.* at 983-1005.

[264] *Id.* at 968-969.

[265] *Id.* at 972-973.

[266] *Id.* at 972.

[267] *Id.* at 973.

The remaining issues for resolution are those raised in G.R. Nos. 173194, 196958, 197120, and 205463, which are:

First, whether the Philippine National Bank's Petition for Review on Certiorari in G.R. No. 173194 is the wrong remedy to assail the March 2, 2006 Court of Appeals Resolution,[268] which denied Philippine National Bank's (1) Application to Hold [Spouses Limso and Davao Sunrise] and the Surety Bond Company Jointly and Severally Liable for Damages on the Injunction Bond, and (2) Application for the Appointment of [Philippine National Bank] as Receiver;

Second, whether Philippine National Bank committed forum shopping when it filed an ex-parte Petition for the Issuance of a Writ of Possession and an Application to be Appointed as Receiver;

Third, whether the Court of Appeals erred in ruling that the interest rates imposed by Philippine National Bank were usurious and unconscionable;

Fourth, whether the Conversion, Restructuring and Extension Agreement executed in 1999 novated the original Loan and Credit Agreement executed in 1993;

Fifth, whether the Court of Appeals erred in dismissing the appeal under Rule 41 filed by Philippine National Bank, which assailed the Court of Appeals Decision dated January 21, 2013 in CA-G.R. CV No. 01464-MIN, for being the wrong remedy;

Sixth, whether the Sheriff's Provisional Certificate of Sale should be considered registered in view of the entry made by the Register of Deeds in the Primary Entry Book; and

Lastly, whether Philippine National Bank is entitled to a writ of possession.

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[268] *Id.* at 77-82. The Resolution was penned by Associate Justice Normandie B. Pizarro and concurred in by Associate Justices Edgardo A. Camello (Chair) and Ricardo R. Rosario of the Twenty-Third Division.

I

The Petition for Review in G.R. No. 173194 should be denied.

The Petition docketed as G.R. No. 173194, filed by Philippine National Bank, questions the Court of Appeals Resolutions in CA-G.R. CV No. 79732-MIN dated March 2, 2006 and May 26, 2006, which denied Philippine National Bank's applications for damages on the injunction bond and to be appointed as receiver.[269]

The assailed Resolutions in G.R. No. 173194 are interlocutory orders and are not appealable.

Rule 41, Section 1[270] of the Rules of Court provides:

SECTION 1. Subject of Appeal. — An appeal may be taken from a judgment or final order that completely disposes of the case, or of a particular matter therein when declared by these Rules to be appealable.

No appeal may be taken from:

x x x x x x x x x

(b) An interlocutory order;

x x x x x x x x x

In any of the foregoing circumstances, the aggrieved party may file an appropriate special civil action as provided in Rule 65.

In addition, Rule 45, Section 1 of the Rules of Court provides:

SECTION 1. Filing of Petition with Supreme Court. — A party desiring to appeal by certiorari *from a judgment, final order or resolution* of the Court of Appeals, the Sandiganbayan, the Court of Tax Appeals, the Regional Trial Court or other courts, whenever authorized by law, may file with the Supreme Court a verified petition for review on certiorari[.] (Emphasis supplied)

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[269] *Id.* at 1001-1002.

[270] As amended by A.M. 07-7-12-SC.

The difference between an interlocutory order and a final order was discussed in *United Overseas Bank v. Judge Ros*: [271]

> The word interlocutory refers to something intervening between the commencement and the end of the suit which decides some point or matter but is not a final decision of the whole controversy. This Court had the occasion to distinguish a final order or resolution from an interlocutory one in the case of *Investments, Inc. v. Court of Appeals*, thus:
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> > x x x A "final" judgment or order is one that finally disposes of a case, leaving nothing more to be done by the Court in respect thereto, *e.g.*, an adjudication on the merits which, on the basis of the evidence presented on the trial, declares categorically what the rights and obligations of the parties are and which party is in the right; or a judgment or order that dismisses an action on the ground, for instance, of *res judicata* or prescription. Once rendered, the task of the Court is ended, as far as deciding the controversy or determining the rights and liabilities of the litigants is concerned. Nothing more remains to be done by the Court except to await the parties' next move (which among others, may consist of the filing of a motion for new trial or reconsideration, or the taking of an appeal) and ultimately, of course, to cause the execution of the judgment once it becomes "final" or, to use the established and more distinctive term, "final and executory."
>
> x x x x x x x x x
>
> > Conversely, an order that does not finally dispose of the case, and does not end the Court's task of adjudicating the parties' contentions and determining their rights and liabilities as regards each other, but obviously indicates that other things remain to be done by the Court, is "interlocutory" *e.g.*, an order denying motion to dismiss under Rule 16 of the Rules, or granting of motion on extension of time to file a pleading, or authorizing amendment thereof, or granting or denying applications for postponement, or production or inspection of documents or things, *etc*. Unlike a "final" judgment or order, which is appealable, as above pointed out, an "interlocutory" order may

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[271] 556 Phil. 178 (2007) [Per *J*. Chico-Nazario, Third Division].

not be questioned on appeal except only as part of an appeal that may eventually be taken from the final judgment rendered in the case.[272] (Citations omitted)

The Resolutions denying Philippine National Bank's applications were interlocutory orders since the Resolutions did not dispose of the merits of the main case.

CA-G.R. CV No. 79732-MIN originated from Civil Case No. 28,170-2000, which involved the issues regarding the interest rates imposed by Philippine National Bank. Hence, the denial of Philippine National Bank's applications did not determine the issues on the interest rates imposed by Philippine National Bank.

The proper remedy for Philippine National Bank would have been to file a petition for certiorari under Rule 65 or, in the alternative, to await the outcome of the main case and file an appeal, raising the denial of its applications as an assignment of error.

In any case, we continue to resolve the arguments raised in G.R. No. 173194.

Philippine National Bank argues in its Petition for Review docketed as G.R. No. 173194 that its application to hold the injunction bond liable for damages was filed on time. It points out that the phrase "before the judgment becomes executory" found in Section 20[273] of Rule 57 refers to the judgment in the main case, which, in this case, refers to CA-G.R. CV No. 79732.[274]

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

[273] RULES OF COURT, Rule 57, Sec. 20 provides:

SECTION 20. Claim for Damages on Account of Improper, Irregular or Excessive Attachment. — An application for damages on account of improper, irregular or excessive attachment must be filed before the trial or before appeal is perfected or before the judgment becomes executory, with due notice to the attaching party and his surety or sureties, setting forth the facts showing his right to damages and the amount thereof. Such damages may be awarded only after proper hearing and shall be included in the judgment on the main case[.]

[274] *Rollo* (G.R. No. 173194), p. 65, Petition for Review. Note that CA-

Philippine National Bank also argues that the Court of Appeals erred in denying its application to be appointed as receiver because although the Sheriff's Provisional Certificate of Sale was not registered, the Certificate of Sale "provides the basis for [Philippine National Bank] to claim ownership over the foreclosed properties."[275] As the highest bidder, Philippine National Bank had the right to receive the rental income of the foreclosed properties.[276]

Spouses Limso and Davao Sunrise filed their Comment,[277] countering that the Court of Appeals did not err in denying Philippine National Bank's applications to hold the injunction bond liable for damages and to be appointed as receiver.[278] They cite *San Beda College v. Social Security System*,[279] where this court ruled that "the claim for damages for wrongful issuance of injunction must be filed before the finality of the decree dissolving the questioned writ."[280]

They highlight Philippine National Bank's admission that the writ of preliminary injunction was dissolved in January 2002, and that the Decision[281] dissolving the writ attained finality on September 11, 2002.[282]

Spouses Limso and Davao Sunrise further point out that while CA-G.R. CV No. 79732 was still pending before the Court of Appeals, "the decree dissolving the questioned Writ of

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G.R. CV No. 79732 was subsequently re-docketed as CA-G.R. CV No. 79732-MIN.

[275] *Id.* at 67.

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

[277] *Id.* at 471-498.

[278] *Id.* at 477-481.

[279] 144 Phil. 143 (1970) [Per *J.* J.B.L. Reyes, *En Banc*].

[280] *Rollo* (G.R. No. 173194), p. 479, Comment.

[281] This Decision refers to that in G.R. No. 152812.

[282] *Rollo* (G.R. No. 173194), pp. 478-479, Comment.

Preliminary Injunction had already become final."[283] Thus, Philippine National Bank filed its application out of time.[284]

They argue that in any case, Philippine National Bank cannot claim damages on the injunction bond since it was unable to secure a judgment in its favor in Civil Case No. 28,170-2000.[285]

They further argue that the Court of Appeals was correct in denying Philippine National Bank's application to be appointed as receiver on the ground that Philippine National Bank is a party to the case and hence, it cannot be appointed as receiver.[286]

Spouses Limso and Davao Sunrise then allege that Philippine National Bank is guilty of forum shopping. They argue that Philippine National Bank's ex-parte Petition for the issuance of a writ of possession, docketed as Other Case No. 124-2002, and the application to be appointed as receiver have the same purpose: to obtain possession of the properties.[287]

Philippine National Bank, through counsel, filed its Reply, countering that *San Beda College* was decided when the 1964 Rules of Court was still in effect.[288] It argues that the cited case is no longer applicable because the 1964 Rules was superseded by the 1997 Rules of Civil Procedure.[289] The applicable case is *Hanil Development Co., Ltd. v. Intermediate Appellate Court*,[290] where this court ruled that "the judgment against the attachment bond could be included in the final judgment of the main case."[291]

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[283] *Id.* at 480.

[284] *Id.* at 480-481.

[285] *Id.* at 481.

[286] *Id.* at 488.

[287] *Id.* at 492.

[288] *Id.* at 666, Reply.

[289] *Id.* at 667.

[290] 228 Phil. 529 (1986) [Per *J.* Gutierrez, Jr., Second Division].

[291] *Rollo* (G.R. No. 173194), p. 667, Reply.

Philippine National Bank also argued that under the 1997 Rules of Civil Procedure, the applicant for damages does not have to be the winning party.[292]

Philippine National Bank further argues that it did not commit forum shopping since "there is no identity of parties between CA G.R. CV No. 79732 . . . and Other Case No. 124-2002."[293] The causes of action and reliefs sought in the two cases are different.[294] It points out that its application to be appointed as receiver is a provisional remedy under Rule 59 of the 1997 Rules of Civil Procedure, while its prayer for the issuance of a writ of possession in Other Case No. 124-2002 is based on its right to possess the properties involved.[295]

We rule that the Court of Appeals properly denied Philippine National Bank's application to hold the injunction bond liable for damages and be appointed as receiver. We also rule that no forum shopping was committed by Philippine National Bank. However, the Court of Appeals erred in ruling that Philippine National Bank filed its application to hold the injunction bond liable for damages out of time.

The Court of Appeals, in its Resolution dated March 2, 2006, explained:

> Records show that when this Court annulled the RTC's order of injunction, Davao Sunrise thereafter elevated the matter to the Supreme Court. On July 24, 2002, the Supreme Court denied its petition for having been filed out of time and an Entry of Judgment was issued on Sept[ember] 11, 2002.
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> PNB's instant application however was filed only on February 17, 2005 and/or in the course of its appeal on the main case — about two (2) years and five (5) months after the judgment annulling the injunction order attained finality.

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[292] *Id.* at 671-674.

[293] *Id.* at 683.

[294] *Id.* at 684.

[295] *Id.*

Clearly, despite that it already obtained a favorable judgment on the injunction matter, PNB failed to file (before the court *a quo*) an application for damages against the bond before judgment was rendered in the main case by the court *a quo*. Thus, even for this reason alone, Davao Sunrise and its bondsman are relieved of further liability thereunder.[296] (Citations omitted)

The Petition referred to by the Court of Appeals in the quoted Resolution was docketed as G.R. No. 152812 and was entitled *Davao Sunrise Investment and Development Corporation, et al. v. Court of Appeals, et al*.[297] G.R. No. 152812 originated from CA G.R. SP No. 63351.[298] CA G.R. SP No. 63351 was a Petition for Certiorari filed by Philippine National Bank, which questioned the issuance of a writ of preliminary injunction in Civil Case No. 28,170-2000.[299]

In the Decision[300] dated January 10, 2002, the Court of Appeals granted Philippine National Bank's Petition for Certiorari and held that:

In the case at bar, respondents' claim to a right to preliminary injunction based on PNB's purported unilateral imposition of interest rates and subsequent increases thereof, is not a right warranting the issuance of an injunction to halt the foreclosure proceedings. On the contrary, it is petitioner bank which has proven its right to foreclose respondents' mortgaged properties, especially since respondents have admitted their indebtedness to PNB and merely questioning the interest rates imposed by the bank. . . .

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[296] *Rollo* (G.R. No. 173194), pp. 79-80, Court of Appeals Resolution in CA-G.R. CV No. 79732. The injunction referred to is the writ of preliminary injunction issued in Civil Case No. 28,170-2000.

[297] *Id.* at 216, Supreme Court Resolution.

[298] *Id.* at 55-56, Petition for Review.

[299] *Id.* at 201-202, Court of Appeals Decision in CA G.R. SP No. 63351.

[300] *Id.* at 201-215. The Decision was penned by Associate Justice Salvador J. Valdez, Jr. (Chair) and concurred in by Associate Justices Mercedes Gozo-Dadole and Sergio L. Pestaño of the Fifteenth Division.

Above all, the core and ultimate issue raised in the main case below is the interest stipulation in the loan agreements between the petitioner and private respondents, the validity of which is still to be determined by the lower court. Injunctive relief cannot be made to rest on the assumption that said interest stipulation is void as it would preempt the merits of the main case.

WHEREFORE, premises considered, the assailed Orders of respondent judge dated December 4 and 21, 2000 are hereby ANNULLED and SET ASIDE, and the Order dated November 20, 2000 denying private respondents prayer for the issuance of a writ of preliminary injunction is REINSTATED.

SO ORDERED.[301]

Spouses Limso and Davao Sunrise assailed the Decision in CA-G.R. SP No. 63351 and filed before this court a Petition for Review, docketed as G.R. No. 152812. However, the Petition for Review was denied in the Resolution[302] dated July 24, 2002 for being filed out of time, and Entry of Judgment[303] was made on September 11, 2002.

The issuance of the writ of preliminary injunction in Civil Case No. 28,170-2000 was an interlocutory order, and was properly questioned by Philippine National Bank through a Petition for Certiorari.

However, the Court of Appeals erred in ruling that Philippine National Bank's application was filed out of time.

Section 20 of Rule 57 of the Rules of Civil Procedure provides:

SECTION 20. Claim for Damages on Account of Improper, Irregular or Excessive Attachment. — An application for damages on account of improper, irregular or excessive attachment must be filed before the trial or before appeal is perfected or before the judgment becomes executory, with due notice to the attaching party and his surety or sureties, setting forth the facts showing his right to damages and the

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[301] *Id.* at 212-215, Court of Appeals Decision in CA G.R. SP No. 63351.

[302] *Id.* at 216-217.

[303] *Id.* at 218.

amount thereof. Such damages may be awarded only after proper hearing and shall be included in the judgment on the main case.

If the judgment of the appellate court be favorable to the party against whom the attachment was issued, he must claim damages sustained during the pendency of the appeal by filing an application in the appellate court, with notice to the party in whose favor the attachment was issued or his surety or sureties, before the judgment of the appellate court becomes executory. The appellate court may allow the application to be heard and decided by the trial court.

Nothing herein contained shall prevent the party against whom the attachment was issued from recovering in the same action the damages awarded to him from any property of the attaching party not exempt from execution should the bond or deposit given by the latter be insufficient or fail to fully satisfy the award.

The judgment referred to in Section 20 of Rule 57 should mean the judgment in the main case. In *Carlos v. Sandoval*: [304]

Section 20 essentially allows the application to be filed at any time before the judgment becomes executory. It should be filed in the same case that is the main action, and cannot be instituted separately. It should be filed with the court having jurisdiction over the case at the time of the application. The remedy provided by law is exclusive and by failing to file a motion for the determination of the damages on time and while the judgment is still under the control of the court, the claimant loses his right to damages.[305] (Citations omitted)

In this case, Philippine National Bank filed its application[306] during the pendency of the appeal before the Court of Appeals. The application was dated January 12, 2005,[307] while the appeal in the main case, docketed as CA-G.R. CV No. 79732-MIN, was decided on August 13, 2009.[308] Hence, Philippine National

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[304] 508 Phil. 260 (2005) [Per *J.* Tinga, Second Division].

[305] *Id.* at 277-278.

[306] *Rollo* (G.R. No. 173194), pp. 262-272.

[307] *Id.* at 271.

[308] *Rollo* (G.R. No. 196958), p. 98, Court of Appeals Decision in CA-G.R. CV No. 79732-MIN.

Bank's application to hold the injunction bond liable for damages was filed on time.

The Court of Appeals properly denied Philippine National Bank's application to be appointed as a receiver.

Rule 59, Section 1 provides the grounds when a receiver may be appointed:

SECTION 1. Appointment of Receiver. — Upon a verified application, one or more receivers of the property subject of the action or proceeding may be appointed by the court where the action is pending, or by the Court of Appeals or by the Supreme Court, or a member thereof, in the following cases:

(a) When it appears from the verified application, and such other proof as the court may require, that the party applying for the appointment of a receiver has an interest in the property or fund which is the subject of the action or proceeding, and that such property or fund is in danger of being lost, removed, or materially injured unless a receiver be appointed to administer and preserve it;

(b) When it appears in an action by the mortgagee for the foreclosure of a mortgage that the property is in danger of being wasted or dissipated or materially injured, and that its value is probably insufficient to discharge the mortgage debt, or that the parties have so stipulated in the contract of mortgage;

(c) After judgment, to preserve the property during the pendency of an appeal, or to dispose of it according to the judgment, or to aid execution when the execution has been returned unsatisfied or the judgment obligor refuses to apply his property in satisfaction of the judgment, or otherwise to carry the judgment into effect;

(d) Whenever in other cases it appears that the appointment of a receiver is the most convenient and feasible means of preserving, administering, or disposing of the property in litigation.

During the pendency of an appeal, the appellate court may allow an

application for the appointment of a receiver to be filed in and decided by the court of origin and the receiver appointed to be subject to the control of said court.

In *Commodities Storage & Ice Plant Corporation v. Court of Appeals*:[309]

> The general rule is that neither party to a litigation should be appointed as receiver without the consent of the other because a receiver should be a person indifferent to the parties and should be impartial and disinterested. The receiver is not the representative of any of the parties but of all of them to the end that their interests may be equally protected with the least possible inconvenience and expense.[310] (Citations omitted)

The Court of Appeals cited Spouses Limso and Davao Sunrise's objection to Philippine National Bank's application to be appointed as receiver as one of the grounds why the application should fail.[311]

Also, the Court of Appeals found that the mortgaged properties of Spouses Limso and Davao Sunrise were earning approximately ₱12,000,000.00 per month. This proves that the properties were being administered properly and did not require the appointment of a receiver. Also, to appoint Philippine National Bank as receiver would be premature since the trial court's Decision was pending appeal.[312]

Philippine National Bank did not commit forum shopping when it filed an ex-parte Petition for the issuance of a writ of possession and an application for appointment as receiver.

The elements of forum shopping are:

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[309] 340 Phil. 551 (1997) [Per *J.* Puno, Second Division].

[310] *Id.* at 559.

[311] *Rollo* (G.R. No. 173194), p. 33, Court of Appeals Resolution in CA-G.R. CV No. 79732.

[312] *Id.* at 33-34.

(a) identity of parties, or at least such parties as represent the same interests in both actions;

(b) identity of rights asserted and relief prayed for, the relief being founded on the same facts; and

(c) the identity of the two preceding particulars, such that any judgment rendered in the other action will, regardless of which party is successful, amount to *res judicata* in the action under consideration.[313] (Citation omitted)

There is no identity of parties because the party to the Petition for Issuance of Writ of Possession is Philippine National Bank only, while there are two parties to application for appointment as receiver: Philippine National Bank on one hand, and Spouses Limso and Davao Sunrise on the other.

The causes of action are also different. In the Petition for Issuance of Writ of Possession, Philippine National Bank prays that it be granted a writ of possession over the foreclosed properties because it is the winning bidder in the foreclosure sale.[314] On the other hand, Philippine National Bank's application to be appointed as receiver is for the purpose of preserving these properties pending the resolution of CA-G.R. CV No. 79732.[315] While the issuance of a writ of possession or the appointment as receiver would have the same result of granting possession of the foreclosed properties to Philippine National Bank, Philippine National Bank's right to possess these properties as the winning bidder in the foreclosure sale is different from its interest as creditor to preserve these properties.

II

There is no mutuality of contracts when the determination or imposition of interest rates is at the sole discretion of a party

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[313] *Ortigas & Company Limited Partnership v. Velasco*, G.R. No. 109645, January 21, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/january2015/109645.pdf> 39-40 [Per *J.* Leonen, Second Division].

[314] *Rollo* (G.R. No. 173194), p. 682, Philippine National Bank's Reply.

[315] *Id.* at 337-340, Application for the Appointment of PNB as Receiver.

to the contract. Further, escalation clauses in contracts are void when they allow the creditor to unilaterally adjust the interest rates without the consent of the debtor.

The Petitions docketed as G.R. Nos. 196958 and 197120 assail the Decision in CA-G.R. CV No. 79732-MIN.[316]

Philippine National Bank argues that the principle of mutuality of contracts was not violated because Spouses Limso and Davao Sunrise were notified as to the applicable interest rates, and their consent was obtained before the effectivity of the agreement.[317] There was no unilateral imposition of interest rates since the rates were dependent on the prevailing market rates.[318]

Philippine National Bank also argues that Spouses Limso and Davao Sunrise were regularly informed by Philippine National Bank of the interest rates imposed on their loan, as shown by Robert Alan L. Limso's signatures on the letters sent by Philippine National Bank.[319]

Philippine National Bank further argues that loan agreements with escalation clauses, by their nature, "would not indicate the exact rate of interest applicable to a loan precisely because it is made to depend by the parties to external factors such as market indicators and/or government regulations affecting the cost of money."[320]

Philippine National Bank cites *Solidbank Corp., (now Metropolitan Bank and Trust Company) v. Permanent Homes, Incorporated*,[321] where this court held that "contracts with

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[316] *Rollo* (G.R. No. 196958), p. 13, Petition for Review; *rollo* (G.R. No. 197120), p. 4, Petition for Review.

[317] *Rollo* (G.R. No. 196958), p. 52, Petition for Review.

[318] *Id.* at 61.

[319] *Id.* at 53-56.

[320] *Id.* at 63.

[321] 639 Phil. 289 (2010) [Per *J.* Carpio, Second Division].

escalation clause do not violate the principle of mutuality of contracts."[322]

Philippine National Bank contends that the Conversion, Restructuring and Extension Agreement novated the previous contracts with Spouses Limso and Davao Sunrise. In addition, the alleged infirmities in the previous contracts were set aside upon the execution of the Conversion, Restructuring and Extension Agreement.[323]

On the other hand, Spouses Limso and Davao Sunrise argue that the Court of Appeals did not err in ruling that the interest rates were imposed unilaterally. Spouses Limso and Davao Sunrise allege that the interest rates were not stipulated in writing, in violation of Article 1956 of the Civil Code.[324] Also, the Court of Appeals did not err in reducing the penalties and attorney's fees since Article 2227 of the Civil Code states:[325]

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

Spouses Limso and Davao Sunrise add that the letters sent by Philippine National Bank to Davao Sunrise were not agreements but mere notices that the interest rates were increased by Philippine National Bank.[326] Moreover, the letters were received by Davao Sunrise's employees who were not authorized to receive such letters.[327] Some of the letters did not even appear to have been received by anyone at all.[328]

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[322] *Rollo* (G.R. No. 196958), p. 71, Petition for Review.

[323] *Id.* at 78-79.

[324] *Id.* at 294, Comment.

[325] *Id.* at 321-322.

[326] *Id.* at 297-298.

[327] *Id.* at 298-300.

[328] *Id.* at 300-301.

Spouses Limso and Davao Sunrise allege that Philippine National Bank admitted that the penalties stated in the agreements were in the nature of liquidated damages.[329] Nevertheless, Spouses Limso and Davao Sunrise question the Court of Appeals' ruling insofar as it held that their remaining obligation to Philippine National Bank is ₱803,185,411.11 as of September 1, 2008. According to Spouses Limso and Davao Sunrise, they have overpaid Philippine National Bank in the amount of ₱15,915,588.89.[330]

Philippine National Bank counters that Davao Sunrise and Spouses Limso's promissory notes had a provision stating:

> [T]he rate of interest shall be set at the start of every Interest Period. For this purpose, I/We agree that the rate of interest herein stipulated may be increased or decreased for the subsequent Interest Periods, with **PRIOR NOTICE TO THE BORROWER** in the event of changes in the interest rate prescribed by law or the Monetary Board of Central Bank of the Philippines or in the Bank's overall cost of funds. I/We hereby agree that **IN THE EVENT I/WE ARE NOT AGREEABLE TO THE INTEREST RATE FIXED FOR ANY INTEREST PERIOD, I/WE HAVE THE OPTION TO PREPAY THE LOAN OR CREDIT FACILITY WITHOUT PENALTY** within ten (10) calendar days from the Interest Setting Date.[331] (Emphasis in the original)

As to the letters sent by Philippine National Bank, these letters were received by the Chief Finance Officer, Chairman, and President of Davao Sunrise. In addition, assuming that the employees who allegedly received the letters were not authorized to do so, the unauthorized acts were ratified by Spouses Limso and Davao Sunrise when they used the proceeds of the loan.[332]

We rule that there was no mutuality of contract between the parties since the interest rates imposed were based on the sole

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[329] *Id.* at 322.

[330] *Id.* at 292.

[331] *Id.* at 365, Reply.

[332] *Id.* at 367-368.

discretion of Philippine National Bank.[333] Further, the escalation clauses in the real estate mortgage "[did] not specify a fixed or base interest[.]"[334] Thus, the interest rates are invalid.

The principle of mutuality of contracts is stated in Article 1308 of the Civil Code as follows:

> Article 1308. The contract must bind both contracting parties; its validity or compliance cannot be left to the will of one of them.

The importance of the principle of mutuality of contracts was discussed in *Juico v. China Banking Corporation*:[335]

> The binding effect of any agreement between parties to a contract is premised on two settled principles: (1) that any obligation arising from contract has the force of law between the parties; and (2) that there must be mutuality between the parties based on their essential equality. Any contract which appears to be heavily weighed in favor of one of the parties so as to lead to an unconscionable result is void. Any stipulation regarding the validity or compliance of the contract which is left solely to the will of one of the parties, is likewise, invalid.[336] (Citation omitted)

When there is no mutuality between the parties to a contract, it means that the parties were not on equal footing when the terms of the contract were negotiated. Thus, the principle of mutuality of contracts dictates that a contract must be rendered void when the execution of its terms is skewed in favor of one party.[337]

The Court of Appeals also noted that since the interest rates imposed were at the sole discretion of Philippine National Bank, and that Spouses Limso and Davao Sunrise were merely notified

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[333] *Id.* at 304, Comment.

[334] *Id.* at 314.

[335] G.R. No. 187678, April 10, 2013, 695 SCRA 520 [Per *J.* Villarama, Jr., First Division].

[336] *Id.* at 531.

[337] *Allied Banking Corporation v. Court of Appeal*s, 348 Phil. 382, 390 (1998) [Per *J.* Bellosillo, First Division].

when there were changes in the interest rates, Philippine National Bank violated the principle of mutuality of contracts.[338] The Court of Appeals ruled that:

> We cannot subscribe to appellant bank's allegation that plaintiffs-appellees agreed to these interest rates by receiving various letters from PNB. Those letters cannot be construed as agreements as a simple reading of those letters would show that they are mere notices informing plaintiffs-appellees that the bank, through its top management, had already imposed interest rates on their loan. The uniform wordings of the said letters go this way:
>
> > This refers to your existing credit facility in the principal amount of ₱850.0 MM granted by the Philippine National Bank by and under the terms and conditions of that Credit Agreement dated 12.2.97 (Renewal of Credit Facility).
> >
> > We wish to advise you that the top management has approved an interest rate of 20.756% which will be used in computing the interest due on your existing peso and redenominated availments against the credit facility for the period July 20 to August 19, 1998.
> >
> > If you are amenable to this arrangement, please signify your conformity on the space provided below and return to us the original copy of the document. If we receive no written objection by the end of 10 days from date of receipt of this letter, we will take it to mean that you agree to the new interest rate we quote. On the other hand, if you disagree with the quoted rate, you will have to pay the loan in full within the same ten-day period otherwise, the entire loan will be considered due and demandable.[339] (Citation omitted)

The contents of the letter quoted by the Court of Appeals show that there was no room for negotiation among Philippine National Bank, Spouses Limso, and Davao Sunrise when it came to the applicable interest rate. Since there was no room for negotiations between the parties with regard to the increases

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[338] *Rollo* (G.R. No. 196958), p. 113, Court of Appeals Decision in CA-G.R. CV No. 79732-MIN.

[339] *Id.* at 121-122.

of the rates of interest, the principle of mutuality of contracts was violated. There was no meeting of the minds between Spouses Limso, Davao Sunrise, and Philippine National Bank because the increases in the interest rates were imposed on them unilaterally.

Meeting of the minds between parties to a contract is manifested when the elements of a valid contract are all present.[340] Article 1318 of the Civil Code provides:

> Article 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.

When one of the elements is wanting, no contract can be perfected.[341] In this case, no consent was given by Spouses Limso and Davao Sunrise as to the increase in the interest rates. Consequently, the increases in the interest rates are not valid.

Even the promissory notes contained provisions granting Philippine National Bank the sole discretion to set the interest rate:

> [Promissory Note] NO. 0015138516350115 . . .
>
> x x x x x x x x x
>
> . . . I/We, jointly and severally, promise to pay to the order of the Philippine National Bank (the 'Bank') at its office in cm recto avenue davao city [sic], Philippines, the sum of PHILIPPINE PESOS: 583,183,333.34 (₱583,183,333.34) together with interest thereon for

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[340] *Clemente v. Court of Appeals*, G.R. No. 175483, October 14, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/october2015/175483.pdf> 7 [Per *J.* Jardeleza, Third Division]. See also *Heirs of Spouses Intac v. Court of Appeals, et al.*, 697 Phil. 373, 383 (2012) [Per *J.* Mendoza, Third Division].

[341] *Clemente v. Court of Appeals*, G.R. No. 175483, October 14, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/october2015/175483.pdf> 7 [Per *J.* Jardeleza, Third Division].

the current Interest Period *at a rate of to be set by mgt.* [management]. Interest Period shall mean the period commencing on the date hereof and having a duration not exceeding monthly (_____) days and each similar period thereafter commencing upon the expiry of the immediately preceding Interest Period. The rate of interest shall be set at the start of every Interest Period. For this purpose, I/We agree that the rate of interest herein stipulated may be increased or decreased for the subsequent Interest Periods, with prior notice to the Borrower in the event of changes in interest rate prescribed by law or the Monetary Board of the Central Bank of the Philippines, or in the Bank's overall cost of funds. I/We hereby agree that in the event I/We are not agreeable to the interest rate fixed for any Interest Period, I/we shall have the option to prepay the loan or credit facility without penalty within ten (10) calendar days from the Interest Setting Date.[342]

Promissory Note No. 0015138516350116[343] contained the same provisions, differing only as to the amount of the obligation.

Assuming that Davao Sunrise and Spouses Limso agreed to the increase in interest rates, the interest rates are still null and void for being unreasonable.[344]

This court has held that while the Usury Law was suspended by Central Bank Circular No. 905, Series of 1982, unconscionable interest rates may be declared illegal.[345] The suspension of the Usury Law did not give creditors an unbridled right to impose arbitrary interest rates. To determine whether an interest rate is unconscionable, we are guided by the following pronouncement:

In determining whether the rate of interest is unconscionable, the mechanical application of pre-established floors would be wanting. The lowest rates that have previously been considered unconscionable need not be an impenetrable minimum. What is more crucial is a consideration of the parties' contexts. Moreover, interest rates must

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[342] *Rollo* (G.R. No. 173194), p. 102.

[343] *Id.* at 103.

[344] *Rollo* (G.R. No. 196958), p. 320, Comment.

[345] *Spouses Castro v. Tan, et al.*, 620 Phil. 239, 247 (2009) [Per *J.* Del Castillo, Second Division].

be appreciated in light of the fundamental nature of interest as compensation to the creditor for money lent to another, which he or she could otherwise have used for his or her own purposes at the time it was lent. It is not the default vehicle for predatory gain. As such, interest need only be reasonable. It ought not be a supine mechanism for the creditor's unjust enrichment at the expense of another.[346]

A reading of the interest provisions in the original agreement and the Conversion, Restructuring and Extension Agreement shows that the interest rates imposed by Philippine National Bank were usurious and unconscionable.

In the original credit and loan agreements executed in 1993, the interest provisions provide:

CREDIT AGREEMENT

x x x x x x x x x

1.04 Interest on Availments. (a) The Borrowers agree to pay interest on each availment from date of each availment up to, but not including the date of full payment thereof *at a rate per annum that is determined by the Bank* to be equivalent to the Bank's prime rate less 1.0% in effect as of the date of the relevant Availment, subject to quarterly review and to maintenance of deposits with ADB of at least 5% of the amount availed in its savings and current account. Non compliance of ADB requirement shall subject the credit line to regular interest rate which is the prime rate plus applicable spread.[347]

LOAN AGREEMENT

x x x x x x x x x

1.03 Interest. (a) The Borrowers hereby agree to pay interest on the loan from the date of Drawdown up to Repayment Date *at the rate that is determined by the Bank* to be the Bank's prime rate in effect at the Date of Drawdown less 1.0% and which shall be reset every 90 days to coincide with interest payments.

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[346] *Spouses Abella v. Spouses Abella*, G.R. No. 195166, July 8, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/july2015/195166.pdf> 12 [Per *J.* Leonen, Second Division].

[347] *Rollo* (G.R. No. 197120), pp. 139-140, Credit Agreement.

(b) The determination by the Bank of the amount of interest due and payable hereunder shall be conclusive and binding on the borrower in the absence of manifest error in the computation.[348] (Emphasis supplied, underscoring in the original)

In the Conversion, Restructuring and Extension Agreement, the interest provisions state:

SECTION 2. TERMS OF LOAN I

x x x x x x x x x

2.04 Interest. (a) The Borrowers agree to pay the Bank interest on Loan I from the Effective Date, until the date of full payment thereof at the rate per annum *to be set by the Bank*. The interest rate *shall be reset by the Bank every month*.

x x x x x x x x x

SECTION 3. TERMS OF LOAN II

x x x x x x x x x

3.04 Interest. (a) The Borrowers agree to pay the Bank interest on Loan II from the Effective Date, until the date of full payment thereof at the rate per annum *to be set by the Bank*. The interest rate shall *be reset by the Bank every month*.[349] (Emphasis supplied, underscoring in the original)

From the terms of the loan agreements, there was no way for Spouses Limso and Davao Sunrise to determine the interest rate imposed on their loan because it was always at the discretion of Philippine National Bank.

Nor could Spouses Limso and Davao Sunrise determine the exact amount of their obligation because of the frequent changes in the interest rates imposed.

As found by the Court of Appeals, the loan agreements merely stated that interest rates would be imposed. However, the specific interest rates were not stipulated, and the subsequent increases

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[348] *Id.* at 143-144, Loan Agreement.

[349] *Id.* at 181, Conversion, Restructuring and Extension Agreement.

in the interest rates were all at the discretion of Philippine National Bank.[350]

Also invalid are the escalation clauses in the real estate mortgage and promissory notes. The escalation clause in the real estate mortgage states:

"(k) INCREASE OF INTEREST RATE:

"The rate of interest charged on the obligation secured by this mortgage as well as the interest on the amount which may have been advanced by the mortgagee, in accordance with the provisions hereof shall be subject during the life of this contract to such an increase within the rate allowed by law, as the Board of Directors of the MORTGAGEE may prescribe for its debtors."[351]

The escalation clause in the promissory notes[352] states:

For this purpose, I/We agree that the rate of interest herein stipulated may be increased or decreased for the subsequent Interest Periods, with prior notice to the Borrower in the event of changes in interest rate prescribed by law or the Monetary Board or the Central Bank of the Philippines, or in the Bank's overall cost of funds.[353]

Banco Filipino Savings and Mortgage Bank v. Judge Navarro[354] defined an escalation clause as "one which the contract fixes a base price but contains a provision that in the event of specified cost increases, the seller or contractor may raise the price up to a fixed percentage of the base."[355]

This court has held that escalation clauses are not always void since they serve "to maintain fiscal stability and to retain the value of money in long term contracts."[356] However:

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[350] *Rollo* (G.R. No. 196958), p. 118, Court of Appeals Decision in CA-G.R. CV No. 79732-MIN.

[351] *Id.* at 313-314, Comment.

[352] *Id.* at 314. The promissory notes are dated January 5, 1999.

[353] *Id.*

[354] 236 Phil. 370 (1987) [Per *J.* Melencio-Herrera, *En Banc*].

[355] *Rollo* (G.R. No. 196958), p. 313, Comment.

[356] *Juico v. China Banking Corporation*, G.R. No. 187678, April 10, 2013, 695 SCRA 520, 531 [Per *J.* Villarama, Jr., First Division].

[A]n escalation clause "which grants the creditor an unbridled right to adjust the interest independently and upwardly, completely depriving the debtor of the right to assent to an important modification in the agreement" is void. A stipulation of such nature violates the principle of mutuality of contracts. Thus, this Court has previously nullified the unilateral determination and imposition by creditor banks of increases in the rate of interest provided in loan contracts.

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. . . [W]e hold that the escalation clause is . . . void because it grants respondent the power to impose an increased rate of interest without a written notice to petitioners and their written consent. Respondent's monthly telephone calls to petitioners advising them of the prevailing interest rates would not suffice. A detailed billing statement based on the new imposed interest with corresponding computation of the total debt should have been provided by the respondent to enable petitioners to make an informed decision. An appropriate form must also be signed by the petitioners to indicate their conformity to the new rates. Compliance with these requisites is essential to preserve the mutuality of contracts. For indeed, one-sided impositions do not have the force of law between the parties, because such impositions are not based on the parties' essential equality.[357] (Citations omitted)

The interest rate provisions in Philippine National Bank's loan agreements and real estate mortgage contracts have been nullified by this court in several cases. Even the escalation clauses in Philippine National Bank's contracts were noted to be violative of the principle of mutuality of contracts.[358]

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[357] *Id.* at 531-539.

[358] *Philippine National Bank v. Court of Appeal*s, 273 Phil. 789, 798-799 (1991) [Per *J.* Griño-Aquino, First Division]; *Philippine National Bank v. Court of Appeals*, G.R. No. 107569, November 8, 1994, 238 SCRA 20, 26 [Per *J.* Puno, Second Division]; *Philippine National Bank v. Court of Appeals*, 328 Phil. 54, 60-61 (1996) [Per *J.* Mendoza, Second Division]; *Philippine National Bank v. Manalo*, G.R. No. 174433, February 24, 2014, 717 SCRA 254, 269-270 [Per *J.* Bersamin, First Division]; *Silos v. Philippine National Bank*, G.R. No. 181045, July 2, 2014, 728 SCRA 617, 643-655 [Per *J.* Del Castillo, Second Division].

The original loan agreement in this case was executed in 1993. Prior to the execution of the original loan agreement, this court promulgated a Decision in 1991 ruling that "the unilateral action of the [Philippine National Bank] in increasing the interest rate on the private respondent's loan, violated the mutuality of contracts ordained in Article 1308 of the Civil Code[.]"[359]

In *Philippine National Bank v. Court of Appeals*,[360] the interest rate provisions were nullified because these allowed Philippine National Bank to unilaterally increase the interest rate.[361] The nullified interest rate provisions were worded as follows:

"The Credit Agreement provided *inter alia*, that —

'(a) The BANK reserves the right to increase the interest rate within the limits allowed by law at any time depending on whatever policy it may adopt in the future: Provided, that the interest rate on this accommodation shall be correspondingly decreased in the event that the applicable maximum interest is reduced by law or by the Monetary Board. In either case, the adjustment in the interest rate agreed upon shall take effect on the effectivity date of the increase or decrease in the maximum interest rate.'

"The Promissory Note, in turn, authorized the PNB to raise the rate of interest, at any time without notice, beyond the stipulated rate of 12% but only 'within the limits allowed by law.'

The Real Estate Mortgage contract likewise provided that —

'(k) INCREASE OF INTEREST RATE: The rate of interest charged on the obligation secured by this mortgage as well as the interest on the amount which may have been advanced by the MORTGAGEE, in accordance with the provision hereof, shall be subject during the life of this contract to such an increase within the rate allowed by law, as the Board of Directors of the MORTGAGEE

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[359] *Philippine National Bank v. Court of Appeals*, 273 Phil. 789, 798 (1991) [Per *J.* Griño-Aquino, First Division].

[360] G.R. No. 107569, November 8, 1994, 238 SCRA 20 [Per *J.* Puno, Second Division].

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

[362] *Id.* at 22.

may prescribe for its debtors.'[362]

This court explained that:

Similarly, contract changes must be made with the consent of the contracting parties. The minds of all the parties must meet as to the proposed modification, especially when it affects an important aspect of the agreement. In the case of loan contracts, it cannot be gainsaid that the rate of interest is always a vital component, for it can make or break a capital venture. Thus, any change must be mutually agreed upon, otherwise, it is bereft of any binding effect.[363]

In a subsequent case[364] also involving Philippine National Bank, this court likewise nullified the interest rate provisions of Philippine National Bank and discussed:

In this case no attempt was made by PNB to secure the conformity of private respondents to the successive increases in the interest rate. Private respondents' assent to the increases cannot be implied from their lack of response to the letters sent by PNB, informing them of the increases. For as stated in one case, no one receiving a proposal to change a contract is obliged to answer the proposal.[365] (Citation omitted)

However, only the interest rate imposed is nullified; hence, it is deemed not written in the contract. The agreement on

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[363] *Id.* at 26.

[364] *Philippine National Bank v. Court of Appeals*, 328 Phil. 54, 63 (1996) [Per *J.* Mendoza, Second Division]. In this case, the assailed interest rate provision in the real estate mortgage stated:

"(k) INCREASE OF INTEREST RATE:

The rate of interest charged on the obligation secured by this mortgage as well as the interest on the amount which may have been advanced by the MORTGAGEE, in accordance with the provision hereof, shall be subject during the life of this contract to such an increase within the rate allowed by law, as the Board of Directors of the MORTGAGEE may prescribe for its debtors" (*Id.* at 57).

[365] *Id.* at 63.

[366] *Mallari v. Prudential Bank (now Bank of the Philippine Islands)*, G.R. No. 197861, June 5, 2013, 697 SCRA 555, 566 [Per *J.* Peralta, Third Division].

payment of interest on the principal loan obligation remains. It is a basic rule that a contract is the law between contracting parties.[366] In the original loan agreement and the Conversion, Restructuring and Extension Agreement, Spouses Limso and Davao Sunrise agreed to pay interest on the loan they obtained from Philippine National Bank. Such obligation was not nullified by this court. Thus, their obligation to pay interest in their loan obligation subsists.[367]

Spouses Abella v. Spouses Abella[368] involved a simple loan with an agreement to pay interest. Unfortunately, the applicable interest rate was not stipulated by the parties. This court discussed that in cases where the parties fail to specify the applicable interest rate, the legal rate of interest applies. This court also discussed that the applicable legal rate of interest shall be the prevailing rate at the time when the agreement was entered into:[369]

> This is so because interest in this respect is used as a surrogate for the parties' intent, as expressed as of the time of the execution of their contract. In this sense, the legal rate of interest is an affirmation of the contracting parties' intent; that is, by their contract's silence on a specific rate, the then prevailing legal rate of interest shall be the cost of borrowing money. This rate, which by their contract the parties have settled on, is deemed to persist regardless of shifts in the legal rate of interest. Stated otherwise, the legal rate of interest, when applied as conventional interest,

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[367] See *Andal v. Philippine National Bank*, G.R. No. 194201, November 27, 2013, 711 SCRA 15, 28 [Per *J.* Perez, Second Division].

[368] G.R. No. 195166, July 8, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/july2015/195166.pdf> [Per *J.* Leonen, Second Division].

[369] *Id.* at 10.

[370] *Id.* The term "conventional interest" was defined in the case as "interest as the cost of borrowing money" (*Id.* at 7).

shall always be the legal rate at the time the agreement was executed and shall not be susceptible to shifts in rate.[370]

Further, *Spouses Abella* cited Article 2212[371] of the Civil Code and the ruling in *Nacar v. Gallery Frames*,[372] which both state that "interest due shall itself earn legal interest from the time it is judicially demanded:"[373]

> [T]he interest due on conventional interest shall be at the rate of 12% per annum from [date of judicial demand] to June 30, 2013. Thereafter, or starting July 1, 2013, this shall be at the rate of 6% per annum.[374]

In this case, the Conversion, Restructuring and Extension Agreement was executed on January 28, 1999. Thus, the applicable interest rate on the principal loan obligation (conventional interest) is at 12% per annum. With regard to the interest due on the conventional interest, judicial demand was made on August 21, 2000 when Philippine National Bank filed a Petition[375] for Extrajudicial Foreclosure of Real Estate Mortgage.[376] Thus, from August 21, 2000 to June 30, 2013, the

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[371] CIVIL CODE, Art. 2212 provides:

> Article 2212. Interest due shall earn legal interest from the time it is judicially demanded, although the obligation may be silent upon this point.

[372] G.R. No. 189871, August 13, 2013, 703 SCRA 439 [Per *J*. Peralta, *En Banc*], specifically: "I. When the obligation is breached, and it consists in the payment of a sum of money, *i.e.,* a loan or forbearance of money, the interest due should be that which may have been stipulated in writing. Furthermore, the interest due shall itself earn legal interest from the time it is judicially demanded. In the absence of stipulation, the rate of interest shall be 6% *per annum* to be computed from default, *i.e*., from judicial or extrajudicial demand under and subject to the provisions of Article 1169 of the Civil Code" (*Id.* at 457-458).

[373] *Spouses Abella v. Spouses Abella*, G.R. No. 195166, July 8, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudente/2015/july2015/195166.pdf> 13 [Per *J*. Leonen, Second Division].

[374] *Id.*

[375] *Rollo* (G.R. No. 173194), pp. 106-112.

[376] *Id.* at 52, Petition for Review.

interest rate on conventional interest shall be at 12%. From July 1, 2013 until full payment, the applicable interest rate on conventional interest shall be at 6%.

III

The Conversion, Restructuring and Extension Agreement novated the original agreement executed in 1993. However, the nullified interest rate provisions in the original loan agreement cannot be deemed as having been legitimized, ratified, or set aside.

Philippine National Bank argues that the Conversion, Restructuring and Extension Agreement novated the original loan agreement and that the novation effectively set aside the infirmities in the original loan agreement.[377]

The Civil Code provides that:

Article 1292. In order that an obligation may be extinguished by another which substitutes the same, it is imperative that it be so declared in unequivocal terms, or that the old and the new obligations be on every point incompatible with each other.

Novation has been defined as:

Novation may either be express, when the new obligation declares in unequivocal terms that the old obligation is extinguished, or implied, when the new obligation is on every point incompatible with the old one. The test of incompatibility lies on whether the two obligations can stand together, each one with its own independent existence.

For novation, as a mode of extinguishing or modifying an obligation, to apply, the following requisites must concur:

1) There must be a previous valid obligation.

2) The parties concerned must agree to a new contract.

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[377] *Rollo* (G.R. No. 196958), pp. 78-79, Petition for Review.

[378] *St. James College of Parañaque, et al. v. Equitable PCI Bank*, 641 Phil. 452, 462 (2010) [Per *J.* Velasco, Jr., First Division].

3) The old contract must be extinguished.

4) There must be a valid new contract.[378] (Citations omitted)

The original Credit Agreement[379] was executed on September 1, 1993,[380] while the Conversion, Restructuring and Extension Agreement[381] was executed on January 28, 1999.[382]

Pertinent portions of the Conversion, Restructuring and Extension Agreement state:

WITNESSETH: That —

x x x x x x x x x

WHEREAS, *the Borrowers* [referring to DSIDC and spouses Limso] *acknowledge that they have outstanding obligations* (the "Obligations") with the Bank broken down as follows:

(i) Credit Line — ₱583.18 Million (as of September 30, 1998);

(ii) Loan — ₱266.67 Million (as of September 30, 1998); and

(iii) Interest — ₱217.15 Million (as of December 31, 1998);

WHEREAS, *at the request of the Borrowers*, the Bank has approved (a) the conversion and restructuring of the Credit Line portion of the Obligations into a term loan, (b) the extension of the term of the Loan for another four (4) years, (c) the capitalization on accrued interest (up to December 31, 1998) on the Obligations, (d) the waiver of the penalties charges (if any) accruing on the Obligations, and (e) the partial release of chattel mortgage on stock inventories, subject to the terms and conditions hereinafter set forth;

x x x x x x x x x

SECTION 2. TERMS OF LOAN I

2.01 Amount of Loan I. Loan I shall be in the principal amount

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[379] *Rollo* (G.R. No. 205463), pp. 221-224.

[380] *Id.* at 223.

[381] *Id.* at 272-277.

[382] *Id.* at 276.

not exceeding PESOS: FIVE HUNDRED EIGHTY THREE MILLION ONE HUNDRED EIGHTY THOUSAND (₱583,180,000.00)

x x x x x x x x x

SECTION 3. TERMS OF LOAN II

3.01 Amount of Loan II. Loan II shall be in the principal amount not exceeding PESOS: FOUR HUNDRED EIGHTY THREE MILLION SEVEN HUNDRED EIGHTY THOUSAND (₱483,780,000.00).[383]

In this case, the previous valid obligation of Spouses Limso and Davao Sunrise was the payment of a loan in the total amount of ₱700 million, plus interest.

Upon the request of Spouses Limso and Davao Sunrise, Philippine National Bank agreed to restructure the original loan agreement.[384]

Philippine National Bank summarized the Conversion, Restructuring and Extension Agreement as follows:

(a) The conversion of the Revolving Credit Line into a Term Loan in the principal amount of 583.18 Million and denominated as "Loan I".

(b) The Extension for another four (4) years of the original long term loan (from 01 September 2001 to 31 December 2005);

(c) The capitalization of the accrued interest on both the Revolving Credit Line and the Long Term Loan up to 31 December 1998;

(d) The consolidation of the accrued interest and the outstanding obligation of the original Long Term Loan to form "Loan 2" with the total principal amount of ₱483.82 Million;

(e) Waiver of penalty charges;

(f) Partial release of chattel mortgage on the stock inventories;

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[383] *Id.* at 272-273.

[384] *Rollo* (G.R. No. 196958), p. 105, Court of Appeals Decision in CA-G.R. CV No. 79732-MIN.

[385] *Id.* at 34, Petition for Review.

(g) Both "Loan I" and "Loan II" were made payable within seven (7) years in monthly amortization and a balloon payment on or before December 2005.[385]

When the loan agreement was restructured, the principal obligation of Spouses Limso and Davao Sunrise became ₱1.067 billion.

The Conversion, Restructuring and Extension Agreement novated the original credit agreement because the principal obligation itself changed.

Important provisions of the original agreement were altered. For example, the penalty charges were waived and the terms of payment were extended.

Further, the preambular clauses of the Conversion, Restructuring and Extension Agreement show that Spouses Limso and Davao Sunrise sought to change the terms of the original agreement and that they themselves acknowledged their obligation to be ₱1.067 billion. They are now estopped from claiming that their obligation should be based on the original agreement when it was through their own actions that the loan was restructured.

Thus, the Court of Appeals in CA-G.R. CV No. 79732-MIN erred in not declaring that the Conversion, Restructuring and Extension Agreement novated the original agreement and in computing Spouses Limso and Davao Sunrise's obligation based on the original agreement.

Since the Conversion, Restructuring and Extension Agreement novated the original credit agreement, we modify the Court of Appeals Decision in that the outstanding obligation of Spouses Limso and Davao Sunrise should be computed on the basis of the Conversion, Restructuring and Extension Agreement.

In the Court of Appeals Decision dated August 13, 2009:

Computing the interest at 12% per annum on the principal amount of 700 Million Pesos, the interest should be 84 Million Pesos per annum. Multiplying 84 Million Pesos by 15 years from September

1, 1993 to September 1, 2008, the interest for the 15-year period would be One Billion Two Hundred Sixty Million Pesos (₱1,260,000,000.00). Then, by adding the interest of ₱1,260,000,000.00 to the principal amount of 700 Million Pesos, the total obligation of plaintiffs-appellees would be One Billion Nine Hundred Sixty Million Pesos (₱1,960,000,000.00) by September 1, 2008. And since plaintiffs-appellees has paid a total amount of One Billion One Hundred Fifty Six Million Eight Hundred Fourteen Thousand Five Hundred Eighty Eight Pesos and 89/100 (₱1,156,814,588.89) to appellant PNB as of December 5, 1998, as per PNB's official computation of payments per official receipts, then, plaintiffs-appellees would still have an outstanding balance of about Eight Hundred Three Million One Hundred Eighty Five Thousand Four Hundred Eleven and 11/100 Pesos (₱803,185,411.11) as of September 1, 2008. The amount of ₱803,185,411.11 will earn interest at the legal rate of 12% per annum from September 1, 2008 until fully paid.

x x x x x x x x x

WHEREFORE, the assailed Decision dated June 19, 2002 and Order dated August 13, 2002 of the Regional Trial Court of Davao City, Branch 17 in Civil Case No. 28,170-2000 declaring the unilateral imposition of interest rates by defendant-appellant PNB as null and void appealed from are **AFFIRMED with the MODIFICATION** that the obligation of plaintiffs-appellees arising from the Loan and Revolving Credit Line and subsequent *Conversion, Restructuring and Extension Agreement* as Loan I and Loan II shall earn interest at the legal rate of twelve percent (12%) per annum computed from September 1, 1993, until fully paid and satisfied.

SO ORDERED.[386]

Notably, in the body of the Court of Appeals Decision, Spouses Limso and Davao Sunrise's obligation was computed on the basis of the original loan agreement, while in the dispositive portion, the Court of Appeals cited both the original loan agreement and the Conversion, Restructuring and Extension Agreement.

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[386] *Id.* at 125-127, Court of Appeals Decision in CA-G.R. CV No. 79732-MIN.

The general rule is that:

> Where there is a conflict between the dispositive part and the opinion of the court contained in the text or body of the decision, the former must prevail over the latter on the theory that the dispositive portion is the final order, while the opinion is merely a statement ordering nothing.[387] (Citation omitted)

To avoid confusion, we also rule that the interest rate provisions and the escalation clauses in the Conversion, Restructuring and Extension Agreement are nullified insofar as they allow Philippine National Bank to unilaterally determine and increase the imposable interest rates.

Article 1409[388] of the Civil Code provides that void contracts cannot be ratified. Hence, the void interest rate provisions in the original loan agreement could not have been ratified by the execution of the Conversion, Restructuring and Extension Agreement.

IV

The proper remedy to assail a decision on pure questions of law is to file a petition for review on certiorari under Rule 45,

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[387] *PH Credit Corporation v. Court of Appeals*, 421 Phil. 821, 833 (2001) [Per *J.* Panganiban, Third Division].

[388] CIVIL CODE, Art. 1409 provides:

> Article 1409. The following contracts are inexistent and void from the beginning:
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> (1) Those whose cause, object or purpose is contrary to law, morals, good customs, public order or public policy;
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> (2) Those which are absolutely simulated or fictitious;
>
> (3) Those whose cause or object did not exist at the time of the transaction;
>
> (4) Those whose object is outside the commerce of men;
>
> (5) Those which contemplate an impossible service;
>
> (6) Those where the intention of the parties relative to the principal object of the contract cannot be ascertained;
>
> (7) Those expressly prohibited or declared void by law.
>
> These contracts cannot be ratified. Neither can the right to set up the defense of illegality be waived.

[389] *Rollo* (G.R. No. 205463), p. 25, Petition for Review on *Certiorari.*

not an appeal under Rule 41 of the 1997 Rules of Civil Procedure.

One of the issues raised by Philippine National Bank in G.R. No. 205463 is the dismissal of its appeal under Rule 41 by the Court of Appeals in its Decision dated January 21, 2013.[389]

Philippine National Bank, through counsel, argues that Rule 41 is the proper remedy because its Petition raises questions of fact and of law.[390] For example, the issue of whether there is an annotation of encumbrance on the titles of the mortgaged properties is a question of fact.[391]

Denying Philippine National Bank's appeal under Rule 41, the Court of Appeals stated that:

> [Philippine National Bank] simply takes issue against the conclusions made by the court a quo which pertains to the matter of whether mere entry in the Primary Entry Book, sans the signature of the registrar, already completes registration. It does not question the weight and probative value of the fact that the signature of Atty. Patriarcha [sic] was previously entered in the records then revoked by her. What PNB seeks, therefore, is a review of the decision of the court a quo dismissing its petition, without delving into the weight of the evidence, but on the correctness of the court a quo's conclusions based on the evidence presented before it. This is clearly a question of law.
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> x x x x x x x x x
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> To the mind of this Court, PNB seeks to harp repeatedly on the issue of the court a quo's failure to consider that the certificate of sale has been duly registered on February 4, 2002 upon mere entry in the Primary Entry Book, even without the signature of the then register of deeds. Though couched in different creative presentations, all the errors assigned by PNB point to one vital question: *What completes registration*? To answer it, this Court is not asked to calibrate the evidence presented, or gauge the truth or falsity, but to apply the appropriate law to the situation. This is clearly a question of law.[392]

[390] *Id.* at 25-26.

[391] *Id.* at 30.

[392] *Id.* at 64-65, Court of Appeals Decision in CA-G.R. CV No. 01464-MIN.

[393] G.R. No. 172551, January 15, 2014, 713 SCRA 370 [Per *J.* Brion, Second Division].

(Emphasis in the original)

In *Land Bank of the Philippines v. Yatco Agricultural Enterprises*,[393] this court discussed the difference between questions of law and questions of fact:

> As a general rule, the Court's jurisdiction in a Rule 45 petition is limited to the review of pure questions of law. A question of law arises when the doubt or difference exists as to what the law is on a certain state of facts. Negatively put, Rule 45 does not allow the review of questions of fact. A question of fact exists when the doubt or difference arises as to the truth or falsity of the alleged facts.
>
> The test in determining whether a question is one of law or of fact is "whether the appellate court can determine the issue raised without reviewing or evaluating the evidence, in which case, it is a question of law[.]" Any question that invites calibration of the whole evidence, as well as their relation to each other and to the whole, is a question of fact and thus proscribed in a Rule 45 petition.[394] (Citations omitted)

Based on the foregoing, there was no error on the part of the Court of Appeals when it dismissed Philippine National Bank's Petition for being the wrong remedy. Indeed, Philippine National Bank was not questioning the probative value of the evidence. Instead, it was questioning the conclusion of the trial court that registration had not been perfected based on the evidence presented.

V

The registration of the Sheriff's Provisional Certificate of Sale was completed.

Philippine National Bank argues that the registration was completed, and restates the doctrine in *National Housing*

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[394] *Id.* at 378-379.

[395] 632 Phil. 471, 494 (2010) [Per *J.* Leonardo-de Castro, First Division].

[396] *Rollo* (G.R. No. 205463), p. 38, Petition for Review on *Certiorari.*

Authority v. Basa, Jr., et al.:[395]

Once the Certificate of Sale is entered in the Primary Book of Entry of the Registry of Deeds with the registrant having paid all the required fees and accomplished all that is required of him under the law to cause registration, the registration is complete.[396]

Philippine National Bank further argues that "[t]he records of all the transactions are recorded in the Primary Entry Book and the annotation on the titles of the transaction do not control registration. It is the recording in the Primary Entry Book which controls registration."[397]

Philippine National Bank adds that though the annotation of a certificate of sale at the back of the certificates of title is immaterial in the perfection of registration, the evidence shows that the Certificate of Sale was annotated.[398]

Philippine National Bank alleges that registration was completed because Atty. Patriarca, the Register of Deeds at that time, affixed her signature but would later erase it.[399]

Philippine National Bank cites Atty. Cruzabra's Comment, which alleges that the Sheriff's Provisional Certificate of Sale and other documents relative to the sale were registered in the Primary Entry Book of the Registry of Deeds of Davao City.[400] The Comment also states that:

3. The Sheriff's Provisional Certificate of Sale was annotated at the back of the aforementioned titles but it does not bear the signature of the former Registrar of Deeds. Noted however is that the portion below the annotation of the Provisional Sheriff's [sic] Certificate of Sale there appears to be erasures ("snowpake"), and [Atty. Cruzabra] is not in a position to conclude as to the circumstances [relative to said erasures], for lack of personal knowledge as to what transpired

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[397] *Id.* at 39.

[398] *Id.*

[399] *Id.* at 906, Philippine National Bank's Memorandum.

[400] *Id.* at 930.

[401] *Id.*

at that time.[401] (Citation omitted)

Philippine National Bank also cites the Decision in Administrative Case No. 02-13 dated January 12, 2005, which was the case against Atty. Patriarca for Grave Misconduct and Conduct Unbecoming of a Public Official. In the Decision, the Land Registration Authority found that:

> Respondent herein likewise admits that she finally signed the PNB transaction annotated on the subject titles when she was informed that the motion for reconsideration was denied by this Authority, but she subsequently erased her signature when she subsequently found out that an appeal was filed by the Limso spouses.
>
> x x x x x x x x x
>
> The registration of these documents became complete when respondent affixed her signature below these annotations. Whatever information belatedly gathered thereafter relative to the circumstances as to the registrability of these documents, respondent can not unilaterally take judicial notice thereof and proceed to lift at her whims and caprices what has already been officially in force and effective, by erasing thereon her signature.[402]

In addition, Philippine National Bank argues that the erasure of Atty. Patriarca's signature using correction fluid could not have revoked, cancelled, or annulled the registration since under Section 108 of Presidential Decree 1529, only a court order can revoke registration.[403]

Philippine National Bank alleges that it has complied with the requirements under Section 7 of Act No. 3135 and Section 47 of Republic Act No. 8791.[404] Thus, it is entitled to a writ of

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[402] *Id.* at 89.

[403] *Id.* at 41-42, Petition for Review on *Certiorari.*

[404] General Banking Law of 2000.

[405] *Rollo* (G.R. No. 205463), pp. 44-48, Petition for Review on *Certiorari.*

[406] *Id.* at 79-84.

[407] *Id.* at 80.

possession.[405]

The Office of the Solicitor General filed its Comment,[406] quoting the dispositive portion of the Land Registration Authority's Consulta No. 3405 dated May 21, 2002:[407]

> WHEREFORE, in view of the foregoing, the Sheriff's Provisional Certificate of Sale dated February 04, 2002 is *registerable* on TCT Nos. T-147820, T-147386, and T-247012, provided all other registration requirements are complied with.[408] (Emphasis supplied)

The Office of the Solicitor General also quotes the dispositive portion of the Land Registration Authority's Resolution in the Motion for Reconsideration:[409]

> WHEREFORE, in view of the foregoing[,] the Sheriff's Provisional Certificate of Sale dated February 4, 2002 *is registrable* on TCT Nos. T-147820, T-147821, T-147386 and T-247012, provided all other registration requirements are complied with.[410] (Emphasis supplied)

The Office of the Solicitor General then cites *National Housing Authority and Autocorp Group and Autographics, Inc. v. Court of Appeals*[411] and discusses that when all the requirements for registration of annotation has been complied with, it is ministerial upon the Register of Deeds to register the annotation.[412] The Register of Deeds is not authorized "to make an appraisal of proofs outside of the documents sought to be registered."[413]

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[408] *Id.*

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

[410] *Id.* at 81.

