PHILIPPINE REPORTS

VOL. 783

MARCH 9, 2016 TO APRIL 5, 2016

VOLUME 783

REPORTS OF CASES

DETERMINED IN THE

SUPREME COURT

OF THE

PHILIPPINES

FROM

MARCH 9, 2016 TO APRIL 5, 2016

SUPREME COURT
MANILA
2017

Prepared
by

The Office of the Reporter
Supreme Court
Manila
2017

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

THIRD DIVISION

[A.C. No. 9831. March 9, 2016]

CHAN SHUN KUEN, *complainant, vs.* **COMMISSIONERS LOURDES B. COLOMA-JAVIER, GREGORIO O. BILOG III, RAUL TAGLE AQUINO and ATTY. JOYRICH M. GOLANGCO,** *respondents.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; DISBARMENT AND SUSPENSION; IN DISBARMENT, THE TEST IS WHETHER THE LAWYER'S CONDUCT SHOWS HIM OR HER TO BE WANTING IN MORAL CHARACTER, HONESTY, PROBITY, AND GOOD DEMEANOR, OR WHETHER IT RENDERS HIM OR HER UNWORTHY TO CONTINUE AS AN OFFICER OF THE COURT. — [T]he main issue in disbarment cases is whether or not a lawyer has committed serious professional misconduct sufficient to cause disbarment. The test is whether the lawyer's conduct shows him or her to be wanting in moral character, honesty, probity, and good demeanor; or whether it renders him or her unworthy to continue as an officer of the court. The burden of proof rests upon the complainant; and the Court will exercise its disciplinary power only if the complainant establishes the complaint with clearly preponderant evidence.

2. ID.; ID.; ID.; THE RESPONDENTS CANNOT BE DISBARRED MERELY ON COMPLAINANT'S BARE ALLEGATIONS.— [T]he disbarment complaint against the

respondents has no leg to stand on. The particular acts alleged by the complainant against the respondents, which to his mind, were grounds for disbarment, have no merit and seem too far-fetched. The respondents cannot be disbarred merely on complainant's bare allegation that the respondents connived with each other in writing its decisions, resolutions and orders against his company, and that Commissioner Genilo's signature was forged by a personnel of the NLRC Third Division. These acts particularized by the complainant are mere allegations and he has nothing but hollow suppositions to bolster his complaint.

3. ID.; ID.; ID.; CHARGES AGAINST THE RESPONDENTS, NOT PROVED.— Even if the Court were to gauge the assailed actions of the respondents, there was no evidence to show that the respondents committed the acts complained of. No specific incidents and sufficient evidence can be gathered to show that the respondents had committed misconduct, dishonesty, falsehood, or had misused the rules of procedure. There was no indication whatsoever of any connivance or manifest partiality to prejudice the complainant. Neither was there proof that the decisions, resolution, or orders of the respondents were attended by bad faith, malice or gross negligence. As it turned out, the charges leveled against the respondents were imaginary and unworthy of serious consideration because it was clear from the start that the acts particularized in the complaint pertain to the respondents' capacity as NLRC commissioners. Besides, the sincerity of the charge against the respondents is cynical.

4. ID.; ID.; ID.; THE COMPLAINT AGAINST THE RESPONDENTS WAS ILL-MOTIVATED; ALLOWING THE COMPLAINANT TO TRIFLE WITH THE COURT, TO MAKE USE OF THE JUDICIAL PROCESS AS AN INSTRUMENT OF RETALIATION, WOULD BE A REFLECTION ON THE RULE OF LAW.— Upon scrutiny of the records of this case, it would reveal that the complaint was an ill-motivated bid to disbar the respondents, who were merely exercising their judicial function as NLRC Commissioners. Hence, there is a veneer of truth in the allegation of the respondents that the complaint is a vindictive charge of the complainant meant to vex, harass, humiliate and punish them in performing their duty, as well as to get even with them for deciding the labor case against the complainant. The Court

had already held that "[t]o allow complainant to trifle with the Court, to make use of the judicial process as an instrument of retaliation, would be a reflection on the rule of law."

5. ID.; ID.; ID.; TO ALLOW EVERY PARTY WHO LOST IN A CASE TO FILE MULTIPLE SUITS AGAINST THOSE WHO DID NOT DECIDE IN HIS FAVOR WOULD UNREASONABLY CLOG THE DOCKETS OF THE COURT WITH UNSCRUPULOUS CASES; COMPLAINANT ADMONISHED FOR FILING BASELESS SUITS.— The Court also noted that the instant complaint is a virtual duplicate of previous administrative complaints which this Court had already dismissed in A.C. No. 8040 and A.C. No. 8621, there being no *prima facie* case. Clearly, all the cases filed by the complainant before the different bodies essentially revolve around the same circumstances and parties involving the decisions, resolutions, and orders relative to the abovementioned labor case. From the foregoing, it is clear that the case should be dismissed for utter lack of merit. Nonetheless, the complainant's propensity in incessantly filing baseless complaints against the respondents should be curtailed. To allow every party who lost in a case to file multiple suits against those who did not decide in his favor would unreasonably clog the dockets of the court with unscrupulous cases. Considering that this has already been complainant's third attempt to file a baseless suit against the respondents before this Court, it is deemed proper to admonish him and sternly warn him that he shall be dealt with more severely should he commit a similar act against a member of the Bar.

R E S O L U T I O N

REYES, *J.*:

The instant disbarment case filed by Chan Shun Kuen (complainant), the General Manager and Chief Executive Officer of Compromise Enterprises Corporation (CEC), against Commissioners Lourdes B. Coloma-Javier, Gregorio O. Bilog III and Raul Tagle Aquino, and Deputy Executive Clerk Atty. Joyrich M. Golangco (respondents), all from the National Labor Relations Commission (NLRC), is an offshoot of the labor case

entitled *Felisa B. Toribio, et al. v. Compromise Enterprises Corporation and/or Margaret So Chan*.

The said labor case for illegal dismissal, unpaid service incentive leave and 13th month pay was decided against CEC; hence, it was ordered to pay separation pay in lieu of reinstatement in the sum of ₱5,543,807.57.[1] CEC, however, failed to appeal the said decision, thus it became final and executory. The complainants in the labor case moved for the execution of the said decision, hence, a Writ of Execution was issued and was duly served. Accordingly, the sheriff levied the property covered by Transfer Certificate of Title No. 19784 belonging to CEC.

By a Decision[2] dated October 16, 2007, the labor case was resolved by the NLRC Third Division in favor of the complainants therein. CEC filed several motions and appeal before the NLRC but all were ruled against it.

Instead of filing an appeal with the appellate court, the complainant opted to file a series of complaints, administrative and criminal, against one or several of the respondents of the NLRC before different bodies.[3]

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[1] *Rollo*, Vol. I, pp. 77-81.

[2] *Id.* at 34-38.

[3] *Id.* at 453-466, 670-671.

Court/Office	Case Number	Complainant	Respondent/s	Status
NLRC Committee on Peers	A.O. 05-07	CEC/Chan Shun Kuen	[Herein respondents], Nieves Vivar De Castro, Angelita Alberto-Gacutan, Pablo Espiritu, Board Secretary Angelito V. Vives and Labor Associate Ramona P. Manalo	Dismissed
Ombudsman	CPL-C-08-1944	Chan Shun Kuen	[Herein respondent commissioners], Angelita A. Gacutan	Dismissed
Supreme Court	A.C. No. 8040	CEC Chan Shun Kuen	[Herein respondent commissioners], Angelita A. Gacutan	Dismissed

Undaunted with the dismissal of all the cases he filed against the respondents, the complainant once again came to this Court with a Verified Complaint[4] for disbarment claiming that the respondents connived with each other in writing its Decision dated October 16, 2007 for the said labor case and alleging that Commissioner Tito F. Genilo's (Commissioner Genilo) signature was forged by a personnel of the Third Division, as well as the December 10, 2007 Letter of Commissioner Genilo regarding his inhibition in the said case.

In compliance with the Court's directive,[5] the respondents filed their Comment[6] asserting in the main that the complainant committed forum shopping for having filed identical complaints

Supreme Court	A.C. No. 8621	CEC Chan Shun Kuen	Lourdes C. Javier, Gregorio O. Bilog III, Pablo C. Espiritu, Jr., Joyrich M. Golangco	Dismissed (28 June 2010 Resolution)
Ombudsman	OMB-C-A-10-0218-E OMB-C-C-10-0205-E	Chan Shun Kuen	Lourdes C. Javier, Gregorio O. Bilog III, Pablo C. Espiritu, Jr., Angelito Vives, Joyrich M. Golangco, Ramona P. Manalo	Pending
Supreme Court Office of the Bar Confidant (Referred to [Integrated Bar of the Philippines] Board of Governors)	Adm. Case No. 7894	Chan Shun Kuen	Nieves V. De Castro	Dismissed on 28 May 2010
Ombudsman	CPL-C-08-0298	Chan Shun Kuen	Nieves V. De Castro	Pending
Office of the President			Atty. Marion Shane T. Madeja, Leonardo M. Leonida, Dolores Peralta-Beley, Numeriano D. Villena	Dismissed

[4] *Id.* at 1-21.

[5] *Id.* at 581.

[6] *Id.* at 582-600, 660-674, and *rollo*, Vol. II, pp. 1-6.

in various forms, against the same respondents before different bodies. The respondents branded the complaint as motivated by malice and retorted that the complainant has been using the Court and several quasi-judicial bodies as a means to overturn the decision of the Labor Arbiter in his desperate attempt to stop the execution proceedings on his property by maliciously and repeatedly filing baseless, unfounded and frivolous harassment suits against them.

After examining the instant complaint, the Court resolves to dismiss it outright.

To begin with, the main issue in disbarment cases is whether or not a lawyer has committed serious professional misconduct sufficient to cause disbarment. The test is whether the lawyer's conduct shows him or her to be wanting in moral character, honesty, probity, and good demeanor; or whether it renders him or her unworthy to continue as an officer of the court. The burden of proof rests upon the complainant; and the Court will exercise its disciplinary power only if the complainant establishes the complaint with clearly preponderant evidence.[7]

Guided by the foregoing tenets, the disbarment complaint against the respondents has no leg to stand on. The particular acts alleged by the complainant against the respondents, which to his mind, were grounds for disbarment, have no merit and seem too far-fetched. The respondents cannot be disbarred merely on complainant's bare allegation that the respondents connived with each other in writing its decisions, resolutions and orders against his company, and that Commissioner Genilo's signature was forged by a personnel of the NLRC Third Division. These acts particularized by the complainant are mere allegations and he has nothing but hollow suppositions to bolster his complaint.

Even if the Court were to gauge the assailed actions of the respondents, there was no evidence to show that the respondents committed the acts complained of. No specific incidents and

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[7] *Atty. Alfredo L. Villamor, Jr. v. Attys. E. Hans A. Santos and Agnes H. Maranan,* A.C. No. 9868, April 22, 2015.

sufficient evidence can be gathered to show that the respondents had committed misconduct, dishonesty, falsehood, or had misused the rules of procedure. There was no indication whatsoever of any connivance or manifest partiality to prejudice the complainant. Neither was there proof that the decisions, resolution, or orders of the respondents were attended by bad faith, malice or gross negligence. As it turned out, the charges levelled against the respondents were imaginary and unworthy of serious consideration because it was clear from the start that the acts particularized in the complaint pertain to the respondents' capacity as NLRC commissioners. Besides, the sincerity of the charge against the respondents is cynical.

Upon scrutiny of the records of this case, it would reveal that the complaint was an ill-motivated bid to disbar the respondents, who were merely exercising their judicial function as NLRC Commissioners. Hence, there is a veneer of truth in the allegation of the respondents that the complaint is a vindictive charge of the complainant meant to vex, harass, humiliate and punish them in performing their duty, as well as to get even with them for deciding the labor case against the complainant. The Court had already held that "[t]o allow complainant to trifle with the Court, to make use of the judicial process as an instrument of retaliation, would be a reflection on the rule of law."[8]

The Court also noted that the instant complaint is a virtual duplicate of previous administrative complaints which this Court had already dismissed in A.C. No. 8040[9] and A.C. No. 8621,[10]

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[8] *Seares, Jr. v. Atty. Gonzales-Alzate*, 698 Phil. 596, 609 (2012), citing *Lim v. Atty. Antonio*, 210 Phil. 226, 230 (1983).

[9] *Compromise Enterprises Corporation, Chan Shun Kuen, General Manager v. Commissioners Raul Aquino, Angelita Alberto-Gacutan, Lourdes Coloma-Javier and Gregorio O. Bilog III*, January 18, 2010, *rollo*, Vol. I, pp. 708-709.

[10] *Compromise Enterprises Corporation, Chan Shun Kuen/CEO v. Commissioners Lourdes Coloma-Javier Gregorio Ocampo Bilog III, and Pablo Espiritu, Jr., and Deputy Executive Clerk Joyrich Monteverde Golangco,* June 28, 2010, *id.* at 625-626.

there being no *prima facie* case. Clearly, all the cases filed by the complainant before the different bodies essentially revolve around the same circumstances and parties involving the decisions, resolutions, and orders relative to the abovementioned labor case.

From the foregoing, it is clear that the case should be dismissed for utter lack of merit. Nonetheless, the complainant's propensity in incessantly filing baseless complaints against the respondents should be curtailed. To allow every party who lost in a case to file multiple suits against those who did not decide in his favor would unreasonably clog the dockets of the court with unscrupulous cases. Considering that this has already been complainant's third attempt to file a baseless suit against the respondents before this Court, it is deemed proper to admonish him and sternly warn him that he shall be dealt with more severely should he commit a similar act against a member of the Bar.

WHEREFORE, the Court resolves to **DISMISS** the disbarment complaint against Commissioners Lourdes B. Coloma-Javier, Gregorio O. Bilog III, Raul Tagle Aquino, and Atty. Joyrich M. Golangco for lack of merit. Complainant Chan Shun Kuen is hereby **ADMONISHED** for filing the malicious complaint, **WITH STERN WARNING** that a repetition shall be dealt with more severely as indirect contempt of the Court.

SO ORDERED.

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

THIRD DIVISION

[A.M. No. RTJ-16-2452. March 9, 2016]

IN THE MATTER OF: ANONYMOUS COMPLAINT FOR DISHONESTY, GRAVE MISCONDUCT AND PERJURY COMMITTED BY JUDGE JAIME E. CONTRERAS (IN HIS CAPACITY AS THE THEN 4TH PROVINCIAL PROSECUTOR OF LIBMANAN, CAMARINES SUR).

SYLLABUS

1. **POLITICAL LAW; CONSTITUTION; OMBUDSMAN; POWER TO INVESTIGATE AND PROSECUTE ANY ILLEGAL ACT OR OMISSION OF ANY PUBLIC OFFICIAL.—** Section 12, Article XI of the Constitution provides the power of the Ombudsman to investigate and prosecute any illegal act or omission of any public officials. x x x In *Office of the Ombudsman v. CA (16th Division)*, this Court held that the Ombudsman's authority as defined under the Constitution and Republic Act No. 6770 is broad enough to include the direct imposition of the penalty of removal, suspension, demotion, fine or censure on an erring public official or employee.

2. **ID.; JUDGES; DISHONESTY; MAKING FALSE STATEMENT IN THE PERSONAL DATA SHEET (PDS); PENALTY OF ONE YEAR MADE PROPER IN CASE AT BAR.—** [T]he finding of the OMB against Judge Contreras for simple misconduct in OMB-ADM-1-94-1040 is considered an administrative offense, which he should have declared in his PDS when he was asked: "Have you ever been convicted of any administrative offense?" x x x A careful perusal of the wording of the question "Have you ever been charged?" would show that it solicits an answer that pertains to either past or present charge, whether it was already dismissed or not. Judge Contreras should have known fully well the consequences of making a false statement in his PDS. x x x Dishonesty is considered a grave offense. It carries the maximum penalty of dismissal from the service with forfeiture of retirement benefits, except accrued leave credits, and perpetual disqualification

> from reemployment in the government service. x x x In the present case, taking into account Judge Contreras' more than 30 years of government service, and that this is his first offense as a member of the bench, this Court finds the imposition of suspension of one (1) year without pay to be proper under the circumstances.

D E C I S I O N

REYES, *J.*:

This is an administrative case for gross dishonesty against Judge Jaime E. Contreras (Judge Contreras) of the Regional Trial Court (RTC) of Naga City, Branch 25.

Facts of the Case

On November 12, 2014, the Office of the Court Administrator (OCA) received an anonymous complaint[1] dated October 16, 2014 charging Judge Contreras with Dishonesty, Grave Misconduct and Perjury, relative to an administrative case[2] filed against him before the Office of the Ombudsman (OMB) docketed as OMB-ADM-1-94-1040, entitled *Carlito I. Nudo v. Jaime Contreras.*

The complaint alleged that when Judge Contreras applied for a position in the judiciary, he failed to disclose in his Personal Data Sheet (PDS) that a previous administrative case was filed against him while he was the 4th Assistant Provincial Prosecutor of Libmanan, Camarines Sur wherein he was found guilty by the OMB for simple misconduct and was meted out a penalty of admonition.[3]

On November 21, 2014, the OCA issued its 1st Indorsement[4] directing Judge Contreras to file his Comment thereon within ten (10) days from receipt of the Indorsement.

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[1] *Rollo*, pp. 7-10.

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

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

[4] *Id.* at 1.

In his Comment[5] dated January 15, 2015, Judge Contreras surmised that the anonymous complaint was filed by a certain Jose Arnel Rubio, a former Sheriff of the RTC of Naga City, whom he dismissed from service before by reason of his shady and anomalous transactions in the implementation of writs of execution and improper conduct.

Moreover, Judge Contreras averred that he cannot categorically deny or affirm the charge against him due to complainant's failure to attach the questioned PDS. Nonetheless, he maintained that during the Judicial and Bar Council's (JBC) interviews, he had been disclosing information relating to the cases filed against him with the OMB.

Also, Judge Contreras claimed that in administrative cases, admonition is not a penalty but merely an advice.

Recommendation of OCA

After evaluation, the OCA recommended the re-docketing of the matter as a regular administrative case and that Judge Contreras be found guilty of dishonesty and be dismissed from service with forfeiture of all retirement benefits, excluding accrued leave credits, with prejudice to reemployment in any government office, including government-owned and controlled corporations.[6]

Ruling of the Court

The Court agrees with the recommendation of the OCA finding Judge Contreras guilty of dishonesty in filling out his PDS, but modifies the recommended penalty of dismissal to suspension of one (1) year given the attendant circumstances.

"Civil service rules mandate the accomplishment of the PDS as a requirement for employment in the government."[7] "It is the repository of all information about any government employee

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

[6] *Id.* at 95-103.

[7] *Villordon v. Avila*, 692 Phil. 388, 396 (2012).

and official regarding his personal background, qualification, and eligibility."[8] "Considering that truthful completion of [PDS] is a requirement for employment in the Judiciary, the importance of answering the same with candor need not be gainsaid."[9]

As per the Certification[10] issued by the OMB dated February 12, 2015 and signed by a certain Natividad T. Abenir, Chief Administrative Officer of the Central Records Division, Judge Contreras had four (4) resolved cases filed with the OMB, namely:

(i) OMB-1-94-2624 [Case dismissed];
(ii) OMB-ADM-1-94-1040 [Sanctioned];
(iii) OMB-1-97-1152 [Case dismissed]; and
(iv) OMB-ADM-1-97-0369 [Case dismissed].

Among the four cases, Judge Contreras, while he was then a Provincial Prosecutor, was admonished for simple misconduct in OMB-ADM-1-94-1040 for exerting undue influence in causing the arrest of a certain Carlito Nudo despite proof that the latter has posted a bail bond duly approved by the court.

Section 12, Article XI of the Constitution provides the power of the Ombudsman to investigate and prosecute any illegal act or omission of any public officials, it states:

> Sec. 12. The Ombudsman and his Deputies, as protectors of the people, shall act promptly on complaints filed in any form or manner against public officials or employees of the Government, or any subdivision, agency, or instrumentality thereof, including government-owned or controlled corporations, and shall, in appropriate cases, notify the complainants of the action taken and the result thereof.

In *Office of the Ombudsman v. CA (16th Division)*,[11] this Court held that the Ombudsman's authority as defined under the Constitution and Republic Act No. 6770 is broad enough to include the direct imposition of the penalty of removal,

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[8] *Advincula v. Dicen*, 497 Phil. 979, 990 (2005).

[9] *Acting Judge Bellosillo v. Rivera*, 395 Phil. 180, 191 (2000).

[10] *Rollo*, p. 61.

[11] 524 Phil. 405 (2006).

suspension, demotion, fine or censure on an erring public official or employee. This Court further held that:

> All these provisions in Republic Act No. 6770 taken together reveal the manifest intent of the lawmakers to bestow on the [OMB] *full* administrative disciplinary authority. These provisions cover the entire gamut of administrative adjudication which entails the authority to, *inter alia*, receive complaints, conduct investigations, hold hearings in accordance with its rules of procedure, summon witnesses and require the production of documents, place under preventive suspension public officers and employees pending an investigation, determine the appropriate penalty imposable on erring public officers or employees as warranted by the evidence, and, necessarily, impose the said penalty.[12]

Undoubtedly, the finding of the OMB against Judge Contreras for simple misconduct in OMB-ADM-1-94-1040 is considered an administrative offense, which he should have declared in his PDS when he was asked: "Have you ever been convicted of any administrative offense?"

Moreover, as correctly observed by OCA, the following were likewise found in Judge Contreras' PDS forms:

> 2. In the PDS dated 16 April 2007 submitted before the JBC, respondent Judge Contreras answered **"NO"** to the question **"Have you ever been charged with, found guilty of, or otherwise imposed a sanction** *for, violation of any law, decree, ordinance, administrative issuance or regulation by any court, tribunal, or any other government office, agency or instrumentality in the Philippines or in any foreign country?*"; x x x
>
> 3. In the PDS dated 24 January 2010, also filed with the JBC in connection with respondent Judge Contreras' application for the post of Associate Justice of the Court of Appeals and the Sandiganbayan, he answered **"YES"** to the question "*Have you ever been charged with violation of any law, decree, ordinance, administrative issuance, or regulation by any court, prosecution office, tribunal, or any other*

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[12] *Id.* at 429-430.

government office, agency or instrumentality in the Philippines or in any foreign country?". In relation to his affirmative answer, respondent Judge Contreras mentioned two (2) cases filed before the [OMB] in 1997, viz.:

Case Title/Docket	Type of Complaint	Disposition
Nudo *vs.* Contreras	Violation of R.A. 3019	Dismissed
Nudo *vs.* Contreras	Violation of R.A. 6713	Dismissed

4. In a more recent PDS dated 28 September 2013, which was also submitted before the JBC, respondent Judge Contreras answered **"YES"** to the question "*Have you ever been charged with violation of any law, decree, ordinance, administrative issuance, or regulation by any court, prosecution office, tribunal, or any other government office, agency, or instrumentality in the Philippines or in any foreign country?*". In relation to his affirmative answer, respondent Judge Contreras again mentioned the two (2) cases which were filed before the [OMB] in 1997, viz.:

Case Title/Docket	Type of Complaint	Disposition
Nudo *vs.* Contreras	Violation of R.A. 3019	Dismissed
Nudo *vs.* Contreras	Violation of R.A. 6713	Dismissed

x x x x x x x x x[13]

(Citations omitted)

A careful perusal of the wording of the question "Have you ever been charged?" would show that it solicits an answer that pertains to either past or present charge, whether it was already dismissed or not. Judge Contreras should have known fully well the consequences of making a false statement in his PDS. Being a former public prosecutor and a judge now, it is his duty to ensure that all the laws and rules of the land are followed to the letter. His being a judge makes the act all the more unacceptable. Clearly, there was an obvious lack of integrity, the most fundamental qualification of a member of the judiciary.[14]

Time and time again, this Court has stressed that "the behavior of all employees and officials involved in the administration of

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[13] *Rollo*, pp. 98-99.

[14] *Samson v. Judge Caballero*, 612 Phil. 737, 746 (2009).

justice, from judges to the most junior clerks, is circumscribed with a heavy responsibility."[15] "As visible representation of the law, respondent judge should have conducted himself in a manner which would merit the respect of the people to him in particular and to the Judiciary in general."[16]

Dishonesty is considered a grave offense. It carries the maximum penalty of dismissal from the service with forfeiture of retirement benefits, except accrued leave credits, and perpetual disqualification from reemployment in the government service.

In *OCA v. Judge Aguilar*,[17] however, this Court refrained from imposing the maximum penalty based on several factors attendant to the case. The Court held:

> Nonetheless, Rule IV, Section 53 of the Civil Service Rules also provides that in the determination of the penalties to be imposed, extenuating, mitigating, aggravating or alternative circumstances attendant to the commission of the offense shall be considered. Among the circumstances that may be allowed to modify the penalty are (1) length of service in the government, (2) good faith, and (3) other analogous circumstances.
>
> In several jurisprudential precedents, the Court has refrained from imposing the actual administrative penalties prescribed by law or regulation in the presence of mitigating factors. Factors such as the respondent's length of service, the respondent's acknowledgement of his or her infractions and feeling of remorse, family circumstances, humanitarian and equitable considerations, respondent's advanced age, among other things, have had varying significance in the determination by the Court of the imposable penalty. x x x.[18]

In the present case, taking into account Judge Contreras' more than 30 years of government service, and that this is his first offense as a member of the bench, this Court finds the imposition of suspension of one (1) year without pay to be proper under the circumstances.

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[15] *Judge Santos, Jr. v. Mangahas*, 685 Phil. 814, 821 (2012).

[16] *Atty. Fernandez v. Judge Vasquez*, 669 Phil. 619, 633 (2011).

[17] 666 Phil. 11 (2011).

[18] *Id.* at 22-23.

WHEREFORE, Judge Jaime E. Contreras is hereby found **GUILTY** of **DISHONESTY** and is **SUSPENDED** from the service for one (1) year without pay, to take effect upon the finality hereof, with a warning that a repetition of the same or similar act will be dealt with more severely.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 159350. March 9, 2016]

ALUMAMAY O. JAMIAS, JENNIFER C. MATUGUINAS and JENNIFER F. CRUZ,* *petitioners*, *vs.* **NATIONAL LABOR RELATIONS COMMISSION (SECOND DIVISION), HON. COMMISSIONERS: RAUL T. AQUINO, VICTORIANO R. CALAYCAY and ANGELITA A. GACUTAN; HON. LABOR ARBITER VICENTE R. LAYAWEN; INNODATA PHILIPPINES, INC., INNODATA PROCESSING CORPORATION, (INNODATA CORPORATION), and TODD SOLOMON,** *respondents.*

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* Although the petition for review on *certiorari* was filed in the names of all the original parties in the Court of Appeals, namely: Alvin V. Patnon, Marietha V. Delos Santos, Mary Rose V. Macabuhay, Alumamay O. Jamias, Marilen Agbayani, Rina O. Duque, Lilian R. Guamil, Jerry F. Soldevilla, Ma. Concepcion A. Dela Cruz, Analyn I. Beter, Michael L. Aguirre, Jennifer C. Matuguinas and Jennifer F. Cruz, the Court captions this decision only with the names of the three who brought this appeal, namely: Alumamay O. Jamias, Jennifer C. Matuguinas and Jennifer F. Cruz.

SYLLABUS

1. REMEDIAL LAW; DOCTRINE OF *STARE DECISIS* ENJOINS ADHERENCE TO JUDICIAL PRECEDENTS; DISCUSSED.— The doctrine of *stare decisis* enjoins adherence to judicial precedents. 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; but when the facts are essentially different, *stare decisis* does not apply because a perfectly sound principle as applied to one set of facts might be entirely inappropriate when a factual variance is introduced.

2. LABOR AND SOCIAL LEGISLATION; EMPLOYMENT; FIXED TERM EMPLOYMENT.— [Article 280 of the Labor Code] contemplates three kinds of employees, namely; (*a*) regular employees; (*b*) project employees; and (*c*) casuals who are neither regular nor project employees. The nature of employment of a worker is determined by the factors provided in Article 280 of the *Labor Code*, regardless of any stipulation in the contract to the contrary. x x x Obviously, Article 280 does not preclude an agreement providing for a fixed term of employment knowingly and voluntarily executed by the parties. A fixed term agreement, to be valid, must strictly conform with the requirements and conditions provided in Article 280 of the *Labor Code*. The test to determine whether a particular employee is engaged as a project or regular employee is whether or not the employee is assigned to carry out a specific project or undertaking, the duration or scope of which was specified at the time of his engagement. There must be a determination of, or a clear agreement on, the completion or termination of the project at the time the employee is engaged. Otherwise put, the fixed period of employment must be knowingly and voluntarily agreed upon by the parties, without any force, duress or improper pressure being brought to bear upon the employee and absent any other circumstances vitiating his consent, or it must satisfactorily appear that the employer and employee dealt with each other on more or less equal terms with no moral dominance whatsoever being exercised by the former on the latter.

APPEARANCES OF COUNSEL

Cezar F. Maravilla, Jr., for petitioners A. Jamias, J. Matuguinas & J. Cruz.

Alonzo & Associates Law Offices for private respondents.

D E C I S I O N

BERSAMIN, *J.*:

The petitioners appeal the adverse judgment promulgated on July 31, 2002,[1] whereby the Court of Appeals (CA) upheld the ruling of the National Labor Relations Commission (NLRC) declaring them as project employees hired for a fixed period.

Antecedents

Respondent Innodata Philippines, Inc. (Innodata), a domestic corporation engaged in the business of data processing and conversion for foreign clients,[2] hired the following individuals on various dates and under the following terms, to wit:

Name	Position	Duration of Contract
Alumamay Jamias	Manual Editor	August 7, 1995 to August 7, 1996[3]
Marietha V. Delos Santos	Manual Editor	August 7, 1995 to August 7, 1996[4]
Lilian R. Guamil	Manual Editor	August 16, 1995 to August 16, 1996[5]

[1] *Rollo*, pp. 38-46; penned by CA Associate Justice Bienvenido L. Reyes (now a Member of the Court), with Associate Justice Roberto A. Barrios (retired/deceased) and Associate Justice Edgardo F. Sundiam (retired/deceased), concurring.

[2] *Id.* at 179-180.

[3] *Id.* at 217.

[4] CA *rollo*, pp. 41-42.

[5] *Id.*

Rina C. Duque	Manual Editor	August 7, 1995 to August 7, 1996[6]
Marilen Agabayani	Manual Editor	August 23, 1995 to August 23, 1996[7]
Alvin V. Patnon	Production Personnel	September 1, 1995 to September 1, 1996[8]
Analyn I. Beter	Type Reader	September 18, 1995 to September 18, 1996[9]
Jerry O. Soldevilla	Production Personnel	September 18, 1995 to September 18, 1996[10]
Ma. Concepcion A. Dela Cruz	Production Personnel	September 18, 1995 to September 18, 1996[11]
Jennifer Cruz	Data Encoder	November 20, 1995 to November 20, 1996[12]
Jennifer Matuguinas	Data Encoder	November 20, 1995 to November 20, 1996[13]

After their respective contracts expired, the aforenamed individuals filed a complaint for illegal dismissal claiming that Innodata had made it appear that they had been hired as project employees in order to prevent them from becoming regular employees.[14]

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[6] *Id.*

[7] *Id.*

[8] *Id.*

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

[10] *Id.*

[11] *Id.*

[12] *Rollo*, p. 218.

[13] *Id.* at 219.

[14] CA *rollo*, p. 48.

Decision of the Labor Arbiter

On September 8, 1998, Labor Arbiter (LA) Vicente Layawen rendered his decision dismissing the complaint for lack of merit.[15] He found and held that the petitioners had knowingly signed their respective contracts in which the durations of their engagements were clearly stated; and that their fixed term contracts, being exceptions to Article 280 of the *Labor Code*, precluded their claiming regularization.

Ruling of the National Labor Relations Commission

On appeal, the NLRC affirmed the decision of LA Layawen,[16] opining that Article 280 of the *Labor Code* did not prohibit employment contracts with fixed periods provided the contracts had been voluntarily entered into by the parties, *viz*.:

> [I]t is distinctly provided that complainants were hired for a definite period of one year incidental upon the needs of the respondent by reason of the seasonal increase in the volume of its business. Consequently, following the rulings in *Pantranco North Express, Inc. vs. NLRC, et al.*, G.R. No. 106654, December 16, 1994, the decisive determinant in term of employment should not be the activities that the employee is called upon to perform, but the day certain agreed upon by the parties for the commencement and termination of their employment relationship, a day certain being understood to be "that which must necessarily come, although it may not be known when." Further, Article 280 of the Labor Code does not prescribe or prohibit an employment contract with a fixed period provided, the same is entered into by the parties, without any force, duress or improper pressure being brought to bear upon the employee and absent any other circumstance vitiating consent. It does not necessarily follow that where the duties of the employee consist of activities usually necessary or desirable in the usual business of the employer, the parties are forbidden from agreeing on a period of time for the performance of such activities. There is thus nothing essentially contradictory between a definite period of employment and the nature of the employee's duties. x x x[17]

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[15] *Id.* at 40-47.

[16] *Id.* at 25-38.

[17] *Id.* at 35-36.

Judgment of the CA

As earlier mentioned, the CA upheld the NLRC. It observed that the desirability and necessity of the functions being discharged by the petitioners did not make them regular employees; that Innodata and the employees could still validly enter into their contracts of employment for a fixed period provided they had agreed upon the same at the time of the employees' engagement;[18] that Innodata's operations were contingent on job orders or undertakings for its foreign clients; and that the availability of contracts from foreign clients, and the duration of the employments could not be treated as permanent, but coterminous with the projects.[19]

The petitioners moved for reconsideration,[20] but the CA denied their motion on August 8, 2003.[21]

Hence, this appeal by only three of the original complainants, namely petitioners Alumamay Jamias, Jennifer Matuguinas and Jennifer Cruz.

Issues

The petitioners anchor their appeal on the following:

I

THE HON. COURT OF APPEALS COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION OR IN EXCESS OF JURISDICTION AS IT CANNOT REVERSE OR ALTER THE SUPREME COURT DECISION

THE SUPREME COURT HAS RULED THAT THE NATURE OF EMPLOYMENT AT RESPONDENTS IS REGULAR NOT FIXED OR CONTRACTUAL IN AT LEAST TWO (2) CASES AGAINST INNODATA PHILS., INC.

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[18] *Rollo*, pp. 43-44.

[19] *Id.* at 45.

[20] CA *rollo*, pp. 528-547.

[21] *Rollo*, pp. 48-49.

II

THE HON. COURT OF APPEALS COMMITTED SERIOUS ERROR OF LAW WHEN IT DID NOT STICK TO PRECENDENT AS IT HAS ALREADY RULED IN AN EARLIER CASE THAT THE NATURE OF EMPLOYMENT AT INNODATA PHILS., INC. IS REGULAR AND NOT CONTRACTUAL

III

THE HON. COURT OF APPEALS PATENTLY ERRED IN LAW AND COMMITTED GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF JURISDICTION IN RULING THAT PETITIONERS' EMPLOYMENT IS FOR A FIXED PERIOD CO-TERMINOUS WITH A PROJECT WHEN THERE IS NO PROJECT TO SPEAK OF

IV

THE HON. COURT OF APPEALS PALPABLY ERRED IN LAW IN RULING THAT THE STIPULATION IN CONTRACT IS GOVERNING AND NOT THE NATURE OF EMPLOYMENT AS DEFINED BY LAW.[22]

The petitioners maintain that the nature of employment in Innodata had been settled in *Villanueva v. National Labor Relations Commission (Second Division)*[23] and *Servidad v. National Labor Relations Commission*,[24] whereby the Court accorded regular status to the employees because the work they performed were necessary and desirable to the business of data encoding, processing and conversion.[25] They insist that the CA consequently committed serious error in not applying the pronouncement in said rulings, thereby ignoring the principle of *stare decisis* in declaring their employment as governed by the contract of employment; that the CA also erroneously found that the engagement of the petitioners was coterminous with the project that was nonexistent; that Innodata engaged in

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[22] *Id.* at 14.

[23] G.R. No. 127448, September 10, 1998, 295 SCRA 326.

[24] G.R. No. 128682, March 18, 1999, 305 SCRA 49.

[25] *Rollo*, p. 18.

"semantic interplay of words" by introducing the concept of "fixed term employment" or "project employment" that were not founded in law;[26] and that Article 280 of the *Labor Code* guarantees the right of workers to security of tenure, which rendered the contracts between the petitioners and Innodata meaningless.[27]

In refutation, Innodata insists that the contracts dealt with in *Villanueva* and *Servidad* were different from those entered into by the petitioners herein,[28] in that the former contained stipulations that violated the provisions of the *Labor Code* on probationary employment and security of tenure,[29] while the latter contained terms known and explained to the petitioners who then willingly signed the same;[30] that as a mere service provider, it did not create jobs because its operations depended on the availability of job orders or undertakings from its client;[31] that Article 280 of the *Labor Code* allowed "term employment" as an exception to security of tenure; and that the decisive determinant was the day certain agreed upon by the parties, not the activities that the employees were called upon to perform.[32]

Were the petitioners regular or project employees of Innodata?

Ruling of the Court

We deny the petition for review on *certiorari*.

I
***Stare decisis* does not apply where the facts are essentially different**

Contrary to the petitioners' insistence, the doctrine of *stare decisis*, by which the pronouncements in *Villanueva* and *Servidad*

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[26] *Id.* at 27-28.

[27] *Id.* at 30-31.

[28] *Id.* at 186-188.

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

[30] *Id.* at 195.

[31] *Id.* at 197-198.

[32] *Id.* at 199-200.

would control the resolution of this case, had no application herein.

The doctrine of *stare decisis* enjoins adherence to judicial precedents.[33] 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; but when the facts are essentially different, *stare decisis* does not apply because a perfectly sound principle as applied to one set of facts might be entirely inappropriate when a factual variance is introduced.[34]

Servidad and *Villanueva* involved contracts that contained stipulations not found in the contracts entered by the petitioners. The cogent observations in this regard by the CA are worth reiterating:

> A cursory examination of the facts would reveal that while all the cases abovementioned involved employment contracts with a fixed term, the employment contract subject of contention in the *Servidad* and *Villanueva* cases provided for *double probation*, meaning, that the employees concerned, by virtue of a clause incorporated in their contracts, were made to remain as probationary employees even if they continue to work beyond the six month probation period set by law. Indeed, such stipulation militates against Constitutional policy of guaranteeing the tenurial security of the workingman. To Our mind, the provision alluded to is what prodded the Supreme Court to disregard and nullify altogether the terms of the written entente. Nonetheless, it does not appear to be the intendment of the High Tribunal to sweepingly invalidate or declare as unlawful all employment contracts with a fixed period. To phrase it differently, the said agreements providing for a one year term would have been declared valid and, consequently, the separation from work of the employees concerned would have been sustained had their contracts not included any unlawful and circumventive condition.

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[33] *Lazatin v. Desierto*, G.R. No. 147097, June 5, 2009, 588 SCRA 285, 293-294; citing *Fermin v. People*, G.R. No. 157643, March 28, 2008, 550 SCRA 132, 145.

[34] *Hacienda Bino/Hortencia Starke, Inc./Hortencia Starke v. Cuenca*, G.R. No. 150478, April 15, 2005, 456 SCRA 300, 309.

It ought to be underscored that unlike in the *Servidad* and *Villanueva* cases, the written contracts governing the relations of the respondent company and the petitioners herein do not embody such illicit stipulation.[35]

We also disagree with the petitioners' manifestation[36] that the Court struck down in *Innodata Philippines, Inc. v. Quejada-Lopez*[37] a contract of employment that was similarly worded as their contracts with Innodata. What the Court invalidated in *Innodata Philippines, Inc. v. Quejada-Lopez* was the purported fixed-term contract that provided for two periods — a fixed term of one year under paragraph 1 of the contract, and a three-month period under paragraph 7.4 of the contract — that in reality placed the employees under probation. In contrast, the petitioners' contracts did not contain similar stipulations, but stipulations to the effect that their engagement was for the fixed period of 12 months, to wit:

1. The EMPLOYER shall employ the EMPLOYEE and the EMPLOYEE shall serve the EMPLOYER in the EMPLOYER'S business as a MANUAL EDITOR on a fixed term only and for a fixed and definite period of twelve months, commencing on August 7, 1995 and terminating on August 7, 1996, x x x.[38]

In other words, the terms of the petitioners' contracts did not subject them to a probationary period similar to that indicated in the contracts struck down in *Innodata, Villanueva* and *Servidad*.

II

A fixed period in a contract of employment does not by itself signify an intention to circumvent Article 280 of the *Labor Code*

The petitioners argue that Innodata circumvented the security of tenure protected under Article 280 of the *Labor Code* by

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[35] *Rollo*, pp. 42-43.

[36] *Id.* at 555-562.

[37] G.R. No. 162839, October 12, 2006, 504 SCRA 253.

[38] *Rollo*, p. 217.

providing a fixed term; and that they were regular employees because the work they performed were necessary and desirable to the business of Innodata.

The arguments of the petitioners lack merit and substance.

Article 280 of the *Labor Code* provides:

> Art. 280. Regular and Casual Employment. — The provisions of written agreement to the contrary notwithstanding and regardless of the oral agreements of the parties, an employment shall be deemed to be regular where the employee has been engaged to perform activities which are usually necessary or desirable in the usual business or trade of the employer except where the employment has been fixed for a specific project or undertaking the completion or termination of which has been determined at the time of the engagement of the employee or where the work or service to be performed is seasonal in nature and the employment is for the duration of the season.
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> An employment shall be deemed casual if it is not covered by the preceding paragraph: Provided, That, any employee who has rendered at least one year of service, whether such service is continuous or broken, shall be considered a regular employee with respect to the activity in which he is employed and his employment shall continue while such actually exists.

The provision contemplates three kinds of employees, namely: (*a*) regular employees; (*b*) project employees; and (*c*) casuals who are neither regular nor project employees. The nature of employment of a worker is determined by the factors provided in Article 280 of the *Labor Code*, regardless of any stipulation in the contract to the contrary.[39] Thus, in *Brent School, Inc. v. Zamora*,[40] we explained that the clause referring to written contracts should be construed to refer to agreements entered into for the purpose of circumventing the security of tenure. Obviously, Article 280 does not preclude an agreement providing

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[39] *Villa v. National Labor Relations Commission*, G.R. No. 117043, January 14, 1998, 284 SCRA 105, 127.

[40] G.R. No. 48494, February 5, 1990, 181 SCRA 702.

for a fixed term of employment knowingly and voluntarily executed by the parties.[41]

A fixed term agreement, to be valid, must strictly conform with the requirements and conditions provided in Article 280 of the *Labor Code*. The test to determine whether a particular employee is engaged as a project or regular employee is whether or not the employee is assigned to carry out a specific project or undertaking, the duration or scope of which was specified at the time of his engagement.[42] There must be a determination of, or a clear agreement on, the completion or termination of the project at the time the employee is engaged.[43] Otherwise put, the fixed period of employment must be knowingly and voluntarily agreed upon by the parties, without any force, duress or improper pressure being brought to bear upon the employee and absent any other circumstances vitiating his consent, or it must satisfactorily appear that the employer and employee dealt with each other on more or less equal terms with no moral dominance whatsoever being exercised by the former on the latter.[44]

The contracts of the petitioners indicated the one-year duration of their engagement as well as their respective project assignments (*i.e.*, Jamias being as assigned to the CD-ROM project; Cruz and Matuguinas to the TSET project).[45] There is no indication that the petitioners were made to sign the contracts against their will. Neither did they refute Innodata's assertion that it did not employ force, intimidate or fraudulently manipulate the petitioners into signing their contracts, and that the terms thereof had been explained and made known to them.[46] Hence, the petitioners

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[41] *Id.* at 716.

[42] *Violeta v. National Labor Relations Commission*, G.R. No. 119523, October 10, 1997, 280 SCRA 520, 528.

[43] *Id.*

[44] *Philippine National Oil Co.-Energy Dev't. Corp. v. NLRC*, G.R. No. 97747, March 31, 1993, 220 SCRA 695, 699.

[45] *Rollo*, pp. 217-219.

[46] *Id.* at 195.

knowingly agreed to the terms of and voluntarily signed their respective contracts.

That Innodata drafted the contracts with its business interest as the overriding consideration did not necessarily warrant the holding that the contracts were prejudicial against the petitioners.[47] The fixing by Innodata of the period specified in the contracts of employment did not also indicate its ill-motive to circumvent the petitioners' security of tenure. Indeed, the petitioners could not presume that the fixing of the one-year term was intended to evade or avoid the protection to tenure under Article 280 of the *Labor Code* in the absence of other evidence establishing such intention. This presumption must ordinarily be based on some aspect of the agreement other than the mere specification of the fixed term of the employment agreement, or on evidence *aliunde* of the intent to evade.[48]

Lastly, the petitioners posit that they should be accorded regular status because their work as editors and proofreaders were usually necessary to Innodata's business of data processing.

We reject this position. For one, it would be unusual for a company like Innodata to undertake a project that had no relationship to its usual business.[49] Also, the necessity and desirability of the work performed by the employees are not the determinants in term employment, but rather the "day certain" voluntarily agreed upon by the parties.[50] As the CA cogently observed in this respect:

> There is proof to establish that Innodata's operations indeed rests upon job orders or undertakings coming from its foreign clients. Apparently, its employees are assigned to projects — one batch may be given a fixed period of one year, others, a slightly shorter duration,

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[47] *Villa v. National Labor Relations Commission, supra,* note 39, at 128.

[48] *Pakistan International Airlines Corporation v. Ople*, G.R. No. 61594, September 28, 1990, 190 SCRA 90.

[49] *ALU-TUCP v. National Labor Relations Commission*, G.R. No. 109902, August 2, 1994, 234 SCRA 678, 684.

[50] *Brent School, Inc. v. Zamora, supra,* note 40, at 710.

depending on the estimated time of completion of the particular job or undertaking farmed out by the client to the company.[51]

In fine, the employment of the petitioners who were engaged as project employees for a fixed term legally ended upon the expiration of their contract. Their complaint for illegal dismissal was plainly lacking in merit.

WHEREFORE, we **DENY** the petition for review on *certiorari*; **AFFIRM** the decision promulgated on July 31, 2002; and **ORDER** the petitioners to pay the costs of suit.

SO ORDERED.

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

FIRST DIVISION

[G.R. No.170679. March 9, 2016]

TUNG HUI CHUNG and TONG HONG CHUNG, *petitioners, vs.* **SHIH CHIU HUANG a.k.a. JAMES SHIH,** *respondent.*

SYLLABUS

1. CIVIL LAW; OBLIGATIONS AND CONTRACTS; COMPROMISE AGREEMENT; ONCE STAMPED WITH JUDICIAL IMPRIMATUR, IT CEASES TO BE A MERE CONTRACT BETWEEN THE PARTIES, AND BECOMES A JUDGMENT OF THE COURT, TO BE ENFORCED THROUGH WRIT OF EXECUTION. — [A] compromise

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[51] *Supra* note 1, at 45.

agreement is a contract whereby the parties make reciprocal concessions to avoid litigation or to put an end to one already commenced. It is an accepted, nay, even highly encouraged practice in the courts of law of this jurisdiction. It attains the authority and effect of *res judicata* upon the parties upon its execution, and becomes immediately final and executory, unless rescinded by grounds which vitiate consent. Once stamped with judicial imprimatur, it ceases to be a mere contract between the parties, and becomes a judgment of the court, to be enforced through writ of execution.

2. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; IMPROPER REMEDY TO ANNUL AND SET ASIDE A JUDGMENT BASED ON THE COMPROMISE AGREEMENT ON GROUNDS OF FRAUD AND LACK OF CONSENT.— The CA did not recognize that what it was asked to annul and set aside in C.A.-G.R. SP No. 88804 was no longer the compromise agreement of the parties but already the judgment based on the compromise agreement. The failure to recognize led the CA into granting the unprecedented relief of annulling the compromise agreement on the ground of fraud and lack of consent. In so doing, the CA acted without jurisdiction. First of all, the action before the CA was a special civil action for *certiorari* that had been brought on March 7, 2005, which was way beyond the period of 60 days from the rendition of the judgment based on the compromise agreement on October 20, 2003. The long delay grossly violated Section 4, Rule 65 of the *Rules of Court*, which allowed the petition for *certiorari* to be filed not later than 60 days from notice of the judgment being assailed. Moreover, the grounds relied upon by the respondent in his petition for *certiorari* in C.A.-G.R. SP No. 88804—that the RTC had committed grave abuse of discretion tantamount to excess or lack of jurisdiction for issuing the writ of execution that was patently unjust, one-side, unfair, fraudulent and unconscionable compromise agreement; and for issuing the writ of execution of the compromise agreement that lacked consideration—were not proper grounds for assailing the judgment based on the compromise agreement. Even assuming that such grounds for the petition for *certiorari* were true, which they were not, the judgment based on the compromise agreement could not be assailed on that basis. As the foregoing excerpt of the assailed decision bears out, the annulment of the judgment

based on the compromise agreement was premised on fraud and lack of consent on the part of the respondent as a contracting party, which were far from the jurisdictional error on which the petition for *certiorari* should have rested.

3. CIVIL LAW; OBLIGATIONS AND CONTRACTS; COMPROMISE AGREEMENT; ONCE JUDICIALLY APPROVED, A COMPROMISE AGREEMENT TURNED INTO A FINAL JUDGMENT, IMMUTABLE AND UNALTERABLE, REGARDLESS OF WHETHER OR NOT IT RESTED ON ERRONEOUS CONCLUSIONS OF FACT AND LAW, AND REGARDLESS OF WHETHER THE CHANGE WOULD BE BY THE COURT THAT RENDERED IT OR THE HIGHEST COURT OF THE LAND. — The impropriety of the petition for *certiorari* in CA-G.R. SP No. 87768 to demand the annulment of the compromise agreement was blatant and unquestionable. The RTC, after finding the August 19, 2003 compromise agreement to be in order and not contrary to law, morals, good customs and public policy, issued the October 20, 2003 order *approving* the compromise agreement. With this stamp of judicial approval, the compromise agreement became more than a mere contract of the parties. The judicially approved agreement was thereby turned into a final judgment, immutable and unalterable, regardless of whether or not it rested on erroneous conclusions of fact and law, and regardless of whether the change would be by the court that rendered it or the highest court of the land. This doctrine of immutability is grounded on fundamental considerations of public policy and sound practice, for, at the risk of occasional errors, judgments of the courts must become final at some definite date set by law. The doctrine exists for the reason that every litigation must come to an end at some time, for it is necessary for the proper enforcement of the rule of law and the administration of justice that once a judgment attains finality, the winning party should not be denied the favorable result. Clearly, the element of public policy and public interest has diluted the purely private interest of the parties before the compromise agreement was approved by the trial court.

4. REMEDIAL LAW; JUDGMENTS; ANNULMENT OF JUDGMENTS; PROPER REMEDY TO ASSAIL THE JUDGMENT BASED ON THE COMPROMISE

AGREEMENT ON GROUNDS OF EXTRINSIC FRAUD OR LACK OF JURISDICTION, BUT THE REMEDY OF ANNULMENT OF JUDGMENT CAN BE AVAILED OF ONLY IF THE ORDINARY REMEDIES OF NEW TRIAL, APPEAL, PETITION FOR RELIEF OR OTHER APPROPRIATE REMEDIES ARE NO LONGER AVAILABLE THROUGH NO FAULT OF THE PETITIONER. — [I]f the ground of the respondent to assail the judgment based on the compromise agreement was extrinsic fraud, his action should be brought under Rule 47 of the *Rules of Court*. Under Section 2 of Rule 47, the original action for annulment may be based only on extrinsic fraud or lack of jurisdiction, but extrinsic fraud, to be valid ground, should not have been availed of, or could not have been availed of in a motion for new trial or petition for relief. If the ground relied up is extrinsic fraud, the action must be filed within four years from the discovery of the extrinsic fraud; if the ground is lack of jurisdiction, the action must be brought before it is barred by laches or estoppels. Regardless of the ground for the action, the remedy under Rule 47 is to be availed of only if the ordinary remedies of new trial, appeal, petition for relief or other appropriate remedies are no longer available through no fault of the petitioner. Ostensibly, the respondent could have availed himself of the petition for relief from judgment under Rule 38 of the *Rules of Court*. Hence, his failure to resort to such remedy precluded him from availing himself of the remedy to annul the judgment based on the compromise agreement.

5. ID.; ID.; NATURE OF THE REMEDY OF ANNULMENT OF JUDGMENT. — In *Dare Adventure Farm Corporation v. Court of Appeals*, the Court has discoursed on the nature of the remedy of annulment of judgment under Rule 47 in the following manner: A petition for annulment of judgment is a remedy in equity so exceptional in nature that it may be availed of only when other remedies are wanting, and only if the judgment, final order or final resolution sought to be annulled was rendered by a court lacking jurisdiction or through extrinsic fraud. Yet, the remedy, being exceptional in character, is not allowed to be so easily and readily abused by parties aggrieved by the final judgments, orders or resolutions. The Court has thus instituted safeguards by limiting the grounds for the annulment to lack of jurisdiction and extrinsic fraud, and by prescribing in Section 1 of Rule 47 of the *Rules of Court* that

the petitioner should show that the ordinary remedies of new trial, appeal, petition for relief or other appropriate remedies are no longer available through no fault of the petitioner. A petition for annulment that ignores or disregards any of the safeguards cannot prosper.

APPEARANCES OF COUNSEL

V.Y. Eleazar and Associates for petitioners.
Benjamin A. Moraleda, Jr., for respondent.

D E C I S I O N

BERSAMIN, *J.*:

A compromise agreement has the effect and authority of *res judicata* between the parties, and is immediately final and executory, unless rescinded upon grounds that vitiate consent. Once stamped with judicial *imprimatur*, it is more than a mere contract between the parties. Any effort to annul the judgment based on compromise on the ground of extrinsic fraud must proceed in accordance with Rule 47 of the *Rules of Court*.

The Case

This appeal by petition for review on *certiorari* seeks the review and reversal of the decision promulgated on September 30, 2005,[1] whereby the Court of Appeals (CA) annulled and set aside the judicially-approved compromise agreement of August 19, 2003,[2] and the resolution dated December 1, 2005,[3] whereby the CA denied the motion for reconsideration, as well as the orders of January 13, 2005[4] and February 28, 2005[5] of the trial

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[1] *Rollo*, pp. 52-62; penned by Associate Justice Jose L. Sabio, Jr. (retired/deceased), concurred in by Associate Justice Jose C. Mendoza (now a Member of the Court) and Associate Justice Arturo G. Tayag (retired).

[2] *Id.* at 104.

[3] *Id.* at 63-64.

[4] *Id.* at 154.

[5] *Id.* at 162.

court denying the motion to quash the writ of execution to enforce the compromise judgment.

Antecedents

On September 6, 2001, the petitioners, both Australian citizens, filed in the Regional Trial Court (RTC), Branch 49, in Manila an amended complaint[6] to recover from the respondent a sum of money and damages (with prayer for a writ of attachment). The suit, docketed as Civil Case No. 01-101260, involved the contract to sell dated October 30, 2000,[7] whereby the respondent, as the vendor, undertook to deliver to the petitioners, as the vendees, shares of stock worth ₱10,606,266.00 in Island Information and Technology, Inc. (the corporation), a publicly listed corporation. The contract to sell pertinently stipulated:

x x x x x x x x x

WHEREAS, sometime in the month of March, 2000 VENDEE remitted to VENDOR the total remount of Ten Million Six Hundred Six Thousand Two Hundred Sixty Six Philippine currency (Php10,606,266.00) which VENDOR hereby acknowledges receipt of the same;

WHEREAS, the above amount was given by VENDEE to VENDOR in consideration for equivalent number of shares ("subject shares") of stock in the corporation, at the price specified below, which shares VENDOR will deliver to VENDEE at the time agreed upon in this Contract;

NOW, THEREFORE, for and in consideration of the foregoing premises, VENDOR and VENDEE hereby agree as follows:

1. VENDOR shall deliver to VENDEE the subject shares on either of the following dates, whichever comes sooner:

a. Upon approval by the Securities and Exchange Commission (SEC) of the application for increase of the number of shares of stocks of the Corporation; or
b. Four (4) months after the signing of this Contract.

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[6] *Id.* at 65-69.

[7] *Id.* at 78-80.

x x x x x x x x x

3. VENDOR and VENDEE hereby agree that the subject shares shall be priced at the average value thereof five (5) days prior to end of the fourth month as specified in Section 1 (b). In the event that VENDOR is able to deliver the subject shares to VENDEE prior to any of the periods given in Section 1, the subject shares shall be valued at the price mutually agreed upon in writing by both VENDOR and VENDEE at the time of actual delivery;

4. It is hereby understood that the exact number of shares to be delivered by VENDOR to VENDEE shall be that equivalent to Ten Million Six Hundred Six Thousand Two Hundred Sixty Six Philippine Currency (Php10,606,266.00), consideration of this Contract, at the value or price thereof provided in Section 3;

5. VENDEE hereby acknowledges that VENDOR has advanced to him certain certificates of stocks of the Corporation equivalent to Thirty Four Million Two Hundred Thousand (34,200,000) shares, which are not yet transferred to his name, which number of shares shall be deducted from the subject shares to be delivered by VENDOR to VENDEE at the value provided in Section 3;[8] (emphasis supplied)

x x x x x x x x x

The petitioners alleged that under the provisions of the contract to sell, the equivalent shares of stock in the corporation should be their value as of February 22, 2001, the date corresponding to the five-day period prior to the end of the fourth month after October 30, 2000, the date of the signing of the contract to sell; that according to the Philippine Stock Exchange, Inc. (PSEI), the shares of the corporation, which stood at ₱0.05 for the open, high, low and closing prices on February 22, 2001, had the equivalent of 177,925,320 shares of stock; and that the respondent failed to deliver the shares of stock corresponding to the agreed amount on the date fixed by the contract.

On October 10, 2001, the RTC issued an amended order granting the petitioners' application for the writ of preliminary

[8] *Id.*

attachment.[9] On December 27, 2001, the respondent submitted his answer with counterclaim.[10]

Later on, the parties filed their *Joint Motion for Approval of a Compromise Agreement* dated August 19, 2003.[11] The compromise agreement, which was signed by the respondent and by Eduard Alcordo, as the attorney-in-fact of the petitioners, with the assistance of their respective counsels, stipulated that the parties agreed to settle their respective claims and counterclaims, and the respondent acknowledged therein his obligation to the petitioners in the amount of $250,000.00, which he promised to pay in US$ currency, as follows:

1. The amount of Twenty Thousand Dollars (US$20,000.00) on or before November 15, 2003;
2. The amount of Sixty Five Thousand Dollars (US$65,000.00) on or before November 15, 2004;
3. The amount of Sixty Five Thousand Dollars (US$65,000.00) on or before November 15, 2005;
4. The amount of Fifty Thousand Dollars (US$50,000.00) on or before November 15, 2006; and
5. The amount of Fifty Thousand Dollars (US$50,000.00) on or before November 15, 2007.[12]

The parties further agreed that upon payment of the first installment of US$20,000.00, both of them would jointly move for the partial lifting of the writ of attachment issued by the RTC against the properties of the respondent.

The RTC approved the compromise agreement on October 20, 2003.[13]

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

[10] *Id.* at 81-85.

[11] *Id.* at 91-94.

[12] *Id.* at 91.

[13] *Id.* at 104.

Upon the respondent's payment of the initial amount of US$20,000.00, the parties filed their *Joint Motion to Partially Lift the Preliminary Attachment* dated December 16, 2003 in accordance with the compromise agreement.[14] The RTC granted the joint motion.

But the respondent did not pay the November 15, 2004 second installment despite demand. Instead, he filed in the CA a petition for annulment of judgment dated November 25, 2004 (C.A.-G.R. SP No. 87768),[15] thereby seeking to nullify the amended order dated October 10, 2001 granting the application for the writ of attachment, and the order dated October 20, 2003 approving the compromise agreement.

Meanwhile, the petitioners sought the execution of the judgment upon the compromise agreement through their motion for execution dated December 2, 2004 on the ground of the respondent's failure to pay the second installment.[16] The RTC granted their motion for execution on December 14, 2004,[17] and issued the writ of execution,[18] commanding the sheriff to demand from the respondent the immediate payment of the full amount of $230,000.00 as indicated in the compromise agreement.

Through its resolution promulgated on December 29, 2004,[19] the CA dismissed C.A.-G.R. SP No. 87768 for having no substantial merit. Although the respondent filed a *Motion for Reconsideration with Leave of Court*,[20] he later withdrew the motion. The CA granted his motion to withdraw on March 7, 2005.[21]

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[14] *Id.* at 105-106.

[15] *Id.* at 113-132.

[16] *Id.* at 109-110.

[17] *Id.* at 112.

[18] Records, p. 26.

[19] *Rollo*, pp. 136-137.

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

[21] *Id.* at 145.

During the pendency of C.A.-G.R. SP No. 87768, the respondent filed a *Motion to Quash Writ of Execution* dated December 20, 2004,[22] which the RTC denied on January 13, 2005.[23] The RTC later denied the motion for reconsideration with finality.[24]

The RTC's denial of the motion for reconsideration with finality impelled the respondent to go to the CA on *certiorari* (C.A.-G.R. SP No. 88804) on March 7, 2005,[25] alleging that the RTC committed grave abuse of discretion amounting to lack of jurisdiction in issuing: (1) the writ of execution in Civil Case No. 01-101260; (2) the order dated January 13, 2005 denying the *Motion to Quash Writ of Execution*; and (3) the order dated February 28, 2005 denying the motion for reconsideration. He claimed that the compromise agreement was patently unjust, one-sided, unfair, fraudulent and unconscionable; hence, the RTC should not have issued the writ of execution.

On September 30, 2005, the CA promulgated the assailed decision,[26] whereby it disposed as follows:

> WHEREFORE, the petition, having merit in fact and in law is hereby GIVEN DUE COURSE. Resultantly, the assailed February 28, 2005 and January 18, 2005 orders of the trial court are hereby ANNULLED and SET ASIDE for having been issued without jurisdiction. The judicially approved compromise agreement of August 19, 2003 is likewise annulled and set aside due to fraud and lack of valid consent on the part of petitioner. The trial court is directed to bring the parties together, if so desired by them, for a possible valid compromise agreement reflective of the true and real intent of the parties and in the alternative to proceed with the hearing and trial of Civil Case No. 01-101260 with dispatch. No costs.
>
> SO ORDERED.[27]

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[22] *Id.* at 148-152.

[23] *Id.* at 154.

[24] *Id.* at 162.

[25] *Id.* at 163-183.

[26] *Supra* note 1.

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

The CA opined that based on the huge difference between the obligation of $250,000.00 as stated in the compromise agreement and the relief prayed for in the amended complaint worth ₱10,606,266.00, there could be no other conclusion than that the respondent had been deceived into entering into the compromise agreement; and that, in addition, the writ of execution was void for varying the terms of the judgment by directing the payment of the entire $230,000.00 obligation, thereby including sums that were not yet due and demandable.

The petitioners moved for reconsideration,[28] but the CA denied their motion.[29]

Hence, this appeal.

Issues

On the procedural aspect, the petitioners contend that the judicial compromise agreement could no longer be assailed through *certiorari*; that the lapse of time between the approval of the compromise agreement on October 20, 2003 and the filing of the petition for *certiorari* in C.A.-G.R. SP No. 88804 on March 7, 2005 had rendered the compromise agreement conclusive and immutable.

On the substantive aspect, the petitioners insist that there was no fraud in the execution of the compromise agreement; that contrary to the findings of the CA, there was nothing appalling in the amount agreed upon in the compromise agreement that amounted to fraud considering that their amended complaint had prayed for ₱10,606,266.00, an amount that could be equal to $212,125.00, exclusive of amount of damages, interest and cost of suit, due to the exchange rate at the time of the discussion of the terms and conditions of the compromise agreement being ₱50.00 to $1.00; and that the amount of $250,000.00 stated in the compromise agreement was fair and reasonable under the circumstances.

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[28] *Rollo*, pp. 195-215.

[29] *Id.* at 63-64.

In addition, the petitioners assert that based on the resolution promulgated in C.A.-G.R. SP No. 87768, the controlling legal rule between the parties was that there had been no extrinsic fraud as the ground to annul the order dated October 20, 2003 approving the compromise agreement; that the respondent's payment of the initial US$20,000.00 in accordance with the compromise agreement had rendered him in estoppel, and that the fact that both parties had been assisted by their respective counsels during the execution and submission of the compromise agreement for judicial approval negated the existence of fraud.

In his comment dated April 12, 2006,[30] the respondent counters that the petitioners had taken advantage of his unfamiliarity with the English language and the trust and confidence he had reposed in them as his friends when they made him sign a document containing stipulations contrary to what they had agreed upon; that the document turned out to be the contract to sell; that the petitioners then used such fraudulent contract in having his properties attached; that as a businessman, he was forced to enter into the compromise agreement to recover his properties; and that the RTC erred in approving the compromise agreement despite its being one-sided, unfair, fraudulent and unconscionable.

The respondent contends that the payment of $20,000.00 did not constitute his ratification of the compromise agreement as to estop him because the void contracts could not be ratified; and that it would be unjust to have the errors of his previous counsel bind him, most especially if the errors were blatant and gross, causing grave and irreparable injury to him.

In other words, the Court shall determine and resolve whether or not the CA was correct in nullifying and setting aside the judgment based on the compromise agreement dated August 19, 2003.

Ruling of the Court

The appeal is meritorious.

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[30] *Id.* at 224-257.

The CA annulled the August 19, 2003 final and executory compromise agreement on the ground of fraud and vitiated consent, observing:

> Indeed we are persuaded by the arguments of petitioner that the compromise agreement was tainted with fraud and that the consent of petitioner therein was not freely given. We carefully compared the amended complaint filed by plaintiff-private respondent and the answer with counterclaim filed by petitioner defendant with the approved compromise agreement and we are all the more convinced of the presence of fraud, deceit or lack of consideration therein.
>
> It is simply incredible and beyond any reason how all of a sudden, in the compromise agreement, petitioner becomes liable in the amount of Two Hundred Fifty Thousand ($250.000.00) Dollars while in the prayer contained in the amended complaint, plaintiff-private respondent only prayed for Ten Million Six Hundred Six Thousand and Two Hundred Sixty Six (₱10,606,266.00) Pesos plus damages of Eight Hundred Thousand (₱800,000.00) Pesos plus costs of the suit. How did petitioner become liable for such an amount without any other transaction having been entered into. The only explanation for such mind-boggling discrepancy is that petitioner was defrauded into agreeing to the proposed compromise agreement.
>
> A judicial compromise may be annulled or modified on the ground of vitiated consent or forgery. We find petitioners' argument on the matter very compelling, hence we adopt it as our own.[31] (citations and underscoring omitted)

The annulment by the CA was legally and factually unwarranted.

To start with, a compromise agreement is a contract whereby the parties make reciprocal concessions to avoid litigation or to put an end to one already commenced.[32] It is an accepted, nay, even highly encouraged practice in the courts of law of this jurisdiction.[33] It attains the authority and effect of *res judicata*

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[31] *Id.* at 55-56.

[32] Article 2028 of the Civil Code.

[33] Article 2029 of the Civil Code provides:

> Article 2029. The court shall endeavour to persuade the litigants in a civil case to agree upon some fair compromise.

upon the parties upon its execution,[34] and becomes immediately final and executory, unless rescinded by grounds which vitiate consent.[35] Once stamped with judicial imprimatur, it ceases to be a mere contract between the parties, and becomes a judgment of the court, to be enforced through writ of execution.[36]

The CA did not recognize that what it was asked to annul and set aside in C.A.-G.R. SP No. 88804 was no longer the compromise agreement of the parties but already the judgment based on the compromise agreement. The failure to recognize led the CA into granting the unprecedented relief of annulling the compromise agreement on the ground of fraud and lack of consent. In so doing, the CA acted without jurisdiction. First of all, the action before the CA was a special civil action for *certiorari* that had been brought on March 7, 2005, which was way beyond the period of 60 days from the rendition of the judgment based on the compromise agreement on October 20, 2003. The long delay grossly violated Section 4, Rule 65 of the *Rules of Court*, which allowed the petition for *certiorari* to be filed not later than 60 days from notice of the judgment being assailed. Moreover, the grounds relied upon by the respondent in his petition for *certiorari* in C.A.-G.R. SP No. 88804 — that the RTC had committed grave abuse of discretion tantamount to excess or lack of jurisdiction for issuing the writ of execution that was patently unjust, one-side, unfair, fraudulent and unconscionable compromise agreement; and for issuing the writ of execution of the compromise agreement that lacked consideration — were not proper grounds for assailing the judgment based on the compromise agreement. Even assuming that such grounds for the petition for *certiorari* were true, which they were not, the judgment based on the compromise agreement could not be assailed on that basis. As the foregoing excerpt of the assailed decision bears out, the annulment of the judgment

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[34] Article 2037 of the Civil Code.

[35] *Gadrinab v. Salamanca*, G.R. No. 194560, June 11, 2014, 726 SCRA 315, 326.

[36] Article 2037 of the Civil Code.

based on the compromise agreement was premised on fraud and lack of consent on the part of the respondent as a contracting party, which were far from the jurisdictional error on which the petition for *certiorari* should have rested.

The impropriety of the petition for *certiorari* in CA-G.R. SP No. 87768 to demand the annulment of the compromise agreement was blatant and unquestionable. The RTC, after finding the August 19, 2003 compromise agreement to be in order and not contrary to law, morals, good customs and public policy, issued the October 20, 2003 order *approving* the compromise agreement. With this stamp of judicial approval, the compromise agreement became more than a mere contract of the parties. The judicially approved agreement was thereby turned into a final judgment, immutable and unalterable, regardless of whether or not it rested on erroneous conclusions of fact and law, and regardless of whether the change would be by the court that rendered it or the highest court of the land.[37] This doctrine of immutability is grounded on fundamental considerations of public policy and sound practice, for, at the risk of occasional errors, judgments of the courts must become final at some definite date set by law.[38] The doctrine exists for the reason that every litigation must come to an end at some time, for it is necessary for the proper enforcement of the rule of law and the administration of justice that once a judgment attains finality, the winning party should not be denied the favorable result. Clearly, the element of public policy and public interest has diluted the purely private interest of the parties before the compromise agreement was approved by the trial court.

And, secondly, if the ground of the respondent to assail the judgment based on the compromise agreement was extrinsic fraud, his action should be brought under Rule 47 of the *Rules*

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[37] *Government Service Insurance System (GSIS) v. Group Management Corp. (GMC)*, G.R. No. 167000, and G.R. No. 169971, June 8, 2011, 651 SCRA 279, 305.

[38] *Id.*

of Court. Under Section 2 of Rule 47, the original action for annulment may be based only on extrinsic fraud or lack of jurisdiction, but extrinsic fraud, to be valid ground, should not have been availed of, or could not have been availed of in a motion for new trial or petition for relief. If the ground relied up is extrinsic fraud, the action must be filed within four years from the discovery of the extrinsic fraud; if the ground is lack of jurisdiction, the action must be brought before it is barred by laches or estoppels.[39] Regardless of the ground for the action, the remedy under Rule 47 is to be availed of only if the ordinary remedies of new trial, appeal, petition for relief or other appropriate remedies are no longer available through no fault of the petitioner. [40] Ostensibly, the respondent could have availed himself of the petition for relief from judgment under Rule 38 of the *Rules of Court*. Hence, his failure to resort to such remedy precluded him from availing himself of the remedy to annul the judgment based on the compromise agreement.

In *Dare Adventure Farm Corporation v. Court of Appeals*,[41] the Court has discoursed on the nature of the remedy of annulment of judgment under Rule 47 in the following manner:

> A petition for annulment of judgment is a remedy in equity so exceptional in nature that it may be availed of only when other remedies are wanting, and only if the judgment, final order or final resolution sought to be annulled was rendered by a court lacking jurisdiction or through extrinsic fraud. Yet, the remedy, being exceptional in character, is not allowed to be so easily and readily abused by parties aggrieved by the final judgments, orders or resolutions. The Court has thus instituted safeguards by limiting the grounds for the annulment to lack of jurisdiction and extrinsic fraud, and by prescribing in Section 1 of Rule 47 of the *Rules of Court* that the petitioner should show that the ordinary remedies of new trial, appeal, petition for relief or other appropriate remedies are no longer available through no fault of the petitioner. A petition for annulment that ignores or disregards any of the safeguards cannot prosper.

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[39] Section 3, Rule 47, Rules of Court.

[40] Section 1, Rule 47, Rules of Court.

[41] G.R. No. 161122, September 24, 2012, 681 SCRA 580.

The attitude of judicial reluctance towards the annulment of a judgment, final order or final resolution is understandable, for the remedy disregards the time-honored doctrine of immutability and unalterability of final judgments, a solid corner stone in the dispensation of justice by the courts. The doctrine of immutability and unalterability serves a two-fold purpose, namely: (*a*) to avoid delay in the administration of justice and thus, procedurally, to make orderly the discharge of judicial business; and (*b*) to put an end to judicial controversies, at the risk of occasional errors, which is precisely why the courts exist. As to the first, a judgment that has acquired finality becomes immutable and unalterable and is no longer to be modified in any respect even if the modification is meant to correct an erroneous conclusion of fact or of law, and whether the modification is made by the court that rendered the decision or by the highest court of the land. As to the latter, controversies cannot drag on indefinitely because fundamental considerations of public policy and sound practice demand that the rights and obligations of every litigant must not hang in suspense for an indefinite period of time.

WHEREFORE, the Court **GRANTS** the petition for review on *certiorari*; **ANNULS** and **SETS** aside the assailed decision promulgated on September 30, 2005, **REINSTATES** the judgment issued by the Regional Trial Court, Branch 49, of Manila based on the compromise agreement of August 19, 2003 in Civil Case No. 01-101260; and **ORDERS** the respondent to pay the costs of suit.

SO ORDERED.

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

THIRD DIVISION

[G.R. Nos. 170746-47. March 9, 2016]

CALTEX (PHILIPPINES), INC., CALTEX PHILIPPINES PETROLEUM, CO., INC., CALTEX SERVICES (PHILIPPINES), INC., CALTEX OCEANIC LIMITED, CALTEX INVESTMENT AND TRADING LIMITED, CALTEX PETROLEUM CORPORATION, CALTRAPORT (FAR EAST) COMPANY, CALTEX TRADING AND TRANSPORT CORPORATION, CALTEX SERVICES CORPORATION, AMERICAN OVERSEAS PETROLEUM LIMITED, P.T. CALTEX PACIFIC INDONESIA, CALTEX PETROLEUM INC., CALTEX ASIA, LIMITED, CALIFORNIA TEXAS OIL CORPORATION, CALTEX INTERNATIONAL SERVICES LIMITED, CALTEX OIL CORPORATION, CALTEX OIL CORPORATION (DELAWARE), CALTEX OIL CORPORATION (NEW YORK), CALTEX OIL PRODUCT COMPANY, CALTEX (OVERSEAS) LIMITED, CALTEX INTERNATIONAL LIMITED, CALTEX OIL CORP., *petitioners, vs.* **MA. FLOR A. SINGZON AGUIRRE, ERNEST SINGZON, CESAR SINGZON AND ALL THE OTHER PLAINTIFFS-INTERVENORS IN CIVIL CASES NOS. 91-59592, 91-59658, AND 92-61026 PENDING BEFORE THE REGIONAL TRIAL COURT OF MANILA, BRANCH 39,** *respondents.*

SYLLABUS

1. CIVIL LAW; PRESCRIPTION; DEFINED; ACQUISITIVE PRESCRIPTION DISTINGUISHED FROM EXTINCTIVE PRESCRIPTION; RATIONALE BEHIND THE PRESCRIPTION OF ACTIONS . — Article 1106 of the Civil Code provides that "[b]y prescription, one acquires ownership and other real rights through the lapse of time in the manner and under the conditions laid down by law. In the same way, rights and conditions are lost by prescription." The first sentence

refers to acquisitive prescription, which is a mode of "acquisition of ownership and other real rights through the lapse of time in the manner and under the conditions provided by law." The second sentence pertains to extinctive prescription "whereby rights and actions are lost by the lapse of time." It is also called limitation of action. This case involves the latter type of prescription, the purpose of which is to protect the diligent and vigilant, not the person who sleeps on his rights, forgetting them and taking no trouble of exercising them one way or another to show that he truly has such rights. The rationale behind the prescription of actions is to suppress fraudulent and stale claims from springing up at great distances of time when all the proper vouchers and evidence are lost or the facts have become obscure from the lapse of time or defective memory or death or removal of witnesses.

2. **ID.; ID.; PRESCRIPTION MAY BE CONSIDERED BY THE COURTS *MOTU PROPRIO* IF THE FACTS SUPPORTING THE GROUND ARE APPARENT FROM THE PLEADINGS OR THE EVIDENCE ON RECORD.—** There is no dispute that the respondents' cause of action against the petitioners has prescribed under the Civil Code. In fact, the same is evident on the complaint itself. The respondents brought their claim before a Philippine court only on March 6, 2001, more than 13 years after the collision occurred. Article 1139 of the Civil Code states that actions prescribe by the mere lapse of time fixed by law. Accordingly, the RTC of Catbalogan cannot be faulted for the *motu proprio* dismissal of the complaint filed before it. It is settled that prescription may be considered by the courts *motu proprio* if the facts supporting the ground are apparent from the pleadings or the evidence on record.

3. **ID.; ID.; THE RIGHT TO PRESCRIPTION MAY BE WAIVED OR RENOUNCED.—** The Court has previously held that the right to prescription may be waived or renounced pursuant to Article 1112 of the Civil Code: Art. 1112. Persons with capacity to alienate property may renounce prescription already obtained, but not the right to prescribe in the future. Prescription is deemed to have been tacitly renounced when the renunciation results from acts which imply the abandonment of the right acquired. In the instant case, not only once did the petitioners expressly renounce their defense of prescription.

4. REMEDIAL LAW; COURTS; JURISDICTION; COURTS ACQUIRE JURISDICTION OVER THE PERSONS OF DEFENDANTS OR RESPONDENTS, BY A VALID SERVICE OF SUMMONS OR THROUGH THEIR VOLUNTARY SUBMISSION BY FILING A PLEADING OR MOTION SEEKING AFFIRMATIVE RELIEF.— It is not contested that the petitioners were not served with summons by the RTC of Catbalogan prior to the *motu proprio* dismissal of the respondents' complaint. It is basic that courts acquire jurisdiction over the persons of defendants or respondents, by a valid service of summons or through their voluntary submission. Not having been served with summons, the petitioners were not initially considered as under the jurisdiction of the court. However, the petitioners voluntarily submitted themselves under the jurisdiction of the RTC of Catbalogan by filing their motion for reconsideration. x x x. In *Philippine Commercial International Bank v. Spouses Dy Hong Pi, et al.*, the Court explained the following: (1) Special appearance operates as an exception to the general rule on voluntary appearance; (2) Accordingly, objections to the jurisdiction of the court over the person of the defendant must be explicitly made, *i.e.*, set forth in an unequivocal manner; and (3) Failure to do so constitutes voluntary submission to the jurisdiction of the court, especially in instances where a pleading or motion seeking affirmative relief is filed and submitted to the court for resolution.

5. ID.; APPEALS; A PARTY IS BARRED FROM ASSAILING THE CORRECTNESS OF A JUDGMENT NOT APPEALED FROM BY HIM, FOR A PARTY WHO DID NOT INTERJECT AN APPEAL IS PRESUMED TO BE SATISFIED WITH THE ADJUDICATION MADE BY THE LOWER COURT.— The RTC of Manila denied the respondents' motion for intervention on the ground of the finality of the order of the RTC of Catbalogan, there being no appeal or any other legal remedy perfected in due time by either the petitioners or the respondents. Since the dismissal of the complaint was already final and executory, the RTC of Manila can no longer entertain a similar action from the same parties. The bone of contention is not regarding the petitioners' execution of waivers of the defense of prescription, but the effect of *finality of an order or judgment* on both parties. "Settled is the rule that a party is barred from assailing the correctness of a judgment

not appealed from by him" because the "presumption [is] that a party who did not interject an appeal is satisfied with the adjudication made by the lower court." Whether the dismissal was based on the merits or technicality is beside the point. "[A] dismissal on a technicality is no different in effect and consequences from a dismissal on the merits."

APPEARANCES OF COUNSEL

Platon Martinez Flores San Pedro & Leano for petitioners.
Veralaw Del Rosario Bagamasbad and Raboca for respondents.

D E C I S I O N

REYES, *J.*:

Facts

Dubbed as the Asia's Titanic,[1] the M/V Doña Paz was an inter-island passenger vessel owned and operated by Sulpicio Lines, Inc. (Sulpicio) traversing its Leyte to Manila route on the night of December 20, 1987, when it collided with M/T Vector, a commercial tanker owned and operated by Vector Shipping Corporation, Inc., (Vector Shipping). On that particular voyage, M/T Vector was chartered by Caltex (Philippines), Inc., *et al.*[2] (petitioners) to transport petroleum products. The collision brought forth an inferno at sea with an estimate of about 4,000 casualties, and was described as the "world's worst peace time

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[1] <http://natgeotv.com/asia/asias-titanic/about> (visited October 9, 2015).

[2] Chevron Philippines, Inc. is formerly Caltex (Philippines), Inc., *rollo*, pp. 204, 215; PT Chevron Pacific Indonesia is formerly PT Caltex Pacific Indonesia, *rollo*, p. 165; Chevron Overseas Limited is formerly Caltex (Overseas) Limited, *rollo*, p. 171; Chevron Oil Corporation is formerly Caltex Oil Corporation, *rollo*, p. 177; Chevron Holdings, Inc., is formerly Caltex (Asia) Limited, *rollo*, p. 180; Chevron Global Energy, Inc. is formerly Caltex Petroleum Corporation and Caltex Texas Oil Corporation, *rollo*, pp. 186, 189; Caltex International Limited withdrew as petitioner, *rollo*, p. 189; Traders Insurance Limited is formerly Caltex Investment and Trading Limited, *rollo*, p. 189.

maritime disaster."[3] It precipitated the filing of numerous lawsuits, the instant case included.

In December 1988, the heirs of the victims of the tragedy (respondents), instituted a class action with the Civil District Court for the Parish of Orleans, State of Louisiana, United States of America (Louisiana Court), docketed as Civil Case No. 88-24481 entitled "*Sivirino Carreon, et al. v. Caltex (Philippines), Inc., et al.*"[4] On November 30, 2000, the Louisiana Court entered a conditional judgment dismissing the said case on Louisiana Court entered a conditional judgment dismissing the said case on the ground of *forum non-conveniens*.[5] This led the respondents, composed of 1,689 claimants, to file on March 6, 2001 a civil action for damages for breach of contract of carriage and *quasi-delict* with the Regional Trial Court (RTC) of Catbalogan, Samar, Branch 28 (RTC of Catbalogan), against the herein petitioners, Sulpicio, Vector Shipping, and Steamship Mutual Underwriting Association, Bermuda Limited (Steamship). This was docketed as Civil Case No. 7277 entitled "*Ma. Flor Singzon-Aguirre, et al. v. Sulpicio Lines, Inc., et al.*"[6]

In its Order[7] dated March 28, 2001, the RTC of Catbalogan, *motu proprio* dismissed the complaint pursuant to Section 1, Rule 9 of the 1997 Rules of Civil Procedure as the respondents' cause of action had already prescribed. In an unusual turn of events however, the petitioners as defendants therein, who were not served with summons, filed a motion for reconsideration, alleging that they are waiving their defense of prescription, among others. The RTC of Catbalogan, however, merely noted the petitioners' motion.[8]

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[3] *Supra* note 1.

[4] *Rollo*, pp. 514-516.

[5] *Id.* at 516.

[6] *Id.* at 41.

[7] Rendered by Judge Sibanah E. Usman; *id.* at 102-103.

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

The dismissal of the complaint prompted the respondents to have the case reinstated with the Louisiana Court. The petitioners, as defendants, however argued against it and contended that the Philippines offered a more convenient forum for the parties, specifically the RTC of Manila, Branch 39 (RTC of Manila), where three consolidated cases[9] concerning the M/V Doña Paz collision were pending.[10]

In its Judgment[11] dated March 27, 2002, the Louisiana Court once again conditionally dismissed the respondents' action, ordering the latter to bring their claims to the RTC of Manila by intervening in the consolidated cases filed before the latter court. It was also stated in the judgment that the Louisiana Court will allow the reinstatement of the case if the Philippine court "is unable to assume jurisdiction over the parties or does not recognize such cause of action or any cause of action arising out of the same transaction or occurrence."[12]

Following the Louisiana Court's order, the respondents filed a motion for intervention on May 6, 2002, and a complaint in intervention on May 13, 2002 with the pending consolidated cases before the RTC of Manila. Also, co-defendants in the consolidated cases, Sulpicio and Steamship were furnished with a copy of the respondents' motion to intervene.

In their Manifestation[13] dated April 24, 2002, the petitioners unconditionally waived the defense of prescription of the

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[9] Civil Case No. 91-59592 entitled "*Victorino Ondrada, et al. v. Sulpicio Lines, Inc., et al.*"; Civil Case No. 91-59659 entitled "*Paulita Artugue, et al. v. Sulpicio Lines, Inc., et al.*"; and Civil Case No. 92-61026 entitled "*Winefredo Acol, et al. v. Sulpicio Lines, Inc., et al.*" Allegedly, Case No. 92-61026 was filed beyond its prescriptive period but the herein petitioners waived the defense of prescription, which the RTC of Manila allowed, *id.* at 39-40.

[10] *Id.* at 536.

[11] *Id.* at 470-471.

[12] *Id.* at 470.

[13] *Id.* at 108-110.

respondents' cause of action. The petitioners also reiterated a similar position in their Comment/Consent to Intervention[14] dated May 16, 2002. Likewise, Sulpicio and Steamship filed their Manifestation of No Objection dated May 30, 2002 and Manifestation dated June 20, 2002 with the RTC of Manila, expressing concurrence with the petitioners.[15]

On July 2, 2002, the RTC of Manila issued its Order[16] denying the respondents' motion to intervene for lack of merit. The RTC of Manila ruled that the RTC of Catbalogan had already dismissed the case with finality; that a final and executory prior judgment is a bar to the filing of the complaint in intervention of the respondents; and that the waivers of the defense of prescription made by the petitioners, Sulpicio and Steamship are of no moment.[17] The motion for reconsideration filed by the petitioners, Sulpicio and Steamship was denied as well on August 30, 2002.[18]

On September 25, 2002, the petitioners instituted a petition for *certiorari* before the Court of Appeals (CA) docketed as CA-G.R. SP No. 72994. On November 12, 2002, Sulpicio and Steamship also filed a separate petition docketed as CA-G.R. SP No. 73793. These petitions were consolidated in an order of the CA dated March 31, 2004.[19]

On April 27, 2005, the CA dismissed[20] the consolidated petitions in this wise:

WHEREFORE, premises considered, the consolidated petitions under consideration are hereby DISMISSED. Accordingly, the assailed

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[14] *Id.* at 111-114.

[15] *Id.* at 11.

[16] Rendered by Pairing Judge Placido C. Marquez; *id.* at 115-120.

[17] *Id.* at 119.

[18] *Id.* at 121-129.

[19] *Id.* at 44.

[20] Penned by Associate Justice Amelita G. Tolentino, with Associate Justices Roberto A. Barrios and Vicente S.E. Veloso concurring; *id.* at 37-73.

orders of the [RTC of Manila] dated July 2, 2002 and August 30, 2002 are AFFIRMED. No pronouncement as to costs.

SO ORDERED.[21]

The CA concurred with the RTC of Manila that the finality of the Order dated March 28, 2001 issued by the RTC of Catbalogan has the effect of *res judicata*, which barred the respondents' motion to intervene and complaint-in-intervention with the RTC of Manila.[22] The CA also considered the filing of motion for reconsideration by the petitioners before the RTC of Catbalogan as tantamount to voluntary submission to the jurisdiction of the said court over their person.[23] The CA rationalized that "[i]t is basic that as long as the party is given the opportunity to defend his interests in due course, he would have no reason to complain, for it is this opportunity to be heard that makes up the essence of due process."[24]

The motions for reconsideration having been denied by the CA in its Order[25] dated December 8, 2005, only the petitioners elevated the matter before this Court by way of petition for review on *certiorari*[26] under Rule 45.

The Parties' Arguments

The petitioners contended that not all the elements of *res judicata* are present in this case which would warrant its application as the RTC of Catbalogan did not acquire jurisdiction over their persons and that the judgment therein is not one on the merits.[27] It was also adduced that only the respondents were heard in the RTC of Catbalogan because when the petitioners

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[21] *Id.* at 72.

[22] *Id.* at 55.

[23] *Id.* at 59.

[24] *Id.* at 60.

[25] *Id.* at 96-99.

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

[27] *Id.* at 14.

filed their motion for reconsideration, the order of dismissal was already final and executory.[28] The petitioners also bewailed that other complaints were accepted by the RTC of Manila in the consolidated cases despite prescription of the cause of action[29] and that the real issue of merit is whether the defense of prescription that has matured can be waived.[30] They explained that they were not able to file for the annulment of judgment or order of the RTC of Catbalogan since the respondents precluded them from seeking such remedy by filing a motion for intervention in the consolidated cases before the RTC of Manila.[31]

On the other side, the respondents maintained that the waiver on prescription is not the issue but bar by prior judgment is, because when they filed their motion for intervention, the dismissal meted out by the RTC of Catbalogan was already final.[32] According to the respondents, if the petitioners intended to have the dismissal reversed, the latter should have appealed from the order of the RTC of Catbalogan or filed a petition for *certiorari* against the said order or an action to nullify the same.[33] The respondents also elucidated that they could not have precluded the petitioners from assailing the RTC of Catbalogan's orders because it was not until May 6, 2002 when the respondents filed a motion for intervention with the consolidated cases before the RTC of Manila[34] and only in deference to the 2nd order of dismissal of the Louisiana Court.[35] Finally, for the respondents, the CA correctly held that the petitioners cannot collaterally attack the final order of the RTC of Catbalogan, the reason

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[28] *Id.* at 21.

[29] *Id.* at 23.

[30] *Id.* at 19.

[31] *Id.* at 26.

[32] *Id.* at 539.

[33] *Id.* at 539-540.

[34] *Id.* at 543.

[35] *Id.* at 544.

being that a situation wherein there could be two conflicting rulings between two co-equal courts must be avoided.[36]

Essentially, the issues can be summed up as follows:

I. WHETHER THE CA ERRED IN RULING THAT THE ORDERS OF THE RTC OF CATBALOGAN BARRED THE FILING OF THE MOTION AND COMPLAINT FOR INTERVENTION BEFORE THE RTC OF MANILA; and

II. WHETHER THE CA ERRED IN AFFIRMING THE RTC OF MANILA'S DISREGARD OF THE PETITIONERS' WAIVER OF PRESCRIPTION ON THE GROUND OF BAR BY PRIOR JUDGMENT.[37]

Ruling of the Court

The petition lacks merit.

The petitioners cannot be permitted to assert their right to waive the defense of prescription when they had foregone the same through their own omission, as will be discussed below.

The Court shall first discuss the prescription of the respondents' cause of action against the petitioners. Article 1106 of the Civil Code provides that "[b]y prescription, one acquires ownership and other real rights through the lapse of time in the manner and under the conditions laid down by law. In the same way, rights and conditions are lost by prescription." The first sentence refers to acquisitive prescription, which is a mode of "acquisition of ownership and other real rights through the lapse of time in the manner and under the conditions provided by law." The second sentence pertains to extinctive prescription "whereby rights and actions are lost by the lapse of time."[38] It is also called limitation of action.[39]

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[36] *Id.* at 547-548.

[37] *Id.* at 13.

[38] *De Morales v. Court of First Instance of Misamis Occidental, Branch II, Ozamis City*, 186 Phil. 596, 598 (1980).

[39] *Id.*

This case involves the latter type of prescription, the purpose of which is to protect the diligent and vigilant, not the person who sleeps on his rights, forgetting them and taking no trouble of exercising them one way or another to show that he truly has such rights.[40] The rationale behind the prescription of actions is to suppress fraudulent and stale claims from springing up at great distances of time when all the proper vouchers and evidence are lost or the facts have become obscure from the lapse of time or defective memory or death or removal of witnesses.[41]

There is no dispute that the respondents' cause of action against the petitioners has prescribed under the Civil Code.[42] In fact, the same is evident on the complaint itself. The respondents brought their claim before a Philippine court only on March 6, 2001, more than 13 years after the collision occurred.[43] Article 1139 of the Civil Code states that actions prescribe by the mere lapse of time fixed by law. Accordingly, the RTC of Catbalogan cannot be faulted for the *motu proprio* dismissal of the complaint filed before it. It is settled that prescription may be considered by the courts *motu proprio* if the facts supporting the ground are apparent from the pleadings or the evidence on record.[44]

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[40] *Tagarao v. Garcia,* 61 Phil. 5, 20 (1934).

[41] *Antonio, Jr. v. Engr. Morales,* 541 Phil. 306, 310 (2007).

[42] Article 1144. The following actions must be brought within ten years from the time the right of action accrues:
(1) Upon a written contract;
(2) Upon an obligation created by law; and
(3) Upon a judgment.
Article 1145. The following actions must be commenced within six years:
(1) Upon an oral contract; and
(2) Upon a quasi-contract.
Article 1146. The following actions must be instituted within four years:
(1) Upon an injury to the rights of the plaintiff; and
(2) Upon a quasi-delict[.]

[43] *Rollo,* pp. 445-462.

[44] *Cua (Cua Hian Tek) v. Wallem Philippines Shipping, Inc., et al.*, 690 Phil. 491, 499 (2012).

The peculiarity in this case is that the petitioners, who were the defendants in the antecedent cases before the RTCs of Catbalogan and Manila, are most adamant in invoking their waiver of the defense of prescription while the respondents, to whom the cause of action belong, have acceded to the dismissal of their complaint. The petitioners posit that there is a conflict between a substantive law and procedural law in as much as waiver of prescription is allowed under Article 1112 of the Civil Code, a substantive law even though the *motu proprio* dismissal of a claim that has prescribed is mandated under Section 1, Rule 9 of the Rules of Court.[45]

The Court has previously held that the right to prescription may be waived or renounced pursuant to Article 1112 of the Civil Code:[46]

> Art. 1112. Persons with capacity to alienate property may renounce prescription already obtained, but not the right to prescribe in the future.
>
> Prescription is deemed to have been tacitly renounced when the renunciation results from acts which imply the abandonment of the right acquired.

In the instant case, not only once did the petitioners expressly renounce their defense of prescription. Nonetheless, the Court cannot consider such waiver as basis in order to reverse the rulings of the courts below as the dismissal of the complaint had become final and binding on both the petitioners and the respondents.

It is not contested that the petitioners were not served with summons by the RTC of Catbalogan prior to the *motu proprio* dismissal of the respondents' complaint. It is basic that courts acquire jurisdiction over the persons of defendants or respondents,

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[45] *Rollo*, p. 328.

[46] *Development Bank of the Philippines (DBP) v. The Honorable Midpaintao L. Adil, Judge of the Second Branch of the Court of First Instance of Iloilo and Spouses Patricio Confesor and Jovita Villafuerte*, G.R. No. L-48889, May 11, 1989.

by a valid service of summons or through their voluntary submission.[47] Not having been served with summons, the petitioners were not initially considered as under the jurisdiction of the court. However, the petitioners voluntarily submitted themselves under the jurisdiction of the RTC of Catbalogan by filing their motion for reconsideration.

Section 20, Rule 14 of the 1997 Rules of Court states:

> Sec. 20. *Voluntary appearance*.— The defendant's voluntary appearance in the action shall be equivalent to service of summons. The inclusion in a motion to dismiss of other grounds aside from lack of jurisdiction over the person of the defendant shall not be deemed a voluntary appearance.

In *Philippine Commercial International Bank v. Spouses Dy Hong Pi, et al.*,[48] the Court explained the following:

> (1) Special appearance operates as an exception to the general rule on voluntary appearance;
>
> (2) Accordingly, objections to the jurisdiction of the court over the person of the defendant must be explicitly made, *i.e.*, set forth in an unequivocal manner; and
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> (3) Failure to do so constitutes voluntary submission to the jurisdiction of the court, especially in instances where a pleading or motion seeking affirmative relief is filed and submitted to the court for resolution.[49]

Previous to the petitioners' filing of their motion for reconsideration, the RTC of Catbalogan issued an Entry of Final Judgment[50] stating that its Order dated March 28, 2001 became final and executory on April 13, 2001. The petitioners claimed that for this reason, they could not have submitted themselves

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[47] *Aurora N. De Pedro v. Romasan Development Corporation*, G.R. No. 194751, November 26, 2014.

[48] 606 Phil. 615 (2009).

[49] *Id.* at 634.

[50] *Rollo*, p. 130.

to the jurisdiction of the RTC of Catbalogan by filing such a belated motion.[51]

But the petitioners cannot capitalize on the supposed finality of the Order dated March 28, 2001 to repudiate their submission to the jurisdiction of the RTC of Catbalogan. It must be emphasized that before the filing of their motion for reconsideration, the petitioners were not under the RTC of Catbalogan's jurisdiction. Thus, although the order was already final and executory with regard to the respondents; it was not yet, on the part of the petitioners. As opposed to the conclusion reached by the CA, the Order dated March 28, 2001 cannot be considered as final and executory with respect to the petitioners. It was only on July 2, 2001, when the petitioners filed a motion for reconsideration seeking to overturn the aforementioned order, that they voluntarily submitted themselves to the jurisdiction of the court. On September 4, 2001, the RTC of Catbalogan noted the petitioners' motion for reconsideration on the flawed impression that the defense of prescription cannot be waived.[52]

Consequently, it was only after the petitioners' failure to appeal or seek any other legal remedy to challenge the subsequent Order dated September 4, 2001, that the dismissal became final on their part. It was from the date of the petitioners' receipt of this particular order that the reglementary period under the Rules of Court to assail it commenced to run for the petitioners. But neither the petitioners nor the respondents resorted to any action to overturn the orders of the RTC of Catbalogan, which ultimately led to their finality. While the RTC of Catbalogan merely noted the motion for reconsideration in its Order dated September 4, 2001, the effect is the same as a denial thereof, for the intended purpose of the motion, which is to have the complaint reinstated, was not realized. This should have prompted the petitioners to explore and pursue other legal measures to have the dismissal reversed. Instead, nothing more was heard from the parties until

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[51] *Id.* at 16-17.

[52] *Id.* at 107.

a motion for intervention was filed by the respondents before the RTC of Manila, in conformity with the order of the Louisiana Court. As the CA espoused in its decision:

> We concur with the observation of the [RTC of Manila] that the petitioners' predicament was of their own making. The petitioners should have exhausted the other available legal remedies under the law after the [RTC of Catbalogan] denied their motion for reconsideration. Under Section 9, Rule 37 of the [Rules of Court], the remedy against an order denying a motion for reconsideration is not to appeal the said order of denial but to appeal from the judgment or final order of the court. Moreover, the petitioners could have availed of an action for annulment of judgment for the very purpose of having the final and executory judgment be set aside so that there will be a renewal of litigation. An action for annulment of judgment is grounded only on two justifications: (1) extrinsic fraud; and (2) lack of jurisdiction or denial of due process. All that herein petitioners have to prove was that the trial court had no jurisdiction; that they were prevented from having a trial or presenting their case to the trial court by some act or conduct of the private respondents; or that they have been denied due process of law. Seasonably, the petitioners could have also interposed a petition for certiorari under Rule 65 of the Rules [of Court] imputing grave abuse of discretion on the part of the trial court judge in issuing the said order of dismissal. For reasons undisclosed in the records, the petitioners did not bother to mull over and consider the said legal avenues, which they could have readily availed of during that time.[53]

The RTC of Manila denied the respondents' motion for intervention on the ground of the finality of the order of the RTC of Catbalogan, there being no appeal or any other legal remedy perfected in due time by either the petitioners or the respondents. Since the dismissal of the complaint was already final and executory, the RTC of Manila can no longer entertain a similar action from the same parties. The bone of contention is not regarding the petitioners' execution of waivers of the defense of prescription, but the effect of *finality of an order or judgment* on both parties.

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

"Settled is the rule that a party is barred from assailing the correctness of a judgment not appealed from by him" because the "presumption [is] that a party who did not interject an appeal is satisfied with the adjudication made by the lower court."[54] Whether the dismissal was based on the merits or technicality is beside the point. "[A] dismissal on a technicality is no different in effect and consequences from a dismissal on the merits."[55]

The petitioners attempted to justify their failure to file an action to have the orders of the RTC of Catbalogan annulled by ratiocinating that the respondents precluded them from doing so when the latter filed their complaint anew with the RTC of Manila. This is untenable, as it is clear that the respondents filed the said complaint-in-intervention with the RTC of Manila more than a year after the case was ordered dismissed by the RTC of Catbalogan.[56] Aside from this, the petitioners offered no other acceptable excuse on why they did not raise their oppositions against the orders of the RTC of Catbalogan when they had the opportunity to do so. Thus, the only logical conclusion is that the petitioners abandoned their right to waive the defense of prescription.

Lastly, the Court takes judicial notice of its ruling in *Vector Shipping Corporation, et al. v. Macasa, et al.*[57] *and Caltex (Philippines), Inc. v. Sulpicio Lines, Inc.*[58] wherein the petitioners, as a mere voyage charterer, were exonerated from third party liability in the M/V Doña Paz collision. Should this Court allow the reinstatement of the complaint against the petitioners, let the trial proceedings take its course, and decide the same on the merits in favor of the respondents, then it would have led to the promulgation of conflicting decisions. On the other hand,

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[54] *George Pidlip P. Palileo and Jose De la Cruz v. Planters Development Bank,* G.R. No. 193650, October 8, 2014.

[55] *General Offset Press, Inc. v. Anatalio, et al.*, 124 Phil. 80, 83 (1966).

[56] *Rollo,* pp. 472-489.

[57] 581 Phil. 88 (2008).

[58] 374 Phil. 325 (1999).

if this Court were to decide this matter on the merits in favor of the petitioners, then the same result would be obtained as with a dismissal now.

WHEREFORE, the petition is denied for lack of merit.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 174747. March 9, 2016]

REPUBLIC OF THE PHILIPPINES represented by PRIVATIZATION AND MANAGEMENT OFFICE, *petitioners, vs.* **NATIONAL LABOR RELATIONS COMMISISION (Third Division) and NACUSIP/ BISUDECO CHAPTER/GEORGE EMATA, DOMINGO REBANCOS, NELSON BERINA, ROBERTO TIRAO, AMADO VILLOTE, and BIENVENIDO FELINA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; NOT A RIGHT BUT A MERE STATUTORY PRIVILEGE WHICH MAY ONLY BE EXERCISED WITHIN THE MANNER PROVIDED BY LAW.— It is settled that appeal is not a right but a mere statutory privilege. It may only be exercised within the manner provided by law. In labor cases, the perfection of an appeal is governed

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[*] Additional Member per Raffle dated March 7, 2016 *vice* Associate Justice Diosdado M. Peralta.

by the Labor Code. Article 223 provides: **Art. 223. Appeal.** Decisions, awards, or orders of the Labor Arbiter are final and executory unless appealed to the Commission by any or both parties within ten (10) calendar days from receipt of such decisions, awards, or orders. x x x. Petitioner received a copy of the Labor Arbiter's Decision on January 26, 2000. It had 10 days, or until February 7, 2000, to file its appeal. However, it filed its Memorandum of Appeal only on February 8, 2000. Petitioner did not explain the reason for its delay.

2. ID.; RULES OF PROCEDURE; IN LABOR CASES, PROCEDURAL RULES ARE NOT TO BE APPLIED IN A VERY RIGID AND TECHNICAL SENSE IF ITS STRICT APPLICATION WILL FRUSTRATE, RATHER THAN PROMOTE, SUBSTANTIAL JUSTICE. — Petitioner's disregard of procedural rules resulted in the denial of its appeal before the National Labor Relations Commission and its subsequent Petition for *Certiorari* before the Court of Appeals. In its Petition for Review before this Court, petitioner still did not explain its delay in filing the Memorandum of Appeal. It merely insisted that its case should have been resolved on the merits. Procedural rules are designed to facilitate the orderly administration of justice. In labor cases, however, procedural rules are not to be applied "in a very rigid and technical sense" if its strict application will frustrate, rather than promote, substantial justice. Liberality favors the laborer. However, this case is also brought against a government entity. If the government entity is found liable, its liability will necessarily entail the dispensation of public funds. Thus, its basis for liability must be subjected to strict scrutiny.

3. POLITICAL LAW; ADMINISTRATIVE LAW; GOVERNMENT CORPORATIONS' PRIVATIZATION; PROCLAMATION NO. 50, SERIES OF 1986; THE PRIVATIZATION AND MANAGEMENT OFFICE IS NOT LIABLE FOR MONEY CLAIM ARISING FROM AN EMPLOYER-EMPLOYEE RELATIONSHIP, FOR IT NEVER BECAME THE SUBSTITUTE EMPLOYER OF BICOLANDIA SUGAR DEVELOPMENT CORPORATION'S EMPLOYEES, AS THE ACQUISITION THEREOF OF THE ASSETS OF THE CORPORATION IS NOT FOR THE PURPOSE OF CONTINUING ITS BUSINESS BUT TO CONSERVE THE ASSETS IN ORDER TO PREPARE IT FOR

PRIVATIZATION. — [P]etitioner was not liable for the Union's claims for labor standard benefits. Its acquisition of Bicolandia Sugar Development Corporation's assets was not for the purpose of continuing its business. It was to conserve the assets in order to prepare it for privatization. When Philippine National Bank ceded its rights and interests over Bicolandia Sugar Development Corporation's loan to petitioner in 1987, it merely transferred its rights and interests over Bicolandia's *outstanding loan obligations.* The transfer was not for the purpose of continuing Bicolandia Sugar Development Corporation's business. Thus, petitioner never became the substitute employer of Bicolandia Sugar Development Corporation's employees. It would not have been liable for any money claim arising from an employer-employee relationship.

4. ID.; ID.; ID.; THE PRIVATIZATION AND MANAGEMENT OFFICE IS NOT PER SE LIABLE FOR MONEY CLAIMS ARISING FROM AN EMPLOYER-EMPLOYEE RELATIONSHIP, EXCEPT WHEN IT SPECIFICALLY AND CATEGORICALLY AGREE TO BE LIABLE FOR THESE CLAIMS.— For petitioner to be liable for private respondents' money claims arising from an employer-employee relationship, it must specifically and categorically agree to be liable for these claims. While petitioner per se is not liable for private respondent's money claims arising from an employer-employee relationship, it voluntarily obliged itself to pay Bicolandia Sugar Development Corporation's terminated employees separation benefits in the event of the Corporation's privatization. x x x. When petitioner's Board of Trustees issued the Resolution dated September 23, 1992, it acknowledged its contractual obligation to be liable for benefits arising from an employer-employee relationship even though, as a mere conservator of assets, it was not supposed to be liable. Under Article III, Section 12(6) of Proclamation No. 50, Asset Privatization Trust had the power to release claims or settle liabilities, as in this case. When it issued its Resolution dated September 23, 1992, petitioner voluntarily bound itself to be liable for separation benefits to Bicolandia Sugar Development Corporation's terminated employees.

5. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; CLOSURE OF ESTABLISHMENT TO PREVENT BUSINESS LOSSES;

THE EMPLOYER IS EXEMPTED FROM HAVING TO PAY SEPARATION PAY IF THE CLOSURE WAS DUE TO SERIOUS BUSINESS LOSSES.— An employer may terminate employment to prevent business losses. Article 298 of the Labor Code allows the termination of employees provided that the employer pays the affected employees separation pay of one month or at least one-half month for every month of pay, whichever is higher. x x x. The employer is exempted from having to pay separation pay if the closure was due to serious business losses. A business suffers from serious business losses when it has operated at a loss for such a period of time that its financial standing is unlikely to improve in the future.

6. ID.; ID.; ID.; ID.; THE EXEMPTION FROM PAYING THE SEPARATION PAY OF THE TERMINATED EMPLOYEES ON GROUND OF SERIOUS BUSINESS LOSSES DOES NOT APPLY WHERE THE EMPLOYER VOLUNTARILY ASSUMES THE OBLIGATION TO PAY THE TERMINATED EMPLOYEES, REGARDLESS OF THE EMPLOYER'S FINANCIAL SITUATION.— Bicolandia Sugar Development Corporation's financial standing when petitioner took over as its conservator clearly showed that it was suffering from serious business losses and would have been exempted from paying its terminated employees their separation pay. This exemption, however, only applies to *employers*. It does not apply to petitioner. Even assuming that petitioner became NACUSIP/BISUDECO's substitute employer, the exemption would still not apply if the employer voluntarily assumes the obligation to pay terminated employees, regardless of the employer's financial situation. x x x. Petitioner's Board of Trustees issued the Resolution dated September 23, 1992 authorizing the payment of separation benefits to Bicolandia Sugar Development Corporation's terminated employees in the event of the Corporation's privatization. It voluntarily bound itself to pay separation benefits regardless of the Corporation's financial standing. It cannot now claim that it was exempted from paying such benefits due to serious business losses.

7. ID.; ID.; ID.; MONEY CLAIM; THREE-YEAR PRESCRIPTIVE PERIOD APPLIES TO MONEY CLAIM ARISING FROM AN EMPLOYER-EMPLOYEE RELATIONSHIP WHILE

THE FOUR-YEAR PRESCRIPTIVE PERIOD APPLIES TO MONEY CLAIM AS REPARATION FOR ILLEGAL ACTS DONE BY AN EMPLOYER IN VIOLATION OF THE LABOR CODE ; PRIVATE RESPONDENTS' CAUSE OF ACTION AND MONEY CLAIM FOR ILLEGAL TERMINATION HAS NOT YET PRESCRIBED.— Private respondents' claim to their separation benefits has not yet prescribed under Article 291 of the Labor Code. x x x. In *Arriola v. National Labor Relations Commission,* we have distinguished a money claim arising from an employer-employee relationship and a money claim as reparation for illegal acts done by an employer in violation of the Labor Code. The prescriptive period for the former is three (3) years under Article 291 of the Labor Code while the prescriptive period of the latter is four (4) years under Article 1146 of the Civil Code. We also reiterated that the three-year prescriptive period under Article 290 of the Labor Code refers to "illegal acts penalized under the Labor Code, including committing any of the prohibited activities during strikes and lockouts, unfair labor practices, and illegal recruitment activities." x x x. Private respondents filed their Complaint for unfair labor practices, union busting, and labor standard benefits on April 24, 1996, or three (3) years, seven (7) months and 24 days after their termination on September 30, 1992. Their Complaint essentially alleged that their termination was illegal because it was made prior to Bicolandia Sugar Development Corporation's sale to Bicol Agro-Industrial Producers Cooperative, Incorporated-Peñafrancia Sugar Mill. They also alleged that the sale was illegal since it was made for the purpose of removing NACUSIP/BISUDECO Chapter as the sugar mill's Union. Under the prescriptive periods stated in the Labor Code and *Arriola*, private respondents' cause of action and any subsequent money claim for illegal termination has not yet prescribed. Their Complaint dated April 24, 1996 before the Labor Arbiter was filed within the prescriptive period.

8. ID.; ID.; ID.; WORKERS SHOULD BE GRANTED ALL RIGHTS, INCLUDING MONETARY BENEFITS, ENJOYED BY OTHER WORKERS WHO ARE SIMILARLY SITUATED; PRIVATE RESPONDENTS ARE ENTITLED TO THE SEPARATION BENEFITS WHICH WERE GRANTED TO THEIR FELLOW WORKERS, DESPITE THEIR INITIAL REFUSAL TO RECEIVE

THEM.— [T]he Labor Arbiter did not err in ordering the release of separation benefits to private respondents despite their initial refusal to receive them. The Constitution guarantees workers full protection of their rights, including that of "economic security and parity." x x x. Under these provisions, workers should be granted all rights, including monetary benefits, enjoyed by other workers who are similarly situated. Thus, the separation benefits granted to Bicolandia Sugar Development Corporation's terminated employees as of September 30, 1992 must be enjoyed by all, including private respondents. This case is unique, however, in that though private respondents' separation benefits were already released by petitioner, they refused to collect their checks "on account of their protested dismissal." Their refusal to receive their checks was premised on their Complaint that petitioner's sale of Bicolandia Sugar Development Corporation violated their Collective Bargaining Agreement and was a method of union busting. It was not because of negligence or malice. It was because of their honest belief that their rights as laborers were violated and the grant of separation benefits would not be enough compensation for it. While private respondents' allegations have not been properly substantiated, it would be unjust to deprive them of their rightful claim to their separation benefits.

9. ID.; ID.; ID.; THE COURT'S MONEY JUDGMENTS AGAINST GOVERNMENT MUST BE BROUGHT BEFORE THE COMMISSION ON AUDIT BEFORE IT CAN BE SATISFIED; PRIVATE RESPONDENTS' SEPARATION BENEFITS MAY BE RELEASED TO THEM WITHOUT FILING A SEPARATE MONEY CLAIM BEFORE THE COMMISSION ON AUDIT, AS THE FUNDS TO BE USED FOR THE SAME HAVE ALREADY BEEN APPROPRIATED AND DISBURSED AND IT WOULD BE UNJUST AND A VIOLATION OF PRIVATE RESPONDENTS' RIGHT TO EQUAL PROTECTION IF THEY WERE NOT ALLOWED TO CLAIM, UNDER THE SAME CONDITIONS AS THEIR FELLOW WORKERS, WHAT IS RIGHTFULLY DUE TO THEM.— [P]rivate respondents' co-complainants were able to collect their checks for their separation benefits during the pendency of the Complaint without having to go through the Commission on Audit. x x x. Money claims against government include money judgments by courts, which must be brought before the

> Commission on Audit before it can be satisfied. x x x. Petitioner's Board of Trustees already issued the Resolution on September 23, 1992 for the release of funds to pay separation benefits to terminated employees of Bicolandia Sugar Development Corporation. Private respondents' checks were released by petitioner to the Arbitration Branch of the Labor Arbiter in 1992. Under these circumstances, it is presumed that the funds to be used for private respondents' separation benefits have already been appropriated and disbursed. This would account for why private respondents' co-complainants were able to claim their checks without need of filing a separate claim before the Commission on Audit. In this instance, private respondents' separation benefits may be released to them without filing a separate money claim before the Commission on Audit. It would be unjust and a violation of private respondents' right to equal protection if they were not allowed to claim, under the same conditions as their fellow workers, what is rightfully due to them.

APPEARANCES OF COUNSEL

The Solicitor General for petitioners.
Zoilo V. Dela Cruz, Jr. for respondents.

D E C I S I O N

LEONEN, *J.*:

Under Proclamation No. 50, Series of 1986,[1] no employer-employee relationship is created by the acquisition of Asset Privatization Trust (now Privatization and Management Office) of government assets for privatization. It is not obliged to pay for any money claims arising from employer-employee relations except when it voluntarily holds itself liable to pay. These money claims, however, must be filed within the three-year period

[1] Entitled "Proclaiming and Launching a Program for the Expeditious Disposition and Privatization of Certain Government Corporations and/or the Assets thereof, and Creating the Committee on Privatization and the Asset Privatization Trust."

under Article 291[2] of the Labor Code. Once liability is determined, a separate money claim must be brought before the Commission on Audit, unless the funds to be used have already been previously appropriated and disbursed.

This resolves a Petition for Review on Certiorari[3] assailing the Decision[4] dated February 27, 2004 and Resolution[5] dated September 19, 2006 of the Court of Appeals. The Decision and Resolution affirmed the National Labor Relations Commission Resolutions dated May 10, 2002[6] and June 21, 2002[7] dismissing petitioner's appeal for failure to file the appeal within the reglementary period.

Asset Privatization Trust was a government entity created under Proclamation No. 50 dated December 8, 1986 for the purpose of conserving, provisionally managing, and disposing of assets that have been identified for privatization or disposition. NACUSIP/BISUDECO Chapter is the exclusive bargaining agent for the rank-and-file employees of Bicolandia Sugar Development Corporation, a corporation engaged in milling and producing sugar.[8] Since the 1980s, Bicolandia Sugar Development Corporation had been incurring heavy losses.[9] It obtained loans from Philippine Sugar Corporation and Philippine National Bank, secured by its assets and properties.[10]

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[2] LABOR CODE, Art. 291 provides:

Art. 291. Money claims. All money claims arising from employer-employee relations accruing during the effectivity of this Code shall be filed within three (3) years from the time the cause of action accrued; otherwise they shall be forever barred.

[3] *Rollo*, pp. 13-38.

[4] *Id.* at 39-43.

[5] *Id.* at 44-48.

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

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

[8] *Id.* at 298, Labor Arbiter's Decision.

[9] *Id.* at 298-299.

[10] *Id.* at 299.

Under Proclamation No. 50, as amended, Administrative Order No. 14 dated February 3, 1987, the Deed of Transfer dated February 27, 1987, and the Trust Agreement dated February 27, 1987,[11] Philippine National Bank ceded its rights and interests over Bicolandia Sugar Development Corporation's loans to the government through Asset Privatization Trust.[12]

On November 18, 1988, Bicolandia Sugar Development Corporation, with the conformity of Asset Privatization Trust, entered into a Supervision and Financing Agreement[13] with Philippine Sugar Corporation for the latter to operate and manage the mill until August 31, 1992.[14]

Due to Bicolandia Sugar Development Corporation's continued failure to pay its loan obligations, Asset Privatization Trust filed a Petition for Extrajudicial Foreclosure of Bicolandia Sugar Development Corporation's mortgaged properties on March 26, 1990. There being no other qualified bidder, Asset Privatization Trust was issued a certificate of sale upon payment of ₱1,725,063,044.00.[15]

On December 15, 1990, NACUSIP/BISUDECO Chapter and Bicolandia Sugar Development Corporation entered into a Collective Bargaining Agreement to be in effect until December 15, 1996.[16] Asset Privatization Trust and Philippine Sugar Corporation were also joined as parties.[17]

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[11] *Id.* at 17, Petition.

[12] *Id.*

[13] *Id.* at 112-118.

[14] *Id.* at 88, Department of Labor and Employment Order dated October 15, 1992. The Supervision and Financing Agreement actually sets the term only up to the 1988-1989 milling season, but both the *Department of Labor and Employment and Barayoga v. Asset Privatization Trust* (510 Phil. 452 (2005) [Per *J.* Panganiban, Third Division]) found that the agreement would commence on August 28, 1992 and end on August 31, 1992.

[15] *Id.* at 299, Labor Arbiter's Decision.

[16] *Id.*

[17] *Id.*

Sometime in 1992, the Asset Privatization Trust, pursuant to its mandate to dispose of government properties for privatization, decided to sell the assets and properties of Bicolandia Sugar Development Corporation. On September 1, 1992, it issued a Notice of Termination to Bicolandia Sugar Development Corporation's employees, advising them that their services would be terminated within 30 days. NASUCIP/ BISUDECO Chapter received the Notice under protest.[18]

After the employees' dismissal from service, Bicolandia Sugar Development Corporation's assets and properties were sold to Bicol Agro-Industrial Producers Cooperative, Incorporated-Peñafrancia Sugar Mill.[19]

As a result, several members of the NACUSIP/BISUDECO Chapter[20] filed a Complaint dated April 24, 1996 charging Asset Privatization Trust, Bicolandia Sugar Development Corporation, Philippine Sugar Corporation, and Bicol Agro-Industrial Producers Cooperative, Incorporated-Peñafrancia Sugar Mill with unfair labor practice, union busting, and claims for labor standard benefits.[21]

On January 14, 2000, the Labor Arbiter rendered the Decision[22] dismissing the Complaint for lack of merit. The Labor Arbiter found that there was no union busting when Asset Privatization Trust and Philippine Sugar Corporation disposed of Bicolandia Sugar Development Corporation's assets and properties since

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[18] *Id.*

[19] *Id.* at 300.

[20] *Id.* at 123. These members were: Donald B. Domulot, Rodolfo Parro, Antonio T. Falcon, Manuel Aguilar, Gil Gomez, Jr., Jorge Emata, Bienvenido S. Felina, Domingo Rebancos, Jr., Nelson Berina, Pelecio de Jesus, Antonio Abonite, Necito Ramos, Ernesto de Luna, Domingo Arao, Armando Villote, Pablo San Buenaventura, Roberto Tirao, Mariano Pelo, Eutiquio Enfeliz, Reynaldo Ragay, Onofre Gallarte, Jaime Vinas, and Lydio Bomanlag.

[21] *Id.* at 300.

[22] *Id.* at 298-305. The Decision was penned by Executive Labor Arbiter Gelacio L. Rivera, Jr.

Asset Privatization Trust was merely disposing of a non-performing asset of government, pursuant to its mandate under Proclamation No. 50.[23]

However, the Labor Arbiter found that although Asset Privatization Trust previously released funds for separation pay, 13th month pay, and accrued vacation and sick leave credits for 1992, George Emata, Bienvenido Felina, Domingo Rebancos, Jr., Nelson Berina, Armando Villote, and Roberto Tirao (Emata, *et al.*) refused to receive their checks[24] "on account of their protested dismissal."[25] Their refusal to receive their checks was premised on their Complaint that Asset Privatization Trust's sale of Bicolandia Sugar Development Corporation violated their Collective Bargaining Agreement and was a method of union busting.[26]

While the Labor Arbiter acknowledged that Emata, *et al.*'s entitlement to these benefits had already prescribed under Article 291[27] of the Labor Code,[28] he nevertheless ordered Asset Privatization Trust to pay Emata, *et al.* their benefits since their co-complainants were able to claim their checks.[29]

Pursuant to the Decision, Asset Privatization Trust deposited with the National Labor Relations Commission a Cashier's Check in the amount of ₱116,182.20, the equivalent of the monetary award in favor of Emata, *et al.* On February 8, 2000, it filed a

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[23] *Id.* at 301-302.

[24] *Id.* at 129.

[25] *Id.* at 130.

[26] *Id.* at 304.

[27] LABOR CODE, Art. 291 provides:

Art. 291. Money Claims. — All money claims arising from employer-employee relations accruing during the effectivity of this Code shall be filed within three (3) years from the time the cause of action accrued; otherwise they shall be barred forever.

[28] *Rollo*, p. 305.

[29] *Id.*

Notice of Partial Appeal, together with a Memorandum of Partial Appeal, before the National Labor Relations Commission.[30]

Under Executive Order No. 323 dated December 6, 2000, Asset Privatization Trust was succeeded by Privatization and Management Office.[31]

On May 10, 2002, the National Labor Relations Commission issued the Resolution[32] dismissing the Partial Appeal for failure to perfect the appeal within the statutory period of appeal. Privatization and Management Office moved for reconsideration, but its Motion was denied in the National Labor Relations Commission's June 21, 2002 Resolution.[33]

Aggrieved, Privatization and Management Office filed before the Court of Appeals a Petition for Certiorari[34] arguing that its appeal should have been decided on the merits in the interest of substantial justice.

On February 27, 2004, the Court of Appeals rendered its Decision[35] denying the Petition. According to the Court of Appeals, Privatization and Management Office failed to show that it falls under the exemption for strict compliance with procedural rules. It ruled that the grant of separation pay to Emata, *et al.* was anchored on the finding that Privatization and Management Office had already granted the same benefits to the other complainants in the labor case.[36]

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[30] *Id.* at 21, Petition.

[31] *Id.* at 14, Petition.

[32] *Id.* at 49-51. The Resolution was penned by Presiding Commissioner Lourdes C. Javier and concurred in by Commissioners Ireneo B. Bernardo and Tito F. Genilo of the Third Division.

[33] *Id.* at 52-53. The Resolution was penned by Presiding Commissioner Lourdes C. Javier and concurred in by Commissioners Ireneo B. Bernardo and Tito F. Genilo of the Third Division.

[34] *Id.* at 155-191.

[35] *Id.* at 39-43. The Decision was penned by Associate Justice Aurora Santiago-Lagman and concurred in by Associate Justices Marina L. Buzon (Chair) and Sergio L. Pestaño of the Fourteenth Division.

[36] *Id.* at 42.

Privatization and Management Office moved for reconsideration, but the Motion was denied in the Resolution[37] dated September 19, 2006.

Hence, this Petition[38] was filed.

Privatization and Management Office argues that there should have been a liberal application of the procedural rules since the dismissal of its appeal would cause grave and irreparable damage to government.[39] It alleges that the money claims of the employees had already prescribed since their Complaint for illegal dismissal was filed beyond the three-year prescriptive period under Article 291[40] of the Labor Code.[41]

Privatization and Management Office argues further that even assuming that the action had not yet prescribed, it would still not be liable to pay separation pay and other benefits since the closure of the business was due to serious losses and financial reverses.[42] It also argues that the transfer of Bicolandia Sugar Development Corporation's assets and properties to it, by virtue of a foreclosure sale, did not create an employer-employee relationship with Bicolandia Sugar Development Corporation's

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[37] *Id.* at 44-48. The Decision was penned by Associate Justice Aurora Santiago-Lagman and concurred in by Associate Justices Marina L. Buzon (Chair) and Regalado E. Maambong of the Special Former Fourteenth Division.

[38] *Id.* at 13-38.

[39] *Id.* at 23.

[40] LABOR CODE, Art. 291 provides:

Art. 291. Money claims. — All money claims arising from employer-employee relations accruing during the effectivity of this Code shall be filed within three (3) years from the time the cause of action accrued; otherwise they shall be forever barred.

All money claims accruing prior to the effectivity of this Code shall be filed with the appropriate entities established under this Code within one (1) year from the date of effectivity, and shall be processed or determined in accordance with the implementing rules and regulations of the Code; otherwise, they shall be forever barred[.]

[41] *Rollo*, pp. 27-28.

[42] *Id.* at 29-31.

employees.[43] Moreover, since Privatization and Management Office is an instrumentality of government, any money claim against it should first be brought before the Commission on Audit in view of Commonwealth Act No. 327,[44] as amended by Presidential Decree No. 1445.[45]

On the other hand, Emata, *et al.* allege that the Petition did not raise any new issue that had not already been addressed by the Labor Arbiter, the National Labor Relations Commission, and the Court of Appeals.[46] They argue that the issues raised involve the exercise of discretion by the Court of Appeals and the quasi-judicial agencies. They further argue that the Petition does not specifically mention any law relied upon by Privatization and Management Office to support its arguments.[47]

In rebuttal, Privatization and Management Office insists that it was able to point out laws and jurisprudence that the Court of Appeals and the National Labor Relations Commission failed to take into consideration when it dismissed the appeal on a technicality.[48]

For this Court's resolution are the following issues:

First, whether there was an employer-employee relationship between petitioner Privatization and Management Office (then Asset Privatization Trust) and private respondents NACUSIP/BISUDECO Chapter employees, and thus, whether petitioner is liable to pay the separation benefits of private respondents George Emata, Bienvenido Felina, Domingo Rebancos, Jr., Nelson Berina, Armando Villote, and Roberto Tirao;

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[43] *Id.* at 30-32.

[44] Entitled "An Act Fixing the Time within which the Auditor General shall Render his Decisions and Prescribing the Manner of Appeal Therefrom."

[45] *Rollo*, pp. 33-34, Petition. *See* Pres. Decree No. 1445, State Audit Code of the Philippines (1978).

[46] *Id.* at 411, Comment.

[47] *Id.* at 412.

[48] *Id.* at 431-432, Reply.

Second, whether Bicolandia Sugar Development Corporation's closure could be considered serious business losses that would exempt petitioner from payment of separation benefits; and

Lastly, whether private respondents' claim for labor standard benefits had already prescribed under Article 291 of the Labor Code.

I

Before proceeding to the substantive issues of the case, petitioner's procedural misstep before the National Labor Relations Commission must first be addressed.

It is settled that appeal is not a right but a mere statutory privilege. It may only be exercised within the manner provided by law.[49] In labor cases, the perfection of an appeal is governed by the Labor Code. Article 223 provides:

Art. 223. Appeal. — Decisions, awards, or orders of the Labor Arbiter are final and executory unless appealed to the Commission by any or both parties within ten (10) calendar days from receipt of such decisions, awards, or orders. Such appeal may be entertained only on any of the following grounds:

. . . . . .

Petitioner received a copy of the Labor Arbiter's Decision on January 26, 2000.[50] It had 10 days, or until February 7,

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[49] See *Lepanto Consolidated Mining v. Icao*, G.R. No. 196047, January 15, 2014, 714 SCRA 1, 11 [Per *C.J.* Sereno, First Division], citing *BPI Family Savings Bank, Inc. v. Pryce Gases, Inc.*, 668 Phil. 206 (2011) [Per *J.* Carpio, Second Division]; *National Power Corporation v. Spouses Laohoo*, 611 Phil. 194 (2009) [Per *J.* Peralta, Third Division]; *Philux, Inc. v. National Labor Relations Commission*, 586 Phil. 19 (2008) [Per *J.* Leonardo-De Castro, First Division]; *Cu-unjieng v. Court of Appeals*, 515 Phil. 568 (2006) [Per *J.* Garcia, Second Division]; *Stolt-Nielsen Services, Inc. v. NLRC*, 513 Phil. 642 (2005) [Per *J.* Garcia, Third Division]; *Producers Bank of the Philippines v. Court of Appeals*, 430 Phil. 812 (2002) [Per *J.* Carpio, Third Division]; *Villanueva v. Court of Appeals*, G.R. No. 99357, 27 January 1992, 205 SCRA 537 [Per *J.* Regalado, Second Division]; *Trans International v. Court of Appeals*, 348 Phil. 830 (1998) [Per *J.* Martinez, Second Division]; *Acme Shoe, Rubber & Plastic Corporation v. Court of Appeals*, 329 Phil. 531 (1996) [Per *J.* Vitug, First Division]; and *Ozaeta v. Court of Appeals*, 259 Phil. 428 (1989) [Per *J.* Gancayco, First Division].

[50] *Rollo*, p. 50, National Labor Relations Commission Resolution.

2000,[51] to file its appeal. However, it filed its Memorandum of Appeal only on February 8, 2000.[52] Petitioner did not explain the reason for its delay.

Petitioner's disregard of procedural rules resulted in the denial of its appeal before the National Labor Relations Commission and its subsequent Petition for Certiorari before the Court of Appeals. In its Petition for Review before this Court, petitioner still did not explain its delay in filing the Memorandum of Appeal. It merely insisted that its case should have been resolved on the merits.

Procedural rules are designed to facilitate the orderly administration of justice.[53] In labor cases, however, procedural rules are not to be applied "in a very rigid and technical sense"[54] if its strict application will frustrate, rather than promote, substantial justice.[55]

Liberality favors the laborer.[56] However, this case is also brought against a government entity. If the government entity is found liable, its liability will necessarily entail the dispensation of public funds. Thus, its basis for liability must be subjected to strict scrutiny.

Even assuming that we grant the plea of liberality, the Petition will still be denied.

II

Initially, petitioner was not liable for the Union's claims for labor standard benefits. Its acquisition of Bicolandia Sugar

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[51] The actual last day of filing, February 5, 2000, fell on a Sunday.

[52] *Rollo*, p. 50, National Labor Relations Commission Resolution.

[53] *Tres Reyes v. Maxims Tea House*, 446 Phil. 388, 400 (2003) [Per *J.* Quisumbing, Second Division], citing *Lopez, Jr. v. National Labor Relations Commission*, 315 Phil. 717 (1995) [Per *J.* Puno, Second Division].

[54] *Id.*, citing *Kunting v. National Labor Relations Commission*, G.R. No. 101427, November 8, 1993, 227 SCRA 571, 581 [Per *J.* Bidin, Third Division].

[55] *Id.*, citing *Lopez, Jr. v. National Labor Relations Commission*, 315 Phil. 717 (1995) [Per *J.* Puno, Second Division].

[56] *See* LABOR CODE, Art. 4.

Development Corporation's assets was not for the purpose of continuing its business. It was to conserve the assets in order to prepare it for privatization.

When Philippine National Bank ceded its rights and interests over Bicolandia Sugar Development Corporation's loan to petitioner in 1987, it merely transferred its rights and interests over Bicolandia's *outstanding loan obligations*. The transfer was not for the purpose of continuing Bicolandia Sugar Development Corporation's business. Thus, petitioner never became the substitute employer of Bicolandia Sugar Development Corporation's employees. It would not have been liable for any money claim arising from an employer-employee relationship.

Section 24 of Proclamation No. 50 states:

> *The transfer of any asset of government directly to the national government as mandated herein shall be for the purpose of disposition, liquidation and/or privatization only, any import in the covering deed of assignment to the contrary notwithstanding.* Such transfer, therefore, shall not operate to revert such assets automatically to the general fund or the national patrimony, and shall not require specific enabling legislation to authorize their subsequent disposition, but shall remain as duly appropriated public properties earmarked for assignment, transfer or conveyance under the signature of the Minister of Finance or his duly authorized representative, who is hereby authorized for this purpose, to any disposition entity approved by the Committee pursuant to the provisions of this Proclamation. (Emphasis supplied)

This Court explained in *Republic v. National Labor Relations Commission, et al.*[57] that the Asset Privatization Trust is usually joined as a party respondent due to its role as the conservator of assets of the corporation undergoing privatization:

> A matter that must not be overlooked is the fact that the inclusion of APT as a respondent in the monetary claims against [Pantranco North Express, Inc.] is merely the consequence of its being a

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[57] 331 Phil. 608 (1996) [Per *J.* Vitug, First Division].

conservator of assets, a role that APT normally plays in, or the relationship that ordinarily it maintains with, corporations identified for and while under privatization. The liability of APT under this particular arrangement, nothing else having been shown, should be co-extensive with the amount of assets taken over from the privatized firm.[58]

Pursuant to its mandate under Proclamation No. 50, petitioner provisionally took possession of assets and properties only for the purpose of privatization or disposition. Its interest over Bicolandia Sugar Development Corporation was not the latter's continued business operations.

The issue of petitioner's role in the money claims of Bicolandia Sugar Development Corporation's employees was already settled in *Barayoga v. Asset Privatization Trust.*[59]

In *Barayoga*, BISUDECO-PHILSUCOR Corfarm Workers Union alleged that when Philippine Sugar Corporation took over Bicolandia Sugar Development Corporation's operations in 1988, it retained the Corporation's existing employees until the start of the season sometime in May 1991. At the start of the 1991 season, Philippine Sugar Corporation failed to recall some of the union's members back to work. For this reason, it filed a Complaint on July 23, 1991 for unfair labor practice, illegal dismissal, illegal deduction, and underpayment of wages and other labor standard benefits against Bicolandia Sugar Development Corporation, Asset Privatization Trust, and Philippine Sugar Corporation. Of the three respondents, only Asset Privatization Trust was held liable by the Labor Arbiter and the National Labor Relations Commission for the union members' money claims.

The Court of Appeals reversed the Labor Arbiter's and the National Labor Relations Commission's rulings and held that Asset Privatization Trust did not become the employer of Bicolandia Sugar Development Corporation's employees. The

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[58] *Id.* at 621.

[59] 510 Phil. 452 (2005) [Per *J.* Panganiban, Third Division].

terminated employees appealed to this Court, arguing that their claims against Asset Privatization Trust were recognized under the law.

This Court, however, denied their Petition and held that the Asset Privatization Trust could not be held liable for any money claims arising from an employer-employee relationship. Asset Privatization Trust, being a mere transferee of Bicolandia Sugar Development Corporation's assets for the purpose of conservation, never became the union's employer. Hence, it could not be liable for their money claims:

> *The duties and liabilities of BISUDECO, including its monetary liabilities to its employees, were not all automatically assumed by APT as purchaser of the foreclosed properties at the auction sale. Any assumption of liability must be specifically and categorically agreed upon*. In *Sundowner Development Corp. v. Drilon*, the Court ruled that, unless expressly assumed, labor contracts like collective bargaining agreements are not enforceable against the transferee of an enterprise. Labor contracts are in personam and thus binding only between the parties.
>
> *No succession of employment rights and obligations can be said to have taken place between the two. Between the employees of BISUDECO and APT, there is no privity of contract that would make the latter a substitute employer that should be burdened with the obligations of the corporation*. To rule otherwise would result in unduly imposing upon APT an unwarranted assumption of accounts not contemplated in Proclamation No. 50 or in the Deed of Transfer between the national government and PNB.[60] (Emphasis supplied)

For petitioner to be liable for private respondents' money claims arising from an employer-employee relationship, it must specifically and categorically agree to be liable for these claims.

III

While petitioner per se is not liable for private respondents' money claims arising from an employer-employee relationship, it voluntarily obliged itself to pay Bicolandia Sugar Development

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[60] *Id.* at 461.

Corporation's terminated employees separation benefits in the event of the Corporation's privatization.

In *Barayoga*, the aggrieved union members were those who were not recalled back to work by Philippine Sugar Corporation during the start of the season in May 1991. The union members in this case were those who were recalled back to work in May 1991 but were eventually served with a Notice of Termination on September 1, 1992.

The timeline of events in this case mirror that of *Barayoga*. In *Barayoga*, Asset Privatization Trust's Board of Trustees issued the Resolution dated September 23, 1992 authorizing the payment of separation pay and other benefits to Bicolandia Sugar Development Corporation's employees in the event of its privatization:

> In the present case, petitioner-unions members who were not recalled to work by Philsucor in May 1991 seek to hold APT liable for their monetary claims and allegedly illegal dismissal. *Significantly, prior to the actual sale of BISUDECO assets to BAPCI on October 30, 1992, the APT board of trustees had approved a Resolution on September 23, 1992. The Resolution authorized the payment of separation benefits to the employees of the corporation in the event of its privatization.* Not included in the Resolution, though, were petitioner-unions members who had not been recalled to work in May 1991.[61] (Emphasis supplied)

This Resolution was not made part of the records of this case. However, it is not disputed that the union members here were Bicolandia Sugar Development Corporation's employees at the time the Corporation was sold to Bicol Agro-Industrial Producers Cooperative, Incorporated—Peñafrancia Sugar Mill. The Labor Arbiter also found that:

> With respect to complainants[']claim for labor standard benefits, records show that they were paid separation pay including 13th month pay for the year 1992 as well as conversion of their accrued vacation and sick leave (pp. 698 to 763, *rollo*) except that some complainants refused to collect their checks representing said benefits whereas

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[61] *Id.*

the payments due complainants Domulot, de Luna, Falcon, Aguilar, Gomez, Ramos, Arao, de Jesus, Abonite, Bomanlag, and Parro were released by APT to this Arbitration Branch (p. 764, *rollo*) in compliance with the Alias Writ of Execution issued by then Executive Labor Arbiter Vito C. Bose.[62]

Under Section 27 of Proclamation No. 50, the employer-employee relationship is severed upon the sale or disposition of assets of a company undergoing privatization. This, however, is without prejudice to "benefits incident to their employment or attaching to termination under applicable employment contracts, collective bargaining agreements, and applicable legislation":

SECTION 27. AUTOMATIC TERMINATION OF EMPLOYER-EMPLOYEE RELATIONS. — Upon the sale or other disposition of the ownership and/or controlling interest of the government in a corporation held by the Trust, or all or substantially all of the assets of such corporation, the employer-employee relations between the government and the officers and other personnel of such corporations shall terminate by operation of law. None of such officers or employees shall retain any vested right to future employment in the privatized or disposed corporation, and the new owners or controlling interest holders thereof shall have full and absolute discretion to retain or dismiss said officers and employees and to hire the replacement or replacements of any one or all of them as the pleasure and confidence of such owners or controlling interest holders may dictate.