[411] 481 Phil. 298 (2004) [Per *J*. Puno, Second Division].

[412] *Rollo* (G.R. No. 205463), pp. 81-82, Office of the Solicitor General's Comment.

[413] *Id.* at 82.

[414] *Id.* at 951, Office of the Solicitor General's Memorandum.

[415] *Id.* at 860-897.

[416] Pres. Decree No. 1529 (1978), Sec. 117 provides:

For the Office of the Solicitor General, the Register of Deeds' refusal to affix the annotation on the foreclosed properties' titles "should not preclude the completion of the registration of any applicant who has complied with the requirements of the law to register its right or interest in registered lands."[414]

Spouses Limso and Davao Sunrise, as intervenors-oppositors,

SECTION 117. Procedure. — When the Register of Deeds is in doubt with regard to the proper step to be taken or memorandum to be made in pursuance of any deed, mortgage or other instrument presented to him for registration, or where any party in interest does not agree with the action taken by the Register of Deeds with reference to any such instrument, the question shall be submitted to the Commissioner of Land Registration by the Register of Deeds, or by the party in interest thru the Register of Deeds.

Where the instrument is denied registration, the Register of Deeds shall notify the interested party in writing, setting forth the defects of the instrument or legal grounds relied upon, and advising him that if he is not agreeable to such ruling, he may, without withdrawing the documents from the Registry, elevate the matter by consulta within five days from receipt of notice of the denial of registration to the Commissioner of Land Registration upon payment of a consulta fee in such amount as shall be prescribed by the Commissioner of Land Registration.

The Register of Deeds shall make a memorandum of the pending consulta on the certificate of title which shall be cancelled *motu proprio* by the Register of Deeds after final resolution or decision thereof, or before resolution, if withdrawn by petitioner.

The Commissioner of Land Registration, considering the consulta and the records certified to him after notice to the parties and hearing, shall enter an order prescribing the step to be taken or memorandum to be made. His resolution or ruling in consultas shall be conclusive and binding upon all Registers of Deeds, provided, that the party in interest who disagrees with the final resolution, ruling or order of the Commissioner relative to consultas may appeal to the Court of Appeals within the period and in the manner provided in Republic Act No. 5434.

[417] *Rollo* (G.R. No. 205463), pp. 881-882, Spouses Limso and Davao Sunrise's Memorandum.

[418] *Id.* at 883-884.

[419] *Id.* at 881. Although the records do not show whether DSIDC and Spouses Limso were allowed to intervene, a copy of the Resolution requiring the parties to submit their respective memoranda was sent to counsel for DSIDC and Spouses Limso.

[420] *Id.* at 884.

filed a Memorandum.[415] They cite Section 117[416] of Presidential Decree No. 1529[417] and argue that registration of the Certificate of Sale in the Primary Entry Book is a preliminary step in registration.[418] Since Philippine National Bank withdrew the documents it submitted to the Register of Deeds of Davao City, the Sheriff's Provisional Certificate of Sale was not registered.[419]

Further, Philippine National Bank's argument that "entry

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[421] Pres. Decree No. 1529 (1978), Sec. 56 provides:

SECTION 56. Primary Entry Book; Fees; Certified Copies. — Each Register of Deeds shall keep a primary entry book in which, upon payment of the entry fee, he shall enter, in the order of their reception, all instruments including copies of writs and processes filed with him relating to registered land. He shall, as a preliminary process in registration, note in such book the date, hour and minute of reception of all instruments, in the order in which they were received. They shall be regarded as registered from the time so noted, and the memorandum of each instrument, when made on the certificate of title to which it refers, shall bear the same date: Provided, that the national government as well as the provincial and city governments shall be exempt from the payment of such fees in advance in order to be entitled to entry and registration.

Every deed or other instrument, whether voluntary or involuntary, so filed with the Register of Deeds shall be numbered and indexed and endorsed with a reference to the proper certificate of title. All records and papers relative to registered land in the office of the Register of Deeds shall be open to the public in the same manner as court records, subject to such reasonable regulations as the Register of Deeds, under the direction of the Commissioner of Land Registration, may prescribe.

All deeds and voluntary instruments shall be presented with their respective copies and shall be attested and sealed by the Register of Deeds, endorsed with the file number, and copies may be delivered to the person presenting them.

Certified copies of all instruments filed and registered may also be obtained from the Register of Deeds upon payment of the prescribed fees.

[422] Property Registration Decree (1978).

[423] *Rollo* (G.R. No. 205463), p. 885, Nancy Limso and Davao Sunrise's Memorandum.

[424] *Id.* at 886-888.

[425] *Id.* at 887-888.

. . . in the Primary Entry Book is equivalent to registration"[420] is not in accordance with Section 56[421] of Presidential Decree No. 1529.[422] Moreover, "[t]he signature of the Register of Deeds is crucial to the completeness of the registration process."[423]

Spouses Limso and Davao Sunrise posit that Philippine National Bank admitted that the Certificate of Sale is not registered in various hearings.[424] These admissions are judicial admissions that should be binding on Philippine National Bank.[425]

Spouses Limso and Davao Sunrise allege that during the oral arguments held on March 19, 2003 at the Court of Appeals in CA G.R. SP No. 71527, counsel for Philippine National Bank stated:[426]

ATTY. [BENILDA A.] TEJADA:

Yes, we can show the documents which we are going to file your Honors.

We would like to state also your Honors the fact of why no registration was ever made in this case. Counsel forgot to mention that the fact of no registration is simply because the Register of Deeds refused to register our Certificate of Sale. We have a pending case against them Sir before the LRA and before the Ombudsman fore [sic] refusal to register our Certificate of Sale. Now, we have filed this case because inspite [sic] of the fact the Register of Deeds addressed a consulta to the Land Registration Authority on the registerity of the Certificate of Sale your Honors[,] [i]t was at their instance that there was a consulta.

And then, the Land Registration Authority has already rendered its opinion that the document is registrable. Despite that your Honors, the document has never been registered. So that was the subject of our case against them. We do not understand the intransigencies we do not understand the refusal.[427]

In addition, the Court of Appeals correctly dismissed

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[426] *Id.* at 886-887.

[427] *Id.* at 887.

[428] *Id.* at 894.

Philippine National Bank's appeal because the issue raised involved a question of law, specifically "whether or not mere entry in the Primary Entry Book is considered as registration of the subject Certificate of Sale."[428]

Section 56 of Presidential Decree No. 1529 states:

> SECTION 56. Primary Entry Book; Fees; Certified Copies. — Each Register of Deeds shall keep a primary entry book in which, upon payment of the entry fee, he shall enter, in the order of their reception, all instruments including copies of writs and processes filed with him relating to registered land. He shall, as a preliminary process in registration, note in such book the date, hour and minute of reception of all instruments, in the order in which they were received. They shall be regarded as registered from the time so noted, and the memorandum of each instrument, when made on the certificate of title to which it refers, shall bear the same date: Provided, that the national government as well as the provincial and city governments shall be exempt from the payment of such fees in advance in order to be entitled to entry and registration. (Emphasis supplied)

In this case, Philippine National Bank filed the Sheriff's Provisional Certificate of Sale, which was duly approved by the Executive Judge, before the Registry of Deeds of Davao City. Entries were made in the Primary Entry Book. Hence, the Sheriff's Provisional Certificate of Sale should be considered registered.

Autocorp Group and Autographics, Inc. involved an extrajudicial foreclosure of mortgaged property and the registration of a Sheriff's Certificate of Sale. Autocorp sought the issuance of a writ of injunction "to prevent the register of deeds from registering the subject certificate of sale[.]"[429]

This court explained that a Sheriff's Certificate of Sale is an involuntary instrument and that a writ of injunction will no longer lie because of the following reasons:

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[429] *Autocorp Group and Autographics, Inc. v. Court of Appeals*, 481 Phil. 298, 312 (2004) [Per *J.* Puno, Second Division].

[F]or the registration of an involuntary instrument, the law does not require the presentation of the owner's duplicate certificate of title and *considers the annotation of such instrument upon the entry book, as sufficient to affect the real estate to which it relates. . . .*

x x x x x x x x x

It is a ministerial duty on the part of the Register of Deeds to annotate the instrument on the certificate of sale after a valid entry in the primary entry book. P.D. No. 1524 provides:

SEC. 63. Foreclosure of Mortgage. — x x x

(b) If the mortgage was foreclosed extrajudicially, a certificate of sale executed by the officer who conducted the sale *shall be filed with the Register of Deeds who shall make a brief memorandum thereof on the certificate of title.*

In fine, petitioner's prayer for the issuance of a writ of injunction, to prevent the register of deeds from registering the subject certificate of sale, had been rendered moot and academic by the valid entry of the instrument in the primary entry book. *Such entry is equivalent to registration*.[430] (Emphasis supplied, citation omitted)

Based on the records of this case, the Sheriff's Certificate of Sale filed by Philippine National Bank was already recorded in the Primary Entry Book.

The refusal of the Register of Deeds to annotate the registration on the titles of the properties should not affect Philippine National Bank's right to possess the properties.

As to the argument that Philippine National Bank admitted in open court that the Certificate of Sale was not registered, it is evident from Spouses Limso and Davao Sunrise's Memorandum that Philippine National Bank immediately explained that the non-registration was due to the Register of Deeds' refusal. Thus, the alleged non-registration was not due to Philippine National Bank's fault.

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[430] *Id.* at 311-312.

[431] *Rollo* (G.R. No. 205463), p. 89, Land Registration Authority's Resolution.

It appears on record that Philippine National Bank already complied with the requirements for registration. Thus, there was no reason for the Register of Deeds to persistently refuse the registration of the Certificate of Sale.

At any rate, the Land Registration Authority stated in its Resolution in Administrative Case No. 02-13 that Atty. Patriarca herself admitted that she already affixed her signature on the annotation at the back of the certificate of titles, and that she subsequently erased her signature.[431] This finding of fact in the administrative case supports the argument of Philippine National Bank and the opinion of the Office of the Solicitor General that the Certificate of Sale should be considered registered.

With regard to the issue of whether Philippine National Bank is entitled to a writ of possession, the trial court in Other Case No. 124-2002 denied the application for the writ of possession and explained:

> Portion of Sec. 47 of RA No. 8791 is quoted:
>
> > x x x the purchaser at the auction sale concerned whether in a judicial or extra-judicial foreclosure shall have the right to enter upon and take possession of such property immediately after the date of the confirmation of the auction sale and administer the same in accordance with law . . . .
>
> From the quoted provision, one can readily conclude that before the sale is confirmed, it is not considered final or perfected to entitle the purchaser at the auction sale to the writ of possession as a matter of right. . . .
>
> In extra-judicial foreclosure, there is technically no confirmation of the auction sale in the manner provided for by Sec. 7 of Rule 68. The process though involves an application, preparation of the notice of extra-judicial sale, the extra-judicial foreclosure sale, issuance of the certificate of sale, approval of the Executive Judge or in the latter's absence, the Vice-Executive Judge and the registration of the certificate of sale with the Register of Deeds.
>
> While it may be true that as found by the CA in the case earlier cited that DSIDC had only until January 24, 2001 to redeem its

properties and that the registration of the certificate of foreclosure sale is no longer relevant in the reckoning of the redemption period, for purposes of the issuance of the writ of possession, petitioner to this Court's belief should complete the entire process in extra-judicial foreclosure. Otherwise the sale may not be considered perfected and the application for writ of possession may be denied.

The records disclose that contrary to petitioner's claim, the Certificate of Sale covering the subject properties has not been registered with the Registry of Deeds of Davao City as the Court finds no annotation thereof. As such, the sale is not considered perfected to entitle petitioner to the writ of possession as a matter of right.

Accordingly, for reason stated, the petition is **DISMISSED**. With the dismissal of the petition, PNB's Motion for Reception and Admission of PNB's Ex-parte Testimonial and Documentary Evidence is **DENIED.**

SO ORDERED.[432]

However, Philippine National Bank is applying for the writ of possession on the ground that it is the winning bidder during the auction sale, and not because it consolidated titles in its name. As such, the applicable provisions of law are Section 47 of Republic Act No. 8791[433] and Section 7 of Act No. 3135.[434]

Section 47 of Republic Act No. 8791 provides:

SECTION 47. Foreclosure of Real Estate Mortgage. — In the event of foreclosure, whether judicially or extrajudicially, of any mortgage on real estate which is security for any loan or other credit accommodation granted, the mortgagor or debtor whose real property has been sold for the full or partial payment of his obligation shall have the right within one year after the sale of the real estate, to redeem the property by paying the amount due under the mortgage deed, with interest thereon at the rate specified in the mortgage, and

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[432] *Rollo* (G.R. No. 173194), pp. 560-561, Regional Trial Court Order in Other Case No. 124-2002.

[433] The General Banking Law of 2000.

[434] An Act to Regulate the Sale of Property Under Special Powers Inserted in or Annexed to Real Estate Mortgages (1924).

all the costs and expenses incurred by the bank or institution from the sale and custody of said property less the income derived therefrom. *However, the purchaser at the auction sale concerned whether in a judicial or extrajudicial foreclosure shall have the right to enter upon and take possession of such property immediately after the date of the confirmation of the auction sale and administer the same in accordance with law*. Any petition in court to enjoin or restrain the conduct of foreclosure proceedings instituted pursuant to this provision shall be given due course only upon the filing by the petitioner of a bond in an amount fixed by the court conditioned that he will pay all the damages which the bank may suffer by the enjoining or the restraint of the foreclosure proceeding.

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. (Emphasis supplied)

Section 7 of Act No. 3135 provides:

SECTION 7. In any sale made under the provisions of this Act, the purchaser may petition the Court of First Instance of the province or place where the property or any part thereof is situated, to give him possession thereof during the redemption period, furnishing bond in an amount equivalent to the use of the property for a period of twelve months, to indemnify the debtor in case it be shown that the sale was made without violating the mortgage or without complying with the requirements of this Act. Such petition shall be made under oath and filed in form of an ex parte motion in the registration or cadastral proceedings if the property is registered, or in special proceedings in the case of property registered under the Mortgage Law or under section one hundred and ninety-four of the Administrative Code, or of any other real property encumbered with a mortgage duly registered in the office of any register of deeds in accordance with any existing law, and in each case the clerk of the court shall, upon the filing of such petition, collect the fees specified in paragraph

[435] G.R. No. 172504, July 31, 2013, 702 SCRA 615 [Per *J*. Brion, Second Division].

eleven of section one hundred and fourteen of Act Numbered Four hundred and ninety-six, as amended by Act Numbered Twenty-eight hundred and sixty-six, and the court shall, upon approval of the bond, order that a writ of possession issue, addressed to the sheriff of the province in which the property is situated, who shall execute said order immediately.

The rule under Section 7 of Act No. 3135 was restated in *Nagtalon v. United Coconut Planters Bank*:[435]

> During the one-year redemption period, as contemplated by Section 7 of the above-mentioned law, a purchaser may apply for a writ of possession by filing an *ex parte* motion under oath in the registration or cadastral proceedings if the property is registered, or in special proceedings in case the property is registered under the Mortgage Law. In this case, a bond is required before the court may issue a writ of possession.[436]

On the other hand, a writ of possession may be issued as a matter of right when the title has been consolidated in the buyer's name due to nonredemption by the mortgagor. Under this situation, the basis for the writ of possession is ownership of the property.[437]

The Sheriff's Provisional Certificate of Sale should be deemed registered. However, Philippine National Bank must still file a bond before the writ of possession may be issued.

VI

To fully dispose of all the issues in these consolidated cases, this court shall also rule on one of the issues raised in G.R. No.

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[436] *Id.* at 623.

[437] *Tolosa v. United Coconut Planters Bank*, G.R. No. 183058, April 3, 2013, 695 SCRA 138, 146 [Per J. Perez, Second Division].

[438] *Rollo* (G.R. No. 158622, Vol. I), pp. 13-17, Petition for Review on *Certiorari*.

[439] Act 3135 (1924), Sec. 6, as amended by Act 4118 (1933), Sec. 1, provides:

> SEC. 6. In all cases in which an extrajudicial sale is made under the special power hereinbefore referred to, the debtor, his successors in interest

158622.

In G.R. No. 158622, Spouses Limso and Davao Sunrise allege that the Sheriff's Provisional Certificate of Sale does not state the appropriate redemption period; thus, they filed a Petition for Declaratory Relief, which was docketed as Civil Case No. 29,036-2002.[438]

In the loan agreement, natural and juridical persons are co-debtors, while the properties mortgaged to secure the loan are owned by Davao Sunrise.

Act No. 3135 provides that the period of redemption is one (1) year after the sale.[439] On the other hand, Republic Act No. 8791 provides a shorter period of three (3) months to redeem in cases involving juridical persons.[440]

We rule that the period of redemption for this case should be not more than three (3) months in accordance with Section 47 of Republic Act No. 8791. The mortgaged properties are all owned by Davao Sunrise. Section 47 of Republic Act No. 8791 states: "the mortgagor or debtor whose real property has been sold" and "juridical persons whose property is being sold[.]" Clearly, the law itself provides that the right to redeem belongs to the owner of the property mortgaged. As the mortgaged properties all belong to Davao Sunrise, the shorter period of three (3) months is the applicable redemption period.

The policy behind the shorter redemption period was explained in *Goldenway Merchandising Corporation v.*

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or any judicial creditor or judgment creditor of said debtor, or any person having a lien on the property subsequent to the mortgage or deed of trust under which the property is sold, may redeem the same at any time within the term of one year from and after the date of the sale; and such redemption shall be governed by the provisions of sections four hundred and sixty-four to four hundred and sixty-six, inclusive, of the Code of Civil Procedure, in so far as these are not inconsistent with the provisions of this Act.

[440] Rep. Act No. 8791 (2000), Sec. 47.

[441] G.R. No. 195540, March 13, 2013, 693 SCRA 439 [Per *J.* Villarama, Jr., First Division].

Equitable PCI Bank:[441]

> The difference in the treatment of juridical persons and natural persons was based on the nature of the properties foreclosed — whether these are used as residence, for which the more liberal one-year redemption period is retained, or used for industrial or commercial purposes, in which case a shorter term is deemed necessary to reduce the period of uncertainty in the ownership of property and enable mortgagee-banks to dispose sooner of these acquired assets. It must be underscored that the General Banking Law of 2000, crafted in the aftermath of the 1997 Southeast Asian financial crisis, sought to reform the General Banking Act of 1949 by fashioning a legal framework for maintaining a safe and sound banking system. In this context, the amendment introduced by Section 47 embodied one of such safe and sound practices aimed at ensuring the solvency and liquidity of our banks.[442] (Citation omitted)

To grant a longer period of redemption on the ground that a co-debtor is a natural person defeats the purpose of Republic Act No. 8791. In addition, the real properties mortgaged by Davao Sunrise appear to be used for commercial purposes.[443]

WHEREFORE, the Petition for Review on Certiorari in G.R. No. 173194 is **DENIED.**

The Petition docketed as G.R. No. 196958 is **PARTIALLY GRANTED,** while the Petition docketed as G.R. No. 197120 is **DENIED.** The Decision of the Court of Appeals in CA-G.R. CV No. 79732-MIN is **AFFIRMED with MODIFICATION.**

The Conversion, Restructuring and Extension Agreement executed in 1999 is deemed to have novated the Credit Agreement and Loan Agreement executed in 1993. Thus, the principal loan

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[442] *Id.* at 453.

[443] *Rollo* (G.R. No. 173194), pp. 106-111, Petition for Extrajudicial Foreclosure of Real Estate Mortgage.

[444] G.R. No. 189871, August 13, 2013, 703 SCRA 439, 457-458 [Per *J.* Peralta, *En Banc*]. In *Nacar*, this court held: "To recapitulate and for future guidance, the guidelines laid down in the case of *Eastern Shipping Lines* are accordingly modified to embody BSP-MB Circular No. 799, as follows:

obligation of Davao Sunrise Investment and Development Corporation and Spouses Robert Alan and Nancy Limso shall be computed on the basis of the amounts indicated in the Conversion, Restructuring and Extension Agreement.

Interest on the principal loan obligation shall be at the rate of 12% per annum and computed from January 28, 1999, the date of the execution of the Conversion, Restructuring and Extension Agreement. Interest rate on the conventional interest shall be at the rate of 12% per annum from August 21, 2000, the date of judicial demand, to June 30, 2013. From July 1, 2013 until full satisfaction, the interest rate on the conventional interest shall be computed at 6% per annum in view of this court's ruling in *Nacar v. Gallery Frames*:

> I. When an obligation, regardless of its source, *i.e.*, law, contracts, quasi-contracts, delicts or quasi-delicts is breached, the contravenor can be held liable for damages. The provisions under Title XVIII on 'Damages' of the Civil Code govern in determining the measure of recoverable damages.
>
> II. With regard particularly to an award of interest in the concept of actual and compensatory damages, the rate of interest, as well as the accrual thereof, is imposed, as follows:
>
> 1. When the obligation is breached, and it consists in the payment of a sum of money, *i.e.*, a loan or forbearance of money, the interest due should be that which may have been stipulated in writing. Furthermore, the interest due shall itself earn legal interest from the time it is judicially demanded. In the absence of stipulation, the rate of interest shall be 6% per annum to be computed from default, *i.e.*, from judicial or extrajudicial demand under and subject to the provisions of Article 1169 of the Civil Code.
>
> 2. When an obligation, not constituting a loan or forbearance of money, is breached, an interest on the amount of damages awarded may be imposed at the discretion of the court at the rate of 6% *per annum.* No interest, however, shall be adjudged on unliquidated claims or damages, except when or until the demand can be established with reasonable certainty. Accordingly, where the demand is established with reasonable certainty, the interest shall begin to run from the time the claim is made judicially or extrajudicially (Art. 1169, Civil Code), but when such certainty cannot be so reasonably established at the time the demand is made, the interest shall begin to run only from the date the judgment of the court is made (at which time the quantification of damages may be deemed to have been reasonably ascertained). The actual base for the computation of legal interest shall, in any case, be on the amount finally adjudged.

This case is ordered **REMANDED** to Branch 17 of the Regional Trial Court of Davao City for the computation of the total amount of Davao Sunrise Investment and Development Corporation and Spouses Robert Alan and Nancy Limso's remaining obligation.

The Petition docketed as G.R. No. 205463 is **PARTIALLY GRANTED.** The Sheriff's Provisional Certificate of Sale is deemed to have been registered. In view of the facts of this case, the applicable period of redemption shall be three (3) months as provided under Republic Act No. 8791.

In case the final computation shows that Davao Sunrise Investment and Development Corporation and Spouses Robert Alan and Nancy Limso overpaid Philippine National Bank, Philippine National Bank must return the excess amount.

The writ of possession prayed for by Philippine National Bank may only be issued after all the requirements for the issuance of a writ of possession are complied with.

SO ORDERED.

Carpio (Chairperson), Brion, Peralta,[*] and *del Castillo, JJ.,* concur.

THIRD DIVISION

[G.R. No. 180993. January 27, 2016]

REPUBLIC OF THE PHILIPPINES, REPRESENTED BY THE LAND REGISTRATION AUTHORITY, *petitioner, vs.* **RAYMUNDO VIAJE, ET AL.,** *respondents.*

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3. When the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest, whether the case falls under paragraph 1 or paragraph 2, above, shall be 6% *per annum* from such finality until its satisfaction, this interim period being deemed to be by then an equivalent to a forbearance of credit.

And, in addition to the above, judgments that have become final and executory prior to July 1, 2013, shall not be disturbed and shall continue to be implemented applying the rate of interest fixed therein." (Emphasis in the original, citation omitted)

[*] Designated additional member per Raffle dated January 25, 2016.

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE CODE OF 1987; THE OFFICE OF THE SOLICITOR GENERAL'S (OSG) DEPUTIZED COUNSEL IS NO MORE THAN THE 'SURROGATE' OF THE SOLICITOR GENERAL IN ANY PARTICULAR PROCEEDING, AND THE LATTER REMAINS THE PRINCIPAL COUNSEL ENTITLED TO BE FURNISHED COPIES OF ALL COURT ORDERS, NOTICES, AND DECISIONS.— The power of the OSG to deputize legal officers of government departments, bureaus, agencies and offices to assist it in representing the government is well settled. The Administrative Code of 1987 explicitly states that the OSG shall have the power to "deputize legal officers of government departments, bureaus, agencies and offices to assist the Solicitor General and appear or represent the Government in cases involving their respective offices, brought before the courts and exercise supervision and control over such legal officers with respect to such cases." But it is likewise settled that **the OSG's deputized counsel is "no more than the 'surrogate' of the Solicitor General in any particular proceeding" and the latter remains the principal counsel entitled to be furnished copies of all court orders, notices, and decisions.** In this case, records show that it was the OSG that first entered an appearance in behalf of the Republic; hence, it remains the principal counsel of record. The appearance of the deputized counsel did not divest the OSG of control over the case and did not make the deputized special attorney the counsel of record. Thus, the RTC properly acted within bounds when it relied on the rule that it is the notice to the OSG that is binding.

2. ID.; ID.; ID.; ID.; SERVICE OF THE COPIES OF THE COURT'S NOTICES, ORDERS AND DECISIONS UPON THE DEPUTIZED COUNSEL WILL NOT BE BINDING UNTIL THEY ARE ACTUALLY RECEIVED BY THE OSG, AS THE PROPER BASIS FOR COMPUTING A REGLEMENTARY PERIOD FOR DETERMINING WHETHER A DECISION HAD ATTAINED FINALITY IS SERVICE ON THE OSG.— [T]he OSG also pointed out that it specifically requested the RTC to likewise furnish its

deputized counsel with a copy of its notices. Records show that the deputized counsel also requested that copies of notices and pleadings be furnished to him. Despite these requests, it was only the OSG that the RTC furnished with copies of its notices. It would have been more prudent for the RTC to have furnished the deputized counsel of its notices. All the same, doing so does not necessarily clear the OSG from its obligation to oversee the efficient handling of the case. And even if the deputized counsel was served with copies of the court's notices, orders and decisions, these will not be binding until they are actually received by the OSG. More so in this case where the OSG's Notice of Appearance and its Letter deputizing the LRA even contained the *caveat* that it is **only notices of orders, resolutions and decisions served on the OSG that will bind the Republic, the entity, agency and/or official represented**. In fact, the proper basis for computing a reglementary period and for determining whether a decision had attained finality is service on the OSG.

3. ID.; ID.; ID.; ID.; THE FAILURE OF THE OSG TO DESIGNATE WHERE THE APPEAL WILL BE TAKEN SHOULD NOT WORK AGAINST THE REPUBLIC, FOR THE REPUBLIC IS NEVER ESTOPPED BY THE MISTAKES OR ERROR COMMITTED BY ITS OFFICIALS OR AGENTS; THE STRINGENT APPLICATION OF THE RULES, BOTH ON THE MATTER OF SERVICE OF NOTICES TO THE OSG AND ITS DEPUTIZED COUNSEL AND ON THE NOTICE OF APPEAL, RELAXED BY THE COURT IN CASE AT BAR.— The Court, likewise, cannot attribute error to the CA when it affirmed the RTC's recall of its order granting the OSG's notice of appeal. The RTC simply applied the clear provisions of Section 5, Rule 41 of the Rules of Court, which mandated that a "notice of appeal shall x x x **specify the court to which the appeal is being taken** x x x ." Nevertheless, under the circumstances obtaining in this case, the Court resolves to relax the stringent application of the rules, both on the matter of service of notices to the OSG and its deputized counsel, and on the notice of appeal. Such relaxation of the rules is not unprecedented. **x x x.** In *Ulep v. People of the Philippines*, meanwhile, the Court ordered the remand of the case to the proper appellate court, stating that the "petitioner's failure to designate the proper forum for her appeal was inadvertent,"

and that "[t]he omission did not appear to be a dilatory tactic on her part." Similarly in this case, the OSG's omission should not work against the Republic. For one, the OSG availed of the proper remedy in seeking a review of the RTC's order of dismissal by pursuing an ordinary appeal and filing a notice of appeal, albeit without stating where the appeal will be taken. For another, it is quite elementary that an ordinary appeal from a final decision/order of the RTC rendered in the exercise of its original jurisdiction can only be elevated to the CA under Rule 41 of the Rules of Court. Moreover, as in *Ulep*, the OSG's failure to designate where the appeal will be taken was a case of inadvertence and does not appear to be a dilatory tactic on its part. More importantly, the OSG's omission should not redound to the Republic's disadvantage for it is a well-settled principle that the Republic is never estopped by the mistakes or error committed by its officials or agents.

4. **ID.; ID.; ID.; SUSTAINING THE PEREMPTORY DISMISSAL OF THE CIVIL CASE DUE TO THE ERRONEOUS APPRECIATION BY THE REPUBLIC'S COUNSEL OF THE APPLICABLE RULES OF PROCEDURE IS CONSIDERED AN ABDICATION OF THE STATE'S AUTHORITY OVER LANDS OF THE PUBLIC DOMAIN; THE COURT MUST EXERCISE ITS EQUITY JURISDICTION AND RELAX THE RIGID APPLICATION OF THE RULES WHERE STRONG CONSIDERATIONS OF SUBSTANTIAL JUSTICE ARE MANIFEST.—** [T]he subject matter of the case before the RTC — the recovery by the Republic of a 342,842-sq m property in Cavite covered by an allegedly non-existent title — necessitates a full-blown trial. To sustain the peremptory dismissal of Civil Case No. TM-1001 due to the erroneous appreciation by the Republic's counsel of the applicable rules of procedure is an abdication of the State's authority over lands of the public domain. Under the **Regalian Doctrine,** "all lands of the public domain belong to the State, and the State is the source of any assertes right to ownership in land and charged with the conservation of such patrimony." The Court, therefore, must exercise its equity juirsdiction and relax the rigid application of the rules whwre srong considerations of substantial justice are manifest.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
Atty. Franco L. Loyola for respondents V. Pellos, *et al.*
Atty. Renon V. Cruz for respondents CNP Industies, Inc. & Network Trading Phils., Inc.
Atty. Juan Carlos J. De Veyra for respondent Johnny R. Chan.
Atty. Rolando A. Vergara, Jr. for respondent Norberto V. Sanco.

D E C I S I O N

REYES, *J.*:

The Republic of the Philippines (Republic) filed the present Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court assailing the Court of Appeals' (CA) Decision[2] dated November 28, 2007 in CA-G.R. SP No. 90102, dismissing its petition for *certiorari.*

Facts

The Office of the Solicitor General (OSG), on behalf of the Republic and as represented by the Land Registration Authority (LRA), filed on July 10, 2000 a complaint[3] for Cancellation of Title and Reconveyance with the Regional Trial Court (RTC) of Trece Martires City, docketed as Civil Case No. TM-1001 and raffled to Branch 23. The action mainly sought the nullity of the transfer certificate of title (TCT) individually issued in the name of the defendants therein, for having been issued in violation of law and for having dubious origins. The titles were allegedly derived from TCT No. T-39046 issued on October 1, 1969. TCT No. T-39046, in turn, was derived from Original

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[1] *Rollo*, pp. 12-43.

[2] Penned by Associate Justice Ramon M. Bato, Jr. with Associate Justices Andres B. Reyes, Jr. (now CA Presiding Justice) and Jose C. Mendoza (now a Member of this Court) concurring; *id.* at 44-58.

[3] *Id.* at 65-78.

Certificate of Title (OCT) No. 114 issued on March 9, 1910 covering 342,842 square meters. The Republic alleged, among others, that OCT No. 114 and the documents of transfer of TCT No. T-39046 do not exist in the records of the Registers of Deeds of Cavite and Trece Martires City.[4]

The OSG entered its appearance on August 7, 2001 and deputized Atty. Artemio C. Legaspi and the members of the LRA legal staff to appear in Civil Case No. TM-1001, with the OSG exercising supervision and control over its deputized counsel.[5] The OSG also requested that notices of hearings, orders, decisions and other processes be served on both the OSG and the deputized counsel.[6] The Notice of Appearance, however, stated that "only notices of orders, resolutions, and decisions served on him will bind the party represented."[7] Subsequently, Atty. Alexander N.V. Acosta (Atty. Acosta) of the LRA entered his appearance as deputized LRA lawyer, pursuant to the OSG Letter[8] dated August 7, 2001.[9] The letter also contained the statement, "only notices of orders, resolutions and decisions served on him will bind the [Republic], the entity, agency and/or official represented."[10]

Thereafter, several re-settings of the pre-trial date were made due to the absence of either the counsel for the Republic or the counsel of one of the defendants, until finally, on April 11, 2003, the RTC dismissed the complaint due to the non-appearance of the counsel for the Republic.[11]

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[4] *Id.* at 65-70.

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

[6] *Id.*

[7] *Id.* at 188.

[8] *Id.* at 190.

[9] *Id.* at 191-192.

[10] *Id.* at 190.

[11] *Id.* at 193.

The OSG filed a motion for reconsideration,[12] which was granted by the RTC in its Order dated July 22, 2003.[13] Pre-trial was again set and re-set, and on January 23, 2004, the RTC finally dismissed Civil Case No. TM-1001 with prejudice.[14] The order reads, in part:

> WHEREFORE, in view of the above, and upon motion of the defendants through counsel, Atty. Eufracio C. Fortuno, let this case be, as it is hereby, DISMISSED with prejudice.
>
> SO ORDERED.[15]

Having been informed of this, the OSG forthwith filed a Manifestation and Motion,[16] informing the RTC that Atty. Acosta was not given notice of the pre-trial schedule. The OSG also stated that such lack of notice was pursuant to a verbal court order that notice to the OSG is sufficient notice to the deputized counsel, it being the lead counsel, and that they were not formally notified of such order. The OSG argued that its deputized counsel should have been notified of the settings made by the trial court as it is not merely a collaborating counsel who appears with an OSG lawyer during hearing; rather, its deputized counsel appears in behalf of the OSG and should be separately notified. Aside from this, the OSG pointed out that it particularly requested for a separate notice for the deputy counsel.[17]

The RTC denied the OSG's Manifestation and Motion in its Order[18] dated May 31, 2004, from which the OSG filed a Notice of Appeal,[19] which was given due course by the RTC.[20]

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[12] *Id.* at 194-197.

[13] See CA Decision dated November 28, 2007, *id.* at 47.

[14] *Id.* at 59.

[15] *Id.*

[16] *Id.* at 198-203.

[17] *Id*. at 198-200.

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

[19] *Id.* at 204-205.

[20] *Id.* at 206.

Subsequently, the RTC, on motion of the defendants, issued Order[21] dated October 4, 2004 recalling its previous order that gave due course to the OSG's appeal. The ground for the recall was the OSG's failure to indicate in its notice of appeal the court to which the appeal was being directed.[22] The OSG moved for the reconsideration[23] of the order but it was denied by the RTC on March 16, 2005.[24]

Thus, the OSG filed a special civil action for *certiorari* with the CA. On November 28, 2007, the CA rendered the assailed decision dismissing the OSG's petition on the grounds that the petition was filed one day late and the RTC did not commit any grave abuse of discretion when it dismissed Civil Case No. TM-1001 and the OSG's notice of appeal. It ruled that the OSG's failure to indicate in its notice of appeal the court to which the appeal is being taken violated Section 5, Rule 41 of the Rules of Civil Procedure, which provides, among others, that "[t]he notice of appeal shall x x x specify the court to which the appeal is being taken x x x ." The CA also ruled that the OSG cannot claim lack of due process when its deputized counsel was not served a notice of the pre-trial schedule. The CA disagreed with the OSG's contention that its deputized counsel should have been notified. According to the CA, the OSG remains the principal counsel of the Republic and it is service on them that is decisive, and having received the notice of pre-trial, it should have informed its deputized counsel of the date. Aside from this, the authority given by the OSG to its deputized counsel did not include the authority to enter into a compromise agreement, settle or stipulate on facts and admissions, which is a part of the pre-trial; hence, even if the deputized counsel was present, the case would still be dismissed.[25]

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[21] *Id.* at 62.

[22] *Id.*

[23] *Id.* at 219-219.

[24] *Id.* at 64.

[25] *Id.* at 50-56.

The OSG is now before the Court arguing that:

THE APPELLATE COURT ERRED IN NOT HOLDING THAT RESPONDENT JUDGE COMMITTED GRAVE ABUSE OF DISCRETION IN DISMISSING THE COMPLAINT DESPITE THE JUSTIFIED FAILURE OF THE DEPUTIZED COUNSEL TO ATTEND THE PRE-TRIAL.

THE APPELLATE COURT ERRED IN NOT HOLDING THAT RESPONDENT JUDGE COMMITTED GRAVE ABUSE OF DISCRETION IN DISMISSING THE NOTICE OF APPEAL.[26]

The OSG contends that the rule that notice to the OSG is sufficient notice to its deputized counsel applies only to collaborating counsels who appear with the lead counsel. In case of deputized counsels, a separate notice is necessary since they appear in behalf of the OSG. Also, the OSG pointed out that it specifically requested that separate notices be furnished to its deputized counsel.[27]

The OSG also argues that the RTC committed grave abuse of discretion when it dismissed the notice of appeal despite the fact that the defendants did not ask for its recall and merely sought clarification as to which court the case was being appealed to. Moreover, the OSG maintains that its inadvertence is not fatal as it did not create any ambiguity as to which court the appeal shall be made, and that the interest of due process should prevail over an inadvertent violation of procedural rules.[28]

Ruling of the Court

The power of the OSG to deputize legal officers of government departments, bureaus, agencies and offices to assist it in representing the government is well settled. The Administrative Code of 1987 explicitly states that the OSG shall have the power

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[26] *Id.* at 27-28.

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

[28] *Id.* at 31-38.

to "deputize legal officers of government departments, bureaus, agencies and offices to assist the Solicitor General and appear or represent the Government in cases involving their respective offices, brought before the courts and exercise supervision and control over such legal officers with respect to such cases."[29] But it is likewise settled that **the OSG's deputized counsel is "no more than the 'surrogate' of the Solicitor General in any particular proceeding" and the latter remains the principal counsel entitled to be furnished copies of all court orders, notices, and decisions.**[30] In this case, records show that it was the OSG that first entered an appearance in behalf of the Republic; hence, it remains the principal counsel of record. The appearance of the deputized counsel did not divest the OSG of control over the case and did not make the deputized special attorney the counsel of record.[31] Thus, the RTC properly acted within bounds when it relied on the rule that it is the notice to the OSG that is binding.[32]

Nonetheless, the OSG also pointed out that it specifically requested the RTC to likewise furnish its deputized counsel with a copy of its notices. Records show that the deputized counsel also requested that copies of notices and pleadings be furnished to him.[33] Despite these requests, it was only the OSG that the RTC furnished with copies of its notices. It would have been more prudent for the RTC to have furnished the deputized counsel of its notices. All the same, doing so does not necessarily clear the OSG from its obligation to oversee the efficient handling of the case. And even if the deputized counsel was served with copies of the court's notices, orders and decisions, these will not be binding until they are actually received by the OSG.

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[29] ADMINISTRATIVE CODE OF 1987, Book IV, Title III, Chapter 12, Section 35 (8).

[30] *The Director of Lands v. Judge Medina*, 311 Phil. 357, 369 (1995).

[31] *National Power Corporation v. Sps. Laohoo, et al.*, 611 Phil. 194, 215 (2009).

[32] *Rollo*, pp. 54-55.

[33] *Id.* at 191.

More so in this case where the OSG's Notice of Appearance and its Letter deputizing the LRA even contained the *caveat* that it is **only notices of orders, resolutions and decisions served on the OSG that will bind the Republic, the entity, agency and/or official represented**.[34] In fact, the proper basis for computing a reglementary period and for determining whether a decision had attained finality is service on the OSG.[35] As was stated in *National Power Corporation v. National Labor Relations Commission*:[36]

> The underlying justification for compelling service of pleadings, orders, notices and decisions on the OSG as principal counsel is one and the same. As the lawyer for the government or the government corporation involved, **the OSG is entitled to the service of said pleadings and decisions, whether the case is before the courts or before a quasi-judicial agency such as respondent commission. Needless to say, a uniform rule for all cases handled by the OSG simplifies procedure, prevents confusion and thus facilitates the orderly administration of justice.**[37] (Emphasis ours)

The CA, therefore, cannot be faulted for upholding the RTC's dismissal of Civil Case No. TM-1001 due to the failure of the counsel for the Republic to appear during pre-trial despite due notice.

The Court, likewise, cannot attribute error to the CA when it affirmed the RTC's recall of its order granting the OSG's notice of appeal. The RTC simply applied the clear provisions of Section 5, Rule 41 of the Rules of Court, which mandated that a "notice of appeal shall x x x **specify the court to which the appeal is being taken** x x x ."

Nevertheless, under the circumstances obtaining in this case, the Court resolves to relax the stringent application of the rules,

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[34] *Id.* at 188-190.

[35] *National Power Corporation v. National Labor Relations Commission*, 339 Phil. 89, 101 (1997).

[36] 339 Phil. 89 (1997).

[37] *Id.* at 102.

both on the matter of service of notices to the OSG and its deputized counsel, and on the notice of appeal. Such relaxation of the rules is not unprecedented.

In *Cariaga v. People of the Philippines*,[38] the Court ruled that rules of procedure must be viewed as tools to facilitate the attainment of justice such that its rigid and strict application which results in technicalities tending to frustrate substantial justice must always be avoided.[39] In *Ulep v. People of the Philippines*,[40] meanwhile, the Court ordered the remand of the case to the proper appellate court, stating that the "petitioner's failure to designate the proper forum for her appeal was inadvertent," and that "[t]he omission did not appear to be a dilatory tactic on her part."[41]

Similarly in this case, the OSG's omission should not work against the Republic. For one, the OSG availed of the proper remedy in seeking a review of the RTC's order of dismissal by pursuing an ordinary appeal and filing a notice of appeal, albeit without stating where the appeal will be taken. For another, it is quite elementary that an ordinary appeal from a final decision/order of the RTC rendered in the exercise of its original jurisdiction can only be elevated to the CA under Rule 41 of the Rules of Court.[42] Moreover, as in *Ulep*, the OSG's failure to designate where the appeal will be taken was a case of inadvertence and does not appear to be a dilatory tactic on its part. More importantly, the OSG's omission should not redound to the Republic's disadvantage for it is a well-settled principle

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[38] 640 Phil. 272 (2010).

[39] *Id.* at 278.

[40] 597 Phil. 580 (2009).

[41] *Id.* at 584.

[42] Section 2 provides, among others, that the appeal to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its original jurisdiction shall be taken by filing a notice of appeal with the court which rendered the judgment or final order appealed from and serving a copy thereof upon the adverse party.

that the Republic is never estopped by the mistakes or error committed by its officials or agents.[43]

Finally, the subject matter of the case before the RTC — the recovery by the Republic of a 342,842-sq m property in Cavite covered by an allegedly non-existent title — necessitates a full-blown trial. To sustain the peremptory dismissal of Civil Case No. TM-1001 due to the erroneous appreciation by the Republic's counsel of the applicable rules of procedure is an abdication of the State's authority over lands of the public domain.[44] Under the Regalian doctrine, "all lands of the public domain belong to the State, and the State is the source of any asserted right to ownership in land and charged with the conservation of such patrimony." The Court, therefore, must exercise its equity jurisdiction and relax the rigid application of the rules where strong considerations of substantial justice are manifest.[45]

WHEREFORE, the petition is **GRANTED.** The Decision dated November 28, 2007 of the Court of Appeals in CA-G.R. SP No. 90102 is **REVERSED** and **SET ASIDE**. Civil Case No. TM-1001 and all its records are **REMANDED** to the Regional Trial Court of Trece Martires City, Branch 23, for further disposition on the merits.

The Office of the Solicitor General and its deputized counsel/s are advised to be more circumspect in the performance of their duties as counsels for the Republic of the Philippines.

SO ORDERED.

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

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[43] *Republic of the Philippines v. Mendoza, Sr.,* 548 Phil. 140, 165 (2007); *Mobilia Products, Inc. v. Umezawa*, 493 Phil. 85, 110 (2005). See also *Republic v. Lorenzo*, G.R. No. 172338, December 10, 2012, 687 SCRA 478, 490.

[44] *Republic of the Philippines v. Spouses Dante and Lolita Benigno*, G.R. No. 205492, March 11, 2015.

[45] *Republic v. Heirs of Cecilio and Moises Cuizon,* G.R. No. 191531, March 6, 2013, 692 SCRA 626, 643.

THIRD DIVISION

[G.R. No. 186635. January 27, 2016]

REPUBLIC OF THE PHILIPPINES, *petitioner,* **UNIVERSITY OF THE PHILIPPINES,** *oppositor, vs.* **SEGUNDINA ROSARIO, joined by ZUELLGATE CORPORATION,** *respondents.*

SYLLABUS

1. **CIVIL LAW; LAND REGISTRATION; RECONSTITUTION OF TITLE; GRANT OF PETITIONS FOR RECONSTITUTION IS NOT A MINISTERIAL TASK, FOR THE SAME INVOLVES DILIGENT AND CIRCUMSPECT EVALUATION OF THE AUTHENTICITY AND RELEVANCE OF ALL THE EVIDENCE PRESENTED, LEST THE CHILLING CONSEQUENCES OF MISTAKENLY ISSUING A RECONSTITUTED TITLE WHEN IN FACT THE ORIGINAL IS NOT TRULY LOST OR DESTROYED.—** A reconstitution of title is the re-issuance of a new certificate of title lost or destroyed in its original form and condition. Indeed, it does not pass upon the ownership of the land covered by the lost or destroyed title. Nonetheless, in *Republic of the Philippines v. Pasicolan*, the Court has cautioned against treating petitions for reconstitution as a mere ministerial task, to wit: [G]ranting Petitions for Reconstitution is not a ministerial task. It involves diligent and circumspect evaluation of the authenticity and relevance of all the evidence presented, lest the chilling consequences of mistakenly issuing a reconstituted title when in fact the original is not truly lost or destroyed.

2. **ID.; ID.; ID.; THE VALIDITY AND INDEFEASIBILITY OF THE TITLES OF THE UNIVERSITY OF THE PHILIPPINES OVER ITS LANDHOLDINGS ARE RECOGNIZED AND CONFIRMED BOTH BY LAW AND JURISPRUDENCE. —** The Court of Appeals erred in its observation that UP failed to sufficiently prove the existence of its title over the subject land. UP's titles over its landholdings are recognized and confirmed both by law and jurisprudence. Section 22 of Republic Act No. 9500 (R.A. 9500) is explicit:

SEC. 22. *Land Grants and Other Real Properties of the University.* – **The absolute ownership of the national university over these landholdings, including those covered by original and transfer certificates of title in the name of the University of the Philippines and their future derivatives, is hereby confirmed**. x x x. Citing *Tiburcio, et al. v. PHHC*, *et al*., *Galvez v. Tuason*, *People's Homesite & Housing Corporation (PHHC) v. Mencias*, and *Varsity Hills, Inc. v. Mariano*, the Court emphasized in *Heirs of Pael v. CA* that the titles of UP over its landholdings have become incontrovertible so that courts are precluded from looking anew into their validity. x x x. **The rulings in *Tiburcio vs. PHHC and Galvez vs. Tuason* were reiterated by this Court in *PHHC vs. Mencias* and *Varsity Hills vs. Mariano.*** x x x **Finally, it should be emphasized that this Court's Decision in Tiburcio, et al. vs. PHHC, as well as in the subsequent cases upholding the validity and indefeasibility of the certificate of title covering the UP Diliman Campus, precludes the courts from looking anew into the validity of UP's tile**. xxx Section 1, Rule 129 of the Rules of Court mandates that a court shall take judicial notice, without the introduction of evidence, of the official acts of the legislative, executive, and judicial departments of the Philippines. Thus, as both Congress and this Court have repeatedly and consistently validated and recognized UP's indefeasible title over its landholdings, the RTC and the Court of Appeals clearly erred when it faulted the Republic and UP for presenting certified true copies of its titles signed by its records custodian instead of either the duplicate originals or the certified true copies issued by the Register of Deeds of Quezon City. Indeed, the RTC and the CA should have taken judicial notice of UP's title over its landholdings, without need of any other evidence.

3. ID.; DECISIONS; PRINCIPLE OF *STARE DECISIS ET NON QUIETA MOVERE*; COURTS ARE DUTY-BOUND TO ABIDE BY PRECEDENTS; THUS, WHERE THE SAME QUESTIONS RELATING TO THE SAME EVENT HAVE BEEN PUT FORWARD BY THE PARTIES SIMILARLY SITUATED AS IN A PREVIOUS CASE LITIGATED AND DECIDED BY A COMPETENT COURT, THE RULE OF *STARE DECISIS* IS A BAR TO ANY ATTEMPT TO RELITIGATE THE SAME ISSUE. — It may be, as pointed out by the RTC and the Court of Appeals, that a petition for

reconstitution of title does not treat of the issue of ownership. However, in the case at bar, as it was established that TCT No. 269615 overlaps with UP's titles, and as UP's indefeasible titles are recognized by law and jurisprudence, adopting the myopic view of the RTC and the Court of Appeals will only result into an unnecessary and pointless relitigation of an issue that has already been repeatedly settled by this Court. We remind the courts that we are duty-bound to abide by precedents, pursuant to the time-honored principle of *stare decisis et non quieta movere*. In *Commissioner of Internal Revenue v. The Insular Life Assurance Co. Ltd.*, we reiterated: Time and again, the Court has held that it is a very desirable and necessary judicial practice that when a court has laid down a principle of law as applicable to a certain state of facts, it will adhere to that principle and apply it to all future cases in which the facts are substantially the same. *Stare decisis et non quieta movere*. Stand by the decisions and disturb not what is settled. *Stare decisis* simply means that for the sake of certainty, a conclusion reached in one case should be applied to those that follow if the facts are substantially the same, even though the parties may be different. It proceeds from the first principle of justice that, absent any powerful countervailing considerations, like cases ought to be decided alike. Thus, where the same questions relating to the same event have been put forward by the parties similarly situated as in a previous case litigated and decided by a competent court, the rule of *stare decisis* is a bar to any attempt to relitigate the same issue.

4. CIVIL LAW; LAND REGISTRATION; RECONSTITUTION OF TITLE; COURTS MUST BE CAUTIOUS AND CAREFUL IN GRANTING RECONSTITUTION OF LOST OR DESTROYED TITLES, AS IT IS THE DUTY THEREOF TO SCRUTINIZE AND VERIFY NOT ONLY ALL SUPPORTING DOCUMENTS, BUT ALSO EACH AND EVERY FACT, CIRCUMSTANCE, OR INCIDENT RELATED TO THE CASE. — The Republic and UP were able to establish that the land described in the duplicate original of TCT No. 269615 submitted by respondent Rosario does not refer to any technically recognized location. In the Certification dated September 18, 1998 issued by OIC- Technical Director of the LMB-DENR-NCR, the DENR, which is the official repository of all approved survey plans for all parcels of land

within the territorial jurisdiction of the Philippines, attested to the non-existence of the survey plans alluded to in TCT No. 269615. x x x It is to be observed also that the sketch plan presented by respondent Rosario in open court bore the annotations "NOT FOR REGISTRATION" and for "reference only," whereas the photocopy submitted to the court does not contain said annotations. This discrepancy, unexplained by respondent Rosario, coupled with the LRA Report with Attached Sketch Plan dated December 10, 1998 and the Official Report of OIC Regional Technical Director Mamerto Infante of the LMB-DENR-NCR, shows that something is suspicious about the land described as TCT No. 269615. Verily, on this point alone, the RTC and the Court of Appeals should have denied reconstitution. x x x. [W]e again remind the courts of their duty to protect the efficacy of the Torrens system and the stability and security of land titles. In *Republic of the Phils. v. Sps. Lagramada*, the Court, citing *Tahanan Devt. Corp. v. CA, et al.*, warned that courts must be cautious and careful in granting reconstitution of lost or destroyed titles. It is the duty of the courts to scrutinize and verify not only all supporting documents, but also each and every fact, circumstance, or incident related to the case.

5. **ID.; ID.; ID.; COURTS AND UNSCRUPULOUS LAWYERS ARE ADMONISHED TO STOP ENTERTAINING BOGUS CLAIMS SEEKING TO ASSAIL THE TITLE OF THE UNIVERSITY OF THE PHILIPPINES OVER ITS LANDHOLDINGS, WHICH HAD ALREADY BEEN VALIDATED COUNTLESS TIMES BY THE COURT .—** [W]e herein reiterate our admonition in *Cañero* for courts and unscrupulous lawyers to stop entertaining bogus claims seeking to assail UP's title over its landholdings. We repeat: **We strongly admonish courts and unscrupulous lawyers to stop entertaining spurious cases seeking further to assail respondent UP's title. These cases open the dissolute avenues of graft to unscrupulous land-grabbers who prey like vultures upon the campus of respondent UP. By such actions, they wittingly or unwittingly aid the hucksters who want to earn a quick buck by misleading the gullible to buy the Philippine counterpart of the proverbial London Bridge. It is well past time for courts and lawyers to cease wasting their time and resources on these worthless causes and take judicial notice of the fact that respondent UP's title had already been**

validated countless times by this Court. Any ruling deviating from such doctrine is to be viewed as a deliberate intent to sabotage the rule of law and will no longer be countenanced.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner and oppositor.
Karaan & Karaan Law Office for respondents.
Eduardo A. Balauro for *Zuellgate Corp.*

D E C I S I O N

PEREZ, *J.*:

Assailed in the present petition for review *on certiorari* is the Decision[1] dated October 17, 2008 and the Resolution[2] dated February 10, 2009 of the Court of Appeals in CA-G.R. CV No. 85519, which affirmed the Decision[3] dated January 5, 2004 of the Regional Trial Court (RTC) of Quezon City, and in effect ordered the reconstitution of Transfer Certificate of Title (TCT) No. 269615 in the name of respondent Segundina Rosario (Rosario).

Factual Background

The property subject of the present controversy is located in the Diliman campus of the University of the Philippines, and is now the site of various buildings and structures along Commonwealth Avenue, including the PHILCOA Wet Market, the Asian Institute of Tourism, the Philippine Social Sciences Building, the National Hydraulic Center, the UP Sewerage Treatment Plant, the Petron Gas Station, the UP Arboretum, the Campus Landscaping Office, the Philippine Atomic Energy

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[1] *Rollo*, pp. 70-87; penned by Associate Justice Marlene Gonzales-Sison and concurred in by Associate Justice Isaias P. Dicdican and then Associate Justice Estela M. Perlas-Bernabe (now a member of this Court).

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

[3] Records, Vol. 3, pp. 1124-1134; penned by then Judge Normandie B. Pizzaro.

Commission Building, the INNOTECH Building, and the UP-Ayala Land TechnoHub.[4]

On November 12, 1997, respondent Rosario filed a petition for the reconstitution of TCT No. 269615 before the Regional Trial Court of Quezon City (RTC), claiming that her title covers lots 42-A-1, 42-A-2 and 42-A-3 of subdivision plan Psd 77362 and Psd 4558.[5] This petition was docketed as LRC No. Q-9885 (97).

As summarized by the Court of Appeals, to support respondent Rosario's claim:[6]

> [S]he presented the owner's duplicate copy of said title (TCT No. 269615) and a certification issued by Atty. Samuel Cleofe of the Register of Deeds of Quezon City to prove that the original copy of said title was among those burned during the fire that razed the Quezon City Hall on 11 June 1998. In addition, she presented a sketch plan of the subject piece of land, which was recorded in the Bureau of Lands and Tax Bill Receipt Nos. 52768, 63268 and 442447, together with a certification issued by the City Treasurer of Quezon City stating that she paid all the real property taxes due on the subject piece of land. Lastly, she maintained that she is in possession of the subject piece of land through a caretaker named Linda Salvacion.

Petitioner Republic of the Philippines (Republic) and oppositor University of the Philippines (UP) opposed the petition. They contend that the documents presented by respondent Rosario are of suspicious authenticity and, more importantly, that the land supposedly covered by TCT No. 269615 is already covered by RT-58201 (192687) and RT-107350 (192689) in the name of UP. As condensed by the Court of Appeals:[7]

> xxx. The Republic presented several witnesses: 1) Benjamin Bustos,

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[4] *Rollo*, p. 220; Motion to Admit Attached Reply to Respondent Segundina Rosario's (joined by Zuellgate Corporation) Comment and/or Opposition dated 17 August 2009 (With Prayer to Refer the Case *En Banc*).

[5] *Supra* note 1 at 71.

[6] *Id.* at 72.

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

the Chief of the reconstitution division of the Land Registration Authority (LRA), testified that based on a land cross section using available documents, TCT No. 269615 overlapped with the land titles registered in the name of UP; 2) Emilio Pugongan, from the LRA, testified that TCT No. 269615 was located within the tract of land owned by UP; 3) Anthony Pulmano, an assistant to the OIC of the Real Estate Division of Quezon City's Treasurer's Office, testified that the City Treasurer's Office prepared a report signed by one Alfredo Cortes stating that one of the receipts presented by petitioner Segundina to prove that she paid realty tax was genuine but it was not validated and that Director Casiano Cristobal told Cortes that the signature purportedly appearing in the receipt was not Cristobal's signature; 4) Henry Pacis, a member of the survey division of the Land Management Services of the Department of Environment and Natural Resources (DENR), testified that he conducted a study of the survey plan submitted by petitioner Segundina, the results of which were embodied in a certification signed by the DENR Regional Director Mamerto Infante stating that Psd 77362 is not available in the records of the DENR; and 5) Teofista Pajara, the Chief of the Assessment Record and Management Division of Quezon City's Treasurer's Office, testified that she studied Tax Declaration 12158 and found that said declaration is actually in the name of Tecla Gutierrez and that a copy of the same declaration in the name of petitioner Segundina does not exist in her files.

Oppositor UP argued that the petition for reconstitution was a collateral attack on the land titles registered in its name and if granted, will cause it prejudice. UP presented its records custodian who testified that TCT No. 269615 and TCT Nos. 192687 and 192689, both in the name of UP, are overlapping.

Proceedings before the RTC

Respondent Rosario testified in support of her petition. She presented her owner's duplicate copy of title, a Certification issued by the Register of Deeds of Quezon City to the effect that the original copy of TCT No. 269615 was among those burned in the fire of June 11, 1998, the supposed original of her 1980 Tax Declaration No. 12158 to show that the land declared thereunder was covered by TCT No. 269615, as well as a sketch plan of the subject land.

During respondent Rosario's testimony, the Republic's counsel noted that the supposed original tax declaration presented by respondent Rosario did not match the photocopy of the tax declaration attached in the petition as the latter did not state that the land it described was covered by TCT No. 269615. Respondent Rosario was not able to explain this discrepancy.[8]

Moreover, UP's counsel also noted that when respondent Rosario presented the original microfilm copy of her sketch plan for marking, it contained the annotations "NOT FOR REGISTRATION OR TITLING," and was for "reference only," but the photocopy presented by her to be marked and offered in evidence did not contain said annotations. Again, respondent Rosario failed to explain this discrepancy.[9]

For their part, the Republic and UP presented public officers of various government agencies like the Land Registration Authority (LRA), the Department of Environment and Natural Resources-Land Management Bureau (DENR-LMB), the Quezon City Assessor's Office, and the Quezon City Treasurer's Office to prove that the land supposedly covered by TCT No. 269615 is located within the tract of land owned and registered in the name of UP, that Psd 77362 is not available in the records of the DENR, and that Tax Declaration No. 12158 is in the name of one Tecla Gutierrez and not in respondent Rosario's name.

The RTC granted reconstitution. The dispositive portion of the Decision dated January 5, 2004, reads:[10]

> WHEREFORE, the above premises considered, the Register of Deeds of Quezon City is hereby ordered to reconstitute in its records the original TCT No. 269615 in the name of the Petitioner Segundina Rosario WITHOUT PREJUDICE to an existing or better title over the same lot covered thereby.
>
> SO ORDERED.

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[8] Petition for Review on *Certiorari*; *rollo*, p. 18.

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

[10] *Supra* note 1 at 73.

The Republic and UP appealed before the Court of Appeals.

In 2004, respondent Rosario died. Respondent Zuellgate Corporation moved to substitute or join CA-G.R. CV No. 85519, alleging that it acquired the lots covered by TCT No. 269615 from respondent Rosario by virtue of a Deed of Absolute Sale notarized in 2003.

Proceedings before the Court of Appeals

In the Decision dated October 17, 2008, the Court of Appeals affirmed the RTC in this wise:[11]

> **WHEREFORE,** in view of the foregoing, the decision of the Regional Trial Court of Quezon City (Branch 101) in LRC Case No. Q-9885(97) ordering the reconstitution of Transfer Certificate of Title (TCT) No. 269615 in the name of petitioner Segundina Rosario is ***AFFIRMED.***
>
> **SO ORDERED.**

The Court of Appeals held that as the case was one for reconstitution of title, it does not pass upon the ownership of the land covered by the lost or destroyed title, and thus, the RTC was correct in ordering the reconstitution of TCT No. 269615 on the basis of the owner's duplicate copy of the title presented by respondent Rosario.

The appellate court further held that the petition for reconstitution filed by respondent Rosario cannot be said to have attacked, collaterally or otherwise, the titles of UP because the latter failed to sufficiently prove the existence of its title over the subject land.

Issues

In the present petition, petitioner raises the following issues:[12]

I.

WHETHER OR NOT THE COURT OF APPEALS ERRED IN AFFIRMING THE DECISION OF THE TRIAL COURT, WHICH

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[11] *Id.* at 86.

[12] *Supra* note 8 at 29.

ORDERED THE RECONSTITION (*sic*) OF TCT NO. 269615 IN FAVOR OF SEGUNDINA ROSARIO, DESPITE THE FRAUDULENT NATURE OF SAID TCT.

II.

WHETHER OR NOT OTHER DOCUMENTS ADDUCED IN EVIDENCE BY SEGUNDINA ROSARIO SUPPORT THE RECONSTITUION (*sic*) OF TCT NO. 269615 IN HER FAVOR.

III.

WHETHER OR NOT THE DECISIONS AND RESOLUTIONS OF THE TRIAL COURT AND OF THE COURT OF APPEALS ORDERING THE RECONSTITUTION OF TCT NO. 269615 ARE CONTRARY TO THE DECISIONS OF THE SUPREME COURT ON THE INDEFEASIBILITY OF THE TITLES OF THE UNIVERSITY OF THE PHILIPPINES.

Our Ruling

The petition is meritorious.

A reconstitution of title is the re-issuance of a new certificate of title lost or destroyed in its original form and condition. Indeed, it does not pass upon the ownership of the land covered by the lost or destroyed title. Nonetheless, in *Republic of the Philippines v. Pasicolan*,[13] the Court has cautioned against treating petitions for reconstitution as a mere ministerial task, to wit:

> [G]ranting Petitions for Reconstitution is not a ministerial task. It involves diligent and circumspect evaluation of the authenticity and relevance of all the evidence presented, lest the chilling consequences of mistakenly issuing a reconstituted title when in fact the original is not truly lost or destroyed.

In *Cañero v. UP*,[14] a petition for reconstitution was similarly filed to reconstitute TCT No. 240042, the original of which was also allegedly razed in the fire of June 11, 1998, and for

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[13] G.R. No. 198543, April 15, 2015.

[14] 481 Phil. 249 (2004).

which petitioners therein also presented an alleged owner's duplicate copy. The petition being unopposed, the RTC ordered reconstitution. Sometime later, petitioners therein filed an action to quiet title against UP on the strength of said reconstituted title. When the case reached this Court, we ruled that the reconstituted title and the proceedings from which it hailed are **void.** We ratiocinated:

> R.A. No. 26 provides for a special procedure for the reconstitution of Torrens certificates of title that are missing but not fictitious titles or titles which are existing. It is an absolute absurdity to reconstitute existing certificates of title that are on file and available in the registry of deeds. If we were to sustain petitioner's stance, the establishment of the Torrens system of land titling would be for naught, as cases dealing with claims of ownership of registered land would be teeming like worms coming out of the woodwork. xxx.[15]

The indefeasibility of the titles of the University of the Philippines over its landholdings has been affirmed both by law and jurisprudence.

Clearly, the Court of Appeals erred in its observation that UP failed to sufficiently prove the existence of its title over the subject land. UP's titles over its landholdings are recognized and confirmed both by law and jurisprudence.

Section 22 of Republic Act No. 9500 (R.A. 9500)[16] is explicit:

> SEC. 22. *Land Grants and Other Real Properties of the University.* —
>
> x x x x x x x x x
>
> (b) Such parcels of land ceded by law, decree or presidential issuance to the University of the Philippines are hereby declared to be reserved for the purposes intended. **The absolute ownership of the national university over these landholdings, including those covered by**

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[15] *Id.* at 263.

[16] An Act to Strengthen the University of the Philippines as the National University.

original and transfer certificates of title in the name of the University of the Philippines and their future derivatives, is hereby confirmed. Where the issuance of proper certificates of title is yet pending for these landholdings, the appropriate government office shall expedite the issuance thereof within six months from the date of effectivity of this Act: *Provided*, That all registration requirements necessary for the issuance of the said titles have been submitted and complied with[.] (Emphasis supplied.)

In the case at bar, the Republic and UP were able to establish that TCT No. 269615 overlaps with two valid and existing certificates of title in the name of UP, namely TCT Nos. RT-107359 (192689) and RT-58201 (192687). The LRA Report with Attached Sketch Plan dated December 10, 1998 issued by Atty. Benjamin Bustos, Chief of the Reconstitution Division of the LRA reads:[17]

> The technical description of Lots 42-A-1, 42-A-2 and 42-A-3, all of Psd-77362, appearing on the xerox copy of TCT No. 269615, when plotted on our Municipal Index Sheet Nos. 4437-C and 4436-A, **were found to overlap** as follows:
>
> 1. Lot 42-A-1 overlaps Lot 42-A-C-8 & Lot 42-C-9, (LRC) Psd-174313;
> 2. Lot 42-A-2 overlaps Lot 42-C-9 & Lot 42-C-10, (LRC) Psd-174313;
> 3. Lot 42-A-3 is totally inside Lot 42-C-10, (LRC) Psd-174313.
>
> **Lot 42-C-8, (LRC) Psd-174313 is among three parcels of land covered by TCT No. 192687, in the name of the University of the Philippines, Lot 42-C-9 & Lot 42-C-10, (LRC) Psd-174313 are both covered by TCT No. 192689, also registered in the name of the University of the Philippines.**
>
> For reference, see attached sketch plan SK-No. 98-08.
>
> WHEREFORE, this report is respectfully submitted for the information of the Honorable Court and **with the recommendation**

[17] *Rollo*, pp. 36-37.

that the instant petition be dismissed. (Emphasis supplied.)

These findings were corroborated by the Official Report of OIC Regional Technical Director Mamerto Infante of the LMB-DENR-NCR, which states:

> However, per computed geographic position of Lots 42-A-1, 42-A-2 and 42-A-3, based on the xerox copy of TCT No. 269615 submitted by your office, these lots fall on CM 14 deg. 39" N.121 deg. 03'E. Sec. 1 and 2 Barangay U.P. Campus, Land Use Map 1978 **and overlapped Swo-13-000340 and (LRC) Psd-174313 Lots 42-C-10, 42-C-7, 42-C-8 and 42-C-9.** We therefore, plotted subject lots mentioned in TCT No. 269615 in a blue print copy of Swo-13-000340 for your reference.[18] (Emphasis supplied.)

These reports were duly offered in evidence; thus, the RTC and the Court of Appeals should have taken judicial notice of the various jurisprudence upholding UP's indefeasible title over its landholdings.

Citing *Tiburcio, et al. v. PHHC, et al.*,[19] *Galvez v. Tuason*, [20] *People's Homesite & Housing Corporation (PHHC) v. Mencias,*[21] and *Varsity Hills, Inc. v. Mariano,*[22] the Court emphasized in *Heirs of Pael v. CA*[23] that the titles of UP over its landholdings have become incontrovertible so that courts are precluded from looking anew into their validity. The Court expounded:

> **It is judicial notice that the legitimacy of UP's title has been settled in several other cases decided by this Court.** The case of *Tiburcio, et al. vs. People's Homesite & Housing Corp. (PHHC), et al.* was an action for reconveyance of a 430-hectare lot in Quezon

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[18] *Id.* at 37.

[19] 106 Phil. 477 (1959).

[20] G.R. No. L-15644, February 29, 1964, 10 SCRA 344.

[21] G.R. No. L-24114, August 16, 1967, 20 SCRA 1031.

[22] G.R. No. L-30546, June 30, 1988, 163 SCRA 132.

[23] 461 Phil. 104 (2003).

City, filed by the heirs of Eladio Tiburcio against PHHC and UP. A portion of the disputed land was covered by TCT No. 1356 registered in the name of PHHC and another portion was covered by TCT No. 9462 registered in the name of UP. Affirming the validity of TCT No. 1356 and TCT No. 9462, this Court ruled:

> x x x the land in question has been placed under the operation of the Torrens system since 1914 when it has been originally registered in the name of defendant's predecessor-in-interest. It further appears that sometime in 1955 defendant People's Homesite & Housing Corporation acquired from the original owner a parcel of land embracing practically all of plaintiff's property for which Transfer Certificate of Title No. 1356 was issued in its favor, while defendant University of the Philippines likewise acquired from the same owner another portion of land which embraces the remainder of the property for which Transfer Certificate of Title No. 9462 was issued in its favor. It is, therefore, clear that the land in question has been registered in the name of defendant's predecessor-in-interest since 1914 under the Torrens system and that notwithstanding what they now claim that the original title lacked the essential requirements prescribed by law for their validity, they have never taken any step to nullify said title until 1957 when they instituted the present action. In other words, they allowed a period of 43 years before they woke up to invoke what they claim to be erroneous when the court decreed in 1914 the registration of the land in the name of defendants' predecessor-in-interest. Evidently, this cannot be done for under our law and jurisprudence, a decree of registration can only be set aside within one year after entry on the ground of fraud provided no innocent purchaser for value has acquired the property.

Thus, this Court held that the decree of registration in the name of the predecessor-in-interest of PHHC and UP, as well as the titles issued pursuant thereto have become incontrovertible.

This Court again affirmed the validity and indefeasibility of UP's title in the case of *Galvez vs. Tuason*, where Maximo Galvez and the heirs of Eladio Tiburcio sought the recovery of a parcel of land in Quezon City registered under the names of Mariano Severo, Maria Teresa Eriberta, Juan Jose, Demetrio Asuncion, Augusto Huberto, all surnamed Tuason y de la Paz, UP, and PHHC. This is the same land subject of the controversy in Tiburcio vs. PHHC. This

Court held in Galvez that the question of ownership of the disputed land has been thrice settled definitely and conclusively by the courts: first, in the proceedings for the registration of the property in the name of the Tuasons; second, in the application filed by Marcelino Tiburcio with the Court of First Instance of Rizal for registration of the disputed property in his name which was dismissed by said court; and third, in the action for reconveyance filed by the heirs of Eladio Tiburcio against PHHC and UP which was also dismissed by the court, which dismissal was affirmed by this Court in Tiburcio vs. PHHC. **We held that the issue of ownership of the property was already beyond review.**

The rulings in *Tiburcio vs. PHHC* and *Galvez vs. Tuason* were reiterated by this Court in *PHHC vs. Mencias* and *Varsity Hills vs. Mariano*.

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Finally, it should be emphasized that this Court's Decision in Tiburcio, et al. *vs.* PHHC, as well as in the subsequent cases upholding the validity and indefeasibility of the certificate of title covering the UP Diliman Campus, precludes the courts from looking anew into the validity of UP's title. xxx[24]

Section 1, Rule 129 of the Rules of Court[25] mandates that a court shall take judicial notice, without the introduction of evidence, of the official acts of the legislative, executive, and judicial departments of the Philippines. Thus, as both Congress and this Court have repeatedly and consistently validated and recognized UP's indefeasible title over its landholdings, the RTC and the Court of Appeals clearly erred when it faulted the Republic and UP for presenting certified true copies of its

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[24] *Id.* at 121-124. (Emphasis supplied)

[25] SEC. 1. *Judicial notice, when mandatory*. — A court shall take judicial notice, without the introduction of evidence, of the existence and territorial extent of states, their political history, forms of government and symbols of nationality, the law of nations, the admiralty and maritime courts of the world and their seals, the political constitution and history of the Philippines, the official acts of legislative, executive and judicial departments of the Philippines, the laws of nature, the measure of time, and the geographical divisions.

titles signed by its records custodian instead of either the duplicate originals or the certified true copies issued by the Register of Deeds of Quezon City. Indeed, the RTC and the CA should have taken judicial notice of UP's title over its landholdings, without need of any other evidence.

It may be, as pointed out by the RTC and the Court of Appeals, that a petition for reconstitution of title does not treat of the issue of ownership. However, in the case at bar, as it was established that TCT No. 269615 overlaps with UP's titles, and as UP's indefeasible titles are recognized by law and jurisprudence, adopting the myopic view of the RTC and the Court of Appeals will only result into an unnecessary and pointless relitigation of an issue that has already been repeatedly settled by this Court.

We remind the courts that we are duty-bound to abide by precedents, pursuant to the time-honored principle of *stare decisis et non quieta movere*. In *Commissioner of Internal Revenue v. The Insular Life Assurance Co. Ltd.*,[26] we reiterated:

> Time and again, the Court has held that it is a very desirable and necessary judicial practice that when a court has laid down a principle of law as applicable to a certain state of facts, it will adhere to that principle and apply it to all future cases in which the facts are substantially the same. *Stare decisis et non quieta movere*. Stand by the decisions and disturb not what is settled. *Stare decisis* simply means that for the sake of certainty, a conclusion reached in one case should be applied to those that follow if the facts are substantially the same, even though the parties may be different. It proceeds from the first principle of justice that, absent any powerful countervailing considerations, like cases ought to be decided alike. Thus, where the same questions relating to the same event have been put forward by the parties similarly situated as in a previous case litigated and decided by a competent court, the rule of *stare decisis* is a bar to any attempt to relitigate the same issue.

The evidence presented by respondent Rosario are of doubtful veracity and cannot justify the reconstitution of a title covering lots

[26] G.R. No. 197192, June 4, 2014, 725 SCRA 94, 96-97.

already registered in the name of UP.

The Republic and UP were able to establish that the land described in the duplicate original of TCT No. 269615 submitted by respondent Rosario does not refer to any technically recognized location.

In the Certification dated September 18, 1998 issued by OIC-Technical Director of the LMB-DENR-NCR, the DENR, which is the official repository of all approved survey plans for all parcels of land within the territorial jurisdiction of the Philippines, attested to the non-existence of the survey plans alluded to in TCT No. 269615. The Certification declares.[27]

CERTIFICATION

TO WHOM IT MAY CONCERN:

This is to certify that alleged plan Psd-77362, Lots 42-A-1, Lot 42-A-2 and 42-A-3, 'being a portion of Lot 42-A, Psd 4558, situated in Culiat, Quezon City, owned by Segundina Rosario per T.C.T. No. 269615 as submitted by the Office of the Solicitor General is **NOT [AVAILABLE]** in the Technical Records and Statistics Section, Surveys Division, DENR-NCR. It is also informed by the Director, Lands Management Bureau that their Office has **no records** of the alleged plans Psd-77362 and Psd-4558 per his letter dated July 13, 1998. (Emphasis supplied.)

It is to be observed also that the sketch plan presented by respondent Rosario in open court bore the annotations "NOT FOR REGISTRATION" and for "reference only," whereas the photocopy submitted to the court does not contain said annotations. This discrepancy, unexplained by respondent Rosario, coupled with the LRA Report with Attached Sketch Plan dated December 10, 1998 and the Official Report of OIC Regional Technical Director Mamerto Infante of the LMB-DENR-NCR, shows that something is suspicious about the land described in TCT No. 269615. Verily, on this point alone, the RTC and the Court of Appeals should have denied reconstitution.

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[27] *Supra* note 8 at 32-33 and 201.

The speciousness of respondent Rosario's claim becomes more apparent in view of the evidence that, except for the year prior to the time she filed her petition for reconstitution, there is nothing in the records of the City Treasurer's Office to support respondent Rosario's claim that she paid the real property taxes on the land covered by TCT No. 269615 from 1970 up to 1998, or for a period of twenty-eight (28) years.

Moreover, Teofista Pajara, Chief of the Assessment Records Management Division, Office of the City Assessor for Quezon City, also testified that respondent Rosario's 1980 Tax Declaration No. 12158 does not exist in the assessment records maintained by her office. She also stated that from existing records in her office, the reconstructed Tax Declaration No. PD-12158 is in the name of one Tecla Gutierrez and refers to a different property and certificate of title.[28]

At this point, we again remind the courts of their duty to protect the efficacy of the Torrens system and the stability and security of land titles. In *Republic of the Phils. v. Sps. Lagramada*,[29] the Court, citing *Tahanan Devt. Corp. v. CA, et al.*, warned that courts must be cautious and careful in granting reconstitution of lost or destroyed titles. It is the duty of the courts to scrutinize and verify not only all supporting documents, but also each and every fact, circumstance, or incident related to the case.

Finally, we herein reiterate our admonition in *Cañero* for courts and unscrupulous lawyers to stop entertaining bogus claims seeking to assail UP's title over its landholdings. We repeat:

We strongly admonish courts and unscrupulous lawyers to stop entertaining spurious cases seeking further to assail respondent UP's title. These cases open the dissolute avenues of graft to unscrupulous land-grabbers who prey like vultures upon the campus of respondent UP. By such actions, they wittingly or unwittingly aid the hucksters who want to earn a quick buck by misleading the gullible to buy the Philippine counterpart of the ~~proverbial Lon~~don Bridge. It is well past time for courts and

[28] *Id.* at 42.

[29] 577 Phil. 232, 242 (2008).

lawyers to cease wasting their time and resources on these worthless causes and take judicial notice of the fact that respondent UP's title had already been validated countless times by this Court. Any ruling deviating from such doctrine is to be viewed as a deliberate intent to sabotage the rule of law and will no longer be countenanced.[30] (Emphasis supplied)

WHEREFORE, premises considered, the present petition is hereby **GRANTED**. The Decision dated October 17, 2008 and the Resolution dated February 10, 2009 of the Court of Appeals in C.A.-G.R. CV No. 85519, and the Decision dated January 5, 2004 of the Regional Trial Court of Quezon City in LRC No. Q-9885(97), are **REVERSED and SET ASIDE**. The petition for reconstitution in LRC No. Q-9885(97) is **DISMISSED**, and TCT No. 269615 in the name of Segundina Rosario is declared **SPURIOUS and VOID**. The Land Registration Authority and the Register of Deeds of Quezon City are ordered not to entertain or act on any application, conveyance, or transaction involving TCT No. 269615.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 190798. January 27, 2016]

RONALD IBAÑEZ, EMILIO IBAÑEZ, and DANIEL "BOBOT" IBAÑEZ, *petitioners, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

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[30] *Supra* note 14 at 269.

SYLLABUS

1. POLITICAL LAW; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHTS OF THE ACCUSED; RIGHT TO COUNSEL; THE RIGHT TO BE ASSISTED BY COUNSEL IS AN INDISPENSABLE COMPONENT OF DUE PROCESS IN CRIMINAL PROSECUTION, FOR WITHOUT COUNSEL, AN ACCUSED IS ESSENTIALLY DEPRIVED OF A FAIR HEARING WHICH IS TANTAMOUNT TO A GRAVE DENIAL OF DUE PROCESS. — The right invoked by the petitioners is premised upon Article III, Section 14 of the Constitution which states that: Section 14. (1) No person shall be held to answer for a criminal offense without due process of law. (2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, x x x. Guided by the constitutionally guaranteed right of an accused to counsel and pursuant to its rule-making authority, the Court, in promulgating the Revised Rules of Criminal Procedure, adopted the following provisions: Rule 115, SEC. 1. *Rights of accused at the trial*. – In all criminal prosecutions, the accused shall be entitled to the following rights: x x x (c) To be present and defend in person and by counsel at every stage of the proceedings, from arraignment to promulgation of the judgment. x x x Rule 116 of the same Rules makes it mandatory for the trial court to designate a counsel *de oficio* for the accused in the absence of private representation. x x x. The right to be assisted by counsel is an indispensable component of due process in criminal prosecution. As such, right to counsel is one of the most sacrosanct rights available to the accused. A deprivation of the right to counsel strips the accused of an equality in arms resulting in the denial of a level playing field. Simply put, an accused without counsel is essentially deprived of a fair hearing which is tantamount to a grave denial of due process.

2. ID.; ID.; ID.; ID.; ID.; NO DENIAL OF RIGHT TO COUNSEL WHERE THE PARTIES ARE NOT ONLY ASSISTED BY A COUNSEL *DE OFICIO* DURING ARRAIGNMENT AND PRE-TRIAL BUT MORE SO, THEIR COUNSEL *DE OFICIO* ACTIVELY PARTICIPATED IN THE PROCEEDINGS BEFORE THE TRIAL COURT INCLUDING THE DIRECT AND CROSS-EXAMINATION

OF THE WITNESSES. — There was no denial of right to counsel as evinced by the fact that the petitioners were not only assisted by a counsel *de oficio* during arraignment and pre-trial but more so, their counsel *de oficio* actively participated in the proceedings before the trial court including the direct and cross-examination of the witnesses. As aptly found by the CA, the petitioners were duly represented by a counsel *de oficio* all throughout the proceedings except for one hearing when their court appointed lawyer was absent and Rodolfo and PO2 Sulit presented their testimonies. [I]t was during said hearing when the trial court declared that the cross-examination of the said two prosecution witnesses was deemed waived.

3. ID.; ID.; ID.; RIGHT TO CROSS-EXAMINE; MERE OPPORTUNITY AND NOT ACTUAL CROSS-EXAMINATION IS THE ESSENCE OF THE RIGHT TO CROSS-EXAMINE, AS THE SAID RIGHT IS A PERSONAL ONE WHICH MAY BE WAIVED EXPRESSLY OR IMPLIEDLY, BY CONDUCT AMOUNTING TO A RENUNCIATION OF THE RIGHT OF CROSS-EXAMINATION.— *Mere opportunity and not actual cross-examination is the essence of the right to cross-examine.* The case of *Savory Luncheonette v. Lakas ng Manggagawang Pilipino, et al.* thoroughly explained the meaning and substance of right to cross-examine as an integral component of due process with a *colatilla* that the same right may be expressly or impliedly waived, to quote: The right of a party to confront and cross-examine opposing witnesses in a judicial litigation, be it criminal or civil in nature, or in proceedings before administrative tribunals with quasi-judicial powers, is a fundamental right which is part of due process. However, the right is a personal one which may be waived expressly or impliedly, by conduct amounting to a renunciation of the right of cross-examination. Thus, where a party has had the opportunity to cross-examine a witness but failed to avail himself of it, he necessarily forfeits the right to cross- examine and the testimony given on direct examination of the witness will be received or allowed to remain in the record. Such is the scenario in the present case where the reason why Rodolfo and PO2 Sulit were not subjected to cross-examination was not because the petitioners were not given opportunity to do so. Noticeably, the petitioners' counsel *de oficio* omitted to mention that in the June 18, 2003 hearing,

Ronald, one of the accused, did not show up despite prior notice. Thus, the bail bond posted for his provisional liberty was ordered confiscated in favor of the government.

4. ID.; ID.; ID.; ID.; ID.; THE ABSENCE OF THE COUNSEL *DE OFICIO* IN ONE OF THE HEARINGS OF THE CASE DOES NOT AMOUNT TO A DENIAL OF RIGHT TO COUNSEL, NOR DOES SUCH ABSENCE WARRANT THE NULLIFICATION OF THE ENTIRE TRIAL COURT PROCEEDINGS AND THE EVENTUAL INVALIDATION OF ITS RULING, WHERE THERE IS NO INDICATION THAT THE COUNSEL *DE OFICIO* HAD BEEN NEGLIGENT IN PROTECTING THE PETITIONERS' INTERESTS.— Going by the records, there is no indication that any of the counsel *de oficio* had been negligent in protecting the petitioners' interests. As a matter of fact, the counsel *de oficio* kept on attending the trial court hearings in representation of the petitioners despite the latter's unjustified absences. In sum, the Court is not persuaded that the absence of the counsel *de oficio* in one of the hearings of this case amounts to a denial of right to counsel. Nor does such absence warrant the nullification of the entire trial court proceedings and the eventual invalidation of its ruling. In *People v. Manalo*, the Court held *that the fact that a particular counsel de oficio did not or could not consistently appear in all the hearings of the case, is effectively a denial of the right to counsel, especially so where, as in the instant case, there is no showing that the several appointed counsel de oficio in any way neglected to perform their duties to the appellant and to the trial court and that the defense had suffered in any substantial sense therefrom*.

5. CRIMINAL LAW; FRUSTRATED HOMICIDE; ELEMENTS.— [T]he factual findings of the RTC as affirmed by the CA, which are backed up by substantial evidence on record, led this Court to no other conclusion than that the petitioners are guilty of frustrated homicide. The elements of frustrated homicide are: (1) the accused intended to kill his victim, as manifested by his use of a deadly weapon in his assault; (2) the victim sustained fatal or mortal wound/s but did not die because of timely medical assistance; and (3) none of the qualifying circumstance for murder under Article 248 of the Revised Penal Code, as amended, is present.

6. ID.; ID.; ID.; INTENT TO KILL, WHEN IT EXISTS.— In ascertaining whether intent to kill exists, the Court considers the presence of the following factors: (1) the means used by the malefactors; (2) the nature, location and number of wounds sustained by the victim; (3) the conduct of the malefactors before, during, or immediately after the killing of the victim; and (4) the circumstances under which the crime was committed and the motives of the accused. Here, intent to kill Rodolfo was evident in the manner in which he was attacked, by the concerted actions of the accused, the weapon used and the nature of wounds sustained by Rodolfo.

7. ID.; ID.; CONSPIRACY; PRESUPPOSES UNITY OF PURPOSE AND UNITY OF ACTION TOWARDS THE REALIZATION OF AN UNLAWFUL OBJECTIVE AMONG THE ACCUSED AND ITS EXISTENCE CAN BE INFERRED FROM THE INDIVIDUAL ACTS OF THE ACCUSED, WHICH IF TAKEN AS A WHOLE ARE IN FACT RELATED, AND INDICATIVE OF A CONCURRENCE OF SENTIMENT; APPRECIATED. — Both the RTC and CA correctly appreciated the presence of conspiracy. Conspiracy presupposes unity of purpose and unity of action towards the realization of an unlawful objective among the accused. Its existence can be inferred from the individual acts of the accused, which if taken as a whole are in fact related, and indicative of a concurrence of sentiment. In this case, conspiracy was manifested in the spontaneous and coordinated acts of the accused, where two of them delivered the initial attack on Rodolfo by stoning, while another struck him with a shovel and the third held him so that the other two can simultaneously stab Rodolfo. It was only when Rodolfo laid helpless on the ground and had lost consciousness that the accused hurriedly left the scene. This chain of events leading to the commission of the crime adequately established a conspiracy among them.

8. ID.; ID.; THE KIND OF WEAPON USED FOR THE ATTACK AND THE VITAL PARTS OF THE VICTIM'S BODY AT WHICH HE WAS STABBED DEMONSTRATE ACCUSED'S INTENT TO KILL. — [T]he kind of weapon used for the attack, in this case, a knife and the vital parts of Rodolfo's body at which he was undeniably stabbed demonstrated petitioners' intent to kill. The medico-legal

certificate revealed that Rodolfo sustained multiple stab wounds in the epigastrium, left upper quadrant of the abdomen resulting to internal injuries in the transverse colon (serosal), mesentery and left kidney. Given these injuries, Rodolfo would have succumbed to death if not for the emergency surgical intervention.

9. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; IN DETERMINING WHO BETWEEN THE PROSECUTION AND DEFENSE WITNESSES ARE TO BE BELIEVED, THE EVALUATION OF THE TRIAL COURT IS ACCORDED MUCH RESPECT FOR THE REASON THAT THE TRIAL COURT IS IN A BETTER POSITION TO OBSERVE THE DEMEANOR OF THE WITNESSES AS THEY DELIVER THEIR TESTIMONIES. — With respect to the petitioners' defenses of denial and alibi, the Court concurs with the lower courts' rejection of these defenses. An assessment of the defenses of denial and alibi necessitates looking into the credibility of witnesses and their testimonies. Well-settled is the rule that in determining who between the prosecution and defense witnesses are to be believed, the evaluation of the trial court is accorded much respect for the simple reason that the trial court is in a better position to observe the demeanor of the witnesses as they deliver their testimonies. As such, the findings of the trial court is accorded finality unless it has overlooked substantial facts which if properly considered, could alter the result of the case. In the instant case, the Court finds no cogent reason to deviate from this rule considering the credibility of the prosecution witnesses.

10. ID.; ID.; DEFENSE OF DENIAL; AN INTRINSICALLY WEAK DEFENSE THAT FURTHER CRUMBLES WHEN IT COMES FACE-TO-FACE WITH THE POSITIVE IDENTIFICATION AND STRAIGHTFORWARD NARRATION OF THE PROSECUTION WITNESSES.— The trial and appellate courts were right in not giving probative value to petitioners' denial. Denial is an intrinsically weak defense that further crumbles when it comes face-to-face with the positive identification and straightforward narration of the prosecution witnesses. Between an affirmative assertion which has a ring of truth to it and a general denial, the former generally prevails. The prosecution witnesses recounted the details of the crime in a clear, detailed and consistent manner, without any hint of hesitation or sign of untruthfulness, which they could not have

done unless they genuinely witnessed the incident. Besides, the prosecution witnesses could not have mistakenly identified the petitioners as Rodolfo's perpetrators considering there is so much familiarity among them. The records are also bereft of any indication that the prosecution witnesses were actuated by ill motives when they testified against the petitioners. Thus, their testimonies are entitled to full faith and credit. In contrast, the petitioners' testimonies are self-serving and contrary to human reason and experience.

11. ID.; ID.; DEFENSE OF ALIBI; TO PROSPER, THE ACCUSED MUST NOT ONLY PROVE BY CLEAR AND CONVINCING EVIDENCE THAT HE WAS AT ANOTHER PLACE AT THE TIME OF THE COMMISSION OF THE OFFENSE, BUT THAT IT WAS PHYSICALLY IMPOSSIBLE FOR HIM TO BE AT THE SCENE OF THE CRIME.— For the defense of alibi to prosper, the petitioners must not only prove by clear and convincing evidence that he was at another place at the time of the commission of the offense but that it was physically impossible for him to be at the scene of the crime. Emilio himself admitted that he was just one kilometer away from the crime scene when the incident happened during the unholy hour of 1:00 a.m. of July 15, 2001. As such, Emilio failed to prove physical impossibility of his being at the crime scene on the date and time in question. Just like denial, alibi is an inherently weak defense that cannot prevail over the positive identification by the witnesses of the petitioners as the perpetrators of the crime. In the present case, Emilio was positively identified by the prosecution witnesses as one of the assailants. Moreover, alibi becomes less credible if offered by the accused himself and his immediate relatives as they are expected to make declarations in his favor, as in this case, where Emilio, his father and brother insisted that the former was somewhere else when the incident occurred. For these reasons, Emilio's defense of alibi will not hold.

12. CRIMINAL LAW; JUSTIFYING CIRCUMSTANCES; SELF-DEFENSE; THE PERSON ASSERTING SELF-DEFENSE MUST ADMIT THAT HE INFLICTED AN INJURY ON ANOTHER PERSON IN ORDER TO DEFEND HIMSELF. — Anent Bobot's claim of self-defense, it is undeserving of any serious consideration or credence. Basic is the rule that the person asserting self-defense must admit that

he inflicted an injury on another person in order to defend himself. Here, there is nothing on record that will show that Bobot categorically admitted that he wounded Rodolfo.

13. ID.; FRUSTRATED HOMICIDE; PROPER PENALTY.— Article 249 of the Revised Penal Code provides that the imposable penalty for homicide is *reclusion temporal*. Article 50 of the same Code states that the imposable penalty upon principals of a frustrated crime shall be the penalty next lower in degree than that prescribed by law for the consummated felony. Hence, frustrated homicide is punishable by *prision mayor*. Applying the Indeterminate Sentence Law, there being no aggravating or mitigating circumstances present in this case, the minimum penalty to be meted on the petitioners should be anywhere within the range of six (6) months and one (1) day to six (6) years of *prision correccional* and the maximum penalty should be taken from the medium period of *prision mayor* ranging from eight (8) years and one (1) day to ten (10) years. Thus, the imposition by the CA of imprisonment of six (6) years of *prision correccional*, as minimum, to eight (8) years and one (1) day of *prision mayor*, as maximum, is proper.

14. ID.; ID.; CIVIL LIABILITY OF ACCUSED-PETITIONERS.— As regards the civil liability of the petitioners, the Court sustains the award of moral and temperate damages with modification as to the latter's amount. Pursuant to Article 2224 of the Civil Code, temperate damages may be recovered when some pecuniary loss has been suffered but the amount of which cannot be proven with certainty. In *People v. Villanueva* and *Serrano v. People*, the Court ruled that in case the amount of actual damages, as proven by receipts during trial is less than ₱25,000.00, the victim shall be entitled to ₱25,000.00 temperate damages, in lieu of actual damages of a lesser amount. In the instant case, only the amount of ₱2,174.80 was supported by receipts. Following the prevailing jurisprudence, the Court finds it necessary to increase the temperate damages from ₱15,000.00 to ₱25,000.00. The award of moral damages is justified under Article 2219 of the Civil Code as Rodolfo sustained physical injuries which were the proximate effect of the petitioners' criminal offense. As the amount is left to the discretion of the court, moral damages should be reasonably proportional and approximate to the degree of the injury caused and the gravity of the wrong done. In light of the attendant circumstances in

the case, the Court affirms that ₱30,000.00 is a fair and reasonable grant of moral damages.

APPEARANCES OF COUNSEL

Juan S. Sindingan for petitioners.
Office of the Solicitor General for public respondent.

D E C I S I O N

PEREZ, *J.*:

On appeal is the September 25, 2009 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR. No. 31285 which affirmed with modifications the July 17, 2007 Decision[2] of the Regional Trial Court (RTC), Branch 255 of Las Piñas City, convicting Ronald Ibañez (Ronald), Emilio Ibañez (Emilio) and Daniel "Bobot" Ibañez (Bobot) (collectively, petitioners) of the crime of frustrated homicide.

The Facts

For allegedly stoning, hitting and stabbing Rodolfo M. Lebria (Rodolfo), the petitioners together with their co-accused, Boyet Ibañez (Boyet) and David Ibañez (David), who have remained at large, were charged with the crime of frustrated homicide in an Information[3] dated October 11, 2001. The accusatory portion thereof reads:

"That on or about 15th day of July, 2001, in the City of Las Piñas, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together, acting in common accord and mutually helping and aiding one another, with intent to kill and without justifiable cause, did then and there

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[1] *Rollo*, pp. 15-28; penned by CA Associate Justice Apolinario D. Bruselas, Jr., with Presiding CA Justice (now retired) Conrado M. Vasquez, Jr. and CA Associate Justice Jose C. Reyes, Jr.

[2] *Id.* at 44-58; penned by Judge Raul Bautista Villanueva.

[3] Records, p. 1.

willfully, unlawfully and feloniously attack, assault, stone, hit with an spade and stab with bladed weapons one RODOLFO M. LEBRIA, thereby inflicting upon him physical injuries, thus performing all the acts of execution which would produce the crime of Homicide as a consequence but which, nevertheless, did not produce it by reason of causes independent of the will of the accused, that is, by the timely and able medical assistance rendered to said RODOLFO M. LEBRIA, which prevented his death.

CONTRARY TO LAW."

After posting their bail bond at ₱24,000.00 each, Ronald, Bobot and Emilio were released on bail.[4] Arraignment of Ronald and Bobot was held on May 9, 2002. Emilio was, in turn, arraigned on December 10, 2002. All the petitioners entered a plea of not guilty to the crime charged.[5] After termination of pre-trial on April 23, 2003,[6] trial on the merits immediately followed. In the course of trial, two versions of what transpired on the early morning of July 15, 2001 surfaced. These conflicting versions of the incident, as culled from the records, are as follows:

Version of the Prosecution

In his narration, Rodolfo claimed that Ronald and his sons Emilio, Bobot, Boyet and David were his neighbors in CAA, Las Piñas City. Rodolfo recalled that he had visitors on the day of the incident. When his guests left at around 1:00 a.m. of July 15, 2001, Rodolfo accompanied them outside his house. After about thirty minutes and as he was about to go inside, Rodolfo noticed some garbage in front of his house. Addressing nobody in particular, Rodolfo uttered in the vernacular *"bakit dito tinambak ang basura sa harap ng aking bahay na malawak naman ang pagtataponan ng basura?"*[7] Emilio and Boyet, who was then present and angered by what they heard, threw stones at the private complainant hitting him twice on the forehead.

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[4] *Id.* at 15-90.

[5] *Rollo*, pp. 44-45.

[6] *Id.* at 45.

[7] Records, p. 8.

With blood oozing from his forehead, Rodolfo went inside his house to cleanse his face obscured by blood and emerged again, this time, carrying a 2" x 2" (dos por dos) piece of wood. Rodolfo was caught off guard when he was hit on the head with a shovel by another accused, David.[8] Then, Ronald held Rodolfo, rendering him helpless, as Boyet and Bobot simultaneously stabbed him in the abdomen.[9] At this point, Rodolfo fell to the ground, lying flat and eventually lost consciousness. When he regained consciousness, Rodolfo found himself at the Las Piñas District Hospital (LPDH) but was later on transferred to the Philippine General Hospital (PGH) for the much-needed surgical procedure. At the PGH, Rodolfo was operated on, confined for nine days and incurred hospital expenses amounting to ₱30,000.00.[10]

PO2 Sulit testified that he was the investigating police officer who took the statements of Rodolfo's daughter Ruth Ann Lebria (Ruth) and Rodolfo's wife, Salvacion Lebria (Salvacion) when they went to the police station to complain about the incident. PO2 Sulit disclosed that when he asked Ruth and Salvacion why Rodolfo was not with them, he was informed that Rodolfo was still undergoing medication and treatment for the injuries suffered from the petitioners. PO2 Sulit also testified that he endorsed the complaint against the petitioners to the Office of the City Prosecutor of Las Piñas for proper disposition.[11]

To corroborate Rodolfo's testimony, the prosecution presented Ruth and Salvacion as witnesses.

Ruth testified that she actually witnessed the entire incident which she admitted was preceded by the utterance made by his father.[12] Her testimony on how Ronald, Emilio, Bobot, Boyet and David ganged up on her father and who among them stoned,

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[8] TSN, p. 20.

[9] *Id.* at 21-24.

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

[11] *Rollo*, p. 47.

[12] *Id.*

hit, held and stabbed Rodolfo perfectly matched the latter's sworn declarations.[13]

Salvacion, who was also home on that fateful morning, confirmed the beating and stabbing her husband endured in the hands of the petitioners and their co-accused. Salvacion also submitted receipts in the total amount of ₱2,174.80, representing the medical expenses incurred for the treatment of Rodolfo's injuries resulting from the incident.[14]

The prosecution presented the Medico-Legal Certificate issued by the Records Division of the PGH showing that Rodolfo suffered multiple stab wounds in the abdomen and underwent an exploratory laparotomy,[15] the standard surgery in abdominal trauma cases involving life-threatening injuries.[16]

Version of the Defense

To refute the accusations against them, the petitioners offered an entirely different scenario.

Not only did he deny the allegations against him but Ronald even claimed that he was the one who was stabbed by Rodolfo. Ronald averred that the incident happened within the vicinity of his home, which was about four meters away from the house of Rodolfo.[17] When Ronald heard Rodolfo shouting at around 2:00 a.m., he tried pacifying Rodolfo by telling him that they would just talk later in the day. Unappeased, Rodolfo allegedly destroyed the bicycle belonging to Ronald's son-in-law. Rodolfo then attacked Ronald by stabbing him on his right arm. It was during this time that Ronald's son, Bobot, came to his rescue

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[13] *Id.* at 48-49.

[14] *Id.* at 48 and 51.

[15] *Id.* at 135; Medical Certificate of Rodolfo M. Lebria.

[16] Seymour I. Schwartz, M.D., G. Tom Shires, M.D., Frank C. Spencer, M.D., John M. Daly, M.D., Josef E. Fischer, M.D., Aubrey C. Galloway, M.D., Principles of Surgery, Volume I (New York: McGraw-Hill Companies, Inc., 1999), pp. 167-168.

[17] *Rollo*, p. 49.

but was prevented from doing so as Bobot was also struck with a knife by Rodolfo. Ronald and his son instituted a criminal complaint against Rodolfo for attempted homicide but nothing came out of it. In support of his testimony, Ronald presented a picture taken the day after the incident showing a slipper purportedly belonging to Rodolfo and a balisong. Ronald further insisted that all the other accused were not around as they were residing elsewhere at that crucial time.

Bobot testified that he immediately rushed outside his house, which is located beside his father's, upon hearing Ronald shout, *"Tulungan mo ako, ako'y sinaksak."*[18] However, he was not able to save his father as he himself was stabbed twice with a knife by Rodolfo. A struggle for the possession of the knife between Bobot and Rodolfo ensued and in the process, the latter accidentally sustained a stab wound in the abdomen. Still, Bobot asserted that it was Rodolfo who ran away from the scene of the crime. Meanwhile, Ronald had already left for the nearby police detachment to seek help.

Accused Emilio, for his part, interposed denial and alibi as his defenses. He emphatically denied that he threw a stone at Rodolfo. On the date and time of the incident, Emilio claimed that he was working overtime as a laborer in Moonwalk, Las Piñas City, which is one kilometer away from the crime scene. He argued that he was just unfortunately dragged into this case which had nothing to do with him at all.[19]

The defense likewise proffered two medical certificates to support the petitioners' claims. The July 15, 2001 medical certificate issued by Dr. Ma. Cecilia Leyson (Dr. Leyson), of the Ospital ng Maynila, declared that Ronald's body bore lacerations and hematoma at the time she attended to him. Nevertheless, Dr. Leyson acknowledged that she had no idea how the injuries were sustained by Ronald. The other medical certificate dated March 20, 2006 was issued by Dr. Renato Borja (Dr. Borja), a physician affiliated with the Parañaque Community

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[18] TSN, p. 295.

[19] *Rollo*, pp. 49-50.

Hospital where Bobot was taken after getting injured. Based on the hospital records, Dr. Borja testified that Bobot had sustained wounds on the head and chest, possibly caused by a sharp instrument.[20]

Petitioners' Representation in the Trial Court Proceedings

In view of the petitioners' allegation that they were denied of right to counsel, a narration of petitioners' representation in the trial court proceedings is imperative.

During the arraignment on May 9, 2002, Ronald and Bobot were assisted by Atty. Bibiano Colasito, who was selected as their counsel *de oficio* only for that occasion. At his arraignment on December 10, 2002, Emilio appeared with the assistance of Atty. Antonio Manzano (Atty. Manzano), who was then appointed by the trial court as counsel *de oficio* for all the accused. In the pre-trial conference that followed, Atty. Manzano appeared for the petitioners. Atty. Manzano was informed that the trial for the presentation of prosecution evidence was set on June 18, 2003.

Both Rodolfo and PO2 Sulit completed their respective testimonies during the June 18, 2003 hearing. However, Atty. Manzano failed to appear at the said hearing despite prior notice. Likewise, Ronald, one of the petitioners, absented himself from the same hearing. As a result, the RTC issued the June 18, 2003 Order,[21] the pertinent portion of which reads:

> Due to the failure of Atty. Manzano to appear in today's proceeding despite due notice and so as not to delay the proceedings herein, his right to cross-examine the said two (2) witnesses is deemed waived. At the same time, Atty. Manzano is hereby fined the amount of ₱2,000.00 for his absence in today's proceedings despite the fact that the same has been previously set and known to him, without even filing any motion or pleading regarding his inability to appear herein which clearly indicates a show of disrespect to the authority of this Court.

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[20] *Id.* at 50.

[21] Records. pp. 180-181.

Let a warrant of arrest be issued against accused Ronald Ibañez for failing to appear in today's hearing despite notice and the bond posted by him for his provisional liberty confiscated in favor of the government. As such, the bondsman BF General Insurance Company, Inc., is hereby directed to produce the body of the said accused within thirty (30) days from receipt of this Order and to show cause why no judgment should be rendered against the bond.

The Director of the National Bureau of Investigation and the Director of the Criminal Investigation Service Command, PNP, Camp Crame, are hereby directed to explain within five (5) days from receipt of this Order why the warrants of arrest issued against Boyet Ibañez and David Ibañez remain unimplemented and/or no return submitted to this Court.

Thereafter, Atty. Manzano withdrew as petitioners' counsel *de oficio*. In its Order[22] dated September 3, 2003, the trial court appointed Atty. Gregorio Cañeda, Jr. (Atty. Cañeda) as the new counsel *de oficio* of the petitioners. On the same date, Atty. Cañeda conducted the cross-examination of Ruth and even expressed his desire to continue with the cross-examination of said witness on the next scheduled hearing. In the hearing of September 17, 2003, Atty. Cañeda appeared for the petitioners but Bobot and Emilio did not show up. This prompted the trial court to issue the corresponding warrants for their arrest and the bonds posted by them for their provisional liberty were ordered confiscated in favor of the government. Despite the continued absence of his clients, Atty. Cañeda religiously attended the succeeding hearings. On November 5, 2003, upon his request, the trial court relieved Atty. Cañeda of his designation as counsel *de oficio* for the petitioners.

Per the trial court's Order[23] dated February 10, 2004, Atty. Ma. Teresita C. Pantua (Atty. Pantua), of the Public Attorney's Office, was designated as the petitioners' counsel *de oficio*. However, Atty. Pantua's designation was recalled upon her manifestation that she had previously assisted Rodolfo in

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[22] *Id.* at 214.

[23] *Id.* at 250-251.

initiating the present case. In her stead, the trial court appointed the petitioners' current counsel *de oficio*, Atty. Juan Sindingan (Atty. Sindingan).

Since then, Atty. Sindingan has been representing the petitioners. With his help, all three petitioners finally appeared before the trial court on May 5, 2005. Atty. Sindingan handled the cross-examination of another prosecution witness, Salvacion, as well as the presentation of evidence for the defense.

After both parties had rested their case, they were required to submit their respective memoranda in thirty (30) days. Atty. Sindingan submitted the Memorandum for the petitioners while no memorandum was ever filed by the prosecution. Thereafter, the case was deemed submitted for decision.

The RTC's Ruling

The RTC accorded more weight to the positive testimonies of the prosecution witnesses over the declarations of the defense, thus, the dispositive portion of its judgment reads:

> WHEREFORE, the foregoing considered, the Court finds accused Ronald Ibañez, Emilio Ibañez and Daniel "Bobot" Ibañez GUILTY beyond reasonable doubt of the crime of frustrated homicide and hereby sentences them to each suffer the penalty of imprisonment of SIX (6) YEARS AND ONE (1) DAY of *prision mayor*, as minimum, up to EIGHT (8) YEARS of *prision mayor*, as maximum, as well as to suffer the accessory penalties provided for by law.
>
> Also, accused Ronald Ibañez, Emilio Ibañez and Daniel "Bobot" Ibañez are ordered to pay to private complainant or victim Rodolfo Lebria the sum of ₱2,174.80 representing his actual medical expenses.
>
> With costs de officio.
>
> SO ORDERED.[24]

The petitioners filed a motion for reconsideration of the RTC Decision but this was denied in an Order[25] dated October 11,

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[24] *Rollo*, p. 58.

[25] *Id.* at 75-77.

2007. Undaunted, the petitioners elevated their case to the CA. They faulted the trial court for totally disregarding their claim that Rodolfo was the aggressor and for not recognizing that Bobot was merely acting in self-defense when Rodolfo was stabbed. The petitioners also asserted that they were deprived of their constitutional right to counsel.

The CA's Ruling

The CA agreed with the trial court's judgment of conviction but modified the penalty imposed. The appellate court sentenced the petitioners to suffer the indeterminate penalty of six (6) years of *prision correccional*, as minimum, to eight (8) years and one (1) day of *prision mayor* as maximum. The CA also found it proper to award ₱15,000.00 as temperate damages and ₱30,000.00 as moral damages to Rodolfo. The petitioners sought a reconsideration of the CA's decision. Still, their motion was denied in the Resolution[26] of December 28, 2009.

The Issue

Hence, the present petition for review on certiorari raising the lone issue of whether the petitioners were deprived of their constitutionally guaranteed right to counsel.

The Court's Ruling

The Court sustains the conviction of the petitioners with modification.

No Deprivation of Right to Counsel

The right invoked by the petitioners is premised upon Article III, Section 14 of the Constitution which states that:

> Section 14. (1) No person shall be held to answer for a criminal offense without due process of law.
>
> (2) In all criminal prosecutions, the accused shall be presumed innocent until the contrary is proved, and shall enjoy the right to be heard by himself and counsel, x x x.

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[26] *Id.* at 12.

Guided by the constitutionally guaranteed right of an accused to counsel and pursuant to its rule-making authority, the Court, in promulgating the Revised Rules of Criminal Procedure, adopted the following provisions:

> Rule 115, SEC. 1. *Rights of accused at the trial.* — In all criminal prosecutions, the accused shall be entitled to the following rights:
>
> x x x x x x x x x
>
> (c) To be present and defend in person and by counsel at every stage of the proceedings, from arraignment to promulgation of the judgment. x x x
>
> x x x x x x x x x

Rule 116 of the same Rules makes it mandatory for the trial court to designate a counsel *de oficio* for the accused in the absence of private representation. It provides:

> SEC. 6. *Duty of court to inform accused of his right to counsel.* — Before arraignment, the court shall inform the accused of his right to counsel and ask him if he desires to have one. Unless the accused is allowed to defend himself in person or has employed counsel of his choice, the court must assign a counsel *de officio* to defend him.
>
> SEC. 7. *Appointment of counsel de officio.* — The court, considering the gravity of the offense and the difficulty of the questions that may arise, shall appoint as counsel *de officio* such members of the bar in good standing who, by reason of their experience and ability, can competently defend the accused. But in localities where such members of the bar are not available, the court may appoint any person, resident of the province and of good repute for probity and ability, to defend the accused.

The right to be assisted by counsel is an indispensable component of due process in criminal prosecution.[27] As such, right to counsel is one of the most sacrosanct rights available to the accused.[28] A deprivation of the right to counsel strips the accused of an equality in arms resulting in the denial of a

[27] *People v. Ferrer*, 454 Phil. 431, 448 (2003).

[28] *Regala v. Sandiganbayan*, 330 Phil. 678, 701 (1996).

level playing field.[29] Simply put, an accused without counsel is essentially deprived of a fair hearing which is tantamount to a grave denial of due process.[30]

On the basis of this ratiocination and as a last ditch effort to be exculpated, the petitioners insisted that they were denied of their right to counsel when their counsel *de oficio* failed to appear on the June 18, 2003 trial court hearing during which Rodolfo and PO2 Sulit gave their testimonies. As a consequence, the petitioners argued that they were divested of the opportunity to cross-examine the said two prosecution witnesses.

The Office of the Solicitor General (OSG), for its part, disputed the petitioners' claim that they were deprived of their constitutional right to counsel. In their May 5, 2010 Comment[31] on the instant petition, the OSG pointed out that since the beginning of the proceedings in the trial court until the filing of the present petition before this Court, three (3) counsel *de oficio* were appointed and represented the petitioners[32] and to which designation the latter did not raise any protest.[33] The OSG opined that the trial court judge made sure that the petitioners were adequately assisted by a counsel *de oficio* when they failed to engage the services of a lawyer of their own choice. Thus, the OSG recommended the dismissal of the petition.

The Court agrees with the position taken by the OSG.

There was no denial of right to counsel as evinced by the fact that the petitioners were not only assisted by a counsel *de oficio* during arraignment and pre-trial but more so, their counsel *de oficio* actively participated in the proceedings before the trial court including the direct and cross-examination of the witnesses.[34] As aptly found by the CA, the petitioners were

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[29] *People v. Serzo, Jr.*, 340 Phil. 660, 673 (1997).

[30] *People v. Liwanag*, 415 Phil. 271, 287 (2001).

[31] *Rollo*, pp. 147-160.

[32] *Id.* at 156.

[33] *Id.* at 35.

duly represented by a counsel *de oficio* all throughout the proceedings except for one hearing when their court appointed lawyer was absent and Rodolfo and PO2 Sulit presented their testimonies.[35] As previously stated, it was during said hearing when the trial court declared that the cross-examination of the said two prosecution witnesses was deemed waived.

Mere opportunity and not actual cross-examination is the essence of the right to cross-examine.[36] The case of *Savory Luncheonette v. Lakas ng Manggagawang Pilipino, et al.* thoroughly explained the meaning and substance of right to cross-examine as an integral component of due process with a *colatilla* that the same right may be expressly or impliedly waived, to quote:

> The right of a party to confront and cross-examine opposing witnesses in a judicial litigation, be it criminal or civil in nature, or in proceedings before administrative tribunals with quasi-judicial powers, is a fundamental right which is part of due process. However, the right is a personal one which may be waived expressly or impliedly, by conduct amounting to a renunciation of the right of cross-examination. Thus, where a party has had the opportunity to cross-examine a witness but failed to avail himself of it, he necessarily forfeits the right to cross-examine and the testimony given on direct examination of the witness will be received or allowed to remain in the record.[37]

Such is the scenario in the present case where the reason why Rodolfo and PO2 Sulit were not subjected to cross-examination was not because the petitioners were not given opportunity to do so. Noticeably, the petitioners' counsel *de oficio* omitted to mention that in the June 18, 2003 hearing, Ronald, one of the accused, did not show up despite prior notice.

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[34] *Id.*

[35] *Id.* at 34.

[36] *People v. Narca*, 341 Phil. 696, 706 (1997).

[37] *Savory Luncheonette v. Lakas ng Manggagawang Pilipino*, 159 Phil. 310, 315-317 (1975).

Thus, the bail bond posted for his provisional liberty was ordered confiscated in favor of the government. Ironically, Ronald comes to this Court asserting the very right he seemingly waived and abandoned for not attending the scheduled hearing without justifiable cause. Moreover, neither did the petitioners interpose any objection to the presentation of testimony of the prosecution witnesses during the June 18, 2003 hearing nor did their counsel *de oficio* subsequently seek a reconsideration of the June 18, 2003 Order.

Further, the trial court judge, when he issued the June 18, 2003 Order, was merely exercising a judicial prerogative. No proof was presented by the defense showing that the exercise of such discretion was either despotic or arbitrary.

Going by the records, there is no indication that any of the counsel *de oficio* had been negligent in protecting the petitioners' interests. As a matter of fact, the counsel **de oficio** kept on attending the trial court hearings in representation of the petitioners despite the latter's unjustified absences.

In sum, the Court is not persuaded that the absence of the counsel *de oficio* in one of the hearings of this case amounts to a denial of right to counsel. Nor does such absence warrant the nullification of the entire trial court proceedings and the eventual invalidation of its ruling. In *People v. Manalo,* the Court held *that the fact that a particular counsel de oficio did not or could not consistently appear in all the hearings of the case, is effectively a denial of the right to counsel, especially so where, as in the instant case, there is no showing that the several appointed counsel de oficio in any way neglected to perform their duties to the appellant and to the trial court and that the defense had suffered in any substantial sense therefrom.*[38]

Guilt Proven Beyond Reasonable Doubt

At any rate, the factual findings of the RTC as affirmed by the CA, which are backed up by substantial evidence on record, led this Court to no other conclusion than that the petitioners

[38] 232 Phil. 105, 117 (1987).

are guilty of frustrated homicide.

The elements of frustrated homicide are: (1) the accused intended to kill his victim, as manifested by his use of a deadly weapon in his assault; (2) the victim sustained fatal or mortal wound/s but did not die because of timely medical assistance; and (3) none of the qualifying circumstance for murder under Article 248 of the Revised Penal Code, as amended, is present.[39] There being no prior determination by both the trial and appellate courts of any qualifying circumstance that would elevate the homicide to murder, the Court will simply limit its discussion to the first two elements.

In ascertaining whether intent to kill exists, the Court considers the presence of the following factors: (1) the means used by the malefactors; (2) the nature, location and number of wounds sustained by the victim; (3) the conduct of the malefactors before, during, or immediately after the killing of the victim; and (4) the circumstances under which the crime was committed and the motives of the accused.[40]

Here, intent to kill Rodolfo was evident in the manner in which he was attacked, by the concerted actions of the accused, the weapon used and the nature of wounds sustained by Rodolfo.

Both the RTC and CA correctly appreciated the presence of conspiracy. Conspiracy presupposes unity of purpose and unity of action towards the realization of an unlawful objective among the accused.[41] Its existence can be inferred from the individual acts of the accused, which if taken as a whole are in fact related, and indicative of a concurrence of sentiment.[42] In this case, conspiracy was manifested in the spontaneous and coordinated acts of the accused, where two of them delivered the initial attack on Rodolfo by stoning, while another struck him with a shovel and the third held him so that the other two can

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[39] *People v. Lanuza*, 671 Phil. 811, 819 (2011).

[40] *De Guzman v. People*, G.R. No. 178512, November 26, 2014.

[41] *People v. Reyes*, 600 Phil. 738, 770 (2009).

[42] *People v. Melencion*, 407 Phil. 400, 411 (2001).

simultaneously stab Rodolfo. It was only when Rodolfo laid helpless on the ground and had lost consciousness that the accused hurriedly left the scene. This chain of events leading to the commission of the crime adequately established a conspiracy among them.

Plainly, the kind of weapon used for the attack, in this case, a knife and the vital parts of Rodolfo's body at which he was undeniably stabbed demonstrated petitioners' intent to kill. The medico-legal certificate revealed that Rodolfo sustained multiple stab wounds in the epigastrium, left upper quadrant of the abdomen resulting to internal injuries in the transverse colon (serosal), mesentery and left kidney.[43] Given these injuries, Rodolfo would have succumbed to death if not for the emergency surgical intervention.

With respect to the petitioners' defenses of denial and alibi, the Court concurs with the lower courts' rejection of these defenses. An assessment of the defenses of denial and alibi necessitates looking into the credibility of witnesses and their testimonies. Well-settled is the rule that in determining who between the prosecution and defense witnesses are to be believed, the evaluation of the trial court is accorded much respect for the simple reason that the trial court is in a better position to observe the demeanor of the witnesses as they deliver their testimonies.[44] As such, the findings of the trial court is accorded finality unless it has overlooked substantial facts which if properly considered, could alter the result of the case.[45]

In the instant case, the Court finds no cogent reason to deviate from this rule considering the credibility of the prosecution witnesses.

The trial and appellate courts were right in not giving probative value to petitioners' denial. Denial is an intrinsically weak defense that further crumbles when it comes face-to-face with

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[43] *Rollo*, p. 135.

[44] *People v. Cueto*, 443 Phil. 425, 433 (2003).

[45] *People v. Sotes*, 329 Phil. 126, 132 (1996).

the positive identification and straightforward narration of the prosecution witnesses.[46] Between an affirmative assertion which has a ring of truth to it and a general denial, the former generally prevails.[47] The prosecution witnesses recounted the details of the crime in a clear, detailed and consistent manner, without any hint of hesitation or sign of untruthfulness, which they could not have done unless they genuinely witnessed the incident. Besides, the prosecution witnesses could not have mistakenly identified the petitioners as Rodolfo's perpetrators considering there is so much familiarity among them. The records are also bereft of any indication that the prosecution witnesses were actuated by ill motives when they testified against the petitioners. Thus, their testimonies are entitled to full faith and credit.

In contrast, the petitioners' testimonies are self-serving and contrary to human reason and experience.

The Court notes that the defense presented no witnesses, other than themselves, who had actually seen the incident and could validate their story. Additionally, aside from the medical certificates of Ronald and that of Bobot which was issued almost five (5) years since the incident occurred, the defense have not submitted any credible proof that could efficiently rebut the prosecution's evidence.

Further, the Court finds it contrary to human reason and experience that Ronald, would just leave his son Bobot, while the latter was being stabbed and struggling for the possession of the knife with Rodolfo, to go to a police station for assistance. Logic dictates that a father would not abandon a son in the presence of actual harm.

For the defense of alibi to prosper, the petitioners must not only prove by clear and convincing evidence that he was at another place at the time of the commission of the offense but that it was physically impossible for him to be at the scene of

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[46] *People v. Kulais*, 354 Phil. 565, 592 (1998).

[47] *Id.*

the crime.[48] Emilio himself admitted that he was just one kilometer away from the crime scene when the incident happened during the unholy hour of 1:00 a.m. of July 15, 2001. As such, Emilio failed to prove physical impossibility of his being at the crime scene on the date and time in question. Just like denial, alibi is an inherently weak defense that cannot prevail over the positive identification by the witnesses of the petitioners as the perpetrators of the crime.[49] In the present case, Emilio was positively identified by the prosecution witnesses as one of the assailants. Moreover, alibi becomes less credible if offered by the accused himself and his immediate relatives as they are expected to make declarations in his favor,[50] as in this case, where Emilio, his father and brother insisted that the former was somewhere else when the incident occurred. For these reasons, Emilio's defense of alibi will not hold.

Anent Bobot's claim of self-defense, it is undeserving of any serious consideration or credence. Basic is the rule that the person asserting self-defense must admit that he inflicted an injury on another person in order to defend himself.[51] Here, there is nothing on record that will show that Bobot categorically admitted that he wounded Rodolfo.

Based on the foregoing, the Court upholds the trial and appellate courts' conviction of the petitioners for frustrated homicide.

Penalty and Civil Liability

Article 249 of the Revised Penal Code provides that the imposable penalty for homicide is *reclusion temporal*. Article 50 of the same Code states that the imposable penalty upon principals of a frustrated crime shall be the penalty next lower in degree than that prescribed by law for the consummated felony. Hence, frustrated homicide is punishable by *prision mayor*. Applying the Indeterminate Sentence Law, there being no

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[48] *Escamilla v. People*, G.R. No. 188551, February 27, 2013, 692 SCRA 203, 213.

[49] *People v. Liwanag*, 415 Phil. 271, 297 (2001).

[50] *People v. Camat*, 326 Phil. 56, 72 (1996).

[51] *Mahawan v. People*, 595 Phil. 397, 407 (2008).

aggravating or mitigating circumstances present in this case, the minimum penalty to be meted on the petitioners should be anywhere within the range of six (6) months and one (1) day to six (6) years of *prision correccional* and the maximum penalty should be taken from the medium period of *prision mayor* ranging from eight (8) years and one (1) day to ten (10) years. Thus, the imposition by the CA of imprisonment of six (6) years of *prision correccional*, as minimum, to eight (8) years and one (1) day of *prision mayor*, as maximum, is proper.

As regards the civil liability of the petitioners, the Court sustains the award of moral and temperate damages with modification as to the latter's amount.

Pursuant to Article 2224 of the Civil Code, temperate damages may be recovered when some pecuniary loss has been suffered but the amount of which cannot be proven with certainty. In *People v. Villanueva*[52] and *Serrano v. People*,[53] the Court ruled that in case the amount of actual damages, as proven by receipts during trial is less than ₱25,000.00, the victim shall be entitled to ₱25,000.00 temperate damages, in lieu of actual damages of a lesser amount. In the instant case, only the amount of ₱2,174.80 was supported by receipts. Following the prevailing jurisprudence, the Court finds it necessary to increase the temperate damages from ₱15,000.00 to ₱25,000.00.

The award of moral damages is justified under Article 2219 of the Civil Code as Rodolfo sustained physical injuries which were the proximate effect of the petitioners' criminal offense. As the amount is left to the discretion of the court, moral damages should be reasonably proportional and approximate to the degree of the injury caused and the gravity of the wrong done.[54] In light of the attendant circumstances in the case, the Court affirms that ₱30,000.00 is a fair and reasonable grant of moral damages.

WHEREFORE, the assailed Court of Appeals Decision dated September 25, 2009 in CA-G.R. CR. No. 31285 is **AFFIRMED**

[52] 456 Phil. 14, 29 (2003).

[53] 637 Phil. 319, 388 (2010).

[54] *Yuchengco v. Manila Chronicle Publishing Corp., et al.*, 677 Phil. 422, 436 (2011).

with **MODIFICATION**. Petitioners **RONALD IBAÑEZ, EMILIO IBAÑEZ and DANIEL "BOBOT" IBAÑEZ** are found guilty of frustrated homicide and sentenced to a prison term of six (6) years of *prision correccional*, as minimum, to eight (8) years and one (1) day of *prision mayor*, as maximum. They are also ordered to pay **RODOLFO LEBRIA** Twenty Five Thousand Pesos (₱25,000.00) as temperate damages and Thirty Thousand Pesos (₱30,000.00) as moral damages.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 191132. January 27, 2016]

APOSTOLIC VICAR OF TABUK, INC. represented by BISHOP PRUDENCIO ANDAYA, JR., *petitioner, vs.* **SPOUSES ERNESTO AND ELIZABETH SISON and VENANCIO WADAS,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; ACTIONS; CAUSE OF ACTION; DISMISSAL OF FAILURE TO STATE A CAUSE OF ACTION AND LACK OF A CAUSE OF ACTION, DISTINGUISHED.— Failure to state a cause of action and lack of a cause of action are not the same. **Failure to state a cause of action** refers to an **insufficiency of the allegations in the petition/complaint**. It is a ground for dismissal under Rule 16 of the Rules of Court before the defendant or respondent files a responsive pleading. Notably, the dismissal is without prejudice to the re-filing of an amended complaint. On the other

hand, the **lack of a cause of action** refers to an **insufficiency of factual or legal basis to grant the complaint**. It applies to a situation where the evidence failed to *prove* the cause of action alleged in the pleading. It is a ground for dismissal using a demurrer to evidence under Rule 33 after the plaintiff has completed presenting his evidence. The dismissal constitutes *res judicata* on the issue and will bar future suits based on the same cause of action.