Nothing in this section, however, be construed to deprive said officers and employees of their vested entitlements in accrued or due compensation and other benefits incident to their employment or attaching to termination under applicable employment contracts, collective bargaining agreements, and applicable legislation. (Emphasis supplied)

When petitioner's Board of Trustees issued the Resolution dated September 23, 1992, it acknowledged its contractual obligation to be liable for benefits arising from an employer-employee relationship even though, as a mere conservator of assets, it was not supposed to be liable. Under Article III,

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[62] *Rollo*, p. 129.

Section 12(6) of Proclamation No. 50,[63] Asset Privatization Trust had the power to release claims or settle liabilities, as in this case. When it issued its Resolution dated September 23, 1992, petitioner voluntarily bound itself to be liable for separation benefits to Bicolandia Sugar Development Corporation's terminated employees.

IV

Petitioner proposes that even if it is found liable for separation benefits, it cannot be made to pay since Bicolandia Sugar Development Corporation's closure was due to serious business losses.

An employer may terminate employment to prevent business losses. Article 298[64] of the Labor Code allows the termination of employees provided that the employer pays the affected employees separation pay of one month or at least one-half month for every month of pay, whichever is higher. The provision states:

Art. 298. Closure of establishment and reduction of personnel. The employer may also terminate the employment of any employee

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[63] Proc. No. 50 (1986), Sec. 12(6) provides:

Section 12. POWERS. — The Trust shall, in the discharge of its responsibilities, have the following powers:

. . . . . .

(6) To lease or own real and personal property to the extent required or entailed by its functions; to borrow money and incur such liabilities as may be reasonably necessary to permit it to carry out the responsibilities imposed upon it under this Proclamation; to receive and collect interest, rent and other income from the corporations and assets held by it and to exercise in behalf of the National Government and to the extent authorized by the Committee, in respect of such corporations and assets, all rights, powers and privileges of ownership including the ability to compromise and release claims or settle liabilities, and otherwise to do and perform any and all acts that may be necessary or proper to carry out the purposes of this Proclamation: Provided, however, that any borrowing by the Trust shall be subject to the prior approval by the majority vote of the members of the Committee[.]

[64] Article 283 of the Labor Code has since been re-numbered to Article 298 by virtue of Rep. Act No. 10151, approved June 21, 2011, and DOLE Department Advisory No. 1, Series of 2015.

due to the installation of labor-saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the workers and the Ministry of Labor and Employment at least one (1) month before the intended date thereof. In case of termination due to the installation of labor-saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least his one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one-half (½) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered one (1) whole year.

The employer is exempted from having to pay separation pay if the closure was due to serious business losses.[65] A business suffers from serious business losses when it has operated at a loss for such a period of time that its financial standing is unlikely to improve in the future.[66]

Bicolandia Sugar Development Corporation incurred heavy loans from Philippine National Bank in the 1980s to cover its losses. The Corporation's losses were substantial. When Philippine National Bank transferred its interests over the Corporation's loans to petitioner, it effectively transferred all of the Corporation's assets. Petitioner eventually sold these assets and properties to a private company, pursuant to its mandate to dispose of government's non-performing assets.

Bicolandia Sugar Development Corporation's financial standing when petitioner took over as its conservator clearly showed that it was suffering from serious business losses and would have been exempted from paying its terminated employees

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[65] See *GJT Rebuilders Machine Shop v. Ambos*, G.R. No. 174184, January 28, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/january2015/174184.pdf> 7 [Per *J.* Leonen, Second Division].

[66] *Id.*

their separation pay. This exemption, however, only applies to *employers*. It does not apply to petitioner.

Even assuming that petitioner became NACUSIP/BISUDECO's substitute employer, the exemption would still not apply if the employer voluntarily assumes the obligation to pay terminated employees, regardless of the employer's financial situation. In *Benson Industries Employees Union-ALU-TUCP v. Benson Industries, Inc.*:[67]

> To reiterate, an employer which closes shop due to serious business losses is exempt from paying separation benefits under Article 297 of the Labor Code for the reason that the said provision explicitly requires the same only when the closure is not due to serious business losses; conversely, the obligation is maintained when the employer's closure is not due to serious business losses. For a similar exemption to obtain against a contract, such as a CBA, the tenor of the parties' agreement ought to be similar to the law's tenor. *When the parties, however, agree to deviate therefrom, and unqualifiedly covenant the payment of separation benefits irrespective of the employer's financial position, then the obligatory force of that contract prevails and its terms should be carried out to its full effect.*[68] (Emphasis supplied)

Petitioner's Board of Trustees issued the Resolution dated September 23, 1992 authorizing the payment of separation benefits to Bicolandia Sugar Development Corporation's terminated employees in the event of the Corporation's privatization. It voluntarily bound itself to pay separation benefits regardless of the Corporation's financial standing. It cannot now claim that it was exempted from paying such benefits due to serious business losses.

V

Private respondents' claim to their separation benefits has not yet prescribed under Article 291 of the Labor Code.[69] Article 291 provides:

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[67] G.R. No. 200746, August 6, 2014, 732 SCRA 318 [Per *J.* Perlas-Bernabe, Second Division].

[68] *Id.* at 327.

[69] *Id.* at 130.

Art. 291. Money claims. All money claims arising from employer-employee relations accruing during the effectivity of this Code shall be filed within three (3) years from the time the cause of action accrued; otherwise they shall be forever barred[.]

In *Arriola v. National Labor Relations Commission*,[70] we have distinguished a money claim arising from an employer-employee relationship and a money claim as reparation for illegal acts done by an employer in violation of the Labor Code. The prescriptive period for the former is three (3) years under Article 291 of the Labor Code while the prescriptive period of the latter is four (4) years under Article 1146[71] of the Civil Code. We also reiterated that the three-year prescriptive period under Article 290 of the Labor Code refers to "illegal acts penalized under the Labor Code, including committing any of the prohibited activities during strikes and lockouts, unfair labor practices, and illegal recruitment activities."[72] Article 290 provides:

Art. 290. Offenses. Offenses penalized under this Code and the rules and regulations pursuant thereto shall prescribe in three (3) years.

All unfair labor practice arising from Book V shall be filed within one (1) year from accrual of such unfair labor practice; otherwise, they shall be forever barred.

Private respondents filed their Complaint for unfair labor practices, union busting, and labor standard benefits on April 24, 1996,[73] or three (3) years, seven (7) months and 24 days after

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[70] G.R. No. 175689, August 13, 2014, 732 SCRA 656 [Per *J.* Leonen, Third Division].

[71] CIVIL CODE, Art. 1146 provides:

Article 1146. The following actions must be instituted within four years:

(1) Upon injury to the rights of the plaintiff[.]

[72] *Arriola v. National Labor Relations Commission,* G.R. No. 175689, August 13, 2014, 732 SCRA 656, 667 [Per *J.* Leonen, Third Division], citing *Callanta v. Carnation Philippines, Inc.*, 22 Phil. 279 (1986) [Per *J.* Fernan, Second Division].

[73] *Rollo,* p. 70.

their termination on September 30, 1992. Their Complaint essentially alleged that their termination was illegal because it was made prior to Bicolandia Sugar Development Corporation's sale to Bicol Agro-Industrial Producers Cooperative, Incorporated-Peñafrancia Sugar Mill.[74] They also alleged that the sale was illegal since it was made for the purpose of removing NACUSIP/BISUDECO Chapter as the sugar mill's Union.[75]

Under the prescriptive periods stated in the Labor Code and *Arriola*, private respondents' cause of action and any subsequent money claim for illegal termination has not yet prescribed. Their Complaint dated April 24, 1996 before the Labor Arbiter was filed within the prescriptive period.

The claim for separation pay, 13th month pay, and accrued vacation and sick leaves are incidental to employer-employee relations. Under Article 291 of the Labor Code, these claims prescribe within three (3) years from the accrual of the cause of action:

Art. 291. Money Claims. All money claims arising from employer-employee relations accruing during the effectivity of this Code shall be filed within three (3) years from the time the cause of action accrued; otherwise they shall be barred forever.

This Court has stated that "in the computation of the three-year prescriptive period, a determination must be made as to the period when the act constituting a violation of the workers' right to the benefits being claimed was committed."[76] In *Barayoga*, the September 23, 1992 Resolution "authorized the payment of separation benefits to the employees of the corporation in the event of its privatization."[77] The payment of these benefits, however, to private respondents was mandated

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[74] *Id.* at 82, Opposition to the Motion to Dismiss.

[75] *Id.* at 127, Labor Arbiter's Decision.

[76] *Auto Bus Transport Systems v. Bautista,* 497 Phil. 863, 875-876 (2005) [Per *J.* Chico-Nazario, Second Division].

[77] *Barayoga v. Asset Privatization Trust*, 510 Phil. 452, 461 (2005) [Per *J.* Panganiban, Third Division].

by the Labor Arbiter in his Decision dated January 14, 2000.[78] It was only then that private respondents' right to these benefits was determined. Since the case was appealed to the National Labor Relations Commission, the prescriptive period to claim these benefits began to run only after the Commission's Decision had become final and executory. The refusal to pay these benefits after the Commission's Decision had become final and executory would be "the act constituting a violation of the worker's right to the benefits being claimed."[79]

Under Rule VII, Section 14[80] of the New Rules of Procedure of the National Labor Relations Commission,[81] decisions of the Commission become final and executory 10 days after the receipt of the notice of decision, order, or resolution. The three-year prescriptive period, therefore, begins from private respondents' receipt of the National Labor Relations Commission Resolution dated June 21, 2002 denying petitioner's Motion for Reconsideration.

Since the Complaint, which included the claim for labor benefits, was filed on April 24, 1996, private respondents' claims did not prescribe.

Further, the Labor Arbiter did not err in ordering the release of separation benefits to private respondents despite their initial refusal to receive them. The Constitution guarantees workers full protection of their rights, including that of "economic security

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[78] *Rollo*, p. 130.

[79] *Auto Bus Transport Systems v. Bautista*, 497 Phil. 863, 875-876 (2005) [Per *J.* Chico-Nazario, Second Division].

[80] 2011 NLRC Rules of Procedure, Rule VII, Sec. 14 provides:

SECTION 14. Finality of Decision of the Commission and Entry of Judgment. — (a) Finality of the Decisions, Resolutions or Orders of the Commission. Except as provided in Rule XI, Section 9, the decisions, resolutions or orders of the Commission/Division shall become executory after ten (10) calendar days from receipt of the same.

[81] As amended by NLRC Resolution No. 01-02, Series of 2002. The current rules of procedure are the 2011 Rules of Procedure of the National Labor Relations Commission.

and parity."[82] Article II, Section 18 and Article XIII, Section 3 state:

> Article II
> State Policies
>
> SECTION 18. The State affirms labor as a primary social economic force. It shall protect the rights of workers and promote their welfare.
>
> Article XIII
> Labor
>
> SECTION 3. The State shall afford full protection to labor, local and overseas, organized and unorganized, and promote full employment and equality of employment opportunities for all.
>
> It shall guarantee the rights of all workers to self-organization, collective bargaining and negotiations, and peaceful concerted activities, including the right to strike in accordance with law. They shall be entitled to security of tenure, humane conditions of work, and a living wage. They shall also participate in policy and decision-making processes affecting their rights and benefits as may be provided by law.
>
> The State shall promote the principle of shared responsibility between workers and employers and the preferential use of voluntary modes in settling disputes, including conciliation, and shall enforce their mutual compliance therewith to foster industrial peace.
>
> The State shall regulate the relations between workers and employers, recognizing the right of labor to its just share in the fruits of production and the right of enterprises to reasonable returns on investments, and to expansion and growth.

Under these provisions, workers should be granted all rights, including monetary benefits, enjoyed by other workers who are similarly situated. Thus, the separation benefits granted to Bicolandia Sugar Development Corporation's terminated employees as of September 30, 1992 must be enjoyed by all, including private respondents.

This case is unique, however, in that though private respondents' separation benefits were already released by

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[82] *Serrano v. Gallant Maritime Services, Inc.*, 601 Phil. 245, 281 (2009) [Per *J.* Austria-Martinez, *En Banc*].

petitioner, they refused to collect their checks "on account of their protested dismissal."[83] Their refusal to receive their checks was premised on their Complaint that petitioner's sale of Bicolandia Sugar Development Corporation violated their Collective Bargaining Agreement and was a method of union busting. It was not because of negligence or malice. It was because of their honest belief that their rights as laborers were violated and the grant of separation benefits would not be enough compensation for it. While private respondents' allegations have not been properly substantiated, it would be unjust to deprive them of their rightful claim to their separation benefits.

Moreover, private respondents' co-complainants[84] were able to collect their checks for their separation benefits during the pendency of the Complaint[85] without having to go through the Commission on Audit.

Under Section 26 of the State Auditing Code, the Commission on Audit has jurisdiction over the settlement of debts and claims "of any sort" against government:

> Section 26. General jurisdiction. *The authority and powers of the Commission shall extend to and comprehend all matters relating to auditing procedures, systems and controls, the keeping of the general accounts of the Government,* the preservation of vouchers pertaining thereto for a period of ten years, the examination and inspection of the books, records, and papers relating to those accounts; and the audit and settlement of the accounts of all persons respecting funds or property received or held by them in an accountable capacity, *as well as the examination, audit, and settlement of all debts and claims of any sort due from or owing to the Government or any of its subdivisions, agencies and instrumentalities.* The said jurisdiction extends to all government-owned or controlled corporations, including

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[83] *Rollo*, p. 130.

[84] *Id.* at 123 and 129. These co-complainants were: Donald B. Domulot, Rodolfo Parro, Antonio T. Falcon, Manuel Aguilar, Gil Gomez, Jr., Pelecio de Jesus, Antonio Abonite, Necito Ramos, Ernesto de Luna, Domingo Arao, Pablo San Buenaventura, Mariano Pelo, Eutiquio Enfeliz, Reynaldo Ragay, Onofre Gallarte, Jaime Vinas, and Lydio Bomanlag.

[85] *Id.* at 129.

their subsidiaries, and other selfgoverning [sic] boards, commissions, or agencies of the Government, and as herein prescribed, including non-governmental entities subsidized by the government, those funded by donation through the government, those required to pay levies or government share, and those for which the government has put up a counterpart fund or those partly funded by the government. (Emphasis supplied)

The purpose of requiring a separate process with the Commission on Audit for money claims against government is under the principle that public funds may only be released upon proper appropriation and disbursement:

Section 4. Fundamental principles. Financial transactions and operations of any government agency shall be governed by the fundamental principles set forth hereunder, to wit:

(1) No money shall be paid out of any public treasury or depository except in pursuance of an appropriation law or other specific statutory authority.

(2) Government funds or property shall be spent or used solely for public purposes.

(3) Trust funds shall be available and may be spent only for the specific purpose for which the trust was created or the funds received.

(4) Fiscal responsibility shall, to the greatest extent, be shared by all those exercising authority over the financial affairs, transactions, and operations of the government agency.

(5) Disbursements or disposition of government funds or property shall invariably bear the approval of the proper officials.

(6) Claims against government funds shall be supported with complete documentation.

(7) All laws and regulations applicable to financial transactions shall be faithfully adhered to.

(8) Generally accepted principles and practices of accounting as well as of sound management and fiscal administration shall be observed, provided that they do not contravene existing laws and regulations.

Money claims against government include money judgments by courts, which must be brought before the Commission on

Audit before it can be satisfied. Supreme Court Administrative Circular No. 10-2000[86] states the rationale for requiring claimants to file their money judgments before the Commission on Audit:

Republic of the Philippines
Supreme Court
Manila

ADMINISTRATIVE CIRCULAR NO. 10-2000
TO : All Judges of Lower Courts
SUBJECT : Exercise of Utmost Caution, Prudence and Judiciousness in the Issuance of Writs of Execution to Satisfy Money Judgments Against Government Agencies and Local Government Units

In order to prevent possible circumvention of the rules and procedures of the Commission on Audit, judges are hereby enjoined to observe utmost caution, prudence and judiciousness in the issuance of writs of execution to satisfy money judgments against government agencies and local government units.

Judges should bear in mind that in *Commissioner of Public Highways v. San Diego* (31 SCRA 617, 625 [1970]), this Court explicitly stated:

The universal rule that where the State gives its consent to be sued by private parties either by general or special law, it may limit claimant's action 'only up to the completion of proceedings anterior to the stage of execution' and that the power of the Courts ends when the judgment is rendered, since government funds and properties may not be seized under writs of execution or garnishment to satisfy such judgments, is based on obvious considerations of public policy. Disbursements of public funds must be covered by the corresponding appropriation as required by law. The functions and public services rendered by the State cannot be allowed to be paralyzed or disrupted by the diversion of public funds from their legitimate and specific objects, as appropriated by law.

Moreover, it is settled jurisprudence that upon determination of State liability, the prosecution, enforcement or satisfaction thereof must still be pursued in accordance with the rules and procedures laid down in P.D. No. 1445, otherwise known as the Government Auditing Code of the Philippines (*Department of Agriculture v. NLRC*, 227 SCRA 693, 701-02 [1993] citing *Republic vs. Villasor*, 54 SCRA 84

[86] Dated October 25, 2000.

[1973]). All money claims against the Government must first be filed with the Commission on Audit which must act upon it within sixty days. Rejection of the claim will authorize the claimant to elevate the matter to the Supreme Court on certiorari and in effect sue the State thereby (P.D. 1445, Sections 49-50). . . . (Emphasis supplied)

Thus, in *National Electrification Administration v. Morales*,[87] while entitlement to claims for rice allowance, meal allowance, medical/dental/optical allowance, children's allowance, and longevity pay under Republic Act No. 6758 may be adjudicated by the trial court, a separate action must be filed before the Commission on Audit for the satisfaction of the judgment award.

Similarly, in *Lockheed Detective and Watchman Agency v. University of the Philippines*,[88] this Court reimbursed to the University of the Philippines its funds that were garnished upon orders of the National Labor Relations Commission for the satisfaction of a judgment award. The reimbursement was on the ground that the money claim must first be filed before the Commission on Audit.

The situation in this case, however, is different from these previous cases. Petitioner's Board of Trustees already issued the Resolution on September 23, 1992 for the release of funds to pay separation benefits to terminated employees of Bicolandia Sugar Development Corporation.[89] Private respondents' checks were released by petitioner to the Arbitration Branch of the Labor Arbiter in 1992.[90] Under these circumstances, it is presumed that the funds to be used for private respondents' separation benefits have already been appropriated and disbursed. This would account for why private respondents' co-complainants were able to claim their checks without need of filing a separate claim before the Commission on Audit.

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[87] 555 Phil. 74 (2007) [Per *J.* Austria-Martinez, Third Division].

[88] 686 Phil. 191 (2012) [Per *J.* Villarama, Jr., First Division].

[89] See *Barayoga v. Asset Privatization Trust*, 510 Phil. 452 (2005) [Per *J.* Panganiban, Third Division].

[90] *Rollo*, p. 129.

In this instance, private respondents' separation benefits may be released to them without filing a separate money claim before the Commission on Audit. It would be unjust and a violation of private respondents' right to equal protection if they were not allowed to claim, under the same conditions as their fellow workers, what is rightfully due to them.

WHEREFORE, the Petition is **DENIED.**

SO ORDERED.

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

Brion, J., on leave.

THIRD DIVISION

[G.R. No. 184251. March 9, 2016]

ESTATE OF DR. JUVENCIO P. ORTAÑEZ, represented by DIVINA ORTAÑEZ-ENDERES, LIGAYA NOVICIO, and CESAR ORTAÑEZ, *petitioners, vs.* **JOSE C. LEE, BENJAMIN C LEE, CARMENCITA TAN, ANGEL ONG, MA. PAZ CASAL-LEE, JOHN OLIVER PASCUAL, CONRADO CRUZ, JR., BRENDA ORTAÑEZ, and JULIE ANN PARADO and JOHN DOES,** *respondents.*

SYLLABUS

1. COMMERCIAL LAW; CORPORATIONS; CAPITAL STOCK; THE SALE OF THE SHARES OF STOCK OF THE ESTATE TO A THIRD PARTY WITHOUT THE COURT'S APPROVAL AND THE INCREASE IN AUTHORIZED CAPITAL STOCK OF THE SUBJECT CORPORATION, APPROVED ON THE VOTE OF

PETITIONERS' NON-EXISTENT SHAREHOLDINGS, DECLARED VOID. — We refer to the details of the antecedent facts of the case as culled from this Court's decision promulgated on 23 February 2004 x x x. We observed in the aforesaid decision that Juliana Ortañez (Juliana)and her three sons invalidly entered into a Memorandum of Agreement extra-judicially partitioning the intestate estate among themselves, despite their knowledge that there were other heirs or claimants to the Estate and before the final settlement of the Estate by the intestate court. Since the appropriation of the estate properties was invalid, the subsequent sale thereof by Juliana and Lee to a third party (FLAG), without court approval, was likewise void. It goes without saying that the increase in Philinterlife's authorized capital stock, approved on the vote of petitioners' non-existent shareholdings was likewise void *ab initio.*

2. **ID.; ID.; CAPITAL STOCK; ONLY THOSE INCREASES ON CAPITAL STOCK SUBSEQUENT TO THE ILLEGAL SALES OF SHARES OF STOCK ARE CONSIDERED VOID, AND QUESTIONS ON THE INCREASE OF STOCKS MADE BEFORE THE ILLEGAL SALES SHOULD BE THE SUBJECT OF A SEPARATE PROCEEDING.—** Upon a closer analysis of our ruling in G.R. No. 146006, however, we note that only the 4 March 1982 memorandum of agreement was declared void and as a consequence thereto, the subsequent sale to FLAG was likewise declared void. With regard to the increases in Philinterlife's capital stock, we only declared void those **increases approved on the vote of petitioners' non-existent shareholdings**. In other words, only those increases subsequent to the illegal sales of shares of stock are considered void. The validity of the increases of stock *before* 1989 (from 1980 to 1988) has never been questioned before any court. Parenthetically, any question on the increase of stocks made before the illegal sales should not be raised in the instant election contest case but should be the subject of a separate proceeding.

3. **ID.; ID.; ID.; PETITIONERS FAILED TO PROVE 51% OWNERSHIP OF THE OUTSTANDING CAPITAL STOCK OF THE SUBJECT CORPORATION DURING THE STOCKHOLDERS' MEETING.—** Capital Structure proffered by the respondents negated the claim of petitioners that they have *always* been the true and lawful owners of at least 51%

of Philinterlife. It should be noted that the last valid uncontested outstanding capital stock before the illegal sales was 10,000 shares. Prior to the sales made to FLAG on 15 April 1989 and 30 October 1991, the outstanding capital stock as reflected in the General Information Sheet dated 16 April 1988, is 10,000 shares at ₱10,000,000.00 and not 5,000 shares as advanced by the petitioners. Therefore, the total number of outstanding shares during the 15 March 2006 annual stockholders' meeting was definitely not 5,000 shares as petitioners posit. Even before the illegal sale, the Estate only owned 2,029 shares, not even close to majority of the total outstanding capital stock of 10,000 shares. x x x. From the x x x facts and based on a careful evaluation of the evidence on record, we are of the considered view that petitioners indeed failed to present the required preponderance of evidence to prove their allegation in the complaint that they represented more than 51% of the outstanding capital stock of Philinterlife during the annual stockholders' meeting held on 15 March 2006.

4. ID.; ID.; IN THE ABSENCE OF EVIDENCE TO THE CONTRARY, THE PRESUMPTION IS THAT THE RESPONDENTS WERE DULY ELECTED AS DIRECTORS/ OFFICERS OF SUBJECT CORPORATION DURING ITS ANNUAL STOCKHOLDERS' MEETING.— [T]he core issue to be resolved in the present case is simply on whether respondents were validly elected as Board of Directors during the annual stockholders' meeting of Philinterlife held on 15 March 2006. We agree with the courts below that in the absence of evidence to the contrary, the presumption is that the respondents were duly elected as directors/officers of Philinterlife during the aforesaid annual stockholders' meeting. Petitioners cannot, in the instant election contest case, question the increases in the capital stocks of the corporation.

APPEARANCES OF COUNSEL

Picazo Buyco Tan Fider & Santos for petitioner Ortañez-Enderes.

Nelson A. Clemente for petitioners Novicio & Ortañez.

Raymund P. Palad for respondents Brenda Ortañez and Julie Ann Parado.

Fernandez & Associates Law Firm for respondents Jose C. Lee, *et al.*

D E C I S I O N

PEREZ, *J.*:

Before us for resolution is the appeal filed by the Estate of Dr. Juvencio P. Ortañez (Dr. Ortañez), Ligaya Novicio, Divina Ortañez-Enderes, and Cesar Ortañez (petitioners) seeking to nullify the 28 February 2008 Decision[1] of the Court of Appeals (CA) in CA-G.R. SP No. 97829. The CA affirmed the 17 January 2007 Judgment[2] of the Regional Trial Court (RTC), Branch 90, Quezon City, which dismissed the petitioners' complaint for failure to present the required preponderance of evidence to substantiate the material allegations embodied therein.

Culled from the records are the following antecedent facts:

On 6 July 1956, Dr. Ortañez organized and founded the Philippine International Life Insurance Company, Inc. (Philinterlife). At the time of its incorporation, Dr. Ortañez owned ninety percent (90%) of the subscribed capital stock of Philinterlife.

Upon his death on 21 July 1980, Dr. Ortañez left behind an estate consisting of, among others, 2,029 shares of stock in Philinterlife, then representing at least 50.725% of the outstanding capital stock of Philinterlife which was at 4,000 shares valued at ₱4,000,000.00.

On 30 March 2006, petitioners filed a Complaint for Election Contest before the RTC of Quezon City. The case was docketed as Civil Case No. Q-06-143 and raffled to Branch 90. The complaint challenged the lawfulness and validity of the meeting and election conducted by the group of Jose C. Lee (respondents) on 15 March 2006. During the assailed meeting, Jose C. Lee (Lee), Angel Ong, Benjamin C. Lee, Carmelita Tan, Ma. Paz C. Lee, John Oliver Pascual, Edwin C. Lee, Conrado C. Cruz, Jr.,

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[1] *Rollo*, pp. 55-70; Penned by Associate Justice Agustine S. Dizon with Associate Justices Lucenito N. Tagle and Japar B. Dimaampao concurring.

[2] CA *rollo*, pp. 32-35; Presided by Judge Reynaldo B. Daway.

Brenda Ortañez, Julie Ann Parado and Gary Jason Santos were elected as members of the Board of Directors of Philinterlife.

Petitioners claimed that before the contested election, they formally informed the respondents that without the participation of the Estate, no quorum would be constituted in the scheduled annual stockholders' meeting.

Petitioners averred that in spite of their formal announcement and notice that they were not participating in the session, the respondents continued, in bad faith, with the illegal meeting. Further, respondents allegedly elected themselves as directors of Philinterlife and proceeded to elect their own set of officers.

Petitioners, who insisted that they represented at least 51% of the outstanding capital stock of 5,000 shares of Philinterlife, conducted on the same day and in the same venue but in a different room, their own annual stockholders' meeting and proceeded to elect their own set of directors, to wit: Rafael Ortañez, Divina Ortañez-Enderes, Ligaya Novicio, Cesar Ortañez and Leopoldo Tomas.

Petitioners complained that despite being the true and lawful directors, they were prevented by respondents to enter into the office premises of Philinterlife's corporate records and assets.

In their backgrounder, petitioners narrated that on 15 April 1989 and 30 October 1991, the 2,029 shares of stock of the Estate were sold to the group of Lee, through an entity called Filipino Loan Assistance Group (FLAG). By reason of said sale, respondents took control of the management of the corporation. In the course of their management, and by voting on the shares that they had illegally acquired, respondents increased the authorized capital stock of Philinterlife to 5,000 shares.

The aforementioned sale of the shares of stock of the Estate was challenged by some of the heirs (some of the petitioners) before the estate court, which in due course, issued an order declaring the sale null and void *ab initio*. The case eventually reached this Court and was docketed as G.R. No. 146006.

In the Court's decision in G.R. No. 146006,[3] it affirmed the lower court's ruling that indeed the sale was null and void. Furthermore, the Court ruled that all increases in the authorized capital stock of Philinterlife made and effected by the respondents using the shares that they illegally acquired were null and void as well. Petitioners submit that as a necessary and logical consequence, majority ownership over Philinterlife was restored to the Estate, which was the controlling stockholder prior to the unlawful sale of the shares.

Petitioners pointed out that in the Court's Resolutions dated 22 April 2005 and 22 August 2005 in G.R. No. 146006, it reiterated its 23 February 2004 ruling that all increases in the capital stock of the corporation effected by Lee and his group were null and void.

They further submitted that the exercise of pre-emptive right of the Estate to acquire 51% of the additional 1,000 paid up shares of stock, raising the total outstanding capital stock to 5,000 shares, was recognized by the RTC of Quezon City, which acted as an Intestate Court in Sp. Proc. No. Q-30884, through its Order dated 6 July 2000 and was upheld by this Court in its decision in G.R. No. 146006.

On the basis and strength of the aforesaid decision and resolutions of this Court in G.R. No. 146006, petitioners argued that the valid and lawful capital stock of Philinterlife remained at 5,000 shares of stock. From this 5,000 shares, petitioner Estate owns 2,029 shares, plus 510 shares which also legally belongs to it by reason of its pre-emptive right, or a total of 2,539 shares. These figures indicate that they still represent majority of the outstanding capital stock of Philinterlife.

Petitioners concluded that notwithstanding the decision and subsequent resolutions of this Court in G.R. No. 146006, respondents unlawfully held on to the management and control of Philinterlife and maliciously resisted and prevented all their efforts to regain control and management thereof.

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[3] *Rollo,* pp. 227-258.

Respondents, for their part, categorically denied the material allegations of the complaint and raised the defense that the stockholders' meeting they conducted on 15 March 2006 was valid as it was allegedly attended by stockholders representing 98.76% of the 50,000 shares representing the authorized and issued capital stock of Philinterlife.

In a Judgment[4] dated 17 January 2007, the RTC dismissed the complaint filed by petitioners on the ground that the latter did not present the required preponderance of evidence to substantiate their claim that they were the owners of at least 51% of the outstanding capital stock of Philinterlife.

Dissatisfied with the RTC ruling, petitioners elevated the matter to the CA.

On 28 February 2008,[5] the CA dismissed the petition on the grounds that: 1) petitioners are guilty of forum shopping; 2) the decision of this Court in G.R. No. 146006 was already interpreted and clarified by RTC, Branch 93 in Civil Case No. 05-115 in favor of the respondents, when a writ of preliminary injunction was issued against petitioners and; 3) petitioners are not even stockholders on the stock books of Philinterlife even if the basis for filing of the complaint in Civil Case No. Q-06-143 is the 5,000 shares existing on the books of Philinterlife as of 1982.

Hence, this Petition for Review on *Certiorari*[6] under Rule 45 of the Rules of Court.

Petitioners essentially allege that the CA erred when:

(1) it refused to acknowledge the final and executory decision of this Court in G.R. No. 146006, declaring that petitioner Estate is the owner of majority of the capital stock of Philinterlife;

(2) it ruled that the election of respondents as directors of Philinterlife was in accordance with the provisions of the

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[4] CA *rollo*, pp. 32-35.

[5] *Rollo*, pp. 55-70.

[6] *Id.* at 3-45.

> Corporation Code, despite the categorical pronouncement of this Court in G.R. No. 146006 that it is the Estate, and not the respondents, which own the controlling interest in Philinterlife.[7]

For reasons to be discussed hereunder, we rule in favor of respondents.

We note respondents' submission that in March 1983, Jose S. Ortañez sold certain shares of stocks which he personally and exclusively owned to Lee and eighteen (18) other stockholders including Divina Ortañez-Enderes and her family. These shares of stock are separate and distinct from the 2,029 shares of stock belonging to the Estate. The respondents direct the Court's attention to the General Information Sheets of Philinterlife from 31 March 1983 to 16 April 1988, where it is shown that even before the alleged illegal sales on 15 April 1980 and 30 October 1996, Lee and the other respondents were stockholders and directors of Philinterlife.[8]

Respondents also claim that as of 27 July 1987, the authorized capital stock of Philinterlife was increased to ₱10,000,000.00 in compliance with Ministry Order 2-84; that as of 31 January 1989, the authorized capital stock was still at ₱10,000,000.00 and the Estate's 2,025 shares have minority interest of 20.29% only; that as of 20 February 2003, 90% of the company's controlling interest approved the increase of capital stock to ₱50,000,000.00 as mandated by law. Moreover, respondents allege that the 15 March 2006 annual stockholders' meeting presided over by Lee was attended by stockholders representing 98.76% of the 50,000 authorized and fully subscribed capital stock.

We agree with the lower courts that the petitioners failed to present credible and convincing evidence that Philinterlife's outstanding capital stock during the 15 March 2006 annual stockholders' meeting was 5,000 and that they own more than

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

[8] *Id.* at 707-723.

2,550 shares or 51% thereof. The unrebutted presumption is that respondents, as defendants below, were duly elected as directors-officers of Philinterlife.

G.R. No. 146006

We refer to the details of the antecedent facts of the case as culled from this Court's decision promulgated on 23 February 2004, is as follows:

> Dr. Juvencio P. Ortañez incorporated the Philippine International Life Insurance Company, Inc. on July 6, 1956. At the time of the company's incorporation, Dr. Ortañez owned ninety (90%) of the subscribed capital stock.
>
> On July 21, 1980, Dr. Ortañez died. He left behind a wife (Juliana Salgado Ortañez), three legitimate children (Rafael, Jose and Antonio Ortañez) and five illegitimate children by Ligaya Novicio (herein private respondent Ma. Divina Ortañez-Enderes and her siblings Jose, Romeo, Enrico Manuel and Cesar, all surnamed Ortañez)
>
> On September 24, 1980, Rafael Ortañez filed before the Court of First Instance of Rizal, Quezon City a petition for letters of administration of the intestate estate of Dr. Ortañez, docketed as SP. Proc. Q-30884. Private respondent Ma. Divina Ortañez-Enderes and her siblings filed an opposition to the petition for letters of administration. x x x
>
> On March 10, 1982, Rafael and Jose Ortañez were appointed joint special administrators of their father's estate. x x x [The] inventory of the estate included, x x x among other properties, 2,029 shares of stock in Philinterlife representing 50.725% of the company's outstanding capital stock at that time.
>
> On April 15, 1989 [and October 30, 1991], the decedent's wife, Juliana Ortañez [and Special Administrator Jose Ortañez], sold [their] shares with right to repurchase in favor of Filipino Loan Assistance Group (FLAG), represented by its president, Jose C. Lee. [Both of them] failed to repurchase x x x, thus ownership thereof was consolidated by FLAG in its name.
>
> It appears that on [March 4, 1982] (during the pendency of the intestate proceedings). Juliana Ortañez and her two children, Rafael and Jose Ortañez, entered into a memorandum of agreement for the extrajudicial settlement of the estate of Dr. Juvencio Ortañez,

partitioning the estate (including Philinterlife shares of stock) among themselves. x x x

x x x x x x x x x

On November 8, 1995, the intestate court x x x appointed Ma. Divina Ortañez-Enderes as special administratrix of the Philinterlife shares of stock.

x x x Special Administratrix Enderes filed urgent motions to declare (1) void *ab initio* the memorandum of agreement dated March 4, 1982; [(2)] x x x to declare the partial nullity of the extrajudicial settlement of the decedent's estate; (3) to declare void *ab initio* the deeds of sale of Philinterlife shares of stock x x x.

x x x x x x x x x

On August 11, 1997, the intestate court x x x [ruled that] "a sale of a property of the estate without an Order of the probate court is void and passes no title to the purchaser. Since the sales in question were entered into by Juliana S. Ortañez and Jose S. Ortañez in their personal capacity without prior approval of the Court, the same is not binding upon the Estate."

On August 29, 1997, the intestate court x x x [granted] the motion [for the annulment of the] March 4, 1982 memorandum of agreement or extrajudicial partition of [the] estate. [The Memorandum of Agreement was declared partially void *ab initio* insofar as the transfer/waiver/renunciation of the Philinterlife shares of stock was concerned. This was eventually brought up to the Supreme Court but to no avail. The decision attained finality and was subsequently recorded in the book of entries of judgment.][9]

x x x x x x x x x

We observed in the aforesaid decision that Juliana Ortañez (Juliana) and her three sons invalidly entered into a Memorandum of Agreement extra-judicially partitioning the intestate estate among themselves, despite their knowledge that there were other heirs or claimants to the Estate and before the final settlement of the Estate by the intestate court. Since the appropriation of the estate properties was invalid, the subsequent sale thereof

[9] *Id.* at 227-258.

by Juliana and Lee to a third party (FLAG), without court approval, was likewise void.

It goes without saying that the increase in Philinterlife's authorized capital stock, approved on the vote of petitioners' non-existent shareholdings was likewise void *ab initio*.

Over-stretching of G.R. No. 146006

Petitioners anchor their claim on this Court's ruling in G.R. No. 146006 to support their argument that they own 51% of the outstanding capital stock of Philinterlife. They insist that pursuant thereto, *all* increases in the authorized capital stock of Philinterlife are null and void; thus, it logically follows that the authorized capital stock of Philinterlife remains at 5,000 (capital stock at the time of death of Dr. Ortañez) to date and that the 2,029 shares owned by petitioners, coupled with the shares owned by other petitioners in their individual capacity, constitute more than 51% of the issued capital stock.

Upon a closer analysis of our ruling in G.R. No. 146006, however, we note that only the 4 March 1982 memorandum of agreement was declared void and as a consequence thereto, the subsequent sale to FLAG was likewise declared void. With regard to the increases in Philinterlife's capital stock, we only declared void those **increases approved on the vote of petitioners' non-existent shareholdings**.[10] In other words, only those increases subsequent to the illegal sales of shares of stock are considered void. The validity of the increases of stock *before* 1989 (from 1980 to 1988) has never been questioned before any court. Parenthetically, any question on the increase of stocks made before the illegal sales should not be raised in the instant election contest case but should be the subject of a separate proceeding.

Petitioners argue that G.R. No. 146006 serves as their "best evidence of the fact that petitioners have *always been the true and lawful owners of at least 51% of Philinterlife*."[11] We iterate

[10] *Id.* at 252.

[11] *Id.* at 519.

that what we declared void in G.R. No. 146006 was the 4 March 1982 Memorandum of Agreement and consequently, the subsequent sales and pursuant thereto, the increased authorized capital stocks approved on the vote of petitioners' non-existent shares. Petitioners seek to over-stretch this Court's ruling in G.R. No. 146006 by arguing that *all* increases of capital stock were declared void. At this juncture, we emphasize once more, that the increases in the capital stock made *before* the illegal sales were not declared void by G.R. No. 146006. In fact, these previous increases, as discussed below, were mandated by law.

We give more weight to the Capital Structure of Philinterlife as of 15 December 1980,[12] which shows that the Estate owned 2,029 shares of the 5,000 total outstanding shares or 40.58%. It is evident, therefore, that as of 15 December 1980, the Estate no longer owned 50.725% of the outstanding capital stock of Philinterlife. In view of the increase of the capital structure of Philinterlife from 4,000 shares to 5,000 shares in 15 December 1980, the percentage of shareholdings owned by the Estate was naturally reduced from 50.73% (2,029 shares out of 4,000 shares) to 40.58% (2,029 shares out of 5,000 shares). In other words, the Estate's 2,029 shares became a minority shareholder of Philinterlife from 15 December 1980 up to 24 March 1983. The Capital Structure proffered by the respondents negated the claim of petitioners that they have *always* been the true and lawful owners of at least 51% of Philinterlife.

It should be noted that the last valid uncontested outstanding capital stock before the illegal sales was 10,000 shares. Prior to the sales made to FLAG on 15 April 1989 and 30 October 1991, the outstanding capital stock as reflected in the General Information Sheet dated 16 April 1988,[13] is 10,000 shares at ₱10,000,000.00 and not 5,000 shares as advanced by the petitioners. Therefore, the total number of outstanding shares during the 15 March 2006 annual stockholders' meeting was definitely not 5,000 shares as petitioners posit. Even before

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[12] *Id.* at 584.

[13] *Id.* at 487-488.

the illegal sale, the Estate only owned 2,029 shares, not even close to majority of the total outstanding capital stock of 10,000 shares.

Moreover, this Court recognizes the significant weight of the Certification issued by the Insurance Commission.[14] The document certified that Department Order No. 62-87 (5 June 1987), as issued by the Insurance Commission, required domestic insurance companies to increase their minimum paid-up capital to ₱10,000,000.00 by the end of 31 December 1987.

We quote with approval the following pertinent disquisitions of the RTC, Branch 93, Quezon City in Civil Case No. 05-115:[15]

> From July 21, 1980 up to April 15, 1989, there were changes in the capital structure of Philinterlife. There were increases in the capital stock [pursuant to law].[16] These changes took place before the sale of the 2,029 shares of the Estate x x x in 1989 and 1991 to FLAG. Prior to 1995, Rafael and Jose Ortañez were the joint special administrators of the Estate x x x and their administration covered the 2,029 shares. x x x Under the joint special administration x x x, the 2,029 shares remained static. How and why these shares of the Estate remained unimproved despite the general increase in capital stock of Philinterlife during that time can only be answered by the joint special administrators.

As respondents correctly pointed out,[17] to give premium to petitioners' story that the quorum in the annual stockholders' meeting should be based on 5,000 shares is to grossly violate and disregard corporate acts and powers done by the corporation, which were validly voted upon by the stockholders including the Estate, through its then Special Administrators Rafael Ortañez and Jose Ortañez, from 1983 to 1988. Furthermore, the same increases of capital stock to 10,000 were also voted upon and approved after due notice to petitioners Divina Ortañez-Enderes, Ligaya Novicio and Cesar Ortañez who were present/allowed to be present, during the stockholders' meetings from 1983 to 1988.

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[14] *Id.* at 513.

[15] CA *rollo*, p. 155.

[16] Section 188, Insurance Code of 1978.

[17] *Rollo*, pp. 456-475.

Classified hereunder is a summary of the developments in the Capital Structure of Philinterlife from the time of death of Dr. Ortañez:

	No. of Shares		**Amount**
1. At the time of death 21 July 1980			
Paid-up Capital	4,000		Php4,000,000.00
Holdings of Juvencio Ortañez	2,029		Php2,029,000.00
Percentage		**50.72%**	
2. Increase in Paid-Up Capital 15 December 1980			
Paid-up Capital	5,000		Php5,000,000.00
Holdings of Juvencio Ortañez	2,029		Php2,029,000.00
Percentage		**40.58%**	
3. Increase in Paid-Up Capital 24 September 1984			
Paid-Up Capital	6,000		Php6,000,000.00
Holdings of Juvencio Ortañez	2,029		Php2,029,000.00
Percentage		**33.81%**	
4. Increase in Paid Up Capital 26 January 1987			
Paid-Up Capital	8,000		Php8,000,000.00
Holdings of Juvencio Ortañez	2,029		Php2,029,000.00
Percentage		**25.36%**	
5. Increase in Paid-Up Capital 27 July 1987			
Paid-Up Capital	10,000		Php10,000,000.00
Holdings of Juvencio Ortañez	2,029		Php2,029,000.00
Percentage		**20.29%**	

6. Increase in Paid-Up Capital 6 February 2003			
Paid-Up Capital	20,000		Php20,000,000.00
Holdings of Juvencio Ortañez	2,029		Php2,029,000.00
Percentage		**9.85%**	
7. Increase in Paid-Up Capital 20 February 2003			
Paid-Up Capital	50,000		Php50,000,000.00
Holdings of Juvencio Ortañez			Php2,029,000.00
Percentage		**4.05%**[18]	

From the foregoing facts and based on a careful evaluation of the evidence on record, we are of the considered view that petitioners indeed failed to present the required preponderance of evidence to prove their allegation in the complaint that they represented more than 51% of the outstanding capital stock of Philinterlife during the annual stockholders' meeting held on 15 March 2006.

Clearly, the core issue to be resolved in the present case is simply on whether respondents were validly elected as Board of Directors during the annual stockholders' meeting of Philinterlife held on 15 March 2006. We agree with the courts below that in the absence of evidence to the contrary, the presumption is that the respondents were duly elected as directors/officers of Philinterlife during the aforesaid annual stockholders' meeting. Petitioners cannot, in the instant election contest case, question the increases in the capital stocks of the corporation.

Given the ruling of this Court, as provided above, we find it no longer necessary to rule on the other matters raised in this case.

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

WHEREFORE, in the light of the foregoing premises, the instant appeal is hereby **DENIED.**

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 184513. March 9, 2016]

DESIGNER BASKETS, INC., *petitioner, vs.* **AIR SEA TRANSPORT, INC. and ASIA CARGO CONTAINER LINES, INC.,** *respondents.*

SYLLABUS

1. COMMERCIAL LAW; CODE OF COMMERCE; BILL OF LADING; DEFINED; A BILL OF LADING DEFINES THE RIGHTS AND LIABILITIES OF THE PARTIES IN REFERENCE TO THE CONTRACT OF CARRIAGE AND THE STIPULATIONS THEREIN ARE VALID AND BINDING UNLESS THEY ARE CONTRARY TO LAW, MORALS, CUSTOMS, PUBLIC ORDER OR PUBLIC POLICY.— A bill of lading is defined as "a written acknowledgement of the receipt of goods and an agreement to transport and to deliver them at a specified place to a person named or on his order." It may also be defined as "an instrument in writing, signed by a carrier or his agent, describing the freight so as to identify it, stating the name of the consignor, the terms of the contract of carriage, and agreeing or directing that the freight be delivered to bearer, to order or to a specified person at a specified place. Under Article 350 of the Code of Commerce, "the shipper as well as the carrier of the merchandise or goods may mutually demand that a bill of lading be made."

A bill of lading, when issued by the carrier to the shipper, is the legal evidence of the contract of carriage between the former and the latter. It defines the rights and liabilities of the parties in reference to the contract of carriage. The stipulations in the bill of lading are valid and binding unless they are contrary to law, morals, customs, public order or public policy.

2. ID.; ID.; ID.; ABSENT EXPRESS PROHIBITION IN THE BILL OF LADING, THERE IS NO OBLIGATION ON THE PART OF THE CARRIER AND THE CARRIER'S AGENT TO RELEASE THE GOODS ONLY UPON THE SURRENDER OF THE ORIGINAL BILL OF LADING.— [A]CCLI, as agent of ASTI, issued Bill of Lading No. AC/MLLA6013l7 to DBI. This bill of lading governs the rights, obligations and liabilities of DBI and ASTI. DBI claims that Bill of Lading No. AC/MLLA6013l7 contains a provision stating that ASTI and ACCLI are "to release and deliver the cargo/shipment to the consignee, x x x, only after the original copy or copies of the said Bill of Lading is or are surrendered to them; otherwise they become liable to [DBI] for the value of the shipment." Quite tellingly, however, DBI does not point or refer to any specific clause or provision on the bill of lading supporting this claim. The language of the bill of lading shows no such requirement. What the bill of lading provides on its face is: x x x. **If required by the Carrier this Bill of Lading duly endorsed must be surrendered in exchange for the Goods of delivery order.** There is no obligation, therefore, on the part of ASTI and ACCLI to release the goods only upon the surrender of the original bill of lading.

3. ID.; ID.; ID.; A COMMON CARRIER IS ALLOWED BY LAW TO RELEASE THE GOODS TO THE CONSIGNEE EVEN WITHOUT THE LATTER'S SURRENDER OF THE BILL OF LADING WHEN THE BILL OF LADING GETS LOST OR FOR OTHER CAUSE. BUT IN EITHER CASE, THE CONSIGNEE MUST ISSUE A RECEIPT TO THE CARRIER UPON THE RELEASE OF THE GOODS, AND SUCH RECEIPT SHALL PRODUCE THE SAME EFFECT AS THE SURRENDER OF THE BILL OF LADING. — [A] carrier is allowed by law to release the goods to the consignee even without the latter's surrender of the bill of lading. The third paragraph of Article 353 of the Code of Commerce is enlightening: x x x. **In case the consignee, upon receiving**

the goods, cannot return the bill of lading subscribed by the carrier, because of its loss or any other cause, he must give the latter a receipt for the goods delivered, this receipt producing the same effects as the return of the bill of lading. The general rule is that upon receipt of the goods, the consignee surrenders the bill of lading to the carrier and their respective obligations are considered canceled. The law, however, provides two exceptions where the goods may be released without the surrender of the bill of lading because the consignee can no longer return it. These exceptions are when the bill of lading gets lost or for other cause. In either case, the consignee must issue a receipt to the carrier upon the release of the goods. Such receipt shall produce the same effect as the surrender of the bill of lading.

4. **ID.; ID.; ID.; THE NON-SURRENDER OF THE ORIGINAL BILL OF LADING DOES NOT VIOLATE THE COMMON CARRIER'S DUTY OF EXTRAORDINARY DILIGENCE OVER THE GOODS AND THE SURRENDER OF THE ORIGINAL BILL OF LADING IS NOT A CONDITION PRECEDENT FOR A COMMON CARRIER TO BE DISCHARGED OF ITS CONTRACTUAL OBLIGATION.** — We have already ruled that the non-surrender of the original bill of lading does not violate the carrier's duty of extraordinary diligence over the goods. In *Republic v. Lorenzo Shipping Corporation*, we found that the carrier exercised extraordinary diligence when it released the shipment to the consignee, not upon the surrender of the original bill of lading, but upon signing the delivery receipts and surrender of the certified true copies of the bills of lading. Thus, we held that the surrender of the original bill of lading is not a condition precedent for a common carrier to be discharged of its contractual obligation. Under special circumstances, we did not even require presentation of any form of receipt by the consignee, in lieu of the original bill of lading, for the release of the goods.

5. **ID.; ID.; ID.; THE EXECUTION OF AN INDEMNITY AGREEMENT ALLOWING THE RELEASE OF SHIPMENT EVEN WITHOUT SURRENDER OF THE BILL OF LADING, AND THE RELEASE OF THE SHIPMENT TO THE CONSIGNEE PURSUANT TO IT, OPERATE AS A RECEIPT IN SUBSTANTIAL COMPLIANCE WITH THE LAW.—** [L]aw and jurisprudence

is settled that the surrender of the original bill of lading is not absolute; that in case of loss or any other cause, a common carrier may release the goods to the consignee even without it. Here, Ambiente could not produce the bill of lading covering the shipment not because it was lost, but for another cause: the bill of lading was retained by DBI pending Ambiente's full payment of the shipment. Ambiente and ASTI then entered into an Indemnity Agreement, wherein the former asked the latter to release the shipment even without the surrender of the bill of lading. The execution of this Agreement, and the undisputed fact that the shipment was released to Ambiente pursuant to it, to our mind, operates as a receipt in substantial compliance with the last paragraph of Article 353 of the Code of Commerce.

6. ID.; ID.; ARTICLE 353 OF THE CODE OF COMMERCE, NOT ARTICLES 1733, 1734, AND 1735 OF THE CIVIL CODE, APPLIES TO THE CASE AT BAR. — Articles 1733, 1734, and 1735 of the Civil Code are not applicable in this case. x x x. Articles 1733, 1734, and 1735 speak of the common carrier's responsibility over the **goods**. They refer to the general liability of common carriers in case of **loss, destruction** or **deterioration** of goods and the presumption of negligence against them. This responsibility or duty of the common carrier lasts from the time the goods are unconditionally placed in the possession of, and received by the carrier for transportation, until the same are delivered, actually or constructively, by the carrier to the consignee, or to the person who has a right to receive them. It is, in fact, undisputed that the goods were timely delivered to the proper consignee or to the one who was authorized to receive them. DBI's only cause of action against ASTI and ACCLI is the release of the goods to Ambiente without the surrender of the bill of lading, purportedly in violation of the terms of the bill of lading. We have already found that Bill of Lading No. AC/MLLA601317 does not contain such express prohibition. Without any prohibition, therefore, the carrier had no obligation to withhold release of the goods. Articles 1733, 1734, and 1735 do not give ASTI any such obligation. The applicable provision instead is Article 353 of the Code of Commerce, x x x.

7. ID.; ID.; ARTICLES 1523 AND 1503 OF THE CIVIL CODE WHICH REFER TO A CONTRACT OF SALE BETWEEN

A SELLER AND A BUYER DO NOT APPLY TO A CONTRACT OF CARRIAGE BETWEEN THE SHIPPER AND THE COMMON CARRIER.— Article 1503 is an exception to the general presumption provided in the first paragraph of Article 1523 x x x. Articles 1523 and 1503, x x x, refer to a contract of sale between a seller and a buyer. In particular, they refer to who between the seller and the buyer has the right of possession or ownership over the goods subject of the sale. Articles 1523 and 1503 do not apply to a contract of carriage between the shipper and the common carrier. The third paragraph of Article 1503, upon which DBI relies, does not oblige the common carrier to withhold delivery of the goods in the event that the bill of lading is retained by the seller. Rather, it only gives the seller a better right to the possession of the goods as against the mere inchoate right of the buyer. Thus, Articles 1523 and 1503 find no application here. The case before us does not involve an action where the seller asserts ownership over the goods as against the buyer. Instead, we are confronted with a complaint for sum of money and damages filed by the seller against the buyer and the common carrier due to the non-payment of the goods by the buyer, and the release of the goods by the carrier despite non-surrender of the bill of lading. A contract of sale is separate and distinct from a contract of carriage. They involve different parties, different rights, different obligations and liabilities.

8. **ID.; ID.; NOT BEING A PARTY TO THE CONTRACT OF SALE BETWEEN THE BUYER-CONSIGNEE AND SELLER-SHIPPER, THE COMMON CARRIER CANNOT BE HELD LIABLE FOR THE PAYMENT OF THE VALUE OF THE SHIPMENT, FOR ITS LIABILITY WITH THE SELLER-SHIPPER SHOULD BE PURSUANT TO THE CONTRACT OF CARRIAGE OF GOODS AND THE LAW ON TRANSPORTATION OF GOODS.—** [W]e quote with approval the ruling of the CA, to wit: x x x **It is therefore clear that the moment the carrier has delivered the subject goods, its responsibility ceases to exist and it is thereby freed from all the liabilities arising from the transaction. Any question regarding the payment of the buyer to the seller is no longer the concern of the carrier.** This easily debunks plaintiff's theory of joint liability. x x x. The contract between DBI and ASTI is a contract of carriage of goods; hence, ASTl's liability should be pursuant to that contract and the

law on transportation of goods. Not being a party to the contract of sale between DBI and Ambiente, ASTI cannot be held liable for the payment of the value of the goods sold.

9. ID.; ID.; RESPONDENTS FOUND NOT LIABLE TO PETITIONER FOR THE VALUE OF THE SHIPMENT; LEGAL RATE OF INTEREST MODIFIED FROM 12% TO 6% PER ANNUM.— [W]e hold that under Bill of Lading No. AC/MLLA601317 and the pertinent law and jurisprudence, ASTI and ACCLI are not liable to DBI. We sustain the finding of the CA that only Ambiente, as the buyer of the goods, has the obligation to pay for the value of the shipment. However, in view of our ruling in *Nacar v. Gallery Frames*, we modify the legal rate of interest imposed by the CA. Instead of 12% per annum from the finality of this judgment until its full satisfaction, the rate of interest shall only be 6% per annum.

APPEARANCES OF COUNSEL

Riguera & Riguera Law Office for petitioner.
Sto. Tomas & Serrano for respondents.

D E C I S I O N

JARDELEZA, *J.*:

This is a Petition for Review on *Certiorari*[1] of the August 16, 2007 Decision[2] and September 2, 2008 Resolution[3] of the Court of Appeals (CA) in CA-G.R. CV No. 79790, absolving respondents Air Sea Transport, Inc. (ASTI) and Asia Cargo Container Lines, Inc. (ACCLI) from liability in the complaint for sum of money and damages filed by petitioner Designer Baskets, Inc. (DBI).

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[1] Dated November 3, 2008 and filed under Rule 45 of the Rules of Court. *Rollo*, pp. 9-26.

[2] Penned by Associate Justice Mariflor P. Punzalan Castillo with Associate Justices Marina L. Buzon and Rosmari D. Carandang, concurring. *Id.* at 27-45.

[3] *Id.* at 46-49.

The Facts

DBI is a domestic corporation engaged in the production of housewares and handicraft items for export.[4] Sometime in October 1995, Ambiente, a foreign-based company, ordered from DBI[5] 223 cartons of assorted wooden items (the shipment).[6] The shipment was worth Twelve Thousand Five Hundred Ninety and Eighty-Seven Dollars (US$12,590.87) and payable through telegraphic transfer.[7] Ambiente designated ACCLI as the forwarding agent that will ship out its order from the Philippines to the United States (US). ACCLI is a domestic corporation acting as agent of ASTI, a US based corporation engaged in carrier transport business, in the Philippines.[8]

On January 7, 1996, DBI delivered the shipment to ACCLI for sea transport from Manila and delivery to Ambiente at 8306 Wilshire Blvd., Suite 1239, Beverly Hills, California. To acknowledge receipt and to serve as the contract of sea carriage, ACCLI issued to DBI triplicate copies of ASTI Bill of Lading No. AC/MLLA601317.[9] DBI retained possession of the originals of the bills of lading pending the payment of the goods by Ambiente.[10]

On January 23, 1996, Ambiente and ASTI entered into an Indemnity Agreement (Agreement).[11] Under the Agreement, Ambiente obligated ASTI to deliver the shipment to it or to its order "without the surrender of the relevant bill(s) of lading due to the non-arrival or loss thereof."[12] In exchange, Ambiente

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[4] Complaint, records, p. 1.

[5] DBI received Import Purchase Order No. 23597A dated September 28, 1995 via fax from Ambiente, *id.* at 2.

[6] *Id.*

[7] Per Invoice Number 497 dated January 6, 1996, records, p. 11.

[8] Records, pp. 1-2.

[9] *Id.* at 46-48.

[10] CA Decision, *rollo*, p. 28.

[11] *Id.* at 81.

[12] *Id.*

undertook to indemnify and hold ASTI and its agent free from any liability as a result of the release of the shipment.[13] Thereafter, ASTI released the shipment to Ambiente without the knowledge of DBI, and without it receiving payment for the total cost of the shipment.[14]

DBI then made several demands to Ambiente for the payment of the shipment, but to no avail. Thus, on October 7, 1996, DBI filed the Original Complaint against ASTI, ACCLI and ACCLI's incorporators-stockholders[15] for the payment of the value of the shipment in the amount of US$12,590.87 or Three Hundred Thirty-Three and Six Hundred Fifty-Eight Pesos (₱333,658.00), plus interest at the legal rate from January 22, 1996, exemplary damages, attorney's fees and cost of suit.[16]

In its Original Complaint, DBI claimed that under Bill of Lading Number AC/MLLA601317, ASTI and/or ACCLI is "to release and deliver the cargo/shipment to the consignee, x x x, only after the original copy or copies of [the] Bill of Lading is or are surrendered to them; otherwise, they become liable to the shipper for the value of the shipment."[17] DBI also averred that ACCLI should be jointly and severally liable with its co-defendants because ACCLI failed to register ASTI as a foreign corporation doing business in the Philippines. In addition, ACCLI failed to secure a license to act as agent of ASTI.[18]

On February 20, 1997, ASTI, ACCLI, and ACCLI's incorporators-stockholders filed a Motion to Dismiss.[19] They argued that: (a) they are not the real parties-in-interest in the

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[13] *Id.*

[14] CA Decision, *rollo*, pp. 28-29.

[15] The incorporators-stockholders sued are the following: Marlon Gaya, Richard Sim Ng, Ng Tiam Tiong, Fortunata Sim Ng, Ng Uy Sim, Tina Orleans Ng and Analy R. Borbon. Original Complaint, records, p. 1.

[16] Original Complaint, *id.* at 1-5.

[17] Original Complaint, records, p. 3.

[18] Records, pp. 3-4.

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

action because the cargo was delivered and accepted by Ambiente. The case, therefore, was a simple case of non-payment of the buyer; (b) relative to the incorporators-stockholders of ACCLI, piercing the corporate veil is misplaced; (c) contrary to the allegation of DBI, the bill of lading covering the shipment does not contain a proviso exposing ASTI to liability in case the shipment is released without the surrender of the bill of lading; and (d) the Original Complaint did not attach a certificate of non-forum shopping.[20]

DBI filed an Opposition to the Motion to Dismiss,[21] asserting that ASTI and ACCLI failed to exercise the required extraordinary diligence when they allowed the cargoes to be withdrawn by the consignee without the surrender of the original bill of lading. ASTI, ACCLI, and ACCLI's incorporators-stockholders countered that it is DBI who failed to exercise extraordinary diligence in protecting its own interest. They averred that whether or not the buyer-consignee pays the seller is already outside of their concern.[22]

Before the trial court could resolve the motion to dismiss, DBI filed an Amended Complaint[23] impleading Ambiente as a new defendant and praying that it be held solidarily liable with ASTI, ACCLI, and ACCLI's incorporators-stockholders for the payment of the value of the shipment. DBI alleged that it received reliable information that the shipment was released merely on the basis of a company guaranty of Ambiente.[24] Further, DBI asserted that ACCLI's incorporators-stockholders have not yet fully paid their stock subscriptions; thus, "under the circumstance of [the] case," they should be held liable to the extent of the balance of their subscriptions.[25]

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[20] *Id.* at 23-25.

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

[22] *Id.* at 65-68.

[23] *Rollo*, pp. 50-57.

[24] *Id.* at 53.

[25] *Id.* at 54.

In their Answer,[26] ASTI, ACCLI, and ACCLI's incorporators-stockholders countered that DBI has no cause of action against ACCLI and its incorporators-stockholders because the Amended Complaint, on its face, is for collection of sum of money by an unpaid seller against a buyer. DBI did not allege any act of the incorporators-stockholders which would constitute as a ground for piercing the veil of corporate fiction.[27] ACCLI also reiterated that there is no stipulation in the bill of lading restrictively subjecting the release of the cargo only upon the presentation of the original bill of lading.[28] It regarded the issue of ASTI's lack of license to do business in the Philippines as "entirely foreign and irrelevant to the issue of liability for breach of contract" between DBI and Ambiente. It stated that the purpose of requiring a license (to do business in the Philippines) is to subject the foreign corporation to the jurisdiction of Philippine courts.[29]

On July 22, 1997, the trial court directed the service of summons to Ambiente through the Department of Trade and Industry.[30] The summons was served on October 6, 1997[31] and December 18, 1997.[32] Ambiente failed to file an Answer. Hence, DBI moved to declare Ambiente in default, which the trial court granted in its Order dated September 15, 1998.[33]

The Ruling of the Trial Court

In a Decision[34] dated July 25, 2003, the trial court found ASTI, ACCLI, and Ambiente solidarily liable to DBI for the value of the shipment. It awarded DBI the following:

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[26] *Id.* at 58-65.

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

[28] *Id.* at 61.

[29] *Id.* at 62.

[30] Records, p. 92.

[31] *Id.* at 96; 107-108.

[32] *Id.* at 115.

[33] *Id.* at 168-169.

[34] Penned by Judge Raul Bautista Villanueva. *Rollo*, pp. 82-92.

1. US$12,590.87, or the equivalent of [₱]333,658.00 at the time of the shipment, plus 12% interest per annum from 07 January 1996 until the same is fully paid;
2. [₱]50,000.00 in exemplary damages;
3. [₱]47,000.00 as and for attorney's fees; and,
4. [₱]10,000.00 as cost of suit.[35]

The trial court declared that the liability of Ambiente is "very clear." As the buyer, it has an obligation to pay for the value of the shipment. The trial court noted that "[the case] is a simple sale transaction which had been perfected especially since delivery had already been effected and with only the payment for the shipment remaining left to be done."[36]

With respect to ASTI, the trial court held that as a common carrier, ASTI is bound to observe extraordinary diligence in the vigilance over the goods. However, ASTI was remiss in its duty when it allowed the unwarranted release of the shipment to Ambiente.[37] The trial court found that the damages suffered by DBI was due to ASTI's release of the merchandise despite the non-presentation of the bill of lading. That ASTI entered into an Agreement with Ambiente to release the shipment without the surrender of the bill of lading is of no moment.[38] The Agreement cannot save ASTI from liability because in entering into such, it violated the law, the terms of the bill of lading and the right of DBI over the goods.[39]

The trial court also added that the Agreement only involved Ambiente and ASTI. Since DBI is not privy to the Agreement, it is not bound by its terms.[40]

The trial court found that ACCLI "has not done enough to prevent the defendants Ambiente and [ASTI] from agreeing

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[35] *Id.* at 92.

[36] *Id.* at 89.

[37] *Id.*

[38] *Id.*

[39] *Id.* at 90.

[40] *Id.* at 89.

among themselves the release of the goods in total disregard of [DBI's] rights and in contravention of the country's civil and commercial laws."[41] As the forwarding agent, ACCLI was "well aware that the goods cannot be delivered to the defendant Ambiente since [DBI] retained possession of the originals of the bill of lading."[42] Consequently, the trial court held ACCLI solidarily liable with ASTI.

As regards ACCLI's incorporators-stockholders, the trial court absolved them from liability. The trial court ruled that the participation of ACCLI's incorporators-stockholders in the release of the cargo is not as direct as that of ACCLI.[43]

DBI, ASTI and ACCLI appealed to the CA. On one hand, DBI took issue with the order of the trial court awarding the value of the shipment in Philippine Pesos instead of US Dollars. It also alleged that even assuming that the shipment may be paid in Philippine Pesos, the trial court erred in pegging its value at the exchange rate prevailing at the time of the shipment, rather than at the exchange rate prevailing at the *time of payment*.[44]

On the other hand, ASTI and ACCLI questioned the trial court's decision finding them solidarily liable with DBI for the value of the shipment. They also assailed the trial court's award of interest, exemplary damages, attorney's fees and cost of suit in DBI's favor.[45]

The Ruling of the Court of Appeals

The CA affirmed the trial court's finding that Ambiente is liable to DBI, but absolved ASTI and ACCLI from liability. The CA found that the pivotal issue is whether the law requires that the bill of lading be surrendered by the buyer/consignee

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[41] *Id.* at 90.

[42] *Id.*

[43] *Id.* at 92.

[44] Brief for the Plaintiff-Appellant, *rollo*, pp. 137-147.

[45] *Id.* at 97-119.

before the carrier can release the goods to the former. It then answered the question in the *negative*, thus:

> **There is nothing in the applicable laws that require the surrender of bills of lading before the goods may be released to the buyer/consignee.** In fact, Article 353 of the Code of Commerce suggests a contrary conclusion, viz —
>
> > "Art. 353. After the contract has been complied with, the bill of lading which the carrier has issued shall be returned to him, and by virtue of the exchange of this title with the thing transported, the respective obligations shall be considered canceled x x x In case the consignee, upon receiving the goods, cannot return the bill of lading subscribed by the carrier because of its loss or of any other cause, he must give the latter a receipt for the goods delivered, this receipt producing the same effects as the return of the bill of lading."
>
> The clear import of the above article is that the surrender of the bill of lading is not an absolute and mandatory requirement for the release of the goods to the consignee. **The fact that the carrier is given the alternative option to simply require a receipt for the goods delivered suggests that the surrender of the bill of lading may be dispensed with when it cannot be produced by the consignee for whatever cause.**[46] (Emphasis supplied.)

The CA stressed that DBI failed to present evidence to prove its assertion that the surrender of the bill of lading upon delivery of the goods is a common mercantile practice.[47] Further, even assuming that such practice exists, it cannot prevail over law and jurisprudence.[48]

As for ASTI, the CA explained that its only obligation as a common carrier was to deliver the shipment in good condition. It did not include looking beyond the details of the transaction between the seller and the consignee, or more particularly, ascertaining the payment of the goods by the buyer Ambiente.[49]

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[46] *Id.* at 34.

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

[48] *Id.*

[49] *Rollo*, p. 36.

Since the agency between ASTI and ACCLI was established and not disputed by any of the parties, neither can ACCLI, as a mere agent of ASTI, be held liable. This must be so in the absence of evidence that the agent exceeded its authority.[50]

The CA, thus, ruled:

WHEREFORE, in view of the foregoing, the Decision dated July 25, 2003 of Branch 255 of the Regional Trial Court of Las [Piñas] City in Civil Case No. LP-96-0235 is hereby **AFFIRMED** with the following **MODIFICATIONS**:

1. Defendants-appellants Air Sea Transport, Inc. and Asia Cargo Container Lines, Inc. are hereby **ABSOLVED** from all liabilities;

2. The actual damages to be paid by defendant Ambiente shall be in the amount of US$12,590.87. Defendant Ambiente's liability may be paid in Philippine currency, computed at the exchange rate prevailing at the time of payment;[51] and

3. The rate of interest to be imposed on the total amount of US$12,590.87 shall be 6% per annum computed from the filing of the complaint on October 7, 1996 until the finality of this decision. After this decision becomes final and executory, the applicable rate shall be 12% per annum until its full satisfaction.

SO ORDERED.[52]

Hence, this petition for review, which raises the sole issue of whether ASTI and ACCLI may be held solidarily liable to DBI for the value of the shipment.

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[50] *Id.* at 37.

[51] The CA, citing *C.F. Sharp & Co., Inc. v. Northwest Airlines, Inc.*, G.R. No. 133498, April 18, 2002, 381 SCRA 314, 319-320, stated that Republic Act No. 8183 allows the parties to agree upon payment in another currency other than the Philippine Peso. Hence, the obligation of Ambiente may be paid at the currency agreed upon by the parties or its peso equivalent at the time of payment.

[52] *Rollo*, pp. 43-44.

Our Ruling

We deny the petition.

A common carrier may release the goods to the consignee even without the surrender of the bill of lading.

This case presents an instance where an unpaid seller sues not only the buyer, but the carrier and the carrier's agent as well, for the payment of the value of the goods sold. The basis for ASTI and ACCLI's liability, as pleaded by DBI, is the bill of lading covering the shipment.

A bill of lading is defined as "a written acknowledgment of the receipt of goods and an agreement to transport and to deliver them at a specified place to a person named or on his order."[53] It may also be defined as "an instrument in writing, signed by a carrier or his agent, describing the freight so as to identify it, stating the name of the consignor, the terms of the contract of carriage, and agreeing or directing that the freight be delivered to bearer, to order or to a specified person at a specified place.[54]

Under Article 350 of the Code of Commerce, "the shipper as well as the carrier of the merchandise or goods may mutually demand that a bill of lading be made." A bill of lading, when issued by the carrier to the shipper, is the legal evidence of the contract of carriage between the former and the latter. It defines the rights and liabilities of the parties in reference to the contract of carriage. The stipulations in the bill of lading are valid and binding unless they are contrary to law, morals, customs, public order or public policy.[55]

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[53] Agbayani, *COMMENTARIES AND JURISPRUDENCE ON THE COMMERCIAL LAWS OF THE PHILIPPINES*, 1993 ed., Vol. IV, p. 133; citing *Interprovincial Autobus Co., Inc. v. Collector of Internal Revenue*, 98 Phil. 290, 293 (1956), citing 9 Am. Jur. 662.

[54] Agbayani, *COMMENTARIES AND JURISPRUDENCE ON THE COMMERCIAL LAWS OF THE PHILIPPINES*, *supra*; citing *Black's Law Dictionary*.

[55] *Provident Insurance Corp. v. Court of Appeals*, G.R. No. 118030, January 15, 2004, 419 SCRA 480, 483.

Here, ACCLI, as agent of ASTI, issued Bill of Lading No. AC/MLLA601317 to DBI. This bill of lading governs the rights, obligations and liabilities of DBI and ASTI. DBI claims that Bill of Lading No. AC/MLLA601317 contains a provision stating that ASTI and ACCLI are "to release and deliver the cargo/ shipment to the consignee, x x x, only after the original copy or copies of the said Bill of Lading is or are surrendered to them; otherwise they become liable to [DBI] for the value of the shipment."[56] Quite tellingly, however, DBI does not point or refer to any specific clause or provision on the bill of lading supporting this claim. The language of the bill of lading shows no such requirement. What the bill of lading provides on its face is:

> Received by the Carrier in apparent good order and condition unless otherwise indicated hereon, the Container(s) and/or goods hereinafter mentioned to be transported and/or otherwise forwarded from the Place of Receipt to the intended Place of Delivery upon and [subject] to all the terms and conditions appearing on the face and back of this Bill of Lading. **If required by the Carrier this Bill of Lading duly endorsed must be surrendered in exchange for the Goods of delivery order.**[57] (Emphasis supplied.)

There is no obligation, therefore, on the part of ASTI and ACCLI to release the goods only upon the surrender of the original bill of lading.

Further, a carrier is allowed by law to release the goods to the consignee even without the latter's surrender of the bill of lading. The third paragraph of Article 353 of the Code of Commerce is enlightening:

> Article 353. The legal evidence of the contract between the shipper and the carrier shall be the bills of lading, by the contents of which the disputes which may arise regarding their execution and performance shall be decided, no exceptions being admissible other than those of falsity and material error in the drafting.

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[56] Amended Complaint, *rollo*, p. 52.

[57] *Id.* at 70-72.

After the contract has been complied with, the bill of lading which the carrier has issued shall be returned to him, and by virtue of the exchange of this title with the thing transported, the respective obligations and actions shall be considered cancelled, unless in the same act the claim which the parties may wish to reserve be reduced to writing, with the exception of that provided for in Article 366.

In case the consignee, upon receiving the goods, cannot return the bill of lading subscribed by the carrier, because of its loss or any other cause, he must give the latter a receipt for the goods delivered, this receipt producing the same effects as the return of the bill of lading. (Emphasis supplied.)

The general rule is that upon receipt of the goods, the consignee surrenders the bill of lading to the carrier and their respective obligations are considered canceled. The law, however, provides two exceptions where the goods may be released without the surrender of the bill of lading because the consignee can no longer return it. These exceptions are when the bill of lading gets lost or for other cause. In either case, the consignee must issue a receipt to the carrier upon the release of the goods. Such receipt shall produce the same effect as the surrender of the bill of lading.

We have already ruled that the non-surrender of the original bill of lading does not violate the carrier's duty of extraordinary diligence over the goods.[58] In *Republic v. Lorenzo Shipping Corporation*,[59] we found that the carrier exercised extraordinary diligence when it released the shipment to the consignee, not upon the surrender of the original bill of lading, but upon signing the delivery receipts and surrender of the certified true copies of the bills of lading. Thus, we held that the surrender of the original bill of lading is not a condition precedent for a common carrier to be discharged of its contractual obligation.

Under special circumstances, we did not even require presentation of any form of receipt by the consignee, in lieu of

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[58] See *Republic v. Lorenzo Shipping Corporation*, G.R. No. 153563, February 7, 2005, 450 SCRA 550, 556; as cited by the CA, *rollo*, pp. 34-35.

[59] G.R. No. 153563, February 7, 2005, 450 SCRA 550.

the original bill of lading, for the release of the goods. In *Macam v. Court of Appeals*,[60] we absolved the carrier from liability for releasing the goods to the consignee without the bills of lading despite this provision on the bills of lading:

"One of the Bills of Lading must be surrendered duly endorsed in exchange for the goods or delivery order."[61] (Citations omitted.)

In clearing the carrier from liability, we took into consideration that the shipper sent a telex to the carrier after the goods were shipped. The telex instructed the carrier to deliver the goods without need of presenting the bill of lading and bank guarantee per the shipper's request since "for prepaid shipt ofrt charges already fully paid our end x x x."[62] We also noted the usual practice of the shipper to request the shipping lines to immediately release perishable cargoes through telephone calls.

Also, in *Eastern Shipping Lines v. Court of Appeals*,[63] we absolved the carrier from liability for releasing the goods to the supposed consignee, Consolidated Mines, Inc. (CMI), on the basis of an Undertaking for Delivery of Cargo but without the surrender of the original bill of lading presented by CMI. Similar to the factual circumstance in this case, the Undertaking in *Eastern Shipping Lines* guaranteed to hold the carrier "harmless from all demands, claiming liabilities, actions and expenses."[64] Though the central issue in that case was who the consignee was in the bill of lading, it is noteworthy how we gave weight to the Undertaking in ruling in favor of the carrier:

But assuming that CMI may not be considered consignee, the petitioner cannot be faulted for releasing the goods to CMI under the circumstances, due to its lack of knowledge as to who was the

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[60] G.R. No. 125524, August 25, 1999, 313 SCRA 77.

[61] *Id.* at 78.

[62] *Id.* at 79.

[63] G.R. No. 80936, October 17, 1990, 190 SCRA 512; as cited by the CA, *rollo*, pp. 35-36.

[64] *Eastern Shipping Lines v. Court of Appeals*, *supra* at 515.

real consignee in view of CMI's strong representations and letter of undertaking wherein it stated that the bill of lading would be presented later. This is precisely the situation covered by the last paragraph of Art. 353 of the [Code of Commerce] to wit:

> "If in case of loss or for any other reason whatsoever, the consignee cannot return upon receiving the merchandise the bill of lading subscribed by the carrier, he shall give said carrier a receipt of the goods delivered this receipt producing the same effects as the return of the bill of lading."[65]

Clearly, law and jurisprudence is settled that the surrender of the original bill of lading is not absolute; that in case of loss or any other cause, a common carrier may release the goods to the consignee even without it.

Here, Ambiente could not produce the bill of lading covering the shipment not because it was lost, but for another cause: the bill of lading was retained by DBI pending Ambiente's full payment of the shipment. Ambiente and ASTI then entered into an Indemnity Agreement, wherein the former asked the latter to release the shipment even without the surrender of the bill of lading. The execution of this Agreement, and the undisputed fact that the shipment was released to Ambiente pursuant to it, to our mind, operates as a receipt in substantial compliance with the last paragraph of Article 353 of the Code of Commerce.

Articles 1733, 1734, and 1735 of the Civil Code are not applicable.

DBI, however, challenges the Agreement, arguing that the carrier released the goods pursuant to it, notwithstanding the carrier's knowledge that the bill of lading should first be surrendered. As such, DBI claims that ASTI and ACCLI are liable for damages because they failed to exercise extraordinary diligence in the vigilance over the goods pursuant to Articles 1733, 1734, and 1735 of the Civil Code.[66]

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[65] *Id.* at 522-523.

[66] Opposition to Motion to Dismiss, records, pp. 31-32.

DBI is mistaken.

Articles 1733, 1734, and 1735 of the Civil Code are not applicable in this case. The Articles state:

> Article 1733. Common carriers, from the nature of their business and for reasons of public policy, are bound to observe extraordinary diligence in the vigilance over the goods and for the safety of the passengers transported by them, according to all the circumstances of each case.
>
> Such extraordinary diligence in vigilance over the goods is further expressed in Articles 1734, 1735, and 1745, Nos. 5, 6, and 7, while the extraordinary diligence for the safety of the passengers is further set forth in Articles 1755 and 1756.
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> Article 1734. Common carriers are responsible for the loss, destruction, or deterioration of the goods, unless the same is due to any of the following causes only:
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> (1) Flood, storm, earthquake, lightning, or other natural disaster or calamity;
> (2) Act of the public enemy in war, whether international or civil;
> (3) Act or omission of the shipper or owner of the goods;
> (4) The character of the goods or defects in the packing or in the containers;
> (5) Order or act of competent public authority.
>
> Article 1735. In all cases other than those mentioned in Nos. 1, 2, 3, 4, and 5 of the preceding article, if the goods are lost, destroyed or deteriorated, common carriers are presumed to have been at fault or to have acted negligently, unless they prove that they observed extraordinary diligence as required in Article 1733.

Articles 1733, 1734, and 1735 speak of the common carrier's responsibility over the **goods**. They refer to the general liability of common carriers in case of **loss, destruction** or **deterioration** of goods and the presumption of negligence against them. This responsibility or duty of the common carrier lasts from the time the goods are unconditionally placed in the possession of, and received by the carrier for transportation, until the same are delivered, actually or constructively, by the carrier to the consignee, or to the person who has a right to receive

them.[67] It is, in fact, undisputed that the goods were timely delivered to the proper consignee or to the one who was authorized to receive them. DBI's only cause of action against ASTI and ACCLI is the release of the goods to Ambiente without the surrender of the bill of lading, purportedly in violation of the terms of the bill of lading. We have already found that Bill of Lading No. AC/MLLA601317 does not contain such express prohibition. Without any prohibition, therefore, the carrier had no obligation to withhold release of the goods. Articles 1733, 1734, and 1735 do not give ASTI any such obligation.

The applicable provision instead is Article 353 of the Code of Commerce, which we have previously discussed. To reiterate, the Article allows the release of the goods to the consignee even without his surrender of the original bill of lading. In such case, the duty of the carrier to exercise extraordinary diligence is not violated. Nothing, therefore, prevented the consignee and the carrier to enter into an indemnity agreement of the same nature as the one they entered here. No law or public policy is contravened upon its execution.

Article 1503 of the Civil Code does not apply to contracts for carriage of goods.

In its petition, DBI continues to assert the wrong application of Article 353 of the Code of Commerce to its Amended Complaint. It alleges that the third paragraph of Article 1503 of the Civil Code is the applicable provision because: (a) Article 1503 is a special provision that deals particularly with the situation of the seller retaining the bill of lading; and (b) Article 1503 is a law which is later in point of time to Article 353 of the Code of Commerce.[68] DBI posits that being a special provision, Article 1503 of the Civil Code should prevail over Article 353 of the Code of Commerce, a general provision that makes no reference to the seller retaining the bill of lading.[69]

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[67] CIVIL CODE, Art. 1736.

[68] *Rollo*, pp. 17-18.

[69] *Id.* at 17.

DBI's assertion is untenable. Article 1503 is an exception to the general presumption provided in the first paragraph of Article 1523, which reads:

Article 1523. **Where, in pursuance of a contract of sale, the seller is authorized or required to send the goods to the buyer, delivery of the goods to a carrier, whether named by the buyer or not, for the purpose of transmission to the buyer is deemed to be a delivery of the goods to the buyer, except in the cases provided for in Articles 1503, first, second and third paragraphs, or unless a contrary intent appears.**

Unless otherwise authorized by the buyer, the seller must make such contract with the carrier on behalf of the buyer as may be reasonable, having regard to the nature of the goods and the other circumstances of the case. If the seller omit so to do, and the goods are lost or damaged in the course of transit, the buyer may decline to treat the delivery to the carrier as a delivery to himself, or may hold the seller responsible in damages.

Unless otherwise agreed, where goods are sent by the seller to the buyer under circumstances in which the seller knows or ought to know that it is usual to insure, the seller must give such notice to the buyer as may enable him to insure them during their transit, and, if the seller fails to do so, the goods shall be deemed to be at his risk during such transit. (Emphasis supplied.)

Article 1503, on the other hand, provides:

Article 1503. When there is a contract of sale of specific goods, the seller may, by the terms of the contract, reserve the right of possession or ownership in the goods until certain conditions have been fulfilled. The right of possession or ownership may be thus reserved notwithstanding the delivery of the goods to the buyer or to a carrier or other bailee for the purpose of transmission to the buyer.

Where goods are shipped, and by the bill of lading the goods are deliverable to the seller or his agent, or to the order of the seller or of his agent, the seller thereby reserves the ownership in the goods. But, if except for the form of the bill of lading, the ownership would have passed to the buyer on shipment of the goods, the seller's property in the goods shall be deemed to be only for the purpose of securing performance by the buyer of his obligations under the contract.

Where goods are shipped, and by the bill of lading the goods are deliverable to order of the buyer or of his agent, but possession of the bill of lading is retained by the seller or his agent, the seller thereby reserves a right to the possession of the goods as against the buyer.

Where the seller of goods draws on the buyer for the price and transmits the bill of exchange and bill of lading together to the buyer to secure acceptance or payment of the bill of exchange, the buyer is bound to return the bill of lading if he does not honor the bill of exchange, and if he wrongfully retains the bill of lading he acquires no added right thereby. If, however, the bill of lading provides that the goods are deliverable to the buyer or to the order of the buyer, or is indorsed in blank, or to the buyer by the consignee named therein, one who purchases in good faith, for value, the bill of lading, or goods from the buyer will obtain the ownership in the goods, although the bill of exchange has not been honored, provided that such purchaser has received delivery of the bill of lading indorsed by the consignee named therein, or of the goods, without notice of the facts making the transfer wrongful. (Emphasis supplied.)

Articles 1523 and 1503, therefore, refer to a contract of sale between a seller and a buyer. In particular, they refer to who between the seller and the buyer has the right of possession or ownership over the goods subject of the sale. Articles 1523 and 1503 do not apply to a contract of carriage between the shipper and the common carrier. The third paragraph of Article 1503, upon which DBI relies, does not oblige the common carrier to withhold delivery of the goods in the event that the bill of lading is retained by the seller. Rather, it only gives the seller a better right to the possession of the goods as against the mere inchoate right of the buyer. Thus, Articles 1523 and 1503 find no application here. The case before us does not involve an action where the seller asserts ownership over the goods as against the buyer. Instead, we are confronted with a complaint for sum of money and damages filed by the seller against the buyer and the common carrier due to the non-payment of the goods by the buyer, and the release of the goods by the carrier despite non-surrender of the bill of lading. A contract of sale is separate and distinct from a contract of carriage. They involve different parties, different rights, different obligations and

liabilities. Thus, we quote with approval the ruling of the CA, to wit:

> On the third assigned error, [w]e rule for the defendants-appellants [ASTI and ACCLI]. **They are correct in arguing that the nature of their obligation with plaintiff [DBI] is separate and distinct from the transaction of the latter with defendant Ambiente. As carrier of the goods transported by plaintiff, its obligation is simply to ensure that such goods are delivered on time and in good condition.** In the case [*Macam v. Court of Appeals*], the Supreme Court emphasized that "the extraordinary responsibility of the common carriers lasts until actual or constructive delivery of the cargoes to the consignee or to the person who has the right to receive them." x x x
>
> **It is therefore clear that the moment the carrier has delivered the subject goods, its responsibility ceases to exist and it is thereby freed from all the liabilities arising from the transaction. Any question regarding the payment of the buyer to the seller is no longer the concern of the carrier.** This easily debunks plaintiff's theory of joint liability.[70] x x x (Emphasis supplied; citations omitted.)

The contract between DBI and ASTI is a contract of carriage of goods; hence, ASTI's liability should be pursuant to that contract and the law on transportation of goods. Not being a party to the contract of sale between DBI and Ambiente, ASTI cannot be held liable for the payment of the value of the goods sold. In this regard, we cite *Loadstar Shipping Company, Incorporated v. Malayan Insurance Company, Incorporated*,[71] thus:

> Malayan opposed the petitioners' invocation of the Philex-PASAR purchase agreement, stating that the contract involved in this case is a contract of affreightment between the petitioners and PASAR, not the agreement between Philex and PASAR, which was a contract for the sale of copper concentrates.
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> On this score, the Court agrees with Malayan that contrary to the trial court's disquisition, the petitioners cannot validly invoke the

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[70] CA Decision, *rollo*, pp. 39-40.

[71] G.R. No. 185565, November 26, 2014, 742 SCRA 627.

penalty clause under the Philex-PASAR purchase agreement, where penalties are to be imposed by the buyer PASAR against the seller Philex if some elements exceeding the agreed limitations are found on the copper concentrates upon delivery. **The petitioners are not privy to the contract of sale of the copper concentrates. The contract between PASAR and the petitioners is a contract of carriage of goods and not a contract of sale. Therefore, the petitioners and PASAR are bound by the laws on transportation of goods and their contract of affreightment.** Since the Contract of Affreightment between the petitioners and PASAR is silent as regards the computation of damages, whereas the bill of lading presented before the trial court is undecipherable, the New Civil Code and the Code of Commerce shall govern the contract between the parties.[72] (Emphasis supplied; citations omitted.)

In view of the foregoing, we hold that under Bill of Lading No. AC/MLLA601317 and the pertinent law and jurisprudence, ASTI and ACCLI are not liable to DBI. We sustain the finding of the CA that only Ambiente, as the buyer of the goods, has the obligation to pay for the value of the shipment. However, in view of our ruling in *Nacar v. Gallery Frames*,[73] we modify the legal rate of interest imposed by the CA. Instead of 12% per annum from the finality of this judgment until its full satisfaction, the rate of interest shall only be 6% per annum.

WHEREFORE, the petition is **DENIED** for lack of merit. The August 16, 2007 Decision and the September 2, 2008 Resolution of the Court of Appeals in CA-G.R. CV No. 79790 are hereby **AFFIRMED** with the **MODIFICATION** that from the finality of this decision until its full satisfaction, the applicable rate of interest shall be 6% per annum.

SO ORDERED.

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

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[72] *Id.* at 637.

[73] G.R. No. 189871, August 13, 2013, 703 SCRA 439.

THIRD DIVISION

[G.R. Nos. 202647-50. March 9, 2016]

CORAZON H. RICAFORT, JOSE MANUEL H. RICAFORT and MARIE GRACE H. RICAFORT, *petitioners, vs.* **The Honorable ISAIAS P. DICDICAN, the Honorable RAMON M. BATO, JR., and the Honorable EDUARDO B. PERALTA, JR., in their official capacities as Members of the Special Fourteenth Division of the Court of Appeals, NATIONWIDE DEVELOPMENT CORPORATION, ROBERTO R. ROMULO, CONRADO T. CALALANG, ALFREDO I. AYALA, JOHN ENGLE, LEOCADIO NITORREDA and LUIS MANUEL GATMAITAN,** *respondents.*

[G.R. Nos. 205921-24. March 9, 2016]

CORAZON H. RICAFORT, JOSE MANUEL H. RICAFORT and MARIE GRACE H. RICAFORT, *petitioners, vs.* **ROBERTO R. ROMULO, CONRADO T. CALALANG, ALFREDO I. AYALA, JOHN ENGLE, LEOCADIO NITORREDA, NATIONWIDE DEVELOPMENT CORPORATION and LUIS MANUEL L. GATMAITAN,** *respondents.*

SYLLABUS

1. COMMERCIAL LAW; SECURITIES REGULATION CODE (R.A. NO. 8799); SECTIONS 1 TO 3 OF RULE 6 OF THE INTERIM RULES; SEC CASE NO. 11-164 IS BARRED BY PRESCRIPTION SINCE IT WAS FILED BEYOND THE 15-DAY PRESCRIPTIVE PERIOD ALLOWED FOR AN ELECTION PROTEST.— Claiming to be stockholders of record who were denied due notice of NADECOR's August 15, 2011 ASM, the petitioner filed the Complaint in SEC Case No. 11-164 purportedly to void and nullify "the August 15, 2011 [ASM] of NADECO[R], including all proceedings taken thereat, all the consequences thereof, and all acts carried out pursuant thereto. x x x. Yet there can be no denying that by

(a) asserting their "right to choose the persons who will direct, manage and operate the corporation is significant because it is the primary way in which a stockholder can have a voice in the management of corporate affairs," because they said they had been unlawfully deprived thereof due to late notification of the aforesaid meeting, and (b) by praying for the voiding of the August 15, 2011 ASM, and for "other just and equitable reliefs," the petitioners were really seeking the holding of a new election for members of the Board of Directors of NADECOR for FY 2011-2012. x x x. Under Sections 1 to 3 of Rule 6 of the Interim Rules, SEC Case No. 11-164 should have been dismissed for having been filed beyond the 15-day prescriptive period allowed for an election protest.

2. **ID.; CORPORATIONS; STOCKHOLDERS' MEETING; LACK OF NOTICE TO PETITIONERS IS INCONSEQUENTIAL AS THEY WERE DULY REPRESENTED IN THE AUGUST 15, 2011 ANNUAL STOCKHOLDERS' MEETING BY THEIR PROXY JG RICAFORT.—** During the stockholders' registration for the August 15, 2011 ASM, no one questioned JG Ricafort's Irrevocable Proxy dated April 26, 2010 as attorney and proxy for the petitioners. x x x. Equally significantly, the petitioners do not deny that they each executed a Nominee Agreement dated June 4, 2007 wherein they acknowledged that JG Ricafort is the true and beneficial owner of the shares of stock in their names. x x x. Thus, JG Ricafort being the real and beneficial owner of the petitioners' shares, lack of notice to them is inconsequential because he attended and represented them at the August 15, 2011 ASM.

3. **ID.; ID.; ID.; PETITIONERS WERE NOTIFIED OF THE AUGUST 15, 2011 ANNUAL STOCKHOLDERS' MEETING. —** As shown in the Affidavit dated October 13, 2011 of San Juan, NADECOR's messenger, he mailed the notices for the August 15, 2011 ASM to the petitioners' address at the Ortigas Post Office on August 11, 2011, four days prior to the ASM. This was confirmed by Gatmaitan in his Affidavit dated November 21, 2011. It must be noted that under Article I, Section 3 of NADECOR's Amended By-Laws, what is required is the mailing out of notices by registered mail at least three days before the ASM: x x x. The shorter notice of three days instead of two weeks for stockholders' regular or special meeting is clearly allowed under Section 50 of the Corporation Code, to wit: SECTION 50. Regular and Special Meetings of Stockholders

or Members. — x x x. Provided that written notice of regular meetings shall be sent to all stockholders or members of record at least two (2) weeks prior to the meeting, **unless a different period is required by the by-laws.** x x x. **Notice of any meeting may be waived, expressly or impliedly, by any stockholder or member**. x x x. By failing to file their complaint below seasonably, the petitioners must be deemed to have waived their right to notice of the August 15, 2011 ASM.

4. ID.; ID.; ID.; THE VALIDITY OF THE ANNUAL STOCKHOLDERS' MEETING OR THE PROCEEDINGS THEREIN NOT AFFECTED BY FAILURE TO GIVE NOTICE OF THE REGULAR OR ANNUAL MEETINGS, WHERE THE DATE THEREOF IS FIXED IN THE BY-LAWS.— Section 50 provides in effect that failure to give notice of the regular or annual meetings, when the date thereof is fixed in the by-laws, as in Section 1, Article 1 of the Amended By-Laws of NADECOR, which is *"at twelve thirty P.M., on the THIRD MONDAY OF AUGUST in each year, if not a legal holiday, and if a legal holiday, then on the first day following which is not a legal holiday,"* will not affect the validity of the ASM or the proceedings therein.

APPEARANCES OF COUNSEL

Zamora Pobaldor Vasquez & Bretana for petitioners.

Villaraza & Angangco Law Offices for Calalang, Ayala, Engle, Nitorreda & Romulo.

Picazo Buyco Tan Fider & Santos for Luis Manuel Gatmaitan.

D E C I S I O N

REYES, *J.*:

Before this Court are two joint petitions: (i) G.R. Nos. 202647-50, for *certiorari* and prohibition under Rule 65 seeking to set aside the Resolution[1] dated June 13, 2012 of the Court of Appeals

[1] Penned by Associate Justice Ramon M. Bato, Jr., with Associate Justices Isaias P. Dicdican and Eduardo B. Peralta, Jr. concurring; *rollo* (G.R. Nos. 202647-50), Vol. I, pp. 64-71.

(CA) Special 14th Division in four consolidated petitions before it, namely, CA-G.R. SP Nos. 122782, 122784, 122853, and 122854, which granted the application for Writ of Preliminary Injunction (WPI) of the Nationwide Development Corporation (NADECOR), Roberto R. Romulo (Romulo), Conrado T. Calalang (Calalang), Alfredo I. Ayala (Ayala), John Engle (Engle), Leocadio Nitorreda (Nitorreda) and Luis Manuel L. Gatmaitan (Gatmaitan) (private respondents);[2] and (ii) G.R. Nos. 205921-24, for review on *certiorari* under Rule 45 of the Rules of Court from the CA Special 14th Division's consolidated Decision[3] dated February 18, 2013 in CA-G.R. SP Nos. 122782, 122784, 122853, and 122854, which nullified and set aside the Order[4] dated December 21, 2011 of the Regional Trial Court (RTC) of Pasig City, Branch 159, in SEC Case No. 11-164, and made permanent the WPI it issued on June 13, 2012.[5]

Antecedent Facts

The NADECOR is a domestic company which was first registered with the Securities and Exchange Commission (SEC) on September 6, 1956. It is the holder of a Mining Production Sharing Agreement (MPSA), MPSA 009-92-XI, with the Department of Environment and Natural Resources (DENR), which covers the King-king Gold and Copper Project (King-king Project), a 1,656-hectare gold and copper mining concession in Barangay King-king, Municipality of Pantukan, Province of Compostela Valley in Mindanao. The King-king Project is the second largest copper and gold mine in the country with proven copper deposits of 5.4 billion pounds and gold deposits of 10.3 million troy ounces.[6]

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

[3] *Rollo* (G.R. Nos. 205921-24), Vol. I, pp. 101-135.

[4] Rendered by Judge Rodolfo R. Bonifacio; *id.* at 429-446.

[5] *Id.* at 48-99.

[6] <http://www.nadecor.com.ph> (visited March 1, 2016). Per www.lme.com, the website of London Metal Exchange, which claims to be world centre for industrial metals trading, as of March 1, 2016 copper was trading at US$4,780.00/ton, or US$2.173/lb; per www.apmex.com, website of APMEX,

Pursuant to Section 1, Article I of NADECOR's Amended By-Laws,[7] its regular annual stockholders' meeting (ASM) was held on August 15, 2011 to elect its Board of Directors for Fiscal Year (FY) 2011-2012. The meeting was held in the Turf Room of the Manila Polo Club, South Forbes Park, Makati City. In his Affidavit[8] dated November 21, 2011, Gatmaitan, NADECOR Corporate Secretary, attested to the presence of a quorum representing 94.81% of NADECOR's outstanding shares of stock, and the election of new set of its Board of Directors, namely, Calalang, Jose G. Ricafort (JG Ricafort), Jose P. De Jesus (De Jesus), Romulo, Ayala, Victor P. Lazatin (Lazatin), Ethelwoldo E. Fernandez (Fernandez), Nitorreda and Engle.[9]

But on October 20, 2011, more than two months after the ASM, Corazon H. Ricafort (Corazon), wife of JG Ricafort, along with their children, Jose Manuel H. Ricafort (Jose Manuel), Marie Grace H. Ricafort (Marie Grace) (petitioners), and Maria Teresa Flora R. Santos (Maria Teresa) (plaintiffs), claiming to be stockholders of record, filed a complaint before the RTC to declare null and void "*the 15 August 2011 [ASM] of NADECO[R], including all proceedings taken thereat, all the consequences thereof, and all acts carried out pursuant thereto*,"[10] against NADECOR itself, the newly-elected members of its Board of Directors, and Gatmaitan (defendants). The plaintiffs alleged, among others, that "they had no knowledge or prior notice of, and were thus unable to attend, participate in, and vote at, the said [ASM]"[11] since they received the notice of the ASM only on August 16, 2011, or one day late, in violation of the three-day notice provided in NADECOR's By-Laws; that due to lack of notice, they failed to attend the said ASM and

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which claims to be the leading Precious Metals retailer in the U.S., the bid price for gold was US$1,239.90/oz. on March 2, 2016.

[7] *Rollo* (G.R. Nos. 205921-24), Vol. I, pp. 157-169.

[8] *Rollo* (G.R. Nos. 202647-50), Vol. III, pp. 1343-1353.

[9] *Rollo* (G.R. Nos. 205921-24), Vol. I, p. 103.

[10] *Id.* at 178.

[11] *Id.* at 174.

to exercise their right as stockholders to participate in the management and control of NADECOR. They further noted that the notice announced a time and venue different from those set forth in the By-Laws.[12]

Gatmaitan filed his Answer with Application for Hearing on Affirmative Defenses dated November 18, 2011;[13] Calalang, Romulo, Ayala, Engle and Nitorreda filed their Answer with Compulsory Counterclaim dated November 21, 2011;[14] and NADECOR filed its Answer dated November 23, 2011.[15] The defendants sought the dismissal of SEC Case No. 11-164 on the following grounds: that the complaint involved an election contest, since in effect it sought to nullify the election of the Board of Directors of NADECOR for FY2011-2012, and under Section 3, Rule 6 of the Interim Rules of Procedure Governing Intra-Corporate Controversies (Interim Rules),[16] it should have been filed within 15 days from the date of the election; that the complaint is not only barred by prescription for having been filed more than two months after the ASM complained of, but the plaintiffs have no cause of action because they were duly served with notice of the said meeting, as shown in the affidavit dated October 13, 2011 of the NADECOR messenger, Mario S. San Juan (San Juan), who mailed the notices on August 11, 2011 at the Ortigas Post Office to all stockholders of record of NADECOR, four days prior to the scheduled ASM; that a valid ASM was held on August 15, 2011, the third Monday of August 2011, at which the required quorum was present and successfully conducted business; that the plaintiffs although physically absent were in fact represented by their proxy, JG Ricafort, by virtue of irrevocable proxies which they executed; that JG Ricafort attended and signed the attendance sheet as the plaintiffs' proxy

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[12] *Id.* at 171-180.

[13] *Id.* at 203-209.

[14] *Id.* at 230-250.

[15] *Id.* at 270-296.

[16] A.M. No. 01-2-04-SC, approved on March 13, 2001.

and participated in the ASM for himself as well as in the plaintiffs' behalf; that the true and beneficial owner of the shares of stock issued in the plaintiffs' names is JG Ricafort, not the plaintiffs, as shown in the Nominee Agreements which they executed; that aided by the irrevocable proxies and Nominee Agreements, JG Ricafort won election to the NADECOR Board.

In its now assailed Order dated December 21, 2011, the RTC ruled that the petitioners were not validly served with notice of the ASM as required in the Amended By-Laws, and moreover, that their complaint did not involve an election contest, and thus, was not subject to the 15-day prescriptive period for filing an election protest under Section 3, Rule 6 of the Interim Rules.[17] The trial court explained:

> Contrary to defendants' claims, none of the [petitioners] is claiming any elective office in NADECOR. Neither are they questioning the manner and validity of the elections, and qualifications of the candidates for directorship. [Petitioners'] prayer is clear that they seek to have the August 15, 2011 [ASM] declared null and void due to fatal defects committed prior to said meeting. The nullification of the proceedings, including the elections is not only incidental or the logical consequence of a declaration of nullity of the [ASM].
>
> The complaint, not being an election contest, need not comply with the requirements stated in Rule 6, Section 3 of the Interim Rules.[18]

The RTC thus declared as "void and of no force and effect" the assailed ASM, nullified all acts performed by the new Board

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[17] Sec. 3. Complaint. — In addition to the requirements in Section 4, Rule 2 of these Rules, the complaint in an election contest must state the following:

(1) The case was filed within fifteen (15) days from the date of the election if the by-laws of the corporation do not provide for a procedure for resolution of the controversy, or within fifteen (15) days from the resolution of the controversy by the corporation as provided in its by-laws; and

(2) The plaintiff has exhausted all intra-corporate remedies in election cases as provided for in the by-laws of the corporation.

[18] *Rollo* (G.R. Nos. 205921-24), Vol. I, p. 433.

of Directors elected thereat, and ordered the holding within 30 days of another ASM for FY2011-2012, to wit:

> ***IN VIEW OF THE FOREGOING,*** this Court ***GRANTS***, as it hereby ***GRANTS***, the relief prayed for in the complaint, and ***[DENIES]*** all compulsory counterclaims for lack of merit. Consequently, [NADECOR's] 2011 [ASM] held on August 15, 2011 is hereby declared NULL and VOID, including ALL matters taken up during said [ASM]. Any other acts, decisions, deeds, incidents, matters taken up arising from and subsequent to the 2011 [ASM] are hereby likewise declared ***VOID and OF NO FORCE and EFFECT.***
>
> Defendant NADECOR is hereby directed to: (a) issue a new notice to all stockholders for the conduct of an [ASM] corresponding to the year 2011 since the [ASM] held on August 15, 2011 was declared VOID, ensuring their receipt within three (3) days from the intended date of the annual meeting and (b) hold the [ASM] within thirty (30) days from receipt of this Order.
>
> No pronouncements as to cost.
>
> SO ORDERED.[19]

The RTC refused to apply the case of *Yujuico v. Quiambao*[20] invoked by the defendants on the issue of whether SEC Case No. 11-164 involves an election contest. It reasoned that the petitioners did not seek to annul the election of NADECOR's Board of Directors for FY2011-2012, but rather to void all the proceedings had at the August 15, 2011 ASM, and to call for the holding of a new stockholders' meeting, whereas in *Yujuico* the complaint specifically sought to nullify the results of the election for the new members of the Board of Directors.[21]

As for the irrevocable proxies executed by the plaintiffs in favor of JG Ricafort, the trial court held that the proxies were not valid as they were really only intended as "*comfort documents to give [JG Ricafort] control of NADECOR,*"[22] and moreover,

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[19] *Id.* at 445-446.

[20] 542 Phil. 236 (2007).

[21] *Rollo* (G.R. Nos. 205921-24), Vol. I, p. 433.

[22] *Id.* at 442.

the proxies must be deemed to have been amended by the Special Power of Attorney[23] (SPA) which the plaintiffs executed on April 27, 2010 in favor of JG Ricafort pertaining to NADECOR's ongoing negotiations with Russel Mining and Minerals, Inc. and St. Augustine Mining Ltd.[24]

The RTC Order dated December 21, 2011 elicited the filing in the CA of four separate petitions for *certiorari* by the private respondents against the plaintiffs, with application for temporary restraining order (TRO) and/or a WPI, to wit:

a. CA-G.R. SP No. 122782 dated January 5, 2012 filed by Romulo.[25] The case was raffled to the Special 15th Division,[26] with Associate Justice Jane Aurora C. Lantion (Justice Lantion) as the *ponente*, and Associate Justices Isaias P. Dicdican (Justice Dicdican) and Angelita A. Gacutan (Justice Gacutan) as members.

b. CA-G.R. SP No. 122784 dated January 5, 2012 filed by Calalang, Ayala, Engle and Nitorreda (Calalang group).[27] The case was raffled to the 11th Division.

c. CA-G.R. SP No. 122853 dated January 6, 2012 filed by NADECOR.[28] The case was raffled to the 6th Division.

d. CA-G.R. SP No. 122854 dated January 6, 2012 filed by Gatmaitan.[29] The case was raffled to the 9th Division.

On January 16, 2012, the CA Special 15th Division denied the application for TRO and WPI in CA-G.R. SP No. 122782.[30]

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[23] *Rollo* (G.R. Nos. 202647-50), Vol. III, pp. 1417-1420.

[24] *Id.* at 441-442.

[25] *Rollo* (G.R. Nos. 202647-50), Vol. I, pp. 130-167.

[26] Later designated Special 14th Division after an internal reorganization of the CA.

[27] *Rollo* (G.R. Nos. 202647-50), Vol. I, pp. 168-208.

[28] *Id.* at 209-269.

[29] *Id.* at 270-336.

[30] *Id.* at 412-414.

But on the same day, the CA 11th Division issued a TRO in CA-G.R. SP No. 122784,[31] after finding that the three conditions for the issuance of an injunctive relief were present, namely: (a) the *prima facie* existence of the right of the Calalang group sought to be protected; (b) the act sought to be enjoined is violative of that right; and (c) there is an urgent and paramount necessity for the writ to prevent serious damage to NADECOR.[32] The 11th Division's order reads:

> **WHEREFORE**, in view of the foregoing, pending the determination by this Court of the merits of the Petition, the Court **GRANTS** [Calalang group's] prayer for the issuance of a [TRO], to prevent the implementation and execution of the assailed Order dated December 21, 2011 of the [RTC], Branch 159, Pasig City.
>
> The **TRO** is conditioned upon the filing by the [Calalang group] of the **bond** in the amount of **ONE HUNDRED THOUSAND (₱100,000.00) PESOS** each, which shall answer for whatever damages *that* [plaintiffs] may incur in the event that the Court finds [Calalang group] not entitled to the injunctive relief issued. The **TRO** shall be **effective for sixty (60) days** upon posting of the required bond unless earlier lifted or dissolved by the Court.
>
> During the effectivity of the TRO, the Board of Directors elected and serving before the August 15, 2011 Stockholders['] Meeting shall discharge their functions as Directors in a hold-over capacity in order to prevent any hiatus and so as not to unduly prejudice the corporation.
>
> [Plaintiffs] are **REQUIRED** to submit their Comment to [Calalang group's] petition and why a WPI should not be issued within **TEN (10) days** from notice, and [Calalang group], their Reply thereon, within **FIVE (5) days** from receipt of the said Comment.
>
> SO ORDERED.[33] (Underlining ours and emphasis in the original)

Thus, the CA 11th Division directed not only the Board of Directors elected on August 15, 2011 (**New Board**) to cease

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[31] *Id.* at 417-424.

[32] *Id.* at 419-421.

[33] *Id.* at 423-424.

its functions until CA-G.R. SP No. 122784 has been resolved on the merits, but it also ordered the immediately preceding Board (**Old Board**), whose term had expired on August 15, 2011, to act as "hold-over" Board for the duration of the TRO, "*to prevent any hiatus and so as not to unduly prejudice the corporation*."[34]

On February 8, 2012, the CA Special 15th Division ordered the consolidation of the four CA petitions;[35] on February 24, 2012, the CA 9th Division consolidated CA-G.R. SP No. 122854 with CA-G.R. SP No. 122782;[36] on March 9, 2012, the CA 10th Division (formerly 11th Division) approved the consolidation of CA-G.R. SP No. 122784 with CA-G.R. SP No. 122782.[37] In its now assailed Resolution dated June 13, 2012, the CA Special 14th Division (formerly Special 15th Division) included CA-G.R. SP No. 122853 in its caption, implying that the CA 6th Division had acceded to its consolidation with the three other petitions.

The petitioners filed a Comment *Ad Cautelam* dated February 17, 2012 to the petition in CA-G.R. SP No. 122784.[38] Thereafter, the Calalang group filed **three** urgent motions to resolve their application for WPI, dated March 8, 2012,[39] May 21, 2012[40] and June 6, 2012.[41]

On June 6, 2012, ***before the CA could resolve the Calalang group's application for WPI***, Deogracias G. Contreras, Jr. (Contreras), acting as Corporate Secretary of the Old Board, issued a notice of special stockholders' meeting (SSM) on June

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[34] *Id.* at 424.

[35] *Id.* at 428-431.

[36] *Id.* at 485-488.

[37] *Id.* at 497-499.

[38] *Id.* at 433-484.

[39] *Id.* at 489-495.

[40] *Id.* at 500-508.

[41] *Id.* at 537-553.

13, 2012 at 12:30 p.m. at the Jollibee Centre Building in Pasig City. The notice was published on June 7, 2012 in *The Philippine Star*.[42] Not long after the announcement, the CA issued the now assailed WPI, also on June 13, 2012.

As published, among the agenda of the June 13, 2012 SSM were:

(a) Ratification of the **rescission** by the Old Board of NADECOR's memoranda of understanding (MOUs) with *St. Augustine Gold and Copper Ltd.* and *St. Augustine Mining, Ltd.*, (St. Augustine group), both dated April 27, 2010;

(b) Ratification of the subscription by a new investor, Queensberry Mining and Development Corporation (Queensberry), controlled by the group of former Senator Manuel Villar (Villar Group), to 25% of NADECOR's capital stock for ₱1.8 Billion, a price which the petitioners' claim is 60 times the book value of NADECOR's shares (of the said price Queensberry had paid ₱335 Million as of September 13, 2012);[43] the Old Board approved the subscription on May 25, 2012;[44] and

(c) Election of Directors.

The Calalang group filed a *Supplement to Third Urgent Motion to Resolve with Manifestation*[45] dated June 7, 2012, wherein they contended that the rescission by the Old Board of NADECOR's MOUs with the St. Augustine group would result in grave and irreparable damage to NADECOR since, according to them, only the St. Augustine Group has the financial and technical capability to develop the King-king Project, with the reminder that NADECOR's MPSA over King-king Project is its only valuable corporate asset.

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[42] *Id.* at 601.

[43] *Rollo* (G.R. Nos. 202647-50), Vol. V, pp. 2706-2709.

[44] *Rollo* (G.R. Nos. 202647-50), Vol. I, p. 54.

[45] *Id.* at 594-600.

On June 13, 2012 at 12:30 p.m., the SSM called by the Old Board took place as scheduled, presided by Calalang. But while the meeting was in progress, Calalang's counsel received a facsimile of the assailed Resolution dated June 13, 2012 of the CA Special 14th Division granting the Calalang group's application for WPI. Whereupon, on motion by his counsel, Calalang declared the SSM adjourned, but he was overruled by the stockholders representing 64% of the outstanding shares, counting the Queensberry shares. In protest, Calalang and his minority group walked out of the meeting, but the meeting continued after De Jesus, NADECOR's President, was designated to preside over the meeting. A new set of directors (Third Board) was elected, and the rescission of NADECOR's MOUs with the St. Augustine group and the 25% subscription of Queensberry were ratified by the assembly.[46]

The *fallo* of the CA Resolution dated June 13, 2012 reads:

WHEREFORE, premises considered, the application for a [WPI] is **GRANTED**. Let a [WPI] be issued enjoining the implementation of the Order dated December 21, 2011 of the [RTC] of Pasig City, Branch 159 and allowing the Board of Directors elected during the August 15, 2011 [ASM] to continue to act as Board of Directors of NADECOR.

Likewise, the parties, including the hold-over Board of Directors elected and acting before the August 15, 2011 [ASM] are enjoined and prohibited from acting as hold-over board and from scheduling and holding any stockholders' meeting, including the scheduled June 13, 2012 stockholders' meeting. Any effects of said June 13, 2012 stockholders' meeting, including the ratification of the rescission of all MOUs dated April 27, 2010 and Related Transaction Agreements between NADECOR and [St. Augustine group], the election of any new Board of Directors and their acting as such thereafter and the sale and ratification of the sale of Unissued Certificates of Shares of NADECOR constituting 25% of its authorized capital stock to Queensberry are also hereby enjoined.

[Private respondents] are thus mandated to post a bond of Five Hundred Thousand Pesos (₱500,000.00) to answer for any damages which may result by virtue of the [WPI].

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[46] *Rollo* (G.R. Nos. 205921-24), Vol. II, pp. 990-991.

SO ORDERED.[47]

The assailed resolution was penned by Associate Justice Ramon Bato, Jr. (Justice Bato), acting Senior Member of the CA Special 14th Division, vice Justice Lantion to whom CA-G.R. SP No. 122782 had been initially assigned, but who was on a 15-day leave beginning on June 1, 2012.[48] It enjoined the holding of the June 13, 2012 SSM and suspended the effects of all actions taken thereat, specifically the ratification of the rescission of the MOUs and Related Transaction Agreements with the St. Augustine group to develop the King-king Project, the election of a new Board of Directors and their acting as such, and the ratification of Queensberry's 25% subscription to NADECOR's capital stock. The CA also allowed the New Board "to continue to act as Board of Directors of NADECOR,"[49] thereby reversing the CA 11th Division in CA-G.R. SP No. 122784.

The CA Special 14th Division justified its issuance of a WPI by citing new and subsequent matters which it said could not have been contemplated in the RTC Order dated December 21, 2011, such as the rescission of NADECOR's MOUs with the St. Augustine group, and the sale of 25% of NADECOR's capital stock to Queensberry. It determined that as stockholders and members of the New Board, the petitioners have a right *in esse* to preserve the only valuable property of NADECOR, its MPSA over the King-King Project, that the action of the Old Board of calling the June 13, 2012 SSM violated the TRO issued by the CA 11th Division, and that the special agenda taken at the said meeting could adversely affect the future viability of NADECOR.[50]

The CA also acknowledged that the MOUs with the St. Augustine group reflected NADECOR's determination that the former had the technical and financial capabilities to put the

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[47] *Rollo* (G.R. Nos. 202647-50), Vol. I, pp. 70-71.

[48] Per CA Office Order No. 201-12-ABR dated May 31, 2012.

[49] *Rollo* (G.R. Nos. 202647-50), Vol. I, p. 70.

[50] *Id.* at 69-70.

King-king Project into production, and thus, the rescission thereof might result in the recall by the DENR of the MPSA, to NADECOR's irreparable injury.[51] Moreover, the June 13, 2012 SSM would render moot and academic the four consolidated CA petitions, since a "third" Board which would be elected thereat could effectively supplant the New Board while the validity of the latter's election was pending resolution.

On June 15, 2012, the Third Board issued a resolution calling for the next ASM on August 22, 2012.[52]

Meanwhile, the petitioners received a copy of the assailed CA Resolution on June 14, 2012;[53] on June 14, 2012, the CA directed all the parties to the four *certiorari* petitions to simultaneously submit their Memoranda on the merits within 15 days;[54] the petitioners filed their Memorandum *Ad Cautelam* dated July 5, 2012, Romulo filed his Memorandum dated July 11, 2012, and the Calalang group filed their Memorandum dated July 17, 2012.[55]

The petitioners filed its motion for reconsideration dated June 21, 2012 of the CA Resolution[56] dated June 13, 2012 contending that it is void *ab initio* because (a) the CA Special 14th Division had no jurisdiction to issue the WPI because its Resolution was penned by Justice Bato, a mere acting Senior Member *vice* the regular *ponente*, Justice Lantion, to whom the consolidated CA petitions had been raffled;[57] (b) the Calalang group's "Third Urgent Motion to Resolve" and "Supplement to Third Urgent Motion to Resolve" in CA-G.R. SP No. 122784, which the CA Special 14th Division acted upon, were *unverified* and contained

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

[52] *Rollo* (G.R. Nos. 202647-50), Vol. II, p. 1210.

[53] *Rollo* (G.R. Nos. 202647-50), Vol. I, p. 76.

[54] *Rollo* (G.R. Nos. 205921-24), Vol. I, p. 112.

[55] *Id.*

[56] *Rollo* (G.R. Nos. 202647-50), Vol. I, pp. 75-106.

[57] *Id.* at 76-81.

"new matters and subsequent events";[58] and (c) the Calalang group's application for a WPI was granted *without notice and hearing* as required under Section 5, Rule 58 of the Rules of Court.[59]

The petitioners further alleged that the Calalang group failed to post a timely injunction bond of ₱500,000.00;[60] that the Resolution dated June 13, 2012 had become moot and academic because the acts it sought to enjoin were already *fait accompli*, namely, (a) the holding of the June 13, 2012 SSM, wherein 67% of the outstanding shares was present and voted, (b) the rescission of the MOUs with the St. Augustine group, and (c) the issuance of 25% shares of stock to Queensberry; that the CA resolution disrupted the status *quo* ordered by the CA 11th Division since it did not merely maintain the *status quo ante litem motam*, but in fact it created new relationships between the parties by ordering the New Board to **replace** the Old Board, notwithstanding that the members of the latter had not been impleaded in the CA petitions and therefore were not bound thereby; that the powers of the Old Board included not merely the maintenance of the status *quo*, but all powers which a regular Board might exercise; that there was no showing of irreparable injury to the Calalang group, whereas the acts of the Old Board involved business judgment intended to preserve and protect NADECOR against the contractual violations of the St. Augustine group, such as its self-dealing with affiliates, bloated and fraudulent project expenses, non-payment of project expenses, and non-infusion of committed capital totalling US$96.7 Million, not only US$32 Million, to justify their 60% interest in King-king Project;[61] that after St. Augustine group threatened to pull out, the Old Board sought a new partner to obtain the much-needed capital infusion; that Queensberry was willing to pay ₱1.8 Billion for a mere 25%, not 60%, interest in NADECOR, for a price

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[58] *Id.* at 82-90.

[59] *Id.* at 82-83, 87.

[60] *Id.* at 90-91.

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

premium equal to 60 times the par value of its shares, whereas the Calalang group offered only 20 times above the par value;[62] and finally, that the Calalang group is guilty of forum shopping.[63]

On July 20, 2012, the CA Special 14th Division resolved to hold in abeyance further actions on the pending incidents until the Committee on Internal Rules of the CA (IRCA) had made its recommendation on whether Justice Bato should retain and resolve the consolidated *certiorari* petitions, or whether they should be returned to the original *ponente*, Justice Lantion.[64] On December 18, 2012, the Committee on IRCA recommended that the cases "should remain consolidated with the special division that issued a [WPI] regardless of the fact that [Justice] Bato acted thereat merely as a substitute for [Justice] Lantion."[65] The recommendation was approved by Presiding Justice Andres Reyes in his Memorandum dated January 11, 2013.[66] On February 7, 2013, the CA dismissed[67] the petitioners' motion for inhibition against Justices Dicdican, Bato and Eduardo B. Peralta, Jr. (Justice Peralta) (respondent Justices).

Meanwhile, on July 23, 2012, the petitioners filed a Manifestation of Withdrawal of Motion for Reconsideration,[68] without giving an explanation.

G.R. Nos. 202647-50

On August 1, 2012, the petitioners filed before this Court the herein first joint petition for *certiorari*, **G.R. Nos. 202647-50**, with prayer for issuance of a TRO. It reiterated the grounds invoked in their aforesaid withdrawn motion for reconsideration. To justify their petition, they pointed out that the WPI of the

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[62] *Id.* at 102-103.

[63] *Id.* at 104.

[64] *Rollo* (G.R. Nos. 205921-24), Vol. I, pp. 112-113.

[65] *Rollo* (G.R. Nos. 205921-24), Vol. III, p. 1527.

[66] *Id.* at 1528.

[67] *Id.* at 1526-1538.

[68] *Rollo* (G.R. Nos. 202647-50), Vol. I, pp. 107-111.

CA remained in force and the CA Special 14th Division had not relinquished control of the CA petitions, and thus it could still undertake further actions; and, they were without remedy *a quo* since action on their motion for reconsideration would still have been suspended in light of the CA's Order dated July 20, 2012.[69]

On September 26, 2012, the petitioners filed a *Manifestation and Motion*,[70] wherein they revealed that on August 22, 2012 at 12:30 p.m., an ASM, called by the Third Board, was held at NADECOR's head office at the Jollibee Centre in Pasig City, attended by stockholders representing 62.67%, or 7,496,090,800 shares, of the outstanding shares of 11,961,403,333, counting Queensberry's 3,000,000,000 shares.[71] Controlled by the petitioners' group, the assembly elected a new set of Board of Directors (Fourth Board), composed of JG Ricafort, De Jesus, Lazatin, Fernandez, Maria Nalen Rosero-Galang (Galang), Antonio A. Henson (Henson), Angel S. Ong (Ong), Teodorico C. Taguinod (Taguinod), and Marc Paolo A. Villar (Marc Paolo). Elected as corporate officers were JG Ricafort as Chairman, De Jesus as President, Henson as Treasurer, Contreras as Corporate Secretary, and Lemuel M. Santos as Assistant Corporate Secretary. At 1:38 p.m., the Fourth Board filed a General Information Sheet with the SEC to report the above ASM results.[72] Thus, the petitioners moved for the dismissal of their petition for having become moot and academic, on the ground that the RTC's Order dated December 21, 2011 in SEC Case No. 11-164 had been overtaken by a supervening event, the holding of the August 22, 2012 ASM and the election of the Fourth Board.[73]

But the Calalang group in their *Comment/Opposition with Counter Manifestation and Opposition*[74] dated October 19, 2012

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

[70] *Rollo* (G.R. Nos. 202647-50), Vol. II, pp. 1006-1023.

[71] *Id.* at 1014.

[72] *Id.* at 1015-1023.

[73] *Id.* at 1010-1011.

[74] *Id.* at 1098-1222.

also disclosed that the New Board had sent notices on August 15, 2012, signed by Cynthia Corazon G. Roxas (Roxas) as Corporate Secretary, calling for the holding of the regular ASM on August 22, 2012; that the said meeting was successfully held on August 22, 2012 at 12:30 p.m. at Last Chukker, Manila Polo Club, McKinley Road, Forbes Park, Makati City; that during the said meeting, new directors were elected, namely, Romulo, Calalang, Ayala, Engle, Nitorreda, Juan Kevin Belmonte, Peter Mutuc, Benjamin C. Sevilla (Sevilla), and Maria Veronica Calalang; that NADECOR's new corporate officers were Romulo as Chairman, Calalang as President, Nitorreda as Chief Operating Officer and General Counsel, Sevilla as Chief Financial Officer, Raymond H. Ricafort (Raymond) as Treasurer, and Roxas as Corporate Secretary; that a General Information Sheet[75] was filed with the SEC on September 21, 2012 disclosing the above actions of the stockholders and the newly-elected Board.[76] Thus, the Calalang group contended that the August 22, 2012 ASM called by the Third Board was void for being in violation of the WPI of the CA Special 14th Division, which recognized the authority of the New Board to continue to act as NADECOR's lawful Board of Directors.

**Administrative Case *versus*
Members of the CA Special 14th Division**

On July 9, 2012, Fernandez, Henson, and Ong filed with this Court an administrative **case** against herein respondent Justices, docketed as A.M. OCA IPI No. 12-201-CA-J. They alleged that the respondent Justices were guilty of grave misconduct, conduct detrimental to the service, gross ignorance of the law, gross incompetence, and manifest partiality, as follows: (i) they issued the above WPI without notice and hearing as required in Section 5, Rule 58 of the Rules of Court, upon an unverified "Third Motion to Resolve" and upon a "Supplement to the Third Urgent Motion to Resolve" in CA-G.R. SP No. 122784 which contained new factual matters; (ii) it was irregular

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[75] *Rollo* (G.R. Nos. 202647-50), Vol. III, pp. 1817-1824.

[76] *Rollo* (G.R. Nos. 202647-50), Vol. II, pp. 1212-1214.

for Justice Bato, as mere acting member, to have penned the resolution granting the WPI since the consolidated CA petitions had not been re-raffled to him; (iii) granting that the WPI was a matter of extreme urgency, Section 5 of Rule VI of the IRCA authorizes the two remaining regular Division members, Justices Dicdican and Peralta, not Justice Bato, to act on the application; (iv) the WPI did not just preserve the status *quo*, but in fact disposed of the petitions on the merits.[77]

On February 19, 2013, the Court dismissed the administrative case, holding as valid the WPI penned by Justice Bato and concurred in by Justices Dicdican and Peralta.[78]

Coincidentally, on February 18, 2013, the CA Special 14th Division issued its now assailed Decision[79] nullifying the RTC's Order dated December 21, 2011 in SEC Case No. 11-164 and making the WPI it issued in CA-G.R. SP Nos. 122782, 122784, 122853, and 122854, permanent. The *fallo* thereof reads:

> ***WHEREFORE***, the petitions are ***GRANTED*** and the RTC Order dated December 21, 2011 is ***NULLIFIED* and *SET ASIDE***. The [ASM] of NADECOR held on August 15, 2011 is hereby declared valid and the Board of Directors and Officers elected thereat are declared lawfully elected. Any and all acts of the Board of Directors elected during the August 15, 2011 NADECOR [ASM] are declared ***VALID***. All acts performed pursuant to the assailed Order dated December 21, 2011 in SEC Case No. 11-164 are likewise declared ***NULL*** and ***VOID***.
>
> Likewise, the [WPI] dated June 13, 2012 is made ***PERMANENT***.
>
> ***SO ORDERED.***[80]

Meanwhile, on July 18, 2012 the Court resolved to dismiss **G.R. Nos. 202218-21**, entitled "*Jose G. Ricafort, et al. v. CA [Special 14th Division], et al.,*" for *certiorari* and prohibition,

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[77] *Fernandez, et al. v. Justices Bato, Jr., et al.*, 704 Phil. 175 (2013).

[78] *Id.* at 205.

[79] *Rollo* (G.R. Nos. 205921-24), Vol. I, pp. 101-135.

[80] *Id.* at 134-135.

filed by JG Ricafort, De Jesus, Marc Paolo, and Galang to question the validity of the WPI issued by the CA Special 14th Division, because they were not parties to any of the consolidated petitions in the CA, and thus had no personality to assail the CA's injunctive writ.[81]

Also on July 18, 2012, the Court dismissed **G.R. Nos. 202257-60**, entitled "*Ethelwoldo E. Fernandez, et al. v. Court of Appeals (Special 14th Division), et al.*," also assailing the WPI, since therein petitioners were also strangers to the consolidated CA petitions.[82] Fernandez and Henson were members of the Old Board of NADECOR, elected in August 2010, while Ong was among those elected to NADECOR's Third Board on June 13, 2012; therein petitioners were also elected to the Fourth Board of NADECOR on August 22, 2012.

G.R. Nos. 205921-24

On April 12, 2013, the petitioners filed their second joint petition, docketed as **G.R. Nos. 205921-24**,[83] raising substantially the same issues in G.R. Nos. 202647-50 and praying that the CA Special 14th Division's decision be set aside. On July 31, 2013, the Court consolidated G.R. Nos. 205921-24 with G.R. Nos. 202647-50.[84]

On December 20, 2013, Gatmaitan filed his Comment,[85] followed on January 6, 2014 by the Comment[86] of Calalang group.

Meanwhile, on November 29, 2013, the petitioners, through Contreras acting as Corporate Secretary, represented by law firm of Zamora Poblador Vasquez & Bretana, filed allegedly in behalf of NADECOR a "Consolidated Comment"[87] praying

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[81] *Rollo* (G.R. Nos. 202647-50), Vol. III, pp. 1667-1670.

[82] *Id.* at 1671-1674.

[83] *Rollo* (G.R. Nos. 205921-24), Vol. I, pp. 48-99.

[84] *Rollo* (G.R. Nos. 205921-24), Vol. III, p. 1443.

[85] *Id.* at 1761-1801.

[86] *Id.* at 1807-1865.

[87] *Id.* at 1447-1478.

that the CA Special 14th Division's WPI dated June 13, 2012 and Decision dated February 18, 2013 be set aside, and that the RTC's Order dated December 21, 2011 be reinstated. Thus, NADECOR through Contreras argued for the validity of the June 13, 2012 SSM called by the Old Board, and that the WPI had become *functus officio* for having been mooted not just once but thrice: first, since the WPI was served after the successful holding of the June 13, 2012 SSM, then second and third, by the holding of the ASM on August 22, 2012 and on August 19, 2013.

The petitioners also manifested that the August 22, 2012 ASM was attended by stockholders representing 62.67% interest, counting the Queensberry's 3,000,000,000 shares; that the members of the Third Board were re-elected, namely, JG Ricafort, De Jesus, Lazatin, Fernandez, Galang, Henson, Ong, Taguinod, and Marc Paolo; and also, that elected at the August 19, 2013 ASM were JG Ricafort, De Jesus, Henson, Lazatin, Fernandez, Taguinod, Ong, Ruy Y. Moreno and Contreras.[88]

On December 12, 2013, the petitioners, again through the firm of Zamora Poblador Vasquez & Bretana, filed a "Supplemental Petition"[89] wherein they maintained that nothing in the June 13, 2012 WPI specifically enjoined the stockholders who attended the August 22, 2012 ASM called by the Third Board, nor the holding of the said ASM, and thus, the Fourth Board had superseded the New Board. Incidentally, in the August 19, 2013 ASM, JG Ricafort appeared to also be representing the shares of the Queensberry.[90]

The petitioners then informed this Court of supervening events which have allegedly added new confusion concerning the respective rights of the parties, and further delay in the settlement of their claims. Thus, they now urge this Court to resolve G.R. Nos. 202647-50 and G.R. Nos. 205921-24 on the merits, *notwithstanding their earlier insistence that the June 13, 2012,*

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[88] *Id.* at 1448-1452.

[89] *Rollo* (G.R. Nos. 202647-50), Vol. V, pp. 2567-2602.

[90] *Id.* at 2568-2573.

August 22, 2012 and August 19, 2013 ASMs have mooted the CA's WPI.

The petitioners narrated that people in the employ of the Calalang group, invoking the WPI and the CA decision, had broken into the King-king Project's warehouse and taken custody of core mine samples which they surrendered to the Mines and Geosciences Bureau (MGB);[91] that sometime in June 2013, with the aid of armed men, they forcibly carted away various items and equipment of the mine worth ₱1.7 Million;[92] that the Calalang group had demanded the turnover of corporate records, such as the Stock and Transfer Book and certain corporate documents;[93] that the Calalang group fraudulently procured a spurious Stock and Transfer Book;[94] that the Calalang group held a bogus stockholders' meeting on August 19, 2013 and filed a false General Information Sheet with the SEC;[95] that the Calalang group announced to media additional subscription by the St. Augustine group;[96] that on August 25, 2013, five security men of the Calalang group killed a watchman and wounded another from the petitioners' group;[97] that on October 17, 2013, the Calalang group was able to withdraw ₱225,000,050.00 from King-king Project's bank account maintained with Metrobank;[98] that on November 4, 2013, the Calalang group held a SSM to ratify the rescission of the transfer of NADECOR's MPSA to King-king Project, and to ratify its authority to transfer the MPSA to another entity and to enforce its project agreement with St. Augustine group;[99] that on November 27, 2013, the MGB-Region

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[91] *Id.* at 2577-2578.

[92] *Id.* at 2579.

[93] *Id.* at 2578-2579.

[94] *Id.* at 2579.

[95] *Id.* at 2580-2581.

[96] *Id.* at 2581.

[97] *Id.*

[98] *Id.* at 2577.

[99] *Id.* at 2581.

XI announced the suspension of the processing of NADECOR's Declaration of Mining Project Feasibility (DMPF) of King-king Project due to the present intra-corporate dispute, and even threatened to recommend the cancellation of MPSA No. 009-92-XI due to NADECOR's inability to start production after 21 years, to the great disadvantage of the Government.[100]

On January 20, 2014, the private respondents, except NADECOR, filed a Motion to Expunge the petitioners' Supplemental Petition on the ground that the same was filed without leave of court.[101]

On January 30, 2014, the law firm of Molo Sia Velasco Dy Tuazon Ty & Coloma, claiming to represent the Board of Directors of NADECOR elected pursuant to the CA Decision dated February 18, 2013, which made permanent the WPI it issued on June 13, 2012, filed a Motion to Withdraw[102] the Consolidated Comment filed by the law firm of Zamora Poblador Vasquez & Bretana, through Contreras, for lack of authority from NADECOR's legitimate Board of Directors.

On March 31, 2014, the petitioners, also through Zamora Poblador Vasquez & Bretana, filed their Consolidated Reply[103] to the Calalang group's Comment[104] dated January 6, 2014 and Gatmaitan's Comment[105] filed on December 20, 2012. Among others, they tried to point out that at the August 15, 2011 ASM, the Calalang group was in the minority with 47.40% interest in NADECOR; that knowing that they would lose in the next stockholders' meeting to be called under the RTC Order dated December 21, 2011 in SEC Case No. 11-164, they filed the four petitions in the CA to annul the said order;[106] that the

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[100] *Id.* at 2590-2592.

[101] *Id.* at 2875-2881.

[102] *Id.* at 2895-2902.

[103] *Id.* at 2912-2928.

[104] *Rollo* (G.R. Nos. 205921-24), Vol. III, pp. 1807-1865.

[105] *Id.* at 1761-1801.

[106] *Rollo* (G.R. Nos. 202647-50), Vol. V, pp. 2914-2916.

private respondents belatedly posted a bond for ₱500,000.00 required under the WPI but the bond did not bear the approval of the CA, and thus, the WPI is a mere scrap of paper;[107] that the WPI granted in advance the ultimate reliefs sought in the CA petitions;[108] that SEC Case No. 11-164 is not an election contest but a general intra-corporate case falling under Rule 1, Section 1 (a) (2) of the Interim Rules; and that the supposed principal-nominee relationship between the petitioners and JG Ricafort is immaterial because under Section 6 of the Corporation Code, they were not furnished a notice as stockholders of record.[109]

On May 27, 2014, Romulo and the Calalang group filed their Comment[110] to the Supplemental Petition of the petitioners. Chiefly, they argued that the June 13, 2012 SSM and August 22, 2012 and August 19, 2013 ASMs are null and void for being in violation of the WPI, which was immediately executory and later made permanent by the CA Decision on February 18, 2013; that the acts of the Calalang group are authorized under the WPI and the CA decision; that the petitioners' group initiated the shooting incident on August 24, 2013; that the MGB-Region XI suspended the processing of NADECOR's DMPF not due to fraud or mischief committed by the Calalang group but in view of the present intra-corporate dispute; that JG Ricafort attended the August 15, 2011 ASM both as beneficial owner and as proxy of the petitioners; that the Calalang group comprised the majority of the stockholders at the August 15, 2011 ASM with 50.03% of the shares; that SEC Case No. 11-164 involves an election contest which was barred by prescription and therefore should have been dismissed outright by the RTC; that all indispensable parties were duly impleaded in the CA petitions; and that the participation of Justice Bato in the CA petitions conformed to Section 2(C), Rule VI of the 2009 IRCA.

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[107] *Id.* at 2918-2919.

[108] *Id.* at 2918.

[109] *Id.* at 2923.

[110] *Id.* at 2966-3045.

Ruling of the Court

The Court finds no merit in the petitions.

SEC Case No. 11-164 is time-barred because it involves an election contest and therefore is subject to the 15-day prescription period.

Claiming to be stockholders of record who were denied due notice of NADECOR's August 15, 2011 ASM, the petitioners filed the Complaint[111] in SEC Case No. 11-164 purportedly to void and nullify "the August 15, 2011 [ASM] of NADECO[R], including all proceedings taken thereat, all the consequences thereof, and all acts carried out pursuant thereto."[112] In justifying its Order dated December 21, 2011 declaring that the complaint had not prescribed since it did not involve an election contest, the RTC adverted to the fact that none of the petitioners was claiming an elective office in NADECOR, or questioning the manner and validity of the election of the New Board, or the qualifications of the candidates for directors.

But the real motive of the petitioners could not have escaped the trial court's notice, being readily discernible from a perusal of the Second Cause of Action of their complaint, which reads:

> 15. One of the cardinal rights of a stockholder is the right to participate in the control and management of the corporation. This right is exercised through his vote. The right to vote is a right inherent in and incidental to the ownership of corporate stock, and as such is a property right. The stockholder cannot be deprived of the right to vote his stock nor may the right be essentially impaired, either by the legislature or by the corporation, without his consent, though amending the charter, or the by-laws.
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> 16. The right to choose the persons who will direct, manage and operate the corporation is significant because it is the primary way in which a stockholder can have a voice in the management of corporate affair x x x. The right to choose these persons is exercised

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[111] *Rollo* (G.R. Nos. 205921-24), Vol. I, pp. 171-180.

[112] *Id.* at 178.

through the voting process. This right is enshrined in Article I, Section 6 of NADECO[R]'s amended by-laws, which provides that "(a)t all meetings of the Stockholders, each Stockholder shall be entitled to one vote for each share of stock owned by him."[113] (Citation omitted)

The *fallo* of the trial court's Order[114] dated December 21, 2011 appears to be carefully worded as to avoid seeming to direct the holding of a new election of the members of the Board of Directors of NADECOR for FY2011-2012, and thus be consistent with its ruling that SEC Case No. 11-164 is not an election contest. The trial court reasoned:

> Contrary to defendants' claims, none of the plaintiffs is claiming any elective office in NADECOR. Neither are they questioning the manner and validity of the elections, and qualifications of the candidates for directorship. Plaintiffs['] prayer is clear that they seek to have the August 15, 2011 [ASM] declared null and void due to fatal defects committed prior to said meeting. The nullification of proceedings, including the elections is not only incidental or the logical consequence of a declaration of nullity of the [ASM].
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> The complaint, not being an election contest, need not comply with the requirements stated in Rule 6, Section 3 of the Interim Rules.[115]

Yet, there can be no denying that by (a) asserting their "right to choose the persons who will direct, manage and operate the corporation is significant because it is the primary way in which a stockholder can have a voice in the management of corporate affairs,"[116] because they said they had been unlawfully deprived thereof due to late notification of the aforesaid meeting, and (b) by praying for the voiding of the August 15, 2011 ASM, and for "other just and equitable reliefs,"[117] the petitioners were

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[113] *Id.* at 177-178.

[114] *Id.* at 429-446.

[115] *Id.* at 433.

[116] *Id.* at 177.

[117] *Id.* at 178.

really seeking the holding of a new election for members of the Board of Directors of NADECOR for FY2011-2012. As the CA noted, by seeking to nullify the August 15, 2011 ASM of NADECOR, "*including all proceedings taken thereat, all the consequences thereof, and all acts carried out pursuant thereto*,"[118] the petitioners were clearly challenging the validity of the election of the new Board of Directors. As the NADECOR's Amended By-Laws itself expressly provides, the purpose of the ASM is "for the election of Directors and for the transaction of general business of its office."[119]

Indeed, to nullify the August 15, 2011 ASM would have had no practical effect except to void the election of the Board of Directors.[120] And no doubt, this was the trial court's understanding of the petitioners' intent when it voided the August 15, 2011 ASM and all matters taken up thereat. Thus, by declaring as void all "acts, decisions, deeds, incidents, matters taken up arising ***from and subsequent*** to the 2011 [ASM],"[121] things which could only be performed by the newly-elected Board, and then by directing the issuance of a three-day notice for the holding of a new ASM corresponding to FY2011-2012, the trial court clearly understood that a new election should be held for Board of Directors of NADECOR for FY2011-2012, notwithstanding its express ruling that SEC Case No. 11-164 did not involve an election contest and therefore the 15-day prescriptive period to file the petitioners' complaint did not apply.

But more importantly, the defendants did not fail to point out to the trial court, as the appellate court has made copiously clear in its decision, that contrary to the petitioners' feigned lament that they were unlawfully deprived of their right as stockholders to participate in the ASM due to late notice, they were in fact represented by JG Ricafort under an irrevocable

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[118] *Id.*

[119] *Id.* at 157.

[120] *Id.* at 132.

[121] *Id.* at 446.

proxy which they executed on April 26, 2010. The defendants further noted that the petitioners even shared the same address as JG Ricafort, who is the husband of petitioner Corazon, and the father of petitioners Jose Manuel and Marie Grace. Thus, the defendants insisted that the petitioners deliberately misled the trial court by pretending to be ignorant of the August 15, 2011 ASM.

Equally significantly, it has never been plausibly debunked that the real and beneficial owner of the shares in their names is JG Ricafort himself, as shown in the Nominee Agreements[122] which they executed back in 2007; hence, the petitioners' non-participation at the hearings in the RTC. The claimed violation of the petitioners' right as owners to vote their shares in the assailed assembly is thus exposed as a complete fabrication. As the private respondents pointed out in their Comment to the petitioners' Supplemental Petition, JG Ricafort appeared at the RTC hearing on December 2, 2011 and spoke for the petitioners, notwithstanding that he was in fact one of the defendants named in the complaint, being a member of the New Board whom the petitioners wanted ousted.[123]

As subsequent events since the filing of SEC Case No. 11-164 now amply show, the complaint is traced to a tenacious struggle between two contending groups of stockholders of NADECOR, the petitioners' group and the Calalang group, for control of the fabled riches of the King-king Project. The petitioners' group wanted to rescind NADECOR's MOUs with the St. Augustine group and to bring in a new investor, the Villar group, which the Calalang group strongly opposed. It is not for this Court to say which of the contending stockholders' blocs is justified in the direction they want NADECOR to take, but the Calalang group now blames the petitioners for exposing the NADECOR's all too precious MPSA to the threat of cancellation by the DENR by filing SEC Case No. 11-164. Undoubtedly, the complaint

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[122] *Rollo* (G.R. Nos. 202647-50), Vol. II, pp. 793-798.

[123] *Rollo* (G.R. Nos. 202647-50), Vol. V, pp. 3005-3006.

was a clear attempt by, or on behalf of, the petitioners' group to oust the New Board for FY2011-2012. In fact, the petitioners are even represented by the very same law firm which the petitioners' group has employed.

Under Sections 1 to 3 of Rule 6 of the Interim Rules, SEC Case No. 11-164 should have been dismissed for having been filed beyond the 15-day prescriptive period allowed for an election protest. In substance, the main issues therein are on all fours with *Yujuico*,[124] wherein the Court expressly ruled that where one of the reliefs sought in the complaint is to nullify the election of the Board of Directors at the ASM, the complaint involves an election contest. Both cases put in issue the validity of the ASM and, expressly in *Yujuico* and indirectly below, the election of the members of the Board of Directors. The ostensible difference is that in SEC Case No. 11-164 the petitioners invoked lack of notice of the August 15, 2011 ASM, while in *Yujuico* the ground invoked was improper venue.

In *Yujuico*, the Articles of Incorporation of the Strategic Alliance Development Corporation (STRADEC), a domestic corporation engaged in financial and investment advisory services were amended on July 27, 1998 to change its principal office from Pasig City to Bayambang, Pangasinan. On March 1, 2004, STRADEC held its ASM in its former Pasig City office as indicated in the notices it sent to the stockholders. Alderito Z. Yujuico (Yujuico), Bonifacio C. Sumbilla (Bonifacio) and Dolney S. Sumbilla (petitioners therein) were elected as members of the Board of Directors, along with Cesar T. Quiambao, Jose M. Magno III and Ma. Christina Ferreros (respondents therein). Yujuico became Chairman and President, while Bonifacio was elected Treasurer.[125]

On August 16, 2004, five months after the ASM, the respondents therein filed with the RTC of San Carlos City, Pangasinan a complaint praying that: (1) the March 1, 2004

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[124] *Supra* note 20.

[125] *Id.* at 241.

election be nullified on the ground of **improper venue**, pursuant to Section 51 of the Corporation Code; (2) all ensuing transactions conducted by the elected directors be likewise nullified; and (3) a SSM be held anew. On September 2, 2004, the complaint was amended to include a prayer for issuance of a TRO and/or WPI to enjoin petitioners therein from discharging their functions as directors and officers of STRADEC. On September 22, 2004, they filed a supplemental complaint to direct the surrender of the original and reconstituted Stock and Transfer Book and other corporate documents of STRADEC, and to nullify the reconstituted Stock and Transfer Book and all transactions of the corporation.[126]

The petitioners therein sought to dismiss the complaint for, among others: (a) lack of cause of action; (b) being barred by prescription since it was filed beyond the 15-day prescriptive period provided by Section 2, Rule 6 of the Interim Rules under Republic Act No. 8799; and (c) the respondents therein waived their right to object to the venue since they attended and participated in the March 1, 2004 ASM and election **without any protest**.[127]

On November 25, 2004, the RTC granted the respondents' application for preliminary injunction and ordered (1) the holding of a SSM on December 10, 2004 in the principal office of the corporation in Bayambang, Pangasinan, and (2) the turnover by Bonifacio to the court of the duplicate key to STRADEC's safety deposit box in Export Industry Bank, Shaw Boulevard, Pasig City where the original Stock and Transfer Book of STRADEC was deposited.[128]

On petition for *certiorari* by the petitioners therein, the CA sustained the RTC Order dated November 25, 2004. Their motion for reconsideration was denied.[129] On petition for review on

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[126] *Id.* at 241-242.

[127] *Id.* at 242-243.

[128] *Id.* at 243.

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

certiorari, the Court held that the complaint below involved an election contest as defined in Sections 1 and 2, Rule 6 of the Interim Rules, since one of the reliefs sought by therein respondents was the nullification of the election of the Board of Directors and corporate officers at the March 1, 2004 ASM.[130] Sections 1 and 2, Rule 6 of the Interim Rules provide:

> SEC. 1. *Cases covered*. — The provisions of this rule shall apply to **election contests** in stock and non-stock corporations.
>
> SEC. 2. *Definition*. — An election contest refers to any controversy or dispute involving title or claim to any elective office in a stock or non-stock corporation, the validation of proxies, the manner and **validity of elections**, and the qualifications of candidates, including the proclamation of winners, to the office of director, trustee or other officer directly elected by the stockholders in a close corporation or by members of a non-stock corporation where the articles of incorporation or by-laws so provide. (Emphasis ours)

Since the action questioning the validity of the March 1, 2004 stockholders' election was filed by respondents therein well beyond the 15-day prescriptive period in Section 3, Rule 6 of the Interim Rules, the Court set aside the RTC Order dated November 25, 2004, nullified the SSM and election held on December 10, 2004 in Bayambang, Pangasinan, and restored the last actual peaceable uncontested status of the parties prior to the filing of Civil (SEC) Case No. U-14.[131]

The petitioners have no cause of action because they were duly represented at the August 15, 2011 ASM by their proxy, JG Ricafort.

As found by the CA, the petitioners did participate in the stockholders' meeting through their authorized representative and proxy, JG Ricafort. In his Affidavit[132] dated November 21,

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[130] *Id.* at 257-258.

[131] *Id.* at 258-259.

[132] *Rollo* (G.R. Nos. 202647-50), Vol. III, pp. 1343-1353.

2011, Gatmaitan, NADECOR Corporate Secretary, categorically declared under oath that JG Ricafort held a valid irrevocable proxy from the petitioners to attend and vote their shares at all meetings of the stockholders, and that JG Ricafort signed the attendance sheet for and in behalf of the plaintiffs as shown by his signatures in the rows in the said attendance sheet for the names of the plaintiffs who had appointed him as his proxy.[133]

During the stockholders' registration for the August 15, 2011 ASM, no one questioned JG Ricafort's Irrevocable Proxy[134] dated April 26, 2010 as attorney and proxy for the petitioners. His irrevocable proxy reads:

IRREVOCABLE PROXY

KNOW ALL MEN BY THESE PRESENTS:

That the undersigned parties, shareholders of **[NADECOR]** (hereinafter referred to as the "Company"), hereby **irrevocably** constitute and appoint **[JG RICAFORT]**, acting through its representatives, as the attorney and proxy of the undersigned, **to attend and represent the undersigned at [any and all meetings of the shareholders of the Company], and for and on behalf of the undersigned, to vote upon any and all matters to be taken up at said meeting, according to the number of share(s) of stock of the Company of which the undersigned are the lawful record and beneficial owners, and which they would be entitled to vote if personally present,** hereby ratifying and confirming all that said attorney and proxy shall do in the premises, and giving and granting unto said attorney and proxy full power of substitution and revocation.

This proxy shall continue in force for the maximum term allowed under Philippine law, unless revoked earlier by the undersigned."

Dated this 26th day of April, 2010.

(signed)
Corazon H. Ricafort

(signed)
Jose Manuel H. Ricafort

(signed)
Juan Carlos H. Ricafort

(signed)
Marie Grace H. Ricafort

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[133] *Id.* at 1347.

[134] *Id.* at 1357.

(signed) (signed)
Ma. Theresa Flora Santos Raymond H. Ricafort[135]
(Emphasis ours)

The CA also cited the Affidavit[136] dated November 21, 2011 of Atty. Timothy Joseph M. Mendoza (Atty. Mendoza), who together with Atty. Armina Dielle R. Kapunan assisted Gatmaitan in taking the attendance at the August 15, 2011 ASM. Atty. Mendoza declared under oath as follows:

Q12: The plaintiffs in SEC Case No. 11-164 are claiming that they were not properly notified of the [ASM] held on 15 August 2011. What can you say, if any, regarding this claim of plaintiffs?

A12: Based on the records, plaintiffs were given notices of the meeting through registered mail sent at least four days prior to the meeting in accordance with the requirements of the Amended By-Laws. Besides, the Amended By-laws already provides that annual meetings of NADECOR shall be held on the third Monday of August in each year. The date of the meeting, 15 August 2011, was the third Monday of August 2011.

Q13: Were the plaintiffs in SEC Case No. 11-164, x x x present or represented in the said meeting?

A13: They were represented during the subject meeting by [JG Ricafort], one of the defendants in SEC Case No. 11-164.

Q14: How do you know that the plaintiffs in SEC Case No. 11-164 were represented by [JG Ricafort] in the meeting?

A14: Together with Atty. Armina Dielle R. Kapunan, I was responsible for taking attendance at the stockholders' meeting in order to assist Atty. Gatmaitan, as corporate secretary and secretary of the said meeting, to determine whether stockholders holding at least a majority of NADECOR's issued and outstanding capital stock were present for quorum purposes. Atty. Kapunan and I manned the designated registration area in front of the entrance to the venue of the meeting. When [JG Ricafort] arrived at

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[135] *Id.*

[136] *Rollo* (G.R. Nos. 202647-50), Vol. IV, pp. 1887-1891.

the subject meeting, he approached our table and I asked him to register his attendance at the meeting and sign the attendance sheet we had prepared for this purpose. He asked me where he can sign in the attendance sheet. I showed him where he should sign his name and asked him whether he was also attending as proxy for those NADECOR shares whose registered owners had appointed him as proxy through an irrevocable proxy, which includes the NADECOR shares owned by all of the plaintiffs in SEC Case No. 11-164. [JG Ricafort] said yes and in fact, he signed the attendance sheet for and on behalf of the plaintiffs as shown by his signature in the spaces or rows in the said attendance sheet for the names of the plaintiffs who had appointed him as proxy.

Q15: If I show you a copy of the attendance sheet which you said was signed by [JG Ricafort], would you be able to identify the same?

A15: Yes.

Q16: I am showing to you a copy of an attendance sheet for the NADECOR stockholders' meeting on 15 August 2011, what relation, if any, does this have to the attendance sheet you just mentioned.

A16: It is the same document.

Q17: In the spaces or rows in the attendance sheet for the names of the plaintiffs, there are signatures appearing beside the printed name Jose G. Ricafort, whose signatures are these?

A17: These are all the signatures of [JG Ricafort].

Q18: Why do you know that these are the signatures of [JG Ricafort]?

A18: I saw him sign the attendance sheet. Also, I am familiar with his signature because I have seen it before and also because I have acted on the same signature before.

Q19: What is your basis for saying that [JG Ricafort] can represent the shares held by the plaintiffs in SEC Case No. 11-164?

A19: We have on our file as the Corporate Secretary of NADECOR an Irrevocable Proxy signed by the plaintiffs in SEC Case No. 11-164 together with Messrs. Jose Carlos

> H. Ricafort and Raymo[n]d H. Ricafort, which constituted and appointed [JG Ricafort] as their attorney and proxy to attend and represent them at any and all meetings of the shareholders of NADECOR, and to vote upon any and all matters to be taken up at said meeting for and on their behalf. We also have copies of the respective Nominee Agreements of each of the plaintiffs where each plaintiff confirmed and acknowledged his/her status as nominee for [JG Ricafort] for the purpose of holding legal title to the shares owned by [JG Ricafort] in NADECOR. Further, in previous meetings with [JG Ricafort] involving other NADECOR matters, [JG Ricafort] had repeatedly said that those shares are really owned by him and that he controls the voting for such shares.[137]

JG Ricafort's proxy authority was "to attend and represent the [petitioners] at [any and all meetings of the shareholders of the Company], and for and on behalf of the [petitioners], *to vote upon any and all matters to be taken up at said meeting, according to the number of share(s) of stock of the Company of which the [petitioners] are the lawful record and beneficial owners, and which they would be entitled to vote if personally present*."[138] Thus, the CA concluded, there is no doubt that JG Ricafort was duly constituted by the petitioners as their proxy to attend "any and all" stockholders' meetings.

But the RTC saw it differently, and held that the SPA[139] which the petitioners executed in favor of JG Ricafort on April 27, 2010, a day after the Irrevocable Proxy, "*amended and limited the authority conferred [by the petitioners] on [JG Ricafort] in the Irrevocable Proxies to matters and issues affecting on-going negotiations with Russel Mining and Minerals, Inc. and St. Augustine Mining, Ltd*."[140] It agreed with the petitioners that they never really intended "to name, appoint and constitute

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[137] *Id.* at 1889-1891.

[138] *Rollo* (G.R. Nos. 202647-50), Vol. III, p. 1357.

[139] *Id.* at 1417-1420.

[140] *Rollo* (G.R. Nos. 205921-24), Vol. I, pp. 441-442.

[JG Ricafort] as their proxy,"[141] but "[t]hese documents were merely executed as *comfort documents* to give [JG Ricafort] control of NADECOR."[142] According to the RTC, "[a] careful perusal of the provisions of both the Irrevocable Proxies and the [SPA] lends credence to [petitioners'] assertion."[143] Yet, as the CA pointed out, the RTC failed to mention what these provisions are which amended and limited the applicability of the Irrevocable Proxies only to matters and issues affecting on-going negotiations with Russel Mining and Minerals, Inc. and St. Augustine Mining, Ltd.[144]

On the other hand, the Irrevocable Proxy expressly authorized JG Ricafort to participate and vote "*upon any and all matters to be taken up at [the stockholders'] meeting, according to the number of share(s) of stock of the Company of which the [petitioners] are the lawful record and beneficial owners, and which they would be entitled to vote if personally present*."[145] Moreover, the CA noted that under the SPA, JG Ricafort was even authorized to appoint a "proxy to vote upon the shares of stock owned by the Shareholders or standing in its name in the books of the [NADECOR], at any meeting of the shareholders of [NADECOR], whether regular or special."[146] Thus, not only did the SPA acknowledge JG Ricafort's proxy authority from the petitioners, it even expanded his authority to include naming another person as proxy of the petitioners.[147]

Equally significantly, the petitioners do not deny that they each executed a Nominee Agreement[148] dated June 4, 2007 wherein

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[141] *Id.* at 442.

[142] *Id.*

[143] *Id.*

[144] *Id.* at 123.

[145] *Rollo* (G.R. Nos. 202647-50), Vol. III, p. 1357.

[146] *Id.* at 1418.

[147] *Rollo* (G.R. Nos. 205921-24), Vol. I, p. 123.

[148] *Rollo* (G.R. Nos. 202647-50), Vol. II, pp. 793-798.

they acknowledged that JG Ricafort is the true and beneficial owner of the shares of stock in their names. Each of the nominee agreements uniformly provide:

> The undersigned x x x (hereinafter referred to as the "Nominee") hereby confirms and acknowledges her status as nominee for [JG Ricafort] (hereinafter referred to as the "Principal") x x x. The relationship of the Principal and the Nominee with respect to the Shares is governed by the following terms and conditions:
>
> 1. **The Nominee holds the legal title to the Shares for and in behalf of Principal who is the beneficial owner thereof.** Any and all payments made by the Nominee on the Shares, including but not limited to the subscription payment therefor, were funded by, and made on behalf and for the benefit of the Principal.
>
> 2. All dividends, whether cash, stock or property, all future shares from the exercise of stock rights or preemptive rights and other fruits or proceeds accruing to or on the Shares or from any disposition thereof shall be for the account, funding, expense or benefit of the Principal, and accordingly, the Nominee shall deliver the same to the Principal or to whoever the latter may designate. x x x
>
> x x x x x x x x x
>
> 5. In case the Principal decides at any time to transfer the Shares or any portion thereof to its own name, or to another nominee or to an assignee, the Principal is hereby given full and irrevocable special power and authority, with right of substitution, to cause the transfer of the legal title to the Shares to the name of the Principal or to such other nominee or assignee of the Principal, as the case may be, by conveying such instruction to the Corporate Secretary of the Corporation. x x x
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> x x x x x x x x x
>
> 8. The Corporate Secretary of the Corporation is hereby given full special power and authority to do all acts and deeds necessary to effect the transfer in the books of the Corporation of the Shares from the name of the Nominee to the name of the Principal, another nominee, or the assignee of the Principal, as the case may be.
>
> 9. The Nominee shall not in any manner mortgage, assign, or otherwise encumber her legal rights, title and interests in and to the Shares without the prior written instructions of the Principal.

10. The Principal may assign any and all of its rights, title and interests in and to the Shares and/or this Nominee Agreement in favor of any person upon prior written notice to the Nominee.[149] (Emphasis ours)

As Nominees, the petitioners expressly acknowledged that they held "the legal title to the Shares ***for and in behalf*** *of Principal [JG Ricafort] who is the beneficial owner thereof," and that "[a]ny and all payments made by the Nominee on the Shares, including but not limited to the subscription payment therefor, were funded by, and made on behalf and for the benefit of the Principal [JG Ricafort].*"[150] Thus, the petitioners misled the trial court into thinking that they had an inherent right to vote as an incident of their ownership of corporate stock, although they always knew that JG Ricafort was the real and beneficial owner and that he himself attended the stockholders' meeting and voted as their "proxy" the shares in their names.

Raymond, in his Affidavit[151] dated November 18, 2011, confirmed the execution by the petitioners of the Nominee Agreements; that his father JG Ricafort retained beneficial ownership of the shares as well as the custody of the certificates of stock; that the petitioners all knew about the Annual General Meeting (AGM) of NADECOR that was scheduled on August 15, 2011;"[152] and, even that his mother Corazon never attended any stockholders' meetings of NADECOR:

1. I am one of the six children of [JG Ricafort] and [Corazon], and my siblings are [Jose Manuel], Juan Carlos H. Ricafort, Victor Dennis H. Ricafort, [Marie Grace] and [Maria Teresa] (a family of 8);

2. My father, [JG Ricafort], is and has been a Director of [NADECOR] for more than 20 years and was more recently the

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[149] *Id.*

[150] *Id.*

[151] *Rollo* (G.R. Nos. 202647-50), Vol. III, pp. 1366-1367.

[152] *Id.* at 1366.

president of NADECOR within the period covering January 1, 2011 to August 31, 2011;

3. Sometime in June 2007, my father had asked all of us, myself, my mother and all my sisters and brothers, except for Victor Dennis H. Ricafort, to execute Nominee Agreements covering shares that he assigned in favor of the various members of the family, copies of which are attached hereto as Annexes "A" to "D";

4. In essence, the Nominee Agreements specifically state that my father, as the "Principal", retains beneficial ownership of the shares and custody of the certificates of stock;

5. My father, [JG Ricafort], also required all the family members who are nominees, to sign irrevocable proxies from time to time, providing him the authority to vote the NADECOR shares in the names of the various members of our family and these proxies authorized my father to attend meetings and vote the shares of NADECOR on behalf of the family members who were the registered shareholders of NADECOR;

6. None of the shares that are in the name of my mother and/or in the name of my brothers and/or sisters have been paid for by the respective named shareholder and all these are beneficially owned by my father, [JG Ricafort];

7. My mother has never attended a stockholders' meeting of NADECOR but has always been represented by my father in all of the shareholders' meetings attended by my father since shares of NADECOR were placed in the name of my mother as Nominee;

8. My sisters [Marie Grace] and [Maria Teresa], and my mother, [Corazon], all knew about the Annual General Meeting (AGM) of NADECOR that was scheduled on August 15, 2011[.][153]

Thus, JG Ricafort being the real and beneficial owner of the petitioners' shares, lack of notice to them is inconsequential because he attended and represented them at the August 15, 2011 ASM. It defies reason, too, that he could not have informed his wife and children, who live in the same house with him, of the scheduled ASM.

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[153] *Id.*

The petitioners were given due notice of the August 15, 2011 ASM.

As shown in the Affidavit dated October 13, 2011 of San Juan, NADECOR's messenger, he mailed the notices for the August 15, 2011 ASM to the petitioners' address at the Ortigas Post Office on August 11, 2011, four days prior to the ASM. This was confirmed by Gatmaitan in his Affidavit dated November 21, 2011. It must be noted that under Article I, Section 3 of NADECOR's Amended By-Laws, what is required is the mailing out of notices by registered mail at least three days before the ASM:

SECTION 3. Notice of Meetings. — Written or printed notice of every annual or special meeting of the stockholders shall be given to each Stockholder entitled to vote at such meeting, by leaving the same with him or at his residence, or usual place of business, **or by mailing it**, postage prepaid, and addressed to him at his address as it appears upon the books of the Corporation **at least three days before such meeting**. Notice of every special meeting shall state the place, day and hour of such meeting and the general nature of the business proposed to be transacted thereat. **Failure to give notice of annual meeting, or any irregularity in such notice, shall not affect the validity of such annual meeting or of any proceedings at such meeting** (other than proceedings or which special notice is required by law or by these By-Laws). It shall not be requisite to the validity of any meeting of Stockholders that notice thereof whether prescribed by law or by these By-laws, shall have been given to any stockholder who attends in person or by proxy, or to any Stockholder who in writing executed and filed with the records of the meeting either before or after the holding thereof, waives such notice. No notice other than verbal announcement need be given of any adjourned meetings of Stockholders.[154] (Emphasis ours)

The shorter notice of three days instead of two weeks for stockholders' regular or special meeting is clearly allowed under Section 50 of the Corporation Code, to wit:

SECTION 50. Regular and Special Meetings of Stockholders or Members. — Regular meetings of stockholders or members shall be

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[154] *Rollo* (G.R. Nos. 205921-24), Vol. I, pp. 157-158.

held annually on a date fixed in the by-laws, or if not so fixed, on any date in April of every year as determined by the board of directors or trustees: Provided, That written notice of regular meetings shall be sent to all stockholders or members of record at least two (2) weeks prior to the meeting, **unless a different period is required by the by-laws.**

Special meetings of stockholders or members shall be held at any time deemed necessary or as provided in the by-laws: Provided, however, That at least one (1) week written notice shall be sent to all stockholders or members, **unless otherwise provided in the by-laws.**

Notice of any meeting may be waived, expressly or impliedly, by any stockholder or member. x x x[155] (Emphasis ours)

By failing to file their complaint below seasonably, the petitioners must be deemed to have waived their right to notice of the August 15, 2011 ASM. Section 50 provides in effect that failure to give notice of the regular or annual meetings, when the date thereof is fixed in the by-laws, as in Section 1, Article 1 of the Amended By-Laws of NADECOR,[156] which is "*at twelve thirty P.M., on the THIRD MONDAY OF AUGUST in each year, if not a legal holiday, and if a legal holiday, then on the first day following which is not a legal holiday*,"[157] will not affect the validity of the ASM or the proceedings therein. Thus, it is also provided in Section 3, Article 1 of NADECOR's Amended By-Laws that:

Sec. 3. x x x. Failure to give notice of annual meeting, or any irregularity in such notice, *shall not affect the validity of such annual meeting or of any proceedings at such meeting* (other than proceedings of which special notice is required by law or by these By-laws). x x x[158] (Italics ours)

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[155] Section 51 of the Corporation Code provides that "[a]ll proceedings had and any business transacted at any meeting of the stockholders or members, if within the powers or authority of the corporation, shall be valid, even if the meeting be improperly held or called, provided ***all*** the stockholders or members of the corporation are present or duly represented at the meeting."

[156] *Rollo* (G.R. Nos. 205921-24), Vol. I, p. 157.

[157] *Id.*

[158] *Id.*

The Court concludes that the RTC undoubtedly erred in nullifying NADECOR's August 15, 2011 ASM and in not dismissing SEC Case No. 11-164.

WHEREFORE, the petitions in G.R. Nos. 202647-50 and G.R. Nos. 205921-24 are **DISMISSED.**

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 206941. March 9, 2016]

MILAGROSA JOCSON, *petitioner, vs.* **NELSON SAN MIGUEL,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; DARAB RULES OF PROCEDURE; APPEALS; FOR COMPLAINT FILED PRIOR TO THE DATE OF THE EFFECTIVITY OF THE 2009 DARAB RULES OF PROCEDURE, THE APPLICABLE RULE IN THE COUNTING OF THE PERIOD FOR FILING A NOTICE OF APPEAL WITH THE BOARD IS GOVERNED BY SECTION 12, RULE X OF THE 2003 DARAB RULES OF PROCEDURE.— [S]ection 1, Rule XXIV of the 2009 DARAB Rules of Procedure explicitly states that: Sec. 1. *Transitory Provisions.* These Rules shall govern all cases filed on or after its effectivity. **All cases pending with the Board and the Adjudicators, prior to the date of effectivity of these Rules, shall be governed by the DARAB Rules prevailing at the time of their filing.** In the present case, the Complaint was filed on September 10, 2008 prior to the date of effectivity of the 2009 DARAB Rules of Procedure

on September 1, 2009. Thus, pursuant to the above-cited rule, the applicable rule in the counting of the period for filing a Notice of Appeal with the Board is governed by Section 12, Rule X of the 2003 DARAB Rules of Procedure, which states that: The filing of the Motion for Reconsideration shall interrupt the period to perfect an appeal. If the motion is denied, the aggrieved party shall have the remaining period within which to perfect his appeal. Said period shall not be less than five (5) days in any event, reckoned from the receipt of the notice of denial.

2. REMEDIAL LAW; APPEALS; THE FRESH PERIOD RULE APPLIES ONLY TO JUDICIAL APPEALS AND NOT TO ADMINISTRATIVE APPEALS.— This Court likewise finds no merit to San Miguel's contention that the "fresh period rule" laid down in *Neypes* is applicable in the instant case. In *Panolino,* this Court held that the "fresh period rule" only covers judicial proceedings under the 1997 Rules of Civil Procedure, to wit: x x x . As reflected in the xxx portion of the decision in *Neypes,* the "fresh period rule" shall apply to Rule 40 (appeals from the Municipal Trial Courts to the Regional Trial Courts); Rule 41 (appeals from the Regional Trial Courts to the [CA] or Supreme Court); Rule 42 (appeals from the Regional Trial Courts to the [CA]); Rule 43 (appeals from quasi-judicial agencies to the [CA]); and Rule 45 (appeals by *certiorari* to the Supreme Court). **Obviously, these Rules cover *judicial* proceedings under the 1997 Rules of Civil Procedure.** x x x. In the present case, the appeal from a decision of the Provincial Adjudicator to the DARAB as provided for under Section 1, Rule XIV of the 2003 DARAB Rules of Procedure, is not judicial but administrative in nature. As such, the "fresh period rule" in *Neypes* finds no application therein.

3. ID.; ID.; THE LIBERAL APPLICATION OF RULES OF PROCEDURE FOR PERFECTING APPEALS IS STILL THE EXCEPTION, AND NOT THE RULE, AND IT IS ONLY ALLOWED IN EXCEPTIONAL CIRCUMSTANCES TO BETTER SERVE THE INTEREST OF JUSTICE.— [I]t is worthy to emphasize that the right to appeal is not a natural right or a part of due process, but is merely a statutory privilege that may be exercised only in the manner prescribed by law. The right is unavoidably forfeited by the litigant who does not comply with the manner thus prescribed. In addition,

the liberal application of rules of procedure for perfecting appeals is still the exception, and not the rule; and it is only allowed in exceptional circumstances to better serve the interest of justice. This exceptional situation, however, does not obtain in this case.

APPEARANCES OF COUNSEL

Maglalang Lagman & Maglalang Law Office for petitioner.
Viray Rongcal Beltran Yumul & Viray for respondent.

D E C I S I O N

REYES, *J.*:

Before this Court is a petition for review on *certiorari*[1] under Rule 45 of the Rules of Court seeking to annul and set aside the Decision[2] dated October 29, 2012 and Resolution[3] dated April 16, 2013 issued by the Court of Appeals (CA) in CA-G.R. SP No. 122007, which allowed the application of the "fresh-period rule" in the filing of a Notice of Appeal to the Department of Agrarian Reform Adjudication Board (DARAB), Office of the Provincial Agrarian Reform Adjudicator (PARAD).

Facts of the Case

On September 10, 2008, Milagrosa C. Jocson (Jocson) filed with the DARAB-PARAD, Region III of San Fernando City, Pampanga, a Complaint[4] for ejectment with damages against respondent Nelson San Miguel (San Miguel) and all persons claiming rights under him. The case was docketed as DARAB Case No. 6291-P'08.

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[1] *Rollo,* pp. 9-26.

[2] Penned by Associate Justice Elihu A. Ybañez, with Associate Justices Jane Aurora C. Lantion and Victoria Isabel A. Paredes concurring; *id.* at 27-38.

[3] *Id.* at 39-41.

[4] *Id.* at 64-68.

In the Complaint, Jocson alleged that she is the registered owner of a parcel of agricultural land with an area of 60,241 square meters, located in Magalang, Pampanga covered by Transfer Certificate of Title No. 473856-R. She asserted that 56,000 sq.m. thereof became the subject of an Agricultural Leasehold Contract[5] (Contract) between her and San Miguel, with the latter as tenant-lessee. As part of the contract, they agreed that the subject landholding shall be devoted to sugar and rice production.[6]

According to Jocson, San Miguel, however, occupied the entire landholding and refused to vacate the portion not covered by their Contract despite repeated demands.[7]

On December 15, 2009, Jocson filed a Supplemental Complaint[8] alleging that, during the pendency of the present suit, San Miguel commenced to plant corn on the subject landholding which violated their Contract.[9]

In his Answer,[10] San Miguel maintained that he had religiously complied with all the terms and conditions of their Contract and that Jocson has no valid ground to eject him from the disputed landholding.[11]

PARAD Decision

On January 26, 2011, PARAD Provincial Adjudicator Vicente Aselo S. Sicat (PA Sicat) rendered a Decision,[12] the decretal portion of which reads:

WHEREFORE, premises considered, judgment is hereby rendered:

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[5] *Id.* at 264-266.

[6] *Id.* at 64-65, 264.

[7] *Id.* at 29.

[8] *Id.* at 284-287.

[9] *Id.* at 284-285.

[10] *Id.* at 288-290.

[11] *Id.*

[12] *Id.* at 90-92.

1. TERMINATING the existing leasehold contract of the parties as well as their tenancy relationship;

2. ORDERING [San Miguel] and all persons claiming rights under him to peacefully vacate and surrender the land to [Jocson];

3. DISMISSING all other claims for want of evidence.

No costs.

SO ORDERED.[13]

San Miguel filed a Motion for Reconsideration[14] (MR) dated February 10, 2011 but it was denied in an Order[15] dated May 31, 2011.

On June 15, 2011,[16] San Miguel filed his Notice of Appeal.[17]

Thereafter, on June 28, 2011, Jocson filed an Omnibus Motion to: (i) expunge the Notice of Appeal from the records of the present case; (ii) dismiss the said appeal; and (iii) issue a writ of execution.[18] She alleged that the Notice of Appeal filed by San Miguel was filed not in accordance with the 2003 DARAB Rules of Procedure, specifically the non-payment of appeal fee and the failure to attach therein a Certification against Non-Forum Shopping pursuant to Section 2, Rule IV of the Rules.[19]

On July 27, 2011, PA Sicat issued an Order[20] denying due course to San Miguel's Notice of Appeal and thereafter declared the case final and executory. Aside from failure to pay the required appeal fee and to attach the required certification, the

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[13] *Id.* at 91-92.

[14] *Id.* at 93-96.

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

[16] *Id.* at 123.

[17] *Id.* at 108-109.

[18] *Id.* at 118-122.

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

[20] *Id.* at 123-125.

PARAD held that the Notice of Appeal was likewise filed out of time.[21]

The PARAD held that under Section 12, Rule X of the 2003 DARAB Rules of Procedure, "[t]he filing of the Motion for Reconsideration shall interrupt the period to perfect an appeal. If the motion is denied, the aggrieved party shall have the remaining period within which to perfect his appeal. Said period shall not be less than five (5) days in any event, reckoned from the receipt of the notice of denial."[22]

The PARAD found that San Miguel, through his counsel, received his copy of Decision dated January 26, 2011 on February 3, 2011 and thereafter filed his MR on February 15, 2011, thus, he could have only three (3) days within which to file his Notice of Appeal upon its denial. The MR was denied on May 31, 2011 and San Miguel, through his counsel, received his copy of the Order on June 2, 2011 and he filed his Notice of Appeal on June 15, 2011 or after twelve (12) days, which, following the rules abovementioned, is already beyond the period allowed.[23]

San Miguel filed his MR[24] but the same was denied in an Order[25] dated October 18, 2011, which likewise directed the issuance of a writ of execution to enforce the decision rendered by the PARAD.

Undaunted, San Miguel filed a Petition for *Certiorari*[26] (with a Prayer for a Temporary Restraining Order and Application for Preliminary Mandatory Injunction) with the CA.

San Miguel argued that the 2009 DARAB Rules of Procedure adopted the "fresh period rule" enunciated by this Court in

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[21] *Id.* at 123-124.

[22] *Id.* at 123.

[23] *Id.* at 124.

[24] *Id.* at 126-129.

[25] *Id.* at 130-131.

[26] *Id.* at 134-157.

Neypes v. CA[27] to the effect that it allows litigants a fresh period of 15 days within which to file a notice of appeal, counted from receipt of the order dismissing a motion for a new trial or motion for reconsideration as provided for under Section 1, Rule IV of the 2009 DARAB Rules of Procedure.[28]

Ruling of the CA

On October 29, 2012, the CA issued a Decision[29] granting San Miguel's petition and remanding the case to the DARAB-PARAD for further proceedings. The CA held that the "fresh period rule" enunciated in *Neypes* should be applied in the instant case. The CA decision reads in part:

> The "fresh period rule" is a procedural law as it prescribes a fresh period of 15 days within which an appeal may be made in the event that the motion for reconsideration is denied by the lower court. Following the rule on retroactivity of procedural laws, the "fresh period rule" should be applied to pending actions, such as the case at bar. The *raison d'etre* for the "fresh period rule" is to standardize the appeal period provided in the Rules of Court and do away with the confusion as to when the 15-day appeal period should be counted. Thus, **the 15-day period to appeal is no longer interrupted by the filing of a motion for new trial or motion for reconsideration**. Litigants today need not concern themselves with counting the balance of the 15-day period to appeal since the 15-day period is now counted from receipt of the order dismissing a motion for new trial or motion for reconsideration or any final order or resolution.[30] (Citation omitted and emphasis in the original)

Jocson filed her MR but it was denied in a Resolution[31] dated April 16, 2013.

Hence, the present petition.

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[27] 506 Phil. 613 (2005).

[28] *Rollo*, p. 150.

[29] *Id.* at 27-38.

[30] *Id.* at 36.

[31] *Id.* at 39-41.

Issues

Jocson argued that the CA committed grave abuse and substantial error of judgment amounting to errors of law:

I. IN REJECTING THE APPLICATION OF THE 2003 DARAB RULES OF PROCEDURE TO THE NOTICE OF APPEAL FILED BY SAN MIGUEL AND UPHOLDING THE APPLICATION OF THE "FRESH PERIOD RULE" PROVIDED UNDER THE NEW 2009 DARAB RULES OF PROCEDURE WHICH TOOK EFFECT DURING THE PENDENCY OF THIS SUIT BEFORE THE PARAD, IN THE CASE AT BAR.

II. IN APPLYING THE *NEYPES* RULING IN THE INSTANT CASE INSTEAD OF THE RULING IN *PANOLINO V. TAJALA*[32] DESPITE THE FACT THAT THE ASSAILED ORDERS WERE NOT ISSUED BY A COURT.[33]

Ruling of the Court

This Court finds the petition to be meritorious.

Application of the 2003 DARAB Rules of Procedure

San Miguel alleged that due to the effectivity of the 2009 DARAB Rules of Procedure, its provisions should be applied instead of the 2003 DARAB Rules of Procedure.

This Court rules in the negative.

It must be noted that Section 1, Rule XXIV of the 2009 DARAB Rules of Procedure explicitly states that:

Sec. 1. *Transitory Provisions*. — These Rules shall govern all cases filed on or after its effectivity. **All cases pending with the Board and the Adjudicators, prior to the date of effectivity of**

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[32] 636 Phil. 313 (2010).

[33] *Rollo*, p. 17.

these Rules, shall be governed by the DARAB Rules prevailing at the time of their filing. (Emphasis ours)

In the present case, the Complaint was filed on September 10, 2008 prior to the date of effectivity of the 2009 DARAB Rules of Procedure on September 1, 2009. Thus, pursuant to the above-cited rule, the applicable rule in the counting of the period for filing a Notice of Appeal with the Board is governed by Section 12, Rule X of the 2003 DARAB Rules of Procedure, which states that:

The filing of the Motion for Reconsideration shall interrupt the period to perfect an appeal. If the motion is denied, the aggrieved party shall have the remaining period within which to perfect his appeal. Said period shall not be less than five (5) days in any event, reckoned from the receipt of the notice of denial.

Application of the "fresh period rule" enunciated in the *Neypes* ruling

This Court likewise finds no merit to San Miguel's contention that the "fresh period rule" laid down in *Neypes* is applicable in the instant case.

In *Panolino*, this Court held that the "fresh period rule" only covers judicial proceedings under the 1997 Rules of Civil Procedure, to wit:

The "fresh period rule" in *Neypes* declares:

> To standardize the appeal periods provided in the Rules and to afford litigants fair opportunity to appeal their cases, the Court deems it practical to allow a fresh period of 15 days within which to file the notice of appeal in the Regional Trial Court, counted from receipt of the order dismissing a motion for a new trial or motion for reconsideration.
>
> Henceforth, this "fresh period rule" shall also apply to Rule 40 governing appeals from the Municipal Trial Courts to the Regional Trial Courts; Rule 42 on petitions for review from the Regional Trial Courts to the [CA]; Rule 43 on appeals from quasi-judicial agencies to the [CA]; and Rule 45 governing

> appeals by *certiorari* to the Supreme Court. The new rule aims to regiment or make the appeal period uniform, to be counted from receipt of the order denying the motion for new trial, motion for reconsideration (whether full or partial) or any final order or resolution.
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> x x x x x x x x x

As reflected in the above-quoted portion of the decision in *Neypes*, the "fresh period rule" shall apply to Rule 40 (appeals from the Municipal Trial Courts to the Regional Trial Courts); Rule 41 (appeals from the Regional Trial Courts to the [CA] or Supreme Court); Rule 42 (appeals from the Regional Trial Courts to the [CA]); Rule 43 (appeals from quasi-judicial agencies to the [CA]); and Rule 45 (appeals by *certiorari* to the Supreme Court). **Obviously, these Rules cover *judicial* proceedings under the 1997 Rules of Civil Procedure.**

Petitioner's present case is *administrative* in nature involving an appeal from the decision or order of the DENR regional office to the DENR Secretary. Such appeal is indeed governed by Section 1 of Administrative Order No. 87, Series of 1990. As earlier quoted, Section 1 clearly provides that if the motion for reconsideration is *denied*, the movant shall perfect his appeal "during the remainder of the period of appeal, reckoned from receipt of the resolution of denial;" whereas if the decision is *reversed*, the adverse party has a fresh 15-day period to perfect his appeal.[34] (Citation omitted and emphasis ours)

The same principle was applied in the recent case of *San Lorenzo Ruiz Builders and Developers Group, Inc. and Oscar Violago v. Ma. Cristina F. Bayang*,[35] wherein this Court reiterated that the "fresh period rule" in Neypes applies only to judicial appeals and not to administrative appeals.

In the present case, the appeal from a decision of the Provincial Adjudicator to the DARAB as provided for under Section 1, Rule XIV of the 2003 DARAB Rules of Procedure, is not judicial but administrative in nature. As such, the "fresh period rule" in *Neypes* finds no application therein.

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[34] *Panolino v. Tajala, supra* note 32, at 317-319.

[35] G.R. No. 194702, April 20, 2015.

As correctly observed by PA Sicat, San Miguel should perfect his appeal during the remainder of the period of appeal, but not less than five (5) days, reckoned from receipt of the resolution of denial of his MR or until June 7, 2011.

As a final note, it is worthy to emphasize that the right to appeal is not a natural right or a part of due process, but is merely a statutory privilege that may be exercised only in the manner prescribed by law. The right is unavoidably forfeited by the litigant who does not comply with the manner thus prescribed. In addition, the liberal application of rules of procedure for perfecting appeals is still the exception, and not the rule; and it is only allowed in exceptional circumstances to better serve the interest of justice.[36] This exceptional situation, however, does not obtain in this case.

WHEREFORE, in consideration of the foregoing disquisitions, the petition is hereby **GRANTED.** The Decision dated October 29, 2012 and Resolution dated April 16, 2013 of the Court of Appeals in CA-G.R. SP No. 122007 are hereby **REVERSED** and **SET ASIDE.** The Orders dated July 27, 2011 and October 18, 2011 of the Provincial Agrarian Reform Adjudicator are hereby **REINSTATED.**

SO ORDERED.

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

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[36] *Cadena v. Civil Service Commission,* 679 Phil. 165, 176-177 (2012).

THIRD DIVISION

[G.R. No. 208071. March 9, 2016]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **EDGARDO PEREZ *y* ALAVADO,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; RAPE; THE COURT HAS ALWAYS GIVEN PRIMORDIAL CONSIDERATION TO THE CREDIBILITY OF A RAPE VICTIM'S TESTIMONY; RATIONALE; APPLICATION IN CASE AT BAR.— Article 266-A, paragraph one (1) of the Revised Penal Code (*RPC*) provides the elements of the crime of rape. x x x Time and again, the Court has always given primordial consideration to the credibility of a rape victim's testimony. This is because rape is a crime that is almost always committed in isolation, usually leaving only the victims to testify on the commission of the crime. Thus, for as long as the victim's testimony is logical, credible, consistent and convincing, the accused may be convicted solely on the basis thereof. Here, the trial court found AAA's testimony to be categorical, straightforward, spontaneous and frank. In spite of her stringent cross-examination, AAA remained steadfast, committing no material inconsistency which may adversely affect her credibility, clearly and convincingly describing the events that transpired during the rape incidents. As to appellant's contention that serious inconsistencies in AAA's testimony render it unreliable and present problems as to her credibility, the Court is in agreement with the appellate court that the same pertained only to minor inconsistencies. x x x Indeed, a rape victim cannot be expected to mechanically keep and then give an accurate account of the traumatic and horrifying experience she had undergone. Inaccuracies and inconsistencies in her testimony are generally expected. Thus, such fact, alone, cannot automatically result in an accused's acquittal.

2. ID.; ID.; ID.; THE CRIME OF RAPE QUALIFIED BY RELATIONSHIP MUST SUCCINCTLY STATE THAT THE ACCUSED IS A RELATIVE WITHIN THE THIRD CIVIL DEGREE BY CONSANGUINITY OR AFFINITY;

EFFECT ON AWARD OF DAMAGES; CASE AT BAR.— Jurisprudence is replete with rulings requiring that Informations charging an accused with the crime of rape qualified by relationship must succinctly state that said accused is a relative within the third civil degree by consanguinity or affinity. x x x Similarly in this case, the Information merely alleged that "the accused is an uncle by affinity of the latter," failing to clearly state that appellant herein is AAA's *relative within the third civil degree* of consanguinity or affinity, as expressly required by the aforecited ruling. Appellant herein cannot, therefore, be properly convicted of rape in its qualified form resulting in a higher award of damages. Hence, in view of the failure of the Information to expressly allege the qualifying circumstance of relationship, as well as the absence of any discussion as to the existence of such qualifying circumstance that would warrant the imposition of the death penalty, the Court finds the award of damages in the amount of ₱75,000.00 as civil indemnity and ₱75,000.00 as moral damages improper. Accordingly, both awards of civil indemnity and moral damages are reduced to ₱50,000.00 each, in line with existing jurisprudence. The exemplary damages in the amount of ₱30,000.00 awarded by the CA, however, is maintained. Moreover, said amounts shall earn interest at the rate of 6% *per annum* from date of finality of this judgment until fully paid.

APPEARANCES OF COUNSEL

Office of the Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

PERALTA, *J.*:

Before the Court is an appeal from the Decision[1] dated February 27, 2013 of the Court of Appeals (*CA*) in CA-G.R.

[1] Penned by Associate Justice Marie Christine Azcarraga-Jacob, with Associate Justices Romulo V. Borja and Ma. Luisa C. Quijano-Padilla concurring; *rollo*, pp. 5-18.

CR-HC No. 00176-MIN which affirmed the Decision[2] dated May 15, 2002 of the Regional Trial Court (*RTC*), 9th Judicial Region, Branch 15, Zamboanga City, in Criminal Case No. 17071 for rape.

The antecedent facts are as follows:

In an Information[3] dated June 23, 2000, accused-appellant Eduardo was charged with the crime of rape, committed by having carnal knowledge of his niece, AAA,[4] a 13-year-old girl, against her will and to her damage and prejudice, the accusatory portions of which read:

> That on or about January 3, 2000, in the City of Zamboanga, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, by means of force and intimidation, did then and there wilfully, unlawfully, and feloniously, have carnal knowledge of one AAA, a girl, 13 years old, against her will; furthermore, there being present an aggravating circumstance in that the victim is under eighteen (18) years old and the accused is an uncle by affinity of the latter.
>
> CONTRARY TO LAW.[5]

Upon arraignment on September 6, 2000, appellant pleaded not guilty to the offense charged.[6] Thereafter, during trial, the prosecution presented the testimonies of the Victim AAA, police investigator PO2 Maria Enriquez, Dr. Marian Calaycay, the examining physician, and BBB, the father of the victim.[7]

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[2] Penned by Judge Vicente L. Cabatingan; CA *rollo*, pp. 19-29.

[3] *Id.* at 8-9.

[4] In line with the Court's ruling in *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419, 426, citing Rule on Violence Against Women and their Children, Sec. 40, Rules and Regulations Implementing Republic Act No. 9262, Rule XI, Sec. 63, otherwise known as the "Anti-Violence Against Women and their Children Act," the real name of the rape victim will not be disclosed.

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

[6] *Id.* at 19.

[7] *Id.*

AAA testified that she was born on August 18, 1986 to her parents who, at that time, were already separated from each other. She stayed with her father in his house in Tugbungan, Zamboanga City. On December 24, 1999, however, she spent Christmas with her mother who was in the house of her uncle, appellant herein, also situated in Tugbungan, Zamboanga. AAA stated that appellant is the husband of her mother's sister.[8] According to AAA, when she woke up at about 4:00 a.m. on January 3, 2000, she was already on the cement floor inside the room of appellant, who was wearing only a white towel wrapped around his waist. She tried to get out of the room but appellant pushed her to the floor and shut the door with a kick. He then pulled out her skirt, raised her shirt, and removed her underwear, baring her breasts and vagina, which he kissed. Thereafter, he removed his towel, mounted her, and inserted his penis into her vagina, thereby causing her pain. While doing this, he continued on kissing her lips and breast. She cried and kicked him, but he did not stop.[9] Afterwards, he removed his penis and cleaned her vagina with a shirt. He wore his towel again and told her to put on her underwear. He then gave her ₱10.00 which she used to buy "chippy."[10]

On January 5, 2000, she went home to her father. She did not tell him about the incident until confronted by him. BBB testified that at about 2:00 p.m. on February 10, 2000, his son, AAA's brother, told him that he saw appellant holding the hair of AAA and kissing her. Consequently, BBB confronted AAA about what he had heard from her brother. She then told him what transpired on the alleged incident. Thereafter, he brought her to the barangay officials who advised them to have her examined by a doctor and obtain a Medico-Legal Certificate.[11]

Said testimonies were corroborated by Dr. Marian Calaycay who conducted a medical examination on AAA and issued a

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[8] *Id.*

[9] *Id.* at 20.

[10] *Id.*

[11] *Id.* at 21.

Medico-Legal Certificate thereon. Dr. Calaycay testified that the certificate states that AAA's hymen had complete healed lacerations at 4 o'clock and 8 o'clock positions, that her labia majora and labia minora were apposed, that the introitus admits one finger with ease, that her pubic hair were sparsely distributed, her breasts were not yet fully developed and that she tested negative for spermatozoa.[12] Dr. Calaycay further gave many possible agents that may have caused AAA's lacerations, one of which is an erect penis.[13]

Thereafter, PO3 Maria Enriquez, who was assigned at the Women and Children's Desk of the Tetuan Police Station, Zamboanga City, testified that she received a complaint assignment sheet registering the complaint of BBB that his daughter had been raped, together with the medico-legal certificate and birth certificate of AAA. After taking the statements of AAA and BBB, she was convinced that rape was, indeed, committed. Thus, she prepared a case report, and submitted the same to the Office of the City Prosecutor for the filing of the appropriate charge.[14]

In contrast, appellant essentially interposed a defense of denial and alibi. He testified that at the time of the alleged rape, he did not sleep in his room that he shared with his wife because he was out driving his passenger tricycle. He added that during those times, they had many relatives from Curuan, Zamboanga City, composed of the families of his in-laws, visiting them who all slept in the living room of their house, together with the other members of their household. They all stayed in his house because they came to know that the sister of his mother-in-law had just died. Thus, it was highly unlikely for him to transport AAA to his room without waking anybody up. Appellant further testified that the only reason why AAA and her father filed the rape charge against him was because BBB had a personal grudge against him. This was because occasionally,

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[12] *Rollo,* p. 7.

[13] CA *rollo,* p. 20.

[14] *Rollo,* p. 7.

appellant would scold AAA and BBB's other children. Moreover, appellant testified that he also incurred the ire of BBB because he made it known that he did not like the presence of BBB's children in his house due to their "itchy hands."[15]

Aside from appellant's testimony, the defense also presented six (6) other witnesses to corroborate his defense of alibi, namely, Anabel Perez, daughter of appellant; Khoki Uwano Perez, nephew of appellant who lived with him; Clarita Perez, wife of appellant; Abigail Perez, another daughter of appellant; Edwin Andico, brother-in-law of appellant; and Mercedita Marquez, sister of appellant.[16]

On May 15, 2002, the RTC found appellant guilty beyond reasonable doubt of the crime of rape and rendered its Decision, the dispositive portion of which reads:

> WHEREFORE, having weighed the evidence on both sides, the Court finds Eduardo Perez y Alavado GUILTY beyond reasonable doubt of the crime of RAPE, defined and penalized under Article 266-A of Republic Act No. 8353, The Anti-Rape Law of 1997, as principal and as charged, and in the absence of any aggravating or mitigating circumstance attendant in the commission of the offense, does hereby sentence him to suffer the penalty of *RECLUSION PERPETUA*, to indemnify the offended party the sum of ₱100,000.00, Philippine Currency, and to pay the costs.
>
> SO ORDERED.[17]

The RTC found that the prosecution sufficiently proved, beyond reasonable doubt, that appellant had carnal knowledge of AAA. Even though AAA was subject to a stringent cross-examination, she remained steadfast, committing no material inconsistency which may adversely affect her credibility. She clearly and convincingly described the manner by which she was deflowered against her will. The fact that it took AAA more than one month

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[15] CA *rollo*, p. 25.

[16] *Rollo*, p. 8.

[17] CA *rollo*, p. 29.

to report the incident to her father does not affect her credibility. Jurisprudence is replete with rulings stating that delay in reporting the rape incident in the face of threats of physical violence cannot be taken against the accused. As to the theory that it is highly improbable for the accused to commit the crime of rape because there were several other persons present in the house at that time, the trial court rejected the same in view of multiple case law finding it possible for one to rape another even in the presence of third persons. The RTC also rejected appellant's imputation of ill motive on the part of BBB due to his personal grudges against him in ruling that it is unthinkable that a high school student would endure the shame and humiliation of being publicly known that she has been ravished, allow an examination of her private parts and undergo the trouble and expense of a court proceeding if her motive was not to bring justice to the person who had grievously wronged her.[18]

Furthermore, while the RTC took notice of the fact that the defense presented numerous testimonies to support appellant's allegations of denial and alibi, it refused to give credence to the same. According to the trial court, the defense's witnesses were all appellant's direct relatives, either by consanguinity or affinity, who depend on appellant and reside in his house, save for his sister. As such, it is possible that their loyalty to appellant may have some influence on their testimonies. The court ruled that it would have made a difference had two or three of the visitors from Curuan come to court to testify for the defense as they were the ones who supposedly occupied the living room at the time of the alleged incident. Their presence could have easily been requested considering that Curuan is very near the City proper.[19] In the end, the RTC ruled that the defense of absolute denial interposed by the accused, which can easily be fabricated, does not hold water in view of the positive identification of the accused by the offended party and the lack of clear and convincing evidence to back it up.

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[18] *Id.*

[19] *Id.* at 27.

On appeal, the CA affirmed the RTC Decision finding appellant guilty beyond reasonable doubt of having carnal knowledge of AAA. According to the appellate court, the trial court did not err in granting full weight and credence to the uncorroborated testimony of AAA for she positively identified appellant as the perpetrator of the crime in a straightforward and clear manner. It is unlikely that she would accuse appellant, her uncle, of so serious a crime as rape if this was not the plain truth as youth and immaturity are generally badges of sincerity. As to appellant's asseverations that AAA's testimony contained significant inconsistencies, the CA ruled that the same only pertained to minor details of the case.[20] A victim of a savage crime cannot be expected to mechanically retain and then give an accurate account of every lucid detail of a frightening experience. Thus, the appellate court found no reason to disturb the factual findings of the trial court, which are entitled to the highest degree of respect.

It, however, modified the trial court's award of damages from the sum of ₱100,000.00, to ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, and ₱30,000.00 as exemplary damages in the following wise:

> The award of civil indemnity to the rape victim is mandatory upon the finding that rape took place. Moral damages, on the other hand, are awarded to rape victims without need of proof other than the fact of rape, under the assumption that the victim suffered moral injuries from the experience she underwent. In line with current jurisprudence, appellant Edgardo Perez should be ordered to indemnify the victim in the amount of PhP75,000.00 as civil indemnity and Php75,000.00 as moral damages.
>
> We also deem it proper to award exemplary damages to the victim. It finds support in People *v.* Dalisay. Art. 2229 of the Civil Code serves as the basis for the award of exemplary damages as it pertinently provides, "Exemplary 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." Being corrective in nature, exemplary damages, therefore, can be awarded, not only

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[20] *Rollo*, p. 14.

in the presence of an aggravating circumstance, but also where the circumstances of the case show the highly reprehensible or outrageous conduct of the offender. Consistent with the cited jurisprudence, it is but fitting that exemplary damage, in the sum of Php30,000.00 be granted.[21]

Consequently, appellant filed a Notice of Appeal[22] on March 14, 2013. Thereafter, in a Resolution[23] dated September 4, 2013, the Court notified the parties that they may file their respective supplemental briefs, if they so desire, within thirty (30) days from notice. Both parties, however, manifested that they are adopting their respective briefs filed before the CA as their supplemental briefs, their issues and arguments having been thoroughly discussed therein. Thus, the case was deemed submitted for decision.

In his Brief, appellant assigned the following error:

I.

THE COURT OF APPEALS ERRED IN CONVICTING THE ACCUSED-APPELLANT FOR THE CRIME CHARGED DESPITE THE FAILURE OF THE PROSECUTION TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.[24]

Appellant essentially argues that he should not be convicted of the crime charged herein on the basis of AAA's testimony as it is loaded with serious inconsistencies. He likewise asserts that it is beyond human nature how AAA can be transported to appellant's room without being noticed by those who were asleep in the same living room as AAA. Appellant also found surprising why AAA did not immediately report the alleged incident to her parents or other relatives when she had every opportunity to do so.[25]

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[21] *Id.* at 17. (Citations omitted).

[22] *Id.* at 19.

[23] *Id.* at 24.

[24] CA *rollo*, p. 173.

[25] *Id.* at 37.

We affirm appellant's conviction, with modification as to the award of damages.

Article 266-A, paragraph one (1) of the Revised Penal Code (*RPC*) provides the elements of the crime of rape:

> Article 266-A. *Rape: When and How Committed*. — Rape is committed:
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> 1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:
>
> a) Through force, threat, or intimidation;
>
> b) When the offended party is deprived of reason or otherwise unconscious;
>
> c) By means of fraudulent machination or grave abuse of authority; and
>
> d) When the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present;
>
> 2) By any person who, under any of the circumstances mentioned in paragraph 1 hereof, shall commit an act of sexual assault by inserting his penis into another person's mouth or anal orifice, or any instrument or object, into the genital or anal orifice of another person.[26]

Time and again, the Court has always given primordial consideration to the credibility of a rape victim's testimony. This is because rape is a crime that is almost always committed in isolation, usually leaving only the victims to testify on the commission of the crime. Thus, for as long as the victim's testimony is logical, credible, consistent and convincing, the accused may be convicted solely on the basis thereof.[27] Here, the trial court found AAA's testimony to be categorical, straightforward, spontaneous and frank. In spite of her stringent

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[26] Article 266-A of the Revised Penal Code (1930), as amended by Republic Act No. 8353 (1997).

[27] *People v. Alfredo Gallano y Jaranilla*, G.R. No. 184762, February 25, 2015.

cross-examination, AAA remained steadfast, committing no material inconsistency which may adversely affect her credibility, clearly and convincingly describing the events that transpired during the rape incidents.

As to appellant's contention that serious inconsistencies in AAA's testimony render it unreliable and present problems as to her credibility, the Court is in agreement with the appellate court that the same pertained only to minor inconsistencies. In *People v. Sanchez*,[28] the Court provided the following guidelines when confronted with the issue of credibility of witnesses:

> First, the Court gives the highest respect to the RTC's evaluation of the testimony of the witnesses, considering its unique position in directly observing the demeanor of a witness on the stand. From its vantage point, the trial court is in the best position to determine the truthfulness of witnesses.
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> Second, absent any substantial reason which would justify the reversal of the RTC's assessments and conclusions, the reviewing court is generally bound by the lower court's findings, particularly when no significant facts and circumstances, affecting the outcome of the case, are shown to have been overlooked or disregarded.
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> And third, the rule is even more stringently applied if the CA concurred with the RTC.[29]

In this case, the appellate court expressly found no reason to disturb the factual findings of the trial court in view of the absence of any clear showing that some fact had been overlooked. Neither does the Court's own perusal of the records of the case present any reason to depart therefrom. Indeed, a rape victim cannot be expected to mechanically keep and then give an accurate account of the traumatic and horrifying experience she had undergone.[30] Inaccuracies and inconsistencies in her

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[28] 681 Phil. 631 (2012).

[29] *People v. Sanchez*, *supra*, at 635-636.

[30] *People v. Pareja*, G.R. No. 202122, January 15, 2014, 714 SCRA 131, 148.

testimony are generally expected.[31] Thus, such fact, alone, cannot automatically result in an accused's acquittal.

There is, however, a need to modify the award of ₱75,000.00 as civil indemnity and ₱75,000.00 as moral damages. In prescribing said amounts as damages, the CA cites the ruling in *People v. Delos Reyes*[32] which states:

> Regarding the civil indemnity and moral damages, People *v.* Salome explained the basis for increasing the amount of said civil damages as follows:
>
> The Court, likewise, affirms the civil indemnity awarded by the Court of Appeals to Sally in accordance with the ruling in People *v.* Sambrano which states:
>
> > As to damages, we have held that **if the rape is perpetrated with any of the attending qualifying circumstances that require the imposition of the death penalty, the civil indemnity for the victim shall be Php75,000.00** . . . Also, in rape cases, moral damages are awarded without the need of proof other than the fact of rape because it is assumed that the victim has suffered moral injuries entitling her to such an award. However, the trial court's award of Php50,000.00 as moral damages should also be increased to Php75,000.00 pursuant to current jurisprudence on qualified rape.
> >
> > **It should be noted that while the new law prohibits the imposition of the death penalty, the penalty provided for by law for a heinous offense is still death and the offense is still heinous. Consequently, the civil indemnity for the victim is still Php75,000.00.**
>
> People *v.* Quiachon also ratiocinates as follows:
>
> > **With respect to the award of damages, the appellate court, following prevailing jurisprudence, correctly awarded the following amounts; Php75,000.00 as civil indemnity which is awarded if the crime is qualified by circumstances warranting the imposition of the death penalty; Php75,000.00 as moral damages because the victim is assumed to have**

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[31] *Id.*

[32] 697 Phil. 531 (2012).

suffered moral injuries, hence, entitling her to an award of moral damages even without proof thereof,

x x x x x x x x x.

Even if the penalty of death is not to be imposed on the appellant because of the prohibition in R.A. No. 9346, the civil indemnity of Php75,000.00 is still proper because, following the ratiocination in People *v.* Victor, the said award is not dependent on the actual imposition of the death penalty but on the fact that qualifying circumstances warranting the imposition of the death penalty attended the commission of the offense. The Court declared that the award of ₱75,000.00 shows "not only a reaction to the apathetic societal perception of the penal law and the financial fluctuations over time but also the expression of the displeasure of the court of the incidence of heinous crimes against chastity.[33]

Thus, the award of ₱75,000.00 as damages is dependent on the existence of a qualifying circumstance that would warrant the imposition of the death penalty. In this case, however, while the CA ordered appellant to pay AAA the amounts of ₱75,000.00 as civil indemnity and ₱75,000.00 as moral damages, it made no mention of any attending qualifying circumstance in the commission of the crime. It simply stated that "the award of civil indemnity to the rape victim is mandatory upon the finding that rape took place. Moral damages, on the other hand, are awarded to rape victims without need of proof other than the fact of rape, under the assumption that the victim suffered moral injuries from the experience she underwent." In fact, a perusal of the dispositive portion of the trial court's Decision would reveal an "absence of any aggravating or mitigating circumstance attendant in the commission of the offense."

It is worthy to note, moreover, that even the following accusatory portion of the Information charging appellant herein does not warrant a conviction of rape in its qualified form:

That on or about January 3, 2000, in the City of Zamboanga, Philippines, and within the jurisdiction of this Honorable Court, the

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[33] *People v. Delos Reyes, supra,* at 554-556. (Emphasis ours)

above-named accused, by means of force and intimidation, did then and there wilfully, unlawfully, and feloniously, have carnal knowledge of one AAA, a girl, 13 years old, against her will; furthermore, **there being present an aggravating** circumstance in that the victim is under eighteen (18) years old and **the accused is an uncle by affinity of the latter.**

Jurisprudence is replete with rulings requiring that Informations charging an accused with the crime of rape qualified by relationship must succinctly state that said accused is a relative within the third civil degree by consanguinity or affinity, to wit:

While it appears that the circumstance of minority under Article 335 (old rape provision) and Article 266-B was sufficiently proven, the allegation of the relationship between AAA and accused-appellant Roxas is considered insufficient under present jurisprudence. This Court has thus held:

> However, as regards the allegation in the Information that appellant is an uncle of the victim, we agree with the Court of Appeals that the same did not sufficiently satisfy the requirements of Art. 335 of the Revised Penal Code, *i.e.*, **it must be succinctly stated that appellant is a relative within the 3rd civil degree by consanguinity or affinity. It is immaterial that appellant admitted that the victim is his niece.** In the same manner, it is irrelevant that "AAA" testified that appellant is her uncle. We held in *People v. Velasquez*:
>
> > However, the trial court erred in imposing the death penalty on accused-appellant, applying Section 11 of Republic Act No. 7659. **We have consistently held that the circumstances under the amendatory provisions of Section 11 of R.A. No. 7659, the attendance of which could mandate the imposition of the single indivisible penalty of death, are in the nature of qualifying circumstances which cannot be proved as such unless alleged in the information. Even in cases where such circumstances are proved, the death penalty cannot be imposed where the information failed to allege them.** To impose the death penalty on the basis of a qualifying circumstance which has not been alleged in the information would violate the accused's constitutional and statutory right to be informed of the nature and cause of the accusation against him.

> **While the informations in this case alleged that accused-appellant is the uncle of the two victims, they did not state that he is their relative within the third civil degree of consanguinity or affinity.** The testimonial evidence that accused-appellant's wife and Luisa de Guzman are sisters is immaterial. The circumstance that accused-appellant is a relative of the victims by consanguinity or affinity within the third civil degree must be alleged in the information. **In the case at bar, the allegation that accused-appellant is the uncle of private complainants was not sufficient to satisfy the special qualifying circumstance of relationship. It was necessary to specifically allege that such relationship was within the third civil degree. Hence, accused-appellant can only be convicted of simple rape on two counts, for which the penalty imposed is *reclusion perpetua* in each case.**[34]

Similarly in this case, the Information merely alleged that "the accused is an uncle by affinity of the latter," failing to clearly state that appellant herein is AAA's *relative within the third civil degree* of consanguinity or affinity, as expressly required by the aforecited ruling. Appellant herein cannot, therefore, be properly convicted of rape in its qualified form resulting in a higher award of damages.

Hence, in view of the failure of the Information to expressly allege the qualifying circumstance of relationship, as well as the absence of any discussion as to the existence of such qualifying circumstance that would warrant the imposition of the death penalty, the Court finds the award of damages in the amount of ₱75,000.00 as civil indemnity and ₱75,000.00 as moral damages improper. Accordingly, both awards of civil indemnity and moral damages are reduced to ₱50,000.00 each, in line with existing jurisprudence.[35] The exemplary damages in the amount

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[34] *People v. Roxas*, G.R. No. 200793, June 4, 2014, 725 SCRA 181, 197-198. (Citations omitted; emphases ours)

[35] *Id.* at 199, citing *People v. Manigo*, G.R. No. 194612, January 27, 2014, 714 SCRA 551.

of ₱30,000.00 awarded by the CA, however, is maintained. Moreover, said amounts shall earn interest at the rate of 6% *per annum* from date of finality of this judgment until fully paid.[36]

WHEREFORE, premises considered, the Court **AFFIRMS** the Decision dated February 27, 2013 of the Court of Appeals in CA-G.R. CR-HC No. 00176-MIN insofar as it (1) found accused-appellant Edgardo Perez *y* Alavado guilty beyond reasonable doubt of the crime of rape sentencing him to suffer the penalty of *reclusion perpetua*, and (2) ordered said accused-appellant to pay AAA the amount of ₱30,000.00 as exemplary damages, with **MODIFICATION** as to the following amounts: (a) ₱50,000.00 as civil indemnity; (b) ₱50,000.00 as moral damages, plus 6% interest *per annum* of all the damages awarded from finality of decision until fully paid.

SO ORDERED.

Velasco, Jr. (Chairperson), del Castillo,[*] *Perez,* and *Reyes, JJ.,* concur.

THIRD DIVISION

[G.R. No. 211642. March 9, 2016]

NELSON TEÑIDO *y* SILVESTRE, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; QUESTIONS PERTAINING TO CREDIBILITY OF A

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[36] *Id.*

[*] Designated Additional Member in lieu of Associate Justice Francis H. Jardeleza, per Raffle dated February 29, 2016.

WITNESS ARE FACTUAL IN NATURE AND ARE, GENERALLY, OUTSIDE THE AMBIT OF THE COURT'S APPELLATE JURISDICTION; SUSTAINED.— Questions pertaining to the credibility of a witness are factual in nature and are, generally, outside the ambit of the Court's appellate jurisdiction. It is a settled rule that a petition for review on *certiorari* under Rule 45 of the Rules of Court shall raise only questions of law. "A question that invites a review of the factual findings of the lower tribunals or bodies is beyond the scope of this Court's power of review and generally justifies the dismissal of the petition." Moreover, it is axiomatic that absent any showing that the trial court overlooked substantial facts and circumstances that would affect the final disposition of the case, appellate courts are bound to give due deference and respect to its evaluation of the credibility of an eyewitness and his testimony as well as its probative value as it was certainly in a better position to rate the credibility of the witnesses after hearing them and observing their deportment and manner of testifying during the trial.

2. ID.; ID.; ID.; WHERE THERE IS NO EVIDENCE TO INDICATE THAT THE PROSECUTION WITNESS WAS ACTUATED BY IMPROPER MOTIVE, THE PRESUMPTION IS THAT SHE WAS NOT SO ACTUATED AND THAT HER TESTIMONY IS ENTITLED TO FULL FAITH AND CREDIT; APPLICATION IN CASE AT BAR.— Teñido berates the trustworthiness of Guinto's testimony based on her declaration during cross-examination that she was not able to recognize the man who first entered the store because she only saw the back profile of the robbers. An examination however of her entire testimony clearly shows that even before the robbers have entered the store and while they were just on their way thereto coming from a nearby house and as they were destroying the store's *lawanit* wall, she has already identified them to be Teñido and Alvarade. Thus, the detail as to who between them first entered the store is inconsequential. Teñido further discredits the reliability of Guinto's testimony because she failed to shout for help as she was allegedly witnessing the robbery; it also took her two months to report what she supposedly witnessed to Enriquez and to the authorities. The fact of delay attributed to a prosecution witness cannot be taken against her. What is important is that her testimony regarding the incident bears the earmarks of truth and dependability. x x x

Guinto sufficiently explained that she got nervous and frightened. Further, there is no showing that Guinto was impelled by any ill motive to fabricate facts and attribute a serious offense against Teñido. Where there is no evidence to indicate that the prosecution witness was actuated by improper motive, the presumption is that she was not so actuated and that her testimony is entitled to full faith and credit.

3. ID.; ID.; ID.; POSITIVE IDENTIFICATION OF THE ACCUSED BY THE WITNESS PREVAILS OVER THE FORMER'S SELF SERVING DENIAL AND WEAK *ALIBI*; PRESENT IN CASE AT BAR.— Guinto testified in a categorical, straightforward, consistent and spontaneous manner. Her positive identification of Teñido as one of the perpetrators of the robbery thus prevails over the latter's self-serving denial and weak *alibi*. For *alibi* to prosper, the accused must demonstrate that it was physically impossible for him to be at the crime scene at the time it was committed. Here, Teñido failed to prove such physical impossibility as he even admitted that on the night of the incident he was at his house which was just across the street from the Enriquez residence.

4. CRIMINAL LAW; REVISED PENAL CODE; ROBBERY; IMPOSABLE PENALTY.— The penalty for robbery in one of the dependencies of an inhabited house committed by breaking a wall, where the value taken exceeds P250.00 and the offender does not carry arms under Article 299, subdivision (a), number (2), paragraph 4 of the RPC, is *prision mayor*, In view of the absence of any aggravating or mitigating circumstance, the penalty becomes *prision mayor* in its medium period in accordance with Article 64, paragraph 1 of the RPC. Applying the Indeterminate Sentence Law, the range of the penalty now is *prision correccional* in any of its periods as minimum to *prision mayor* medium as its maximum. The penalty imposable upon Teñido should thus be anywhere six (6) months and one (1) day to six (6) years, as minimum, and eight (8) years and one (1) day to ten (10) years, as maximum. Applying the foregoing, the maximum penalty imposed by the CA should be modified to eight (8) years and one (1) day of *prision mayor* in its medium period. Although the minimum penalty imposed by the CA is within the aforesaid range of penalty, the Court deems it proper to modify the same in consonance with a jurisprudence involving a robbery case with identical

circumstances wherein the minimum prison term imposed was four (4) years, two (2) months, and one day (1) of *prision correccional.*

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
Office of the Solicitor General for respondent.

R E S O L U T I O N

REYES, *J.*:

This resolves the Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court, from the Decision[2] dated September 20, 2013 of the Court of Appeals (CA) in CA-G.R. CR No. 34325 which affirmed with modification the Decision[3] dated May 23, 2011 of the Regional Trial Court (RTC) of Manila, Branch 25, in Criminal Case No. 88-67398 finding Nelson Teñido *y* Silvestre (Teñido) guilty beyond reasonable doubt of the crime of Robbery in the manner, date and circumstances stated in the criminal information accusing him and his co-accused, Rizaldo Alvarade *y* Valencia (Alvarade), as follows:

That on or about June 22, 1988, in the City of Manila, Philippines, the said accused, conspiring and confederating together and helping each other, did then and there wilfully, unlawfully and feloniously, with intent of gain and without the knowledge and consent of the owner thereof, by means of force upon things, break into and enter house no. 1250, Kahilom I, Pandacan, Manila, inhabited by Lolita Sus de Enriquez, by the[n] and there destroying the chicken wire of their door at the store and removing a small piece of lawanit nailed to it, and passing through the same, an opening not intended for entrance or egress, and once inside, took, stole and carried away

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[1] *Rollo*, pp. 11-26.

[2] Penned by Associate Justice Romeo F. Barza, with Associate Justices Noel G. Tijam and Ramon A. Cruz concurring; *id.* at 30-40.

[3] Issued by Presiding Judge Aida Rangel-Roque; *id.* at 58-66.

therefrom cash money amounting to ₱600.00, one (1) male wristwatch (Rolex) worth ₱2,000.00, one (1) Citizen wristwatch worth ₱995, one (1) gold ring with stone (brillante) worth ₱1,500.00, one (1) wallet containing cash money of ₱1,200.00, and one (1) gold[-]plated Seiko 5 watch worth ₱1,200.00 with a total value of ₱7,495.00, belonging to Lolita Sus de Enriquez, to the damage and prejudice of the said owner in the aforesaid amount of ₱7,495.00, Philippine currency.

Contrary to law.[4]

The prosecution substantiated the foregoing criminal charge through the testimony of Aurora Guinto (Guinto), a neighbor of the private complainant, Lolita Enriquez (Enriquez). Guinto's house was directly across and five meters away from the house of Enriquez where the robbery took place. Guinto narrated that at around 3:30 a.m. of June 22, 1988, she woke up to prepare breakfast for her family. She was opening the windows of the room in the second floor of her house when she saw two men trying to enter the house of one Mary Amor Galvez. Failing to open the said house, the two transferred to the house of Enriquez. They went to the side of the house where the store was located and entered by destroying the screen door. The two thereafter came out carrying a square-shaped box and went into an alley. Since the premises of Enriquez's house were well-lighted, she recognized the two men to be Teñido *alias* Dolphy or Pidol and Alvarade *alias* Bukol. She had known Teñido since 1976 and she had seen him frequently loitering around the neighborhood. Guinto explained that she failed to immediately report the incident to Enriquez because she was frightened.[5]

Likewise submitted in evidence was the testimony of Enriquez, who declared that at about the same time, she was awakened by a noise coming from the door of the store adjacent to her house. She woke her husband up and they checked their property. They discovered that the door of the store was opened and the *lawanit* (chicken wire) covering the wall of the store was

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[4] *Id.* at 58.

[5] *Id.* at 31-32, 59-60.

detached. Upon further probing, she found out that the following items were missing: one (1) gold ring with diamond worth ₱1,500.00; one (1) Rolex wrist watch valued at ₱2,000.00; one (1) Seiko 5 with gold bracelet worth ₱1,200.00; one (1) Citizen lady's wrist watch worth ₱995.00; her husband's wallet containing ₱1,200.00 in cash; and a box which contained the daily sales amounting to ₱600.00.[6]

Meanwhile, Teñido interposed denial and *alibi*. He denied any involvement in the robbery and claimed that at around 3:30 a.m. of June 22, 1988, he was in his house together with his parents. He recalled that he was arrested by a certain Mar Brun who brought him to Precinct 10 and was subjected to inquest one week thereafter. Enriquez had been his neighbor for about 10 years prior to the incident.[7]

Ruling of the RTC

In its Decision[8] dated May 23, 2011, the RTC accorded more weight and credibility to the prosecution's evidence *vis-à-vis* the lone testimony of Teñido. According to the RTC, all the elements of robbery as defined in Article 299 of the Revised Penal Code (RPC) were present and the identity of Teñido as one of the perpetrators was positively and convincingly established by the testimony of eyewitness Guinto. The RTC ruled thus:

> **WHEREFORE**, the Court finds the accused [Teñido] **GUILTY** beyond reasonable doubt of the crime of Robbery, defined and penalized under Article 299 of the [RPC] and hereby sentences him to suffer the penalty of *six years and one day of prision mayor as minimum imprisonment to eight years of prision mayor as maximum imprisonment.* The accused is likewise ordered to reimburse [Enriquez] the amount of Php7,495.00 representing the value of her personal belongings and to pay the costs of suit.

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[6] *Id.* at 32, 58.

[7] *Id.* at 33, 64.

[8] *Id.* at 58-66.

Meanwhile, considering that [Alvarade] remains at large, let the records of this case be placed in the archives subject to revival, at the behest of the prosecution, if circumstances warrant.

SO ORDERED.[9]

Ruling of the CA

Teñido sought recourse before the CA questioning the credibility accorded by the RTC to Guinto's testimony despite her failure to categorically testify on these matters: the identity of Teñido as one of the culprits; what were the culprits wearing; which culprit entered or exited first; who was holding the box allegedly carried out of the Enriquez residence. Teñido further alleged that Guinto's failure to report the incident immediately instead of two months later casts doubt on the veracity of her declarations.[10]

In a Decision[11] dated September 20, 2013, the CA affirmed the RTC's findings. The CA noted that it found no circumstances tending to show that the RTC arbitrarily evaluated Guinto's testimony or that it overlooked, misunderstood or misapplied substantial facts. The CA observed that Guinto's positive identification of Teñido as one of the perpetrators of the robbery was firm and candid. She had known him for a long time and her house was directly opposite the crime scene, the premises of which was sufficiently illuminated. The alleged loopholes in her testimony pertained to facts that are immaterial to the prosecution of the case. More so, the fact that it took her two months to report what she witnessed did not make her testimony any less credible. She explained that she got nervous and frightened. No clear-cut standard form of behavior can be drawn from an unusual experience such as witnessing a crime. Accordingly, the CA affirmed the conviction of Teñido. The CA, however, modified the penalty based on these factors: (a) Teñido

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[9] *Id.* at 66.

[10] *Id.* at 34.

[11] *Id.* at 30-40.

was not armed; (b) the value of the stolen items exceeded ₱250.00; and (c) there are no attendant aggravating or mitigating circumstances. The CA decision disposed thus:

> **WHEREFORE**, the assailed Decision dated 23 May 2011 finding [Teñido] **GUILTY** beyond reasonable doubt of the crime of Robbery, as defined and penalized under Art. 299 of the [RPC], is hereby **AFFIRMED** with **MODIFICATION** on the penalty imposed. As modified, [Teñido] is hereby sentenced to suffer the Indeterminate Penalty of six (6) years of *prision correccional*, as minimum penalty to eight (8) years of *prision mayor* medium, as maximum penalty. The trial court is further **AFFIRMED** as to the amount of indemnity and costs of suit.
>
> **SO ORDERED.**[12]

Teñido moved for reconsideration,[13] but it was denied in the CA Resolution[14] dated February 20, 2014. Hence the present petition, reiterating the same arguments broached before the CA.

Ruling of the Court

The Court denies the petition.

It is immediately observable that the arguments reiterated in the petition essentially involve the RTC's assessment of the credibility of the testimony of the prosecution's principal witness, Guinto, and its ruling that the same satisfactorily repudiates his denial and *alibi*.

Questions pertaining to the credibility of a witness are factual in nature and are, generally, outside the ambit of the Court's appellate jurisdiction. It is a settled rule that a petition for review on *certiorari* under Rule 45 of the Rules of Court shall raise only questions of law. "A question that invites a review of the factual findings of the lower tribunals or bodies is beyond the

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[12] *Id.* at 39.

[13] *Id.* at 85-90.

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

scope of this Court's power of review and generally justifies the dismissal of the petition."[15]

Moreover, it is axiomatic that absent any showing that the trial court overlooked substantial facts and circumstances that would affect the final disposition of the case, appellate courts are bound to give due deference and respect to its evaluation of the credibility of an eyewitness and his testimony as well as its probative value as it was certainly in a better position to rate the credibility of the witnesses after hearing them and observing their deportment and manner of testifying during the trial.[16]

The Court finds no cogent reason to depart from the foregoing tenets especially in view of the absence of any exceptional circumstances[17] that will justify a re-evaluation of the RTC's factual findings.

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[15] Court First Division Resolution dated August 20, 2014 in G.R. No. 202630 entitled *Joseph Bitome v. People of the Philippines*, citing *Natividad v. Mariano, et al.*, 710 Phil. 57, 68 (2013).

[16] *People v. Gamez*, G.R. No. 202847, October 23, 2013, 708 SCRA 625, 634.

[17] (1) When the factual findings of the [CA] and the trial court are contradictory;

(2) When the conclusion is a finding grounded entirely on speculation, surmises or conjectures;

(3) When the inference made by the [CA] from its findings of fact is manifestly mistaken, absurd or impossible;

(4) When there is grave abuse of discretion in the appreciation of facts;

(5) When the appellate court, in making its findings, went beyond the issues of the case, and such findings are contrary to the admissions of both appellant and appellee;

(6) When the judgment of the [CA] is premised on misapprehension of facts;

(7) When the [CA] failed to notice certain relevant facts which, if properly considered, would justify a different conclusion;

(8) When the findings of fact are themselves conflicting;

(9) When the findings of fact are conclusions without citation of the specific evidence on which they are based; and

(10) When the findings of fact of the [CA] are premised on the absence of evidence but such findings are contradicted by the evidence on record. See *Salcedo v. People*, 400 Phil. 1302, 1308-1309 (2000), citing *Fuentes v. CA*, 335 Phil. 1163, 1168-1169 (1997).

The CA, in affirming the RTC ruling, did not misapprehend or overlook relevant facts that will substantiate a different conclusion.

Teñido berates the trustworthiness of Guinto's testimony based on her declaration during cross-examination that she was not able to recognize the man who first entered the store because she only saw the back profile of the robbers. An examination however of her entire testimony clearly shows that even before the robbers have entered the store and while they were just on their way thereto coming from a nearby house and as they were destroying the store's *lawanit* wall, she has already identified them to be Teñido and Alvarade.[18] Thus, the detail as to who between them first entered the store is inconsequential.

Teñido further discredits the reliability of Guinto's testimony because she failed to shout for help as she was allegedly witnessing the robbery; it also took her two months to report what she supposedly witnessed to Enriquez and to the authorities.

The fact of delay attributed to a prosecution witness cannot be taken against her. What is important is that her testimony regarding the incident bears the earmarks of truth and dependability.[19] Time and again, the Court has stressed:

> Delay in revealing the identity of the perpetrators of a crime does not necessarily impair the credibility of a witness, especially where sufficient explanation is given. No standard form of behavior can be expected from people who had witnessed a strange or frightful experience. Jurisprudence recognizes that witnesses are naturally reluctant to volunteer information about a criminal case or are unwilling to be involved in criminal investigations because of varied reasons. Some fear for their lives and that of their family; while others shy away when those involved in the crime are their relatives or townmates. And where there is delay, it is more important to consider the reason for the delay, which must be sufficient or well-grounded, and not the length of delay.[20] (Citations omitted)

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[18] *Rollo*, p. 35.

[19] *Vidar, et al. v. People*, 625 Phil. 57, 68 (2010).

[20] *People v. Berondo, Jr.*, 601 Phil. 538, 544-545 (2009).

Guinto sufficiently explained that she got nervous and frightened.[21] Further, there is no showing that Guinto was impelled by any ill motive to fabricate facts and attribute a serious offense against Teñido. Where there is no evidence to indicate that the prosecution witness was actuated by improper motive, the presumption is that she was not so actuated and that her testimony is entitled to full faith and credit.[22]

Guinto testified in a categorical, straightforward, consistent and spontaneous manner. Her positive identification of Teñido as one of the perpetrators of the robbery thus prevails over the latter's self-serving denial and weak *alibi*. For *alibi* to prosper, the accused must demonstrate that it was physically impossible for him to be at the crime scene at the time it was committed.[23] Here, Teñido failed to prove such physical impossibility as he even admitted that on the night of the incident he was at his house which was just across the street from the Enriquez residence.

The penalty for robbery in one of the dependencies of an inhabited house committed by breaking a wall, where the value taken exceeds ₱250.00 and the offender does not carry arms under Article 299, subdivision (a), number (2), paragraph 4 of the RPC, is *prision mayor*. In view of the absence of any aggravating or mitigating circumstance, the penalty becomes *prision mayor* in its medium period in accordance with Article 64, paragraph 1 of the RPC. Applying the Indeterminate Sentence Law, the range of the penalty now is *prision correccional* in any of its periods as minimum to *prision mayor* medium as its maximum.[24] The penalty imposable upon Teñido should thus be anywhere between six (6) months and one (1) day to six (6) years, as minimum, and eight (8) years and one (1) day to ten (10) years, as maximum.[25]

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[21] *Rollo*, p. 36.

[22] *Vidar, et al. v. People, supra* note 19.

[23] *People v. Castro, et al.*, 684 Phil. 319, 328-329 (2012).

[24] *Estioca v. People*, 578 Phil. 853, 873 (2008).

[25] REVISED PENAL CODE, Article 76.

Applying the foregoing, the maximum penalty imposed by the CA should be modified to eight (8) years and one (1) day of *prision mayor* in its medium period. Although the minimum penalty imposed by the CA is within the aforesaid range of penalty, the Court deems it proper to modify the same in consonance with a jurisprudence involving a robbery case with identical circumstances wherein the minimum prison term imposed was four (4) years, two (2) months, and one day (1) of *prision correccional*.[26]

WHEREFORE, premises considered, the petition is **DENIED**. The Decision dated September 20, 2013 of the Court of Appeals in CA-G.R. CR No. 34325 is hereby **AFFIRMED with MODIFICATION** on the penalty imposed. Nelson Teñido *y* Silvestre is hereby sentenced to suffer the Indeterminate Penalty of four (4) years, two (2) months, and one (1) day of *prision correccional* as minimum penalty to eight (8) years and one (1) day of *prision mayo*r medium, as maximum penalty.

SO ORDERED.

Velasco, Jr. (Chairperson), Peralta, Bersamin,[*] and *Perez, JJ.*, concur.

FIRST DIVISION

[G.R. No. 214430. March 9, 2016]

FELICITO M. MEJORADO, *petitioner, vs.* **HON. FLORENCIO B. ABAD, IN HIS CAPACITY AS THE SECRETARY OF THE DEPARTMENT OF BUDGET AND MANAGEMENT,** *respondent.*

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[26] *Estioca v. People, supra* note 24.

[*] Additional Member per Raffle dated October 8, 2014 *vice* Associate Justice Francis H. Jardeleza.

SYLLABUS

REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *MANDAMUS*; *MANDAMUS* WILL NOT ISSUE TO ENFORCE A RIGHT WHICH IS IN SUBSTANTIAL DISPUTE OR TO WHICH A SUBSTANTIAL DOUBT EXISTS; PRESENT IN CASE AT BAR.— It is settled that *mandamus* is employed to compel the performance, when refused, of a ministerial duty, but not to compel the performance of a discretionary duty. ***Mandamus will not issue to enforce a right which is in substantial dispute or to which a substantial doubt exists.*** In *Star Special Watchman and Detective Agency, Inc. v. Puerto Princesa City*, a case cited at length by petitioner himself, the Court elucidated on the propriety of the issuance of the writ of *mandamus* in this wise: x x x **The writ of *mandamus*, however, will not issue to compel an official to do anything which is not his duty to do or which it is his duty not to do, or to give to the applicant anything to which he is not entitled by law. Nor will mandamus issue to enforce a right which is in substantial dispute or as to which a substantial doubt exists**, although objection raising a mere technical question will be disregarded if the right is clear and the case is meritorious. As a rule, *mandamus* will not lie in the absence of any of the following grounds: [a] that the court, officer, board, or person against whom the action is taken unlawfully neglected the performance of an act which the law specifically enjoins as a duty resulting from office, trust, or station; or [b] that such court, officer, board, or person has unlawfully excluded petitioner/relator from the use and enjoyment of a right or office to which he is entitled. On the part of the relator, **it is essential to the issuance of a writ of *mandamus* that he should have a clear legal right to the thing demanded and it must be the imperative duty of respondent to perform the act required**. x x x In this case, petitioner's right to receive the amount of his second claim, *i.e.*, **₱272,064,996.55** or twenty percent (20%) of the total deficiency taxes assessed and collected from URC, OILINK, UGT, and PAL, which was based on Section 3513 of the TCCP, is still in substantial dispute, as exhibited by the variance in opinions rendered by the DOJ as well as the BOC and the DOF regarding the applicable laws. It bears reiteration that the writ of *mandamus* may only issue if the party claiming it has a **well-defined, clear, and certain legal right** to the thing

demanded, and that it was the imperative duty of respondent to perform the act required to accord the same upon him. Petitioner's prayer for the issuance of the NCA to cover the amount of his *second claim* falls short of this standard, there being no clear and specific duty on the part of the respondent to issue the same.

APPEARANCES OF COUNSEL

Dante F. Vargas for petitioner.
The Solicitor General for respondent.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Before the Court is a Petition for *Mandamus* with Prayer for Preliminary Prohibitory and Mandatory Injunction[1] filed by petitioner Felicito M. Mejorado (petitioner) seeking to compel respondent Honorable Florencio B. Abad (respondent), in his capacity as Secretary of the Department of Budget and Management (DBM), after due proceedings, to issue the Notice of Cash Allocation (NCA) covering the informer's reward claimed by petitioner.

The Facts

Sometime in December 1996 and the early part of 1997, petitioner documented 62 smuggled oil importations from 1991 to 1997 of Union Refinery Corporation (URC), OILINK Industrial Corporation (OILINK),[2] Union Global Trading (UGT), and Philippine Airlines (PAL). He provided confidential information detailing the illegal importations of the said companies to the now-defunct Economic Intelligence and Investigation Bureau of the Bureau of Customs (BOC).[3]

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[1] *Rollo*, pp. 3-69.

[2] Sometimes referred to as "OILLINK"; see *rollo*, p. 9.

[3] *Id.* at 9.

Based on the information petitioner furnished, the BOC investigated 23 out of the 62 smuggled oil importations he reported. The investigation resulted in the payment by the four (4) companies of millions in unpaid Value-Added Tax (VAT), excise, and *ad valorem* taxes from 1997 to 1998. Thus, petitioner filed his *first claim* for informer's reward with the BOC and the Department of Finance (DOF).[4]

Subsequently, the BOC investigated 30 additional smuggled oil importations out of the 62 that petitioner reported. From this investigation, it was able to collect deficiency taxes from URC, OILINK, and PAL, prompting petitioner to file his *second claim* for informer's fee on May 12, 2000.[5]

Records show that petitioner was able to receive the amount of ₱63,185,959.73 as informer's fee for the *first claim* on April 19, 2006.[6]

On April 19, 2005, in response to an inquiry from the DOF relative to informer's reward, the Department of Justice (DOJ), through then Secretary Raul M. Gonzalez (Secretary Gonzalez), rendered Opinion No. 18, series of 2005[7] (*2005 Opinion*) stating that there is no conflict between Section 3513 of the Tariff and Customs Code of the Philippines (TCCP),[8] as amended by Republic Act No. (RA) 4712,[9] a special law, and Section 282 of RA 8424, otherwise known as the Tax Reform Act of 1997,[10] which amended the National Internal

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[4] *Id*.

[5] *Id*. at 10-11 and 137-138.

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

[7] *Id*. at 72-75. Signed by Secretary Raul M. Gonzalez.

[8] Entitled "AN ACT TO REVISE AND CODIFY THE TARIFF AND CUSTOMS LAWS OF THE PHILIPPINES," approved on June 22, 1957.

[9] Entitled "AN ACT AMENDING CERTAIN SECTIONS OF THE TARIFF AND CUSTOMS CODE OF THE PHILIPPINES," approved on June 18, 1966.

[10] Entitled "AN ACT AMENDING THE NATIONAL INTERNAL REVENUE CODE, AS AMENDED, AND FOR OTHER PURPOSES" (January 1, 1998).

Revenue Code (NIRC), a general law.[11] Section 3513 of the TCCP states:

Section 3513. *Reward to persons instrumental in the discovery and seizure of smuggled goods*. – To encourage the public and law enforcement personnel to extend full cooperation and do their utmost in stamping out smuggling, a cash reward [equivalent] to **twenty per centum** of the fair market value of the smuggled and confiscated goods shall be given to the officers and men and informers who are instrumental in the discovery and seizure of such goods in accordance with the rules and regulations to be issued by the Secretary of Finance. (Emphasis and underscoring supplied)

On the other hand, Section 282 of the NIRC, as amended, states:

Section 282. ***Informer's Reward to Persons Instrumental in the Discovery of Violations of the National Internal Revenue Code and in the Discovery and Seizure of Smuggled Goods***. –

(A) **For Violations of the National Internal Revenue Code**. Any person, except an internal revenue official or employee, or other public official or employee, or his relative within the sixth degree of consanguinity, who voluntarily gives definite and sworn information, not yet in the possession of the Bureau of Internal Revenue, leading to the discovery of frauds upon the internal revenue laws or violations of any of the provisions thereof, thereby resulting in the recovery of revenues, surcharges and fees and/or the conviction of the guilty party and/or the imposition of any of the fine or penalty, shall be rewarded in a sum equivalent to **ten percent (10%)** of the revenues, surcharges or fees recovered and/or fine or penalty imposed and collected or One Million Pesos (₱1,000,000) per case, whichever is lower. The same amount of reward shall also be given to an informer where the offender has offered to compromise the violation of law committed by him and his offer has been accepted by the Commissioner and collected from the offender: *Provided*, That should no revenue, surcharges or fees be actually recovered or collected, such person shall not be entitled to a reward: *Provided, further*, That the information mentioned herein shall not refer to a case already pending or previously investigated or examined by the Commissioner or any of his deputies,

[11] *Rollo*, pp. 11-12.

agents or examiners, or the Secretary of Finance or any of his deputies or agents: *Provided, finally*, That the reward provided herein shall be paid under rules and regulations issued by the Secretary of Finance, upon recommendation of the Commissioner.

(B) **For Discovery and Seizure of Smuggled Goods**. To encourage the public to extend full cooperation in eradicating smuggling, a cash reward equivalent to **ten percent (10%)** of the fair market value of the smuggled and confiscated goods or One Million Pesos (₱1,000,000) per case, whichever is lower, shall be given to persons instrumental in the discovery and seizure of such smuggled goods.

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(Emphases and underscoring supplied)

In its *2005 Opinion*, the DOJ opined that the provisions of the TCCP specifically cover tariff and customs duties, while the provisions of the NIRC govern all internal revenue taxes in general.[12] The Office of the President (OP) concurred in this pronouncement.[13]

Thus, on April 12, 2007, the DOF favorably indorsed[14] petitioner's *second claim* to the BOC amounting to **₱272,064,996.55**, or twenty percent (20%) of the total deficiency assessed and collected from URC, OILINK, and PAL, based on Section 3513 of the TCCP.

Subsequently, on September 8, 2008, the OP directed[15] the DBM to issue an NCA covering the *second claim*[16] of petitioner.[17]

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[12] *Id*. at 74.

[13] See *id*. at 76-78. See letter dated August 3, 2005 signed by Executive Secretary Eduardo R. Ermita.

[14] See 2nd Indorsement signed by members Gil S. Beltran, Ma. Teresa S. Habitan, Ma. Lourdes V. Dedal, and Eleazar C. Cesista and approved by Committee on Rewards Undersecretary and Chairman Gaudencio A. Mendoza, Jr.; *id*. at 79-81.

[15] See Memorandum from the Executive Secretary signed by Executive Secretary Eduardo R. Ermita; *id*. at 82.

[16] See 2nd Indorsement dated April 12, 2007; *id* at 81.

[17] The amount of the *second claim* was increased from ₱272,064,996.55 to ₱272,074,992.91. See *id*. at 82.

Apparently due to lack of response, on August 22, 2011, the BOC itself also requested from the DBM the issuance and release of the NCA pertaining to petitioner's *second claim*.[18]

On March 28, 2012, National Treasurer Roberto B. Tan certified that the amount pertaining to petitioner's *second claim* was still available and may be paid to the latter anytime.[19] Thus, on April 18, 2012, the BOC once again requested from the DBM, through respondent, the issuance of the NCA to cover the payment of petitioner's *second claim*.[20] Petitioner himself also wrote letters[21] to the DBM reiterating the request for the issuance of said NCA.

On June 8, 2012, in response to an inquiry from the DOF regarding the percentage of fees that should be given to informers, the DOJ, through former Secretary Leila M. De Lima (Secretary De Lima), issued Opinion No. 40, series of 2012[22] (*2012 Opinion*) superseding the *2005 Opinion* issued by then Secretary Gonzalez. In the *2012 Opinion*, the DOJ declared that Section 3513 of the TCCP has been impliedly repealed, or at the very least, amended or modified by Section 282 (B) of the NIRC, as amended, since they both refer to the same subject matter and contain inconsistent provisions.[23] As such, under Section 282 (B) of the NIRC, as amended – the controlling provision with respect to informer's reward for discovery and seizure of smuggled goods – the amount of the reward is only ten percent (10%) of the fair market value of the smuggled and confiscated goods or ₱1,000,000.00, whichever is lower.[24]

In a letter[25] dated December 16, 2013, the DOF sought clarification from the DOJ on the implication of the following

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[18] *Id*. at 83. Signed by Commissioner Angelito A. Alvarez.

[19] *Id*. at 84.

[20] *Id*. at 85. Signed by Commissioner Rozzano Rufino B. Biazon.

[21] See *id*. at 86-89-A.

[22] *Id*. at 89-B-93. Signed by Secretary Leila M. De Lima.

[23] *Id*. at 92.

[24] *Id*. at 90.

[25] *Id*. at 94-98. Signed by Secretary of Finance Cesar V. Purisima.

statements: (*1*) the pronouncement in the *2012 Opinion* may be applied to claims for informer's rewards for discovery and seizure of smuggled goods filed even before the issuance of the *2012 Opinion*, as long as said claims were filed after the effectivity of the Tax Reform Act; (*2*) considering that Section 282 (B) of the NIRC, as amended, is the controlling provision with respect to the informer's reward for discovery and seizure of smuggled goods, the DOF may revise the awards it has made on the basis of Section 3513 of the TCCP and the DOJ's *2005 Opinion*; and (*3*) the Republic of the Philippines may, therefore, recover amounts erroneously awarded to a number of claimants on the basis of Section 3513 of the TCCP and the said *2005 Opinion*.[26]

In response thereto, the DOJ rendered Opinion No. 01, series of 2014[27] dated January 8, 2014 (*2014 Opinion*) stating that its opinions are not administrative issuances that interpret the law, but rather, are purely advisory in nature.[28] Thus, it maintained that it is not the DOJ, but the DOF and the BOC, which are primarily charged with the implementation, administration, and enforcement of the TCCP and the NIRC, that should issue administrative issuances interpreting said laws.[29]

Thereafter, in a letter[30] dated May 2, 2014, the DBM informed petitioner that it has yet to receive a favorable endorsement from the DOF on its request for re-evaluation of his claim. It also informed petitioner of the DOJ's *2012 Opinion* stating that under Section 282 (B) of the NIRC, only ten percent (10%) of the fair market value of the smuggled goods or ₱1,000,000.00, whichever is lower, is given as informer's fee.[31]

To date, the DBM has not issued any NCA pertaining to the amount of petitioner's *second claim* for informer's fee; hence,

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[26] *Id*. at 96.

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

[28] *Id*. at 101.

[29] *Id*. at 102.

[30] *Id*. at 103. Signed by DBM Undersecretary Luz M. Cantor.

[31] *Id*.

this petition for *mandamus* praying, *inter alia*, that respondent be directed to issue the NCA covering his *second claim* and that the amount thereof be released to him with interest at the legal rate.

In his Comment,[32] respondent, through the Office of the Solicitor General (OSG), maintained, *inter alia*, that: (*1*) Section 3513 of the TCCP has been repealed by the NIRC, as amended;[33] (*2*) mistaken acts of public officials, *i.e.*, the *2005 Opinion* of the DOJ, cannot validate a claim based on a repealed law;[34] and (3) petitioner is not entitled to legal interest on his informer's fee, for lack of legal basis.[35]

The Issue Before the Court

The sole issue to be resolved by the Court is whether or not respondent may be compelled by *mandamus* to issue the NCA corresponding to the amount of petitioner's *second claim* for informer's fee.

The Court's Ruling

The petition is bereft of merit.

It is settled that *mandamus* is employed to compel the performance, when refused, of a ministerial duty, but not to compel the performance of a discretionary duty. ***Mandamus will not issue to enforce a right which is in substantial dispute or to which a substantial doubt exists.***[36] In *Star Special Watchman and Detective Agency, Inc. v. Puerto Princesa City*,[37] a case cited at length by petitioner himself,[38] the Court elucidated

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[32] *Id*. at 136-152.

[33] See *id*. at 142-147.

[34] See *id*. at 147-148.

[35] See *id*. at 149-150.

[36] *Angeles v. The Secretary of Justice*, 628 Phil. 381, 396 (2010); citation omitted.

[37] G.R. No. 181792, April 21, 2014, 722 SCRA 66.

[38] *Rollo*, pp. 42-45.

on the propriety of the issuance of the writ of *mandamus* in this wise:

Mandamus is a command issuing from a court of law of competent jurisdiction, in the name of the state or the sovereign, directed to some inferior court, tribunal, or board, or to some corporation or person requiring the performance of a particular duty therein specified, which duty results from the official station of the party to whom the writ is directed or from operation of law. This definition recognizes the public character of the remedy, and clearly excludes the idea that it may be resorted to for the purpose of enforcing the performance of duties in which the public has no interest. The writ is a proper recourse for citizens who seek to enforce a public right and to compel the performance of a public duty, most especially when the public right involved is mandated by the Constitution. As the quoted provision instructs, *mandamus* will lie if the tribunal, corporation, board, officer, or person unlawfully neglects the performance of an act which the law enjoins as a duty resulting from an office, trust or station.

The writ of *mandamus*, however, will not issue to compel an official to do anything which is not his duty to do or which it is his duty not to do, or to give to the applicant anything to which he is not entitled by law. Nor will *mandamus* issue to enforce a right which is in substantial dispute or as to which a substantial doubt exists, although objection raising a mere technical question will be disregarded if the right is clear and the case is meritorious. As a rule, *mandamus* will not lie in the absence of any of the following grounds: [a] that the court, officer, board, or person against whom the action is taken unlawfully neglected the performance of an act which the law specifically enjoins as a duty resulting from office, trust, or station; or [b] that such court, officer, board, or person has unlawfully excluded petitioner/relator from the use and enjoyment of a right or office to which he is entitled. On the part of the relator, **it is essential to the issuance of a writ of *mandamus* that he should have a clear legal right to the thing demanded and it must be the imperative duty of respondent to perform the act required.**

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Moreover, an important principle followed in the issuance of the writ is that there should be no plain, speedy and adequate remedy in the ordinary course of law other than the remedy of *mandamus* being invoked. In other words, *mandamus* can be issued only in cases where the usual modes of procedure and forms of remedy are powerless to

afford relief. Although classified as a legal remedy, *mandamus* is equitable in its nature and its issuance is generally controlled by equitable principles. Indeed, the grant of the writ of *mandamus* lies in the sound discretion of the court.[39] (Emphases and underscoring supplied)

In this case, petitioner's right to receive the amount of his *second claim*, *i.e.*, **₱272,064,996.55** or twenty percent (20%) of the total deficiency taxes assessed and collected from URC, OILINK, UGT, and PAL, which was based on Section 3513 of the TCCP, is still in substantial dispute, as exhibited by the variance in opinions rendered by the DOJ as well as the BOC and the DOF regarding the applicable laws.

It bears reiteration that the writ of *mandamus* may only issue if the party claiming it has a **well-defined, clear, and certain legal right** to the thing demanded, and that it was the imperative duty of respondent to perform the act required to accord the same upon him. Petitioner's prayer for the issuance of the NCA to cover the amount of his *second claim* falls short of this standard, there being no clear and specific duty on the part of the respondent to issue the same.

In fine, the Court dismisses the present petition for *mandamus* for being the improper remedy to obtain the relief sought for. It should, however, be made clear that the dismissal is without prejudice to petitioner's recourse before the proper forum for the apt resolution of the subject claim.

WHEREFORE, the petition for *mandamus* is **DENIED**.

SO ORDERED.

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

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[39] *Star Special Watchman and Detective Agency, Inc. v. Puerto Princesa City, supra* note 37, at 80-82; citation omitted.

FIRST DIVISION

[G.R. No. 214752. March 9, 2016]

EQUITABLE SAVINGS BANK, (now known as the merged entity "BDO Unibank, Inc."), *petitioner, vs.* **ROSALINDA C. PALCES,** *respondent.*

SYLLABUS

1. CIVIL LAW; CONTRACTS; LOAN; A LOAN CONTRACT WITH THE ACCESSORY CHATTEL MORTGAGE CONTRACT DISTINGUISHED FROM A CONTRACT OF SALE OF PERSONAL PROPERTY IN INSTALLMENT; RIGHTS OF THE MORTGAGEE IN CASE OF DEFAULT, EXPLAINED; CASE AT BAR.— Article 1484 of the Civil Code, which governs the sale of personal properties in installments. x x x In this case, there was no vendor-vendee relationship between respondent and petitioner. A judicious perusal of the records would reveal that respondent never bought the subject vehicle from petitioner but from a third party, and merely sought financing from petitioner for its full purchase price. In order to document the loan transaction between petitioner and respondent, a Promissory Note with Chattel Mortgage dated August 18, 2005 was executed wherein, *inter alia*, respondent acknowledged her indebtedness to petitioner in the amount of ₱l,196,100.00 and placed the subject vehicle as a security for the loan. Indubitably, a loan contract with the accessory chattel mortgage contract – and not a contract of sale of personal property in installments – was entered into by the parties with respondent standing as the debtor-mortgagor and petitioner as the creditor-mortgagee. x x x The Promissory Note with Chattel Mortgage subject of this case expressly stipulated, among others, that: *(a)* monthly installments shall be paid on due date without prior notice or demand; *(b)* in case of default, the total unpaid principal sum plus the agreed charges shall become immediately due and payable; and (c) the mortgagor's default will allow the mortgagee to exercise the remedies available to it under the law. In light of the foregoing provisions, petitioner is justified in filing his Complaint before the RTC seeking for either the recovery of possession of the

subject vehicle so that it can exercise its rights as a mortgagee, *i.e.,* to conduct foreclosure proceedings over said vehicle; or in the event that the subject vehicle cannot be recovered, to compel respondent to pay the outstanding balance of her loan. Since it is undisputed that petitioner had regained possession of the subject vehicle, it is only appropriate that foreclosure proceedings, if none yet has been conducted/concluded, be commenced in accordance with the provisions of Act No. 1508, otherwise known as "The Chattel Mortgage Law," as intended. Otherwise, respondent will be placed in an unjust position where she is deprived of possession of the subject vehicle while her outstanding debt remains unpaid, either in full or in part, all to the undue advantage of petitioner — a situation which law and equity will never permit.

2. ID.; DAMAGES; ATTORNEY'S FEES; THE POWER OF THE COURT TO AWARD ATTORNEY'S FEES DEMANDS FACTUAL, LEGAL, AND EQUITABLE JUSTIFICATION; NOT ESTABLISHED IN CASE AT BAR.— Finally, anent the issue of attorney's fees, it is settled that attorney's fees "cannot be recovered as part of damages because of the policy that no premium should be placed on the right to litigate. They are not to be awarded every time a party wins a suit. The power of the court to award attorney's fees under Article 2208 of the Civil Code demands factual, legal, and equitable justification. Even when a claimant is compelled to litigate with third persons or to incur expenses to protect his rights, still, attorney's fees may not be awarded where no sufficient showing of bad faith could be reflected in a party's persistence in a case other than an erroneous conviction of the righteousness of his cause." In this case, suffice it to say that the CA correctly ruled that the award of attorney's fees and costs of suit should be deleted for lack of sufficient basis.

APPEARANCES OF COUNSEL

Mary Jennifer A. Protasio-Arches and *Tomas R. De Lara III* for petitioner.

Richard G. Cudiamat for respondent.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated February 13, 2014 and the Resolution[3] dated October 8, 2014 of the Court of Appeals (CA) in CA-G.R. CV No. 96008, which partially affirmed the Decision[4] dated May 20, 2010 of the Regional Trial Court of Pasay City, Branch 114 (RTC) in Civil Case No. 07-0386-CFM and ordered petitioner Equitable Savings Bank, now BDO Unibank, Inc. (petitioner), to reimburse respondent Rosalinda C. Palces (respondent) the installments she made in March 2007 amounting to ₱103,000.00.

The Facts

On August 15, 2005, respondent purchased a Hyundai Starex GRX Jumbo (subject vehicle) through a loan granted by petitioner in the amount of ₱1,196,100.00. In connection therewith, respondent executed a Promissory Note with Chattel Mortgage[5] in favor of petitioner, stating, *inter alia*, that: *(a)* respondent shall pay petitioner the aforesaid amount in 36-monthly installments of ₱33,225.00 per month, beginning September 18, 2005 and every 18th of the month thereafter until full payment of the loan; *(b)* respondent's default in paying any installment renders the remaining balance due and payable; and (c) respondent's failure to pay any installments shall give petitioner the right to declare the entire obligation due and payable and may likewise, at its option, x x x foreclose this mortgage; or file an ordinary civil action for collection and/or such other action or proceedings as may be allowed under the law.[6]

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[1] *Rollo*, pp. 11-28.

[2] *Id.* at 106-121. Penned by Associate Justice Myra V. Garcia-Fernandez with Associate Justices Fernanda Lampas-Peralta and Francisco P. Acosta concurring.

[3] *Id.* at 131-135.

[4] *ld.* at 60-66. Penned by Judge Edwin B. Ramizo.

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

[6] *Id.* See also *id.* at 106-107.

From September 18, 2005 to December 21, 2006, respondent paid the monthly installment of ₱33,225.00 per month. However, she failed to pay the monthly installments in January and February 2007, thereby triggering the acceleration clause contained in the Promissory Note with Chattel Mortgage[7] and prompting petitioner to send a demand letter[8] dated February 22, 2007 to compel respondent to pay the remaining balance of the loan in the amount of ₱664,500.00.[9] As the demand went unheeded, petitioner filed on March 7, 2007 the instant Complaint for Recovery of Possession with Replevin with Alternative Prayer for Sum of Money and Damages[10] against respondent before the RTC, praying that the court *a quo: (a)* issue a writ of replevin ordering the seizure of the subject vehicle and its delivery to petitioner; or *(b)* in the alternative as when the recovery of the subject vehicle cannot be effected, to render judgment ordering respondent to pay the remaining balance of the loan, including penalties, charges, and other costs appurtenant thereto.[11]

Pending respondent's answer, summons[12] and a writ of replevin[13] were issued and served to her personally on April 26, 2007, and later on, a Sheriffs Retum[14] dated May 8, 2007 was submitted as proof of the implementation of such writ.[15]

In her defense,[16] while admitting that she indeed defaulted on her installments for January and February 2007, respondent nevertheless insisted that she called petitioner regarding such delay in payment and spoke to a bank officer, a certain Rodrigo

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[7] Records, pp. 18-19.

[8] *Id.* at 24.

[9] *Rollo,* pp. 107-108.

[10] *Id.* at 32-37.

[11] See also *id.* at 107-109.

[12] Records, p. 48.

[13] *Id.* at 46.

[14] *Id.* at 47.

[15] *Rollo,* pp. 61 and 66.

[16] See Answer dated July 10, 2007; *id.* at 56-59.

Dumagpi, who gave his consent thereto. Respondent then maintained that in order to update her installment payments, she paid petitioner the amounts of ₱70,000.00 on March 8, 2007 and ₱33,000.00 on March 20, 2007, or a total of ₱103,000.00. Despite the aforesaid payments, respondent was surprised when petitioner filed the instant complaint, resulting in the sheriff taking possession of the subject vehicle.[17]

The RTC Ruling

In a Decision[18] dated May 20, 2010, the RTC ruled in petitioner's favor and, accordingly, confirmed petitioner's right and possession over the subject vehicle and ordered respondent to pay the former the amount of ₱15,000.00 as attorney's fees as well as the costs of suit.[19]

The RTC found that respondent indeed defaulted on her installment payments in January and February 2007, thus, rendering the entire balance of the loan amounting to ₱664,500.00 due and demandable. In this relation, the RTC observed that although respondent made actual payments of the installments due, such payments were all late and irregular, and the same were not enough to fully pay her outstanding obligation, considering that petitioner had already declared the entire balance of the loan due and demandable. However, since the writ of replevin over the subject vehicle had already been implemented, the RTC merely confirmed petitioner's right to possess the same and ruled that it is no longer entitled to its alternative prayer, *i.e.*, the payment of the remaining balance of the loan, including penalties, charges, and other costs appurtenant thereto.[20]

Respondent moved for reconsideration,[21] but was denied in an Order[22] dated August 31, 2010. Dissatisfied, respondent

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[17] See *id.* at 109-110.

[18] *Id.* at 60-66.

[19] *Id.* at 66.

[20] *Id.* at 64-66.

[21] See motion for reconsideration dated June 21, 2010; records, pp. 421-424.

[22] *Id.* at 441.

appealed[23] to the CA, contending that petitioner acted in bad faith in seeking to recover more than what is due by attempting to collect the balance of the loan and, at the same time, recover the subject vehic1e.[24]

The CA Ruling

In a Decision[25] dated February 13, 2014, the CA affirmed the RTC ruling with modification: *(a)* ordering petitioner to return the amount of ₱103,000.00 to respondent; and *(b)* deleting the award of attorney's fees in favor of petitioner for lack of sufficient basis. It held that while respondent was indeed liable to petitioner under the Promissory Note with Chattel Mortgage, petitioner should not have accepted respondent's late partial payments in the aggregate amount of ₱103,000.00. In this regard, the CA opined that by choosing to recover the subject vehicle *via* a writ of replevin, petitioner already waived its right to recover any unpaid installments, pursuant to Article 1484 of the Civil Code. As such, the CA concluded that respondent is entitled to the recovery of the aforesaid amount.[26]

Aggrieved, petitioner moved for partial reconsideration[27] specifically praying for the setting aside of the order to return the amount of ₱103,000.00 to respondent — which was, however, denied in a Resolution[28] dated October 8, 2014; hence, this petition.

The Issues Before The Court

The issues raised for the Court's resolution are whether or not the CA correctly: *(a)* ordered petitioner to return to respondent

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[23] See Appellant's Brief dated July 4, 2010; CA *rollo,* pp. 24-33.

[24] *Rollo,* pp. 113-114.

[25] *Id.* at 106-121.

[26] *Id.* at 115-120.

[27] See motion for partial reconsideration dated March 4, 2014; *CA rollo,* pp. 102-109.

[28] *Rollo,* pp. 131-135.

the amount of ₱103,000.00 representing the latter's late installment payments; and *(b)* deleted the award of attorney's fees in favor of petitioner.

The Court's Ruling

The petition is partly meritorious.

Citing Article 1484 of the Civil Code, specifically paragraph 3 thereof, the CA ruled that petitioner had already waived its right to recover any unpaid installments when it sought — and was granted — a writ of replevin in order to regain possession of the subject vehicle. As such, petitioner is no longer entitled to receive respondent's late partial payments in the aggregate amount of ₱103,000.00.

The CA is mistaken on this point.

Article 1484 of the Civil Code, which governs the sale of personal properties in installments, states in full:

> Article 1484. In a **contract of sale of personal property the price of which is payable in installments**, the **vendor** may exercise any of the following remedies:
>
> (1) Exact fulfilment of the obligation, should the **vendee** fail to pay;
>
> (2) Cancel the sale, should the **vendee**'s failure to pay cover two or more installments;
>
> (3) Foreclose the chattel mortgage on the thing sold, if one has been constituted, should the **vendee**'s failure to pay cover two or more installments. In this case, he shall have no further action against the purchaser to recover any unpaid balance of the price. Any agreement to the contrary shall be void. (Emphases and underscoring supplied)

In this case, there was no vendor-vendee relationship between respondent and petitioner. A judicious perusal of the records would reveal that respondent never bought the subject vehicle from petitioner but from a third party, and merely sought financing from petitioner for its full purchase price. In order to document the loan transaction between petitioner and

respondent, a Promissory Note with Chattel Mortgage[29] dated August 18, 2005 was executed wherein, *inter alia,* respondent acknowledged her indebtedness to petitioner in the amount of ₱1,196,100.00 and placed the subject vehicle as a security for the loan.[30] Indubitably, a loan contract with the accessory chattel mortgage contract — and not a contract of sale of personal property in installments — was entered into by the parties with respondent standing as the debtor-mortgagor and petitioner as the creditor- mortgagee. Therefore, the conclusion of the CA that Article 1484 finds application in this case is misplaced, and thus, must be set aside.

The Promissory Note with Chattel Mortgage subject of this case expressly stipulated, among others, that: *(a)* monthly installments shall be paid on due date without prior notice or demand;[31] *(b)* in case of default, the total unpaid principal sum plus the agreed charges shall become immediately due and payable;[32] and (*c*) the mortgagor's default will allow the mortgagee to exercise the remedies available to it under the law. In light of the foregoing provisions, petitioner is justified in filing his Complaint[33] before the RTC seeking for either the recovery of possession of the subject vehicle so that it can exercise its rights as a mortgagee, *i.e.,* to conduct foreclosure proceedings over said vehicle;[34] or in the event that the subject vehicle cannot be recovered, to compel respondent to pay the outstanding balance of her loan.[35] Since it is undisputed that petitioner had regained possession of the subject vehicle, it is only appropriate that foreclosure proceedings, if none yet has been conducted/ concluded, be commenced in accordance with the provisions

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

[30] See *id*. at 33, 57, 60-61, and 106-108.

[31] See *id*. at 40.

[32] See *id*. 40 and 43.

[33] Dated March 7, 2007. *Id.* at 32-37.

[34] See *id*. at 33-35.

[35] See *id*. at 35-36.

of Act No. 1508[36] otherwise known as "The Chattel Mortgage Law," as intended. Otherwise, respondent will be placed in an unjust position where she is deprived of possession of the subject vehicle while her outstanding debt remains unpaid, either in full or in part, all to the undue advantage of petitioner — a situation which law and equity will never permit.[37]

Further, there is nothing in the Promissory Note with Chattel Mortgage that bars petitioner from receiving any late partial payments from respondent. If at all, petitioner's acceptance of respondent's late partial payments in the aggregate amount of ₱103,000.00 will only operate to reduce her outstanding obligation to petitioner from ₱664,500.00 to ₱561,500.00. Such a reduction in respondent's outstanding obligation should be accounted for when petitioner conducts the impending foreclosure sale of the subject vehicle. Once such foreclosure sale has been made, the proceeds thereof should be applied to the reduced amount of respondent's outstanding obligation, and the excess of said proceeds, if any, should be returned to her.[38]

In sum, the CA erred in ordering petitioner to return the amount of ₱103,000.00 to respondent. In view of petitioner's prayer for and subsequent possession of the subject vehicle in preparation for its foreclosure, it is only proper that petitioner be ordered to commence foreclosure proceedings, if none yet has been conducted/concluded, over the vehicle in accordance with the provisions of the Chattel Mortgage Law, *i.e.*, within thirty (30) days from the finality of this Decision.[39]

Finally, anent the issue of attorney's fees, it is settled that attorney's fees "cannot be recovered as part of damages because of the policy that no premium should be placed on the right to

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[36] Entitled "AN ACT PROVIDING FOR THE MORTGAGING OF PERSONAL PROPERTY, AND FOR THE REGISTRATION OF THE MORTGAGES SO EXECUTED" (August 1, 1906).

[37] See *De La Cruz v. Asian Consumer and Industrial Finance Corp.*, G.R. No. 94828, September 18, 1992, 214 SCRA 103, 107-108.

[38] See Section 14 of Act No. 1508.

[39] *Id*.

litigate. They are not to be awarded every time a party wins a suit. The power of the court to award attorney's fees under Article 2208[40] of the Civil Code demands factual, legal, and equitable justification. Even when a claimant is compelled to litigate with third persons or to incur expenses to protect his rights, still, attorney's fees may not be awarded where no sufficient showing of bad faith could be reflected in a party's persistence in a case other than an erroneous conviction of the righteousness of his cause."[41] In this case, suffice it to say that the CA correctly ruled that the award of attorney's fees and costs of suit should be deleted for lack of sufficient basis.

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[40] Article 2208 of the Civil Code reads:

Art. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

(1) When exemplary damages are awarded;

(2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;

(3) In criminal cases of malicious prosecution against the plaintiff;

(4) In case of a clearly unfounded civil action or proceeding against the plaintiff;

(5) Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim;

(6) In actions for legal support;

(7) In actions for the recovery of wages of household helpers, laborers and skilled workers;

(8) In actions for indemnity under workmen's compensation and employer's liability laws;

(9) In a separate civil action to recover civil liability arising from a crime;

(10) When at least double judicial costs are awarded;

(11) In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.

In all cases, the attorney's fees and expenses of litigation must be reasonable.

[41] See *Spouses Vergara v. Sonkin,* G.R. No. 193659, June 15, 2015, citing *The President of the Church of Jesus Christ of the Latter Day Saints v. BTL Construction Corporation,* G.R. No. 176439, January 15, 2014, 713 SCRA 455, 472-473.

WHEREFORE, the petition is **PARTLY GRANTED.** The Decision dated February 13, 2014 and the Resolution dated October 8, 2014 of the Court of Appeals in CA-G.R. CV No. 96008 are hereby **SET ASIDE**. In case foreclosure proceedings on the subject chattel mortgage has not yet been conducted/ concluded, petitioner Equitable Savings Bank, now BDO Unibank, Inc., is **ORDERED** to commence foreclosure proceedings on the subject vehicle in accordance with the Chattel Mortgage Law, *i.e.*, within thirty (30) days from the finality of this Decision. The proceeds therefrom should be applied to the reduced outstanding balance of respondent Rosalinda C. Palces in the amount of ₱561,500.00, and the excess, if any, should be returned to her.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 195835. March 14, 2016]

SISON OLAÑO, SERGIO T. ONG, MARILYN O. GO, and JAP FUK HAI, *petitioners, vs.* **LIM ENG CO,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; PROBABLE CAUSE; JUDICIAL REVIEW OF THE RESOLUTION OF THE SECRETARY OF JUSTICE IS LIMITED TO A DETERMINATION OF WHETHER THERE HAS BEEN A GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OR EXCESS OF JURISDICTION; RATIONALE.— It is a settled judicial policy that courts do not reverse the

Secretary of Justice's findings and conclusions on the matter of probable cause. Courts are not empowered to substitute their judgment for that of the executive branch upon which full discretionary authority has been delegated in the determination of probable cause during a preliminary investigation. Courts may, however, look into whether the exercise of such discretionary authority was attended with grave abuse of discretion. Otherwise speaking, "judicial review of the resolution of the Secretary of Justice is limited to a determination of whether there has been a grave abuse of discretion amounting to lack or excess of jurisdiction."

2. **ID.; ID.; ID.; ID.; ISSUANCE BY THE DOJ OF SEVERAL RESOLUTIONS WITH VARYING FINDINGS OF FACT AND CONCLUSIONS OF LAW ON THE EXISTENCE OF PROBABLE CAUSE, BY ITSELF, IS NOT INDICATIVE OF GRAVE ABUSE OF DISCRETION UNLESS COUPLED WITH GROSS MISAPPREHENSION OF FACTS OF THE CASE; CASE AT BAR .—** It has been held that the issuance by the DOJ of several resolutions with varying findings of fact and conclusions of law on the existence of probable cause, by itself, is not indicative of grave abuse of discretion. Inconsistent findings and conclusions on the part of the DOJ will denote grave abuse of discretion only if coupled with gross misapprehension of facts, which, after a circumspect review of the records, is not attendant in the present case. x x x The positions taken by the DOJ and the investigating prosecutor differed only in the issues tackled and the conclusions arrived at. x x x This situation does not amount to grave abuse of discretion but rather a mere manifestation of the intricate issues involved in the case which thus resulted in varying conclusions of law. Nevertheless, the DOJ ultimately pronounced its definite construal of copyright laws and their application to the evidence on record through its Resolution dated March 10, 2006 when it granted the petitioners' motion for reconsideration. Such construal, no matter how erroneous to the CA's estimation, did not amount to grave abuse of discretion.

3. **ID.; ID.; ID.; ID.; PROBABLE CAUSE DOES NOT MEAN ACTUAL AND POSITIVE CAUSE NOR DOES IT IMPORT ABSOLUTE CERTAINTY; ELUCIDATED.—** "Probable cause has been defined as the existence of such facts and circumstances as would excite the belief in a reasonable mind,

acting on the facts within the knowledge of the prosecutor, that the person charged was guilty of the crime for which he was prosecuted. It is a reasonable ground of presumption that a matter is, or may be, well-founded on such a state of facts in the mind of the prosecutor as would lead a person of ordinary caution and prudence to believe, or entertain an honest or strong suspicion, that a thing is so." "The term does not mean actual and positive cause nor does it import absolute certainty. It is merely based on opinion and reasonable belief. Thus, a finding of probable cause does not require an inquiry into whether there is sufficient evidence to procure a conviction. It is enough that it is believed that the act or omission complained of constitutes the offense charged."

4. MERCANTILE LAW; INTELLECTUAL PROPERTY; COPYRIGHT; A COPYRIGHTABLE WORK REFERS TO LITERARY AND ARTISTIC WORKS DEFINED AS ORIGINAL INTELLECTUAL CREATIONS IN THE LITERARY AND ARTISTIC DOMAIN.— A copyright refers to "the right granted by a statute to the proprietor of an intellectual production to its exclusive use and enjoyment to the extent specified in the statute." x x x A copyrightable work refers to literary and artistic works defined as original intellectual creations in the literary and artistic domain

5. ID.; ID.; ID.; ID.; COPYRIGHT INFRINGEMENT; COMMITTED BY ANY PERSON WHO SHALL USE ORIGINAL LITERARY OR ARTISTIC WORKS, OR DERIVATIVE WORKS, WITHOUT THE COPYRIGHT OWNER'S CONSENT IN VIOLATION OF SECTION 177 OF R.A. NO. 8239.— Copyright infringement is thus committed by any person who shall use original literary or artistic works, or derivative works, without the copyright owner's consent in such a manner as to violate the foregoing copy and economic rights. For a claim of copyright infringement to prevail, the evidence on record must demonstrate: (1) ownership of a validly copyrighted material by the complainant; and (2) infringement of the copyright by the respondent.

6. ID.; ID.; ID.; ID.; ID.; LEC'S "HATCH DOORS" WERE NOT PRIMARILY ARTISTIC WORKS WITHIN THE MEANING OF COPYRIGHT LAWS BUT WERE INTRINSICALLY OBJECTS OF UTILITY, EXCLUDED FROM COPYRIGHT ELIGIBILITY.— Here, evidence

negating originality and copyrightability as elements of copyright ownership was satisfactorily proffered against LEC's certificate of registration. x x x From the description, it is clear that the hatch doors were not artistic works within the meaning of copyright laws. A copyrightable work refers to literary and artistic works defined as original intellectual creations in the literary and artistic domain. x x x It is not primarily an artistic creation but rather an object of utility designed to have aesthetic appeal. It is intrinsically a useful article, which, as a whole, is not eligible for copyright. A "useful article" defined as an article "having an intrinsic utilitarian function that is not merely to portray the appearance of the article or to convey information" is excluded from copyright eligibility.

7. ID.; ID.; ID.; ID.; ID.; ID.; A USEFUL ARTICLE MAY BE SUBJECT OF COPYRIGHT PROTECTION ONLY WHEN IT INCORPORATES A DESIGN ELEMENT THAT IS PHYSICALLY OR CONCEPTUALLY SEPARABLE FROM THE UNDERLYING PRODUCT; CASE AT BAR.— The only instance when a useful article may be the subject of copyright protection is when it incorporates a design element that is physically or conceptually separable from the underlying product. This means that the utilitarian article can function without the design element. In such an instance, the design element is eligible for copyright protection. x x x In the present case, LEC's hatch doors bore no design elements that are physically and conceptually separable, independent and distinguishable from the hatch door itself. The allegedly distinct set of hinges and distinct jamb, were related and necessary hence, not physically or conceptually separable from the hatch door's utilitarian function as an apparatus for emergency egress. Without them, the hatch door will not function. Being articles of manufacture already in existence, they cannot be deemed as original creations.

8. ID.; ID.; ID.; ID.; ID.; ID.; LEC'S "HATCH DOORS" HAS NO VALID COPYRIGHT OWNERSHIP WHICH MAY BE INFRINGED, ABSENT THE ELEMENTS OF ORIGINALITY AND COPYRIGHTABILITY; CASE AT BAR.—Valid copyright ownership denotes originality of the copyrighted material. Originality means that the material was not copied, evidences at least minimal creativity and was independently created by the author. It connotes production as a result of independent labor. LEC did not produce the door

jambs and hinges; it bought or acquired them from suppliers and thereafter affixed them to the hatch doors. No independent original creation can be deduced from such acts. x x x Verily then, the CA erred in holding that a probable cause for copyright infringement is imputable against the petitioners. Absent originality and copyrightability as elements of a valid copyright ownership, no infringement can subsist.

APPEARANCES OF COUNSEL

Bengzon Negre Untalan for petitioners.
Andres Padernal & Paras Law Offices for respondent.

D E C I S I O N

REYES, *J.*:

This is a petition for review on *certiorari*[1] under Rule 45 of the Rules of Court, assailing the Decision[2] dated July 9, 2010 and Resolution [3] dated February 24, 2011 of the Court of Appeals (CA) in CA-G.R. SP No. 95471, which annulled the Resolutions dated March 10, 2006[4] and May 25, 2006[5] of the Department of Justice (DOJ) in I.S. No. 2004-925, finding no probable cause for copyright infringement against Sison Olaño, Sergio Ong, Marilyn Go and Jap Fuk Hai (petitioners) and directing the withdrawal of the criminal information filed against them.

The Antecedents

The petitioners are the officers and/or directors of Metrotech Steel Industries, Inc. (Metrotech).[6] Lim Eng Co (respondent),

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[1] *Rollo*, pp. 3-42.

[2] Penned by Associate Justice Rodil V. Zalameda, with Associate Justices Mario L. Guariña III and Apolinario D. Bruselas, Jr. concurring; *id.* at 45-58.

[3] *Id.* at 60-65.

[4] Issued by Secretary Raul M. Gonzalez; *id.* at 145-148.

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

[6] *Id.* at 73.

on the other hand, is the Chairman of LEC Steel Manufacturing Corporation (LEC), a company which specializes in architectural metal manufacturing.[7]

Sometime in 2002, LEC was invited by the architects of the Manansala Project (Project), a high-end residential building in Rockwell Center, Makati City, to submit design/drawings and specifications for interior and exterior hatch doors. LEC complied by submitting on July 16, 2002, shop plans/drawings, including the diskette therefor, embodying the designs and specifications required for the metal hatch doors.[8]

After a series of consultations and revisions, the final shop plans/drawings were submitted by LEC on January 15, 2004 and thereafter copied and transferred to the title block of Ski-First Balfour Joint Venture (SKI-FB), the Project's contractor, and then stamped approved for construction on February 3, 2004.[9]

LEC was thereafter subcontracted by SKI-FB, to manufacture and install interior and exterior hatch doors for the 7th to 22nd floors of the Project based on the final shop plans/drawings.[10]

Sometime thereafter, LEC learned that Metrotech was also subcontracted to install interior and exterior hatch doors for the Project's 23rd to 41st floors.[11]

On June 24, 2004, LEC demanded Metrotech to cease from infringing its intellectual property rights. Metrotech, however, insisted that no copyright infringement was committed because the hatch doors it manufactured were patterned in accordance with the drawings provided by SKI-FB.[12]

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[7] *Id.* at 66.

[8] *Id.* at 66, 97.

[9] *Id.* at 66, 97-98.

[10] *Id.* at 98.

[11] *Id.* at 47.

[12] *Id.* at 98.

On July 2, 2004, LEC deposited with the National Library the final shop plans/drawings of the designs and specifications for the interior and exterior hatch doors of the Project.[13] On July 6, 2004, LEC was issued a Certificate of Copyright Registration and Deposit showing that it is the registered owner of plans/drawings for interior and exterior hatch doors under Registration Nos. I-2004-13 and I-2004-14, respectively.[14] This copyright pertains to class work "I" under Section 172 of Republic Act (R.A.) No. 8293, *The Intellectual Property Code of the Philippines*, which covers "illustrations, maps, plans, sketches, charts and three-dimensional works relative to geography, topography, architecture or science."

On December 9, 2004, LEC was issued another Certificate of Copyright Registration and Deposit showing that it is the registered owner of plans/drawings for interior and exterior hatch doors under Registration Nos. H-2004-566 and H-2004-567[15] which is classified under Section 172 (h) of R.A. No. 8293 as "original ornamental designs or models for articles of manufacture, whether or not registrable as an industrial design, and other works of applied art."

When Metrotech still refused to stop fabricating hatch doors based on LEC's shop plans/drawings, the latter sought the assistance of the National Bureau of Investigation (NBI) which in turn applied for a search warrant before the Regional Trial Court (RTC) of Quezon City, Branch 24. The application was granted on August 13, 2004 thus resulting in the confiscation of finished and unfinished metal hatch doors as well as machines used in fabricating and manufacturing hatch doors from the premises of Metrotech.[16]

On August 13, 2004, the respondent filed a Complaint-Affidavit[17] before the DOJ against the petitioners for copyright

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[13] *Id.*

[14] *Id.* at 105.

[15] *Id.*

[16] *Id.*

[17] *Id.* at 66-68.

infringement. In the meantime or on September 8, 2004, the RTC quashed the search warrant on the ground that copyright infringement was not established.[18]

Traversing the complaint, the petitioners admitted manufacturing hatch doors for the Project. They denied, however, that they committed copyright infringement and averred that the hatch doors they manufactured were functional inventions that are proper subjects of patents and that the records of the Intellectual Property Office reveal that there is no patent, industrial design or utility model registration on LEC's hatch doors. Metrotech further argued that the manufacturing of hatch doors *per se* is not copyright infringement because copyright protection does not extend to the objects depicted in the illustrations and plans. Moreover, there is no artistic or ornamental expression embodied in the subject hatch doors that would subject them to copyright protection.[19]

Resolutions of the DOJ

In a Resolution[20] dated August 18, 2005, the investigating prosecutor dismissed the respondent's complaint based on inadequate evidence showing that: (1) the petitioners committed the prohibited acts under Section 177 of R.A. No. 8293; and (2) the interior and exterior hatch doors of the petitioners are among the classes of copyrightable work enumerated in Sections 172 and 173 of the same law.[21]

Adamant, the respondent filed a petition for review before the DOJ but it was also denied due course in the Resolution[22] dated November 16, 2005.

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

[19] *Id.* at 76-78.

[20] Rendered by Senior State Prosecutor Rosalina P. Aquino; *id.* at 97-113.

[21] *Id.* at 113.

[22] *Id.* at 139-140.

Upon the respondent's motion for reconsideration, however, the Resolution[23] dated January 27, 2006 of the DOJ reversed and set aside the Resolution dated August 18, 2005 and directed the Chief State Prosecutor to file the appropriate information for copyright infringement against the petitioners.[24] The DOJ reasoned that the pieces of evidence adduced show that the subject hatch doors are artistic or ornamental with distinctive hinges, door and jamb, among others. The petitioners were not able to sufficiently rebut these allegations and merely insisted on the non-artistic nature of the hatch doors. The DOJ further held that probable cause was established insofar as the artistic nature of the hatch doors and based thereon the act of the petitioners in manufacturing or causing to manufacture hatch doors similar to those of the respondent can be considered as unauthorized reproduction; hence, copyright infringement under Section 177.1 in relation to Section 216 of R.A. No. 8293.[25]

Aggrieved, the petitioners moved for reconsideration. This time, the DOJ made a complete turn around by granting the motion, vacating its Resolution dated January 27, 2006 and declaring that the evidence on record did not establish probable cause because the subject hatch doors were plainly metal doors with functional components devoid of any aesthetic or artistic features. Accordingly, the DOJ Resolution[26] dated March 10, 2006 disposed as follows:

> **WHEREFORE**, finding cogent reason to reverse the assailed resolution, the motion for reconsideration is GRANTED finding no probable cause against the [petitioners]. Consequently, the City Prosecutor of Manila is hereby directed to cause the withdrawal of the information, if any has been filed in court, and to report the action taken thereon within TEN (10) DAYS from receipt hereof.
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> SO ORDERED.[27]

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[23] *Id.* at 141-144.

[24] *Id.* at 143.

[25] *Id.* at 142.

[26] *Id.* at 145-148.

[27] *Id.* at 147.

The respondent thereafter filed a motion for reconsideration of the foregoing resolution but it was denied[28] on May 25, 2006. The respondent then sought recourse before the CA *via* a petition for *certiorari*[29] ascribing grave abuse of discretion on the part of the DOJ.

In its assailed Decision[30] dated July 9, 2010, the CA granted the petition. The CA held that the vacillating findings of the DOJ on the presence or lack of probable cause manifest capricious and arbitrary exercise of discretion especially since its opposite findings were based on the same factual evidence and arguments.

The CA then proceeded to make its own finding of probable cause and held that:

> [F]or probable cause for copyright infringement to exist, essentially, it must be shown that the violator reproduced the works without the consent of the owner of the copyright.
>
> In the present case before Us, [the petitioners] do not dispute that: (1) LEC was issued copyrights for the illustrations of the hatch doors under Section 171.i, and for the hatch doors themselves as ornamental design or model for articles of manufacture pursuant to Section 171.h of R.A. [No.] 8293; and (2) they manufactured hatch doors based on drawings and design furnished by SKI-FB, which consists of LEC works subject of copyrights. These two (2) circumstances, taken together, are sufficient to excite the belief in a reasonable mind that [the petitioners] are probably guilty of copyright infringement. First, LEC has indubitably established that it is the owner of the copyright for both the illustrations of the hatch doors and [the] hatch doors themselves, and second, [the petitioners] manufactured hatch doors based on LEC's works, sans LEC's consent.
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> x x x x x x x x x
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> [T]he fact that LEC enjoys ownership of copyright not only on the illustrations of the hatch doors but on the hatch doors itself and

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

[29] *Id.* at 151-164.