2. **ID.; JUDGMENTS; ANNULMENT OF JUDGMENT; THE REGIONAL TRIAL COURT IS AUTHORIZED TO DISMISS A PETITION FOR ANNULMENT OF JUDGMENT OUTRIGHT IF IT HAS NO SUBSTANTIAL MERIT.—** In the present case, the petition for annulment of judgment actually stated a cause of action: that the MCTC rendered a judgment against the petitioner without acquiring jurisdiction over its person. If the RTC hypothetically admitted this allegation, the petitioner becomes entitled to the relief prayed for: the annulment of the MCTC judgment. Thus, the RTC erred when it stated that the dismissal was for "failure to state a cause of action." Nevertheless, Rule 47 authorizes the RTC to dismiss a petition for annulment of judgment outright if it *has no substantial merit.*

3. **ID.; SPECIAL CIVIL ACTIONS; EJECTMENT; OWNERSHIP OVER THE PROPERTY IS IMMATERIAL AND IS ONLY PASSED UPON PROVISIONALLY FOR THE LIMITED PURPOSE OF DETERMINING WHICH PARTY HAS THE BETTER RIGHT TO POSSESSION, AND THE SUIT IS ONLY FILED AGAINST THE POSSESSOR OF THE PROPERTY AT THE COMMENCEMENT OF ACTION, AND NOT AGAINST ONE WHO DOES NOT IN FACT OCCUPY THE LAND.—** In an ejectment suit (*accion interdictal*), the sole issue is the right of physical or material possession over the subject real property independent of any claim of ownership by the parties involved. Ownership over the property is immaterial and is only passed upon *provisionally* for the limited purpose of determining which party has the better right to possession. The only purpose of an ejectment suit for Forcible Entry (*detentacion)* is to protect the person who had prior physical possession against another who unlawfully entered the property and usurped his possession. The suit is only filed against the possessor(s) of the property at the commencement of action, and not against one who does not in fact occupy the

land. To determine who should be made a party-defendant, we simply look at who *committed* the acts amounting to forcible entry and *remains* in possession of the subject property.

4. ID.; ID.; ID.; EJECTMENT SUITS ARE ACTIONS *IN PERSONAM* WHEREIN THE JUDGMENT ONLY BINDS PARTIES WHO HAD BEEN PROPERLY IMPLEADED AND WERE GIVEN AN OPPORTUNITY TO BE HEARD.— Ejectment suits are actions *in personam* wherein judgment only binds parties who had been properly impleaded and were given an opportunity to be heard. The MCTC judgment was only rendered against Fr. Gudmalin and the Vicar Apostolic of Mountain Province, not against the petitioner Vicariate of Tabuk. Hence, the petitioner can only be bound by the MCTC judgment if it is shown to be: (a) a trespasser, squatter, or agent of the defendants fraudulently occupying the property to frustrate the judgment; (b) a guest or other occupant of the premises with the permission of the defendants; (c) a transferee *pendente lite;* (d) sub-lessee; (e) co-lessee; or (f) a member of the family, a relative, or other privy of the defendants. In such a case, a court hearing is required to determine the character of such possession. If the executing court finds that the petitioner is a mere successor-in-interest, guest, or agent of the defendants, the order of execution shall be enforced against it.

5. ID.; JUDGMENTS; A PARTY HAS NO LEGAL PERSONALITY TO ASK FOR ANNULMENT OF THE JUDGMENT WHERE THE JUDGMENT WAS NOT RENDERED AGAINST HIM; PETITIONER MAY AVAIL OF THE PLENARY ACTION OF REINVINDICATORIA IN CASE BAR.— Since the judgment was not rendered against the petitioner, it has no legal personality to ask for annulment of the judgment. Understandably, the petitioner feels aggrieved because it claims ownership over the subject lot that the MCTC ordered Fr. Gudmalin to turn over to the respondents. However, from a purely legal perspective, the MCTC judgment did not prejudice the petitioner. This is not to say that the petitioner is left without a remedy in law. The petitioner may still avail of the plenary action of *accion reinvindicatoria* wherein the issue of its ownership may be thoroughly threshed out in a full- blown trial after which complete reliefs may be granted to the proper parties.

APPEARANCES OF COUNSEL

Glenn M. Macabbad for petitioner.
Agranzamendez Liceralde Gallardo & Associates co-counsel for petitioner.
Marco Ferdinand A. Bastian for respondents.

D E C I S I O N

BRION, *J.*:

This petition for review on *certiorari* seeks to reverse the 23 November 2009 and 26 January 2010 orders of the Regional Trial Court of Luna, Apayao, Branch 26 (*RTC*) in **Civil Case No. 2-2009.**[1] The RTC dismissed the petitioner's Rule 47 petition for annulment of judgment addressing the decision of the 6th Municipal Circuit Trial Court of Kabugao-Conner (*MCTC*) in **SPL. Civil Case No. 32-05-Cr.**[2]

ANTECEDENTS

On 16 February 2005, the respondent spouses Ernesto and Elizabeth Sison and respondent Venancio Wadas filed a forcible entry complaint against the Vicar Apostolic of Mountain Province represented by Fr. Gerry Gudmalin. The complaint was filed with the MCTC and docketed as **Spl. Civil Case No. 32-2005-Cr.**

The respondents alleged that on 29 August 2004, Fr. Gerry Gudmalin, a priest of the St. Anthony Church of the Vicar Apostolic of Mountain Province, ordered the forcible demolition of their respective perimeter fences in order to expand the area of the Church. The priest dispossessed them of their lands and began constructing a building that encroached on portions of their respective lots.

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[1] Both penned by Judge Quirino M. Andaya; *rollo*, pp. 31-36.

[2] Penned by Judge Designate Tomas D. Lasam; *id.* at 64-64-A.

On 11 March 2005, MCTC Junior Process Server Raul T. Abad executed an officer's return. The return states:

> Respectfully informed the Hon. Court regarding the "SUMMON[s]" in Civil Case No. 32-2005-Cr., with the information that it was duly served, but the person/defendant cited therein went to Manila for an official business as per verbal information related by her [sic] secretary Mariphee B. Pollo, who received and signed said summon[s], she promised the undersigned that said summon[s] will be handed to the defendant upon his arrival from Manila.

On 13 July 2005, the case was submitted for decision because the defendant failed to file its answer despite service of summons.

On 12 August 2005, the MCTC rendered a decision in favor of the respondents. It ordered Fr. Gerry Gudmalin and the Vicar Apostolic of Mountain Province to: (1) refrain from any further construction within the respondents' properties; (2) remove their constructions; (3) vacate and return the respondents' properties; and (4) pay damages.

On 7 September 2005, the MCTC decision **became final and executory.**[3]

On 19 September 2005, petitioner Apostolic Vicar of Tabuk, Inc. (*the Vicariate of Tabuk*) filed an urgent manifestation and motion before the MCTC.[4] It manifested: (1) that the land subject of Spl. Civil Case No. 32-05-Cr. is owned and possessed by the Vicariate of Tabuk represented by Reverend Monsignor Prudencio P. Andaya, Jr., not by the Vicariate Apostolic of Mt. Province represented by Fr. Gerry Gudmalin as alleged in the complaint; and (2) that it had been denied due process because it was neither impleaded nor served summons. It moved for the court to set aside its 12 August 2005 decision and to summon and implead the Vicariate of Tabuk.

On 28 August 2006, the MCTC denied the petitioner's urgent motion and manifestation.[5] It treated the motion as a motion

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[3] Entry of Final Judgment dated 22 December 2009; *id.* at 57.

[4] *Id.* at 58.

for reconsideration — a prohibited pleading under Section 19 of the Rules on Summary Procedure. It also stressed that in ejectment cases, the basic issue is possession *de facto*, not ownership; the proper defendant is the person who actually disturbed the complainant's possession over the property. Thus, the respondents correctly impleaded the Vicariate of Mt. Province (represented by Fr. Gerry Gudmalin) which ordered the demolition of the perimeter fences and the expansion of the Church's occupied area.

On 7 September 2007, the petitioner filed a notice of appeal from the 28 August 2006 decision. The appeal was raffled to the Regional Trial Court (RTC) of Luna, Apayao, Branch 26 and docketed as **Civil Case No. 1-2008**.[6]

On 3 June 2008, the RTC dismissed the appeal because the petitioner failed to file its appellant's memorandum within the reglementary period.

On 10 June 2009, the Vicariate of Tabuk filed a Rule 47 petition for annulment of the MCTC judgment in **Special Civil Case No. 32-2005-Cr.**[7] It argued that the MCTC rendered the decision without acquiring jurisdiction over its person. It also alleged that the Vicariate of Mt. Province no longer exists because it was dissolved in 1990. The petition was filed before the RTC of Luna, Apayao, Branch 26 and docketed as **Civil Case No. 2-2009.**

The respondents filed a motion to dismiss[8] dated 14 July 2009 because: (1) the petition *had* no cause of action and (2) the Vicariate of Tabuk had no juridical personality or legal capacity to sue. The respondents reasoned that the Vicariate of Mt. Province, through Fr. Gerry Gudmalin was properly impleaded because the sole issue was prior possession. They

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[5] *Id.* at 64.

[6] Presided by Judge Quirino M. Andaya.

[7] *Rollo*, p. 68.

[8] *Id.* at 91.

posited that since the Vicariate of Tabuk and Bishop Prudencio Andaya were not impleaded in **Spl. Civil Case No. 32-2005-Cr,** then they have no personality to file the petition for the annulment of judgment.

On 28 August 2009, the Vicariate of Tabuk filed its opposition[9] arguing that: (1) it is a corporation sole duly registered with the Securities and Exchange Commission; and (2) it is the proper party to file the petition for annulment because Fr. Gerry Gudmalin had no authority to represent the corporation sole in Spl. Civil Case No. 32-2005-Cr.

On 17 September 2009, the RTC denied the motion to dismiss because the petition stated a cause of action.[10] It held that if the allegations in the petition were hypothetically admitted, then a judgment can be rendered in accordance with the prayer. It brushed aside the contention that the Vicariate of Tabuk had no legal personality because its articles of incorporation were attached to the opposition.

On 22 September 2009, the respondents moved for reconsideration of the RTC's denial of their motion to dismiss.

On 19 October 2009, the Vicariate of Tabuk opposed the motion for reconsideration insisting that the RTC cannot dismiss the petition if the allegations sufficiently state a cause of action.

On 23 November 2009, the RTC reconsidered its denial and dismissed the petition for failure to state a cause of action. The RTC reasoned that the petitioner's filing of a notice of appeal and subsequent failure to file its appeal memorandum precluded its resort to annulment of judgment; the remedy is not available to a party who lost his right to appeal due to his own fault. The RTC concluded that since the petitioner claimed ownership over the property, then it should file an appropriate case for ownership with the proper court instead.

The petitioner moved for reconsideration which the RTC

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[9] *Id.* at 95.

[10] *Id.* at 103.

denied on 26 January 2010.

On 19 February 2010, the petitioner elevated the case directly to this court by filing the present petition for review on *certiorari.*

THE PETITION

The petitioner prays that the Court set aside the RTC's dismissal of its petition for annulment of judgment and to issue a mandatory injunction restoring its possession of the subject lot.

It argues: (1) that its petition for annulment sufficiently stated a cause of action; (2) that it is the real party-in-interest that should have been impleaded in the ejectment suit; (3) that it had legal standing to question the MCTC's failure to serve summons; and (4) that its filing of a notice of appeal did not amount to voluntary submission to the MCTC's jurisdiction because the void judgment was already "final and executory" when the petitioner discovered it.

In their comment, the respondents maintain: (1) that the MCTC acquired jurisdiction over the named defendant in the case; (2) that as the actual occupant of the subject property, the named defendant is the real party-in-interest; and (3) that the petitioner cannot resort to an action for annulment of judgment (an equitable remedy) because it lost its opportunity to appeal after it failed to file its appellant's brief.

OUR RULING

The RTC dismissed the Vicariate of Tabuk's petition for annulment of judgment because it allegedly *failed to state* a cause of action. However, upon reviewing the RTC's 23 November 2009 order and examining the petition for annulment, we conclude that the dismissal was actually due to *lack* of a cause of action.

Failure to state a cause of action and lack of a cause of action are not the same. **Failure to state a cause of action** refers to an **insufficiency of the allegations in the petition/complaint.** It is a ground for dismissal under Rule 16 of the Rules of Court

before the defendant or respondent files a responsive pleading. Notably, the dismissal is without prejudice to the refiling of an amended complaint.

On the other hand, the **lack of a cause of action** refers to an **insufficiency of factual or legal basis to grant the complaint.** It applies to a situation where the evidence failed to *prove* the cause of action alleged in the pleading. It is a ground for dismissal using a demurrer to evidence under Rule 33 after the plaintiff has completed presenting his evidence. The dismissal constitutes *res judicata* on the issue and will bar future suits based on the same cause of action.

In the present case, the petition for annulment of judgment actually stated a cause of action: that the MCTC rendered a judgment against the petitioner without acquiring jurisdiction over its person. If the RTC hypothetically admitted this allegation, the petitioner becomes entitled to the relief prayed for: the annulment of the MCTC judgment. Thus, the RTC erred when it stated that the dismissal was for "failure to state a cause of action."

Nevertheless, Rule 47 authorizes the RTC to dismiss a petition for annulment of judgment outright if it *has no substantial merit:*

> **Section 5.** *Action by the court.* — Should the court find **no substantial merit** in the petition, the same may be **dismissed outright with specific reasons for such dismissal.** x x x

We affirm the RTC's dismissal of the petition.

First, in an ejectment suit (*accion interdictal*), the sole issue is the right of physical or material possession over the subject real property independent of any claim of ownership by the parties involved. Ownership over the property is immaterial and is only passed upon *provisionally* for the limited purpose of determining which party has the better right to possession.[11]

The only purpose of an ejectment suit for Forcible Entry (*detentacion*) is to protect the person who had prior physical possession against another who unlawfully entered the property

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[11] *Chua v. Court of Appeals*, 350 Phil. 74, 89 (1998).

and usurped his possession. The suit is only filed against the possessor(s) of the property at the commencement of action, and not against one who does not in fact occupy the land.[12] To determine who should be made a party-defendant, we simply look at who *committed* the acts amounting to forcible entry and *remains* in possession of the subject property.[13]

In the present case, it was alleged that it was Fr. Gerry Gudmalin, acting for the Vicar Apostolic of Mountain Province, who forcibly entered the property previously held by the respondents and who remains in possession. Hence, the Vicariate of Mt. Province was correctly impleaded as the defendant. While the petitioner denies the existence of the Vicariate of Mt. Province, this Court cannot pass upon this peripheral issue because we are not a trier of facts.

Second, ejectment suits are actions *in personam* wherein judgment only binds parties who had been properly impleaded and were given an opportunity to be heard.[14] The MCTC judgment was only rendered against Fr. Gudmalin and the Vicar Apostolic of Mountain Province, not against the petitioner Vicariate of Tabuk. Hence, the petitioner can only be bound by the MCTC judgment if it is shown to be: (a) a trespasser, squatter, or agent of the defendants fraudulently occupying the property to frustrate the judgment; (b) a guest or other occupant of the premises with the permission of the defendants; (c) a transferee *pendente lite*; (d) sub-lessee; (e) co-lessee; or (f) a member of the family, a relative, or other privy of the defendants.[15]

In such a case, a court hearing is required to determine the character of such possession. If the executing court finds that the

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[12] *Co Tiac v. Natividad*, 80 Phil. 127, 131 (1948), citing *Laeno v. Laeno*, 12 Phil. 508 (1909).

[13] *Id.*

[14] *Floyd v. Gonzales*, 591 Phil. 420, 426 (2008), citing *Biscocho v. Marero*, A.M. No. P-01-1527, 22 April 2002, 381 SCRA 430, 432.

[15] *Id.* at 427, citing *Equitable PCI Bank v. Ku*, G.R. No. 142950, 26 March 2001, 355 SCRA 309, 312.

petitioner is a mere successor-in-interest, guest, or agent of the defendants, the order of execution shall be enforced against it.

Since the judgment was not rendered against the petitioner, it has no legal personality to ask for annulment of the judgment. Understandably, the petitioner feels aggrieved because it claims ownership over the subject lot that the MCTC ordered Fr. Gudmalin to turn over to the respondents. However, from a purely legal perspective, the MCTC judgment did not prejudice the petitioner.

This is not to say that the petitioner is left without a remedy in law. The petitioner may still avail of the plenary action of *accion reinvindicatoria* wherein the issue of its ownership may be thoroughly threshed out in a full-blown trial after which complete reliefs may be granted to the proper parties.

WHEREFORE, premises considered, the petition is **DENIED** for lack of merit. Costs against the petitioners.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 192268. January 27, 2016]

DEPARTMENT OF EDUCATION, represented by its Regional Director, *petitioner, vs.* **DELFINA C. CASIBANG, ANGELINA C. CANAPI, ERLINDA C. BAJAN, LORNA G. GUMABAY, DIONISIA C. ALONZO, MARIA C. BANGAYAN and DIGNA C. BINAYUG,** *respondents.*

SYLLABUS

1. CIVIL LAW; LACHES; DEFINED; THE QUESTION OF LACHES IS ADDRESSED TO THE SOUND DISCRETION OF THE COURT, AND SINCE LACHES IS AN EQUITABLE DOCTRINE, ITS APPLICATION IS CONTROLLED BY EQUITABLE CONSIDERATIONS AND IT CANNOT WORK TO DEFEAT JUSTICE OR TO PERPETRATE FRAUD AND INJUSTICE.— Laches, in a general sense, is 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. There is no absolute rule as to what constitutes laches or staleness of demand; each case is to be determined according to its particular circumstances. The question of laches is addressed to the sound discretion of the court, and since laches is an equitable doctrine, its application is controlled by equitable considerations. It cannot work to defeat justice or to perpetrate fraud and injustice.

2. ID.; ID.; ELEMENTS.— Laches is evidentiary in nature, a fact that cannot be established by mere allegations in the pleadings. The following elements, as prescribed in the case of *Go Chi Gun, et al. v. Co Cho, et al.,* must be present to constitute laches: x xx (1) conduct on the part of the defendant, or of one under whom he claims, giving rise to the situation of which complaint is made for which the complaint seeks a remedy; (2) delay in asserting the complainant's rights, the complainant having had knowledge or notice, of the defendant's conduct and having been afforded an opportunity to institute a suit; (3) lack of knowledge or notice on the part of the defendant that the complainant would assert the right on which he bases his suit; and (4) injury or prejudice to the defendant in the event relief is accorded to the complainant, or the suit is not held to be barred.

3. ID.; ID.; EVEN IF THEY ARE AWARE OF THE OCCUPATION OF THEIR PROPERTY BY ANOTHER PERSON, AND REGARDLESS OF THE LENGTH OF THAT POSSESSION, THE LAWFUL OWNERS HAVE A

RIGHT TO DEMAND THE RETURN OF THEIR PROPERTY AT ANY TIME AS LONG AS THE POSSESSION WAS UNAUTHORIZED OR MERELY TOLERATED AND THE SAID RIGHT IS NEVER BARRED BY LACHES. — It is undisputed that the subject property is covered by OCT No. 0-627, registered in the name of the Juan Cepeda. A fundamental principle in land registration under the Torrens system is that a certificate of title serves as evidence of an indefeasible and incontrovertible title to the property in favor of the person whose name appears therein. Thus, the certificate of title becomes the best proof of ownership of a parcel of land. As registered owners of the lots in question, the respondents have a right to eject any person illegally occupying their property. This right is imprescriptible. Even if it be supposed that they were aware of the petitioner's occupation of the property, and regardless of the length of that possession, the lawful owners have a right to demand the return of their property at any time as long as the possession was unauthorized or merely tolerated, if at all. This right is never barred by laches.

4. ID.; OWNERSHIP; THOSE WHO OCCUPY THE LAND OF ANOTHER AT THE LATTER'S TOLERANCE OR PERMISSION, WITHOUT ANY CONTRACT BETWEEN THEM, ARE NECESSARILY BOUND BY AN IMPLIED PROMISE THAT THE OCCUPANTS WILL VACATE THE PROPERTY UPON DEMAND; "TOLERATED ACTS," EXPLAINED.— Case law teaches that those who occupy the land of another at the latter's tolerance or permission, without any contract between them, are necessarily bound by an implied promise that the occupants will vacate the property upon demand. In the case of *Sarona, et al. v. Villegas, et al.,* this Court described what tolerated acts mean, in this language: Professor Arturo M. Tolentino states that acts merely tolerated are "those which **by reason of neighborliness or familiarity,** the owner of property allows his neighbor or another person to do on the property; they are generally those particular services or benefits which one's property can give to another without material injury or prejudice to the owner, who **permits them out of friendship or courtesy**." x x x. and, Tolentino continues, **even though "this is continued for a long time, no right will be acquired by prescription**." x x x. It was out of respect and courtesy to the then Mayor who was a distant relative that Cepeda consented to the building of the school. The occupancy of the subject

property by the DepEd to conduct classes therein arose from what Professor Arturo Tolentino refers to as the sense of "neighborliness or familiarity" of Cepeda to the then Mayor that he allowed the said occupation and use of his property.

5. ID.; ID.; ID.; UNTIL THE DEMAND TO VACATE IS COMMUNICATED BY THE LAWFUL OWNERS TO THE POSSESSOR BY MERE TOLERANCE, THE LAWFUL OWNERS ARE NOT REQUIRED TO DO ANY ACT TO RECOVER THE SUBJECT LAND; RESPONDENTS FOUND NOT GUILTY OF LACHES IN CASE AT BAR.— [I]n light of the DepEd's admission that it was the then Mayor who convinced Cepeda to allow its use of his property and in the absence of evidence that the same was indeed sold to it, the occupation and use as school site of the subject lot by the DepEd upon Cepeda's permission is considered a tolerated act. Cepeda allowed the use of his property out of his respect, courtesy and familiarity with the then Mayor who convinced him to allow the use of his property as a school site. Considering that the occupation of the subject lot is by mere tolerance or permission of the respondents, the DepEd, without any contract between them, is bound by an implied promise that it will vacate the same upon demand. Hence, until such demand to vacate was communicated by the respondents to the DepEd, respondents are not required to do any act to recover the subject land, precisely because they knew of the nature of the DepEd's possession which is by mere tolerance. Therefore, respondents are not guilty of failure or neglect to assert a right within a reasonable time.

6. ID.; ID.; RIGHTS OF LANDOWNERS AS AGAINST A BUILDER IN GOOD FAITH.— Despite being a possessor by mere tolerance, the DepEd is considered a builder in good faith, since Cepeda permitted the construction of building and improvements to conduct classes on his property. Hence, Article 448 may be applied in the case at bar. Article 448, in relation to Article 546 of the Civil Code, provides for the rights of respondents as landowners as against the DepEd, a builder in good faith. x x x. In the case of *Bernardo v. Bataclan,* the Court explicated that Article 448 provides a just and equitable solution to the impracticability of creating "forced co-ownership" by giving the owner of the land the option to acquire the improvements after payment of the proper indemnity or to

oblige the builder or planter to pay for the land and the sower to pay the proper rent. The owner of the land is allowed to exercise the said options because his right is older and because, by the principle of accession, he is entitled to the ownership of the accessory thing. Thus, the two options available to the respondents as landowners are: (a) they may appropriate the improvements, after payment of indemnity representing the value of the improvements introduced and the necessary and useful expenses defrayed on the subject lots; or (b) they may oblige the DepEd to pay the price of the land. However, it is also provided under Article 448 that the builder cannot be obliged to buy the land if its value is considerably more than that of the improvements and buildings. If that is the case, the DepEd is not duty-bound to pay the price of the land should the value of the same be considerably higher than the value of the improvement introduced by the DepEd on the subject property. In which case, the law provides that the parties shall agree on the terms of the lease and, in case of disagreement, the court shall fix the terms thereof.

7. ID.; ID.; ID.; WHERE THE OPTION OF THE LANDOWNER TO APPROPRIATE THE IMPROVEMENTS UPON PAYMENT OF INDEMNITY IS NO LONGER PRACTICABLE AND FEASIBLE, THE LANDOWNER MAY OBLIGE THE BUILDER IN GOOD FAITH TO PAY THE PRICE OF THE LAND, OR TO REQUIRE THE BUILDER IN GOOD FAITH TO PAY REASONABLE RENT IF THE VALUE OF THE LAND IS CONSIDERABLY MORE THAN THE VALUE OF THE BUILDINGS AND IMPROVEMENTS. — The RTC, as affirmed by the CA, ruled that the option of the landowner to appropriate after payment of the indemnity representing the value of the improvements introduced and the necessary and useful expenses defrayed on the subject lots is no longer feasible or convenient because it is now being used as school premises. Considering that the appropriation of improvements upon payment of indemnity pursuant to Article 546 by the respondents of the buildings being used by the school is no longer practicable and feasible, the respondents are thus left with the second option of obliging the DepEd to pay the price of the land or to require the DepEd to pay reasonable rent if the value of the land is considerably more than the value of the buildings and improvements. Since the determination of

the value of the subject property is factual in nature, this Court finds a need to remand the case to the trial court to determine its value. In case the trial court determines that the value of the land is considerably more than that of the buildings and improvements introduced, the DepEd may not be compelled to pay the value of the land, instead it shall pay reasonable rent upon agreement by the parties of the terms of the lease. In the event of a disagreement between the parties, the trial court shall fix the terms of lease.

8. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; EXPROPRIATION; JUST COMPENSATION; THE RECKONING PERIOD FOR VALUING THE PROPERTY IN CASE THE LANDOWNER EXERCISED HIS RIGHTS IN ACCORDANCE WITH ARTICLE 448 OF THE CIVIL CODE SHALL BE AT THE TIME THE LANDOWNER ELECTED HIS CHOICE. — The RTC ruled that the basis of due compensation for the respondents should be the price or value of the property at the time of the taking. In the case of *Ballatan v. CA,* the Court has settled that the time of taking is determinative of just compensation in expropriation proceedings but not in a case where a landowner has been deprived of the use of a portion of this land for years due to the encroachment of another. In such instances, the case of *Vda. de Roxas v. Our Lady's foundation, lnc.* is instructive. The Court elucidated therein that the computation of the value of the property should be fixed at the prevailing market value. The reckoning period for valuing the property in case the landowner exercised his rights in accordance with Article 448 shall be at the time the landowner elected his choice. Therefore, the basis for the computation of the value of the subject property in the instant case should be its present or current fair market value.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
Santos M. Baculi for respondents.

D E C I S I O N

PERALTA, *J.*:

For resolution of this Court is the Petition for Review on *Certiorari*, dated June 18, 2010, of petitioner Department of Education (*DepEd*), represented by its Regional Director seeking to reverse and set aside the Decision[1] dated April 29, 2010 of the Court of Appeals (*CA*) affirming the Decision[2] dated January 10, 2008 of the Regional Trial Court (*RTC*) of Tuguegarao City, Cagayan, Branch 5, declaring the respondents the owners of property in controversy and ordering the DepEd to pay the value of the property.

The antecedents follow:

The property in controversy is a seven thousand five hundred thirty-two (7,532) square meter portion of Lot 115 covered by Original Certificate of Title (*OCT*) No. O-627 registered under the name of Juan Cepeda, the respondents' late father.[3]

Sometime in 1965, upon the request of the then Mayor Justo Cesar Caronan, Cepeda allowed the construction and operation of a school on the western portion of his property. The school is now known as Solana North Central School, operating under the control and supervision of the petitioner *DepEd*.[4]

Despite Cepeda's death in 1983, the herein respondents and other descendants of Cepeda continued to tolerate the use and possession of the property by the school.[5]

Sometime between October 31, 2000 and November 2, 2000, the respondents entered and occupied a portion of the property.

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[1] Penned by Associate Justice Ricardo R. Rosario, with Associate Justices Hakim S. Abdulwahid and Michael P. Elbinias, concurring, *rollo*, pp. 27-37.

[2] Penned by Judge Jezarene C. Aquino, *id.* at 52-57.

[3] *Id.* at 28.

[4] *Id.*

[5] *Id.*

Upon discovery of the said occupation, the teachers of the school brought the matter to the attention of the barangay captain. The school officials demanded the respondents to vacate the property.[6] However, the respondents refused to vacate the property, and asserted Cepeda's ownership of the lot.[7]

On June 21, 2001, the DepEd filed a Complaint for Forcible Entry and Damages against respondents before the Municipal Circuit Trial Court (*MCTC*) of Solana-Enrile. The MCTC ruled in favor of the petitioner and directed respondents to vacate the premises.[8] On appeal, the RTC affirmed the decision of the MCTC.[9]

Thereafter, respondents demanded the petitioner to either pay rent, purchase the area occupied, or vacate the premises. DepEd did not heed the demand and refused to recognize the ownership of the respondents over the property.[10]

On March 16, 2004, the respondents filed an action for Recovery of Possession and/or Sum of Money against the DepEd.[11] Respondents averred that since their late father did not have any immediate need of the land in 1965, he consented to the building of the temporary structure and allowed the conduct of classes in the premises. They claimed that they have been deprived of the use and the enjoyment of the portion of the land occupied by the school, thus, they are entitled to just compensation and reasonable rent for the use of property.[12]

In its Answer, the DepEd alleged that it owned the subject property because it was purchased by civic-minded residents of Solana, Cagayan from Cepeda. It further alleged that contrary

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[6] *Id.* at 12.

[7] *Id.* at 28.

[8] *Id.* at 12.

[9] *Id.* at 13.

[10] *Id.* at 29.

[11] *Id.*

[12] *Id.* at 40.

to respondents' claim that the occupation is by mere tolerance, the property has always been occupied and used adversely, peacefully, continuously and in the concept of owner for almost forty (40) years.[13] It insisted that the respondents had lost whatever right they had over the property through laches.[14]

During the trial, respondents presented, *inter alia*, the OCT No. O-627 registered in the name of Juan Cepeda; Tax Declarations also in his name and the tax receipts showing that they had been paying real property taxes on the property since 1965.[15] They also presented the Technical Description of the lot by the Department of Environment and Natural Resources Land Management Services showing that the subject property was surveyed in the name of Cepeda and a certification from the Municipal Trial Court of Solana, Cagayan declaring that Lot 115 was the subject of Cad Case No. N-13 in LRC Cad. Record No. N-200 which was adjudicated to Cepeda.[16]

On the other hand, despite notice and reset of hearing, the DepEd failed to present its evidence or witness to substantiate its defense.[17]

Consequently, the RTC considered the case submitted for decision and rendered a Decision dated January 10, 2008, finding that the respondents are the owners of the subject property, thus:

WHEREFORE, judgment is hereby rendered.

1. Declaring plaintiffs as the owner of Lot 115 covered by Original Certificate of Title No. O-627.

2. Ordering the reconveyance of the portion of the subject property occupied by the Solana North Central School, Solana, Cagayan. However, since restoration of possession of said

[13] *Id.* at 47.

[14] *Id.* at 13.

[15] *Id.* at 53.

[16] *Id.*

[17] *Id.* at 30.

portion by the defendant Department of Education is no longer feasible or convenient because it is now used for the school premises, the only relief available is for the government to pay due compensation which should have [been] done years ago.

2.1 To determine due compensation for the Solana North Central School the basis should be the price or value of the property at the time of taking.

3. No pronouncement as to cost.

SO ORDERED.[18]

The DepEd, through the Office of the Solicitor General (*OSG*), appealed the case before the CA. In its appeal, the DepEd insisted that the respondents have lost their right over the subject property for their failure to assert the same for more than thirty (30) years, starting in 1965, when the Mayor placed the school in possession thereof.[19]

The CA then affirmed the decision of the RTC. The dispositive portion of the said decision reads:

WHEREFORE, the appeal is DISMISSED, and the Decision dated 10 January 2008, of the Regional Trial Court, Branch 5, Tuguegarao, Cagayan in Civil Case No. 6336 for Recovery of Possession and/or Sum of Money, declaring plaintiffs as the owners of the property in controversy, and ordering the Department of Education to pay them the value of the property taken is AFFIRMED *in toto*.

SO ORDERED.[20]

Aggrieved, the DepEd, through the OSG, filed before this Court the present petition based on the sole ground that:

THE COURT OF APPEALS ERRED IN AFFIRMING THE TRIAL COURT'S DECISION THAT THE RESPONDENTS' RIGHT TO

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[18] *Id.* at 50-57.

[19] *Id.* at 31.

[20] *Id.* at 36.

RECOVER THE POSSESSION OF THE SUBJECT PROPERTY IS NOT BARRED BY PRESCRIPTION AND/OR LACHES.[21]

This Court finds the petition without merit.

Laches, in a general sense, is 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.[22]

There is no absolute rule as to what constitutes laches or staleness of demand; each case is to be determined according to its particular circumstances. The question of laches is addressed to the sound discretion of the court, and since laches is an equitable doctrine, its application is controlled by equitable considerations. It cannot work to defeat justice or to perpetrate fraud and injustice.[23]

Laches is evidentiary in nature, a fact that cannot be established by mere allegations in the pleadings.[24] The following elements, as prescribed in the case of *Go Chi Gun, et al. v. Co Cho, et al.*,[25] must be present to constitute laches:

x x x (1) conduct on the part of the defendant, or of one under whom he claims, giving rise to the situation of which complaint is made for which the complaint seeks a remedy; (2) delay in asserting the complainant's rights, the complainant having had knowledge or notice, of the defendant's conduct and having been afforded an opportunity to institute a suit; (3) lack of knowledge or notice on the part of the defendant that the complainant would assert the right on which he bases his suit; and (4) injury or prejudice to the defendant in the

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[21] *Id.* at 16.

[22] *Tijam v. Sibonghanoy*, 131 Phil. 556, 563 (1968).

[23] *Romero v. Natividad*, 500 Phil. 322, 327 (2005).

[24] *Aniceto Uy v. Court of Appeals, Mindanao Station, Cagayan de Oro City, et al.*, G.R. No. 173186, September 16, 2015.

[25] 96 Phil. 622, 637 (1954), citing 19 Am. Jur., 343-344.

event relief is accorded to the complainant, or the suit is not held to be barred.[26]

To refute the respondents' claim that its possession of the subject lot was merely tolerated, the DepEd averred that it owned the subject property because the land was purchased by the civic-minded residents of Solana.[27] It further alleged that since it was the then Mayor who convinced Cepeda to allow the school to occupy the property and use the same, it believed in good faith that the ownership of the property was already transferred to it.[28]

However, the DepEd did not present, in addition to the deed of sale, a duly-registered certificate of title in proving the alleged transfer or sale of the property. Aside from its allegation, the DepEd did not adduce any evidence to the transfer of ownership of the lot, or that Cepeda received any consideration for the purported sale.

On the other hand, to support their claim of ownership of the subject lot, respondents presented the following: (1) the OCT No. O-627 registered in the name of Juan Cepeda;[29] (2) Tax Declarations in the name of Cepeda and the tax receipts showing the payment of the real property taxes on the property since 1965;[30] (3) Technical Description of the lot by the Department of Environment and Natural Resources Land Management Services, surveyed in the name of Cepeda;[31] and (4) Certification from the Municipal Trial Court of Solana, Cagayan declaring that Lot 115 was adjudicated to Cepeda.[32]

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[26] *Go Chi Gun, et al. v. Co Cho, et al., supra.*

[27] *Rollo*, p. 20.

[28] *Id.* at 21.

[29] *Id.* at 53.

[30] *Id.*

[31] *Id.*

[32] *Id.*

After a scrutiny of the records, this Court finds that the above were sufficient to resolve the issue on who had better right of possession. That being the case, it is the burden of the DepEd to prove otherwise. Unfortunately, the DepEd failed to present any evidence to support its claim that the disputed land was indeed purchased by the residents. By the DepEd's admission, it was the fact that the then Mayor of Solana, Cagayan convinced Cepeda to allow the school to occupy the property for its school site that made it believe that the ownership of the property was already transferred to it. We are not swayed by the DepEd's arguments. As against the DepEd's unsubstantiated self-serving claim that it acquired the property by virtue of a sale, the Torrens title of respondents must prevail.

It is undisputed that the subject property is covered by OCT No. O-627, registered in the name of the Juan Cepeda.[33] A fundamental principle in land registration under the Torrens system is that a certificate of title serves as evidence of an indefeasible and incontrovertible title to the property in favor of the person whose name appears therein.[34] Thus, the certificate of title becomes the best proof of ownership of a parcel of land.[35]

As registered owners of the lots in question, the respondents have a right to eject any person illegally occupying their property. This right is imprescriptible. Even if it be supposed that they were aware of the petitioner's occupation of the property, and regardless of the length of that possession, the lawful owners have a right to demand the return of their property at any time as long as the possession was unauthorized or merely tolerated, if at all. This right is never barred by laches.[36]

Case law teaches that those who occupy the land of another at the latter's tolerance or permission, without any contract

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[33] *Id.* at 28.

[34] *Federated Realty Corporation v. Court of Appeals*, 514 Phil. 93, 104 (2005).

[35] *Halili v. Court of Industrial Relations*, 326 Phil. 982, 991 (1996).

[36] *Spouses Esmaquel and Sordevilla v. Coprada*, 653 Phil. 96, 108 (2010).

between them, are necessarily bound by an implied promise that the occupants will vacate the property upon demand.[37]

In the case of *Sarona, et al. v. Villegas, et al.*,[38] this Court described what tolerated acts mean, in this language:

> Professor Arturo M. Tolentino states that acts merely tolerated are "those which **by reason of neighborliness or familiarity**, the owner of property allows his neighbor or another person to do on the property; they are generally those particular services or benefits which one's property can give to another without material injury or prejudice to the owner, who **permits them out of friendship or courtesy**." . . . . and, Tolentino continues, **even though "this is continued for a long time, no right will be acquired by prescription**." x x x[39]

It was out of respect and courtesy to the then Mayor who was a distant relative that Cepeda consented to the building of the school.[40] The occupancy of the subject property by the DepEd to conduct classes therein arose from what Professor Arturo Tolentino refers to as the sense of "neighborliness or familiarity" of Cepeda to the then Mayor that he allowed the said occupation and use of his property.

Professor Tolentino, as cited in the *Sarona* case, adds that tolerated acts are acts of little disturbances which a person, *in the interest of neighborliness or friendly relations*, permits others to do on his property, such as passing over the land, tying a horse therein, or getting some water from a well.[41] In tolerated acts, the said permission of the owner for the acts done in his property arises from an "impulse of sense of neighborliness or good familiarity with persons"[42] or out of "friendship or

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[37] *Rivera v. Rivera*, 453 Phil. 404, 411 (2003).

[38] 131 Phil. 365 (1968).

[39] *Sarona, et al. v. Villegas, et al., supra*, at 372-373, per Sanchez, *J.* (Emphases supplied; citations omitted).

[40] *Rollo*, p. 39.

[41] *Sarona, et al. v. Villegas, et al., supra* note 38, at 372.

[42] Pineda, *Law on Property*, 2009 ed., p. 321.

courtesy,"[43] and not out of duty or obligation. By virtue of tolerance that is considered as an authorization, permission, or license, acts of possession are realized or performed.[44]

Thus, in light of the DepEd's admission that it was the then Mayor who convinced Cepeda to allow its use of his property and in the absence of evidence that the same was indeed sold to it, the occupation and use as school site of the subject lot by the DepEd upon Cepeda's permission is considered a tolerated act. Cepeda allowed the use of his property out of his respect, courtesy and familiarity with the then Mayor who convinced him to allow the use of his property as a school site.

Considering that the occupation of the subject lot is by mere tolerance or permission of the respondents, the DepEd, without any contract between them, is bound by an implied promise that it will vacate the same upon demand. Hence, until such demand to vacate was communicated by the respondents to the DepEd, respondents are not required to do any act to recover the subject land, precisely because they knew of the nature of the DepEd's possession which is by mere tolerance.

Therefore, respondents are not guilty of failure or neglect to assert a right within a reasonable time. The nature of that possession by the DepEd has never changed from 1965 until the filing of the complaint for forcible entry against the respondents on June 21, 2001. It was only then that the respondents had knowledge of the adverse claim of the DepEd over the property. The respondents filed the action for recovery of possession on March 16, 2004 after they lost their appeal in the forcible entry case and upon the continued refusal of the DepEd to pay rent, purchase the lot or vacate the premises.[45]

Lastly, the DepEd maintains that the respondents' inaction for more than 30 years reduced their right to recover the subject property into a stale demand. It cited the case of *Eduarte v.*

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[43] *Sarona, et al. v. Villegas, et al., supra* note 38, at 372.

[44] *Id.* at 373.

[45] *Rollo*, p. 35.

CA,[46] *Catholic Bishop of Balanga v. CA*,[47] *Mactan-Cebu International Airport Authority (MCIAA) v. Heirs of Marcelina L. Sero, et al*.[48] and *DepEd Division of Albay v. Oñate*[49] to bolster its claim that a registered owner may lose his right to recover the possession of his registered property by reason of laches. It alleged that the fact that the respondents possess the certificate of title of the property is of no moment since a registered landowner, like the respondents, lost their right to recover the possession of the registered property by reason of laches.

In the *Eduarte* case, the respondents therein knew of Eduarte's adverse possession of the subject lot as evidenced by their Joint Affidavit dated March 18, 1959. In the case of *Catholic Bishop of Balanga v. CA*, the petitioner, by its own admission, was aware of private respondent's occupation in the concept of owner of the lot donated in its behalf to private respondent's predecessor-in-interest in 1936. The subject lot in the case of *Mactan-Cebu International Airport Authority* was obtained through expropriation proceedings and registered in the name of the petitioner. In the *Oñate* case, no evidence was presented to show that the respondent or his predecessor-in-interest protested against the adverse possession of the disputed lot by the Municipality of Daraga and, subsequently, by the petitioner.

Unlike the cases cited by the DepEd, there was no solid evidentiary basis to establish that laches existed in the instant case. The DepEd failed to substantiate its claim of possession in the concept of an owner from the time it occupied the lot after Cepeda allowed it to use the same for a school site in 1965. The possession by the DepEd of the subject lot was clearly by mere tolerance, since it was not proven that it laid an adverse claim over the property by virtue of the purported sale.

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[46] 370 Phil. 18 (1999).

[47] 332 Phil. 206 (1996).

[48] 574 Phil. 755 (2008).

[49] 551 Phil. 633 (2007).

Moreover, the trial court ruled that the DepEd is a builder in good faith. To be deemed a builder in good faith, it is essential that a person asserts title to the land on which he builds, *i.e.*, that he be a possessor in the concept of owner, and that he be unaware that there exists in his title or mode of acquisition any flaw which invalidates it.[50] However, there are cases where Article 448 of the Civil Code was applied beyond the recognized and limited definition of good faith, *e.g.*, cases wherein the builder has constructed improvements on the land of another with the consent of the owner.[51] The Court ruled therein that the structures were built in good faith in those cases that the owners knew and approved of the construction of improvements on the property. [52]

Despite being a possessor by mere tolerance, the DepEd is considered a builder in good faith, since Cepeda permitted the construction of building and improvements to conduct classes on his property. Hence, Article 448 may be applied in the case at bar.

Article 448, in relation to Article 546 of the Civil Code, provides for the rights of respondents as landowners as against the DepEd, a builder in good faith. The provisions respectively read:

> Article 448. The owner of the land on which anything has been built, sown or planted in good faith, shall have the right to appropriate as his own the works, sowing, or planting, after payment of the indemnity provided for in Articles 546 and 548, or to oblige the one who built or planted to pay the price of the land, and the one who sowed, the proper rent. However, the builder or planter cannot be obliged to buy the land if its value is considerably more than that of the building or trees. In such case, he shall pay reasonable rent, if the owner of the land dues not choose to appropriate the building or trees after proper indemnity. The parties shall agree upon the terms

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[50] *Heirs of Victorino Sarili v. Lagrosa*, G.R. No. 193517, January 15, 2014, 713 SCRA 726, 741.

[51] *Spouses Crispin and Teresa Aquino v. Spouses Eusebio and Josefina Aguilar*, G.R. No. 182754, June 29, 2015.

[52] *Id.*

of the lease and in case of disagreement, the court shall fix the terms thereof.

Article 546. Necessary expenses shall be refunded to every possessor; but only the possessor in good faith may retain the thing until he has been reimbursed therefor.

Useful expenses shall be refunded only to the possessor in good faith with the same right of retention, the person who has defeated him in the possession having the option of refunding the amount of the expenses or of paying the increase in value which the thing may have acquired by reason thereof.

In the case of *Bernardo v. Bataclan*,[53] the Court explicated that Article 448 provides a just and equitable solution to the impracticability of creating "forced co-ownership" by giving the owner of the land the option to acquire the improvements after payment of the proper indemnity or to oblige the builder or planter to pay for the land and the sower to pay the proper rent.[54] The owner of the land is allowed to exercise the said options because his right is older and because, by the principle of accession, he is entitled to the ownership of the accessory thing.[55]

Thus, the two options available to the respondents as landowners are: (a) they may appropriate the improvements, after payment of indemnity representing the value of the improvements introduced and the necessary and useful expenses defrayed on the subject lots; or (b) they may oblige the DepEd to pay the price of the land. However, it is also provided under Article 448 that the builder cannot be obliged to buy the land if its value is considerably more than that of the improvements and buildings. If that is the case, the DepEd is not duty-bound to pay the price of the land should the value of the same be considerably higher than the value of the improvement introduced by the DepEd on the subject property. In which case, the law

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[53] 66 Phil. 598(1938).

[54] *Bernardo v. Bataclan, supra*, at 602.

[55] *Id.*

provides that the parties shall agree on the terms of the lease and, in case of disagreement, the court shall fix the terms thereof.

The RTC, as affirmed by the CA, ruled that the option of the landowner to appropriate after payment of the indemnity representing the value of the improvements introduced and the necessary and useful expenses defrayed on the subject lots is no longer feasible or convenient because it is now being used as school premises. Considering that the appropriation of improvements upon payment of indemnity pursuant to Article 546 by the respondents of the buildings being used by the school is no longer practicable and feasible, the respondents are thus left with the second option of obliging the DepEd to pay the price of the land or to require the DepEd to pay reasonable rent if the value of the land is considerably more than the value of the buildings and improvements.

Since the determination of the value of the subject property is factual in nature, this Court finds a need to remand the case to the trial court to determine its value. In case the trial court determines that the value of the land is considerably more than that of the buildings and improvements introduced, the DepEd may not be compelled to pay the value of the land, instead it shall pay reasonable rent upon agreement by the parties of the terms of the lease. In the event of a disagreement between the parties, the trial court shall fix the terms of lease.

Lastly, the RTC ruled that the basis of due compensation for the respondents should be the price or value of the property at the time of the taking. In the case of *Ballatan v. CA*,[56] the Court has settled that the time of taking is determinative of just compensation in expropriation proceedings but not in a case where a landowner has been deprived of the use of a portion of this land for years due to the encroachment of another.[57]

In such instances, the case of *Vda. de Roxas v. Our Lady's Foundation, Inc.*[58] is instructive. The Court elucidated therein

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[56] 363 Phil. 408 (1999).

[57] *Ballatan v. CA, supra*, at 423.

[58] G.R. No. 182378, March 6, 2013, 692 SCRA 578.

that the computation of the value of the property should be fixed at the prevailing market value.[59] The reckoning period for valuing the property in case the landowner exercised his rights in accordance with Article 448 shall be at the time the landowner elected his choice.[60] Therefore, the basis for the computation of the value of the subject property in the instant case should be its present or current fair market value.

WHEREFORE, the Petition for Review on *Certiorari*, dated June 18, 2010, of petitioner Department of Education, represented by its Regional Director, is hereby **DENIED**. Accordingly, the Decision dated April 29, 2010 of the Court of Appeals in CA-G.R. CV No. 90633, affirming the Decision dated January 10, 2008 of the Regional Trial Court of Tuguegarao City, Cagayan, Branch 5, which declared the respondents the owners of property in controversy, is hereby **AFFIRMED**.

Accordingly, this case is **REMANDED** to the court of origin to determine the value of the subject property. If the value of the property is less than the value of the buildings and improvements, the Department of Education is ordered to pay such amount. If the value of the property is greater than the value of the buildings and improvements, the DepEd is ordered to pay reasonable rent in accordance with the agreement of the parties. In case of disagreement, the trial court shall fix the amount of reasonable rent.

SO ORDERED.

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

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[59] *Vda. de Roxas v. Our Lady's Foundation, Inc., supra*, at 584.

[60] *Id.*

JUSTICE SO REQUIRE. — The notices sent to the counsel of record is binding upon the client, and the neglect or failure of counsel to inform him of an adverse judgment resulting in the loss of his right to appeal is not a ground for setting aside a judgment that is valid and regular on its face. This is based on the rule that any act performed by a counsel within the scope of his general or implied authority is regarded as an act of the client. In highly meritorious cases, however, the Court may depart from the application of this rule such as when the negligence of the counsel is so gross, reckless, and inexcusable that the client is deprived of due process of law; when adherence to the general rule would result in the outright deprivation of the clients' property; or when the interests of justice so require. In the case of *People's Homesite and Housing Corporation v. Tiongco*, the Court stated the reason therefor. Thus: There should be no dispute regarding the doctrine that normally notice to counsel is notice to parties, and that such doctrine has beneficient effects upon the prompt dispensation of justice. **Its application to a given case, however, should be looked into and adopted, according to the surrounding circumstances; otherwise, in the court's desire to make a short cut of the proceedings, it might foster, wittingly or unwittingly, dangerous collusions to the detriment of justice**. It would then be easy for one lawyer to sell one's right down the river, by just alleging that he just forgot every process of the court affecting his clients, because he was so busy. Under this circumstance, one should not insist that a notice to such irresponsible lawyer is also a notice to his clients.

3. **ID.; ID.; ID.; COURT STEPS IN AND ACCORD RELIEF TO A CLIENT WHO SUFFERED FROM GROSS AND PALPABLE NEGLIGENCE OF COUNSEL AND OF EXTRINSIC FRAUD.—** [T]hough the Court is cognizant of the general rule, in cases of **gross and palpable negligence of counsel** and of **extrinsic fraud**, the Court must step in and accord relief to a client who suffered thereby. For negligence to be excusable, it must be one which ordinary diligence and prudence could not have guarded against, and for the extrinsic fraud to justify a petition for relief from judgment, it must be that fraud which the prevailing party caused to prevent the losing party from being heard on his action or defense. Such fraud concerns not the judgment itself but the manner in which it

relief from judgment is an equitable remedy that is allowed in exceptional cases where there is no other available or adequate remedy. In the interest of justice and equity, the Court deems it just and equitable to grant the petition and enable CEZA to appeal its case.

5. LEGAL ETHICS; ATTORNEYS; ATTORNEY-CLIENT RELATIONSHIP; IT IS THE DUTY OF EVERY LAWYER TO GIVE ADEQUATE ATTENTION AND TIME TO EVERY CASE ENTRUSTED TO HIM AND TO EXERT HIS BEST JUDGMENT IN THE PROSECUTION OR DEFENSE THEREOF AND TO EXERCISE REASONABLE AND ORDINARY CARE AND DILIGENCE IN THE PURSUIT OR DEFENSE OF THE CASE. — It must be stressed that a lawyer-client relationship is highly fiduciary in nature. The Code of Professional Responsibility mandates every lawyer to observe candor, fairness and loyalty in all his dealings and transactions with his client and to serve them with competence and diligence. It is the duty of every lawyer to give adequate attention and time to every case entrusted to him and to exert his best judgment in the prosecution or defense thereof and to exercise reasonable and ordinary care and diligence in the pursuit or defense of the case.

6. REMEDIAL LAW; RULES OF PROCEDURE; THE RULES ARE NOT INFLEXIBLE TOOLS DESIGNED TO HINDER OR DELAY, BUT TO FACILITATE AND PROMOTE THE ADMINISTRATION OF JUSTICE, AND THEIR STRICT AND RIGID APPLICATION, WHICH WOULD RESULT IN TECHNICALITIES THAT TEND TO FRUSTRATE, RATHER THAN PROMOTE SUBSTANTIAL JUSTICE, MUST ALWAYS BE ESCHEWED.— Time and again, this Court has stressed that rules of procedure are not to be applied in a very strict and technical sense. The rules are not inflexible tools designed to hinder or delay, but to facilitate and promote the administration of justice. Their strict and rigid application, which would result in technicalities that tend to frustrate, rather than promote substantial justice, must always be eschewed. As pronounced in the case of *Legarda vs. Court of Appeals*: Procedural technicality should not be made a bar to the vindication of a legitimate grievance. When such technicality deserts from being an aid to justice, the courts are justified in

otherwise known as the "Cagayan Special Economic Zone Act of 1995." Its primary purpose is to manage and supervise the development of the Cagayan Special Economic Zone and Freeport (*Freeport Zone*).

Due to several inquiries from a group of Spanish nationals on the possibility of operating a jai alai fronton, CEZA sought the opinion of the Office of the Government Corporate Counsel (*OGCC*) on whether it could operate/license jai alai inside the Freeport Zone.

The OGCC, in its Opinion No. 251, s. 2007,[6] was of the view that the CEZA could operate and/or license jai alai under its legislative franchise including the authority to manage, establish and operate jai alai betting stations inside and outside the Freeport Zone.

Accordingly, respondent Meridien Vista Gaming Corporation (*MVGC*) applied with CEZA for registration as licensed/ authorized operator of gaming, sports betting and tourism-related activities such as jai alai, cock fighting, virtual gaming, bingo, horse racing, dog racing, sports betting, internet gaming, and land based casinos.[7]

CEZA granted the application of MVGC to engage in gaming operations within the Freeport Zone and subsequently issued several certifications attesting that MVGC was licensed to conduct gaming operations within the zone and to set up betting stations in any place as may be allowed by law.[8]

On January 5, 2009, MVGC informed CEZA that its virtual games software had been *alpha* tested and was ready for actual field testing as of December 29, 2008. MVGC also proposed to conduct a real market environment testing starting on January 15, 2009 and to utilize an offsite gaming station in the provinces of Isabela, Camarines Sur and Nueva Viscaya subject to the requisite local government permits.[9]

[6] Annex "C" of the Petition, *id.* at 94-100.

[7] Annex "D" of the Petition, *id.* at 102-103.

[8] Annexes "E-I" of the Petition, *id.* at 104-114.

[9] Annex "F" of the Petition, *id.* at 112.

and *basque pelota* games (jai alai); (3) Presidential Decree (P.D.) No. 771 revoking all powers and authority of the Local Government to grant, franchise, license, permit, and regulate wages or betting by the public on horse and dog races, jai alai and other forms of gambling; and (4) P.D. No. 810, "An Act Granting the Philippine Jai-Alai and Amusement Corporation a Franchise to Operate, Construct and Maintain a Fronton for Basque Pelota and Similar Games of Skill in the Greater Manila Area."

On October 30, 2009, after the parties had filed their Joint Manifestation with Motion to Render Judgment based on the Pleadings,[14] the RTC rendered a decision[15] in favor of MVGC, the dispositive portion of which reads:

> WHEREFORE, premises considered, judgment is hereby rendered in favor of the petitioner and against the respondent. Accordingly, let a Writ of Mandamus issue directing respondent or any other person/s acting under its control and direction to allow the petitioner to continue with its gaming operations in accordance with the license already granted. The bond earlier posted by Petitioner is hereby released in its favor.
>
> Let a copy of this Decision be furnished the Department of Justice, the Department of Interior and Local Government and the Philippine National Police and other law enforcement agencies of the government for their reference and guidance.
>
> No Costs.
>
> SO ORDERED.[16]

On the same date, a copy of the decision was obtained by Atty. Baniaga, who was coincidentally then in the premises of the court building.[17]

On November 26, 2009, the OGCC filed a Manifestation[18] informing the court that they received information that a decision

[14] Annex "AA" of the Petition, *id.* at 272-276.

[15] Annex "BB" of the Petition, *id.* at 277-287.

[16] *Id.* at 286-287.

[17] *Id.* at 41.

[18] *Id.* at 289-290.

that the negligence of CEZA's counsel, Atty. Baniaga,[23] was binding on his client and could not be used as an excuse to revive the right to appeal which had been lost.

On July 23, 2010, CEZA filed with the CA a petition for *certiorari* and prohibition.

On August 13, 2010, the CA denied the petition, sustaining the ruling that CEZA was bound by the mistakes and negligence of its counsel.[24]

A motion for reconsideration was filed by CEZA but it was likewise denied in the CA Resolution, dated December 9, 2010.[25]

Hence, this petition praying for the reversal and setting aside of the August 13, 2010 and December 9, 2010 Resolutions of the CA in CA-G.R. SP No. 115034 anchored on the ground that the CA **gravely erred**:[26]

(A) WHEN IT RULED THAT PETITIONER CEZA FAILED TO SHOW THE SPECIFIC ACTS COMMITTED BY HON. JUDGE ZALDIVAR THAT CONSTITUTE GRAVE ABUSE OF DISCRETION.

(B) WHEN IT RULED THAT PETITIONER CEZA IS BOUND BY THE MISTAKES AND NEGLIGENCE OF ATTY. BANIAGA.

(C) WHEN IT RULED THAT PETITIONER CEZA's 15-DAY PERIOD TO APPEAL IS COUNTED FROM ATTY. BANIAGA'S RECEIPT OF THE 30 OCTOBER 2009 DECISION.

(D) WHEN IT RULED THAT UNDER REPUBLIC ACT (R.A.) NO. 7922, PETITIONER CEZA HAS THE POWER TO OPERATE ON ITS OWN OR LICENSE TO OTHERS, JAI-ALAI.

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[23] On January 27, 2011, the GOCC **DISMISSED Atty. Edgardo G. Baniaga for "Serious Dishonesty, Grave Misconduct, Gross Neglect of Duty, Conduct prejudicial to the Best Interest of the Service, and Violation of Reasonable Office Rules and Regulations,** *id.* at 47; and Annex UU, *id.* at 431-432.

[24] *Id.* at 81-88.

[25] *Id.* at 90-93.

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

by a counsel within the scope of his general or implied authority is regarded as an act of the client.[32]

In highly meritorious cases, however, the Court may depart from the application of this rule such as when the negligence of the counsel is so gross, reckless, and inexcusable that the client is deprived of due process of law;[33] when adherence to the general rule would result in the outright deprivation of the clients' property;[34] or when the interests of justice so require.[35] In the case of *People's Homesite and Housing Corporation v. Tiongco*,[36] the Court stated the reason therefor. Thus:

> There should be no dispute regarding the doctrine that normally notice to counsel is notice to parties, and that such doctrine has beneficient effects upon the prompt dispensation of justice. **Its application to a given case, however, should be looked into and adopted, according to the surrounding circumstances; otherwise, in the court's desire to make a short cut of the proceedings, it might foster, wittingly or unwittingly, dangerous collusions to the detriment of justice.** It would then be easy for one lawyer to sell one's right down the river, by just alleging that he just forgot every process of the court affecting his clients, because he was so busy. Under this circumstance, one should not insist that a notice to such irresponsible lawyer is also a notice to his clients.[37]
>
> [Emphases Supplied]

Thus, though the Court is cognizant of the general rule, in cases of **gross and palpable negligence of counsel** and of **extrinsic fraud**, the Court must step in and accord relief to a client who suffered thereby.[38] For negligence to be excusable,

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[32] *APEX Mining, Inc. v. Court of Appeals*, 377 Phil. 482, 493 (1999).

[33] *Id.* at 495; *Labao v. Flores*, 649 Phil. 213, 223 (2010).

[34] *Escudero v. Dulay*, 241 Phil. 877, 886 (1988).

[35] *Villanueva v. People of the Philippines*, 659 Phil. 418, 429 (2011).

[36] 120 Phil. 1264, 1270 (1964).

[37] *Id.*

[38] *Kalubiran v. Court of Appeals*, 360 Phil. 510, 526 (1998).

such as by keeping him away from court, by giving him a false promise of a compromise, or **where an attorney fraudulently or without authority connives at his defeat**."

Because extrinsic fraud must emanate from the opposing party, extrinsic fraud concerning a party's lawyer often involves the latter's collusion with the prevailing party, such that his lawyer connives at his defeat or corruptly sells out his client's interest.

In this light, we have ruled in several cases that a lawyer's mistake or gross negligence does not amount to the extrinsic fraud that would grant a petition for annulment of judgment.

We so ruled not only because extrinsic fraud has to involve the opposing party, but also because the negligence of counsel, as a rule, binds his client.

We have recognized, however, that there had been instances where the lawyer's negligence had been so gross that it amounted to a collusion with the other party, and thus, qualified as extrinsic fraud.

In *Bayog v. Natino*, for instance, we held that the unconscionable failure of a lawyer to inform his client of his receipt of the trial court's order and the motion for execution, and to take the appropriate action against either or both to protect his client's rights amounted to connivance with the prevailing party, which constituted extrinsic fraud.

Two considerations differentiate the lawyer's negligence in Bayog from the general rule enunciated in Tan. While both cases involved the lawyer's negligence to inform the client of a court order, the negligence in Bayog was unconscionable because (1) the client's pauper litigant status indicated that he relied solely on his counsel for the protection and defense of his rights; and (2) the lawyer's repeated acts of negligence in handling the case showed that his inaction was deliberate.

In contrast, the Court ruled in Tan that the petitioner's failure to file a notice of appeal was partly his fault and not just his lawyer's. Too, the failure to file the notice of appeal was the only act of negligence presented as extrinsic fraud.

We find the exceptional circumstances in *Bayog* to be present in the case now before us.

the NFA's right to present its controverting evidence against Lasala's counterclaim evidence. Strangely, when asked during hearing, Atty. Cahucom refused to refute Lasala's testimony and instead simply moved for the filing of a memorandum.

The actions of these lawyers, that at the very least could be equated with unreasonable disregard for the case they were handling and with obvious indifference towards the NFA's plight, lead us to the conclusion that Attys. Mendoza's and Cahucom's actions amounted to a concerted action with Lasala when the latter secured the trial court's huge and baseless counterclaim award. By this fraudulent scheme, the NFA was prevented from making a fair submission in the controversy.

[Emphases in the original; Underscoring Supplied]

Similarly, the negligence of the petitioner's counsel was **evidently so gross** as to call for the exercise of this Court's equity jurisdiction. Clearly, the negligence of Atty. Baniaga was **unconscionable** and **inexcusable**. It was highly suspicious, if not outright deliberate. Obviously, he fell short of the high standard of assiduousness that a counsel must perform to safeguard the rights of his clients.[43] At the inception, CEZA was already deprived of its right to present evidence during the trial of the case when Atty. Baniaga filed a joint manifestation submitting the case for decision based on the pleadings without informing CEZA. In violation of his sworn duty to protect his client's interest, Atty. Baniaga agreed to submit the case for decision without fully substantiating their defense. Worse, after he received a copy of the decision, he did not even bother to inform his client and the OGCC of the adverse judgment. He did not even take steps to protect the interests of his client by filing an appeal. Instead, he allowed the judgment to lapse into finality. Such reckless and gross negligence deprived CEZA not only of the chance to seek reconsideration thereof but also the opportunity to elevate its case to the CA.

It must be stressed that a lawyer-client relationship is highly fiduciary in nature.[44] The Code of Professional Responsibility

[43] *Francisco v. Portugal*, 519 Phil. 547, 555 (2006).

[44] *Macarilay v. Seriña*, 497 Phil. 348, 356 (2005).

a particular case. Where there was something fishy and suspicious about the actuations of the former counsel of petitioner in the case at bar, in that he did not give any significance at all to the processes of the court, which has proven prejudicial to the rights of said clients, under a lame and flimsy explanation that the court's processes just escaped his attention, it is held that said lawyer deprived his clients of their day in court, thus entitling said clients to petition for relief from judgment despite the lapse of the reglementary period for filing said period for filing said petition.

Potential Liability of Atty. Baniaga

The records disclose that on January 27, 2011, the OGCC dismissed Atty. Baniaga for "Serious Dishonesty, Grave Misconduct, Gross Neglect of Duty, Conduct Prejudicial to the Best Interest of the Service, and Violation of Reasonable Office Rules and Regulations."[53]

The Court is forwarding a copy of the records of this case to the Board of Governors of the Integrated Bar of the Philippines so it may conduct the appropriate investigation regarding Atty. Baniaga's fitness to remain as a member of the Bar.

As in *Lasala*, the Court's ruling in this case involves solely the finding of extrinsic fraud for the purpose of granting CEZA a relief from judgment. The Board of Governors should conduct its own investigation regarding the incidents surrounding this case with this decision and its records to be considered as part of evidence to determine the potential liabilities of Atty. Baniaga.