[30] *Id.* at 45-58.

that [the petitioners] manufactured the same is sufficient to warrant a finding of probable cause for copyright infringement. x x x.[31]

The CA further ruled that any allegation on the non-existence of ornamental or artistic values on the hatch doors are matters of evidence which are best ventilated in a full-blown trial rather than during the preliminary investigation stage. Accordingly, the CA disposed as follows:

WHEREFORE, considering the foregoing premises, the present Petition is **GRANTED**, and accordingly, the assailed Resolutions dated 10 March 2006 and 25 May 2006 are **ANNULLED and SET ASIDE.** The Resolution of the Secretary of Justice dated 27 January 2006 finding probable cause against [the petitioners], is **REINSTATED**.

SO ORDERED.[32]

The CA reiterated the above ruling in its Resolution[33] dated February 24, 2011 when it denied the petitioners' motion for reconsideration. Hence, the present appeal, arguing that:

I. There was no evidence of actual reproduction of the hatch doors during the preliminary investigation that would lead the investigating prosecutor to declare the existence of probable cause;[34]

II. Even assuming that the petitioners manufactured hatch doors based on the illustrations and plans covered by the respondent's Certificate of Registration Nos. I-2004-13 and I-2004-14, the petitioners could not have committed copyright infringement. Certificate of Registration Nos. I-2004-13 and I-2004-14 are classified under Section 172 (i) which pertains to "illustrations, maps, plans, sketches, charts and three-dimensional works relative to geography, topography, architecture

[31] *Id.* at 53-55.

[32] *Id.* at 58.

[33] *Id.* at 60-65.

[34] *Id.* at 17.

or science." Hence the original works that are copyrighted are the illustrations and plans of interior hatch doors and exterior hatch doors. Thus, it is the reproduction of the illustrations and plans covered by the copyright registration that amounts to copyright infringement. The petitioners did not reproduce the illustrations and plans covered under Certificate of Registration Nos. I-2004-13 and I-2004-14.

The manufacturing of hatch doors *per se* does not fall within the purview of copyright infringement because copyright protection does not extend to the objects depicted in the illustrations and plans;[35] and

III. LEC's copyright registration certificates are not conclusive proofs that the items covered thereby are copyrightable. The issuance of registration certificate and acceptance of deposit by the National Library is ministerial in nature and does not involve a determination of whether the item deposited is copyrightable or not. Certificates of registration and deposit serve merely as a notice of recording and registration of the work but do not confer any right or title upon the registered copyright owner or automatically put his work under the protective mantle of the copyright law.[36]

Ruling of the Court

It is a settled judicial policy that courts do not reverse the Secretary of Justice's findings and conclusions on the matter of probable cause. Courts are not empowered to substitute their judgment for that of the executive branch upon which full discretionary authority has been delegated in the determination of probable cause during a preliminary investigation. Courts may, however, look into whether the exercise of such discretionary authority was attended with grave abuse of discretion.[37]

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

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

[37] *Spouses Aduan v. Chong*, 610 Phil. 178, 183-184 (2009), citing *First Women's Credit Corporation v. Hon. Perez*, 524 Phil. 305, 308-309 (2006).

Otherwise speaking, "judicial review of the resolution of the Secretary of Justice is limited to a determination of whether there has been a grave abuse of discretion amounting to lack or excess of jurisdiction."[38]

The CA anchored its act of reversing the DOJ Resolution dated March 10, 2006 upon the foregoing tenets. Thus, the Court's task in the present petition is only to determine if the CA erred in concluding that the DOJ committed grave abuse of discretion in directing the withdrawal of any criminal information filed against the petitioners.

Grave abuse of discretion has been defined as "such capricious and whimsical exercise of judgment as is equivalent to lack of jurisdiction. The abuse of discretion must be grave as where the power is exercised in an arbitrary or despotic manner by reason of passion or personal hostility and must be so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law."[39] "'Capricious,' usually used in tandem with the term 'arbitrary,' conveys the notion of willful and unreasoning action."[40]

According to the CA, the DOJ's erratic findings on the presence or absence of probable cause constitute grave abuse of discretion. The CA explained:

> This, to Our minds, in itself creates a nagging, persistent doubt as to whether [the DOJ Secretary] issued the said resolutions untainted with a whimsical and arbitrary use of his discretion. For one cannot rule that there is reason to overturn the investigating prosecutor's findings at the first instance and then go on to rule that ample evidence exists showing that the hatch doors possess artistic and ornamental elements at the second instance and proceed to rule that no such

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[38] *Spouses Aduan v. Chong, id.* at 184, citing *United Coconut Planters Bank v. Looyuko,* 560 Phil. 581, 591 (2007).

[39] *Spouses Aduan v. Chong; id.* at 185.

[40] *Spouses Balangauan v. The Hon. CA, Special 19th Division, et al.,* 584 Phil. 183, 197-198 (2008).

artistry can be found on the purely utilitarian hatch doors at the last instance. x x x.[41]

The Court disagrees. It has been held that the issuance by the DOJ of several resolutions with varying findings of fact and conclusions of law on the existence of probable cause, by itself, is not indicative of grave abuse of discretion.[42]

Inconsistent findings and conclusions on the part of the DOJ will denote grave abuse of discretion only if coupled with gross misapprehension of facts,[43] which, after a circumspect review of the records, is not attendant in the present case.

The facts upon which the resolutions issued by the investigating prosecutor and the DOJ were actually uniform, *viz*.:

(a) LEC is the registered owner of plans/drawings for interior and exterior hatch doors under Certificate of Registration Nos. I-2004-13 and I-2004-14 classified under Section 172 (i) of R.A. No. 8293 as pertaining to "illustrations, maps, plans, sketches, charts and three-dimensional works relative to geography, topography, architecture or science";

(b) LEC is also the registered owner of plans/drawings for interior and exterior hatch doors under Certificate of Registration Nos. H-2004-566 and H-2004-567 classified under Section 172 (h) of R.A. No. 8293 as to "original ornamental designs or models for articles of manufacture, whether or not registrable as an industrial design, and other works of applied art";

(c) LEC as the subcontractor of SKI-FB in the Project first manufactured and installed the interior and exterior hatch doors at the Manansala Tower in Rockwell Center, Makati City, from the 7th to 22nd floors. The hatch doors

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[41] *Rollo*, p. 57.

[42] *Tan, Jr. v. Matsuura, et al.*, 701 Phil. 236, 250 (2013).

[43] *Id.* at 260.

were based on the plans/drawings submitted by LEC to SKI-FB and subject of the above copyright registration numbers; and

(d) thereafter, Metrotech fabricated and installed hatch doors at the same building's 23rd to 41st floor based on the drawings and specifications provided by SKI-FB.[44]

The positions taken by the DOJ and the investigating prosecutor differed only in the issues tackled and the conclusions arrived at.

It may be observed that in the Resolution dated August 18, 2005 issued by the investigating prosecutor, the primary issue was whether the hatch doors of LEC fall within copyrightable works. This was resolved by ruling that hatch doors themselves are not covered by LEC's Certificate of Registration Nos. I-2004-13 and I-2004-14 issued on the plans/drawing depicting them. The DOJ reversed this ruling in its Resolution dated January 27, 2006 wherein the issue was streamlined to whether the illustrations of the hatch doors under LEC's Certificate of Registration Nos. H-2004-566 and H-2004-567 bore artistic ornamental designs.

This situation does not amount to grave abuse of discretion but rather a mere manifestation of the intricate issues involved in the case which thus resulted in varying conclusions of law. Nevertheless, the DOJ ultimately pronounced its definite construal of copyright laws and their application to the evidence on record through its Resolution dated March 10, 2006 when it granted the petitioners' motion for reconsideration. Such construal, no matter how erroneous to the CA's estimation, did not amount to grave abuse of discretion. "[I]t is elementary that not every erroneous conclusion of law or fact is an abuse of discretion."[45]

More importantly, the Court finds that no grave abuse of discretion was committed by the DOJ in directing the withdrawal of the criminal information against the respondents because a

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[44] *Rollo*, p. 105.

[45] *First Women's Credit Corporation v. Hon. Perez, supra* note 37, at 310.

finding of probable cause contradicts the evidence on record, law, and jurisprudence.

"Probable cause has been defined as the existence of such facts and circumstances as would excite the belief in a reasonable mind, acting on the facts within the knowledge of the prosecutor, that the person charged was guilty of the crime for which he was prosecuted. It is a reasonable ground of presumption that a matter is, or may be, well-founded on such a state of facts in the mind of the prosecutor as would lead a person of ordinary caution and prudence to believe, or entertain an honest or strong suspicion, that a thing is so."[46]

"The term does not mean actual and positive cause nor does it import absolute certainty. It is merely based on opinion and reasonable belief. Thus, a finding of probable cause does not require an inquiry into whether there is sufficient evidence to procure a conviction. It is enough that it is believed that the act or omission complained of constitutes the offense charged."[47]

"In order that probable cause to file a criminal case may be arrived at, or in order to engender the well-founded belief that a crime has been committed, the elements of the crime charged should be present. This is based on the principle that every crime is defined by its elements, without which there should be — at the most — no criminal offense."[48]

A copyright refers to "the right granted by a statute to the proprietor of an intellectual production to its exclusive use and enjoyment to the extent specified in the statute."[49] Under Section 177 of R.A. No. 8293, the Copyright or Economic Rights consist of the exclusive right to carry out, authorize or prevent the following acts:

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[46] *Hasegawa v. Giron*, G.R. No. 184536, August 14, 2013, 703 SCRA 549, 559.

[47] *United Coconut Planters Bank v. Looyuko, supra* note 38, at 596-597.

[48] *Ang-Abaya, et al. v. Ang*, 593 Phil. 530, 542 (2008).

[49] *Habana v. Robles*, 369 Phil. 764, 787 (1999).

177.1 Reproduction of the work or substantial portion of the work;

177.2 Dramatization, translation, adaptation, abridgment, arrangement or other transformation of the work;

177.3 The first public distribution of the original and each copy of the work by sale or other forms of transfer of ownership;

177.4 Rental of the original or a copy of an audiovisual or cinematographic work, a work embodied in a sound recording, a computer program, a compilation of data and other materials or a musical work in graphic form, irrespective of the ownership of the original or the copy which is the subject of the rental;

177.5 Public display of the original or a copy of the work;

177.6 Public performance of the work; and

177.7 Other communication to the public of the work.

Copyright infringement is thus committed by any person who shall use original literary or artistic works, or derivative works, without the copyright owner's consent in such a manner as to violate the foregoing copy and economic rights. For a claim of copyright infringement to prevail, the evidence on record must demonstrate: (1) ownership of a validly copyrighted material by the complainant; and (2) infringement of the copyright by the respondent.[50]

While both elements subsist in the records, they did not simultaneously concur so as to substantiate infringement of LEC's two sets of copyright registrations.

The respondent failed to substantiate the alleged reproduction of the drawings/sketches of hatch doors copyrighted under Certificate of Registration Nos. I-2004-13 and I-2004-14. There is no proof that the respondents reprinted the copyrighted sketches/drawings of LEC's hatch doors. The raid conducted by the NBI on Metrotech's premises yielded no copies or reproduction of LEC's copyrighted sketches/drawings of hatch doors. What were discovered instead were finished and unfinished hatch doors.

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[50] *Ching v. Salinas, Sr.*, 500 Phil. 628, 639 (2005).

Certificate of Registration Nos. I-2004-13 and I-2004-14 pertain to class work "I" under Section 172 of R.A. No. 8293 which covers "illustrations, maps, plans, sketches, charts and three-dimensional works relative to geography, topography, architecture or science."[51] As such, LEC's copyright protection there under covered only the hatch door sketches/drawings and not the actual hatch door they depict.[52]

As the Court held in *Pearl and Dean (Philippines), Incorporated v. Shoemart, Incorporated*:[53]

> Copyright, in the strict sense of the term, is purely a statutory right. Being a mere statutory grant, the rights are limited to what the statute confers. It may be obtained and enjoyed only with respect to the subjects and by the persons, and on terms and conditions specified in the statute. *Accordingly, it can cover only the works falling within the statutory enumeration or description*.[54] (Citations omitted and italics in the original)

Since the hatch doors cannot be considered as either illustrations, maps, plans, sketches, charts and three-dimensional works relative to geography, topography, architecture or science, to be properly classified as a copyrightable class "I" work, what was copyrighted were their sketches/drawings only, and not the actual hatch doors themselves. To constitute infringement, the usurper must have copied or appropriated the original work of an author or copyright proprietor, absent copying, there can be no infringement of copyright.[55]

"Unlike a patent, a copyright gives no exclusive right to the art disclosed; protection is given only to the expression of the idea — not the idea itself."[56]

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[51] *Rollo*, p. 107.

[52] *Id.* at 109.

[53] 456 Phil. 474 (2003).

[54] *Id.* at 489.

[55] *Habana v. Robles, supra* note 49, at 790.

[56] *Mazer v. Stein*, 347 U.S. 201 (1954).

The respondent claimed that the petitioners committed copyright infringement when they fabricated/manufactured hatch doors identical to those installed by LEC. The petitioners could not have manufactured such hatch doors in substantial quantities had they not reproduced the copyrighted plans/drawings submitted by LEC to SKI-FB. This insinuation, without more, does not suffice to establish probable cause for infringement against the petitioners. "[A]lthough the determination of probable cause requires less than evidence which would justify conviction, it should at least be more than mere suspicion."[57]

Anent, LEC's Certificate of Registration Nos. H-2004-566 and H-2004-567, the Court finds that the ownership thereof was not established by the evidence on record because the element of copyrightability is absent.

"Ownership of copyrighted material is shown by proof of originality and copyrightability."[58] While it is true that where the complainant presents a copyright certificate in support of the claim of infringement, the validity and ownership of the copyright is presumed. This presumption, however, is rebuttable and it cannot be sustained where other evidence in the record casts doubt on the question of ownership,[59] as in the instant case.

Moreover, "[t]he presumption of validity to a certificate of copyright registration merely orders the burden of proof. The applicant should not ordinarily be forced, in the first instance, to prove all the multiple facts that underline the validity of the copyright unless the respondent, effectively challenging them, shifts the burden of doing so to the applicant."[60]

Here, evidence negating originality and copyrightability as elements of copyright ownership was satisfactorily proffered against LEC's certificate of registration.

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[57] *Tan, Jr. v. Matsuura, et al., supra* note 42, at 256.

[58] *Ching v. Salinas, Sr., supra* note 50.

[59] *Id.* at 640.

[60] *Id.* at 640-641.

The following averments were not successfully rebuffed by LEC:

> [T]he hinges on LEC's "hatch doors" have no ornamental or artistic value. In fact, they are just similar to hinges found in truck doors that had been in common use since the 1960's. The gaskets on LEC's "hatch doors", aside from not being ornamental or artistic, were merely procured from a company named Pemko and are not original creations of LEC. The locking device in LEC's "hatch doors" are ordinary drawer locks commonly used in furniture and office desks.[61]

In defending the copyrightability of its hatch doors' design, LEC merely claimed:

> LEC's Hatch Doors were particularly designed to blend in with the floor of the units in which they are installed and, therefore, appeal to the aesthetic sense of the owner of units or any visitors thereto[;]
>
> LEC's Hatch Doors have a distinct set of hinges, a distinct door a distinct jamb, all of which are both functional or utilitarian and artistic or ornamental at the same time[;] and
>
> Moreover, the Project is a high-end residential building located in the Rockwell Center, a very prime area in Metro Manila. As such, the owner of the Project is not expected to settle for Hatch Doors that simply live up to their function as such. The owner would require, as is the case for the Project, Hatch Doors that not only fulfill their utilitarian purposes but also appeal to the artistic or ornamental sense of their beholders.[62]

From the foregoing description, it is clear that the hatch doors were not artistic works within the meaning of copyright laws. A copyrightable work refers to literary and artistic works defined as original intellectual creations in the literary and artistic domain.[63]

A hatch door, by its nature is an object of utility. It is defined as a small door, small gate or an opening that resembles a window

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[61] CA *rollo*, p. 84.

[62] *Id.* at 63.

[63] *Ching v. Salinas, Sr., supra* note 50, at 650, citing *Pearl and Dean (Philippines), Incorporated v. Shoemart, Incorporated, supra* note 53, at 490.

equipped with an escape for use in case of fire or emergency.[64] It is thus by nature, functional and utilitarian serving as egress access during emergency. It is not primarily an artistic creation but rather an object of utility designed to have aesthetic appeal. It is intrinsically a useful article, which, as a whole, is not eligible for copyright.

A "useful article" defined as an article "having an intrinsic utilitarian function that is not merely to portray the appearance of the article or to convey information" is excluded from copyright eligibility.[65]

The only instance when a useful article may be the subject of copyright protection is when it incorporates a design element that is physically or conceptually separable from the underlying product. This means that the utilitarian article can function without the design element. In such an instance, the design element is eligible for copyright protection.[66] The design of a useful article shall be considered a pictorial, graphic, or sculptural work only if, and only to the extent that, such design incorporates pictorial, graphic, or sculptural features that can be identified separately from, and are capable of existing independently of, the utilitarian aspects of the article.[67]

A belt, being an object utility with the function of preventing one's pants from falling down, is in itself not copyrightable. However, an ornately designed belt buckle which is irrelevant to or did not enhance the belt's function hence, conceptually separable from the belt, is eligible for copyright. It is copyrightable as a sculptural work with independent aesthetic value, and not as an integral element of the belt's functionality.[68]

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[64] See *WEBSTER'S THIRD NEW INTERNATIONAL DICTIONARY* (Unabridged), pp. 1037, 2613, (1986 edition).

[65] *Chosun Int'l., Inc. v. Chrisha Creations, Ltd.*, 413 F.3d 324 (2d. Cir. 2005).

[66] *Id.*

[67] *Id.*, citing 17 U.S.C. §101.

[68] *Id.*, citing *Kieselstein-Cord v. Accessories by Pearl, Inc.*, 632 F.2d 989 (2d Cir. 1980).

A table lamp is not copyrightable because it is a functional object intended for the purpose of providing illumination in a room. The general shape of a table lamp is likewise not copyrightable because it contributes to the lamp's ability to illuminate the reaches of a room. But, a lamp base in the form of a statue of male and female dancing figures made of semi vitreous china is copyrightable as a work of art because it is unrelated to the lamp's utilitarian function as a device used to combat darkness.[69]

In the present case, LEC's hatch doors bore no design elements that are physically and conceptually separable, independent and distinguishable from the hatch door itself. The allegedly distinct set of hinges and distinct jamb, were related and necessary hence, not physically or conceptually separable from the hatch door's utilitarian function as an apparatus for emergency egress. Without them, the hatch door will not function.

More importantly, they are already existing articles of manufacture sourced from different suppliers. Based on the records, it is unrebutted that: (a) the hinges are similar to those used in truck doors; (b) the gaskets were procured from a company named Pemko and are not original creations of LEC; and (c) the locking device are ordinary drawer locks commonly used in furniture and office desks.

Being articles of manufacture already in existence, they cannot be deemed as original creations. As earlier stated, valid copyright ownership denotes originality of the copyrighted material. Originality means that the material was not copied, evidences at least minimal creativity and was independently created by the author.[70] It connotes production as a result of independent labor.[71] LEC did not produce the door jambs and hinges; it bought or acquired them from suppliers and thereafter affixed them to the hatch doors. No independent original creation can be deduced from such acts.

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[69] *Id.*, citing *Mazer v. Stein, supra* note 56.

[70] *Ching v. Salinas, Sr., supra* note 50.

[71] *Jones Bros. Co. v. Underkoffler*, 16 F. Supp. 729 (M.D. Pa. 1936).

The same is true with respect to the design on the door's panel. As LEC has stated, the panels were "designed to blend in with the floor of the units in which they [were] installed."[72] Photos of the panels indeed show that their color and pattern design were similar to the wooden floor parquet of the condominium units.[73] This means that the design on the hatch door panel was not a product of LEC's independent artistic judgment and discretion but rather a mere reproduction of an already existing design.

Verily then, the CA erred in holding that a probable cause for copyright infringement is imputable against the petitioners. Absent originality and copyrightability as elements of a valid copyright ownership, no infringement can subsist.

WHEREFORE, premises considered, the petition is hereby **GRANTED**. The Decision dated July 9, 2010 and Resolution dated February 24, 2011 of the Court of Appeals in CA-G.R. SP No. 95471 are **REVERSED** and **SET ASIDE**. The Resolutions dated March 10, 2006 and May 25, 2006 of the Department of Justice in I.S. No. 2004-925 dismissing the complaint for copyright infringement are **REINSTATED**.

SO ORDERED.

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

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[72] *Rollo*, p. 24.

[73] *Id.* at 209-210.

THIRD DIVISION

[G.R. No. 199282. March 14, 2016]

TRAVEL & TOURS ADVISERS, INCORPORATED, *petitioner, vs.* **ALBERTO CRUZ, SR., EDGAR HERNANDEZ and VIRGINIA MUÑOZ,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON CERTIORARI; THE JURISDICTION OF THE SUPREME COURT IN CASES BROUGHT FROM THE COURT OF APPEALS IS LIMITED TO REVIEW AND REVISION OF ERRORS OF LAW ALLEGEDLY COMMITTED BY THE APPELLATE COURT, AS ITS FINDINGS OF FACT IS DEEMED CONCLUSIVE; EXCEPTIONS, ENUMERATED.— Jurisprudence teaches us that "(a)s a rule, the jurisdiction of this Court in cases brought to it from the Court of Appeals x x x is limited to the review and revision of errors of law allegedly committed by the appellate court, as its findings of fact are deemed conclusive. As such, this Court is not duty- bound to analyze and weigh all over again the evidence already considered in the proceedings below. This rule, however, is not without exceptions." The findings of fact of the Court of Appeals, which are, as a general rule, deemed conclusive, may admit of review by this Court: (1) when the factual findings of the Court of Appeals and the trial court are contradictory; (2) when the findings are grounded entirely on speculation, surmises, or conjectures; (3) when the inference made by the Court of Appeals from its findings of fact is manifestly mistaken, absurd, or impossible; (4) when there is grave abuse of discretion in the appreciation of facts; (5) when the appellate court, in making its findings, goes beyond the issues of the case, and such findings are contrary to the admissions of both appellant and appellee; (6) when the judgment of the Court of Appeals is premised on a misapprehension of facts; (7) when the Court of Appeals fails to notice certain relevant facts which, if properly considered, will justify a different conclusion; (8) when the findings of fact are themselves conflicting; (9) when the findings of fact are conclusions without citation of the specific evidence on which they are based; and

(10) when the findings of fact of the Court of Appeals are premised on the absence of evidence but such findings are contradicted by the evidence on record.

2. CIVIL LAW; QUASI-DELICTS; THE CIVIL CODE PROVIDES THAT THE EMPLOYER OF A NEGLIGENT EMPLOYEE IS LIABLE FOR DAMAGES CAUSED BY THE LATTER; REMEDY OF EMPLOYER, EXPLAINED. — Article 2180, in relation to Article 2176, of the Civil Code provides that the employer of a negligent employee is liable for the damages caused by the latter. When an injury is caused by the negligence of an employee there instantly arises a presumption of the law that there was negligence on the part of the employer either in the selection of his employee or in the supervision over him after such selection. The presumption, however, may be rebutted by a clear showing on the part of the employer that it had exercised the care and diligence of a good father of a family in the selection and supervision of his employee. Hence, to escape solidary liability for quasi-delict committed by an employee, the employer must adduce sufficient proof that it exercised such degree of care. x x x In the selection of prospective employees, employers are required to examine them as to their qualifications, experience, and service records. On the other hand, due diligence in the supervision of employees includes the formulation of suitable rules and regulations for the guidance of employees, the issuance of proper instructions intended for the protection of the public and persons with whom the employer has relations through his or its employees and the imposition of necessary disciplinary measures upon employees in case of breach or as may be warranted to ensure the performance of acts indispensable to the business of and beneficial to their employer. To this, we add that actual implementation and monitoring of consistent compliance with said rules should be the constant concern of the employer, acting through dependable supervisors who should regularly report on their supervisory functions.

3. ID.; DAMAGES; ATTORNEY'S FEES; ATTORNEY'S FEES AS PART OF DAMAGES ARE AWARDED ONLY IN THE INSTANCES SPECIFIED IN THE CIVIL CODE; RATIONALE; NOT APPLICABLE IN CASE AT BAR.— As to the award of attorney's fees, it is settled that the award of attorney's fees is the exception rather than the general rule;

counsel's fees are not awarded every time a party prevails in a suit because of the policy that no premium should be placed on the right to litigate. Attorney's fees, as part of damages, are not necessarily equated to the amount paid by a litigant to a lawyer. In the ordinary sense, attorney's fees represent the reasonable compensation paid to a lawyer by his client for the legal services he has rendered to the latter; while in its extraordinary concept, they may be awarded by the court as indemnity for damages to be paid by the losing party to the prevailing party. Attorney's fees as part of damages are awarded only in the instances specified in Article 2208 of the Civil Code. As such, it is necessary for the court to make findings of fact and law that would bring the case within the ambit of these enumerated instances to justify the grant of such award, and in all cases it must be reasonable. In this case, the RTC, in awarding attorney's fees, reasoned out that *[w]hile there is no document submitted to prove that the plaintiffs spent attorney's fees, it is clear that they paid their lawyer in the prosecution of this case for which they are entitled to the same.* Such reason is conjectural and does not justify the grant of the award, thus, the attorney's fees should be deleted.

APPEARANCES OF COUNSEL

M.M. Lazaro & Associates for petitioner.
Westremundo Y. De Guzman for respondents.

D E C I S I O N

PERALTA, *J.*:

For resolution of this Court is the Petition for Review on *Certiorari* under Rule 45 of the Revised Rules of Court dated December 28, 2011, of petitioner Travel & Tours Advisers, Inc. assailing the Decision[1] dated May 16, 2011 and Resolution[2] dated November 10, 2011 of the Court of Appeals (CA), affirming

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[1] Penned by Associate Justice Ramon M. Bato, Jr. with Associate Justices Juan Q. Enriquez, Jr. and Florito S. Macalino, concurring; *rollo*, pp. 39-57.

[2] *Id.* at 58.

with modifications the Decision[3] dated January 30, 2008 of the Regional Trial Court (*RTC*), Branch 61, Angeles City finding petitioner jointly and solidarily liable for damages incurred in a vehicular accident.

The facts follow.

Respondent Edgar Hernandez was driving an Isuzu Passenger Jitney (jeepney) that he owns with plate number DSG-944 along Angeles-Magalang Road, Barangay San Francisco, Magalang, Pampanga, on January 9, 1998, around 7:50 p.m. Meanwhile, a Daewoo passenger bus (RCJ Bus Lines) with plate number NXM-116, owned by petitioner Travel and Tours Advisers, Inc. and driven by Edgar Calaycay travelled in the same direction as that of respondent Edgar Hernandez' vehicle. Thereafter, the bus bumped the rear portion of the jeepney causing it to ram into an *acacia* tree which resulted in the death of Alberto Cruz, Jr. and the serious physical injuries of Virginia Muñoz.

Thus, respondents Edgar Hernandez, Virginia Muñoz and Alberto Cruz, Sr., father of the deceased Alberto Cruz, Jr., filed a complaint for damages, docketed as Civil Case No. 9006 before the RTC claiming that the collision was due to the reckless, negligent and imprudent manner by which Edgar Calaycay was driving the bus, in complete disregard to existing traffic laws, rules and regulations, and praying that judgment be rendered ordering Edgar Calaycay and petitioner Travel & Tours Advisers, Inc. to pay the following:

1. For plaintiff Alberto Cruz, Sr.

a. The sum of ₱140,000.00 for the reimbursement of the expenses incurred for coffin, funeral expenses, for vigil, food, drinks for the internment (sic) of Alberto Cruz, Jr. as part of actual damages;

b. The sum of ₱300,000.00, Philippine Currency, as moral, compensatory and consequential damages.

c. The sum of ₱6,000.00 a month as lost of (sic) income from January 9, 1998 up to the time the Honorable Court may fixed (sic);

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[3] Penned by Judge Bernardita Gabitan Erum, *id.* at 79-98.

2. For plaintiff Virginia Muñoz:

a. The sum of ₱40,000.00, Philippine Currency, for the reimbursement of expenses for hospitalization, medicine, treatment and doctor's fee as part of actual damages;

b. The sum of ₱150,000.00 as moral, compensatory and consequential damages;

3. For plaintiff Edgar Hernandez:

a. The sum of ₱42,400.00 for the damage sustained by plaintiff's Isuzu Passenger Jitney as part of actual damages, plus ₱500.00 a day as unrealized net income for four (4) months;

b. The sum of ₱150,000.00, Philippine Currency, as moral, compensatory and consequential damages;

4. The sum of ₱50,000.00 pesos, Philippine Currency, as attorney's fees, plus ₱1,000.00 per appearance fee in court;

5. Litigation expenses in the sum of ₱30,000.00; and

6. To pay the cost of their suit.

Other reliefs just and equitable are likewise prayed for.[4]

For its defense, the petitioner claimed that it exercised the diligence of a good father of a family in the selection and supervision of its employee Edgar Calaycay and further argued that it was Edgar Hernandez who was driving his passenger jeepney in a reckless and imprudent manner by suddenly entering the lane of the petitioner's bus without seeing to it that the road was clear for him to enter said lane. In addition, petitioner alleged that at the time of the incident, Edgar Hernandez violated his franchise by travelling along an unauthorized line/route and that the jeepney was overloaded with passengers, and the deceased Alberto Cruz, Jr. was clinging at the back thereof.

On January 30, 2008, after trial on the merits, the RTC rendered judgment in favor of the respondents, the dispositive portion of the decision reads:

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[4] Complaint dated April 22, 1998, *id.* at 70.

WHEREFORE, premises considered, judgment is hereby rendered ordering the defendants Edgar Calaycay Ranese and Travel & Tours Advisers, Inc. to jointly and solidarily pay the following:

I.1. To plaintiff Alberto Cruz, Sr. and his family —

a) the sum of ₱50,000.00 as actual and compensatory damages;
b) the sum of ₱250,000.00 for loss of earning capacity of the decedent Alberto Cruz, Jr. and;
c) the sum of ₱50,000.00 as moral damages.

2. To plaintiff Virginia Muñoz —

a) the sum of ₱16,744.00 as actual and compensatory damages; and
b) the sum of ₱150,000.00 as moral damages.

3. To Edgar Hernandez —

a) the sum of ₱50,000.00 as actual and compensatory damages.

II. The sum of ₱50,000.00 as attorney's fees, and

III. The sum of ₱4,470.00 as cost of litigation

SO ORDERED.

Angeles City, Philippines, January 30, 2008.[5]

Petitioner filed its appeal with the CA, and on May 16, 2011, the appellate court rendered its decision, the decretal portion of which reads as follows:

WHEREFORE, the instant appeal is PARTLY GRANTED. The assailed Decision of the RTC, Branch 61, Angeles City, dated January 30, 2008, is AFFIRMED with MODIFICATIONS. The defendants are ordered to pay, jointly and severally, the following:

1. To plaintiff Alberto Cruz, Sr. and family —

a) the sum of ₱25,000.00 as actual damages;
b) the sum of ₱250,000.00 for the loss of earning capacity of the decedent Alberto Cruz, Jr.;

[5] *Rollo*, p. 98.

c) the sum of ₱50,000.00 as civil indemnity for the death of Alberto Cruz, Jr.;
d) the sum of ₱50,000.00 as moral damages.

2. To plaintiff Virginia Muñoz —

a) the sum of ₱16,744.00 as actual damages; and

b) the sum of ₱30,000.00 as moral damages.
3. To plaintiff Edgar Hernandez

a) The sum of ₱40,200.00 as actual damages.

4. The award of attorney's fees (₱50,000.00) and cost of litigation (₱4,470.00) remains.

SO ORDERED.[6]

Hence, the present petition wherein the petitioner assigned the following errors:

I.
THE PETITIONER'S BUS WAS NOT "OUT OF LINE;"

II.
THE FACT THAT THE JEEPNEY WAS BUMPED ON ITS LEFT REAR PORTION DOES NOT PREPONDERANTLY PROVE THAT THE DRIVER OF THE BUS WAS THE NEGLIGENT PARTY;

III.
THE DECEASED ALBERTO CRUZ, JR. WAS POSITIONED AT THE RUNNING BOARD OF THE JEEPNEY;

IV.
THE BUS DRIVER WAS NOT SPEEDING OR NEGLIGENT WHEN HE FAILED TO STEER THE BUS TO A COMPLETE STOP;

V.
THE PETITIONER EXERCISED EXTRAORDINARY DILIGENCE OF A GOOD FATHER OF A FAMILY IN ITS SELECTION AND SUPERVISION OF DRIVER CALAYCAY; AND

VI.
THERE IS NO FACTUAL AND LEGAL BASIS FOR THE VARIOUS AWARDS OF MONETARY DAMAGES.[7]

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[6] *Id.* at 56.

[7] *Id.* at 14-15.

According to petitioner, contrary to the declaration of the RTC, the petitioner's passenger bus was not "out-of-line" and that petitioner is actually the holder of a PUB (public utility bus) franchise for provincial operation from Manila-Ilocos Norte/ Cagayan-Manila, meaning the petitioner's passenger bus is allowed to traverse any point between Manila-Ilocos Norte/ Cagayan-Manila. Petitioner further asseverates that the fact that the driver of the passenger bus took the Magalang Road instead of the Bamban Bridge is of no moment because the bridge was under construction due to the effects of the lahar; hence closed to traffic and the Magalang Road is still in between the points of petitioner's provincial operation. Furthermore, petitioner claims that the jeepney was traversing a road way out of its allowed route, thus, the presumption that respondent Edgar Hernandez was the negligent party.

Petitioner further argues that respondent Edgar Hernandez failed to observe that degree of care, precaution and vigilance that his role as a public utility called for when he allowed the deceased Alberto Cruz, Jr., to hang on to the rear portion of the jeepney.

After due consideration of the issues and arguments presented by petitioner, this Court finds no merit to grant the petition.

Jurisprudence teaches us that "(a)s a rule, the jurisdiction of this Court in cases brought to it from the Court of Appeals x x x is limited to the review and revision of errors of law allegedly committed by the appellate court, as its findings of fact are deemed conclusive. As such, this Court is not duty-bound to analyze and weigh all over again the evidence already considered in the proceedings below.[8] This rule, however, is not without exceptions."[9] The findings of fact of the Court of Appeals, which

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[8] *Fuentes v. Court of Appeals*, 335 Phil. 1163, 1168 (1997).

[9] *Gaw v. Intermediate Appellate Court*, G.R. No. 70451, March 24, 1993, 220 SCRA 405, 413; citing *Morales v. Court of Appeals*, 274 Phil. 674 (1991); and *Navarra v. Court of Appeals*, G.R. No. 86237, December 17, 1991, 204 SCRA 850.

are, as a general rule, deemed conclusive, may admit of review by this Court:[10]

(1) when the factual findings of the Court of Appeals and the trial court are contradictory;

(2) when the findings are grounded entirely on speculation, surmises, or conjectures;

(3) when the inference made by the Court of Appeals from its findings of fact is manifestly mistaken, absurd, or impossible;

(4) when there is grave abuse of discretion in the appreciation of facts;

(5) when the appellate court, in making its findings, goes beyond the issues of the case, and such findings are contrary to the admissions of both appellant and appellee;

(6) when the judgment of the Court of Appeals is premised on a misapprehension of facts;

(7) when the Court of Appeals fails to notice certain relevant facts which, if properly considered, will justify a different conclusion;

(8) when the findings of fact are themselves conflicting;

(9) when the findings of fact are conclusions without citation of the specific evidence on which they are based; and

(10) when the findings of fact of the Court of Appeals are premised on the absence of evidence but such findings are contradicted by the evidence on record.

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[10] *Reyes v. Court of Appeals*, 328 Phil. 171 (1996); *Vda. de Alcantara v. Court of Appeals*, 322 Phil. 490 (1996); *Quebral v. Court of Appeals*, G.R. No. 101941, January 25, 1996, 252 SCRA 353, 368 (citing *Calde v. Court of Appeals*, G.R. No. 93980, June 27, 1994, 233 SCRA 376. See also *Cayabyab v. The Honorable Intermediate Appellate Court*, G.R. No. 75120, April 28, 1994, 232 SCRA 1), *Engineering & Machinery Corporation v. Court of Appeals*, 322 Phil. 161 (1996), *Chua Tiong Tay v. Court of Appeals*, 312 Phil. 1128 (1995), *Dee v. Court of Appeals*, G.R. No. 111153, November 21, 1994, 238 SCRA 254, 263, and *Asia Brewery, Inc. v. Court of Appeals*, G.R. No. 103543, July 5, 1993, 224 SCRA 437, 443; *Fuentes v. Court of Appeals, supra* note 8.

The issues presented are all factual in nature and do not fall under any of the exceptions upon which this Court may review. Moreover, well entrenched is the prevailing jurisprudence that only errors of law and not of facts are reviewable by this Court in a petition for review on *certiorari* under Rule 45 of the Revised Rules of Court, which applies with greater force to the Petition under consideration because the factual findings by the Court of Appeals are in full agreement with what the trial court found.[11]

Nevertheless, a review of the issues presented in this petition would still lead to the finding that petitioner is still liable for the damages awarded to the respondents but with certain modifications.

The RTC and the CA are one in finding that both vehicles were not in their authorized routes at the time of the incident. The conductor of petitioner's bus admitted on cross-examination that the driver of the bus veered off from its usual route to avoid heavy traffic. The CA thus observed:

First. As pointed out in the assailed Decision, both vehicles were not in their authorized routes at the time of the mishap. FRANCISCO TEJADA, the conductor of defendant-appellant's bus, admitted on cross-examination that the driver of the bus passed through Magalang Road instead of Sta. Ines, which was the usual route, thus:

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Q: What route did you take from Manila to Laoag, Ilocos Sur?
A: Instead of Sta. Ines, we took Magalang Road, sir.

Q: So that is not your usual route that you are taking?
A: No, sir, it so happened that there was heavy traffic at Bamban, Tarlac, that is why we took the Magalang Road.

x x x x x x x x x

The foregoing testimony of defendant-appellant's own witness clearly belies the contention that its driver took the Magalang Road instead of the Bamban Bridge because said bridge was closed and under construction due to the effects of lahar. Regardless of the

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[11] *Boneng y Bagawili v. People*, 363 Phil. 594, 605 (1999).

reason, however, the irrefutable fact remains that defendant-appellant's bus likewise veered from its usual route.[12]

Petitioner now claims that the bus was not out of line when the vehicular accident happened because the PUB (public utility bus) franchise that the petitioner holds is for provincial operation from Manila-Ilocos Norte/Cagayan-Manila, thus, the bus is allowed to traverse any point between Manila-Ilocos Norte/ Cagayan-Manila. Such assertion is correct. "Veering away from the usual route" is different from being "out of line." A public utility vehicle can and may veer away from its usual route as long as it does not go beyond its allowed route in its franchise, in this case, Manila-Ilocos Norte/Cagayan-Manila. Therefore, the bus cannot be considered to have violated the contents of its franchise. On the other hand, it is indisputable that the jeepney was traversing a road out of its allowed route. Necessarily, this case is not that of "*in pari delicto*" because only one party has violated a traffic regulation. As such, it would seem that Article 2185 of the New Civil Code is applicable where it provides that:

> Art. 2185. Unless there is proof to the contrary, it is presumed that a person driving a motor vehicle has been negligent if at the time of the mishap, he was violating any traffic regulation.

The above provision, however, is merely a presumption. From the factual findings of both the RTC and the CA based on the evidence presented, the proximate cause of the collision is the negligence of the driver of petitioner's bus. The jeepney was bumped at the left rear portion. Thus, this Court's past ruling,[13] that drivers of vehicles who bump the rear of another vehicle are presumed to be the cause of the accident, unless contradicted by other evidence, can be applied. The rationale behind the presumption is that the driver of the rear vehicle has full control of the situation as he is in a position to observe the vehicle in front of him.[14] Thus, as found by the CA:

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[12] *Rollo*, p. 44. (Emphasis ours).

[13] *Raynera v. Hiceta*, 365 Phil. 546 (1999).

[14] *Id.*

Second. The evidence on record preponderantly shows that it was the negligence of defendant-appellant's driver, EDGAR CALAYCAY, that was the proximate cause of the collision.

Even without considering the photographs (Exhibit "N", "N-1" and "N-2") showing the damage to the jeepney, **it cannot be denied that the said vehicle was bumped in its left rear portion by defendant-appellant's bus.** The same was established by the unrebutted testimonies of plaintiffs-appellees EDGAR HERNANDEZ and VIRGINIA MUÑOZ, as follows:

EDGAR HERNANDEZ

x x x x x x x x x

Q: Now, according to you, you were not able to reach the town proper of Magalang because your vehicle was bumped. In what portion of your vehicle was it bumped, Mr. Witness?
A: At the left side edge portion of the vehicle, sir.
Q: When it was bumped on the rear left side portion, what happened to your vehicle?
A: It was bumped strongly, sir, and then, "sinulpit ya", sir.
Q: When your vehicle was "sinulpit" and hit an acacia tree, what happened to the acacia tree?
A: The jeepney stopped and Alberto Cruz died and some of my passengers were injured, sir.

x x x x x x x x x

VIRGINIA MUÑOZ

x x x x x x x x x

Q: what portion of the vehicle wherein you were boarded that was hit by the Travel Tours Bus?
A: The rear portion of the jeep, sir.
Q: It was hit by the Travel Tours Bus?
A: Yes, sir.
Q: What happened to you when the vehicle was bumped?
A: I was thrown off the vehicle, sir.

x x x x x x x x x

It has been held that drivers of vehicles "who bump the rear of another vehicle" are presumed to be "the cause of the accident, unless contradicted by other evidence." The rationale behind the presumption is that the driver of the rear vehicle has full control of the situation as he is in a position to observe the vehicle in front of him.

In the case at bar, defendant-appellant failed to overturn the foregoing presumption. FRANCISCO TEJADA, the conductor of

the bus who was admittedly "seated in front, beside the driver's seat," and thus had an unimpeded view of the road, declared on direct examination that the jeepney was about 10 to 15 meters away from the bus when he first saw said vehicle on the road. Clearly, the bus driver, EDGAR CALAYCAY, would have also been aware of the presence of the jeepney and, thus, was expected to anticipate its movements.

However, on cross-examination, TEJADA claimed that the jeepney "suddenly appeared" before the bus, passing it diagonally, and causing it to be hit in its left rear side. Such uncorroborated testimony cannot be accorded credence by this Court because it is inconsistent with the physical evidence of the actual damage to the jeepney. On this score, We quote with approval the following disquisition of the trial court:

> x x x (F)rom the evidence presented, it was established that it was the driver of the RCJ Line Bus which was negligent and recklessly driving the bus of the defendant corporation.
>
> Francisco Tejada, who claimed to be the conductor of the bus, testified that it was the passenger jeepney coming from the pavement which suddenly entered diagonally the lane of the bus causing the bus to hit the rear left portion of the passenger jeepney. But such testimony is belied by the photographs of the jeepney (Exhs. N and N-1). As shown by Exh. N-1, the jeepney was hit at the rear left portion and not when the jeepney was in a diagonal position to the bus otherwise, it should have been the left side of the passenger jeepney near the rear portion that could have been bumped by the bus. It is clear from Exh. N-1 and it was even admitted that the rear left portion of the passenger jeepney was bumped by the bus. Further, if the jeepney was in diagonal position when it was hit by the bus, it should have been the left side of the body of the jeepney that could have sustained markings of such bumping. In this case, it is clear that it is the left rear portion of the jeepney that shows the impact of the markings of the bumping. The jeepney showed that it had great damage on the center of the front portion (Exh. N-2). It was the center of the front portion that hit the acacia tree (Exh. N). As admitted by the parties, both vehicles were running along the same direction from west to east. As testified to by Francisco Tejada, the jeepney was about ten (10) to fifteen (15) meters away from the bus when he noticed the jeepney entering diagonally the lane of the bus. If this was so, the middle

> left side portion of the jeepney could have been hit, not the rear portion. The evidence is clear that the bus was in fast running condition, otherwise, it could have stopped to evade hitting the jeepney. The hitting of the acacia tree by the jeepney, and the damages caused on the jeepney in its front (Exh. N-2) and on its rear left side show that the bus was running very fast.
>
> x x x x x x x x x

Assuming *ex gratia argumenti* that the jeepney was in a "stop position," as claimed by defendant-appellant, on the pavement of the road 10 to 15 meters ahead of the bus before swerving to the left to merge into traffic, a cautious public utility driver should have stepped on his brakes and slowed down. The distance of 10 to 15 meters would have allowed the bus with slacked speed to give way to the jeepney until the latter could fully enter the lane. Obviously, as correctly found by the court *a quo*, the bus was running very fast because even if the driver stepped on the brakes, it still made contact with the jeepney with such force that sent the latter vehicle crashing head-on against an acacia tree. In fact, FRANCISCO TEJADA effectively admitted that the bus was very fast when he declared that the driver "could not suddenly apply the break (sic) in full stop because our bus might turn turtle x x x." Incidentally, the allegation in the appeal brief that the driver could not apply the brakes with force because of the possibility that the bus might turn turtle "as they were approaching the end of the gradient or the decline of the sloping terrain or topography of the roadway" was only raised for the first time in this appeal and, thus, may not be considered. Besides, there is nothing on record to substantiate the same.

Rate of speed, in connection with other circumstances, is one of the principal considerations in determining whether a motorist has been reckless in driving a vehicle, and evidence of the extent of the damage caused may show the force of the impact from which the rate of speed of the vehicle may be modestly inferred. From the evidence presented in this case, it cannot be denied that the bus was running very fast. As held by the Supreme Court, the very fact of speeding is indicative of imprudent behavior, as a motorist must exercise ordinary care and drive at a reasonable rate of speed commensurate with the conditions encountered, which will enable him to keep the vehicle under control and avoid injury to others using the highway.[15]

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[15] *Rollo*, pp. 44-48. (Citations omitted; emphasis ours).

From the above findings, it is apparent that the proximate cause of the accident is the petitioner's bus and that the petitioner was not able to present evidence that would show otherwise. Petitioner also raised the issue that the deceased passenger, Alberto Cruz, Jr. was situated at the running board of the jeepney which is a violation of a traffic regulation and an indication that the jeepney was overloaded with passengers. The CA correctly ruled that no evidence was presented to show the same, thus:

> That the deceased passenger, ALBERTO CRUZ, JR., was clinging at the back of the jeepney at the time of the mishap cannot be gleaned from the testimony of plaintiff- appellee VIRGINIA MUÑOZ that it was she who was sitting on the left rearmost of the jeepney.
>
> VIRGINIA MUÑOZ herself testified that there were only about 16 passengers on board the jeepney when the subject incident happened. Considering the testimony of plaintiff-appellee EDGAR HERNANDEZ that the seating capacity of his jeepney is 20 people, VIRGINIA's declaration effectively overturned defendant-appellant's defense that plaintiff-appellee overloaded his jeepney and allowed the deceased passenger to cling to the outside railings. Yet, curiously, the defense declined to cross-examine VIRGINIA, the best witness from whom defendant-appellant could have extracted the truth about the exact location of ALBERTO CRUZ, JR. in or out of the jeepney. Such failure is fatal to defendant-appellant's case. The only other evidence left to support its claim is the testimony of the **conductor, FRANCISCO TEJADA, that there were 3 passengers who were clinging to the back of the jeepney, and it was the passenger clinging to the left side that was bumped by the bus. However, in answer to the clarificatory question from the court *a quo*, TEJADA admitted that he did not really see what happened, thus:**
>
> **Q: What happened to the passenger clinging to the left side portion?**
> **A: He was bumped, your Honor.**
> **Q: Why, the passenger fell?**
> **A: I did not really see what happened, Mam [sic], what I know he was bumped.**

This, despite his earlier declaration that he was seated in front of the bus beside the driver's seat and knew what happened to the passengers who were clinging to the back of the jeepney. Indubitably, therefore,

TEJADA was not a credible witness, and his testimony is not worthy of belief.[16]

Consequently, the petitioner, being the owner of the bus and the employer of the driver, Edgar Calaycay, cannot escape liability. Article 2176 of the Civil Code provides:

> Whoever by act or omission causes damage to another, there being fault or negligence, is obliged to pay for the damage done. Such fault or negligence, if there is no pre-existing contractual relation between the parties, is called a quasi-delict and is governed by the provisions of this Chapter.

Complementing Article 2176 is Article 2180 which states the following:

> The obligation imposed by Article 2176 is demandable not only for one's own acts or omissions, but also for those of persons for whom one is responsible x x x.
>
> Employers shall be liable for the damages caused by their employees and household helpers acting within the scope of their assigned tasks, even though the former are not engaged in any business or industry x x x.
>
> The responsibility treated of in this article shall cease when the persons herein mentioned prove that they observed all the diligence of a good father of a family to prevent damage.

Article 2180, in relation to Article 2176, of the Civil Code provides that the employer of a negligent employee is liable for the damages caused by the latter. When an injury is caused by the negligence of an employee there instantly arises a presumption of the law that there was negligence on the part of the employer either in the selection of his employee or in the supervision over him after such selection. The presumption, however, may be rebutted by a clear showing on the part of the employer that it had exercised the care and diligence of a good father of a family in the selection and supervision of his employee. Hence, to escape solidary liability for quasi-delict committed

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[16] *Id.* at 48-49. (Citations omitted, emphasis ours)

by an employee, the employer must adduce sufficient proof that it exercised such degree of care.[17] In this case, the petitioner failed to do so. The RTC and the CA exhaustively and correctly ruled as to the matter, thus:

> Thus, whenever an employee's (defendant EDGAR ALAYCAY) negligence causes damage or injury to another, there instantly arises a presumption that the employer (defendant-appellant) failed to exercise the due diligence of a good father of the family in the selection or supervision of its employees. To avoid liability for a quasi-delict committed by its employee, an employer must overcome the presumption by presenting convincing proof that it exercised the care and diligence of a good father of a family in the selection and supervision of its employee. The failure of the defendant-appellant to overturn this presumption was meticulously explained by the court *a quo* as follows:
>
> > The position of the defendant company that it cannot be held jointly and severally liable for such damages because it exercised the diligence of a good father of a family, that (sic) does not merit great credence.
> >
> > As admitted, Edgar Calaycay was duly authorized by the defendant company to drive the bus at the time of the incident. Its claim that it has issued policies, rules and regulations to be followed, conduct seminars and see to it that their drivers and employees imbibe such policies, rules and regulations, have their drivers and conductors medically checked-up and undergo drug-testing, did not show that all these rudiments were applied to Edgar Calaycay. No iota of evidence was presented that Edgar Calaycay had undergone all these activities to ensure that he is a safe and capable drivers [sic]. In fact, the defendant company did not put up a defense on the said driver. The defendant company did not even secure a counsel to defend the driver. It did not present any evidence to show it ever counseled such driver to be careful in his driving. As appearing from the evidence of the defendant corporation, the driver at the time of the incident was Calaycay Francisco (Exh. 9) and the conductor was Tejada. This shows that the defendant

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[17] *Baliwag Transit, Inc. v. CA, et al.*, 330 Phil. 785, 789-790 (1996), citing *China Air Lines, Ltd. v. Court of Appeals*, 264 Phil. 15, 26 (1990).

corporation does not exercise the diligence of a good father of a family in the selection and supervision of the employees. It does not even know the correct and true name of its drivers. The testimony of Rolando Abadilla, Jr. that they do not have the records of Edgar Calaycay because they ceased operation due to the death of his father is not credible. Why only the records of Edgar Calaycay? It has the inspection and dispatcher reports for January 9, 1998 and yet it could not find the records of Edgar Calaycay. As pointed out by the Supreme Court in a line of cases, the evidence must not only be credible but must come from a credible witness. No proof was submitted that Edgar Calaycay attended such alleged seminars and examinations. Thus, under Art. 2180 of the Civil Code, "Employers shall be liable for the damage caused by their employees and household helper acting within the scope of their assigned tasks, even though the former are not engaged in any business or industry. The liability of the employer for the tortuous acts or negligence of its employer [sic] is primary and solidary, direct and immediate, and not conditional upon the insolvency of prior recourse against the negligent employee. The cash voucher for the alleged lecture on traffic rules and regulations (Exh. 12) presented by the defendant corporation is for seminar allegedly conducted on May 20 and 21, 1995 when Edgar Calaycay was not yet in the employ of the defendant corporation. As testified to by Rolando Abadilla, Jr., Edgar Calaycay stated his employment with the company only in 1996. Rolando Abadilla, Jr. testified that copies of the manual (Exh. 8) are given to the drivers and conductors for them to memorize and know the same, but no proof was presented that indeed Edgar Calaycay was among the recipients. Nobody testified categorically that indeed Edgar Calaycay underwent any of the training before being employed by the defendant company. All the testimonies are generalizations as to the alleged policies, rules and regulations but no concrete evidence was presented that indeed Edgar Calaycay underwent such familiarization, trainings and seminars before he got employed and during that time that he was performing his duties as a bus driver of the defendant corporation. Moreover, the driver's license of the driver was not even presented. These omissions did not overcome the liability of the defendant corporation under Article 2180 of the Civil Code. x x x

The observation of the court *a quo* that defendant-appellant failed to show proof that EDGAR CALAYCAY did in fact undergo the seminars conducted by it assumes greater significance when viewed in the light of the following admission made by ROLANDO ABADILLA, JR., General Manager of the defendant-appellant corporation, that suggest compulsory attendance of said seminars only among drivers and conductors in Manila thus:

x x x x x x x x x

Q: How many times does (sic) the seminars being conducted by your company a year?
A: Normally, it is a minimum of two (2) seminars per year, sir.
Q: In these seminars that you conduct, are all drivers and conductors obliged to attend?
A: Yes, sir, if they are presently in Manila.
Q: It is only in Manila that you conduct seminars?
A: Yes, sir.

x x x x x x x x x

Moreover, with respect to the selection process, ROLANDO ABADILLA, JR. categorically admitted in open court that EDGAR CALAYCAY was not able to produce the clearances required by defendant-appellant upon employment, thus:

x x x x x x x x x

Q: By the way, Mr. Witness, do you know this Edgar Calaycay who was once employed by your company as a driver?
A: Yes, sir.
Q: Have you seen the application of Edgar Calaycay?
A: Yes, sir.
Q: From what I have seen, what documents did he submit in applying as a driver in your business?
Atty. De Guzman: Very leading, your Honor.
Q: Before a driver could be accepted, what document is he required to submit?
A: The company application form; NBI clearance; police clearance; barangay clearance; mayor's clearance and other clearances, sir.
Q: Was he able to reproduce these clearances by Mr. Calaycay?
A: No, sir.

x x x x x x x x x[18]

In the selection of prospective employees, employers are required to examine them as to their qualifications, experience, and service records.[19] On the other hand, due diligence in the supervision of employees includes the formulation of suitable rules and regulations for the guidance of employees, the issuance of proper instructions intended for the protection of the public and persons with whom the employer has relations through his or its employees and the imposition of necessary disciplinary measures upon employees in case of breach or as may be warranted to ensure the performance of acts indispensable to the business of and beneficial to their employer. To this, we add that actual implementation and monitoring of consistent compliance with said rules should be the constant concern of the employer, acting through dependable supervisors who should regularly report on their supervisory functions.[20] In this case, as shown by the above findings of the RTC, petitioner was not able to prove that it exercised the required diligence needed in the selection and supervision of its employee.

Be that as it may, this doesn't erase the fact that at the time of the vehicular accident, the jeepney was in violation of its allowed route as found by the RTC and the CA, hence, the owner and driver of the jeepney likewise, are guilty of negligence as defined under Article 2179 of the Civil Code, which reads as follows:

When the plaintiff's negligence was the immediate and proximate cause of his injury, he cannot recover damages. But if his negligence was only contributory, the immediate and proximate cause of the injury being the defendant's lack of due care, the plaintiff may recover damages, but the courts shall mitigate the damages to be awarded.

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[18] *Rollo*, pp. 49-52. (Citations omitted).

[19] *Metro Manila Transit Corporation v. Court of Appeals*, 359 Phil. 18, 32 (1998).

[20] *Metro Manila Transit Corporation v. Court of Appeals*, G.R. No. 104408, June 21, 1993, 223 SCRA 521, 540-541.

The petitioner and its driver, therefore, are not solely liable for the damages caused to the victims. The petitioner must thus be held liable only for the damages actually caused by his negligence.[21] It is, therefore, proper to mitigate the liability of the petitioner and its driver. The determination of the mitigation of the defendant's liability varies depending on the circumstances of each case.[22] The Court had sustained a mitigation of 50% in *Rakes v. AG & P*;[23] 20% in *Phoenix Construction, Inc. v. Intermediate Appellate Court*[24] and *LBC Air Cargo, Inc. v. Court of Appeals*; [25] and 40% in *Bank of the Philippine Islands v. Court of Appeals*[26] and *Philippine Bank of Commerce v. Court of Appeals*.[27]

In the present case, it has been established that the proximate cause of the death of Alberto Cruz, Jr. is the negligence of petitioner's bus driver, with the contributory negligence of respondent Edgar Hernandez, the driver and owner of the jeepney, hence, the heirs of Alberto Cruz, Jr. shall recover damages of only 50% of the award from petitioner and its driver. Necessarily, 50% shall be bourne by respondent Edgar Hernandez. This is pursuant to *Rakes v. AG & P* and after considering the circumstances of this case.

In awarding damages for the death of Alberto Cruz, Jr., the CA ruled as follows:

For the death of ALBERTO CRUZ, JR. the court *a quo* awarded his heirs ₱50,000.00 as actual and compensatory damages; ₱250,000.00 for loss of earning capacity; and another ₱50,000.00 as moral damages. However, as pointed out in the assailed Decision

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[21] See *Syki v. Begasa*, 460 Phil. 381, 391 (2003).

[22] *Lambert v. Heirs of Castillon*, 492 Phil. 384, 396 (2005).

[23] 7 Phil. 359 (1907).

[24] 232 Phil. 327 (1987).

[25] 311 Phil. 715 (1995).

[26] G.R. No. 102383, November 26, 1992, 216 SCRA 51.

[27] 336 Phil. 667 (1997).

dated January 30, 2008, only the amount paid (₱25,000.00) for funeral services rendered by Magaleña Memorial Home was duly receipted (Exhibit "E-1"). It is settled that actual damages must be substantiated by documentary evidence, such as receipts, in order to prove expenses incurred as a result of the death of the victim. As such, the award for actual damages in the amount of ₱50,000.00 must be modified accordingly.

Under Article 2206 of the Civil Code, the damages for death caused by a *quasi-delict* shall, in addition to the indemnity for the death itself which is fixed by current jurisprudence at ₱50,000.00 and which the court *a quo* failed to award in this case, include loss of the earning capacity of the deceased and moral damages for mental anguish by reason of such death. The formula for the computation of loss of earning capacity is as follows:

Net earning capacity = Life expectancy x [Gross Annual Income - Living Expenses (50% of gross annual income)], where life expectancy = 2/3 (80 — the age of the deceased)

Evidence on record shows that the deceased was earning ₱6,000.00 a month as smoke house operator at Pampanga's Best, Inc., as per Certification (Exhibit "K") issued by the company's Production Manager, Enrico Ma. O. Hizon, on March 18, 1998, His gross income therefore amounted to ₱72,000.00 [₱6,000.00 x 12]. Deducting 50% therefrom (₱36,000.00) representing the living expenses, his net annual income amounted to ₱36,000.00. Multiplying this by his life expectancy of 40.67 years [2/3(80-19)] having died at the young age of 19, the award for loss of earning capacity should have been ₱1,464,000.00. Considering, however, that his heirs represented by his father, ALBERTO CRUZ, SR., no longer appealed from the assailed Decision dated January 30, 2008, and no discussion thereon was even attempted in plaintiffs-appellees' appeal brief, the award for loss of earning capacity in the amount of ₱250,000.00 stands.

Moral damages in the amount of ₱50,000.00 is adequate and reasonable, bearing in mind that the purpose for making such award is not to enrich the heirs of the victim but to compensate them however inexact for injuries to their feelings.

x x x x x x x x x[28]

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[28] *Rollo*, pp. 52-54. (Citations omitted).

In summary, the following were awarded to the heirs of Alberto Cruz, Jr.:

1) ₱25,000.00 as actual damages;
2) ₱250,000.00 for the loss of earning;
3) ₱50,000.00 as civil indemnity for the death of Alberto Cruz, Jr.; and
4) ₱50,000.00 as moral damages

Petitioner contends that the CA erred in awarding an amount for the loss of earning capacity of Alberto Cruz, Jr. It claims that the certification from the employer of the deceased stating that when he was still alive, he earned ₱6,000.00 per month was not presented and identified in open court. In that aspect, petitioner is correct. The records are bereft that such certification was presented and identified during the trial. It bears stressing that compensation for lost income is in the nature of damages and as such requires due proof of the damages suffered; there must be unbiased proof of the deceased's average income.[29]

Therefore, applying the above disquisitions, the heirs of Alberto Cruz, Jr. shall now be awarded the following:

1) ₱12,500.00 as actual damages;
2) ₱25,000.00 as civil indemnity for the death of Alberto Cruz, Jr., and
3) ₱25,000.00 as moral damages.

In the same manner, petitioner is also partly responsible for the injuries sustained by respondent Virginia Muñoz hence, of the ₱16,744.00 actual damages and ₱30,000.00 moral damages awarded by the CA, petitioner is liable for half of those amounts. Anent respondent Edgar Hernandez, due to his contributory negligence, he is only entitled to receive half the amount (₱40,200.00) awarded by the CA as actual damages which is ₱20,100.00.

As to the award of attorney's fees, it is settled that the award of attorney's fees is the exception rather than the general rule;

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[29] *People v. Ereno*, 383 Phil. 30, 46 (2000).

counsel's fees are not awarded every time a party prevails in a suit because of the policy that no premium should be placed on the right to litigate. Attorney's fees, as part of damages, are not necessarily equated to the amount paid by a litigant to a lawyer. In the ordinary sense, attorney's fees represent the reasonable compensation paid to a lawyer by his client for the legal services he has rendered to the latter; while in its extraordinary concept, they may be awarded by the court as indemnity for damages to be paid by the losing party to the prevailing party. Attorney's fees as part of damages are awarded only in the instances specified in Article 2208[30] of the Civil Code. As such, it is necessary for the court to make findings of fact and law that would bring the case within the ambit of these enumerated instances to justify the grant of such award, and in all cases it must be reasonable.[31] In

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[30] Art. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

(1) When exemplary damages are awarded;

(2) When the defendant's act or omission has compelled the plaintiff to litigate with third persons or to incur expenses to protect his interest;

(3) In criminal cases of malicious prosecution against the plaintiff;

(4) In case of a clearly unfounded civil action or proceeding against the plaintiff;

(5) Where the defendant acted in gross and evident bad faith in refusing to satisfy the plaintiff's plainly valid, just and demandable claim;

(6) In actions for legal support;

(7) In actions for the recovery of wages of household helpers, laborers and skilled workers;

(8) In actions for indemnity under workmen's compensation and employer's liability laws;

(9) In a separate civil action to recover civil liability arising from a crime;

(10) When at least double judicial costs are awarded;

(11) **In any other case where the court deems it just and equitable that attorney's fees and expenses of litigation should be recovered.**

In all cases, the attorney's fees and expenses of litigation must be reasonable. (Emphasis supplied).

[31] *Benedicto v. Villaflores*, 646 Phil. 733, 742 (2010).

this case, the RTC, in awarding attorney's fees, reasoned out that *[w]hile there is no document submitted to prove that the plaintiffs spent attorney's fees, it is clear that they paid their lawyer in the prosecution of this case for which they are entitled to the same*.[32] Such reason is conjectural and does not justify the grant of the award, thus, the attorney's fees should be deleted. However, petitioner shall still have to settle half of the cost of the suit.

WHEREFORE, the Petition for Review on *Certiorari* under Rule 45, dated December 28, 2011, of petitioner Travel & Tours Advisers, Inc. is **DENIED.** However, the Decision dated May 16, 2011 of the Court of Appeals is **MODIFIED** as follows:

The petitioner and Edgar Calaycay are **ORDERED** to jointly and severally PAY the following:

1. To respondent Alberto Cruz, Sr. and family:
   a) ₱12,500.00 as actual damages;
   b) ₱25,000.00 as civil indemnity for the death of Alberto Cruz, Jr., and
   c) ₱25,000.00 as moral damages.
2. To respondent Virginia Muñoz:
   a) ₱8,372.00 as actual damages;
   b) ₱15,000.00 as moral damages.
3. To respondent Edgar Hernandez:
   a) ₱20,100.00 as actual damages, and
4. The sum of ₱2,235.00 as cost of litigation.

Respondent Edgar Hernandez is also **ORDERED** to **PAY** the following:

1. To respondent Alberto Cruz, Sr. and family:
   a) ₱12,500.00 as actual damages;
   b) ₱25,000.00 as civil indemnity for the death of Alberto Cruz, Jr., and
   c) ₱25,000.00 as moral damages.

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[32] *Rollo*, p. 98.

2. To respondent Virginia Muñoz:
   a) ₱8,372.00 as actual damages;
   b) ₱15,000.00 as moral damages, and
3. The sum of ₱2,235.00 as cost of litigation.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 203005. March 14, 2016]

TABUK MULTI-PURPOSE COOPERATIVE, INC. (TAMPCO), JOSEPHINE DOCTOR, and WILLIAM BAO-ANGAN, *petitioners, vs.* **MAGDALENA DUCLAN,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT BY EMPLOYER; WILLFUL DISOBEDIENCE, AS A GROUND; REQUISITES; ELUCIDATED.— Under Article 282 of the Labor Code, the employer may terminate the services of its employee for the latter's serious misconduct or willful disobedience of its or its representative's lawful orders. And for willful disobedience to constitute a ground, it is required that: "(a) the conduct of the employee must be willful or intentional; and (b) the order the employee violated must have been reasonable, lawful, made known to the employee, and must pertain to the duties that he had been engaged to discharge. Willfulness must be attended by a wrongful and perverse mental attitude rendering the employee's act inconsistent with proper subordination. In any case, the conduct of the employee that is

a valid ground for dismissal under the Labor Code constitutes harmful behavior against the business interest or person of his employer. It is implied that in every act of willful disobedience, the erring employee obtains undue advantage detrimental to the business interest of the employer." The persistent refusal of the employee to obey the employer's lawful order amounts to willful disobedience. Indeed, "[o]ne of the fundamental duties of an employee is to obey all reasonable rules, orders and instructions of the employer. Disobedience, to be a just cause for termination, must be willful or intentional, willfulness being characterized by a wrongful and perverse mental attitude rendering the employee's act inconsistent with proper subordination. A willful or intentional disobedience of such rule, order or instruction justifies dismissal only where such rule, order or instruction is (1) reasonable and lawful, (2) sufficiently known to the employee, and (3) connected with the duties which the employee has been engaged to discharge."

2. ID.; ID.; ID.; PROCEDURAL DUE PROCESS, REQUIREMENTS; ESTABLISHED IN CASE AT BAR.— The Court likewise finds that in dismissing respondent, petitioners observed the requirements of due process. An investigation was conducted by a fact-finding committee; respondent and her colleagues were summoned and required to explain – and they did; respondent submitted an October 21, 2004 letter acknowledging and confessing her wrongdoing – that despite BA No. 55, she and her colleagues continued to approve and release SILs. After the investigation proceedings, the committee prepared a detailed Report of its findings and containing a recommendation to suspend the respondent, require her to restore the amounts she wrongly disbursed – by collecting the credits herself, and in the event of failure to restore the said amounts, she would be dismissed from the service. The Report was approved and adopted by the cooperative's BOD, which resolved to suspend respondent from November 8 until December 31, 2004 and ordered her to collect, within the said period, the unauthorized SIL releases she made; otherwise, she would be terminated from employment. When respondent failed to restore the amounts in question, the BOD ordered her dismissal from employment. Respondent was informed of her dismissal in a February 1, 2005 communication addressed to her; this is the second of the twin notices required by law. Thus, as to respondent, the cooperative observed the proper

procedure prior to her dismissal. In termination proceedings of employees, procedural due process consists of the twin requirements of notice and hearing. The employer must furnish the employee with two written notices before the termination of employment can be effected: (1) the first apprises the employee of the particular acts or omissions for which his dismissal is sought; and (2) the second informs the employee of the employer's decision to dismiss him. x x x

3. ID.; ID.; ID.; MANAGEMENT PREROGATIVES; THE COURT WILL NOT INTERFERE WITH PREROGATIVES OF MANAGEMENT ON THE DISCIPLINE OF EMPLOYEES, AS LONG AS THEY DO NOT VIOLATE LABOR LAWS, COLLECTIVE BARGAINING AGREEMENTS, IF ANY, AND GENERAL PRINCIPLES OF FAIRNESS AND JUSTICE; APPLICATION IN CASE AT BAR.— "x x x Courts will not interfere with prerogatives of management on the discipline of employees, as long as they do not violate labor laws, collective bargaining agreements if any, and general principles of fairness and justice." Moreover, management is not precluded from condoning the infractions of its employees; as with any other legal right, the management prerogative to discipline employees and impose punishment may be waived. As far as respondent is concerned, the cooperative chose not to waive its right to discipline and punish her; this is its privilege as the holder of such right. Finally, it cannot be said that respondent was discriminated against or singled out, for among all those indicted, only the former General Manager was accorded leniency; the rest, including respondent, were treated on equal footing. As to why the former General Manager was allowed to retire, this precisely falls within the realm of management prerogative; what matters, as far as the Court is concerned, is that respondent was not singled out and treated unfairly.

APPEARANCES OF COUNSEL

Dick Gaydoen Bal-O for petitioners.
Perdigon Duclan and Associates for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

An employee's willful and repeated disregard of a resolution issued by a cooperative's board of directors (BOD) declaring a moratorium on the approval and release of loans, thus placing the resources of the cooperative and ultimately the hard-earned savings of its members in a precarious state, constitutes willful disobedience which justifies the penalty of dismissal under Article 282 of the Labor Code.

Assailed in this Petition for Review on *Certiorari*[1] are: 1) the September 15, 2011 Decision[2] of the Court of Appeals (CA) in CA-G.R. SP No. 114753, which reversed and set aside the November 25, 2009 Decision[3] and April 8, 2010 Resolution[4] of the National Labor Relations Commission (NLRC) in NLRC CA-No. 050848-06 (RA-06-09); and 2) the CA's July 11, 2012 Resolution[5] denying reconsideration of its assailed Decision.

Factual Antecedents

Petitioner Tabuk Multi-Purpose Cooperative, Inc. (TAMPCO) is a duly registered cooperative based in Tabuk City, Kalinga. It is engaged in the business of obtaining investments from its members which are lent out to qualified member-borrowers. Petitioner Josephine Doctor is TAMPCO Chairperson and member of the cooperative's BOD, while petitioner William Bao-Angan is TAMPCO Chief Executive Officer.

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[1] *Rollo,* pp. 10-34.

[2] CA *rollo,* pp. 449-467; penned by Associate Justice Francisco P. Acosta and concurred in by Associate Justices Vicente S.E. Veloso and Edwin D. Sorongon.

[3] NLRC Records, pp. 584-593; penned by Presiding Commissioner Gerardo C. Nograles and concurred in by Commissioners Perlita B. Velasco and Romeo L. Go.

[4] *Id.* at 639-641.

[5] CA *rollo,* pp. 582-583.

Respondent Magdalena Duclan was employed as TAMPCO Cashier on August 15, 1989. In 2002, TAMPCO introduced Special Investment Loans (SILs) to its members and prospective borrowers. Among those who availed themselves of the SILs were Brenda Falgui (Falgui) and Juliet Kotoken (Kotoken).[6]

In June 2003, the TAMPCO BOD issued Board Action (BA) No. 28 which limited the grant of SILs to ₱5 million and instructed management to collect outstanding loans and thus reduce the amount of loans granted to allowable levels. This was prompted by a cooperative report stating that too many SILs were being granted, the highest single individual borrowing reached a staggering ₱14 million, which thus adversely affected the cooperative's ability to grant regular loans to other members of the cooperative.[7] However, despite said board action, SILs were granted to Falgui and Kotoken over and above the ceiling set. This prompted the BOD to issue, on October 26, 2003, BA No. 55 completely halting the grant of SILs pending collection of outstanding loans.

Despite issuance of BA No. 55, however, additional SILs were granted to Falgui amounting to ₱6,697,000.00 and to Kotoken amounting to ₱3.5 million.[8] Eventually, Falgui filed for insolvency while Kotoken failed to pay back her loans.

On February 23, 2004, TAMPCO indefinitely suspended respondent and other cooperative officials pursuant to BA No. 73-03, and required them to replace the amount of ₱6 million representing unpaid loans as of February 21, 2004. On March 6, 2004, respondent's suspension was fixed at 15 days, and she was ordered to return to work on March 15, 2004.

The TAMPCO BOD then created a fact-finding committee (committee) to investigate the SIL fiasco.[9] Respondent and other

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[6] *Id.* at 115.

[7] NLRC Records, pp. 99, 102.

[8] *Rollo*, p. 137.

[9] *Id.* at 116.

TAMPCO employees were summoned to the proceedings and required to submit their respective answers to the committee.[10]

Respondent submitted to the committee an October 21, 2004 letter,[11] admitting that despite the issuance of BA No. 55, she and her co-respondents approved and released SILs, and that she acknowledged responsibility therefor.

After conducting hearings, the committee issued its Report on the Special Investment Loans,[12] which states as follows:

x x x x x x x x x

a. There are loan notes which do not contain the signature of the spouse of the borrower as mandated under Chapter 10 of the Policy Manual. This is true in the loan notes of Monica Oras, and Juliet Kotoken for her loan application sometime on [sic] January 12, 2004;

b. Special loans were still granted even after the setting of the allowable ceiling on June 28, 2003 (BA No. 28) and even after the Board of Directors stopped the granting of the Special Investment Loan on October 26, 2003 (BA No. 55);

c. Loans were released even there [sic] were lacking documents. The case of the SIL granted for example to Mrs. Juliet Kotoken and Mrs. Brenda Falgui on January 12, 2004 were released even without the required loan note. It was revealed that Mr. Peter Socalo prepared the voucher and Mrs. Aligo did the releasing of the amount upon the conformity of Mrs. Magdalena Duclan. The loan notes were made and executed later after the loans were also released;

d. Checks used to secure or postdated checks intended to pay the Special Investment Loans were not presented for payment at the time that they fall [sic] due;

e. Extension of the term of the loan were done through the substitution of the checks without prior approval of the Board of Directors.

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[10] *Id.* at 57-59, 85-86.

[11] *Id.* at 114.

[12] *Id.* at 115-119.

All the above findings were not denied and in fact respondent's CEO Rev. Ismael Sarmiento admitted the charge against him. "Mea Culpa" x x x he said[,] but at the same time prayed for the Committee's and Board's understanding and compassion. Magdalena Duclan and Fruto Singwey admitted [their fault under] command responsibility for the action of their subordinates.

All the other respondents invoked that they just [performed] their duties [or be charged with] insubordination. x x x

To the issue of the missing check which was raised by Mr. Dulawon in the previous Board meetings, the committee heard again the side of the cashier [who] denied that the same is missing. Accordingly, the same was changed by Mrs. Brenda Falgui, or that a substitute check was issued by Mrs. Falgui. She [had a] conflicting statement before the Board when she stated that the amount belongs to Juliet's account.

CONCLUSION:

There was indeed an error, mistake, negligence or abuse of discretion that transpired in the grant of the special investment loans. x x x [T]here are violations of the policies or Board actions which should be dealt with[.] x x x.

RECOMMENDATIONS:

AS TO THE ACCOUNTABILITY

x x x x x x x x x

Mrs. Magdalena Duclan

The committee recommended that she will be immediately suspended without pay and for her to collect the SIL she [had] released even without the loan note and for her to account [for] or pay the missing value of the check bearing no. 00115533 in the amount of ₱1,500,000.00 [by] Dec. 31, 2004.

[For failure] to collect or account/pay [by then she] shall be [dismissed] from service with forfeiture of all benefits.

She violated policies and Board actions, specially 28 and 55 in relation to the manual.[13]

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[13] *Id.* at 117-119.

On November 6, 2004, the BOD adopted the report of the committee and ordered that respondent be suspended from November 8 until December 31, 2004; respondent was likewise directed to collect, within the said period, the unauthorized SIL releases she made, otherwise she would be terminated from employment.[14]

Unable to collect or account for the ₱1.5 million as required, respondent was dismissed from employment. Thus, in a February 1, 2005 communication,[15] TAMPCO wrote:

> Anent your letter dated January 26, 2005, reiterating your plea for a reconsideration of your suspension for the reason that you were suspended twice on different days for the commission of the same offense, the following quoted paragraph was lifted from lines 339 through 350 of the minutes of the regular meeting of the TAMPCO BOD held on November 27, 2004, treating the matter of your concern for your information, to wit:
>
> *"x x x CEO Sarmiento and Cashier Duclan (requested] reconsideration of their suspension pointing out that they are being suspended twice for the same offense. The Board denied the request, clarifying that the basis for the second suspension is the discovery of the release of cash to the SIL recipient without first accomplishing the corresponding loan note and which action is contrary to the established processes. It was mentioned that such violation is punishable by outright dismissal but the policy was humanized with the imposition only of suspension to the violators to give them ample time to collect the unauthorized disbursement. x x x[The first] suspension was lifted because their services were urgently needed in the distribution of dividends and patronage refunds. The Board decided to stand by its decision based on the recommendation of the fact-finding committee."*
>
> [For] failure to comply with the tasks required x x x within the effectivity period of your suspension as set under Office Orders numbered 001-04 and 002-04, both dated November 6, 2004, the Board, during its January 29, 2005 regular meeting, decided to

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[14] *Id.* at 40.

[15] *Id.* at 94.

terminate your services x x x effective as of the closing of office hours on February 1, 2005.

Ruling of the Labor Arbiter

On July 12, 2005, respondent filed a complaint for illegal dismissal, with recovery of backwages; unpaid holiday pay; premium and 13th month pay; moral, exemplary and actual damages; and attorney's fees, against respondents which was docketed in the NLRC RAB, Cordillera Administrative Region, Baguio City as NLRC Case No. RAB-CAR-07-0344-05 (R-11-08).

On April 24, 2009, Labor Arbiter Monroe C. Tabingan issued a Decision[16] in the case, decreeing as follows:

WHEREFORE, all premises duly considered, the respondent is hereby found to have illegally suspended, then illegally dismissed the herein complainant. In view of the fact that this decision was a collective act of the Board of Directors and Officers of the respondent, they, as well as the respondent Cooperative, are hereby jointly and severally held liable to pay to the complainant the following:

1. Her full backwages from the time of her illegal suspension beginning 24 February 2004 to 15 March 2004, and her illegal dismissal from 08 November 2004 to the finality of this Decision, with legal rate of interest thereon until fully paid, currently computed at PhP1,188,288.30, subject to re-computation at the time of the payment of said monetary claim;

x x x x x x x x x

2. Her separation pay in lieu of reinstatement of one (1) month pay for every year of service beginning at the time of her initial date of hiring, to the finality of this decision, with legal rate of interest thereon until fully paid, currently computed at PhP405,002.40, said interest subject to re-computation at the time of the payment;

x x x x x x x x x

[16] *Id.* at 125-157.

3. Moral damages in the amount of PhP100,000.00 and exemplary damages in the amount of PhP100,000.00;

4. Her attorney's fees of not less than ten (10%) per centum of the total monetary award hereto awarded, currently computed at ₱159,329.07, subject to re-computation at the time of payment.

SO ORDERED.[17]

In ruling that respondent was illegally dismissed, the Labor Arbiter made the following findings: a) respondent's first suspension was for an indefinite period, hence illegal; b) respondent was not accorded the opportunity to explain her side before she was meted the penalty of suspension; c) placing respondent on suspension and requiring her to personally pay the loan is not the proper way to collect irregularly released loans; d) although respondent's indefinite suspension was eventually reduced to 15 days, by that time respondent was suspended for 20 days already; e) respondent was deprived of the opportunity to explain her side when she was suspended the second time on November 8, 2004 to December 31, 2004; f) the second suspension was illegal because it was beyond 30 days; g) respondent was suspended twice for the same infraction; h) the February 1, 2005 letter informing respondent of her termination is redundant since respondent has been deemed constructively dismissed as early as February 23, 2004 when she was indefinitely suspended; i) as cashier, respondent's signing of the check before its release is merely ministerial; she has no hand in the processing or approval of the loans; j) TAMPCO had previously tolerated the practice of releasing loans ahead of the processing of vouchers and board approval and during the prohibited period; and k) petitioners did not terminate respondent's co-workers who were charged with committing the same infraction.[18]

Ruling of the National Labor Relations Commission

Petitioners filed an appeal before the NLRC, which was docketed as NLRC CA-No. 050848-06 (RA-06-09). On

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

[18] *Id.* at 150-156.

November 25, 2009, the NLRC issued its Decision[19] containing the following pronouncement:

Anent respondent's first suspension, the NLRC noted that petitioners already modified the period from being indefinite to only 15 days and that respondent was properly paid her wages corresponding to said period of suspension. Thus, there was no need to discuss the validity of said suspension. Regarding the second suspension from November 8 to December 31, 2004, the NLRC found the same as illegal considering that it was imposed as a penalty and not as a preventive suspension pending investigation of her administrative liability. In fact, during her suspension, she was ordered to collect the loan illegally released. However, as regards her dismissal from service, the NLRC found the same as valid and for cause. The NLRC opined that respondent was notified of the investigation to be conducted by the Fact-Finding Committee; the notice apprised her that she was being charged with: (1) violation of BA No. 55 stopping the giving of SILs; (2) violation of BA No. 28 limiting the individual grant of SIL to ₱5 million; and (3) violation of lending policies requiring the consent of spouse in the granting of loans. Respondent was given the opportunity to answer the charges against her. In fact, she admitted having released SILs despite the board resolution discontinuing the same. Despite this admission, petitioners continued with the investigation and found the following infractions to have been committed by respondent:

1. There were loan notes which did not contain the signature of the borrower's spouse as mandated by the Policy Manual of the Cooperative;

2. SILs were still granted even after the BOD passed BR Nos. 28 and 55 which limited the ceiling of SILs to be granted and even subsequently stopping the grant of the said loan;

3. Loans were released even [when] there [were] documents [missing]. The cases of Ms. Kotoken and Falgui were cited where their loans were released despite the absence of loan notes;

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[19] *Id.* at 158-167; penned by Presiding Commissioner Gerardo C. Nograles and concurred in by Commissioners Perlita B. Velasco and Romeo L. Go.

4. [Post-dated] checks used to secure the SILs were not presented at the time they fell due; and

5. Extension of the term of the loans [was] done through substitution of checks without prior approval of the BOD.[20]

According to the NLRC, the Fact-Finding Committee discovered that respondent unilaterally altered the terms of the loan by extending the dates of maturity of checks which secured the loans and that she reported a partial payment, by way of two (2) checks, of the loan of Kotoken in the amount of ₱3 million although the subject checks were not yet encashed. Worse, the checks were later dishonored when presented for payment.

As observed by the NLRC, respondent failed to refute the above findings. In fact, she admitted having released SILs despite knowledge of board resolutions discontinuing the grant of SILs and despite the fact that the borrower concerned had exceeded the allowable ceiling.

The NLRC did not give credence to respondent's assertion that as a mere cashier, she has no discretion at all on the approval of the loans. The NLRC opined that respondent was the custodian of the entire funds of TAMPCO and also an honorary member of the BOD, advising the latter on financial matters. The NLRC also held that the release of funds is not purely ministerial as respondent was expected to check all the supporting documents and whether pertinent policies regarding the loan had been met by the applicant.

For the NLRC, respondent's transgressions were deliberate infractions of clear and mandatory policies of TAMPCO amounting to gross misconduct.

The dispositive portion of the NLRC Decision reads:

WHEREFORE, premises considered, the appeal of respondents is GRANTED. The Decision of the Labor Arbiter dated April 24, 2009 is hereby REVERSED AND SET ASIDE, and a new one is hereby rendered DISMISSING the above-entitled complaint for lack

[20] *Id.* at 164.

of merit. Respondent Tabuk Multi-Purpose Cooperative, Inc. is, however, ordered to pay complainant's wages for the period of November 8 to December 31, 2004.

SO ORDERED.[21]

Respondent moved to reconsider. However, in a Resolution dated April 8, 2010, the NLRC held its ground.[22]

Ruling of the Court of Appeals

In a Petition for *Certiorari*[23] filed with the CA and docketed therein as CA-G.R. SP No. 114753, respondent sought to set aside the NLRC dispositions and reinstate the Labor Arbiter's judgment, arguing that she had no discretion in the release of the SILs; that she was not an ex-officio member of the cooperative's BOD; that while she committed a violation of the cooperative's policies, she should be accorded clemency just as her co-respondents were pardoned and allowed to collect their benefits; that she did not commit gross misconduct, as she was not solely responsible for the prohibited release of the SILs to Kotoken and Falgui, since they were previously approved by the loan investigator, the Credit Committee, and the General Manager prior to their release; that petitioners did not properly observe the twin-notice rule prior to her dismissal, as she was not given any notice to present her side — instead, she was dismissed outright when she failed to collect and return the amount she disbursed *via* the SILs; that there is no just cause for her dismissal; that her length of service (15 years) and her unblemished record with the cooperative should merit the setting aside of her dismissal, and instead, her previous suspensions should suffice as a penalty for her infraction; that the exoneration of her co-respondents — notably the General Manager — who was allowed to retire, given a "graceful exit" from the cooperative, honorably discharged, allowed to collect his benefits in full, and given a certification to the effect that he did not commit

[21] *Id.* at 166.

[22] *Id.* at 175.

[23] *Id.* at 168-197.

any violation of the cooperative's policies, rules, and regulations — constitutes discrimination, favoritism, evident bad faith, and a violation of her constitutional right to equal protection; and that the Labor Arbiter's decision is entirely correct and should be given full credence and respect.

In their Comment[24] seeking dismissal of the Petition, petitioners contended that the Petition was filed to cover up for a lost appeal; that no reversible error is evident; that contrary to respondent's claim, her position as cashier is the "lifeblood and very existence of the Cooperative" since she was the "key to the vault and the dispenser of the Cooperative's fund"; that respondent is responsible and accountable for all disbursements because before the release of the loan proceeds, she must ensure that all the processes and necessary documents are duly complied with and there are no violations of any of the cooperative's policies and rules; that she is likewise responsible for the collection activities of the cooperative and the coordination thereof, as required under her job description; that respondent was customarily appointed by the BOD as its adviser and treasurer — being so, she very well knew of its policies; that as cashier, her signature to the checks were required prior to the release thereof to the SIL borrowers — thus, she is liable for signing these checks and releasing them to the borrowers in disregard of BA No. 55 prohibiting the further release of loans pending collection of those outstanding; that there is no favoritism or discrimination when the former General Manager was allowed a graceful exit while respondent was dismissed, as the decision to allow the former to retire and collect his benefits is a management prerogative that respondent cannot interfere with; and that ultimately, respondent was dismissed not for her failure to collect the outstanding loans, but for her violation of the cooperative's policies (BA Nos. 28 and 55); that in dismissing her, due process was observed.

On September 15, 2011, the CA issued the herein assailed Decision, decreeing as follows:

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[24] *Id.* at 198-210.

WHEREFORE, premises considered, the Decision of the NLRC dated 25 November 2009 is hereby REVERSED and SET ASIDE. The Decision of the Labor Arbiter dated 24 April 2009 in NLRC Case No. RAB-CAR-07-0344-05 (R-11-18) is hereby REINSTATED.

SO ORDERED.[25]

The CA held that respondent's dismissal was illegal; that she was not guilty of violating her duties and responsibilities as Cashier; that she was under the supervision of the cooperative's Finance and Credit Managers, who are primarily responsible for the approval of loan applications; that as Cashier, she was a mere co-signatory of check releases and simply acts as a "check and balance on the power and authority of the General Manager;" that she does not exercise discretion on the matter of SILs — specifically the assessment, recommendation, approval and granting thereof; that only the Loan Officers, as well as the Credit, Finance, and General Managers, have a direct hand in the evaluation, assessment and approval of SIL applications, including their required attachments/documents; that while the questioned SILs were released without the approval of the BOD, such practice was sanctioned and had been adopted and tolerated within TAMPCO ever since; that it is unjust to require respondent to pay the amounts released to SIL borrowers but which could no longer be collected; that it was unfair to condemn and punish respondent for the anomalies, while her co-respondents, particularly the former General Manager, was given a graceful exit, honorably discharged, and was even allowed to collect his retirement benefits in full; that respondent's suspension from November 8 to December 31, 2004 was illegal; and that petitioners failed to comply with the twin-notice rule prior to her dismissal.

Petitioners filed a Motion for Reconsideration,[26] but the CA denied the same in its July 11, 2012 Resolution. Hence, the present Petition.

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[25] *Id.* at 55.

[26] *Id.* at 56-84.

In a November 11, 2013 Resolution,[27] this Court resolved to give due course to the Petition.

On March 19, 2014, petitioners filed an Urgent Motion[28] seeking injunctive relief to enjoin the execution of judgment. In a March 24, 2014 Resolution,[29] the motion was denied.

Issues

Petitioners submit the following issues for resolution:

1. WHETHER THE HONORABLE COURT OF APPEALS ERRED WHEN IT HELD TO REVERSE THE DECISION OF THE HONORABLE NATIONAL LABOR RELATIONS COMMISSION THEREBY AFFIRMING THE DECISION OF THE HONORABLE LABOR ARBITER.

2. WHETHER THE HONORABLE COURT OF APPEALS COMMITTED A GRAVE ERROR WHEN IT DID NOT CONSIDER THE EVIDENCE OF THE PETITIONERS AS IT RULED THAT THE RESPONDENT WAS REMOVED IN VIOLATION OF THE TWO-NOTICE RULE AND THAT THERE IS NO JUST CAUSE FOR HER REMOVAL.

3. WHETHER THE HONORABLE COURT OF APPEALS PATENTLY COMMITTED A GRAVE ERROR WHEN IT RULED THAT THE JOB OF THE RESPONDENT MAGDALENA DUCLAN INCLUDES CHECK AND BALANCE AND YET IT CONCLUDED THAT HER FUNCTION IS MERELY MINISTERIAL. THUS, SHE CANNOT BE HELD ACCOUNTABLE FOR HER [CONDUCT].

4. WHETHER THE HONORABLE COURT OF APPEALS ERRED WHEN IT ACTED ON THE PETITION FOR CERTIORARI (RULE 65) FILED BY THE RESPONDENT DESPITE THE FACT THAT THE PROPER REMEDY SHOULD HAVE] BEEN X X X A PETITION FOR REVIEW ON CERTIORARI.[30]

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[27] *Id.* at 483-484.

[28] *Id.* at 729-735.

[29] *Id.* at 748-749.

[30] *Id.* at 15.

Petitioners' Arguments

Praying that the assailed CA pronouncements be set aside and that the NLRC judgment be reinstated instead, petitioners essentially argue in their Petition and Reply[31] that due process was observed in the dismissal of respondent; that there was just and valid cause to dismiss her, as she violated the cooperative's policies and board resolutions limiting and subsequently prohibiting the grant and release of SILs — which actions jeopardized TAMPCO's financial position; that respondent's actions constituted serious misconduct and willful disobedience, justifying dismissal under Article 282 of the Labor Code;[32] that while the Credit and General Managers possessed discretion in the evaluation and approval of SIL applications, respondent as Cashier was still accountable as she was duty-bound to check that the release of the loan amounts was proper and done in accordance with the cooperative's rules and policies; and that there is no basis to suppose that respondent was unfairly treated, since all those found responsible for the SIL fiasco were dismissed from service after their respective cases were individually considered and accordingly treated based on the infractions committed.

Respondent's Arguments

In her Comment,[33] respondent counters that the Petition fails to present any cogent argument that warrants reversal of the

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[31] *Id.* at 471-474.

[32] ART. 282. Termination by employer. — An employer may terminate an employment for any of the following causes:

(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 representative; and

(e) Other causes analogous to the foregoing.

[33] *Rollo*, pp. 269-289.

assailed CA dispositions; that on the contrary, the CA correctly upheld her rights to security of tenure and due process; that there was no valid cause to dismiss her; that as Cashier, she had no power to approve SIL applications, but only release the loan amounts after the applications are evaluated and approved by the Credit Manager, and under the supervision of the Finance Manager; and that the respective decisions of the CA and the Labor Arbiter are correct on all points and must be upheld.

Our Ruling

The Court grants the Petition.

Under Article 282 of the Labor Code, the employer may terminate the services of its employee for the latter's serious misconduct or willful disobedience of its or its representative's lawful orders. And for willful disobedience to constitute a ground, it is required that: "(a) the conduct of the employee must be willful or intentional; and (b) the order the employee violated must have been reasonable, lawful, made known to the employee, and must pertain to the duties that he had been engaged to discharge. Willfulness must be attended by a wrongful and perverse mental attitude rendering the employee's act inconsistent with proper subordination. In any case, the conduct of the employee that is a valid ground for dismissal under the Labor Code constitutes harmful behavior against the business interest or person of his employer. It is implied that in every act of willful disobedience, the erring employee obtains undue advantage detrimental to the business interest of the employer."[34]

The persistent refusal of the employee to obey the employer's lawful order amounts to willful disobedience.[35] Indeed, "[o]ne of the fundamental duties of an employee is to obey all reasonable rules, orders and instructions of the employer. Disobedience, to be a just cause for termination, must be willful or intentional, willfulness being characterized by a wrongful and perverse mental

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[34] *Dongon v. Rapid Movers and Forwarders Co., Inc.*, G.R. No. 163431, August 28, 2013, 704 SCRA 56, 67-68.

[35] *San Miguel Corporation v. Pontillas*, 576 Phil. 761, 770 (2008).

attitude rendering the employee's act inconsistent with proper subordination. A willful or intentional disobedience of such rule, order or instruction justifies dismissal only where such rule, order or instruction is (1) reasonable and lawful, (2) sufficiently known to the employee, and (3) connected with the duties which the employee has been engaged to discharge."[36]

As TAMPCO Cashier, respondent was, among her other designated functions and duties, responsible and accountable for all disbursements of cooperative funds and the coordination of delinquency control and collection activities.[37] She was likewise expected to understand the cooperative's operational procedures,[38] and of course, follow its rules, regulations, and policies.

A year after introducing the SIL program, TAMPCO realized that a considerable amount of the cooperative's loanable funds was being allocated to SILs, which thus adversely affected its ability to lend under the regular loan program. It further discovered that single individual borrowings under the SIL program reached precarious levels, thus placing the resources of the cooperative at risk. Thus, in June 2003, the TAMPCO BOD issued BA No. 28, putting a cap on SIL borrowings at ₱5 million. In October of the same year, BA No. 55 was issued, completely prohibiting the grant of SILs. However, despite issuance of BA Nos. 28 and 55, respondent and the other officers of the cooperative including its former General Manager, continued to approve and release SILs to borrowers, among them Falgui and Kotoken, who received millions of pesos in loans in January and December of 2004, and in January 2005. Eventually, Falgui claimed insolvency, and Kotoken failed to pay back her loans.

The CA failed to consider that in releasing loan proceeds to SIL borrowers like Falgui and Kotoken even after the BOD issued BA Nos. 28 and 55, respondent, and the other cooperative officers, willfully and repeatedly defied a necessary, reasonable

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[36] *Nissan Motors Phils., Inc. v. Angelo*, 673 Phil. 150, 160 (2011).

[37] *Rollo*, p. 46.

[38] *Id.*

and lawful directive of the cooperative's BOD, which directive was made known to them and which they were expected to know and follow as a necessary consequence of their respective positions in the cooperative. They placed the resources of the cooperative — the hard-earned savings of its members — in a precarious state as a result of the inability to collect the loans owing to the borrowers' insolvency or refusal to honor their obligations. Respondent committed gross insubordination which resulted in massive financial losses to the cooperative. Applying Article 282, her dismissal is only proper.

Respondent cannot pretend to ignore the clear mandate of BA Nos. 28 and 55 and justify her actions in releasing the loan proceeds to borrowers by claiming that she had no choice but to release the loan proceeds after the SIL loan applications were evaluated and approved by the loan investigator, the Credit Committee, and the General Manager. These officers were themselves bound to abide by BA Nos. 28 and 55 — they, just as respondent, are subordinate to the TAMPCO BOD. Pursuant to the Philippine Cooperative Code of 2008, or Republic Act No. 9520, TAMPCO's BOD is entrusted with the management of the affairs of the cooperative (Article 5 [3]); the direction and management of the cooperative's affairs shall be vested in the said board (Article 37); and it shall be responsible for the strategic planning, direction-setting and policy-formulation activities of the cooperative (Article 38).

Just the same, respondent could have simply refused to release the loan proceeds even if the loan applications were duly approved. Had she done so, she would have been excluded from the indictments. She would have continued with her employment. In this regard, the CA erred completely in declaring that only the Loan Officers, as well as the Credit, Finance, and General Managers are primarily responsible since only they exercised discretion over SIL applications, and respondent had no choice but to perfunctorily release the loan proceeds upon approval of the applications.

The Court likewise finds that in dismissing respondent, petitioners observed the requirements of due process. An

investigation was conducted by a fact-finding committee; respondent and her colleagues were summoned and required to explain — and they did; respondent submitted an October 21, 2004 letter acknowledging and confessing her wrongdoing — that despite BA No. 55, she and her colleagues continued to approve and release SILs. After the investigation proceedings, the committee prepared a detailed Report of its findings and containing a recommendation to suspend the respondent, require her to restore the amounts she wrongly disbursed — by collecting the credits herself, and in the event of failure to restore the said amounts, she would be dismissed from the service. The Report was approved and adopted by the cooperative's BOD, which resolved to suspend respondent from November 8 until December 31, 2004 and ordered her to collect, within the said period, the unauthorized SIL releases she made; otherwise, she would be terminated from employment. When respondent failed to restore the amounts in question, the BOD ordered her dismissal from employment. Respondent was informed of her dismissal in a February 1, 2005 communication addressed to her; this is the second of the twin notices required by law. Thus, as to respondent, the cooperative observed the proper procedure prior to her dismissal.

> In termination proceedings of employees, procedural due process consists of the twin requirements of notice and hearing. The employer must furnish the employee with two written notices before the termination of employment can be effected: (1) the first apprises the employee of the particular acts or omissions for which his dismissal is sought; and (2) the second informs the employee of the employer's decision to dismiss him. x x x[39]

During the proceedings below, respondent questioned the cooperative's decision requiring her to collect the credits from Falgui and/or Kotoken, claiming this was illegal and improper. But there is nothing wrong in requiring her to do so; this is simply ordering her to restore the amounts she unlawfully released. She may do so in any way she deemed best: either by paying the amounts from her own funds, or by collecting the same from

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[39] *New Puerto Commercial v. Lopez*, 639 Phil. 437, 445 (2010).

the borrowers themselves. The cooperative could have rephrased its directive to her by simply ordering her to restore the lost amounts. This is pretty much standard procedure in cases of this nature: the accused in malversation cases is required to restore the amount lost, and bank tellers or cashiers are told to pay back what the banks lose through their willful or negligent acts.

There is also nothing irregular in the cooperative's decision to require from respondent and her colleagues the collection or restoration of the amounts that were illegally released, with a threat that in case of failure to do so, they would be dismissed from employment. Respondent and her colleagues were simply given the opportunity to clear themselves from the serious infractions they committed; their failure to restore the amounts lost in any manner could not prevent the imposition of the ultimate penalty, since their commission of the serious offense has been adequately shown. In fact, respondent voluntarily confessed her crime. To the mind of the Court, respondent and her colleagues were afforded ample opportunity to clear themselves and thus restore the confidence that was lost, and TAMPCO was not precluded from testing their resolve.

Finally, while the CA finds that it is unfair for TAMPCO to treat respondent differently from the former General Manager, who was permitted to retire and collect his benefits in full, the appellate court must nonetheless be reminded that "[t]he law protects both the welfare of employees and the prerogatives of management. Courts will not interfere with prerogatives of management on the discipline of employees, as long as they do not violate labor laws, collective bargaining agreements if any, and general principles of fairness and justice."[40] Moreover, management is not precluded from condoning the infractions of its employees; as with any other legal right, the management prerogative to discipline employees and impose punishment may be waived.[41]

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[40] *The University of the Immaculate Conception v. National Labor Relations Commission*, 655 Phil. 605, 616 (2011).

[41] *Salvaloza v. National Labor Relations Commission*, 650 Phil. 543 (2010); *RBC Cable Master System v. Baluyot*, 596 Phil. 729 (2009); *R.B. Michael Press v. Galit*, 568 Phil. 585 (2008).

As far as respondent is concerned, the cooperative chose not to waive its right to discipline and punish her; this is its privilege as the holder of such right. Finally, it cannot be said that respondent was discriminated against or singled out, for among all those indicted, only the former General Manager was accorded leniency; the rest, including respondent, were treated on equal footing. As to why the former General Manager was allowed to retire, this precisely falls within the realm of management prerogative; what matters, as far as the Court is concerned, is that respondent was not singled out and treated unfairly.

WHEREFORE, the Petition is **GRANTED**. The assailed September 15, 2011 Decision and July 11, 2012 Resolution of the Court of Appeals in CA-G.R. SP No. 114753 are **REVERSED** and **SET ASIDE.** The November 25, 2009 Decision of the National Labor Relations Commission in NLRC CA-No. 050848-06 (RA-06-09) is **REINSTATED** and **AFFIRMED**.

SO ORDERED.

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

Brion, J., on leave.

Leonen, J., on official leave.

EN BANC

[G.R. Nos. 212593-94. March 15, 2016]

JESSICA LUCILA G. REYES, *petitioner, vs.* **THE HONORABLE OMBUDSMAN,** *respondent.*

[G.R. Nos. 213163-78. March 15, 2016]

JESSICA LUCILA G. REYES, *petitioner, vs.* **THE HONORABLE SANDIGANBAYAN (THIRD DIVISION) and PEOPLE OF THE PHILIPPINES,** *respondent.*

[G.R. Nos. 213540-41. March 15, 2016]

JANET LIM NAPOLES, *petitioner, vs.* **CONCHITA CARPIO MORALES in her official capacity as OMBUDSMAN, PEOPLE OF THE PHILIPPINES, and SANDIGANBAYAN,** *respondents.*

[G.R. Nos. 213542-43. March 15, 2016]

JO CHRISTINE NAPOLES and JAMES CHRISTOPHER NAPOLES, *petitioners, vs.* **CONCHITA CARPIO MORALES in her capacity as OMBUDSMAN, PEOPLE OF THE PHILIPPINES, and SANDIGANBAYAN,** *respondents.*

[G.R. Nos. 215880-94. March 15, 2016]

JO CHRISTINE NAPOLES and JAMES CHRISTOPHER NAPOLES, *petitioners, vs.* **SANDIGANBAYAN and PEOPLE OF THE PHILIPPINES,** *respondents.*

[G.R. Nos. 213475-76. March 15, 2016]

JOHN RAYMUND DE ASIS, *petitioner, vs.* **CONCHITA CARPIO MORALES in her official capacity as OMBUDSMAN, PEOPLE OF THE PHILIPPINES, and SANDIGANBAYAN (Third Division),** *respondents.*

SYLLABUS

1. CRIMINAL LAW; PLUNDER (RA 7080); ELEMENTS.— Plunder, defined and penalized under Section 2 of RA 7080, as amended, has the following elements: (*a*) that the offender

is a public officer, who acts by himself or in connivance with members of his family, relatives by affinity or consanguinity, business associates, subordinates or other persons; (*b*) that he amasses, accumulates or acquires ill-gotten wealth through a combination or series of overt or criminal acts described in Section 1 (d) thereof; and (*c*) that the aggregate amount or total value of the ill-gotten wealth is at least Fifty Million Pesos (₱50,000,000.00).

2. ID.; ANTI-GRAFT AND CORRUPT PRACTICES ACT (RA 3019); VIOLATION OF SECTION 3 (e), ELEMENTS OF.— [T]he elements of violation of Section 3 (e) of RA 3019 are: (*a*) that the accused must be a public officer discharging administrative, judicial, or official functions (or a private individual acting in conspiracy with such public officers); (*b*) that he acted with manifest partiality, evident bad faith, or inexcusable negligence; and (*c*) that his action caused any undue injury to any party, including the government, or giving any private party unwarranted benefits, advantage, or preference in the discharge of his functions.

3. REMEDIAL LAW; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; NATURE; REQUIREMENT IN THE DETERMINATION OF PROBABLE CAUSE.— [P]reliminary investigation is merely an inquisitorial mode of discovering whether or not there is reasonable basis to believe that a crime has been committed and that the person charged should be held responsible for it. Being merely based on opinion and belief, "a finding of probable cause does not require an inquiry as to whether there is sufficient evidence to secure a conviction. In *Fenequito v. Vergara, Jr.*, "[p]robable cause, for the purpose of filing a criminal information, has been defined as **such facts as are sufficient to engender a well-founded belief that a crime has been committed and that respondent is probably guilty thereof**. The term does not mean 'actual or positive cause' nor does it import absolute certainty. It is merely based on opinion and reasonable belief. **Probable cause does not require an inquiry x x x whether there is sufficient evidence to procure a conviction. It is enough that it is believed that the act or omission complained of constitutes the offense charged.** Thus, in determining the elements of the crime charged for purposes of arriving at a finding of probable cause, "**only facts sufficient to support a *prima facie* case**

against the [accused] are required, not absolute certainty." x x x Owing to the nature of a preliminary investigation and its purpose, all of the x x x elements [of the crime] need not be definitively established for it is enough that their presence becomes reasonably apparent. This is because, probable cause — the determinative matter in a preliminary investigation — implies mere probability of guilt; thus, a finding based on more than bare suspicion but less than evidence that would justify a conviction would suffice. Also, it should be pointed out that a preliminary investigation is not the occasion for the full and exhaustive display of the prosecution's evidence, and that the presence or absence of the elements of the crime is evidentiary in nature and is a matter of defense that may be passed upon after a full-blown trial on the merits. Therefore, "**the validity and merits of a party's defense or accusation, as well as the admissibility of testimonies and evidence, are better ventilated during trial proper than at the preliminary investigation level**."

4. ID.; ID.; ID.; DETERMINATION OF PROBABLE CAUSE; THERE IS PROBABLE CAUSE TO INDICT ACCUSED REYES OF PLUNDER AND VIOLATIONS OF SECTION 3 (e) OF THE ANTI-GRAFT AND CORRUPT PRACTICES ACT (RA 3019).— [R]ecords reveal that there is substantial basis to believe that Reyes, as Chief of Staff of Senator Enrile, dealt with the parties involved; signed documents necessary for the immediate and timely implementation of the Senator's PDAF-funded projects that, however, turned out to be "ghost projects"; and repeatedly received "rebates," "commissions," or "kickbacks" for herself and for Senator Enrile representing portions of the latter's PDAF. x x x Indeed, these pieces of evidence are already sufficient to engender a well-founded belief that the crimes charged were committed and Reyes is probably guilty thereof as it remains apparent that: (*a*) Reyes, a public officer, connived with Senator Enrile and several other persons (including the other petitioners in these consolidated cases as will be explained later) in the perpetuation of the afore-described PDAF scam, among others, in entering into transactions involving the illegal disbursement of PDAF funds; (*b*) Senator Enrile and Reyes acted with manifest partiality and/or evident bad faith by repeatedly endorsing the JLN-controlled NGOs as beneficiaries of his PDAF without the benefit of public bidding and/or negotiated procurement in violation

of existing laws, rules, and regulations on government procurement; (*c*) the PDAF-funded projects turned out to be inexistent; (*d*) such acts caused undue injury to the government, and at the same time, gave unwarranted benefits, advantage, or preference to the beneficiaries of the scam; and (*e*) Senator Enrile, through Reyes, was able to accumulate and acquire ill-gotten wealth amounting to at least ₱172,834,500.00.

5. ID.; ID.; DISCHARGE OF ACCUSED TO BE STATE WITNESS; RATIONALE; WHISTLEBLOWERS TESTIMONIES SHOULD NOT BE CONDEMNED BUT BE WELCOMED SINCE THEY RISK INCRIMINATING THEMSELVES IN ORDER TO EXPOSE THE PERPETRATORS AND BRING THEM TO JUSTICE.— Tuason admitted to having acted merely as a liaison between Janet Napoles and the Office of Senator Enrile. It is in this capacity that she made "direct arrangements" with Janet Napoles concerning the PDAF "commissions," and "directly received" money from Janet Napoles for distribution to the participants of the scam. In the same manner, Luy and Suñas, being mere employees of Janet Napoles, only acted upon the latter's orders. Thus, the Ombudsman simply saw the higher value of utilizing them as witnesses instead of prosecuting them in order to fully establish and strengthen her case against those mainly responsible for the scam. The Court has previously stressed that the discharge of an accused to be a state witness is geared towards the realization of the deep-lying intent of the State not to let a crime that has been committed go unpunished by allowing an accused who appears not to be the most guilty to testify, in exchange for an outright acquittal, against a more guilty co-accused. It is aimed at achieving the greater purpose of securing the conviction of the most guilty and the greatest number among the accused for an offense committed. In fact, whistleblower testimonies – especially in corruption cases, such as this – should not be condemned, but rather, be welcomed as these whistleblowers risk incriminating themselves in order to expose the perpetrators and bring them to justice. In *Re: Letter of Presiding Justice Conrado M. Vasquez, Jr. on CA-G.R. SP No. 103692* (*Antonio Rosete, et al. v. Securities and Exchange Commission, et al.*), the Court gave recognition and appreciation to whistleblowers in corruption cases, considering that corruption is often done in secrecy and it is almost inevitable

to resort to their testimonies in order to pin down the crooked public officers.

6. ID.; ID.; PRELIMINARY INVESTIGATION; DETERMINATION OF PROBABLE CAUSE; THE COURT IS CONVINCED THAT THERE IS PROBABLE CAUSE AGAINST ACCUSED JANET LIM NAPOLES FOR THE CHARGE OF PLUNDER AND VIOLATIONS OF SECTION 3 (e) OF RA 3019.— Based on the evidence in support thereof, the Court is convinced that there lies probable cause against Janet Napoles for the charge of Plunder as it has *prima facie* been established that: (*a*) she, in conspiracy with Senator Enrile, Reyes, and other personalities, was significantly involved in the afore-described *modus operandi* to obtain Senator Enrile's PDAF, who supposedly abused his authority as a public officer in order to do so; (*b*) through this *modus operandi*, it appears that Senator Enrile repeatedly received ill-gotten wealth in the form of "kickbacks" in the years 2004-2010; and (*c*) the total value of "kickbacks" given to Senator Enrile amounted to at least ₱I72,834,500.00. In the same manner, there is probable cause against Janet Napoles for violations of Section 3 (e) of RA 3019, as it is ostensible that: (*a*) she conspired with public officials, *i.e.*, Senator Enrile and his chief of staff, Reyes, who exercised official functions whenever they would enter into transactions involving illegal disbursements of the PDAF; (*b*) Senator Enrile, among others, has shown manifest partiality and evident bad faith by repeatedly indorsing the JLN-controlled NGOs as beneficiaries of his PDAF-funded projects – even without the benefit of a public bidding and/or negotiated procurement, in direct violation of existing laws, rules, and regulations on government procurement; and (*c*) the "ghost" PDAF–funded projects caused undue prejudice to the government in the amount of ₱345,000,000.00.

7. ID.; ID.; ID.; PRIVATE INDIVIDUALS MAY BE HELD LIABLE FOR PLUNDER AND VIOLATIONS OF RA 3019 IF THEY CONSPIRED WITH PUBLIC OFFICERS IN COMMITTING SUCH CRIMES.— [T]he Court must disabuse Janet Napoles of her mistaken notion that as a private individual, she cannot be held answerable for the crimes of Plunder and violations of Section 3 (e) of RA 3019 because the offenders in those crimes are public officers. While the primary offender in the aforesaid crimes are public officers, private individuals

may also be held liable for the same if they are found to have conspired with said officers in committing the same. This proceeds from the fundamental principle that in cases of conspiracy, the act of one is the act of all. In this case, given that the evidence gathered perceptibly shows Janet Napoles's engagement in the illegal hemorrhaging of Senator Enrile's PDAF, the Ombudsman rightfully charged her, with Enrile and Reyes, as a co-conspirator for the aforestated crimes.

8. ID.; ID.; SUFFICIENCY OF COMPLAINT OR INFORMATION; AVERMENTS IN THE COMPLAINT OR INFORMATION ARE SUFFICIENT WHEN THE FACTS ALLEGED THEREIN, IF HYPOTHETICALLY ADMITTED, CONSTITUTE THE ELEMENTS OF THE CRIME; THE COMPLAINTS IN CASE AT BAR ARE SUFFICIENT IN FORM AND SUBSTANCE.— [T]here is no merit in Janet Napoles's assertion that the complaints are insufficient in form and in substance for the reason that it lacked certain particularities such as the time, place, and manner of the commission of the crimes charged. "According to Section 6, Rule 110 of the 2000 Rules of Criminal Procedure, the complaint or information is sufficient if it states the names of the accused; the designation of the offense given by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; the approximate date of the, commission of the offense; and the place where the offense was committed. **The fundamental test in determining the sufficiency of the averments in a complaint or information is, therefore, whether the facts alleged therein, if hypothetically admitted, constitute the elements, of the offense**." In this case, the NBI and the FlO Complaints stated that: (*a*) Senator Enrile, Reyes, and Janet Napoles, among others, are the ones responsible for the PDAF scam; (*b*) Janet Napoles, *et al*. are being accused of Plunder and violations of Section 3 (e) of RA 3019; (*c*) they used a certain *modus operandi* to perpetuate said scam, details of which were stated therein; (*d*) because of the PDAF scam, the Philippine government was prejudiced and defrauded in the approximate amount of ₱345,000,000.00; and (*e*) the PDAF scam happened sometime between the years 2004 and 2010, specifically in Taguig City, Pasig City, Quezon City, and Pasay City. The aforesaid allegations were essentially reproduced in the sixteen (16) Informations – one (1) for Plunder and fifteen (15) for violation of RA 3019 – filed before the Sandiganbayan.

Evidently, these factual assertions already square with the requirements of Section 6, Rule 110 of the Rules of Criminal Procedure as above-cited. Upon such averments, there is no gainsaying that Janet Napoles has been completely informed of the accusations against her to enable her to prepare for an intelligent defense. The NBI and the FIO Complaints are, therefore, sufficient in form and in substance.

9. ID.; ID.; PRELIMINARY INVESTIGATION; DETERMINATION OF PROBABLE CAUSE; IN VIEW OF THE CONSPIRACY OF NAPOLES SIBLINGS WITH THEIR MOTHER JANET LIM NAPOLES, THERE IS PROBABLE CAUSE TO CHARGE THEM WITH VIOLATIONS OF SECTION 3 (e) OF RA 3019; CIRCUMSTANCES SHOWING THE PARTICIPATION OF THE NAPOLES SIBLINGS IN THE PDAF SCAM, ENUMERATED.— With respect to the Napoles siblings, it must be clarified that x x x they were nonetheless involved in various phases of the PDAF cam. Their respective participations, from which a unity of purpose and design with the acts of their mother, Janet Napoles, resonates, were uncovered in the sworn statement of whistleblower Luy[.] x x x Based on the [testimonies of witnesses], it may be gathered that the Napoles siblings: (*a*) worked at the JLN Corporation, which was apparently shown to be at the forefront of the PDAF scam, as it was even revealed that it received no other income outside of the PDAF transactions; (*b*) do not work as mere, regular employees but as high-ranking officers, being the Vice-President for Administration and Finance and Vice-President for Operations, respectively of JLN Corporation; and (*c*) as high-ranking officers of the JLN Corporation, were ostensibly privy to and/or participated in the planning and execution of the company's endeavors, which, as claimed, include, illegal activities concerning the misappropriation of various government funds, which, as specifically pointed out by Luy, included, among others, Senator Enrile's PDAF. To recount, Luy stated that Jo Christine Napoles, as part of the scheme, checked the "vouchers" he had prepared; that the Napoles siblings knew of the "codenames" of the legislators in the illicit "vouchers"; and that they were also included in the actual disbursement of "rebates" to the legislators, among others, Senator Enrile. More so, although Suñas's testimony that the Napoles siblings forged documents and signatures pertaining to the disbursement of the DAR funds which does not directly prove that they had

committed the same with respect to Senator Enrile's PDAF, such evidence, when juxtaposed with Luy's testimony, gains relevance in ascertaining the illegal plan, system or scheme to which they were alleged to be involved. It also tends to directly prove the fact that they had knowledge of JLN Corporation's illegal activities. The Court notes that these accounts gain more credibility not only in view of the whistleblowers' allegations that they worked closely with the Napoles siblings in JLN Corporation for a considerable length of time, but also that Sula, Suñas, and particularly Luy as "lead employee," were among the most trusted workers of Janet Napoles in the furtherance of the PDAF scam. Also, there appears to be no motive for any of these whistleblowers, particularly, Luy, to incredulously implicate the Napoles siblings in this case. With all these factors together, there is, at least, some substantial basis to conclude, that the Napoles siblings were, in all reasonable likelihood, involved in the entire con.

10. ID.; ID.; ID.; ID.; FOR DE ASIS'S APPARENT PARTICIPATION IN THE SCAM, THERE IS LIKEWISE PROBABLE CAUSE TO CHARGE HIM WITH PLUNDER AND VIOLATIONS OF SECTION 3 (e) OF RA 3019.— [T]he evidence on record exhibits probable cause for De Asis's involvement as a co-conspirator for the crime of Plunder, as well as violations of Section 3 (e) of RA 3019. A perusal thereof readily reveals that De Asis is the President of KPMFI and a member/incorporator of CARED — two (2) among the many JLN-controlled NGOs that were used in the perpetuation of the scam particularly involved in the illegal disbursement of Senator Enrile's PDAF. Moreover, in the *Pinagsamang Sinumpaang Salaysay* of whistleblowers Luy and Suñas, as well as their respective *Karagdagang Sinumpaang Salaysay*, they tagged De Asis as one of those who prepared money to be given to the lawmaker; that he, among others, received the checks issued by the lAs to the NGOs and deposited the same in the bank; and that, after the money is withdrawn from the bank, De Asis was also one of those tasked to bring the money to Janet Napoles's house. With these, the Court finds that there are equally well-grounded bases to believe that, in all possibility, De Asis, thru his participation as President of KPMFI and member/incorporator of CARED, as well as his acts of receiving checks in the name of said NGOs, depositing them in the NGO's bank accounts, delivering money to Janet Napoles, and assisting

in the delivery of "kickbacks" and "commissions" of the legislators, conspired with the other petitioners to commit the crimes charged against them.

11. ID.; ID.; ID.; ID.; EXECUTIVE AND JUDICIAL DETERMINATION OF PROBABLE CAUSE, DISTINGUISHED.— Once the public prosecutor (or the Ombudsman) determines probable cause and thus, elevates the case to the trial court (or the Sandiganbayan), a judicial determination of probable cause is made in order to determine if a warrant of arrest should be issued ordering the detention of the accused. The Court, in *People v. Castillo*, delineated the functions and purposes of a determination of probable cause made by the public prosecutor, on the one hand, and the trial court, on the other: x x x The executive determination of probable cause is one made during preliminary investigation. It is a function that properly pertains to the public prosecutor who is given a broad discretion to determine whether probable cause exists and to charge those whom he believes to have committed the crime as defined by law and thus should be held for trial. x x x **The judicial determination of probable cause, on the other hand, is one made by the judge to ascertain whether a warrant of arrest should be issued against the accused. The judge must satisfy himself that based on the evidence submitted, there is necessity for placing the accused under custody in order not to frustrate the ends of justice. If the judge finds no probable cause, the judge cannot be forced to issue the arrest warrant**.

LEONEN, *J.*, *concurring opinion*:

REMEDIAL LAW; CRIMINAL PROCEDURE; PRELIMINARY INVESTIGATION; DETERMINATION OF PROBABLE CAUSE BY THE PROSECUTOR AND BY THE TRIAL COURT, DISTINGUISHED AND EXPLAINED; ONCE THE TRIAL COURT FINDS THE EXISTENCE OF PROBABLE CAUSE, ANY QUESTION ON PROSECUTOR'S CONDUCT OF PRELIMINARY INVESTIGATION HAS ALREADY BECOME MOOT.— The determination of probable cause by the prosecutor is different from the determination of probable cause by the trial court. A preliminary investigation is conducted by the prosecutor to determine whether

there is probable cause to file an information or whether the complaint should be dismissed. Once the information is filed, the trial court acquires jurisdiction over the case. The trial court then determines the existence of probable cause for the issuance of a warrant of arrest. Any question relating to the disposition of the case should be addressed to the trial court. x x x Although both the prosecutor and the trial court may rely on the same records and evidence, their findings are arrived at independently. Executive determination of probable cause is outlined by the Rules of Court, Republic Act No. 6770, and various issuances by the Department of Justice. It is the Constitution, however, that mandates the conduct of judicial determination of probable cause[.] x x x A trial court's finding of probable cause does not rely on the prosecutor's finding of probable cause. Once the trial court finds the existence of probable cause, which results in the issuance of a warrant of arrest, any question on the prosecutor's conduct of preliminary investigation has already become moot.

APPEARANCES OF COUNSEL

David Cui-David Buenaventura & Ang Law Offices for petitioners in G.R. Nos. 215880-94 & G.R. Nos. 213475-76.

The Solicitor General for public respondents.

David Cui-David Buenaventura & Ang Law Offices for petitioners in G.R. Nos. 213540-41 & G.R. Nos. 213542-43.

Law Firm of Diaz Del Rosario & Associates for petitioner in G.R. Nos. 212593-94 & G.R. Nos. 213163-78.

D E C I S I O N

PERLAS-BERNABE, *J.*:

"In dealing with probable cause[,] as the very name implies, we deal with probabilities. These are not technical; they are the factual and practical considerations of everyday life on which reasonable and prudent men, not legal technicians, act. The standard of proof is accordingly correlative to what must be proved."[1]

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[1] *Brinegar v. United States*, 338 U.S. 160 (1949).

Before this Court are consolidated[2] petitions[3] which commonly assail the Joint Resolution[4] dated March 28, 2014 and the Joint Order[5] dated June 4, 2014 of the Office of the Ombudsman (Ombudsman) in OMB-C-C-13-0318 and OMB-C-C-13-0396 finding probable cause for the crimes of Plunder[6] and/or violation of Section 3 (e) of Republic Act No. (RA) 3019[7] against

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[2] See orders of consolidation in Court Resolutions dated July 22, 2014 (*rollo* [G.R. Nos. 213163-78], Vol. I, pp. 220-221); September 30, 2014 (*rollo* [G.R. Nos. 213542-43], pp. 480-481); October 7, 2014 (*rollo* [G.R. Nos. 213475-76], Vol. I, pp. 570-571); October 14, 2014 (*rollo* [G.R. Nos. 213540-41], Vol. I, pp. 484-485); and February 24, 2015 (*rollo* [G.R. Nos. 215880-94], Vol. III, pp. 1248-1250).

[3] Pertains to the following petitions: (*a*) petition in **G.R. Nos. 212593-94**, which was filed on June 9, 2014 by Reyes (*rollo* [G.R. Nos. 212593-94], Vol. I, pp. 3-83); (*b*) petition in **G.R. Nos. 213540-41**, which was filed on August 13, 2014 by Janet Napoles (*rollo* [G.R. Nos. 213540-41], Vol. I, pp. 3-41); (*c*) petition in **G.R. Nos. 213542-43**, which was filed on August 13, 2014 by the Napoles siblings (*rollo* [G.R. Nos. 213542-43], Vol. I, pp. 3-22); and (*d*) petition in **G.R. Nos. 213475-76,** which was filed on August 8, 2014 by De Asis (*rollo* [G.R. Nos. 213475-76], Vol. I, pp. 3-70).

[4] *Rollo* (G.R. Nos. 212593-94), Vol. I, pp. 87-230; *rollo* (G.R. Nos. 213540-41), Vol. I, pp. 43-186; *rollo* (G.R. Nos. 213542-43), Vol. I, pp. 25-168; and *rollo* (G.R. Nos. 213475-76), Vol. I, pp. 74-217. Signed by Special Panel of Graft Investigation and Prosecution Officers M.A. Christian O. Uy, Ruth Laura A. Mella, Francisca M. Serfino, Anna Francesca M. Limbo, Jasmine Ann B. Gapatan, and approved by Ombudsman Conchita Carpio-Morales.

[5] *Rollo* (G.R. Nos. 212593-94), Vol. I, pp. 231-296; *rollo* (G.R. Nos. 213540-41), Vol. I, pp. 360-425; *rollo* (G.R. Nos. 213542-43), Vol. I, pp. 342-407; *rollo* (G.R. Nos. 215880-94), Vol. II, pp. 419-484; and *rollo* (G.R. Nos. 213475-76), Vol. I, pp. 391-456, some pages are apparently misarranged.

[6] Defined and penalized under Section 2 of RA 7080, entitled "AN ACT DEFINING AND PENALIZING THE CRIME OF PLUNDER," approved on July 12, 1991, as amended by, among others, Section 12 of RA 7659, entitled "AN ACT TO IMPOSE THE DEATH PENALTY ON CERTAIN HEINOUS CRIMES, AMENDING FOR THAT PURPOSE THE REVISED PENAL LAWS, AS AMENDED, OTHER SPECIAL PENAL LAWS, AND FOR OTHER PURPOSES," approved on December 13, 1993.

[7] Entitled "ANTI-GRAFT AND CORRUPT PRACTICES ACT," approved on August 17, 1960.

petitioners Jessica Lucila "Gigi" G. Reyes (Reyes), Janet Lim Napoles (Janet Napoles), Jo Christine L. Napoles (Jo Christine Napoles) and James Christopher L. Napoles (James Napoles; collectively, the Napoles siblings), and John Raymund De Asis (De Asis), together with several others. Further assailed are: by Reyes,[8] the Resolution[9] dated July 3, 2014 of the Sandiganbayan, which directed the issuance of warrants of arrest against her, and several others, as well as the Resolution[10] dated July 4, 2014 issued by the same tribunal, which denied her Urgent Motion to Suspend the Proceedings;[11] and by the Napoles siblings,[12] the Resolution[13] dated September 29, 2014 and the Resolution[14] dated November 14, 2014 of the Sandiganbayan,

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[8] This pertains to Reyes's petition in **G.R. Nos. 213163-78**, which was filed on July 18, 2014 (*rollo* [G.R. Nos. 213163-78], Vol. I, pp. 3-23).

[9] *Rollo* (G.R. Nos. 213163-78), Vol. I, pp. 26-45. Issued by Presiding Justice and Chairperson Amparo M. Cabotaje-Tang and Associate Justice Alex L. Quiroz. Associate Justice Samuel R. Martires issued a Separate Opinion dated July 4, 2014 (see *rollo* [G.R. Nos. 215880-94], Vol. II, pp. 629-645).

[10] *Rollo* (G.R. Nos. 213163-78), Vol. I, pp. 46-52. See also Associate Justice Samuel R. Martires's July 4, 2014 Separate Opinion (see *rollo* [G.R. Nos. 215880-94], Vol. II, pp. 629-645).

[11] Dated June 13, 2014. *Rollo* (G.R. Nos. 213163-78), Vol. I, pp. 101-111.

[12] This pertains to the Napoles sibling's petition in **G.R. Nos. 215880-94**, which was filed on January 30, 2015 (*rollo* [G.R. Nos. 215880-94], Vol. I, pp. 3-42).

[13] *Rollo* (G.R. Nos. 215880-94), Vol. I, pp. 46-48. Composed by the Sandiganbayan (Special Third Division). Penned by Presiding Justice and Chairperson Amparo M. Cabotaje-Tang with Associate Justices Samuel R. Martires, Alex L. Quiroz, Jose R. Hernandez, and Maria Cristina J. Cornejo concurring. Prior to the issuance of this Resolution, Justice Maria Cristina J. Cornejo issued a Separate Opinion dated September 11, 2014 (*rollo* [G.R. Nos. 215880-94], Vol. II, pp. 646-648) which was concurred in by Associate Justice Jose R. Hernandez on September 17, 2014 (*rollo* [G.R. Nos. 215880-94], Vol. II, p. 649).

[14] *Rollo* (G.R. Nos. 215880-94), Vol. I, pp. 49-60. Penned by Presiding Justice and Chairperson Amparo M. Cabotaje-Tang with Associate Justices Samuel R. Martires and Alex L. Quiroz concurring.

which found the existence of probable cause against them, and several others, and consequently, set their arraignment.

The Facts

Petitioners are all charged as co-conspirators for their respective participations in the anomalous Priority Development Assistance Fund (PDAF) scam, involving, as reported[15] by whistleblowers Benhur Luy (Luy), Marina Sula (Sula), and Merlina Suñas (Suñas), the illegal utilization and pillaging of public funds sourced from the PDAF of Senator Juan Ponce Enrile (Senator Enrile) for the years 2004 to 2010, in the total amount of ₱172,834,500.00.[16] The charges are contained in two (2) complaints, namely: (1) a Complaint[17] for Plunder filed by the National Bureau of Investigation (NBI) on September 16, 2013, docketed as OMB-C-C-13-0318 (NBI Complaint); and (2) a Complaint[18] for Plunder and violation of Section 3 (e) of

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[15] See *Pinagsamang Sinumpaang Salaysay* (*rollo* (G.R. Nos. 212593-94], Vol. II, pp. 481-491); *Karagdagang Sinumpaang Salaysay ni* Suñas before the NBI (*rollo* [G.R. Nos. 212593-94], Vol. II, pp. 503-533); *Karagdagang Sinumpaang Salaysay ni Luy* before the NBI (*rollo* [G.R. Nos. 212593-94], Vol. II, pp. 538-578); and *Karagdagang Sinumpaang Salaysay ni* Sula (*rollo* [G.R. Nos. 215880-94], Vol. III, pp. 1027-1051).

[16] See **NBI Complaint**; *rollo* (G.R. Nos. 212593-94), Vol. I, pp. 305-306; **March 28, 2014 Joint Resolution**; *rollo* (G.R. Nos. 212593-94), Vol. I, pp. 114-115; **July 3, 2014 Resolution**; *rollo* (G.R. Nos. 213163-78), Vol. I, p. 31; **Information in Criminal Case No. SB-14-CRM-0238**; *rollo* (G.R. Nos. 213163-78), Vol. I, pp. 53-54; and **Ombudsman's Consolidated Comment** dated December 19, 2014; *rollo* (G.R. Nos. 213542-43), Vol. I, pp. 547-548 and *rollo* (G.R. Nos. 213475-76), Vol. I, pp. 618-619.

[17] *Rollo* (G.R. Nos. 212593-94), Vol. I, pp. 297-316; *rollo* (G.R. Nos. 213540-41), Vol. I, pp. 340-359; *rollo* (G.R. Nos. 213542-43), Vol. I, pp. 322-341; *rollo* (G.R. Nos. 215880-94), Vol. I, pp. 72-91; and *rollo* (G.R. Nos. 213475-76), Vol. I, pp. 371-390. Signed by Assistant Director Atty. Medardo G. De Lemos.

[18] *Rollo* (G.R. Nos. 212593-94), Vol. I, pp. 318-470; *rollo* (G.R. Nos. 213540-41), Vol. I, pp. 187-339; *rollo* (G.R. Nos. 213542-43), Vol. I, pp. 169-321; *rollo* (G.R. Nos. 215880-94), Vol. I, pp. 92-242; and *rollo* (G.R. Nos. 213475-76), Vol. I, pp. 218-370. Signed by Associate Graft Investigation Officers Karen Rose C. Tamayo, Julber P. Tadiaman, Corinne Joie M. Garillo, Ann Germaine L. Constantino, and Myrene Q. Suetos, and Graft

RA 3019 filed by the Field Investigation Office of the Ombudsman (FIO) on November 18, 2013, docketed as OMB-C-C-13-0396 (FIO Complaint). Tersely put, petitioners were charged for the following acts:

(*a*) Reyes, as Chief of Staff of Senator Enrile during the times material to this case, for fraudulently processing the release of Senator Enrile's illegal PDAF disbursements — through: (1) project identification and cost projection;[19] (2) preparation and signing of endorsement letters,[20] project reports,[21] and pertinent documents addressed to the Department of Budget and Management (DBM) and the Implementing Agencies (IAs);[22] and (3) endorsement of the preferred JLN[23] — controlled Non-Government Organizations (NGOs)[24] to undertake the PDAF-funded project — and for personally[25] receiving significant portions of the diverted PDAF funds representing Senator Enrile's "share," "commissions," or "kickbacks" therefrom,[26] as well as her own;[27]

(*b*) Janet Napoles, as the alleged mastermind of the entire PDAF scam, for facilitating the illegal utilization, diversion, and disbursement of Senator Enrile's PDAF — through: (1) the commencement *via* "business propositions"[28] with the legislator

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Investigation and Prosecution Officers Ronald Allan D. Ramos, John Sernan T. Sambajon, R. Epicurus Charlo S. Salcedo, and Ryan P. Medrano, and certified by Assistant Ombudsman, FIO Atty. Joselito P. Fangon.

[19] *Rollo* (G.R. Nos. 212593-94). Vol. I, pp. 181-182.

[20] *Rollo* (G.R. Nos. 212593-94), Vol. II, pp. 471-478.

[21] *Id.* at 479-480.

[22] *Rollo* (G.R. Nos. 212593-94), Vol. I, pp. 155 and 187.

[23] "JLN" stands for "Janet Lim Napoles."

[24] *Rollo* (G.R. Nos. 212593-94), Vol. I, p. 177.

[25] See Sworn Statement of Ruby Tuason before the FIO Investigation; *rollo* (G.R. Nos. 215880-94), Vol. II, p. 689.

[26] *Rollo* (G.R. Nos. 212593-94), Vol. I, pp. 164 and 184.

[27] See *id.* at 303.

[28] *Id.* at 152.

regarding his allocated PDAF;[29] (2) the creation and operation of the JLN-controlled NGOs purposely to serve as "conduits" of government funds, in this case, Senator Enrile's PDAF;[30] (3) the use of spurious receipts and liquidation documents to make it appear that the projects were implemented by her NGOs;[31] (4) the falsification and machinations used in securing the funds from the IAs and liquidating disbursements;[32] and (5) the remittance of the PDAF funds to Janet Napoles from her JLN controlled-NGOs to the JLN Corporation[33] to be misappropriated by her and Senator Enrile;[34]

(*c*) the Napoles siblings,[35] as high ranking officers of the JLN Corporation,[36] for continuously diverting the sums sourced from Senator Enrile's PDAF to Janet Napoles's control[37] — through: (1) falsification and forgery of the signatures of the supposed recipients on the Certificates of Acceptance and Delivery Reports, as well as the documents submitted in the liquidation of PDAF funds;[38] and (2) handling of the PDAF proceeds after being deposited in the accounts of the JLN-controlled NGOs; and[39]

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[29] *Id.* at 158.

[30] *Id.* at 329 and 450.

[31] *Id.* at 447-448.

[32] *Id.* at 450.

[33] Referred to as "JLN Group of Companies" in some parts of the *rollo*s. See *id.* at 330.

[34] *Id.* at 452.

[35] Charged under the FIO Complaint only.

[36] Jo Christine Napoles is the "CFO" or more commonly known as the "Vice-President for Administration and Finance," while James Christopher Napoles is the "COS" or the "Vice-President for Operations" of the JLN Corporation. *Rollo* (G.R. Nos. 213542-43), Vol. I, p. 616.

[37] *Id.* at 104.

[38] *Rollo* (G.R. Nos. 213542-43), Vol. I, p. 616. See also *rollo* (G.R. Nos. 212593-94), Vol. I, p. 451.

[39] *Rollo* (G.R. Nos. 213542-43), Vol. I, p. 616.

(*d*) De Asis, as Janet Napoles's driver, body guard, or messenger,[40] for assisting in the fraudulent releases of the PDAF funds to the JLN-controlled NGOs and eventually remitting the funds to Janet Napoles's control — through: (1) preparation and use of spurious documents to obtain checks from the IAs;[41] (2) picking up and receiving[42] the checks representing the PDAF "commissions" or "kickbacks," and depositing them to bank accounts in the name of the JLN-controlled NGOs concerned;[43] and (3) withdrawing and delivering the same to their respective recipients[44] — also, for having been appointed as member/ incorporator[45] and President[46] of certain JLN-controlled NGOs.

As alleged, the systemic pillaging of Senator Enrile's PDAF commences with Janet Napoles meeting with a legislator — in this case, Senator Enrile himself or through his Chief of Staff, Reyes, or Ruby Tuason (Tuason)[47] — with the former rendering an offer to "acquire" his PDAF allocation in exchange for a "rebate," "commission," or "kickback" amounting to a certain percentage of the PDAF.[48] Upon their agreement on the conditions of the "PDAF acquisition," including the "project" for which the PDAF will be utilized, the corresponding IA tasked to "implement" the same, and the legislator's "rebate," "commission," or "kickback" ranging from 40-60% of either the "project" cost

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[40] *Rollo* (G.R. Nos. 213475-76), Vol. I, p. 124.

[41] *Id.* at 321-322.

[42] See table showing receipt of payments by De Asis; *id.* at 297-299.

[43] *Id.* at 137.

[44] *Id.* at 171 and 331.

[45] De Asis is an incorporator of the Countrywide Agri & Rural Economic Development Foundation, Inc. (CARED). *Id.* at 237 and 243.

[46.] De Asis is the President of *Kaupdanan Para sa Mangunguma Foundation, Inc.* (KPMFI), *Id.* at 378-379.

[47] Tuason acted as the "agent" of Senator Enrile, in-charge of delivering the share of Senator Enrile through Reyes. *Rollo* (G.R. Nos. 215880-94), Vol. II, p. 705; and *rollo* (G.R. Nos. 212593-94), Vol. I, p. 120.

[48] See *Rollo* (G.R. Nos. 212593-94), Vol. I, pp. 148 and 419.

or the amount stated in the Special Allotment Release Order (SARO),[49] the legislator would then write a letter addressed to the Senate President for the immediate release of his PDAF, who in turn, will endorse such request to the DBM for the release of the SARO.[50] By this time, the initial advance portion of the "commission" would be remitted by Janet Napoles to the legislator.[51] Upon release of the SARO, Janet Napoles would then direct her staff — including whistleblowers Luy, Sula, and Suñas — to prepare PDAF documents containing, *inter alia*, the preferred JLN-controlled NGO that will be used for the implementation of the "project," the project proposals of the identified NGO, and the indorsement letters to be signed by the legislator and/or his staff, all for the approval of the legislator;[52] and would remit the remaining portion or balance of the "commission" of the legislator,[53] which is usually delivered by her staff, De Asis and Ronald John Lim.[54] Once the documents are approved, the same would be transmitted to the IA which will handle the preparation of the Memorandum of Agreement (MOA) to be executed by the legislator's office, the IA, and the chosen NGO.[55] Thereafter, the DBM would release the Notice of Cash Allocation (NCA) to the IA concerned, the head of which, in turn, would expedite the transaction and release of the corresponding check representing the PDAF disbursement, in exchange for a ten percent (10%) share in the project cost.[56] Among those tasked by Janet Napoles to pick up the checks and deposit them to the bank accounts of the NGO concerned

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[49] In this case, Senator Enrile agreed to a 50% "commission" (see *Pinagsamang Sinumpaang Salaysay; rollo* [G.R. Nos. 212593-94], Vol. II, p. 488). *Rollo* (G.R. Nos. 212593-94), Vol. I, p. 302.

[50] See *rollo* (G.R. Nos. 212593-94), Vol. I, pp. 148 and 420.

[51] *Id.* at 149, 302-303, and 420.

[52] *Id.* at 149.

[53] *Id.* at 149, 303, and 421.

[54] *Id.* at 184.

[55] See *id.* at 149-150 and 303.

[56] See *id.* at 303-304.

were Luy, Suñas, De Asis, and the Napoles siblings.[57] Once the funds are in the account of the JLN-controlled NGO, Janet Napoles would then call the bank to facilitate the withdrawal thereof.[58] Upon withdrawal of the said funds by Janet Napoles's staff, the latter will bring the proceeds to the office of the JLN Corporation where it will be accounted. Janet Napoles will then decide how much will be left in the office and how much will be brought to her residence in Taguig City.[59] De Asis, Luy, and Suñas were the ones instructed to deliver the money to Janet Napoles's residence.[60] Finally, to liquidate the disbursements, Janet Napoles and her staff, *i.e.*, the Napoles siblings and De Asis, would manufacture fictitious lists of beneficiaries, liquidation reports, inspection reports, project activity reports, and similar documents that would make it appear that the PDAF-related project was implemented.[61] Under this *modus operandi*, Senator Enrile, with the help of petitioners, among others, allegedly funneled his PDAF amounting to around ₱345,000,000.00[62] to the JLN-controlled NGOs and, in return, received "rebates," "commissions," or "kickbacks" amounting to at least ₱172,834,500.00.[63]

In her defense, Reyes filed her Consolidated Counter-Affidavit[64] on January 3, 2014, contending that the letters and documents which she purportedly signed in connection with the allocation of the PDAF of Senator Enrile were all forged, and that none of the three (3) witnesses — Luy, Suñas, and Nova Kay B. Macalintal — who mentioned her name in their

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[57] *Id.* at 150 and 188.

[58] *Id.* at 151 and 304.

[59] See *id.* at 304 and 421. See also *id.* at 188.

[60] See *id.* at 310 and 421.

[61] *Id.* at 188.

[62] See *id.* at 417.

[63] See *id.* at 183-185.

[64] Dated December 26, 2013. *Rollo* (G.R. Nos. 212593-94), Vol. II, pp. 591-673.

respective affidavits, directly and positively declared that she received money from the PDAF in question.[65]

For their part, the Napoles siblings filed their Joint Counter-Affidavit[66] on February 24, 2014, opposing their inclusion as respondents in the FIO Complaint. They claimed that the said Complaint: (*a*) is insufficient in form and substance as it failed to state in unequivocal terms the specific acts of their involvement in the commission of the offenses charged, as required in Section 6, Rule 110 of the 2000 Rules of Criminal Procedure;[67] and (*b*) failed to allege and substantiate the elements of the crime of Plunder and violation of Section 3 (e) of RA 3019.[68] They likewise argued that the affidavits and statements of the whistleblowers contain nothing more than mere hearsay and self-serving declarations, which are, therefore, inadmissible evidence unworthy of credence.[69]

On the other hand, while De Asis admitted[70] that he was an employee of the JLN Corporation from 2006-2010 in various capacities as driver, bodyguard or messenger, and that he received a salary of ₱10,000.00 a month for serving as the personal driver and "errand boy" of Janet Napoles, he denied the allegations against him, and maintained that he was merely following instructions from Janet Napoles when he picked-up checks for the JLN-controlled NGOs; that he had no knowledge in setting up or managing the corporations which he supposedly helped incorporate (namely, *Kaupdanan Para sa Mangunguma Foundation, Inc.* [KPMFI], as President,[71] and Countrywide Agri and Rural Economic Development Foundation, Inc.

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[65] *Id.* at 645 and 650-651.

[66] Dated February 21, 2014. *Rollo* (G.R. Nos. 215880-94), Vol. I, pp. 243-259.

[67] *Id.* at 245.

[68] *Id.* at 247 and 251.

[69] *Id.* at 255.

[70] See *rollo* (G.R. Nos. 213475-76), Vol. I, p. 124. See also *id.* at 13.

[71] See *id.* at 372.

[CARED], as Member/Incorporator);[72] and that he did not personally benefit from the alleged misuse of the PDAF.[73]

Meanwhile, despite due notice, Janet Napoles failed to file her counter-affidavits to the foregoing Complaints. Thus, the Ombudsman considered her to have waived her right to file the same.[74]

While preliminary investigation proceedings were ongoing before the Ombudsman, Tuason, who was likewise charged under OMB-C-C-13-0318 and OMB-C-C-13-0396, surfaced as an additional witness and offered her affidavit[75] implicating Reyes in the PDAF scam. This prompted Reyes to file before the Ombudsman an Omnibus Motion[76] dated March 27, 2014, requesting that: (*a*) she be furnished copies of: (1) Tuason's affidavit, which supposedly contained vital information that was described by Department of Justice Secretary Leila M. De Lima as "slam dunk evidence";[77] (2) the transcript of the alleged 12-hour clarificatory hearing on February 11, 2014[78] where Tuason was said to have substantiated the allegations in her affidavit; and (3) the additional documents the latter submitted thereat; and (*b*) she be given a period of time to comment on Tuason's affidavit or to file a supplemental counter-affidavit, if deemed necessary.[79] On even date, the Ombudsman denied[80] Reyes's Omnibus Motion on the ground that "there is no provision

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[72] See *id.* at 237.

[73] *Id.* at 124.

[74] *Id.* at 72 and 382.

[75] See Supplemental Sworn Statement of Tuason; *rollo* (G.R. Nos. 215880-94), Vol. II, pp. 704-709.

[76] *Rollo* (G.R. Nos. 212593-94), Vol. II, pp. 712-717.

[77] *Id.* at 713.

[78] *Rollo* (G.R. Nos. 215880-94), Vol. II, pp. 685-691.

[79] *Rollo* (G.R. Nos. 212593-94), Vol. II, p. 715.

[80] See Order dated March 27, 2014 signed by Graft Investigation and Prosecution Officer IV and Chairperson M.A. Christian O. Uy; *id.* at 718-721.

under [the said office's Rules of Procedure] which entitles [Reyes] to be furnished filings by the other parties, including the other respondents."[81]

The following day, the Ombudsman issued the assailed 144-page Joint Resolution[82] dated March 28, 2014 finding probable cause against, *inter alia*, Reyes, Janet Napoles, and De Asis of one (1) count of Plunder, and against Reyes, Janet Napoles, De Asis, and the Napoles siblings for fifteen (15) counts of violation of Section 3 (e) of RA 3019. Accordingly, separate motions for reconsideration were timely filed by Reyes,[83] Janet Napoles,[84] the Napoles siblings,[85] and De Asis.[86]

Pending the resolution of the aforesaid motions, the Ombudsman issued a Joint Order[87] dated May 7, 2014 granting Reyes's request for copies of the respective Counter-Affidavits of Tuason and Dennis Cunanan (Cunanan), and directing her to file a comment thereon. Among the documents allegedly attached to the said Joint Order were copies of the Supplemental Sworn Statement[88] of Tuason dated February 21, 2014 and the Sworn Statement[89] of Cunanan dated February 20, 2014,[90] to

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[81] *Id.* at 721.

[82] *Rollo* (G.R. Nos. 212593-94), Vol. I, pp. 87-230; *rollo* (G.R. Nos. 213540-41) Vol. I, pp. 43-186; *rollo* (G.R. Nos. 213542-43), Vol. I, pp. 25-168; *rollo* (G.R. Nos. 215880-94), Vol. I, pp. 260-403; and *rollo* (G.R. Nos. 213475-76), Vol. I, pp. 74-217.

[83] See Motion for Reconsideration dated April 4, 2014; *rollo* (G.R. Nos. 212593-94), Vol. II, pp. 722-778.

[84] See Motion for Reconsideration dated April 7, 2014; *rollo* (G.R. Nos. 213540-41), Vol. I, pp. 426-459.

[85] See Motion for Reconsideration dated April 7, 2014; *rollo* (G.R. Nos. 213542-43), Vol. I, pp. 408-422.

[86] See Motion for Reconsideration and/or Reinvestigation dated April 21, 2014; *rollo* (G.R. Nos. 213475-76), Vol. I, pp. 457-469.

[87] *Rollo* (G.R. Nos. 212593-94), Vol. II, pp. 791-792.

[88] *Rollo* (G.R. Nos. 215880-94), Vol. II, pp. 704-709.

[89] Not attached to the *rollo*s.

[90] *Rollo* (G.R. Nos. 212593-94), Vol. I, pp. 16-17.

which Reyes submitted separate Comments[91] on May 13, 2014. However, Tuason's earlier Sworn Statement dated February 4, 2014[92] and the transcripts of the clarificatory hearing[93] — both of which were requested by Reyes — were not included. Hence, Reyes filed another Motion[94] on May 9, 2014 requesting copies of said documents. Subsequently, on May 13, 2014, she filed a Reiterative Motion[95] for the same purpose. The Ombudsman denied the aforesaid motions on the ground that "the Affidavit dated 4 February 2014 does not form part of the records of the preliminary investigation and neither was [it] mentioned/referred to in the Joint Resolution dated 28 March 2014."[96] It was further stated that the Special Panel of Investigators "did not conduct clarificatory hearings at any stage during the preliminary investigation."[97]

Due to reports[98] that Tuason was officially declared a state witness and granted immunity[99] from criminal prosecution for the PDAF scam-related cases, Reyes wrote a letter[100] dated May 7, 2014 to the Ombudsman, requesting a copy of the immunity agreement that it entered into with Tuason. Again, the

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[91] See Reyes's respective Comments on Tuason's Supplemental Sworn Statement filed on May 13, 2014; *rollo* (G.R. Nos. 212593-94), Vol. II, pp. 798-802; and on Cunanan's Counter-Affidavit filed on May 13, 2014; *rollo* (G.R. Nos. 212593-94), Vol. II, pp. 803-821.

[92] *Rollo* (G.R. Nos. 215880-94), Vol. II, pp. 656-670.

[93] See *id.* at 685-691.

[94] Dated May 8, 2014. *Rollo* (G.R. Nos. 212593-94), Vol. II, pp. 793-797.

[95] Dated May 12, 2014. *Id.* at 822-825.

[96] See Joint Order dated May 13, 2014; *id.* at 826-827.

[97] *Id.*

[98] *Id.* at 784-788. See also <http://newsinfo.inquirer.net/599180/ruby-tuason-gets-immunity-for-pdaf-scam-not-yet-for-malampaya-fund> (last accessed February 10, 2016).

[99] See Immunity Agreement dated April 23, 2014; *rollo* (G.R. Nos. 215880-94), Vol. II, pp. 650-654.

[100] *Rollo* (G.R. Nos. 212593-94), Vol. II, pp. 789-790.

Ombudsman denied Reyes's request for the reason that the immunity agreement is a "privileged communication which is considered confidential under Section 3, Rule IV of the Rules and Regulations Implementing [RA] 6713,"[101] otherwise known as the "Code of Conduct and Ethical Standards for Public Officials and Employees."[102]

On June 4, 2014, the Ombudsman issued a Joint Order[103] denying, among others, the motions for reconsideration filed by herein petitioners. This led to the filing of the petitions before this Court, docketed as **G.R. Nos. 212593-94,**[104] **G.R. Nos. 213540-41**,[105] **G.R. Nos. 213542-43**,[106] and **G.R. Nos. 213475-76**,[107] commonly assailing the March 28, 2014 Joint Resolution[108] and the June 4, 2014 Joint Order[109] of the Ombudsman in OMB-C-C-13-0318 and OMB-C-C-13-0396.

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[101] See Letter dated May 15, 2014 signed by Graft Investigation and Prosecution Officer IV M.A. Christian O. Uy; *id.* at 828-829.

[102] Entitled "AN ACT ESTABLISHING A CODE OF CONDUCT AND ETHICAL STANDARDS FOR PUBLIC OFFICIALS AND EMPLOYEES, TO UPHOLD THE TIME-HONORED PRINCIPLE OF PUBLIC OFFICE BEING A PUBLIC TRUST, GRANTING INCENTIVES AND REWARDS FOR EXEMPLARY SERVICE, ENUMERATING PROHIBITED ACTS AND TRANSACTIONS AND PROVIDING PENALTIES FOR VIOLATIONS THEREOF AND FOR OTHER PURPOSES," approved on February 20, 1989.

[103] *Rollo* (G.R. Nos. 212593-94), Vol. I, pp. 231-296; *rollo* (G.R. Nos. 213540-41), Vol. I, pp. 360-425; *rollo* (G.R. Nos. 213542-43), Vol. I, pp. 342-407); *rollo* (G.R. Nos. 215880-94), Vol. II, pp. 419-484; and *rollo* (G.R. Nos. 213475-76), Vol. I, pp. 391-456; some pages are apparently misarranged.

[104] *Rollo* (G.R. Nos. 212593-94), Vol. I, pp. 3-83.

[105] *Rollo* (G.R. Nos. 213540-41), Vol. I, pp. 3-41.

[106] *Rollo* (G.R. Nos. 213542-43), Vol. I, pp. 3-22.

[107] *Rollo* (G.R. Nos. 213475-76), Vol. I, pp. 3-70.

[108] *Rollo* (G.R. Nos. 212593-94), Vol. I, pp. 87-230; *rollo* (G.R. Nos. 213540-41), Vol. I, pp. 43-186; *rollo* (G.R. Nos. 213542-43), Vol. I, pp. 25-168; *rollo* (G.R. Nos. 215880-94), Vol. I, pp. 260-403; and *rollo* (G.R. Nos. 213475-76), Vol. I, pp. 74-217.

[109] *Rollo* (G.R. Nos. 212593-94), Vol. I, pp. 231-296; *rollo* (G.R. Nos. 213540-41), Vol. I, pp. 360-425; *rollo* (G.R. Nos. 213542-43), Vol. I, pp. 342-407);

Consequently, a total of sixteen (16) Informations[110] were filed by the Ombudsman before the Sandiganbayan, charging, *inter alia*, Reyes, Janet Napoles, and De Asis with one (1) count of Plunder, docketed as Criminal Case No. SB-14-CRM-0238;[111] and Reyes, Janet Napoles, the Napoles siblings, and De Asis with fifteen (15) counts of violation of Section 3 (e) of RA 3019, docketed as Criminal Case Nos. SB-14-CRM-0241 to 0255,[112] which were raffled to the Sandiganbayan's Third Division.[113]

To forestall the service of a warrant of arrest against her, on June 13, 2014, Reyes filed an Urgent Motion to Suspend Proceedings[114] before the Sandiganbayan until after this Court shall have resolved her application for the issuance of a temporary restraining order and/or writ of preliminary injunction in G.R. Nos. 212593-94. On July 1, 2014, she filed a Manifestation and Reiterative Motion to Suspend Proceedings Against Accused Reyes.[115] Similarly, the Napoles siblings filed a Motion for Judicial Determination of Probable Cause with Urgent Motion to Defer the Issuance of Warrant of Arrest and Suspend Proceedings[116] dated June 13, 2014 before the Sandiganbayan.

On July 3, 2014, resolving Criminal Case No. SB-14-CRM-0238, "along with several other related cases," the Sandiganbayan issued a Resolution[117] finding probable cause for the issuance of warrants of arrest against "all the accused," opining therein

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rollo (G.R. Nos. 215880-94), Vol. II, pp. 419-484; and *rollo* (G.R. Nos. 213475-76), Vol. I, pp. 391-456, some pages are apparently misarranged.

[110] *Rollo* (G.R. Nos. 213163-78), Vol. I, pp. 53-100; and *rollo* (G.R. Nos. 215880-94), Vol. II, pp. 508-554.

[111] *Rollo* (G.R. Nos. 213163-78), Vol. II, pp. 516-517.

[112] *Id.* at 518-563.

[113] *Rollo* (G.R. Nos. 213163-78), Vol. I, p. 6.

[114] *Id.* at 101-111.

[115] *Id.* at 203-207.

[116] *Rollo* (G.R. Nos. 215880-94), Vol. II, pp. 555-601.

[117] *Rollo* (G.R. Nos. 213163-78), Vol. I, pp. 26-45; *rollo* (G.R. Nos. 215880-94) Vol. II, pp. 602-621.

that the filing of a motion for judicial determination of probable cause was a mere superfluity given that it was its bounden duty to personally evaluate the resolution of the Ombudsman and the supporting evidence before it determines the existence or non-existence of probable cause for the arrest of the accused.[118] In view, however, of the Separate Opinion[119] issued by Justice Samuel R. Martires, dissenting to the issuance of warrants of arrest against the Napoles siblings, along with several others, upon the premise that the Office of the Special Prosecutor (OSP) still needs to present additional evidence with respect to the aforementioned persons, pursuant to Section 5, Rule 112 of the 2000 Rules of Criminal Procedure,[120] a Special Third Division of the Sandiganbayan, composed of five (5) members, was created.

A day later, or on July 4, 2014, the Sandiganbayan issued another Resolution[121] dated July 4, 2014 in Criminal Case Nos. SB-14-CRM-0238 and SB-CRM-0241 to 0255, denying Reyes's Motion to Suspend Proceedings for lack of merit. In view of the foregoing developments, Reyes voluntarily surrendered to the Sandiganbayan on even date, and accordingly, underwent the required booking procedure for her arrest and detention.[122] This prompted Reyes to file the petition docketed as **G.R. Nos. 213163-78**,[123] assailing the July 3, 2014[124] and July 4, 2014[125] Resolutions of the Sandiganbayan.

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[118] *Rollo* (G.R. Nos. 213163-78), Vol. I, pp. 27-28; *rollo* (G.R. Nos. 215880-94), Vol. II, pp. 603-604.

[119] *Rollo* (G.R. Nos. 215880-94), Vol. II, pp. 629-645.

[120] *Id.* at 644.

[121] *Rollo* (G.R. Nos. 213163-78), Vol. I, pp. 46-52; *rollo* (G.R. Nos. 215880-94), Vol. II, pp. 622-628.

[122] *Rollo* (G.R. Nos. 213163-78), Vol. I, p. 9.

[123] *Id.* at 3-21.

[124] *Id.* at 26-45. Signed by Associate Justice and Chairperson Amparo M. Cabotaje and Associate Justice Alex L. Quiroz.

[125] *Id.* at 46-52.

On September 29, 2014, the Special Third Division of the Sandiganbayan issued a Resolution[126] in Criminal Case Nos. SB-14-CRM-0241 to 0255, finding the existence of probable cause against them, and several others, and consequently, setting their arraignment. The Napoles siblings urgently moved for the reconsideration[127] of the judicial finding of probable cause against them and requested that their arraignment be held in abeyance pending the resolution of their motion. However, the Napoles siblings alleged[128] that the Sandiganbayan acted on their motion for reconsideration through the latter's Resolution[129] dated November 14, 2014, declaring that the presence of probable cause against them had already been settled in its previous resolutions.[130] Hence, the Napoles siblings caused the filing of the petition, docketed as **G.R. Nos. 215880-94,**[131] assailing the September 29, 2014[132] and November 14, 2014[133] Resolutions of the Sandiganbayan.

The Issue Before the Court

The core issue in this case is whether or not the Ombudsman and/or the Sandiganbayan committed any grave abuse of discretion in rendering the assailed resolutions ultimately finding probable cause against petitioners for the charges against them.

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[126] *Rollo* (G.R. Nos. 215880-94), Vol. I, pp. 46-48.

[127] See Urgent Motion for Reconsideration (with Request to Hold in Abeyance the Arraignment of the Accused) dated October 8, 2014; *id.* at 61-71.

[128] See *id.* at 11.

[129] It appears from the records that the November 14, 2014 Resolution pertains to the denial of the motions for reconsideration of accused Mario L. Relampagos, Antonio U. Ortiz, and Ronald John Lim. *Id.* at 49-60.

[130] *Id.* at 56.

[131] *Id.* at 3-42.

[132] *Id.* at 46-48.

[133] *Id.* at 49-60.

The Court's Ruling

I. The Petitions Assailing the Resolution and Order of the Ombudsman.

In **G.R. Nos. 212593-94**, Reyes imputes grave abuse of discretion against the Ombudsman in finding probable cause against her for Plunder and violations of Section 3 (e) of RA 3019 on the basis of: (*a*) Tuason's Sworn Statement dated February 4, 2014, which was not furnished to Reyes despite her repeated requests therefor, thereby violating her right to due process;[134] (*b*) Tuason's Supplemental Sworn Statement dated February 21, 2014 that did not mention Reyes's name at all;[135] (*c*) documentary evidence that were forged, falsified, and fictitious;[136] and (*d*) hearsay declarations of the whistleblowers who merely mentioned Reyes's name in general terms but did not positively declare that they saw or talked with her at any time or had seen her receive money from Janet Napoles or the latter's employees.[137]

In **G.R. Nos. 213540-41**, Janet Napoles claims that the Ombudsman committed grave abuse of discretion in finding probable cause to indict her for Plunder and violations of Section 3 (e) of RA 3019, notwithstanding the failure of the NBI and the FIO to allege and establish the elements of Plunder;[138] and the insufficiency, in form and in substance, of both the NBI and FIO Complaints as they lacked certain particularities such as the time, place, and manner of the commission of the crimes charged.[139] Janet Napoles further contends that as a private individual, she cannot be held liable for Plunder, considering that the said crime may only be committed by public officers; and that conspiracy was not established.[140]

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[134] See *rollo* (G.R. Nos. 212593-94), Vol. I, pp. 25-33.

[135] See *id.* at 29.

[136] See *id.* at 42-56.

[137] See *id.* at 56-60.

[138] See *rollo* (G.R. Nos. 213540-41), Vol. I, pp. 25-36.

[139] See *id.* at 38-40.

[140] See *id.* at 26-31 and 40.

In **G.R. Nos. 213542-43**, the Napoles siblings assert that the Ombudsman gravely abused its discretion in finding probable cause against them for violations of Section 3 (e) of RA 3019, mainly arguing that there is no evidence to show that they conspired with any public officer to commit the aforesaid crime.[141] Likewise, the Napoles siblings asseverate that the whistleblowers' testimonies were bereft of probative value and are, in fact, inadmissible against them.[142]

Finally, in **G.R. Nos. 213475-76**, De Asis accuses the Ombudsman of gravely abusing its discretion in finding probable cause against him for Plunder and violations of Section 3 (e) of RA 3019, contending that he was a mere driver and messenger of Janet Napoles, and not the "cohort" that the Ombudsman found him to be;[143] that he did not benefit from the illegal transactions of Janet Napoles, nor was he ever in full control and possession of the funds involved therein; and that the whistleblowers admitted to being the "real cohorts" of Janet Napoles, and as such, should have been the ones charged for the crimes which were ascribed to him instead.[144]

The petitions are bereft of merit.

At the outset, it must be stressed that the Court has consistently refrained from interfering with the discretion of the Ombudsman to determine the existence of probable cause and to decide whether or not an Information should be filed. Nonetheless, **this Court is not precluded from reviewing the Ombudsman's action when there is a charge of grave abuse of discretion**. Grave abuse of discretion implies a capricious and whimsical exercise of judgment tantamount to lack of jurisdiction. The Ombudsman's exercise of power must have been done in an arbitrary or despotic manner which must be so patent and gross as to amount to an evasion of a positive duty or a virtual refusal to perform the

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[141] See *rollo* (G.R. Nos. 213542-43), Vol. I, pp. 12-19.

[142] See Reply dated February 12, 2015; *id.* at 655.

[143] See *rollo* (G.R. Nos. 213475-76), Vol. I, pp. 40-48.

[144] See *id.* at 48-49.

duty enjoined or to act at all in contemplation of law.[145] In *Ciron v. Gutierrez*,[146] was held that:

[T]his Court's consistent policy has been to maintain non-interference in the determination of the Ombudsman of the existence of probable cause, provided there is no grave abuse in the exercise of such discretion. This observed policy is based not only on respect for the investigators and prosecutors powers granted by the Constitution to the Office of the Ombudsman but upon practicality as well. Otherwise, the functions of the Court will be seriously hampered by innumerable petitions assailing the dismissal of investigatory proceedings conducted by the Office of the Ombudsman with regard to complaints filed before it, in much the same way that the courts would be extremely swamped with cases if they could be compelled to review the exercise of discretion on the part of the fiscals or prosecuting attorneys each time they decide to file an information in court or dismiss a complaint by a private complainant.[147] (Emphasis and underscoring supplied)

In assessing if the Ombudsman had committed grave abuse of discretion, attention must be drawn to the context of its ruling — that is: **preliminary investigation is merely an inquisitorial mode of discovering whether or not there is reasonable basis to believe that a crime has been committed and that the person charged should be held responsible for it.**[148] Being merely based on opinion and belief, "a finding of probable cause does not require an inquiry as to whether there is sufficient evidence to secure a conviction."[149] In *Fenequito v. Vergara, Jr.*,[150]

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[145] See *Ciron v. Gutierrez*, G.R. Nos. 194339-41, April 20, 2015, citing *Soriano v. Marcelo*, 610 Phil. 72, 79 (2009).

[146] See *id.*

[147] See *id.*, citing *Tetangco v. Ombudsman*, 515 Phil. 230, 234-235 (2006), further citing *Roxas v. Vasquez*, 411 Phil. 276, 288 (2011).

[148] See *Encinas v. Agustin, Jr.*, G.R. No. 187317, April 11, 2013, 696 SCRA 240, 263-264, citing *Bautista v. Court of Appeals*, 413 Phil. 159, 168-169 (2001).

[149] *Clay & Feather International, Inc. v. Lichaytoo*, 664 Phil. 764, 771 (2011).

[150] 691 Phil. 335 (2012).

"[p]robable cause, for the purpose of filing a criminal information, has been defined as **such facts as are sufficient to engender a well-founded belief that a crime has been committed and that respondent is probably guilty thereof**. The term does not mean 'actual or positive cause' nor does it import absolute certainty. It is merely based on opinion and reasonable belief. **Probable cause does not require an inquiry x x x whether there is sufficient evidence to procure a conviction. It is enough that it is believed that the act or omission complained of constitutes the offense charged**."[151]

Thus, in determining the elements of the crime charged for purposes of arriving at a finding of probable cause, "**only facts sufficient to support a *prima facie* case against the [accused] are required, not absolute certainty**."[152] In this case, petitioners were charged with the crimes of Plunder and violations of Section 3 (e) of RA 3019.

Plunder, defined and penalized under Section 2[153] of RA 7080, as amended, has the following elements: (*a*) that the offender

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[151] *Id.* at 345-346, citing *Reyes v. Pearlbank Securities, Inc.*, 582 Phil. 505, 518-519 (2008); emphases and underscoring supplied.

[152] *Shu v. Dee*, G.R. No. 182573, April 23, 2014, 723 SCRA 512, 523; emphases and underscoring supplied.

[153] Section 2 of RA 7080 reads in full:

> Section 2. *Definition of the Crime of Plunder; Penalties.* — Any public officer who, by himself or in connivance with members of his family, relatives by affinity or consanguinity, business associates, subordinates or other persons, amasses, accumulates or acquires ill-gotten wealth through a combination or series of overt or criminal acts as described in Section 1 (d) hereof in the aggregate amount or total value of at least Fifty Million Pesos (₱50,000,000.00) shall be guilty of the crime of plunder and shall be punished by *reclusion perpetua* to death. Any person who participated with the said public officer in the commission of an offense contributing to the crime of plunder shall likewise be punished for such offense. In the imposition of penalties, the degree of participation and the attendance of mitigating and extenuating circumstances, as provided by the Revised Penal Code, shall be considered by the court. The court shall declare any and all ill-gotten wealth and their interests and other incomes and assets including the properties and shares of stocks derived from the deposit or investment thereof forfeited in favor of the State.

is a public officer, who acts by himself or in connivance with members of his family, relatives by affinity or consanguinity, business associates, subordinates or other persons; (*b*) that he amasses, accumulates or acquires ill-gotten wealth through a combination or series of overt or criminal acts described in Section 1 (d)[154] thereof; and (*c*) that the aggregate amount or total value of the ill-gotten wealth is at least Fifty Million Pesos (₱50,000,000.00).[155]

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[154] Section 1 (d) of RA 7080, as amended provides:

Section 1. Definition of Terms. — As used in this Act, the term —

x x x x x x x x x

d) "*Ill-gotten wealth*" means any asset, property, business enterprise or material possession of any person within the purview of Section Two (2) hereof, acquired by him directly or indirectly through dummies, nominees, agents, subordinates and/or business associates by any combination or series of the following means or similar schemes:

1) Through misappropriation, conversion, misuse, or malversation of public funds or raids on the public treasury;

2) By receiving, directly or indirectly, any commission, gift, share, percentage, kickbacks, or any other form of pecuniary benefit from any person and/or entity in connection with any government contract or project or by reason of the office or position of the public officer concerned;

3) By the illegal or fraudulent conveyance or disposition of assets belonging to the National Government or any of its subdivision, agencies or instrumentalities or government-owned or -controlled corporations and their subsidiaries;

4) By obtaining, receiving or accepting directly, or indirectly any shares of stock, equity or any other form of interest or participation including the promise of future employment in any business enterprise or undertaking;

5) By establishing agricultural, industrial or commercial monopolies or other combinations and/or implementation of decrees and orders intended to benefit particular persons or special interests; or

6) By taking undue advantage of official position, authority, relationship, connection, or influence to unjustly enrich himself or themselves at the expense and to the damage and prejudice of the Filipino people and the Republic of the Philippines.

[155] See *Enrile v. People*, G.R. No. 213455, August 11, 2015.

On the other hand, the elements of violation of Section 3 (e)[156] of RA 3019 are: (*a*) that the accused must be a public officer discharging administrative, judicial, or official functions (or a private individual acting in conspiracy with such public officers); (*b*) that he acted with manifest partiality, evident bad faith, or inexcusable negligence; and (*c*) that his action caused any undue injury to any party, including the government, or giving any private party unwarranted benefits, advantage, or preference in the discharge of his functions.[157]

Owing to the nature of a preliminary investigation and its purpose, all of the foregoing elements need not be definitively established for it is enough that their presence becomes reasonably apparent. This is because probable cause — the determinative matter in a preliminary investigation — implies mere probability of guilt; thus, a finding based on more than bare suspicion but less than evidence that would justify a conviction would suffice.[158]

Also, it should be pointed out that a preliminary investigation is not the occasion for the full and exhaustive display of the prosecution's evidence, and that the presence or absence of the elements of the crime is evidentiary in nature and is a matter of defense that may be passed upon after a full-blown trial on

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[156] Section 3 (e) of RA 3019 reads:

> 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
>
> (e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

[157] See *Presidential Commission on Good Government v. Navarro-Gutierrez*, G.R. No. 194159, October 21, 2015.

[158] *Shu v. Dee*, *supra* note 152.

the merits.[159] Therefore, "**the validity and merits of a party's defense or accusation, as well as the admissibility of testimonies and evidence, are better ventilated during trial proper than at the preliminary investigation level**."[160]

Furthermore, owing to the initiatory nature of preliminary investigations, the "**technical rules of evidence should not be applied**" in the course of its proceedings,[161] keeping in mind that "**the determination of probable cause does not depend on the validity or merits of a party's accusation or defense or on the admissibility or veracity of testimonies presented**."[162] Thus, in *Estrada v. Ombudsman*[163] (*Estrada*), the Court declared that since a preliminary investigation does not finally adjudicate the rights and obligations of parties, "**probable cause can be established with hearsay evidence, as long as there is substantial basis for crediting the hearsay**."[164]

Guided by these considerations, the Court finds that the Ombudsman did not gravely abuse its discretion in finding probable cause to indict Reyes, Janet Napoles, and De Asis of one (1) count of Plunder, and Reyes, Janet Napoles, the Napoles siblings, and De Asis of fifteen (15) counts of violation of Section 3 (e) of RA 3019, as will be explained hereunder.

First, records reveal that there is substantial basis to believe that Reyes, as Chief of Staff of Senator Enrile, dealt with the parties involved; signed documents necessary for the immediate and timely implementation of the Senator's PDAF-funded

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[159] *Lee v. KBC Bank N.V.*, 624 Phil. 115, 126 (2010), citing *Andres v. Cuevas*, 499 Phil. 36, 49-50 (2005).

[160] *Id.* at 126-127; emphasis and underscoring supplied.

[161] See *De Chavez v. Ombudsman*, 543 Phil. 600, 619-620 (2007); emphasis and underscoring supplied.

[162] See *Estrada v. Ombudsman*, G.R. Nos. 212140-41, January 21, 2015, citing *Unilever Philippines, Inc. v. Tan*, G.R. No. 179367, January 29, 2014, 715 SCRA 36, 49-50, emphasis and underscoring supplied.

[163] See *id.*

[164] See *id.*

projects that, however, turned out to be "ghost projects"; and repeatedly received "rebates," "commissions," or "kickbacks" for herself and for Senator Enrile representing portions of the latter's PDAF. As correctly pointed out by the Ombudsman, such participation on the part of Reyes was outlined by whistleblowers Luy, Sula, and Suñas as follows:

> [O]nce a PDAF allocation becomes available to Senator Enrile, his staff, in the person of either respondent **Reyes** or Evangelista, would inform Tuason of this development. Tuason, in turn, would relay the information to either Napoles or Luy. Napoles or Luy would then prepare a listing of the projects available where Luy would specifically indicate the implementing agencies. This listing would be sent to **Reyes** who would then endorse it to the DBM under her authority as Chief-of-Staff of Senator Enrile. After the listing is released by the Office of Senator Enrile to the DBM, Janet Napoles would give Tuason a down payment for delivery to Senator Enrile through **Reyes**. After the SARO and/or NCA is released, Napoles would give Tuason the full payment for delivery to Senator Enrile through **Atty. Gigi Reyes**.[165]

This was corroborated in all respects by Tuason's verified statement, the pertinent portions of which read:

> 11. x x x It starts with a call or advise from **Atty. Gigi Reyes** or Mr. Jose Antonio Evangelista (also from the Office of Senator Enrile) informing me that a budget from Senator Enrile's PDAF is available. I would then relay this information to Janet Napoles/Benhur Luy.
>
> 12. Janet Napoles/Benhur Luy would then prepare a listing of the projects available indicating the implementing agencies. This listing would be sent to **Atty. Gigi Reyes** who will endorse the same to the DBM under her authority as Chief-of-Staff of Senator Enrile.
>
> 13. After the listing is released by the Office of Senator Enrile to the DBM, Janet Napoles would give me a down payment for delivery for the share of Senator Enrile through **Atty. Gigi Reyes**.
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> 14. After the SARO and/or NCA is released, Janet Napoles would give me the full payment for delivery to Senator Enrile through **Atty. Gigi Reyes**.

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[165] *Rollo* (G.R. Nos. 212593-94), Vol. I, p. 176.

15. Sometimes Janet Napoles would have the money for Senator Enrile delivered to my house by her employees. At other times, I would get it from her condominium in Pacific Plaza or from Benhur Luy in Discovery Suites. When Benhur Luy gives me the money, he would make me scribble on some of their vouchers [or] even sign under the name "Andrea Reyes," [Napoles's] codename for me. This is the money that I would deliver to Senator Enrile through **Atty. Gigi Reyes**.

16. I don't count the money I receive for delivery to Senator Enrile. I just receive whatever was given to me. The money was all wrapped and ready for delivery when I get it from Janet Napoles or Benhur Luy. For purposes of recording the transactions, I rely on the accounting records of Benhur Luy for the PDAF of Senator Enrile, which indicates the date, description and amount of money I received for delivery to Senator Enrile.

x x x x x x x x x

18. As I have mentioned above, I personally received the share of Senator Enrile from Janet Napoles and Benhur Luy and I personally delivered it to Senator Enrile's Chief-of-Staff, **Atty. Gigi Reyes**. Sometimes she would come to my house to pick up the money herself. There were also instances when I would personally deliver it to her when we would meet over lunch. There were occasions when Senator [Enrile] would join us for a cup of coffee when he would pick her up. For me, his presence was a sign that whatever **Atty. Gigi Reyes** was doing was with Senator Enrile's blessing.

x x x x x x x x x

25. Initially, I was in-charge of delivering the share of Senator Enrile to **Atty. Gigi Reyes**, but later on, I found out that Janet Napoles dealt directly with her. Janet Napoles was able to directly transact business with **Atty. Gigi Reyes** after I introduced them to each other. This was during the Senate hearing of Jocjoc Bolante in connection with the fertilizer fund scam. Janet Napoles was scared of being investigated on her involvement, so she requested me to introduce her to **Atty. Gigi Reyes** who was the Chief of Staff of the [sic] Senate President Enrile.[166] (Emphases supplied)

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[166] See Supplemental Sworn Statement of Tuason dated February 21, 2014; *rollo* (G.R. Nos. 215880-94), Vol. II, pp. 704-709.

Indeed, these pieces of evidence are already sufficient to engender a well-founded belief that the crimes charged were committed and Reyes is probably guilty thereof as it remains apparent that: (*a*) Reyes, a public officer, connived with Senator Enrile and several other persons (including the other petitioners in these consolidated cases as will be explained later) in the perpetuation of the afore-described PDAF scam, among others, in entering into transactions involving the illegal disbursement of PDAF funds; (*b*) Senator Enrile and Reyes acted with manifest partiality and/or evident bad faith by repeatedly endorsing the JLN-controlled NGOs as beneficiaries of his PDAF without the benefit of public bidding and/or negotiated procurement in violation of existing laws, rules, and regulations on government procurement;[167] (*c*) the PDAF-funded projects turned out to be

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[167] "As correctly pointed out by the FIO, the [Revised] Implementing Rules and Regulations of RA 9184 states that an NGO may be contracted only when so authorized by an appropriation law or ordinance:

> 53.11. NGO *Participation*. When an appropriation law or ordinance earmarks an amount to be specifically contracted out to [NGOs], the procuring entity may enter into a [MOA] with an NGO, subject to guidelines to be issued by the [Government Procurement Policy Board (GPPB)].

National Budget Circular (NBC) No. 476, as amended by NBC No. 479, provides that PDAF allocations should be directly released only to those government agencies identified in the project menu of the pertinent General Appropriations Act (GAAs). The GAAs in effect at the time material to the charges, however, did not authorize the direct release of funds to NGOs, let alone the direct contracting of NGOs to implement government projects. This, however, did not appear to have impeded Senator Enrile's direct selection of the [JLN-controlled NGOs], and which choice was accepted *in toto* by the IAs.

Even assuming *arguendo* that the GAAs allowed the engagement of NGOs to implement PDAF-funded projects, such engagements remain subject to ***public bidding*** requirements. Consider GPPB Resolution No. 012-2007:

> 4.1 When an appropriation law or ordinance specifically earmarks an amount for projects to be specifically contracted out to NGOs, ***the procuring entity may select an NGO through competitive bidding or negotiated procurement under Section 53[(j)] of the [IRR-A]. x x x.***

The aforementioned laws and rules, however, were, disregarded by public respondents, Senator Enrile having just chosen the JLN-controlled NGOs." (Emphases and underscoring in the original; see *rollo* [G.R. Nos. 212593-94], Vol. I, pp. 159-160.)

inexistent; (*d*) such acts caused undue injury to the government, and at the same time, gave unwarranted benefits, advantage, or preference to the beneficiaries of the scam; and (*e*) Senator Enrile, through Reyes, was able to accumulate and acquire ill-gotten wealth amounting to at least ₱172,834,500.00.

In an attempt to exculpate herself from the charges, Reyes contends that the Ombudsman gravely abused its discretion when it: (*a*) relied upon hearsay and unsubstantiated declarations of the whistleblowers who merely mentioned her name in general terms but did not positively declare that they saw or talked with her at any time or that they had seen her receive money from Janet Napoles or anyone else connected with the latter;[168] (*b*) granted immunity to the whistleblowers and Tuason;[169] (*c*) denied her of due process when she was deprived of the opportunity to rebut and disprove the statements of Tuason as she was never furnished a copy of the latter's Sworn Statement[170] dated February 4, 2014 despite repeated requests therefor;[171] and (*d*) disregarded the fact that her signatures found on the documentary evidence presented were forged, falsified, and fictitious.[172]

Such contentions deserve scant consideration.

Assuming *arguendo* that such whistleblower accounts are merely hearsay, it must be reiterated that — as held in the *Estrada* case — probable cause can be established with hearsay evidence, so long as there is substantial basis for crediting the same.[173] As aforestated, the *modus operandi* used in advancing the PDAF scam as described by the whistleblowers was confirmed by Tuason herself, who admitted to having acted as a liaison between Janet

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[168] See *id.* at 56-60.

[169] See *id.* at 33-34 and 38-42.

[170] *Rollo* (G.R. Nos. 215880-94), Vol. II, pp. 656-670.

[171] See *rollo* (G.R. Nos. 212593-94), Vol. I, pp. 25-33.

[172] See *id.* at 42-56.

[173] See *Estrada v. Ombudsman*, *supra* note 162.

Napoles and the office of Senator Enrile.[174] The Ombudsman further pointed out that the collective statements of Luy, Sula, Suñas, and Tuason find support in the following documentary evidence: (*a*) the business ledgers prepared by witness Luy, showing the amounts received by Senator Enrile, through Tuason and Reyes, as his "commission" from the so-called PDAF scam; (*b*) the 2007-2009 Commission on Audit (COA) Report documenting the results of the special audit undertaken on PDAF disbursements — that there were serious irregularities relating to the implementation of PDAF-funded projects, including those endorsed by Senator Enrile; and (*c*) the reports on the independent field verification conducted in 2013 by the investigators of the FIO which secured sworn statements of local government officials and purported beneficiaries of the supposed projects which turned out to be inexistent.[175] Clearly, these testimonial and documentary evidence are substantial enough to reasonably conclude that Reyes had, in all probability, participated in the PDAF scam and, hence, must stand trial therefor.

In this relation, the Court rejects Reyes's theory that the whistleblowers and Tuason are the "most guilty" in the perpetuation of the PDAF scam and, thus, rebuffs her claim that the Ombudsman violated Section 17, Rule 119[176] of the

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[174] *Rollo* (G.R. Nos. 212593-94), Vol. I, pp. 152-153.

[175] *Id.* at 154.

[176] Section 17, Rule 119 of the 2000 Rules of Criminal Procedure states:

Section 17. *Discharge of accused to be state witness*. — When two or more persons are jointly charged with the commission of any offense, upon motion of the prosecution before resting its case, the court may direct one or more of the accused to be discharged with their consent so that they may be witnesses for the state when, after requiring the prosecution to present evidence and the sworn statement of each proposed state witness at a hearing in support of the discharge, the court is satisfied that:

(a) There is absolute necessity for the testimony of the accused whose discharge is requested;

(b) There is no other direct evidence available for the proper prosecution of the offense committed, except the testimony of said accused;

(c) The testimony of said accused can be substantially corroborated in its material points;

2000 Rules of Criminal Procedure by granting immunity to them. To begin with, "[t]he authority to grant immunity is not an inherent judicial function. Indeed, Congress has vested such power in the Ombudsman[,] as well as in the Secretary of Justice. Besides, the decision to employ an accused as a state witness must necessarily originate from the public prosecutors whose mission is to obtain a successful prosecution of the several accused before the courts. The latter do not, as a rule[,] have a vision of the true strength of the prosecution's evidence until after the trial is over. Consequently, courts should generally defer to the judgment of the prosecution and deny a motion to discharge an accused so he can be used as a witness only in clear cases of failure to meet the requirements of Section 17, Rule 119 [of the 2000 Rules of Criminal Procedure]."[177] As explained in *Quarto v. Marcelo*:[178]

> The decision to grant immunity from prosecution forms a constituent part of the prosecution process. It is essentially a tactical decision to forego prosecution of a person for government to achieve a higher objective. It is a deliberate renunciation of the right of the State to prosecute all who appear to be guilty of having committed a crime. Its justification lies in the particular need of the State to obtain the conviction of the more guilty criminals who, otherwise, will probably elude the long arm of the law. **Whether or not the delicate power should be exercised, who should be extended the privilege, the timing of its grant, are questions addressed solely to the sound judgment of the prosecution. The power to prosecute includes the right to determine who shall be prosecuted and the corollary right to decide whom not to prosecute. In reviewing the exercise of prosecutorial discretion in these areas, the jurisdiction of the respondent court is limited. For the business of a court of justice**

(d) **said accused does not appear to be the most guilty**; and

(e) Said accused has not at any time been convicted of any offense involving moral turpitude.

x x x x x x x x x

(Emphasis supplied)

[177] *People v. Sandiganbayan*, G.R. Nos. 185724-32, June 26, 2013, 699 SCRA 713, 720.

[178] 674 Phil. 370 (2011).

is to be an impartial tribunal, and not to get involved with the success or failure of the prosecution to prosecute. Every now and then, the prosecution may err in the selection of its strategies, but such errors are not for neutral courts to rectify, any more than courts should correct the blunders of the defense.[179] (Emphasis and underscoring supplied)

As earlier mentioned, Tuason admitted to having acted merely as a liaison between Janet Napoles and the Office of Senator Enrile. It is in this capacity that she made "direct arrangements" with Janet Napoles concerning the PDAF "commissions," and "directly received" money from Janet Napoles for distribution to the participants of the scam. In the same manner, Luy and Suñas, being mere employees of Janet Napoles, only acted upon the latter's orders. Thus, the Ombudsman simply saw the higher value of utilizing them as witnesses instead of prosecuting them in order to fully establish and strengthen her case against those mainly responsible for the scam.[180] The Court has previously stressed that the discharge of an accused to be a state witness is geared towards the realization of the deep-lying intent of the State not to let a crime that has been committed go unpunished by allowing an accused who appears not to be the most guilty to testify, in exchange for an outright acquittal, against a more guilty co-accused. It is aimed at achieving the greater purpose of securing the conviction of the most guilty and the greatest number among the accused for an offense committed.[181] In fact, whistleblower testimonies — especially in corruption cases, such as this — should not be condemned, but rather, be welcomed as these whistleblowers risk incriminating themselves in order to expose the perpetrators and bring them to justice. In *Re: Letter of Presiding Justice Conrado M. Vasquez, Jr. on CA-G.R. SP No. 103692* (*Antonio Rosete, et al. v. Securities and Exchange Commission, et al.*),[182] the Court gave recognition

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

[180] See *id.* at 402.

[181] *People v. Feliciano*, 419 Phil. 324, 341 (2001).

[182] 590 Phil. 8 (2008).

and appreciation to whistleblowers in corruption cases, considering that corruption is often done in secrecy and it is almost inevitable to resort to their testimonies in order to pin down the crooked public officers.[183]

For another, Reyes erroneously posits that under Section 4,[184] Rule II of the Rules of Procedure of the Office of the Ombudsman,

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[183] See *id.* at 49-50.

[184] Section 4, Rule II of the Rules of Procedure of the Office of the Ombudsman reads:

> Section 4. *Procedure*. — The preliminary investigation of cases falling under the jurisdiction of the Sandiganbayan and Regional Trial Courts shall be conducted in the manner prescribed in Section 3, Rule 112 of the Rules of Court, subject to the following provisions:
>
> a) If the complaint is not under oath or is based only on official reports, the investigating officer shall require the complainant or supporting witnesses to execute affidavits to substantiate the complaints.
>
> b) After such affidavits have been secured, the investigating officer shall issue an order, attaching thereto a copy of the affidavits and other supporting documents, directing the respondents to submit, within ten (10) days from receipt thereof, his counter-affidavits and controverting evidence with proof of service thereof on the complainant. The complainant may file reply affidavits within ten (10) days after service of the counter-affidavits.
>
> c) If the respondents [sic] does not file a counter-affidavit, the investigating officer may consider the comment filed by him, if any, as his answer to the complaint. In any event, the respondent shall have access to the evidence on record.
>
> d) No motion to dismiss shall be allowed except for lack of jurisdiction. Neither may a motion for a bill of particulars be entertained. If respondents [sic] desires any matter in the complainant's affidavit to be clarified, the particularization thereof may be done at the time of clarificatory questioning in the manner provided in paragraph (f) of this section.
>
> e) If the respondents [sic] cannot be served with the order mentioned in paragraph 6 hereof, or having been served, does not comply therewith, the complaint shall be deemed submitted for resolution on the basis of the evidence on the record.
>
> f) If, after the filing of the requisite affidavits and their supporting evidences, there are facts material to the case which the investigating

she is entitled to copies of Tuason's affidavit, as well as the transcripts of the clarificatory hearings conducted by the Ombudsman with Tuason, and that the Ombudsman's denial of such copies constitutes a violation of due process on her part. In *Estrada*, the Court had already resolved in detail that under both Rule 112 of the 2000 Rules of Criminal Procedure and Section 4, Rule II of the Rules of Procedure of the Office of the Ombudsman, a respondent to a preliminary investigation proceeding (such as Reyes in this case) is only entitled to the evidence submitted by the complainants, and not to those submitted by a co-respondent[185] (such as Tuason in this case, prior to her grant of immunity as a state witness). It must also be noted that by virtue of the Ombudsman's Joint Order[186] dated May 7, 2014, Reyes was even provided with copies of Tuason and Cunanan's respective Counter-Affidavits,[187] and directed to file a comment thereon. In fact, Reyes even submitted separate

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officer may need to be clarified on, he may conduct a clarificatory hearing during which the parties shall be afforded the opportunity to be present but without the right to examine or cross-examine the witness being questioned. Where the appearance of the parties or witnesses is impracticable, the clarificatory questioning may be conducted in writing, whereby the questions desired to be asked by the investigating officer or a party shall be reduced into writing and served on the witness concerned who shall be required to answer the same in writing and under oath.

g) Upon the termination of the preliminary investigation, the investigating officer shall forward the records of the case together with his resolution to the designated authorities for their appropriate action thereon.

No information may be filed and no complaint may be dismissed without the written authority or approval of the Ombudsman in cases falling within the jurisdiction of the Sandiganbayan, or of the proper Deputy Ombudsman in all other cases.

[185] See *Estrada v. Ombudsman, supra* note 162.

[186] *Rollo* (G.R. Nos. 212593-94), Vol. II, pp. 791-792.

[187] Among the documents allegedly attached to the May 7, 2014 Joint Order were copies of the Supplemental Sworn Statement of Tuason dated February 21, 2014 and the Sworn Statement of Cunanan dated February 20, 2014 (see *rollo*, [G.R. Nos. 212593-94], Vol. I, pp. 16-17).

Comments[188] on May 13, 2014. Thus, there is more reason to decline Reyes's assertion that the Ombudsman deprived her of due process. Time and again, it has been said that the touchstone of due process is the opportunity to be heard,[189] which was undeniably afforded to Reyes in this case.

Finally, anent Reyes's claim that her signatures in the documentary evidence presented were false, falsified, and fictitious, it must be emphasized that "[a]s a rule, forgery cannot be presumed and must be proved by clear, positive[,] and convincing evidence and the burden of proof lies on the party alleging forgery. The best evidence of a forged signature in the instrument is the instrument itself reflecting the alleged forged signature. The fact of forgery can only be established by comparison between the alleged forged signature and the authentic and genuine signature of the person whose signature is theorized upon to have been forged."[190] Here, Reyes has yet to overcome the burden to present clear and convincing evidence to prove her claim of forgery, especially in light of the following considerations pointed out by the Office of the Solicitor General in its Comment on the petition in **G.R. Nos. 212593-94**:[191] (*a*) in a letter dated March 21, 2012 addressed to the COA, Senator Enrile himself admitted that his signatures, as well as those of Reyes, found on the documents covered by the COA's Special Audit Report are authentic;[192] and (*b*) Rogelio Azores, the supposed document examiner who now works as a freelance consultant, aside from only analyzing photocopies of the aforesaid documents and not the originals thereof, did not categorically state that Reyes's signatures on the endorsement letters were forged.[193]

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[188] *Rollo* (G.R. Nos. 212593-94), Vol. II, pp. 798-802 and 803-821.

[189] *Republic v. Transunion Corporation*, G.R. No. 191590, April 21, 2014, 722 SCRA 273, 286.

[190] *Heir of Bucton v. Gonzalo*, G.R. No. 188395, November 20, 2013, 710 SCRA 457, 465-466.

[191] *Rollo* (G.R. Nos. 212593-94), Vol. III, pp. 1172-1214.

[192] See *id.* at 1188.

[193] See *id.* at 1187.

As there is no clear showing of forgery, at least at this stage of the proceedings, the Court cannot subscribe to Reyes's contrary submission. Notably, however, she retains the right to raise and substantiate the same defense during trial proper.

In sum, the Ombudsman did not gravely abuse its discretion in finding probable cause to indict Reyes of one (1) count of Plunder and fifteen (15) counts of violation of Section 3 (e) of RA 3019.

Anent Janet Napoles's complicity in the abovementioned crimes, records similarly show that she, in all reasonable likelihood, played an integral role in the calculated misuse of Senator Enrile's PDAF. As exhibited in the *modus operandi* discussed earlier, once Janet Napoles was informed of the availability of a PDAF allocation, either she or Luy, as the "lead employee"[194] of the JLN Corporation, would prepare a listing of the available projects specifically indicating the IAs. After said listing is released by the Office of Senator Enrile to the DBM, Janet Napoles would give a down payment from her own pockets for delivery to Senator Enrile through Reyes, with the remainder of the amount given to the Senator after the SARO and/or NCA is released. Senator Enrile would then indorse Janet Napoles's NGOs to undertake the PDAF-funded projects,[195] which were "ghost projects" that allowed Janet Napoles and her cohorts to pocket the PDAF allocation.[196]

Based on the evidence in support thereof, the Court is convinced that there lies probable cause against Janet Napoles for the charge of Plunder as it has *prima facie* been established that: (*a*) she, in conspiracy with Senator Enrile, Reyes, and other personalities, was significantly involved in the afore-described *modus operandi* to obtain Senator Enrile's PDAF, who supposedly abused his authority as a public officer in order to do so; (*b*) through this *modus operandi*, it appears that Senator Enrile repeatedly received ill-gotten wealth in the form of "kickbacks" in the

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[194] *Rollo* (G.R. Nos. 213540-41), Vol. I, p. 52.

[195] See *id.* at 132-133.

[196] See *id.* at 138-139.

years 2004-2010; and (*c*) the total value of "kickbacks" given to Senator Enrile amounted to at least ₱172,834,500.00.

In the same manner, there is probable cause against Janet Napoles for violations of Section 3 (e) of RA 3019, as it is ostensible that: (*a*) she conspired with public officials, *i.e.*, Senator Enrile and his chief of staff, Reyes, who exercised official functions whenever they would enter into transactions involving illegal disbursements of the PDAF; (*b*) Senator Enrile, among others, has shown manifest partiality and evident bad faith by repeatedly indorsing the JLN-controlled NGOs as beneficiaries of his PDAF-funded projects — even without the benefit of a public bidding and/or negotiated procurement, in direct violation of existing laws, rules, and regulations on government procurement;[197] and (*c*) the "ghost" PDAF-funded projects caused undue prejudice to the government in the amount of ₱345,000,000.00.

At this juncture, the Court must disabuse Janet Napoles of her mistaken notion that as a private individual, she cannot be held answerable for the crimes of Plunder and violations of Section 3 (e) of RA 3019 because the offenders in those crimes are public officers. While the primary offender in the aforesaid crimes are public officers, private individuals may also be held liable for the same if they are found to have conspired with said officers in committing the same.[198] This proceeds from the fundamental principle that in cases of conspiracy, the act of one is the act of all.[199] In this case, given that the evidence gathered perceptibly shows Janet Napoles's engagement in the illegal hemorrhaging of Senator Enrile's PDAF, the Ombudsman rightfully charged her, with Enrile and Reyes, as a co-conspirator for the aforestated crimes.

Furthermore, there is no merit in Janet Napoles's assertion that the complaints are insufficient in form and in substance

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[197] See *rollo* (G.R. Nos. 212593-94), Vol. I, pp. 159-160.

[198] See *People v. Balao*, 655 Phil. 563, 572-573 (2011), citing *Dela Chica v. Sandiganbayan*, 462 Phil. 712, 720 (2003).

[199] See *People v. Nazareno*, 698 Phil. 187, 193 (2012).

for the reason that it lacked certain particularities such as the time, place, and manner of the commission of the crimes charged. "According to Section 6, Rule 110[200] of the 2000 Rules of Criminal Procedure, the complaint or information is sufficient if it states the names of the accused; the designation of the offense given by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; the approximate date of the commission of the offense; and the place where the offense was committed. **The fundamental test in determining the sufficiency of the averments in a complaint or information is, therefore, whether the facts alleged therein, if hypothetically admitted, constitute the elements of the offense**."[201] In this case, the NBI and the FIO Complaints stated that: (*a*) Senator Enrile, Reyes, and Janet Napoles, among others, are the ones responsible for the PDAF scam; (*b*) Janet Napoles, *et al.* are being accused of Plunder and violations of Section 3 (e) of RA 3019; (*c*) they used a certain *modus operandi* to perpetuate said scam, details of which were stated therein; (*d*) because of the PDAF scam, the Philippine government was prejudiced and defrauded in the approximate amount of ₱345,000,000.00; and *(e)* the PDAF scam happened sometime between the years 2004 and 2010, specifically in Taguig City, Pasig City, Quezon City, and Pasay City.[202] The aforesaid allegations were essentially reproduced in the sixteen (16)

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[200] Section 6, Rule 110 of the Rules of Criminal Procedure states in full:

> Section 6. *Sufficiency of complaint or information*. — A complaint or information is sufficient if it states the name of the accused; the designation of the offense given by the statute; the acts or omissions complained of as constituting the offense; the name of the offended party; the approximate date of the commission of the offense; and the place where the offense was committed.
>
> When an offense is committed by more than one person, all of them shall be included in the complaint or information.

[201] See *Enrile v. Manalastas*, G.R. No. 166414, October 22, 2014, citing *People v. Balao, supra* note 198, at 571-572; emphasis and underscoring supplied.

[202] See NBI and FIO Complaints; *rollo* (G.R. Nos. 212593-94), Vol. I, pp. 301-306, 417-421, and 438.

Informations — one (1) for Plunder[203] and fifteen (15) for violation of RA 3019[204] — filed before the Sandiganbayan. Evidently, these factual assertions already square with the requirements of Section 6, Rule 110 of the Rules of Criminal Procedure as above-cited. Upon such averments, there is no gainsaying that Janet Napoles has been completely informed of the accusations against her to enable her to prepare for an intelligent defense.[205] The NBI and the FIO Complaints are, therefore, sufficient in form and in substance.

In view of the foregoing, the Ombudsman did not gravely abuse its discretion in finding probable cause to indict Janet Napoles of the crimes of Plunder and violations of Section 3 (e) of RA 3019.

As regards the finding of probable cause against the Napoles siblings and De Asis, it must be first highlighted that they are placed in the same situation as Janet Napoles in that they are being charged with crime/s principally performed by public officers (specifically, of Plunder and/or multiple violations of Section 3 [e] of RA 3019) despite their standing as private individuals on account of their alleged conspiracy with public officers, Senator Enrile and Reyes. It is a fundamental legal axiom that "**[w]hen there is conspiracy, the act of one is the act of all**."[206] Thus, the reasonable likelihood that conspiracy exists between them denotes the probable existence of the elements of the crimes above-discussed equally as to them.

"Conspiracy can be inferred from and established by the acts of the accused themselves when said acts point to a joint purpose and design, concerted action and community of interests."[207]

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[203] See *rollo* (G.R. Nos. 213163-78), Vol. I, pp. 53-54.

[204] *Id.* at 55-57, 58-60, 61-63, 64-66, 67-69, 70-72, 73-75, 76-78, 79-81, 82-85, 86-88, 89-91, 92-94, 95-97, and 98-100.

[205] *Estrada v. Sandiganbayan*, 421 Phil. 290, 347 (2001).

[206] *Quidet v. People*, 632 Phil. 1, 11 (2010); emphasis and underscoring supplied.

[207] *People v. Cadevida*, G.R. No. 94528, March 1, 1993, 219 SCRA 218, 228.

With respect to the Napoles siblings, it must be clarified that while it appears from the evidence on record that: (*a*) they did not serve as officers or incorporators of the JLN-controlled NGOs designated as "project partners" in the implementation of Senator Enrile's PDAF projects;[208] (*b*) their names did not appear in the table of signatories to the MOAs;[209] and (*c*) they did not acknowledge receipt of the checks issued by the IAs in payment of Senator Enrile's "ghost" PDAF-funded projects, they were nonetheless involved in various phases of the PDAF scam. Their respective participations, from which a unity of purpose and design with the acts of their mother, Janet Napoles, resonates, were uncovered in the sworn statement[210] of whistleblower Luy, as will be shown hereunder.

For its proper context, it should be first pointed out that Luy specifically mentioned that Janet Napoles transacted with Senator Enrile regarding his PDAF, among other legislators:

> 50. T: *Nabanggit mo na may mga pulitiko na madalas nakikipag-*transact *kay* JANET LIM NAPOLES, *maaari mo bang sabihin kung sinu-sino ang mga pulitiko na nagpapagamit sa mga* PDAF *nila*?
>
> S: *Opo. Sa mga Senador po ang madalas pong makuha ni* Madame Janet *na* PDAF *nila ay sina Senador* JINGGOY ESTRADA, ***Senador* JUAN PONCE ENRILE**, *at si Senador* BONG REVILLA. *Sa* Congressman *naman ay sina*, Congresswoman RIZALINA LANETE *ng* 3rd District *ng Benguet*, Congressman RODOLFO PLAZA *ng* lone District *ng Agusan Del Sur*, Congressman CONSTANTINO JARAULA *ng* lone District *ng Cagayan De Oro, at si* Congressman EDGAR VALDEZ *ng* APEC Party List. *Meron pa rin mga iba pero nasa* records *ko po iyon. Itong mga nabanggit ko po ay* familiar *na sa akin kasi* regular *silang nakaka-*transact *ng* JLN Corporation.[211] (Emphasis supplied)

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[208] See *rollo* (G.R. Nos. 213542-43), Vol. I, pp. 38-39 and 192-198.

[209] *Id.* at 40-41.

[210] *Rollo* (G.R. Nos. 215880-94), Vol. III, pp. 1136-1176.

[211] *Id.* at 1150.

He then explained that the share of the involved legislators in the PDAF were termed as "rebates," and their disbursement from JLN Corporation were reflected in "vouchers," which were, after his initial preparation, checked by, among others, Jo Christine Napoles:

51. T: *Papaano mo naman nalaman na madalas na nagagamit o nakukuha ni* JANET LIM NAPOLES *ang* PDAF *ng mga nabanggit mong pulitiko*?
    S: *Kasi po bukod sa nakikita ko sila sa opisina ng* JLN Corporation *o sa mga parties ni* Madame JANET LIM NAPOLES *o madalas na kausap sa telepono, ay sila rin lagi ang nasa* records *ko na pinagbibigyan ng pera ni* Madam JANET LIM NAPOLES. *Gaya po ng sinabi ko, ako po ang inuutusan ni* Madame JANET LIM NAPOLES *na gumawa ng mga dokumento at maghanda ng pera para sa* rebates *ng mga Senador o* Congressman *na mga ito. May* **VOUCHER** *po kasi ang mga pera na lumalabas sa* JLN Corporation. *Doon sa* voucher *ay nakalagay ang pangalan ng taong pagbibigyan gaya ng Senador, o* Chief-of-Staff *nila, o* Congressman, *o sinumang* public official *na kumukuha ng* **REBATES** *sa mga* government projects *na ipinatutupad ng* NGOs *o* foundations *ni* Madame JANET LIM NAPOLES.

52. T: *Sino naman ang gumagawa ng sinasabi mong* voucher?
    S: *Ako po.*

53. T: *Maaari mo bang sabihin kung papaano iyong paghahanda mo ng* voucher *at ang proseso nito*?
    S: *Noong ako ay nasa* JLN Corporation *pa, ang una po ay sasabihan ako ni* Madame JANET LIM NAPOLES *na may pupuntang tao sa opisina ng* JLN Corporation *na kukuha nang pera. Maghahanda ako ng* VOUCHER *kung saan naka-*indicate *ang pangalan ng politiko, iyong petsa, iyong* control number *ng* voucher *at iyong* amount *na ibibigay.* ***Pipirmahan ko ito at ipapa-*****check** ***ko ito sa anak ni*** **Madame JANET LIM NAPOLES** ***na si*** **JO CHRISTINE** ***o di kaya ay kay*** **REYNALD "JOJO" LIM.** *Kapag nasuri na nila na tama [ang] ginawa ko ay pipirmahan na nila ito at ibibigay kay* Madame JANET LIM NAPOLES *at siya ang nag-a-*approve *nito. Babalik sa akin ang voucher para maihanda ko iyong pera.*

> *Kukuha ako ng pera sa vault na nasa opisina ng* JLN Corporation. *Kapag nandoon si* Madame JANET LIM NAPOLES *sa opisina ay siya mismo ang nag-aabot ng pera sa tao. Kung wala naman siya kami na ang nag-aabot ng pera. Bago pa man iabot ang pera ay bibilangin pa muna sa harap noong taong tatanggap ng pera at papapirmahin siya sa* voucher *para katunayan na natanggap ng ganoon halaga ng pera*.[212] (Emphases supplied)

Luy further revealed that these "vouchers" do not actually contain the names of the legislators to whom the PDAF shares were disbursed as they were identified by the use of "codenames." These "codenames," which were obviously devised to hide the identities of the legislators involved in the scheme, were known by a select few in the JLN Corporation, among others, the Napoles siblings:

57. T: *Sinabi mo na inilalagay mo sa voucher iyong pangalan ng kung sino man ang kukuha ng pera, may mga pagkakataon ba na iyong sinabi sa iyo ni* JANET LIM NAPOLES *na kukuha ng pera ay iba sa tatanggap*?
    S: *Meron po. Kunwari po sa mga Senador, sasabihin ni* Madame JANET LIM NAPOLES *na kinukuha na ni ganitong Senador ang kanyang* kickback *pero ang pera ay kukunin ng kanyang* Chief-of-Staff *o* representative *niya. Ilalagay ko iyong pangalan o* codename n*g Senador tapos i*-indicate *ko na* "care of" *tapos iyon pangalan o* codename *ng kung sinuman ang tumanggap*.

58. T: *Maaari mo bang linawin itong sinasabi mong* "codename"?
    S: *Ang pangalan po ng taong tumanggap ng pera ang nilalagay ko sa* "voucher" *pero minsan po ay* codename *ang nilalagay ko.*

59. T: *Sino ang nagbigay ng* "codename"?
    S: *Si* Madame JANET LIM NAPOLES *po ang nagbigay ng* codename *kasi daw po ay sa gobyerno kami nagta-*transact.

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[212] *Id.* at 1150-1151.

60. T: *Maaari mo bang sabihin kung anu-ano ang mga* "codenames" *ng mga ka*-transact *ni* JANET LIM NAPOLES *na pulitiko o kanilang* Chief-of-Staff?

S: *Opo. "TANDA" kay* Senator Juan Ponce Enrile, "SEXY/ *ANAK/KUYA" kay* Senator Jinggoy Estrada, "POGI" *kay Senator* Bong Revilla, "GUERERA" *kay* Congressman Rizalina Seachon-Lanete, "BONJING" *kay* Congressman RODOLFO PLAZA, "BULAKLAK" *kay* Congressman SAMUEL DANGWA, "*SUHA*" *kay* Congressman ARTHUR PINGOY, at "KURYENTE" *kay* Congressman EDGAR VALDEZ. *Mayroon pa po ibang* codename *nasa* records *ko. Sa ngayon po ay sila lang po ang aking naalala.*

61. T: *Bukod sa iyo, may ibang tao ba na nakakaalam ng mga sinasabi mong codenames?*

S: *Opo.*

62. T: *Sinu-sino itong mga nakakaalam ng* codenames *na nabanggit mo?*

S: *Si* Madame JANET LIM NAPOLES, ***ang anak niyang sina* JO CHRISTINE at JAMES CHRISTOPHER**, *at mga* seniors *ko sa* JLN Corporation *na sina* MERLINA SUÑAS [sic], MARINA SULA, EVELYN DE LEON, RONALD JOHN LIM *at ako*.[213] (Emphases and underscoring supplied)

As mentioned by Luy, the Napoles siblings' standing in the JLN Corporation were as follows:

13. T: *Bago ang sinasabi mong iligal na pagkakakulong mo noong* December 2012, ***sinu-sino ang mga ibang empleyado ni* JANET LIM NAPOLES?**

S: *Si* Madame JANET LIM NAPOLES *po ang* President/ CEO, JAIME G. NAPOLES *po ang* Consultant, **JO CHRISTINE L. NAPOLES *ang* Vice-President for Admin and Finance, JAMES CHRISTOPHER L. NAPOLES Vice-President for Operations**, x x x.[214]

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[213] *Id.* at 1139-1140 and 1151-1152.

[214] *Id.* at 1139-1140.

x x x x x x x x x
(Emphases and underscoring supplied)

Subsequently, Luy shed light on the process through which the "rebates" were received by the legislators, again identifying the Office of Senator Enrile, through Tuason, as one of the recipients:

66. T: *Papaano naman ibinigay ni* JANET LIM NAPOLES *ang* "rebates" *ng Senador o* Congressman?
    S: *Sa mga ibang* transaction *ay pumupunta sa opisina ng* JLN Corporation *ang* Chief of Staff *o pinagkakatiwalaan na tao ng* Congressman *o* Senador. *Ikalawa po, mayroon din po na pagkakataon na* bank transfer *na mula sa* account *ng* foundation *o* JLN Corporation *o* JO CHRIS Trading *patungo sa* account *ng* legislator *o pinagkakatiwalang tao ng* Congressman *o Senador*. *Ikatlong sistema pa ay si* Madame NAPOLES *o kaming mga empleyado na po ang nagdadala ng* cash *sa mga kausap niya*.

67. T: *Mayroon bang pagkakataon na ikaw mismo ay nakapagbigay ng pera na* "rebates" *ng* transaction *sa Senador o* Congressman *o sa kung sino mang* representative *ng pulitiko*?
    S: *Opo. Sa mga* Chief-of-Staff *ng mga Senador at sa mga* Congressman *mismo ay nakapag-abot na po ako ng* personal. *Pero sa mga senador po ay wala pong pagkakataon na ako mismo ang nag-abot. Naririnig ko lang kay* Madame JANET LIM NAPOLES *na nagbibigay daw sa mga Senador*.

68. T: *Maaari mo bang sabihin kung sinu-sino itong mga tinutukoy mong* Chief-of-Staff *ng Senador na tumanggap ng pera na* "rebates" *sa* transaction *kay* JANET LIM NAPOLES?
    S: *Opo, sina* Atty. RICHARD CAMBE *sa opisina ni Senador* BONG REVILLA, Ms. PAULINE LABAYEN, *sa opisina ni Senador* JINGGOY ESTRADA, Ms. RUBY TUASON ***sa opisina nina Senador*** **JUAN PONCE ENRILE** *at Senador* JINGGOY ESTRADA.

69. T: *Sinu-sino naman sa mga* Congressman *ang pinagbigyan mo ng pera na* "rebates" *ng* transaction *nila ni* JANET LIM NAPOLES?
S: *Sina* Congressman EDGAR VALDEZ, Congressman RODOLFO PLAZA, Congressman CONSTANTINO JARAULA *po. Nakapag-abot din po ako kay* Mr. JOSE SUMALPONG *na* Chief of Staff *ni* Congresswoman RIZALINA LANETE.[215] (Emphasis and underscoring supplied)

When asked if Luy was the only one involved in the disbursement of "rebates," he clarified that the children of Janet Napoles, among others, were also into the act:

70. T: *Maaari mo bang sabihin kung bakit ikaw ang nag-abot ng pera na* "rebates" *sa* transaction *ni* JANET LIM NAPOLES *sa mga pinangalanan mong* Chief-of-Staff *o* representative *ng Senador at mga* Congressman?
S: *Ganoon naman ang kalakaran sa opisina kung wala si* Madame JANET LIM NAPOLES. *Kapag may pumupuntang tao sa opisina para kumuha ng pera ay sinasabihan na kami ni* Madame JANET LIM NAPOLES *para maghanda ng pera at kami na mismo ang nag-aabot ng pera. Binibilang namin ito sa harap ng tatanggap bago namin iabot at pinapapirma namin sila para ipakita kay* Madame JANET LIM NAPOLES *kapag pinag*-report *niya kami.*

71. T: *Sinasabi mo na "kami", ibig mo bang sabihin ay bukod sa iyo ay mayroon pang iba na nakapag-abot ng pera sa mga pinangalanan mong tumanggap ng pera na* "rebates" *sa* transaction *ni* JANET LIM NAPOLES?
S: *Opo, iyong mga ibang* seniors *ko sa opisina na* trusted *na tauhan ni* Madame JANET LIM NAPOLES *na sina* MERLINA SUÑAS [sic], EVELYN DE LEON, *at* JOHN LIM. ***Pati iyong mga ANAK at kapatid ni*** **Madame JANET LIM NAPOLES** ***ay nag-aabot din ng*** **personal** ***sa mga kumukuha ng pera sa opisina ng*** **JLN Corporation**.[216] (Emphases supplied)

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[215] *Id.* at 1153-1154.

[216] *Id.* at 1155.

Meanwhile, Suñas testified that the Napoles siblings were previously involved in the forging of documents and signatures which were, however, related, to illegal disbursements involving funds allotted to the Department of Agrarian Reform (DAR). She also stated that the Napoles siblings were employees of the JLN Corporation who always held office thereat, and, similar to Luy, knew their positions in the office:

91. T: *Maaalala mo pa ba kung sinu-sino ang mga kasama mo sa sinabi mong pagpupulong kung saan nabanggit ni* Madame JENNY *na may nakuha siyang pondo mula sa* DAR?

S: ***Opo, andun po iyong mga empleyado ng*** JLN Corporation *na sina* BENHUR LUY, EVELYN DE LEON, LAARNI UY, ARTHUR LUY, JR., JOHN LIM, MARINA SULA *at mga anak ni* Madam JENNY LIM *na sina* **JO CHRISTINE a.k.a "NENENG" at JAMES CHRISTOPHER a.k.a "BUTSOY."** *Tapos noong bandang* October 2009 *ay pinulong ulit kami ni* Madame JENNY *at dito niya sinabi na ang pondo ay nagkakahalaga ng* Php900 million *mula sa* DAR.[217]

x x x x x x x x x

111. T: *Nabanggit mo na kasama ang mga anak ni* Madame JENNY *na sina* JO CHRISTINE *at* JAMES CHRISTOPHER *sa paggawa ng mga pekeng dokumento at pamemeke ng mga pirma, sila ba ay nasa opisina ng* JLN Corporation *lagi*?

S: *Opo. Dahil empleyado din sila at doon nag-oopisina sa* JLN Corporation.

x x x x x x x x x

149. T: *Bilang dating empleyado ng* JLN Corporation *mula taong* 2000 *hanggang* 2013, ***natatandaan mo pa ba kung sino-sino ang mga nakatrabaho mo sa* JLN Corporation?**

S: *Opo. Sila ay* [*sina*] JANET LIM NAPOLES *na* president and CEO, *asawa niyang si* JAIME G. NAPOLES *bilang* consultant, ***mga anak niyang sina* JO-CHRISTINE L. NAPOLES *ang* VP for admin and finance *at* JAMES**

[217] *Id.* at 1122.

CHRISTOPHER NAPOLES *na* VP for operations
x x x.[218] (Emphases and underscoring supplied)

Notably, the JLN Corporation, as per whistleblower Sula's account, had no income from business transactions aside from the PDAF coming from the legislators involved that go through Janet Napoles's conduit NGOs:

12) T: *Nabanggit mo sa iyong sinumpaang salaysay na may petsang* 29 Agosto 2013 *na ikaw ay nagtrabaho kay* JANET LIM NAPOLES *mula pa noong taong* 1997, *ano ba ang uri ng negosyo ng* JLN Corporation?
S: *Ayon po sa* SEC paper *ng* JLN Corporation *ay* trading *ng mga* marine supplies and equipment *at* construction materials *ang* line of business ***subalit sa papel lamang pa iyon dahil pakikipag*-transact *po sa mga* lawmakers, government agency heads *at* LGU officials *para sa* implementation *ng mga* government funded projects *ang naging negosyo ng* JLN Corporation *gamit ang mga* NGOs *o* foundations *na itinatag ni* Madam JANET NAPOLES.**

13) T: *Paano naman kumikita ang* JLN Corporation *sa mga* PDAF *ng* lawmakers?
S: *Sa katotohanan po ay hindi naman po kumikita ang* JLN Corporation *dahil wala naman po itong anumang* business transactions. *Ang mga pondo po na nagmumula sa* PDAF *ng mga* lawmakers *ay* ***pumapasok sa mga* NGOs *ni* Madam JANET NAPOLES. *Mula po sa mga* bank accounts *ng* NGOs *ay winiwidraw po ang pera at inire*-remit *po kay* Madam JANET NAPOLES. *Kay* Madam JANET NAPOLES *po napupunta ang pera at hindi sa* JLN Corporation.**

14) T: *Sa* paragraph No. 21 *ng iyong sinumpaang salaysay na may petsang* 29 Agosto 2013 *ay may mga listahan ng miyembro ng pamilya* NAPOLES *at mga tao na may kaugnayan sa kanyang mga negosyo, makikita dito na coded at mga alyas lamang ang* ID names, *maari mo bang ibigay ang mga kumpletong pangalan nila*?

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[218] *Id.* at 1122, 1125, and 1133.

S: *Opo, ang mga katumbas po ng mga* codes/*alyas na nakasaad sa aking* notebook *ay ang mga sumusunod*:

x x x x x x x x x

3) N1 **JO CHRISTINE L. NAPOLES**

4) N2 **JAMES CHRISTOPHER L. NAPOLES**

x x x x x x x x x[219]

(Emphases and underscoring supplied)

Based on the foregoing, it may be gathered that the Napoles siblings: (*a*) worked at the JLN Corporation, which was apparently shown to be at the forefront of the PDAF scam, as it was even revealed that it received no other income outside of the PDAF transactions; (*b*) do not work as mere regular employees but as high-ranking officers, being the Vice-President for Administration and Finance and Vice-President for Operations, respectively of JLN Corporation; and (*c*) as high-ranking officers of the JLN Corporation, were ostensibly privy to and/or participated in the planning and execution of the company's endeavors, which, as claimed, include illegal activities concerning the misappropriation of various government funds, which, as specifically pointed out by Luy, included, among others, Senator Enrile's PDAF. To recount, Luy stated that Jo Christine Napoles, as part of the scheme, checked the "vouchers" he had prepared; that the Napoles siblings knew of the "codenames" of the legislators in the illicit "vouchers"; and that they were also included in the actual disbursement of "rebates" to the legislators, among others, Senator Enrile. More so, although Sunas's testimony that the Napoles siblings forged documents and signatures pertaining to the disbursement of the DAR funds which does not directly prove that they had committed the same with respect to Senator Enrile's PDAF, such evidence, when juxtaposed with Luy's testimony, gains relevance in ascertaining the illegal plan, system or scheme to which they were alleged to be involved. It also tends to directly prove the fact that they had knowledge of JLN Corporation's illegal

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[219] *Id.* at 1031-1032.

activities.[220] The Court notes that these accounts gain more credibility not only in view of the whistleblowers' allegations that they worked closely with the Napoles siblings in JLN Corporation for a considerable length of time,[221] but also that Sula, Suñas, and particularly Luy as "lead employee," were among the most trusted workers of Janet Napoles in the furtherance of the PDAF scam.[222] Also, there appears to be no motive for any of these whistleblowers, particularly, Luy, to incredulously implicate the Napoles siblings in this case. With all these factors together, there is, at least, some substantial basis to conclude, that the Napoles siblings were, in all reasonable likelihood, involved in the entire con.

Neither can the Napoles siblings discount the testimonies of the whistleblowers based on their invocation of the *res inter alios acta* rule under Section 28, Rule 130 of the Rules on Evidence, which states that the rights of a party cannot be prejudiced by an act, declaration, or omission of another, unless the admission is by a conspirator under the parameters of Section 30 of the same Rule.[223] To be sure, the foregoing rule constitutes

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[220] Section 34, Rule 130 of the 2000 Rules of Court states:

> Section. 34. *Similar acts as evidence*. — Evidence that one did or did not do a certain thing at one time is not admissible to prove that he did or did not do the same or a similar thing at another time, but it may be received to prove a specific intent or knowledge, identity, plan, system, scheme, habit, custom or usage, and the like.

[221] Sula worked with Janet Napoles for sixteen (16) years (*rollo* [G.R. Nos. 215880-94], Vol. III, p. 922). Suñas worked with Janet Napoles for twelve (12) years (*rollo* [G.R. Nos. 215880-94], Vol. III, p. 897). Luy worked with Janet Napoles for ten (10) years (*rollo* [G.R. Nos. 215880-94], Vol. III, pp. 896 and 1139).

[222] *Rollo* (G.R. Nos. 213475-76), Vol. I, pp. 83, 136, and 351.

[223] "An exception to the *res inter alios acta* rule is an admission made by a conspirator under Section 30, Rule 130 of the Rules of Court. This provision states that the act or declaration of a conspirator relating to the conspiracy, and during its existence, may be given in evidence against the co-conspirator after the conspiracy is shown by evidence other than such act or declaration. Thus, in order that the admission of a conspirator may be received against his or her co-conspirators, it is necessary that: (a) the

a technical rule on evidence which should not be rigidly applied in the course of preliminary investigation proceedings. In *Estrada*, the Court sanctioned the Ombudsman's appreciation of hearsay evidence, which would otherwise be inadmissible under technical rules on evidence, during the preliminary investigation "as long as there is substantial basis for crediting the hearsay."[224] This is because "such investigation is merely preliminary, and does not finally adjudicate rights and obligations of parties."[225] Applying the same logic, and with the similar observation that there lies substantial basis for crediting the testimonies of the whistleblowers herein, the objection interposed by the Napoles siblings under the evidentiary *res inter alios acta* rule should falter. Ultimately, as case law edifies, "[t]he technical rules on evidence are not binding on the fiscal who has jurisdiction and control over the conduct of a preliminary investigation,"[226] as in this case.

Therefore, on account of the above-mentioned acts which seemingly evince the Napoles siblings' participation in the conspiracy involving Senator Enrile's PDAF, no grave abuse of discretion may be ascribed against the Ombudsman in finding probable cause against them for fifteen (15) counts of violation of Section 3 (e) of RA 3019 as charged.

In the same vein, the evidence on record exhibits probable cause for De Asis's involvement as a co-conspirator for the crime of Plunder, as well as violations of Section 3 (e) of RA 3019. A perusal thereof readily reveals that De Asis is the President[227] of KPMFI and a member/incorporator[228] of CARED

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conspiracy be first proved by evidence other than the admission itself; (b) the admission relates to the common object; and (c) it has been made while the declarant was engaged in carrying out the conspiracy." (*People v. Ibañez*, G.R. No. 191752, June 10, 2013, 698 SCRA 161, 174-175.)

[224] See *Estrada v. Ombudsman*, *supra* note 162.

[225] See *id.*

[226] See *id.*

[227] See NBI Complaint; *rollo* (G.R. Nos. 213475-76), Vol. I, pp. 378-379.

[228] See FIO Complaint; *id.* at 243.

— two (2) among the many JLN-controlled NGOs that were used in the perpetuation of the scam particularly involved in the illegal disbursement of Senator Enrile's PDAF.[229] Moreover, in the *Pinagsamang Sinumpaang Salaysay*[230] of whistleblowers Luy and Suñas, as well as their respective *Karagdagang Sinumpaang Salaysay*,[231] they tagged De Asis as one of those who prepared money to be given to the lawmaker;[232] that he, among others, received the checks issued by the IAs to the NGOs and deposited the same in the bank;[233] and that, after the money is withdrawn from the bank, De Asis was also one of those tasked to bring the money to Janet Napoles's house.[234] With these, the Court finds that there are equally well-grounded bases to believe that, in all possibility, De Asis, thru his participation as President of KPMFI and member/incorporator of CARED, as well as his acts of receiving checks in the name of said NGOs, depositing them in the NGOs' bank accounts, delivering money to Janet Napoles, and assisting in the delivery of "kickbacks" and "commissions" of the legislators, conspired with the other petitioners to commit the crimes charged against them.

Certainly, De Asis's defenses, which are anchored on the want of criminal intent, as well as the absence of all the elements of the crime of Plunder on his part, are better ventilated during trial and not during preliminary investigation. At the risk of belaboring the point, a preliminary investigation is not the occasion for the full and exhaustive display of the prosecution's evidence; and the presence or absence of the elements of the crime charged is evidentiary in nature and is a matter of defense that may be passed upon only after a full-blown trial on the merits.[235]

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[229] See NBI Complaint (*id.* at 379-380) and FIO Complaint (*id.* at 222 and 228).

[230] *Rollo* (G.R. Nos. 215880-94), Vol. III, pp. 1016-1026.

[231] For Suñas, *id.* at 1106-1135; for Luy, *id.* at 1136-1176.

[232] *Id.* at 1018.

[233] *Id.* at 1020.

[234] *Id.* at 1020-1021.

[235] See *Lee v. KBC Bank N.V., supra* note 159, at 126.

Hence, for De Asis's apparent participation in the PDAF scam, the Ombudsman did not gravely abuse its discretion in finding probable cause against him for one (1) count of Plunder and fifteen (15) counts of violation of Section 3 (e) of RA 3019 as charged.

In totality, **G.R. Nos. 212593-94**, **G.R. Nos. 213540-41**, **G.R. Nos. 213542-43**, and **G.R. Nos. 213475-76** questioning the March 28, 2014 Joint Resolution and June 4, 2014 Joint Order of the Ombudsman finding probable cause against Reyes, Janet Napoles, the Napoles siblings, and De Asis should all be dismissed for lack of merit.

II. Petitions Assailing the Resolutions of the Sandiganbayan.

In **G.R. Nos. 213163-78**, Reyes ascribes grave abuse of discretion on the part of the Sandiganbayan for allegedly failing to perform its duty of personally evaluating the evidence on record and, instead, merely adopting the findings of the Ombudsman in the Joint Resolution dated March 28, 2014.[236] She argues that, had the Sandiganbayan conducted a judicious and independent evaluation of the evidence on record, it would have determined that there is no probable cause against her for plunder and violations of Section 3 (e) of RA 3019.[237]

On the other hand, in **G.R. Nos. 215880-94**, the Napoles siblings impute grave abuse of discretion against the Sandiganbayan in issuing its Resolutions dated September 29, 2014[238] and November 14, 2014[239] finding probable cause for the issuance of warrants of arrest against them.[240] They claim that the challenged Resolutions which were concluded without any additional evidence presented by the OSP were hastily issued and decided; that the documents submitted by the prosecution,

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[236] *Rollo* (G.R. Nos. 213163-78), Vol. I, pp. 12-13.

[237] *Id.* at 15.

[238] *Rollo* (G.R. Nos. 215880-94). Vol. I, pp. 46-48.

[239] *Id.* at 49-60.

[240] *Id.* at 4.

which were used as bases in resolving the challenged Resolutions, were mere bare allegations of witnesses that did not relate to the crime charged and most of them even made no mention of them; that the NBI Complaint submitted by the prosecution creates serious doubt on their participation; that not even one of the essential elements of Section 3 (e) of RA 3019 is present in the case in so far as they are concerned; and that there is no proof to show that they conspired with any of the accused public officers.[241]

Their arguments fail to persuade.

Once the public prosecutor (or the Ombudsman) determines probable cause and thus, elevates the case to the trial court (or the Sandiganbayan), a judicial determination of probable cause is made in order to determine if a warrant of arrest should be issued ordering the detention of the accused. The Court, in *People v. Castillo*,[242] delineated the functions and purposes of a determination of probable cause made by the public prosecutor, on the one hand, and the trial court, on the other:

> There are two kinds of determination of probable case: executive and judicial. The executive determination of probable cause is one made during preliminary investigation. It is a function that properly pertains to the public prosecutor who is given a broad discretion to determine whether probable cause exists and to charge those whom he believes to have committed the crime as defined by law and thus should be held for trial. Otherwise stated, such official has the quasi-judicial authority to determine whether or not a criminal case must be filed in court. Whether or not that function has been correctly discharged by the public prosecutor, *i.e.*, whether or not he has made a correct ascertainment of the existence of probable cause in a case, is a matter that the trial court itself does not and may not be compelled to pass upon.
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> **The judicial determination of probable cause, on the other hand, is one made by the judge to ascertain whether a warrant of arrest should be issued against the accused. The judge must**

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[241] *Id.* at 16.

[242] 607 Phil. 754 (2009).

satisfy himself that based on the evidence submitted, there is necessity for placing the accused under custody in order not to frustrate the ends of justice. If the judge finds no probable cause, the judge cannot be forced to issue the arrest warrant.[243] (Emphasis and underscoring supplied)

As above-articulated, the executive determination of probable cause concerns itself with whether there is enough evidence to support an Information being filed. The judicial determination of probable cause, on the other hand, determines whether a warrant of arrest should be issued.[244]

This notwithstanding, the Court in *Mendoza v. People*[245] (*Mendoza*) clarified that the trial court (or the Sandiganbayan) is given three (3) distinct options upon the filing of a criminal information before it, namely to: (*a*) dismiss the case if the evidence on record clearly failed to establish probable cause; (*b*) issue a warrant of arrest if it finds probable cause; and (*c*) order the prosecutor to present additional evidence in case of doubt as to the existence of probable cause.[246] The Court went on to elaborate that "the option to order the prosecutor to present additional evidence is not mandatory" and reiterated that "the court's first option x x x is for it to 'immediately dismiss the case if the evidence on record clearly fails to establish probable cause.'"[247]

Verily, when a criminal Information is filed before the trial court, the judge, *motu proprio* or upon motion of the accused, is entitled to make his own assessment of the evidence on record to determine whether there is probable cause to order the arrest of the accused and proceed with the trial; or in the absence

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[243] *Id.* at 764-765.

[244] *Mendoza v. People*, G.R. No. 197293, April 21, 2014, 722 SCRA 647, 656.

[245] *Id.* at 659.

[246] *Id.*, citing *People v. Dela Torre-Yadao*, G.R. Nos. 162144-54, November 13, 2012, 685 SCRA 264, 287-288.

[247] *Id.*

thereof, to order the immediate dismissal of the criminal case.[248] This is in line with the fundamental doctrine that "once a complaint or information is filed in court, any disposition of the case, whether as to its dismissal or the conviction or the acquittal of the accused, rests in the sound discretion of the court."[249] Nevertheless, the Court, in *Mendoza* cautions the trial courts in proceeding with dismissals of this nature:

> Although jurisprudence and procedural rules allow it, a judge must always proceed with caution in dismissing cases due to lack of probable cause, considering the preliminary nature of the evidence before it. It is only when he or she finds that the evidence on hand absolutely fails to support a finding of probable cause that he or she can dismiss the case. On the other hand, if a judge finds probable cause, he or she must not hesitate to proceed with arraignment and trial in order that justice may be served.[250]

A careful study of the records yields the conclusion that the requirement to personally evaluate the report of the Ombudsman, and its supporting documents, was discharged by the Sandiganbayan when it explicitly declared in its Resolution[251] dated July 3, 2014 that it had "personally [read] and [evaluated] the Information, the Joint Resolution dated March 28, 2013 and Joint Order dated June 4, 2013 of the [Ombudsman], together with the above-enumerated documents, including their annexes and attachments, which are all part of the records of the preliminary investigation x x x."[252] A similar pronouncement was made by the Sandiganbayan in its Resolution[253] dated September 29, 2014, wherein it was said that "[a]fter further considering the records of these cases and due deliberations, the Court finds the existence of probable cause against the said

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[248] See *id.* at 659-660.

[249] *Id.* at 659, citing *Leviste v. Alameda*, 640 Phil. 620, 638 (2010).

[250] *Id.* at 660-661.

[251] *Rollo* (G.R. Nos. 213163-78), Vol. I, pp. 26-45.

[252] *Id.* at 35-36.

[253] *Rollo* (G.R. Nos. 215880-94), Vol. I, pp. 46-48.

accused x x x."[254] Later on, in a Resolution[255] dated November 14, 2014, the Sandiganbayan affirmed its earlier findings when it held that the presence of probable cause against all the accused "was already unequivocally settled x x x in its [Resolution] dated July 3, 2014 x x x."[256] Besides, the Sandiganbayan should be accorded with the presumption of regularity in the performance of its official duties.[257] This presumption was not convincingly overcome by either Reyes or the Napoles siblings through clear and convincing evidence, and hence, should prevail.[258] As such, the Ombudsman's finding of probable cause against, *inter alia*, Reyes and the Napoles siblings was judicially confirmed by the Sandiganbayan when it examined the evidence, found probable cause, and issued warrants of arrest against them.[259]

Also, the Court cannot lend any credence to Reyes's protestations of haste on the part of the Sandiganbayan in issuing the assailed Resolutions, absent any clear showing that the presumed regularity of the proceedings has been breached. Reyes would do well to be reminded of the Court's ruling in *Leviste v. Alameda*[260] wherein it was instructed that "[s]peed in the conduct of proceedings by a judicial or quasi-judicial officer

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[254] *Id.* at 47.

[255] *Id.* at 49-60.

[256] *Id.* at 56.

[257] See Section 3 (m), Rule 131 of the Rules on Evidence.

[258] "In sum, the petitioners have in their favor the presumption of regularity in the performance of official duties which the records failed to rebut. The presumption of regularity of official acts may be rebutted by affirmative evidence of irregularity or failure to perform a duty. The presumption, however, prevails until it is overcome by no less than clear and convincing evidence to the contrary. Thus, unless the presumption is rebutted, it becomes conclusive. Every reasonable intendment will be made in support of the presumption and in case of doubt as to an officer's act being lawful or unlawful, construction should be in favor of its lawfulness." (*Bustillo v. People*, 634 Phil. 547, 556 (2010), citing *People v. De Guzman*, G.R. No. 106025, February 9, 1994, 299 SCRA 795, 799.)

[259] See *Estrada v. Ombudsman, supra* note 162.

[260] 640 Phil. 620 (2010).

cannot *per se* be instantly attributed to an injudicious performance of functions. For one's prompt dispatch may be another's undue haste. The orderly administration of justice remains as the paramount and constant consideration, with particular regard of the circumstances peculiar to each case."[261]

Finally, no grave abuse of discretion may be imputed on the part of the Sandiganbayan in denying Reyes's motion to suspend proceedings against her in view of her filing of a petition for *certiorari* questioning the Ombudsman's issuances before the Court, *i.e.*, **G.R. Nos. 212593-94**. Under Section 7, Rule 65[262] of the Rules of Court, a mere pendency of a special civil action for *certiorari* in relation to a case pending before the court *a quo* does not *ipso facto* stay the proceedings therein, unless the higher court issues a temporary restraining order or a writ of preliminary injunction against the conduct of such proceedings. Otherwise stated, a petition for *certiorari* does not divest the lower courts of jurisdiction validly acquired over the case pending before them. Unlike an appeal, a petition for *certiorari* is an original action; it is not a continuation of the proceedings in the lower court. It is designed to correct only errors of jurisdiction, including grave abuse of discretion amounting to lack or excess

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[261] *Id.* at 645, citing *Santos-Concio v. Department of Justice*, 567 Phil. 70, 89 (2008).

[262] Section 7, Rule 65 of the Rules of Court reads:

> Section. 7. *Expediting proceedings; injunctive relief.* — The court in which the petition is filed may issue orders expediting the proceedings, and it may also grant a temporary restraining order or a writ of preliminary injunction for the preservation of the rights of the parties pending such proceedings. The petition shall not interrupt the course of the principal case, unless a temporary restraining order or a writ of preliminary injunction has been issued, enjoining the public respondent from further proceeding with the case.
>
> The public respondent shall proceed with the principal case within ten (10) days from the filing of a petition for *certiorari* with a higher court or tribunal, absent a temporary restraining order or a preliminary injunction, or upon its expiration. Failure of the public respondent to proceed with the principal case may be a ground for an administrative charge.

of jurisdiction. Thus, under Section 7 of Rule 65, the higher court should issue against the public respondent a temporary restraining order or a writ of preliminary injunction in order to interrupt the course of the principal case. The petitioner in a Rule 65 petition has the burden of proof to show that there is a meritorious ground for the issuance of an injunctive writ or order to suspend the proceedings before the public respondent. She should show the existence of an urgent necessity for the writ or order, so that serious damage may be prevented.[263] In this case, since the Court did not issue any temporary restraining order and/or a writ of preliminary injunction in **G.R. Nos. 212593-94**, then the Sandiganbayan cannot be faulted for continuing with the proceedings before it.

Hence, overall, the Sandiganbayan did not gravely abuse its discretion in judicially determining the existence of probable cause against Reyes and the Napoles siblings; and in denying Reyes's Urgent Motion to Suspend Proceedings. Perforce, the dismissal of **G.R. Nos. 213163-78** and **G.R. Nos. 215880-94** is in order.

WHEREFORE, the petitions are **DISMISSED** for lack of merit. Accordingly, the assailed Resolutions and Orders of the Office of the Ombudsman and the Sandiganbayan are hereby **AFFIRMED.**

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Peralta, Bersamin, del Castillo, Perez, Mendoza, Reyes, and *Caguioa, JJ.,* concur.

Leonen, J., concurs. See separate opinion.

Jardeleza, J., no part.

Brion, J., on leave.

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[263] *Trajano v. Uniwide Sales Warehouse Club*, G.R. No. 190253, June 11, 2014, 726 SCRA 298, 312.

CONCURRING OPINION

LEONEN, *J.*:

I concur with the *ponencia* of my esteemed colleague Associate Justice Estela M. Perlas-Bernabe. The Petitions should be dismissed. The Ombudsman did not act in grave abuse of discretion when it found probable cause to charge petitioners with Plunder under Republic Act No. 7080[1] and violation of Section 3 (e)[2] of Republic Act No. 3019.[3]

In addition, the Petitions before us could also be dismissed for being moot and academic. When the Sandiganbayan issued warrants of arrest against petitioners after finding probable cause, all petitions questioning the Ombudsman's finding of probable cause, including these Petitions before us, have already become moot.

The determination of probable cause by the prosecutor is different from the determination of probable cause by the trial court.[4] A preliminary investigation is conducted by the prosecutor to determine whether there is probable cause to file an information or whether the complaint should be dismissed. Once the

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[1] An Act Defining and Penalizing the Crime of Plunder (1991).

[2] Rep. Act No. 3019 (1960), Sec. 3 provides:

SEC. 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

(e) Causing any undue injury to any party, including the Government, or giving any private party any unwarranted benefits, advantage or preference in the discharge of his official, administrative or judicial functions through manifest partiality, evident bad faith or gross inexcusable negligence. This provision shall apply to officers and employees of offices or government corporations charged with the grant of licenses or permits or other concessions.

[3] Anti-Graft and Corrupt Practices Act (1960).

[4] See *People v. Castillo and Mejia*, 607 Phil. 754 (2009) [Per *J.* Quisumbing, Second Division].

information is filed, the trial court acquires jurisdiction over the case. The trial court then determines the existence of probable cause for the issuance of a warrant of arrest. Any question relating to the disposition of the case should be addressed to the trial court.[5] In *Crespo v. Mogul:*[6]

> The rule therefore in this jurisdiction is that once a complaint or information is filed in Court, any disposition of the case as to its dismissal or the conviction or acquittal of the accused rests in the sound discretion of the Court.[7]

Similarly, in *People v. Castillo and Mejia*:[8]

> There are two kinds of determination of probable cause: executive and judicial. The executive determination of probable cause is one made during preliminary investigation. It is a function that properly pertains to the public prosecutor who is given a broad discretion to determine whether probable cause exists and to charge those whom he believes to have committed the crime as defined by law and thus should be held for trial. Otherwise stated, such official has the quasi-judicial authority to determine whether or not a criminal case must be filed in court. *Whether or not that function has been correctly discharged by the public prosecutor, i.e., whether or not he has made a correct ascertainment of the existence of probable cause in a case, is a matter that the trial court itself does not and may not be compelled to pass upon.*
>
> The judicial determination of probable cause, on the other hand, is one made by the judge to ascertain whether a warrant of arrest should be issued against the accused. The judge must satisfy himself that based on the evidence submitted, there is necessity for placing the accused under custody in order not to frustrate the ends of justice. If the judge finds no probable cause, the judge cannot be forced to issue the arrest warrant.[9] (Emphasis supplied)

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[5] See *Crespo v. Mogul*, 235 Phil. 465 (1987) [Per *J.* Gancayco, *En Banc*].

[6] 235 Phil. 465 (1987) [Per *J.* Gancayco, *En Banc*].

[7] *Id.*

[8] 607 Phil. 754 (2009) [Per *J.* Quisumbing, Second Division].

[9] *Id.* at 764-765, citing *Paderanga v. Drilon*, 273 Phil. 290, 296 (1991) [Per *J.* Regalado, *En Banc*]; *Roberts, Jr. v. Court of Appeals*, 324 Phil.

Although both the prosecutor and the trial court may rely on the same records and evidence, their findings are arrived at independently. Executive determination of probable cause is outlined by the Rules of Court,[10] Republic Act No. 6770,[11] and various issuances by the Department of Justice.[12] It is the Constitution, however, that mandates the conduct of judicial determination of probable cause:

ARTICLE III
BILL OF RIGHTS

Section 2. The right of the people to be secure in their persons, houses, papers, and effects against unreasonable searches and seizures of whatever nature and for any purpose shall be inviolable, and *no search warrant or warrant of arrest shall issue except upon probable cause to be determined personally by the judge after examination under oath or affirmation of the complainant and the witnesses he may produce and particularly describing the place to be searched and the persons or things to be seized*. (Emphasis supplied)

In *Ho v. People*:[13]

Lest we be too repetitive, we only wish to emphasize three vital matters once more: First, as held in *Inting*, the determination of probable cause by the prosecutor is for a purpose different from that which is to be made by the judge. Whether there is reasonable ground to believe that the accused is guilty of the offense charged and should be held for trial is what the prosecutor passes upon. The judge, on the other hand, determines whether a warrant of arrest should be issued against the accused, i.e., whether there is a necessity for placing him under immediate custody in order not to frustrate the ends of justice. Thus, even if both should base their findings on one and the same proceeding or evidence, there should be no confusion as to their distinct objectives.

568, 620-621 (1996) [Per *J.* Davide, Jr., *En Banc*]; *Ho v. People*, 345 Phil. 597, 611 (1997) [Per *J.* Panganiban, *En Banc*].

[10] See RULES OF COURT, Rule 112.

[11] The Ombudsman Act of 1989.

[12] The most common of these issuances is the 2000 NPS Rules on Appeal.

[13] 345 Phil. 597 (1997) [Per *J.* Panganiban, *En Banc*].

Second, since their objectives are different, *the judge cannot rely solely on the report of the prosecutor in finding probable cause to justify the issuance of a warrant of arrest.* Obviously and understandably, the contents of the prosecutor's report will support his own conclusion that there is reason to charge the accused of an offense and hold him for trial. However, *the judge must decide independently. Hence, he must have supporting evidence, other than the prosecutor's bare report, upon which to legally sustain his own findings on the existence (or nonexistence) of probable cause to issue an arrest order. This responsibility of determining personally and independently the existence or nonexistence of probable cause is lodged in him by no less than the most basic law of the land.* Parenthetically, the prosecutor could ease the burden of the judge and speed up the litigation process by forwarding to the latter not only the information and his bare resolution finding probable cause, but also so much of the records and the evidence on hand as to enable His Honor to make his personal and separate judicial finding on whether to issue a warrant of arrest.

Lastly, it is not required that the complete or entire records of the case during the preliminary investigation be submitted to and examined by the judge. We do not intend to unduly burden trial courts by obliging them to examine the complete records of every case all the time simply for the purpose of ordering the arrest of an accused. What is required, rather, is that the judge must have sufficient supporting documents (such as the complaint, affidavits, counter-affidavits, sworn statements of witnesses or transcripts of stenographic notes, if any) upon which to make his independent judgment or, at the very least, upon which to verify the findings of the prosecutor as to the existence of probable cause. The point is: he cannot rely solely and entirely on the prosecutor's recommendation, as Respondent Court did in this case. *Although the prosecutor enjoys the legal presumption of regularity in the performance of his official duties and functions, which in turn gives his report the presumption of accuracy, the Constitution we repeat, commands the judge to personally determine probable cause in the issuance of warrants of arrest.* This Court has consistently held that a judge fails in his bounden duty if he relies merely on the certification or the report of the investigating officer.[14] (Emphasis provided)

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[14] *Id.* at 611-612, citing RULES OF COURT, Rule 112, Section 6 (b) and *J.* Reynato S. Puno, Dissenting Opinion in *Roberts, Jr. vs. Court of Appeals*, 324 Phil. 568, 623-642 (1996) [Per *J.* Davide, Jr., *En Banc*].

The conduct of a preliminary investigation is also not a venue for an exhaustive display of petitioners' evidence. It is merely preparatory to a criminal action. In *Drilon v. Court of Appeals:*[15]

> Probable cause should be determined in a summary but scrupulous manner to prevent material damage to a potential accused's constitutional right of liberty and the guarantees of freedom and fair play. *The preliminary investigation is not the occasion for the full and exhaustive display of the parties' evidence. It is for the presentation of such evidence as may engender a well-grounded belief that an offense has been committed and that the accused is probably guilty thereof.* It is a means of discovering the persons who may be reasonably charged with a crime. The validity and merits of a party's defense and accusation, as well as admissibility of testimonies and evidence, are better ventilated during trial proper than at the preliminary investigation level.[16] (Emphasis supplied)

Thus, in *People v. Narca*,[17] this court pointed out that any alleged irregularity in the preliminary investigation does not render the information void or affect the trial court's jurisdiction:

> It must be emphasized that the preliminary investigation is not the venue for the full exercise of the rights of the parties. This is why preliminary investigation is not considered as a part of trial but merely preparatory thereto and that the records therein shall not form part of the records of the case in court. Parties may submit affidavits but have no right to examine witnesses though they can propound questions through the investigating officer. In fact, a preliminary investigation may even be conducted ex-parte in certain cases. Moreover, in Section 1 of Rule 112, the purpose of a preliminary investigation is only to determine a well grounded belief if a crime was probably committed by an accused. *In any case, the invalidity or absence of a preliminary*

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[15] 327 Phil. 916 (1995) [Per *J.* Romero, Second Division].

[16] *Id.* at 923, citing *Salonga v. Cruz-Paño*, 219 Phil. 402 (1985) [Per *J.* Gutierrez, *En Banc*]; *Hashim v. Boncan*, 71 Phil. 216 (1941) [Per *J.* Laurel, *En Banc*]; *Paderanga v. Drilon*, G.R. No. 96080, April 19, 1991, 196 SCRA 86, 92 [Per *J.* Regalado, *En Banc*]; *J.* Francisco, Concurring Opinion in *Webb v. De Leon*, 317 Phil. 758, 809-811 (1995) [Per *J.* Puno, Second Division].

[17] 341 Phil. 696 (1997) [Per *J.* Francisco, Third Division].

investigation does not affect the jurisdiction of the court which may have taken cognizance of the information nor impair the validity of the information or otherwise render it defective.[18] (Emphasis supplied)

A trial court's finding of probable cause does not rely on the prosecutor's finding of probable cause. Once the trial court finds the existence of probable cause, which results in the issuance of a warrant of arrest, any question on the prosecutor's conduct of preliminary investigation has already become moot.

In *De Lima v. Reyes*,[19] we dismissed a Petition for Review on Certiorari questioning the Secretary of Justice's finding of probable cause against the accused. Once probable cause has been judicially determined, any question on the executive determination of probable cause is already moot:

> Here, the trial court has already determined, independently of any finding or recommendation by the First Panel or the Second Panel, that probable cause exists to cause the issuance of the warrant of arrest against respondent. Probable cause has been judicially determined. Jurisdiction over the case, therefore, has transferred to the trial court. *A petition for certiorari questioning the validity of the preliminary investigation in any other venue has been rendered moot by the issuance of the warrant of arrest and the conduct of arraignment.*

The Court of Appeals should have dismissed the Petition for Certiorari filed before them when the trial court issued its warrant of arrest. Since the trial court has already acquired jurisdiction over

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[18] *Id.* at 705, citing *Lozada v. Hernandez*, 92 Phil. 1051 (1953) [Per *J.* Reyes, *En Banc*]; RULES OF COURT, Rule 112, Sec. 8; RULES OF COURT, Rule 112, Sec. 3 (e); RULES OF COURT, Rule 112, Sec. 3 (d); *Mercado v. Court of Appeals*, 315 Phil. 657 (1995) [Per *J.* Quiason, First Division]; *Rodriguez v. Sandiganbayan*, 306 Phil. 567 (1983) [Per *J.* Escolin, *En Banc*]; *Webb v. De Leon*, 317 Phil. 758 (1995) [Per *J.* Puno, Second Division]; *Romualdez v. Sandiganbayan*, 313 Phil. 870 (1995) [Per C.*J.* Narvasa, *En Banc*]; and *People v. Gomez*, 202 Phil. 395 (1982) [Per *J.* Relova, First Division].

[19] G.R. No. 209330, January 11, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/january2016/209330.pdf> [Per *J.* Leonen, Second Division].

the case and the existence of probable cause has been judicially determined, a petition for *certiorari* questioning the conduct of the preliminary investigation ceases to be the "plain, speedy, and adequate remedy" provided by law. Since this Petition for Review is an appeal from a moot Petition for Certiorari, it must also be rendered moot.

The prudent course of action at this stage would be to proceed to trial. Respondent, however, is not without remedies. He may still file any appropriate action before the trial court or question any alleged irregularity in the preliminary investigation during pre-trial.[20] (Emphasis supplied)

In its July 3, 2014 Resolution, the Sandiganbayan categorically states that "it had 'personally [read] and [evaluated] the Information, the Joint Resolution dated March 28, 2013 and Joint Order dated June 4, 2013 of the [Ombudsman] together with the above-enumerated documents, including their annexes and attachments, which are all part of the records of the preliminary investigation.'"[21] In its Resolution dated September 29, 2014, the Sandiganbayan reiterated that "[a]fter further considering the records of these cases and due deliberations, the [Sandiganbayan] finds the existence of probable cause against said accused."[22] Warrants of arrest have already been issued against petitioners.[23] Thus, these Petitions questioning the Ombudsman's determination of probable cause have already become moot and academic.

ACCORDINGLY, I vote to **DISMISS** the Petitions.

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[20] *Id.* at 20, citing RULES OF COURT, Rule 65, Sec. 1.

[21] *Ponencia*, p. 38.

[22] *Id.*

[23] See *ponencia*, p. 3.

SPECIAL THIRD DIVISION

[A.C. No. 9684. March 16, 2016]

MARY ROSE A. BOTO, *complainant, vs.* **SENIOR ASSISTANT CITY PROSECUTOR VINCENT L. VILLENA, CITY PROSECUTOR ARCHIMEDES V. MANABAT AND ASSISTANT CITY PROSECUTOR PATRICK NOEL P. DE DIOS,** *respondents.*

SYLLABUS

LEGAL ETHICS; ATTORNEYS; ADMINISTRATIVE PENALTIES; WHILE THE COURT IS EVER MINDFUL OF ITS DUTY TO DISCIPLINE ITS ERRING OFFICERS, IT ALSO KNOWS HOW TO SHOW COMPASSION WHEN THE PENALTY IMPOSED HAS ALREADY SERVED ITS PURPOSE; PENALTY IMPOSED REDUCED FROM FINE TO REPRIMAND.— From his motion for reconsideration, Villena appears contrite to what he considers as an act short of what was expected of him. He does not deny what he did and he is not proffering any excuses therefor. All Villena is asking is compassion from the Court as he deems that the penalty imposed is not commensurate to the infraction the Court thought he did and, to his mind, did not distinguish his lapses from one incited by ill motive or corrupted by malice. In other words, he stresses that there was no malice or bad faith on his part. Villena, who has an unblemished career, has been truly remorseful and apologetic for his opposition to the motion to dismiss, which resistance he deemed as "pro-forma comment." The Court is of the considered view that because the penalty imposed would remain in his record, it would affect his promotion or application for a higher office. Accordingly, the Court favors the grant of the motion and reduces the penalty from payment of Fine in the amount of ₱10,000.00 to Reprimand, the same penalty imposed on his co-respondents. There is no need to stem the growth of his promising professional career. "Penalties, such as disbarment, are imposed not to punish but to correct offenders. While the Court is ever mindful of its duty to discipline its erring officers, it also knows how to show compassion when the penalty imposed has already served its purpose."

RESOLUTION

MENDOZA, *J.*:

Subject of this resolution is the Motion for Reconsideration,[1] dated October 22, 2013, filed by respondent Senior Assistant City Prosecutor Vincent L. Villena (*Villena*) seeking reconsideration by this Court of its September 18, 2013 Decision,[2] the dispositive portion of which reads:

> **WHEREFORE**, Senior Assistant City Prosecutor Vincent L. Villena is found liable for Ignorance of the Law and is hereby **FINED** in the amount of Ten Thousand (₱10,000.00) Pesos, payable within 30 days from receipt of this resolution with a warning that a repetition of the same or similar offense shall be dealt with more severely.
>
> Assistant City Prosecutor Patrick Noel P. De Dios, for his negligence, is **REPRIMANDED** with a warning that a repetition of the same or similar offense shall be dealt with more severely.
>
> City Prosecutor Archimedes V. Manabat is admonished to be more careful and circumspect in the review of the actions of his assistants.
>
> SO ORDERED.[3]

As stated in the September 18, 2013 decision, this administrative matter stemmed from an information for Libel against complainant Mary Rose A. Boto (*Boto*) filed before the Metropolitan Trial Court, Branch LXXIV, Taguig City (*MeTC*). The information was prepared by Assistant City Prosecutor Patrick Noel P. de Dios (*de Dios*), the investigating prosecutor; and approved by City Prosecutor Archimedes Manabat (*Manabat*). Villena was the trial prosecutor assigned to the MeTC.

In her Affidavit-Complaint,[4] Boto charged respondents Villena, Manabat and de Dios with gross ignorance of the law

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[1] *Rollo*, pp. 68-70.

[2] *Id.* at 56-63.

[3] *Id.* at 62.

[4] *Id.* at 1-7.

for filing the information and for opposing the motion to quash despite the knowledge that the MeTC had no jurisdiction over the case.

In his motion for reconsideration, Villena prays that the Court "RECONSIDER its Decision, and to:

a. RELIEVE respondent Villena from any liability, or

b. DOWNGRADE, COMMUTE or MITIGATE the penalty that was imposed upon him from Fine to Reprimand or Admonition."[5]

In advocacy of his plea, respondent Villena wrote:

3. The Decision of this Honorable Court's Third Division is grounded on the following factual findings:

a. Respondent Villena should have initiated the move for the dismissal of the case instead of opposing it; and
b. The prosecution of the case was considerably delayed.

4. I wish to emphasize to this Honorable Court that I come before it, through this MR, NOT to give excuses. Rather, I wish for the Court to see that, while my actions appeared to have fallen short of its expectations, it was not my intention to prejudice the accused (complainant Boto) or anyone for that matter.

5. **First**, I humbly believe that I was not solely to be blamed. Neither should I be blamed for the delay in the resolution of the complainant's Motion to Quash. Its resolution was not something that I could decide or control, it was for the Lower Court's.

6. And **second**, while it is true that I did not immediately oppose the Motion to Quash the first time the Lower Court ordered me to do so, I honestly [b]elieved then that the Lower Court would have already realized the "error" when its attention was called to it.

7. Admittedly, I was on a wrong assumption that the Lower Court should dismiss the case even without my comment. I was also wrong to have acted in deference to the Lower Court's decision not to dismiss the case outright after it already determined probable cause to issue a warrant of arrest.

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[5] *Id.* at 70.

8. At any rate, I must admit that I committed a mistake in not categorically taking side with the motion to quash when I was asked again by the Honorable Lower Court to file my comment. Perhaps, I was just cautious then not to appear earnestly rallying for the dismissal of the case, and be accused by the private complainants of compromising their cases.

9. Verily, the Comment that I filed was in fact short, simple and imprecise. It was a sort of a "pro-forma comment" that was crafted merely in general terms.

10. WITH THIS, I come before this Honorable Court to **plead for compassion.** I feel that the **penalty is not commensurate to the infraction the Court thought I had done which, to my mind, did not distinguish my lapses to one incited by ill-motive or corrupted by malice in my actions.**

11. I apologize that I have to explain in this MR, notwithstanding my apology. It is because this is the **first time** that I have been charged with misdeed. In my long years of practice as a lawyer and a prosecutor, I have done my job in the best way I can. The records of the Office of the Bar Confidant and even the Integrated Bar of the Philippines can bear truth to this sworn declaration. Furthermore, it has never been a predisposition (in the performance of my prosecutorial work) to intentionally or unintentionally prejudice anyone's cause. Not one before this case has come forward to accuse me of delaying their cases or jeopardizing their cases with incompetency and inefficiency. In our Office, I continue to hold this year the highest disposal rate.

12. To this Honorable Court, I hope that you will not be unselfish of your compassion. I just truly believe that I should not bear alone the whole uneventful incident. If I had to, I hope that the Court would take into mind as well that this is my first offense and again, **there was no had faith or malice on my part.**

[Emphases Supplied]

From his motion for reconsideration, Villena appears contrite to what he considers as an act short of what was expected of him. He does not deny what he did and he is not proffering any excuses therefor. All Villena is asking is compassion from the Court as he deems that the penalty imposed is not commensurate to the infraction the Court thought he did and, to his mind, did

not distinguish his lapses from one incited by ill motive or corrupted by malice. In other words, he stresses that there was no malice or bad faith on his part.

Villena, who has an unblemished career, has been truly remorseful and apologetic for his opposition to the motion to dismiss, which resistance he deemed as "pro-forma comment." The Court is of the considered view that because the penalty imposed would remain in his record, it would affect his promotion or application for a higher office.

Accordingly, the Court favors the grant of the motion and reduces the penalty from payment of Fine in the amount of ₱10,000.00 to Reprimand, the same penalty imposed on his co-respondents. There is no need to stem the growth of his promising professional career.

"Penalties, such as disbarment, are imposed not to punish but to correct offenders. While the Court is ever mindful of its duty to discipline its erring officers, it also knows how to show compassion when the penalty imposed has already served its purpose."[6]

WHEREFORE, the Motion for Reconsideration of respondent Vincent L. Villena is **PARTIALLY GRANTED.** The penalty imposed upon him is reduced from paying a fine of ₱10,000.00 to **REPRIMAND.**

SO ORDERED.

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

Leonen, J., on leave.

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[6] Bar Matter No. 1222-G, Re: 2003 Bar Examinations, April 24, 2009.

[*] Designated Member in lieu of Associate Justice Diosdado M. Peralta, per Special Order No. 1541 dated September 9, 2013.

FIRST DIVISION

[A.C. No. 10483. March 16, 2016]

THE CHRISTIAN SPIRITISTS IN THE PHILIPPINES, INC., PICO LOCAL CENTER, REPRESENTED BY THEIR ATTORNEY-IN-FACT, EDWIN A. PANTE, *complainant, vs.* **ATTY. DANIEL D. MANGALLAY,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; DISBARMENT AND DISCIPLINE OF ATTORNEYS; THE PROCEEDINGS FOR THE DISBARMENT, SUSPENSION OR DISCIPLINE OF AN ATTORNEY MAY BE TAKEN BY THE COURT, *MOTU PROPRIO,* OR BY THE IBP ITSELF UPON THE VERIFIED COMPLAINT OF ANY PERSON; EXPLAINED. — Under Section 1, Rule 139-B of the *Rules of Court*, the proceedings for the disbarment, suspension or discipline of an attorney may be taken by the Court, *motu proprio*, or by the IBP itself upon the verified complaint of any person. Should the disciplinary complaint against the attorney be filed directly with the Court, the complaint is referred to the IBP for investigation, report and recommendation. The reference to the IBP is resorted to whenever the factual basis for the charge may be contested or disputed, or may require the reception of the evidence of the complainant and the respondent attorney. After the referral and hearings, the IBP renders its findings and recommendations on the complaint, subject to the review by the Court. Yet, the Court may dispense with the referral to the IBP and resolve the charge without delay. This happens particularly when the charge is patently frivolous, or insincere, or unwarranted, or intended only to harass and spite the respondent attorney. The Court has not enunciated any rule that prohibits the direct filing with it of administrative complaints against attorneys in order to emphasize its role as the guardian of the legal profession with the ultimate disciplinary power over attorneys. The disciplinary power of the Court is both a right and a duty.

2. ID.; ID.; ADMINISTRATIVE COMPLAINTS DIRECTLY RECEIVED BY THE COURT ARE GENERALLY NOT

DISMISSED OUTRIGHT BUT ARE INSTEAD REFERRED FOR INVESTIGATION, REPORT AND RECOMMENDATION EITHER TO THE IBP, OR THE OFFICE OF THE BAR CONFIDANT (OBC), OR ANY OFFICE OF THE COURT OR EVEN A JUDGE OF A LOWER COURT; RATIONALE.— Quite recently, however, the Court has revised Rule 139-B to eliminate any ambiguity about the authority of the Court to directly receive administrative complaints against attorneys. x x x Under the foregoing revisions of Rule 139-B, the administrative complaints against attorneys are generally not dismissed outright but are instead referred for investigation, report and recommendation either to the IBP, or the Office of the Bar Confidant (OBC), or any office of the Court or even a judge of a lower court. Such referral ensures that the parties' right to due process is respected as to matters that require further inquiry and which cannot be resolved by the mere evaluation of the documents attached to the pleadings. Consequently, whenever the referral is made by the Court, the IBP, the OBC or other authorized office or individual must conduct the formal investigation of the administrative complaint, and this investigation is a mandatory requirement that cannot be dispensed with except for valid and compelling reasons because it serves the purpose of threshing out all the factual issues that no cursory evaluation of the pleadings can determine. However, the referral to the IBP is not compulsory when the administrative case can be decided on the basis of the pleadings filed with the Court, or when the referral to the IBP for the conduct of formal investigation would be redundant or unnecessary, such as when the protraction of the investigation equates to undue delay. Dismissal of the case may even be directed at the outset should the Court find the complaint to be clearly wanting in merit. Indeed, the *Rules of Court* should not be read as preventing the giving of speedy relief whenever such speedy relief is warranted.

D E C I S I O N

BERSAMIN, *J.*:

This administrative case against the respondent attorney did not arise from any attorney-client relationship gone wrong between

the parties but from the ejectment action in which the respondent attorney, as the plaintiff, successfully defeated the local congregation of the Christian Spiritists in the Philippines, Inc., Pico Local Center (CSP-PLC), whose church building and other structures were the objects of the action. After the defendants filed their notice of appeal, the parties agreed to settle among themselves, with the defendants withdrawing the notice of appeal and agreeing to voluntarily vacate and remove their structures by August 31, 2013 in consideration of the respondent's financial assistance of ₱300,000.00. But, despite receiving the respondent's financial assistance, the defendants reneged on their end of the agreement; hence, at the respondent's instance, the trial court issued the writ of execution and the writ of demolition, by virtue of which the structures of the defendants were ultimately demolished.

The demolition impelled the CSP-PLC, represented by its local Minister, Edwin A. Pante (Pante), to bring the disbarment complaint against the respondent based on his allegedly gross misconduct and deceit in causing the demolition of the structures without the demolition order from the court, violation of the Lawyer's Oath, and disobedience to a lawful order of the court, positing that he thereby abused his legal knowledge.

Antecedents

Pante avers that the CSP-PLC constructed its church building on the land located in JE 176 Pico, La Trinidad, Benguet, which was owned by Maria Omiles who had bought it from Larry Ogas;[1] that on June 11, 2012, Omiles and Pastor Elvis Maliked received the summons issued by the Municipal Trial Court (MTC) of La Trinidad, Benguet requiring them to answer the complaint for unlawful detainer filed against them by the respondent; that based on the allegations of the complaint (docketed as Civil Case No. R-1256 entitled *Daniel Dazon Mangallay v. Maria Tomino Omiles and all persons staying with and/or acting on her behalf, including all Officers and/or patrons of the Church of the Christian Spiritists in the Philippines, represented by*

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

Pastor Elvis S. Maliked), the respondent claimed ownership of the land where the church of the CSP-PLC had been erected, attaching the copy of Transfer Certificate of Title (TCT) No. 45241 issued by the Register of Deeds of Benguet, and the deed of absolute sale executed between him and one Pedro Loy;[2] that the MTC later on decided the case by declaring the respondent to have the better right of possession; and that the MTC further declared that the CSP-PLC was a builder in good faith, without prejudice to the respondent exercising his option to appropriate the building in accordance with Article 448 of the *Civil Code*.[3]

As earlier mentioned, the respondent sought and obtained the writ of execution from the MTC after the defendants, including the complainant, reneged on the promise to voluntarily vacate and surrender the premises by August 31, 2013 in consideration of the respondent's financial assistance of ₱300,000.00. The writ of execution was issued on December 13, 2013 and the writ of demolition on December 19, 2013. Sheriffs Joselito S. Tumbaga and John Marie O. Ocasla, accompanied by the respondent and elements of the Philippine National Police, implemented the writ of execution and writ of demolition on January 22 and January 23, 2014 by demolishing the church building and the pastoral house of the CSP-PLC.[4]

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[2] *Id.*

[3] *Id*. at 17. The dispositive portion reads:

> WHEREFORE, premises considered, judgment is rendered in the above-entitled case:
>
> 1. Declaring the plaintiff as having the better right to the material and physical possession of the subject property in dispute;
>
> 2. Declaring defendants as builders in good faith;
>
> 3. Directing plaintiff to exercise his option pursuant to the provisions of Article 448 of the New Civil Code of the Philippines, within thirty (30) days from the finality of this judgment insofar as the improvements introduced by the defendants on the subject property.
>
> 4. No pronouncement as to damages and costs.
>
> SO ORDERED.

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

Pante now insists that the demolition was done without a demolition order from the MTC; that the dismantled materials worth ₱462,236.00 were forcibly taken away by the respondent, who had taken advantage of his legal knowledge to cause the premature demolition of the structures sans the demolition order; that such taking away of the dismantled materials constituted robbery and malicious mischief; and that his act warranted his disbarment.

In response, the respondent denies any wrong doing. He counters that the demolition was backed up by a court order;[5] that after receiving the decision of the MTC, the parties entered into a compromise agreement by virtue of which the CSP-PLC withdrew its appeal and promised to voluntarily vacate and surrender the disputed premises in consideration of ₱300,000.00 to be paid by him;[6] that despite his having paid the same, the CSP-PLC did not vacate the premises even within the grace period given to them;[7] that he then moved for the execution of the judgment, and his motion was granted by the MTC;[8] that the sheriff's report dated November 21, 2013[9] stated that after the CSP-PLC did not comply with the writ of execution to remove or demolish its structures on the premises; that he consequently sought from the MTC the writ of demolition; and that the MTC issued the writ of demolition.[10]

The respondent avers that it was not he but the sheriffs who implemented the writ of demolition; that the sheriff's report dated January 30, 2014 stated that the conduct of the implementation was peaceful, and that Pante and the other members of the church personally observed the conduct of the demolition; and that the sheriff's report further stated that Pante showed no defiance of the lawful order of the court.[11]

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[5] *Id.* at 53-54.

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

[7] *Id.* at 55.

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

[9] *Id.* at 82.

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

[11] *Id.* at 89.

The respondent submits that there was nothing wrong in his appropriating the dismantled materials to ensure compensation for the expenses incurred in the demolition; and that the complaint for his disbarment should be dismissed.

Ruling of the Court

The complaint for disbarment is absolutely devoid of merit and substance.

Section 1, Rule 139-B of the *Rules of Court*, provides as follows:

> Section 1. *How Instituted*. — Proceedings for the disbarment, suspension, or discipline of attorneys may be taken by the Supreme Court *motu proprio*, or by the Integrated Bar of the Philippines (IBP) upon the verified complaint of any person. The complaint shall state clearly and concisely the facts complained of and shall be supported by affidavits of persons having personal knowledge of the facts therein alleged and/or by such documents as may substantiate said facts.
>
> The IBP Board of Governors may, *motu proprio* or upon referral by the Supreme Court or by a Chapter Board of Officers, or at the instance of any person, initiate and prosecute proper charges against erring attorneys including those in the government service. *Provided, however*, That all charges against Justices of the Court of Appeals and the *Sandiganbayan*, and Judges of the Court of Tax Appeals and lower courts, even if lawyers are jointly charged with them, shall be filed with the Supreme Court; *Provided, further*, That charges filed against Justices and Judges before the IBP, including those filed prior to their appointment in the Judiciary, shall immediately be forwarded to the Supreme Court for disposition and adjudication.
>
> Six (6) copies of the verified complaint shall be filed with the Secretary of the IBP or the Secretary of any of its chapter who shall forthwith transmit the same to the IBP Board of Governors for assignment to an investigator. *(As amended, Bar Matter No. 1960, May 1, 2000.)*

Under the foregoing rule, the proceedings for the disbarment, suspension or discipline of an attorney may be taken by the Court, *motu proprio*, or by the IBP itself upon the verified complaint of any person.

Should the disciplinary complaint against the attorney be filed directly with the Court, the complaint is referred to the IBP for investigation, report and recommendation. The reference to the IBP is resorted to whenever the factual basis for the charge may be contested or disputed, or may require the reception of the evidence of the complainant and the respondent attorney. After the referral and hearings, the IBP renders its findings and recommendations on the complaint, subject to the review by the Court.[12] Yet, the Court may dispense with the referral to the IBP and resolve the charge without delay. This happens particularly when the charge is patently frivolous, or insincere, or unwarranted, or intended only to harass and spite the respondent attorney.

The Court has not enunciated any rule that prohibits the direct filing with it of administrative complaints against attorneys in order to emphasize its role as the guardian of the legal profession with the ultimate disciplinary power over attorneys. The disciplinary power of the Court is both a right and a duty.[13] Quite recently, however, the Court has revised Rule 139-B[14] to eliminate any ambiguity about the authority of the Court to directly receive administrative complaints against attorneys, thus:

Section 1. *How Instituted*. — Proceedings for the disbarment, suspension, or discipline of attorneys may be taken by the Supreme Court *motu proprio*, **or upon the filing of a verified complaint of any person before the Supreme Court** or the Integrated Bar of the Philippines (IBP). The complaint shall state clearly and concisely the facts complained of and shall be supported by affidavits of persons having personal knowledge of the facts therein alleged and/or by such documents as may substantiate said facts.

The IBP shall forward to the Supreme Court for appropriate disposition all complaints for disbarment, suspension and discipline filed against incumbent Justices of the Court of Appeals,

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[12] See Section 8 and Section 12 (b) and (c), Rule 139-B, *Rules of Court*.

[13] *Berbano v. Barcelona,* A.C. No. 6084, September 3, 2003, 410 SCRA 258, 268.

[14] Bar Matter No. 1645, Re: Amendment of Rule 139-B, October 13, 2015.

Sandiganbayan, Court of Tax Appeals and judges of lower courts, or against lawyers in the government service, whether or not they are charged singly or jointly with other respondents, and whether or not such complaint deals with acts unrelated to the discharge of their official functions. If the complaint is filed before the IBP, six (6) copies of the verified complaint shall be filed with the Secretary of the IBP or the Secretary of any of its chapter who shall forthwith transmit the same to the IBP Board of Governors for assignment to an investigator.

x x x x x x x x x

B. PROCEEDINGS IN THE SUPREME COURT

Section 13. *Investigation of complaints.* — In proceedings initiated by the Supreme Court, or in other proceedings when the interest of justice so requires, the Supreme Court **may refer the case for investigation to the Office of the Bar Confidant, or to any officer of the Supreme Court or judge of a lower court,** in which case the investigation shall proceed in the same manner provided in Sections 6 to 11 hereof, save that the review of the report of investigation shall be conducted directly by the Supreme Court.

The complaint may also be referred to the IBP for investigation, report, and recommendation. [bold emphasis supplied to indicate the revisions]

Under the foregoing revisions of Rule 139-B, the administrative complaints against attorneys are generally not dismissed outright but are instead referred for investigation, report and recommendation either to the IBP, or the Office of the Bar Confidant (OBC), or any office of the Court or even a judge of a lower court. Such referral ensures that the parties' right to due process is respected as to matters that require further inquiry and which cannot be resolved by the mere evaluation of the documents attached to the pleadings.[15] Consequently, whenever the referral is made by the Court, the IBP, the OBC or other authorized office or individual must conduct the formal investigation of the administrative complaint, and this investigation is a mandatory requirement that cannot be dispensed with except

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[15] *Baldomar v. Paras,* Adm. Case No. 4980, December 15, 2000, 348 SCRA 212, 214-215.

for valid and compelling reasons because it serves the purpose of threshing out all the factual issues that no cursory evaluation of the pleadings can determine.[16]

However, the referral to the IBP is not compulsory when the administrative case can be decided on the basis of the pleadings filed with the Court, or when the referral to the IBP for the conduct of formal investigation would be redundant or unnecessary, such as when the protraction of the investigation equates to undue delay. Dismissal of the case may even be directed at the outset should the Court find the complaint to be clearly wanting in merit.[17] Indeed, the *Rules of Court* should not be read as preventing the giving of speedy relief whenever such speedy relief is warranted.

It is upon this that we dispense with the need to refer the complaint against the respondent to the IBP for the conduct of the formal investigation. The documents he submitted to substantiate his denial of professional wrongdoing are part of the records of the trial court, and, as such, are sufficient to establish the unworthiness of the complaint as well as his lawful entitlement to the demolition of the structures of the defendants in Civil Case No. R-1256.

Specifically, the demolition was authorized by the order issued by the MTC on December 19, 2013.[18] In the execution of the final and executory decision in Civil Case No. R-1256, the sheriffs dutifully discharged their functions. The presence of the respondent during the execution proceedings was by no means irregular or improper, for he was the plaintiff in Civil Case No. R-1256. The complainant was then represented by Pante and some other members of the congregation, who did not manifest any resistance or objection to any irregularity in the conduct of the execution. After all, elements of the Philippine

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[16] *Tabang v. Gacott*, Adm. Case No. 6490, September 29, 2004, 439 SCRA 307, 312.

[17] *Cottam v. Laysa*, Adm. Case No. 4834, February 29, 2000, 326 SCRA 614, 617.

[18] *Rollo*, pp. 87-88.

National Police were also present to ensure the peaceful implementation of the writ of execution.

Neither do we find anything wrong, least of all criminal, in the act of the respondent of taking away the materials of the demolished structures. The parties put an end to their dispute by the defendants, including the complainant and Pante, opting to withdraw their notice of appeal and undertaking to voluntarily vacate and to peacefully turn over the premises to the respondent by August 31, 2013 in exchange for the latter's financial assistance of the ₱300,000.00. The respondent paid the amount in the MTC on March 20, 2013, and the amount was later on received by Maria Omiles, Feliciano Omiles, Jr., and Noralyn T. Abad as the representatives of the CSP-PLC on the same day.[19] But the latter reneged on their part of the agreement without returning the ₱300,000.00 to the respondent, who was left to exhaust his legal remedies to enforce the judgment against them. It is notable that the judgment expressly directed him "*to exercise his option pursuant to the provisions of Article 448 of the New Civil Code of the Philippines within thirty (30) days from the finality of this judgment insofar as the improvements introduced by the defendants on the subject property*."[20] Article 448 of the *Civil Code* granted to him as the owner of the premises, among others, "*the right to appropriate as his own the works, sowing or planting, after payment of the indemnity provided for in Articles 546 and 548*." His act of taking the materials of the demolished structures was undoubtedly the exercise of the right of appropriating them in light of the fact that the ₱300,000.00 earlier delivered as financial assistance was most likely meant to indemnify the supposed builders in good faith.

The respondent has called attention to the letter of the Christian Spiritists in the Philippines, Inc.,[21] the mother organization to which the CSP-PLC belonged, to the effect that it was disavowing knowledge of or participation in the disbarment complaint, and

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[19] *Id.* at 75.

[20] *Supra* note 3.

[21] *Rollo*, p. 46.

that it was categorically declaring that the complaint had been filed by Pante only for his personal interest at the expense of the congregation. The sentiments expressed in the letter manifested the inanity of the complaint, and the ill motives behind Pante's filing of the complaint against the respondent. The proper outcome for such a complaint is its immediate dismissal.

WHEREFORE, the Court **DISMISSES** the complaint for disbarment against Atty. Daniel Dazon Mangallay for its utter lack of merit.

SO ORDERED.

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

FIRST DIVISION

[A.C. No. 10543. March 16, 2016]
(Formerly CBD Case No. 07-1959)

NENITA D. SANCHEZ, *petitioner, vs.* **ATTY. ROMEO G. AGUILOS,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; CODE OF PROFESSIONAL RESPONSIBILITY; A LAWYER SHALL SERVE HIS CLIENT WITH COMPETENCE AND DILIGENCE; VIOLATION IN CASE AT BAR.— The respondent offered himself to the complainant as a lawyer who had the requisite professional competence and skill to handle the action for the annulment of marriage for her. He required her to pay ₱150,000.00 as attorney's fees, exclusive of the filing fees and his appearance fee of ₱5,000.00/hearing. Of that amount, he received the sum of ₱70,000.00. x x x Clearly, the respondent misrepresented his professional competence and skill to the

complainant. As the findings [by IBP Investigating Commissioner] reveal, he did not know the distinction between the grounds for legal separation and for annulment of marriage. Such knowledge would have been basic and expected of him as a lawyer accepting a professional engagement for either causes of action. His explanation that the client initially intended to pursue the action for legal separation should be disbelieved. The case unquestionably contemplated by the parties and for which his services was engaged, was no other than an action for annulment of the complainant's marriage with her husband with the intention of marrying her British fiancée. They did not contemplate legal separation at all, for legal separation would still render her incapacitated to re-marry. That the respondent was insisting in his answer that he had prepared a petition for legal separation, and that she had to pay more as attorney's fees if she desired to have the action for annulment was, therefore, beyond comprehension other than to serve as a hallow afterthought to justify his claim for services rendered. As such, the respondent failed to live up to the standards imposed on him as an attorney. He thus transgressed Canon 18, and Rules 18.01, 18.02 and 18.03 of the *Code of Professional Responsibility*, to wit: CANON 18 – A LAWYER SHALL SERVE HIS CLIENT WITH COMPETENCE AND DILIGENCE. Rules 18.01 – **A lawyer shall not undertake a legal service which he knows or should know that he is not qualified to render.** x x x Rule 18.02 - **A lawyer shall not handle any legal matter without adequate preparation.**

2. ID.; COMPENSATION OF ATTORNEYS; ATTORNEY'S FEES; IN THE ABSENCE OF WRITTEN AGREEMENT, THE LAWYER'S COMPENSATION SHALL BE BASED ON *QUANTUM MERUIT*; RATIONALE.— The attorney's fees shall be those stipulated in the retainer's agreement between the client and the attorney, which constitutes the law between the parties for as long as it is not contrary to law, good morals, good customs, public policy or public order. The underlying theory is that the retainer's agreement between them gives to the client the reasonable notice of the arrangement on the fees. Once the attorney has performed the task assigned to him in a valid agreement, his compensation is determined on the basis of what he and the client agreed. In the absence of the written agreement, the lawyer's compensation shall be based on *quantum meruit*, which means "as much as he deserved." The determination of attorney's fees on the basis of *quantum meruit* is also

authorized "when the counsel, for justifiable cause, was not able to finish the case to its conclusion." Moreover, *quantum meruit* becomes the basis of recovery of compensation by the attorney where the circumstances of the engagement indicate that it will be contrary to the parties' expectation to deprive the attorney of all compensation. Nevertheless, the court shall determine in every case what is reasonable compensation based on the obtaining circumstances, provided that the attorney does not receive more than what is reasonable, in keeping with Section 24 of Rule 138 of the *Rules of Court.* x x x The court's supervision of the lawyer's compensation for legal services rendered is not only for the purpose of ensuring the reasonableness of the amount of attorney's fees charged, but also for the purpose of preserving the dignity and integrity of the legal profession. x x x The attorney who fails to accomplish the tasks he should naturally and expectedly perform during his professional engagement does not discharge his professional responsibility and ethical duty toward his client. The respondent was thus guilty of misconduct, and may be sanctioned according to the degree of the misconduct. As a consequence, he may be ordered to restitute to the client the amount received from the latter in consideration of the professional engagement, subject to the rule on *quantum meruit*, if warranted.