WHEREFORE, the petition is **GRANTED**. The August 13, 2010 and December 9, 2010 Resolutions of the Court of Appeals, affirming the March 4, 2010 Resolution of the Regional Trial Court, Branch 7, Aparri, Cagayan, are **SET ASIDE.**

The Petition for Relief from Judgment filed by petitioner Cagayan Economic Zone Authority is **GRANTED**. Accordingly, the Court of Appeals is ordered to give due course to its Notice of Appeal.

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[53] *Rollo*, p. 47; and Annex "UU", *rollo*, pp. 431-432.

Let copies of this decision and the relevant records of this case be sent to the Board of Governors of the Integrated Bar of the Philippines for its administrative investigation of Atty. Edgardo Baniaga, based on the given facts of this decision to determine whether he has the requisite competence and integrity to maintain his membership in the roll of lawyers of this country.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 196140. January 27, 2016]

NATIONAL POWER CORPORATION, *petitioner, vs.* **ELIZABETH MANALASTAS and BEA CASTILLO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; EXPROPRIATION; JUST COMPENSATION; VALUATION OF THE LAND FOR PURPOSES OF DETERMINING JUST COMPENSATION SHOULD NOT INCLUDE THE INFLATION RATE OF THE PHILIPPINE PESO BECAUSE THE DELAY IN PAYMENT OF THE PRICE OF EXPROPRIATED LAND IS SUFFICIENTLY RECOMPENSED THROUGH PAYMENT OF INTEREST ON THE MARKET VALUE OF THE LAND AS OF THE TIME OF TAKING FROM THE LANDOWNER. — [I]in *Secretary of the Department of Public Works and Highways, et al. v. Spouses Heracleo and Ramona Tecson*, the Court stressed that "just compensation is the value of the property at the time of taking that is controlling for purposes of compensation." x x x. In its Resolution dated April 21, 2015,

the Court fully explained that: x x x. the State is not obliged to pay premium to the property owner for appropriating the latter's property; it is only bound to make good the loss sustained by the landowner, with due consideration of the circumstances availing at the time the property was taken. x x x. Notwithstanding the foregoing, we recognize that the owner's loss is not only his property but also its income-generating potential. Thus, when property is taken, full compensation of its value must immediately be paid to achieve a fair exchange for the property and the potential income lost. **Accordingly, in *Apo*, we held that the rationale for imposing the interest is to compensate the petitioners for the income they would have made had they been properly compensated for their properties at the time of the taking**. Thus: We recognized in *Republic v. Court of Appeals* the need for prompt payment and the necessity of the payment of interest to compensate for any delay in the payment of compensation for property already taken. We ruled in this case that: x x x. In other words, **the just compensation due to the landowners amounts to an effective forbearance on the part of the State—a proper subject of interest computed from the time the property was taken until the full amount of just compensation is paid—in order to eradicate the issue of the constant variability of the value of the currency over time.** xxx. The foregoing clearly dictates that valuation of the land for purposes of determining just compensation should not include the inflation rate of the Philippine Peso because the delay in payment of the price of expropriated land is sufficiently recompensed through payment of interest on the market value of the land as of the time of taking from the landowner.

2. ID.; ID.; ID.; ID.; IT IS THE COURTS, NOT THE LITIGANTS, WHO DECIDE ON THE PROPER INTERPRETATION OR APPLICATION OF THE LAW AND, THUS, ONLY THE COURTS MAY DETERMINE THE RIGHTFUL COMPENSATION IN ACCORDANCE WITH THE LAW AND EVIDENCE PRESENTED BY THE PARTIES. — [T]he fact that it was petitioner's own counsel below that recommended the inclusion of the inflation rate in the determination of just compensation should not be taken against petitioner. After all, it is ultimately the courts' mandated duty to adjudge whether the parties' submissions are correct.

It is the courts, not the litigants, who decide on the proper interpretation or application of the law and, thus, only the courts may determine the rightful compensation in accordance with the law and evidence presented by the parties. It is incongruous for the court below to uphold a proposition merely because it was recommended by a party, despite the same being erroneous.

3. ID.; ID.; ID.; ID.; EXEMPLARY DAMAGES AND ATTORNEY'S FEES SHOULD BE AWARDED AS A CONSEQUENCE OF THE GOVERNMENT AGENCY'S ILLEGAL OCCUPATION OF THE OWNER'S PROPERTY FOR A VERY LONG TIME, RESULTING IN PECUNIARY LOSS TO THE OWNER. — [I]n addition to the award for interests, Article 2229 of the Civil Code provides that "[e]xemplary or corrective damages are imposed by way of example or correction for the public good" and Article 2208 of the same code states that attorney's fees may be awarded by the court in cases where such would be just and equitable. As held in the Resolution dated April 21, 2015 in *Secretary of the Department of Public Works and Highways, et al. v. Spouses Heracleo and Ramona Tecson*, **additional compensation in the form of exemplary damages and attorney's fees should likewise be awarded as a consequence of the government agency's illegal occupation of the owner's property for a very long time, resulting in pecuniary loss to the owner**. Indeed, government agencies should be admonished and made to realize that its negligence and inaction in failing to commence the proper expropriation proceedings before taking private property, as provided for by law, cannot be countenanced by the Court.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
Nelson P. Paraiso for respondents.

D E C I S I O N

PERALTA, *J.*:

This resolves the Petition for Review on *Certiorari* under Rule 45 of the Rules of Court, praying that the Decision[1] of the Court of Appeals (CA) promulgated on September 9, 2010, and its Resolution[2] dated March 14, 2011, denying petitioner's Motion for Partial Reconsideration be reversed and set aside.

Sometime in 1977 to 1978, petitioner, a government-owned and controlled corporation involved in the development of hydro-electric generation of power and production of electricity, and the construction, operation and maintenance of power plants, transmission lines, power stations and substations, among others, constructed a 230 KV transmission line for the Naga-Tiwi line and a 69 KV transmission line for the Naga-Tinambac line on respondents' parcel of land covered by TCT No. 26263, affecting an area of 26,919 square meters. Petitioner entered said land without the knowledge or consent of respondents, without properly initiating expropriation proceedings, and without any compensation to respondents-landowners. Because of said transmission lines, respondents alleged that they could no longer use their land as part of a subdivision project as originally intended, which ultimately caused financial loss to their family. Thus, in July 2000, respondents (plaintiffs below, who were then joined by their mother, Celedonia, and brother, Mariano; Celedonia and Mariano are no longer impleaded as parties in this petition as the CA Decision has attained finality as to them)[3] filed a complaint against petitioner and its officers with the Regional Trial Court of Naga City (*RTC*). Respondents demanded the removal of the power lines and its accessories

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[1] Penned by Associate Justice Mario L. Guariña III, with Associate Justices Apolinario D. Bruselas, Jr. and Rodil V. Zalameda, concurring; *rollo*, pp. 43-52.

[2] *Id.* at 54.

[3] See Resolution dated January 18, 2012 (*Id.* at 215) and Resolution dated April 11, 2012 (*Id.* at 224).

and payment of damages, or in the alternative, payment of the fair market value of the affected areas totalling 26,000 square meters of respondents' land at ₱800.00 per square meter.

On November 17, 2006, the RTC issued a Decision, the dispositive portion of which reads as follows:

> WHEREFORE, defendant NAPOCOR is hereby ordered to:
>
> 1) Pay plaintiffs the amount of PESOS: NINETY-TWO MILLION EIGHT HUNDRED TWENTY-SEVEN THOUSAND and THREE HUNDRED FIFTY-ONE (₱92,827,351.00), by way of just compensation, broken down as follows:
>
> a) For the plaintiffs Elizabeth Manalastas and Bea Castillo:
>
> | | |
> |---|---|
> | ₱32,033,610.00 | — Value of the land |
> | ₱53,816,461.00 | — Interest at 6% per annum for 28 years |
> | ₱85,850,071.00 | — Total |
>
> b) For the plaintiffs Celedonia Mariano and Enrico Mariano:
>
> | | |
> |---|---|
> | ₱1,000,200.00 | — Value of the land |
> | ₱5,887,080.00 | — Interest at 6% per annum for 9 years |
> | ₱6,977,280.00 | — Total |
>
> 2) Pay Attorney's fees to plaintiffs in the amount of Pesos: One Hundred Thousand (₱100,000.00).
>
> With cost against plaintiff (sic) NAPOCOR.
>
> SO ORDERED.[4]

On appeal to the CA, herein petitioner argued that the RTC erred in factoring the devaluation of the peso in the computation of the fair market value of respondents' land. In a Decision dated September 9, 2010, the CA affirmed the RTC judgment with modification, reducing the award to Celedonia and Enrico Mariano (respondents' co-plaintiffs below) to ₱1,678,908.00. The CA ruled that petitioner could no longer assail the valuation that petitioner itself recommended, the same being a judicial

[4] *Rollo*, pp. 139-140.

admission. Moreover, the CA pointed out that taking an inconsistent position on appeal cannot be allowed. Petitioner's motion for reconsideration was denied in a Resolution dated March 14, 2010.

Hence, the present petition where petitioner alleges as follows:

I.

ESTOPPEL IS INOPERATIVE AGAINST THE GOVERNMENT; THE INFLATION FACTOR SHOULD NOT BE INCLUDED IN THE COMPUTATION OF JUST COMPENSATION

II.

THE DETERMINATION OF JUST COMPENSATION IS A JUDICIAL FUNCTION. COURTS ARE THEREFORE NOT BOUND TO UPHOLD A PARTY'S FORMULATION OF JUST COMPENSATION; [and]

III.

THE AWARD OF EIGHTY-FIVE MILLION EIGHT HUNDRED FIFTY THOUSAND AND SEVENTY-ONE PESOS (Php85,850,071.00) WILL UNJUSTLY ENRICH THE RESPONDENTS.[5]

The Court finds the petition meritorious.

The bone of contention in this case is the inclusion of the inflation rate of the Philippine Peso in determining the just compensation due to respondents. Petitioners maintain that such inclusion of the inflation rate in arriving at the value of just compensation has no legal basis, and it was a palpable mistake on the part of its representatives and counsel below to make a recommendation factoring in said inflation rate in the computation of just compensation. None of the parties contest the finding that the fair market value of the property at the time of taking was Php170.00 per square meter.

It should be noted that in *Secretary of the Department of Public Works and Highways, et al. v. Spouses Heracleo and*

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[5] *Id.* at 21.

Ramona Tecson,[6] the Court stressed that "just compensation is the value of the property at the time of taking that is controlling for purposes of compensation." In a motion for reconsideration of the Decision in said case, the landowners argued that it would be unjust if the amount that will be awarded to them today will be based on the value of the property at the time of actual taking. In its Resolution dated April 21, 2015, the Court fully explained that:

> x x x the State is not obliged to pay premium to the property owner for appropriating the latter's property; it is only bound to make good the loss sustained by the landowner, with due consideration of the circumstances availing at the time the property was taken. More, **the concept of just compensation does not imply fairness to the property owner alone. Compensation must also be just to the public, which ultimately bears the cost of expropriation.**
>
> Notwithstanding the foregoing, we recognize that the owner's loss is not only his property but also its income-generating potential. Thus, when property is taken, full compensation of its value must immediately be paid to achieve a fair exchange for the property and the potential income lost. **Accordingly, in *Apo*, we held that the rationale for imposing the interest is to compensate the petitioners for the income they would have made had they been properly compensated for their properties at the time of the taking.** Thus:
>
> > We recognized in *Republic v. Court of Appeals* the need for prompt payment and the necessity of the payment of interest to compensate for any delay in the payment of compensation for property already taken. We ruled in this case that:
> >
> > > The constitutional limitation of "just compensation" is considered to be the sum equivalent to the market value of the property, broadly described to be the price fixed by the seller in open market in the usual and ordinary course of legal action and competition or the fair value of the property as between one who receives, and one who desires to sell, i[f] fixed at the time of the actual taking by the government.
> >
> > Thus, ***if property is taken for public use before compensation is deposited with the court having***

[6] G.R. No. 179334, July 1, 2013, 700 SCRA 243, 268.

> ***jurisdiction over the case, the final compensation must include interest[s] on its just value to be computed from the time the property is taken to the time when compensation is actually paid or deposited with the court. In fine, between the taking of the property and the actual payment, legal interest[s] accrue in order to place the owner in a position as good as (but not better than) the position he was in before the taking occurred.*** [Emphasis supplied]

In other words, **the just compensation due to the landowners amounts to an effective forbearance on the part of the State — a proper subject of interest computed from the time the property was taken until the full amount of just compensation is paid — in order to eradicate the issue of the constant variability of the value of the currency over time.** In the Court's own words:

> The Bulacan trial court, in its 1979 decision, was correct in imposing interests on the zonal value of the property to be computed from the time petitioner instituted condemnation proceedings and "took" the property in September 1969. ***This allowance of interest on the amount found to be the value of the property as of the time of the taking computed, being an effective forbearance, at 12% per annum should help eliminate the issue of the constant fluctuation and inflation of the value of the currency over time x x x***.[7]

The foregoing clearly dictates that valuation of the land for purposes of determining just compensation should not include the inflation rate of the Philippine Peso because the delay in payment of the price of expropriated land is sufficiently recompensed through payment of interest on the market value of the land as of the time of taking from the landowner.

Moreover, the fact that it was petitioner's own counsel below that recommended the inclusion of the inflation rate in the determination of just compensation should not be taken against petitioner. After all, it is ultimately the courts' mandated duty to adjudge whether the parties' submissions are correct. It is the courts, not the litigants, who decide on the proper

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[7] *Secretary of the DPWH v. Spouses Tecson*, Resolution dated April 21, 2015. (Emphasis and underscoring supplied)

interpretation or application of the law and, thus, only the courts may determine the rightful compensation in accordance with the law and evidence presented by the parties. It is incongruous for the court below to uphold a proposition merely because it was recommended by a party, despite the same being erroneous. Thus, in *Secretary of Finance v. Oro Maura Shipping Lines*,[8] the Court emphasized, thus:

> x x x Assuming further x x x that the Collector of the Port of Manila similarly erred, we reiterate the legal principle that estoppel generally finds no application against the State when it acts to rectify mistakes, errors, irregularities, or illegal acts, of its officials and agents, irrespective of rank. This ensures efficient conduct of the affairs of the State without any hindrance on the part of the government from implementing laws and regulations, despite prior mistakes or even illegal acts of its agents shackling government operations and allowing others, some by malice, to profit from official error or misbehavior. **The rule holds true even if the rectification prejudices parties who had meanwhile received benefits.**[9]

Such important principle was reiterated in the more recent *Republic v. Bacas*,[10] where the Court stated that even "[g]ranting that the persons representing the government were negligent, the doctrine of estoppel cannot be taken against the Republic."[11] Again, in *National Power Corporation v. Samar*,[12] the Court admonished the trial court to disregard even the panel of commissioners' recommended valuation of the land if such valuation is not the relevant value at the time the NPC took possession of the property.[13] The cases cited by the lower court to justify its ruling that petitioner is bound by the recommendation

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[8] 610 Phil. 419 (2009).

[9] *Secretary of Finance v. Oro Maura Shipping Lines, supra*, at 437-438. (Underscoring supplied)

[10] G.R. No. 182913, November 20, 2013, 710 SCRA 411.

[11] *Republic v. Bacas, supra*, at 433.

[12] G.R. No. 197329, September 8, 2014, 734 SCRA 399.

[13] *National Power Corporation v. Samar, supra*, at 408-409.

made by its counsel before the trial court, are all inapplicable to the present case as said cases do not involve agencies or instrumentalities of the State.

Lastly, in addition to the award for interests, Article 2229 of the Civil Code provides that "[e]xemplary or corrective damages are imposed by way of example or correction for the public good" and Article 2208 of the same code states that attorney's fees may be awarded by the court in cases where such would be just and equitable. As held in the Resolution dated April 21, 2015 in *Secretary of the Department of Public Works and Highways, et al. v. Spouses Heracleo and Ramona Tecson*,[14] **additional compensation in the form of exemplary damages and attorney's fees should likewise be awarded as a consequence of the government agency's illegal occupation of the owner's property for a very long time, resulting in pecuniary loss to the owner.** Indeed, government agencies should be admonished and made to realize that its negligence and inaction in failing to commence the proper expropriation proceedings before taking private property, as provided for by law, cannot be countenanced by the Court.

To recapitulate, the formula for determination of just compensation to landowners does not include the factor for inflation rate, as inflation is properly accounted for through payment of interest on the amount due to the landowner, and through the award of exemplary damages and attorney's fees in cases where there was irregularity in the taking of property.

WHEREFORE, the petition is **GRANTED.** The Decision of the Court of Appeals in CA-G.R. CV No. 89366 is **MODIFIED**, such that petitioner is adjudged liable to **PAY JUST COMPENSATION** to respondents at the rate of Php170.00 per square meter, subject to interest at the rate of twelve percent (12%) per annum from the time of taking in 1978 up to June 30, 2013 and, thereafter, six percent (6%) per annum from July 1, 2013 until full satisfaction, pursuant to

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[14] *Supra* note 7.

Bangko Sentral ng Pilipinas — Monetary Board Circular No. 799, Series of 2013 and applicable jurisprudence. Petitioner is, likewise, **ORDERED** to **PAY** respondents exemplary damages in the amount of Php500,000.00 and attorney's fees in the amount of Php200,000.00.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 202426. January 27, 2016]

GINA ENDAYA, *petitioner, vs.* **ERNESTO V. VILLAOS,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; EJECTMENT; IN RESOLVING THE ISSUE OF POSSESSION IN AN EJECTMENT CASE, THE REGISTERED OWNER OF THE PROPERTY IS PREFERRED OVER THE TRANSFEREE UNDER AN UNREGISTERED DEED OF SALE, FOR A CERTIFICATE OF TITLE HAS A SUPERIOR PROBATIVE VALUE AS AGAINST THAT OF AN UNREGISTERED DEED OF SALE.—In resolving the Petition for Review, the CA lost sight of the legal principle that in resolving the issue of possession in an ejectment case, the registered owner of the property is preferred over the transferee under an unregistered deed of sale. x x x. [I]n *Manila Electric Company v. Heirs of Deloy*, the Court held: At any rate, it is fundamental that a certificate of title serves as evidence of an indefeasible and incontrovertible title to the property in favor of the person whose name appears therein. It bears to

emphasize that the titleholder is entitled to all the attributes of ownership of the property, including possession. Thus, the Court must uphold the age-old rule that the person who has a Torrens title over a land is entitled to its possession. In *Pascual v. Coronel,* the Court reiterated the rule that a certificate of title has a superior probative value as against that of an unregistered deed of sale in ejectment cases.

2. **ID.; ID.; ID.; ID.; THE HEIRS WHO SUCCEEDED THE REGISTERED OWNER OF THE PROPERTIES IN DISPUTE ARE PREFERRED TO POSSESS THE SUBJECT PROPERTIES OVER THE TRANSFEREE UNDER UNREGISTERED DEEDS OF SALE.—** While respondent has in his favor deeds of sale over the eight parcels of land, these deeds were not registered; thus, title remained in the name of the owner and seller Atilano. When he died, title passed to petitioner, who is his illegitimate child. This relationship does not appear to be contested by respondent – in these proceedings, at least. Under Article 777 of the Civil Code, "[t]he rights to the succession are transmitted from the moment of the death of the decedent." Thus, applying the principle enunciated in the above-cited cases, petitioner and her co-heirs should have been favored on the question of possession, being heirs who succeeded the registered owner of the properties in dispute. Clearly, the MTCC, RTC, and CA erred in ruling in favor of respondent.

3. **ID.; ID.; ID.; WHEN THE EXECUTION OF THE JUDGMENT IN THE UNLAWFUL DETAINER CASE WOULD RESULT IN THE DEMOLITION OF THE PREMISES, SUCH THAT THE RESULT OF ENFORCEMENT WOULD BE PERMANENT, UNJUST AND PROBABLY IRREPARABLE, THEN THE UNLAWFUL DETAINER CASE SHOULD AT LEAST BE SUSPENDED, IF NOT ABATED OR DISMISSED, IN ORDER TO AWAIT FINAL JUDGMENT IN THE MORE SUBSTANTIVE CASE INVOLVING LEGAL POSSESSION OR OWNERSHIP.—**[I]f there are strong reasons of equity, such as when the execution of the judgment in the unlawful detainer case would result in the demolition of the premises such that the result of enforcement would be permanent, unjust and probably irreparable, then the unlawful detainer case should at least be suspended, if not abated or dismissed, in order to

await final judgment in the more substantive case involving legal possession or ownership. The facts indicate that petitioner and her co-heirs have established residence on the subject premises; the fact that they were given a long period of six months within which to vacate the same shows how deep they have established roots therein. If they vacate the premises, serious irreversible consequences – such as demolition of their respective residences — might ensue. It is thus more prudent to await the outcome of Civil Case. No. 4162.

4. ID.; ID.; ID.; ID.; RATIONALE.— In *Vda. de Legaspi v. Avendaño,* the Court suspended the enforcement of a writ of demolition rendered in an ejectment case until after a case for annulment of title involving the property to be demolished was decided. The Court ratiocinated: x x x. Where the action, therefore, is one of illegal detainer, as distinguished from one of forcible entry, and the right of the plaintiff to recover the premises is seriously placed in issue in a proper judicial proceeding, it is more equitable and just and less productive of confusion and disturbance of physical possession, with all its concomitant inconvenience and expenses. For the Court in which the issue of legal possession, whether involving ownership or not, is brought to restrain, should a petition for preliminary injunction be filed with it, the effects of any order or decision in the unlawful detainer case in order to await the final judgment in the more substantive case involving legal possession or ownership. It is only where there has been forcible entry that as a matter of public policy the right to physical possession should be immediately set at rest in favor of the prior possession regardless of the fact that the other party might ultimately be found to have superior claim to the premises involved, thereby to discourage any attempt to recover possession thru force, strategy or stealth and without resorting to the courts.

APPEARANCES OF COUNSEL

Ma. Gisela B. Josol-Trampe for petitioner.
Antonio B. Abad Law Firm for respondent.

D E C I S I ON

DEL CASTILLO, *J.*:

This Petition for Review on *Certiorari*[1] assails: 1) the January 2, 2012 Decision[2] of the Court of Appeals (CA) dismissing petitioner's Petition for Review in CA-G.R. SP No. 110427 and affirming the April 11, 2008 Decision[3] and May 29, 2009 Resolution[4] of the Regional Trial Court of Puerto Princesa City, Branch 49 in RTC Case No. 4344; and 2) the CA's June 11, 2012 Resolution[5] denying petitioner's Motion for Reconsideration.

Factual Antecedents

The CA is succinct in its narration of the facts:

> Gina Endaya (hereinafter petitioner) and the other heirs of Atilano Villaos (hereinafter Atilano) filed before the RTC, Branch 52, Palawan City, a complaint for declaration of nullity of deeds of sale, recovery of titles, and accounting of income of the Palawan Village Hotel (hereinafter PVH) against Ernesto V. Villaos (hereinafter respondent). Docketed thereat as Civil Case No. 4162, the complaint sought the recovery of several lots, including that on which the PVH and Wooden Summer Homes[6] are located.
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> The complaint in the main said that the purported sale of the affected lots, from Atilano to respondent, was spurious.
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> Subsequently or on 10 May 2006, respondent filed an ejectment

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[1] *Rollo*, pp. 34-57.

[2] *Id.* at 58-66; penned by Associate Justice Ricardo R. Rosario and concurred in by Associate Justices Rosmari D. Carandang and Danton Q. Bueser.

[3] *Id.* at 68-85; penned by Judge Mario P. Legazpi.

[4] *Id.* at 86-91.

[5] *Id.* at 67.

[6] Or WSH.

[7] MTCC records, pp. 1-5.

case with preliminary mandatory injunction[7] against petitioner Gina Endaya and Leny Rivera before the Municipal Trial Court in Cities (MTCC), Puerto Princesa City, docketed as Civil Case No. 1940.

According to respondent, he bought from Atilano eight (8) parcels of land,[8] including those where PVH and WSH stood. Respondent then took possession of the lots and started to manage and operate the said hotels. Upon taking possession of the said lots, he told petitioner and the others who live in residential houses in the lots in question, to vacate the premises, giving them a period of six (6) months to do so.

However, instead of leaving, petitioner even participated in a violent and unlawful take-over of portions of PVH and WSH, thus, the filing of the ejectment case.

Denying that Atilano, during his lifetime, had executed deeds of sale involving the subject lots in favor of respondent, petitioner stated that during the alleged execution of said deeds, Atilano was no longer ambulatory and could no longer talk and give assent to the deeds of sale. She added that Atilano, an educated and successful businessman, could have affixed his [signature] to the documents and not merely put his thumbmark on it. She claims that the deeds of sale were forged and could not have been executed with Atilano's consent.

Petitioner further contended that the deeds of sale could not have been properly notarized because the same were notarized in Palawan at a time when Atilano was purportedly confined at a hospital in Quezon City. Finally, petitioner questioned the propriety of the ejectment case since according to her, they already have filed Civil Case No. 4162 precisely to nullify the deeds of sale.

In its decision,[9] the MTCC held that an action questioning the ownership of a property does not bar the filing of an ejectment case since the only issue for resolution in an unlawful detainer case is the physical or material possession of the property independent of any claim of ownership. Such being the case, the MTCC had jurisdiction to decide as to who is entitled to the possession of the residential

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[8] Located in Puerto Princesa City and covered by Transfer Certificates of Title Nos. 8940, 8941, 8942, 8943, 8944, 10774, 19319, and 17932.

[9] MTCC records, pp. 423-447; Decision dated August 6, 2007 in Civil Case No. 1940, penned by Judge Lydia Abiog-Pe.

house. It ruled that respondent had the right to the possession of the residential house subject of the instant case and ordered the petitioners to vacate the same and pay attorney's fees in the amount of ₱20,000.00.

Aggrieved by the decision, petitioners appealed before the RTC of Palawan, docketed thereat as RTC Case No. 4344.

On 11 April 2008, the RTC promulgated its decision[10] affirming the ruling of the MTCC, holding that the pendency of Civil Case No. 4162 could not be considered as ground for the dismissal of the present ejectment case under the principle of *litis pendentia* because the parties therein assert contrasting rights and prayed for different reliefs. It further ruled that the MTCC simply took cognizance of the existence of the *deeds* of sale in favor of respondent without passing judgment as to whether these deeds were valid or not.

According to the RTC, the questioned deeds of absolute sale, being notarized documents, are considered to be public documents and carry with them the presumption of regularity.

However, the RTC deleted the award for attorney's fees, saying that there was no factual and legal basis to justify the same.

Petitioner filed a motion for reconsideration, arguing that the RTC should pass judgment on the legality of the *deeds* for the purpose of deciding who between the parties has a better right to possession even if the same issue is pending before another court.

The RTC denied the motion in its Resolution[11] dated 29 May 2009 x x x.

The RTC held in its May 29, 2009 Resolution that —

Appellants'[12] insistence that this Court pass judgment on the legality or illegality of the deeds of sale if only for the limited purpose of deciding who between the parties herein has the better right to possession of the properties subject hereof, even if the same issue is pending before another branch of this Court, is as highly improper as it is subversive of orderliness in the administration of justice, as it would put the presiding judges of both this and Branch 52 of this

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[10] *Rollo*, pp. 68-85.

[11] *Id.* at 86-91.

[12] Herein petitioner and the Atilano heirs.

Court in a most inconvenient bind.

One cannot begin to think what consequences such suggested action shall spawn. Whichever way this Court decides the matter of the validity of the deeds of sale, not only shall the same be without any final weight and binding effect but it is likewise bound to slight, irate and/or humiliate either or both judges involved, and/or otherwise to adversely impact on judicial capacity to decide finally the issue with utmost freedom, which is indispensable to a fair and orderly administration of justice.

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In the end, it can even be added that when appellants decided to lodge civil case no. 4162, even while the ejectment case was pending with the court *a quo*, they have empowered Branch 52 of this Court, to which the former case was assigned, to decide squarely and bindingly the issue of the validity or invalidity of the deeds of sale. Consequently, they must have known and understood the legal and practical impacts of this decision of theirs on the capacity of the court *a quo*, and of this Court eventually, to make a similar determination even for a limited, and especially for a limited, purpose only.

For appellants, now, to ask both concerned branches of this Court to decide on one and the same issue, when the latter were compelled, by the former's aforesaid filing of action, to limit themselves only to the issue directly affecting the particular aspect of the controversy between the same parties-in-litigation that they are specifically handling, could be considered a myopic regard for the legal system that everyone should try to edify and sustain.[13]

Ruling of the Court of Appeals

Petitioner filed a Petition for Review[14] before the CA, docketed as CA-G.R. SP No. 110427. Petitioner later filed an Amended Petition for Review, with Supplement.[15] She claimed that the RTC erred in affirming the MTCC; that the MTCC and RTC erred in not passing upon the issue of validity of the deeds of sale executed by Atilano in favor of respondent and declaring

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[13] *Id.* at 89-90.

[14] CA *rollo*, pp. 3-23.

[15] *Id.* at 287-305.

that said issue should be resolved in Civil Case No. 4162 for declaration of nullity of said deeds of sale, recovery of titles, and accounting before the Palawan RTC Branch 52; that it was necessary to pass upon the validity of the deeds of sale even if the same is the main point of contention in Civil Case No. 4162, because the question of possession in the ejectment case cannot be resolved without deciding the issue of ownership;[16] that while respondent claimed that the subject lots were sold to him, title to the same remains in the name of Atilano even up to this day; and that the MTCC had no jurisdiction over the case.

In a January 2, 2012 Decision, the CA denied the Petition, stating thus:

> The petition is devoid of merit.
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> At the outset, it bears emphasis that the only issue for resolution in an ejectment case is the question of who is entitled to the physical or material possession of the property in dispute which is independent of any claim of ownership raised by any of the parties. If the question of ownership is linked to the issue of possession, then the MTCC may pass on the question of ownership only for the purpose of determining the issue of possession. Such determination is not final and does not affect the ownership of the property. This is clearly set forth in Section 16, Rule 70 of the Rules of Court which provides:
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> > SEC. 16. Resolving defense of ownership. — When the defendant raises the defense of ownership in his pleadings and the question of possession cannot be resolved without deciding the issue of ownership, the issue of ownership shall be resolved only to determine the issue of possession.
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> In this case, the MTCC was correct in refusing to dismiss the ejectment case despite the pendency of Civil Case No. 4162 which is an action for declaration of nullity of the deeds of sale in another court. The case then pending before the MTCC was concerned only with the issue of possession, or to be exact, who between petitioner and respondent had the better right to possess the properties in question.
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> Respondent has in his favour the deeds of sale which are notarized documents and hence, enjoy the presumption of regularity. Based

[16] Citing *Wilmon Auto Supply Corporation v. Court of Appeals*, G.R. Nos. 97637 & 98700-01, April 10, 1992, 208 SCRA 108.

on the said deeds of sale, the MTCC correctly awarded the possession of the properties in question to respondent. In effect, the MTCC provisionally ruled on the ownership of the subject properties, contrary to petitioner's insistence that said court completely avoided the issue.

It cannot also be said that the RTC likewise refused to rule on the issue of ownership, or on the validity of the deeds of sale. The RTC was one with the MTCC in ruling that the deeds of sale are presumed to be valid because these were notarized. While it categorically refused to rule on the validity of the deeds of sale, it may be considered to have ruled on the ownership of the properties on the basis of the presumption of regularity that attaches to the notarized deeds.

The RTC is justified in refusing to rule on the validity of the deeds of sale since this is a matter that pertains to Civil Case No. 4162. x x x

x x x x x x x x x

To reiterate, the only duty imposed upon the RTC in resolving questions of possession where the issue of ownership is raised is to touch on said subject matter provisionally. When it ruled on the issue of possession on the basis of the aforesaid presumption, it cannot be said to have been remiss in its duty.

As to petitioner's argument that the MTCC should have dismissed the ejectment case for lack of jurisdiction since the present case was a forcible entry case and not an unlawful detainer case, this Court likewise finds it to be lacking in merit.

Records will show that petitioner never raised the said issue in the court below. In fact, it was raised only for the first time on appeal before this Court. Hence, petitioner cannot now impugn for the first time MTCC's lack of jurisdiction based on the rule that issues not raised or ventilated in the court *a quo* cannot be raised for the first time on appeal. To do so would offend the basic rules of fair play and justice.

WHEREFORE, premises considered, the petition is hereby DISMISSED. The assailed Decision dated 11 April 2008 and Resolution dated 29 May 2009 of the Regional Trial Court of Puerto Princesa City, Branch 49, in RTC Case No. 4344, are hereby AFFIRMED.

SO ORDERED.[17]

Petitioner moved to reconsider, but in its assailed June 11,

2012 Resolution, the CA held its ground. Hence, the present Petition.

Issues

Petitioner submits that —

A. The Honorable Court of Appeals erred in affirming the findings of the MTCC of Puerto Princesa City and RTC Branch 49 on the issue of ownership of the subject properties.

B. The Honorable Court of Appeals erred in ruling that the issue of jurisdiction, or lack of it, of the MTCC over the complaint for ejectment filed by the Respondent cannot be raised for the first time on appeal.[18]

Petitioner's Arguments

Praying that the assailed CA dispositions be reversed and set aside and that the ejectment case — Civil Case No. 1940 — be dismissed, petitioner essentially insists in her Petition and Reply[19] that the MTCC and RTC should have resolved the issues of ownership and validity of the deeds of sale despite the pendency of Civil Case No. 4162 because these issues will settle the question of who between the parties has the better right of possession over the subject properties; that it was error for the MTCC and RTC to declare that respondent had the better right of possession based on the supposed deeds of sale in disregard of the successional rights of the Atilano heirs; that the CA erred in declaring that the MTCC possessed jurisdiction over Civil Case No. 1940; that the issues raised in her Petition involve questions of law which thus merit consideration by this Court and the exercise of its discretionary power of review; and that the ejectment case should be dismissed while Civil Case No. 4162 is pending since a determination of the issue of ownership therein will likewise settle the question of possession.

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[17] *Rollo*, pp. 63-65.

[18] *Id.* at 41.

[19] *Id.* at 232-241.

Respondent's Arguments

In his Comment,[20] respondent maintains that the CA committed no error in its appreciation of the case; that the question of ownership involves a factual issue which cannot be raised before this Court; that consequently, the Petition should be dismissed; and that since the issue of jurisdiction was first raised only before the CA, it does not merit consideration by this Court as well.

Our Ruling

The Petition must be granted.

In resolving the Petition for Review, the CA lost sight of the legal principle that in resolving the issue of possession in an ejectment case, the registered owner of the property is preferred over the transferee under an unregistered deed of sale. In *Co v. Militar*,[21] this Court held that —

> In the instant case, the evidence showed that as between the parties, it is the petitioner who has a Torrens Title to the property. Respondents merely showed their unregistered deeds of sale in support of their claims. The Metropolitan Trial Court correctly relied on the transfer certificate of title in the name of petitioner.
>
> In *Tenio-Obsequio v. Court of Appeals*, it was held that the Torrens System was adopted in this country because it was believed to be the most effective measure to guarantee the integrity of land titles and to protect their indefeasibility once the claim of ownership is established and recognized.
>
> It is settled that a Torrens Certificate of title is indefeasible and binding upon the whole world unless and until it has been nullified by a court of competent jurisdiction. Under existing statutory and decisional law, the power to pass upon the validity of such certificate of title at the first instance properly belongs to the Regional Trial Courts in a direct proceeding for cancellation of title.
>
> As the registered owner, petitioner had a right to the possession of the property, which is one of the attributes of his ownership. x x x.[22]

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[20] *Id.* at 214-230.

[21] 466 Phil. 217 (2004).

The same principle was reiterated in *Pascual v. Coronel*,[23] which held thus —

In any case, we sustain the appellate court's finding that the respondents have the better right to possess the subject property. As opposed to the unregistered deeds of sale, the certificate of title certainly deserves more probative value. Indeed, a Torrens Certificate is evidence of indefeasible title of property in favor of the person in whose name appears [sic] therein; such holder is entitled to the possession of the property until his title is nullified.

The petitioners, however, insist that the deeds of sale deserve more credence because they are valid contracts that legally transferred ownership of the property to Melu-Jean. They argue that (a) the 1975 Deed, being a public document, is presumed to be valid and there was no evidence sufficient to overturn such presumption or show that it was simulated; (b) the fact that the person who notarized the said deed of sale is not commissioned as a notary public has no bearing on its validity; (c) registration of the deed of sale was not necessary to transfer ownership; (d) Melu-Jean is not guilty of laches in asserting her ownership over the property since she is actually in possession of the property through the petitioners; and (e) the filing of the annulment case is an admission that the two deeds of sale are merely voidable, or valid until annulled.

However, it should be noted that the CA merely affirmed the power of the trial court to provisionally resolve the issue of ownership, which consequently includes the power to determine the validity of the deeds of sale. As previously stated, such determination is not conclusive, and the issue of ownership and the validity of the deeds of sale would ultimately be resolved in the case for annulment of the deeds of sale.

Even if we sustain the petitioners' arguments and rule that the deeds of sale are valid contracts, it would still not bolster the petitioners' case. In a number of cases, the Court had upheld the registered owners' superior right to possess the property. In *Co v. Militar*, the Court was confronted with a similar issue of which between the certificate of title and an unregistered deed of sale should be given more probative weight in resolving the issue of who has the better right to possess.

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[22] *Id.* at 224-225.

[23] 554 Phil. 351 (2007).

There, the Court held that the court *a quo* correctly relied on the transfer certificate of title in the name of petitioner, as opposed to the unregistered deeds of sale of the respondents. The Court stressed therein that the Torrens System was adopted in this country because it was believed to be the most effective measure to guarantee the integrity of land titles and to protect their indefeasibility once the claim of ownership is established and recognized.

Likewise, in the recent case of *Umpoc v. Mercado*, the Court declared that the trial court did not err in giving more probative weight to the TCT in the name of the decedent *vis-a-vis* the contested unregistered Deed of Sale. Later in *Arambulo v. Gungab*, the Court held that the registered owner is preferred to possess the property subject of the unlawful detainer case. The age-old rule is that the person who has a Torrens Title over a land is entitled to possession thereof.[24]

Later, in *Vda. de Aguilar v. Alfaro*,[25] a case decided by this *ponente*, the following pronouncement was made:

It is settled that a Torrens title is evidence of indefeasible title to property in favor of the person in whose name the title appears. It is conclusive evidence with respect to the ownership of the land described therein. It is also settled that the titleholder is entitled to all the attributes of ownership of the property, including possession. Thus, in *Arambulo v. Gungab*, this Court declared that the age-old rule is that the person who has a Torrens title over a land is entitled to possession thereof.

In the present case, there is no dispute that petitioner is the holder of a Torrens title over the entire Lot 83. Respondents have only their notarized but unregistered *Kasulatan sa Bilihan* to support their claim of ownership. Thus, even if respondents' proof of ownership has in its favor a *juris tantum* presumption of authenticity and due execution, the same cannot prevail over petitioner's Torrens title. This has been our consistent ruling which we recently reiterated in *Pascual v. Coronel*, *viz*[.]:

> Even if we sustain the petitioners' arguments and rule that the deeds of sale are valid contracts, it would still not bolster the petitioners' case. In a number of cases, the Court had upheld the registered owners' superior right to possess the property.

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

[25] 637 Phil. 131 (2010).

> In *Co v. Militar*, the Court was confronted with a similar issue of which between the certificate of title and an unregistered deed of sale should be given more probative weight in resolving the issue of who has the better right to possess. There, the Court held that the court *a quo* correctly relied on the transfer certificate of title in the name of petitioner, as opposed to the unregistered title in the name of respondents. The Court stressed therein that the Torrens System was adopted in this country because it was believed to be the most effective measure to guarantee the integrity of land titles and to protect their indefeasibility once the claim of ownership is established and recognized.
>
> Likewise, in the recent case of *Umpoc v. Mercado*, the Court declared that the trial court did not err in giving more probative weight to the TCT in the name of the decedent *vis-a-vis* the contested unregistered Deed of Sale. Later in *Arambulo v. Gungab*, the Court held that the registered owner is preferred to possess the property subject of the unlawful detainer case. The age-old rule is that the person who has a Torrens Title over a land is entitled to possession thereof.
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> As the titleholder, therefore, petitioner is preferred to possess the entire Lot 83. x x x[26]

Then again, in *Manila Electric Company v. Heirs of Deloy*, [27] the Court held:

> At any rate, it is fundamental that a certificate of title serves as evidence of an indefeasible and incontrovertible title to the property in favor of the person whose name appears therein. It bears to emphasize that the titleholder is entitled to all the attributes of ownership of the property, including possession. Thus, the Court must uphold the age-old rule that the person who has a Torrens title over a land is entitled to its possession. In *Pascual v. Coronel*, the Court reiterated the rule that a certificate of title has a superior probative value as against that of an unregistered deed of sale in ejectment cases.[28]

While respondent has in his favor deeds of sale over the eight parcels of land, these deeds were not registered; thus,

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[26] *Id.* at 142-143.

[27] G.R. No. 192893, June 5, 2013, 697 SCRA 486.

title remained in the name of the owner and seller Atilano. When he died, title passed to petitioner, who is his illegitimate child. This relationship does not appear to be contested by respondent — in these proceedings, at least. Under Article 777 of the Civil Code, "[t]he rights to the succession are transmitted from the moment of the death of the decedent." Thus, applying the principle enunciated in the above-cited cases, petitioner and her co-heirs should have been favored on the question of possession, being heirs who succeeded the registered owner of the properties in dispute. Clearly, the MTCC, RTC, and CA erred in ruling in favor of respondent.

Besides, if there are strong reasons of equity, such as when the execution of the judgment in the unlawful detainer case would result in the demolition of the premises such that the result of enforcement would be permanent, unjust and probably irreparable, then the unlawful detainer case should at least be suspended, if not abated or dismissed, in order to await final judgment in the more substantive case involving legal possession or ownership.[29] The facts indicate that petitioner and her co-heirs have established residence on the subject premises; the fact that they were given a long period of six months within which to vacate the same shows how deep they have established roots therein. If they vacate the premises, serious irreversible consequences — such as demolition of their respective residences — might ensue. It is thus more prudent to await the outcome of Civil Case No. 4162.

In *Vda. de Legaspi v. Avendaño*, the Court suspended the enforcement of a writ of demolition rendered in an ejectment case until after a case for annulment of title involving the property to be demolished was decided. The Court ratiocinated:

> x x x. Where the action, therefore, is one of illegal detainer,

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[28] *Id.* at 504.

[29] *Go v. Court of Appeals*, 358 Phil. 214, 226 (1998); *Wilmon Auto Supply Corporation v. Court of Appeals, supra* note 16; *Salinas v. Hon. Navarro*, 211 Phil. 351, 356 (1983); *Vda. de Legaspi v. Hon. Avendaño*, 169 Phil. 138, 146 (1977).

> as distinguished from one of forcible entry, and the right of the plaintiff to recover the premises is seriously placed in issue in a proper judicial proceeding, it is more equitable and just and less productive of confusion and disturbance of physical possession, with all its concomitant inconvenience and expenses. For the Court in which the issue of legal possession, whether involving ownership or not, is brought to restrain, should a petition for preliminary injunction be filed with it, the effects of any order or decision in the unlawful detainer case in order to await the final judgment in the more substantive case involving legal possession or ownership. It is only where there has been forcible entry that as a matter of public policy the right to physical possession should be immediately set at rest in favor of the prior possession regardless of the fact that the other party might ultimately be found to have superior claim to the premises involved, thereby to discourage any attempt to recover possession thru force, strategy or stealth and without resorting to the courts.[30]

With the foregoing pronouncement, the Court finds no need to tackle the other issues raised by the parties.

WHEREFORE, the Petition is **GRANTED**. The assailed January 2, 2012 Decision and June 11, 2012 Resolution of the Court of Appeals in CA-G.R. SP No. 110427 are **REVERSED** and **SET ASIDE**. Civil Case No. 1940 for ejectment is ordered **DISMISSED.**

SO ORDERED.

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

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[30] *Fernando v. Lim*, 585 Phil. 141, 159 (2008).

THIRD DIVISION

[G.R. No. 203642. January 27, 2016]

THOMASITES CENTER FOR INTERNATIONAL STUDIES (TCIS), *petitioner, vs.* **RUTH N. RODRIGUEZ, IRENE P. PADRIGON and ARLYN B. RILLERA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; RULES OF PROCEDURE; CASES SHOULD BE DETERMINED ON THE MERITS, AFTER FULL OPPORTUNITY TO ALL PARTIES FOR VENTILATION OF THEIR CAUSES AND DEFENSES, RATHER THAN ON TECHNICALITY OR SOME PROCEDURAL IMPERFECTIONS. — In *Jaro v. CA,* where the CA dismissed a petition for review from a Department of Agrarian Reform Adjudication Board (DARAB) decision for not being in proper form and lacking pertinent annexes, the Court admonished the appellate court **for putting a premium on technicalities at the expense of a just resolution of the case,** and ruled that there was more than substantial compliance when the landowner amended the petition, now in proper form and accompanied by annexes which were all certified true copies by the DARAB. The Court stated: In *Cusi-Hernandez vs. Diaz* and *Piglas-Kamao vs. [NLRC],* we ruled that the subsequent submission of the missing documents with the motion for reconsideration amounts to substantial compliance. x x x If we were to apply the rules of procedure in a very rigid and technical sense, as what the [CA] would have it in this case, the ends of justice would be defeated. In *Cusi-Hernandez vs. Diaz,* where the formal requirements were liberally construed and substantial compliance were recognized, we explained that rules of procedure are mere tools designed to expedite the decision or resolution of cases and other matters pending in court. Hence, a strict and rigid application of technicalities that tend to frustrate rather than promote substantial justice must be avoided. We further declared that: "Cases should be determined on the merits, after full opportunity to all parties for ventilation of their causes and defenses, rather than on

technicality or some procedural imperfections. In that way, the ends of justice would be served better."

2. ID.; JUDGMENTS; RELIEF FROM JUDGMENT; NATURE; RELIEF WILL NOT BE GRANTED TO A PARTY WHO SEEKS AVOIDANCE FROM THE EFFECTS OF THE JUDGMENT WHEN THE LOSS OF THE REMEDY AT LAW WAS DUE TO HIS OWN NEGLIGENCE; OTHERWISE THE PETITION FOR RELIEF CAN BE USED TO REVIVE THE RIGHT TO APPEAL WHICH HAD BEEN LOST THRU INEXCUSABLE NEGLIGENCE.— In *Tuason v. CA,* the Court explained the nature of a petition for relief from judgment, thus: A petition for relief from judgment is an equitable remedy; it is allowed only in exceptional cases where there is no other available or adequate remedy. When a party has another remedy available to him, which may be either a motion for new trial or appeal from an adverse decision of the trial court, and he was not prevented by fraud, accident, mistake or excusable negligence from filing such motion or taking such appeal, he cannot avail himself of this petition. Indeed, relief will not be granted to a party who seeks avoidance from the effects of the judgment when the loss of the remedy at law was due to his own negligence: otherwise the petition for relief can be used to revive the right to appeal which had been lost thru inexcusable negligence.

3. ID.; ID.; ID.; TIME FOR FILING PETITION; THE REGLEMENTARY PERIODS FOR FILING THE PETITION MUST BE STRICTLY COMPLIED BECAUSE A PETITION FOR RELIEF FROM JUDGMENT IS A FINAL ACT OF LIBERALITY ON THE PART OF THE STATE, WHICH REMEDY CANNOT BE ALLOWED TO ERODE ANY FURTHER THE FUNDAMENTAL PRINCIPLE THAT A JUDGMENT, ORDER OR PROCEEDING MUST, AT SOME DEFINITE TIME, ATTAIN FINALITY IN ORDER TO PUT AN END TO LITIGATION. — As provided in Section 3, Rule 38 of the Rules of Court, a party filing a petition for relief from judgment must strictly comply with two (2) reglementary periods: *first,* the petition must be filed within sixty (60) days from knowledge of the judgment, order or other proceeding to be set aside; and *second,* within a fixed

period of six (6) months from entry of such judgment, order or other proceeding. Strict compliance with these periods is required because a petition for relief from judgment is a final act of liberality on the part of the State, which remedy cannot be allowed to erode any further the fundamental principle that a judgment, order or proceeding must, at some definite time, attain finality in order to put an end to litigation. The NLRC pointed out that TCIS 's petition for relief was filed beyond the period provided under Rule 38. The earliest that it could have learned of the LA's judgment was on June 21, 2006 when Dr. Cho received a copy thereof, and the latest was during the pre-execution conference held on September 22, 2006, when Atty. Bayona formally entered her appearance as counsel for TCIS and Dr. Cho. TCIS's petition for relief was filed only on February 13, 2007, well beyond the 60-day period a1lowed.

4. ID.; SUMMONS; SERVICE OF SUMMONS; SERVICE OF SUMMONS AND NOTICES OF PROCEEDINGS SENT TO THE PETITIONER'S RESPONSIBLE OFFICER AT ITS ADDRESS IS VALID AND BINDING UPON THE PETITIONER.— TCIS was afforded every opportunity to be heard. The service of summons and notices of proceedings to Dr. Cho was perfectly valid and binding upon TCIS since they were sent to him at its address, and Dr. Cho is a responsible officer of TCIS. Dr. Cho was TCIS's academic dean who hired the respondents and also signed their termination letters. The attendance of TCIS's counsel at the hearings held on February 15, 2005, March 15, 2005, and April 19, 2005 is also proof that it was duly notified of the LA's judgment.

APPEARANCES OF COUNSEL

Andres Padernal & Paras Law Offices for petitioner.
Norberto Ortiz Perez for respondents.

D E C I S I O N

REYES, *J.*:

This is a petition for review[1] from the Resolution[2] dated May 24, 2012 of the Court of Appeals (CA) in CA-G.R. SP No. 124630, dismissing outright the Thomasites Center for International Studies' (TCIS) petition for *certiorari*[3] from the Decision[4] dated September 30, 2011 of the National Labor Relations Commission (NLRC) in NLRC Case No. RAB-III-01-8376-05, filed by Ruth N. Rodriguez (Rodriguez) and Arlyn B. Rillera (Rillera), and in NLRC Case No. RAB-III-01-8401-05, filed by Irene P. Padrigon (Padrigon) (respondents).

The Facts

On July 29, 2004, Rodriguez, 34, Rillera, 36, and Padrigon, 30, all graduates of the University of the Philippines and holders of teaching licenses from the Professional Regulation Commission, were hired by Dr. Jae Won Park and Dr. Cheol Je Cho (Dr. Cho), Korean nationals and President and Academic Dean, respectively, of TCIS, to develop the academic programs of the said school, design its curricula, create materials for the school website, recruit American and Filipino staff, draft documents required for the school's Technical Education and Skills Development Authority accreditation, help supervise the construction of the school building in Subic Bay Metropolitan Authority, as well as draft the school's rules and regulations and student and faculty handbooks. The parties executed no written contracts but the respondents were promised a monthly salary of ₱25,000.00 plus shares of stock.[5]

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[1] *Rollo*, pp. 8-27.

[2] Penned by Associate Justice Fernanda Lampas Peralta with Associate Justices Priscilla J. Baltazar-Padilla and Socorro B. Inting concurring; *id.* at 29-31.

[3] *Id.* at 127-144.

[4] Penned by Commissioner Dolores M. Peralta-Beley with Presiding Commssioner Leonardo L. Leonida and Commissioner Mercedes R. Posada-Lacap concurring; *id.* at 111-119.

[5] *Id.* at 57-58.

As soon after classes opened on December 20, 2004 at the Crown Peak Hotel in Subic Bay, disagreements arose between the respondents and the American teachers on the question of salaries. At the meeting called by Dr. Cho on January 7, 2005, the American teachers threatened to resign unless the respondents were terminated. That same afternoon, the respondents were served with letters of termination[6] effective January 8, 2005, signed by Dr. Cho, citing as reason the restructuring of the company and consequent evaluation of its staffing requirements.[7]

On January 24, 2005, Rodriguez and Rillera filed NLRC Case No. RAB-III-01-8376-05,[8] while Padrigon filed NLRC Case No. RAB-III-01-8401-05, both for illegal dismissal and money claims, against TCIS and Dr. Cho. TCIS and Dr. Cho were served with summons by registry through Dr. Cho, giving them 10 days from receipt to file their position paper.[9] TCIS and Dr. Cho did not file their position paper, but they were represented by counsel at the hearings held on February 15, 2005, March 15, 2005, and April 19, 2005.[10]

On May 8, 2006, the Labor Arbiter (LA) rendered a Decision[11] finding that the respondents were illegally dismissed, and directed TCIS and Dr. Cho to reinstate them with full backwages in the total amount of ₱1,125,000.00, plus 10% as attorney's fees.[12] Dr. Cho received a copy of the decision on June 21, 2006.[13]

On August 11, 2006, the complainants moved for issuance of a writ of execution. At the September 22, 2006 pre-execution conference, Atty. Joy P. Bayona (Atty. Bayona) entered her

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[6] *Id.* at 50-52.

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

[8] *Id.* at 33-34.

[9] *Id.* at 35.

[10] *Id.* at 112.

[11] Issued by LA Reynaldo V. Abdon; *id.* at 56-65.

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

[13] *Id.* at 116.

appearance as counsel for TCIS and Dr. Cho. Conferences were held on October 2, 2006, October 23, 2006, November 24, 2006 and December 15, 2006. But at the hearing held on December 18, 2006, the law firm of Andres Marcelo Pedernal Guerrero and Paras entered its appearance as counsel for TCIS and filed a petition for relief from judgment. On January 30, 2007, the LA directed the issuance of a writ of execution, which was served on TCIS's counsel on February 8, 2007; the LA merely noted the petition for relief due to wrong venue and lack of jurisdiction and because it was a prohibited pleading.[14]

On February 19, 2007, TCIS re-filed its petition for relief, with prayer for Temporary Restraining Order and/or writ of preliminary injunction, before the NLRC. It claimed that the LA did not acquire jurisdiction over it since the summons and notices were addressed to Dr. Cho, who did not represent TCIS; that the entry of appearance of Atty. Bayona at the pre-execution conference was signed only by Dr. Cho in his capacity as therein respondent and academic dean of TCIS; that TCIS did not receive any notice of the proceedings; and, that although the NLRC is not bound by technical rules of procedure, TCIS's right to due process was violated since it was deprived of the right to file its position paper. TCIS further argued it faced a shut-down and would suffer irreparable damage unless the execution was enjoined, although it also expressed willingness to post a bond to guarantee payment of whatever damages may be awarded by the NLRC.[15]

On September 30, 2011, the NLRC denied TCIS's petition on the ground that it had other adequate remedies such as a motion for new trial or an appeal; that it failed to show that due to fraud, accident, mistake or excusable negligence it was prevented from availing thereof; that it could not avail of the equitable remedy of petition for relief for the purpose of reviving its appeal which it lost through its negligence.[16]

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

[15] *Id.* at 114-115.

[16] *Id.* at 115-116, citing *Tuason v. CA,* 326 Phil. 169, 178-179 (1996).

On petition for *certiorari*, the CA dismissed on May 24, 2012 the TCIS's petition outright for its failure to indicate the material dates to show the timeliness of the petition. Moreover, TCIS attached an incomplete copy of the NLRC decision as well as did not attach copies of the complaint, position papers, appeal memorandum, motion for reconsideration and other relevant portions of the records to support the allegations in the petition.[17] The CA also denied its motion for reconsideration on September 26, 2012 for lack of meritorious grounds.[18]

Petition for Review in the Supreme Court

In this petition, TCIS invokes the following grounds:

A.

THE HONORABLE [NLRC] ERRED IN APPLYING RIGIDLY THE PROCEDURAL RULES ON TECHNICAL REQUIREMENTS AND DISMISSED [TCIS'S] CERTIORARI BASED ONLY THEREON[;]

B.

THE HONORABLE [NLRC] GRAVELY ERRED IN HOLDING THAT THE SUMMONS WERE VALID DESPITE BEING DIRECTED TO DR. CHO, THE ACADEMIC DEAN OF [TCIS;]

C.

THE HONORABLE [NLRC] GRAVELY ERRED IN HOLDING THAT THE [RESPONDENTS] WERE ILLEGALLY DISMISSED[.][19]

In *Jaro v. CA*,[20] where the CA dismissed a petition for review from a Department of Agrarian Reform Adjudication Board (DARAB) decision for not being in proper form and lacking pertinent annexes, the Court admonished the appellate court **for putting a premium on technicalities at the expense of a just resolution of the case,** and ruled that there was more than substantial compliance when the landowner amended the petition,

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[17] *Id.* at 29-31.

[18] *Id.* at 32.

[19] *Id.* at 14.

[20] 427 Phil. 532 (2002).

now in proper form and accompanied by annexes which were all certified true copies by the DARAB. The Court stated:

> In *Cusi-Hernandez vs. Diaz and Piglas-Kamao vs. [NLRC]*, we ruled that the subsequent submission of the missing documents with the motion for reconsideration amounts to substantial compliance. The reasons behind the failure of the petitioners in these two cases to comply with the required attachments were no longer scrutinized. What we found noteworthy in each case was the fact that the petitioners therein substantially complied with the formal requirements. We ordered the remand of the petitions in these cases to the [CA], stressing the ruling that by precipitately dismissing the petitions "the appellate court clearly put a premium on technicalities at the expense of a just resolution of the case."
>
> We cannot see why the same leniency cannot be extended to petitioner. x x x.
>
> If we were to apply the rules of procedure in a very rigid and technical sense, as what the [CA] would have it in this case, the ends of justice would be defeated. In *Cusi-Hernandez vs. Diaz*, where the formal requirements were liberally construed and substantial compliance were recognized, we explained that rules of procedure are mere tools designed to expedite the decision or resolution of cases and other matters pending in court. Hence, a strict and rigid application of technicalities that tend to frustrate rather than promote substantial justice must be avoided. We further declared that:
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> > "Cases should be determined on the merits, after full opportunity to all parties for ventilation of their causes and defenses, rather than on technicality or some procedural imperfections. In that way, the ends of justice would be served better."
>
> In the similar case of *Piglas-Kamao vs. [NLRC]*, we stressed the policy of the courts to encourage the full adjudication of the merits of an appeal.[21] (Citations omitted and italics in the original)

In *Piglas Kamao (Sari-Sari Chapter) v. NLRC*,[22] the Court also ruled that there was substantial compliance after the

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[21] *Id.* at 547-548.

[22] 409 Phil. 735 (2001).

petitioner therein subsequently attached the lacking documents to the motion for reconsideration, reiterating the Court's policy to encourage the full adjudication of the merits of an appeal.[23]

As to the merits of its petition before the NLRC, TCIS argued that its right to due process was violated due to the invalid service of the summons and a copy of the complaint in the LA; moreover, being mere probationary employees, the respondents were validly dismissed for failing to qualify as regular employees.

The Court denies the petition.

In *Philippine Amanah Bank (now Al-Amanah Islamic Investment Bank of the Philippines, also known as Islamic Bank) v. Contreras*,[24] the Court stated:

> Relief from judgment is a remedy provided by law to any person against whom a decision or order is entered through fraud, accident, mistake, or excusable negligence. It is a remedy, equitable in character, that is allowed only in exceptional cases when there is no other available or adequate remedy. When a party has another remedy available to him, which may either be a motion for new trial or appeal from an adverse decision of the trial court, and he was not prevented by fraud, accident, mistake, or excusable negligence from filing such motion or taking such appeal, he cannot avail of the remedy of petition for relief.[25] (Citation omitted)

Otherwise, the petition for relief will be tantamount to reviving the right of appeal which has already been lost either because of inexcusable negligence or due to the mistake in the mode of procedure by counsel.[26]

In *Tuason v. CA*,[27] the Court explained the nature of a petition for relief from judgment, thus:

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[23] *Id.* at 744-745.

[24] G.R. No. 173168, September 29, 2014, 716 SCRA 567.

[25] *Id.* at 578.

[26] *Espinosa v. Yatco, etc., et al.*, 117 Phil. 78, 82 (1963).

[27] 326 Phil. 169 (1996).

A petition for relief from judgment is an equitable remedy; it is allowed only in exceptional cases where there is no other available or adequate remedy. When a party has another remedy available to him, which may be either a motion for new trial or appeal from an adverse decision of the trial court, and he was not prevented by fraud, accident, mistake or excusable negligence from filing such motion or taking such appeal, he cannot avail himself of this petition. Indeed, relief will not be granted to a party who seeks avoidance from the effects of the judgment when the loss of the remedy at law was due to his own negligence; otherwise the petition for relief can be used to revive the right to appeal which had been lost thru inexcusable negligence.[28] (Citations omitted)

As provided in Section 3, Rule 38 of the Rules of Court, a party filing a petition for relief from judgment must strictly comply with two (2) reglementary periods: *first*, the petition must be filed within sixty (60) days from knowledge of the judgment, order or other proceeding to be set aside; and *second,* within a fixed period of six (6) months from entry of such judgment, order or other proceeding. Strict compliance with these periods is required because a petition for relief from judgment is a final act of liberality on the part of the State, which remedy cannot be allowed to erode any further the fundamental principle that a judgment, order or proceeding must, at some definite time, attain finality in order to put an end to litigation.[29]

The NLRC pointed out that TCIS's petition for relief was filed beyond the period provided under Rule 38.[30] The earliest that it could have learned of the LA's judgment was on June 21, 2006 when Dr. Cho received a copy thereof, and the latest was during the pre-execution conference held on September 22, 2006, when Atty. Bayona formally entered her appearance as counsel for TCIS and Dr. Cho. TCIS's petition for relief was filed only on February 13, 2007, well beyond the 60-day period allowed.[31]

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[28] *Id.* at 178-179.

[29] *Lynx Industries Contractor, Inc. v. Tala*, 557 Phil. 711, 716 (2007).

[30] *Rollo*, p. 116.

[31] *Id.* at 117-118.

Moreover, the Court agrees with the CA that no fraud, accident, mistake, or excusable negligence prevented TCIS from filing an appeal from the decision of the LA, even as the NLRC also noted that the petition also lacked the requisite affidavit showing the fraud, accident, mistake or excusable negligence, and the facts constituting its good and substantial cause of action.[32]

TCIS was afforded every opportunity to be heard. The service of summons and notices of proceedings to Dr. Cho was perfectly valid and binding upon TCIS since they were sent to him at its address, and Dr. Cho is a responsible officer of TCIS. Dr. Cho was TCIS's academic dean who hired the respondents and also signed their termination letters. The attendance of TCIS's counsel at the hearings held on February 15, 2005, March 15, 2005, and April 19, 2005 is also proof that it was duly notified of the LA's judgment.[33]

WHEREFORE, premises considered, the petition for review is **DENIED**.

SO ORDERED.

Velasco, Jr. (Chairperson), Brion,[*] *Perez,* and *Jardeleza, JJ.*, concur.

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[32] *Id.* at 116.

[33] *Id.* at 117.

[*] Designated Additional Member per Raffle dated June 17, 2015 *vice* Associate Justice Diosdado M. Peralta.