3. ID.; CODE OF PROFESSIONAL RESPONSIBILITY; IN MAINTAINING THE INTEGRITY AND DIGNITY OF THE LEGAL PROFESSION, A LAWYER'S LANGUAGE – SPOKEN OR IN HIS PLEADINGS – MUST BE DIGNIFIED; VIOLATION IN CASE AT BAR; PENALTY. — The *Rules of Court* mandates members of the Philippine Bar to "abstain from all offensive personality and to advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which he is charged." This duty of lawyers is further emphasized in the *Code of Professional Responsibility*, whose Canon 8 provides: "A lawyer shall conduct himself with courtesy, fairness and candor toward his professional colleagues, and shall avoid harassing tactics against opposing counsel." Rule 8.01 of Canon 8 specifically demands that: "A lawyer shall not, in his professional dealings, use language which is abusive, offensive or otherwise improper." The Court recognizes the adversarial nature of our legal system which has necessitated lawyers to use strong language in the advancement of the interest of their clients. However, as members of a noble profession, lawyers

> are always impressed with the duty to represent their clients' cause, or, as in this case, to represent a personal matter in court, with courage and zeal but that should not be used as license for the use of offensive and abusive language. In maintaining the integrity and dignity of the legal profession, a lawyer's language – spoken or in his pleadings – must be dignified. As such, every lawyer is mandated to carry out his duty as an agent in the administration of justice with courtesy, dignity and respect not only towards his clients, the court and judicial officers, but equally towards his colleagues in the Legal Profession. The respondent's statement in his answer that the demand from Atty. Martinez should be treated "as a mere scrap of paper or should have been addressed by her counsel x x x to the urinal project of the MMDA where it may service its rightful purpose" constituted simple misconduct that this Court cannot tolerate. x x x As penalty for this particular misconduct, he is reprimanded, with the stern warning that a repetition of the offense will be severely punished.

APPEARANCES OF COUNSEL

Martinez Law Office for petitioner.

D E C I S I O N

BERSAMIN, *J.*:

This administrative case relates to the performance of duty of an attorney towards his client in which the former is found and declared to be lacking in knowledge and skill sufficient for the engagement. Does *quantum meruit* attach when an attorney fails to accomplish tasks which he is naturally expected to perform during his professional engagement?

Antecedents

Complainant Nenita D. Sanchez has charged respondent Atty. Romeo G. Aguilos (respondent) with misconduct for the latter's refusal to return the amount of ₱70,000.00 she had paid for his professional services despite his not having performed the contemplated professional services. She avers that in March 2005, she sought the legal services of the respondent to represent her

in the annulment of her marriage with her estranged husband, Jovencio C. Sanchez; that the respondent accepted the engagement, fixing his fee at ₱150,000.00, plus the appearance fee of ₱5,000.00/hearing; that she then gave to him the initial amount of ₱90,000.00;[1] that she had gone to his residence in May 2005 to inquire on the developments in her case, but he told her that he would only start working on the case upon her full payment of the acceptance fee; that she had only learned then that what he had contemplated to file for her was a petition for legal separation, not one for the annulment of her marriage; that he further told her that she would have to pay a higher acceptance fee for the annulment of her marriage;[2] that she subsequently withdrew the case from him, and requested the refund of the amounts already paid, but he refused to do the same as he had already started working on the case;[3] that she had sent him a letter, through Atty. Isidro S.C. Martinez, to demand the return of her payment less whatever amount corresponded to the legal services he had already performed;[4] that the respondent did not heed her demand letter despite his not having rendered any appreciable legal services to her;[5] and that his constant refusal to return the amounts prompted her to bring an administrative complaint against him[6] in the Integrated Bar of the Philippines (IBP) on March 20, 2007.

In his answer dated May 21, 2007,[7] the respondent alleges that the complainant and her British fiancée sought his legal services to bring the petition for the annulment of her marriage; that based on his evaluation of her situation, the more appropriate case would be one for legal separation anchored on the psychological incapacity of her husband; that she and her British

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[1] *Rollo*, pp. 2-3.

[2] *Id.*

[3] *Id.*

[4] *Id.* at 6.

[5] *Id.* at 3.

[6] *Id.* at 2-4.

[7] *Id.* at 17-20.

fiancée agreed on ₱150,000.00 for his legal services to bring the action for legal separation, with the fiancée paying him ₱70,000.00, as evidenced by his handwritten receipt;[8] that for purposes of the petition for legal separation he required the complainant to submit copies of her marriage contract and the birth certificates of her children with her husband, as well as for her to submit to further interviews by him to establish the grounds for legal separation; that he later on communicated with her and her fiancée upon finalizing the petition, but they did not promptly respond to his communications; that in May 2005, she admitted to him that she had spent the money that her fiancée had given to pay the balance of his professional fees; and that in June 2005, she returned to him with a note at the back of the prepared petition for legal separation essentially requesting him not to file the petition because she had meanwhile opted to bring the action for the annulment of her marriage instead.

The respondent admits that he received the demand letter from Atty. Martinez, but states that he dismissed the letter as a mere scrap of paper because the demand lacked basis in law. It is noted that he wrote in the last part of his answer dated May 21, 2007 in relation to the demand letter the following:

> Hence, respondent accordingly treated the said letter demand for refund dated 15 August 2005 (Annex "B" of the complaint) as a mere scrap of paper or should have been addressed by her counsel **ATTY. ISIDRO S.C. MARTINEZ,** who **unskillfully** relied on an **unverified** information furnished him, to the urinal project of the MMDA where it may serve its rightful purpose.[9]

Findings and Recommendation of the IBP

The IBP Commission on Bar Discipline (IBP-CBD) summoned the parties to a mandatory conference on August 3, 2007,[10] but only the complainant and her counsel attended the conference. On his part, the respondent sent a letter dated July 20, 2007 to

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[8] *Id.* at 11.

[9] *Id.* at 20.

[10] *Id.* at 49.

the IBP-CBD to reiterate his answer.[11] Due to his non-appearance, the IBP-CBD terminated the conference on the same day, but required the complainant to submit a verified position paper within 10 days. She did not submit the position paper in the end.

In his commissioner's report dated July 25, 2008,[12] IBP Investigating Commissioner Jose I. De La Rama, Jr. declared that the respondent's insistence that he could have brought a petition for legal separation based on the psychological incapacity of the complainant's husband was sanctionable because he himself was apparently not conversant with the grounds for legal separation; that because he rendered some legal services to the complainant, he was entitled to receive only ₱40,000.00 out of the ₱70,000.00 paid to him as acceptance fee, the ₱40,000.00 being the value of the services rendered under the principle of *quantum meruit*; and that, accordingly, he should be made to return to her the amount of ₱30,000.00.

IBP Investigating Commissioner De La Rama, Jr. observed that the respondent's statement in the last part of his answer, to the effect that the demand letter sent by Atty. Martinez in behalf of the complainant should be treated as a scrap of paper, or should have been addressed "to the urinal project of the MMDA where it may serve its rightful purpose," was uncalled for and improper; and he opined that such offensive and improper language uttered by the respondent against a fellow lawyer violated Rule 8.01[13] of the *Code of Professional Responsibility*.

IBP Investigating Commissioner De La Rama, Jr. ultimately recommended as follows:

> The undersigned Commissioner is most respectfully recommending the following:
>
> (1) To order the respondent to return to the complainant the amount of ₱30,000.00 which he received for the purpose of

[11] *Id.* at 15.

[12] *Id.* at 56-69.

[13] Rule 8.01 — A lawyer shall not, in his professional dealings, use language which is abusive, offensive or otherwise improper.

preparing a petition for legal separation. Undersigned believes that considering the degree of professional services he has extended, the amount of ₱40,000.00 he received on March 10, 2005 would be sufficient payment for the same.

(2) For failure to distinguish between the grounds for legal separation and annulment of marriage, respondent should be sanctioned.

(3) Lastly, for failure to conduct himself with courtesy, fairness towards his colleagues and for using offensive or improper language in his pleading, which was filed right before the Commission on Bar Discipline, he must also be sanctioned and disciplined in order to avoid repetition of the said misconduct.

WHEREFORE, in view of the foregoing, it is most respectfully recommended that Atty. Romeo G. Aguilos be ordered to return to complainant Nenita D. Sanchez the amount of ₱30,000.00 which the former received as payment for his services because it is excessive.

It is also recommended that the Atty. Romeo G. Aguilos be suspended from the practice of law for a period of six (6) months for failure to show his respect to his fellow lawyer and for using offensive and improper language in his pleadings.

Through Resolution No. XVIII-2008-476 dated September 20, 2008,[14] the IBP Board of Governors affirmed the findings of Investigating Commissioner De La Rama, Jr., but modified the recommendation of the penalty, *viz.*:

RESOLVED to ADOPT and APPROVE, as it is hereby unanimously ADOPTED AND APPROVED, **with modification,** the Report and Recommendation of the Investigating Commissioner of the above entitled case, herein made part of this Resolution as Annex "A", and, finding the recommendation fully supported by the evidence on record and the applicable laws and rules, and considering respondent's failure to show respect to his fellow lawyer and for showing offensive and improper words in his pleadings, Atty. Romeo G. Aguilos, is hereby **WARNED** and **Ordered to Return** the Thirty Thousand (₱30,000.00) Pesos to complainant within thirty (30) days from receipt of notice.[15]

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[14] *Rollo*, p. 55.

[15] *Id.*

The respondent filed a motion for reconsideration,[16] which the IBP Board of Governors denied through Resolution No. XXI-2014-177 dated March 23, 2014.[17]

Issues

The two issues for consideration and resolution are: (a) whether or not the respondent should be held administratively liable for misconduct; and (b) whether or not he should be ordered to return the attorney's fees paid.

Ruling of the Court

We adopt and affirm Resolution No. XVIII-2008-476 and Resolution No. XXI-2014-177, but modify the recommended penalty.

1.
Respondent was liable for misconduct, and he should be ordered to return the entire amount received from the client

The respondent offered himself to the complainant as a lawyer who had the requisite professional competence and skill to handle the action for the annulment of marriage for her. He required her to pay ₱150,000.00 as attorney's fees, exclusive of the filing fees and his appearance fee of ₱5,000.00/hearing. Of that amount, he received the sum of ₱70,000.00.

On the respondent's conduct of himself in his professional relationship with the complainant as his client, we reiterate and adopt the thorough analysis and findings by IBP Investigating Commissioner De La Rama, Jr. to be very apt and cogent, *viz*.:

> As appearing in Annex "4", which is the handwritten retainer's contract between the respondent and the complainant, there is a sweeping evidence that there is an attorney-client relationship. The respondent agreed to accept the case in the amount of ₱150,000.00. The acceptance fee was agreed upon to be paid on installment basis.

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[16] *Id.* at 70-74.

[17] *Id.* at 80.

Excluded in the agreement is the payment of appearance fee, filing fee and other legal documentation.

That next question is — for what case the ₱150,000.00 was intended for? Was it intended for the filing of the annulment case or legal separation?

In the verified Answer filed by the respondent, even the latter is quite confused as to what action he is going to file in court. The intention of the British national and the complainant was to get married. At that time and maybe up to now, the complainant is still legally married to a certain Jovencio C. Sanchez. That considering that the two are intending to get married, we can safely assume that the complainant was contemplating of filing a petition for annulment of marriage in order to free her from the marriage bond with her husband. It is only then, granting that the petition will be granted, that the complainant will be free to marry the British subject. The legal separation is but a separation of husband and wife from board and bed and the marriage bond still exists. Granting that the petition for legal separation will be granted, one is not free to marry another person.

A reading of the answer filed by the respondent would show that he himself is not well versed in the grounds for legal separation. He stated the following;

> . . . respondent suggested to them to file instead a legal separation case for the alleged psychological incapacity of her husband to comply with his marital obligations developed or of their marriage on February 6, 1999. (please see par. 2 of the Answer).

If the intention was to file a petition for legal separation, under A.M. 02-11-11-SC, the grounds are as follows:

> Sec. 2. Petition. —
>
> (a) Who may and when to file — (1) A petition for legal separation may be filed only by the husband or the wife, as the case may be, within five years from the time of the occurrence of any of the following causes:
>
> (a) Repeated physical violence or grossly abusive conduct directed against the petitioner, a common child, or a child of the petitioner;

(b) Physical violence or moral pressure to compel the petitioner to change religious or political affiliation;

(c) Attempt of respondent to corrupt or induce the petitioner, a common child, or a child of the petitioner, to engage in prostitution, or connivance in such corruption or inducement;

(d) Final judgment sentencing the respondent to imprisonment of more than six years, even if pardoned;

(e) Drug addiction or habitual alcoholism of the respondent;

(f) Lesbianism or homosexuality of the respondent:

(g) Contracting by the respondent of a subsequent bigamous marriage, whether in or outside the Philippines;

(h) Sexual infidelity or perversion of the respondent;

(i) Attempt on the life of petitioner by the respondent; or

(j) Abandonment of petitioner by respondent without justifiable cause for more than one year.

Psychological incapacity, contrary to what respondent explained to the complainant, is not one of those mentioned in any of the grounds for legal separation.

Even in Article 55 of the Family Code of the Philippines, psychological incapacity is never a ground for the purpose of filing a petition for legal separation.

On the other hand, psychological incapacity has always been used for the purpose of filing a petition for declaration of nullity or annulment of marriage.

That as provided for by Article 36 of the New Family Code, it states that "*a marriage contracted by any party who, at the time of the celebration, was psychologically incapacitated to comply with the essential marital obligations of marriage, shall likewise be void even if such incapacity becomes manifest only after its solemnization.*"

That lawyers shall keep abreast of the legal developments and participate in continuing legal education program (Canon 5 of the Code of Professional Responsibility) in order to prevent repetition of such kind of advise that respondent gave to the complainant. In giving an advise, he should be able to distinguish between the grounds for legal separation and grounds for annulment of marriage. But as

the respondent stated in his answer, it appears that he is mixed up with the basic provisions of the law.[18]

Clearly, the respondent misrepresented his professional competence and skill to the complainant. As the foregoing findings reveal, he did not know the distinction between the grounds for legal separation and for annulment of marriage. Such knowledge would have been basic and expected of him as a lawyer accepting a professional engagement for either causes of action. His explanation that the client initially intended to pursue the action for legal separation should be disbelieved. The case unquestionably contemplated by the parties and for which his services was engaged, was no other than an action for annulment of the complainant's marriage with her husband with the intention of marrying her British fiancée. They did not contemplate legal separation at all, for legal separation would still render her incapacitated to re-marry. That the respondent was insisting in his answer that he had prepared a petition for legal separation, and that she had to pay more as attorney's fees if she desired to have the action for annulment was, therefore, beyond comprehension other than to serve as a hallow afterthought to justify his claim for services rendered.

As such, the respondent failed to live up to the standards imposed on him as an attorney. He thus transgressed Canon 18, and Rules 18.01, 18.02 and 18.03 of the *Code of Professional Responsibility*, to wit:

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

Rules 18.01 — **A lawyer shall not undertake a legal service which he knows or should know that he is not qualified to render.** However, he may render such service if, with the consent of his client, he can obtain as collaborating counsel a lawyer who is competent on the matter.

Rule 18.02 — **A lawyer shall not handle any legal matter without adequate preparation.**

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[18] *Id.* at 85-88.

Rule 18.03 — A lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable. (Emphasis supplied)

The next to be dealt with is the matter of the attorney's fees. We can easily agree that every attorney is entitled to have and receive a just and reasonable compensation for services performed at the special instance and request of his client. As long as the attorney is in good faith and honestly trying to represent and serve the interests of the client, he should have a reasonable compensation for such services.[19]

The attorney's fees shall be those stipulated in the retainer's agreement between the client and the attorney, which constitutes the law between the parties for as long as it is not contrary to law, good morals, good customs, public policy or public order.[20] The underlying theory is that the retainer's agreement between them gives to the client the reasonable notice of the arrangement on the fees. Once the attorney has performed the task assigned to him in a valid agreement, his compensation is determined on the basis of what he and the client agreed.[21] In the absence of the written agreement, the lawyer's compensation shall be based on *quantum meruit*, which means "as much as he deserved."[22] The determination of attorney's fees on the basis of *quantum meruit* is also authorized "when the counsel, for justifiable cause, was not able to finish the case to its conclusion."[23] Moreover, *quantum meruit* becomes the basis of recovery of compensation by the attorney where the circumstances of the engagement indicate that it will be contrary to the parties' expectation to deprive the attorney of all compensation.

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[19] *Traders Royal Bank Employees Union-Independent v. NLRC*, G.R. No. 120592, March 14, 1997, 269 SCRA 733, 743; *De Guzman v. Visayan Rapit Transit Co., Inc*., 68 Phil. 643 (1939).

[20] *Reparations Commission vs. Visayan Packing Corporation*, G.R. No. 30712, February 6, 1991, 193 SCRA 531, 540.

[21] *Francisco v. Matias*, L-16349, January 1, 1964, 10 SCRA 89, 95.

[22] *Rilloraza, Africa, De Ocampo and Africa v. Eastern Telecommunications Phils., Inc*., G.R. No. 104600, July 2, 1999, 309 SCRA 566, 575.

[23] *Id.*

Nevertheless, the court shall determine in every case what is reasonable compensation based on the obtaining circumstances,[24] provided that the attorney does not receive more than what is reasonable, in keeping with Section 24 of Rule 138 of the *Rules of Court*, to wit:

> Section 24. *Compensation of attorneys; agreement as to fees*. — An attorney shall be entitled to have and recover from his client no more than a reasonable compensation for his services, with a view to the importance of the subject matter of the controversy, the extent of the services rendered, and the professional standing of the attorney. No court shall be bound by the opinion of attorneys as expert witnesses as to the proper compensation, but may disregard such testimony and base its conclusion on its own professional knowledge. A written contract for services shall control the amount to be paid therefor unless found by the court to be unconscionable or unreasonable.

The court's supervision of the lawyer's compensation for legal services rendered is not only for the purpose of ensuring the reasonableness of the amount of attorney's fees charged, but also for the purpose of preserving the dignity and integrity of the legal profession.[25]

The respondent should not have accepted the engagement because as it was later revealed, it was way above his ability and competence to handle the case for annulment of marriage. As a consequence, he had no basis to accept any amount as attorney's fees from the complainant. He did not even begin to perform the contemplated task he undertook for the complainant because it was improbable that the agreement with her was to bring the action for legal separation. His having supposedly prepared the petition for legal separation instead of the petition for annulment of marriage was either his way of covering up for his incompetence, or his means of charging her more. Either way did not entitle him to retain the amount he had already received.

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[24] *Bach v. Ongkiko Kalaw Manhit & Acorda Law Offices*, G.R. No. 160334, September 11, 2006, 501 SCRA 419, 426-427.

[25] *Id.* at 433-434.

The written receipt dated March 10, 2005 shows that the respondent received ₱70,000.00 as acceptance fee. His refusal to return the amount to the complainant rested on his claim of having already completed the first phase of the preparation of the petition for legal separation after having held conferences with the complainant and her British fiancée. In this respect, IBP Investigating Commission De la Rama, Jr. opined that the respondent could retain ₱40,000.00 of the ₱70,000.00 because the respondent had rendered some legal services to the complainant, specifically: (a) having the complainant undergo further interviews towards establishing the ground for legal separation; (b) reducing into writing the grounds discussed during the interviews based on her statement in her own dialect (Annexes 1 and 2) after he could not understand the written statement prepared for the purpose by her British fiancée; (c) requiring her to submit her marriage contract with her husband Jovencio C. Sanchez (Annex 3), and the certificates of live birth of her four children: Mary Joy, Timothy, Christine, and Janette Anne, all surnamed Sanchez (Annexes 4, 5, 6 and 7); and (d) finalizing her petition for legal separation (Annex 8) in the later part of April, 2007.

The opinion of IBP Investigating Commission De la Rama, Jr. in favor of the respondent was too generous. We cannot see how the respondent deserved any compensation because he did not really begin to perform the contemplated tasks if, even based on his version, he would prepare the petition for legal separation instead of the petition for annulment of marriage. The attorney who fails to accomplish the tasks he should naturally and expectedly perform during his professional engagement does not discharge his professional responsibility and ethical duty toward his client. The respondent was thus guilty of misconduct, and may be sanctioned according to the degree of the misconduct. As a consequence, he may be ordered to restitute to the client the amount received from the latter in consideration of the professional engagement, subject to the rule on *quantum meruit*, if warranted.

Accordingly, the respondent shall be fined in the amount of ₱10,000.00 for his misrepresentation of his professional competence, and he is further to be ordered to return the entire

amount of ₱70,000.00 received from the client, plus legal interest of 6% *per annum* reckoned from the date of this decision until full payment.

2.
Respondent did not conduct himself with courtesy, fairness and candor towards his professional colleague

The *Rules of Court* mandates members of the Philippine Bar to "abstain from all offensive personality and to advance no fact prejudicial to the honor or reputation of a party or witness, unless required by the justice of the cause with which he is charged."[26] This duty of lawyers is further emphasized in the *Code of Professional Responsibility*, whose Canon 8 provides: "A lawyer shall conduct himself with courtesy, fairness and candor toward his professional colleagues, and shall avoid harassing tactics against opposing counsel." Rule 8.01 of Canon 8 specifically demands that: "A lawyer shall not, in his professional dealings, use language which is abusive, offensive or otherwise improper."

The Court recognizes the adversarial nature of our legal system which has necessitated lawyers to use strong language in the advancement of the interest of their clients.[27] However, as members of a noble profession, lawyers are always impressed with the duty to represent their clients' cause, or, as in this case, to represent a personal matter in court, with courage and zeal but that should not be used as license for the use of offensive and abusive language. In maintaining the integrity and dignity of the legal profession, a lawyer's language — spoken or in his pleadings — must be dignified.[28] As such, every lawyer is mandated to carry out his duty as an agent in the administration of justice with courtesy, dignity and respect not only towards his clients, the court and judicial officers, but equally towards his colleagues in the Legal Profession.

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[26] Rule 138, Sec. 20 (f) of the Rules of Court.

[27] *Saberon v. Larong*, A.C. No. 6567, April 16, 2008, 551 SCRA 359, 368.

[28] *Id.*

The respondent's statement in his answer that the demand from Atty. Martinez should be treated "as a mere scrap of paper or should have been addressed by her counsel x x x to the urinal project of the MMDA where it may service its rightful purpose" constituted simple misconduct that this Court cannot tolerate.

In his motion for reconsideration, the respondent tried to justify the offensive and improper language by asserting that the phraseology was not *per se* uncalled for and improper. He explained that he had sufficient cause for maintaining that the demand letter should be treated as a mere scrap of paper and should be disregarded. However, his assertion does not excuse the offensiveness and impropriety of his language. He could have easily been respectful and proper in responding to the letter.

As penalty for this particular misconduct, he is reprimanded, with the stern warning that a repetition of the offense will be severely punished.

WHEREFORE, the Court **AFFIRMS** the Resolution No. XVIII-2008-476 dated September 20, 2008 of the Integrated Bar of the Philippines Board of Governors, with the **MODIFICATION** that Atty. Romeo G. Aguilos is hereby **FINED** ₱10,000.00 for misrepresenting his professional competence to the client, and **REPRIMANDS** him for his use of offensive and improper language towards his fellow attorney, with the stern warning that a repetition of the offense shall be severely punished.

The Court **ORDERS** Atty. Romeo G. Aguilos to **RETURN** to the complainant within thirty (30) days from notice the sum of ₱70,000.00, plus legal interest of 6% *per annum* reckoned from the date of this decision until full payment.

Let copies of this decision be attached to the personal records of Atty. Romeo G. Aguilos as a member of the Philippine Bar, and be furnished to the Office of the Bar Confidant, the Integrated Bar of the Philippines and the Office of the Court Administrator for proper dissemination to all courts throughout the country.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 185979. March 16, 2016]

BANGKO SENTRAL NG PILIPINAS, *petitioner, vs.* **VICENTE JOSE CAMPA, JR., MIRIAM M. CAMPA, MARIA ANTONIA C. ORTIGAS, MARIA TERESA C. AREVALO, MARIA NIEVES C. ALVAREZ, MARIAN M. CAMPA and BALBINO JOSE CAMPA,** *respondents.*

SYLLABUS

1. MERCANTILE LAW; CORPORATION CODE; DERIVATIVE ACTION; A DERIVATIVE ACTION IS A SUIT BY A SHAREHOLDER TO ENFORCE A CORPORATE CAUSE OF ACTION; NATURE OF DERIVATIVE SUIT, EXPLAINED.— A derivative action is a suit by a shareholder to enforce a corporate cause of action. Under the Corporation Code, where a corporation is an injured party, its power to sue is lodged with its board of directors or trustees. But an individual stockholder may be permitted to institute a derivative suit on behalf of the corporation in order to protect or vindicate corporate rights whenever the officials of the corporation refuse to sue, or are the ones to be sued, or hold control of the corporation. In such actions, the corporation is the real party-in-interest while the suing stockholder, on behalf of the corporation, is only a nominal party. A stockholder's right to institute a derivative suit is not based on any express provision of the Corporation Code, or even the Securities Regulation Code, but is impliedly recognized when the said laws make corporate directors or officers liable for damages suffered by the corporation and its stockholders for violation of their fiduciary duties.

2. ID.; ID.; ID.; IT IS A CONDITION *SINE QUA NON* THAT THE CORPORATION BE IMPLEADED AS A PARTY IN A DERIVATIVE SUIT; RATIONALE.— Prior to the promulgation of the Interim Rules of Procedure Governing Intra-Corporate Controversies, the requirements for derivative suit were encapsulated in *San Miguel Corporation v. Kahn*. x x x These jurisprudential requirements were incorporated in

Section 1, Rule 8 of A.M. No. 01-2-04-SC, otherwise known as the Interim Rules of Procedure Governing Intra-Corporate Controversies under Republic Act No. 8799 x x x Even then, not every suit filed on behalf of the corporation is a derivative suit. For a derivative suit to prosper, the minority stockholder suing for and on behalf of the corporation must allege in his complaint that he is suing on a derivative cause of action on behalf of the corporation and all other stockholders similarly situated who may wish to join him in the suit. It is a condition *sine qua non* that the corporation be impleaded as party in a derivative suit. The Court explained in *Asset Privatization Trust v. Court of Appeals* the rationale. x x x In other words the corporation must be joined as party because it is its cause of action that is being litigated and because judgment must be a *res judicata* against it. At the outset, the rule on derivative suits presupposes that the corporation is the injured party and the individual stockholder may file a derivative suit on behalf of the corporation to protect or vindicate corporate rights whenever the officials of the corporation refuse to sue, or are the ones to be sued, or hold control of the corporation.

3. REMEDIAL LAW; ACTIONS; PLEADINGS; A COMPLAINT-IN-INTERVENTION IS MERELY AN INCIDENT OF THE MAIN ACTION; JURISDICTION OF INTERVENTION IS GOVERNED BY JURISDICTION OF THE MAIN ACTION; CASE AT BAR.— A Complaint-in-Intervention is merely an incident of the main action. In the case of *Asian Terminals Inc. v. Bautista-Ricafort*, we expounded that "intervention is merely ancillary and supplemental to the existing litigation and never an independent action, the dismissal of the principal action necessarily results in the dismissal of the complaint-in-intervention. Likewise, a court which has no jurisdiction over the principal action has no jurisdiction over a complaint-in-intervention. Intervention presupposes the pendency of a suit in a court of competent jurisdiction. Jurisdiction of intervention is governed by jurisdiction of the main action." In this case, the RTC had already acquired jurisdiction upon filing of the complaint. The re-raffling of the case is more administrative than it is judicial. By directing the re-raffling of the case to all the RTCs, the Complaint-in-Intervention should be refiled in the court where the principal action is assigned.

APPEARANCES OF COUNSEL

Ongkiko Manhit Custodio and Acorda for petitioner.
DB Law Partnership for respondents.

D E C I S I O N

PEREZ, *J.*:

This petition for review assails the 9 January 2009 Resolution[1] of the Court of Appeals in CA-G.R. SP No. 99099. The Court of Appeals denied petitioner Bangko Sentral ng Pilipinas' (BSP) motion to reconsider the 15 July 2008 Decision[2] which affirmed the Order[3] dated 24 April 2007 of the Regional Trial Court (RTC) of Manila, Branch 36 in Commercial Case No. 06-114866 allowing the intervention in said case by respondents Vicente Jose Campa, Jr., *et al.*

The case stemmed from the following facts:

Bankwise applied for a Special Liquidity Facility (SLF) loan from BSP sometime in 2000. BSP advised Bankwise to submit mortgages of properties owned by third parties to secure its outstanding obligation to BSP. In compliance with the requirement, Bankwise mortgaged some real properties belonging to third-party mortgagors, as follows:

THIRD-PARTY MORTGAGORS	TITLES	LOCATION
Eduardo Aliño and co-owners	TCT Nos. T-4685 and T-4686	Barrio Masiga, Gasan, Marinduque

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[1] *Rollo*, pp. 40-41; Penned by Associate Justice Arcangelita M. Romilla-Lontok with Associate Justices Mariano C. Del Castillo (now a member of this Court) and Romeo F. Barza concurring.

[2] *CA rollo*, pp. 540-550.

[3] *Id.* at 34-38; Presided by Judge Emma S. Young.

Haru Gen Beach Resort and Hotel Corporation	TCT Nos. 11849 and 11850	Barrio Igang, Virac, Catanduanes
Vicente Jose Campa, Miriam Campa, Maria Antonia Ortigas, Maria Teresa Arevalo, Maria Nieves Alvarez, Marian Campa, and Balbino Jose Campa	TCT Nos. 25849, 25850, 25851 and 9087	Mandaluyong City[4]

When Bankwise failed to pay its obligations to BSP, the latter applied for extra-judicial foreclosure of the third-party mortgages. All mortgaged properties were sold at public auction to BSP being the highest bidder and corresponding certificates of sale were registered.

On 18 April 2006, Eduardo Aliño (Aliño) filed a Complaint[5] for specific performance, novation of contracts and damages with application for Temporary Restraining Order (TRO)/writ of preliminary injunction against BSP and Bankwise. The case was docketed as Commercial Case No. 06-114866. Aliño alleged that he is a stockholder of VR Holdings, owning 10% of the outstanding shares of stock therein. Aliño averred that he allowed his properties to be used by Bankwise as collateral for the SLF loan because Bankwise and VR Holdings[6] assured him that the properties will be returned to him and that he will not be exposed to the risk of foreclosure.[7] According to Aliño, BSP reassured him that it would allow Bankwise to settle its outstanding obligation by way of *dacion en pago*, the details of which are outlined in a portion of the Complaint below:

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[4] *Rollo,* pp. 165-166; See Complaint.

[5] *Id*. at 16I-178.

[6] *Id*. at 162; VR Holdings is a holding corporation which used to own 50.44% of the shares of stock of Bankwise before the latter was taken over by Philippine Veterans Bank. The other principal stockholder of Bankwise is Wise Holdings, owning 49.56% of the shares of stock thereof. See Complaint.

[7] *Id.* at 163.

2.8 Relying on BSP' s assurance of a *dacion en pago* settlement of Bankwise's obligations, therefore-

2.8.1 The former owners of Bankwise agreed to the takeover of Bankwise by PVB;

2.8.2 The former owners of Bankwise agreed to assume the liability for the segregated obligation which at the time had ballooned to 1.027 Billion, inclusive of interest and penalties;

2.8.3 Pursuant to the *dacion en pago* arrangement for the settlement of Bankwise's outstanding obligation, the former owners started submitting no less than thirty-five (35) titles over several real estate properties located in different parts of the country beginning the second quarter of 2005. Roughly, the total value of the properties already offered by the former owners of Bankwise for *dacion* is in the vicinity of ₱2 Billion, more or less.

2.9 Proofs that BSP had agreed on a *dacion en pago* mode of settlement ofBankwise's obligation are:

2.9.1. BSP's letter dated 13 October 2004 [. . . addressed to PVB] explicitly stating that:

> The Monetary Board, in its Resolution No. 1450 dated 07 October 2004, decided to allow Bankwise, Inc. to execute *Dacion en Pago* to settle its outstanding loan with Banko Sentral ng Pilipinas (BSP), which settlement shall not be conditioned to the submission of an acceptable rehabilitation plan for Bankwise, Inc.

2.9.2 BSP wrote another letter to PVB dated 05 November 2004 confirming the *dacion en pago* arrangement. It reads:—

> It will be recalled that the Bangko Sentral ng Pilipinas (BSP) agreed to provide additional credit facilities to Bankwise, Inc. and to accept its dacion en pago proposal to pay outstanding obligations with BSP only because of the assurance from PVB that it will take over management and control of the operations of the bank. Such commitment was made to us verbally by the President of PVB in several meetings with us as well as in writing.

> 2.9.3 On various dates, BSP already implemented the dacion en pago arrangement by accepting no less than fifteen (15) properties of Bankwise in partial settlement of its outstanding obligation. x x x[8] (Emphasis omitted)

Aliño claimed that BSP foreclosed his properties, among others, in callous disregard of the fact that to date, it has in its hands no less than 11 original duplicate certificates of title over various real properties offered by Bankwise for *dacion.* Aliño asserted that the value of the lots offered for *dacion* would be more than sufficient to answer for the obligation of Bankwise. Aliño also claimed that Bankwise refused to honor its commitment to him; and that Bankwise and BSP have allied together to deny the return to the third-party mortgagors of the foreclosed properties.

Haru Gen Beach Resort filed a Motion for Leave of Court to Admit Complaint in Intervention alleging that it is a third-party mortgagor over properties covered by TCT Nos. 11849 and 11850 in favor of BSP without any consideration; that BSP extrajudicially foreclosed its properties and the titles were already consolidated in the name of BSP; that the real estate mortgage is null and void on the ground that the intervenor did not receive any consideration therefrom and that the signatory in the said real estate mortgage was not properly authorized by the board of directors of the corporation in a meeting held for said purpose; and that it is entitled to the declaration of nullity of real estate mortgage and the return in its name of the said TCTs.

BSP opposed the motion. On 23 October 2003,[9] the RTC through Judge Antonio M. Eugenio denied the motion on the ground that Haru Gen's cause of action, if any, is properly the subject of a separate proceeding.

On 3 January 2007, respondents Vicente Jose Campa, Jr., Miriam M. Campa, Maria Antonia C. Ortigas, Maria Teresa C. Arevalo, Maria Nieves C. Alvarez, Marian M. Campa and Balbino

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[8] *Id.* at 164-165.

[9] *Id.* at 240-242.

Jose Campa filed a Motion for Leave to Intervene and Admit their Complaint-in-Intervention. Respondents asserted that they have a legal interest in the matter of litigation being the registered owners of certain real properties subject of the mortgage and in accommodation of the request of Bankwise who assured them that there is no risk of foreclosure. They allowed their properties to be used as security for Bankwise's SLF with BSP. Respondents repleaded the causes of action submitted by Aliño in his Complaint.

BSP opposed the motion. But on 24 April 2007,[10] the RTC through Judge Emma S. Young granted the motion and admitted the Complaint-in-Intervention filed by respondents.

BSP appealed said Order to the Court of Appeals *via* petition for *certiorari* alleging grave abuse of discretion on the part of the trial court on the following reasons: 1) the requirements for intervention were not met by respondents; 2) respondents' complaint-in-intervention and its supplement are dismissible for lack of cause of action; 3) respondents' cause of action, if any, is properly the subject of a separate proceeding; 4) considering the previous final denial of the intervention sought by Haru Gen, there is no reason to allow any other third-party mortgagor to intervene in Commercial Case No. 06-114866; 5) the intervention of respondents is a scheme to delay consolidation of title in the name of BSP and BSP's taking possession of the foreclosed properties; and 6) respondents' allegations are patently devoid of merit.[11]

On 15 July 2008,[12] the Court of Appeals ruled in favor of respondents and found no grave abuse of discretion on the part of the trial court in allowing the motion for leave to intervene and admission of a Complaint-in-Intervention. BSP moved for reconsideration insisting that respondents, not being stockholders of VR Holdings, do not have any legal interest in the subject matter of Commercial Case No. 06-114866 the same being a

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[10] CA *rollo*, pp. 34-38.

[11] *Id.* at 12-13.

[12] *Id.* at 540-550.

derivative suit initiated by Aliño as a stockholder of VR Holdings. Said motion was denied on 9 January 2009.

In the instant petition, BSP re-asserted the following grounds for review:

I. Private respondents failed to satisfy the requisites for intervention.

II. There is no legal basis to treat Private Respondents differently from Haru Gen, a third-party mortgagor similarly situated with Private Respondents, whose intervention had been denied with finality.[13]

BSP insists that since Commercial Case No. 06-114866 is a derivative suit filed by Aliño as a stockholder of VR Holdings, respondents cannot have an actual legal interest in the matter of litigation because they are not stockholders in VR Holdings. BSP maintains that respondents' intervention was being sought to delay consolidation of title in the name of BSP and BSP's taking possession of the subject properties which are necessary consequences of foreclosure. BSP urges this Court to apply the trial court's denial of a similar intervention in this case sought by Haru Gen.

While the primary issue relates to the propriety of an intervention, BSP's opposition is anchored on the nature of a derivative suit which, according to it, effectively disallows intervention by a non-stockholder.

A derivative action is a suit by a shareholder to enforce a corporate cause of action. Under the Corporation Code, where a corporation is an injured party, its power to sue is lodged with its board of directors or trustees. But an individual stockholder may be permitted to institute a derivative suit on behalf of the corporation in order to protect or vindicate corporate rights whenever the officials of the corporation refuse to sue, or are the ones to be sued, or hold control of the corporation. In such actions, the corporation is the real party-in-interest while

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[13] *Rollo*, pp. 27 & 29.

the suing stockholder, on behalf of the corporation, is only a nominal party.[14]

A stockholder's right to institute a derivative suit is not based on any express provision of the Corporation Code, or even the Securities Regulation Code, but is impliedly recognized when the said laws make corporate directors or officers liable for damages suffered by the corporation and its stockholders for violation of their fiduciary duties.[15]

Prior to the promulgation of the Interim Rules of Procedure Governing Intra-Corporate Controversies, the requirements for derivative suits were encapsulated in *San Miguel Corporation v. Kahn*,[16] to wit:

1. the party bringing suit should be a shareholder as of the time of the act or transaction complained of, the number of his shares not being material;

2. he has tried to exhaust intra-corporate remedies, *i.e.*, has made a demand on the board of directors for the appropriate relief but the latter has failed or refused to heed his plea; and

3. the cause of action actually devolves on the corporation, the wrongdoing or harm having been, or being caused to the corporation and not to the particular stockholder bringing the suit.[17]

These jurisprudential requirements were incorporated in Section 1, Rule 8 of A.M. No. 01-2-04-SC, otherwise known as the Interim Rules of Procedure Governing Intra-Corporate Controversies under Republic Act No. 8799. Section 1 reads:

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[14] *Hi-Yield Realty v. Court of Appeals*, 608 Phil. 350, 358 (2009) citing *R.N. Symaco Trading Corporation v. Santos*, 504 Phil. 573, 589 (2005) and *Filipinas Port Services, Inc. v. Go*, 547 Phil. 360, 377 (2007).

[15] *Ching v. Subic Bay Golf and Country Club*, G.R. No. 174353, 10 September 2014, 734 SCRA 569, 585.

[16] 257 Phil. 459 (1989).

[17] *Id.* at 473-474 citing *Pascual v. Del Saz Orozco*, 19 Phil. 82 (1911); *Republic Bank v. Cuaderno*, 125 Phil. 1076 (1967); *Everett v. Asia Banking Corporation*, 49 Phil. 512 (1926); *Angeles v. Santos*, 64 Phil. 697 (1937); *Evangelista v. Santos*, 86 Phil. 387 (1950).

(1) The person filing the suit must be a stockholder or member at the time the acts or transactions subject of the action occurred and the time the action was filed;

(2) He must have exerted all reasonable efforts, and alleges the same with particularity in the complaint, to exhaust all remedies available under the articles of incorporation, by-laws, laws or rules governing the corporation or partnership to obtain the relief he desires;

(3) No appraisal rights are available for the act or acts complained of; and

(4) The suit is not a nuisance or harassment suit.

Even then, not every suit filed on behalf of the corporation is a derivative suit. For a derivative suit to prosper, the minority stockholder suing for and on behalf of the corporation must allege in his complaint that he is suing on a derivative cause of action on behalf of the corporation and all other stockholders similarly situated who may wish to join him in the suit.[18]

It is a condition *sine qua non* that the corporation be impleaded as party in a derivative suit. The Court explained in *Asset Privatization Trust v. Court of Appeals*[19] the rationale:

> Not only is the corporation an indispensible party, but it is also the present rule that it must be served with process. The reason given is that the judgment must be made binding upon the corporation in order that the corporation may get the benefit of the suit and may not bring a subsequent suit against the same defendants for the same cause of action. In other words the corporation must be joined as party because it is its cause of action that is being litigated and because judgment must be a *res judicata* against it.[20]

At the outset, the rule on derivative suits presupposes that the corporation is the injured party and the individual stockholder

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[18] *Hi-Yield Realty v. Court of Appeals, supra* note 14 at 359.

[19] 360 Phil. 768 (1998).

[20] *Id.* at 805 citing Agbayani's *Commercial Law of the Philippines*, Vol. III, p. 566, further citing Ballantine, pp. 366-367.

may file a derivative suit on behalf of the corporation to protect or vindicate corporate rights whenever the officials of the corporation refuse to sue, or are the ones to be sued, or hold control of the corporation.[21]

The damage in this case does not really devolve on the corporation. The harm or injury that Aliño sought to be prevented pertains to properties registered under Aliño and other third-party mortgagors.

The following quoted portions of the Complaint show that the allegations pertain to injury caused to Aliño alone and not to the corporation:

> 2.22 Aside from his personal interest in having his Third-Party Mortgage released, plaintiff, as 10% stockholder of VR Holdings, which is 50.44% stockholder of Bankwise and 66% owner of Wise Holdings, stands to be adversely affected by the looming actions by Third-party Mortgagors.
>
> x x x x x x x x x
>
> 3.4 While making plaintiff and the other Third-Party Mortgagors and Bankwise believe that it was in the process of evaluating and considering the properties offered for *dacion*, BSP's simultaneous act of rapidly foreclosing on the Third-Party Mortgages, including plaintiff's is treacherous and confiscatory. x x x
>
> x x x x x x x x x
>
> 3.6 Under these circumstances, plaintiff, acting as derivative suitor for VR Holdings, which is 50.44% owner of Bankwise and 66% owner of Wise Holdings, has the right, under Article 1191 of the Civil Code to:
>
> x x x x x x x x x
>
> 3.6.2 Compel defendant Bankwise to immediately return the properties covered by the Third-Party REMs to their rightful owners upon acceptance by BSP of the dacion properties.
>
> x x x x x x x x x

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[21] *Hi-Yield Realty v. Court of Appeals, supra* note 14 at 3598.

4.8 Thus, the agreement and execution of the *dacion en pago* between BSP and Bankwise in 2005, without the knowledge of plaintiff, effectively released plaintiff from any further obligations under his Third-Party REMs which he executed in the years 2000 to 2004, together with his co-owners of the properties.

4.9 Consequently, all the foreclosures undertaken by BSP of the REMs over the properties enumerated in paragraph 2.12 hereof are null and void because when the *dacion en pago* arrangement arose, the REMs over these properties ceased to exist.

4.10 Specifically in the case of plaintiff, Bankwise paid BSP ₱42 Million in cash in order to cause the release of plaintiff's TCT Nos. 4685 and 4686. But as BSP accepted said ₱42 Million payment, it held on to the properties of plaintiff and proceeded to foreclose on the same.

4.11 Under the premises, BSP has the duty to immediately cause the cancelling of all the remaining REMs in its custody, if any, and to release to the Third-Party Mortgagors, including plaintiff, the titles to their properties.

x x x x x x x x x

5.2 Defendant Bankwise's failure to return plaintiff and the other Third-Party Mortgagor's properties as promised, and BSP's refusal to cause the release of the foreclosed properties as a result of the novation of the REMs, have caused the plaintiff to suffer serious anxiety, sleepless nights and wounded feelings for which reason BSP should be held liable to plaintiff for moral damages in the amount of **ONE MILLION PESOS (PHP1,000,000.00).**[22]

Furthermore, the prayer in the complaint seeks for recovery of the properties, belonging to Aliño and other third-party mortgagors, some of whom are not stockholders of VR Holdings, who mortgaged their properties to BSP:

WHEREFORE, plaintiff respectfully prays that —

1. Immediately upon the filing of this Complaint, this Honorable Court conduct an ex-parte hearing on plaintiff's application for

[22] *Rollo*, pp. 169-173.

the issuance of a TRO effective for seventy-two (72) hours prohibiting and enjoining BSP from consolidating in itself titles to plaintiff and the other Third-Party Mortgagor's foreclosed properties;

2. After due notice and summary hearing, this honourable court extend the 72-hour TRO to its full term of twenty (20) days;

3. Before the lapse of the 20-day TRO, and upon due notice and evidentiary hearing, this honorable court issue a writ of preliminary injunction —

3.1 Prohibiting and enjoining BSP from consolidating in itself titles to plaintiff and the other Third-Party Mortgagor's foreclosed properties; and

3.2 Suspending the redemption period for the properties foreclosed by BSP, registered in the names of plaintiff Aliño, *et al.*, while the merits of this complaint are being heard, conditioned upon the plaintiff's posting of a bond in an amount as may be determined by this court to answer for damages that defendant may suffer as a result of the preliminary injunction should it be finally decided that plaintiff was not entitled thereto.

4. After trial of the issues, this court render judgment —

4.1 Making the preliminary injunction permanent;

4.2 Declaring that the Third-Party Real Estate Mortgages had been released/discharged/extinguished by novation resulting from the subsequent *dacion en pago* arrangement between BSP and BankWise;

4.3 Compelling BSP to honor its commitment to allow BankWise to settle the segregate obligation by way of *dacion en pago*, and to accept so much of the titles/properties that have been submitted to it in payment of said entire segregated obligation, in substitution of the Third-Party Mortgages.

4.4 Compelling BankWise to make good its promise to return the titles that they borrowed from the Third-Party Mortgagors.

5. Finding defendants to pay plaintiff, as follows:

5.1 **PHP1,000,000.00**, as moral damages;

5.2 **PHP1,000,000.00**, as attorney's fees;

5.3 **PHP200,000.00**, as exemplary damages, and,

5.4 Costs of suit.

Plaintiff likewise respectfully prays for such other or further or reliefs as may be deemed just or equitable.[23]

The suit clearly is not for the benefit of the corporation for a judgment in favor of the complainant would mean recovery of his personal property. There is no actual or threatened injury alleged to have been done to the corporation due to the foreclosure of the properties belonging to third-party mortgagors.

A reading of the Interim Rules further demonstrates that the complaint could not be considered a derivative suit.

First, Aliño failed to exhaust all remedies available to him as a stockholder of VR Holdings. Aliño made the following allegations in his Complaint which we find lacking in particulars:

2.19 Plaintiff called the attention of VR Holdings, as 50.44% owner of BankWise and defendant BankWise itself, to honor their commitments mentioned in their assurance letters — that plaintiff's and the Third-Party Mortgagors' properties will be returned to them in no time and that they will not be exposed to the risk of foreclosure. All his supplications — oral or written — were both ignored by both corporations. VR Holdings and defendant BankWise were also uncooperative as regards BSP's requirements on plaintiff as contained in the letter of BSP's counsel. Copies of plaintiff's demand letters on VR Holdings and BankWise are attached and made integral parts hereof as Annexes "M" and "N".[24]

The "supplications" referred to in the complaint are in the form of one demand letter sent to each company, which does not suffice. Moreover, the letter was addressed to the President

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[23] *Id.* at 175-176.

[24] *Id.* at 168-169.

of Bankwise and VR Holdings, and not to the Board of Directors. In *Lopez Realty v. Spouses Tanjangco*,[25] a demand made on the board of directors for the appropriate relief is considered compliance with the requirement of exhaustion of corporate remedies. Aliño failed to show that he exerted all reasonable efforts to exhaust all remedies available under the articles of incorporation, by-laws, and laws or rules governing the corporation to obtain the relief he desired.

Second, the unavailability of appraisal right as a requirement for derivative suits does not apply in this case. A stockholder who dissents from certain corporate actions has the right to demand payment of the fair value of his or her shares. This right, known as the right of appraisal, is expressly recognized in Section 81 of the Corporation Code, to wit:

> Section 81. *Instances of appraisal right*. — Any stockholder of a corporation shall have the right to dissent and demand payment of the fair value of his shares in the following instances:
>
> 1. In case any amendment to the articles of incorporation has the effect of changing or restricting the rights of any stockholder or class of shares, or of authorizing preferences in any respect superior to those of outstanding shares of any class, or of extending or shortening the term of corporate existence;
>
> 2. In case of sale, lease, exchange, transfer, mortgage, pledge or other disposition of all or substantially all of the corporate property and assets as provided in the Code; and
>
> 3. In case of merger or consolidation.[26]

The appraisal right does not obtain in this case because the subject of the act complained of is the private properties of a stockholder and not that of the corporation.

Third, the instant case is a harassment suit. In determining whether a complaint is considered a harassment suit, the following guidelines are provided in Section 1 (b), Rule I of the Interim Rules of Procedure for Intra-Corporate Controversies, thus:

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[25] G.R. No. 154291, 12 November 2014.

[26] *Turner v. Lorenzo Shipping Corp.*, 650 Phil. 372, 384 (2010).

(b) *Prohibition against nuisance and harassment suits*. — Nuisance and harassment suits are prohibited. In determining whether a suit is a nuisance or harassment suit, the court shall consider, among others, the following:

(1) The extent of the shareholding or interest of the initiating stockholder or member;

(2) Subject matter of the suit;

(3) Legal and factual basis of the complaint;

(4) Availability of appraisal rights for the act or acts complained of; and

(5) Prejudice or damage to the corporation, partnership, or association in relation to the relief sought.

The guidelines basically summed up the three previous requisites of a derivative suit and more importantly, it is highlighted that the damage must be caused to the corporation.

When Republic Act No. 8799 took effect, the Securities and Exchange Commission's (SEC) exclusive and original jurisdiction over cases enumerated in Section 5 of Presidential Decree No. 902-A[27] was transferred to the RTC designated as a special commercial court.[28] As long as the nature of the controversy is intra-corporate, the designated RTCs have the authority to exercise jurisdiction over such cases. The Court

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[27] a) Devices or schemes employed by or any acts, of the board of directors, business associates, its officers or partners, amounting to fraud and misrepresentation which may be detrimental to the interest of the public and/or of the stockholder, partners, members of associations or organizations registered with the Commission;

b) Controversies arising out of intra-corporate or partnership relations, between and among stockholders, members, or associates; between any or all of them and the corporation, partnership or association of which they are stockholders, members or associates, respectively; and between such corporation, partnership or association and the state insofar as it concerns their individual franchise or right to exist as such entity;

c) Controversies in the election or appointments of directors, trustees, officers or managers of such corporations, partnerships or associations.

[28] *Reyes v. RTC of Makati, Br. 142, et al.*, 583 Phil. 591, 602 (2008).

reproduced the above jurisdiction in Rule I of the Interim Rules of Procedure Governing Intra-corporate Controversies under Republic Act No. 8799:

SECTION 1. (a) *Cases Covered*. — These Rules shall govern the procedure to be observed in civil cases involving the following:

(1) Devices or schemes employed by, or any act of, the board of directors, business associates, officers or partners, amounting to fraud or misrepresentation which may be detrimental to the interest of the public and/or of the stockholders, partners, or members of any corporation, partnership, or association;
(2) Controversies arising out of intra-corporate, partnership, or association relations, between and among stockholders, members, or associates; and between, any or all of them and the corporation, partnership, or association of which they are stockholders, members, or associates, respectively;
(3) Controversies in the election or appointment of directors, trustees, officers, or managers of corporations, partnerships, or associations;
(4) **Derivative suits**; and
(5) Inspection of corporate books.[29] (Emphasis ours).

Considering that the Aliño complaint is not a derivative suit, it would have been proper to dismiss the case for lack of jurisdiction. In *Reyes v. Hon. RTC of Makati*, Br. 142,[30] respondents filed a derivative suit with the SEC before it was turned over to Branch 142, RTC of Makati, a special commercial court. We dismissed the case by ruling that the allegations in the complaint do not amount to a derivative suit and that the RTC had no jurisdiction to hear the complaint which involves settlement of estate, the remedy of which is to institute a special proceeding. In *Home Guaranty Corporation v. R-II Builders, Inc.*,[31] Branch 24, RTC of Manila ruled that the case does not

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[29] *Aguirre v. FQB+7, INC*, G.R. No. 170770, 9 January 2013, 688 SCRA 242, 258.

[30] 583 Phil. 591 (2008).

[31] 667 Phil. 781 (2011).

involve an intra-corporate controversy but instead of dismissing the case, the trial court ordered the re-raffle of the case. In dismissing the case, we held that a re-raffle cannot cure a jurisdictional defect because a court without subject matter jurisdiction cannot transfer the case to another court. *Ching v. Subic Bay Golf and Country Club, Inc*.[32] relates to a case where in filing a derivative suit, petitioners failed to state with particularity in the Complaint that they had exerted all reasonable efforts to exhaust all remedies available under the articles of incorporation, by-laws, and laws or rules governing the corporation. Consequently, we dismissed the action. We also affirmed the appellate court's decision to dismiss the case in *Ang v. Ang*[33] when the complaint was found to be not a derivative suit.

It can be gleaned from the aforementioned cases that a ruling that a complaint is not a derivative suit results in the dismissal of the complaint. This doctrine is deemed abandoned by the recent case of *Gonzales v. GJH Land*[34] which now disallows the dismissal of the case. In said case, a complaint for injunction was filed by petitioners against GJH Land before the RTC of Muntinlupa. The case involved an intra-corporate dispute. The case was raffled to Branch 276, which is not a commercial court. Branch 276 dismissed the case for lack of jurisdiction. We reversed and ordered the re-raffling of the case to all the RTCs of the place where the complaint was filed. We explained the principle behind the new rule:

> [T]he re-raffling of an ordinary civil case in this instance to all courts is permissible due to the fact that a particular branch which has been designated as a Special Commercial Court does not shed the RTC's general jurisdiction over ordinary civil cases under the imprimatur of statutory law, *i.e.*, Batas Pambansa Bilang (BP) 129. To restate, the designation of Special Commercial Courts was merely intended as a procedural tool to expedite the resolution of commercial cases in line with the court's exercise of jurisdiction. This designation was

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[32] *Supra* note 15.

[33] G.R. No. 201675, 19 June 2013, 699 SCRA 272.

[34] G.R. No. 202664, 10 November 2015.

not made by statute but only by an internal Supreme Court rule under its authority to promulgate rules governing matters of procedure and its constitutional mandate to supervise the administration of all courts and the personnel thereof. Certainly, an internal rule promulgated by the Court cannot go beyond the commanding statute. But as a more fundamental reason, the designation of Special Commercial Courts is, to stress, merely an incident related to the court's exercise of jurisdiction, which, as first discussed, is distinct from the concept of jurisdiction over the subject matter. The RTC's general jurisdiction over ordinary civil cases is therefore not abdicated by an internal rule streamlining court procedure.[35]

Following *Gonzales*, the instant case, which we find to be an ordinary civil case and the jurisdiction of which pertains to the RTC, should be re-raffled to all the RTCs of the place where the complaint was filed. Dismissal of the action is no longer the proper recourse.

Finally, we shall discuss the principal issue of whether the intervention is proper in this case. A Complaint-in-Intervention is merely an incident of the main action. In the case of *Asian Terminals, Inc. v. Bautista-Ricafort*,[36] we expounded that "intervention is merely ancillary and supplemental to the existing litigation and never an independent action, the dismissal of the principal action necessarily results in the dismissal of the complaint-in-intervention. Likewise, a court which has no jurisdiction over the principal action has no jurisdiction over a complaint-in-intervention. Intervention presupposes the pendency of a suit in a court of competent jurisdiction. Jurisdiction of intervention is governed by jurisdiction of the main action." In this case, the RTC had already acquired jurisdiction upon filing of the complaint. The re-raffling of the case is more administrative than it is judicial. By directing the re-raffling of the case to all the RTCs, the Complaint-in-Intervention should be refiled in the court where the principal action is assigned.

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[35] *Id.*

[36] 536 Phil. 614, 630 (2006) citing *Cariño v. Ofilada*, G.R. No. 102836, 18 January 1993, 217 SCRA 206, 215; 671 C.J.S. Parties, p. 806 and *Begg v. New York*, 262 U.S. 196, 67 L.ed. 946. 43 S.Ct. 513.

WHEREFORE, the petition is **PARTLY GRANTED.** The Decision and Resolution dated 15 July 2008 and 9 January 2009, respectively of the Court of Appeals, are set aside. The Complaint in Commercial Case No. 06-114866 is **REFERRED** to the Executive Judge of the Regional Trial Court of Manila for re-docketing as a civil case. Thereafter, the Executive Judge shall **RAFFLE** the case to all branches of the Regional Trial Court of Manila. The assigned Branch is **ORDERED** to resolve the case with reasonable dispatch. The Clerk of Court of RTC Manila shall **DETERMINE** the appropriate amount of docket fees and, in so doing, **ORDER** the payment of any difference or, on the other hand, refund any excess.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 193313. March 16, 2016]

ERNIE IDANAN, NANLY DEL BARRIO and MARLON PLOPENIO, *petitioners, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CRIMINAL LAW; PRESIDENTIAL DECREE (PD) NO. 705; ACTS PUNISHABLE UNDER SECTION 68 THEREOF.— Section 68 penalizes three categories of acts: (1) the cutting, gathering, collecting, or removing of timber or other forest products from any forest land without any authority; (2) the cutting, gathering, collecting, or removing of timber from alienable or disposable public land, or from private land without any authority; and (3) the possession of timber or other forest

products without the legal documents as required under existing forest laws and regulations.

2. ID.; ID.; ILLEGAL POSSESSION OF TIMBER; NATURE OF POSSESSION, EXPLAINED.— Petitioners were charged under the third category, *i.e.*, of possessing and in control of 29 pieces of narra lumber without the legal requirements as required under existing forest laws and regulations. Illegal possession of timber is an offense covered by special law and is *malum prohibitum*. Thus, criminal intent is not an essential element of the offense. However, the prosecution must prove intent to possess or *animus possidendi*. Possession, under the law, includes not only actual possession, but also constructive possession. Actual possession exists when the object of the crime is in the immediate physical control of the accused. On the other hand, constructive possession exists when the object of the crime is under the dominion and control of the accused or when he has the right to exercise dominion and control over the place where it is found. Thus, conviction need not be predicated upon exclusive possession, and a showing of non-exclusive possession would not exonerate the accused. Such fact of possession may be proved by direct or circumstantial evidence and any reasonable inference drawn therefrom.

3. ID.; ID.; ID.; PETITIONERS WERE FOUND TO HAVE BEEN IN CONSTRUCTIVE POSSESSION OF THE TIMBER WITHOUT THE REQUISITE LEGAL DOCUMENTS.— We find the Idanan, Del Barrio, and Plopenio were, at the very least, in constructive possession of the timber without the requisite legal documents. Petitioners were found in the truck loaded with 29 pieces of narra lumber. Idanan admitted to driving the truck while Del Barrio and Plopenio accompanied Idanan. They claimed to have traveled for almost three hours just to retrieve the cellular phone of Idanan's father from a certain Jojo Cabrera (Cabrera) in *Barangay* Poblacion, Panganiban, Catanduanes. When pressed by the prosecutor if they managed to get the cellphone, they replied that they failed to locate Cabrera. The three accused did not protest despite seeing that the policemen allegedly load lumber into the truck. Neither did they complain when they were subsequently arrested. Idanan was the driver. It is presumed that he exercised full control of the vehicle that he is driving and that he knew what its load was. Having offered no plausible excuse, petitioners failed to

prove to our satisfaction that they did not have the *animus possidendi* of the narra lumber. Mere possession of timber or other forest products without the proper legal documents, even absent malice or criminal intent, is illegal. It would make no difference at all whether the ownership of the lumber pertains to only one accused.

4. ID.; ID.; ID.; ILLEGAL POSSESSION OF TIMBER IS PUNISHABLE AS QUALIFIED THEFT UNDER THE REVISED PENAL CODE; THE RESULTING PENALTY IS *RECLUSION PERPETUA* BUT IN VIEW OF THE COURT'S COMPASSION FOR THE ACCUSED, IT RECOMMENDS THE GRANT OF EXECUTIVE CLEMENCY.— Violation of Section 68 of PD 705, as amended, is punishable as Qualified Theft under Article 309 and 310 of the Revised Penal Code. x x x Since the amount exceeds ₱22,000.00, the penalty of *prision mayor* in its minimum and medium periods should be imposed in its maximum period. To determine the additional years of imprisonment prescribed in Article 309 (1), the amount of ₱22,000.00 should be deducted from ₱275,884.80, thus, leaving the amount of ₱253,884.80. The net amount should then be divided by ₱10,000.00, disregarding any amount below ₱10,000.00. The result is the incremental penalty of twenty-five (25) years which must then be added to the basic penalty of the maximum period of *prision mayor* minimum and medium periods. The penalty of *prision mayor* in its minimum and medium periods has a range of six years (6) and one (1) day to ten (10) years. Its maximum period is eight (8) years, eight (8) months and one (1) day to ten (10) years, and the incremental penalty is 25 years. Had appellant committed simple theft, the penalty should have been twenty years of reclusion temporal. In qualified theft, the penalty is two degrees higher. Thus the penalty of *reclusion perpetua* should be imposed. x x x This penalty will be suffered by the driver and the helpers. The operator of the illegal logging business has not been apprehended. While we sympathize with the plight of petitioners who were merely following orders and were consequently caught is possession of the lumber, we must still apply the law in full force. *Dura lex sed lex.* But considering the facts about petitioners' participation in the crime, and guided by jurisprudence on instances when the facts of the crime elicited the Court's compassion for the accused, we recommend executive clemency.

APPEARANCES OF COUNSEL

Sarmiento Tamayo and Bulawan Law Offices for petitioners.
Office of the Solicitor General for respondent.

D E C I S I O N

PEREZ, *J.*:

Before us is a Decision[1] of the Court of Appeals dated 29 March 2010 in CA-G.R. CR No. 30729 affirming the Decision[2] dated 22 February 2007 of the Regional Trial Court (RTC), Branch 42 of Virac, Catanduanes finding petitioners Ernie Idanan (Idanan), Nanly Del Barrio (Del Barrio) and Marlon Plopenio (Plopenio), together with Roberto Vargas (Vargas) and Elmer Tulod (Tulod) guilty beyond reasonable doubt of illegal possession of lumber under Section 68 of Presidential Decree (PD) No. 705, as amended.

The petitioners were charged in the following Information:

> That on or about the 16th day of October 2005 in the afternoon at [B]arangay San Miguel, [M]unicipality of Panganiban, [P]rovince of Catanduanes, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused[,] with intent to gain, conspiring, confederating and helping one another did there and then (sic) willfully, unlawfully and feloniously possess, and in control of twenty nine (29) pieces of narra lumber with gross volume of 716.48 board feet or 1.69 cubic meter valued at Php275,844.80, Philippine currency loaded in a truck bearing Plate No. UMU-424 without necessary permit, license or documents required under the existing laws, rules and regulations of the DENR to the damage and prejudice of the Republic of the Philippines in the amount of Php275,844.80.[3]

During trial, the prosecution presented the police officers who apprehended petitioners. Their version goes:

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[1] *Rollo*, pp. 24-42; Penned by Associate Justice Magdangal M. De Leon with Associate Justices Romeo F. Barza and Stephen C. Cruz concurring.

[2] Records, pp. 225-235; Presided by Judge Genie G. Gapas-Agbada.

[3] *Id.* at 11.

In the morning of 16 October 2005, the PNP headquarters of the Municipality of Panganiban, Province of Catanduanes received an information that a group of illegal loggers will be transporting narra flitches[4] along Kilometer 11, 12 or 13 in Panganiban. At around 3:30 p.m., the OIC Chief of Police P/Inspector Chito Oyardo and five (5) other policemen were patrolling Kilometer 12 in a motorbike and a compactor when they spotted an idling Isuzu Elf truck loaded with lumber. The policemen approached the truck. They found out that Idanan was the driver while Del Barrio and Plopenio were the passengers. Vargas and Tulod were seen hauling lumber to be loaded into the truck. Petitioners were not able to produce any document authorizing them to transport lumber so they were placed under arrest. PO1 Ferdinand Bobiles took photographs of the truck, the seized lumber and the accused. Thereafter, petitioners were first brought to the police station before they were brought to Camp Camacho in Virac, Catanduanes.[5]

The defense, on the other hand, denied the charge. Idanan, Del Barrio and Plopenio testified that while they were traversing Kilometer 12, they were flagged down by policemen. One of them borrowed the truck. Idanan, the driver of the truck, obliged. One of the policemen drove the truck for about 100 meters while petitioners trailed the truck by foot. They then saw the policemen load narra flitches into the truck. Not one of them questioned the police out of fear. To petitioners' surprise, they were then arrested and ordered to follow the policemen to the police station.[6] Vargas and Tulod claimed that they were going to Caramoran and they hitched a ride with Idanan.

The defense presented a Certification signed by *Punong Barangay* Elias D. Obierna (Elias) and *Barangay Tanod* Benito P. Obierna (Benito) certifying that the police intercepted the truck driven by Idanan; that it was found empty; and that the

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[4] A flitch is a slab of timber cut from a tree trunk while a lumber is a processed log or timber. For purposes of discussion, flitches and lumber shall be used interchangeably.

[5] TSN, 16 May 2006, pp. 17-26.

[6] TSN, 18 July 2006, pp. 6-9.

police officers asked the driver of the truck to deliver the logs to the Municipal Office/Police Office Station of Panganiban, Catanduanes.[7]

The Obiernas initially denied that they executed the Certification. Elias later on clarified that while he signed the Certification, he was not present at the time of the apprehension and had no personal knowledge that the truck was empty. Elias claimed that Santiago Idanan forced him to sign the Certification.[8] Benito was present during the incident. He allegedly saw firewood on two trucks and heard the policemen instructing a certain son of Agoy to load the lumbers into the truck.[9]

On 22 February 2007, the RTC found petitioners guilty beyond reasonable doubt of illegal possession of lumber. The dispositive portion reads:

> WHEREFORE, the prosecution having proved the guilt of all the accused beyond reasonable doubt, the Court hereby sentences accused Ernie Idanan, Nanly del Barrio, Marlon Plopenio, Roberto Vargas and Elmer Tulod to suffer the imprisonment ranging from ten (10) years and one (1) day of *prision mayor*, as minimum, to sixteen (16) years, five (5) months and eleven (11) days of *reclusion temporal*, as maximum. The 29 pieces of narra lumber subject of this case are forfeited in favor of the government.[10]

The trial court relied on the presumption of regularity in the performance of official duty in giving credence to the testimonies of the police officers. Moreover, there was no evidence manifesting ill motive on the part of the police officers to falsely testify against the accused. The trial court held that possession of 29 pieces of narra lumber with gross volume of 1.69 cubic meters and estimated value of ₱275,844.80 without any documentation clearly constitutes an offense punishable under PD 705, as amended.

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[7] Records, pp. 124 and 229.

[8] TSN, 5 October 2006, p. 25.

[9] *Id.* at 5 and 8.

[10] Records, pp. 234-235.

Tulod and Vargas are at large.[11]

On 29 March 2010, the Court of Appeals rendered its decision affirming petitioner's conviction.

Petitioners maintain that the prosecution failed to prove beyond reasonable doubt all the elements of the offense charged. Relying on an illegal possession of firearm case where the Court held that to support a conviction, there must be possession coupled with intent to possess, petitioners assert that their intent to possess the subject narra lumber must be proven beyond reasonable doubt. In the case of Tulod and Vargas, they claim that they were merely hired to load the lumber on the truck. On the part of Idanan, he admitted that the truck was owned by his father. Thus, their possession over the lumber is considered temporary, incidental, casual and harmless. Del Barrio and Plopenio meanwhile were merely present at the crime scene. Petitioners note the testimony of the Chief of Police is far from being candid and straightforward when he had to be coached by the prosecutor on matters relative to the arrest of the accused. Petitioners accuse the police officers of planting evidence against them because since the assumption of the Chief of Police to his post, he had never apprehended anybody for illegal possession of lumber. Petitioners assert that their testimonies are candid and spontaneous. They even cite the testimonies of the *barangay* officials as corroborative of their defense that the truck confiscated by the police officers had no narra lumber on it.

In their Comment,[12] the Office of the Solicitor General (OSG) noted that petitioners were apprehended by the police officers *in flagrante delicto* as they were transporting 29 pieces of narra lumber along Kilometer 12 in Barangay San Miguel, Panganiban, Catanduanes without the required documentation. The OSG added that mere possession of timber or other forest products without the accompanying legal documents consummates the crime. Finally, the OSG defended the credibility of the prosecution witnesses and assailed the defense of frame-up as weak.

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[11] *Id.* at 252.

[12] *Rollo*, pp. 58-77.

At the outset, we find the testimonies of the prosecution witnesses credible. Evidence to be believed must not only proceed from the mouth of a credible witness but it must be credible in itself, such as the common experience and observation of mankind can approve as probable under the circumstances.[13] Petitioners' statements that they did not complain or put up any resistance when they were arrested despite their innocence is contrary to human nature and experience. Petitioners should have at least protested if they believed that they were not committing any crime. Moreover, the allegation of "planted evidence" is unsubstantiated. There is no proof that that the police had the ill-motive to falsely accuse and testify against petitioners, aside from the unsubstantiated and far-fetched allegation that the police wanted to impress their superiors. The presumption of regularity accorded to police officers is unrebutted.

Section 68[14] of PD 705, otherwise known as the Revised Forestry Code of the Philippines, provides:

> Sect. 68. *Cutting, gathering and/or collecting timber or other products without license.* — Any person who shall cut, gather, collect, or remove timber or other forest products from any forest land, or timber from alienable and disposable public lands, or from private lands, without any authority under a license agreement, lease, license or permit, shall be guilty of qualified theft as defined and punished under Articles 309 and 310 of the Revised Penal Code; Provided, That in the case of partnership, association or corporation, the officers who ordered the cutting, gathering or collecting shall be liable, and if such officers are aliens, they shall, in addition to the penalty, be deported without further proceedings on the part of the Commission on Immigration and Deportation.
>
> The Court shall further order the confiscation in favor of the government of the timber or forest products to cut, gathered, collected or removed, and the machinery, equipment, implements and tools used therein, and the forfeiture of his improvements in the area.
>
> The same penalty plus cancellation of his license agreement, lease, license or permit and perpetual disqualification from acquiring any such

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[13] *People v. Capuno*, 655 Phil. 226, 224 (2011).

[14] Re-numbered as Section 77 under Republic Act No. 7161, Section 7.

privilege shall be imposed upon any licensee, lessee, or permittee who cuts timber from the licensed or leased area of another, without prejudice to whatever civil action the latter may bring against the offender.

Section 68 penalizes three categories of acts: (1) the cutting, gathering, collecting, or removing of timber or other forest products from any forest land without any authority; (2) the cutting, gathering, collecting, or removing of timber from alienable or disposable public land, or from private land without any authority; and (3) the possession of timber or other forest products without the legal documents as required under existing forest laws and regulations.[15]

Petitioners were charged under the third category, *i.e.*, of possessing and in control of 29 pieces of narra lumber without the legal requirements as required under existing forest laws and regulations.

Illegal possession of timber is an offense covered by special law and is *malum prohibitum*. Thus, criminal intent is not an essential element of the offense. However, the prosecution must prove intent to possess or *animus possidendi*.[16]

Possession, under the law, includes not only actual possession, but also constructive possession. Actual possession exists when the object of the crime is in the immediate physical control of the accused. On the other hand, constructive possession exists when the object of the crime is under the dominion and control of the accused or when he has the right to exercise dominion and control over the place where it is found.[17]

Thus, conviction need not be predicated upon exclusive possession, and a showing of non-exclusive possession would not exonerate the accused. Such fact of possession may be proved by direct or circumstantial evidence and any reasonable inference drawn therefrom.[18]

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[15] *Merida v. People*, 577 Phil. 243, 253 (2008).

[16] *Villarin v. People*, 672 Phil. 155, 174 (2011).

[17] *Id.*

[18] *People v. Macabre*, 613 Phil. 474, 483 (2009) citing *People v. Tira*, 474 Phil. 152, 174 (2004).

We find that Idanan, Del Barrio, and Plopenio were, at the very least, in constructive possession of the timber without the requisite legal documents. Petitioners were found in the truck loaded with 29 pieces of narra lumber. Idanan admitted to driving the truck while Del Barrio and Plopenio accompanied Idanan. They claimed to have traveled for almost three hours just to retrieve the cellular phone of Idanan's father from a certain Jojo Cabrera (Cabrera) in *Barangay* Poblacion, Panganiban, Catanduanes. When pressed by the prosecutor if they managed to get the cellphone, they replied that they failed to locate Cabrera. The three accused did not protest despite seeing that the policemen allegedly load lumber into the truck. Neither did they complain when they were subsequently arrested. Idanan was the driver. It is presumed that he exercised full control of the vehicle that he is driving and that he knew what its load was. Having offered no plausible excuse, petitioners failed to prove to our satisfaction that they did not have the *animus possidendi* of the narra lumber.

Mere possession of timber or other forest products without the proper legal documents, even absent malice or criminal intent, is illegal. It would make no difference at all whether the ownership of the lumber pertains to only one accused.[19]

The possession of lumber was made without any license or permit issued by any competent authority.

Violation of Section 68 of PD 705, as amended, is punishable as Qualified Theft under Article 309 and 310 of the Revised Penal Code[20] thus:

Art. 309. *Penalties*. — Any person guilty of theft shall be punished by:

1. The penalty of *prision mayor* in its minimum and medium periods, if the value of the thing stolen is more than 12,000 pesos but does not exceed 22,000 pesos; but if the value of the thing stolen exceeds the latter amount, the penalty shall be the maximum period of the one prescribed in this paragraph, and one year for each additional

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[19] *Monge v. People*, 571 Phil. 472, 479 (2008).

[20] *Taopa v. People*, 592 Phil. 341, 345-346 (2008).

ten thousand pesos, but the total of the penalty which may be imposed shall not exceed twenty years. In such cases, and in connection with the accessory penalties which may be imposed and for the purpose of the other provisions of this Code, the penalty shall be termed *prision mayor* or *reclusion temporal*, as the case may be.

2. The penalty of *prision correccional* in its medium and maximum periods, if the value of the thing stolen is more than 6,000 pesos but does not exceed 12,000 pesos.

3. The penalty of *prision correccional* in its minimum and medium periods, if the value of the property stolen is more than 200 pesos but does not exceed 6,000 pesos.

4. *Arresto mayor* in its medium period to *prision correccional* in its minimum period, if the value of the property stolen is over 50 pesos but does not exceed 200 pesos.

5. *Arresto mayor* to its full extent, if such value is over 5 pesos but does not exceed 50 pesos.

6. *Arresto mayor* in its minimum and medium periods, if such value does not exceed 5 pesos.

7. *Arresto menor* or a fine not exceeding 200 pesos, if the theft is committed under the circumstances enumerated in paragraph 3 of the next preceding article and the value of the thing stolen does not exceed 5 pesos. If such value exceeds said amount, the provisions of any of the five preceding subdivisions shall be made applicable.

8. *Arresto menor* in its minimum period or a fine not exceeding 50 pesos, when the value of the thing stolen is not over 5 pesos, and the offender shall have acted under the impulse of hunger, poverty, or the difficulty of earning a livelihood for the support of himself or his family.

Art. 310. *Qualified theft.* — The crime of qualified theft shall be punished by the penalties next higher by two degrees than those respectively specified in the next preceding article x x x.

The Information alleged that the 29 pieces of lumber measuring 716.48 board feet were valued at ₱275,884.80. Said amount was evidenced by the Statement of Narra lumber materials[21] which was presented in evidence and testified to by Basil Cesar

[21] Records, p. 3.

Camba, the person who signed the Statement. Since the amount exceeds ₱22,000.00, the penalty of *prision mayor* in its minimum and medium periods should be imposed in its maximum period. To determine the additional years of imprisonment prescribed in Article 309 (1), the amount of ₱22,000.00 should be deducted from ₱275,884.80, thus, leaving the amount of ₱253,884.80. The net amount should then be divided by ₱10,000.00, disregarding any amount below ₱10,000.00. The result is the incremental penalty of twenty-five (25) years which must then be added to the basic penalty of the maximum period of *prision mayor* minimum and medium periods. The penalty of *prision mayor* in its minimum and medium periods has a range of six years (6) and one (1) day to ten (10) years. Its maximum period is eight (8) years, eight (8) months and one (1) day to ten (10) years, and the incremental penalty is 25 years. Had appellant committed simple theft, the penalty should have been twenty years of *reclusion temporal*. In qualified theft, the penalty is two degrees higher. Thus the penalty of *reclusion perpetua* should be imposed.[22]

Pursuant to Article 5[23] of the Revised Penal Code, we recommend executive clemency. In *People v. Tomotorgo,*[24] the Court recommended executive clemency to appellant taking into consideration the evidence that he only intended to maltreat his spouse resulting in her death, his manifest repentant attitude

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[22] *People v. Cristobal*, 662 Phil. 164, 187-188 (2011); *People v. Tanchanco*, 686 Phil. 119, 136-137 (2012).

[23] ARTICLE 5. Duty of the Court in Connection with Acts Which Should Be Repressed but Which are Not Covered by the Law, and in Cases of Excessive Penalties. — Whenever a court has knowledge of any act which it may deem proper to repress and which is not punishable by law, it shall render the proper decision, and shall report to the Chief Executive, through the Department of Justice, the reasons which induce the court to believe that said act should be made the subject of penal legislation.

In the same way the court shall submit to the Chief Executive, through the Department of Justice, such statement as may be deemed proper, without suspending the execution of the sentence, when a strict enforcement of the provisions of this Code would result in the imposition of a clearly excessive penalty, taking into consideration the degree of malice and the injury caused by the offense.

[24] 220 Phil. 617, 624 (1985).

and remorse for his act. In *People v. Abano*,[25] appellant was convicted of parricide and murder but the court recommended executive clemency because the Court considered her emotional suffering in the hands of her philandering husband. In *Mendoza v. People*,[26] petitioner was convicted for failure to remit the contributions of his employer. Petitioner had managed to settle his obligation but he was not eligible for condonation under Republic Act No. 9003. While it was observed that the penalty imposed on petitioner is harsh, the Court had to apply the law to its full extent. Thus, the Court recommended executive clemency.

In this case, the resulting penalty is *reclusion perpetua*. This penalty will be suffered by the driver and the helpers. The operator of the illegal logging business has not been apprehended. While we sympathize with the plight of petitioners who were merely following orders and were consequently caught in possession of the lumber, we must still apply the law in full force. *Dura lex sed lex*. But considering the facts about petitioners' participation in the crime, and guided by jurisprudence on instances when the facts of the crime elicited the Court's compassion for the accused, we recommend executive clemency.

WHEREFORE, the petition is hereby **DENIED**. The 29 March 2010 Decision of the Court of Appeals in CA-G.R. CR No. 30729 is **AFFIRMED with MODIFICATION**. Petitioners ERNIE IDANAN, NANLY DEL BARRIO and MARLON PLOPENIO are hereby found GUILTY beyond reasonable doubt for violation of Section 68 of Presidential Decree No. 705, as amended, and sentenced to suffer the penalty of *reclusion perpetua*. Pursuant to Article 5 of the Revised Penal Code, the Court shall **TRANSMIT** the case to the Chief Executive, through the Department of Justice, and **RECOMMENDS** the grant of executive clemency to petitioners.

SO ORDERED.

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

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[25] 229 Phil. 551 (1986).

[26] 675 Phil. 759 (2011).

FIRST DIVISION

[G.R. Nos. 201856-57. March 16, 2016]

LAND BANK OF THE PHILIPPINES, *petitioner, vs.* **CONCEPCION PADILLA-MUNSAYAC and BONIFACIO MUNSAYAC,** *respondents.*

[G.R. No. 201871. March 16, 2016]

DEPARTMENT OF AGRARIAN REFORM REP. BY SEC. NASSER C. PANGANDAMAN (NOW VIRGILIO R. DELOS REYES), *petitioner, vs.* **CONCEPCION PADILLA-MUNSAYAC and BONIFACIO MUNSAYAC,** *respondents.*

SYLLABUS

1. **LABOR AND SOCIAL LEGISLATION; AGRARIAN LAWS; REPUBLIC ACT (RA) NO. 6657, AS AMENDED BY REPUBLIC ACT NO. 9700, APPLIES IN CASE AT BAR.—** It is clear from the above that R.A. 6657 is the applicable law when the acquisition process under P.D. 27 is still incomplete and is overtaken by the former's enactment. Petitioners, therefore, cannot insist on applying P.D. 27; otherwise, Section 75 of R.A. 6657 would be rendered inutile. This Court is mindful of a new agrarian reform law, R.A. 9700, entitled "An Act Strengthening the Comprehensive Agrarian Reform Program (CARP), Extending the Acquisition and Distribution of all Agricultural Lands, Instituting Necessary Reforms, Amending for the Purpose Certain Provisions of Republic Act No. 6657, Otherwise Known as the Comprehensive Agrarian Reform Law of 1988, as amended, and Appropriating Funds Thereof." This law, which further amended R.A. 6657, was passed by the Congress on 01 July 2009. Notwithstanding this new law, R.A. 6657 is still applicable.

2. **ID.; ID.; ID.; DETERMINATION OF JUST COMPENSATION SHALL BE IN ACCORDANCE WITH THE GUIDELINES PROVIDED IN SECTION 17 OF RA 6657; LEGAL INTEREST ON THE JUST COMPENSATION IS IMPOSED IN VIEW OF DELAY IN PAYMENT.—** The RTC, as affirmed

by the CA, arrived at the just compensation for respondents' property after taking into consideration the Commissioners' Report on the nature of the subject landholding, its use, average gross production, and the prevailing value of the lands in the vicinity. This Court is convinced that the RTC correctly determined the amount of just compensation for respondents in accordance with, and guided by, R.A. 6657 and existing jurisprudence. x x x It must also be noted that the date of the taking of the subject lot from respondents was 21 October 1972 and the landowners are still unpaid up to this date. For years, respondents have been deprived of the use and enjoyment of their landholding without payment of just compensation. Although the purpose of P.D. 27 is the emancipation of tenants from the bondage of the soil and the transfer to them of the ownership of the land they till, this noble purpose should not trample on the right of the landowners to be fairly and justly compensated for the value of their property. Considering these circumstances, we grant legal interest on the just compensation for respondents where there is a delay in payment, since the landowners' just compensation was considered an effective forbearance on the part of the State.

3. **REMEDIAL LAW; APPEALS; RULE 45 PETITION; LIMITED TO QUESTIONS OF LAW; FACTUAL FINDINGS OF THE TRIAL COURT AS TO THE VALUE OF EXPROPRIATED PROPERTY IS NOT A PROPER SUBJECT OF A RULE 45 PETITION.—** [P]etitioner LBP is praying for the resolution of a question of fact, which is improper in the instant Rule 45 Petition. It is settled that a review on *certiorari* under a Rule 45 petition is generally limited to the review of legal issues; the Court only resolves questions of law that have been properly raised by the parties during the appeal and in the petition. It is not the function of this Court to analyze or weigh all over again evidence already considered in the proceedings below, its jurisdiction being limited to reviewing only errors of law that may have been committed by the lower court. The resolution of factual issues is the function of the lower courts, whose findings on these matters are received with respect. The RTC's factual findings were supported by the report of the independent Panel of Commissioners and were duly affirmed by the CA. Absent any allegation of irregularity or grave abuse of discretion, the factual findings of the lower courts, will no longer be disturbed. Hence, the judicial determination of the value of

the expropriated portion mounting to ₱120,000 per hectare is affirmed.

APPEARANCES OF COUNSEL

LBP Legal Services Group and *CARP Legal Services Department* for petitioner Land Bank of the Philippines.

Ronald Lee C. Hortizuela for respondents.

D E C I S I O N

SERENO, *C.J.*:

Before this Court are consolidated Petitions for Review on *Certiorari* under Rule 45 of the Rules of Court, assailing the Decision[1] dated 14 September 2011 issued by the Ninth Division of the Court of Appeals (CA) in CA-G.R. SP No. 109778 and CA-G.R. SP No. 109992. The CA affirmed therein the Decision[2] and Order[3] of the Regional Trial Court (RTC) Branch 33, Guimba, Nueva Ecija.

FACTUAL ANTECEDENTS

The Complaint was commenced principally to determine and fix just compensation for the parcels of land, subject of this case.

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

Benito Chioco and Constancio Padilla were the registered owners of Lot 1460, which had an area of 53,342 square meters, and Lot 1464, with an area of 28,222 square meters. The lots, which were situated in *Barangay* Parista, Lupao, Nueva Ecija, were covered by Transfer Certificate of Title (TCT) No. 15365.[4]

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[1] *Rollo* (G.R. Nos. 201856-57), pp. 53-71. Penned by Associate Justice Danton Q. Bueser, with Associate Justices Hakim S. Abdulwahid and Ricardo R. Rosario concurring.

[2] *Id.* at 200-202. Penned by Presiding Judge Ismael P. Casabar.

[3] *Id.* at 203.

[4] *Id.* at 93.

The subject properties were transferred to Concepcion Padilla-Munsayac and Jose Padilla by way of succession, as they were the children and only compulsory heirs of Benito Chioco and Constancio Padilla.[5] Later, by virtue of the Deed of Extrajudicial Partition and Settlement of Properties with Waiver of Rights executed by Jose, his rights over the properties were waived in favor of Concepcion.[6]

Pursuant to the government's agrarian reform program, the subject properties owned by respondents to the extent of 8.0782 hectares (of the total area of 8.1563) were placed under Operation Land Transfer in accordance with Presidential Decree (P.D.) No. 27/Executive Order (E.O.) No. 228 on 21 October 1972.[7]

In accordance with the formula provided by P.D. 27 and E.O. 228, the Department of Agrarian Reform (DAR) initially fixed the just compensation for the properties at ₱4,294.50 per hectare. This amount was based on the fact that the value of the landholding was the average gross production (AGP) per hectare of 49.08 cavans of palay (as determined by the *Barangay* Committee on Land Production) multiplied by 2.5; and the product was further multiplied by ₱35, which was the government support price (GSP) for one cavan of 50 kilos of palay on 21 October 1972.[8] In equation form: LV (Land Value) = 2.5 x AGP x GSP.[9]

Rejecting the DAR's valuation, respondents filed with the court *a quo* a Complaint for the determination of just compensation dated 16 February 1999, docketed as Case No. 1030-G and entitled "*Concepcion Padilla Munsayac, et al., Plaintiffs, vs. The Department of Agrarian Reform, et al., Defendants*."[10]

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[5] *Id.*

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

[7] *Id.* at 94.

[8] *Id.*

[9] *Id.*

[10] *Id.* at 95.

Respondents prayed for the appointment of commissioners to investigate and ascertain facts relative to the dispute.[11] The relevant part of the commissioner's report reads:

> [T]he topography of the land is generally flat, devoted to rice production and accessible to all types of land transportation. It is rainfed, however, the other landholdings being cultivated by the farmer beneficiaries have deep wells which is the source of water. There is only one (1) cropping season. Adjacent lots to the landholdings of the petitioners were sold at ₱180,000.00 per hectare and it can be mortgaged at ₱80,000.00 per hectare. The average harvest per hectare is ninety (90) cavans and there are no trees planted thereon. There were seasons that tenant-beneficiaries planted vegetables but the produce was solely for home consumption. A two-hectare portion of the subject land was sold for ₱300,000.00. The commissioners fixed the just compensation of petitioners' land at ₱120,000.00 per hectare.[12]

In their Complaint, respondents alleged that petitioners did not pay either just compensation for the property previously awarded to beneficiaries or the rentals from 1972 to the present.[13] It further averred that petitioners had valued the property in question at ₱4,200 per hectare, which was not the just compensation contemplated by law based on the fair market value of the property, which was ₱120,000 to ₱150,000 per hectare.[14]

Petitioners, in their Answer, argued that the valuation of the DAR was arrived at in accordance with P.D. 27 and/or E.O. 228, which by itself already provided the formula for the cost of the land, which was also the compensation for the landowner.[15]

Adopting the recommendation of the commissioners, the court *a quo* issued its Decision[16] dated 27 May 2009, ruling that the

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[11] *Rollo* (G.R. No. 201871), p. 11.

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

[13] *Supra* note 1, at 218.

[14] *Id.*

[15] *Id.* at 227.

[16] *Id.* at 200-202.

just compensation payable to respondents was ₱978,756; and that the applicable law for the determination of just compensation was R.A. 6657, as P.D. 27 and E.O. 228 only had suppletory application.[17] The *fallo* of the RTC Decision reads:

> **WHEREFORE**, judgment is hereby rendered:
>
> 1. Fixing the just compensation for plaintiffs' 8.1563 hectares land at ₱120,000.00 per hectare or a total of ₱978,756.00;
>
> 2. Ordering the defendant Land Bank of the Philippines to pay the above amount to the plaintiff[s] in cash and bonds in the manner provided by law.
>
> SO ORDERED.[18]

Petitioners' bid for a reconsideration of the adverse Decision failed, pursuant to the court *a quo*'s Order[19] dated 7 July 2009.

Petitioners LBP and DAR filed their appeal before the CA, which consolidated[20] the two cases docketed as CA-G.R. SP No. 109992 and CA-G.R. SP No. 109778. In its Decision[21] dated 14 September 2011, the CA denied the appeal for lack of merit and affirmed the RTC Decision.

Hence, these petitions before this Court.

On 18 July 2012, this Court resolved to consolidate G.R. Nos. 201856-57 and 201871, as both cases assailed the same CA Decisions and Resolution.[22]

Ultimately, this Court is called upon to determine the issue of whether or not the CA committed a serious error in law in upholding the RTC ruling.

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[17] *Id.* at 97.

[18] *Id.* at 202.

[19] *Id.* at 203.

[20] Per Resolution dated 29 October 2009, both Petitions for Review filed by petitioners were consolidated.

[21] *Supra* note 1, at 53-71.

[22] *Id.* at 193-A.

RULING OF THE COURT

The Petitions are denied.

R.A. 6657, as amended by R.A. 9700, is the applicable law in this case.

When the agrarian reform process under P.D. 27 remains incomplete and is overtaken by R.A. 6657, the rule is that just compensation for the landowner — if it has yet to be settled — should be determined and the process concluded under R.A. 6657, with P.D. 27 and E.O. 228 applying only suppletorily.[23]

Land Bank of the Philippines v. Natividad[24] is instructive:

> Land Bank's contention that the property was acquired for purposes of agrarian reform on October 21, 1972, the time of the effectivity of P.D. 27, ergo just compensation should be based on the value of the property as of that time and not at the time of possession in 1993, is likewise erroneous. In *Office of the President, Malacañang, Manila v. Court of Appeals*, we ruled that the seizure of the landholding did not take place on the date of effectivity of P.D. 27 but would take effect [upon] payment of just compensation.
>
> Under the factual circumstances of this case, **the agrarian reform process is still incomplete as the just compensation to be paid private respondents has yet to be settled. Considering the passage of R.A. 6657 before the completion of this process, the just compensation should be determined and the process concluded under the said law. Indeed, R.A. 6657 is the applicable law, with P.D. 27 and EO 228 having only suppletory effect, conformably with our ruling in *Paris v. Alfeche*.**
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> x x x x x x x x x
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> It would certainly be inequitable to determine just compensation based on the guideline provided by P.D. 27 and EO 228 considering the DAR's failure to determine just compensation for a considerable length of time. **That just compensation should be determined in**

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[23] *LBP v. Lajom*, G.R. Nos. 184982 & 185048, 20 August 2014; *LBP v. Santiago, Jr.*, G.R. No. 182209, 03 October 2012, 682 SCRA 278; citations omitted.

[24] *LBP v. Natividad*, 497 Phil. 738 (2005).

accordance with R.A. 6657, and not P.D. 27 or EO 228, is especially imperative considering that just compensation should be the full and fair equivalent of the property taken from its owner by the expropriator, the equivalent being real, substantial, full and ample.[25] (Emphases supplied)

The Court applied the ruling in *Land Bank of the Philippines v. Natividad* to its ruling in *Meneses v. Secretary of Agrarian Reform*:[26]

As previously noted, the property was expropriated under the Operation Land Transfer scheme of P.D. No. 27 way back in 1972. More than 30 years have passed and petitioners are yet to benefit from it, while the farmer-beneficiaries have already been harvesting its produce for the longest time. **Events have rendered the applicability of P.D. No. 27 inequitable. Thus, the provisions of R.A. No. 6657 should apply in this case.**[27] (Emphasis supplied)

Still, in *Lubrica v. Land Bank of the Philippines*,[28] the Court also adhered to *Land Bank of the Philippines v. Natividad*:

The Natividad case reiterated the Court's ruling in *Office of the President v. Court of Appeals* [413 Phil. 711] that the expropriation of the landholding did not take place on the effectivity of P.D. No. 27 on October 21, 1972 but seizure would take effect on the payment of just compensation judicially determined.

Likewise, in the recent case of *Heirs of Francisco R. Tantoco, Sr. v. Court of Appeal*s [489 SCRA 590], we held that expropriation of landholdings covered by R.A. No. 6657 takes place, not on the effectivity of the Act on June 15, 1988, but on the payment of just compensation.[29]

This ruling was reiterated in a recent case, *Holy Trinity Realty & Development Corp. v. Dela Cruz*:[30]

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[25] *Id.* at 739-740, 746-747.

[26] *Meneses v. Secretary of Agrarian Reform*, 535 Phil. 819-834 (2006).

[27] *Id.* at 823, 833.

[28] *Lubrica v. Land Bank of the Philippines,* 537 Phil. 571-584 (2006).

[29] *Id.* at 580.

[30] *Holy Trinity Realty & Development Corp. v. Dela Cruz,* G.R. No. 200454, 22 October 2014.

The terse statement by the OIC-Regional Director that the Dakila property would still be subject to Republic Act No. 6657 should Presidential Decree No. 27 be inapplicable did not meet the requirements under Republic Act No. 6657. Section 7 of Republic Act No. 6657 identified rice and corn lands subject to Presidential Decree No. 27 for priority distribution in the first phase and implementation of the CARP. Insofar as the interplay of these two laws was concerned, **the Court has said that during the effectivity of the Republic Act No. 6657 and in the event of incomplete acquisition under Presidential Decree No. 27, the former should apply, with the provisions of the latter and Executive Order No. 228 having only suppletory effect.**[31] (Citations omitted; emphasis supplied)

Indeed, R.A. 6657,[32] which took effect on 15 June 1988, was enacted to promote social justice for landless farmers and provide "a more equitable distribution and ownership of land with due regard for the rights of landowners to just compensation and to the ecological needs of the nation."[33] Section 4 thereof provides that the Comprehensive Agrarian Reform Law shall cover all public and private agricultural lands, including other lands of public domain suitable for agriculture. Pertinent to this provision is Section 75 of R.A. 6657, which reads:

SECTION 75. *Suppletory Application of Existing Legislation.* — The provisions of Republic Act No. 3844 as amended, Presidential Decree Nos. 27 and 266 as amended, Executive Order Nos. 228 and 229, both Series of 1987; and other laws not inconsistent with this Act shall have suppletory effect.

It is clear from the above that R.A. 6657 is the applicable law when the acquisition process under P.D. 27 is still incomplete and is overtaken by the former's enactment. Petitioners, therefore, cannot insist on applying P.D. 27; otherwise, Section 75 of R.A. 6657 would be rendered inutile.

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[31] *Id.*

[32] AN ACT INSTITUTING A COMPREHENSIVE AGRARIAN REFORM PROGRAM TO PROMOTE SOCIAL JUSTICE AND INDUSTRIALIZATION, PROVIDING THE MECHANISM FOR ITS IMPLEMENTATION, AND FOR OTHER PURPOSES.

[33] Republic Act No. 6657 (1988), Sec. 2.

This Court is mindful of a new agrarian reform law, R.A. 9700, entitled "An Act Strengthening the Comprehensive Agrarian Reform Program (CARP), Extending the Acquisition and Distribution of all Agricultural Lands, Instituting Necessary Reforms, Amending for the Purpose Certain Provisions of Republic Act No. 6657, Otherwise Known as the Comprehensive Agrarian Reform Law of 1988, as amended, and Appropriating Funds Therefor." This law, which further amended R.A. 6657, was passed by the Congress on 01 July 2009.[34] Notwithstanding this new law, R.A. 6657 is still applicable. The later is supported by R.A. 9700, Section 5 of which provides:

Section 5. Section 7 of Republic Act No. 6657, as amended, is hereby further amended to read as follows:

SEC. 7. Priorities. — The DAR, in coordination with the Presidential Agrarian Reform Council (PARC) shall plan and program the final acquisition and distribution of all remaining unacquired and undistributed agricultural lands from the effectivity of this Act until June 30, 2014. Lands shall be acquired and distributed as follows:

Phase One: During the five (5)-year extension period hereafter all remaining lands above fifty (50) hectares shall be covered for purposes of agrarian reform upon the effectivity of this Act. All private agricultural lands of landowners with aggregate landholdings in excess of fifty (50) hectares which have already been subjected to a notice of coverage issued on or before December 10, 2008; **rice and corn lands under Presidential Decree No. 27;** all idle or abandoned lands; all private lands voluntarily offered by the owners for agrarian reform: Provided, That with respect to voluntary land transfer, only those submitted by June 30, 2009 shall be allowed: Provided, further, That after June 30, 2009, the modes of acquisition shall be limited to voluntary offer to sell and compulsory acquisition: *Provided, furthermore,* **That all previously acquired lands wherein valuation is subject to challenge by landowners shall be completed and finally resolved pursuant to Section 17 of Republic Act No. 6657, as amended** x x x.[35] (Emphases supplied)

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[34] **Section 34.** ***Effectivity Clause.*** — This Act shall take effect on 01 July 2009 and it shall be published in at least two (2) newspapers of general circulation.

[35] Republic Act No. 9700, amending R.A. 6657; Sec. 5.

The word "challenge" shall refer to the expression of non-acceptance of valuation by the landowner through the filing of a just compensation case in Court; a written protest or a similar instrument; or impliedly thru noncompliance with the requirement to submit pre-payment/documentary requirements despite receipt of notice or demand.[36] Considering that the just compensation offered by the DAR or the LBP for the acquisition of respondents' rice land is being challenged by the landowners, who are respondents in court, it cannot be gainsaid that this case falls squarely within the ambit of Sec. 5 of R.A. 9700.

For purposes of determining the valuation and the landowners' compensation involving lands under P.D. 27 and E.O. 228, the guidelines provided in Section 17 of R.A. 6657, as amended by R.A. 9700, may be applied.

Having established that R.A. 6657, as amended by R.A. 9700, is the applicable law in this case, we now proceed to the determination of the appropriate just compensation for respondents. Note that we are here determining only whether the CA committed serious errors in law in affirming the RTC determination of just compensation. Respondents herein accept the formula adopted by the RTC.

Section 17, R.A. 6657, which is particularly relevant, providing as it does the guideposts for the determination of just compensation, reads as follows:[37]

Sec. 17. *Determination of Just Compensation*. — In determining just compensation, the cost of acquisition of the land, the current value of like properties, its nature, actual use and income, the sworn valuation by the owner, the tax declarations and the assessment made by government assessors shall be considered. The social and economic benefits contributed by the farmers and the farmworkers and by the Government to the property as well as the non-payment of taxes or

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[36] DAR Administrative Order No. 01, s. 2010.

[37] *Land Bank of the Phils. v. Vda de Abello*, 602 Phil. 710-721 (2009).

loans secured from any government financing institution on the said land shall be considered as additional factors to determine its valuation. (Underscoring supplied)

The RTC ruled:

After examining the evidence in the record as well as the location of the subject landholding, its use, average gross production, and the prevailing land value in the locality vis-à-vis the DAR's and LBP's valuation, this Court adopts the recommendation of Commissioners Esguerra and Wong that the just compensation for the subject landholding be fixed at ₱120,000 per hectare. The Court notes that the Commissioners took into consideration the different factors provided for in Section 17, R.A. 6657 such as average gross production, current value, like properties, nature of the subject properties and actual use. This Court sees no reason to reject the findings of the Commissioners.[38] (Underscoring supplied)

The CA also held:

Again, this Court finds no errors on the part of the trial court in adopting the recommendation of the commissioners:

In any expropriation proceedings and for purposes of determining the just compensation, it is almost always expected that Commissioners are appointed. In the instant case as expected, Commissioners were appointed.

Under Section 17 of R.A. 6657 is provided the following:

> Sec. 17. *Determination of Just Compensation. — In determining just compensation, the cost of acquisition of the land, the current value of like properties, its nature, actual use and income, the sworn valuation by the owner, the tax declarations and the assessment made by the government assessors shall be considered.*

As shown in the Report of Commissioners, the amount of ₱120,000 per hectare was somehow based on the above-quoted provision of the law.[39] (Underscoring supplied)

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[38] *Supra* note 1, at 202.

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

The RTC, as affirmed by the CA, arrived at the just compensation for respondents' property after taking into consideration the Commissioners' Report on the nature of the subject landholding, its use, average gross production, and the prevailing value of the lands in the vicinity. This Court is convinced that the RTC correctly determined the amount of just compensation for respondents in accordance with, and guided by, R.A. 6657 and existing jurisprudence.

Petitioner asks that we reevaluate the RTC-appointed Panel of Commissioners' evidentiary basis for determining the value of respondents' property. In effect, petitioner LBP is praying for the resolution of a question of fact, which is improper in the instant Rule 45 Petition.

It is settled that a review on *certiorari* under a Rule 45 petition is generally limited to the review of legal issues; the Court only resolves questions of law that have been properly raised by the parties during the appeal and in the petition.[40] It is not the function of this Court to analyze or weigh all over again evidence already considered in the proceedings below, its jurisdiction being limited to reviewing only errors of law that may have been committed by the lower court.[41] The resolution of factual issues is the function of the lower courts, whose findings on these matters are received with respect.[42]

The RTC's factual findings were supported by the report of the independent Panel of Commissioners and were duly affirmed by the CA.[43] Absent any allegation of irregularity or grave abuse of discretion, the factual findings of the lower courts, will no

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[40] *City Government of Valenzuela v. Agustines*, G.R. No. 209369 (Notice), 28 January 2015; citing *Ysidoro v. Leonardo-de Castro*, 665 SCRA 1, 13 (2012).

[41] *City Government of Valenzuela v. Agustines*, G.R. No. 209369 (Notice), 28 January 2015.

[42] *City Government of Valenzuela v. Agustines*, G.R. No. 209369 (Notice), 28 January 2015; citing *Heirs of Pacencia Racaza v. Abay-abay*, 672 SCRA 622, 627-628 (2012).

[43] See *LBP v. Montalvan*, G.R. No. 190336, 27 June 2012, 675 SCRA 380.

longer be disturbed.[44] Hence, the judicial determination of the value of the expropriated portion amounting to ₱120,000 per hectare is affirmed.

It must also be noted that the date of the taking of the subject lot from respondents was 21 October 1972 and the landowners are still unpaid up to this date. For years, respondents have been deprived of the use and enjoyment of their landholding without payment of just compensation. Although the purpose of P.D. 27 is the emancipation of tenants from the bondage of the soil and the transfer to them of the ownership of the land they till, this noble purpose should not trample on the right of the landowners to be fairly and justly compensated for the value of their property.[45]

Considering these circumstances, we grant legal interest on the just compensation for respondents where there is a delay in payment,[46] since the landowners' just compensation was considered an effective forbearance on the part of the State.

WHEREFORE, the Petitions are **DENIED.** The consolidated Decision dated 14 September 2011 rendered by the Court of Appeals in CA-G.R. SP No. 109992 and CA-G.R. SP No. 109778 is **AFFIRMED** with **MODIFICATION**. Legal interest on the award for just compensation shall run at the rate of 12% interest per annum from 21 October 1972 until 30 June 2013. Thereafter, or beginning 1 July 2013 until fully paid, legal interest shall be at 6% per annum.

SO ORDERED.

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

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[44] *Id.*

[45] *Supra* note 37.

[46] *Nacar v. Gallery Frames*, G.R. No. 189871, 13 August 2013, 703 SCRA 439, 455.

THIRD DIVISION

[G.R. No. 203075. March 16, 2016]

MILAGROS DIAZ, EDUARDO Q. CATACUTAN, DANTE Q. CATACUTAN, represented by their common Attorney-in-fact, FERNANDO Q. CATACUTAN, *petitioners, vs.* **SPOUSES GAUDENCIO PUNZALAN and TERESITA PUNZALAN,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; EJECTMENT; ALLEGATIONS SUFFICIENT FOR UNLAWFUL DETAINER CASE.— A complaint sufficiently alleges a cause of action for unlawful detainer if it recites the following: (1) the defendant's initial possession of the property was lawful, either by contract with or by tolerance of the plaintiff; (2) eventually, such possession became illegal upon the plaintiffs notice to the defendant of the termination of the latter's right of possession; (3) thereafter, the defendant remained in possession and deprived the plaintiff of the enjoyment of the property; and (4) the plaintiff instituted the complaint for ejectment within one (1) year from the last demand to vacate the property.

2. ID.; ID.; ID.; ESSENTIAL REQUISITES FOR THE MTC TO ACQUIRE JURISDICTION OVER A FORCIBLE ENTRY CASE.— [I]n an action for forcible entry, the following requisites are essential for the MTC to acquire jurisdiction over the case.: (1) the plaintiff must allege prior physical possession of the property; (2) the plaintiff was deprived of possession by force, intimidation, threat, strategy or stealth; and (3) the action must be filed within one (1) year from the date of actual entry on the land, except that when the entry is through stealth, the one (1)-year period is counted from the time the plaintiff-owner or legal possessor learned of the deprivation of the physical possession of the property. It is not necessary, however, for the complaint to expressly use the exact language of the law. For as long as it is shown that the dispossession took place under said conditions, it is considered as sufficient compliance with the requirements.

3. ID.; ID.; ID.; WHEN THE ENTRY INTO THE LAND AND CONSTRUCTION OF THE HOUSE WAS MADE WITHOUT THE LAND OWNER'S CONSENT, IT IS CATEGORIZED AS POSSESSION BY STEALTH WHICH IS PROPER FOR FORCIBLE ENTRY.— [T]he evidence clearly reveal that the spouses' possession was illegal at the inception and not merely tolerated, considering that they started to occupy the subject lot and thereafter built a house on the same without the permission and consent of petitioners. The spouses' entry into the land was, therefore, effected clandestinely, without the knowledge of the owners. Consequently, it is categorized as possession by stealth which is forcible entry. The CA correctly held that the allegations of the complaint failed to state the essential elements of an action for unlawful detainer. The allegation that the Spouses Punzalan entered the subject property and constructed their house on a portion of the same without petitioners' knowledge and consent is more consistent with an action for forcible entry, which should have been filed within a year from the discovery of said illegal entry. Instead, petitioners allowed them to stay, thinking that they would simply accede if asked to vacate the premises. Certainly, petitioners' kind tolerance came, not from the inception, as required to constitute unlawful detainer, but only upon learning of the unlawful entry.

4. ID.; ID.; ID.; FAILURE TO ALLEGE JURISDICTIONAL FACTS IS FATAL; THE COURT CANNOT ACQUIRE JURISDICTION OVER THE CASE AND ANY JUDGMENT RENDERED THEREIN IS VOID; PETITIONERS MAY STILL FILE AN *ACCION PUBLICIANA* OR *ACCION REIVINDICATORIA*.— [T]o vest the court jurisdiction to effect the ejectment of an occupant, it is necessary that the complaint should embody such a statement of facts as brings the party clearly within the class of cases for which the statutes provide a remedy, as these proceedings are summary in nature. The complaint must show enough on its face to give the court jurisdiction without having to resort to parol testimony. In the instant case, the allegations in the complaint do not contain any averment of fact that would substantiate petitioners' claim that they permitted or tolerated the occupation of the property by the Spouses Punzalan right from the start. This failure of petitioners to allege the key jurisdictional facts constitutive of unlawful detainer is fatal. Since the complaint did not satisfy

the jurisdictional requirement of a valid cause for unlawful detainer, the MCTC corollarily failed to acquire jurisdiction over the case. Indeed, a void judgment for lack of jurisdiction is no judgment at all. It cannot be the source of any right neither can it be the creator of any obligation. All acts performed pursuant to it and all claims emanating from it have no legal effect. The same can never become final and any writ of execution based on it will be void. Petitioners may be the lawful possessors of the subject property, but they unfortunately availed of the wrong remedy to recover possession. Nevertheless, they may still opt to file an *accion publiciana* or *accion reivindicatoria* with the proper RTC.

APPEARANCES OF COUNSEL

Melanie U. Arellano for petitioners.
Gerome N. Tubig for respondents.

D E C I S I O N

PERALTA, *J.*:

For the Court's Resolution is a Petition for Review under Rule 45 of the Rules of Court which petitioners Milagros Diaz, Eduardo Q. Catacutan, Dante Q. Catacutan, *et al.* filed, assailing the Decision[1] of the Court of Appeals (*CA*), dated February 17, 2012, and its Resolution[2] dated July 25, 2012 in CA-G.R. SP No. 112959. The CA reversed the Decision [3] of the Regional Trial Court (*RTC*) of San Fernando, Pampanga, Branch 43, in Civil Case No. 13692, which affirmed the June 22, 2009 Municipal Circuit Trial Court (*MCTC*) Decision.[4]

The factual and procedural antecedents are as follows:

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[1] Penned by Associate Justice Amelita G. Tolentino, with Associate Justices Ramon R. Garcia and Leoncia R. Dimagiba; concurring; *rollo*, pp. 25-39.

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

[3] Penned by Judge Carmelita S. Gutierrez-Fruelda; *id.* at 75-76.

[4] Penned by Judge Lysander R. Montemayor; *id.* at 64-74.

Petitioners alleged that their mother, Rufina Vda. de Catacutan, who died on November 17, 2005, had acquired a parcel of land in Mapanique, Candaba, Pampanga, consisting of 3,272 square meters, covered by Transfer Certificate of Title No. 3169. They contend that respondents spouses Gaudencio and Teresita Punzalan (*Spouses Punzalan*) constructed their house on a portion of said lot without their consent and knowledge. But petitioners allowed them to stay, thinking that they would vacate once their need for the property arises. However, when they made a demand, the Spouses Punzalan refused to vacate. Thus, on April 9, 2008, petitioners wrote the spouses a formal demand letter to vacate. Still, they refused to leave the property.

On August 22, 2008, petitioners filed a Complaint for unlawful detainer with the MCTC of Sta. Ana-Candaba, Pampanga. The MCTC then rendered a Decision on June 22, 2009, with the following dispositive portion:

> IN VIEW OF ALL THE FOREGOING CONSIDERATIONS, judgment is hereby rendered in favor of the plaintiffs and against the defendants ordering the latter, their privies and all persons claiming rights, interests or possession over lot No. 8 of the subdivision plan PSD-020070 (OLT), being a portion of PSU-103330 situated in the Barrio (Mapanique) Barangca, Municipality of Candaba, Pampanga, covered by Transfer Certificate of Title No. 3169 of the Registry of Deeds of Pampanga in the name of Rufina Vda. de Catacutan to vacate and surrender its peaceful possession to the plaintiffs; to pay Php1,000.00 per month from April 09, 2008, the date of Demand to Vacate, until defendants finally vacate the premises; to pay Php20,000.00 by way of attorney's fees to the plaintiffs and to pay the costs of suit in the amount of Php2,735.00 duly covered by Official Receipts.
>
> SO ORDERED.[5]

The Spouses Punzalan, thus, brought the case before the San Fernando RTC, which ruled, on November 25, 2009, in this wise:

> WHEREFORE, finding no reversible error in the assailed Decision, the court hereby AFFIRMS it *in toto.*

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[5] *Rollo,* p. 74.

Costs against the defendants-appellants.

Furnish all concerned parties with copies of this Decision.

SO ORDERED.[6]

Aggrieved, the Spouses Punzalan elevated the case to the CA. On February 17, 2012, the CA reversed the RTC, thus:

WHEREFORE, in the light of the foregoing, the instant petition is GRANTED. The assailed *decision* of the Regional Trial Court of San Fernando City, Pampanga, Branch 43 is ***REVERSED*** and ***SET ASIDE.*** The *complaint* in Civil Case No. 08-0407 of the Municipal Circuit Trial Court of Sta. Ana-Candaba, Pampanga is ***DISMISSED*** for lack of jurisdiction.

SO ORDERED.[7]

Hence, petitioners filed a Motion for Reconsideration, but the same was denied. Thus, the present petition.

Petitioners insist that their complaint states a cause of action for unlawful detainer and thus, the MCTC duly acquired jurisdiction.

The petition lacks merit.

Well settled is the rule that jurisdiction of the court in ejectment cases is determined by the allegations of the complaint and the character of the relief sought.[8] The complaint should embody such statement of facts as to bring the party clearly within the class of cases under Section 1, Rule 70 of the 1997 Rules of Civil Procedure, as amended. Said provision states:

SECTION 1. *Who may institute proceedings, and when.* — Subject to the provisions 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

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[6] *Id.* at 76.

[7] *Id.* at 38 (Emphasis in the original).

[8] *Cajayon v. Spouses Batuyong*, 517 Phil. 648, 656 (2006).

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.

Under the aforequoted rule, there are two (2) entirely distinct and different causes of action, to wit: (1) a case for forcible entry, which is an action to recover possession of a property from the defendant whose occupation thereof is illegal from the beginning as he acquired possession by force, intimidation, threat, strategy or stealth; and (2) a case for unlawful detainer, which is an action for recovery of possession from the defendant whose possession of the property was lawful at the inception by virtue of a contract with the plaintiff, be it express or implied, but subsequently became illegal when he continued his possession despite the termination of his right or authority.[9]

Here, petitioners claim that their cause of action is one for unlawful detainer and not for forcible entry. The Court disagrees.

A complaint sufficiently alleges a cause of action for unlawful detainer if it recites the following: (1) the defendant's initial possession of the property was lawful, either by contract with or by tolerance of the plaintiff; (2) eventually, such possession became illegal upon the plaintiff's notice to the defendant of the termination of the latter's right of possession; (3) thereafter, the defendant remained in possession and deprived the plaintiff of the enjoyment of the property; and (4) the plaintiff instituted the complaint for ejectment within one (1) year from the last demand to vacate the property.[10]

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[9] *Sarmienta, et al. v. Manalite Homeowners Asso., Inc*., 647 Phil. 53, 61 (2010).

[10] *Id.* at 63-64.

On the other hand, in an action for forcible entry, the following requisites are essential for the MTC to acquire jurisdiction over the case: (1) the plaintiff must allege prior physical possession of the property; (2) the plaintiff was deprived of possession by force, intimidation, threat, strategy or stealth; and (3) the action must be filed within one (1) year from the date of actual entry on the land, except that when the entry is through stealth, the one (1)-year period is counted from the time the plaintiff-owner or legal possessor learned of the deprivation of the physical possession of the property. It is not necessary, however, for the complaint to expressly use the exact language of the law. For as long as it is shown that the dispossession took place under said conditions, it is considered as sufficient compliance with the requirements.[11]

Contrary to petitioners' contention that none of the means to effectuate forcible entry was alleged in the complaint, the Court finds that the allegations actually make up a case of forcible entry. They claimed in their Complaint[12] that the Spouses Punzalan constructed their dwelling house on a portion of petitioners' lot, without the latter's prior consent and knowledge. This clearly falls under stealth, which is defined as any secret, sly or clandestine act to avoid discovery and to gain entrance into, or to remain within residence of another without permission.[13] Here, the evidence clearly reveal that the spouses' possession was illegal at the inception and not merely tolerated, considering that they started to occupy the subject lot and thereafter built a house on the same without the permission and consent of petitioners. The spouses' entry into the land was, therefore, effected clandestinely, without the knowledge of the owners. Consequently, it is categorized as possession by stealth which is forcible entry.[14]

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[11] *Nuñez v. SLTEAS Phoenix Solutions, Inc.*, 632 Phil. 143, 153 (2010).

[12] *Rollo*, pp. 43-46.

[13] *Black's Law Dictionary* (5th ed., 1979), p. 1267.

[14] *Zacarias v. Anacay*, G.R. No. 202354, September 24, 2014, 736 SCRA 508, 521.

The CA correctly held that the allegations of the complaint failed to state the essential elements of an action for unlawful detainer. The allegation that the Spouses Punzalan entered the subject property and constructed their house on a portion of the same without petitioners' knowledge and consent is more consistent with an action for forcible entry, which should have been filed within a year from the discovery of said illegal entry.[15] Instead, petitioners allowed them to stay, thinking that they would simply accede if asked to vacate the premises. Certainly, petitioners' kind tolerance came, not from the inception, as required to constitute unlawful detainer, but only upon learning of the unlawful entry.

In the similar case of *Zacarias v. Anacay*,[16] the petitioner argued that unlawful detainer was the proper remedy, considering that she merely tolerated respondents' stay in the premises after demand to vacate was made upon them. They had, in fact, entered into an agreement and she was only forced to take legal action when respondents reneged on their promise to vacate the property after the lapse of the period agreed upon. The Court held that the MCTC clearly had no jurisdiction over the case as the complaint did not satisfy the jurisdictional requirement of a valid cause for unlawful detainer. As in said case, the complaint in the case at bar likewise failed to allege a cause of action for unlawful detainer as it did not describe possession by the Spouses Punzalan being initially legal or tolerated by petitioners and which merely became illegal upon the latter's termination of such lawful possession. The fact that petitioners actually tolerated the spouses' continued occupation after discovery of their entry into the subject premises will not and cannot automatically create an action for unlawful detainer. Such possession could not have possibly been legal from the start as it was without their knowledge or consent, much less based on any contract, express or implied. What is decisive is the nature of the defendant's entry into or initial possession of the property. It must be stressed

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[15] *Id.* at 519.

[16] *Supra* note 14.

that the defendant's possession in unlawful detainer is originally legal but simply became illegal due to the expiration or termination of the right to possess. The plaintiff's supposed acts of tolerance must have been present right from the start of the possession. Otherwise, if the possession was already unlawful at the outset, it would constitute an action for forcible entry, and the filing of one for unlawful detainer would be an improper remedy. To hold otherwise would espouse a dangerous doctrine, and for two reasons: (1) forcible entry into the land is an open challenge to the right of the possessor. Violation of that right authorizes a speedy redress in the inferior court provided for in the rules. But if one (1) year from the entry is allowed to lapse before a suit is filed, then the remedy ceases to be speedy, and the possessor is deemed to have waived his right to seek relief in the inferior court; and (2) if a forcible entry action in the inferior court is allowed after the lapse of a number of years, then the result may well be that no action of forcible entry can actually prescribe. No matter how long such defendant has already been in physical possession, the plaintiff will merely have to make a demand, file a case upon a plea of tolerance — to prevent prescription from setting in — and summarily throw him out of the land. Such a conclusion is unreasonable. Especially if we bear in mind the postulates that proceedings of forcible entry and unlawful detainer are summary in nature, and that the one (1)-year time-bar to initiate a suit is but in pursuance of the summary nature of the action.[17] Since the prescriptive period for filing an action for forcible entry had lapsed, petitioner could not convert her action into one for unlawful detainer, reckoning the one (1)-year period to file her action from the time of the demand to vacate.[18]

Verily, to vest the court jurisdiction to effect the ejectment of an occupant, it is necessary that the complaint should embody such a statement of facts as brings the party clearly within the class of cases for which the statutes provide a remedy, as these proceedings are summary in nature. The complaint must show

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[17] *Id.* at 519.

[18] *Id.*

enough on its face to give the court jurisdiction without having to resort to parol testimony.[19]

In the instant case, the allegations in the complaint do not contain any averment of fact that would substantiate petitioners' claim that they permitted or tolerated the occupation of the property by the Spouses Punzalan right from the start. This failure of petitioners to allege the key jurisdictional facts constitutive of unlawful detainer is fatal. Since the complaint did not satisfy the jurisdictional requirement of a valid cause for unlawful detainer, the MCTC corollarily failed to acquire jurisdiction over the case.[20]

Indeed, a void judgment for lack of jurisdiction is no judgment at all. It cannot be the source of any right neither can it be the creator of any obligation. All acts performed pursuant to it and all claims emanating from it have no legal effect. The same can never become final and any writ of execution based on it will be void.[21]

Petitioners may be the lawful possessors of the subject property, but they unfortunately availed of the wrong remedy to recover possession. Nevertheless, they may still opt to, file an *accion publiciana* or *accion reivindicatoria* with the proper RTC.[22]

WHEREFORE, IN VIEW OF THE FOREGOING, the petition is **DENIED**. The Decision of the Court of Appeals, dated February 17, 2012, and its Resolution dated July 25, 2012 in CA-G.R. SP No. 112959, are hereby **AFFIRMED**.

SO ORDERED.

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

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[19] *Id.*

[20] *Id.* at 521.

[21] *Id.* at 522.

[22] *Id.* at 514.

SECOND DIVISION

[G.R. No. 205206. March 16, 2016]

BANK OF THE PHILIPPINE ISLANDS and FGU INSURANCE CORPORATION (presently known as BPI/MS INSURANCE CORPORATION), *petitioners, vs.* **YOLANDA LAINGO,** *respondent.*

SYLLABUS

1. CIVIL LAW; AGENCY; AGENCY MAY BE CREATED EVEN THOUGH THE PRINCIPAL DID NOT PERSONALLY KNOW OR MEET THE THIRD PERSON WITH WHOM THE AGENT TRANSACTED.— Under the law, an agent is one who binds himself to render some service or to do something in representation of another. In *Doles v. Angeles*, we held that the basis of an agency is representation. The question of whether an agency has been created is ordinarily a question which may be established in the same way as any other fact, either by direct or circumstantial evidence. The question is ultimately one of intention. Agency may even be implied from the words and conduct of the parties and the circumstances of the particular case. For an agency to arise, it is not necessary that the principal personally encounter the third person with whom the agent interacts. The law in fact contemplates impersonal dealings where the principal need not personally know or meet the third person with whom the agent transacts: precisely, the purpose of agency is to extend the personality of the principal through the facility of the agent.

2. ID.; ID.; ID.; IT WAS INCUMBENT FOR BPI, AS AGENT OF THE FGU INSURANCE, TO GIVE PROPER NOTICE OF THE EXISTENCE OF THE INSURANCE CONTRACT AND THE STIPULATION THEREIN FOR FILING A CLAIM TO THE BENEFICIARY.— In this case, since the Platinum 2-in-1 Savings and Insurance account was BPI's commercial product, offering the insurance coverage for free for every deposit account opened, Rheozel directly communicated with BPI, the agent of FGU Insurance. BPI not only facilitated the processing of the deposit account and the collection of necessary documents but also the necessary endorsement for

the prompt approval of the insurance coverage without any other action on Rheozel's part. Rheozel did not interact with FGU Insurance directly and every transaction was coursed through BPI. x x x BPI, as agent of FGU Insurance, had the primary responsibility to ensure that the 2-in-1 account be reasonably carried out with full disclosure to the parties concerned, particularly the beneficiaries. Thus, it was incumbent upon BPI to give proper notice of the existence of the insurance coverage and the stipulation in the insurance contract for filing a claim to Laingo, as Rheozel's beneficiary, upon the latter's death. x x x The relationship existing between principal and agent is a fiduciary one, demanding conditions of trust and confidence. It is the duty of the agent to act in good faith for the advancement of the interests of the principal. In this case, BPI had the obligation to carry out the agency by informing the beneficiary, who appeared before BPI to withdraw funds of the insured who was BPI's depositor, not only of the existence of the insurance contract but also the accompanying terms and conditions of the insurance policy in order for the beneficiary to be able to properly and timely claim the benefit. Upon Rheozel's death, which was properly communicated to BPI by his mother Laingo, BPI, in turn, should have fulfilled its duty, as agent of FGU Insurance, of advising Laingo that there was an added benefit of insurance coverage in Rheozel's savings account. An insurance company has the duty to communicate with the beneficiary upon receipt of notice of the death of the insured. This notification is how a good father of a family should have acted within the scope of its business dealings with its clients. BPI is expected not only to provide utmost customer satisfaction in terms of its own products and services but also to give assurance that its business concerns with its partner entities are implemented accordingly.

3. ID.; ID.; ID.; FGU INSURANCE CANNOT JUSTIFY THE DENIAL OF A BENEFICIARY'S INSURANCE CLAIM FOR BEING FILED OUT OF TIME WHEN NOTICE OF DEATH OF THE DEPOSITOR-INSURED HAD BEEN TIMELY COMMUNICATED TO ITS AGENT.— BPI had been informed of Rheozel's death by the latter's family. Since BPI is the agent of FGU Insurance, then such notice of death to BPI is considered as notice to FGU Insurance as well. FGU Insurance cannot now justify the denial of a beneficiary's insurance claim for being filed out of time when notice of death

had been communicated to its agent within a few days after the death of the depositor-insured. In short, there was timely notice of Rheozel's death given to FGU Insurance within three months from Rheozel's death as required by the insurance company. x x x Since BPI, as agent of FGU Insurance, fell short in notifying Laingo of the existence of the insurance policy, Laingo had no means to ascertain that she was entitled to the insurance claim. It would be unfair for Laingo to shoulder the burden of loss when BPI was remiss in its duty to properly notify her that she was a beneficiary.

APPEARANCES OF COUNSEL

The Law Firm of Garcia Iñigo & Partners for petitioners.
Europa Dacanay Cubelo Europa Flores & Caharian Law Office for respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

This is a petition for review on certiorari[1] assailing the Decision dated 29 June 2012[2] and Resolution dated 11 December 2012[3] of the Court of Appeals in CA-G.R. CV No. 01575.

On 20 July 1999, Rheozel Laingo (Rheozel), the son of respondent Yolanda Laingo (Laingo), opened a "Platinum 2-in-1 Savings and Insurance" account with petitioner Bank of the Philippine Islands (BPI) in its Claveria, Davao City branch. The Platinum 2-in-1 Savings and Insurance account is a savings account where depositors are automatically covered by an insurance policy against disability or death issued by petitioner

[1] Under Rule 45 of the 1997 Revised Rules of Civil Procedure.

[2] *Rollo*, pp. 8-19. Penned by Associate Justice Jhosep Y. Lopez, with Associate Justices Edgardo T. Lloren and Maria Elisa Sempio Diy concurring.

[3] *Id.* at 21-25. Penned by Associate Justice Jhosep Y. Lopez, with Associate Justices Edgardo T. Lloren and Henri Jean Paul B. Inting concurring.

FGU Insurance Corporation (FGU Insurance), now known as BPI/MS Insurance Corporation. BPI issued Passbook No. 50298 to Rheozel corresponding to Savings Account No. 2233-0251-11. A Personal Accident Insurance Coverage Certificate No. 043549 was also issued by FGU Insurance in the name of Rheozel with Laingo as his named beneficiary.

On 25 September 2000, Rheozel died due to a vehicular accident as evidenced by a Certificate of Death issued by the Office of the Civil Registrar General of Tagum City, Davao del Norte. Since Rheozel came from a reputable and affluent family, the Daily Mirror headlined the story in its newspaper on 26 September 2000.

On 27 September 2000, Laingo instructed the family's personal secretary, Alice Torbanos (Alice) to go to BPI, Claveria, Davao City branch and inquire about the savings account of Rheozel. Laingo wanted to use the money in the savings account for Rheozel's burial and funeral expenses.

Alice went to BPI and talked to Jaime Ibe Rodriguez, BPI's Branch Manager regarding Laingo's request. Due to Laingo's credit standing and relationship with BPI, BPI accommodated Laingo who was allowed to withdraw ₱995,000 from the account of Rheozel. A certain Ms. Laura Cabico, an employee of BPI, went to Rheozel's wake at the Cosmopolitan Funeral Parlor to verify some information from Alice and brought with her a number of documents for Laingo to sign for the withdrawal of the ₱995,000.

More than two years later or on 21 January 2003, Rheozel's sister, Rhealyn Laingo-Concepcion, while arranging Rheozel's personal things in his room at their residence in Ecoland, Davao City, found the Personal Accident Insurance Coverage Certificate No. 043549 issued by FGU Insurance. Rhealyn immediately conveyed the information to Laingo.

Laingo sent two letters dated 11 September 2003 and 7 November 2003 to BPI and FGU Insurance requesting them to process her claim as beneficiary of Rheozel's insurance policy. On 19 February 2004, FGU Insurance sent a reply-letter to Laingo

denying her claim. FGU Insurance stated that Laingo should have filed the claim within three calendar months from the death of Rheozel as required under Paragraph 15 of the Personal Accident Certificate of Insurance which states:

> 15. Written notice of claim shall be given to and filed at FGU Insurance Corporation within three calendar months of death or disability.

On 20 February 2004, Laingo filed a Complaint[4] for Specific Performance with Damages and Attorney's Fees with the Regional Trial Court of Davao City, Branch 16 (trial court) against BPI and FGU Insurance.

In a Decision[5] dated 21 April 2008, the trial court decided the case in favor of respondents. The trial court ruled that the prescriptive period of 90 days shall commence from the time of death of the insured and not from the knowledge of the beneficiary. Since the insurance claim was filed more than 90 days from the death of the insured, the case must be dismissed. The dispositive portion of the Decision states:

> PREMISES CONSIDERED, judgment is hereby rendered dismissing both the complaint and the counterclaims.
>
> SO ORDERED.[6]

Laingo filed an appeal with the Court of Appeals.

The Ruling of the Court of Appeals

In a Decision dated 29 June 2012, the Court of Appeals reversed the ruling of the trial court. The Court of Appeals ruled that Laingo could not be expected to do an obligation which she did not know existed. The appellate court added that Laingo was not a party to the insurance contract entered into between Rheozel and petitioners. Thus, she could not be bound by the 90-day stipulation. The dispositive portion of the Decision states:

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[4] Docketed as Civil Case No. 30,236-2004.

[5] *Rollo*, pp. 72-74.

[6] *Id.* at 74.

WHEREFORE, the Appeal is hereby GRANTED. The Decision dated April 21, 2008 of the Regional Trial Court, Branch 16, Davao City, is hereby REVERSED and SET ASIDE.

Appellee Bank of the Philippine Islands and FGU Insurance Corporation are DIRECTED to PAY jointly and severally appellant Yolanda Laingo Actual Damages in the amount of ₱44,438.75 and Attorney's Fees in the amount of ₱200,000.00.

Appellee FGU Insurance Corporation is also DIRECTED to PAY appellant the insurance proceeds of the Personal Accident Insurance Coverage of Rheozel Laingo with legal interest of six percent (6%) *per annum* reckoned from February 20, 2004 until this Decision becomes final. Thereafter, an interest of twelve percent (12%) *per annum* shall be imposed until fully paid.

SO ORDERED.[7]

Petitioners filed a Motion for Reconsideration which was denied by the appellate court in a Resolution dated 11 December 2012.

Hence, the instant petition.

The Issue

The main issue for our resolution is whether or not Laingo, as named beneficiary who had no knowledge of the existence of the insurance contract, is bound by the three calendar month deadline for filing a written notice of claim upon the death of the insured.

The Court's Ruling

The petition lacks merit.

Petitioners contend that the words or language used in the insurance contract, particularly under paragraph 15, is clear and plain or readily understandable by any reader which leaves no room for construction. Petitioners also maintain that ignorance about the insurance policy does not exempt respondent from abiding by the deadline and petitioners cannot be faulted for respondent's failure to comply.

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

Respondent, on the other hand, insists that the insurance contract is ambiguous since there is no provision indicating how the beneficiary is to be informed of the three calendar month claim period. Since petitioners did not notify her of the insurance coverage of her son where she was named as beneficiary in case of his death, then her lack of knowledge made it impossible for her to fulfill the condition set forth in the insurance contract.

In the present case, the source of controversy stems from the alleged non-compliance with the written notice of insurance claim to FGU Insurance within three calendar months from the death of the insured as specified in the insurance contract. Laingo contends that as the named beneficiary entitled to the benefits of the insurance claim she had no knowledge that Rheozel was covered by an insurance policy against disability or death issued by FGU Insurance that was attached to Rheozel's savings account with BPI. Laingo argues that she dealt with BPI after her son's death, when she was allowed to withdraw funds from his savings account in the amount of ₱995,000. However, BPI did not notify her of the attached insurance policy. Thus, Laingo attributes responsibility to BPI and FGU Insurance for her failure to file the notice of insurance claim within three months from her son's death.

We agree.

BPI offered a deposit savings account with life and disability insurance coverage to its customers called the Platinum 2-in-1 Savings and Insurance account. This was a marketing strategy promoted by BPI in order to entice customers to invest their money with the added benefit of an insurance policy. Rheozel was one of those who availed of this account, which not only included banking convenience but also the promise of compensation for loss or injury, to secure his family's future.

As the main proponent of the 2-in-1 deposit account, BPI tied up with its affiliate, FGU Insurance, as its partner. Any customer interested to open a deposit account under this 2-in-1 product, after submitting all the required documents to BPI and obtaining BPI's approval, will automatically be given insurance coverage. Thus, BPI acted as agent of FGU Insurance with respect to the insurance feature of its own marketed product.

Under the law, an agent is one who binds himself to render some service or to do something in representation of another.[8] In *Doles v. Angeles*,[9] we held that the basis of an agency is representation. The question of whether an agency has been created is ordinarily a question which may be established in the same way as any other fact, either by direct or circumstantial evidence. The question is ultimately one of intention. Agency may even be implied from the words and conduct of the parties and the circumstances of the particular case. For an agency to arise, it is not necessary that the principal personally encounter the third person with whom the agent interacts. The law in fact contemplates impersonal dealings where the principal need not personally know or meet the third person with whom the agent transacts: precisely, the purpose of agency is to extend the personality of the principal through the facility of the agent.

In this case, since the Platinum 2-in-1 Savings and Insurance account was BPI's commercial product, offering the insurance coverage for free for every deposit account opened, Rheozel directly communicated with BPI, the agent of FGU Insurance. BPI not only facilitated the processing of the deposit account and the collection of necessary documents but also the necessary endorsement for the prompt approval of the insurance coverage without any other action on Rheozel's part. Rheozel did not interact with FGU Insurance directly and every transaction was coursed through BPI.

In *Eurotech Industrial Technologies, Inc. v. Cuizon*,[10] we held that when an agency relationship is established, the agent acts for the principal insofar as the world is concerned. Consequently, the acts of the agent on behalf of the principal within the scope of the delegated authority have the same legal effect and consequence as though the principal had been the one so acting in the given situation.

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[8] Article 1868 of the Civil Code.

[9] 525 Phil. 673 (2006).

[10] 550 Phil. 165 (2007). See also *Rallos v. Felix Go Chan & Sons Realty Corporation*, 171 Phil. 222 (1978).

BPI, as agent of FGU Insurance, had the primary responsibility to ensure that the 2-in-1 account be reasonably carried out with full disclosure to the parties concerned, particularly the beneficiaries. Thus, it was incumbent upon BPI to give proper notice of the existence of the insurance coverage and the stipulation in the insurance contract for filing a claim to Laingo, as Rheozel's beneficiary, upon the latter's death.

Articles 1884 and 1887 of the Civil Code state:

> Art. 1884. The agent is bound by his acceptance to carry out the agency and is liable for the damages which, through his non-performance, the principal may suffer.
>
> He must also finish the business already begun on the death of the principal, should delay entail any danger.
>
> Art. 1887. In the execution of the agency, the agent shall act in accordance with the instructions of the principal.
>
> In default, thereof, he shall do all that a good father of a family would do, as required by the nature of the business.

The provision is clear that an agent is bound to carry out the agency. The relationship existing between principal and agent is a fiduciary one, demanding conditions of trust and confidence. It is the duty of the agent to act in good faith for the advancement of the interests of the principal. In this case, BPI had the obligation to carry out the agency by informing the beneficiary, who appeared before BPI to withdraw funds of the insured who was BPI's depositor, not only of the existence of the insurance contract but also the accompanying terms and conditions of the insurance policy in order for the beneficiary to be able to properly and timely claim the benefit.

Upon Rheozel's death, which was properly communicated to BPI by his mother Laingo, BPI, in turn, should have fulfilled its duty, as agent of FGU Insurance, of advising Laingo that there was an added benefit of insurance coverage in Rheozel's savings account. An insurance company has the duty to communicate with the beneficiary upon receipt of notice of the death of the insured. This notification is how a good father of a family should have acted within the scope of its business

dealings with its clients. BPI is expected not only to provide utmost customer satisfaction in terms of its own products and services but also to give assurance that its business concerns with its partner entities are implemented accordingly.

There is a rationale in the contract of agency, which flows from the "doctrine of representation," that notice to the agent is notice to the principal.[11] Here, BPI had been informed of Rheozel's death by the latter's family. Since BPI is the agent of FGU Insurance, then such notice of death to BPI is considered as notice to FGU Insurance as well. FGU Insurance cannot now justify the denial of a beneficiary's insurance claim for being filed out of time when notice of death had been communicated to its agent within a few days after the death of the depositor-insured. In short, there was timely notice of Rheozel's death given to FGU Insurance within three months from Rheozel's death as required by the insurance company.

The records show that BPI had ample opportunity to inform Laingo, whether verbally or in writing, regarding the existence of the insurance policy attached to the deposit account. *First*, Rheozel's death was headlined in a daily major newspaper a day after his death. *Second*, not only was Laingo, through her representative, able to inquire about Rheozel's deposit account with BPI two days after his death but she was also allowed by BPI's Claveria, Davao City branch to withdraw from the funds in order to help defray Rheozel's funeral and burial expenses. *Lastly*, an employee of BPI visited Rheozel's wake and submitted documents for Laingo to sign in order to process the withdrawal request. These circumstances show that despite being given many opportunities to communicate with Laingo regarding the existence of the insurance contract, BPI neglected to carry out its duty.

Since BPI, as agent of FGU Insurance, fell short in notifying Laingo of the existence of the insurance policy, Laingo had no means to ascertain that she was entitled to the insurance claim. It would be unfair for Laingo to shoulder the burden of loss

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[11] *Air France v. CA,* 211 Phil. 601 (1983).

when BPI was remiss in its duty to properly notify her that she was a beneficiary.

Thus, as correctly decided by the appellate court, BPI and FGU Insurance shall bear the loss and must compensate Laingo for the actual damages suffered by her family plus attorney's fees. Likewise, FGU Insurance has the obligation to pay the insurance proceeds of Rheozel's personal accident insurance coverage to Laingo, as Rheozel's named beneficiary.