SECOND DIVISION

[G.R. No. 208731. January 27, 2016]

PHILIPPINE AMUSEMENT AND GAMING CORPORATION, *petitioner, vs.* **BUREAU OF INTERNAL REVENUE, COMMISSIONER OF INTERNAL REVENUE, and REGIONAL DIRECTOR, REVENUE REGION No. 6,** *respondents.*

SYLLABUS

1. TAXATION; SECTION 3.1.5 OF REVENUE REGULATIONS NO. 12-99, IMPLEMENTING SECTION 228 OF THE NATIONAL INTERNAL REVENUE CODE (NIRC) OF 1997; PROTESTING OF TAX ASSESSMENT; TAXPAYER'S OPTIONS, CITED.— Following the *verba legis* doctrine, the law must be applied exactly as worded since it is clear, plain, and unequivocal. A textual reading of Section 3.1.5 gives a protesting taxpayer like PAGCOR only three options: I. If the protest is wholly or partially denied by the CIR ***or*** his authorized representative, then the taxpayer may appeal to the CTA within 30 days from receipt of the whole or partial denial of the protest. 2. If the protest is wholly or partially denied by the CIR's authorized representative, then the taxpayer may appeal to the CIR within 30 days from receipt of the whole or partial denial of the protest. 3. If the CIR or his authorized representative failed to act upon the protest within 180 days from submission of the required supporting documents, then the taxpayer may appeal to the CTA within 30 days from the lapse of the 180-day period. To further clarify the three options: A whole or partial denial by the CIR's authorized representative may be appealed to the CIR or the CTA. A whole or partial denial by the CIR may be appealed to the CTA. The CIR or the CIR's authorized representative's failure to act may be appealed to the CTA. There is no mention of an appeal to the CIR from the failure to act by the CIR's authorized representative.

2. ID.; ID.; ID.; ID.; A PETITION BEFORE THE COURT OF TAX APPEALS (CTA) MAY ONLY BE MADE AFTER A WHOLE OR PARTIAL DENIAL OF THE PROTEST BY

THE COMMISSIONER OF INTERNAL REVENUE (CIR) OR THE AUTHORIZED REPRESENTATIVE THEREOF; PAGCOR'S PETITION BEFORE THE CTA WAS PREMATURELY FILED IN CASE AT BAR.— PAGCOR did not wait for the RD or the CIR's decision on its protest. PAGCOR made separate ***and*** successive filings before the RD and the CIR before it filed its petition with the CTA. x x x When PAGCOR filed its petition before the CTA, xxx PAGCOR failed to make use of any of the three options x x x. **A petition before the CTA may only be made after a whole or partial denial of the protest by the CIR or the CIR's authorized representative.** When PAGCOR filed its petition before the CTA on 11 March 2009, there was still no denial of PAGCOR's protest by either the RD or the CIR. Therefore, under the first option, PAGCOR's petition before the CTA had no cause of action because it was prematurely filed.

3. REMEDIAL LAW; ACTIONS; CAUSE OF ACTION; A COMPLAINT WHOSE CAUSE OF ACTION HAS NOT YET ACCRUED CANNOT BE CURED OR REMEDIED BY AN AMENDED OR SUPPLEMENTAL PLEADING ALLEGING THE EXISTENCE OR ACCRUAL OF A CAUSE OF ACTION WHILE THE CASE IS PENDING, SUCH AN ACTION PREMATURELY BROUGHT AND IS, THEREFORE, A GROUNDLESS SUIT, WHICH SHOULD BE DISMISSED BY THE COURT UPON PROPER MOTION SEASONABLY FILED BY THE DEFENDANT.— The CIR made an unequivocal denial of PAGCOR's protest only on 18 July 2011, when the CIR sought to collect from PAGCOR the amount of ₱46,589,507.65. The CIR's denial further puts PAGCOR in a bind, because it can no longer amend its petition before the CTA. It thus follows that a complaint whose cause of action has not yet accrued cannot be cured or remedied by an amended or supplemental pleading alleging the existence or accrual of a cause of action while the case is pending. Such an action prematurely brought and is, therefore, a groundless suit, which should be dismissed by the court upon proper motion seasonably filed by the defendant, The underlying reason for this rule is that a person should not be summoned before the public tribunals to answer for complaints which are [premature]. As this Court eloquently said in *Surigao Mine Exploration Co., Inc. v. Harris*: x x x. We are therefore of the

opinion, and so hold, that *unless the plaintiff has a valid and subsisting cause of action at the time his action is commenced, the defect cannot be cured or remedied by the acquisition or accrual of one while the action is pending, and a supplemental complaint or an amendment setting up such after-accrued cause of action is not permissible.*

4. TAXATION; SECTION 3.1.5 OF REVENUE REGULATIONS NO. 12-99, IMPLEMENTING SECTION 228 OF THE NATIONAL INTERNAL REVENUE CODE OF 1997; DISPUTED ASSESSMENT; THE BUREAU OF INTERNAL REVENUE'S ASSESSMENT IS ALREADY FINAL, EXECUTORY AND DEMANDABLE IN CASE AT BAR.— PAGCOR has clearly failed to comply with the requisites in disputing an assessment as provided by Section 228 and Section 3.1.5. Indeed, PAGCOR's lapses in procedure have made the BIR's assessment final, executory and demandable x x x.

APPEARANCES OF COUNSEL

Office of the Government Corporate Counsel for petitioner.
Office of the Solicitor General for public respondents.

D E C I S I O N

CARPIO, *J.*:

The Case

G.R. No. 208731 is a petition for review[1] assailing the Decision[2] promulgated on 18 February 2013 as well as the Resolution[3]

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[1] Under Rule 45 of the 1997 Rules of Civil Procedure and Rule 16 of the Revised Rules of the Court of Tax Appeals.

[2] *Rollo*, pp. 39-46. Penned by Associate Justice Amelia R. Cotangco-Manalastas, with Associate Justices Juanito C. Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, Esperanza R. Fabon-Victorino, and Cielito N. Mindaro-Grulla concurring.

[3] *Id.* at 49-54. Penned by Associate Justice Amelia R. Cotangco-Manalastas, with Associate Justices Roman G. Del Rosario, Juanito C.

promulgated on 23 July 2013 by the Court of Tax Appeals En Banc (CTA En Banc) in CTA EB No. 844. The CTA EB affirmed the Decision dated 6 July 2011[4] and Resolution[5] dated 13 October 2011 of the Court of Tax Appeals' First Division (CTA 1st Division) in CTA Case No. 7880.

In its 6 July 2011 Decision, the CTA 1st Division ruled in favor of the Bureau of Internal Revenue (BIR), Commissioner of Internal Revenue (CIR), and the Regional Director of Revenue Region No. 6 (collectively, respondents) and against petitioner Philippine Amusement and Gaming Corporation (PAGCOR). The CTA 1st Division dismissed PAGCOR's petition for review seeking the cancellation of the Final Assessment Notice (FAN) dated 14 January 2008 which respondents issued for alleged deficiency fringe benefits tax in 2004. The CTA 1st Division ruled that PAGCOR's petition was filed out of time.

The Facts

The CTA 1st Division recited the facts as follows:

> [PAGCOR] claims that it is a duly organized government-owned and controlled corporation existing under and by virtue of Presidential Decree No. 1869, as amended, with business address at the 6th Floor, Hyatt Hotel and Casino, Pedro Gil corner M.H. Del Pilar Streets, Malate, Manila. It was created to regulate, establish and operate clubs and casinos for amusement and recreation, including sports gaming pools, and such other forms of amusement and recreation.
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> Respondent [CIR], on the other hand, is the Head of the [BIR] with authority, among others, to resolve protests on assessments issued by her office or her authorized representatives. She holds office at

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Castañeda, Jr., Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, Esperanza R. Fabon-Victorino, and Ma. Belen M. Ringpis-Liban concurring. Associate Justice Cielito N. Mindaro-Grulla was on leave.

[4] *Id.* at 149-169. Penned by Associate Justice Esperanza R. Fabon-Victorino, with Presiding Justice Ernesto D. Acosta and Associate Justice Erlinda P. Uy concurring.

[5] *Id.* at 199-204. Penned by Associate Justice Esperanza R. Fabon-Victorino, with Presiding Justice Ernesto D. Acosta and Associate Justice Erlinda P. Uy concurring.

the BIR National Office Building, Agham Road, Diliman, Quezon City.

[PAGCOR] provides a car plan program to its qualified officers under which sixty percent (60%) of the car plan availment is shouldered by PAGCOR and the remaining forty percent (40%) for the account of the officer, payable in five (5) years.

On October 10, 2007, [PAGCOR] received a Post Reporting Notice dated September 28, 2007 from BIR Regional Director Alfredo Misajon [RD Misajon] of Revenue Region 6, Revenue District No. 33, for an informal conference to discuss the result of its investigation on [PAGCOR's] internal revenue taxes in 2004. The Post Reporting Notice shows that [PAGCOR] has deficiencies on Value Added Tax (VAT), Withholding Tax on VAT (WTV), Expanded Withholding Tax (EWT), and Fringe Benefits Tax (FBT).

Subsequently, the BIR abandoned the claim for deficiency assessments on VAT, WTV and EWT in the Letter to [PAGCOR] dated November 23, 2007 in view of the principles laid down in *Commissioner of Internal Revenue vs. Acesite Hotel Corporation* [G.R. No. 147295] exempting [PAGCOR] and its contractors from VAT. However, the assessment on deficiency FBT subsists and remains due to date.

On January 17, 2008, [PAGCOR] received a Final Assessment Notice [FAN] dated January 14, 2008, with demand for payment of deficiency FBT for taxable year 2004 in the amount of ₱48,589,507.65.

On January 24, 2008, [PAGCOR] filed a protest to the FAN addressed to [RD Misajon] of Revenue Region No. 6 of the BIR.

On August 14, 2008, [PAGCOR] elevated its protest to respondent CIR in a Letter dated August 13, 2008, there being no action taken thereon as of that date.

In a Letter dated September 23, 2008 received on September 25, 2008, [PAGCOR] was informed that the Legal Division of Revenue Region No. 6 sustained Revenue Officer Ma. Elena Llantada on the imposition of FBT against it based on the provisions of Revenue Regulations (RR) No. 3-98 and that its protest was forwarded to the Assessment Division for further action.

On November 19, 2008, [PAGCOR] received a letter from the OIC-Regional Director, Revenue Region No. 6 (Manila), stating that

its letter protest was referred to Revenue District Office No. 33 for appropriate action.

On March 11, 2009, [PAGCOR] filed the instant Petition for Review alleging respondents' inaction in its protest on the disputed deficiency FBT.[6]

The CTA 1st Division's Ruling

The CTA 1st Division issued the assailed decision dated 6 July 2011 and ruled in favor of respondents. The CTA 1st Division ruled that RD Misajon's issuance of the FAN was a valid delegation of authority, and PAGCOR's administrative protest was validly and seasonably filed on 24 January 2008. The petition for review filed with the CTA 1st Division, however, was filed out of time. The CTA 1st Division stated:

As earlier stated, [PAGCOR] timely filed its administrative protest on January 24, 2008. In accordance with Section 228 of the Tax Code, respondent CIR or her duly authorized representative had 180 days or until July 22, 2008 to act on the protest. After the expiration of the 180-day period without action on the protest, as in the instant case, the taxpayer, specifically [PAGCOR], had 30 days or until August 21, 2008 to assail the non-determination of its protest.

Clearly, the conclusion that the instant Petition for Review was filed beyond the reglementary period for appeal on March 11, 2009, effectively depriving the Court of jurisdiction over the petition, is inescapable.

And as provided in Section 228 of the NIRC, the failure of [PAGCOR] to appeal from an assessment on time rendered the same final, executory and demandable. Consequently, [PAGCOR] is already precluded from disputing the correctness of the assessment. The failure to comply with the 30-day statutory period would bar the appeal and deprive the Court of Tax Appeals of its jurisdiction to entertain and determine the correctness of the assessment.

Even assuming *in gratia argumenti* that the [CTA] has jurisdiction over the case as claimed by [PAGCOR], the petition must still fail on the ground that [PAGCOR] is not exempt from payment of the assessed FBT under its charter.

x x x x x x x x x

[6] *Id.* at 150-153.

Since the car plan provided by [PAGCOR] partakes of the nature of a personal expense attributable to its employees, it shall be treated as taxable fringe benefit of its employees, whether or not the same is duly receipted in the name of the employer. Therefore, [PAGCOR's] obligation as an agent of the government to withhold and remit the final tax on the fringe benefit received by its employees is personal and direct. The government's cause of action against [PAGCOR] is not for the collection of income tax, for which [PAGCOR] is exempted, but for the enforcement of the withholding provision of the 1997 NIRC, compliance of which is imposed on [PAGCOR] as the withholding agent, and not upon its employees. Consequently, [PAGCOR's] non-compliance with said obligation to withhold makes it personally liable for the tax arising from the breach of its legal duty.[7]

PAGCOR filed a motion for reconsideration, dated 26 July 2011, of the 6 July 2011 Decision of the CTA 1st Division. The CIR filed a comment,[8] and asked that PAGCOR be ordered to pay ₱48,589,507.65 representing deficiency fringe benefits tax for taxable year 2004 plus 25% surcharge and 20% delinquency interest from late payment beyond 15 February 2008 until fully paid, pursuant to Sections 248 and 249 of the National Internal Revenue Code (NIRC) of 1997.

In the meantime, the CIR sent PAGCOR a letter dated 18 July 2011.[9] The letter stated that PAGCOR should be subjected to the issuance of a Warrant of Distraint and/or Levy and a Warrant of Garnishment because of its failure to pay its outstanding delinquent account in the amount of ₱46,589,507.65, which included surcharge and interest. Settlement of the tax liability is necessary to obviate the issuance of a Warrant of Distraint and/or Levy and a Warrant of Garnishment.

Subsequently, PAGCOR filed a reply dated 28 September 2011 to ask that an order be issued directing respondents to hold in abeyance the execution of the Warrant of Distraint

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[7] *Id.* at 161-168.

[8] *Id.* at 181-186.

[9] Stamped received by PAGCOR on 26 July 2011. *Id.* at 205.

and/or Levy and the Warrant of Garnishment, as well as to suspend the collection of tax insofar as the 2004 assessment is concerned. PAGCOR also asked for exemption from filing a bond or depositing the amount claimed by respondents.[10]

PAGCOR filed a petition for review with urgent motion to suspend tax collection[11] with the CTA En Banc on 23 November 2011.

The CTA En Banc's Ruling

The CTA En Banc dismissed PAGCOR's petition for review and affirmed the CTA 1st Division's Decision and Resolution. The CTA En Banc ruled that the protest filed before the RD is a valid protest; hence, it was superfluous for PAGCOR to raise the protest before the CIR. When PAGCOR filed its administrative protest on 24 January 2008, the CIR or her duly authorized representative had 180 days or until 22 July 2008 to act on the protest. After the expiration of the 180 days, PAGCOR had 30 days or until 21 August 2008 to assail before the CTA the non-determination of its protest.

Moreover, Section 223 of the NIRC merely suspends the period within which the BIR can make assessments on a certain taxpayer. A taxpayer's request for reinvestigation only happens upon the BIR's issuance of an assessment within the three-year prescriptive period. The reinvestigation of the assessment suspends the prescriptive period for either a revised assessment or a retained assessment.

PAGCOR filed its Motion for Reconsideration on 22 March 2013, while respondents filed their Comment/Opposition on 3 June 2013.

The CTA En Banc denied PAGCOR's motion in a Resolution[12] dated 23 July 2013.

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[10] *Id.* at 187-198.

[11] *Id.* at 221-260.

[12] *Id.* at 49-54.

PAGCOR filed the present petition for review on 14 October 2013. Respondents filed their comment through the Office of the Solicitor General on 20 March 2014. On 23 April 2014, this Court required PAGCOR to file a reply to the comment within 10 days from notice. This period expired on 26 June 2014. On 15 September 2014, this Court issued another resolution denying PAGCOR's petition for failure to comply with its lawful order without any valid cause. On 31 October 2014, PAGCOR filed a motion for reconsideration of the Court's 15 September 2014 Resolution. We granted PAGCOR's motion in a Resolution dated 10 December 2014.

The Issues

PAGCOR presented the following issues in its petition:

1. Whether or not the CTA En Banc gravely erred in affirming the CTA 1st Division's Decision dismissing the Petition for Review for having been filed out of time.

2. Whether or not the CTA En Banc seriously erred when it affirmed the CTA 1st Division's failure to decide the case on substantive matters, i.e., the full import of PAGCOR's tax exemption under its charter which necessarily includes its exemption from the fringe benefits tax (FBT).

    2.1 Assuming that PAGCOR is not exempt from the FBT, whether or not the car plan extended to its officers inured to its benefit and it is required or necessary in the conduct of its business.

    2.2 Assuming that PAGCOR is subject to the alleged deficiency FBT, whether or not it is only liable for the basic tax, i.e., excluding surcharge and interest.[13]

In their Comment,[14] respondents argue that the CTA properly dismissed PAGCOR's petition because it was filed beyond the periods provided by law.

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[13] *Id.* at 16.

[14] *Id.* at 365-A-373.

The Court's Ruling

The petition has no merit. The CTA En Banc and 1st Division were correct in dismissing PAGCOR's petition. However, as we shall explain below, the dismissal should be on the ground of premature, rather than late, filing.

Timeliness of PAGCOR's Petition before the CTA

The CTA 1st Division and CTA En Banc both established that PAGCOR received a FAN on 17 January 2008, filed its protest to the FAN addressed to RD Misajon on 24 January 2008, filed yet another protest addressed to the CIR on 14 August 2008, and then filed a petition before the CTA on 11 March 2009. There was no action on PAGCOR's protests filed on 24 January 2008 and 14 August 2008. PAGCOR would like this Court to rule that its protest before the CIR starts a new period from which to determine the last day to file its petition before the CTA.

The CIR, on the other hand, denied PAGCOR's claims of exemption with the issuance of its 18 July 2011 letter. The letter asked PAGCOR to settle its obligation of ₱46,589,507.65, which consisted of tax, surcharge and interest. PAGCOR's failure to settle its obligation would result in the issuance of a Warrant of Distraint and/or Levy and a Warrant of Garnishment.

The relevant portions of Section 228 of the NIRC of 1997 provide:

> SEC. 228. *Protesting of Assessment*. — When the Commissioner or his duly authorized representative finds that proper taxes should be assessed, he shall first notify the taxpayer of his findings: x x x.
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> x x x x x x x x x
>
> Within a period to be prescribed by implementing rules and regulations, the taxpayer shall be required to respond to said notice. If the taxpayer fails to respond, the Commissioner or his duly authorized representative shall issue an assessment based on his findings.
>
> Such assessment may be protested administratively by filing a

request for reconsideration or reinvestigation within thirty (30) days from receipt of the assessment in such form and manner as may be prescribed by implementing rules and regulations.

Within sixty (60) days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final.

If the protest is denied in whole or in part, or is not acted upon within one hundred eighty (180) days from submission of documents, the taxpayer adversely affected by the decision or inaction may appeal to the Court of Tax Appeals within thirty (30) days from receipt of the said decision, or from the lapse of one hundred eighty (180)-day period; otherwise, the decision shall become final, executory and demandable.

Section 3.1.5 of Revenue Regulations No. 12-99, implementing Section 228 above, provides:

3.1.5. Disputed Assessment. — The taxpayer or his duly authorized representative may protest administratively against the aforesaid formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof. x x x.

x x x x x x x x x

If the taxpayer fails to file a valid protest against the formal letter of demand and assessment notice within thirty (30) days from date of receipt thereof, the assessment shall become final, executory and demandable.

If the protest is denied, in whole or in part, by the Commissioner, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from the date of receipt of the said decision, otherwise, the assessment shall become final, executory and demandable.

In general, if the protest is denied, in whole or in part, by the Commissioner or his duly authorized representative, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from date of receipt of the said decision, otherwise, the assessment shall become final executory and demandable: Provided, however, that if the taxpayer elevates his protest to the Commissioner within thirty (30) days from date of receipt of the final decision of the Commissioner's duly authorized representative, the latter's decision shall not be considered final, executory and demandable, in which

case, the protest shall be decided by the Commissioner.

If the Commissioner or his duly authorized representative fails to act on the taxpayer's protest within one hundred eighty (180) days from date of submission, by the taxpayer, of the required documents in support of his protest, the taxpayer may appeal to the Court of Tax Appeals within thirty (30) days from the lapse of the said 180-day period, otherwise the assessment shall become final, executory and demandable.

Following the verba legis doctrine, the law must be applied exactly as worded since it is clear, plain, and unequivocal.[15] A textual reading of Section 3.1.5 gives a protesting taxpayer like PAGCOR only three options:

1. If the protest is wholly or partially denied by the CIR **or** his authorized representative, then the taxpayer may appeal to the CTA within 30 days from receipt of the whole or partial denial of the protest.

2. If the protest is wholly or partially denied by the CIR's authorized representative, then the taxpayer may appeal to the CIR within 30 days from receipt of the whole or partial denial of the protest.

3. If the CIR or his authorized representative failed to act upon the protest within 180 days from submission of the required supporting documents, then the taxpayer may appeal to the CTA within 30 days from the lapse of the 180-day period.

To further clarify the three options: A whole or partial denial by the CIR's authorized representative may be appealed to the CIR or the CTA. A whole or partial denial by the CIR may be appealed to the CTA. The CIR or the CIR's authorized representative's failure to act may be appealed to the CTA. There is no mention of an appeal to the CIR from the failure to act by the CIR's authorized representative.

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[15] *Commissioner of Internal Revenue v. San Roque Power Corporation*, G.R. No. 187485, 12 February 2013, 690 SCRA 336.

PAGCOR did not wait for the RD or the CIR's decision on its protest. PAGCOR made separate ***and*** successive filings before the RD and the CIR before it filed its petition with the CTA. We shall illustrate below how PAGCOR failed to follow the clear directive of Section 228 and Section 3.1.5.

PAGCOR's protest to the RD on 24 January 2008 was filed within the 30-day period prescribed in Section 228 and Section 3.1.5. The RD did not release any decision on PAGCOR's protest; thus, PAGCOR was unable to make use of the first option as described above to justify an appeal to the CTA. The effect of the lack of decision from the RD is the same, whether we consider PAGCOR's April 2008 submission of documents[16] or not.

Under the third option described above, even if we grant leeway to PAGCOR and consider its unspecified April 2008 submission, PAGCOR still should have waited for the RD's decision until 27 October 2008, or 180 days from 30 April 2008. PAGCOR then had 30 days from 27 October 2008, or until 26 November 2008, to file its petition before the CTA. PAGCOR, however, did not make use of the third option. PAGCOR did not file a petition before the CTA on or before 26 November 2008.

Under the second option, PAGCOR ought to have waited for the RD's whole or partial denial of its protest before it filed an appeal before the CIR. PAGCOR rendered the second option moot when it formulated its own rule and chose to ignore the clear text of Section 3.1.5. PAGCOR "elevated an appeal" to the CIR on 13 August 2008 ***without*** any decision from the RD, then filed a petition before the CTA on 11 March 2009. A textual reading of Section 228 and Section 3.1.5 will readily show that

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[16] See *Commissioner of Internal Revenue v. First Express Pawnshop Co., Inc.,* 607 Phil. 227, 248-249 (2009), where we stated that: "Section 228 of the Tax Code provides the remedy to dispute a tax assessment within a certain period of time. It states that an assessment may be protested by filing a request for reconsideration or reinvestigation within 30 days from receipt of the assessment by the taxpayer. Within 60 days from filing of the protest, all relevant supporting documents shall have been submitted; otherwise, the assessment shall become final."

neither Section 228 nor Section 3.1.5 provides for the remedy of an appeal to the CIR in case of the RD's failure to act. The third option states that the remedy for failure to act by the CIR or his authorized representative is to file an appeal to the CTA within 30 days after the lapse of 180 days from the submission of the required supporting documents. PAGCOR clearly failed to do this.

If we consider, for the sake of argument, PAGCOR's submission before the CIR as a separate protest and not as an appeal, then such protest should be denied for having been filed out of time. PAGCOR only had 30 days from 17 January 2008 within which to file its protest. This period ended on 16 February 2008. PAGCOR filed its submission before the CIR on 13 August 2008.

When PAGCOR filed its petition before the CTA, it is clear that PAGCOR failed to make use of any of the three options described above. **A petition before the CTA may only be made after a whole or partial denial of the protest by the CIR or the CIR's authorized representative.** When PAGCOR filed its petition before the CTA on 11 March 2009, there was still no denial of PAGCOR's protest by either the RD or the CIR. Therefore, under the first option, PAGCOR's petition before the CTA had no cause of action because it was prematurely filed. The CIR made an unequivocal denial of PAGCOR's protest only on 18 July 2011, when the CIR sought to collect from PAGCOR the amount of ₱46,589,507.65. The CIR's denial further puts PAGCOR in a bind, because it can no longer amend its petition before the CTA.[17]

It thus follows that a complaint whose cause of action has not yet accrued cannot be cured or remedied by an amended or supplemental pleading alleging the existence or accrual of a cause of action while the case is pending. Such an action is prematurely brought and is, therefore, a groundless suit, which should be dismissed by the court

[17] See Sections 2 and 3 of Rule 10 of the 1997 Rules of Civil Procedure. See also Section 3 of Rule 1 of the Revised Rules of the Court of Tax Appeals.

upon proper motion seasonably filed by the defendant. The underlying reason for this rule is that a person should not be summoned before the public tribunals to answer for complaints which are [premature]. As this Court eloquently said in *Surigao Mine Exploration Co., Inc. v. Harris*:

> It is a rule of law to which there is, perhaps, no exception, either at law or in equity, that to recover at all *there must be some cause of action at the commencement of the suit.* As observed by counsel for appellees, there are reasons of public policy why there should be no needless haste in bringing up litigation, and why people who are in no default and against whom there is yet no cause of action should not be summoned before the public tribunals to answer complaints which are groundless. We say groundless because if the action is [premature], it should not be entertained, and an action prematurely brought is a groundless suit.
>
> It is true that an amended complaint and the answer thereto take the place of the originals which are thereby regarded as abandoned (*Reynes vs. Compañia General de Tabacos* [1912], 21 Phil. 416; *Ruyman and Farris vs. Director of Lands* [1916], 34 Phil. 428) and that "the complaint and answer having been superseded by the amended complaint and answer thereto, and the answer to the original complaint not having been presented in evidence as an exhibit, the trial court was not authorized to take it into account." (*Bastida vs. Menzi & Co.* [1933], 58 Phil. 188.) But in none of these cases or in any other case have we held that if a right of action did not exist when the original complaint was filed, one could be created by filing an amended complaint. In some jurisdictions in the United States what was termed an "imperfect cause of action" could be perfected by suitable amendment (*Brown vs. Galena Mining & Smelting Co.*, 32 Kan., 528; *Hooper vs. City of Atlanta*, 26 Ga. App., 221) and this is virtually permitted in *Banzon and Rosauro vs. Sellner* ([1933], 58 Phil. 453); *Asiatic Potroleum [sic] Co. vs. Veloso* ([1935], 62 Phil. 683); and recently in *Ramos vs. Gibbon* (38 Off. Gaz. 241). *That, however, which is no cause of action whatsoever cannot by amendment or supplemental pleading* be converted into a cause of action: *Nihil de re accrescit ei qui nihil in re quando jus accresceret habet.*

> We are therefore of the opinion, and so hold, that *unless the plaintiff has a valid and subsisting cause of action at the time his action is commenced, the defect cannot be cured or remedied by the acquisition or accrual of one while the action is pending, and a supplemental complaint or an amendment setting up such after-accrued cause of action is not permissible*. (Italics ours)[18]

PAGCOR has clearly failed to comply with the requisites in disputing an assessment as provided by Section 228 and Section 3.1.5. Indeed, PAGCOR's lapses in procedure have made the BIR's assessment final, executory and demandable, thus obviating the need to further discuss the issue of the propriety of imposition of fringe benefits tax.

WHEREFORE, we **DENY** the petition. The Decision promulgated on 18 February 2013 and the Resolution promulgated on 23 July 2013 by the Court of Tax Appeals — En Banc in CTA EB No. 844 are **AFFIRMED** with the **MODIFICATION** that the denial of Philippine Amusement and Gaming Corporation's petition is due to lack of jurisdiction because of premature filing. We **REMAND** the case to the Court of Tax Appeals for the determination of the final amount to be paid by PAGCOR after the imposition of surcharge and delinquency interest.

SO ORDERED.

Brion, del Castillo, Mendoza, and *Leonen, JJ.,* concur.

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[18] *Swagman Hotels and Travel, Inc. v. Court of Appeals*, 495 Phil. 161, 172-173 (2005), citing *Limpangco v. Mercado*, 10 Phil. 508 (1908) and *Surigao Mine Exploration Co., Inc. v. Harris*, 68 Phil. 113, 121-122 (1939).

FIRST DIVISION

[G.R. No. 212070. January 27, 2016]

CEBU PEOPLE'S MULTI-PURPOSE COOPERATIVE and MACARIO G. QUEVEDO, *petitioners,* ***vs.*** **NICERATO E. CARBONILLA, JR.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; IN LABOR DISPUTES, GRAVE ABUSE OF DISCRETION MAY BE ASCRIBED TO THE NATIONAL LABOR RELATIONS COMMISSION (NLRC) WHEN ITS FINDINGS AND CONCLUSIONS ARE NOT SUPPORTED BY SUBSTANTIAL EVIDENCE, OR THAT AMOUNT OF RELEVANT EVIDENCE WHICH A REASONABLE MIND MIGHT ACCEPT AS ADEQUATE TO JUSTIFY A CONCLUSION.— To justify the grant of the extraordinary remedy of *certiorari,* petitioner must satisfactorily show that the court or quasi-judicial authority gravely abused the discretion conferred upon it. Grave abuse of discretion connotes a capricious and whimsical exercise of judgment, done in a despotic manner by reason of passion or personal hostility, the character of which being so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law. In labor disputes, grave abuse of discretion may be ascribed to the NLRC when, *inter alia,* its findings and conclusions are not supported by substantial evidence, or that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion. Guided by the foregoing considerations, the Court finds that the CA committed reversible error in granting Carbonilla, Jr.'s *certiorari* petition since the NLRC did not gravely abuse its discretion in ruling that he was validly dismissed from employment as CPMPC was able to prove, through substantial evidence, the existence of just causes warranting the same.

2. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; JUST CAUSES.— Basic is the rule that an employer may validly

terminate the services of an employee for **any of the just causes** enumerated under Article 296 (formerly Article 282) of the Labor Code, namely: (a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work; (b) Gross and habitual neglect by the employee of his duties; (c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative; (d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representatives; and (e) Other causes analogous to the foregoing.

3. ID.; ID.; ID.; ID.; MISCONDUCT; REQUISITES TO BE CONSIDERED AS A JUST CAUSE FOR TERMINATION; ESTABLISHED.— [C]ase law characterizes misconduct as a transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character and implies wrongful intent and not mere error in judgment. For misconduct to be considered as a just cause for termination, the following requisites must concur: *(a)* the misconduct must be serious; *(b)* it must relate to the performance of the employee's duties showing that the employee has become unfit to continue working for the employer; and *(c)* it must have been performed with wrongful intent. All of the foregoing requisites have been duly established in this case.

4. ID.; ID.; ID.; ID.; ID.; WITHIN THE BOUNDS OF LAW, MANAGEMENT HAS THE RIGHTFUL PREROGATIVE TO TAKE AWAY DISSIDENTS AND UNDESIRABLES FROM THE WORKPLACE AND IT SHOULD NOT BE FORCED TO DEAL WITH DIFFICULT PERSONNEL, ESPECIALLY ONE WHO OCCUPIES A POSITION OF TRUST AND CONFIDENCE, ELSE IT BE COMPELLED TO ACT AGAINST THE BEST INTEREST OF ITS BUSINESS; GROSSLY DISCOURTEOUS ATTITUDE OF THE MANAGERIAL EMPLOYEE TOWARDS HIS COLLEAGUES AND SUPERIORS CONSTITUTES CONDUCT UNBECOMING OF HIS MANAGERIAL POSITION AND A SERIOUS BREACH OF ORDER AND DISCIPLINE IN THE WORKPLACE. — [C]arbonilla, Jr.'s demeanor towards his colleagues and superiors is serious in

nature as it is not only reflective of defiance but also breeds of antagonism in the work environment. Surely, within the bounds of law, management has the rightful prerogative to take away dissidents and undesirables from the workplace. It should not be forced to deal with difficult personnel, especially one who occupies a position of trust and confidence, else it be compelled to act against the best interest of its business. Carbonilla, Jr.'s conduct is also clearly work- related as all were incidents which sprung from the performance of his duties. Lastly, the misconduct was performed with wrongful intent as no justifiable reason was presented to excuse the same. On the contrary, Carbonilla, Jr. comes off as a smart aleck who would even go to the extent of dangling whatever knowledge he had of the law against his employer in a combative manner. As succinctly put by CPMPC, "[e]very time [Carbonilla, Jr.'s] attention was called for some inappropriate actions, he would always show his Book, Philippine Law Dictionary and would ask the CEO or HRD Manager under what provision of the law he would be liable for the complained action or omission." Irrefragably, CPMPC is justified in no longer tolerating the grossly discourteous attitude of Carbonilla, Jr. as it constitutes conduct unbecoming of his managerial position and a serious breach of order and discipline in the workplace. With all these factored in, CPMPC's dismissal of Carbonilla, Jr. on the ground of serious misconduct was amply warranted.

5. ID.; ID.; ID.; ID.; LOSS OF TRUST AND CONFIDENCE; REQUISITES TO BE CONSIDERED AS A VALID GROUND FOR DISMISSAL; POSITIONS OF TRUST, TWO (2) CLASSES THEREOF.— [C]arbonilla, Jr.'s dismissal was also justified on the ground of loss of trust and confidence. According to jurisprudence, **loss of trust and confidence** will validate an employee's dismissal when it is shown that: (*a*) the employee concerned holds a position of trust and confidence; and (*b*) he performs an act that would justify such loss of trust and confidence. There are two (2) classes of positions of trust: *first,* managerial employees whose primary duty consists of the management of the establishment in which they are employed or of a department or a subdivision thereof, and to other officers or members of the managerial staff; and *second,* fiduciary rank-and-file employees, such as cashiers, auditors, property custodians, or those who, in the normal exercise of their functions,

regularly handle significant amounts of money or property. These employees, though rank-and-file, are routinely charged with the care and custody of the employer's money or property, and are thus classified as occupying positions of trust and confidence.

6. ID.; ID.; ID.; ID.; ID.; WHEN AN EMPLOYEE HAS BEEN GUILTY OF BREACH OF TRUST OR HIS EMPLOYER HAS AMPLE REASON TO DISTRUST HIM, A LABOR TRIBUNAL CANNOT DENY THE EMPLOYER THE AUTHORITY TO DISMISS HIM, AS MERE EXISTENCE OF BASIS FOR BELIEVING THAT THE EMPLOYEE HAS BREACHED THE TRUST AND CONFIDENCE OF THE EMPLOYER IS SUFFICIENT AND DOES NOT REQUIRE PROOF BEYOND REASONABLE DOUBT.— Records reveal that Carbonilla, Jr. occupied a position of trust and confidence as he was employed as Credit and Collection Manager, and later on, as Legal and Collection Manager, tasked with the duties of, among others, handling the credit and collection activities of the cooperative, which included recommending loan approvals, formulating and implementing credit and collection policies, and conducting trainings. With such responsibilities, it is fairly evident that Carbonilla, Jr. is a managerial employee within the ambit of the first classification of employees xxx. The loss of CPMPC's trust and confidence in Carbonilla, Jr., as imbued in that position, was later justified in light of the latter's commission of xxx acts: x x x. While Carbonilla, Jr. posited that these actuations were resorted with good intentions as he was only finding ways for CPMPC to save up on legal fees, this defense can hardly hold, considering that all of these transactions were not only highly irregular, but also done without the prior knowledge and consent of CPMPC's management. Cast against this light, Carbonilla, Jr.'s performance of the said acts therefore gives CPMPC more than enough reason to lose trust and confidence in him. To this, it must be emphasized that "employers are allowed a wider latitude of discretion in terminating the services of employees who perform functions by which their nature require the employer's full trust and confidence. Mere existence of basis for believing that the employee has breached the trust and confidence of the employer is sufficient and does not require proof beyond reasonable doubt. Thus, when an employee has been guilty of breach of trust or his employer has ample reason

to distrust him, a labor tribunal cannot deny the employer the authority to dismiss him," as in this case.

7. ID.; ID.; ID.; AN EMPLOYEE'S PAST MISCONDUCT AND PRESENT BEHAVIOR MUST BE TAKEN TOGETHER IN DETERMINING THE PROPER IMPOSABLE PENALTY.— The totality and gravity of Carbonilla, Jr.'s infractions throughout the course of his employment completely justified CPMPC's decision to finally terminate his employment. The Court's pronouncement in *Realda v. New Age Graphics, Inc.* is instructive on this matter, to wit: **The totality of infractions or the number of violations committed during the period of employment shall be considered in determining the penalty to be imposed upon an erring employee. The offenses committed by petitioner should not be taken singly and separately. Fitness for continued employment cannot be compartmentalized into tight little cubicles of aspects of character, conduct and ability separate and independent of each other**. While it may be true that petitioner was penalized for his previous infractions, this does not and should not mean that his employment record would be wiped clean of his infractions. After all, the record of an employee is a relevant consideration in determining the penalty that should be meted out since an employee's past misconduct and present behavior must be taken together in determining the proper imposable penalty[.] Despite the sanctions imposed upon petitioner, he continued to commit misconduct and exhibit undesirable behavior on board. **Indeed, the employer cannot be compelled to retain a misbehaving employee, or one who is guilty of acts inimical to its interests.**

8. ID.; ID.; ID.; THE EXISTING DEBTS OF THE DISMISSED EMPLOYEE TO THE EMPLOYER WHICH WERE INCURRED DURING THE EXISTENCE OF THE EMPLOYER-EMPLOYEE RELATIONSHIP SHALL BE DEDUCTED FROM THE AMOUNT WHICH MAY BE DUE HIM IN WAGES.— [T]he Court notes that Carbonilla, Jr.'s award of unpaid salaries and 13th month pay were validly offset by his accountabilities to CPMPC in the amount of ₱129,455.00. Pursuant to Article 1278 in relation to Article 1706 of the Civil Code and Article 113 (c) of the Labor Code, compensation can take place between two persons who are

creditors and debtors of each other. Considering that Carbonilla, Jr. had existing debts to CPMPC which were incurred during the existence of the employer-employee relationship, the amount which may be due him in wages was correctly deducted therefrom.

APPEARANCES OF COUNSEL

Neumeran Jayma Sumampong and Associates for petitioners.
Redula Sanchez Montealegre Bauzon Bragat & Danlag-Luig Law Offices for respondent.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated June 25, 2013 and the Resolution[3] dated March 17, 2014 of the Court of Appeals (CA) in CA-G.R. CEB SP No. 05403, which reversed and set aside the Decision[4] dated April 29, 2010 and the Resolution[5] dated June 30, 2010 of the National Labor Relations Commission (NLRC) in NLRC Case No. VAC-10-000977-2009, and accordingly, declared respondent Nicerato E. Carbonilla, Jr. (Carbonilla, Jr.) to have been illegally dismissed by petitioner Cebu People's Multi-Purpose Cooperative (CPMPC).

The Facts

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[1] *Rollo*, pp. 33-90.

[2] *Id.* at 97-108. Penned by Associate Justice Ramon Paul L. Hernando with Associate Justices Carmelita Salandanan-Manahan and Maria Luisa C. Quijano-Padilla concurring.

[3] *Id.* at 110-115.

[4] *Id.* at 115-A-132. Penned by Presiding Commissioner Violeta Ortiz-Bantug with Commissioners Aurelio D. Menzon and Julie C. Rendoque concurring.

[5] *Id.* at 133-134.

On November 14, 2005, CPMPC hired Carbonilla, Jr. as a Credit and Collection Manager and, as such, was tasked with the handling of the credit and collection activities of the cooperative, which included recommending loan approvals, formulating and implementing credit and collection policies, and conducting trainings.[6] Sometime in 2007, CPMPC underwent a reorganization whereby Carbonilla, Jr. was also assigned to perform the duties of Human Resources Department (HRD) Manager, *i.e.*, assisting in the personnel hiring, firing, and handling of labor disputes.[7] In 2008, he was appointed as Legal Officer and subsequently, held the position of Legal and Collection Manager.[8]

However, beginning February 2008, CPMPC, through its HRD Manager, Ma. Theresa R. Marquez (HRD Manager Marquez), sent various memoranda to Carbonilla, Jr. seeking explanation on the various infractions he allegedly committed. The aforesaid memoranda, as well as his replies thereto, are detailed as follows:

Unconvinced by Carbonilla, Jr.'s explanations, CPMPC

CPMPC'S MEMORANDA:	**CARBONILLA, JR.'S REPLIES:**
HRD 202 File 2008.02.19.017 dated February 19, 2008[9] — Memorandum relative to his non-attendance to the CLIMBS HOME PROTEK Dinner Meeting.	He claimed that he was belatedly informed and was not given any written notification of the said meeting, and that he did not find any relation of the said meeting to his job as a Legal Officer.[10]
HRD 202 File 2008.02.26.034 dated February 26, 2008 [11] —	No reply.

[6] *Id.* at 135. See also *id.* at 248.

[7] *Id.* at 136. See also *id.* at 248.

[8] *Id.* at 97-98.

[9] *Id.* at 174.

[10] *Id.* at 175.

[11] *Id.* at 185.

Memorandum relative to his non-submission of Weekly Executive Summary Reports and Itinerary for the months of January and February.	
HRD 202 File 2008.02.26.035 dated February 26, 2008[12] — Memorandum on why he allowed Joelito Aguipo (Aguipo), a contractual collector for the Bantayan Branch, to drive amotorcycle without a driver's license and not being the owner thereof.	He stated that there was no policy requiring field collectors to own — in a strict legal sense — a motorcycle, but merely to possess the same so he can effect collections more efficiently. Besides, Aguipo was allowed to drive due to the urgency of collecting from the Bantayan Branch. In any case, there is an Affidavit of Undertaking[13] exonerating CPMPC from any liability.[14]
HRD 202 File 2008.02.26.036 dated February 26, 2008[15] — Memorandum on why he failed to: (*a*) account for a motorcycle being used by a former employee under his branch; and (*b*) reclassify the vehicle of another employee.	He sought clarification of the charges against him, and at the same time, threatened HRD Manager Marquez that if this Memorandum is "proven malicious, [she] might be answerable to a certain degree of civil liability which the 1987 Constitution has given to individuals."[16]
HRD 202 File 2008.06.26.086 dated June 26, 2008[17] — Memorandum on why he insulted	He dismissed the charge as made with malicious intent and aimed to discredit his person, claiming

[12] *Id.* at 176.

[13] *Id.* at 178.

[14] *Id.* at 177.

[15] *Id.* at 179.

[16] *Id.* at 180.

[17] *Id.* at 186.

his superior, CPMPC Chief Operation Officer Agustina L. Bentillo (COO Bentillo), in front of her subordinates, with the statement: "*Ikaw ra may di mosalig ba, ka kwalipikado adto niya, maski mag contest pa mo, lupigon gani ka*"[18] or "You're the only one who doesn't trust her, she is very qualified, you even lose in comparison to her."[19]	that he only had a discussion with his superior, particularly, about Alfonso Vasquez (Vasquez), who was unsystematically pulled out from his department without his consent. He added that if COO Bentillo was indeed offended by his remarks, then it should not have taken almost a month before his attention was calledregarding the matter.[20]
HRD 202 File 2008.06.26.087 dated June 26, 2008[21] — Memorandum on his alleged acts of insubordination and gross disrespect when he questioned the authority of HRD Manager Marquez to refuse the hiring of a new staff.	Citing the Philippine Law Dictionary, he explained that "[i]nsubordination means a quality or state of being insubordinate to a person in authority." He maintained that he did not commit insubordination as he merely sought clarification about the deferment of the hiring of a working student by HRD Manager Marquez despite having prior approval of CPMPC Chief Executive Officer (CEO), petitioner Macario G. Quevedo (CEO Quevedo).[22]
HRD 202 File 2008.06.26.088 dated June 26, 2008[23] — Memorandum on his alleged acts	Reiterating the definition of "insubordination" in Philippine Law Dictionary, he maintained that his act of clarifying with the

[18] See Incident Report dated June 20, 2008 signed by COO Bentillo; *id.* at 187.

[19] See *id.* at 69.

[20] *Id.* at 188.

[21] *Id.* at 183.

[22] *Id.* at 136-137. See also *id.* at 184.

[23] *Id.* at 181.

of insubordination and gross disrespect when he insisted before CEO Quevedo that he had the authority as Legal and Collection Manager to hire a new staff.	CEO the policy on hiring working students did not constitute insubordination, but rather, was made in the exercise of his right to express.[24]
HRD 202 File 2008.06.27.091 dated June 27, 2008[25] — Memorandum asking Carbonilla, Jr. to turn-over to the officer-in-charge custody of the following documents: Banco de Oro contract on staff loans, CPMPC firearm contracts and licenses, branch offices rentals, and others.[26]	He only reviewed the subject documents and they were never entrusted to him for safekeeping. [27]
HRD 202 File 2008.07.03.094 dated July 3, 2008[28] — Memorandum on his alleged acts of gross negligence in: (*a*) failing to submit the employment assessment of one Marcelina M. Remonde (Remonde); (*b*) promoting one Mary Grace R. Batain (Batain) despite lack of any performance appraisal; (*c*) failing to report the shortage of Batain amounting to ₱108,254.55; (*d*) disseminating a wrong schedule of mediation activity which caused confusion	He interposed the following defenses:[29] (*a*) he was not responsible for employment assessments having been transferred to the Legal Department; (*b*) as then HRD Manager, it was within his discretion to promote Batain whose appointment has been previously concurred in by the CEO; (*c*) he was not informed of the shortage committed by Batain nor was it within his primary obligation to disclose the same; (*d*) the printing of invitation was managed only by his legal assistant, Joel

[24] *Id.* at 137. See also *id.* at 182.

[25] Not attached to the *rollo*.

[26] *Rollo*, p. 138.

[27] *Id.* at 138-139.

[28] *Id.* at 189-191.

[29] *Id.* at 192-194.

and pressure among branch managers; (*e*) failing to annotate the encumbrance on the certificate of title offered as collateral to CPMPC; (*f*) failing to review and verify its contract with the BISDA Security Agency (agency) which exposed CPMPC to third-party liability for failure of the agency to remit the Social Security System, Philhealth and Pag-IBIG premiums of its security guards to the government; (*g*) failing to inform the branch managers of any settlements or compromise agreements entered into by the head office resulting in confusion as to payments; and (*h*) failing to submit to HRD Manager Marquez the status of the firearms and licenses assigned to the branch managers.	Semblante (Semblante) and Vasquez. However, the latter was unexpectedly transferred to another job assignment, leaving only Semblante to do the job, which may have caused the unintentional mistake;[30] (*e*) a certain Brenda Dela Cruz was the one responsible for the annotation of the encumbrances of real and personal properties; (*f*) he was not responsible for the review of the contract between the agency and its security guards as CPMPC had no employer-employee relationship with them; *(g)* he was unaware of the complaints of the branch managers regarding the payment confusion as a result of settlements or compromise agreements; and *(h)* it was not his duty to determine the status, custody,and licenses of the firearms.[31] His acts did not constitute gross
HRD 202 File 2008.07.04.095 dated July 4, 2008[32] — Memorandum on the allegations he made against the CEO during the Board of Directors' inquiry hearing, which constituted gross misconduct, gross disrespect, and loss of trust and confidence.	misconduct, gross disrespect, or loss of trust and confidence as he only questioned the suspicious transactions of CEO Quevedo regarding the sale of a titled parcel of land owned by the cooperative for an inadequate consideration. He then added that as a member of CPMPC, he has the right to demand transparency

[30] *Id.* at 193.

[31] *Id.* at 141-143.

[32] *Id.* at 195.

	of all the transactions made by CEO Quevedo, of which its consequences will affect the cooperative.[33]
HRD 202 File 2008.07.08.098 dated July 8, 2008[34] — Memorandum on his failure to attend the management and operations committee meeting held on July 7, 2008 despite prior notices.	The said meeting was scheduled outside the regular meeting day and he was only informed about it on the day of the meeting at which time, he was personally handling collection cases.[35]
HRD 202 File 2008.07.09.103 dated July 9, 2008[36] — Memorandum relative to the mediation settlements which were forwarded for notarization to one Atty. Miñoza who is not the authorized legal retainer of CPMPC.	He admitted that as head of the Legal Department, he endorsed the documents for notarization to his friend who only charged ₱50.00 per document as compared to the legal retainers who charged ₱100.00 per document. He added that "[t]he same is more advantageous and secured rather than having it notarized by a '*murio-murio*' notary public at the back of the Cebu City Hall."[37]
HRD 202 File 2008.07.09.104 dated July 9, 2008[38] — Memorandum on his failure to update the CEO and management committee of the dismissal of the cases filed by CPMPC against	The two cases were re-filed before the Regional Trial Court on May 29, 2008 as the amounts involved were beyond the jurisdiction of the Municipal Trial Court (MTC). He also explained that he was not aware of the filing of these cases

[33] *Id.* at 196.

[34] *Id.* at 197.

[35] *Id.* at 198.

[36] *Id.* at 202.

[37] *Id.* at 203.

[38] *Id.* at 199.

Spouses Alex and Alma Monisit in Civil Case No. R- 52633 and against Spouses Helen and Rogelio Lopez in Civil Case No. R-53274.	before the MTC as he was occupying the position of the HRD Manager at that time.[39] He explained that as head of the Legal Department, he was
HRD 202 File 2008.07.15.106 dated July 15, 2008[40] — Memorandum relative to Carbonilla, Jr.'s instruction to Semblante to pull out important records and vital documents, *i.e.*, Compromise/Settlement Agreement, Mediation Tracking Form, Agreement to Mediate, Mediator's Report, Evaluation of Mediation, among others, from the head office without the knowledge and approval of the management, which documents were later on returned tampered and altered.	responsible for the proper disposal of all legal documents and contracts, and the cancellation of said documents were done to protect the interest of the cooperative. Moreover, he claimed that the erasures were caused by the cancellation of the notarial subscription since Carbonilla, Jr. found the requirements of the notary public — which required all 125 respondents to appear personally and present their community tax certificates — impractical. Moreover, he claimed that the cancellation of the documents "was not for the purpose of falsifying or tampering the same[,] but merely to protect the interest of the cooperative against possible sanctions [or] circulating bogus documents."[41]
HRD 202 File 2008.07.16.107 dated July 16, 2008[42] — Memorandum relative to the	The delay in liquidation was due to the "agreement" he had with the notary public about the

[39] *Id.* at 200.

[40] *Id.* at 207-208.

[41] *Id.* at 209; emphasis and underscoring omitted.

[42] Not attached to the *rollo*.

unliquidated cash advances of the notarial transactions of the mediation agreements. [43]	disposition of the notarized documents. He claimed that in the afternoon of the same day, he turned over the amount of ₱6,250.00 to the Accounting Department.[44]
HRD 202 File 2008.07.19.111 dated July 19, 2008[45] — Memorandum on the alleged tampering and loss of CPMPC's vital records and documents, *i.e.*, two (2) copies of the compromise settlement agreement.	No reply.

scheduled several clarificatory hearings,[46] but the former failed to attend despite due notice.[47] Later, CPMPC conducted a formal investigation where it ultimately found Carbonilla, Jr. to have committed acts prejudicial to CPMPC's interests.[48] As such, CPMPC, CEO Quevedo, sent Carbonilla, Jr. a Notice of Dismissal[49] dated August 5, 2008 informing the latter of his termination on the grounds of: (*a*) loss of trust and confidence; (*b*) gross disrespect; (*c*) serious misconduct; (*d*) gross negligence; (*e*) commission of a crime of falsification/inducing Aguipo to violate the law or the Land Transportation and Traffic Code; and (*e*) committing acts highly prejudicial to the interest of the cooperative.[50]

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[43] *Rollo*, pp. 146-147.

[44] *Id.* at 147-148.

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

[46] See HRD 202 File 2008.07.08.102 (*id.* at 212), HRD 202 File 2008.07.14.105 (*id.* at 213), and HRD 202 File 2008.07.19.110 (*id.* at 214).

[47] *Id.* at 242. Except HRD 202 File 2008.07.08.102 (*id.* at 212), which scheduled hearing was cancelled despite Carbonilla, Jr.'s attendance (see *id.* at 145).

[48] See *id.* at 101 and 125.

[49] HRD 202 File 2008.05.112. *Id.* at 215-222.

[50] *Id.* at 221-222.

Consequently, Carbonilla, Jr. filed the instant case for illegal dismissal, non-payment of salaries, 13th month pay, as well as damages and backwages, against CPMPC, before the NLRC, docketed as NLRC RAB VII-08-1856-2008.[51] In support of his claims, Carbonilla, Jr. denied the administrative charges against him, asserting that the Management and Board of Directors of CPMPC merely orchestrated means to unjustly dismiss him from employment.[52]

In defense, CPMPC maintained that the totality of Carbonilla, Jr.'s infractions was sufficient to warrant his dismissal, and that it had complied with the procedural due process in terminating him.[53] Further, CPMPC pointed out that Carbonilla, Jr. had been fully paid of all his benefits, notwithstanding his unsettled obligations to it in the form of loans, insurance policy premiums, and cash advances, among others, amounting to a total of ₱129,455.00.[54]

The LA Ruling

In a Decision[55] dated July 1, 2009, the Labor Arbiter (LA) dismissed Carbonilla, Jr.'s complaint for lack of merit.[56] The LA found that Carbonilla, Jr. committed a litany of infractions, the totality of which constituted just cause for the termination of his employment.[57] Likewise, it was determined that CPMPC afforded Carbonilla, Jr. procedural due process prior to his termination, as evinced by the former's issuance of a series of memoranda, as well as its conduct of investigation with notices to the latter.[58] Furthermore, the LA denied his claims for unpaid

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[51] See *id.* at 135.

[52] *Id.* at 300.

[53] See *id.* at 242-243.

[54] *Id.* at 244.

[55] *Id.* at 135-158. Penned by Labor Arbiter Jose G. Gutierrez.

[56] *Id.* at 158.

[57] *Id.* at 157.

[58] *Id.*

salaries and 13th month pay, as records show that the aggregate amount of his monetary claims is not even enough to pay his accountabilities to CPMPC in the total amount of ₱129,455.00.[59]

Aggrieved, Carbonilla, Jr. appealed to the NLRC, which was docketed as NLRC Case No. VAC-10-000977-2009.[60]

The NLRC Ruling

In a Decision[61] dated April 29, 2010, the NLRC affirmed the LA ruling. It found CPMPC to have substantially proven the existence of just causes in dismissing Carbonilla, Jr., i.e., abuse of authority; disrespect to his colleagues and superiors; being remiss in his duties; and commission of acts of misrepresentation.[62] It further held that Carbonilla, Jr. was given the opportunity to present his side and to disprove the charges against him, but failed to do so.[63] Finally, the NLRC explained that while Carbonilla, Jr. may indeed be entitled to his claims for unpaid salaries and 13th month pay, the same cannot be granted as his accountabilities with CPMPC were larger than said claims.[64]

Carbonilla, Jr. moved for reconsideration,[65] which was, however, denied in a Resolution[66] dated June 30, 2010. Undaunted, he elevated the matter to the CA *via* a petition for *certiorari*.[67]

The CA Ruling

In a Decision[68] dated June 25, 2013, the CA reversed and set

[59] *Id.* at 158.

[60] See *id.* at 115A.

[61] *Id.* at 115A-132.

[62] *Id.* at 127-130.

[63] *Id.* at 130.

[64] *Id.* at 131.

[65] Not attached to the *rollo*.

[66] *Rollo*, pp. 133-134.

[67] *Id.* at 356-410.

[68] *Id.* at 97-108.

aside the NLRC ruling and accordingly, ordered Carbonilla, Jr.'s reinstatement and the remand of the case to the LA for the computation of his full backwages, inclusive of allowances and other benefits, as well as attorney's fees.[69] It held that the NLRC gravely abused its discretion in declaring Carbonilla, Jr.'s dismissal as valid, considering that, other than CPMPC's series of memoranda and self-serving allegations, it did not present substantial documents to support a conclusion that would warrant Carbonilla, Jr.'s valid dismissal.[70] In fine, CPMPC failed to discharge the burden of proving that Carbonilla, Jr.'s dismissal was for just causes.[71]

Dissatisfied, petitioners moved for reconsideration,[72] but the same was denied in a Resolution[73] dated March 17, 2014; hence, this petition.

The Issue Before the Court

The core issue for the Court's resolution is whether or not the CA correctly ascribed grave abuse of discretion on the part of the NLRC in ruling that Carbonilla, Jr.'s dismissal was val*id.*

The Court's Ruling

The petition is impressed with merit.

To justify the grant of the extraordinary remedy of *certiorari,* petitioner must satisfactorily show that the court or quasi-judicial authority gravely abused the discretion conferred upon it. Grave abuse of discretion connotes a capricious and whimsical exercise of judgment, done in a despotic manner by reason of passion or personal hostility, the character of which being so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation

[69] *Id.* at 107.

[70] *Id.* at 106.

[71] *Id.*

[72] Not attached to the *rollo*.

[73] *Rollo*, pp. 110-115.

[74] See *Bahia Shipping Services, Inc. v. Hipe, Jr.*, G.R. No. 204699, November 12, 2014.

of law.[74]

In labor disputes, grave abuse of discretion may be ascribed to the NLRC when, *inter alia*, its findings and conclusions are not supported by substantial evidence, or that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.[75]

Guided by the foregoing considerations, the Court finds that the CA committed reversible error in granting Carbonilla, Jr.'s *certiorari* petition since the NLRC did not gravely abuse its discretion in ruling that he was validly dismissed from employment as CPMPC was able to prove, through substantial evidence, the existence of just causes warranting the same.

Basic is the rule that an employer may validly terminate the services of an employee for **any of the just causes** enumerated under Article 296 (formerly Article 282) of the Labor Code,[76] namely:

> (a) Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;
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> (b) Gross and habitual neglect by the employee of his duties;
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> (c) Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;
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> (d) Commission of a crime or offense by the employee against the person of his employer or any immediate member of his family or his duly authorized representatives; and
>
> (e) Other causes analogous to the foregoing.

As may be gathered from the tenor of CPMPC's Notice of Dismissal, it is apparent that Carbonilla, Jr.'s employment was terminated on the grounds of, among others, serious misconduct

[75] See *id.*

[76] As amended and renumbered by Republic Act No. 10151, entitled "AN ACT ALLOWING THE EMPLOYMENT OF NIGHT WORKERS, THEREBY REPEALING ARTICLES 130 AND 131 OF PRESIDENTIAL DECREE NUMBER FOUR HUNDRED FORTY-TWO, AS AMENDED, OTHERWISE KNOWN AS THE LABOR CODE OF THE PHILIPPINES," approved on June 21, 2011.

[77] See *rollo*, pp. 221-222.

and loss of trust and confidence.[77]

On the first ground, case law characterizes misconduct as a transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character and implies wrongful intent and not mere error in judgment.[78] For misconduct to be considered as a just cause for termination, the following requisites must concur: (*a*) the misconduct must be serious; (*b*) it must relate to the performance of the employee's duties showing that the employee has become unfit to continue working for the employer; and (*c*) it must have been performed with wrongful intent.[79]

All of the foregoing requisites have been duly established in this case. Records reveal that Carbonilla, Jr.'s serious misconduct consisted of him frequently exhibiting disrespectful and belligerent behavior, not only to his colleagues, but also to his superiors. He even used his stature as a law graduate to insist that he is "above" them, often using misguided legalese to weasel his way out of the charges against him, as well as to strong-arm his colleagues and superiors into succumbing to his arrogance. Carbonilla, Jr.'s obnoxious attitude is highlighted by the following documents on record: (*a*) his reply to HRD 202 File 2008.02.26.036 dated February 26, 2008 wherein he threatened HRD Manager Marquez with a lawsuit, stating that if the memorandum is "proven malicious, [she] might be answerable to a certain degree of civil liability which the 1987 Constitution has given to individuals";[80] (*b*) HRD 202 File 2008.06.26.086 dated June 26, 2008[81] wherein he berated COO Bentillo in front of her subordinates with the statement: "[*i*]*kaw*

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[78] See *Imasen Philippine Manufacturing Corporation v. Alcon*, G.R. No. 194884, October 22, 2014, citing *Yabut v. Manila Electric Company,* 679 Phil. 97, 110-111 (2012).

[79] See *Imasen Philippine Manufacturing Corporation v. Alcon*, *id.*

[80] *Rollo*, p. 180.

[81] *Id.* at 186.

[82] *Id.* at 187.

ra may di mosalig ba, ka kwalipikado adto niya, maski mag contest pa mo, lupigon gani ka"[82] or "[y]ou're the only one who doesn't trust her, she is very qualified, you even lose in comparison to her[,]"[83] and his reply thereto wherein he dismissed the charge as made with malicious intent and aimed to discredit his person;[84] *(c)* HRD 202 File 2008.06.26.088 dated June 26, 2008[85] wherein he argued with the CEO Quevedo, insisting that he had the authority to hire a new staff, and his reply thereto where he cited the Philippine Law Dictionary to maintain that his act did not amount to insubordination;[86] (*d*) HRD 202 File 2008.06.26.087 dated June 26, 2008[87] wherein he openly questioned the authority of HRD Manager Marquez in refusing to hire a new staff and his reply thereto where he again cited the Philippine Law Dictionary to insist that he did not commit acts of insubordination;[88] and *(e)* HRD 202 File 2008.07.04.095 dated July 4, 2008[89] wherein he openly and improperly confronted the CPMPC CEO during a Board of Directors' inquiry hearing, to which he again maintained that his acts did not constitute misconduct, gross disrespect, and loss of trust and confidence as he was only looking after the welfare of the cooperative.[90]

Indisputably, Carbonilla, Jr.'s demeanor towards his colleagues and superiors is serious in nature as it is not only reflective of defiance but also breeds of antagonism in the work environment. Surely, within the bounds of law, management has the rightful prerogative to take away dissidents and undesirables from the workplace. It should not be forced to deal with difficult personnel, especially one who occupies a

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[83] See *id.* at 69.

[84] *Id.* at 188.

[85] *Id.* at 181.

[86] *Id.* at 182.

[87] *Id.* at 183.

[88] *Id.* at 184.

[89] *Id.* at 195.

[90] *Id.* at 196.

position of trust and confidence, as will be later discussed, else it be compelled to act against the best interest of its business. Carbonilla, Jr.'s conduct is also clearly work-related as all were incidents which sprung from the performance of his duties. Lastly, the misconduct was performed with wrongful intent as no justifiable reason was presented to excuse the same. On the contrary, Carbonilla, Jr. comes off as a smart aleck who would even go to the extent of dangling whatever knowledge he had of the law against his employer in a combative manner. As succinctly put by CPMPC, "[e]very time [Carbonilla, Jr.'s] attention was called for some inappropriate actions, he would always show his Book, Philippine Law Dictionary and would ask the CEO or HRD Manager under what provision of the law he would be liable for the complained action or omission."[91] Irrefragably, CPMPC is justified in no longer tolerating the grossly discourteous attitude of Carbonilla, Jr. as it constitutes conduct unbecoming of his managerial position and a serious breach of order and discipline in the workplace.[92]

With all these factored in, CPMPC's dismissal of Carbonilla, Jr. on the ground of serious misconduct was amply warranted.

For another, Carbonilla, Jr.'s dismissal was also justified on the ground of loss of trust and confidence. According to jurisprudence, **loss of trust and confidence** will validate an employee's dismissal when it is shown that: (*a*) the employee concerned holds a position of trust and confidence; and (*b*) he performs an act that would justify such loss of trust and confidence.[93] There are two (2) classes of positions of trust: *first*, managerial employees whose primary duty consists of the management of the establishment in which they are employed

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[91] *Id.* at 39.