WHEREFORE, we **DENY** the petition. We **AFFIRM** the Decision dated 29 June 2012 and Resolution dated 11 December 2012 of the Court of Appeals in CA-G.R. CV No. 01575.

SO ORDERED.

Del Castillo and *Mendoza, JJ.*, concur.

Brion, J., on leave.

Leonen, J., on official leave.

THIRD DIVISION

[G.R. No. 211411. March 16, 2016]

SILVERTEX WEAVING CORPORATION/ARMANDO ARCENAL/ROBERT ONG, *petitioners, vs.* **TEODORA F. CAMPO,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; EMPLOYERS FAILED TO ESTABLISH THEIR DEFENSE OF VOLUNTARY RESIGNATION.— The petitioners attempted to discharge the burden of proving the respondent's resignation

by referring mainly to a letter allegedly executed by the respondent. The CA, however, correctly explained that the NLRC's reliance thereon and on the QDR from the PNP Crime Laboratory to prove the letter's authenticity was unsatisfactory. In contrast with the NLRC's conclusion in its Resolution dated March 19, 2012 that the respondent actually executed the resignation letter, the full report of the PNP Crime Laboratory actually indicated that the signature appearing on the alleged resignation letter did not appear to be written by the same person who signed the several payroll slips and Philhealth records x x x. Although the same report from the PNP provided that the signature on the resignation letter matched the supposed handwriting of the respondent in her bio-data dated April 1, 2009, the conflicting findings and the fact that only one of the 18 documents used as reference for the examination matched the signature in the letter only supported the respondent's claim that she did not execute the resignation letter. Furthermore, there was no showing that the sample signature considered by the PNP Crime Laboratory was a genuine signature of the respondent, rendering it insufficient basis for the conclusion arrived at by the document examiner and relied upon by the NLRC. Clearly then, given the vehement claim of the respondent that her signature on the resignation letter was a mere forgery, the evidence presented by the petitioners to establish their defense of voluntary resignation failed to suffice.

2. ID.; ID.; ID.; EMPLOYEE'S EXECUTION OF WAIVER, RELEASE AND QUITCLAIMS STATEMENT WAS NOT FATAL TO HER CLAIM OF ILLEGAL DISMISSAL.— The authenticity and due execution of the undated Waiver, Release and Quitclaims Statement purportedly signed by the respondent was also not sufficiently established. The QDR was not conclusive on the issue of its genuineness. Even granting that such document was actually executed by the respondent, its execution was not fatal to the respondent's case for illegal dismissal. The finding of illegal dismissal could still stand, as jurisprudence provides that "[a]n employee's execution of a final settlement and receipt of amounts agreed upon do not foreclose his right to pursue a claim for illegal dismissal."

APPEARANCES OF COUNSEL

G.P. Angeles and Associates Law Office for petitioners.
Legal Advocates for Workers' Interest (LAWIN) for respondent.

R E S O L U T I O N

REYES, *J.*:

Before the Court is a petition for review on *certiorari*[1] filed by Silvertex[2] Weaving Corporation (STWC), Armando Arcenal (Arcenal) and Robert Ong (petitioners) assailing the Decision[3] dated June 13, 2013 and Resolution[4] dated February 12, 2014 of the Court of Appeals (CA) in CA-G.R. SP No. 124881.

Facts of the Case

The case stems from a complaint for illegal dismissal and monetary claims filed by Teodora F. Campo (respondent) against the petitioners, wherein she claimed that she worked for STWC as a weaving machine operator beginning June 11, 1999, until she was unlawfully dismissed from employment on November 21, 2010. Prior to her dismissal, she was suspended for one week beginning November 14, 2010 after a stitching machine that she was operating overheated and emitted smoke on November 13, 2010. When the respondent tried to report back to work on November 21, 2010, she was denied entry by the STWC's security guard, reportedly upon the instructions of Arcenal.[5]

For their defense, the petitioners argued that the respondent, who was hired only in June 2009, voluntarily resigned from

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[1] *Rollo*, pp. 10-21.

[2] Also referred to as Silver Tex in the case records.

[3] Penned by Associate Justice Mariflor P. Punzalan Castillo, with Associate Justices Amy C. Lazaro-Javier and Zenaida T. Galapate-Laguilles concurring; *rollo*, pp. 27-40.

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

[5] *Id.* at 27-28.

STWC after she was reprimanded for poor job performance. They submitted a handwritten resignation letter[6] allegedly executed by the respondent on November 13, 2010, together with the Waiver, Release and Quitclaims Statement[7] that she supposedly signed following her receipt of ₱30,000.00 from STWC.[8] The respondent, however, denied having executed the resignation letter, the quitclaim, and the supposed receipt of the ₱30,000.00.[9]

Ruling of the Labor Arbiter and National Labor Relations Commission

After finding merit in the documentary evidence presented by the petitioners, Labor Arbiter Fatima Jambaro-Franco (LA Franco) rendered on June 30, 2011 a Decision[10] dismissing the respondent's complaint for lack of merit.

Dissatisfied, the respondent appealed to the National Labor Relations Commission (NLRC). On November 29, 2011, the NLRC issued its Resolution[11] initially granting the appeal. It ruled that the respondent's signatures on the petitioners' documentary evidence appeared to be mere forgeries.[12] During the conciliation proceedings, the petitioners also failed to raise the existence of the documents, leading the NLRC to conclude that they were merely fabricated to suit the interests of STWC.[13] In conclusion, the respondent was found to have been constructively dismissed, and thus entitled to reinstatement and

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[6] *Id.* at 90.

[7] *Id.* at 144.

[8] *Id.* at 28.

[9] *Id.*

[10] *Id.* at 148-152.

[11] Penned by Commissioner Pablo C. Espiritu, Jr., with Presiding Commissioner Alex A. Lopez and Commissioner Gregorio O. Bilog III concurring; *id.* at 183-192.

[12] *Id.* at 187.

[13] *Id.* at 188.

monetary awards. Accordingly, the dispositive portion of the NLRC resolution reads:

> **WHEREFORE**, premises considered, the instant appeal is **GRANTED**, and the assailed Decision dated June 30, 2011 is **REVERSED** and **SET ASIDE** to the effect that the [respondent] was illegally dismissed, and the [petitioners] are hereby held solidarily liable to the [respondent] as follows:
>
> 1. REINSTATE the [respondent] to her former or substantially equivalent position without loss of seniority rights;
> 2. FULL BACKWAGES – partially computed at ----- ₱135,672.09
> 3. PRO-RATED 13TH Month Pay for 2010 -------- - ₱ 9,103.47
> 4. SILP for 2009 and 2010---------- - ₱ 3,605.67
> 5. Moral Damages ---------- - ₱20,000.00
> 6. Attorney's fees ---------- - ₱16,838.12 equivalent to 10% of the total monetary award
>
> **SO ORDERED.**[14]

Upon Motion for Reconsideration[15] filed by the petitioners, the NLRC however issued Resolution[16] dated March 19, 2012 granting the motion. It then reinstated and affirmed *in toto* the decision of LA Franco. It heavily considered a Questioned Document Report (QDR)[17] from the Philippine National Police (PNP) Crime Laboratory, which purportedly indicated that upon examination, the disputed signatures on the resignation letter and quitclaim were written by the respondent.[18] The burden to disprove the authenticity of the submitted documents allegedly fell upon the respondent, through evidence other than a bare denial.[19]

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[14] *Id.* at 191-192.

[15] *Id.* at 195-203.

[16] *Id.* at 231-238.

[17] *Id.* at 218-219.

[18] *Id.* at 233-234.

[19] *Id.* at 236.

Ruling of the CA

Feeling aggrieved, the respondent filed with the CA a petition for *certiorari*, which was later granted by the CA in its Decision dated June 13, 2013. The decretal portion of the decision reads:

> **WHEREFORE,** the instant petition for certiorari is ***GRANTED***. The 29 November 2011 Resolution of the [NLRC] is ***REINSTATED*** with ***MODIFICATIONS***, as follows: (1) the award of moral damages in favor of the [respondent] is increased from ₱20,000.00 to ₱50,000.00; and (2) legal interest at the rate of 6% per annum is imposed on the total monetary awards in favor of the [respondent] computed from 21 November 2010 until fully paid.
>
> ***SO ORDERED.***[20]

Hence, the present petition for review on *certiorari* wherein the petitioners impute error upon the CA declaring the respondent to have been illegally dismissed, given the documentary evidence that they presented to prove the fact of the latter's resignation. They further refer to the QDR issued by the PNP Crime Laboratory, allegedly attesting to the genuineness of the respondent's signatures appearing in the resignation letter and quitclaim, waiver and release.

Ruling of the Court

The Court denies the petition.

The Court underscores the petitioners' insistent claim that the respondent was not dismissed, but had voluntarily resigned from employment with STWC. The respondent, on the other hand, consistently and vehemently denied the genuineness of the signatures in the two subject documents presented by the petitioners. She likewise denied any intention to sever her employment with the company.

Anent the foregoing circumstances, it is well-settled by jurisprudence that in labor cases, "the employer has the burden of proving that the employee was not dismissed, or, if dismissed,

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[20] *Id.* at 39.

that the dismissal was not illegal."[21] The NLRC's pronouncement that it was incumbent upon the respondent to dispute the genuineness of her signature on the resignation letter was then clearly misplaced. As the Court emphasized in *San Miguel Properties Philippines, Inc. v. Gucaban*:[22]

> Resignation — the formal pronouncement or relinquishment of a position or office — is the voluntary act of an employee who is in a situation where he believes that personal reasons cannot be sacrificed in favor of the exigency of the service, and he has then no other choice but to disassociate himself from employment. The intent to relinquish must concur with the overt act of relinquishment; hence, the acts of the employee before and after the alleged resignation must be considered in determining whether he in fact intended to terminate his employment. **In illegal dismissal cases, fundamental is the rule that when an employer interposes the defense of resignation, on him necessarily rests the burden to prove that the employee indeed voluntarily resigned.** x x x.[23] (Citations omitted and emphasis ours)

The petitioners attempted to discharge the burden of proving the respondent's resignation by referring mainly to a letter allegedly executed by the respondent. The CA, however, correctly explained that the NLRC's reliance thereon and on the QDR from the PNP Crime Laboratory to prove the letter's authenticity was unsatisfactory. In contrast with the NLRC's conclusion in its Resolution dated March 19, 2012 that the respondent actually executed the resignation letter, the full report of the PNP Crime Laboratory actually indicated that the signature appearing on the alleged resignation letter did not appear to be written by the same person who signed the several payroll slips and Philhealth records, respectively marked as "S-1" to "S-14" and "S-15" to "S-17", that were submitted by the petitioners as reference on the respondent's true handwriting.[24] Thus, pertinent portions of the report read as follows:

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[21] *DUP Sound Phils. and/or Tan v. Court of Appeals, et al.*, 676 Phil. 472, 479 (2011).

[22] 669 Phil. 288 (2011).

[23] *Id.* at 297.

[24] *Rollo*, pp. 33-34.

FINDINGS:

x x x x x x x x x

3. Scientific comparative examination and analysis of the questioned signature TEODORA CAMPO marked "Q-4" appearing on a Resignation letter and the submitted standard signatures of TEODORA CAMPO marked "S-1 to S-17" inclusive reveal divergences in the manner of execution, line quality, stroke structures and other individual handwriting characteristics.

x x x x x x x x x

CONCLUSIONS:

x x x x x x x x x

3. The questioned signature of TEODORA CAMPO marked "Q-4" appearing on the above mentioned documents and the submitted standard signatures of TEODORA CAMPO marked "S-1" to "S-17" inclusive **WERE NOT WRITTEN BY ONE AND THE SAME PERSON.**

x x x x x x x x x[25]

(Emphasis in the original)

Although the same report from the PNP provided that the signature on the resignation letter matched the supposed handwriting of the respondent in her bio-data dated April 1, 2009,[26] the conflicting findings and the fact that only one of the 18 documents used as reference for the examination matched the signature in the letter only supported the respondent's claim that she did not execute the resignation letter. Furthermore, there was no showing that the sample signature considered by the PNP Crime Laboratory was a genuine signature of the respondent, rendering it insufficient basis for the conclusion arrived at by the document examiner and relied upon by the NLRC.

Clearly then, given the vehement claim of the respondent that her signature on the resignation letter was a mere forgery, the evidence presented by the petitioners to establish their defense

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[25] *Id.* at 219.

[26] *Id.*

of voluntary resignation failed to suffice. Several other indicators cast doubt on the letter's authenticity, as the NLRC itself cited in its Resolution dated November 29, 2011 that:

> As shown on records, the [respondent's] original and genuine signature appeared for several times in her documents, evidence and pleadings x x x. The signatures of the [respondent] therein manifest a similar stroke with an upper loop, downslide on the letter "t", letters "c" and "a" not distinct from each other, downslide on the letter "p" and an upward loop on the letter "o". By a careful examination, the said signatures are far and different from the alleged [respondent's] signatures on the "resignation letter, Waiver, Release and Quitclaims Statement and payslips" x x x presented by the [petitioners]. In the resignation letter in particular x x x, the letter "t" does not have an upper loop. Also in the said documents x x x the letters "c" and "a" are distinct from each other, and the letter "p" x x x contains an outside downward loop which obviously differ from the original signature of the [respondent]. On the same tack, the [respondent] specifically denied under oath the genuineness of her signatures in the [petitioners'] documents as well as [their] truthfulness x x x.[27]

The foregoing observations of the NLRC appeared consistent with the PNP Crime Laboratory's report that the signature on the resignation letter did not match the several other documents supposedly executed by the respondent.

The authenticity and due execution of the undated Waiver, Release and Quitclaims Statement purportedly signed by the respondent was also not sufficiently established. The QDR was not conclusive on the issue of its genuineness. Even granting that such document was actually executed by the respondent, its execution was not fatal to the respondent's case for illegal dismissal. The finding of illegal dismissal could still stand, as jurisprudence provides that "[a]n employee's execution of a final settlement and receipt of amounts agreed upon do not foreclose his right to pursue a claim for illegal dismissal."[28]

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[27] *Id.* at 187.

[28] *Londonio, et al. v. Bio Research, Inc., et al.*, 654 Phil. 561, 569 (2011).

All told, the Court finds no cogent reason to reverse the CA's finding that the respondent was illegally dismissed and thus entitled to reinstatement and monetary awards plus interest. The reckoning date for the computation of the awarded interest, however, needs to be modified after the CA ruled that it should be at the rate of six percent (6%) *per annum*, to be computed from the date of dismissal on November 21, 2010 until full payment. To conform with prevailing jurisprudence, interest on the monetary awards shall only be computed from the date this Resolution becomes final and executory, until full satisfaction.[29]

WHEREFORE, the petition is **DENIED**. The Decision dated June 13, 2013 and Resolution dated February 12, 2014 of the Court of Appeals in CA-G.R. SP No. 124881 are **AFFIRMED with MODIFICATION** in that the interest of six percent (6%) *per annum* of the total monetary award is to be computed from the date of finality of this Resolution, until full payment.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 214243. March 16, 2016]

REPUBLIC OF THE PHILIPPINES, *petitioner, vs.* **NILDA B. TAMPUS,** *respondent.*

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[29] *University of Pangasinan, Inc., Cesar Duque/Juan Llamas Amor/ Dominador Reyes v. Florentino Fernandez and Heirs of Nilda Fernandez*, G.R. No. 211228, November 12, 2014; *Nacar v. Gallery Frames*, G.R. No. 189871, August 13, 2013, 703 SCRA 439.

SYLLABUS

1. CIVIL LAW; FAMILY CODE; DECLARATION OF PRESUMPTIVE DEATH; FOUR ESSENTIAL REQUISITES; THE BURDEN OF PROOF TO SHOW THE PRESENCE OF ALL THE REQUISITES RESTS ON THE PRESENT SPOUSE.— Before a judicial declaration of presumptive death can be obtained, it must be shown that the prior spouse had been absent for four consecutive years and the present spouse had a *well-founded belief* that the prior spouse was already dead. Under Article 41 of the Family Code of the Philippines (Family Code), there are four (4) essential requisites for the declaration of presumptive death: (1) that the absent spouse has been missing for four (4) consecutive years, or two (2) consecutive years if the disappearance occurred where there is danger of death under the circumstances laid down in Article 391 of the Civil Code; (2) that the present spouse wishes to remarry; (3) that the present spouse has a well-founded belief that the absentee is dead; and (4) that the present spouse files a summary proceeding for the declaration of presumptive death of the absentee. The burden of proof rests on the present spouse to show that all the foregoing requisites under Article 41 of the Family Code exist. Since it is the present spouse who, for purposes of declaration of presumptive death, substantially asserts the affirmative of the issue, it stands to reason that the burden of proof lies with him/her. He who alleges a fact has the burden of proving it and mere allegation is not evidence.

2. ID.; ID.; ID.; ID.; REQUIREMENT OF "WELL-FOUNDED BELIEF" IN THE ABSENTEE'S DEATH, EXPLAINED.— The "well-founded belief" in the absentee's death requires the present spouse to prove that his/her belief was the result of diligent and reasonable efforts to locate the absent spouse and that based on these efforts and inquiries, he/she believes that under the circumstances, the absent spouse is already dead. It necessitates exertion of active effort, not a passive one. As such, the mere absence of the spouse for such periods prescribed under the law, lack of any news that such absentee spouse is still alive, failure to communicate, or general presumption of absence under the Civil Code would not suffice. The premise is that Article 41 of the Family Code places upon the present spouse the burden of complying with the stringent requirement of "well-founded belief" which can only be

discharged upon a showing of proper and honest-to-goodness inquiries and efforts to ascertain not only the absent spouse's whereabouts, but more importantly, whether the latter is still alive or is already dead.

3. ID.; ID.; ID.; ID.; ID.; MERELY ALLOWING THE PASSAGE OF TIME WITHOUT ACTIVELY AND DILIGENTLY SEARCHING FOR THE ABSENT SPOUSE CANNOT CONSTITUTE A "WELL-FOUNDED BELIEF" THAT THE ABSENTEE IS DEAD.— In this case, Nilda testified that after Dante's disappearance, she tried to locate him by making inquiries with his parents, relatives, and neighbors as to his whereabouts, but unfortunately, they also did not know where to find him. Other than making said inquiries, however, Nilda made no further efforts to find her husband. She could have called or proceeded to the AFP headquarters to request information about her husband, but failed to do so. She did not even seek the help of the authorities or the AFP itself in finding him. Considering her own pronouncement that Dante was sent by the AFP on a combat mission to Jolo, Sulu at the time of his disappearance, she could have inquired from the AFP on the status of the said mission, or from the members of the AFP who were assigned thereto. To the Court's mind, therefore, Nilda failed to actively look for her missing husband, and her purported earnest efforts to find him by asking Dante's parents, relatives, and friends did not satisfy the strict standard and degree of diligence required to create a "well-founded belief" of his death. Furthermore, Nilda did not present Dante's family, relatives, or neighbors as witnesses who could have corroborated her asseverations that she earnestly looked for Dante. These resource persons were not even, named. x x x [O]ther than Nilda's bare testimony, no other corroborative evidence had been offered to support her allegation that she exerted efforts to find him but was unsuccessful. What appears from the facts as established in this case was that Nilda simply allowed the passage of time without actively and diligently searching for her husband, which the Court cannot accept as constituting a "well-founded belief" that her husband is dead. Whether or not the spouse present acted on a well-founded belief of death of the absent spouse depends upon the inquiries to be drawn from a great many circumstances occurring before and after the disappearance of the absent spouse and the nature and extent of the inquiries made by the present spouse. In fine, having

fallen short of the stringent standard and degree of due diligence required by jurisprudence to support her claim of a "well-founded belief" that her husband Dante is already dead, the instant petition must be granted.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Gregorio A. Paquibot, Jr. 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 17, 2013 and the Resolution[3] dated September 2, 2014 rendered by the Court of Appeals (CA) in CA-G.R. SP No. 04588, which affirmed the Decision[4] dated July 29, 2009 of the Regional Trial Court of Lapu-Lapu City, Branch 54 (RTC) declaring respondent's spouse, Dante L. Del Mundo, as presumptively dead.

The Facts

Respondent Nilda B. Tampus (Nilda) was married to Dante L. Del Mundo (Dante) on November 29, 1975 in Cordova, Cebu. The marriage ceremony was solemnized by Municipal Judge Julian B. Pogoy of Cordova, Cebu.[5] Three days thereafter, or on December 2, 1975, Dante, a member of the Armed Forces

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[1] *Rollo*, pp. 9-22.

[2] *Id.* at 24-29. Penned by Associate Justice Carmelita Salandanan-Manahan with Associate Justices Ramon Paul L. Hernando and Ma. Luisa C. Quijano-Padilla concurring.

[3] *Id.* at 31-33. Penned by Associate Justice Ma. Luisa C. Quijano-Padilla with Associate Justices Ramon Paul L. Hernando and Marilyn B. Lagura-Yap concurring.

[4] *Id.* at 61-63. Penned by Presiding Judge Victor Teves, Sr.

[5] *Id.* at 25 and 59.

of the Philippines (AFP), left respondent, and went to Jolo, Sulu where he was assigned. The couple had no children.[6]

Since then, Nilda heard no news from Dante. She tried everything to locate him, but her efforts proved futile.[7] Thus, on April 14, 2009, she filed before the RTC a petition[8] to declare Dante as presumptively dead for the purpose of remarriage, alleging that after the lapse of thirty-three (33) years without any kind of communication from him, she firmly believes that he is already dead.[9]

Due to the absence of any oppositor, Nilda was allowed to present her evidence *ex parte*. She testified on the allegations in her petition, affirming that she exerted efforts to find Dante by inquiring from his parents, relatives, and neighbors, who, unfortunately, were also not aware of his whereabouts. She averred that she intends to remarry and move on with her life.[10]

The RTC Ruling

In a Decision[11] dated July 29, 2009, the RTC granted Nilda's petition and declared Dante as presumptively dead for all legal purposes, without prejudice to the effect of his reappearance. It found that Dante left the conjugal dwelling sometime in 1975 and from then on, Nilda never heard from him again despite diligent efforts to locate him. In this light, she believes that he had passed away especially since his last assignment was a combat mission. Moreover, the RTC found that the absence of thirty-three (33) years was sufficient to give rise to the presumption of death.[12]

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[6] *Id.* at 25.

[7] *Id.*

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

[9] *Id.*

[10] *Id.* at 62.

[11] *Id.* at 61-63.

[12] *Id.* at 62-63.

Dissatisfied, the Office of the Solicitor General (OSG), on behalf of petitioner Republic of the Philippines (Republic), filed a petition for *certiorari*[13] before the CA assailing the RTC Decision.

The CA Ruling

In a Decision[14] dated June 17, 2013, the CA denied the OSG's petition and affirmed the RTC Decision declaring Dante as presumptively dead. The CA gave credence to the RTC's findings that Nilda had exerted efforts to find her husband by inquiring from his parents, relatives, and neighbors, who likewise had no knowledge of his whereabouts. Further, the lapse of thirty-three (33) years, coupled with the fact that Dante had been sent on a combat mission to Jolo, Sulu, gave rise to Nilda's well-founded belief that her husband is already dead.[15]

Moreover, the CA opined that if Dante were still alive after many years, it would have been easy for him to communicate with Nilda, taking into consideration the fact that Dante was only 25 years old when he left and, therefore, would have been still physically able to get in touch with his wife. However, because neither Nilda nor his own family has heard from him for several years, it can be reasonably concluded that Dante is already dead.[16]

The OSG's motion for reconsideration[17] was denied in a Resolution[18] dated September 2, 2014; hence, this petition.

The Issue Before the Court

The sole issue for the Court's resolution is whether or not the CA erred in upholding the RTC Decision declaring Dante as presumptively dead.

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

[14] *Id.* at 24-29.

[15] *Id.* at 27-28.

[16] *Id.* at 28.

[17] See motion for reconsideration dated July 15, 2013; *id.* at 34-38.

[18] *Id.* at 31-33.

The Court's Ruling

The petition has merit.

Before a judicial declaration of presumptive death can be obtained, it must be shown that the prior spouse had been absent for four consecutive years and the present spouse had a *well-founded belief* that the prior spouse was already dead. Under Article 41[19] of the Family Code of the Philippines (Family Code), there are four (4) essential requisites for the declaration of presumptive death: (1) that the absent spouse has been missing for four (4) consecutive years, or two (2) consecutive years if the disappearance occurred where there is danger of death under the circumstances laid down in Article 391 of the Civil Code; (2) that the present spouse wishes to remarry; (3) that the present spouse has a well-founded belief that the absentee is dead; and (4) that the present spouse files a summary proceeding for the declaration of presumptive death of the absentee.[20]

The burden of proof rests on the present spouse to show that all the foregoing requisites under Article 41 of the Family Code exist. Since it is the present spouse who, for purposes of declaration of presumptive death, substantially asserts the affirmative of the issue, it stands to reason that the burden of proof lies with him/her. He who alleges a fact has the burden of proving it and mere allegation is not evidence.[21]

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[19] Article 41. A marriage contracted by any person during the subsistence of a previous marriage shall be null and void, unless before the celebration of the subsequent marriage, the prior spouse had been absent for four consecutive years and the spouse present had a well-founded belief that the absent spouse was already dead. In case of disappearance where there is danger of death under the circumstances set forth in the provisions of Article 391 of the Civil Code, an absence of only two years shall be sufficient.

For the purpose of contracting the subsequent marriage under the preceding paragraph, the spouse present must institute a summary proceeding as provided in this Code for the declaration of presumptive death of the absentee, without prejudice to the effect of reappearance of the absent spouse.

[20] *Republic v. Cantor,* G.R. No. 184621, December 10, 2013, 712 SCRA 1, 18.

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

The "well-founded belief" in the absentee's death requires the present spouse to prove that his/her belief was the result of diligent and reasonable efforts to locate the absent spouse and that based on these efforts and inquiries, he/she believes that under the circumstances, the absent spouse is already dead. It necessitates exertion of active effort, not a passive one. As such, the mere absence of the spouse for such periods prescribed under the law, lack of any news that such absentee spouse is still alive, failure to communicate, or general presumption of absence under the Civil Code would not suffice.[22] The premise is that Article 41 of the Family Code places upon the present spouse the burden of complying with the stringent requirement of "well-founded belief" which can only be discharged upon a showing of proper and honest-to-goodness inquiries and efforts to ascertain not only the absent spouse's whereabouts, but more importantly, whether the latter is still alive or is already dead.[23]

In this case, Nilda testified that after Dante's disappearance, she tried to locate him by making inquiries with his parents, relatives, and neighbors as to his whereabouts, but unfortunately, they also did not know where to find him. Other than making said inquiries, however, Nilda made no further efforts to find her husband. She could have called or proceeded to the AFP headquarters to request information about her husband, but failed to do so. She did not even seek the help of the authorities or the AFP itself in finding him. Considering her own pronouncement that Dante was sent by the AFP on a combat mission to Jolo, Sulu at the time of his disappearance, she could have inquired from the AFP on the status of the said mission, or from the members of the AFP who were assigned thereto. To the Court's mind, therefore, Nilda failed to actively look for her missing husband, and her purported earnest efforts to find him by asking Dante's parents, relatives, and friends did not satisfy the strict standard and degree of diligence required to create a "well-founded belief" of his death.

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[22] See *id.* at 20.

[23] *Id.* at 20, citing *Republic of the Philippines v. CA*, 513 Phil. 391, 397-398 (2005).

Furthermore, Nilda did not present Dante's family, relatives, or neighbors as witnesses who could have corroborated her asseverations that she earnestly looked for Dante. These resource persons were not even named. In *Republic v. Nolasco*,[24] it was held that the present spouse's bare assertion that he inquired from his friends about his absent spouse's whereabouts was found insufficient as the names of said friends were not identified in the testimony nor presented as witnesses.[25]

Finally, other than Nilda's bare testimony, no other corroborative evidence had been offered to support her allegation that she exerted efforts to find him but was unsuccessful. What appears from the facts as established in this case was that Nilda simply allowed the passage of time without actively and diligently searching for her husband, which the Court cannot accept as constituting a "well-founded belief" that her husband is dead. Whether or not the spouse present acted on a well-founded belief of death of the absent spouse depends upon the inquiries to be drawn from a great many circumstances occurring before and after the disappearance of the absent spouse and the nature and extent of the inquiries made by the present spouse.[26]

In fine, having fallen short of the stringent standard and degree of due diligence required by jurisprudence to support her claim of a "well-founded belief" that her husband Dante is already dead, the instant petition must be granted.

WHEREFORE, the petition is **GRANTED**. Accordingly, the Decision dated June 17, 2013 and the Resolution dated September 2, 2014 rendered by the Court of Appeals in CA-G.R. SP No. 04588 are hereby **REVERSED** and **SET ASIDE**. The petition of respondent Nilda B. Tampus to have her husband, Dante L. Del Mundo, declared presumptively dead is **DENIED**.

SO ORDERED.

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

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[24] G.R. No. 94053, March 17, 1993, 220 SCRA 20.

[25] *Id.* at 28.

[26] *Republic of the Philippines v. CA, supra* note 23, at 398.

THIRD DIVISION

[G.R. No. 217121. March 16, 2016]

SYSTEMS AND PLAN INTEGRATOR AND DEVELOPMENT CORPORATION, represented by its President, ENGR. JULIETA CUNANAN, *petitioner, vs.* **MUNICIPAL GOVERNMENT OF MURCIA,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; APPEALS; WRONG MODE OF APPEAL; AN ORDER DISMISSING THE CASE FOR FAILURE TO PROSECUTE IS A FINAL ORDER AND THE PROPER REMEDY OF THE AGGRIEVED PARTY IS ORDINARY APPEAL; DISMISSAL OF THE PETITION FOR *CERTIORARI* PROPER IN CASE AT BAR.—** In *Young v. Spouses Sy*, the Court is emphatic that: [T]he RTC orders dismissing the case for failure to prosecute are final orders, because such orders of dismissal operate as a judgment on the merits. This principle is now an express provision in Section 3, Rule 17 of the Rules of Court, x x x It is firmly established, and with very few exceptions, that the remedy against such final order is appeal and not *certiorari*. x x x Further, Section 5(f), Rule 56 of the Rules of Court clearly provides that an appeal may be dismissed *motu proprio* or upon motion if a party resorts to an erroneous mode thereof. Prescinding from the above, the CA cannot be faulted for dismissing SPIDC's petition for *certiorari* on account of its procedural flaw. Besides, even if the Court were to exercise leniency, consider SPIDC's motion for reconsideration belatedly filed before the RTC, and let the petition for *certiorari* be treated as an ordinary appeal by the CA, it would still be susceptible to dismissal.

2. **ID.; ID.; DISMISSAL OF APPEAL; NEGLIGENCE OF THE COUNSEL BINDS THE CLIENT, AND NO COMPELLING REASON EXISTS TO EXEMPT THE PETITIONER FROM ITS APPLICATION IN THE CASE AT BAR; THE COURT FINDS IT MORE IN ACCORD WITH JUSTICE AND EQUITY TO DISMISS THE CASE WITHOUT PREJUDICE.—** It appears from the records that SPIDC's complaint was dismissed on account of the law office's

> negligence. *Philhouse Development* instructs that as a general rule, the dereliction of duty by the counsel affects the client. As an exception thereto, the client may be excused from the counsel's failure only if the former can prove to have been entirely faultless. In the instant petition, the law office's lackadaisical efforts in prosecuting the complaint should have prompted SPIDC to take the precautionary measures of being constantly updated about the proceedings and promptly engaging the services of another lawyer. Instead, SPIDC left the fate of its case to the hands of the law office. SPIDC was not entirely blameless; hence, the Court finds no compelling reason to exempt the instant case from the application of the rule regarding the binding effect upon the client of counsel's negligence. x x x The Court, however, notes that SPIDC's complaint for collection of a sum of money was lodged against the respondent relative to goods or services, which were already delivered or rendered. The Court thus finds it more in accord with justice and equity that the dismissal of the case be without prejudice.

APPEARANCES OF COUNSEL

Mirandilla Law Firm for petitioner.

R E S O L U T I O N

REYES, *J.*:

The instant petition for review on *certiorari*[1] assails the Resolutions dated May 30, 2014[2] and February 23, 2015[3] of the Court of Appeals (CA) in CA-G.R. SP No. 133398.

Facts

In August of 2010, petitioner Systems and Plan Integrator and Development Corporation (SPIDC) engaged the services of Kapunan Lotilla Garcia and Castillo Law Offices (the law

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[1] *Rollo*, pp. 9-19.

[2] Penned by Associate Justice Stephen C. Cruz, with Associate Justices Magdangal M. De Leon and Eduardo B. Peralta, Jr. concurring; *id.* at 20-22.

[3] *Id.* at 25-26.

office) to pursue a civil collection case and an administrative case against the Municipal Government of Murcia (respondent).[4] Per agreement, SPIDC shall pay the law office acceptance, contingency and deposit fees.[5] Official receipts[6] issued by the law office, dated February 4, 2011 and February 17, 2011, indicated SPIDC's payment of Php50,000.00 and Php30,000.00, respectively.

Thereafter, the law office filed in behalf of SPIDC and against the respondent a collection case before the Regional Trial Court (RTC) of Quezon City, which was docketed as Civil Case No. Q-11-68595, and raffled to Branch 220. On January 4, 2011, SPIDC paid filing fees[7] in the amounts of Php185,146.00 and Php277,594.00.

On August 30, 2012, SPIDC received a copy of the RTC Order, dated July 23, 2012, which dismissed the case against the respondent for failure to prosecute. The dismissal was precipitated by the law office's non-appearance before the RTC to examine the case records pursuant to the order issued on January 12, 2012. SPIDC claimed that a certain "Atty. Garcia" from the law office manifested that a motion for reconsideration shall be filed to assail the RTC's dismissal of the collection case.[8]

On September 21, 2012, SPIDC instead received a copy of the law office's motion to approve withdrawal as counsel for non-payment of service fees filed before the RTC.[9] The RTC granted the law office's motion through the Order issued on October 19, 2012.[10]

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[4] Please *see* the document denominated as "Engagement for Legal Services" dated August 27, 2010, *id.* at 29-30.

[5] *Id.*

[6] *Id.* at 32.

[7] *Id.* at 33.

[8] *Id.* at 11, 13.

[9] *Id.* at 12.

[10] *Id.* at 13.

SPIDC claimed that upon inquiry addressed to the law office, a certain "Atty. Castillo" explained that fees paid for services rendered in the collection case against the respondent were not recorded properly and the lawyers assigned thereto had resigned. Further, SPIDC had to wait for the law office to reconcile its records.[11]

Meanwhile, SPIDC engaged the services of Atty. Arles B. Mirandilla (Atty. Mirandilla),[12] who filed a motion for reconsideration to assail the dismissal of the collection case. Through the Order[13] issued on October 16, 2013, the RTC denied SPIDC's motion for having been filed out of time.

In the herein challenged resolutions, the CA dismissed SPIDC's petition for *certiorari* filed under Rule 65 of the Rules of Court for being a wrong mode of appeal. The CA ruled that the dismissal of a case for failure to prosecute is a final order and operates as a judgment on the merits, appealable under Rule 41 and not Rule 65 of the Rules of Court.[14]

Issues

SPIDC is now before this Court raising the issues of whether or not (1) the dismissal of the case by the RTC violated SPIDC's substantive rights, and (2) the alleged violation of substantive rights should be considered as grave abuse of discretion amounting to lack or excess of jurisdiction.[15]

SPIDC avers that even if there was indeed inadequacy on the part of the law office in prosecuting the case against the respondent, the RTC should have exercised liberality lest there be a deprivation of substantive rights.[16]

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[11] *Id.* at 12-13.

[12] *Id.* at 13, 16.

[13] Issued by Judge Jose G. Paneda; *id.* at 52-57.

[14] *Id.* at 21-22.

[15] *Id.* at 10.

[16] *Id.* at 13.

In its Comment,[17] the respondent asserts that SPIDC has failed to present legal arguments against the validity of the CA Resolutions dated May 30, 2014 and February 23, 2015. Besides, SPIDC had erroneously filed before the CA a petition for *certiorari* under Rule 65 of the Rules of Court, instead of an ordinary appeal under Rule 41 thereof. Hence, by reason of SPIDC's inefficacious appeal before the CA, the RTC Order dated July 23, 2012 dismissing the complaint had attained a state of finality. Further, SPIDC is bound by the acts of its counsel. Granting the instant petition would be violative of the principles of finality of judgments and stability of judicial doctrines.

Ruling of the Court

There is no merit in the instant petition.

An erroneous mode of appeal was filed before the CA.

In *Young v. Spouses Sy*,[18] the Court is emphatic that:

[T]he RTC orders dismissing the case for failure to prosecute are final orders, because such orders of dismissal operate as a judgment on the merits. This principle is now an express provision in Section 3, Rule 17 of the Rules of Court, to wit:

> Section 3. *Dismissal due to fault of plaintiff.* — If, for no justifiable cause, the plaintiff fails to appear on the date of the presentation of his evidence in chief on the complaint, or to prosecute his action for an unreasonable length of time, or to comply with these Rules or any order of the court, the complaint may be dismissed upon motion of the defendant or upon the court's own motion, without prejudice to the right of the defendant to prosecute his counterclaim in the same or in a separate action. ***This dismissal shall have the effect of an adjudication upon the merits, unless otherwise declared by the court***. x x x

It is firmly established, and with very few exceptions, that the remedy against such final order is appeal and not *certiorari*.

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[17] *Id.* at 42-51.

[18] 534 Phil. 246 (2006).

The general rule is that a writ of *certiorari* will not issue where the remedy of appeal is available to the aggrieved party. x x x.[19] (Citations omitted, italics and emphasis in the original and underscoring ours)

Further, Section 5 (f), Rule 56 of the Rules of Court clearly provides that an appeal may be dismissed *motu proprio* or upon motion if a party resorts to an erroneous mode thereof.

Prescinding from the above, the CA cannot be faulted for dismissing SPIDC's petition for *certiorari* on account of its procedural flaw. Besides, even if the Court were to exercise leniency, consider SPIDC's motion for reconsideration belatedly filed before the RTC, and let the petition for *certiorari* be treated as an ordinary appeal by the CA, it would still be susceptible to dismissal.

As a general rule, the counsel's negligence binds the client, and no compelling reason exists for the Court to exempt the petitioner from its application.

In *Philhouse Development Corporation v. Consolidated Orix Leasing and Finance Corporation*,[20] the Court declared that:

The dereliction of duty by counsel affects the client. While, exceptionally, the client may be excused from the failure of counsel, the factual and case settings in this instance, however, would not warrant such an exception; indeed, petitioners themselves may not be said to be entirely faultless.

The complaint for a sum of money and damages was instituted several years back. Petitioners were thrice declared in default. x x x After an adverse decision by the trial court, petitioners' counsel failed to file a timely notice of appeal. The petition for relief, subsequently filed, was correctly dismissed by the trial court for

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[19] *Id.* at 265-266; Please also see *Chingkoe v. Republic*, G.R. No. 183608, July 31, 2013, 702 SCRA 677, 689; *Badillo, et al. v. CA, et al.*, 578 Phil. 404, 418 (2008).

[20] 408 Phil. 392 (2001).

lack of merit. The appeal to the [CA] was itself dismissed for failure to file an appellant's brief. Petitioners could not have failed to notice the succession of blunders committed by their counsel, yet they took no precautionary measures such as by forthwith seeking the help of another counsel. No prudent party would leave the fate of his case completely to his lawyer. It should be the duty of the client to be in touch with his counsel so as to be constantly posted about the case.

Petitioners have not been denied their day in court. It is basic that as long as a party is given the opportunity to defend his interests in due course, he would have no reason to complain, for it is this opportunity to be heard that makes up the essence of due process. [W]here opportunity to be heard, either through oral argument or through pleadings, is accorded, there can be no denial of procedural due process. If it were otherwise, "all that a defeated party would have to do to salvage his case," observed the Court in one case, would be to "claim neglect or mistake on the part of his counsel as a ground for reversing the adverse judgment," and there would then be "no end to litigation x x x as every shortcoming of counsel could be the subject of challenge by his client through another counsel who, if he (were) also found wanting, (could) x x x be disowned by the same client through another counsel, and so on *ad infinitum*, thereby rendering court proceedings indefinite x x x."[21] (Citations omitted, italics in the original and underscoring ours)

In the case at bar, the controversy arose from SPIDC's complaint for collection of a sum of money, which was dismissed by the RTC on July 23, 2012 due to failure to prosecute. A review of the incidents leading to the complaint's dismissal by the RTC and SPIDC's filing of the petition for *certiorari* before the CA is therefore essential.

On January 28, 2012, the RTC issued an Order directing SPIDC to show cause why the latter's complaint should not be dismissed for failure to prosecute. On March 6, 2012, the RTC received SPIDC's compliance through which the law office explained that it was not furnished with notices regarding the proceedings. The law office undertook to examine the records

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[21] *Id.* at 397-398.

of the case for it to proceed. However, despite the lapse of several months, the law office still failed to examine the records. Consequently, the RTC issued the Order dated July 23, 2012 dismissing the case. A copy of the said order was likewise sent to and was received by SPIDC itself on August 29, 2012. On November 13, 2012, SPIDC's new counsel, Atty. Mirandilla, belatedly filed before the RTC a Motion for Reconsideration against the Order dated July 23, 2012. The RTC denied the motion through the Order issued on October 16, 2013.[22]

It appears from the records that SPIDC's complaint was dismissed on account of the law office's negligence.[23] *Philhouse Development*[24] instructs that as a general rule, the dereliction of duty by the counsel affects the client. As an exception thereto, the client may be excused from the counsel's failure only if the former can prove to have been entirely faultless.[25]

In the instant petition, the law office's lackadaisical efforts in prosecuting the complaint should have prompted SPIDC to take the precautionary measures of being constantly updated about the proceedings and promptly engaging the services of another lawyer. Instead, SPIDC left the fate of its case to the hands of the law office. SPIDC was not entirely blameless; hence, the Court finds no compelling reason to exempt the instant case from the application of the rule regarding the binding effect upon the client of counsel's negligence.

The case is dismissed *sans* prejudice.

The Court, however, notes that SPIDC's complaint for collection of a sum of money was lodged against the respondent relative to goods or services, which were already delivered or rendered. The Court thus finds it more in accord with justice and equity that the dismissal of the case be without prejudice.

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[22] *Rollo*, pp. 54-57.

[23] *Id.* at 56.

[24] *Supra* note 20.

[25] *Id.* at 397.

Proofs are inconclusive to determine whether or not the law office had indeed been negligent.

Anent the law office's negligent acts or omissions, the records are insufficient for the Court to be able to conclusively determine the truth of SPIDC's allegations.

IN VIEW OF THE FOREGOING, the instant petition is **DENIED.** The Order dated July 23, 2012 of the Regional Trial Court of Quezon City, Branch 220, in Civil Case No. Q-11-68595 is however **MODIFIED** to the extent that the dismissal of the complaint is hereby declared to be without prejudice. Kapunan Lotilla Garcia and Castillo Law Offices is directed to **SHOW CAUSE** within ten (10) days from notice why it should not be disciplinarily dealt with for acts and omissions ascribed to it by its client, Systems and Plan Integrator and Development Corporation.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 217799. March 16, 2016]

CITA C. PEREZ, *petitioner, vs.* **FIDEL D. AQUINO,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; AGRICULTURAL LAND REFORM CODE (R.A. 3844, AS AMENDED); REQUIREMENTS FOR A VALID EXERCISE OF LESSEE'S

RIGHT OF REDEMPTION.— [T]he right of redemption is validly exercised upon compliance with the following requirements: (*a*) the redemptioner must be an agricultural lessee or share tenant; (*b*) the land must have been sold by the owner to a third party without prior written notice of the sale given to the lessee or lessees and the DAR; (*c*) only the area cultivated by the agricultural lessee may be redeemed; and (*d*) the right of redemption must be exercised within 180 days from written notice of the sale by the vendee. Case law further holds that tender or consignation is an indispensable requirement to the proper exercise of the right of redemption by the agricultural lessee. **Thus, an offer to redeem can be properly effected through: (*a*) a formal tender with consignation, or (*b*) a complaint filed in court coupled with consignation of the redemption price** within the prescribed period. It must be stressed that in making a repurchase, it is not sufficient that a person offering to redeem merely manifests his desire to repurchase. This statement of intention must be accompanied by an actual and simultaneous tender of payment of the full amount of the repurchase price, *i.e.*, the consideration of the sale, **otherwise the offer to redeem will be held ineffectual.**

2. ID.; ID.; ID.; FAILURE TO CONSIGN THE REDEMPTION PRICE UPON FILING OF THE COMPLAINT FOR REDEMPTION WILL RESULT IN THE DISMISSAL THEREOF.— [H]aving elected to exercise his right to redeem the subject land by filing a complaint in court, it behooved upon respondent to comply with the requirements for a valid and effective exercise of such right, *i.e.*, the filing of the complaint should have been coupled with the consignation of the redemption price to show his willingness and ability to pay. Considering that respondent failed to consign the redemption price of ₱20,000.00 when he filed the complaint for redemption before the PARAD on January 15, 2002, there was no valid exercise of the right to redeem the subject land. It bears stressing that while the right of redemption under Section 12 of RA 3844, as amended, is an essential mandate of the agrarian reform legislation to implement the State's policy of owner-cultivatorship and to achieve a dignified, self-reliant existence for small farmers, such laudable and commendable policy is never intended to unduly transgress the corresponding rights of purchasers of land. Consequently, the dismissal of the complaint for redemption is in order.

3. ID.; ID.; ID.; ID.; THE NEW OWNER IS BOUND TO RESPECT THE TENANCY RIGHT ATTACHED TO THE SUBJECT LAND.— [P]etitioner, as the new owner, is bound to respect and maintain respondent as tenant of the subject land because of the latter's tenancy right attached to the land regardless of who its owner may be. Under the law, the existence of an agricultural leasehold relationship is not terminated by changes in ownership in case of sale, as in this case, since the purpose of the law is to strengthen the security of tenure of tenants.

APPEARANCES OF COUNSEL

Oscar V. Bermudez for petitioner.
Public Attorney's Office for respondent.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Before the Court is a petition for review on *certiorari*[1] assailing the Decision[2] dated July 31, 2014 and the Resolution[3] dated March 5, 2015 of the Court of Appeals (CA) in CA-G.R. SP No. 134178, which reversed and set aside the Decision[4] dated November 29, 2013 of the Department of Agrarian Reform Adjudication Board (DARAB) in DARAB Case No. 17676, and reinstated the Decision[5] dated January 7, 2005 of the Office of the Provincial Agrarian Reform Adjudicator (PARAD) of Tarlac City in DARAB Case No. III-T-2163-01 declaring

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[1] *Rollo*, pp. 8-18.

[2] *Id.* at 23-33. Penned by Associate Justice Isaias P. Dicdican with Associate Justices MichaeI P. Elbinias and Victoria Isabel A. Paredes concurring.

[3] *Id.* at 43-44.

[4] *Id.* at 93-102. Penned by Member Jim G. Coleto with Members Gerundio C. Madueño, Alex G. Almario and Ma. Patricia Rualo-Bello concurring. Chairman Virgilio R. Delos Reyes and Members Anthony N. Paruñgao and Mary Frances Pesayco-Aquino took no part.

[5] *Id.* at 70-74. Penned by Provincial Adjudicator Judita M. Tungol.

respondent Fidel D. Aquino (respondent) entitled to redeem the subject land.

The Facts

Respondent is the *bona fide* tenant[6] of a 5,000-square meter (sq. m.) parcel of land situated in Barangay Pinasling, Gerona, Tarlac (subject land), which was originally owned by the late Luis Cardona (Luis), and later transferred to the latter's heirs (Cardona heirs).[7]

Sometime in 1994, the Cardona heirs sold the subject land to petitioner Cita C. Perez (petitioner) for the amount of ₱20,000.00 who was, thereafter, issued a new certificate of title.[8]

On January 15, 2002, respondent filed a complaint[9] for redemption against petitioner before the PARAD, docketed as DARAB Case No. III-T-2163-01, averring that: (*a*) the sale in favor of petitioner violated his right of pre-emption as the legitimate agricultural lessee; and (*b*) petitioner was not a purchaser in good faith, considering that she had prior knowledge that the subject land was already occupied by him.[10]

For her part, petitioner claimed,[11] *inter alia*, that respondent: (*a*) had not cultivated the subject land and allowed it to remain idle; (*b*) had not been paying lease rentals since 1983; (*c*) had allowed his children and relatives to construct residential houses thereon in violation of agrarian laws; and (*d*) was fully aware of her acquisition from the Cardona heirs, but failed to avail of his right of redemption within the prescribed period.[12]

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[6] *Id.* at 95.

[7] See *id.* at 24.

[8] *Id.*

[9] Dated January 14, 2002. *Id.* at 48-51.

[10] See *id.* at 50-51.

[11] See Answer with Affirmative Defenses and Counterclaim dated March 19, 2002; *id.* at 56-61.

[12] See *id.* at 71. See also *id.* at 86.

The PARAD Ruling

In a Decision[13] dated January 7, 2005, the PARAD ruled that respondent is entitled to redeem the subject land, considering: (*a*) his status as the legitimate or *de jure* tenant which continues unless declared terminated by order of the court;[14] and (*b*) the lack of the required written notice of the sale to him[15] pursuant to Sections 11 and 12 of Republic Act No. (RA) 3844,[16] as amended by RA 6389,[17] otherwise known as the "Code of Agrarian Reforms of the Philippines" (RA 3844, as amended), in light of the denial by the Provincial Agrarian Reform Officer of the Department of Agrarian Reform (DAR) of Tarlac of having affixed his signature on the DAR clearance utilized by petitioner for the transfer of the subject land.[18] The PARAD emphasized that the written notice is indispensable, otherwise, the prescribed period of redemption shall not commence to run.[19] Accordingly, it directed: (*a*) respondent to pay petitioner the redemption price of ₱20,000.00, as well as the lease rentals-in-arrears from 1999 to 2002 and those accruing up to the present; (*b*) the Municipal Agrarian Reform Office (MARO) of Gerona, Tarlac to conduct the necessary accounting of harvests made by respondent from 1999 to present; and (*c*) the Registry of Deeds of Tarlac to issue

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[13] *Id.* at 70-74.

[14] *Id.* at 73.

[15] *Id.*

[16] Entitled "AN ACT TO ORDAIN THE AGRICULTURAL LAND REFORM CODE AND TO INSTITUTE LAND REFORMS IN THE PHILIPPINES, INCLUDING THE ABOLITION OF TENANCY AND THE CHANNELING OF CAPITAL INTO INDUSTRY, PROVIDE FOR THE NECESSARY IMPLEMENTING AGENCIES, APPROPRIATE FUNDS THEREFOR AND FOR OTHER PURPOSES," approved on August 8, 1963.

[17] Entitled "AN ACT AMENDING REPUBLIC ACT NUMBERED THIRTY-EIGHT HUNDRED AND FORTY-FOUR, AS AMENDED, OTHERWISE KNOWN AS THE AGRICULTURAL LAND REFORM CODE, AND FOR OTHER PURPOSES," approved on September 10, 1971.

[18] *Rollo*, p. 73.

[19] *Id.*

a new title in favor of respondent over the subject land upon execution of the corresponding deed of transfer/reconveyance.[20]

Dissatisfied, petitioner moved for reconsideration,[21] which was, however, denied in a Resolution[22] dated February 8, 2012, prompting her to file an appeal[23] before the DARAB, docketed as DARAB Case No. 17676.

The DARAB Ruling

In a Decision[24] dated November 29, 2013, the DARAB declared that respondent did not validly exercise his right of redemption as he failed to validly tender or consign the "reasonable purchase price of the [subject] land at the time of the sale"[25] which is mandatory for such exercise. However, it upheld the PARAD's directive to pay the rentals-in-arrears for the three-year period prior to the filing of the complaint in 2002 to be proper under the circumstances.[26] It, thus, affirmed the orders of the PARAD directing: (*a*) respondent to pay petitioner the lease rentals-in-arrears from 1999 to 2002 and those accruing up to the present; and (*b*) the MARO to conduct the necessary accounting of harvests made by respondent from 1999 to present.[27] Furthermore, the DARAB directed the MARO to assist in the execution of a new agricultural leasehold contract between the parties.[28]

Aggrieved, respondent appealed *via* petition for review[29] to the CA, maintaining his right to redeem the subject land, which was docketed as CA-G.R. SP No. 134178.

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[20] *Id.* at 74.

[21] Dated March 28, 2005. See *id.* at 75-79.

[22] *Id.* at 80-83. Penned by Provincial Adjudicator Richelle Lou S. Boling-Sanchez.

[23] See Notice of Appeal dated April 16, 2012; *id.* at 84.

[24] *Id.* at 93-102.

[25] *Id.* at 99.

[26] *Id.* at 100.

[27] *Id.* at 101.

[28] *Id.* at 102.

[29] Dated March 19, 2014. *Id.* at 103-121.

The CA Ruling

In a Decision[30] dated July 31, 2014, the CA reversed and set aside the DARAB's ruling, and reinstated the PARAD's Decision holding that respondent is entitled to redeem the subject land. It ruled that in the absence of the mandatory written notice of the sale to respondent, the prescriptive period to file a petition for redemption never commenced to run.[31]

Aggrieved, petitioner moved for reconsideration,[32] which was, however, denied in a Resolution[33] dated March 5, 2015; hence, this petition.

The Issue Before the Court

The essential issue for the Court's resolution is whether or not the CA erred in ruling that respondent is entitled to redeem the subject land.

The Court's Ruling

The petition is meritorious.

An agricultural lessor has the right to sell his land, with or without the knowledge of the agricultural lessee, subject, however, to the latter's right of redemption over the said land.[34] In this relation, Section 12 of RA 3844, as amended, pertinently provides:

Section 12. *Lessees Right of Redemption*. — **In case the landholding is sold to a third person without the knowledge of the agricultural lessee, the latter shall have the right to redeem the same** at a reasonable price and consideration: *Provided*, That where there are two or more agricultural lessees, each shall be entitled to said right of redemption only to the extent of the area actually cultivated by him. **The right of redemption under this Section may**

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[30] *Id.* at 23-33.

[31] See *id.* at 29-30.

[32] See Motion for Reconsideration dated August 27, 2014; *id.* at 34-41.

[33] *Id.* at 43-44.

[34] See *Planters Development Bank v. Garcia*, 513 Phil. 294, 308-309 (2005).

be exercised within one hundred eighty days from notice in writing which shall be served by the vendee on all lessees affected and the Department of Agrarian Reform upon the registration of the sale, and shall have priority over any other right of legal redemption. The redemption price shall be the reasonable price of the land at the time of the sale. (Emphases and underscoring supplied)

Pursuant to the foregoing provision, the right of redemption is validly exercised upon compliance with the following requirements: *(a)* the redemptioner must be an agricultural lessee or share tenant; *(b)* the land must have been sold by the owner to a third party without prior written notice of the sale given to the lessee or lessees and the DAR; *(c)* only the area cultivated by the agricultural lessee may be redeemed; and *(d)* the right of redemption must be exercised within 180 days from written notice of the sale by the vendee.[35]

Case law further holds that tender or consignation is an indispensable requirement to the proper exercise of the right of redemption by the agricultural lessee.[36] **Thus, an offer to redeem can be properly effected through: *(a)* a formal tender with consignation, or *(b)* a complaint filed in court coupled with consignation of the redemption price** within the prescribed period. It must be stressed that in making a repurchase, it is not sufficient that a person offering to redeem merely manifests his desire to repurchase. This statement of intention must be accompanied by an actual and simultaneous tender of payment of the full amount of the repurchase price, *i.e.*, the consideration of the sale, **otherwise the offer to redeem will be held ineffectual.**[37] In *Quiño v. CA*, the Court explained the rationale for the consignation of the full amount of the redemption price:

It is not difficult to discern why the *full* amount of the redemption price should be consigned in court. Only by such means can the buyer become certain that the offer to redeem is one made seriously

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[35] See *Rupa, Sr. v. CA*, 380 Phil. 112, 123 (2000).

[36] *Sps. Mallari v. Arcega*, 464 Phil. 584, 603 (2004).

[37] *Quiño v. CA*, 353 Phil. 449, 457-458 (1998).

and in good faith. **A buyer cannot be expected to entertain an offer of redemption without the attendant evidence that the redemptioner can, and is willing to accomplish the repurchase immediately.** A different rule would leave the buyer open to harassment by speculators or crackpots, as well as to unnecessary prolongation of the redemption period, contrary to the policy of the law in fixing a definite term to avoid prolonged and anti-economic uncertainty as to ownership of the thing sold. Consignation of the entire price would remove all controversies as to the redemptioner's ability to pay at the proper time.[38] (Emphasis and underscoring supplied)

Applying the foregoing parameters to the present case, the Court finds that respondent was not able to validly exercise his right of redemption pursuant to Section 12 of RA 3844, as amended.

In this case, it is undisputed that respondent is the *bona fide* tenant of the subject land[39] which was sold by the landowner, the Cardona heirs, to a third party, *i.e.*, petitioner, without any written notice of the sale to respondent and the DAR.[40] As such, respondent has the right to redeem the same from petitioner within the prescriptive period of 180 days from written notice of the sale by the latter pursuant to Section 12 of RA 3844, as amended.[41] Since it has been established that respondent was never notified by petitioner of the sale in her favor, then there is no prescription to speak of in the instant case. As such, respondent has the right to redeem the subject land.[42]

Nonetheless, having elected to exercise his right to redeem the subject land by filing a complaint in court, it behooved upon respondent to comply with the requirements for a valid and effective exercise of such right, *i.e.*, the filing of the complaint

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[38] *Id.* at 458-459.

[39] *Rollo*, p. 95.

[40] See *id.* at 30 and 73.

[41] See *Springsun Management Systems Corp. v. Camerino*, 489 Phil. 769, 789 (2005).

[42] *Id.* at 790.

should have been coupled with the consignation of the redemption price to show his willingness and ability to pay. Considering that respondent failed to consign the redemption price of ₱20,000.00 when he filed the complaint for redemption before the PARAD on January 15, 2002, there was no valid exercise of the right to redeem the subject land. It bears stressing that while the right of redemption under Section 12 of RA 3844, as amended, is an essential mandate of the agrarian reform legislation to implement the State's policy of owner-cultivatorship and to achieve a dignified, self-reliant existence for small farmers, such laudable and commendable policy is never intended to unduly transgress the corresponding rights of purchasers of land.[43] Consequently, the dismissal of the complaint for redemption is in order.

This notwithstanding, petitioner, as the new owner, is bound to respect and maintain respondent as tenant of the subject land because of the latter's tenancy right attached to the land regardless of who its owner may be.[44] Under the law, the existence of an agricultural leasehold relationship is not terminated by changes in ownership in case of sale,[45] as in this case, since the purpose of the law is to strengthen the security of tenure of tenants. Thus, in *Planters Development Bank v. Garcia*,[46] the Court held:

> [In] case of transfer [x x x], the tenancy relationship between the landowner and his tenant should be preserved in order to insure the well-being of the tenant or protect him from being unjustly dispossessed by the transferee or purchaser of the land; in other

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[43] *Sps. Mallari v. Arcega, supra* note 36 at 603.

[44] See *Planters Development Bank v. Garcia, supra* note 34, at 308 (2005).

[45] RA 3844, Section 10. *Agricultural Leasehold Relation Not Extinguished By Expiration of Period, etc.* — The agricultural leasehold relation under this Code shall not be extinguished by mere expiration of the term or period in a leasehold contract nor by the sale, alienation or transfer of the legal possession of the landholding. **In case the agricultural lessor sells, alienates or transfers the legal possession of the landholding, the purchaser or transferee thereof shall be subrogated to the rights and substituted to the obligations of the agricultural lessor.** (Emphasis supplied)

[46] *Supra* note 34.

words, **the purpose of the law in question is to maintain the tenants in the peaceful possession and cultivation of the land or afford them protection against unjustified dismissal from their holdings.**[47] (Emphasis and underscoring supplied)

WHEREFORE, the petition is **GRANTED**. The Decision dated July 31, 2014 and the Resolution dated March 5, 2015 of the Court of Appeals in CA-G.R. SP No. 134178 are hereby **REVERSED and SET ASIDE**. The Decision dated November 29, 2013 of the Department of Agrarian Reform Adjudication Board in DARAB Case No. 17676 is **REINSTATED**.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 218172. March 16, 2016]

UNIVERSAL ROBINA SUGAR MILLING CORPORATION, *petitioner, vs.* **ELMER ABLAY, ILDEFONSO CLAVECILLAS, STANLEY BLAZA, VINCENT VILLAVICENCIO, ROBERTO CACAS, and ELSA CADAYUNA, in behalf of her deceased husband, ELEAZAR CADAYUNA,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; MISCONDUCT DEFINED; ELEMENTS THAT MUST CONCUR TO BE

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[47] *Id.* at 308.

A VALID GROUND FOR DISMISSAL OF AN EMPLOYEE. — Misconduct is defined as an improper or wrong conduct. It is 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. To constitute a valid cause for the dismissal within the text and meaning of Article 282 of the Labor Code, the employee's misconduct must be serious, *i.e.*, of such grave and aggravated character, and not merely trivial or unimportant. Additionally, the misconduct must be related to the performance of the employee's duties showing him to be unfit to continue working for the employer. Further, and equally important and required, the act or conduct must have been performed with wrongful intent. In other words, for serious misconduct to be a just cause for dismissal, the concurrence of the following elements is required: *(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.

2. **ID.; ID.; ID.; EMPLOYEES' MISCONDUCT IN CASE AT BAR DOES NOT WARRANT THE ULTIMATE PENALTY OF DISMISSAL.—** [R]espondents committed some form of misconduct when they assisted Sheriff Calinawan in effecting the levy on the forklift and depositing the same to the municipal hall for safekeeping as they operated the forklift and took it out of company premises, all without the authority and consent from petitioner or any of its officers. However, as correctly pointed out by the CA, respondents did not perform the said acts with intent to gain or with wrongful intent. Rather, they were impelled by their belief —albeit misplaced — that they were merely facilitating the enforcement of a favorable decision in a labor standards case in order to finally collect what is due them as a matter of right, which is the balance of their unpaid benefits. In light of the foregoing, the Court upholds the right of petitioner to take the appropriate disciplinary action against respondents, but nevertheless, holds that respondents should not have been dismissed from service as a less punitive sanction, *i.e.*, suspension, would have sufficed. x x x [C]onsidering the fact that respondents were mere equipment operators, technicians, and electricians, and thus, not occupying managerial nor confidential positions, and that the incident concerning the forklift was only their first offense in their

14-15 years of service, the Court agrees with the CA that they should have only been meted a penalty that is less severe than dismissal, *i.e.*, suspension. Hence, respondents could not be validly dismissed by petitioner.

3. ID.; ID.; ID.; AN ILLEGALLY DISMISSED EMPLOYEE IS GENERALLY ENTITLED TO REINSTATEMENT AND BACKWAGES; EXCEPTIONS APPLIED IN CASE AT BAR; THE COURT DIRECTS THE DELETION OF BACKWAGES IN VIEW OF EMPLOYER'S GOOD FAITH IN THE CONDUCT OF DISCIPLINARY PROCEEDINGS. — As a general rule, an illegally dismissed employee is entitled to reinstatement (or separation pay, if reinstatement is not viable) and payment of full backwages. In certain cases, however, the Court has carved out an exception to the foregoing rule and thereby ordered the reinstatement of the employee without backwages on account of the following: *(a)* the fact that the dismissal of the employee would be too harsh a penalty; and *(b)*that the employer was in good faith in terminating the employee. x x x [R]espondents were indeed guilty of some form of misconduct and, as such, petitioner was justified in exercising disciplinary action against them. Absent any evidence to the contrary, petitioner's resort to disciplinary proceedings should be presumed to have been done in good faith. Thus, perceiving that petitioner had ample ground to proceed with its disciplinary action against respondents, and that the disciplinary proceedings appear to have been conducted in good faith, the Court finds it proper to apply the exception to the rule on backwages, and consequently, direct the deletion of backwages in favor of respondents.

4. ID.; ID.; ID.; ID.; ID.; WHEN EMPLOYEE CANNOT BE REINSTATED DUE TO STRAINED RELATION, PAYMENT OF SEPARATION PAY IS WARRANTED.— [T]he CA correctly observed that Ablay's conviction as an accomplice to the murder of petitioner's former assistant manager had strained the relationship between Ablay and petitioner. Hence, Ablay should not be reinstated in the company and, instead, be paid separation pay, as reinstatement would only create an atmosphere of antipathy and antagonism would be generated as to adversely affect his efficiency and productivity. In this relation, it should be clarified that said strained relation should not affect the grant of benefits in his favor prior to his

conviction, as the latter pertains to an offense entirely separate and distinct from the acts constituting petitioner's charges against him in the case at bar, *i.e.*, taking of the company equipment without authority. Petitioner's payment of separation pay to Ablay in lieu of his reinstatement is therefore warranted.

APPEARANCES OF COUNSEL

Reyes-Beltran Flores and Ballicud Law Offices for petitioner.
Armando Alforque for respondents.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated June 28, 2013 and the Amended Decision[3] dated April 30, 2015 of the Court of Appeals (CA) in CA-G.R. SP No. 02078, which reversed and set aside the Decision[4] dated April 26, 2006 and the Resolution[5] dated May 30, 2006 of the National Labor Relations Commission (NLRC) in NLRC Case No. V-000593-05 and, accordingly, declared respondents Elmer Ablay (Ablay), Ildefonso Clavecillas (Clavecillas), Stanley Blaza (Blaza), Vincent Villavicencio (Villavicencio), Roberto Cacas (Cacas), and Eleazar Cadayuna[6] (Cadayuna; collectively, respondents) to have been illegally dismissed by petitioner

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[1] *Rollo*, pp. 41-57.

[2] *Id.* at 9-23. Penned by Associate Justice Pamela Ann Abella Maxino with Justices Edgardo L. Delos Santos and Maria Elisa Sempio Diy concurring.

[3] *Id.* at 25-33. Penned by Associate Justice Pamela Ann Abella Maxino with Justices Edgardo L. Delos Santos and Marie Christine Azcarraga-Jacob concurring.

[4] NLRC records, pp. 327-344. Penned by Commissioner Aurelio D. Menzon with Commissioner Oscar S. Uy and Presiding Commissioner Gerardo C. Nograles concurring.

[5] *Id.* at 382-383.

[6] Represented by his wife Elsa Cadayuna.

Universal Robina Sugar Milling Corporation (petitioner). As such, respondents are entitled to reinstatement — except for Ablay who is awarded separation pay in lieu of reinstatement — and backwages.

The Facts

The instant case arose from a complaint[7] dated June 1, 2004 for illegal dismissal, unfair labor practice, and recovery of damages filed by respondents, members of the *Nagkahiusang Mamumuo* sa Ursumco-National Federation of Labor (the Union), against petitioner before the Sub-Regional Arbitration Branch No. VII, Dumaguete City of the NLRC. Respondents alleged that sometime in 1997, the Union filed a complaint against petitioner for non-compliance with Wage Order No. 3 issued by the Regional Tripartite Wages and Productivity Board before the Department of Labor and Employment (DOLE).[8] After due proceedings, the DOLE found petitioner liable to the members of the Union in the total amount of ₱210,217.54 and, consequently, issued a Writ of Execution to enforce the said ruling.[9] On September 11, 2003, DOLE Sheriff Ignacio Calinawan (Sheriff Calinawan) went to petitioner's premises to serve the writ to petitioner's Personnel Manager, Jocelyn Teo (Teo), but the latter refused to comply by reason of petitioner's pending appeal before the Secretary of Labor.[10] Two (2) months later, or on November 12, 2003, Sheriff Calinawan went back to petitioner's premises in another attempt to serve the writ of execution, this time, seeking the help of the Union Officers, including respondents, in its enforcement. Despite Teo's refusal to receive the writ, Sheriff Calinawan and respondents still effected a levy on one of petitioner's forklifts, took it outside the company premises, and deposited it at the municipal hall for safekeeping.[11]

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[7] NLRC records, pp. 1-2.

[8] *Rollo*, p. 10.

[9] *Id.* at 11.

[10] *Id.*

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

Due to the foregoing incidents, petitioner issued a Notice of Offense[12] dated November 18, 2003 to each of the respondents, requiring them to explain in writing why no disciplinary action should be taken against them. Thereafter, or on November 24, 2003, petitioner issued a Notice of Administrative Investigation[13] to each of the respondents, charging them of stealing company property, fraudulent acquisition or release to other persons of company property, unauthorized possession/use of company property, unauthorized operation of company equipment, and serious misconduct during official working hours or within company premises. On December 1, 2003, after due investigation, petitioner furnished respondents with a Notice of Dismissal[14] for being found guilty as charged. This prompted the filing of the instant complaint.[15]

The LA Ruling

In a Decision[16] dated May 4, 2005, the LA dismissed respondents' complaint for illegal dismissal for lack of merit. Nevertheless, the LA ordered petitioner to pay respondents their unpaid salary for November 16 to December 1, 2003, 13th month pay, off-milling bonus, Social Amelioration Bonus, and unused vacation/sick leave in the aggregate amount of ₱175,577.50, broken down as follows: Ablay — ₱28,940.00; Cadayuna — ₱32,737.50; Clavecillas — ₱26,460.00; Villavicencio — ₱26,460.00; Cacas — ₱28,165.00; and Blaza — ₱32,815.00.[17]

The LA found that respondents' participation in the execution of the writ by Sheriff Calinawan, while legal, was tainted with arrogance and lawlessness, considering that the same was effected with the use of force and intimidation. The LA highlighted the

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[12] NLRC records, pp. 68-73.

[13] *Id.* at 74-85.

[14] *Id.* at 107-114.

[15] *Id.* at 1-2.

[16] *Id.* at 160-171. Penned by Labor Arbiter Fructuoso T. Villarin, IV.

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

fact that their act of assisting Sheriff Calinawan in an intimidating mob-like manner to divest the company of its property was inimical to the interest of petitioner company.[18]

Aggrieved, both parties appealed[19] to the NLRC.

The NLRC Ruling

In a Decision[20] dated April 26, 2006, the NLRC affirmed the LA ruling with modification, reducing the monetary awards in favor of respondents to ₱124,635.25, broken down as follows: Ablay — ₱25,662.81; Cadayuna — ₱25,035.80; Clavecillas — ₱16,453.93; Villavicencio — ₱17,689.14; Cacas — 22,588.37; and Blaza — ₱17,205.20.[21]

The NLRC agreed with the LA that the manner in which respondents assisted in the execution of the writ was arrogant and unlawful and, thus, deemed the legality of their termination as valid. In this relation, it reduced the monetary awards in favor of the respondents, finding lack of basis to grant respondents' off-milling bonus for their failure to work during the milling season, aside from the fact that respondents' award of money claims was subject to deductions, *i.e.*, withholding taxes and legal obligations.[22]

Dissatisfied, both parties moved for reconsideration,[23] but the same were denied in a Resolution[24] dated May 30, 2006. Undaunted, respondents filed a petition for *certiorari*[25] before the CA.

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[18] *Id.* at 167-169.

[19] See petitioner's Partial Appeal dated June 10, 2004; *id.* at 206-218. See respondents' Appeal dated June 3, 2004; *id.* at 184-201.

[20] *Id.* at 327-344.

[21] *Id.* at 343.

[22] *Id.* at 338-342.

[23] See petitioner's motion for partial reconsideration dated May 18, 2006; *id.* at 357-365. See respondents' motion for reconsideration dated May 12, 2006; *id.* at 345-356.

[24] *Id.* at 382-383.

[25] Dated September 8, 2006. *Id.* at 384-405.

The CA Ruling

In a Decision[26] dated June 28, 2013, the CA reversed and set aside the NLRC ruling by declaring respondents to have been illegally dismissed by petitioner. Accordingly, petitioner was ordered to reinstate respondents and pay them backwages, unpaid salaries, 13th month pay, unused leave pay, and social amelioration pay.[27] While the CA agrees with the finding that respondents violated company rules in the manner by which they assisted Sheriff Calinawan in enforcing the writ of execution, it ruled that dismissal is too severe a penalty for the infraction. Finding that: (*a*) respondent's act of bringing the forklift out of the company premises was not tantamount to robbery or theft as they did not do so with intent to gain, but were merely motivated by their strong desire to collect what is due them as a matter of right; (*b*) they were mere equipment operators, technicians, and electricians, and thus, not occupying managerial nor confidential positions; and (*c*) it was their first offense in their 14-15 years of service, the CA concluded that the penalty of suspension would have sufficed as a penalty.[28]

Dissatisfied, petitioner moved for reconsideration,[29] insisting that respondents' act of wresting possession of company property constitutes a serious infraction which warrants their dismissal. Moreover, petitioner brought to the CA's attention Ablay's conviction as an accomplice in the murder of one of its former assistant managers. In view of this, petitioner contended that the relationship between it and Ablay has already been strained and, as such, he should neither be reinstated nor granted separation pay and backwages.[30]

In an Amended Decision[31] dated April 30, 2015, the CA partially granted petitioner's motion by modifying its earlier

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[26] *Rollo*, pp. 9-23.

[27] *Id.* at 22-23.

[28] *Id.* at 19-22.

[29] Not attached to the *rollo*.

[30] *Rollo*, pp. 26-27.

[31] *Id.* at 25-33.

ruling, but only insofar as the reinstatement of Ablay is concerned. The CA agreed that Ablay's conviction as an accomplice to the murder of one of its former assistant managers strained the relationship between him and petitioner, and, as such, he should no longer be reinstated to his former position. Nevertheless, the CA pointed out that since Ablay's conviction stemmed from a cause entirely different from his participation in the enforcement of the writ of execution, he should still receive the benefits accorded to him by law prior to such conviction, *i.e.*, separation pay, backwages, and other benefits.[32]

Hence, this petition.

The Issues Before the Court

The issues raised for the Court's resolution are whether or not the CA correctly ruled that: (*a*) respondents were illegally dismissed as the penalty of suspension would have sufficed; and (*b*) Ablay is entitled to his benefits prior to his conviction, *i.e.*, separation pay, backwages, and other benefits.

The Court's Ruling

The petition is partly meritorious.

Article 297 (formerly Article 282) of the Labor Code,[33] which includes the ground of serious misconduct, provides for the just causes where the employee may be validly terminated from employment. It reads in full:

> Article 297 [282]. *Termination by Employer*. — An employer may terminate an employment for any of the following causes:

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[32] *Id.* at 28-31.

[33] As 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. See also DOLE Department Advisory No. 01, series of 2015, entitled "RENUMBERING OF THE LABOR CODE OF THE PHILIPPINES, AS AMENDED," dated July 21, 2015.

(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. (Emphasis and underscoring supplied)

Misconduct is defined as an improper or wrong conduct. It is 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. To constitute a valid cause for the dismissal within the text and meaning of Article 282 of the Labor Code, the employee's misconduct must be serious, *i.e.*, of such grave and aggravated character, and not merely trivial or unimportant. Additionally, the misconduct must be related to the performance of the employee's duties showing him to be unfit to continue working for the employer. Further, and equally important and required, the act or conduct must have been performed with wrongful intent. In other words, for serious misconduct to be a just cause for dismissal, the concurrence of the following elements is required: (*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.[34]

In this case, the following facts are undisputed: (*a*) the Union, which the respondents are members of, filed a case for violation of labor standards against petitioner before the DOLE;[35] (*b*) after

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[34] See *Imasen Philippine Manufacturing Corporation v. Alcon,* G.R. No. 194884, October 22, 2014; citations omitted.

[35] *Rollo,* p. 10.

due proceedings, the DOLE ruled in favor of the Union and awarded its members the aggregate amount of ₱210,217.54, and accordingly, a writ of execution was issued in the Union's favor;[36] (*c*) Sheriff Calinawan failed in his first attempt to enforce the writ of execution as Teo refused to receive a copy of the same;[37] (*d*) on Sheriff Calinawan's second attempt to enforce the writ of execution, he sought the assistance of Union members, including respondents, and insisted that Teo comply with said writ, but the latter still refused;[38] (*e*) despite Teo's refusal, Sheriff Calinawan and the respondents effected a levy on one of petitioner's forklifts, took it outside the company premises, and deposited it at the municipal hall for safekeeping;[39] and (*f*) the taking of the forklift was without authority from petitioner or any of its officers.[40]

Clearly, respondents committed some form of misconduct when they assisted Sheriff Calinawan in effecting the levy on the forklift and depositing the same to the municipal hall for safekeeping as they operated the forklift and took it out of company premises, all without the authority and consent from petitioner or any of its officers. However, as correctly pointed out by the CA, respondents did not perform the said acts with intent to gain or with wrongful intent. Rather, they were impelled by their belief — albeit misplaced — that they were merely facilitating the enforcement of a favorable decision in a labor standards case in order to finally collect what is due them as a matter of right, which is the balance of their unpaid benefits. In light of the foregoing, the Court upholds the right of petitioner to take the appropriate disciplinary action against respondents, but nevertheless, holds that respondents should not have been dismissed from service as a less punitive sanction, *i.e.*, suspension, would have sufficed. In *Philippine Long Distance*

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[36] *Id.* at 11.

[37] *Id.*

[38] *Id.*

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

[40] *Id.* at 12.

Company v. Teves,[41] the Court stressed that while it is the prerogative of the management to discipline its employees, it should not be indiscriminate in imposing the ultimate penalty of dismissal as it not only affect the employee concerned, but also those who depend on his livelihood, *viz*.:

> While management has the prerogative to discipline its employees and to impose appropriate penalties on erring workers, pursuant to company rules and regulations, however, such management prerogatives must be exercised in good faith for the advancement of the employer's interest and not for the purpose of defeating or circumventing the rights of the employees under special laws and valid agreements. **The Court is wont to reiterate that while an employer has its own interest to protect, and pursuant thereto, it may terminate an employee for a just cause, such prerogative to dismiss or lay off an employee must be exercised without abuse of discretion.** Its implementation should be tempered with compassion and understanding. The employer should bear in mind that, in the execution of said prerogative, what is at stake is not only the employee's position, but his very livelihood, his very breadbasket.
>
> **Dismissal is the ultimate penalty that can be meted to an employee. Even where a worker has committed an infraction, a penalty less punitive may suffice, whatever missteps may be committed by labor ought not to be visited with a consequence so severe.** This is not only the laws concern for the workingman. There is, in addition, his or her family to consider. Unemployment brings untold hardships and sorrows upon those dependent on the wage-earner.[42] (Emphases and underscoring supplied)

Further, considering the fact that respondents were mere equipment operators, technicians, and electricians, and thus, not occupying managerial nor confidential positions, and that the incident concerning the forklift was only their first offense in their 14-15 years of service, the Court agrees with the CA that they should have only been meted a penalty that is less severe than dismissal, *i.e.*, suspension. Hence, respondents could not be validly dismissed by petitioner.[43]

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[41] 649 Phil. 39 (2010).

[42] *Id.* at 51-52.

[43] *Rollo*, pp. 20-21.

As a general rule, an illegally dismissed employee is entitled to reinstatement (or separation pay, if reinstatement is not viable) and payment of full backwages. In certain cases, however, the Court has carved out an exception to the foregoing rule and thereby ordered the reinstatement of the employee without backwages on account of the following: (*a*) the fact that the dismissal of the employee would be too harsh a penalty; and (*b*) that the employer was in good faith in terminating the employee.[44] The application of such exception was thoroughly discussed in the case of *Pepsi-Cola Products Philippines, Inc. v. Molon*,[45] to wit:

> An illegally dismissed employee is entitled to either reinstatement, if viable, or separation pay if reinstatement is no longer viable, and backwages. **In certain cases, however, the Court has ordered the reinstatement of the employee without backwages considering the fact that (1) the dismissal of the employee would be too harsh a penalty, and (2) the employer was in good faith in terminating the employee.** For instance, in the case of *Cruz v. Minister of Labor and Employment* the Court ruled as follows:
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> > The Court is convinced that petitioner's guilt was substantially established. **Nevertheless, we agree with respondent Minister's order of reinstating petitioner without backwages instead of dismissal which may be too drastic. Denial of backwages would sufficiently penalize her for her infractions. The bank officials acted in good faith. They should be exempt from the burden of paying backwages. The good faith of the employer, when clear under the circumstances, may preclude or diminish recovery of backwages.** Only employees discriminately dismissed are entitled to backpay. x x x
>
> Likewise, in the case of *Itogon-Suyoc Mines, Inc. v. National Labor Relations Commission*, the Court pronounced that **"[t]he ends of social and compassionate justice would therefore be served if private respondent is reinstated but without backwages in view of petitioner's good faith."** [46] (Emphasis and underscoring supplied)

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[44] See *Integrated Microelectronics, Inc. v. Pionilla*, G.R. No. 200222, August 28, 2013, 704 SCRA 362, 367.

[45] G.R. No. 175002, February 18, 2013, 691 SCRA 113.

[46] *Id.* at 136-137.

To reiterate, respondents were indeed guilty of some form of misconduct and, as such, petitioner was justified in exercising disciplinary action against them. Absent any evidence to the contrary, petitioner's resort to disciplinary proceedings should be presumed to have been done in good faith.[47] Thus, perceiving that petitioner had ample ground to proceed with its disciplinary action against respondents, and that the disciplinary proceedings appear to have been conducted in good faith, the Court finds it proper to apply the exception to the rule on backwages, and consequently, direct the deletion of backwages in favor of respondents.[48]

Finally, the CA correctly observed that Ablay's conviction as an accomplice to the murder of petitioner's former assistant manager had strained the relationship between Ablay and petitioner. Hence, Ablay should not be reinstated in the company and, instead, be paid separation pay, as reinstatement would only create an atmosphere of antipathy and antagonism would be generated as to adversely affect his efficiency and productivity.[49] In this relation, it should be clarified that said strained relation should not affect the grant of benefits in his favor prior to his conviction, as the latter pertains to an offense entirely separate and distinct from the acts constituting petitioner's charges against him in the case at bar, *i.e.*, taking of the company equipment without authority. Petitioner's payment of separation pay to Ablay in lieu of his reinstatement is therefore warranted.

WHEREFORE, the petition is **PARTLY GRANTED.** The Decision dated June 28, 2013 and the Amended Decision dated April 30, 2015 of the Court of Appeals in CA-G.R. SP No. 02078 are hereby **MODIFIED**, directing the **DELETION** of

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[47] "Good faith is presumed and the burden of proving bad faith rests on the one alleging it. It is a question of fact that must be proven." (*Bermudez v. Gonzales*, 401 Phil. 38, 47 [2000].)

[48] See *Integrated Microelectronics, Inc. v. Pionilla, supra* note 44, at 367-368.

[49] See *Tenazas v. R. Villegas Taxi Transport*, G.R. No. 192998, April 2, 2014, 720 SCRA 467, 484.

the award of backwages in favor of respondents Elmer Ablay, Ildefonso Clavecillas, Stanley Blaza, Vincent Villavicencio, Roberto Cacas, and Eleazar Cadayuna. The rest of the decision **STANDS**.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 184348. April 4, 2016]

TAN PO CHU, *petitioner, vs.* **COURT OF APPEALS, FELIX T. CHINGKOE, ROSITA L. CHINGKOE, and RODRIGO GARCIA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; CONFINED TO ERROR OF JURISDICTION AND WILL NOT SUBSTITUTE FOR APPEAL; EXCEPTION IS WHERE PUBLIC WELFARE AND THE ADVANCEMENT OF PUBLIC POLICY SO DICTATES.— *Certiorari* is an extraordinary remedy of last resort for when another remedy is present, *certiorari* is not available. It is a limited form of review confined to errors of jurisdiction. An error of jurisdiction is one where the officer or tribunal acted without or in excess of its jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction. On the other hand, an error of judgment is one which the court may commit in the exercise of its jurisdiction. They only involve errors in the court or tribunal's appreciation of the facts and of the law. Errors of jurisdiction are reviewable on *certiorari*; errors of judgment, only by appeal. Ordinarily, this Court would have dismissed

the petition outright for being an improper remedy. As a general rule, *certiorari* will not lie as a substitute for an appeal. However, an exception to this rule is where public welfare and the advancement of public policy so dictates.

2. CIVIL LAW; LAND TITLES; WHEN OWNER'S DUPLICATE CERTIFICATE OF TITLE WAS NOT LOST BUT IN THE POSSESSION OF ANOTHER, THE RECONSTITUTED TITLE IS VOID, THE REMEDY OF REGISTERED OWNER IS TO COMPEL THE SURRENDER OF THE OWNER'S DUPLICATE TITLE THROUGH AN ACTION FOR REPLEVIN.— We have consistently held that when the owner's duplicate certificate of title has not been lost, but is in fact in the possession of another person, then the reconstituted certificate is void because the court failed to acquire jurisdiction over the subject matter – the allegedly lost owner's duplicate. The correct remedy for the registered owner against an uncooperative possessor is to compel the surrender of the owner's duplicate title through an action for replevin.

3. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; GRAVE ABUSE OF DISCRETION; PRESENT IN THE DISMISSAL OF PETITION FOR ANNULMENT OF JUDGMENT SOLELY BASED ON TECHNICALITY AND ON AN IRRELEVANT CONSIDERATION.— Grave abuse of discretion is the capricious and whimsical exercise of judgment equivalent to *an evasion of positive duty*, or a virtual refusal to act at all in contemplation of the law. It is present when power is exercised in a despotic manner by reason, for instance, of passion and hostility. The use of wrong or irrelevant considerations in deciding an issue is also sufficient to taint a decision maker's action with grave abuse of discretion. By dismissing Tan's petition for annulment of judgment solely based on a technicality and on an irrelevant consideration, the CA acted with grave abuse of discretion at the expense of the substantial justice.

APPEARANCES OF COUNSEL

Rigoroso and Galindez Law Offices for petitioner.
Gonzales Salazar Tabbu & Associates for respondents.
Johnsen A. Salazar for respondent Felix Chingkoe.

D E C I S I O N

BRION, *J.*:

This is a petition for *certiorari* filed by Tan Po Chu from the January 16, 2008 and July 16, 2008 resolutions of the Court of Appeals (*CA*) in **CA-G.R. SP No. 101727**.[1] The CA dismissed outright Tan's petition for annulment of the Regional Trial Court's (*RTC*) decision in **LRC CASE No. 2005-771-MK**[2] on the grounds that the petition suffered from procedural infirmities and lacked substantial merit.

Antecedents

Fiber Technology Corporation (*FiberTech*) was a Philippine corporation with Securities and Exchange Commission (*SEC*) Registration No. 0000142818. It was also the registered owner of a parcel of land in Marikina (*subject lot*) covered by Transfer Certificate of Title (*TCT*) No. 157923 entered on November 28, 1988. The SEC allegedly revoked FiberTech's registration on September 29, 2003.[3]

On April 4, 2005, respondent Felix Chingkoe executed an affidavit of loss of TCT No. 157923 allegedly on behalf of FiberTech.[4]

On June 2, 2005, FiberTech — supposedly represented by respondent Rodrigo Garcia pursuant to a December 2, 2004 Board Resolution[5] — filed a petition for the reissuance/ replacement of its owner's duplicate of TCT No. 157923. The petition was based on the affidavit of loss that Felix executed. The petition alleged: (1) that Felix and his wife Rosita acquired 100% ownership of FiberTech in 2004 pursuant to an award

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[1] Both penned by Associate Justice Marlene Gonzales-Sison and concurred in by Associate Justices Juan Q. Enriquez, Jr. and Vicente S.E. Veloso.

[2] RTC, Marikina City, Branch 193 through Judge Alice G. Gutierrez.

[3] *Rollo*, p. 4.

[4] *Id.* at 31.

[5] *Id.* at 38.

by the National Labor Relations Commission (*NLRC*); (2) that Felix was elected Corporate Secretary soon after; (3) that Felix asked the former directors and officers of FiberTech to turn over the owner's duplicate of TCT No. 157923, but the latter denied knowledge or possession thereof; and (4) that after conducting an exhaustive search, the subject title was nowhere, to be found.[6]

The petition was raffled to the RTC, Marikina City, Branch 193 and docketed as **LRC Case No. 2005-771-MK.**

On July 23, 2006, the RTC granted the petition. It declared the owner's duplicate copy of TCT No. 157923 as lost and ordered its reissuance.[7]

On December 21, 2007, Tan Po Chu — mother of Fibertech's incorporators Faustino and respondent Felix Chingkoe — filed a petition before the CA for annulment of judgment against the RTC's decision.[8] The petition was docketed as **CA-G.R. SP No. 101727** with Tan Po Chu and FiberTech as petitioners.

Tan alleged: (1) that the missing owner's duplicate of TCT was in her custody as the responsible officer of FiberTech; (2) that Felix was aware of this fact; (3) that Felix committed perjury when he executed the Affidavit of Loss; (4) that Felix and Rosita had not acquired 100% ownership of FiberTech; (5) that Rosita and Rodrigo Garcia were *not* even stockholders of record in Fibertech; and (6) that the respondents had no authority to file the petition for reissuance of the owner's duplicate copy on behalf of FiberTech.[9]

Citing *New Durawood Co. v. Court of Appeals*[10] and *Serra Serra v. Court of Appeals*,[11] Tan further argued that if an owner's

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[6] *Id.* at 33.

[7] *Id.* at 65.

[8] *Id.* at 46.

[9] *Id.* at 50-52.

[10] 324 Phil. 109 (1996).

[11] 272-A Phil. 467 (1991).

duplicate TCT has not been lost, but is in fact possessed by another person, then the reconstituted title is void and the court that rendered the decision never acquired jurisdiction.

However, the CA dismissed Tan's petition outright on January 16, 2008 on the grounds that the petition suffered from procedural infirmities and lacked substantial merit.[12]

The CA observed that: (1) the verification and certification of non-forum shopping were executed alone by Tan Po Chu without showing that she had the authority to sign for and on behalf of the corporation; (2) Tan's actual address was not indicated in the petition as required by Rule 46, Section 3; and (3) the attached copy of the owner's duplicate TCT No. 157923 was not a certified true copy.

The CA also brushed aside Tan's substantive argument. It held that the RTC acquired jurisdiction over the case after complying with the notice and hearing requirements under Section 109 of Presidential Decree (*P.D.*) No. 1529 or the Property Registration Decree.[13]

Tan moved for reconsideration. However, on July 16, 2008, the CA denied the motion, insisting that Tan's assertion that the RTC lacked jurisdiction was without merit.[14]

On September 19, 2008, Tan filed the present petition for *certiorari*.

The Petition

Tan argues that the CA committed grave abuse of discretion in ruling that her allegation of the RTC's lack of jurisdiction was not meritorious. She maintains that the respondents misled the RTC because: (1) Felix and Rosita never became 100% owners of FiberTech; and (2) they knew that the "missing" owner's duplicate was in her possession. Pursuant to the cases

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[12] *Rollo*, p. 18.

[13] *Id.* at 20.

[14] *Id.* at 25.

of *New Durawood, Serra Serra, Strait Times v. CA*,[15] and *Demetriou v. CA*,[16] the RTC never acquired jurisdiction to reconstitute the owner's duplicate TCT.

The respondents counter that the CA did not commit grave abuse of discretion in dismissing the petition. Further, assuming the CA decided in a manner contrary to prevailing jurisprudence, then it only committed an error of law and not an error of jurisdiction. They conclude that Tan's resort to a special civil action of *certiorari* was unwarranted because the correct remedy would have been to appeal the dismissal of her petition.

Our Ruling

At the outset, we observe that Tan resorted to the wrong remedy by filing a petition for *certiorari* under Rule 65. The Rules of Court explicitly authorizes the CA to dismiss outright a petition for annulment of judgment if the court finds no substantial merit in the petition.

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.**

Should *prima facie* merit be found in the petition, the same shall be given due course and summons shall be served on the respondent.[17]

Accordingly, outright dismissal of Tan's petition is within the jurisdiction of the CA and its correctness may be reviewed through an appeal by *certiorari* under Rule 45.

Certiorari is an extraordinary remedy of last resort for when another remedy is present, *certiorari* is not available.[18] It is a limited form of review confined to errors of jurisdiction. An error of jurisdiction is one where the officer or tribunal acted

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[15] 356 Phil. 217 (1998).

[16] G.R. No. 115595, November 14, 1994, 238 SCRA 158, 162.

[17] Rule 47, Section 5 of the RULES OF COURT.

[18] *Enriquez v. Rivera*, 179 Phil. 482, 486 (1979); Rule 65, Section 1 of the RULES OF COURT.

without or in excess of its jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction.[19] On the other hand, an error of judgment is one which the court may commit in the exercise of its jurisdiction.[20] They only involve errors in the court or tribunal's appreciation of the facts and of the law.[21] Errors of jurisdiction are reviewable on *certiorari*; errors of judgment, only by appeal.[22]

Ordinarily, this Court would have dismissed the petition outright for being an improper remedy. As a general rule, *certiorari* will not lie as a substitute for an appeal. However, an exception to this rule is where public welfare and the advancement of public policy so dictates.[23]

This Court cannot ignore the implications if the petitioner's allegations — that she has the original owner's duplicate TCT of the subject lot and that the SEC revoked FiberTech's registration in 2003 — are true. There will currently exist two owner's duplicate TCTs over the same property possessed by *two contending factions in an intra-corporate dispute of a defunct corporation.* This anomalous situation can potentially bring considerable harm to the general public and to the integrity of our Torrens system. This Court, therefore, cannot simply leave the parties as they were.

The CA committed a grave error when it brushed aside Tan's argument that the RTC rendered its decision without jurisdiction. It ruled that the replacement of a lost duplicate certificate is a proceeding *in rem*, directed against the whole world; therefore, the RTC acquired jurisdiction when it complied with the notice and hearing requirements under Section 109 of P.D. 1529.

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

[20] *Fernando v. Vasquez*, G.R. No. L-26417, 30 January 1970, 31 SCRA 288, 292.

[21] *Villareal*, *supra* note 19.

[22] *Id.; Fernando* at 293.

[23] *People v. Zulueta*, G.R. No. L-4017, 89 Phil. 756, 757 (1951); *Fernando v. Vasquez, supra* note 20 at 294; *Enriquez v. Rivera*, *supra* note 18.

The CA completely missed the point because Tan did not assail the RTC's jurisdiction by alleging noncompliance with the requirements of notice and hearing; she questioned the RTC's jurisdiction over the *res* by claiming that the allegedly lost owner's duplicate was, in fact, not lost but was in her custody. Therefore, the RTC's compliance with Section 109 of P.D. 1529 was irrelevant.

We have consistently held that when the owner's duplicate certificate of title has not been lost, but is in fact in the possession of another person, then the reconstituted certificate is void because the court failed to acquire jurisdiction over the subject matter — the allegedly lost owner's duplicate.[24] The correct remedy for the registered owner against an uncooperative possessor is to compel the surrender of the owner's duplicate title through an action for replevin.

A judgment void for want of jurisdiction is no judgment at all.[25] It has been held to be a lawless thing, which can be treated as an outlaw and slain at sight, or ignored wherever and whenever it exhibits its ugly head.[26] It may be attacked at any time.

If Tan's allegation were true, then the RTC's judgment would be void and the CA would have been duty-bound to strike it down. The CA could have nipped this anomalous situation in the bud before it could cause any harm to innocent third persons. However, the CA opted to turn its back on this duty and dismiss the case outright based on rigid technicalities and on irrelevant considerations regardless of the implications to the general public.

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[24] *Camitan v. Fidelity Investment, Corp.*, 574 Phil. 672, 685 (2008); *Feliciano v. Zaldivar*, 534 Phil. 280, 293-294 (2006); *Macabalo-Bravo v. Macabalo*, 508 Phil. 61, 74 (2005); *Heirs of Panganiban v. Dayrit*, 502 Phil. 612, 621 (2005); *Rexlon Realty Group, Inc. v. Court of Appeals*, 429 Phil. 31, 44 (2002); *Reyes, Jr. v. Court of Appeals*, 385 Phil. 623, 630 (2000); *New Durawood, Inc. v. Court of Appeals*, 324 Phil. 109, 119-120 (1996); *Demetriou v. Court of Appeals*, *supra* note 16, at 162.

[25] *Uy v. Chua*, 616 Phil. 768, 782 (2009).

[26] *Banco Español-Filipino v. Palanca*, 37 Phil. 921, 949 (1918); *Trinidad v. Hon. Yatco*, 111 Phil. 466, 470 (1961).

Moreover, the CA's dismissal based on technical grounds was erroneous. The CA raised the following procedural infirmities:

> . . . (1) the verification and certification of non-forum shopping was executed alone by affiant Tan Po Chu without any showing that [s]he had the authority to sign for and in behalf of petitioner corporation pursuant to Sec. 5(1), Rule 7 and Sec. 4(3), Rule 47 of the 1997 Revised Rules of Civil Procedure considering that [s]he is one of the incorporators and stockholders of her co-petitioner corporation; (2) The actual address of petitioner Tan Po Chu is not indicated in the petition as required by Sec. 3 (1), Rule 46 of the same Rule; (3) The copy of the owner's duplicate of TCT No. 157923 is not certified as a true copy of the original owner's duplicate by the proper government agency as alleged by the petitioners.[27]

First, we note that Tan alleged that FiberTech's corporate existence had already ceased when the SEC revoked its corporate registration on September 29, 2003, and that she was a trustee of the corporation for the purpose of its dissolution.[28] We note further that the petition for annulment was filed in the names of *both* FiberTech and Tan Po Chu.

While FiberTech may no longer have judicial personality to initiate the suit or authorize Tan Po Chu to file the case, Tan Po Chu remained a real party-in-interest as the lawful possessor of the allegedly lost owner's duplicate TCT. The respondents could not legally oust her of this possession by reconstituting the owner's duplicate instead of filing an action for *replevin*. Therefore, the verification and certification of non-forum shopping remained valid with respect to Tan Po Chu even though it might have been defective with respect to FiberTech.

Second, we also note that Tan Po Chu submitted her address in her motion for reconsideration to cure the defect in the petition.[29] Her motion for reconsideration substantially complies with Rule 46, Section 3 of the Rules of Court.

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[27] *Rollo*, p. 19.

[28] *Id.* at 63, 86.

[29] *Id.* at 88.

Finally, a petition for annulment of judgment only requires the inclusion of a clearly legible duplicate original or certified true copy of the judgment, order, resolution, or ruling subject thereof.[30] It does not require the petitioner to annex certified true copies or duplicate originals of his evidence to the petition because these may be presented during the evidentiary hearings of the case. To our mind, none of the procedural infirmities warranted the CA's outright dismissal of the case.

Grave abuse of discretion is the capricious and whimsical exercise of judgment equivalent to an *evasion of positive duty*, or a virtual refusal to act at all in contemplation of the law.[31] It is present when power is exercised in a despotic manner by reason, for instance, of passion and hostility.[32] The use of wrong or irrelevant considerations in deciding an issue is also sufficient to taint a decision maker's action with grave abuse of discretion.[33]

By dismissing Tan's petition for annulment of judgment solely based on a technicality and on an irrelevant consideration, the CA acted with grave abuse of discretion. The outright dismissal was also made at the expense of the substantial justice and of the general public who have a right to rely on the integrity of our Torrens system. This amounted to an evasion of its positive duty to uphold the integrity of our Torrens system and to a virtual refusal of its duty to determine and strike down decisions rendered without jurisdiction.

Courts are routinely expected to balance competing state values and interests. When the interest of strictly enforcing rules of

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[30] Rule 46, Section 3 in relation to Rule 46, Section 2 of the RULES OF COURT.

[31] *Commissioner of Internal Revenue v. Court of Appeals*, 327 Phil. 1, 41 (1996); *Salma v. Hon. Miro*, 541 Phil. 685, 686 (2007); *Ligeralde v. Patalinghug*, 632 Phil. 326, 330 (2010).

[32] *Id.*

[33] *Varias v. COMELEC*, 626 Phil. 292, 314 (2010), *Land Bank of the Philippines v. Yatco Agricultural Enterprises*, G.R. No. 172551, 15 January 2014, 713 SCRA 370, 383; *Gonzales v. Solid Cement Corporation*, 697 Phil. 619, 639 (2012).

procedure comes in conflict with the interests of rendering substantial justice and protecting the general welfare, the scales of justice tilt substantially in favor of the latter. The rules of procedure should not be applied in a very rigid technical sense so as to override substantial justice.[34]

Ultimately, this Court finds that the interests of dispensing justice and of protecting both the general public and the integrity of our Torrens system will best be served by requiring the CA to proceed with the case to determine the truth of Tan's factual allegations.

WHEREFORE, we hereby **GRANT** the petition. The January 16, 2008 and the July 16, 2008 resolutions of the Court of Appeals in **CA-G.R. SP No. 101727** are **ANNULLED** and **SET ASIDE**. The Court of Appeals is further **DIRECTED** to **PROCEED** hearing the case.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 187633. April 4, 2016]

HEIRS OF DELFIN and MARIA TAPPA, *petitioners, vs.* **HEIRS OF JOSE BACUD, HENRY CALABAZARON and VICENTE MALUPENG,** *respondents.*

SYLLABUS

1. CIVIL LAW; PROPERTY; QUIETING OF TITLE; REQUISITES. — [A]n action for quieting of title is essentially a common law

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[34] *Reyes, Jr. v. Court of Appeals, supra* note 24, at 629.

remedy grounded on equity, x x x governed by Article 476 and 477 of the Civil Code, x x x. [F]or an action to quiet title to prosper, two indispensable requisites must concur, namely: (1) the plaintiff or complainant has a legal or an equitable title to or interest in the real property subject of the action; and (2) the deed, claim, encumbrance or proceeding claimed to be casting cloud on his title must be shown to be in fact invalid or inoperative despite its *prima facie* appearance of validity or legal efficacy.

2. **ID.; ID.; ID.; FREE PATENT ISSUED OVER A PRIVATE LAND IS NULL AND VOID.—** Spouses Tappa's claim of legal title over Lot No. 3341 by virtue of the free patent and the certificate of title, OCT No. P-69103 issued in their name cannot stand. x x x [A]t the time of the application for free patent, Lot No. 3341 had already become private land by virtue of the open, continuous, exclusive, and notorious possession by respondents. Hence, Lot No. 3341 had been removed from the coverage of the Public Land Act, which governs public patent applications. The settled rule is that a free patent issued over a private land is null and void, and produces no legal effects whatsoever. x x x Public Land Law applies only to lands of the public domain. The Director of Lands has no authority to grant free patent to lands that have ceased to be public in character and have passed to private ownership.

3. **ID.; ID.; ID; REALTY TAX PAYMENT IS GOOD *INDICIA* OF POSSESSION IN THE CONCEPT OF OWNER.—** Although tax declarations or realty tax payment of property are not conclusive evidence of ownership, they are good *indicia* of possession in the concept of owner, for no one in his right mind would be paying taxes for a property that is not in his actual or constructive possession. They constitute at least proof that the holder has a claim of title over the property.

4. **ID.; ID.; IN ACTION TO QUIET TITLE, LEGAL TITLE DENOTES REGISTERED OWNERSHIP WHILE EQUITABLE TITLE MEANS BENEFICIAL OWNERSHIP WHEN CLOUD ON TITLE EXISTS.—** In an action to quiet title, legal title denotes registered ownership, while equitable title means beneficial ownership. x x x A cloud on a title exists when (1) there is an instrument (deed, or contract) or record or claim or encumbrance or proceeding; (2) which is apparently valid or effective; (3) but is, in truth and in fact,

invalid, ineffective, voidable, or unenforceable, or extinguished (or terminated) or barred by extinctive prescription; and (4) and may be prejudicial to the title.

5. ID.; ID.; PROPERTY REGISTRATION DECREE; A CERTIFICATE OF TITLE SHALL NOT BE SUBJECT TO COLLATERAL ATTACK; WHAT CANNOT BE COLLATERALLY ATTACKED IS THE CERTIFICATE OF TITLE AND NOT THE OWNERSHIP.— Section 48 of PD 1529 (Property Registration Decree), provides that "[a] certificate of title shall not be subject to collateral attack. It cannot be altered, modified, or canceled except in a direct proceeding in accordance with law." This rule is not applicable in this case. We reiterate our ruling in *Lee Tek Sheng v. Court of Appeals*, where we stated that, "[w]hat cannot be collaterally attacked is the certificate of title and not the title. The certificate referred to is that document issued by the Register of Deeds x x x. By title, the law refers to ownership which is represented by that document." Ownership is different from a certificate of title, the latter being only the best proof of ownership of a piece of land. Title as a concept of ownership should not be confused with the certificate of title as evidence of such ownership although both are interchangeably used.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioners.
Salud Calabarzon Del Fierro Law Firm for respondents.

D E C I S I O N

JARDELEZA, *J.*:

This is a Petition for Review on *Certiorari*[1] under Rule 45 of the Revised Rules of Court assailing the Decision[2] dated February 19, 2009 and Resolution[3] dated April 30, 2009 of the

[1] *Rollo*, pp. 10-28.

[2] Penned by Associate Justice Juan Q. Enriquez, Jr. with Associate Justices Celia C. Librea-Leagogo, and Normandie B. Pizarro concurring. *Id.* at 81-90.

[3] *Id.* at 100-101.

Court of Appeals (CA) in CA-G.R. CV No. 90026, which reversed and set aside the Decision[4] dated July 6, 2007 of Branch 5, Regional Trial Court (RTC) of Tuguegarao City, Cagayan in Civil Case No. 5560 for Quieting of Title, Recovery of Possession and Damages.

The Facts

On September 9, 1999, petitioners Delfin Tappa (Delfin)[5] and Maria Tappa (Spouses Tappa) filed a complaint[6] for Quieting of Title, Recovery of Possession and Damages (Complaint) against respondents Jose Bacud (Bacud),[7] Henry Calabazaron (Calabazaron), and Vicente Malupeng (Malupeng).[8] The property subject of the complaint is a parcel of land identified as Lot No. 3341, Pls-793 with an area of 21,879 square meters, located in Kongcong, Cabbo, Peñablanca, Cagayan (Lot No. 3341).[9]

In their complaint, Spouses Tappa alleged that they are the registered owners of Lot No. 3341, having been issued an Original Certificate of Title No. P-69103 (OCT No. P-69103) on September 18, 1992, by virtue of Free Patent No. 021519-92-3194.[10] Delfin allegedly inherited Lot No. 3341 from his father, Lorenzo Tappa (Lorenzo). Spouses Tappa claimed that both Delfin and Lorenzo were in open, continuous, notorious, exclusive possession of the lot since time immemorial.[11]

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[4] *Id.* at 30-34.

[5] Upon the death of Delfin, he was substituted by his heirs: Vidal Tappa, Imee T. Henricksen, Ruth T. Taguinod, and Nila T. Maggay. Records, p. 151.

[6] *Id.* at 1-5.

[7] Respondent Bacud was substituted by his heirs: Esting Bacud Salva, Sally Bacud Perciano, Myrna Bacud Bancud, Adoracion Melad Bacud, Leslie M. Bacud, Dante M. Bacud, Jose M. Bacud, Jr., and Margie Bacud. *Id.* at 187.

[8] Respondent Malupeng was likewise substituted by his heirs: Erlinda, Eric, Aileen, Elvis, Nuvel, Jaclyn, Vic, Janice, and Mikey, all surnamed Malupeng. *Id.* at 41.

[9] *Id.* at 1, 6.

[10] *Id.* at 6.

[11] *Id.* at 1-2.

In their Answer,[12] respondents Bacud, Calabazaron and Malupeng claimed that the original owner of Lot No. 3341 was Genaro Tappa (Genaro) who had two children, Lorenzo and Irene. Upon Genaro's death, the property passed on to Lorenzo and Irene by operation of law; and they became *ipso facto* co-owners of the property. As co-owners, Lorenzo and Irene each owned 10,939 square meters of the lot as their respective shares. Lorenzo had children namely, Delfin, Primitiva, and Fermina. Upon the death of Irene, her share in turn passed to her heirs, Demetria, Juanita, Pantaleon and Jose Bacud.[13]

Respondents presented before the RTC a joint affidavit dated April 29, 1963 (1963 Affidavit) signed by Delfin, his sisters, Primitiva and Fermina, and their mother, Modesta Angoluan.[14] The 1963 affidavit stated that Genaro originally owned Lot No. 3341. It further stated that one-half (½) of the property was owned by Lorenzo; but that the whole property was declared as his, only for taxation purposes.

Calabazaron claimed that he became the owner of 2,520 square meters of Lot No. 3341 by virtue of two Deeds of Sale executed in his favor, one dated October 12, 1970 executed by Demetria, and another dated August 22, 1971 executed by Juanita.[15] After the sale, Calabazaron entered into possession of his portion and paid the real property taxes.[16] He remains in possession up to this date.[17]

Malupeng, on the other hand, claimed that he became the owner of 210 square meters of Lot No. 3341 by virtue of a Deed of Sale executed on November 30, 1970 by Pantaleon in his favor.[18]

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[12] *Id.* at 9-12.

[13] *Rollo,* p. 36.

[14] Records, p. 213.

[15] *Id.* 10-11; *rollo,* p. 83.

[16] Respondents' Comment with Entry of Appearance, *rollo,* p. 110.

[17] *Id.*

[18] *Rollo,* pp. 83 and 110.

After the sale, Malupeng entered into possession of his portion of property and paid the real property taxes.[19] He remains in possession up to this date.[20]

Bacud claimed ownership over 1,690 square meters of Lot No. 3341 in his own right as heir of Irene.[21]

Respondents started occupying their respective portions after the sale made to each of them. They continued to occupy them despite several demands to vacate from Spouses Tappa.[22]

Spouses Tappa claimed that the 1963 Affidavit was executed through force and intimidation.[23] Bacud and Malupeng denied this allegation.[24]

The Ruling of the RTC

The RTC issued its Decision,[25] the decretal portion of which reads:

WHEREFORE, judgment is hereby rendered in favor of the plaintiffs and the Court hereby orders:

1. Plaintiffs to be the owners of Lot 3341, Pls 793 and unqualifiedly vests in them the full and untrammeled rights of ownership;
2. All the defendants must, if still in possession of portions of the lot in issue, convey the same to the plaintiffs;
3. No pronouncement as to costs.

SO ORDERED.[26]

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[19] *Id.* at 110.

[20] *Id.*

[21] Records. p. 11.

[22] Petition for Review on *Certiorari*, *rollo*, p. 14.

[23] Records, p. 2; *rollo*, p. 37.

[24] Records, p. 9.

[25] *Rollo*, pp. 30-34.

[26] *Id.* at 33-34.

The RTC ruled that the basic requirement of the law on quieting of title under Article 447 of the Civil Code was met, thus:

Delfin and Maria's title is clear and unequivocal, and its validity has never been assailed by the defendants – nor has any evidence been adduced that successfully overcomes the presumption of validity and legality that the title of Delfin and Maria enjoys.[27] (Emphasis in the original.)

The RTC ruled that there was no document in the hands of respondents as strong and persuasive as the title in the name of the Spouses Tappa that will support respondents' claim of ownership and Irene's antecedent ownership.[28] The RTC stated that the 1963 Affidavit contains nothing more than the allegations of the affiants and does not, by itself, constitute proof of ownership of land, especially as against documents such as titles.[29]

Respondents appealed to the CA, raising the following arguments:

First, respondents alleged that Spouses Tappa fraudulently applied for, and were issued a free patent over Lot No. 3341, and eventually OCT No. P- 69103 dated September 18, 1992.[30] They alleged that Spouses Tappa committed fraud because they were not in possession of the lot since 1963, which possession was required for an applicant for a free patent under the law.[31]

Second, respondents argued that the complaint should be dismissed because both extinctive and acquisitive prescription have already set in.[32] Respondents claimed that both ordinary acquisitive prescription of 10 years, and extraordinary acquisitive prescription of 30 years in claiming ownership of immovable property apply in the case.[33] They argued that more than 30

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[27] *Id.* at 33.

[28] *Id.* at 32.

[29] *Id.* at 33.

[30] *Id.* at 37.

[31] *Id.*

[32] *Rollo*, pp. 39-43.

[33] *Id.* at 40-41.

years have already lapsed from the time they entered possession of the subject lot in 1963 up to the filing of the complaint on September 9, 1999.[34] They also pointed out that Spouses Tappa admitted in their complaint that respondents were in possession of the lot since 1963.[35]

Particularly, Calabazaron argued that the 10-year prescriptive period under Article 1134 of the Civil Code applies to him by virtue of the two duly executed Deeds of Sale in his favor.[36] It was never alleged that he had any participation in the alleged duress, force and intimidation in the execution of the 1963 Affidavit.[37] Hence, he is a purchaser in good faith and for value. Calabazaron entered possession of the lot after the sale to him in 1970, thus, the prescriptive period of 10 years had long lapsed.[38]

Bacud and Malupeng claimed that, even assuming that the execution of the 1963 Affidavit was attended with force and intimidation, the complaint against them should have been dismissed because the extraordinary acquisitive prescriptive period of 30 years under Article 1137 of the Civil Code applies to them.[39] They also argued that the action for quieting of title had already prescribed since the possession of Bacud and Malupeng started in 1963, which fact was allegedly admitted by Spouses Tappa in their complaint.[40] Thus, Spouses Tappa had only until 1993 to file a complaint, which they failed to do.

All respondents claimed that from the start of their possession, they (1) have paid real taxes on the lot, (2) have planted crops, and (3) have continued to possess the lot in the concept of owners.[41]

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[34] *Id.* at 40-42.

[35] *Id.* at 39.

[36] *Id.* at 40-41.

[37] *Id.*

[38] *Id.*

[39] *Rollo*, p. 41.

[40] *Id.*

[41] *Rollo*, pp. 49-50.

Third, respondents alleged that Spouses Tappa failed to prove their right over the subject lot because they cannot rely on the certificate of title issued to them on September 18, 1992 by virtue of a free patent.[42] They asserted that Spouses Tappa fraudulently obtained the free patent on Lot No. 3341 by concealing material facts, specifically the fact of not being in possession of the lot since 1963.[43]

The Ruling of the CA

The CA set aside the decision of the RTC.[44] The relevant dispositive portion of the CA decision reads:

> **WHEREFORE**, premises considered, the appeal is hereby **GRANTED**. The assailed decision dated July 6, 2007 is hereby **REVERSED** and **SET ASIDE**, and another one entered **DISMISSING** the complaint.
>
> **SO ORDERED.**[45]

On the issue of prescription, the CA ruled in favor of respondents and explained that their possession over Lot No. 3341 already ripened into ownership through acquisitive prescription.[46] The CA noted that Spouses Tappa acknowledged in their complaint that they have not been in possession of the lot, and that respondents have been continuously occupying portions of it since 1963.[47] It explained:

> The substantial length of time between 1963, up to the time of filing of the present complaint on September 9, 1999, which is more than 30 years, should be considered against [S]pouses Tappa, and in favor of defendants-appellants. Settled is the rule that an uninterrupted adverse possession of the land for more than 30 years could ripen

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[42] *Id.* at 69; 75-76.

[43] *Id.* at 75.

[44] *Id.* at 81-90.

[45] *Id.* at 89.

[46] *Id.* at 86.

[47] *Id.* at 85-86.

into ownership of the land through acquisitive prescription, which is a mode of acquiring ownership and other real rights over immovable property. Hence, appellants' possession of the land has ripened into ownership by virtue of acquisitive prescription.[48] (Citation omitted.)

On the merits of the case, the CA ruled that the two indispensable requisites for an action to quiet title under Articles 476 and 477 of the Civil Code were not met.[49]

The first requisite is absent because Spouses Tappa do not have a legal or an equitable title to or an interest in the property. The CA explained that the free patent granted to Spouses Tappa produced no legal effect because Lot No. 3341 was a private land, thus:

> As heretofore discussed, the open, continuous, exclusive, and notorious possession by appellants of the subject parcel of land within the period prescribed by law has effectively converted it into a private land. Consequently, the registration in the name of Maria Tappa on September 18, 1992 under OCT [No.] P-69103, by virtue of Free Patent No. 021519-92-3194, produces no legal effect. Private ownership of land—as when there is a *prima facie* proof of ownership like a duly registered possessory information or a clear showing of open, continuous, exclusive, and notorious possession, by present or previous occupants—is not affected by the issuance of a free patent over the same land, because the Public Land [L]aw applies only to lands of the public domain.[50] (Citation omitted.)

The CA further stated that while Spouses Tappa were able to obtain a free patent over the property, and were able to register it under the Torrens system, they have not become its owners. The CA said that "[r]egistration has never been a mode of acquiring ownership over immovable property—it does not create title nor vest one but it simply confirms a title already vested, rendering it forever indefeasible."[51]

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[48] *Id.* at 86.

[49] *Id.* at 86-87.

[50] *Id.* at 87.

[51] *Id.* at 89; citation omitted.

The second requisite that the deed, claim, encumbrance or proceeding claimed to be casting cloud on the title must be shown to be in fact invalid or inoperative despite its *prima facie* appearance of validity is likewise unavailing. The CA ruled that no other evidence (aside from Delfin's own testimony) was presented to prove the allegation of fraud and intimidation, making the testimony self-serving.[52] The CA further noted that Delfin's own sister, Fermina, one of the signatories of the 1963 Affidavit, belied his testimony. Fermina testified that they went to the house of one Atty. Carag to sign the affidavit and they did so, on their own.[53]

Spouses Tappa filed a Motion for Reconsideration,[54] which the CA denied.[55]

Hence, spouses Tappa filed a petition for review on *certiorari* before this court, raising the following issues:

I. Whether the CA erred in dismissing Spouses Tappa's complaint for quieting of title against respondents;[56]

II. Whether the CA erred in not finding that Spouses Tappa's certificate of title cannot be collaterally attacked in this case;[57] and

III. Whether the CA erred in finding that respondents have acquired the property through acquisitive prescription.[58]

The Ruling of the Court

We affirm the decision of the CA.

The action for quieting of title should not prosper.

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[52] *Id.* at 87.

[53] *Id.* at 87-89.

[54] *Id.* at 91-98.

[55] *Id.* at 100-101.

[56] *Id.* at 17.

[57] *Id.* at 22.

[58] *Id.*

The action filed by Spouses Tappa was one for quieting of title and recovery of possession. In *Baricuatro, Jr. v. Court of Appeals*,[59] an action for quieting of title is essentially a common law remedy grounded on equity, to wit:

> x x x Originating in equity jurisprudence, its purpose is to secure ". . . an adjudication that a claim of title to or an interest in property, adverse to that of the complainant, is invalid, so that the complainant and those claiming under him may be forever afterward free from any danger of hostile claim." In an action for quieting of title, the competent court is tasked to determine the respective rights of the complainant and other claimants, ". . . not only to place *things in their proper place*, to make the one who has no rights to said immovable *respect and not disturb* the other, but also for the *benefit of both*, so that he who has the right would see every *cloud of doubt over* the property dissipated, and he could afterwards without fear *introduce the improvements* he may desire, to *use*, and even to *abuse* the property as he deems best. x x x."[60] (Emphasis in the original.)

In our jurisdiction, the remedy is governed by Article 476 and 477 of the Civil Code, which state:

> Art. 476. Whenever there is a cloud on title to real property or any interest therein, by reason of any instrument, record, claim, encumbrance or proceeding which is apparently valid or effective but is in truth and in fact invalid, ineffective, voidable, or unenforceable, and may be prejudicial to said title, an action may be brought to remove such cloud or to quiet the title.
>
> An action may also be brought to prevent a cloud from being cast upon title to real property or any interest therein.
>
> Art. 477. The plaintiff must have legal or equitable title to, or interest in the real property which is the subject- matter of the action. He need not be in possession of said property.

From the foregoing provisions, we reiterate the rule that for an action to quiet title to prosper, two indispensable requisites must concur, namely: (1) the plaintiff or complainant has a

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[59] G.R. No. 105902, February 9, 2000, 325 SCRA 137.

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

legal or an equitable title to or interest in the real property subject of the action; and (2) the deed, claim, encumbrance or proceeding claimed to be casting cloud on his title must be shown to be in fact invalid or inoperative despite its *prima facie* appearance of validity or legal efficacy.[61]

Spouses Tappa failed to meet these two requisites.

First, Spouses Tappa's claim of legal title over Lot No. 3341 by virtue of the free patent and the certificate of title, OCT No. P-69103 issued in their name cannot stand. The certificate of title indicates that it was issued by virtue of Patent No. 021519-92-3194. We agree with the CA that at the time of the application for free patent, Lot No. 3341 had already become private land by virtue of the open, continuous, exclusive, and notorious possession by respondents. Hence, Lot No. 3341 had been removed from the coverage of the Public Land Act,[62] which governs public patent applications.

The settled rule is that a free patent issued over a private land is null and void, and produces no legal effects whatsoever. Private ownership of land—as when there is a *prima facie* proof of ownership like a duly registered possessory information or a clear showing of open, continuous, exclusive, and notorious possession, by present or previous occupants—is not affected by the issuance of a free patent over the same land, because the Public Land Law applies only to lands of the public domain. The Director of Lands has no authority to grant free patent to lands that have ceased to be public in character and have passed to private ownership.[63]

In *Magistrado v. Esplana*,[64] we cancelled the titles issued pursuant to a free patent after finding that the lots involved

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[61] *Calacala v. Republic*, G.R. No. 154415, July 28, 2005, 464 SCRA 438, 444; *Mananquil v. Moico*, G.R. No. 180076, November 21, 2012, 686 SCRA 123, 129-130.

[62] Commonweatlh Act No. 141, as amended.

[63] *Heirs of Simplicio Santiago v. Heirs of Mariano E. Santiago*, G.R. No. 151440, June 17, 2003, 404 SCRA 193, 199.

[64] G.R. No. 54191, May 8, 1990, 185 SCRA 104.

were privately owned since time immemorial. A free patent that purports to convey land to which the Government did not have any title at the time of its issuance does not vest any title in the patentee as against the true owner.[65]

In this case, the parties were able to show that Lot No. 3341 was occupied by, and has been in possession of the Tappa family, even before the 1963 Affidavit was executed. After the execution of the 1963 Affidavit, respondents occupied their respective portions of the property. Delfin testified that before his father, Lorenzo, died in 1961, Lorenzo had been occupying the lot since before the war, and that Delfin was born there in 1934.[66]

Records show that Lorenzo declared Lot No. 3341 for taxation purposes as early as 1948, and paid the real property taxes (evidenced by real property tax payment receipts in the name of Lorenzo from 1952 until his death in 1961).[67] Spouses Tappa were likewise shown to pay the real property taxes from 1961 to 2000.[68] Similarly, respondents also declared their respective portions of Lot No. 3341 for taxation in their names in 1994, and paid real property taxes on those portions from 1967 to 2004.[69] Although tax declarations or realty tax payment of property are not conclusive evidence of ownership, they are good *indicia* of possession in the concept of owner, for no one in his right mind would be paying taxes for a property that is not in his actual or constructive possession. They constitute at least proof that the holder has a claim of title over the property.[70]

Spouses Tappa also admitted in their complaint that sometime in 1963, Bacud and Malupeng started occupying portions of Lot No. 3341 and planted crops on the property, while

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[65] *Agne v. Director of Lands*, G.R. No. 40399, February 6, 1990, 181 SCRA 793, 808.

[66] TSN, April 19, 2002, pp. 7-8.

[67] Records, pp. 65, 68-78.

[68] *Id.* at 65, 79-126.

[69] *Id.* at 202-203, 206, 208-212, 214-228, 230.

[70] *Heirs of Simplicio Santiago v. Heirs of Mariano E. Santiago*, *supra*.

Calabazaron did the same on another portion of the lot in the 1970's.[71] The complaint stated further that since 1963, the respondents "continuously occupied portion of the subject land."[72]

In view of the foregoing circumstances that show open, continuous, exclusive and notorious possession and occupation of Lot No. 3341, the property had been segregated from the public domain.[73] At the time the patent and the certificate of title were issued in 1992, Spouses Tappa and their predecessors-in-interest were already in possession, at least to the half of the lot, since 1934; and respondents were also in possession of the other half since 1963. Therefore, the free patent issued covers a land already segregated from the public domain.

In *Heirs of Simplicio Santiago v. Heirs of Mariano E. Santiago*,[74] we ruled, thus:

> Considering the open, continuous, exclusive and notorious possession and occupation of the land by respondents and their predecessors in interests, they are deemed to have acquired, by operation of law, a right to a government grant without the necessity of a certificate of title being issued. The land was thus segregated from the public domain and the director of lands had no authority to issue a patent. Hence, the free patent covering Lot 2344, a private land, and the certificate of title issued pursuant thereto, are void.[75]

Records also show that Spouses Tappa were aware of respondents' possession of the disputed portions of Lot No. 3341.

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[71] Records, p. 2.

[72] *Id.*

[73] *Heirs of Simplicio Santiago v. Heirs of Mariano E. Santiago, supra.*

[74] G.R. No. 151440, June 17, 2003, 404 SCRA 193, citing *Robles v. Court of Appeals,* G.R. No. 123509, March 14, 2000, 328 SCRA 97; *Heirs of Marciano Nagaño v. Court of Appeals,* G.R. No. 123231, November 17, 1997, 282 SCRA 43; *Mendoza v. Navarette,* G.R. No. 82531, September 30, 1992, 214 SCRA 337; *Azarcon v. Vallarta,* G.R. No. L-43679, October 28, 1980, 100 SCRA 450; *Herico v. Dar,* G.R. No. L-23265, January 28, 1980, 95 SCRA 437; and *Mesina v. Vda. de Sonza, et al.,* 108 Phil. 251 (1960).

[75] *Id.* at 200.

They even admitted such possession (since 1963) by respondents in their complaint filed in 1999. Despite this, Spouses Tappa were able to obtain a free patent of the *whole* property even if they were not in possession of some of its portions. Therefore, Free Patent No. 021519-92-3194 and OCT No. P-69103 are void not only because it covers a private land, but also because they fraudulently included[76] respondents' portion of the property. In *Avila v. Tapucar*,[77] we held that "[i]f a person obtains a title under the Torrens system, which includes by mistake or oversight land which can no longer be registered under the system, he does not, by virtue of the said certificate alone, become the owner of the lands illegally included."[78]

In an action to quiet title, legal title denotes registered ownership, while equitable title means beneficial ownership.[79] As discussed, the free patent and the certificate of title issued to Spouses Tappa could not be the source of their legal title.

The second requisite for an action to quiet title is likewise wanting. We find that although an instrument (the 1963 Affidavit) exists, and which allegedly casts cloud on Spouses Tappa's title, it was not shown to be in fact invalid or ineffective against Spouses Tappa's rights to the property.

A cloud on a title exists when (1) there is an instrument (deed, or contract) or record or claim or encumbrance or proceeding; (2) which is apparently valid or effective; (3) but is, in truth and in fact, invalid, ineffective, voidable, or unenforceable, or extinguished (or terminated) or barred by extinctive prescription; and (4) and may be prejudicial to the title.[80]

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[76] Cf. *Heirs of Simplicio Santiago v. Heirs of Mariano Santiago, supra*.

[77] G.R. No. L-45947, August 27, 1991, 201 SCRA 148.

[78] *Id.* at 155; citations omitted.

[79] *Mananquil v. Moico*, G.R. No. 180076, November 21, 2012, 686 SCRA 123, 124.

[80] Paras, *CIVIL CODE OF THE PHILIPPINES ANNOTATED*, 2013 ed., Vol. II, pp. 299-300; *Green Acres Holdings, Inc. v. Cabral*, G.R. Nos. 175542 & 183205, June 5, 2013, 697 SCRA 266, 289-290.

The 1963 Affidavit is no doubt an instrument, which appears to be valid. It is dated and appears to be executed and signed by Delfin, his mother, and sisters. It is also notarized by a public notary. It states that Genaro originally owns the land described, and that one-half (½) of which is actually owned by Irene as a co-heir. This is contrary to the claim of Spouses Tappa that the property was solely Lorenzo's. Respondents' argue that this affidavit evidences the title of their predecessor-in-interest over Lot No. 3341 and effectively, theirs.[81]

The 1963 Affidavit however, was not proven to be, in fact, invalid, ineffective, voidable, or unenforceable, or extinguished (or terminated) or barred by extinctive prescription. The CA correctly found that Spouses Tappa's claim of force and intimidation in the execution of the 1963 Affidavit was "unsubstantiated."[82] The CA pointed out that, "[a]side from the testimony of Delfin Tappa, no other evidence was presented to prove the claim of force and intimidation, hence, it is at most, self-serving."[83] Also, the 1963 Affidavit was duly notarized and, as such, is considered a public document, and enjoys the presumption of validity as to its authenticity and due execution.

Thus, we affirm the ruling of the CA that the requisites for an action to quiet title are wanting in this case.[84]

There is no collateral attack on the Certificate of Title.

Spouses Tappa argue that respondents collaterally attacked the certificate of title of Lot No. 3441 when they raised the issue of its validity. Spouses Tappa used the same argument against the CA when it declared the certificate of title to be without legal effect.[85]

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[81] *Rollo,* p. 110.

[82] *Id.* at 87.

[83] *Id.*

[84] *Id.*

[85] *Rollo,* pp. 23-24.

Spouses Tappa's argument is without merit. The certificate of title was not collaterally attacked. Section 48 of PD 1529,[86] provides that "[a] certificate of title shall not be subject to collateral attack. It cannot be altered, modified, or canceled except in a direct proceeding in accordance with law." This rule is not applicable in this case.

We reiterate our ruling in *Lee Tek Sheng v. Court of Appeals*,[87] where we stated that, "[w]hat cannot be collaterally attacked is the certificate of title and not the title. The certificate referred to is that document issued by the Register of Deeds x x x. By title, the law refers to ownership which is represented by that document."[88] Ownership is different from a certificate of title, the latter being only the best proof of ownership of a piece of land.[89] Title as a concept of ownership should not be confused with the certificate of title as evidence of such ownership although both are interchangeably used.[90]

In *Vda. de Figuracion v. Figuracion-Gerilla*,[91] citing *Lacbayan v. Samoy, Jr.*,[92] we reaffirm this ruling, and stated that:

> Mere issuance of a certificate of title in the name of any person does not foreclose the possibility that the real property may be under co-ownership with persons not named in the certificate, or that the registrant may only be a trustee, or that other parties may have acquired interest over the property subsequent to the issuance of the certificate of title. Stated differently, placing a parcel of land under the mantle of the Torrens system does not mean that ownership thereof can no longer be disputed. The certificate cannot always be considered as conclusive evidence of ownership.[93]

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[86] Property Registration Decree.

[87] G.R. No. 115402, July 15, 1998, 292 SCRA 544.

[88] *Id.* at 547.

[89] *Id.* at 548.

[90] *Id.*

[91] G.R. No. 151334, February 13, 2013, 690 SCRA 495.

[92] G.R. No. 165427, March 21, 2011, 645 SCRA 677, 690.

[93] *Vda. de Figuracion v. Figuracion-Gerilla*, *supra* at 508-509.

In this case, what respondents dispute, as raised in their Answer, is Spouses Tappa's claim of sole ownership over Lot No. 3341. As affirmative defense, respondents claimed that Spouses Tappa were owners of only one- half (½) of the lot since it was originally owned by Genaro, the father of Lorenzo and Irene.[94] Respondents claim that Lorenzo and Irene became *ipso facto* co-owners of the lot.[95] Thus, respondents claim that, by virtue of a valid transfer from Irene's heirs, they now have ownership and title over portions of Lot No. 3341, and that they have been in continuous, exclusive, and uninterrupted possession of their occupied portions.[96] Malupeng and Calabazaron claim ownership and title over their respective portions by virtue of a valid sale. Bacud claims ownership and title by virtue of succession. Therefore, it is the ownership and title of Spouses Tappa which respondents ultimately attack. OCT No. P-69103 only serves as the document representing Spouses Tappas' title.

Respondents cannot likewise argue that the certificate of title of Spouses Tappa is indefeasible.[97] We have already ruled that the one-year prescriptive period does not apply when the person seeking annulment of title or reconveyance is in possession of the property.[98] This is because the action partakes of a suit to quiet title, which is imprescriptible.[99] In this case, respondents have been proved to be in possession of the disputed portions

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[94] Records, p. 9.

[95] *Rollo*, p. 36.

[96] *Id.* at 36-37; Records, p. 10.

[97] *Wee v. Mardo*, G.R. No. 202414, June 4, 2014, 725 SCRA 242, 252. The pertinent portion of the decision reads:

> A public land patent, when registered in the corresponding Register of Deeds, is a veritable Torrens title, and becomes as indefeasible upon the expiration of one (1) year from the date of issuance thereof. Said title, like one issued pursuant to a judicial decree, is subject to review within one (1) year from the date of the issuance of the patent.

[98] *Heirs of Simplicio Santiago v. Heirs of Mariano Santiago*, *supra* note 74 at 203.

[99] *Id.*

of Lot No. 3341. Thus, their claim against Spouses Tappa cannot be barred by the one-year prescriptive period.

WHEREFORE, in view of the foregoing, the petition is **DENIED** and the Decision of the Court of Appeals in CA-G.R. CV No. 90026 is **AFFIRMED.**

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 192320. April 4, 2016]

BENJAMIN L. VERGARA, JONA M. SARVIDA and JOSEPHINE P. SABALLA, *petitioners, vs.* **ATTY. EUSEBIO I. OTADOY, JR.**, *respondent.*

SYLLABUS

REMEDIAL LAW; CIVIL PROCEDURE; PRE-TRIAL; MOTION TO POSTPONE PRE-TRIAL CONFERENCE MUST ESTABLISH A VALID CAUSE.— Under Rule 18 of the Rules of Court, the counsels and the parties are mandated to appear at pre-trial. Their non-appearance may be excused only if there is a **valid cause** or if a representative appears on their behalf. If the defendant fails to appear, the RTC may allow the plaintiff to present evidence *ex parte* and may render judgment based on it. This Court has ruled that a motion for postponement is a privilege and not a right. The movant should not assume that his motion would be granted. In deciding whether to grant or deny a motion to postpone the pre-trial, the court must take into account two factors: (a) the reason given, and (b) the merits of the movant's case. x x x [Here,] we find that [respondent] did not sufficiently establish a valid cause to postpone the

pre-trial conference, giving the RTC a firm legal basis to deny his motion and to declare him in default.

APPEARANCES OF COUNSEL

Renta Pe & Associates for petitioners.

D E C I S I O N

BRION, *J.*:

We resolve the petition for review on *certiorari* filed by the petitioners to challenge the June 30, 2009 decision[1] and May 11, 2010 resolution[2] of the Court of Appeals (*CA*) in CA-GR SP No. 100262. The CA decision reversed the Regional Trial Court's (*RTC*) orders[3] which denied the respondent's motion to postpone the pre-trial conference and which adopted the evidence that the petitioners had previously presented.

FACTUAL BACKGROUND

This case stemmed from a petition for *habeas corpus* decided by this Court in G.R. 154037.[4] In that case, the petitioners were arrested for indirect contempt because they refused to comply with the probate court's order to pay rentals to Anselma Allers' estate. This Court ruled that their imprisonment was unwarranted

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[1] Penned by Associate Justice Monina Arevalo-Zenarosa and concurred in by Associate Justices Mariano C. Del Castillo (now with the Supreme Court) and Priscilla J. Baltazar-Padilla. *Rollo*, pp. 20-30.

[2] Penned by Associate Justice Priscilla J. Baltazar-Padilla and concurred in by Associate Justices Juan Q. Enriquez Jr. and Sesinando E. Villon.

[3] RTC Orders dated March 12, 2007 and July 13, 2007. *Rollo*, pp. 100-107.

[4] In the Matter of the Petition for *Habeas Corpus* of Benjamin Vergara, Jona Sarvida, Milagros Majoremos, Majorie Jalalon, May Joy Mendoza (@May Joy Sandi), and Joy Saballa (@Josephine Saballa), Mabelyn B. Vergara, Rio Sarvida, Francisco Majoremos, in their respective behalf and in behalf of Roy Jalalon, Rommel Mendoza, and Delfin Saballa, 450 Phil. 623-624 (2003).

as it violated the constitutional prohibition against imprisonment for nonpayment of debt.

Armed with this ruling, on January 12, 2004, the petitioners Benjamin L. Vergara, Jona M. Sarvida, and Josephine P. Saballa filed a civil action for damages against respondent Atty. Eusebio I. Otadoy, Jr. and three other persons (*defendants*). Atty. Otadoy served as the administratrix's counsel in G.R. No. 154037. The petitioners alleged that they were unjustly detained as a result of Atty. Otadoy's fraudulent practices.

On March 4, 2004, the petitioners filed a motion to admit an amended complaint which the RTC granted.

When the defendants failed to file their answers, the petitioners moved to declare the defendants in default and to allow the petitioners to present evidence *ex parte*. These were granted in the RTC's order dated September 17, 2004.

Atty. Otadoy, representing himself, filed several motions for reconsideration of the RTC's order. He alleged that he did not receive the amended complaint.

Meanwhile, the petitioners presented their evidence *ex parte* on September 27, 2004 and October 11, 2004.

On February 8, 2005, the RTC granted Atty. Otadoy's motion to set aside the default order. It also directed the petitioners to serve a copy of the amended complaint on Atty. Otadoy.

The court scheduled the pre-trial conference on March 12, 2007, at 1:30 in the afternoon.

Atty. Otadoy filed a motion to postpone the pre-trial conference to April 20, 2007. He claimed that on March 4, 2007, he was invited to deliver a lecture at the National Annual Lectureship of the Church of Christ on March 11-14, 2007. As a minister and evangelist of that church, he chose to accept the invitation rather than attend the pre-trial conference. Without waiting for a ruling on his motion, Atty. Otadoy proceeded to attend the lecture in Zamboanga.

At the pre-trial conference, the petitioners' counsel opposed the motion to postpone the pre-trial conference arguing that Atty. Otadoy failed to file a pre-trial brief and that his motion was filed late. The petitioners' counsel moved that he be allowed to present his evidence *ex parte* as stated in Section 5, Rule 18 of the Rules of Court. He also moved that the court adopt the evidence that he had previously presented.

The RTC granted his motions and considered the case submitted for resolution.

Atty. Otadoy filed his pre-trial brief only on April 11, 2007. He also filed a motion for reconsideration on April 20, 2007, which the RTC denied.

Atty. Otadoy responded by filing a petition for *certiorari* with the CA.

THE CA RULING

The CA granted Atty. Otadoy's petition. It noted that Atty. Otadoy should be blamed for not appearing at the pre-trial and for presuming that his motion would be granted *ipso facto*. Nevertheless, Atty. Otadoy only asked once for the postponement of the pre-trial proceedings during the entire duration of the case. The RTC should have placed greater premium on safeguarding a litigant's fullest opportunity to establish his case than on technicalities. Thus, the CA opined that the RTC should have granted Atty. Otadoy's motion to postpone.

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

THE PARTIES' ARGUMENTS

In their present petition, the petitioners argue that the CA incorrectly ruled that the RTC committed grave abuse of discretion in denying Atty. Otadoy's urgent motion to postpone dated March 6, 2007.

First, a mere error of judgment does not constitute grave abuse of discretion unless attended by personal biases, whims, and caprices, which were not proven here. Moreover, the CA

did not refer to any law or rule that the RTC violated in granting the petitioners' motions.

Second, Atty. Otadoy did not submit any proof that he indeed attended the conference. Despite this lack of evidence, the CA reversed the RTC's order denying his motion for postponement.

In his comment, the respondent argues that the CA's decision is supported by facts and jurisprudence. He argues that his motion to postpone was timely filed by registered mail on March 7, 2007, or six (6) days before the scheduled pre-trial conference. He claims that by denying his motion, the RTC deprived him of his day in court.

OUR RULING

We GRANT the petition.

The issue to be resolved here is whether the RTC committed grave abuse of discretion in denying Atty. Otadoy's motion to postpone the pre- trial conference.