[92] See *Nissan Motors Phils., Inc. v. Angelo*, 673 Phil. 150 (2011). See also *Garcia v. Manila Times,* G.R. No. 99390, July 5, 1993, 224 SCRA 399; *St. Mary's College v. NLRC*, 260 Phil. 63 (1990); and *Asian Design and Manufacturing Corp. v. Lavarez, Jr.,* 226 Phil. 20 (1986).

[93] See *Alvarez v. Golden Tri Bloc, Inc.*, G.R. No. 202158, September 25, 2013, 706 SCRA 406, 417-418, citing *Philippine Plaza Holdings, Inc. v. Episcope*, G.R. No. 192826, February 27, 2013, 692 SCRA 227, 235.

or of a department or a subdivision thereof, and to other officers or members of the managerial staff; and *second*, fiduciary rank-and-file employees, such as cashiers, auditors, property custodians, or those who, in the normal exercise of their functions, regularly handle significant amounts of money or property. These employees, though rank-and-file, are routinely charged with the care and custody of the employer's money or property, and are thus classified as occupying positions of trust and confidence.[94]

Records reveal that Carbonilla, Jr. occupied a position of trust and confidence as he was employed as Credit and Collection Manager, and later on, as Legal and Collection Manager, tasked with the duties of, among others, handling the credit and collection activities of the cooperative, which included recommending loan approvals, formulating and implementing credit and collection policies, and conducting trainings.[95] With such responsibilities, it is fairly evident that Carbonilla, Jr. is a managerial employee within the ambit of the first classification of employees afore-discussed. The loss of CPMPC's trust and confidence in Carbonilla, Jr., as imbued in that position, was later justified in light of the latter's commission of the following acts: (*a*) the forwarding of the mediation settlements for notarization to a lawyer who was not the authorized legal retainer of CPMPC (HRD 202 File 2008.07.09.103 dated July 9, 2008);[96] (*b*) the pull-out of important records and vital documents from the office premises, which were either lost or returned already tampered and altered (HRD 202 File 2008.07.15.106 dated July 15, 2008[97] and HRD 202 File 2008.07.19.111 dated July 19,

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[94] See *Alvarez v. Golden Tri Bloc, Inc., id.* at 418, citing *Philippine Plaza Holdings, Inc. v. Episcope*, *id.* at 235-236.

[95] *Rollo*, pp. 97-98.

[96] *Id.* at 202.

[97] *Id.* at 207-208.

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

[99] *Id.* at 147.

2008);[98] and (*c*) the incurring of unliquidated cash advances related to the notarial transactions of the mediation agreements (HRD 202 File 2008.07.16.107 dated July 16, 2008).[99] While Carbonilla, Jr. posited that these actuations were resorted with good intentions as he was only finding ways for CPMPC to save up on legal fees, this defense can hardly hold, considering that all of these transactions were not only highly irregular, but also done without the prior knowledge and consent of CPMPC's management. Cast against this light, Carbonilla, Jr.'s performance of the said acts therefore gives CPMPC more than enough reason to lose trust and confidence in him. To this, it must be emphasized that "employers are allowed a wider latitude of discretion in terminating the services of employees who perform functions by which their nature require the employer's full trust and confidence. Mere existence of basis for believing that the employee has breached the trust and confidence of the employer is sufficient and does not require proof beyond reasonable doubt. Thus, when an employee has been guilty of breach of trust or his employer has ample reason to distrust him, a labor tribunal cannot deny the employer the authority to dismiss him,"[100] as in this case.

Perforce, having established the actual breaches of duty committed by Carbonilla, Jr. and CPMPC's observance of due process, the Court no longer needs to further examine the other charges against Carbonilla, Jr., as it is already clear that the CA erred in ascribing grave abuse of discretion on the part of the NLRC when the latter declared that CPMPC validly dismissed Carbonilla, Jr. from his job. The totality and gravity of Carbonilla, Jr.'s infractions throughout the course of his employment completely justified CPMPC's decision to finally terminate his employment. The Court's pronouncement in *Realda v. New Age Graphics, Inc.*[101] is instructive on this matter, to wit:

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[100] *Philippine Plaza Holdings, Inc. v. Episcope, supra* note 93, at 237, citing *Bristol Myers Squibb (Phils.), Inc. v. Baban*, 594 Phil. 620, 631-632 (2008), further citing *Atlas Fertilizer Corporation v. NLRC*, G.R. No. 120030, June 17, 1997, 273 SCRA 551, 558.

[101] 686 Phil. 1110 (2012).

The totality of infractions or the number of violations committed during the period of employment shall be considered in determining the penalty to be imposed upon an erring employee. The offenses committed by petitioner should not be taken singly and separately. Fitness for continued employment cannot be compartmentalized into tight little cubicles of aspects of character, conduct and ability separate and independent of each other. While it may be true that petitioner was penalized for his previous infractions, this does not and should not mean that his employment record would be wiped clean of his infractions. After all, the record of an employee is a relevant consideration in determining the penalty that should be meted out since an employee's past misconduct and present behavior must be taken together in determining the proper imposable penalty[.] Despite the sanctions imposed upon petitioner, he continued to commit misconduct and exhibit undesirable behavior on board. **Indeed, the employer cannot be compelled to retain a misbehaving employee, or one who is guilty of acts inimical to its interests.**[102] (Emphases and underscoring supplied)

On a final point, the Court notes that Carbonilla, Jr.'s award of unpaid salaries and 13th month pay were validly offset by his accountabilities to CPMPC in the amount of ₱129,455.00.[103] Pursuant to Article 1278[104] in relation to Article 1706[105] of the Civil Code and Article 113 (c)[106] of the Labor Code, compensation can take place between two persons who are creditors and debtors of each other.[107] Considering that Carbonilla, Jr. had existing debts to CPMPC which were incurred during the existence of

[102] *Id.* at 1120, citing *Merin v. NLRC*, 590 Phil. 596, 602 (2008).

[103] See *Deoferio v. Intel Technology Philippines, Inc.*, G.R. No. 202996, June 18, 2014, 726 SCRA 676, 692-693.

[104] Article 1278 of the Civil Code provides:

> Art. 1278. Compensation shall take place when two persons, in their own right, are creditors and debtors of each other.

[105] Article 1706 of the Civil Code provides:

> Art. 1706. Withholding of the wages, except for a debt due, shall not be made by the employer.

[106] Article 113 (c) of the Labor Code provides:

> Art. 113. Wage Deduction. — No employer, in his own behalf or in behalf of any person, shall make any deduction from the wages of his employees, except:
>
> x x x x x x x x x
>
> (c) In cases where the employer is authorized by law or regulations issued by the Secretary of Labor.

[107] See *Deoferio v. Intel Technology Philippines, Inc., supra* note 103, at 692-693.

the employer-employee relationship, the amount which may be due him in wages was correctly deducted therefrom.

WHEREFORE, the petition is **GRANTED.** The Decision dated June 25, 2013 and the Resolution dated March 17, 2014 of the Court of Appeals in CA-G.R. CEB SP No. 05403 are hereby **REVERSED** and **SET ASIDE.** Accordingly, the Decision dated April 29, 2010 and the Resolution dated June 30, 2010 of the National Labor Relations Commission in NLRC Case No. VAC-10-000977-2009 declaring respondent Nicerato E. Carbonilla, Jr. to have been validly dismissed by petitioner Cebu People's Multi-Purpose Cooperative are **REINSTATED.**

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 213863. January 27, 2016]

LAND BANK OF THE PHILIPPINES, *petitioner, vs.* **EDGARDO L. SANTOS, represented by his assignee, ROMEO L. SANTOS,** *respondent.*

[G.R. No. 214021. January 27, 2016]

EDGARDO L. SANTOS, represented by his assignee, ROMEO L. SANTOS, *petitioner, vs.* **LAND BANK OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; COMPREHENSIVE AGRARIAN REFORM LAW OF 1988 (RA 6657); JUST COMPENSATION; THE SEIZURE OF LANDHOLDINGS OR PROPERTIES COVERED BY PRESIDENTIAL DECREE (PD) No. 27 DID NOT TAKE PLACE ON OCTOBER 21, 1972, BUT UPON THE PAYMENT OF JUST COMPENSATION; THUS, IF JUST COMPENSATION DUE THE LANDOWNER HAS YET TO BE SETTLED, JUST COMPENSATION SHOULD BE DETERMINED AND THE PROCESS CONCLUDED UNDER RA 6657.—** The Court has repeatedly held that **the seizure of landholdings or properties covered by PD 27 did not take place on October 21, 1972, but upon the payment of just compensation**. Thus, if the agrarian reform process is still incomplete, as in this case where the just compensation due the landowner has yet to be settled, just compensation should be determined and the process concluded under RA 6657.

2. **ID.; ID.; ID.; PROCEDURE FOR THE DETERMINATION OF JUST COMPENSATION. —** As summarized in *LBP v. Sps. Banal*, the procedure for the determination of just compensation under RA 6657 commences with the LBP determining the initial valuation of the lands under the land reform program. Using the *LBP's* valuation, the DAR makes an offer to the landowner. In case the landowner rejects the offer, the DAR adjudicator conducts a summary administrative proceeding to determine the compensation for the land by requiring the landowner, the LBP, and other interested parties to submit evidence on the just compensation of the land. A party who disagrees with the decision of the DAR adjudicator may bring the matter to the RTC, designated as a Special Agrarian Court for final determination of just compensation. Note that in case of rejection, RA 6657 entitles the landowner to withdraw the initial valuation of the landholding pending the determination of just compensation.

3. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION; FOR AN ACT TO BE STRUCK DOWN AS HAVING BEEN DONE WITH GRAVE ABUSE OF DISCRETION, THE ABUSE MUST BE PATENT AND GROSS; RELEASE OF**

THE INITIAL VALUATION WITHOUT SUBMISSION OF THE REQUIRED DOCUMENTS NOT CONSTRUED AS A CAPRICIOUS EXERCISE OF POWER IN CASE AT BAR.— Grave abuse of discretion connotes an arbitrary or despotic exercise of power due to passion, prejudice or personal hostility; or the whimsical, arbitrary, or capricious exercise of power that amounts to an evasion or refusal to perform a positive duty enjoined by law or to act at all in contemplation of law. For an act to be struck down as having been done with grave abuse of discretion, the abuse must be patent and gross. xxx. [T]he leniency accorded by the RTC cannot be construed as a capricious exercise of power as it merely expedited the procedure for payment which is inherently fairer under the circumstances considering that: (*a*) Santos has been "deprived of his right to enjoy properties as early as 1983, and has not yet received any compensation therefore since then"; (*b*) the existence of the certificates of title over Lands 1 and 2 which the LBP insists to be submitted had not been sufficiently established; (*c*) the LBP had judicially admitted that Santos is the owner of Lands 1 and 2 which were identified as covered by tax declarations; and (*d*) compliance with the required documents may still be declare before the full payment of the correct just compensation which, up to this time, has not yet been finally determined. Moreover, as aptly pointed out by the CA, Santos' failure to produce the titles to Lands 1 and 2 was not motivated by any obstinate refusal to abide by the requirements but due to impediments beyond his control. Perforce, no reversible error or grave abuse of discretion can be imputed on the CA in sustaining the RTC Orders dated July 9, 2009 and August 24, 2009 which allowed the withdrawal of the initial valuation upon Santos' (*a*) submission of two (2) valid ID cards, two (2) latest ID pictures, and his current CTC, and (*b*) execution of a Deed of Assignment, Warranties and Undertaking in favor of the LBP.

4. LABOR AND SOCIAL LEGISLATION; COMPREHENSIVE AGRARIAN REFORM LAW OF 1988 (RA 6657); JUST COMPENSATION; THE SUBMISSION OF THE COMPLETE DOCUMENTS IS NOT A PRE-CONDITION FOR THE RELEASE OF THE INITIAL VALUATION TO A LANDOWNER, FOR TO HOLD OTHERWISE WOULD EFFECTIVELY PROTRACT PAYMENT OF THE

AMOUNT WHICH RA 6657 GUARANTEES TO BE IMMEDIATELY DUE THE LANDOWNER EVEN PENDING THE DETERMINATION OF JUST COMPENSATION.— Contrary to the LBP's assertion in **G.R. No. 213863**, nowhere from the said administrative guideline can it be inferred that the submission of the complete documents is a pre-condition for the release of the initial valuation to a landowner. To hold otherwise would effectively protract payment of the amount which RA 6657 guarantees to be immediately due the landowner even pending the determination of just compensation. As elucidated in *LBP v. CA*: As an exercise of police power, the expropriation of private property under the CARP puts the landowner, and not the government, in a situation where the odds are already stacked against his favor. He has no recourse but to allow it. His only consolation is that he can negotiate for the amount of compensation to be paid for the expropriated property. As expected, the landowner will exercise this right to the hilt, but subject however to the limitation that he can only be entitled to a "just compensation." Clearly therefore, by rejecting and disputing the valuation of the DAR, the landowner is merely exercising his right to seek just compensation. **If we are to x x x [withhold] the release of the offered compensation despite depriving the landowner of the possession and use of his property, we are in effect penalizing the latter for simply exercising a right afforded to him by law.**

5. REMEDIAL LAW; JUDGMENTS; *RES JUDICATA*; DEFINED; ELEMENTS.— Neither can the Court subscribe to the LBP's contention that the RTC was barred by *res judicata* from conducting further proceedings to determine just compensation for Lands 2 and 3 since the final and executory Decision in CA-G.R. CV No. 75010 merely called for a remand of the case for computation purposes only. *Res judicata* means a matter adjudged, a thing judicially acted upon or decided; a thing or matter settled by judgment. The doctrine of *res judicata* provides that a final judgment, on the merits rendered by a court of competent jurisdiction is conclusive as to the rights of the parties and their privies and constitutes an absolute bar to subsequent actions involving the same claim, demand, or cause of action. The elements of *res judicata* are (*a*) identity of parties or at least such as representing the same interest in both actions;

(*b*) **identity of rights asserted and relief prayed for, the relief being founded on the same facts;** and (*c*) the identity in the two (2) particulars is such that any judgment which may be rendered in the other action will, regardless of which party is successful, amount to *res judicata* in the action under consideration.

6. ID.; ID.; ID.; THE DECISION IN CA-G.R. CV No. 75010 DID NOT PRECLUDE THE REGIONAL TRIAL COURT (RTC) FROM PROCEEDING WITH THE DETERMINATION OF JUST COMPENSATION OF THE SUBJECT LANDS, AS THE PRONOUNCEMENT IN THE SAID CASE ON THE MATTER OF COMPUTATION OF JUST COMPENSATION IS A MERE *OBITER DICTUM* SINCE THE ISSUE RAISED THEREIN MERELY PERTAINED TO THE LEGAL STANDING OF THE LANDBANK OF THE PHILIPPINES (LBP) TO INSTITUTE THE COMPLAINTS FOR JUST COMPENSATION AND NOT THE VALUATION OF THE SUBJECT LANDS. — As correctly observed by the CA, the decision in CA-G.R. CV No. 75010 did not preclude the RTC from proceeding with the determination of just compensation of the subject lands since the issue raised in the said case merely pertained to the LBP's legal standing to institute the complaints for just compensation and not the valuation of the subject lands. The pronouncement in the said decision on the matter of computation of just compensation was a mere *obiter dictum*, an opinion expressed upon some question of law that was *not necessary* in the determination of the case before it. As succinctly pointed out in the case of *LBP v. Suntay*, "it is a remark made, or opinion expressed, by a judge, in his decision upon a cause *by the way* that is, *incidentally* or *collaterally*, and not directly upon the question before him, or upon a point not necessarily involved in the determination of the cause, or introduced by way of illustration, or analogy or argument. It does not embody the resolution or determination of the court, and is made without argument, or full consideration of the point. It **lacks the force of an adjudication, being a mere expression of an opinion with no binding force for purposes of *res judicata*."**

7. LABOR AND SOCIAL LEGISLATION; COMPREHENSIVE AGRARIAN REFORM LAW OF 1988 (RA 6657); JUST COMPENSATION; THE CONCEPT OF JUST

COMPENSATION EMBRACES NOT ONLY THE CORRECT DETERMINATION OF THE AMOUNT TO BE PAID TO THE LANDOWNER, BUT ALSO THE PAYMENT OF THE LAND WITHIN A REASONABLE TIME FROM ITS TAKING, AS OTHERWISE, COMPENSATION CANNOT BE CONSIDERED "JUST," FOR THE OWNER IS MADE TO SUFFER THE CONSEQUENCE OF BEING IMMEDIATELY DEPRIVED OF HIS LAND WHILE BEING MADE TO WAIT FOR YEARS BEFORE ACTUALLY RECEIVING THE AMOUNT NECESSARY TO COPE WITH HIS LOSS. — With respect to the award of twelve percent (12%) interest on the unpaid just compensation for Land 3 subject of **G.R. No. 214021**, the Court finds untenable the LBP's contention that the same was bereft of factual and legal bases, grounded on its having promptly paid Santos the initial valuation therefor barely two months after it approved the DAR's valuation on June 26, 2000. Notably, while tbe LBP released the initial valuation in the amount of ₱46,781.58 in favor of Santos in the year 2000, the said amount is way below, or only four (4%) of the just compensation finally adjudged by the RTC. To be considered as just, the compensation must be fair and equitable, and the landowners must have received it without any delay. It is doctrinal that the concept of just compensation contemplates of just and timely payment. It embraces not only the correct determination of the amount to be paid to the landowner, but also the payment of the land within a reasonable time from its taking, as otherwise, compensation cannot be considered "just," for the owner is made to suffer the consequence of being immediately deprived of his land while being made to wait for years before actually receiving the amount necessary to cope with his loss.

8. ID.; ID.; ID.; IN EXPROPRIATION CASES, INTEREST IS IMPOSED AS A PENALTY FOR DAMAGES INCURRED BY THE LANDOWNER DUE TO THE DELAY IN THE PAYMENT OF JUST COMPENSATION, PEGGED AT THE RATE OF TWELVE PERCENT (12%) PER ANNUM ON THE UNPAID BALANCE OF THE JUST COMPENSATION, RECKONED FROM THE TIME OF TAKING, OR THE TIME WHEN THE LANDOWNER WAS DEPRIVED OF THE USE AND BENEFIT OF HIS PROPERTY, UNTIL FULL PAYMENT.— [I]n expropriation

cases, **interest is imposed if there is delay in the payment of just compensation to the landowner since the obligation is deemed to be an effective forbearance on the part of the State.** Such interest shall be pegged at the rate of twelve percent (12%) per annum on the unpaid balance of the just compensation, reckoned from the time of taking, or the time when the landowner was deprived of the use and benefit of his property, *such as when title is transferred to the Republic, or emancipation patents are issued by the government, until full payment.* To clarify, unlike the six percent (6%) annual incremental interest allowed under DAR AO No. 13, Series of 1994, DAR AO No. 2, Series of 2004 and DAR AO No. 6, Series of 2008, this twelve percent (12%) annual interest is not granted on the computed just compensation; rather, it is a penalty imposed for damages incurred by the landowner due to the delay in its payment. Accordingly, the award of twelve percent (12%) annual interest on the unpaid balance of the just compensation for Land 3 should be computed from the time of taking, and not from January 1, 2010 as ruled by the RTC and the CA, until full payment on October 12, 2011.

APPEARANCES OF COUNSEL

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D E C I S I ON

PERLAS-BERNABE, *J.*:

Before the Court are consolidated petitions for review on *certiorari*[1] assailing the Decision[2] dated December 4, 2013 and the Resolution[3] dated August 11, 2014 of the Court of Appeals (CA) in CA-G.R. SP Nos. 110779 and 121813, which affirmed

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[1] *Rollo* (G.R. No. 213863), pp. 32-57; *rollo* (G.R. No. 214021), pp. 3-22.

[2] *Rollo* (G.R. No. 213863), pp. 65-80; *rollo* (G.R. No. 214021), pp. 29-44.

the Orders dated July 9, 2009[4] and August 24, 2009[5] of the Regional Trial Court of Naga City (RTC), Branch 23, acting as a Special Agrarian Court (SAC), in Civil Case Nos. 2001-0229 and 2001-0315, and the Order[6] dated October 10, 2011 in Civil Case No. 2001-0315, directing the Land Bank of the Philippines (LBP) to: (*a*) release to Edgardo L. Santos (Santos) the initial valuation of Lands 1 and 2 upon submission of two (2) valid identification (ID) cards, two (2) latest ID pictures, current community tax certificate (CTC), and execution of a Deed of Assignment, Warranties and Undertaking in favor of the LBP; and (*b*) pay twelve percent (12%) interest on the unpaid just compensation for Land 3, reckoned from January 1, 2010 until full payment.

The Facts

Santos owned three (3) parcels of agricultural land devoted to corn situated in the Municipality of Sagnay, Camarines Sur, covered by Tax Declaration (TD) Nos. 97-018-0579 (Land 1) and 97-010-076 (Land 2),[7] and Transfer Certificate of Title (TCT) No. 5717[8] (Land 3; collectively, subject lands).

In 1984, the subject lands were placed under the government's Operation Land Transfer Program[9] pursuant to Presidential Decree (PD) No. 27,[10] and distributed to the farmer-beneficiaries who were issued the corresponding Emancipation Patents.[11] The Department of Agrarian Reform (DAR) fixed the just

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Penned by Associate Justice Victoria Isabel A. Paredes with Associate Justices Elihu A. Ybañez and Eduardo B. Peralta, Jr. concurring.

[3] *Rollo* (G.R. No. 213863), pp. 83-85; *rollo* (G.R. No. 214021), pp. 26-28.

[4] CA *rollo* (CA-G.R. SP No. 110779), pp. 45-47. Penned by Presiding Judge Valentin E. Pura, Jr.

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

[6] *Rollo* (G.R. No. 214021), pp. 45-49.

[7] See *id*. at 30.

[8] *Id*. at 64-66-A.

[9] *Id*. at 30.

[10] Entitled "DECREEING THE EMANCIPATION OF TENANTS FROM

compensation at ₱164,532.50 for Land ₱1, P39,841.93 for Land 2,[12] and ₱66,214.03 for Land 3,[13] using the formula provided under Executive Order No. (EO) 228,[14] Series of 1987.

On May 25, 2000, the LBP received the claim folder covering the subject lands[15] and allowed Santos to collect the initial valuation for Land 3. It withheld the release of the valuation for Lands 1 and 2 until the submission of the certificates of title thereto,[16] since it was discovered that they were covered by Decree Nos. N-82378[17] and 622575,[18] respectively.

Thus, on August 30, 2000 and December 17, 2003, respectively, Santos was issued Agrarian Reform (AR) Bond No. 0079665 in the amount of ₱11,674.59 representing the initial valuation of Land 3 and AR Bond No. 0079666 in the amount of ₱30,428.83 representing the six percent (6%) increment pursuant to PD 27 and EO 228, and paid cash in the total amount of ₱4,678.16.[19]

Finding the valuation unreasonable, Santos filed three (3) petitions[20] for summary administrative proceedings for the

THE BONDAGE OF THE SOIL, TRANSFERRING TO THEM THE OWNERSHIP OF THE LAND THEY TILL AND PROVIDING THE INSTRUMENTS AND MECHANISM THEREFOR" (approved on October 21, 1972).

[11] See *rollo* (G.R. No. 213863), p. 37; and *rollo* (G.R. No. 214021), pp. 30-31.

[12] See CA *rollo* (CA-G.R. SP No. 110779), p. 45.

[13] See *rollo* (G.R. No. 213863), p. 37.

[14] Entitled "DECLARING FULL LAND OWNERSHIP TO QUALIFIED FARMER BENEFICIARIES COVERED BY PRESIDENTIAL DECREE NO. 27; DETERMINING THE VALUE OF REMAINING UNVALUED RICE AND CORN LANDS SUBJECT OF P.D. NO. 27; AND PROVIDING FOR THE MANNER OF PAYMENT BY THE FARMER BENEFICIARY AND MODE OF COMPENSATION TO THE LANDOWNER" (approved on July 17, 1987).

[15] *Rollo* (G.R. No. 214021), p. 51.

[16] See *rollo* (G.R. No. 213863), p. 67; and *rollo* (G.R. No. 214021), p. 31.

[17] CA *rollo* (CA-G.R. SP No. 110779), pp. 367-368.

[18] *Id*. at 366 and 369-370.

[19] See *rollo* (G.R. No. 214021), pp. 54 and 60.

determination of just compensation of the subject lands before the Office of the Provincial Adjudicator (PARAD) of Camarines Sur, docketed as DARAB Case Nos. V-RC-051-CS-00, V-RC-074-CS-00, and V-RC-075-CS-00.

On March 27, 2001, the PARAD rendered separate decisions[21] fixing the just compensation as follows: (*a*) ₱510,034.29[22] for Land 1; (*b*) ₱2,532,060.31[23] for Land 2; and (*c*) P1,147,466.73 [24] for Land 3, using the formula,[25] **LV = AGP x 2.5 x GSP**. However, in arriving at such values, the PARAD used the recent government support price (GSP) for corn of ₱300.00/cavan (₱6.00/kilo) as certified by the National Food Authority Provincial Manager of Camarines Sur, instead of the ₱31.00/cavan provided under Section 2[26] of EO 228. Hence, it no longer applied the six percent (6%) annual incremental interest granted under DAR Administrative Order (DAR AO) No. 13,[27] Series

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[20] CA *rollo* (CA-G.R. SP No. 110779), pp. 211-221.

[21] *Id*. at 249-253, 254-258, and 259-263. All penned by Provincial Adjudicator Pedro B. Jamer, Jr.

[22] *Id*. at 252.

[23] *Id*. at 257.

[24] See *rollo* (G.R. No. 214021), p. 70. See also CA *rollo* (CA-G.R. SP No. 110779), p. 262.

[25] *Rollo* (G.R. No. 214021), p. 70.
Where:
LV = Land Value
AGP = Average Gross Production of corn in cavan of 50 kilos
GSP = Government Support Price of corn

[26] SECTION 2. Henceforth, the valuation of rice and corn lands covered by P.D. No. 27 shall be based on the average gross production determined by the Barangay Committee on Land Production in accordance with Department Memorandum Circular No. 26, series of 1973, and related issuances and regulations of the Department of Agrarian Reform. *The average gross production per hectare shall be multiplied by two and a half (2.5), the product of which shall be multiplied by* Thirty Five Pesos (₱35.00), the government support price for one cavan of 50 kilos of palay on October 21, 1972, or *Thirty One Pesos (P31.00), the government support price for one cavan of 50 kilos of corn on October 21, 1972*, and the amount arrived at shall be the value of the rice and corn land, as the case may be, for the purpose of determining its cost to the farmer and compensation to the landowner. (Underscoring supplied)

of 1994. In a letter[28] dated September 5, 2001, Santos unconditionally accepted and called for the immediate payment of the valuations for Lands 2 and 3.

Dissatisfied with the PARAD's valuation, the LBP instituted two (2) separate complaints[29] for the determination of just compensation before the RTC, averring that the computations were erroneous when they disregarded the formula provided under EO 228. The cases were raffled to its Branch 21, and docketed as **Civil Case Nos. 2001-0299**[30] for Land 1, and **2001-0315**[31] for Lands 2 and 3.

Santos moved to dismiss[32] the complaints on the ground that the LBP has no legal personality to institute such action, and that the complaints were barred by the finality of the PARAD's Decision.

In a consolidated Order[33] dated November 9, 2001, the RTC dismissed both complaints. Meanwhile, Branch 23 of the same RTC was designated as the new SAC that gave due course to the LBP's notices of appeal.[34] The appeals, however, were set aside by the CA's Fifth and Third Divisions, which remanded the cases to the RTC for appropriate proceedings, and computation of just compensation, respectively.[35]

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[27] Entitled "RULES AND REGULATIONS GOVERNING THE GRANT OF INCREMENT OF SIX PERCENT (6%) YEARLY INTEREST COMPOUNDED ANNUALLY ON LANDS COVERED BY PRESIDENTIAL DECREE NO. 27 AND EXECUTIVE ORDER NO. 228" (approved on October 27, 1994).

[28] See *rollo* (G.R. No. 214021), p. 72.

[29] CA *rollo* (CA-G.R. SP No. 110779), pp. 264-274.

[30] *Id*. at 264-268.

[31] *Id*. at 270-274.

[32] See the motions to dismiss dated August 1, 2001 and August 23, 2001 in Civil Case Nos. 2001-0299 and 2001-0315; *Id*. at pp. 277-290 and 291-303, respectively.

[33] *Id.* at 304-311. Penned by Judge Ramon A. Cruz.

[34] See *rollo* (G.R. No. 213863), p. 130.

On May 5, 2009, Santos filed before the RTC a motion to release the initial valuation for Lands 1 and 2 as fixed by the DAR, which was granted on June 2, 2009, conditioned on the submission of several documentary requirements.[36] Santos moved for reconsideration, pointing out that what was sought was the initial valuation only and not its full payment, but nonetheless, committed (*a*) to submit two (2) valid ID cards, two (2) latest ID pictures and his CTC for the current year, and (*b*) to execute a Deed of Assignment, Warranties and Undertaking in favor of the LBP.[37]

In opposition, the LBP insisted that Santos must: (*a*) first establish his ownership over the said properties, it appearing that a Decree covering Land 1 was issued in favor of a certain Mariano Garchitorena, hence, the owner's duplicate of the said title must be surrendered to the Registry of Deeds for cancellation; and (*b*) submit a real estate tax clearance to prove that there were no encumbrances burdening the property and that the taxes thereon had been fully paid until 1972.[38]

In an **Order**[39] **dated July 9, 2009**, the RTC ruled in favor of Santos, holding that since Land 1 was processed as an untitled property and the LBP had admitted in its petitions for just compensation that Santos was the owner of the untitled lands covered by PD 27 as reflected in the tax declarations, the LBP cannot maintain an inconsistent position by requiring Santos to prove his ownership thereto. It added that the submission of the required documents may still be directed upon full payment of the just compensation.

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[35] The cases were docketed as **CA-G.R. CV No. 74919** (for Civil Case No. 2001-0299) and raffled to the CA's Fifth Division and **CA-G.R. CV No. 75010** (for Civil Case No. 2001-0315) was raffled to the Third Division; see *rollo* (G.R. No. 213863), p. 68; *rollo* (G.R. No. 214021), p. 32.

[36] See CA *rollo* (CA-G.R. SP No. 110779), p. 45.

[37] *Id*. at 46.

[38] *Id.* 45-46.

[39] *Id*. at 45-47.

The LBP's motion for reconsideration[40] was denied in an **Order**[41] **dated August 24, 2009**.

The LBP elevated the matter to the CA *via* a petition for *certiorari* and prohibition[42] with prayer for the issuance of a writ of preliminary injunction and/or temporary restraining order (TRO), docketed as **CA-G.R. SP No. 110779**, asserting that the RTC abused its discretion considering that: (*a*) it was not at liberty to disregard[43] DAR AO No. 2, Series of 2005,[44] which prescribes the requirements for the release of the initial valuation to a landowner; and (*b*) no further proceedings were necessary to arrive at the just compensation for Lands 2 and 3 in view of the final and executory decision in **CA-G.R. CV No. 75010** that directed the remand of the case to the RTC for computation purposes only, hence, *res judicata* had set in.[45]

The LBP's application for the issuance of a TRO having been denied,[46] it was constrained to deposit the initial valuation for Lands 1 and 2 as directed by the RTC[47] after Santos' assignee,[48] Romeo Santos, signed the required Deed of Assignment, Warranties and Undertaking[49] in favor of the LBP.

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[40] See motion for reconsideration dated July 17, 2009; *id*. at 129-136.

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

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

[43] *Id*. at 20.

[44] Entitled "RULES AND PROCEDURES GOVERNING THE ACQUISITION OF AGRICULTURAL LANDS SUBJECT OF VOLUNTARY OFFER TO SELL AND COMPULSORY ACQUISITION AND THOSE COVERED UNDER EXECUTIVE ORDER NO. 407" (approved on May 12, 2005).

[45] See CA *rollo* (CA-G.R. SP No. 110779), p. 30.

[46] See Resolution dated November 27, 2009; *id*. at 375-377. Penned by Associate Justice Ricardo R. Rosario with Associate Justices Jose C. Reyes, Jr. and Magdangal M. de Leon concurring.

[47] See *rollo* (G.R. No. 213863), p. 41.

[48] See Deed of Assignment dated February 13, 2002; CA *rollo* (CA-G.R. SP No. 121813), p. 59.

In an Order[50] dated March 17, 2010, the RTC directed the LBP to submit a revaluation for Lands 1, 2, and 3 in accordance with the factors set forth under Republic Act (RA) No. 6657,[51] otherwise known as the "Comprehensive Agrarian Reform Law of 1988," as implemented by DAR AO No. 1, Series of 2010.[52]

In compliance therewith, the LBP recomputed the valuation of the subject lands as follows: ₱514,936.44[53] for Land 1, ₱2,506,873.43[54] for Land 2, and ₱1,155,223.41[55] for Land 3, which Santos accepted. Considering, however, the pendency of **CA-G.R. SP No. 110779** involving Lands 1 and 2, Santos moved for a separate judgment relative to Land 3.[56]

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[49] CA *rollo* (CA-G.R. No. 110779), pp. 361-364.

[50] *Rollo* (G.R. No. 214021), p. 80.

[51] Entitled "AN ACT INSTITUTING A COMPREHENSIVE AGRARIAN REFORM PROGRAM TO PROMOTE SOCIAL JUSTICE AND INDUSTRIALIZATION, PROVIDING THE MECHANISM FOR ITS IMPLEMENTATION, AND FOR OTHER PURPOSES" (approved on June 10, 1988).

[52] Entitled "RULES AND REGULATIONS ON VALUATION AND LANDOWNERS COMPENSATION INVOLVING TENANTED RICE AND CORN LANDS UNDER PRESIDENTIAL DECREE (P.D.) NO. 27 AND EXECUTIVE ORDER (E.O.) NO. 228" which took effect on July 1, 2009.

[53] See *rollo* (G.R. No. 213863), p. 42.

[54] *Rollo* (G.R. No. 214021), pp. 35 and 82.

[55] *Id.* at 35 and 83. As gathered from the records, it appears that the revalued amounts were computed using the formula, **LV = (CNI x 0.90) + (MV x 0.10).**

> Where:
> LV = Land Value
> CNI = Capitalized Net Income
> MV = Market Value per Tax Declaration
> which is the applicable formula if no *comparative sales* data are available. (See DAR AO No. 1, Series of 2010, Part IV on "Land Valuation", No. 1)
> Thus, the LV for Land 3 was computed as follows:
> LV = (CNI x 0.90) + (MV x 0.10)
> = (₱76,500.00 x 0.90) + (₱91,713.67 x 0.10) [*Id.* at 83]
> = ₱68,850.00 + ₱9,171.37

The RTC Ruling

On June 22, 2011, the RTC issued a Judgment[57] in Civil Case No. 2001-0315, adopting and approving the LBP's uncontested revaluation for Land 3 in the amount of ₱1,155,223.41, and ordering its payment to Santos in accordance with Section 18 of RA 6657, minus the initial valuation that had already been paid to him.

Santos moved for reconsideration, contending that the RTC failed to order the payment of twelve percent (12%) interest reckoned from the time the property was taken from him by the government in 1972 and distributed to the farmer beneficiaries until full payment of the just compensation.[58] In an Order[59] dated August 31, 2011, the RTC granted the motion and awarded twelve percent (12%) interest computed from June 26, 2000 when the LBP approved the payment of the initial valuation for the property up to the date the decision was rendered, or a total amount of ₱1,437,669.75.

Both parties moved for reconsideration.[60]

In an **Order**[61] **dated October 10, 2011**, the RTC modified its August 31, 2011 Order, holding that the twelve percent (12%) interest should be reckoned from January 1, 2010 until full payment since the revaluation of Land 3 already included the required six percent (6%) annual incremental interest under DAR AO No. 13, Series of 1994,[62] DAR AO No. 2, Series of 2004,[63] and DAR AO No. 6, Series of 2008,[64] from the time of

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= ₱78,021.37 x 14.8065 has. [*Id.*]
= **₱1,155,223.41** [*Id.*]

[56] See *rollo* (G.R. No. 213863), p. 42; See also *rollo* (G.R. No. 214021), p. 35.

[57] *Rollo* (G.R. No. 214021), pp. 57-58. Penned by Judge Valentin E. Pura, Jr.

[58] *Id.* at 50.

[59] *Id.* at 50-56.

[60] *Id.* at 46.

[61] *Id.* at 45-49.

taking until December 31, 2009.

Dissatisfied, Santos filed a petition for review[65] before the CA, docketed as **CA-G.R. SP No. 121813**, which was subsequently consolidated with the LBP's petition in **CA-G.R. SP No. 110779**.[66]

On October 12, 2011, the LBP fully paid Santos the amount of ₱1,155,223.41 representing the just compensation for Land 3.[67]

The CA Ruling

In a Decision[68] dated December 4, 2013, the CA dismissed the petitions, and affirmed the RTC's Orders dated July 9, 2009 and August 24, 2009 subject of CA-G.R. SP No. 110779, and the Order dated October 11, 2011 subject of CA-G.R. SP No. 121813.

In **CA-G.R. SP No. 110779**, the CA ruled that no grave abuse

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[62] Under this AO, six percent (6%) compounded yearly interest is granted to lands covered by PD 27 and EO 228 for the delay in the payment of just compensation, from the time of taking until November 1994.

[63] Entitled "AMENDMENT TO ADMINISTRATIVE ORDER NO. 13, SERIES OF 1994 ENTITLED "RULES AND REGULATIONS GOVERNING THE GRANT OF INCREMENT OF SIX PERCENT (6%) YEARLY INTEREST COMPOUNDED ANNUALLY ON LANDS COVERED BY PRESIDENTIAL DECREE (P.D.) NO. 27 AND EXECUTIVE ORDER (E.O.) NO. 228" dated November 4, 2004. This extended the grant of the six percent (6%) incremental annual interest up to December 2006.

[64] Entitled "AMENDMENT TO DAR ADMINISTRATIVE ORDER NO. 2., S. OF 2004 ON THE GRANT OF INCREMENT OF SIX PERCENT (6%) YEARLY INTEREST COMPOUNDED ANNUALLY ON LANDS COVERED BY PRESIDENTIAL DECREE (PD) NO. 27 AND EXECUTIVE ORDER (EO) NO. 228" dated July 28, 2008. This further extended the grant of the six percent (6%) incremental annual interest up to December 31, 2009.

[65] CA *rollo* (CA-G.R. SP No. 121813), pp. 12-43.

[66] *Rollo* (G.R. No. 213863), p. 43.

[67] See *rollo* (G.R. No. 214021), p. 116.

[68] *Rollo* (G.R. No. 213863), pp. 65-80; *rollo* (G.R. No. 214021), pp. 29-44.

of discretion was committed by the RTC when it proceeded with the determination of just compensation, thereby rejecting the LBP's contention that the RTC was barred by *res judicata* from conducting further proceedings to determine just compensation with the finality[69] of its earlier decisions in CA-G.R. CV Nos. 74919[70] and 75010.[71] It pointed out that the said decisions merely resolved the LBP's personality to institute an action for determination of just compensation, and reinstated the LBP's complaints for just compensation which were well within the RTC's original and exclusive jurisdiction under RA 6657. It likewise sustained the release of the initial valuation for Lands 1 and 2 conditioned on the submission of only the documents mentioned in the RTC's July 9, 2009 Order, finding that the failure to produce the titles thereto were beyond Santos' control and that his claim of ownership had been sufficiently established. It added that the RTC's June 22, 2011 Judgment conditioned the release of the final just compensation upon compliance with the requirements of the law.[72]

In **CA-G.R. SP No. 121813**, the CA upheld the RTC's ruling that Santos was entitled to a twelve percent (12%) interest reckoned from January 1, 2010 until its full payment since the revaluation by the LBP of Land 3 already included six percent (6%) annual incremental interest until December 31, 2009.[73]

Aggrieved, both parties moved for reconsideration which were denied in a Resolution[74] dated August 11, 2014; hence, these consolidated petitions.

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[69] See Entry of Judgment; *rollo* (G.R. No. 213863), p. 138.

[70] See Decision dated February 18, 2005; CA *rollo* (CA-G.R. SP No. 110779), pp. 328-343. Penned by Associate Justice Ruben T. Reyes with Associate Justices Josefina Guevara-Salonga and Fernanda Lampas Peralta concurring.

[71] See Decision dated February 28, 2007; *id*. at 344-352. Penned by Associate Justice Mario L. Guariña III with Associate Justices Portia Alino-Hormachuelos and Japar B. Dimaampao concurring.

[72] *Rollo* (G.R. No. 213863), pp. 74-77; *rollo* (G.R. No. 214021), pp. 38-41.

[73] *Rollo* (G.R. No. 213863), pp. 77-79; *rollo* (G.R. No. 214021), pp. 41-43.

[74] *Rollo* (G.R. No. 213863), pp. 83-85; *rollo* (G.R. No. 214021), pp. 26-28.

The Issues Before the Court

In its petition in **G.R. No. 213863**, the LBP contended that the CA committed reversible error in: (*a*) not finding the RTC to have acted with grave abuse of discretion in allowing the release of the initial valuation of Lands 1 and 2 without submitting the documents listed under DAR AO No. 2, Series of 2005; (*b*) ignoring the final decision in CA-G.R. CV No. 75010 that effectively barred the RTC from further proceeding with the determination of just compensation relative to Lands 2 and 3; and *(c)* holding it liable for twelve percent (12%) interest on the unpaid just compensation for Land 3.

On the other hand, Santos raised in his petition in **G.R. No. 214021** the sole question of whether or not the CA erred in reckoning the award of twelve percent (12%) interest from January 1, 2010 until full payment of the just compensation.

The Court's Ruling

The Court has repeatedly held that **the seizure of landholdings or properties covered by PD 27 did not take place on October 21, 1972, but upon the payment of just compensation.**[75] Thus, if the agrarian reform process is still incomplete, as in this case where the just compensation due the landowner has yet to be settled, just compensation should be determined and the process concluded under RA 6657.[76]

As summarized in *LBP v. Sps. Banal*,[77] the procedure for the determination of just compensation under RA 6657 commences with the LBP determining the initial valuation of the lands under the land reform program.[78] Using the LBP's valuation, the DAR makes an offer to the landowner.[79] In case

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[75] See *LBP v. Ibarra*, G.R. No. 182472, November 24, 2014.

[76] See *LBP v. Heirs of Alsua*, G.R. No. 211351, February 4, 2015.

[77] 478 Phil. 701 (2004).

[78] *Id.* at 708-709.

[79] Under Executive Order No. 405 issued on June 14, 1990, the DAR is required to make use of the determination of the land valuation and

the landowner rejects the offer, the DAR adjudicator conducts a summary administrative proceeding to determine the compensation for the land by requiring the landowner, the LBP, and other interested parties to submit evidence on the just compensation of the land. A party who disagrees with the decision of the DAR adjudicator may bring the matter to the RTC designated as a Special Agrarian Court for final determination of just compensation.[80]

Note that in case of rejection, RA 6657 entitles the landowner to withdraw the initial valuation of the landholding pending the determination of just compensation.[81] In this case, however, the LBP, citing DAR AO No. 2, Series of 2005, posited that the release of such amount is conditioned on the submission of all the documentary requirements listed therein, and that the RTC's failure to require Santos to comply therewith constitutes grave abuse of discretion.[82]

The Court is not persuaded.

Grave abuse of discretion connotes an arbitrary or despotic exercise of power due to passion, prejudice or personal hostility; or the whimsical, arbitrary, or capricious exercise of power that amounts to an evasion or refusal to perform a positive duty enjoined by law or to act at all in contemplation of law. For an act to be struck down as having been done with grave abuse of discretion, the abuse must be patent and gross.[83]

Contrary to the LBP's assertion in **G.R. No. 213863**, nowhere from the said administrative guideline can it be inferred that the submission of the complete documents is a pre-condition

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compensation by the LBP as the latter is primarily responsible for the determination of the land valuation and compensation.

[80] This is essentially the procedure outlined in Section 16 of RA 6657.

[81] See *LBP v. Heir of Vda. de Arieta*, 642 Phil. 198, 223 (2010); See also sub-paragraph (4) of the Statement of Policies of DAR AO No. 2, Series of 2005.

[82] *Rollo* (G.R. No. 213863), pp. 45-47.

[83] See *LBP v. Pagayatan*, 659 Phil. 198, 214 (2011).

for the release of the initial valuation to a landowner. To hold otherwise would effectively protract payment of the amount which RA 6657 guarantees to be immediately due the landowner even pending the determination of just compensation. As elucidated in *LBP v. CA*:[84]

> As an exercise of police power, the expropriation of private property under the CARP puts the landowner, and not the government, in a situation where the odds are already stacked against his favor. He has no recourse but to allow it. His only consolation is that he can negotiate for the amount of compensation to be paid for the expropriated property. As expected, the landowner will exercise this right to the hilt, but subject however to the limitation that he can only be entitled to a "just compensation." Clearly therefore, by rejecting and disputing the valuation of the DAR, the landowner is merely exercising his right to seek just compensation. **If we are to x x x [withhold] the release of the offered compensation despite depriving the landowner of the possession and use of his property, we are in effect penalizing the latter for simply exercising a right afforded to him by law.**
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> Obviously, this would render the right to seek a fair and just compensation illusory as it would discourage owners of private lands from contesting the offered valuation of the DAR even if they find it unacceptable, for fear of the hardships that could result from long delays in the resolution of their cases. This is contrary to the rules of fair play because the concept of just compensation embraces not only the correct determination of the amount to be paid to the owners of the land, but also the payment of the land within a reasonable time from its taking. Without prompt payment, compensation cannot be considered "just" for the property owner is made to suffer the consequence of being immediately deprived of his land while being made to wait for a decade or more before actually receiving the amount necessary to cope with his loss.[85] (Emphasis supplied)

Thus, the leniency accorded by the RTC cannot be construed as a capricious exercise of power as it merely expedited the procedure for payment which is inherently fairer under the circumstances considering that: (*a*) Santos has been "deprived

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[84] 327 Phil. 1047 (1996).

[85] *Id*. at 1053-1054.

of his right to enjoy his properties as early as 1983, and has not yet received any compensation therefor since then;"[86] *(b)* the existence of the certificates of title over Lands 1 and 2 which the LBP insists to be submitted had not been sufficiently established;[87] (*c*) the LBP had judicially admitted that Santos is the owner of Lands 1 and 2 which were identified as covered by tax declarations;[88] and (*d*) compliance with the required documents may still be directed before the full payment of the correct just compensation[89] which, up to this time, has not yet been finally determined. Moreover, as aptly pointed out by the CA, Santos' failure to produce the titles to Lands 1 and 2 was not motivated by any obstinate refusal to abide by the requirements but due to impediments beyond his control.[90]

Perforce, no reversible error or grave abuse of discretion can be imputed on the CA in sustaining the RTC Orders dated July 9, 2009 and August 24, 2009 which allowed the withdrawal of the initial valuation upon Santos' (*a*) submission of two (2) valid ID cards, two (2) latest ID pictures, and his current CTC, and (*b*) execution of a Deed of Assignment, Warranties and Undertaking in favor of the LBP.

Neither can the Court subscribe to the LBP's contention that the RTC was barred by *res judicata* from conducting further proceedings to determine just compensation for Lands 2 and 3 since the final and executory Decision in CA-G.R. CV No. 75010 merely called for a remand of the case for computation purposes only.

Res judicata means a matter adjudged, a thing judicially acted upon or decided; a thing or matter settled by judgment. The doctrine of *res judicata* provides that a final judgment, on the

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[86] CA *rollo* (CA-G.R. SP No. 110779), p. 46.

[87] *Id.* at 50.

[88] *Id.* at 46.

[89] *Id.* at 47.

[90] *Rollo* (G.R. No. 213863), pp. 76-77; *rollo* (G.R. No. 214021), pp. 40-41.

merits rendered by a court of competent jurisdiction is conclusive as to the rights of the parties and their privies and constitutes an absolute bar to subsequent actions involving the same claim, demand, or cause of action. The elements of *res judicata* are (*a*) identity of parties or at least such as representing the same interest in both actions; **(*b*) identity of rights asserted and relief prayed for, the relief being founded on the same facts**; and (*c*) the identity in the two (2) particulars is such that any judgment which may be rendered in the other action will, regardless of which party is successful, amount to *res judicata* in the action under consideration.[91]

As correctly observed by the CA, the decision in CA-G.R. CV No. 75010 did not preclude the RTC from proceeding with the determination of just compensation of the subject lands since the issue raised in the said case merely pertained to the LBP's legal standing to institute the complaints for just compensation and not the valuation of the subject lands.[92] The pronouncement in the said decision on the matter of computation of just compensation was a mere *obiter dictum*, an opinion expressed upon some question of law that was *not necessary* in the determination of the case before it.[93] As succinctly pointed out in the case of *LBP v. Suntay*,[94] "it is a remark made, or opinion expressed, by a judge, in his decision upon a cause *by the way*, that is, *incidentally* or *collaterally*, and not directly upon the question before him, or upon a point not necessarily involved in the determination of the cause, or introduced by way of illustration, or analogy or argument. It does not embody the resolution or determination of the court, and is made without argument, or full consideration of the point. It **lacks the force of an adjudication, being a mere expression of an opinion**

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[91] *LBP v. Pagayatan, supra* note 83, at 207-208, citing *Lanuza v. CA*, 494 Phil. 51, 58 (2005).

[92] See *Rollo* (G.R. No. 213863), pp. 74-75; *rollo* (G.R. No. 214021), pp. 38-39.

[93] See *LBP v. Suntay*, 678 Phil. 879, 913 (2011).

[94] See *id*.

[95] *Id*. at 913-914.

with no binding force for purposes of *res judicata*."[95]

Besides, it bears stressing that the original and exclusive jurisdiction over all petitions for the determination of just compensation is vested in the RTC,[96] hence, it cannot be unduly restricted in the exercise of its judicial function.

With respect to the award of twelve percent (12%) interest on the unpaid just compensation for Land 3 subject of **G.R. No. 214021**, the Court finds untenable the LBP's contention that the same was bereft of factual and legal bases, grounded on its having promptly paid Santos the initial valuation therefor barely two months after it approved the DAR's valuation on June 26, 2000.[97]

Notably, while the LBP released the initial valuation in the amount of ₱46,781.58 in favor of Santos in the year 2000, the said amount is way below, or only four (4%)[98] of the just compensation finally adjudged by the RTC. To be considered as just, the compensation must be fair and equitable, and the landowners must have received it without any delay.

It is doctrinal that the concept of just compensation contemplates of just and timely payment. It embraces not only the correct determination of the amount to be paid to the landowner, but also the payment of the land within a reasonable time from its taking, as otherwise, compensation cannot be considered "just," for the owner is made to suffer the consequence of being immediately deprived of his land while being made to

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[96] See Section 57, RA 6657.

[97] *Rollo* (G.R. No. 214021), p. 99.

[98] Initial Valuation ₱46,781.58
Final just compensation + 1,155,223.41 ÷
Percentage of initial valuation to final just compensation 4.04956994422404%

[99] *LBP v. Department of Agrarian Reform Adjudication Board*, 624 Phil. 773, 781 (2010).

wait for years before actually receiving the amount necessary to cope with his loss.[99]

In *LBP v. Orilla*,[100] the Court elucidated that "prompt payment" of just compensation is not satisfied by the mere deposit with any accessible bank of the provisional compensation determined by it or by the DAR, and its subsequent release to the landowner after compliance with the legal requirements set by RA 6657, to wit:

> Just compensation is defined as the full and fair equivalent of the property taken from its owner by the expropriator. It has been repeatedly stressed by this Court that the true measure is not the taker's gain but the owner's loss. The word "just" is used to modify the meaning of the word "compensation" to convey the idea that **the equivalent to be given for the property to be taken shall be real, substantial, full, and ample.**
>
> The concept of just compensation embraces not only the correct determination of the amount to be paid to the owners of the land, but also payment within a reasonable time from its taking. Without prompt payment, compensation cannot be considered "just" inasmuch as the property owner is made to suffer the consequences of being immediately deprived of his land while being made to wait for a decade or more before actually receiving the amount necessary to cope with his loss.
>
> Put differently, **while prompt payment of just compensation requires the immediate deposit and release to the landowner of the provisional compensation as determined by the DAR, it does not end there. Verily, it also encompasses the payment in full of the just compensation to the landholders as finally determined by the courts. Thus, it cannot be said that there is already prompt payment of just compensation when there is only a partial payment thereof, as in this case.**[101] (Emphasis supplied)

Thus, in expropriation cases, **interest is imposed if there is delay in the payment of just compensation to the landowner**

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[100] 578 Phil. 663 (2008).

[101] *Id.* at 676-677.

since the obligation is deemed to be an effective forbearance on the part of the State. Such interest shall be pegged at the rate of twelve percent (12%) per annum on the unpaid balance of the just compensation, reckoned from the time of taking, [102] or the time when the landowner was deprived of the use and benefit of his property, [103] *such as when title is transferred to the Republic,* [104] or *emancipation patents are issued by the government*, until full payment.[105] To clarify, unlike the six percent (6%) annual incremental interest allowed under DAR AO No. 13, Series of 1994, DAR AO No. 2, Series of 2004 and DAR AO No. 6, Series of 2008, this twelve percent (12%) annual interest is not granted on the computed just compensation; rather, it is a penalty imposed for damages incurred by the landowner due to the delay in its payment.[106]

Accordingly, the award of twelve percent (12%) annual interest on the unpaid balance of the just compensation for Land 3 should be computed from the time of taking, and not from January 1, 2010 as ruled by the RTC and the CA, until full payment on October 12, 2011.[107] However, copies of the emancipation patents issued to the farmer-beneficiaries have not been attached to the records of the case. Hence, the Court is constrained to remand the case to the RTC of Naga City for receipt of evidence as to the date of the grant of the emancipation patents, which shall serve as the reckoning point for the computation of the interests due Santos.

WHEREFORE, the petitions are **DENIED**. The Decision dated December 4, 2013 and the Resolution dated August 11, 2014 of the Court of Appeals in CA-G.R. SP Nos. 110779 and 121813 are hereby **AFFIRMED** with the **MODIFICATION** that the awarded twelve percent (12%) interest shall be computed

[102] See *LBP v. Santiago, Jr.*, G.R. No. 182209, October 3, 2012, 682 SCRA 264, 285.

[103] *LBP v. Lajom*, G.R. Nos. 184982 and 185048, August 20, 2014, 733 SCRA 511, 523; See also *LBP v. Heirs of Alsua*, G.R. No. 211351, February 4, 2015.

[104] *LBP v. Heirs of Encinas*, G.R. No. 167735, April 18, 2012, 670 SCRA 52, 60.

[105] *LBP v. Lajom, supra* note 103.

[106] *Id.* at 524.

[107] *Rollo* (G.R. No. 214021), p. 116.

from the date of taking until full payment of the just compensation on October 12, 2011 for the property covered by TCT No. 5717 (Land 3). The records of the case are **REMANDED** to the Regional Trial Court of Naga City, Branch 23 for further reception of evidence as to the date of the grant of the emancipation patents in favor of the farmer-beneficiaries of Land 3, which shall serve as the reckoning point for the computation of the said award.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 217694. January 27, 2016]

FAIRLAND KNITCRAFT CORPORATION, *petitioner, vs.* **ARTURO LOO PO,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; UNLAWFUL DETAINER; COMPLAINT FOR UNLAWFUL DETAINER, REQUIREMENTS.— Section 1 of Rule 70 of the Rules of Court lays down the requirements for filing a complaint for unlawful detainer x x x. Stated differently, unlawful detainer is a summary action for the recovery of possession of real property. This action may be filed by a lessor, vendor, vendee, or other person from whom the possession of any land or building is unlawfully withheld after the expiration or termination of the right to hold possession by virtue of any contract, express or implied. The possession of the defendant was originally legal, as his possession was permitted by the plaintiff on account of

an express or implied contract between them. The defendant's possession, however, became illegal when the plaintiff demanded that the defendant vacate the subject property due to the expiration or termination of the right to possess under the contract, and the defendant refused to heed such demand. A case for unlawful detainer must be instituted one year from the unlawful withholding of possession. A complaint sufficiently alleges a cause of action for unlawful detainer if it recites the following: (1) initially, possession of the property by the defendant was by contract with or by tolerance of the plaintiff; (2) eventually, such possession became illegal upon notice by the plaintiff to the defendant of the termination of the latter's right of possession; (3) thereafter, the defendant remained in possession of the property, and deprived the plaintiff of the enjoyment thereof; and (4) within one (1) year from the last demand on defendant to vacate the property, the plaintiff instituted the complaint for ejectment. There is no question that the complaint filed by Fairland adequately alleged a cause of action for unlawful detainer.

2. ID.; ID.; ID.; IF THE DEFENDANT FAILS TO ANSWER THE COMPLAINT WITHIN THE PERIOD PROVIDED, THE COURT HAS NO AUTHORITY TO DECLARE THE DEFENDANT IN DEFAULT, BUT SHALL RENDER JUDGMENT, EITHER *MOTU PROPRIO* OR UPON PLAINTIFF'S MOTION, BASED SOLELY ON THE FACTS ALLEGED IN THE COMPLAINT AND LIMITED TO WHAT IS PRAYED FOR.— The summons, together with the complaint and its annexes, was served upon Po on December 28, 2012. This presupposes that the MeTC found no ground to dismiss the action for unlawful detainer. Nevertheless, Po failed to file his answer on time and the MeTC had the option to render judgment *motu proprio* or on motion of the plaintiff. x x x. Section 6 is clear that in case the defendant failed to file his answer, the court shall render judgment, either *motu proprio* or upon plaintiffs motion, **based solely on the facts alleged in the complaint and limited to what is prayed for**. The failure of the defendant to timely file his answer and to controvert the claim against him constitutes his acquiescence to every allegation stated in the complaint. Logically, there is nothing to be done in this situation except to render judgment as may be warranted by the facts alleged in the complaint.

Similarly, under Section 7, Rule 70 of the Rules of Court, which governs the rules for forcible entry and unlawful detainer, if the defendant fails to answer the complaint within the period provided, the court has no authority to declare the defendant in default. Instead, the court, *motu proprio* or on motion of the plaintiff, shall render judgment as may be warranted by the **facts alleged in the complaint** and limited to what is prayed for. x x x. In this case, Po failed to file his answer to the complaint despite proper service of summons. He also failed to provide a sufficient justification to excuse his lapses. Thus, as no answer was filed, judgment must be rendered by the court as may be warranted by the facts alleged in the complaint.

3. ID.; ID.; ID.; THE PLAINTIFF IS NOT COMPELLED TO ATTACH HIS EVIDENCE TO THE COMPLAINT BECAUSE, AT THE INCEPTION STAGE, HE ONLY HAS TO FILE HIS COMPLAINT TO ESTABLISH HIS CAUSE OF ACTION, AND THERE IS NO NEED TO ATTACH PROOF OF OWNERSHIP IN THE COMPLAINT BECAUSE THE ALLEGATIONS THEREIN CONSTITUTED A SUFFICIENT CAUSE OF ACTION FOR UNLAWFUL DETAINER, FOR ONLY WHEN THE ALLEGATIONS IN THE COMPLAINT ARE SUFFICIENT TO FORM A CAUSE OF ACTION SHALL THE ATTACHMENT BECOME MATERIAL IN THE DETERMINATION THEREOF.— The lower courts erroneously dismissed the complaint of Fairland simply on the ground that it failed to establish by preponderance of evidence its ownership over the subject property. [T]he rules do not compel the plaintiff to attach his evidence to the complaint because, at this inception stage, he only has to file his complaint to establish his cause of action. Here, the court was only tasked to determine whether the complaint of Fairland alleged a sufficient cause of action and to render judgment thereon. Also, there was no need to attach proof of ownership in the complaint because the allegations therein constituted a sufficient cause of action for unlawful detainer. Only when the allegations in the complaint are insufficient to form a cause of action shall the attachment become material in the determination thereof. Even under Section 4 of the Rules of Summary Procedure, it is not mandatory to attach annexes to the complaint. In the case of *Lazaro v. Brewmaster* (*Lazaro*), where judgment was rendered based on the complaint

due to the failure of the defendant to file an answer under the Rules of Summary Procedure, it was written that: x x x To determine whether the complaint states a cause of action, all documents attached thereto may, in fact, be considered, particularly when referred to in the complaint. **We emphasize, however, that the inquiry is into the sufficiency, not the veracity of the material allegations in the complaint. Thus, consideration of the annexed documents should only be taken in the context of ascertaining the sufficiency of the allegations in the complaint.**

4. ID.; ID.; ID.; THE ATTACHMENT OF ANY DEED OF OWNERSHIP TO THE COMPLAINT IS NOT INDISPENSABLE AS AN ACTION FOR ULAWFUL DETAINER DOES NOT ENTIRELY DEPEND ON OWNERSHIP.— [T]here was no need for documentary attachments to prove Fairland's ownership over the subject property. [T]he present action is an action for unlawful detainer wherein only *de facto* or material possession is required to be alleged. Evidently, the attachment of any deed of ownership to the complaint is not indispensable because an action for unlawful detainer does not entirely depend on ownership.

5. ID.; ID.; ID.; INQUIRY INTO THE ATTACHED DOCUMENTS IN THE COMPLAINT IS FOR THE SUFFICIENCY, NOT THE VERACITY OF THE MATERIAL ALLEGATIONS IN THE COMPLAINT.— Fairland sufficiently alleged ownership and superior right of possession over the subject property. These allegations were evidently manifest in the complaint as Fairland claimed to have orally agreed to lease the property to Po. The Court is of the view that these allegations were clear and unequivocal and did not need supporting attachments to be considered as having sufficiently established its cause of action. Even the MeTC conceded that the complaint of Fairland stated a valid cause of action for unlawful detainer. It must be stressed that inquiry into the attached documents in the complaint is for the sufficiency, not the veracity, of the material allegations in the complaint.

6. ID.; ID.; ID.; THE FAILURE OF THE DEFENDANT TO TIMELY FILE HIS ANSWER AND CONTROVERT THE CLAIM AGAINST HIM CONSTITUTED HIS

ACQUIESCENCE TO EVERY ALLEGATION STATED IN THE COMPLAINT.— [C]onsidering that Po failed to file an answer within the prescribed period, he was deemed to have admitted all the allegations in the complaint including Fairland's claim of ownership. To reiterate, the failure of the defendant to timely file his answer and controvert the claim against him constituted his acquiescence to every allegation stated in the complaint. In the Entry of Appearance with Motion for Leave of Court to file Comment/Opposition to Motion to Render Judgment, which was belatedly filed and so was denied by the MeTC, Po merely denied the allegations against him without even bothering to aver why he claimed to have a superior right of possession of the subject property.

7. ID.; ID.; ID.; FORCIBLE ENTRY AND UNLAWFUL DETAINER CASES ARE SUMMARY PROCEEDINGS DESIGNED TO PROVIDE FOR AN EXPEDITIOUS MEANS OF PROTECTING ACTUAL POSSESSION OR THE RIGHT TO POSSESSION OF THE PROPERTY INVOLVED AND IT DOES NOT ADMIT OF A DELAY IN THE DETERMINATION THEREOF.— [I]t is only at the later stage of the summary procedure when the affidavits of witnesses and other evidence on factual issues shall be presented before the court. Sections 8 and 9 of the Rules on Summary Procedure state: x x x [I]t is worth stressing that these provisions are exactly Sections 9 and 10 under Rule 70 of the Rules of Court. Accordingly, it is only at this part of the proceedings that the parties will be required to present and offer their evidence before the court to establish their causes and defenses. Before the issuance of the record of preliminary conference, the parties are not yet required to present their respective evidence. These specific provisions under the Rules of Summary Procedure which are also reflected in Rule 70 of the Rules of Court, serve their purpose to immediately settle ejectment proceedings. Forcible entry and unlawful detainer cases are summary proceedings designed to provide for an expeditious means of protecting actual possession or the right to possession of the property involved. It does not admit of a delay in the determination thereof. It is a 'time procedure' designed to remedy the situation. Thus, as a consequence of the defendant's failure to file an answer, the court is simply tasked to render judgment as may be warranted by the facts

alleged in the complaint and limited to what is prayed for therein.

8. ID.; EVIDENCE; JUDICIAL AFFIDAVIT RULE; THE ATTACHMENTS OF DOCUMENTARY OR OBJECT EVIDENCE TO THE AFFIDAVITS IS REQUIRED WHEN THERE WOULD BE A PRE-TRIAL OR PRELIMINARY CONFERENCE OR THE SCHEDULED HEARING; RULE NOT APPLICABLE IN SUCH CASE THERE IS NO NEED FOR A PRE-TRIAL, PRELIMINARY CONFERENCE OR HEARING.— The Court deems it proper to discuss the relevance of the Judicial Affidavit Rule or A.M. No. 12-8-8-SC, where documentary or object evidence are required to be attached. To begin with, the rule is not applicable because such evidence are required to be attached to a judicial affidavit, not to a complaint. Moreover, as the rule took effect only on January 1, 2013, it cannot be required in this case because this was earlier filed on December 12, 2012. Granting that it can be applied retroactively, the rule being essentially remedial, still it has no bearing on the ruling of this Court. In the Judicial Affidavit Rule, the attachments of documentary or object evidence to the affidavits is required when there would be a **pre-trial or preliminary conference or the scheduled hearing**. As stated earlier, where a defendant fails to file an answer, the court shall render judgment, either motu proprio or upon plaintiffs motion, based solely on the facts alleged in the complaint and limited to what is prayed for. Thus, where there is no answer, there is no need for a pre-trial, preliminary conference or hearing.

APPEARANCES OF COUNSEL

Arturo S. Santos for petitioner.
Marcelino B. Lomoya for respondent.

D E C I S I O N

MENDOZA, *J.*:

This is a petition for review on *certiorari*[1] seeking to reverse and set aside the October 31, 2014 Decision[2] and the March 6, 2015 Resolution[3] of the Court of Appeals (*CA*), in CA-G.R. SP No. 134701 which affirmed the September 16, 2013 Decision[4] of the Regional Trial Court of Pasig City, Branch 67 (*RTC*) in SCA Case No. 3831. The RTC decision, in turn, sustained the March 21, 2013 Decision[5] of the Metropolitan Trial Court, Branch 72, Pasig City (*MeTC*), which dismissed the unlawful detainer case filed by petitioner Fairland Knitcraft Corporation (*Fairland*) against respondent Arturo Loo Po (*Po*) for failure to prove its case by preponderance of evidence.

The Antecedents

In a complaint[6] for unlawful detainer, docketed as Civil Case No. 19429, filed before the MeTC, Fairland alleged that it was the owner of Condominium Unit No. 205 in Cedar Mansion II on Ma. Escriba Street, Pasig City. The said unit was leased by Fairland to Po by verbal agreement, with a rental fee of ₱20,000.00 a month, to be paid by Po at the beginning of each month. From March 2011, Po had continuously failed to pay rent. For said reason, Fairland opted not to renew the lease agreement anymore.

On January 30, 2012, Fairland sent a formal letter[7] to Po demanding that he pay the amount of ₱220,000.00, representing the rental arrears, and that he vacate the leased premises within fifteen (15) days from the receipt of the letter. Despite receipt

[1] *Rollo*, pp. 3-14.

[2] *Id*. at 16-21. Penned by Associate Justice Japar B. Dimaampao with Associate Justice Elihu A. Ybañez and Associate Justice Carmelita S. Manahan, concurring.

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

[4] *Id*. at 62-63. Penned by Presiding Judge Amorfina Cerrado-Cezar.

[5] *Id*. at 42-44. Penned by Presiding Judge Joy N. Casihan-Dumlao.

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

[7] *Id*. at 29.

of the demand letter and the lapse of the said 15-day period to comply, Po neither tendered payment for the unpaid rent nor vacated the premises. Thus, on December 12, 2012, Fairland was constrained to file the complaint for unlawful detainer before the MeTC. Po had until January 7, 2013 to file his answer but he failed to do so. Hence, on February 6, 2013, Fairland filed a motion to render judgment.[8]

In its February 21, 2013 Order,[9] the MeTC considered the case submitted for decision.

On March 1, 2013, Po's counsel filed his Entry of Appearance with Motion for Leave of Court to file Comment/Opposition to Motion to Render Judgment.[10] In the attached Comment/Opposition, Po denied the allegations against him and commented that there was no supporting document that would show that Fairland owned the property; that there was no lease contract between them; that there were no documents attached to the complaint which would show that previous demands had been made and received by him; that the alleged unpaid rental was ₱220,000.00, but the amount of damages being prayed for was ₱440,000.00; that the issue in the case was one of ownership; and that it was the RTC which had jurisdiction over the case.

The MeTC treated the comment/opposition as Po's answer to the complaint. Considering, however, that the case fell under the Rules of Summary Procedure, the same was deemed filed out of time. Hence, the motion was denied.[11]

The Ruling of the Metropolitan Trial Court

In its March 21, 2013 Decision, the MeTC dismissed the complaint for lack of merit due to Fairland's failure to prove its claim by preponderance of evidence. The MeTC explained that although the complaint sufficiently alleged a cause of action,

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

[9] *Id*. at 35.

[10] *Id*. at 36.

[11] *Id*. at 39.

Fairland failed to prove that it was entitled to the possession of the subject property. There was no evidence presented to support its claim against Po either.

Aggrieved, Fairland seasonably filed its appeal before the RTC under Rule 40 of the Rules of Court. Being an appealed case, the RTC required the parties to submit their respective memoranda.

In its memorandum,[12] Fairland argued that an unlawful detainer case was a special civil action governed by summary procedure. In cases where a defendant failed to file his answer, there was no need for a declaration of default. Fairland claimed that the Rules stated that in such cases, judgment should be based on the "facts alleged in the complaint,"[13] and that there was no requirement that judgment must be based on facts proved by preponderance of evidence. Considering that the presentation of evidence was not required when a defendant in an ejectment case failed to appear in a preliminary conference, the same should be applied when no answer had been filed.

Fairland continued that the failure to file an answer in an ejectment case was tantamount to an admission by the defendant of all the ultimate facts alleged in the complaint. There was no more need for evidence in such a situation as every allegation of ultimate facts in the complaint was deemed established by the defendant's acquiescence.

On July 18, 2013, Po filed his memorandum[14] and countered that there was no merit in Fairland's insistence that evidence was unnecessary when no answer had been filed. The facts stated in the complaint did not warrant a rendition of judgment in the plaintiffs favor. The court had the discretion to rule on the pleadings based on its evaluation of the allegation of facts.

Further, all the statements in the complaint were mere

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[12] *Id.* at 47-52.

[13] Section 6, Rules on Summary Procedure.

[14] *Id.* at 53-61.

allegations which were not substantiated by any competent evidence. Po asserted that there was no proof presented to show that the subject property was indeed owned by Fairland; that there was no lease contract between the parties; that he never received the demand letter, dated January 30, 2012; and that the amount stated in the prayer of the complaint did not coincide with the amount of unpaid rent. Po also reiterated that the case involved an issue of ownership over the condominium unit he was occupying.

The Ruling of the Regional Trial Court

On September 16, 2013, the RTC affirmed the MeTC ruling and agreed that Fairland failed to establish its case by preponderance of evidence. There was nothing on record that would establish Fairland's right over the property subject of the complaint. Though it had been consistently ruled that the only issue for resolution in an ejectment case was the physical or material possession of the property involved, independent of any claim of ownership by any of the party-litigants, the court may go beyond the question of physical possession provisionally. The RTC concluded that even assuming that Po was not the lawful owner, his actual physical possession of the subject property created the presumption that he was entitled to its possession thereof.

Fairland filed a motion for reconsideration[15] attaching its condominium certificate of title[16] over the subject property, but it was denied by the RTC in its Order,[17] dated February 24, 2014.

Undaunted, Fairland filed a petition for review[18] under Rule 42 of the Rules of Court before the CA.

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[15] *Id*. at 64-66.

[16] *Id*. at 67-70.

[17] *Id*. at 78-80.

[18] *Id*. at 81-91.

The Ruling of the Court of Appeals

In the assailed Decision, dated October 31, 2014, the CA dismissed the petition and ruled that an action for unlawful detainer would not lie against Po. Notwithstanding the abbreviated proceeding it ordained and the limited pleadings it allowed, the Rules on Summary Procedure did not relax the rules on evidence. In order for an action for recovery of possession to prosper, it was indispensable that he who brought the action should prove not only his ownership but also the identity of the property claimed. The CA concluded, however, that Fairland failed to discharge such bounden duty.

Fairland filed its motion for reconsideration, but it was denied by the CA in its assailed Resolution, dated March 6, 2015.

Hence, this petition.

ARGUMENTS/DISCUSSIONS

I

IN AN EJECTMENT CASE WHEREIN NO ANSWER WAS SEASONABLY FILED, IT IS AN ERROR OF LAW TO BASE JUDGMENT ON PREPONDERANCE OF EVIDENCE

II

HOLDING THAT EVIDENCE IN AN EJECTMENT CASE SHOULD HAVE BEEN ATTACHED TO THE COMPLAINT IS AN ERROR OF LAW.[19]

Fairland argues that in ejectment cases, presentation of evidence was undertaken through the submission of position papers but the same was dispensed with when the defendant failed to file an answer or when either party failed to appear during the preliminary conference. In an ejectment case, the scope of inquiry should be limited to the sufficiency of the cause of action stated in the complaint when no seasonable answer was filed. The attachment of documentary evidence to the Complaint was not a requirement and was even proscribed

[19] *Id.* at 6-9.

by law.

In his Comment,[20] Po countered that the present petition raised a question of fact. Although couched in different words, the issues raised here were substantially the same as the issues raised before the CA. There was no legal basis in Fairland's assertion that evidence was dispensed with when no answer to the complaint had been filed. Such argument would undermine the inherent authority of the courts to resolve legal issues based on the facts of the case and on the rules on evidence. Contrary to Fairland's position, the court decided the case on the basis of the complaint which was found wanting in preponderance of evidence.

In its Reply,[21] Fairland posited that the petition did not raise mere questions of fact but one of law as what was being sought for review was the erroneous dismissal of the ejectment case for lack of preponderance of evidence. Since no answer was filed and the complaint sufficiently alleged a cause of action for unlawful detainer, it became the duty of the MeTC to decide the case in its favor.

The Court's Ruling

The petition is meritorious.

Complaint has a valid cause of action for Unlawful Detainer

Section 1 of Rule 70 of the Rules of Court lays down the requirements for filing a complaint for unlawful detainer, to wit:

> Section 1. - *Who may institute proceedings, and when.* - Subject to the provision of the next succeeding section, a person deprived of the possession of any land or building by force, intimidation, threat, strategy, or stealth, or a lessor, vendor, vendee, or other person against whom the possession of any land or building is unlawfully withheld

[20] *Id.* at 141-158.

[21] *Id.* at 171.

after the expiration or termination of the right to hold possession, by virtue of any contract, express or implied, or the legal representatives or assigns of any such lessor, vendor, vendee, or other person, may, at any time within one (1) year after such unlawful deprivation or withholding of possession, bring an action in the proper Municipal Trial Court against the person or persons unlawfully withholding or depriving of possession, or any person or persons claiming under them, for the restitution of such possession, together with damages and costs.

Stated differently, unlawful detainer is a summary action for the recovery of possession of real property. This action may be filed by a lessor, vendor, vendee, or other person from whom the possession of any land or building is unlawfully withheld after the expiration or termination of the right to hold possession by virtue of any contract, express or implied. The possession of the defendant was originally legal, as his possession was permitted by the plaintiff on account of an express or implied contract between them. The defendant's possession, however, became illegal when the plaintiff demanded that the defendant vacate the subject property due to the expiration or termination of the right to possess under the contract, and the defendant refused to heed such demand. A case for unlawful detainer must be instituted one year from the unlawful withholding of possession.[22]

A complaint sufficiently alleges a cause of action for unlawful detainer if it recites the following: (1) initially, possession of the property by the defendant was by contract with or by tolerance of the plaintiff; (2) eventually, such possession became illegal upon notice by the plaintiff to the defendant of the termination of the latter's right of possession; (3) thereafter, the defendant remained in possession of the property, and deprived the plaintiff of the enjoyment thereof; and (4) within one (1) year from the last demand on defendant to vacate the property, the plaintiff instituted the complaint for ejectment.[23]

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[22] *Jose v. Alfuerto*, 699 Phil. 307, 316 (2012).

[23] *Zacarias v. Anacay*, G.R. No. 202354, September 24, 2014, 736 SCRA 508, 516.

There is no question that the complaint filed by Fairland adequately alleged a cause of action for unlawful detainer. The pertinent portion of the said complaint reads:

x x x x x x x x x

3. Plaintiff is the owner of, and had been leasing to the defendant, the premises mentioned above as the residence of the latter;

4. There is no current written lease contract between plaintiff and the defendant, but the latter agreed to pay the former the amount of Php20,000.00 as rent at the beginning of each month. Thus, the term of the lease agreement is renewable on a month-to-month basis;

5. Since March 2011, defendant has not been paying the aforesaid rent despite plaintiffs repeated demands;

6. Due to defendant's continuous failure to pay rent, plaintiff reached a decision not to renew the lease agreement. It sent a formal letter, x x x demanding defendant to pay the amount of Php220,000.00, representing defendant's twelve month rental arrears beginning January 2011, and to vacate the leased premises, both within fifteen (15) days from receipt of said letter;

7. Despite receipt of the aforesaid demand letter and lapse of the fifteen day period given to comply with plaintiffs demand, defendant neither tendered payment for the unpaid rent nor vacated the leased premises. Worse, defendant has not been paying rent up to now;

x x x x x x x x x[24]

The above-cited portions of the complaint sufficiently alleged that Fairland was the owner of the subject property being leased to Po by virtue of an oral agreement. There was a demand by Fairland for Po to pay rent and vacate before the complaint for unlawful detainer was instituted. The complaint was seasonably filed within the one-year period prescribed by law. With all the elements present, there was clearly a cause of action in the complaint for unlawful detainer.

Under the Rules of Summary

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[24] *Rollo*, pp. 25-26.

Procedure, the weight of evidence is not considered when a judgment is rendered based on the complaint

The question now is whether the MeTC correctly dismissed the case for lack of preponderance of evidence. Fairland posits that judgment should have been rendered in its favor on the basis of the complaint itself and not on its failure to adduce proof of ownership over the subject property.

The Court agrees with Fairland's position.

The summons, together with the complaint and its annexes, was served upon Po on December 28, 2012. This presupposes that the MeTC found no ground to dismiss the action for unlawful detainer.[25] Nevertheless, Po failed to file his answer on time and the MeTC had the option to render judgment *motu proprio* or on motion of the plaintiff. In relation thereto, Sections 5 and 6 of the Rules on Summary Procedure provide:

> Sec. 5. Answer. - Within ten (10) days from service of summons, the defendant shall file his answer to the complaint and serve a copy thereof on the plaintiff. Affirmative and negative defenses not pleaded therein shall be deemed waived, except for lack of jurisdiction over the subject matter. Cross-claims and compulsory counterclaims not asserted in the answer shall be considered barred. The answer to counterclaims or cross-claims shall be filed and served within ten (10) days from service of the answer in which they are pleaded.
>
> Sec. 6. Effect of failure to answer. - Should the defendant fail to answer the complaint within the period above provided, the court, motu proprio or on motion of the plaintiff, **shall render judgment as may be warranted by the facts alleged in the complaint and limited to what is prayed for therein**. The court may in its discretion reduce the amount of damages and attorney's fees claimed for being excessive or otherwise unconscionable, without prejudice to the applicability of Section 4, Rule 18 of the Rules of Court, if there are two or more defendants.
>
> [Emphasis Supplied]

[25] Section 4, Rules of Summary Procedure.

Section 6 is clear that in case the defendant failed to file his answer, the court shall render judgment, either *motu proprio* or upon plaintiffs motion, **based solely** on **the facts alleged in the complaint and limited to what is prayed for**. The failure of the defendant to timely file his answer and to controvert the claim against him constitutes his acquiescence to every allegation stated in the complaint. Logically, there is nothing to be done in this situation[26] except to render judgment as may be warranted by the facts alleged in the complaint.[27]

Similarly, under Section 7, Rule 70 of the Rules of Court, which governs the rules for forcible entry and unlawful detainer, if the defendant fails to answer the complaint within the period provided, the court has no authority to declare the defendant in default. Instead, the court, *motu proprio* or on motion of the plaintiff, shall render judgment as may be warranted by the **facts alleged in the complaint** and limited to what is prayed for.[28]

This has been enunciated in the case of *Don Tino Realty and Development Corporation v. Florentino*,[29] citing *Bayog v. Natino*,[30] where the Court held that there was no provision for an entry of default under the Rules of Summary Procedure if the defendant failed to file his answer.

In this case, Po failed to file his answer to the complaint despite proper service of summons. He also failed to provide a sufficient justification to excuse his lapses. Thus, as no answer was filed, judgment must be rendered by the court as may be

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[26] Luceres, Bernardo M., *Revised Rule of Summary Procedure*, 1st Ed., p. 14 (2011).

[27] Section 6, Resolution of the Court *En Banc*, dated October 15, 1991, providing for the Revised Rule on Summary Procedure for Metropolitan Trial Courts, Municipal Trial Courts in Cities, Municipal Trial Courts and Municipal Circuit Trial Courts.

[28] Riano, Willard, *Civil Procedure*, *The Bar Lecture Series*, Volume II, pp. 456-457 (2012).

[29] 372 Phil. 882 (1999).

[30] 327 Phil. 1019 (1996).

warranted by the facts alleged in the complaint.

Failure to attach annexes is not fatal if the complaint alleges a sufficient cause of action; evidence need not be attached to the complaint

The lower courts erroneously dismissed the complaint of Fairland simply on the ground that it failed to establish by preponderance of evidence its ownership over the subject property. As can be gleaned above, the rules do not compel the plaintiff to attach his evidence to the complaint because, at this inception stage, he only has to file his complaint to establish his cause of action. Here, the court was only tasked to determine whether the complaint of Fairland alleged a sufficient cause of action and to render judgment thereon.

Also, there was no need to attach proof of ownership in the complaint because the allegations therein constituted a sufficient cause of action for unlawful detainer. Only when the allegations in the complaint are insufficient to form a cause of action shall the attachment become material in the determination thereof. Even under Section 4 of the Rules of Summary Procedure,[31] it is not mandatory to attach annexes to the complaint.

In the case of *Lazaro v. Brewmaster*[32] (*Lazaro*), where judgment was rendered based on the complaint due to the failure of the defendant to file an answer under the Rules of Summary Procedure, it was written that:

> x x x To determine whether the complaint states a cause of action, all documents attached thereto may, in fact, be considered, particularly when referred to in the complaint. **We emphasize, however, that the inquiry is into the sufficiency, not the veracity of the material allegations in the complaint. Thus, consideration of the annexed**

[31] Sec. 4. Duty of court. — After the court determines that the case falls under summary procedure, it **may**, from an examination of the allegations therein and such evidence as **may be** attached thereto, dismiss the case outright on any of the grounds apparent therefrom for the dismissal of a civil action. If no ground for dismissal is found it shall forthwith issue summons which shall state that the summary procedure under this Rule shall apply.

[32] 642 Phil. 710 (2010).

documents should only be taken in the context of ascertaining the sufficiency of the allegations in the complaint.

[Emphasis Supplied]

In *Lazaro*, the assailed invalid invoices attached to the complaint were not considered because the complaint already alleged a sufficient cause of action for collection of sum of money. Those assailed documents were not the bases of the plaintiffs action for sum of money, but were only attached to the complaint to provide evidentiary details on the alleged transactions.

Similarly, in the case at bench, there was no need for documentary attachments to prove Fairland's ownership over the subject property. *First*, the present action is an action for unlawful detainer wherein only *de facto* or material possession is required to be alleged. Evidently, the attachment of any deed of ownership to the complaint is not indispensable because an action for unlawful detainer does not entirely depend on ownership.

Second, Fairland sufficiently alleged ownership and superior right of possession over the subject property. These allegations were evidently manifest in the complaint as Fairland claimed to have orally agreed to lease the property to Po. The Court is of the view that these allegations were clear and unequivocal and did not need supporting attachments to be considered as having sufficiently established its cause of action. Even the MeTC conceded that the complaint of Fairland stated a valid cause of action for unlawful detainer.[33] It must be stressed that inquiry into the attached documents in the complaint is for the sufficiency, not the veracity, of the material allegations in the complaint.

Third, considering that Po failed to file an answer within the prescribed period, he was deemed to have admitted all the allegations in the complaint including Fairland's claim of ownership. To reiterate, the failure of the defendant to timely

[33] *Rollo*, p. 42.

file his answer and controvert the claim against him constituted his acquiescence to every allegation stated in the complaint.

In the Entry of Appearance with Motion for Leave of Court to file Comment/Opposition to Motion to Render Judgment, which was belatedly filed and so was denied by the MeTC, Po merely denied the allegations against him without even bothering to aver why he claimed to have a superior right of possession of the subject property.[34]

Fourth, it is only at the later stage of the summary procedure when the affidavits of witnesses and other evidence on factual issues shall be presented before the court. Sections 8 and 9 of the Rules on Summary Procedure state:

> Sec. 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. x x x
>
> Sec. 9. Submission of affidavits and position papers. - Within ten (10) days from receipt of the order mentioned in the next preceding section, the parties shall submit the **affidavits of their witnesses 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.
>
> [Emphasis Supplied]

Again, it is worth stressing that these provisions are exactly Sections 9 and 10 under Rule 70 of the Rules of Court.

Accordingly, it is only at this part of the proceedings that the parties will be required to present and offer their evidence before the court to establish their causes and defenses. Before the issuance of the record of preliminary conference, the parties are not yet required to present their respective evidence.

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[34] *Id*. at 36-38. Though unnecessary and even not sanctioned by the Rule, Fairland, nevertheless, attached the Condominium Certificate of Title (*Rollo*, p. 67) under its name to its motion for reconsideration with the RTC to remove and doubt as to its ownership of the subject property. The said certificate was entered into the books of the registry as early as October 13, 2005.

These specific provisions under the Rules of Summary Procedure which are also reflected in Rule 70 of the Rules of Court, serve their purpose to immediately settle ejectment proceedings. Forcible entry and unlawful detainer cases are summary proceedings designed to provide for an expeditious means of protecting actual possession or the right to possession of the property involved. It does not admit of a delay in the determination thereof. It is a 'time procedure' designed to remedy the situation.[35] Thus, as a consequence of the defendant's failure to file an answer, the court is simply tasked to render judgment as may be warranted by the facts alleged in the complaint and limited to what is prayed for therein.

As the complaint contains a valid cause of action, a judgment can already be rendered

In order to achieve an expeditious and inexpensive determination of unlawful detainer cases, a remand of this case to the lower courts is no longer necessary and the case can be determined on its merits by the Court.

To recapitulate, as Po failed to file his answer on time, judgment shall be rendered based only on the complaint of Fairland without the need to consider the weight of evidence. As discussed above, the complaint of Fairland had a valid cause of action for unlawful detainer.

Consequently, there is no more need to present evidence to establish the allegation of Fairland of its ownership and superior right of possession over the subject property. Po's failure to file an answer constitutes an admission of his illegal occupation due to his non-payment of rentals, and of Fairland's rightful claim of material possession. Thus, judgment must be rendered finding that Fairland has the right to eject Po from the subject property.

The Judicial Affidavit Rule

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[35] *Don Tino Realty and Development Corporation v. Florentino*, 372 Phil. 882 (1999).

On a final note, the Court deems it proper to discuss the relevance of the Judicial Affidavit Rule or A.M. No. 12-8-8-SC, where documentary or object evidence are required to be attached. To begin with, the rule is not applicable because such evidence are required to be attached to a judicial affidavit, not to a complaint. Moreover, as the rule took effect only on January 1, 2013, it cannot be required in this case because this was earlier filed on December 12, 2012.

Granting that it can be applied retroactively, the rule being essentially remedial, still it has no bearing on the ruling of this Court.

In the Judicial Affidavit Rule, the attachments of documentary or object evidence to the affidavits is required when there would be a **pre-trial or preliminary conference or the scheduled hearing**. As stated earlier, where a defendant fails to file an answer, the court shall render judgment, either *motu proprio* or upon plaintiffs motion, based solely on the facts alleged in the complaint and limited to what is prayed for. Thus, where there is no answer, there is no need for a pre-trial, preliminary conference or hearing. Section 2 of the Judicial Affidavit Rule reads:

> Section 2. Submission of Judicial Affidavits and Exhibits in lieu of direct testimonies. - (a) The parties shall file with the court and serve on the adverse party, personally or by licensed courier service, not later than five days before pre-trial or preliminary conference or the scheduled hearing with respect to motions and incidents, the following:
>
> (1) The judicial affidavits of their witnesses, which shall take the place of such witnesses' direct testimonies; and
>
> (2) The parties' documentary or object evidence, if any, which shall be attached to the judicial affidavits and marked as Exhibits A, B, C, and so on in the case of the complainant or the plaintiff, and as Exhibits 1, 2, 3, and so on in the case of the respondent or the defendant.
>
> (b) Should a party or a witness desire to keep the original document or object evidence in his possession, he may, after the

same has been identified, marked as exhibit, and authenticated, warrant in his judicial affidavit that the copy or reproduction attached to such affidavit is a faithful copy or reproduction of that original. In addition, the party or witness shall bring the original document or object evidence for comparison during the preliminary conference with the attached copy, reproduction, or pictures, failing which the latter shall not be admitted.

This is without prejudice to the introduction of secondary evidence in place of the original when allowed by existing rules.

WHEREFORE, the petition is **GRANTED**. The October 31, 2014 Decision and the March 6, 2015 Resolution of the Court of Appeals in CA-G.R. SP No. 134701 are hereby **REVERSED** and **SET ASIDE**. Respondent Arturo Loo Po is **ORDERED TO VACATE** Condominium Unit No. 205 located in Cedar Mansion II on Ma. Escriba Street, Pasig City.

Respondent Po is further **ORDERED TO PAY** the rentals-in-arrears, as well as the rentals accruing in the interim until he vacates the property. The unpaid rentals shall incur a legal interest of six percent (6%) per annum from January 30, 2012, when the demand to pay and to vacate was made, up to the finality of this decision. Thereafter, an interest of six percent (6%) per annum shall be imposed on the total amount due until full payment is made.

SO ORDERED.

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

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the protection of the client's interest, and his failure to protect the interests of his client constitutes a violation of Canon 17 of the Code of Professional Responsibility. (Vasco-Tamaray *vs.* Atty. Daquis, A.C. No. 10868 [Formerly CBD Case No. 07-2041], Jan. 26, 2016) p. 191

—— Pretending to be counsel for complainant constitutes a violation of Canon 1, Rule 1.01 of the Code of Professional Responsibility and the Lawyer's Oath. (*Id.*)

—— Rationale for Canon 15 of the Code of Professional Responsibility. (*Id.*)

—— Respondent found guilty of violating Canon 10, Rule 10.01 of the Code of Professional Responsibility for making untruthful, conflicting and inconsistent statements. (Atty. Francisco *vs.* Atty. Flores, A.C. No. 10753 [Formerly CBD Case No. 10-2703], Jan. 26, 2016) p. 163

—— The lawyer's act of allowing the use of a forged signature on a petition she prepared, notarized and filed before the court constitutes a violation of Canon 7, Rule 7.03 and Canon 10, Rule 10.01 of the Code of Professional Responsibility and demonstrates a lack of moral fiber on her part. (Vasco-Tamaray *vs.* Atty. Daquis, A.C. No. 10868 [Formerly CBD Case No. 07-2041], Jan. 26, 2016) p. 191

—— While lawyers owe their entire devotion to the interest of their clients and zeal in the defense of their client's right, they should not forget that they are, first and foremost, officers of the Court. (Tolentino *vs.* COMELEC, G.R. No. 218536, Jan. 26, 2016) p. 253

Conduct of — A lawyer who acts as a notary public without the necessary notarial commission is remiss in his professional duties and responsibilities. (Japitana *vs.* Atty. Parado, A.C. No. 10859 [Formerly CBD Case No. 09-2514], Jan. 26, 2016) p. 182

—— A lawyer's deceiving attempts to evade payment of his obligations demonstrate lack of moral character to satisfy the responsibilities and duties imposed on lawyers as

professionals and as officers of the court; they constitute acts unbecoming of a member of the Bar. (Aca *vs.* Atty. Salvado, A.C. No. 10952, Jan. 26, 2016) p. 214

–– A man learned in the law is expected to make truthful representations when dealing with persons, clients or otherwise, as the public is inclined to rely on representations made by lawyers. (*Id.*)

Disbarment and discipline of attorneys –– The factual findings and recommendations of the Commission on Bar Discipline and the Board of Governors of the Integrated Bar of the Philippines are recommendatory, subject to review by the court; rationale. (Vasco-Tamaray *vs.* Atty. Daquis, A.C. No. 10868 [Formerly CBD Case No. 07-2041], Jan. 26, 2016) p. 191

Disciplinary proceedings against lawyers –– The only issue in disciplinary proceedings against lawyers is the respondent's fitness to remain as a member of the Bar, and the Court's findings have no material bearing on other judicial actions which the parties may choose to file against each other. (Aca *vs.* Atty. Salvado, A.C. No. 10952, Jan. 26, 2016) p. 214

Duties and responsibilities –– Conflict of interest, when it exists; test of the inconsistency of interest; conflict of interest not committed by the respondent. (Vasco-Tamaray *vs.* Atty. Daquis, A.C. No. 10868 [Formerly CBD Case No. 07-2041], January 26, 2016) p. 191

–– Discussed. (*Id.*)

BAIL

Grant of –– Bail for accused charged of crime not punishable by death, reclusion perpetua or life imprisonment is a matter of right; granted bail should be cancelled in case of failure to appear before the trial court. (People *vs.* Piad *y* Bori, G.R. No. 205472, Jan. 25, 2016) p. 136

–– Bail pending appeal should be denied to convicted offender who violated condition of his previous bail; accused who jumps bail loses standing in court. (*Id.*)

—— Before conviction, bail is either a matter of right or of discretion; after conviction by the trial court of an offense not punishable by death, *reclusion perpetua* or life imprisonment, admission to bail is discretionary. (*Id.*)

CERTIORARI

Grave abuse of discretion —— Committed by the House of Representatives Electoral Tribunal when it utterly disregarded the law and settled precedents on the matter before it. (Ty-Delgado *vs.* HRET, G.R. No. 219603, Jan. 26, 2016) p. 268

Petition for —— A remedy of last resort and is not available if a party still has another speedy and adequate remedy available. (Tolentino *vs.* COMELEC, G.R. No. 218536, Jan. 26, 2016) p. 253

—— For an act to be struck down as having been done with grave abuse of discretion, the abuse must be patent and gross; release of the initial valuation without submission of the required documents not construed as a capricious exercise of power in case at bar. (Land Bank of the Philippines *vs.* Santos, G.R. No. 213863, Jan. 27, 2016) p. 587

Writ of —— An extraordinary remedy of last resort designed to correct errors of jurisdiction; grave abuse of discretion, when present. (Tolentino *vs.* COMELEC, G.R. No. 218536, Jan. 26, 2016) p. 253

COMMISSION ON ELECTIONS (COMELEC)

Powers and jurisdiction —— COMELEC has the power and jurisdiction to affirm, reverse, vacate, or annul the MTCC's judgment, and to restrain the implementation thereof through injunctive writs. (Tolentino *vs.* COMELEC, G.R. No. 218536, Jan. 26, 2016) p. 253

—— COMELEC has the power and jurisdiction to issue orders to its employees to carry out its mandate and may discipline or relieve any officer or employee who fails to comply with its instructions. (*Id.*)

—— COMELEC has the prerogative to treat the petition for certiorari as an appeal and the Court will not interfere in the COMELEC's exercise of this prerogative. (*Id.*)

—— COMELEC is authorized to enforce its directives and orders that, by law, enjoy precedence over that of the Municipal Trial Court in Cities (MTCC). (*Id.*)

COMPREHENSIVE AGRARIAN REFORM LAW OF 1988 (R.A. NO. 6657)

Just compensation — In expropriation cases, interest is imposed as a penalty for damages incurred by the landowner due to the delay in the payment of just compensation, pegged at the rate of 12% per annum on the paid balance of the just compensation, reckoned from the time of taking, or the time when the landowner was deprived of the use and benefit of his property, until full payment. (Land Bank of the Philippines *vs.* Santos, G.R. No. 213863, Jan. 27, 2016) p. 587

—— Procedure for the determination thereof. (*Id.*)

—— The concept embraces not only the correct determination of the amount to be paid to the landowner, but also the payment of the land within a reasonable time from its taking; explained. (*Id.*)

—— The seizure of landholdings or properties covered by P.D. No. 27 did not take place on October 21, 1972, but upon the payment of just compensation; expounded. (*Id.*)

—— The submission of the complete documents is not a pre-condition for the release of the initial valuation to a landowner, for to hold otherwise would effectively protract payment of the amount which R.A. No. 6657 guarantees to be immediately due the landowner even pending the determination of just compensation. (*Id.*)

COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. NO. 9165)

Chain of custody —— Failure to strictly comply does not necessarily render the arrest illegal or the items seized

inadmissible; the most important factor is the preservation of the integrity and evidentiary value of the seized items. (Saraum *vs.* People, G.R. No. 205472, Jan. 25, 2016) p. 122

–– Issue of non-compliance with the chain of custody cannot be raised for the first time on appeal. (*Id.*)

–– Substantial compliance is sufficient. (People *vs.* Piad *y* Bori, G.R. No. 205472, Jan. 25, 2016) p. 136

Illegal possession of dangerous drugs and drug paraphernalia during a party –– Present as there was a proximate company of at least two persons without any legal authority to possess the illicit items. (People *vs.* Piad *y* Bori, G.R. No. 205472, Jan. 25, 2016) p. 136

Illegal possession of paraphernalia for dangerous drugs –– Elements, enumerated. (Saraum *vs.* People, G.R. No. 205472, Jan. 25, 2016) p. 122

CONSPIRACY

Existence of –– Presupposes unity of purpose and unity of action towards the realization of an unlawful objective among the accused and its existence can be inferred from the individual acts of the accused, which if taken as a whole are in fact related, and indicative of a concurrence of sentiment. (Ibañez *vs.* People, G.R. No. 190798, Jan. 27, 2016) p. 436

CONTRACTS

Interests —Absent interest rate provisions in the loan agreement, the legal rate of interest shall be applied, which is the prevailing rate at the time when the agreement was entered into; rationale. (Sps. Limso *vs.* Philippine National Bank, G.R. No. 158622, Jan. 27, 2016) p. 287

–– Escalation clauses are not always void; exception. (*Id.*)

–– Interest due shall itself earn legal interest from the time it is judicially demanded. (*Id.*)

—— Only the void interest rate provisions in the loan agreement shall be nullified and deemed not written in the contract, but the agreement on the payment of interest on the principal loan obligation remains. (*Id.*)

—— The suspension of the Usury Law does not give creditors an unbridled right to impose arbitrary interest rates; interest rates, when unconscionable. (*Id.*)

—— Void interest rate provisions in the original loan agreement cannot be ratified. (*Id.*)

Principle of mutuality of contracts —— Importance thereof, discussed. (Sps. Limso *vs.* Philippine National Bank, G.R. No. 158622, Jan. 27, 2016) p. 287

—— There is no mutuality of contracts when the determination or imposition of interest rates is at the sole discretion of a party to the contract; escalation clause in contracts, when void. (*Id.*)

Requisites —— The meeting of the minds between parties to a contract is manifested when the elements of a valid contract are all present. (Sps. Limso *vs.* Philippine National Bank, G.R. No. 158622, Jan. 27, 2016) p. 287

DENIAL

Defense of — An intrinsically weak defense that further crumbles when it comes face-to-face with the positive identification and straightforward narration of the prosecution witnesses. (Ibañez *vs.* People, G.R. No. 190798, Jan. 27, 2016) p. 436

EJECTMENT

Execution of —— When the execution of the judgment in the unlawful detainer case would result in the demolition of the premises, such that the result of enforcement would be permanent, unjust and probably irreparable, then the unlawful detainer case should at least be suspended, if not abated or dismissed, in order to await final judgment in the more substantive case involving legal possession or ownership. (Endaya *vs.* Villaos, G.R. No. 202426, Jan. 27, 2016) p. 520

Issue of ownership — Ownership over the property is immaterial and is only passed upon provisionally for the limited purpose of determining which party has the better right to possession, and the suit is only filed against the possessor of the property at the commencement of action, and not against one who does not in fact occupy the land. (Apostolic Vicar of Tabuk, Inc. *vs.* Sps. Sison, G.R. No. 191132, Jan. 27, 2016) p. 462

Issue of possession — In resolving the issue of possession in an ejectment case, the registered owner of the property is preferred over the transferee under an unregistered deed of sale; rationale. (Endaya *vs.* Villaos, G.R. No. 202426, Jan. 27, 2016) p. 520

–– The heirs who succeeded the registered owner of the properties in dispute is preferred to possess the subject properties over the transferee under an unregistered deed of sale. (*Id.*)

Nature — Ejectment suits are actions *in personam* wherein judgment only binds parties who had been properly impleaded and were given an opportunity to be heard. (Apostolic Vicar of Tabuk, Inc. *vs.* Sps. Sison, G.R. No. 191132, Jan. 27, 2016) p. 462

EMPLOYMENT, TERMINATION OF

Compensation — The existing debts of the dismissed employee to the employer which were incurred during the existence of the employer-employee relationship shall be deducted from the amount which may be due him in wages. (Cebu People's Multi-Purpose Cooperative *vs.* Carbonilla, Jr., G.R. No. 212070, Jan. 27, 2016) p. 563

Just causes — Enumerated. (Cebu People's Multi-Purpose Cooperative *vs.* Carbonilla, Jr., G.R. No. 212070, Jan. 27, 2016) p. 563

–– Requisites to be considered as a just cause for termination; established. (*Id.*)

—— Within the bounds of law, management has the rightful prerogative to take away dissidents and undesirables from the workplace and it should not be forced to deal with difficult personnel, especially one who occupies a position of trust and confidence; expounded. (*Id.*)

Loss of trust and confidence — Requisites to be considered as a valid ground for dismissal; positions of trust, two (2) classes thereof. (Cebu People's Multi-Purpose Cooperative *vs.* Carbonilla, Jr., G.R. No. 212070, Jan. 27, 2016) p. 563

—— When an employee has been guilty of breach of trust or his employer has ample reason to distrust him, a labor tribunal cannot deny the employer the authority to dismiss him; rationale. (*Id.*)

Penalty — An employee's past misconduct and present behavior must be taken together in determining the proper imposable penalty. (Cebu People's Multi-Purpose Cooperative *vs.* Carbonilla, Jr., G.R. No. 212070, Jan. 27, 2016) p. 563

EVIDENCE

Burden of proof —– Elements to be established in a medical malpractice case. (Borromeo *vs.* Family Care Hosp., Inc., G.R. No. 191018, Jan. 25, 2016) p. 1

Doctrine of common knowledge —– *Res ipsa loquitor* used in conjunction with the doctrine of common knowledge; not applicable in the medical malpractice case as the hospital and doctor's alleged failure to observe due care is not immediately apparent to a layman. (Borromeo *vs.* Family Care Hosp., Inc., G.R. No. 191018, Jan. 25, 2016) p. 1

Expert witness —– In medical malpractice, an expert witness must be a competent member of the profession practicing the same field of medicine in issue. (Borromeo *vs.* Family Care Hosp., Inc., G.R. No. 191018, Jan. 25, 2016) p. 1

Judicial Affidavit Rule —– The attachments of documentary or object evidence to the affidavits is required when there would be a pre-trial or preliminary conference or the

scheduled hearing. (Fairland Knitcraft Corp. *vs.* Loo Po, G.R. No. 217694, Jan. 27, 2016) p. 612

EXPROPRIATION

Just compensation — Exemplary damages and attorney's fees should be awarded as a consequence of the government agency's illegal occupation of the owner's property for a very long time, resulting in pecuniary loss to the owner. (NAPOCOR *vs.* Manalastas, G.R. No. 196140, Jan. 27, 2016) p. 510

–– It is the courts, not the litigants, who decide on the proper interpretation or application of the law and, thus, only the courts may determine the rightful compensation in accordance with the law and evidence presented by the parties. (*Id.*)

–– The reckoning period for valuing the property in case the landowner exercised his rights in accordance with Article 448 of the Civil Code shall be at the time the landowner elected his choice. (Department of Education *vs.* Casibang, G.R. No. 192268, Jan. 27, 2016) p. 472

–– Valuation of the land for purposes of determining just compensation should not include the inflation rate of the Philippine peso; rationale. (NAPOCOR *vs.* Manalastas, G.R. No. 196140, Jan. 27, 2016) p. 510

FORCIBLE ENTRY AND UNLAWFUL DETAINER

Nature of — Forcible entry and unlawful detainer cases are summary proceedings designed to provide for an expeditious means of protecting actual possession or the right to possession of the property involved and it does not admit of a delay in the determination thereof. (Fairland Knitcraft Corp. *vs.* Loo Po, G.R. No. 217694, Jan. 27, 2016) p. 612

FORUM SHOPPING

Commission of — Defect on the verification or certification against forum shopping is not necessarily fatal. (Regulus Dev't.,

Inc. *vs.* Dela Cruz, G.R. No. 198172, Jan. 25, 2016) p. 75

—— Elements, when not present. (Sps. Limso *vs.* Philippine National Bank, G.R. No. 158622, Jan. 27, 2016) p. 287

FRUSTRATED HOMICIDE

Commission of —— Penalty; civil liability of accused-petitioners. (Ibañez *vs.* People, G.R. No. 190798, Jan. 27, 2016) p. 436

Elements —— Enumerated. (Ibañez *vs.* People, G.R. No. 190798, Jan. 27, 2016) p. 436

—— Intent to kill, when it exists. (*Id.*)

—— The kind of weapon used for the attack and the vital parts of the victim's body at which he was stabbed demonstrate accused's intent to kill. (*Id.*)

GENERAL BANKING LAW OF 2000 (R.A. NO. 8791)

Mortgage —— Where natural and juridical persons are co-debtors, and the juridical persons own the properties mortgaged to secure the loan, the period of redemption should not be more than three (3) months; rationale. (Sps. Limso *vs.* Philippine National Bank, G.R. No. 158622, Jan. 27, 2016) p. 287

INTERLOCUTORY ORDERS

Nature of —— Distinguished from a final order. (Sps. Limso *vs.* Philippine National Bank, G.R. No. 158622, Jan. 27, 2016) p. 287

—— The Resolutions denying the application for damages on the injunction bond and to be appointed as receiver are interlocutory orders and are not appealable; proper remedy, discussed. (*Id.*)

JUDGMENTS

Annulment of —— A party has no legal personality to ask for annulment of the judgment where the judgment was not rendered against him; petitioner may avail of the plenary action of *reinvindicatoria* in case at bar. (Apostolic Vicar

of Tabuk, Inc. *vs.* Sps. Sison, G.R. No. 191132, Jan. 27, 2016) p. 462

—— The Regional Trial Court is authorized to dismiss a petition for annulment of judgment outright if it has no substantial merit. (*Id.*)

Dispositive part —— Where there is a conflict between the dispositive part and the opinion of the court contained in the text or body of the decision, the former must prevail over the latter. (Sps. Limso *vs.* Philippine National Bank, G.R. No. 158622, Jan. 27, 2016) p. 287

Execution pending appeal —— The writ of execution pending appeal issued by the MTCC cannot be enforced where the same was issued after it had already lost its residual jurisdiction over the case. (Tolentino *vs.* COMELEC, G.R. No. 218536, Jan. 26, 2016) p. 253

Relief from judgment —— Court steps in and accords relief to a client who suffered from gross and palpable negligence of counsel and of extrinsic fraud. (Cagayan Economic Zone Authority *vs.* Meridien Vista Gaming Corp., G.R. No. 194962, Jan. 27, 2016) p. 492

—— Notices sent to the counsel of record is binding upon the client; the neglect or failure of counsel to inform him of an adverse judgment resulting in the loss of his right to appeal is not a ground for setting aside a judgment that is valid and regular on its face; exception. (*Id.*)

—— Relief will not be granted to a party who seeks avoidance from the effects of the judgment when the loss of the remedy at law was due to the negligence of his counsel; rationale. (Thomasites Center for International Studies [TCIS] *vs.* Rodriguez, G.R. No. 203642, Jan. 27, 2016) p. 536

(Cagayan Economic Zone Authority *vs.* Meridien Vista Gaming Corp., G.R. No. 194962, Jan. 27, 2016) p. 492

—— Shall be granted when the reckless and gross negligence of counsel deprived the client not only of the chance to seek consideration of the judgment but also to appeal its

case. (*Id.*)

–– The reglementary periods for filing the petition must be strictly complied with; rationale. (Thomasites Center for International Studies [TCIS] *vs.* Rodriguez, G.R. No. 203642, Jan. 27, 2016) p. 536

JURISDICTION

Concept –– Equity jurisdiction distinguished from appellate jurisdiction. (Regulus Dev't., Inc. *vs.* Dela Cruz, G.R. No. 198172, Jan. 25, 2016) p. 75

–– The issue on jurisdiction is a justiciable controversy that prevented the assailed Court of Appeals petition in case at bar from becoming moot and academic. (*Id.*)

Execution of –– Shall be applied in the court of origin. (Regulus Dev't., Inc. *vs.* Dela Cruz, G.R. No. 198172, Jan. 25, 2016) p. 75

Jurisdiction over the case –– Determined by the allegations in the complaint. (Sps. Erorita *vs.* Sps. Dumlao, G.R. No. 195477, Jan. 25, 2016) p. 23

Jurisdiction over the subject matter –– May be raised any time; exception to the rule is the principle of estoppel by laches; application. (Sps. Erorita *vs.* Sps. Dumlao, G.R. No. 195477, Jan. 25, 2016) p. 23

JUSTIFYING CIRCUMSTANCES

Self-defense –– The person asserting self-defense must admit that he inflicted an injury on another person in order to defend himself. (Ibañez *vs.* People, G.R. No. 190798, Jan. 27, 2016) p. 436

LABOR ARBITERS

Jurisdiction – Includes unfair labor practices. (Mendoza *vs.* Officers of Manila Water Employees Union [MWEU], G.R. No. 201595, Jan. 25, 2016) p. 96

LABOR RELATIONS

Unfair labor practices –– Concept of unfair labor practice and procedure for prosecution thereof. (Mendoza *vs.* Officers of Manila Water Employees Union [MWEU], G.R. No. 201595, Jan. 25, 2016) p. 96

–– May be committed by labor organizations under Article 249 of the Labor Code. (*Id.*)

–– Violation of union's constitution and by-laws and disregard of rights as union member warrants the award of moral damages, exemplary damages and attorney's fees. (*Id.*)

LACHES

Principle of –– Defined; the question of laches is addressed to the sound discretion of the court, and since laches is an equitable doctrine, its application is controlled by equitable considerations and it cannot work to defeat justice or to perpetrate fraud and injustice. (Department of Education *vs.* Casibang, G.R. No. 192268, Jan. 27, 2016) p. 472

–– Elements. (*Id.*)

–– Even if they are aware of the occupation of their property by another person, and regardless of the length of that possession, the lawful owners have a right to demand the return of their property at any time as long as the possession was unauthorized or merely tolerated and the said right is never barred by laches. (*Id.*)

LAND REGISTRATION

Certificate of Sale –– It is a ministerial duty on the part of the Register of Deeds to annotate the instrument on the Certificate of Sale after a valid entry in the Primary Entry Book. (Sps. Limso *vs.* Philippine National Bank, G.R. No. 158622, Jan. 27, 2016) p. 287

Certificate of title –– Courts and unscrupulous lawyers are admonished to stop entertaining bogus claims seeking to assail the title of the University of the Philippines over its landholdings, which had already been validated

countless times by the Court. (Rep. of the Phils. *vs.* Rosario, G.R. No. 186635, Jan. 27, 2016) p. 418

–– The validity and indefeasibility of the titles of the University of the Philippines over its landholdings are recognized and confirmed both by law and jurisprudence. (*Id.*)

Reconstitution of title –– Courts must be cautious and careful in granting reconstitution of lost or destroyed titles; explained. (Rep. of the Phils. *vs.* Rosario, G.R. No. 186635, Jan. 27, 2016) p. 418

–– Grant of petitions for reconstitution is not a ministerial task, for the same involves diligent and circumspect evaluation of the authenticity and relevance of all the evidence presented. (*Id.*)

LEGAL EASEMENTS

Easement of right-of-way –– Requisites. (Calimoso *vs.* Roullo, G.R. No. 198594, Jan. 25, 2016) p. 89

–– The right-of-way claimed is least prejudicial to the servient estate and the distance from the dominant estate to the public highway may be the shortest; where these two criteria do not concur in a single tenement, the former prevails over the latter. (*Id.*)

LIBEL

Crime of –– Defined; elements. (Ty-Delgado *vs.* HRET, G.R. No. 219603, Jan. 26, 2016) p. 268

–– The criminal liability of the publisher of the libelous articles is the same as that of the author of the libelous articles, rationale. (*Id.*)

LOCAL WATER UTILITIES ADMINISTRATION (LWUA)

Authority –– Sec. 3 of Administrative Order No. 103 did not divest the Local Water Utilities Administration (LWUA) of its authority to fix the per diem of Board of Directors of local water districts (LWDs), but it limits the same to an amount not beyond what is allowed under the SSL.

(Zamboanga City Water District *vs.* COA, G.R. No. 213472, Jan. 26, 2016) p. 225-226

METROPOLITAN TRIAL COURT

Jurisdiction — Exclusive jurisdiction on action for unlawful detainer regardless of the property's assessed value. (Sps. Erorita *vs.* Sps. Dumlao, G.R. No. 195477, Jan. 25, 2016) p. 23

NATIONAL INTERNAL REVENUE CODE

Protest of tax assessment –– A petition before the Court of Tax Appeals (CTA) may only be made after a whole or partial denial of the protest by the Commissioner of Internal Revenue (CIR) or the authorized representative thereof; PAGCOR's petition before the CTA was prematurely filed. (PAGCOR *vs.* Bureau of Internal Revenue, G.R. No. 208731, Jan. 27, 2016) p. 547

–– Sec. 3.1.5 of Revenue Regulations No. 12-99, implementing Sec. 228 of the National Internal Revenue of 1997; taxpayer's options for protesting a tax assessment, cited. (*Id.*)

–– The Bureau of Internal Revenue's assessment is already final, executory and demandable in case at bar. (*Id.*)

NATIONAL LABOR RELATIONS COMMISSION (NLRC)

Grave abuse of discretion — In labor disputes, grave abuse of discretion may be ascribed to the NLRC when its findings and conclusions are not supported by substantial evidence, or that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion. (Cebu People's Multi-Purpose Cooperative *vs.* Carbonilla, Jr., G.R. No. 212070, Jan. 27, 2016) p. 563

NOTARY PUBLIC

2004 Rules on Notarial Practice — Suspension from the practice of law for two years and permanent disqualification from being commissioned as notary public imposed for violation

of Rules on Notarial Practice. (Japitana *vs.* Atty. Parado, A.C. No. 10859 [Formerly CBD Case No. 09-2514], Jan. 26, 2016) p. 182

—— The presentation of a competent evidence of identity is required if the person appearing before the notary public is not personally known by him; competent evidence of identity, defined; presentation of the Community Tax Certificate is insufficient. (*Id.*)

—— Without a commission, a lawyer is unauthorized to perform any of the notarial acts. (*Id.*)

Functions — A duly-commissioned notary public is required to make the proper entries in his notarial register and to refrain from committing any dereliction or act which constitutes good cause for the revocation of the commission or the imposition of an administrative sanction. (Fabay *vs.* Atty. Resuena, A.C. No. 8723 [Formerly CBD Case No. 11-2974], Jan. 26, 2016) p. 151

—— A notary public who failed to perform his duty caused not only damage to those directly affected by the notarized document but also made a mockery of the integrity of a notary public and degraded the function of notarization. (*Id.*)

—— Physical appearance of the affiant is required to enable the notary public to verify the genuineness of the signature of the acknowledging party and to ascertain that the document is the party's free act or deed. (*Id.*)

—— Should not notarize a document unless the persons who signed the same are the very same persons who executed and personally appeared before him to attest to the contents and truth of what are stated therein; when violated. (*Id.*)

OBLIGATIONS

Novation — Defined; requisites. (Sps. Limso *vs.* Philippine National Bank, G.R. No. 158622, Jan. 27, 2016) p. 287

—— The conversion, restructuring and extension agreement novated the original loan agreement. (*Id.*)

OFFICE OF THE SOLICITOR GENERAL

Deputized counsel —— OSG's deputized counsel is no more than the 'surrogate' of the Solicitor General in any particular proceeding, and the latter remains the principal counsel entitled to be furnished copies of all court orders, notices, and decisions. (Rep. of the Phils. *vs.* Viaje, G.R. No. 180993, Jan. 27, 2016) p. 405

—— Service of copies of the court's orders, notices, and decisions upon the deputized counsel will not be binding until they are actually received by the OSG; rationale. (*Id.*)

OMNIBUS ELECTION CODE

Disqualifications —— A sentence by final judgment for a crime involving moral turpitude is a ground for disqualification; moral turpitude, defined. (Ty-Delgado *vs.* HRET, G.R. No. 219603, Jan. 26, 2016) p. 268

—— The disqualification to be a candidate and to hold any office shall be removed after the expiration of a period of five years from the service of sentence. (*Id.*)

—— The imposition of a fine does not determine whether the crime involves moral turpitude or not. (*Id.*)

Section 78 —— A person whose certificate of candidacy had been denied due course and/or cancelled is deemed to have not been a candidate at all; explained. (Ty-Delgado *vs.* HRET, G.R. No. 219603, Jan. 26, 2016) p. 268

—— False material representation is a ground for petition to deny due course to and/or cancel a certificate of candidacy. (*Id.*)

OWNERSHIP

Tolerated acts —— Explained; those who occupy the land of another at the latter's tolerance or permission, without any contract between them, are necessarily bound by an

implied promise that the occupants will vacate the property upon demand. (Department of Education *vs.* Casibang, G.R. No. 192268, Jan. 27, 2016) p. 472

–– Rights of landowners as against a builder in good faith. (*Id.*)

–– Until the demand to vacate is communicated by the lawful owners to the possessor by mere tolerance, the lawful owners are not required to do any act to recover the subject land; respondents found not guilty of laches herein. (*Id.*)

–– Where the option of the landowner to appropriate the improvements upon payment of indemnity is no longer practicable and feasible, the landowner may oblige the builder in good faith to pay the price of the land, or to require the builder in good faith to pay reasonable rent if the value of the land is considerably more than the value of the buildings and improvements. (*Id.*)

PLEADINGS AND PRACTICE

Complaint –– Inquiry into the attached documents in the complaint is for the sufficiency, not the veracity, of the material allegations in the complaint. (Fairland Knitcraft Corp. *vs.* Loo Po, G.R. No. 217694, Jan. 27, 2016) p. 612

–– The failure of the defendant to timely file his answer and controvert the claim against him constituted his acquiescence to every allegation stated in the complaint. (*Id.*)

PRELIMINARY ATTACHMENT

Injunction bond –– The application to hold the injunction bond liable for damages must be filed at any time before the judgment becomes executory; manner of filing. (Sps. Limso *vs.* Philippine National Bank, G.R. No. 158622, Jan. 27, 2016) p. 287

PRESUMPTIONS

Presumption of regular performance of official duties — The testimonies of police officers in a buy-bust operation are generally accorded full faith and credit and prevails as against defense of denial and alibi. (Saraum *vs.* People, G.R. No. 205472, Jan. 25, 2016) p. 122

PRE-TRIAL

Failure to appear — Respondents who failed to appear during pre-trial cannot dispute the evidence petitioner presented *ex-parte*. (Metropolitan Bank and Trust Co. *vs.* Fadcor, Inc., G.R. No. 197970, Jan. 25, 2016) p. 32

— RTC correctly allowed party in attendance to present its evidence *ex parte* and render judgment on basis thereof. (*Id.*)

PROVINCIAL WATER UTILITIES ACT OF 1973 (P.D. NO. 198)

Board of Director — Has the discretion to fix the compensation of the General Manager, but the rates approved must not be in excess of the amounts allowed under the Salary Standardization Law. (Zamboanga City Water District *vs.* COA, G.R. No. 213472, Jan. 26, 2016) p. 225-226

REAL ESTATE MORTGAGES

Redemption period — During the one-year redemption period, a purchaser may apply for a writ of possession by filing an ex parte motion under oath in the registration or in special proceedings in case the property is registered under the Mortgage Law. (Sps. Limso *vs.* Philippine National Bank, G.R. No. 158622, Jan. 27, 2016) p. 287

RECEIVER

Appointment of receiver — Neither party to a litigation should be appointed as receiver without the consent of the other; rationale. (Sps. Limso *vs.* Philippine National Bank, G.R. No. 158622, Jan. 27, 2016) p. 287

RES JUDICATA

Principle of –– Elements. (Land Bank of the Philippines *vs.* Santos, G.R. No. 213863, Jan. 27, 2016) p. 587

–– The decision in CA-G.R. CV No. 75010 did not preclude the RTC from proceeding with the determination of just compensation of the subject lands, as the pronouncement in the said case on the matter of computation of just compensation is a mere *obiter dictum*; expounded. (*Id.*)

RIGHTS OF THE ACCUSED

Right to counsel –– No denial of right to counsel where the parties are not only assisted by a counsel *de oficio* during arraignment and pre-trial but more so, their counsel *de oficio* actively participated in the proceedings before the trial court during the direct and cross-examination of the witnesses. (Ibañez *vs.* People, G.R. No. 190798, Jan. 27, 2016) p. 436

–– The absence of the counsel *de oficio* in one of the hearings of the case does not amount to a denial of right to counsel, nor does such absence warrant the nullification of the entire trial court proceedings and the eventual invalidation of its ruling, where there is no indication that the counsel *de oficio* had been negligent in protecting the petitioners' interests. (*Id.*)

–– The right to be assisted by counsel is an indispensable component of due process in a criminal prosecution; rationale. (*Id.*)

Right to cross-examine –– Mere opportunity and not actual cross-examination is the essence of the right to cross-examine; explained. (Ibañez *vs.* People, G.R. No. 190798, Jan. 27, 2016) p. 436

RULES OF PROCEDURE

Application –– Cases should be determined on the merits, after full opportunity to all parties for ventilation of their causes and defenses, rather than on technicality or some procedural imperfections. (Thomasites Center for International Studies

[TCIS] *vs.* Rodriguez, G.R. No. 203642, Jan. 27, 2016) p. 536

—— The Court must exercise its equity jurisdiction and relax the rigid application of the rules where strong considerations of substantial justice are manifest. (Rep. of the Phils. *vs.* Viaje, G.R. No. 180993, Jan. 27, 2016) p. 405

—— The rules are not inflexible tools designed to hinder or delay, but to facilitate and promote the administration of justice. (Cagayan Economic Zone Authority *vs.* Meridien Vista Gaming Corp., G.R. No. 194962, Jan. 27, 2016) p. 492

SALARY STANDARDIZATION LAW (SSL)

Disallowed benefits —— An employee may be absolved from refunding the disallowed benefits or allowances if it is shown that they were made in good faith; term "good faith," construed. (Zamboanga City Water District *vs.* COA, G.R. No. 213472, Jan. 26, 2016) p. 225-226

—— Employees who had no participation in approving the release of the per diem but merely received the disallowed amounts are not obliged to refund the same; rationale. (*Id.*)

—— The approving officers may be excused from being personally liable to refund the disallowed amount provided that they had acted in good faith. (*Id.*)

Non-integrated benefits —— Non-integrated benefits such as the Representation and Transportation Allowance (RATA) and the Representation Allowance, are allowed to be continued only for incumbents of positions as of July 1, 1989 and those who were actually receiving the said allowances as of the said date based on the rates under Letter of Implementation (LOI) No. 97. (Zamboanga City Water District *vs.* COA, G.R. No. 213472, Jan. 26, 2016) p. 225-226

—— Payment of Collective Negotiation Agreement (CNA) incentives shall be disallowed absent any savings. (*Id.*)

—— The 14th month pay is in the nature of an additional benefit, a non-integrated benefit, which is given on top of an employee's usual salary; explained. (*Id.*)

—— The Cost of Living Allowance (COLA) and the Amelioration Allowance (AA) are deemed integrated into the salary; the employees of the petitioner-Zamboanga City Water District are not entitled to back payment of COLA and AA. (*Id.*)

—— The different treatment accorded to the incumbents as of 1 July 1989, on one hand, and those employees hired on or after the said date, on the other, with respect to the grant of non-integrated benefits. (*Id.*)

STARE DECISIS ET NON QUIETA MOVERE

Principle of —— Courts are duty-bound to abide by precedents; the rule of *stare decisis* is a bar to any attempt to relitigate the same issue. (Rep. of the Phils. *vs.* Rosario, G.R. No. 186635, Jan. 27, 2016) p. 418

SUMMONS

Service of summons — Service of summons and notices of proceedings sent to the petitioner's responsible officer at its address is valid and binding upon the petitioner. (Thomasites Center for International Studies [TCIS] *vs.* Rodriguez, G.R. No. 203642, Jan. 27, 2016) p. 536

UNLAWFUL DETAINER

Complaint for —— If the defendant fails to answer the complaint within the period provided, the court has no authority to declare the defendant in default, but shall render judgment, either *motu proprio* or upon plaintiff's motion, based solely on the facts alleged in the complaint and limited to what is prayed for. (Fairland Knitcraft Corp. *vs.* Loo Po, G.R. No. 217694, Jan. 27, 2016) p. 612

—— Matters that must be alleged in the complaint. (Sps. Erorita *vs.* Sps. Dumlao, G.R. No. 195477, Jan. 25, 2016) p. 23

—— Requirements. (Fairland Knitcraft Corp. *vs.* Loo Po, G.R. No. 217694, Jan. 27, 2016) p. 612

—— The attachment of any deed of ownership to the complaint is not indispensable as an action for unlawful detainer does not entirely depend on ownership. (*Id.*)

—— The plaintiff is not compelled to attach his evidence to the complaint because, at the inception stage, he only has to file his complaint to establish his cause of action; explained. (*Id.*)

WITNESSES

Credibility of —— Findings and conclusions of the trial court sustained by the Court of Appeals. (Saraum *vs.* People, G.R. No. 205472, Jan. 25, 2016) p. 122

—— In determining who between the prosecution and defense witnesses are to be believed, the evaluation of the trial court is accorded much respect for the reason that the trial court is in a better position to observe the demeanor of the witnesses as they deliver their testimonies. (Ibañez *vs.* People, G.R. No. 190798, Jan. 27, 2016) p. 436

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