A ruling that precludes a party from presenting evidence, such as an order of default, must have basis in law; otherwise, it is issued with grave abuse of discretion.[5]

In the present case, the RTC had legal basis to deny the motion for postponement as explained more fully below. Thus, we rule that the RTC did not commit grave abuse of discretion in denying Atty. Otadoy's motion.

Motion to Postpone is a privilege, not a right.

Pre-trial answers the call for the speedy disposition of cases.[6] Under Rule 18 of the Rules of Court, the counsels and the parties are mandated to appear at pre-trial.[7] Their non-appearance may

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[5] *Paredes v. Verano*, G.R. No. 164375, October 12, 2006, 504 SCRA 278.

[6] *Philippine American Life & General Insurance Company v. Enario*, G.R. No. 182075, September 15, 2010, 630 SCRA 607.

[7] Rules of Court, Rule 17, Section 4.

be excused only if there is a **valid cause** or if a representative appears on their behalf.[8] If the defendant fails to appear, the RTC may allow the plaintiff to present evidence *ex parte* and may render judgment based on it.[9]

This Court has ruled that a motion for postponement is a privilege and not a right.[10] The movant should not assume that his motion would be granted.[11]

In deciding whether to grant or deny a motion to postpone the pre- trial, the court must take into account two factors: (a) the reason given, and (b) the merits of the movant's case.[12]

In *Philippine Transmarine Carriers, Inc., et al. v. Song*,[13] the defendants' counsel moved to postpone the pre-trial due to his illness. The trial court denied the motion because the movant did not attach any supporting medical certificate. In the motion for reconsideration, the defendants' counsel attached a duly notarized medical certificate and an affidavit of merit that he signed. The trial court, however, also denied the motion for reconsideration.

When the case reached this Court, we ruled that the trial court should have granted the motion for reconsideration after the notarized medical certificate was submitted, following the rationale we discussed below.

On the basis of this precedent, the question now for us is whether Atty. Otadoy presented a **valid cause to postpone** the pre-trial conference.

We note that Atty. Otadoy's failure to attach proof that he attended the alleged lectureship weighs heavily against him.

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[8] *Id.*

[9] *Id.,* Section 5.

[10] *Supra* note 6.

[11] *Id.*

[12] *Id.*

[13] G.R. No. 122346, February 18, 2000, 326 SCRA 18-19.

He had many opportunities to submit proof of his attendance. He could have attached this proof in his motion for reconsideration, in his petition before the CA, or in this petition. Yet, he failed to do so. Thus, we find that he did not sufficiently establish a valid cause to postpone the pre-trial conference, giving the RTC a firm legal basis to deny his motion and to declare him in default.

Strict application of procedural rules

The CA acknowledged Atty. Otadoy's fault. However, it added that the courts should not be overly strict in applying procedural rules. It cited *Africa v. Intermediate Appellate Court, et al.*[14] and *RN Development Corporation v. A.I.I. System, Inc.*[15]

In those cases, the judges declared the parties in default only because their lawyers were late: for ten minutes in *Africa* and for four minutes in *RN Development.*

In the present case, Atty. Otadoy not only failed to appear during pre- trial; he also failed to file the mandatory pre-trial brief within the prescribed time.

To be sure, judicial action must be guided by the principle that a party-litigant must be given the fullest opportunity to establish the merits of his case.[16] Rules of procedure, however have their own reasons for their existence; they are with us to ensure prompt, speedy, and orderly dispensation of justice. This competing reason must be weighed and balanced against the admittedly weightier need to give litigants their day in court. When procedural rules are at the point of being abused, such as when the litigant fails to establish a valid cause to postpone the proceedings, procedural rules cannot and must not be brushed aside.

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[14] G.R. No. 76372, August 14, 1990, 188 SCRA 586-587.

[15] G.R. No. 166104, June 26, 2008, 555 SCRA 513-514.

[16] *CMTC International Marketing Corporation v. Bhagis International Trading Corporation*, G.R. No. 170488, December 10, 2012, 687 SCRA 469.

In *Philippine Transmarine Carriers*, the Court considered that the motion was the first postponement that the defendants requested only after finding that there was a valid cause to postpone.

In this petition, although Atty. Otadoy requested for postponement only once, he failed to show a valid cause to justify his request; thus, the RTC did not legally err in denying his motion to postpone.

WHEREFORE, we **GRANT** the petition. The June 30, 2009 decision and May 11, 2010 resolution of the Court of Appeals in CA-GR SP No. 100262 are **REVERSED**. The Regional Trial Court's order dated March 12, 2007, is hereby **REINSTATED**.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 195054. April 4, 2016]

ATTY. CORAZON CHAVEZ, *petitioner, vs.* **RENATO GARCIA and THE OFFICE OF THE OMBUDSMAN,** *respondents.*

SYLLABUS

1. POLITICAL LAW; OFFICE OF THE OMBUDSMAN; FINDINGS OF FACT AND CONCLUSIONS BY THE OMBUDSMAN ARE CONCLUSIVE WHEN SUPPORTED

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[*] Designated as Additional Member in lieu of Associate Justice Mariano C. Del Castillo, per Raffle dated February 15, 2016.

BY SUBSTANTIAL EVIDENCE; SUBSTANTIAL EVIDENCE IS SUCH AMOUNT OF RELEVANT EVIDENCE WHICH A REASONABLE MIND MIGHT ACCEPT AS ADEQUATE TO SUPPORT A CONCLUSION.— It is well-settled that findings of fact and conclusions by the Ombudsman are conclusive when supported by ***substantial evidence***. Their factual findings are generally accorded great weight and respect, if not finality by the courts, by reason of their special knowledge and expertise over matters falling under their jurisdiction. In cases filed before administrative or quasi-judicial bodies, a fact may be deemed established if it is supported by substantial evidence. Substantial evidence is defined as such amount of relevant evidence which a reasonable mind might accept as adequate to support a conclusion. It is more than a mere scintilla of evidence. The standard of substantial evidence is satisfied when there is a reasonable ground to believe, based on the evidence submitted, that the respondent is responsible for the misconduct complained of. It need not be overwhelming or preponderant, as is required in an ordinary civil case, or evidence beyond reasonable doubt, as is required in criminal cases, but the evidence must be enough for a reasonable mind to support a conclusion.

2. ID.; ADMINISTRATIVE LAW; MISCONDUCT; GRAVE MISCONDUCT COMMITTED WHEN THE REGISTER OF DEEDS ISSUED THE NEW TCTs WITHOUT PROOF OF PAYMENT OF TAXES.— Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer. The misconduct is considered to be grave if it involves additional elements such as corruption or willful intent to violate the law or to disregard established rules, which must be proven by substantial evidence; otherwise, the misconduct is only simple. Corruption, as an element of grave misconduct, consists in the act of an official or fiduciary person who unlawfully and wrongfully uses his station or character to procure some benefit for himself or for another person, contrary to duty and the rights of others. In other words, in grave misconduct, the elements of corruption, clear intent to violate the law, or flagrant disregard of an established rule must be evident. x x x [Here, the Register of Deeds] Atty. Chavez committed grave misconduct when she issued the new TCTs without proof of payment of taxes.

APPEARANCES OF COUNSEL

Valdez Maulit & Associates Law Offices for petitioner.
Paul Jomar S. Alcudia for respondent.
Office of the Solicitor General for public respondent.

D E C I S I O N

BRION, *J.*:

Before the Court is a petition for review on *certiorari*[1] assailing the July 13, 2010[2] and January 5, 2011[3] resolutions of the Court of Appeals *(CA)* in CA-G.R. SP No. 114497.

ANTECEDENTS

Petitioner Atty. Corazon Chavez *(Atty. Chavez)* was the former Register of Deeds of San Juan City.[4]

On **March 23, 2007,** respondent Renata Garcia *(Garcia)* filed with the Office of the Ombudsman *(Ombudsman)* a complaint[5] against Atty. Chavez for alleged irregularities in the cancellation of Transfer Certificates of Title *(TCTs)* Nos. 11844-R and 11845-R registered in the name of his parents-in-law, Esperanza Corpus and the late Honorato P. Corpus *(Spouses Corpus)*.[6]

Garcia claimed that on **July 26, 2005,** Atty. Chavez issued TCT Nos. 12172-R and 12173-R[7] in the name of Hector P.

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[1] *Rollo,* pp. 9-33. The petition is filed under Rule 45 of the Rules of Court, with prayer for temporary restraining order.

[2] *Id.* at 222.

[3] *Id.* at 242. Associate Justice Mario L. Guariña III penned the assailed resolutions with the concurrence of Associate Justice Apolinario D. Bruselas, Jr. and Associate Justice Rodil V. Zalameda.

[4] *Id.* at 10.

[5] Docketed as OMB-C-C-07-0161-D and OMB-C-A-07-0180-D.

[6] *Rollo,* p. 63.

[7] *Id.* at 65-68.

Corpus *(Hector),* son of the Spouses Corpus. Atty. Chavez issued the new TCTs based on purported deeds of sale executed by the Spouses Corpus and Hector on January 8 and 9, 2002.[8]

On **November 16, 2006**, the Regional Trial Court *(RTC)* of San Juan, in a case filed by Garcia's wife and mother-in-law against Hector and Atty. Chavez, voided the deeds of sale for being spurious. The RTC also directed Atty. Chavez to cancel the TCTs issued in favor of Hector and reinstate and issue a new owner's duplicate copy of the TCTs registered in the name of the Spouses Corpus.[9]

Garcia also alleged that the sales were not reported to the Bureau of Internal Revenue *(BIR)* and that the capital gains tax and documentary stamp tax were not paid. Consequently, the Certificate Authorizing Registration *(CAR)* of the sales with the Registry of Deeds could not have been issued.[10] To prove this allegation, Garcia submitted certifications[11] issued by the BIR that no sale between the Spouses Corpus and Hector was reported to their office.

In sum, Garcia claimed that the issuance of the new TCTs without the requisite payment of taxes was not only contrary to law but also prejudicial to the State.[12]

In defense,[13] Atty. Chavez claimed that she was not in a position to determine the authenticity and due execution of the deeds of sale; that she could only rely on the declaration that they were subscribed and sworn to in the presence of a Notary

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

[9] *Id.* at 73-76

[10] *Id.* at 63.

[11] *Id.* at 77-78. The certifications were issued by Adelfa L. Mateo, Chief, Collection Section of the BIR-Revenue District Office (No. 42) and Melinda B. Ramos, Revenue Officer III of the same office.

[12] *Id.* at 64.

[13] *Id.* at 81-85.

Public; and that the deeds of sale are public documents presumed to be regularly and duly executed.[14]

Contrary to Garcia's allegation, Atty. Chavez maintained that her office issued the new TCTs after all the supporting documents have been submitted, namely: the CAR, the BIR Tax Payment Deposit Slip and the Capital Gains Tax Return.[15] Consequently, her office had to cancel the old TCTs and issue the new ones in Hector's name.[16]

Lastly, Atty. Chavez posited that since the BIR had no records of the transactions, the CAR submitted to her office *might* have been falsified. Assuming it was falsified, she argued that she could not be held liable because as a Register of Deeds, it is not her duty' to determine its intrinsic validity, due execution and authenticity. Only the courts can conduct a full-blown hearing to decide on such litigious matters.[17]

THE OMBUDSMAN's FINDINGS[18]

On September 30, 2008, the Ombudsman found substantial evidence to hold Atty. Chavez administratively liable for Grave Misconduct.[19] The Ombudsman held that the issuance of the TCTs without payment of taxes is contrary to the provisions of the National Internal Revenue Code.[20]

To support its finding that Atty. Chavez issued the new TCTs without the supporting documents, the Ombudsman gave weight to: **(1) the BIR certifications that the taxes on the alleged sales were not paid**[21] **and (2) the RTC decision declaring the deeds**

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[14] *Id.* at 82.

[15] *Id.* at 86-92.

[16] *Id.* at 82.

[17] *Id.* at 83-84.

[18] *Id.* at 176-191.

[19] *Id.* at 183-190.

[20] *See* Sections 24 (D), 58 (E), and 196 of the National Internal Revenue Code.

[21] *Rollo,* p. 186.

of sale null and void.[22] The Ombudsman held that these pieces of evidence proved that Atty. Chavez committed wrongdoing.

While acknowledging that Atty. Chavez submitted as evidence the supporting documents (to prove her claim that she issued the new TCTs only after these documents were submitted), the Ombudsman gave more credence to the BIR certifications and the RTC decision.[23]

From these established facts, the Ombudsman concluded that: (1) Atty. Chavez had been remiss in her duties, and thus, should be liable for Grave Misconduct; (2) the government suffered injury equal to the amount of unpaid taxes: Php 60,000.00 for capital gains tax and Php 15,000.00 for documentary stamp tax;[24] and (3) that Atty. Chavez gave unwarranted benefits to Hector when she issued the new TCTs despite the non-payment of taxes.[25]

In finding Atty. Chavez liable for Grave Misconduct, the Ombudsman stressed that the quantum of proof that must be satisfied in administrative proceedings is merely **substantial evidence**, which is the amount of relevant evidence a reasonable mind might accept as adequate to support a conclusion.[26] In this case, the evidence presented satisfied the quantum of proof necessary to hold Atty. Chavez liable for Grave Misconduct. Thus,

WHEREFORE, in view of the foregoing, respondent **ATTY. CORAZON C. CHAVEZ,** Register of Deeds of San Juan City, is liable for Grave Misconduct and is thus imposed the penalty of **DISMISSAL** from the service, including all the accessory penalties of cancellation of eligibility, forfeiture of leave credits and retirement benefits, and disqualification from reemployment in the government service.

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[22] *Id.* at 73-76,

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

[24] *Id.* at 187-188.

[25] *Id.* at 188.

[26] *Id.* at 189.

Atty. Chavez moved[27] but failed to obtain a reconsideration of the Ombudsan's ruling.[28] Hence, she filed a petition for review[29] with the CA.

The CA dismissed the petition for failure to: (1) state the address of the parties; and (2) attach the affidavit of service and supporting documents. The CA also denied the motion for reconsideration filed by Atty. Chavez.[30] Hence, she came to the Court for relief through the present petition.

PROCEEDINGS BEFORE THE COURT

The Court initially denied the petition because it failed to show any reversible error in the assailed CA resolutions. Atty. Chavez's counsel likewise did not indicate his MCLE compliance.[31]

Atty. Chavez moved for reconsideration on the grounds that: (1) she is battling a stage 3 cancer, and thus, for humanitarian reasons, she asked that her case be at least given due course and resolved on the merits; (2) her case has merits; (3); the defective filing in the CA was fully explained and (4) her counsel has an updated MCLE compliance.[32]

On these bases, the Court granted the motion for reconsideration, reinstated the petition, and required the respondents to file their comments.[33]

THE PETITION

Atty. Chavez assails the Ombudsman's findings on the following grounds:

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[27] *Id.* at 196-209.

[28] *Id.* at 216-220.

[29] *Id.* at 222.

[30] *Id.* at 242-243.

[31] *Id.* at 244-245.

[32] *Id.* at 246-261.

[33] *Id.* at 493.

First, assuming she erred in relying on the supporting documents submitted by Hector, her error does not constitute grave misconduct. She argues that in grave misconduct, there must be corruption and manifest intent to violate the law or flagrant disregard of established rule. Corruption consists of the act of an official who, contrary to duty, unlawfully and wrongfully uses his station to procure some benefit for himself or for another person.[34]

Atty. Chavez points out that the element of corruption was not proven. She insists that while she may have committed a mistake in assuming that the supporting documents were genuine, such mistake was due to inadvertence and may not in any manner be construed as grave misconduct or gross negligence of duty.[35]

Second, Atty. Chavez maintains that she had the right to rely on the authenticity and due execution of the documents submitted to her office. She underscores that it is beyond the duty of the Register of Deeds to look into the intrinsic validity of the CAR or the deeds of sale.[36]

She cites ample jurisprudence to support her claim that the Register of Deeds can only determine the registrability of the document based on its face and that she has no authority to inquire into the intrinsic validity of the documents based on proof *aliunde.*

She claims that her office receives hundreds of document daily, thus, it would be illogical and burdensome to require her to investigate the due execution and authenticity of all documents submitted to her office. This would result in a logistical nightmare. Thus, the Registry of Deeds could rely on the due execution and authenticity of the documents after they have been signed and subscribed to before a Notary Public.[37]

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[34] *Id.* at 16.

[35] *Id.* at 17.

[36] *Id.* at 19.

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

Finally, Atty. Chavez submits that her dismissal from the service is too harsh a penalty assuming she committed lapses in her duties. She points out that she had been in public service for twenty-six (26) years and that she had served the government with honesty and integrity. She prays that the Court consider this fact in imposing the appropriate penalty, if any.[38]

RESPONDENTS' COMMENT

Garcia refutes Atty. Chavez's good faith reliance on the authenticity and due execution of the supporting documents. He claims that the supporting documents were clearly fraudulent. He also questions how these documents came into Atty. Chavez's possession, and posits that such possession gives rise to the presumption that she forged them or participated in their falsification.[39]

Garcia contends that the fact alone that new TCTs were issued without the requisite payment of taxes already constitutes grave misconduct although no evidence was adduced to prove Atty. Chavez received remuneration or benefit from the transaction.[40] Thus, Garcia insists that Atty. Garcia's dismissal from the service was commensurate to her grave misconduct.

Garcia also refutes Atty. Chavez's claim that she had served the government with honesty and integrity for twenty-six (26) years. He discloses that the Ombudsman had previously charged Atty. Chavez with plunder in an alleged Php 95 Million tax scam against the government.[41] On this note, the Court takes judicial notice of the administrative charge that arose from this *separate case* where the Ombudsman also found Atty. Chavez liable for grave misconduct and dismissed her from the service.[42]

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[38] *Id.* at 26-29.

[39] *Id.* at 503-504.

[40] *Id.* at 504.

[41] *Id.* at 504-505.

[42] See *Ombudsman v. De Villa,* G.R No. 208341, June 17, 2015. It is unclear whether Atty. Chavez questioned the Ombudsman's finding on this separate case.

The Ombudsman, on the other hand, maintains that Atty. Chavez committed grave misconduct when she relied on the documents submitted by Hector despite the absence of receipts evidencing payment of taxes.[43]

The Ombudsman reiterates that the BIR issued certifications showing that no taxes on the purported sales had ever been paid; the failure to collect the tax prejudiced the government in the form of uncollected taxes. Thus, Atty. Chavez committed corruption, an element of grave misconduct, for unlawfully and wrongfully using her station or character to procure benefit for herself or *another person,* contrary to her duties and the right of the government.[44]

The Ombudsman further contends that there was substantial evidence to prove that Atty. Chavez is liable for grave misconduct, namely: (1) Garcia's complaint-affidavit; (2) the BIR certifications proving the non- payment of taxes; (3) and the RTC decision voiding the fictitious sales. The Ombudsman notes that its investigating officer thoroughly examined these pieces of evidence and deemed them sufficient to substantiate Garcia's allegations.[45]

In support of this contention, the Ombudsman invokes Section 27 of Republic Act No. 6770 or *The Ombudsman Act of 1989,* which provides that findings of fact by the Ombudsman when supported by substantial evidence are conclusive.[46]

Finally, the Ombudsman notes that grave misconduct is classified as a grave offense, and thus, carries with it the penalty of dismissal from the service.[47]

ISSUES

The case confronts the Court with the issues of whether Atty. Chavez committed grave misconduct; and whether the penalty of dismissal from the service was proper.

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[43] *Rollo,* pp. 523-526.

[44] *Id.* at 525.

[45] *Id.* at 526-527 .

[46] *Id.* at 527.

[47] *Id.* at __.

OUR RULING

We deny the petition.

It is well-settled that findings of fact and conclusions by the Ombudsman are conclusive when supported by ***substantial evidence.*** Their factual findings are generally accorded great weight and respect, if not finality by the courts, by reason of their special knowledge and expertise over matters falling under their jurisdiction.[48]

In cases filed before administrative or quasi-judicial bodies, a fact may be deemed established if it is supported by substantial evidence.[49]

Substantial evidence is defined as such amount of relevant evidence which a reasonable mind might accept as adequate to support a conclusion. It is more than a mere scintilla of evidence. The standard of substantial evidence is satisfied when there is a reasonable ground to believe, based on the evidence submitted, that the respondent is responsible for the misconduct complained of. It need not be overwhelming or preponderant, as is required in an ordinary civil case, or evidence beyond reasonable doubt, as is required in criminal cases, but the evidence must be enough for a reasonable mind to support a conclusion.[50]

To reiterate, the Ombudsman relied on two established facts to conclude that Atty. Chavez committed grave misconduct: (1) the RTC decision finding the deeds of sale fictitious and (2) the BIR certifications that the taxes on the purported sales were not paid.

Are these pieces of evidence substantial to hold Atty. Chavez liable for grave misconduct?

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[48] *Ombudsman v. Mallari,* G.R. No. 183161, December 03, 2014, citing *Miro v. Mendoza Vda. de Erederos,* G.R. Nos. 172532, 172544-45, November 20, 2013, 710 SCRA 371, 383.

[49] Section 5, Rule 133, RULES OF COURT.

[50] *Ibid*.

We rule in the affirmative.

Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer.[51]

The misconduct is considered to be grave if it involves additional elements such as corruption or willful intent to violate the law or to disregard established rules, which must be proven by substantial evidence; otherwise, the misconduct is only simple. Corruption, as an element of grave misconduct, consists in the act of an official or fiduciary person who unlawfully and wrongfully uses his station or character to procure some benefit for himself or for another person, contrary to duty and the rights of others. In other words, in grave misconduct, the elements of corruption, clear intent to violate the law, or flagrant disregard of an established rule must be evident.[52]

We agree that Atty. Chavez could not have known that the notarized deeds of sale were spurious and that it was not her duty to examine their authenticity, validity and due execution.

A Register of Deeds is not tasked with the evaluation of the intrinsic validity or genuineness of the deeds submitted to her office, especially if they appear regular on their face.[53] Otherwise, she would be inundated with paperwork and greatly hampered in the performance of her official functions.

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[51] *Bureau of Internal Revenue v. Organo*, 468 Phil. 111, 118 (2004).

[52] *Supra* note 48.

[53] Section 10 of the Presidential Decree No. 1529 (Amending and Codifying the Laws Relative to Registration of Property and for Other Purposes) provides:

Section 10. *General functions of Register of Deeds.* —

x x x x x x x x x

It shall be the duty of the Register of Deeds to immediately register an instrument presented for registration dealing with real or personal property which complies with all the requisites for registration. He shall see to it that said instrument bears the proper documentary and science stamps and that the same are properly cancelled. x x x

There is nothing on records that would show that Atty. Chavez should have known that the deeds of sale were not genuine, nor did Garcia make such allegation. The Ombudsman also did not rule that the deeds were invalid on their face. The Ombudsman held only that the RTC voided them for being fictitious.

Notably, the RTC found them to be spurious only after holding trial and weighing the evidence adduced by the complainants. There is therefore basis to assume that the deeds of sale *appeared* genuine, valid and duly executed. Thus, Atty. Chavez cannot be faulted for assuming that the deeds were not fictitious, granting she had no prior knowledge that the deeds were indeed falsified.

Be that as it may, the uncontroverted fact in this case, taken as a whole, compel the Court to sustain the ruling of the Ombudsman. These established facts juxtaposed with the degree of proof required in an administrative case justify the finding of grave misconduct and the dismissal of Atty. Chavez from the service.

Stated in concrete terms, we hold that Atty. Chavez committed grave misconduct when she issued the new TCTs without proof of payment of taxes. We find that the following circumstances negate Atty. Chavez's claim of innocence:

First, Atty. Chavez chose to not participate and defend her office in the RTC.

We stress that the case filed in the RTC was not only against Hector, the alleged guilty party in falsifying the deeds of ale, but also against Atty. Chavez, in her official capacity as the Register of Deeds. The case was for the declaration of nullity of the deeds of sale and cancellation of the TCTs issued by Atty. Chavez in favor of Hector.[54]

Despite twice asking for extension to file an answer, Atty. Chavez did not file any responsive pleading. Upon motion, the RTC declared her in default. The RTC then decided the case based on the evidence of the complainants (Garcia's wife and mother-in-law). These included, among others, the BIR

[54] *Rollo*, p. 73.

certifications that the taxes on the sales were not paid (and thus, the CAR and the tax returns could not have been issued). The BIR employees also testified to confirm the facts in their certifications.

Interestingly, the RTC also found that the complainants, through a representative, sent a letter-request to Atty. Chavez asking for certified copies of the documents relevant to the issuance of the TCTs. Despite being told to follow-up several times, the representative was not provided with the requested documents.[55]

Clearly, even prior to the filing of the complaint with the Ombudsman, there was already an indication that Atty. Chavez could not produce the supporting documents that would have justified the issuance of TCTs.

Second, Atty. Chavez filed her counter-affidavit with the Ombudsman only after several extensions of time.

These circumstances tend to refute her claim that she received all the supporting documents before she issued the new TCTs, as well as her claim that she cannot be faulted if the supporting documents turned out to be spurious.

We elaborate on this point in our discussion below.

The Ombudsman ordered Atty. Chavez to file her counter-affidavit on June 9, 2007. She moved for extensions on July 20, 2007; October 22, 2007; May 16, June 2, and June 5, 2008 *(five motions for extension in total).*

She finally filed her counter-affidavit on **August 15, 2008, more than a year after she was first ordered to do so**.[56] Atty. Chavez reasoned that she had to "prioritize the pending workloads in her office before *retrieving relevant documents* and investigating what really transpired in relation to the x x x comp1aint."[57]

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[55] *Id.* at 75.

[56] *Id.* at 179-181.

[57] *Id.* at 79.

Atty. Chavez attached to her belatedly-filed counter-affidavit the alleged CAR and supporting documents supposedly proving that the taxes had been paid.

In this regard, we find relevant that the RTC decided the nullity/cancellation case on November 16, 2006. Thus as early as November 16, 2006, Atty. Chavez had been informed that her office was accused of and had been found issuing TCTs despite the absence of proof of payment of taxes,

And yet, it took her **almost two years** to submit as evidence the purported supporting documents that would have justified the cancellation of the Spouses Corpus' TCTs and the issuance of the new TCTs in favor of Hector.

We underscore that Atty. Chavez had not explained nor attempted to explain anywhere in her pleadings filed before the Court or with the Ombudsman the reason for the delay. She does not claim that these documents were missing or destroyed or stolen. The Court does not understand why it took her a long time to submit them as evidence to protect the integrity of her office and defend her own reputation.

In fact, she admitted that she only had to "*retrieve the relevant documents*" but failed to do so at the earliest opportunity because she was busy with her official duties.[58]

We are far from convinced by the merit of this explanation.

The more tenable explanation is that the alleged CAR, BIR Deposit Payment Slip and Capital Gains Tax Return (the *supporting documents*) were ***non-existent*** at the time of the issuance of the new TCTs. We recall the sequence of events leading to the "appearance" of the supporting documents:

- Atty. Chavez issued the new TCTs to Hector on **July 26, 2005.**[59]
- On **October 4, 2005**, the BIR certified that the capital gains tax and documentary tax had not been paid on the sales.

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[58] *Ibid.*

[59] *Id.* at 65-68.

This means that the alleged supporting documents could not have been issued by the BIR. Consequently, Hector could not have submitted any document to Atty. Chavez's office *unless* falsified versions of the supporting documents were filed.

- On **November 16, 2006**, the RTC cancelled the TCTs for having been issued without proof of payment of taxes.

  This supports the conclusion that the BIR could not have issued and Hector could not have submitted the alleged supporting documents to Atty. Chavez's office *unless* falsified versions were submitted.

- On **March 23, 2007**, Garcia filed his complaint with the Ombudsman alleging that Atty. Chavez issued the TCTs without the required proof of payment of taxes.

  Again, if this allegation is true, it means that Hector could not have submitted the supporting documents to Atty. Chavez's office *unless* he or someone else falsified them.

- On **August 15, 2008**, Atty. Chavez filed her counter-affidavit attaching the alleged supporting documents.

- On **September 30, 2008**, the Ombudsman found that Atty. Chavez issued the TCTs in Hector's name without the required payment of taxes.

To our mind, the above sequence of events renders it clear that on July 26, 2005, Atty. Chavez should have received some sort of supporting documents, fake or otherwise.

Also, **as early as October 4, 2005** (date of BIR certification) **or March 23, 2007** (date of Garcia's complaint), Atty. Chavez had or should have been alerted to the *possibility* that her office received falsified supporting documents. However, she made no attempt to explain what she did upon learning of this distinct possibility.

We find Atty. Chavez's silence on this particular point rather revealing. The supporting documents *surfaced* only when she belatedly filed her counter-affidavit on **August 15, 2008**. She offers no explanation on where the supporting documents were

between October 4, 2005 and August 15, 2008. This inevitably leads us to conclude, as did the Ombudsman, that she did not *at all* receive any supporting document on July 26, 2005, *falsified or otherwise*.

The Court is also not convinced that she was too busy with official duties that it took her almost three years to "retrieve the relevant documents." The more believable conclusion, as found by the Ombudsman though not expressly stated in these terms, is that not only were the deeds of sale fictitious, the alleged supporting documents, namely: the CAR, the BIR Tax Payment Deposit Slip and the Capital Gains Tax Return were ***non-existent*** when Atty. Chavez issued the TCTs in favor of Hector.

We thus rule that the above findings are more than sufficient to qualify as ***substantial evidence***, and that there are sufficient "***reasonable grounds*** to believe, based on the evidence submitted, that the respondent is responsible for the misconduct complained of."[60]

For all these reasons, we sustain the findings of the Ombudsman holding Atty. Chavez liable for grave misconduct and dismissing her from the service.

A final note: While Atty. Chavez had been previously found administratively liable for grave misconduct in a *separate case* (the Ombudsman found in that case that Atty. Chavez registered a deed despite the non-submission of the CAR when she was still the Register of Deeds of Las Piñas), we clarify that such fact has no bearing in the present case. Our conclusion here is arrived at based solely on the facts found by the Ombudsman and the issues submitted by the parties.

WHEREFORE, premises considered, we **DENY** the petition and **AFFIRM** the July 13, 2010 and January 5, 2011 resolutions of the Court of Appeals in CA-G.R. SP No. 114497.

SO ORDERED.

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

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[60] *Supra* note 48.

SECOND DIVISION

[G.R. No. 195611. April 4, 2016]

REPUBLIC OF THE PHILIPPINES, represented by the Register of Deeds, *petitioner, vs.* **HEIRS OF DIEGO LIM, namely, PRUDENCIA D. LIM, ANGELINA D. LIM, SIXTA D. LIM BAJA, ERNESTO D. LIM, MIGUEL D. LIM, JOSEFA D. LIM, CASIMIRO D. LIM, BUENAVENTURA D. LIM, and ENGRACIA D. LIM UY, (the last five being deceased, but represented by Prudencia D. Lim), HEIRS OF JEORGE[*] JOSEFAT,[**] EPIFANIO ROMAMBAN, SANTIAGO PARONG, ANTONIO P. CACHO, JESSMAG, INC., ROSITA LAGUERTA, EMILIO JOSE, HEIRS OF NESTOR P. TRINIDAD, ANTONIO DIAZ, ANTONIO CHUA, GUILLERMO J. JOSE, DANIEL MA. JOSE, LOURDES JOSE, JUNA MA. JOSE, WILFREDO V. GARCIA, JESUS BILBAO, JOSE CONCEPCION, JR., FRANCISCO ACHACOSO, DENNIS B. PABLIZO,[***] ROMEO A. CRUZ, JOSE DE LA ROSA, VICTORIOSO DIAZ CARPIO, ROSARIO CARPIO SANTOS, MARIETA CARPIO BACAY MARIETA PALMA, SPOUSES ROLANDO and OFELIA HUANG, PELAGIO M. ACHACOSO, and MELBA M. MANDOCDOC,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; INTERVENTION; PROPER REMEDY FOR DENIAL OF MOTION FOR INTERVENTION IS APPEAL; PARTY WHO WAS DENIED INTERVENTION AND DID NOT APPEAL THE SAME HAS NO STANDING TO QUESTION THE DECISION OF THE COURT.— With the consequent denial of its intervention

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[*] Or Jorge.

[**] Or Josafat.

[***] Or Tablizo.

and dismissal of its complaint-in-intervention in Civil Case No. 666-I, petitioner should have appealed such denial. "[A]n order denying a motion for intervention is appealable. Where the lower court's denial of a motion for intervention amounts to a final order, an appeal is the proper remedy x x x." Having failed to take and prosecute such appeal, petitioner acquired no right to participate in the proceedings in Civil Case No. 666-I, even question the judgment of the RTC consequently rendered in said case. "A prospective intervenor's right to appeal applies only to the denial of his intervention. Not being a party to the case, a person whose intervention the court denied has no standing to question the decision of the court [, but] only the trial court's orders denying his intervention x x x, not the decision itself."

2. ID.; ID.; APPEALS; A PARTY WHO HAS NOT APPEALED CANNOT OBTAIN FROM THE APPELLATE COURT ANY AFFIRMATIVE RELIEF OTHER THAN THE ONES GRANTED IN THE APPEALED DECISION.— With respect to the Lim and Josefat heirs, they are precluded from seeking a reversal of the herein assailed judgment. As mere respondents in the present Petition, this Court cannot grant the affirmative relief they seek as they did not themselves file a petition questioning the appellate court's decision. "It is a fundamental principle that a party who does not appeal, or file a petition for *certiorari*, is not entitled to any affirmative relief. An appellee who is not an appellant may assign errors in his brief where his purpose is to maintain the judgment, but he cannot seek modification or reversal of the judgment or claim affirmative relief unless he has also appealed." "As a general rule, a party who has not appealed cannot obtain from the appellate court any affirmative relief other than the ones granted in the appealed decision. The reason for this rule is that since parties did not appeal from the decision or resolution, they are presumed to be satisfied with the adjudication."

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.

Sales Sta. Ana and Rodrigo for respondents V. Carpio, M. Bacay & R. Santos.

Public Attorney's Office for respondent Heirs of Diego Lim.

Edaño and Pangan Law Office for respondents Sps. Huang and Jessmag, Inc.

D E C I S I O N

DEL CASTILLO, *J.*:

This Petition for Review on *Certiorari*[1] seeks to set aside the September 27, 2010 Decision[2] of the Court of Appeals (CA) in CA-G.R. CV No. 85329 affirming the April 18, 2005 Decision[3] of the Regional Trial Court (RTC) of Iba, Zambales, Branch 70 in Civil Case No. RTC-666-I, as well as the CA's February 11, 2011 Resolution[4] denying petitioner's Motion for Reconsideration.[5]

Factual Antecedents

Lot 42 consisting of 17,181,376 square meters, more or less — or 1,718.1376 hectares, is situated in Iba, Zambales.

On December 8, 1924, the Director of Lands filed with the then Court of First Instance of Zambales (CFI) a petition for cadastral hearing to settle and adjudicate Lot 42, pursuant to Section 1855 of the Revised Administrative Code.[6] The case was docketed as Cadastral Case No. 121. The Director of Lands

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[1] *Rollo*, pp. 10-36.

[2] *Id.* at 37-56; penned by Associate Justice Franchito N. Diamante and concurred in by Associate Justices Josefina Guevara-Salonga and Mariflor P. Punzalan Castillo.

[3] *Id.* at 96-108; penned by Judge Clodualdo M. Monta.

[4] *Id.* at 66-69.

[5] *Id.* at 57-65.

[6] Sec. 1855. *Institution of Registration Proceedings*. — When the lands have been surveyed and plotted, the Director of Lands, represented by the Solicitor-General, shall institute registration proceedings, by petition against the holders, claimants, possessors or occupants of such lands or any part thereof, stating in substance that the public interest requires that the title to such lands be settled and adjudicated.

The petition shall contain a description of the lands and shall be accompanied by a plan thereof, and may contain such other data as may serve to furnish full notice to the occupants of the lands and to all persons who may claim any right or interest therein.

claimed that Lot 42 was part of the public domain. Herein respondents Epifanio Romamban (Romamban) and Santiago Parong (Parong) opposed the petition, claiming ownership of Lot 42-E, which is a portion of Lot 42. Romamban claimed that he owned by acquisitive prescription, 29 hectares of Lot 42-E; on the other hand, Parong claimed eight hectares of Lot 42-E, which he allegedly purchased from Romamban.

Apart from Romamban and Parong's claims over Lot 42-E, it appears that Diego Lim (Lim) and Jorge Josefat (Josefat) had their own: in October 1968, Lim sent a letter to the CFI informing the latter that he was a claimant over a portion of Lot 42-E, having occupied the same and filed previously a free patent application therefor. Josefat likewise had a pending homestead application over 20 hectares of Lot 42-E.

On November 20, 1969, the CFI of Zambales, Branch 11 rendered judgment in Cadastral Case No. 121 adjudicating in favor of Romamban and Parong, Lot 42-E.[7] The herein petitioner Republic of the Philippines took issue before the CA *via* an appeal docketed as CA-G.R. CV No. 11483.

Meanwhile, in 1970, Romamban was able to secure in his name Original Certificate of Title No. (OCT) 0-6511, covering the 29 hectares of land awarded to him. Parong was likewise able to obtain in his name Transfer Certificates of Title Nos. (TCT) T-20204, T-20205, and T-20206 over his 8-hectare award. Later on, Romamban and Parong sold or transferred portions of their respective awards and, as a result, several derivative titles were issued in favor of Romamban, Parong, and the other respondents herein, namely Jessmag, Inc., Emilio Jose, Nestor P. Trinidad, Antonio Diaz, Wilfredo V. Garcia, Francisco Achacoso, Jesus Bilbao, Victorioso Diaz Carpio, Jose Concepcion, Jr., Marieta Palma, Marieta Carpio Bacay, Spouses Rolando and Ofelia Huang, Pelagio M. Achacoso, Jose De La Rosa, Dennis B. Pablizo, Romeo A. Cruz, Antonio P. Cacho, Rosario Carpio Santos, Rosita Laguerta, Antonio Chua,

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[7] See September 10, 1991 Order in Civil Case No. RTC-666-1, records, vol. II, pp. 327-330 at 327-328.

Guillermo J. Jose, Daniel Ma. Jose, Lourdes Jose, Juna Ma. Jose, and Melba M. Mandocdoc.

On January 12, 1989,[8] the CA issued a Decision[9] in CA-G.R. CV No. 11483, ruling in favor of the Republic, thus —

We find [the Republic's] averment to be impressed with merit. The instant case is a cadastral proceeding under the Public Land Laws. The burden of proving that the land is a registrable private land rests upon [Romamban and Parong] in view of the basic presumption that lands of whatever classification belong to the State. x x x Subject Lot No. 42-E is, therefore, presumed to be public land. To overcome the presumption, it is incumbent upon [Romamban and Parong] to show by clear and convincing evidence that they have been in uninterrupted possession of the same in the concept of an owner for a period of at least thirty (30) years. x x x However, as has been earlier discussed, since [Romamban and Parong] have already lost their standing in court,[10] the evidence adduced by them in the trial court cannot be admitted to support their claim. This court is thus constrained to rule that the presumption that Lot No. 42-E is a public land has not been overcome. Withal, claimant Diego Lim's Application for Free Patent (Exh. "1") and Claimant Jorge Josefat's Homestead Application (Exh. "9") which are pending with the Bureau of Lands are competent evidence that subject Lot No. 42-E is indeed part of the public domain. x x x Necessarily, therefore, the lower court committed reversible error when it awarded subject Lot No. 42-E to [Romamban and Parong].

IN VIEW OF ALL THE FOREGOING, the decision of the court *a quo* dated November 20, 1969 is hereby REVERSED and its Order dated April 14, 1970 SET ASIDE. It is hereby further declared that subject Lot No. 42-E is deemed and considered part and parcel of the public domain without prejudice to the right of claimant Diego Lim and claimant Jorge Josefat to pursue their respective applications for free patent and homestead patent, respectively. With costs.

SO ORDERED.[11]

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[8] See Entry of Judgment, *rollo*, p. 78.

[9] *Id.* at 71-77; penned by Associate Justice Hector C. Full and concurred in by Associate Justices Nathaniel M. Paño, Jr. and Asaali S. Isnani.

[10] An order of general default was issued against Romamban and Parong.

[11] *Rollo*, pp. 76-77.

The above Decision became final and executory on February 3, 1989.[12]

Civil Case No. 666-I

On January 3, 1990, Lim and Josefat filed a Complaint[13] for *accion publiciana* and cancellation of deeds of absolute sale and titles against Romamban, Parong, and their co-respondents herein. The case was docketed as Civil Case No. 666-I and assigned to Branch 70 of the RTC, Iba, Zambales. Lim and Josefat asserted that they were the actual occupants of Lot 42-E, and have filed with the government applications to acquire the same; that Romamban and Parong surreptitiously subdivided Lot 42-E and sold the lots to their co-respondents; that these co-respondents purchased or obtained these lots and occupied them knowing that CA-G.R. CV No. 11483 was still pending; and that by virtue of the resultant Decision in CA-G.R. CV No. 11483, Lim and Josefat are therefore entitled to the subject land. Thus, they prayed that Romamban, Parong, and the other respondents be ordered to vacate Lot 42-E and pay damages and that the deeds of sale and titles issued in their favor be nullified and cancelled.

Romamban, Parong, and the other defendants in Civil Case No. 666-I filed their respective answers and motions to dismiss, arguing among others that they have obtained Torrens titles over the property; that they are innocent purchasers in good faith thereof; and that Lim and Josefat's rights are inchoate, as they are mere applicants and not grantees of the property. In a September 10, 1991 Order,[14] the RTC denied the motions to dismiss but declared that Lim and Josefat lacked personality to seek cancellation of the issued titles.

On April 28, 1992, petitioner filed a Motion for Intervention, attaching thereto a Complaint in Intervention,[15] arguing that

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[12] *Id.* at 78.

[13] Records, Vol. I, pp. 1-7.

[14] Records, Vol. II, pp. 327-330.

[15] *Id.* at 383-390.

Romamban's OCT 0-6511 and all the other derivative titles of the defendants in Civil Case No. 666-I were null and void since, by virtue of the final and executory January 12, 1989 Decision of the CA in CA-G.R. CV No. 11483, Lot 42-E did not cease to be inalienable public land.

Petitioner's motion for intervention was granted and its complaint in intervention was admitted. However, in a February 19, 1998 Order of the trial court, the said complaint in intervention was later dismissed for failure to prosecute.[16]

After trial, the RTC rendered a Decision[17] dated April 18, 2005 in Civil Case No. RTC 666-1 declaring as follows:

> The main issue in this case is whether or not [*sic*] the plaintiffs can still recover the [sic] possession of the lots from the defendants in this case which is also for the nullification of their titles. The issues of possession and ownership are inextricably intertwined with each other and should be resolved together.
>
> It is worthy to note that despite the decision of the Court of Appeals setting aside the decision of the then Court of First Instance at Iba, Zambales which awarded Lot 42-E of the Iba Cadastre to Epifanio Romamban and Santiago Y. Parong, no action was filed by the government for the reversion of such lot to the public domain. It is a hornbook doctrine that it is only the State through the Solicitor General that can file an action for reversion x x x which up to the present time is [sic] not yet initiated by the government office concerned. Although the Republic of the Philippines, through the Solicitor General had intervened in this proceeding, it did not pursue its case against the present possessors the defendants, as in fact its complaint in intervention was dismissed on February 19, 1998 x x x for failure x x x to appear in the hearing of this case and for lack of interest to prosecute. Under the factual milieu of this case, the plaintiffs have therefore no legal personality to file the action to revert Lot 42-E of the Iba Cadastre to the public domain which legally pertains to the State through the Office of the Solicitor General.
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> While the present action is not directly one for reversion but for recovery of possession (*accion publiciana*), still this Court finds

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[16] *Id.* at 702; *rollo*, p. 20.

[17] *Rollo*, pp. 96-108.

plaintiffs'[18] evidence insufficient to overturn the defendants'[19] evidence as to proof of ownership and possession. Witness and plaintiff Prudencia Lim has not even shown any tax declaration either in her name or that of her deceased brother, Diego Lim and so were not paying taxes on the property. The non-existence of a tax declaration of the subject land in the names of the plaintiffs is also confirmed by witnesses Rodrigo A. Aramay and Arturo Buenaventura. The defendants however have certificates of title in their names transferred from the previous owners. The titles of the defendants until now, have not been invalidated. Such titles as a proof of ownership should therefore be given superior weight and the defendants as the holders thereof should be considered as the owners of the property in controversy until their titles are nullified or modified in an appropriate ordinary action x x x. The defendants were buyers in good faith and they relied on the titles of the vendors, Epifanio Romamban and Santiago Y. Parong which do not show any encumbrance or annotation of an adverse claim or the pendency of an appeal. The decision of the Court of Appeals in the case of Director of Lands *vs.* Epifanio Romamban and Santiago Y. Parong (CA-G.R. CV No. 11483 promulgated on January 12, 1989) which declared Lot 42-E, Iba Cadastre to be part and parcel of the public domain, was not annotated in the titles of Epifanio Romamban and Santiago Y. Parong, who were the vendors of the lots now owned and possessed by the defendants. It is a settled doctrinal rule that one who deals with property under the Torrens system need not go beyond the same, but only has to rely on the title x x x. As a consequence of such indubitable proof of ownership, the defendants being the actual possessors, have the right to be respected in their possession (Art. 539, Civil Code of the Philippines).

WHEREFORE, judgment is hereby rendered:

1) Declaring the defendants and their respective transferees to be the absolute owners and lawful possessors of the lots described in their respective certificates of title;

2) Dismissing the plaintiffs' complaint for lack of legal basis;

3) Dismissing the defendants' counterclaim for lack of factual basis there being no evidence submitted by them during the trial; and

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[18] Heirs of Diego Lim and Heirs of Jeorge Josefat.

[19] Romamban and Parong and their co-respondents.

4) Dismissing the cross-claims of some of the defendants for being now moot and academic in view of this decision.

SO ORDERED.[20]

Ruling of the Court of Appeals

Petitioner filed an appeal before the CA, which was docketed as CA-G.R. CV No. 85329. The Lim and Josefat heirs likewise appealed. In seeking reversal of the RTC's April 18, 2005 Decision, petitioner essentially argued that the final and executory January 12, 1989 Decision of the CA in CA-G.R. CV No. 11483 is conclusive as to the nature and classification of Lot 42-E, which is that it is land belonging to the State which may not be disposed or alienated in favor of the respondents; that such a finding constitutes *res judicata* and respondents are bound thereby; and that since the issue of ownership has thus been settled in favor of the State, the RTC may not rule otherwise and declare the property as private land.

On September 27, 2010, the CA rendered the assailed Decision affirming the RTC's April 18, 2005 Decision, pronouncing thus:

The appeal is unmeritorious.

The main issue to be resolved in the case at bar is whether the lower court erred in dismissing the complaint for *accion publiciana* with cancellation of deeds of absolute sale and transfer certificates of title.

We rule in the negative.

In the case at bar, it is undisputed that the parcel of land subject of the instant controversy had been subdivided into smaller lots, and then later on, sold to various entities and third parties by Epifanio Romamban and Santiago Parong. As argued by herein defendants-appellees,[21] to whom the subdivided property had been separately sold, there was no circumstance or presence of anything appearing on the face of the certificates of title of the afore-named vendors which excites or arouses suspicion which should then prompt the former to look beyond the said certificates and investigate the title.

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[20] *Id.* at 104-108.

[21] Romamban, Parong and their co-respondents.

The real purpose of the Torrens system of registration is to quiet title to land and to put a stop to any question of legality of the title except claims which have been recorded in the certificate of title at the time of registration or which may arise subsequent thereto. Every registered owner and every subsequent purchaser for value in good faith holds the title to the property free from all encumbrances except those noted in the certificate. ***Hence, a purchaser is not required to explore further what the Torrens title on its face indicates in quest for any hidden defect or inchoate right that may subsequently defeat his right thereto.***

Where innocent third persons, relying on the correctness of the certificate of title thus issued, acquire rights over the property the court cannot disregard such rights and order the total cancellation of the certificate. The effect of such an outright cancellation would be to impair public confidence in the certificate of title, for everyone dealing with property registered under the Torrens system would have to inquire in every instance whether the title has been regularly or irregularly issued. This is contrary to the evident purpose of the law. x x x. Even if a decree in a registration proceeding is infected with nullity, still an innocent purchaser for value relying on a Torrens title issued in pursuance thereof is protected.

In *Republic of the Philippines vs. Democrito T. Mendoza, et al.* citing *Republic vs. Agunoy, Sr. et al.,* the Supreme Court emphatically explained that contested areas and titles which had already passed on to third parties who acquired the same in good faith and for value must be respected and protected, to wit:

> Finally, it should be borne in mind that the contested areas and titles thereto had already passed on to third parties who acquired the same from the Mendozas in good faith and for value. When the Mendozas' sales patents were registered, they were brought under the operation of Presidential Decree No. [1529], otherwise known as the Land Registration Decree.
>
> According to Section 103 of the Land Registration Decree, whenever public [land] is by the Government alienated, granted, or conveyed to any person, the same shall be brought under the operation of the said Decree and shall be deemed to [sic] registered lands to all intents and purposes under the Decree. x x x.
>
> In ***Republic v. Agunoy, Sr., et al.,*** **We refused to revert the land in question to the public domain despite the fact**

that the free patent thereto was secured by fraud since the same land already passed on to purchasers in good faith and for value —

There can be no debate at all on petitioner's submission that no amount of legal technicality may serve as a solid foundation for the enjoyment of the fruits of fraud. It is thus understandable why petitioner chants the dogma of *fraus et jus nunquam cohabitant*.

Significantly, however, in the cases cited by petitioner Republic, as well as in those other cases where the doctrine of *fraus et jus nunquam cohabitant* was applied against a patent and the title procured thru fraud or misrepresentation, *we note that the land covered thereby is either a part of the forest zone which is definitely non-disposable, as in Animas, or that said patent and title are still in the name of the person who committed the fraud or misrepresentation, as in Acot, Animas, Republic vs. CA and Del Mundo and Director of Lands vs. Abanilla, et al. and, in either instance, there were yet no innocent third parties standing in the way*.

The foregoing pronouncement which declares that, "*even if the original grantee of a patent and title has obtained the same through fraud, reversion will no longer prosper if such will affect the titles of innocent purchasers for value*," was reiterated in *Rabaja Ranch Development Corp. vs. AFP Retirement and Separation Benefits System*, and We quote the pertinent provisions, thus:

In *Estate of the Late Jesus S. Yujuico v. Republic*, citing *Republic v. Court of Appeals*, this Court stressed the fact that it was never proven that private respondent St. Jude was a party to the fraud that led to the increase in the area of the property after it was subdivided. In the same case, citing *Republic v. Umali*, ***we held that, in a reversion case, even if the original grantee of a patent and title has obtained the same through fraud, reversion will no longer prosper as the land had become private land and the fraudulent acquisition cannot affect the titles of innocent purchasers for value***.

This conclusion rests very firmly on Section 32 of P.D. No. 1529, which states:

SEC. 32. Review of decree of registration; Innocent purchaser for value. — The decree of registration shall not

> be reopened or revised by reason of absence, minority, or other disability of any person adversely affected thereby, nor by any proceeding in any court for reversing judgment, subject, however, to the right of any person, including the government and the branches thereof, deprived of land or of any estate or interest therein by such adjudication or confirmation of title obtained by actual fraud, to file in the proper Court of First Instance a petition for reopening and review of the decree of registration not later than one year from and after the date of the entry of such decree of registration, but in no case shall such petition be entertained by the court where an innocent purchaser for value has acquired the land or an interest therein whose rights may be prejudiced. Whenever the phrase "innocent purchaser for value" or an equivalent phrase occurs in this Decree, it shall be deemed to include an innocent lessee, mortgagee, or other encumbrancer for value.
>
> Upon the expiration of said period of one year, the decree of registration and the certificate of title issued shall become incontrovertible. Any person aggrieved by such decree of registration in any case may pursue his remedy by action for damages against the applicant or any other person responsible for the fraud.
>
> Settled is the rule that no valid TCT can issue from a void TCT, unless an innocent purchaser for value had intervened. An innocent purchaser for value is one who buys the property of another, without notice that some other person has a right to or interest in the property, for which a full and fair price is paid by the buyer at the time of the purchase or before receipt of any notice of the claims or interest of some other person in the property. ***The protection given to innocent purchasers for value is necessary to uphold a certificate of title's efficacy and conclusiveness, which the Torrens system ensures.***

Thus, notwithstanding a final judgment declaring that the property in question forms part of the public domain, a reversion of the said property to the public domain will no longer be allowed at this stage in view of the protection given to innocent purchasers for value which is necessary to uphold a certificate of title's efficacy and conclusiveness.

Moreover, herein plaintiffs-appellants have no legal standing to bring this instant action. Section 2, Rule 3 of the Rules of Court requires that every action must be prosecuted and defended in the

name of the real party-in-interest. The real party-in-interest is the party who stands to be benefited or injured by the judgment or the party entitled to the avails of the suit.

"Interest," within the meaning of the rule, means material interest, an interest in the issue and to be affected by the decree, as distinguished from mere interest in the question involved, or a mere incidental interest. Cases construing the real party-in-interest provision can be more easily understood if it is borne in mind that the true meaning of real party-in-interest may be summarized as follows: An action shall be prosecuted in the name of the party who, by the substantive law, has the right sought to be enforced. To qualify a person to be a real party in interest in whose name an action must be prosecuted, he must appear to be the present real owner of the right sought to be enforced.

In the instant case, herein plaintiffs-appellants had in fact admitted that the application for free patent filed by Diego Lim and Jorge Josefat had not been acted upon when a controversy involving the parcel of land subject of the instant case arose. The mere filing of an application for a free patent does not vest ownership upon the applicant.

It is a well-settled rule that the approval of a sales application merely authorized the applicant to take possession of the land so that he could comply with the requirements prescribed by law before a final patent could be issued in his favor. Meanwhile, the government still remained the owner thereof, as in fact the application could still be canceled and the land awarded to another applicant should it be shown that the legal requirements had not been complied with. What divests the government of title to the land is the issuance of the sales patent and its subsequent registration with the Register of Deeds. It is the registration and issuance of the certificate of title that segregate public lands from the mass of public domain and convert it into private property. Hence, the lower court did not err in dismissing the complaint below for *accion publiciana* with cancellation of deeds of absolute sale and transfer certificates of title.

As to the allegation that the decision of the trial court is not valid for its failure to issue the mandatory pre-trial order, We find the same to be devoid of merit. The appellants, in having voluntarily participated in the proceedings below in spite of the alleged absence of a pre-trial order, are now precluded to [sic] challenge the decision through this appeal applying the equitable principle of estoppel.

WHEREFORE, premises considered, the instant appeal is denied. Accordingly, the Decision of the Regional Trial Court of Iba, Zambales dated April 18, 2005 is hereby AFFIRMED.

SO ORDERED.[22] (Emphases in the original)

Petitioner filed a Motion for Reconsideration,[23] which the CA denied in its subsequent February 11, 2011 Resolution. Hence, the present Petition.

Issues

In a June 9, 2014 Resolution,[24] this Court resolved to give due course to the Petition, which contains the following assignment of errors:

THE COURT OF APPEALS ERRED ON A QUESTION OF LAW WHEN IT:

(A) CONSIDERED RESPONDENTS CACHO, ET AL. ENTITLED TO THE PROTECTION GIVEN TO INNOCENT PURCHASERS FOR VALUE.

(B) DISREGARDED THE FINAL AND EXECUTORY DECISION OF THE COURT OF APPEALS [IN] CA-G.R. CV NO. 11483, WHICH DECLARED THE SUBJECT LOTS PART OF THE PUBLIC DOMAIN.[25]

Petitioner's Arguments

In its Petition and Consolidated Reply[26] seeking reversal of the assailed CA Decision and the dismissal of Civil Case No. 666-I, petitioner argues that with the promulgation of the CA's January 12, 1989 Decision in CA-G.R. CV No. 11483 and its consequent finality, Lot 42-E should be considered public land which could not have been validly acquired by the respondents;

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[22] *Id.* at 47-55.

[23] *Id.* at 57-65.

[24] *Id.* at 254-255.

[25] *Id.* at 22.

[26] *Id.* at 240-249.

that respondents are bound by said CA judgment, and any title obtained by them is necessarily null and void; and that the CA erred in declaring respondents Antonio P. Cacho, et al., as innocent purchasers for value, and in stating that petitioner had lost the right to seek reversion.

Respondents' Arguments

In their Comment, [27] the Lim and Josefat heirs adopt the position of the petitioner and pray for the reversal of the assailed CA Decision, arguing that with the pronouncement in CA-G.R. CV No. 11483 that Lot 42-E formed part of the public domain, their co-respondents could not own the portions covered by their respective titles; that the registration of these portions in their name cannot operate to convey title; that Romamban and Parong acted in bad faith in registering Lot 42-E in spite of the pendency of CA-G.R. CV No. 11483; and that they possess the required legal standing as real parties in interest to participate in these proceedings, as their rights as claimants were recognized by the pronouncement in CA-G.R. CV No. 11483.

In their respective Comments,[28] the other respondents reiterate the soundness of the CA's dispositions, and contend that they are innocent purchasers for value; that they are unaware of any defect in their respective titles or that of their predecessors'; that they may not be bound by the January 12, 1989 Decision in CA-G.R. CV No. 11483 since they were not parties in said case; and that their titles have become indefeasible pursuant to Presidential Decree No. 1529.

Our Ruling

The Court denies the Petition.

In resolving the instant case, the procedural issues must first be tackled before the substantive ones.[29] Though the CA was

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[27] *Id.* at 191-203.

[28] *Id.* at 183-189, 207-209, 217-229.

[29] *Land Bank of the Philippines v. Atlanta Industries, Inc.*, G.R. No. 193796, July 2, 2014, 729 SCRA 12, 27.

correct in ruling against petitioner, it erred in addressing the substantive issues before tackling the essential procedural question involved — that is, whether petitioner could appeal the RTC's Decision in Civil Case No. 666-I despite the fact that its attempt at intervention was rebuffed.

With the consequent denial of its intervention and dismissal of its complaint-in-intervention in Civil Case No. 666-I, petitioner should have appealed such denial. "[A]n order denying a motion for intervention is appealable. Where the lower court's denial of a motion for intervention amounts to a final order, an appeal is the proper remedy x x x."[30] Having failed to take and prosecute such appeal, petitioner acquired no right to participate in the proceedings in Civil Case No. 666-I, even question the judgment of the RTC consequently rendered in said case. "A prospective intervenor's right to appeal applies only to the denial of his intervention. Not being a party to the case, a person whose intervention the court denied has no standing to question the decision of the court[, but] only the trial court's orders denying his intervention x x x, not the decision itself."[31]

Since petitioner had no right to appeal the RTC's April 18, 2005 Decision, it was not entitled to a resolution of the substantive issues it raised — particularly who, by law, is properly entitled to Lot 42-E. Be that as it may, petitioner is not left without a remedy. It can still file a reversion case against Romamban and Parong with respect to the portions of Lot 42-E still registered in their names. After all, petitioner's right to reversion cannot be barred by prescription.[32] As to the other portions which have already been transferred to the other respondents who are innocent purchasers for value, the government may file an action for damages against Romamban and Parong or any other person responsible for the fraud.

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[30] *Foster-Gallego v. Spouses Galang*, 479 Phil. 148, 161 (2004), citing *Saw v. Court of Appeals*, 273 Phil. 108 (1991).

[31] *Id.* at 162.

[32] *Republic v. Mina*, G.R. No. 60685, June 29, 1982, citing *Republic v. Animas*, 56 SCRA 499.

With respect to the Lim and Josefat heirs, they are precluded from seeking a reversal of the herein assailed judgment. As mere respondents in the present Petition, this Court cannot grant the affirmative relief they seek as they did not themselves file a petition questioning the appellate court's decision. "It is a fundamental principle that a party who does not appeal, or file a petition for *certiorari*, is not entitled to any affirmative relief. An appellee who is not an appellant may assign errors in his brief where his purpose is to maintain the judgment, but he cannot seek modification or reversal of the judgment or claim affirmative relief unless he has also appealed."[33] "As a general rule, a party who has not appealed cannot obtain from the appellate court any affirmative relief other than the ones granted in the appealed decision. The reason for this rule is that since parties did not appeal from the decision or resolution, they are presumed to be satisfied with the adjudication."[34] These pronouncements are especially significant considering that the CA ruled that the Lim and Josefat heirs have no legal standing to maintain and prosecute Civil Case No. 666-I; indeed, their Comment should have been stricken off the record as a necessary consequence of the appellate court's pronouncement, which they failed to question and is now binding as to them.

WHEREFORE, the Petition is **DENIED**. The September 27, 2010 Decision and February 11, 2011 Resolution of the Court of Appeals in CA-G.R. CV No. 85329 are **AFFIRMED**.

SO ORDERED.

Brion (Acting Chairperson), Peralta,[****] *Mendoza,* and *Leonen, JJ.*, concur.

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[33] *Corinthian Gardens Association, Inc. v. Spouses Tanjangco*, 578 Phil. 712, 723 (2008), *citing Alauya, Jr. v. Commission on Elections*, 443 Phil. 893, 907 (2003) and *Acebedo Optical Company, Inc. v. Court of Appeals*, 385 Phil. 956, 976-977 (2000).

[34] *Salazar v. Philippine Duplicators, Inc. and/or Fontanilla*, 539 Phil. 346, 355 (2006), citing *Filflex Industrial & Manufacturing Corp. v. National Labor Relations Commission*, 349 Phil. 913, 924-925 (1998).

[****] Per Raffle dated March 21, 2016.

SECOND DIVISION

[G.R. No. 198222. April 4, 2016]

GOLDEN CANE FURNITURE MANUFACTURING CORPORATION, *petitioner, vs.* **STEELPRO PHILIPPINES, INC., SOCIAL SECURITY SYSTEM, AIR LIQUIDE PHILIPPINES, INC., CLARK DEVELOPMENT CORPORATION, PHILIPPINE NATIONAL BANK, BUREAU OF INTERNAL REVENUE, UP-TOWN INDUSTRIES SALES, INC.,** *respondents.*

SYLLABUS

1. COMMERCIAL LAW; CORPORATIONS; CORPORATE REHABILITATION CASE; A PROCEEDING *IN REM* WHEREIN THE PETITIONER SEEKS TO ESTABLISH THE INABILITY OF THE CORPORATE DEBTOR TO PAY ITS DEBTS WHEN THEY FALL DUE.— A corporate rehabilitation case is a special proceeding *in rem* wherein the petitioner seeks to establish the status of a party or a particular fact, *i.e.*, the inability of the corporate debtor to pay its debts when they fall due. It is summary and non-adversarial in nature. Its end goal is to secure the approval of a rehabilitation plan to facilitate the successful recovery of the corporate debtor. It does not seek relief from an injury caused by another party.

2. ID.; ID.; PROCEDURE ON CORPORATE REHABILITATION; DISMISSAL OF PETITION FOR REHABILITATION FILED UNDER THE REGIME OF THE INTERIM RULES BEFORE THE EFFECTIVITY OF THE 2008 RULES; PROPER REMEDY IS PETITION FOR REVIEW TO THE COURT OF APPEALS UNDER RULE 43 OF THE RULES OF COURT.— Golden Cane filed its petition for rehabilitation on November 3, 2008 under the regime of the Interim Rules [of Procedure on Corporate Rehabilitation which took effect on December 15, 2000]. The initial hearing was also held on January 7, 2009, before the effectivity of the 2008 Rules. x x x Accordingly, the Interim Rules – not the 2008 Rules – apply to Golden Cane's petition for corporate rehabilitation. The dismissal of the petition for rehabilitation, even if due to technical

grounds or due to its insufficiency, amounts to a failure of rehabilitation. It is a final order because it finally disposes of the case, leaving nothing else to be done. Pursuant to **A.M. No. 04-9-07-SC,** the correct remedy against all decisions and final orders of the rehabilitation courts in proceedings governed by the Interim Rules is a petition for review to the CA under Rule 43 of the Rules of Court.

APPEARANCES OF COUNSEL

Abelardo G. Luzano for petitioner.

Lady Lisandra Lopez-Roxas for respondent Philippine National Bank.

Francisco E. Bustamante for respondent Social Security System.

Nisce Mamuri Guinto Rivera & Alcantara Law Offices for respondent Air Liquide Phils., Inc.

Office of the Government Corporate Counsel for respondent Clark Development Corporation.

AMC Santiago Law Office for respondent STEELPRO Phils.

D E C I S I O N

BRION, *J.*:

This is a petition for review on *certiorari*[1] filed by Golden Cane Furniture Manufacturing Corporation (*Golden Cane*) from the November 27, 2009 and August 16, 2011 resolutions of the Court of Appeals (*CA*) in **CA-G.R. SP No. 111530.**[2] The CA dismissed Golden Cane's petition for *certiorari* from the Regional Trial Court's (*RTC*) May 11, 2009[3] and August 27, 2009[4] orders in **Comm. Case No. 058.**[5]

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[1] *Rollo*, p. 10.

[2] *Id.* at 41, 44. Both penned by Associate Justice Ramon M. Bato, Jr. and concurred in by Associate Justices Noel G. Tijam and Antonio L. Villamor.

[3] *Id.* at 92.

[4] *Id.* at 146.

[5] RTC, San Fernando City, Pampanga, Branch 42, through Judge Maria Amifaith S. Fider-Reyes.

The CA dismissed the petition for *certiorari* for being the wrong remedy to challenge the RTC's dismissal of Golden Cane's petition for corporate rehabilitation.

Antecedents

On November 3, 2008, Golden Cane filed a Petition for Corporate Rehabilitation with the RTC of San Fernando, Pampanga. The petition was raffled to Branch 42 and docketed as **Comm. Case No. 058.**[6]

On November 11, the RTC issued a Stay Order and set the initial hearing on January 7, 2009.[7]

On May 11, 2009, the RTC denied due course to the petition because of: (1*) litis pendentia* and forum shopping due to the pendency of a separate Petition for Suspension of Payments involving the same parties filed by Golden Cane in 2007; (2) the consistent failure of the rehabilitation receiver to fulfill her duties; (3) the receiver's failure to file her bond on time; and (4) the receiver's failure to submit Golden Cane's interim financial statements. The RTC dismissed the petition and lifted the Stay Order.[8]

On June 25, 2009, Golden Cane moved for reconsideration of the dismissal.[9]

The RTC denied the motion for reconsideration on August 27, 2009.[10] Golden Cane received a copy of the denial on October 2, 2009.[11]

On November 23, 2009, Golden Cane elevated the case to the CA *via* a petition for *certiorari*. The petition was docketed as **CA-G.R. SP No. 111530.**[12]

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[6] *Rollo,* p. 46.

[7] *Id.* at 62.

[8] *Id.* at 92.

[9] *Id.* at 107.

[10] *Id.* at 146.

[11] *Id.* at 159.

[12] *Id.* at 156.

On November 27, 2009, the CA dismissed the petition outright for being the wrong mode of appeal.[13] The CA held that the correct remedy is a petition for review under Rule 43 of the Rules of Court pursuant to **A.M. No. 04-9-07-SC.**[14]

Golden Cane moved to reconsider the dismissal but the CA denied the motion on August 16, 2011.[15] Hence, on September 28, 2011, Golden Cane filed the present petition for review on *certiorari*.

Golden Cane argues: (1) that A.M. No. 08-10-SC, or the 2008 Rules of Procedure on Corporate Rehabilitation (*the 2008 Rules*) took effect on January 16, 2009, and superseded A.M. No. 04-9-07-SC; (2) that under Rule 8 of the 2008 Rules, an order denying due course to the petition for rehabilitation rendered before the approval or disapproval of the rehabilitation plan is not appealable to the CA under Rule 43; (3) that the remedy against such an order is a petition for *certiorari* under Rule 65 of the Rules of Court.

The Issue

The lone issue is whether the correct remedy to challenge the outright dismissal of Golden Cane's petition for rehabilitation is a petition for review under Rule 43 or a petition for *certiorari* under Rule 65, both of the Rules of Court.

Our Ruling

We **affirm** the CA's ruling.

A corporate rehabilitation case is a special proceeding *in rem* wherein the petitioner seeks to establish the status of a party or a particular fact, *i.e.*, the inability of the corporate debtor to pay its debts when they fall due.[16] It is summary and non-

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[13] *Id.* at 41.

[14] Re: Mode of Appeal in Cases Formerly Cognizable by the Securities and Exchange Commission, promulgated 14 September 2004.

[15] *Rollo*, p. 44.

[16] A.M. No. 00-8-10-SC, Re: Transfer of Cases from the Securities and Exchange Commission to the Regional Trial Courts (September 4, 2001).

adversarial in nature.[17] Its end goal is to secure the approval of a rehabilitation plan to facilitate the successful recovery of the corporate debtor.[18] It does not seek relief from an injury caused by another party.[19]

Jurisdiction over corporate rehabilitation cases originally fell within the jurisdiction of the Securities and Exchange Commission (*SEC*) which had absolute jurisdiction, control, and supervision over all Philippine corporations.[20] With the enactment of the Securities Regulation Code in 2000, this jurisdiction was transferred to the Regional Trial Courts.[21]

Consequently, this Court enacted A.M. No. 00-8-10-SC or the Interim Rules of Procedure on Corporate Rehabilitation (*Interim Rules*) which took effect on December 15, 2000. Under the Interim Rules, a motion for reconsideration was a prohibited pleading.[22] Orders issued by the rehabilitation court were also immediately executory unless restrained by the appellate court.[23]

The Interim Rules, however, did not specifically indicate the mode of appeal that governed corporate rehabilitation cases. Thus, in 2004, the Court enacted A.M. No. 04-9-07-SC to clarify

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[17] See Interim Rules, Rule 3, Section 1; 2008 Rules, Rule 3, Section 1; and A.M. No. 12-12-11-SC, 2013 Financial Rehabilitation Rules of Procedure, Rule 1, Section 4, (August 27, 2013).

[18] *Supra* note 16.

[19] *Id.*

[20] Presidential Decree No. 902-A, Sections 3 and 5 (b).

[21] Republic Act No. 8799, Section 5.2.

[22] Interim Rules, Rule 3, Section 1.

[23] Interim Rules, Rule 3, Section 5:

> Sec. 5. *Executory Nature of Orders*. — Any order issued by the court under these Rules is immediately executory. A petition for review or an appeal therefrom shall not stay the execution of the order unless restrained or enjoined by the appellate court. The review of any order or decision of the court or an appeal therefrom shall be in accordance with the Rules of Court: *Provided, however*, that reliefs ordered by the trial or appellate courts shall take into account the need for resolution of proceedings in a just, equitable, and speedy manner.

the proper mode of appeal from decisions and final orders of Rehabilitation Courts:

Whereas, there is a need to clarify the proper mode of appeal in these cases in order to prevent cluttering the dockets of the courts with appeals and/or petitions for certiorari;

Wherefore, the Court Resolves:

1. All **decisions and final orders** in cases falling under the Interim Rules of Corporate Rehabilitation and the Interim Rules of Procedure Governing Intra-Corporate Controversies under Republic Act No. 8799 shall be appealable to the Court of Appeals through a petition for review under Rule 43 of the Rules of Court.[24]

In 2008, this Court enacted the Rules of Procedure on Corporate Rehabilitation[25] (*2008 Rules*). The 2008 Rules included motions for reconsideration as a relief from any order of the court prior to the approval of the rehabilitation plan.

RULE 8
PROCEDURAL REMEDIES

Section 1. *Motion for Reconsideration.* — A party may file a motion for reconsideration of **any order** issued by the court prior to the approval of the rehabilitation plan. **No relief can be extended to the party aggrieved by the court's order on the motion through a special civil action for certiorari under Rule 65 of the rules of Court.** Such order can only be elevated to the Court of Appeals as an assigned error in the petition for review of the decision or order approving or disapproving the rehabilitation plan.

An order **issued after the approval of the rehabilitation plan** can be reviewed only through a special civil action for certiorari under Rule 65 of the Rules of Court.

Section 2. *Review of Decision or Order on Rehabilitation Plan.* — **An order approving or disapproving a rehabilitation plan can only be reviewed through a petition for review to the Court of Appeals under Rule 43 of the Rules of Court** within fifteen (15) days from notice of the decision or order.[26] [emphasis supplied]

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[24] A.M. No. 04-9-07-SC (September 14, 2004).

[25] A.M. No. 00-8-10-SC (December 2, 2008).

[26] 2008 Rules, Rule 8, Secs. 1 and 2.

Notably, the 2008 Rules also allowed a petition for *certiorari* under Rule 65 of the Rules of Court as a recourse, but only against an order issued *after* the approval of the rehabilitation plan. Lastly, the 2008 Rules adopted the mode of appeal prescribed in A.M. No. 04-9-07-SC against an order approving or disapproving the rehabilitation plan.

In 2010, Congress enacted the Financial Rehabilitation and Insolvency Act (*FRIA*)[27] which updated the existing laws on corporate rehabilitation. The Court promulgated A.M. No. 12-12-11-SC, or the Financial Rehabilitation Rules of Procedure (*2013 Rules*) on August 27, 2013.[28]

The 2013 Rules adopted the same remedies as the 2008 Rules against interlocutory orders of the rehabilitation court. However, the 2013 Rules eliminated the remedy of appeal from the rehabilitation court's approval or disapproval of the rehabilitation plan:

RULE 6
PROCEDURAL REMEDIES

Section 1. *Motion for Reconsideration*. — A party may file a motion for reconsideration of **any order** issued by the court prior to the approval of the Rehabilitation Plan. **No relief can be extended to the party aggrieved by the court's order on the motion through a special civil action for *certiorari* under Rule 65 of the Rules of Court.**

An order issued after the approval of the Rehabilitation Plan can be reviewed only through a special civil action for *certiorari* under Rule 65 of the Rules of Court.

Section 2. *Review of Decision or Order on Rehabilitation Plan.* — An order approving or disapproving a rehabilitation plan can only be reviewed through a petition for *certiorari* to the Court of Appeals under Rule 65 of the Rules of Court within fifteen (15) days from notice of the decision or order.[29]

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[27] Republic Act No. 10142.

[28] A.M. No. 12-12-11-SC (August 27, 2013).

[29] 2013 Rules, Rule 6, Sections 1 and 2.

Under the 2013 Rules, the Rehabilitation Court's final order approving or disapproving a rehabilitation plan is no longer subject to appeal; it can only be reviewed through a petition for *certiorari*. The 2013 Rules narrowed the scope of appellate review from errors of law and fact under Rule 43,[30] to errors of jurisdiction or abuse of discretion under Rule 65.[31] It effectively lends more credence to the factual findings and the judgment of rehabilitation courts.

Golden Cane's petition for corporate rehabilitation falls under the regime of the Interim Rules.

Golden Cane filed its petition for rehabilitation on November 3, 2008 under the regime of the Interim Rules. The initial hearing was also held on January 7, 2009, before the effectivity of the 2008 Rules.[32] The transitory provision of the 2008 Rules states:

Rule 9
Final Provisions

Sec. 2. *Transitory Provision*. — Unless the court orders otherwise to prevent manifest injustice, any pending petition for rehabilitation that has not undergone the initial hearing prescribed under the Interim Rules of Procedure for Corporate Rehabilitation at the time of the effectivity of these Rules shall be governed by these rules.

Accordingly, the Interim Rules — not the 2008 Rules — apply to Golden Cane's petition for corporate rehabilitation.

The dismissal of the petition for rehabilitation, even if due to technical grounds or due to its insufficiency, amounts to a failure of rehabilitation.[33] It is a final order because it finally disposes of the case, leaving nothing else to be done. Pursuant to **A.M. No. 04-9-07-SC,** the correct remedy against all decisions

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[30] RULES OF COURT, Rule 43, Section 3.

[31] RULES OF COURT, Rule 65, Section 1.

[32] 2008 Rules, Rule 9, Section 3.

[33] FRIA, Section 74.

and final orders of the rehabilitation courts in proceedings governed by the Interim Rules is a petition for review to the CA under Rule 43 of the Rules of Court. A petition for *certiorari* under Rule 65 of the Rules of Court is evidently the wrong mode of appeal.

Even if Golden Cane's petition were under the regime of the 2008 Rules, the correct remedy would still have been a petition for review to the Court of Appeals under Rule 43.[34] The outright dismissal of the petition can be seen as equivalent to the disapproval of the rehabilitation plan. Ultimately, the result is the failure of rehabilitation.

The result would have been different if Golden Cane's petition had been filed under the regime of the 2013 Rules. The 2013 Rules eliminated appeals from the dismissal of the petition or the approval/disapproval of the rehabilitation plan and specifically indicated *certiorari* as the correct remedy.

All things considered, we find no reversible error in the resolution of the CA. It correctly dismissed Golden Cane's petition for *certiorari* for being the wrong mode of appeal.

WHEREFORE, we **DENY** the petition. Costs against the petitioner.

SO ORDERED.

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

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[34] 2008 Rules, Rule 8, Section 2.

SECOND DIVISION

[G.R. No. 198774. April 4, 2016]

TEOFILO ALOLINO, *petitioner, vs.* **FORTUNATO FLORES and ANASTACIA MARIE FLORES,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; LOCAL GOVERNMENTS; PROPERTIES OF LOCAL GOVERNMENT UNITS (LGUs) ARE CLASSIFIED AS EITHER PROPERTY FOR PUBLIC USE OR PATRIMONIAL PROPERTY; *BARRIO* ROAD IS PROPERTY OF PUBLIC DOMINION DEVOTED TO PUBLIC USE.— There is no dispute that respondents built their house/*sari-sari* store on government property. Properties of Local Government Units (LGUs) are classified as either property for public use or patrimonial property. Article 424 of the Civil Code distinguishes between the two classifications: **Article 424.** Property for public use, in the provinces, cities, and municipalities, consist of the **provincial roads, city streets, municipal streets,** the squares, fountains, public waters, promenades, and public works for public service paid for by said provinces, cities, or municipalities. All other property possessed by any of them is patrimonial and shall be governed by this Code, without prejudice to the provisions of special laws. From the foregoing, the *barrio* road adjacent to Alolino's house is property of public dominion devoted to public use.

2. ID.; ID.; LOCAL GOVERNMENT CODE; AUTHORITY OF AN LGU TO WITHDRAW A LOCAL ROAD FROM PUBLIC USE; TO CONVERT A *BARRIO* ROAD INTO PATRIMONIAL PROPERTY, THE LGU MUST ENACT AN ORDINANCE APPROVED BY AT LEAST TWO-THIRDS (2/3) OF THE SANGGUNIAN MEMBERS, PERMANENTLY CLOSING THE ROAD.— The Local Government Code *(LGC)* authorizes an LGU to withdraw a local road from public use under the conditions [provided in] **Section 21** on *Closure and Opening of Roads*. x x x [Thus,] to convert a *barrio* road into patrimonial property, the law requires the LGU to enact an ordinance, approved by at least two-thirds

(2/3) of the Sanggunian members, permanently closing the road. In this case, the Sanggunian did not enact an ordinance but merely passed a resolution. The difference between an ordinance and a resolution is settled in jurisprudence: an ordinance is a law but a resolution is only a declaration of sentiment or opinion of the legislative body.

3. ID.; ID.; ID.; *BARRIO* ROAD; IT IS NOT SUSCEPTIBLE TO PRESCRIPTION AND CANNOT BE BURDENED BY ANY VOLUNTARY EASEMENT.— As a *barrio* road, the subject lot's purpose is to serve the benefit of the collective citizenry. It is outside the commerce of man and as a consequence: (1) it is not alienable or disposable; (2) it is not subject to registration under Presidential Decree No. 1529 and cannot be the subject of a Torrens title; (3) it is **not susceptible to prescription**; (4) it cannot be leased, sold, or otherwise be the object of a contract; (5) it is not subject to attachment and execution; and (6) it **cannot be burdened by any voluntary easements.**

4. CIVIL LAW; PROPERTY; EASEMENT; TITLE TO EASEMENT REFERS TO A JURIDICAL JUSTIFICATION FOR THE ACQUISITION OF RIGHT.— An easement is an encumbrance imposed upon an immovable for the benefit of another immovable belonging to a different owner or for the benefit of a community, or of one or more persons to whom the encumbered estate does not belong. **Continuous and apparent easements** may be acquired by virtue of a title or by prescription of ten years. Meanwhile, **continuous but non-apparent easements** and **discontinuous ones** can only be acquired by virtue of a title. Used in this sense, title refers to a juridical justification for the acquisition of a right. It may refer to a law, a will, a donation, or a contract.

5. ID.; ID.; ID.; ID.; EASEMENT OF RIGHT OF WAY AND EASEMENT OF LIGHT AND VIEW, DISTINGUISHED.— An easement of a right of way is discontinuous and cannot be acquired through prescription. On the other hand, an easement of light and view can be acquired through prescription counting from the time when the owner of the dominant estate formally prohibits the adjoining lot owner from blocking the view of a window located within the dominant estate. x x x The provisions on legal easements are found in Book II, Title VII, Chapter 2 of the Civil Code. x x x Section 3 (Articles 649-657) governs

legal easements of right of way. x x x On the other hand, Section 5 of Book II, Title VII, Chapter 2 of the Civil Code **(Articles 667-673)** governs **legal easements of light and view.** x x x However, *none* of these provisions actually *create* a legal easement of light and view which can only be acquired through prescription or by virtue of a *voluntary* title.

6. ID.; ID.; NUISANCE; THE OCCUPATION AND USE OF PRIVATE INDIVIDUALS OF PUBLIC PLACES DEVOTED TO PUBLIC USE CONSTITUTE PUBLIC AND PRIVATE NUISANCES AND NUISANCE *PER SE*.— Every building is subject to the easement which prohibits the proprietor or possessor from committing nuisance. Under Article 694 of the Civil Code, the respondents' house is evidently a nuisance: Art. 694. A nuisance is any act, omission, establishment, business, condition of property, or anything else which: (1) Injures or endangers the health or safety of others; or (2) Annoys or offends the senses; or (3) Shocks, defies or disregards decency or morality; or (4) **Obstructs or interferes with the free passage of any public highway or street,** or any body of water; or (5) Hinders or impairs the use of property. A *barrio* road is designated for the use of the general public who are entitled to free and unobstructed passage thereon. Permanent obstructions on these roads, such as the respondents' illegally constructed house, are injurious to public welfare and convenience. The occupation and use of private individuals of public places devoted to public use constitute public and private nuisances and nuisance *per se*.

APPEARANCES OF COUNSEL

Gordon Dario Reyes Hocson Viado and Blanco for petitioner.
Gilbert C. Layun for respondents.

D E C I S I O N

BRION, *J.*:

This is a petition for review on *certiorari* filed from the July 8, 2011 decision of the Court of Appeals (*CA*) in **CA-G.R. CV**

No. 94524.[1] The CA reversed the Regional Trial Court's (*RTC*) decision[2] in **Civil Case No. 69320**[3] and dismissed petitioner Teofilo Alolino's complaint against the respondents for the removal of their illegally constructed structure.

Antecedents

Alolino is the registered owner of two (2) contiguous parcels of land situated at No. 47 Gen. Luna Street, Barangay Tuktukan, Taguig, covered by Transfer Certificate of Title (*TCT*) Nos. 784 and 976. TCT No. 784 was issued on August 30, 1976 covering an area of 26 square meters; while TCT No. 976 was issued on August 29, 1977, with an area of 95 square meters.

Alolino initially constructed a bungalow-type house on the property. In 1980, he added a second floor to the structure. He also extended his two-storey house up to the edge of his property. There are terraces on both floors. There are also six (6) windows on the perimeter wall: three (3) on the ground floor and another three (3) on the second floor.

In 1994, the respondent spouses Fortunato and Anastacia (Marie) Flores constructed their house/*sari sari* store on the vacant municipal/*barrio* road immediately adjoining the rear perimeter wall of Alolino's house. Since they were constructing on a municipal road, the respondents could not secure a building permit. The structure is only about two (2) to three (3) inches away from the back of Alolino's house, covering five windows and the exit door. The respondents' construction deprived Alolino of the light and ventilation he had previously enjoyed and prevented his ingress and egress to the municipal road through the rear door of his house.

Alolino demanded that the respondent spouses remove their structure but the latter refused. Thus, he complained about the

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[1] *Rollo*, pp. 277-286. Penned by Associate Justice Manuel M. Barrios and concurred in by Associate Justices Mario L. Guariña III and Japar B. Dimaampao.

[2] *Id.* at 225-232. RTC of Pasig City, Branch 153.

[3] *Id.* Penned by Judge Briccio C. Ygaña.

illegal construction to the Building Official of the Municipality of Taguig. He also filed a complaint with the Barangay of Tuktukan.

Acting on Alolino's complaint, the Building Official issued a Notice of Illegal Construction against the respondents on February 15, 1995, directing them to immediately stop further construction.[4]

Sometime in 2001 or 2002, the respondents began constructing a second floor to their structure, again without securing a building permit. This floor was to serve as residence for their daughter, Maria Teresa Sison. The construction prompted Alolino to file another complaint with the Building Official of Taguig.

The building official issued a second Notice of Illegal Construction against the respondents on May 6, 2002, directing the respondents to desist from their illegal construction.[5]

On May 17, 2002, the Office of the Barangay Council of Tuktukan issued a certification that no settlement was reached between the parties relative to Alolino's 1994 complaint.[6]

The respondents did not comply with the directive from the building official. This prompted Alolino to send them a letter dated January 23, 2003, demanding the removal of their illegally constructed structure.

Despite receipt of the demand letter, the respondents refused to comply. Thus, on February 14, 2003, Alolino filed a complaint against the respondents with the RTC praying for: (1) the removal of the encroaching structure; (2) the enforcement of his right to easement of light and view; and (3) the payment of damages. Alolino claimed that the respondents' encroaching structure deprived him of his light and view and obstructed the air ventilation inside his house. The complaint was docketed as **Civil Case No. 69320.**

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[4] *Id.* at 123.

[5] *Id.* at 124.

[6] *Id.* at 110, 122.

In their answer,[7] the respondent spouses denied that Alolino had a cause of action against them. They alleged that they had occupied their lot where they constructed their house in 1955, long before the plaintiff purchased his lot in the 70s. They further alleged that plaintiff only has himself to blame because he constructed his house up to the very boundary of his lot without observing the required setback. Finally, they emphasized that the wall of their house facing Alolino's does not violate the latter's alleged easement of light and view because it has no window.

The respondents also admitted to them that they did not secure a building permit because the property was constructed on a municipal/*barrio* road. They claimed, however, that on March 1, 2004, the *Sangguniang Bayan* of Taguig (*the Sangguniang*) reclassified the property as a residential lot from its prior classification as a *barrio*/municipal road.[8]

During the trial, both parties moved for an ocular inspection of the premises. Consequently, on November 19, 2007, the RTC ordered the branch clerk of court, the deputy sheriff, and the stenographer to conduct the inspection. The ocular inspection was conducted on December 6, 2007.

In their report dated January 30, 2008,[9] the inspection team confirmed that the respondents' property blocked the entry of light and air to Alolino's house.

On April 20, 2009, the RTC rendered a judgment ordering the respondents to remove their illegal structure obstructing Alolino's right to light and view.

The RTC found that Alolino had already previously acquired an easement of light and view and that the respondents subsequently blocked this easement with their construction. It

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[7] *Id.* at 127-130.

[8] Pursuant to *Sangguniang Bayan* Resolution No. 15, Series of 2004; *id.* at 182.

[9] *Id.* at 96-106.

held that the respondents' illegal construction was a private nuisance with respect to Alolino because it prevented him from using the back portion of his property and obstructed his free passage to the *barrio*/municipal road. The court further held that the respondents' house was a public nuisance, having been illegally constructed on a *barrio* road — a government property — without a building permit.

The respondents appealed the decision to the CA and was docketed as **CA-G.R. CV No. 94524.**

On July 8, 2011, the CA reversed the RTC decision and dismissed the complaint for lack of merit.

The CA held (1) that Alolino had not acquired an easement of light and view because he never gave a formal prohibition against the respondents pursuant to Article 668[10] of the Civil Code; (2) that Alolino was also at fault, having built his house up to the edge of the property line in violation of the National Building Code;[11] (3) that Alolino had not acquired an easement of right of way to the *barrio* Road; and (4) that the respondents' house was not a public nuisance because it did not endanger the safety of its immediate surroundings.

The CA concluded that the Government had already abandoned the *barrio* road pursuant to the 2004 Sanggunian resolution. It further held that the respondents' property could not be

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[10] Art. 668. The period of prescription for the acquisition of an easement of light and view shall be counted:

(1) From the time of the opening of the window, if it is through a party wall; or

(2) **From the time of the formal prohibition upon the proprietor of the adjoining land or tenement, if the window is through a wall on the dominant estate.**

[11] ***Section 708. Minimum Requirements for Group A Dwellings.*** —

(a) Dwelling Location and Lot Occupancy.

The dwelling shall occupy not more than ninety percent of a corner lot and eighty percent of an inside lot, and subject to the provisions on Easement on Light and View of the Civil Code of the Philippines, **shall be at least 2 meters from the property line.**

demolished, citing Section 28 of the Urban Development and Housing Act.[12]

Alolino moved for reconsideration on July 28, 2011.

On September 28, 2011, the CA denied the motion for reconsideration and maintained that Alolino had not acquired an easement of light and view.

Thus, on November 15, 2011, Alolino filed the present petition for review on *certiorari*.

The Petition

Alolino insists (1) that he acquired an easement of light and view by virtue of a title because the respondents constructed their house on a *barrio* road; (2) that the provision of Sec. 708 of the National Building Code and Article 670 of the Civil Code prescribing the setbacks is inapplicable because the property is adjacent to a *barrio* road; (3) that he has a right of way over the lot occupied by the respondents because it is a barrio road; and (4) that the respondents' house/*sari sari* store is a nuisance *per se*.

In its comment, the respondent counters (1) that Alolino has not acquired an easement of light and view or an easement of right of way, by either prescription or title; (2) that Alolino is at fault for constructing his house up to the edge of his property line without observing the setbacks required in Article 670 of the Civil Code and Section 702 of the National Building Code; and (3) that their house/*sari sari* store is not a nuisance because it is not a serious threat to public safety and the Sanggunian has already reclassified the lot as residential.

Our Ruling

We find the petition meritorious.

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[12] An Act to Provide for a Comprehensive and Continuing Urban Development and Housing Program, Establish the Mechanism for its Implementation, and for Other Purposes [URBAN DEVELOPMENT AND HOUSING ACT], Republic Act No. 7279, Section 28 (1992).

There is no dispute that respondents built their house/*sari sari* store on government property. Properties of Local Government Units (LGUs) are classified as either property for public use or patrimonial property.[13] Article 424 of the Civil Code distinguishes between the two classifications:

Article 424. Property for public use, in the provinces, cities, and municipalities, consist of the **provincial roads, city streets, municipal streets,** the squares, fountains, public waters, promenades, and public works for public service paid for by said provinces, cities, or municipalities.

All other property possessed by any of them is patrimonial and shall be governed by this Code, without prejudice to the provisions of special laws.[14] (emphasis supplied)

From the foregoing, the *barrio* road adjacent to Alolino's house is property of public dominion devoted to public use.

We find no merit in the respondents' contention that the Local Government of Taguig had already withdrawn the subject *barrio* road from public use and reclassified it as a residential lot. The Local Government Code[15] (*LGC*) authorizes an LGU to withdraw a local road from public use under the following conditions:

Section 21. *Closure and Opening of Roads.* —

(a) A local government unit may, **pursuant to an ordinance, permanently or temporarily close or open any local road, alley, park, or square falling within its jurisdiction**; Provided, however, That in case of permanent closure, **such ordinance** must be approved by at least two-thirds (2/3) of all the members of the Sanggunian, and when necessary, an adequate substitute for the public facility that is subject to closure is provided.

(b) No such way or place or any part thereof shall be permanently closed without making provisions for the maintenance of

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[13] Art. 423, CIVIL CODE.

[14] Art. 424, CIVIL CODE.

[15] An Act Providing for a Local Government Code of 1991 [LOCAL GOVERNMENT CODE], Republic Act No. 7160 (1991).

> public safety therein. **A property thus permanently withdrawn from public use may be used or conveyed for any purpose for which other real property belonging to the local government unit concerned may be lawfully used or conveyed.** x x x

To convert a *barrio* road into patrimonial property, the law requires the LGU to enact an ordinance, approved by at least two-thirds (2/3) of the Sanggunian members, permanently closing the road.

In this case, the Sanggunian did not enact an ordinance but merely passed a resolution. The difference between an ordinance and a resolution is settled in jurisprudence: an ordinance is a law but a resolution is only a declaration of sentiment or opinion of the legislative body.[16]

Properties of the local government that are devoted to public service are deemed public and are under the absolute control of Congress.[17] Hence, LGUs cannot control or regulate the use of these properties unless specifically authorized by Congress, as is the case with Section 21 of the LGC.[18] In exercising this authority, the LGU must comply with the conditions and observe the limitations prescribed by Congress. The Sanggunian's failure to comply with Section 21 renders ineffective its reclassification of the *barrio* road.

As a *barrio* road, the subject lot's purpose is to serve the benefit of the collective citizenry. It is outside the commerce of man and as a consequence: (1) it is not alienable or disposable;[19] (2) it is not subject to registration under Presidential Decree No. 1529 and cannot be the subject of a Torrens title;[20]

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[16] *Municipality of Parañaque v. V.M. Realty Corporation*, 354 Phil. 684, 693 (1998).

[17] *Macasiano v. Diokno*, G.R. No. 97764, 10 August 1992, 212 SCRA 464, 469.

[18] *Id.*

[19] *Roman Catholic Bishop of Kalibo v. Municipality of Buruanga*, 520 Phil. 753, 799 (2006).

[20] *Bishop of Calbayog v. Director of Lands*, 150-A Phil. 806, 813 (1972).

(3) it is **not susceptible to prescription**;[21] (4) it cannot be leased, sold, or otherwise be the object of a contract;[22] (5) it is not subject to attachment and execution;[23] and (6) it **cannot be burdened by any voluntary easements.**[24]

An easement is an encumbrance imposed upon an immovable for the benefit of another immovable belonging to a different owner or for the benefit of a community, or of one or more persons to whom the encumbered estate does not belong.[25] **Continuous and apparent easements** may be acquired by virtue of a title or by prescription of ten years.[26] Meanwhile, **continuous but non-apparent easements and discontinuous ones** can only be acquired by virtue of a title.[27] Used in this sense, title refers to a juridical justification for the acquisition of a right. It may refer to a law, a will, a donation, or a contract.

We must distinguish between the respondents' house and the land it is built on. The land itself is public property devoted to public use. It is not susceptible to prescription and cannot be burdened with voluntary easements. On the other hand, the respondents' house is private property, albeit illegally constructed on public property. It can be the object of prescription and can be burdened with voluntary easements. Nevertheless, it is indisputable that the respondents have not voluntarily burdened their property with an easement in favor of Alolino.

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[21] Arts. 1108, 1113 CIVIL CODE:

Art. 1113. All things which are within the commerce of men [man] are susceptible of [to] prescription, unless otherwise provided. **Property of the State or any of its subdivisions not patrimonial in character shall not be the object of prescription.** (emphasis supplied)

[22] Arts. 1347, 1409, CIVIL CODE.

[23] *Id.*; see also *Villarico v. Sarmiento-Del Mundo,* 484 Phil. 724, 729 (2004) citing TOLENTINO II, *Civil Code* (1992 ed.), 31-32.

[24] *Id.*, *Villarico v. Sarmiento-Del Mundo*. *Supra* note 23.

[25] Arts. 613, 614, CIVIL CODE.

[26] Art. 620, CIVIL CODE.

[27] Art. 622, CIVIL CODE.

An easement of a right of way is discontinuous and cannot be acquired through prescription.[28] On the other hand, an easement of light and view can be acquired through prescription counting from the time when the owner of the dominant estate formally prohibits the adjoining lot owner from blocking the view of a window located within the dominant estate.[29]

Notably, Alolino had not made (and could not have made) a formal prohibition upon the respondents prior to their construction in 1994; Alolino could not have acquired an easement of light and view through prescription. Thus, only easements created by law can burden the respondents' property.

The provisions on legal easements are found in Book II, Title VII, Chapter 2 of the Civil Code whose specific coverage we list and recite below for clarity and convenience.

Section 3 (Articles 649-657) governs legal easements of right of way. **Article 649** creates a legal easement in favor of an owner or any person entitled to use any immovable, which is landlocked by other immovables pertaining to other persons without an adequate access to a public highway. **Article 652** creates a legal easement in favor of an isolated piece of land acquired by sale, exchange, partition, or donation when it is surrounded by other estates of the vendor, exchanger, co-owner, or donor. **Article 653** grants the same right of way in favor of the vendor, exchanger, co-owner, or donor when his property is the one that becomes isolated. **Article 656** grants the owner of an estate, after payment of indemnity, a right of way to carry materials through the estate of another when it is indispensable for the construction or repair of a building in his estate. Finally, Article 657 governs right of way easements for the passage of livestock.

None of these provisions are applicable to Alolino's property with respect to the *barrio* road where the respondents' house stands on.

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[28] Art. 622, CIVIL CODE; *Ronquillo v. Roco*, 103 Phil. 84, 89 (1958); reiterated in *Costabella Corporation v. Court of Appeals*, 271 Phil. 350, 357 (1991).

[29] Art. 668, CIVIL CODE.

On the other hand, Section 5 of Book II, Title VII, Chapter 2 of the Civil Code (**Articles 667-673**) governs **legal easements of light and view.** These seven provisions are:

SECTION 5
Easement of Light and View

Article 667. No part-owner may, without the consent of the others, open through the party wall any window or aperture of any kind.

Article 668. The period of prescription for the acquisition of an easement of light and view shall be counted: (1) From the time of the opening of the window, if it is through a party wall; or (2) From the time of the formal prohibition upon the proprietor of the adjoining land or tenement, if the window is through a wall on the dominant estate.

Article 669. When the distances in Article 670 are not observed, the owner of a wall which is not party wall, adjoining a tenement or piece of land belonging to another, can make in it openings to admit light at the height of the ceiling joints or immediately under the ceiling, and of the size of thirty centimeters square, and, in every case, with an iron grating imbedded in the wall and with a wire screen.

Nevertheless, the owner of the tenement or property adjoining the wall in which the openings are made can close them should he acquire part-ownership thereof, if there be no stipulation to the contrary.

He can also obstruct them by constructing a building on his land or by raising a wall thereon contiguous to that having such openings, unless an easement of light has been acquired.

Article 670. No windows, apertures, balconies, or other similar projections which afford a direct view upon or towards an adjoining land or tenement can be made, without leaving a distance of two meters between the wall in which they are made and such contiguous property.

Neither can side or oblique views upon or towards such conterminous property be had, unless there be a distance of sixty centimeters.

The nonobservance of these distances does not give rise to prescription.

Article 671. The distance referred to in the preceding article shall be measured in cases of direct views from the outer line of the wall when the openings do not project, from the outer line of the latter

when they do, and, in cases of oblique view, from the dividing line between the two properties.

Article 672. The provisions of Article 670 are not applicable to buildings separated by a public way or alley, which is not less than three meters wide, subject to special regulations and local ordinances.

Article 673. Whenever by any title a right has been acquired to have direct views, balconies or belvederes overlooking an adjoining property, the owner of the servient estate cannot build thereon at less than a distance of three meters to be measured in the manner provided in Article 671. Any stipulation permitting distances less than those prescribed in Article 670 is void.

However, *none* of these provisions actually *create* a legal easement of light and view which can only be acquired through prescription or a by virtue of a *voluntary* title.

From the foregoing, we agree with the respondents that Alolino does not have an easement of light and view or an easement of right of way over the respondents' property or the *barrio* road it stands on. This does not mean, however, that the respondents are entitled to continue occupying the *barrio* road and blocking the rear of Alolino's house. Every building is subject to the easement which prohibits the proprietor or possessor from committing nuisance.[30] Under Article 694 of the Civil Code, the respondents' house is evidently a nuisance:

> Art. 694. A nuisance is any act, omission, establishment, business, condition of property, or anything else which:
>
> (1) Injures or endangers the health or safety of others; or
>
> (2) Annoys or offends the senses; or
>
> (3) Shocks, defies or disregards decency or morality; or
>
> (4) **Obstructs or interferes with the free passage of any public highway or street,** or any body of water; or
>
> (5) Hinders or impairs the use of property. (emphasis supplied)

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[30] Art. 682, Civil Code.

A *barrio* road is designated for the use of the general public who are entitled to free and unobstructed passage thereon. Permanent obstructions on these roads, such as the respondents' illegally constructed house, are injurious to public welfare and convenience. The occupation and use of private individuals of public places devoted to public use constitute public and private nuisances and nuisance *per se*.[31]

The CA clearly erred when it invoked Section 28 of the Urban Development and Housing Act as a ground to deny the demolition of respondents' illegal structure. The invoked provision reads:

> Sec. 28. **Eviction and Demolition**. — Eviction or demolition as a practice shall be discouraged. Eviction or demolition, however, may be allowed under the following situations:
>
> (a) **When persons or entities occupy** danger areas such as esteros, railroad tracks, garbage dumps, riverbanks, shorelines, waterways, **and other public places such as sidewalks, roads**, parks, and playgrounds;
>
> x x x x x x x x x
>
> (c) When **there is a court** order for eviction and demolition. x x x (emphasis supplied)

The invoked provision itself allows the demolition of illegal structures on public roads and sidewalks because these nuisances are injurious to public welfare. Evidently, the respondents have no right to maintain their occupation and permanent obstruction of the *barrio* road. The interests of the few do not outweigh the greater interest of public health, public safety, good order, and general welfare.

WHEREFORE, the petition is **GRANTED**. The decision of the Court of Appeals in **CA-G.R. CV No. 94524** is **REVERSED** and **SET ASIDE** and the decision of the Regional Trial Court, Pasig City, Branch 153 in **Civil Case No. 69320** is **REINSTATED**.

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[31] *Stitchon v. Aquino*, 98 Phil. 458, 464-466 (1956); *Dacanay v. Asistio*, G.R. No. 93654, 6 May 1992, 208 SCRA 404, 408 citing PADILLA, *Civil Code Annotated*, Vol. II, p. 59, 6th Ed.

The respondents, and all persons claiming rights under them, are **ORDERED** to remove and demolish their illegal structure. The respondents are also **ORDERED** to pay the petitioner the sum of One Hundred Thousand Pesos (₱100,000.00) as attorney's fees. Costs against the respondents.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 205414. April 4, 2016]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **EDUARDO DELA CRUZ *y* GUMABAT @ "EDDIE,"** *appellant.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA NO. 9165); ILLEGAL SALE OF REGULATED OR PROHIBITED DRUGS; ELEMENTS.— To secure a conviction for the crime of illegal sale of regulated or prohibited drugs, the following elements under Section 5, Article II of RA No. 9165 should be satisfactorily proven: (1) the identities of the buyer and the seller, the object, and consideration; and (2) the delivery of the thing sold and the payment therefor. What is material to the prosecution for illegal sale of dangerous drugs is the proof that the transaction or sale actually took place, coupled with the presentation in court of evidence of *corpus delicti*.

2. REMEDIAL LAW; EVIDENCE; POSITIVE TESTIMONIES PREVAIL AGAINST PLAIN DENIAL.— [S]traightforward and unwavering testimonies were presented by the prosecution narrating, in detail, how the police officers personally witnessed the sale by appellant of the dangerous drug, being actual

participants of the buy-bust operation. Indeed, a buy-bust operation is a form of entrapment, in which the violator is caught *in flagrante delicto* and the police officers conducting the operation are not only authorized, but duty-bound, to apprehend the violator and to search him for anything that may have been part of or used in the commission of the crime. Against the positive testimonies of the prosecution witnesses, appellant's plain denial of the offense charged, unsubstantiated by any credible and convincing evidence, must simply fail.

3. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (RA NO. 9165); CHAIN OF CUSTODY; NON-COMPLIANCE WITH THE RULE SHALL NOT RENDER THE ITEMS SEIZED INADMISSIBLE AS LONG AS THEIR INTEGRITY AND EVIDENTIARY VALUE WERE PROPERLY PRESERVED. — [T]he failure to conduct a physical inventory of the seized items, as well as to take photographs of the same in the presence of the persons required [under Sec. 21 of RA 9165] will not automatically render an arrest illegal or the seized items inadmissible in evidence, pursuant to the following Section 21 (a) of the Implementing Rules and Regulations (IRR) of RA No. 9165: x x x. **[N]on-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[.]**

APPEARANCES OF COUNSEL

Office of the Solicitor General for appellee.
Public Attorney's Office for appellant.

D E C I S I O N

PERALTA, *J.*:

For the Court's consideration is the Decision[1] dated March 19, 2012 of the Court of Appeals (*CA*) in CA-G.R. CR HC No.

[1] Penned by Associate Justice Rebecca De Guia-Salvador, with Associate Justices Normandie B. Pizarro and Rodil V. Zalameda, concurring; *rollo*, pp. 2-22.

04587 affirming the Decision[2] dated August 2, 2010 of the Regional Trial Court (*RTC*) of Manila, Branch 2, in Criminal Case No. 09-271907, finding appellant guilty beyond reasonable doubt of violating Section 5, Article II of Republic Act (*RA*) No. 9165, otherwise known as the *Comprehensive Dangerous Drugs Act of 2002*.

In an information filed on November 5, 2009, appellant Eduardo dela Cruz y Gumabat was charged with illegal sale of dangerous drugs under Section 5 of Article II of RA No. 9165, the accusatory portion of which reads:

> That on or about October 23, 2009, in the City of Manila, Philippines, the said accused, not having been authorized by law to sell, trade, deliver or give away to another any dangerous drug, did then and there wilfully, unlawfully and knowingly sell or offer for sale to poseur-buyer, one (1) Blister pack with label "Valium" containing Ten (10) round blue tablets weighing ONE POINT SEVEN TWO ZERO (1.720) grams which after a qualitative examination, gave positive result to the test of diazepam, a dangerous drug.
>
> Contrary to law.[3]

Upon arraignment, appellant pleaded not guilty to the crime charged. Consequently, trial on the merits ensued.[4]

The factual antecedents, as narrated by the witnesses of the prosecution, namely, PO1 Jaycee John Galotera, who acted as the poseur-buyer; PO1 Roderick Magpale, who was the investigator-on-duty at the Special Operation and Task Unit; and PO3 Ryan Sulayao, who acted as the perimeter back-up, are as follows:

At around 7:30 p.m. on October 22, 2009, a confidential informant arrived at the Jose Abad Santos Police Station, Manila Police District and informed PO1 Ronnie Tan, PO3 Ryan Sulayao and PO3 Eric Guzman about the illegal drug activities being

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[2] Penned by Presiding Judge Alejandro G. Bijasa, CA *rollo*, pp. 9-15.

[3] *Rollo*, p. 3.

[4] *Id.*

conducted by appellant along Solis Street, Tondo, Manila. Said informant claimed to have gained access to appellant. Consequently, the police officers immediately informed their station commander, P/Supt. Remigio Sedanto, who tasked the unit to conduct a buy-bust operation, to be led by P/Inspector Jeffrey Dallo, with PO1 Galotera acting as poseur-buyer, and the rest of the team to serve as back-up. P/Inspector Dallo gave PO1 Galotera three (3) pieces of One Hundred Peso (₱100.00) bills to be utilized as buy-bust money, which PO1 Galotera marked with his initials "JJG." The team also agreed that PO1 Galotera's removal of his ball cap constitutes the signal indicating that the transaction has been consummated and that the appellant may be arrested. After a thorough briefing and coordination with the Philippine Drug Enforcement Agency (PDEA), the team left the station and proceeded to the target area at around 12:20 a.m.[5]

PO1 Galotera and the confidential informant went straight to the destination aboard a motorcycle, while PO1 Tan, PO3 Sulayao, and PO3 Guzman, aboard a separate motorcycle, positioned themselves about ten (10) meters away from PO1 Galotera and the informant. PO1 Galotera and the informant then walked along an alley on Solis Street towards Villanueva Street and saw two (2) men standing at a dark portion thereof. As they approached said men, the confidential informant whispered to PO1 Galotera that the person on the right was appellant. Thereafter, appellant asked the informant what he needed.[6] In reply, the informant told appellant that he and his companion, PO1 Galotera, needed "Valium," which contains Diazepam, a dangerous drug. Appellant then asked how much Valium they need, to which PO1 Galotera answered, "*Isang banig lang*." PO1 Galotera then handed the marked money in the amount of Three Hundred Pesos (₱300.00) to appellant, who placed the same in his front left pocket. Thereafter, appellant pulled out one blister pack containing ten (10) pieces of round,

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[5] *Id.* at 4.

[6] *Id.*

blue tablets from his right pocket and handed the same to PO1 Galotera. Believing that what he received was Valium based on its appearance, PO1 Galotera executed the pre-arranged signal. Upon seeing the signal, PO3 Guzman proceeded to assist PO1 Galotera, who immediately grabbed appellant. Appellant's companion, who tried to escape, was also subdued by PO3 Guzman. PO1 Galotera then apprised appellant of the nature of his arrest and read him his constitutional rights. He also marked the seized tablets with the initials "EDG" corresponding to appellant's name.

Afterwards, he turned over the appellant and the seized evidence to PO1 Roderick Magpale, an investigator of the Anti-Illegal Special Operation Task Unit at the Police Station. PO1 Magpale then took pictures of appellant and the seized evidence, prepared the Booking and Information Sheet, and forwarded the seized tablets to the forensic laboratory for examination. Accordingly, Forensic Chemist Erickson L. Calabocal, conducted a chemistry examination and in his Chemistry Report No. D-787-09, found that the ten (10) round, blue tablets seized from appellant tested positive for Diazepam, a dangerous drug.[7] During trial, however, Calabocal's testimony was dispensed with after the parties stipulated on the existence and due execution of Chemistry Report No. D-787-09.[8]

Against the foregoing charges, appellant testified on his own version of facts, and further presented the testimonies of his mother, Leonora dela Cruz, and one Roberto Balatbat.[9]

Appellant testified that he was a jeepney driver by profession and a resident at Solis Street, Tondo, Manila. At around 3:00 p.m. on October 23, 2009, he went to see his friend, Nicanor Guevarra, to convince him to place a bet on the "*karera*." He found him at the tricycle terminal at Solis Street corner Callejon Villanueva, playing *cara y cruz* and joined him. Suddenly, the

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[7] *Id.* at 5.

[8] *Id.*

[9] *Id.* at 6.

policemen arrived. They tried to run but were eventually arrested. Appellant requested that he be brought to the *barangay* hall, but the policemen brought him directly to the police station. He thought that he was only being accused of illegal gambling for playing *cara y cruz*. It turned out, however, that he was being charged with illegal sale of dangerous drugs.[10]

After appellant, the defense presented appellant's mother who denied that her son was into selling dangerous drugs. According to her, at around 3:00 p.m. on October 23, 2009, appellant asked her permission to leave the house to place a bet. However, she later learned from her granddaughter that her son had been arrested.

Next was Roberto Balatbat, a tricycle driver residing at Solis Street, Tondo, Manila, who testified that on that day, he was at the tricycle terminal on Solis Street playing *cara y cruz*. When the four (4) police officers arrived, he quickly ran away leaving behind appellant and Guevarra, who were arrested. He denied that any sale of dangerous drugs transpired at the time and place of appellant's arrest.[11]

In its Decision dated August 2, 2010, the RTC gave credence to the testimonies of the police officers as they were given in a clear and convincing manner showing that the officers were at the place of the incident to accomplish exactly what they had set out to do, which was to conduct a legitimate buy-bust operation on appellant.[12] It found that unless the members of the buy-bust team were inspired by any ill motive to testify falsely against appellant, their testimonies deserve full faith and credit, particularly in light of the presumption that they have performed their duties regularly. Indeed, the positive identification of appellant by the prosecution witnesses prevails over appellant's denial, which is inherently a weak defense.[13] The trial court, therefore, disposed of the case as follows:

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[10] *Id.*

[11] *Id.*

[12] CA *rollo*, p. 13.

[13] *Id.* at 14.

WHEREFORE, from the foregoing, judgment is hereby rendered, finding the accused, Eduardo dela Cruz *y* Gumabat @ Eddie, GUILTY, beyond reasonable doubt of the crime charged. He is hereby sentenced to life imprisonment and to pay a fine of ₱500,000.00 without subsidiary imprisonment in case of insolvency and to pay the costs.

The specimen is forfeited in favor of the government and the Branch Clerk of Court, accompanied by the Branch Sheriff, is directed to turn over with dispatch and upon receipt the said specimen to the Philippine Drug Enforcement Agency (PDEA) for proper disposal in accordance with the law and rules.

SO ORDERED.[14]

Appellant appealed his conviction arguing that his warrantless arrest was unlawful for he was not, in fact, caught selling dangerous drugs but was merely committing the offense of illegal gambling. Thus, the ten (10) tablets of Valium allegedly seized from him is inadmissible as evidence.[15] Appellant also argued that there was no showing that he was informed of the reason for his arrest, of his constitutional right to remain silent and to be assisted by a counsel of his choice.[16] Appellant further faulted the prosecution for not only failing to present the buy-bust money as evidence in court[17] but also failing to show proof that the confiscated Valium was subjected to a qualitative examination.[18] He noted that the chemist who supposedly conducted the laboratory examination on the drug did not know the source from which it came.[19]

On March 19, 2012, the CA sustained appellant's conviction. At the outset, it noted that it was only in appellant's appeal that appellant raised for the first time the issue of the irregularity of his arrest. At no time before or during his arraignment did

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[14] *Id.* at 15.

[15] *Id.* at 46.

[16] *Id.* at 51.

[17] *Id.* at 53.

[18] *Id.* at 54.

[19] *Id.*

he object to the same. As such, jurisprudence dictates that he should be estopped from assailing said irregularity, for issues not raised in the lower courts cannot be raised for the first time on appeal without offending the basic rules of fair play.[20] Even assuming that the police officers failed to inform appellant of his rights under custodial investigation, the appellate court held that such would not necessarily result in appellant's acquittal because his conviction was based not on any extrajudicial confession but on the testimony of PO1 Galotera who clearly and convincingly narrated the material details of the buy-bust operation that led to appellant's arrest.[21]

On appellant's main contention that the police officers should have obtained a judicial warrant to validly effect his arrest, the appellate court held that the instant case falls within one of the settled exceptions: an arrest made after an entrapment operation. This is because such warrantless arrest is considered valid under Section 5 (a),[22] Rule 113 of the Revised Rules on Criminal Procedure. The CA explained that buy-bust operations, such as the one conducted herein, is a form of entrapment where means are resorted to for the purpose of capturing lawbreakers in the execution of their own, criminal plan. In upholding the validity of the operation, the "objective test" demands that the details of the purported transaction be clearly shown, beginning from the initial contact between the *poseur*-buyer and the pusher, the offer to purchase, the promise or payment of the consideration, until the consummation of the sale by the delivery of the illegal drug subject of the sale.[23] Here, the appellate court found that said requirements were adequately met for as observed by the trial court, the testimonies presented by the prosecution were given in a clear, straightforward and convincing manner.

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[20] *Rollo*, p. 8.

[21] *Id.* at 9.

[22] 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; x x x.

[23] *Rollo*, p. 11.

As for the failure by the prosecution to offer as evidence the marked money, the CA cited jurisprudence holding that the absence of the marked money does not create a hiatus in the prosecution's evidence, as long as the sale of the dangerous drug is adequately proved.[24] Furthermore, the appellate court rejected appellant's contention that there was no proof that the Valium that was subjected to qualitative examination was the same Valium seized from him during the buy-bust operation. According to the appellate court, the unbroken chain of custody of the ten (10) Valium tablets was established by the prosecution through the testimonies of PO1 Galotera and PO1 Magpale. Thus, in the absence of any bad faith or proof that the evidence has been tampered with, the integrity of the evidence is presumed to have been preserved.[25]

Aggrieved, appellant filed a Notice of Appeal[26] on April 4, 2012. Thereafter, in compliance with the Resolution of the Court, dated March 13, 2013, notifying the parties that they may file their respective supplemental briefs, if they so desire, within thirty (30) days from notice, appellant filed his Supplemental Brief on June 14, 2013 raising the following errors:

I.

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE NON-COMPLIANCE BY THE ARRESTING OFFICERS OF THE REQUIREMENTS FOR THE PROPER CUSTODY OF SEIZED DANGEROUS DRUGS UNDER R.A. NO. 9165.

II.

THE HONORABLE COURT OF APPEALS GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE PROSECUTION'S FAILURE TO PROVE THE IDENTITY OF THE *CORPUS DELICTI*.[27]

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[24] *Id.* at 17.

[25] *Id.* at 21.

[26] *Id.* at 23.

[27] *Id.* at 35.

Appellant maintains that the instant case does not fall under the exceptions to the requirement of obtaining a judicial warrant prior to making an arrest under Section 5, Rule 113 of the Revised Rules on Criminal Procedure. According to appellant, for *in flagrante* warrantless arrests to be lawful, the following elements 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. But here, appellant asserts that he was not exhibiting any strange actuation at the time of his arrest, merely playing *cara y cruz* with a friend. Thus, absent any physical act on the part of the accused, positively indicating that he had just committed a crime or was committing or attempting to commit one, no reasonable suspicion would be sufficient enough to justify his arrest and subsequent search without a warrant.[28]

Next, appellant asseverates that the prosecution failed to establish, with moral certainty, that the item seized from him was the very same item presented and proved in court because of its non-compliance with the requirements under Section 21 of RA No. 9165 mandating the arresting team to conduct a physical inventory of the items seized and photograph the same in the presence of: (1) the accused; (2) a representative from the media; (3) a representative from the Department of Justice (DOJ); and (4) any elected public official who shall further be required to sign the copies of the said inventory. According to appellant, no physical inventory nor photograph was ever taken in this case.[29]

Furthermore, while appellant recognizes the jurisprudential teaching that non-compliance with Section 21 of RA No. 9165 is not fatal so long as: (1) there is justifiable ground therefor; and (2) the integrity and evidentiary value of the seized items were properly preserved by the apprehending team, he stressed that said conditions were not established in this case. Not only

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[28] *Id.* at 36.

[29] *Id.* at 37.

did the prosecution fail to adequately explain its failure to comply with said requirements, it likewise failed to show the preservation of the integrity and evidentiary value of the seized items. Appellant asserts that this is due to a gaping hole in the chain of custody of the seized items arising from the prosecution's failure to show how the seized drugs were transported from the place of arrest to the police station, or from the time they were delivered to the laboratory until their eventual presentation in court.

The appeal is unmeritorious.

To secure a conviction for the crime of illegal sale of regulated or prohibited drugs, the following elements under Section 5, Article II of RA No. 9165 should be satisfactorily proven: (1) the identities of the buyer and the seller, the object, and consideration; and (2) the delivery of the thing sold and the payment therefor. What is material to the prosecution for illegal sale of dangerous drugs is the proof that the transaction or sale actually took place, coupled with the presentation in court of evidence of *corpus delicti*.[30]

The Court finds that the prosecution sufficiently proved the preceding requisites warranting appellant's conviction. As appropriately found by the lower courts, the prosecution presented clear and convincing testimonies of the police officers categorically recounting, in detail, how they conducted the buy-bust operation, beginning from the receipt of the tip from the confidential informant, then to the marking of the buy-bust money with the initials of PO1 Galotera, and then to the meeting of the appellant as seller and PO1 Galotera as buyer, and next to the actual exchange of the blister pack containing the Valium tablets with the marked money, and then finally to the appellant's eventual arrest and turn over to the police station where his arrest was duly recorded. Moreover, the prosecution further presented before the trial court Chemistry Report No. D-787-09 on the seized tablets revealing positive results for Diazepam, a dangerous drug under RA No. 9165. It is clear, therefore,

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[30] *People v. Mariano*, G.R. No. 191193, November 14, 2012, 685 SCRA 592, 600.

that the prosecution's evidence adequately established beyond reasonable doubt the identity of the buyer and seller, the ten (10) tablets of Valium as the object of the sale, the marked money as the consideration, as well as the exchange of the Valium and the marked money signifying the consummation of the sale.

In this regard, the Court cannot give credence to appellant's insistence on the illegality of his warrantless arrest due to an alleged absence of any overt act on his part positively indicating that he was committing a crime. He asserts that he was merely playing *cara y cruz* and denies any participation in the crime charged. Section 5, Rule 113 of the Rules of Court enumerates the circumstances by which a warrantless arrest are considered reasonable:

> 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;**
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> (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
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> (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.[31]

Contrary to appellant's claims, there is overwhelming evidence that he was actually committing a crime in the presence of the police officers who arrested him without a warrant. To repeat, straightforward and unwavering testimonies were presented by the prosecution narrating, in detail, how the police officers personally witnessed the sale by appellant of the dangerous drug, being actual participants of the buy-bust operation. Indeed, a buy-bust operation is a form of entrapment, in which the violator is caught *in flagrante delicto* and the police officers conducting

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[31] Emphasis ours.

the operation are not only authorized, but duty-bound, to apprehend the violator and to search him for anything that may have been part of or used in the commission of the crime.[32] Against the positive testimonies of the prosecution witnesses, appellant's plain denial of the offense charged, unsubstantiated by any credible and convincing evidence, must simply fail.[33]

As for appellant's contention that the prosecution failed to establish that the items seized from him were the very same items presented and proved in court due to its non-compliance with the requirements under Section 21 of RA No. 9165 mandating the arresting officers to take photographs and conduct a physical inventory of the items seized, the Court is not convinced. Section 21, Paragraph 1, Article II of RA No. 9165 provides:

> 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[.]

Notwithstanding the foregoing, and as admitted by appellant, the failure to conduct a physical inventory of the seized items, as well as to take photographs of the same in the presence of

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[32] *People v. Adriano*, G.R. No. 208169, October 8, 2014.

[33] *People v. Almodiel*, 694 Phil. 449, 464 (2012).

the persons required above, will not automatically render an arrest illegal or the seized items inadmissible in evidence,[34] pursuant to the following Section 21 (a) of the Implementing Rules and Regulations (IRR) of RA No. 9165:

> (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[.]**[35]

In view of the preceding, the Court has, time and again, ruled that non-compliance with Section 21 of RA No. 9165 shall not necessarily render the arrest of an accused as illegal or the items seized as inadmissible if the integrity and evidentiary value of the seized items are properly preserved in compliance with the chain of custody rule.[36] The Court explained the rule on the chain of custody to be as follows:

> The rule on chain of custody expressly demands the identification of the persons who handle the confiscated items for the purpose of duly monitoring the authorized movements of the illegal drugs and/or drug paraphernalia from the time they are seized from the accused

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[34] *People of the Philippines v. Manuela Flores y Salazar*, G.R. No. 201365, August 3, 2015.

[35] Emphasis ours.

[36] *People of the Philippines v. Edwin Dalawis y Hidalgo*, G.R. No. 197925, November 9, 2015, citing *People of the Philippines v. Michael Ros y Ortega, et al.*, G.R. No. 201146, April 15, 2015.

until the time they are presented in court. Moreover, as a method of authenticating evidence, the chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. It would include testimony about every link in the chain, from the moment the item was picked up to the time it is offered in evidence, in such manner 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 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.[37]

It is evident from the records of this case that the prosecution sufficiently complied with the chain of custody rule. Contrary to the claims of appellant, the unbroken chain of custody of the tablets seized from him was categorically established by the testimonies presented by the prosecution's witnesses. PO1 Galotera gave a clear and detailed account of the events that transpired from the moment he handed the marked money to appellant, to the time appellant pulled out the blister pack containing ten (10) pieces of round, blue tablets from his right pocket, all the way up to his execution of the pre-arranged signal and subsequent arrest of appellant. He testified that he informed appellant of his constitutional rights, apprised him of the nature of his arrest, and marked the seized tablets with appellant's initials. He also attested to the process by which he turned appellant and the seized items over to PO1 Magpale, who in turn, clearly narrated how he took photographs thereof, prepared the Booking and Information Sheet, and eventually turned over appellant and the seized items to Forensic Chemist Calabocal.

In an attempt to further assign breaks in the chain of custody, appellant claimed that the prosecution did not present any testimony of the persons who took charge of the safekeeping and custody of the illicit drugs from the time they were delivered

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[37] *Id.*

to the laboratory. It bears stressing, however, that such point had already been addressed by the appellate court in the following wise:

> **The testimony of Forensic Chemist PS I. Erickson L. Calabocal was dispensed with after the parties had stipulated on the existence and due execution of Chemistry Report No. D-787-09 (Exhibit "C").**
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> x x x x x x x x x
>
> x x x Quoting from their testimonies, the Solicitor General aptly traced the unbroken chain of custody of the valium tablets seized from appellant, thus:
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> x x x x x x x x x
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> **Worthy of note, as well is the fact that the parties stipulated during pre-trial that the forensic chemist who conducted the qualitative examination of the seized item received a letter request dated October 23, 2009 from PO1 Magpale. Attached to said letter was the specimen with markings EDG.**[38]

In like manner, the trial court similarly noted appellant's admission, during pre-trial, of the parties' stipulation as to the qualification of PS I. Erickson L. Calabocal as a Forensic Chemist, as well as the genuineness and due execution of the documents he brought together with the specimen, part of which were his Final Chemistry Report and his Findings and Conclusions resulting from the laboratory examination he conducted on the seized tablets, which yielded positive results for dangerous drugs.[39] Due to these stipulations, the testimony of Forensic Chemist Calabocal was not presented at trial not because the prosecution failed to do so, but because the same was dispensed with as expressly agreed to by the parties.

Unfazed, appellant further faults the police officers not only for failing to comply with the requirements of Section 21 of

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[38] *Rollo*, pp. 5 and 21. (Emphasis ours)

[39] CA *rollo*, pp. 9-10.

RA No. 9165 but also for failing to provide any explanation constituting justifiable ground therefor. It bears stressing, however, that said objection was never raised in the trial court, and not even on appeal before the appellate court. Appellant cannot belatedly raise its questions as to the evidence presented at trial, too late in the day and, at the same time, expect the prosecution to have provided justifiable grounds for its non-compliance with RA No. 9165. *People of the Philippines v. Jimmy Gabuya y Adlawan*[40] explains:

> It is well to note that the records of the case are bereft of evidence that appellant, during trial, interposed any objection to the non-marking of the seized items in his presence and the lack of information on the whereabouts of the shabu after it was examined by P/Insp. Calabocal. While he questioned the chain of custody before the CA, the alleged defects appellant is now alluding to were not among those he raised on appeal. The defects he raised before the CA were limited to the alleged lack of physical inventory, non-taking of photographs of the seized items, and the supposed failure of the police officers to mark the sachets of shabu at the crime scene. But even then, it was already too late in the day for appellant to have raised the same at that point since he should have done so early on before the RTC. **It bears stressing that the Court has already brushed aside an accused's belated contention that the illegal drugs confiscated from his person is inadmissible for failure of the arresting officers to comply with Section 21 of R.A. 9165. This is considering that "[w]hatever justifiable grounds may excuse the police officers from literally complying with Section 21 will remain unknown, because [appellant] did not question during trial the safekeeping of the items seized from him. Objection to evidence cannot be raised for the first time on appeal; when a party desires the court to reject the evidence offered, he must so state in the form of an objection. Without such objection, he cannot raise the question for the first time on appeal. x x x"**

Be that as it may, the Court has always reiterated that "what is of utmost importance is the preservation of the integrity and evidentiary value of the seized items, as the same would be utilized in the determination of the guilt or innocence of the

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[40] G.R. No. 195245, February 16, 2015. (Emphasis supplied)

accused."[41] Here, the Court opines that said requirement was sufficiently complied with. It is evidently clear, therefore, that there exists no gap in the chain of custody of the dangerous drug seized from appellant for all the links thereof beginning from the moment the item was obtained from appellant up to the time the same was presented in court were sufficiently accounted for. Thus, it is because the apprehending team properly preserved the integrity and evidentiary value of the seized items that the Court excuses their failure to strictly comply with Section 21 of RA No. 9165 for on said failure, alone, appellant cannot automatically be exonerated.

All things considered, the Court finds no compelling reason to disturb the findings of the courts below for the prosecution adequately established, with moral certainty, all the elements of the crime charged herein. It is hornbook doctrine that the factual findings of the appellate court affirming those of the trial court are binding on this Court unless there is a clear showing that such findings are tainted with arbitrariness, capriciousness or palpable error.[42] Thus, there exists no reason to overturn the conviction of appellant.

WHEREFORE, premises considered, the instant appeal is **DISMISSED.** The Decision dated March 19, 2012 of the Court of Appeals in CA-G.R. CR HC No. 04587, affirming the Decision dated August 2, 2010 of the Regional Trial Court, Branch 2, Manila, in Criminal Case No. 09-271907, finding appellant Eduardo Dela Cruz *y* Gumabat guilty beyond reasonable doubt of violating Section 5, Article II of Republic Act No. 9165, is hereby **AFFIRMED**.

SO ORDERED.

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

Perlas-Bernabe,[*] *J.*, on leave.

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[41] *People v. Manlangit*, 654 Phil. 427, 442 (2011).

[42] *People of the Philippines v. Bienvenido Miranda y Feliciano*, G.R. No. 209338, June 29, 2015.

[*] Designated Additional Member in lieu of Associate Justice Francis H. Jardeleza, per Raffle dated October 1, 2014.

SECOND DIVISION

[G.R. No. 206226. April 4, 2016]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **NIEVES CONSTANCIO *y* BACUNGAY, ERNESTO BERRY *y* BACUNGAY,** *accused-appellants.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; FACTUAL FINDINGS OF THE REGIONAL TRIAL COURT AFFIRMED BY THE COURT OF APPEALS, RESPECTED.— Firmly settled is the rule that when factual findings of the RTC are affirmed by the CA, such factual findings should not be disturbed on appeal, unless some material facts or circumstances had been overlooked or their significance misconstrued as to radically affect the outcome of the case.

2. ID.; EVIDENCE; EXTRAJUDICIAL CONFESSION; ADMISSIBLE AS THE SAME WAS VOLUNTARILY EXECUTED WITH THE ASSISTANCE OF A COMPETENT AND INDEPENDENT COUNSEL WHO THOROUGHLY EXPLAINED TO ACCUSED HIS CONSTITUTIONAL RIGHTS AND THE CONSEQUENCES OF ANY STATEMENTS HE WOULD GIVE.— [T]his Court believes that [accused-appellant] Berry's [extrajudicial] confession is admissible because it was voluntarily executed with the assistance of a competent and independent counsel in the person of Atty. Suarez. In point of fact Atty. Suarez testified that he thoroughly explained to Berry his constitutional rights and the consequences of any statements he would give. x x x It is clear from the foregoing testimony that Atty. Suarez is a competent and independent counsel and that he was in fact chosen by Berry himself during the custodial investigation; and that he was no stranger at all to the processes and methods of a custodial investigation. In default of proof that Atty. Suarez was remiss in his duties, as in this case, this Court must hold that the custodial investigation of Berry was regularly conducted. For this reason, Berry's extrajudicial confession is admissible in evidence against him. x x x [Also] Berry's [extra-judicial confession made to news reporter Amparo] is admissible in evidence because it

was voluntarily made to a news reporter and not to the police authority or to an investigating officer. Amparo testified that he requested Berry for an interview in connection with his confession, and that the latter freely acceded. Hence, Berry's confession to Amparo, a news reporter, was made freely and voluntarily and is admissible in evidence.

3. CRIMINAL LAW; CONSPIRACY; CO-CONSPIRATOR BY DIRECT PARTICIPATION; UNITED IN INTENT ESTABLISHED BY ACTING IN CONCERTED EFFORT, HELPING IN THE EXECUTION OF THE CRIME AND FAILING TO PREVENT THE SAME.— [I]t was x x x clear from Berry's conduct that he acted in concerted effort and was united in intent, aim and purpose in executing the group's criminal design. This was established by Adarna's testimony stating that he saw Berry throw the body of "AAA" over a bridge and that he was in "AAA's" car the night she was killed. By helping his cousin and co-accused Constancio dispose of the body of "AAA," Berry became a co-conspirator by direct participation. It is immaterial that Berry was merely present at the scene of the crime since it is settled that in conspiracy, the act of one is the act of all. If it is true that Berry was not privy to the plan of raping and killing "AAA," he should have prevented the same from happening or at the very least, left the group and reported the crime to the authorities. Berry did neither. x x x

4. REMEDIAL LAW; EVIDENCE; ADMISSION BY THIRD PARTY; EXTRA-JUDICIAL CONFESSION IS GENERALLY INADMISSIBLE AGAINST A CO-ACCUSED EXCEPT WHEN IT IS USED AS CIRCUMSTANTIAL EVIDENCE TO SHOW THE PROBABILITY OF PARTICIPATION OF SAID CO-ACCUSED IN THE CRIME.— x x x Constancio argues that Berry's confession is inadmissible in evidence against him under the principle of *res inter alios acta* found in Section 28, Rule 130 of the Rules of Court, which provides that the rights of a party cannot be prejudiced by an act, declaration, or omission of another. x x x The general rule is that an extra-judicial confession is binding only on the confessant and is inadmissible in evidence against his co-accused since it is considered hearsay against them. However, as an exception to this rule, the Court has held that an extra-judicial confession is admissible against a co-accused when it is used as circumstantial evidence to show the probability of participation

of said co-accused in the crime. In *People v. Aquino*, this Court held that in order that an extra-judicial confession may be used against a co-accused of the confessant, "there must be a finding of other circumstantial evidence which when taken together with the confession would establish the guilt of a co-accused beyond reasonable doubt."

5. CRIMINAL LAW; RAPE WITH HOMICIDE; DAMAGES; CIVIL INDEMNITY, MORAL DAMAGES AND EXEMPLARY DAMAGES OF ₱100,000.00 EACH WITH 6% INTEREST PER ANNUM.— In line with prevailing jurisprudence, this Court hereby modifies the awards of civil indemnity, moral damages, and exemplary damages to ₱100,000.00 each. In addition, interest is imposed on all damages awarded at the rate of 6% *per annum.*

APPEARANCES OF COUNSEL

Office of the Solicitor General for plaintiff-appellee.

Chavez Miranda Aseoche Law Offices for complainant.

Public Attorney's Office for appellant Ernesto Berry *y* Bacungay.

Ponce Enrile Reyes & Manalastas for appellant Nieves Constancio *y* Bacungay.

D E C I S I O N

DEL CASTILLO, *J.*:

This is an appeal from the February 24, 2012 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 02709 which affirmed the January 22, 2007 Decision[2] of the Regional Trial Court (RTC), Branch 258, Parañaque City, finding the appellants Nieves Constancio *y* Bacungay (Constancio) and Ernesto Berry *y* Bacungay (Berry) guilty of the crime of Rape

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[1] CA *rollo*, pp. 444-482; penned by Associate Justice Agnes Reyes-Carpio and concurred in by Associate Justices Jose C. Reyes, Jr. and Priscilla J. Baltazar-Padilla.

[2] Records, Vol. 4, pp. 1130-1162; penned by Judge Raul E. De Leon.

with Homicide and sentencing them to suffer the penalty of *reclusion perpetua*.

Factual Antecedents

Constancio and Berry, along with co-accused Donardo Pagkalinawan (Pagkalinawan), Danny Darden (Darden), and *alias* Burog, were charged with the crime of Rape with Homicide committed against "AAA"[3] on the night of March 11, 2001.

The Information states:

> That on or about the 11th day of March 2001, in the City of Parañaque, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating and all of them mutually helping and aiding one another, by means of force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge [of "AAA"] against her will and consent.
>
> That on said occasion, all the above-named accused, did then and there willfully, unlawfully and feloniously attack, assault and strangle and gang up on her thereby inflicting upon the latter traumatic injuries which caused her death.[4]

Constancio and Berry pleaded not guilty during their arraignment on May 3, 2001. Trial on the merits subsequently followed.

Version of the Prosecution

The prosecution presented the following witnesses:

1. "BBB," the mother of the victim "AAA," testified that on March 11, 2001, "AAA" was forcibly abducted, raped, brutally beaten, and strangled to death. Her body was later found at a

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[3] Pursuant to Republic Act No. 9262, otherwise known as the "Anti-Violence Against Women and Their Children Act of 2004" and its implementing rules, the real name of the victim, as well as that of her/his immediate family members, is withheld and fictitious initials instead are used to represent her/him, both to protect their privacy. (*People v. Cabalquinto*, 533 Phil. 703 [2006]).

[4] Records, Vol. 1, p. 81.

creek under a bridge in San Antonio Valley 3, Brgy. San Antonio, Parañaque City. "BBB" further testified on the amount they spent for the wake and funeral expenses of "AAA."

2. Myra Katrina Dacanay (Dacanay) testified that she was a high school classmate of "AAA." On the night before "AAA" was killed, she and "AAA" planned to watch a movie at the Alabang Town Center but since they were late for the last full show, they went to Cinnzeo instead where they were later joined by another friend, Tara Katrina Golez (Golez). After exchanging pleasantries, Golez left first. Thereafter, she (Dacanay) and "AAA" proceeded to the parking lot to get "AAA's" black Mazda 323 with plate number URN 855. "AAA" then brought her (Dacanay) home at Ayala Alabang. Dacanay testified that she tried to contact "AAA" to make sure that she arrived home safely but she could not be reached.

At around 5:30 in the morning, Dacanay received a call from "AAA's" father asking about "AAA's" whereabouts. She also received a call from Golez who told her that "AAA" was not yet home. Dacanay stated that she was shocked when she learned about "AAA's" death.

3. Golez testified that "AAA" was her classmate and that they had been friends for about 10 years; that on March 10, 2001 at around 10:00 o'clock in the evening, she met with "AAA" and Dacanay at the Cinnzeo, Alabang Town Center, and stayed with them for about 30 to 40 minutes.

Golez added that at around 6:00 o'clock on the morning of March 11, 2001, "AAA's" father went to her house to inquire about "AAA's" whereabouts. Golez told him that she was with "AAA" and with Dacanay the night before but that she left earlier than these two. Golez said that she learned about "AAA's" death at about 4:00 o'clock on the afternoon of the same day.

4. Janette Bales (Bales) testified that at around 3:00 o'clock in the early morning of March 12, 2001, she was at Unioil gas station in front of the Multinational Village, Ninoy Aquino Avenue, Brgy. Sto. Niño, Parañaque City waiting for a ride home when a black Mazda car suddenly stopped in front of her

and a male person then alighted from the back seat and immediately grabbed her arm; that she was able to recognize the face of the person as the appellant Berry whom she identified in open court. Bales further testified that Berry's face was not covered at the time he grabbed her arm and that Berry attempted to pull her inside the black Mazda car and abduct her; that she shouted for help and tried to free herself from Berry's hold on her arm; that she then saw another man who was about to alight from the same black Mazda car but fortunately, a *barangay tanod* from behind the car shouted, "*Hoy*!" and Berry was not able to abduct her (Bales); and that Berry was however able to forcibly take her shoulder bag which contained her wallet, cellphone, necklace, and other personal belongings. On the same date, she reported the incident to the Parañaque Police Station and executed a sworn statement. When Berry was arrested on March 30, 2001, Bales identified him as the person who grabbed her arm and took her shoulder bag.

5. Dr. Emmanuel Reyes (Dr. Reyes) is the Medico-Legal Officer at the Southern Police District Crime Laboratory at Fort Bonifacio. He testified that he conducted an autopsy examination on the cadaver of "AAA." According to his Medico-Legal Report No. M-072-2001, the cause of death is asphyxia by strangulation with traumatic head injuries, with signs of drowning and recent loss of virginity. There was a fresh deep laceration of the genitalia with hematoma. Dr. Reyes was able to recover samples of sperm cells collected from the victim.

6. Chito Adarna[5] (Adarna) testified that he is a tricycle driver plying the San Antonio Valley area in Parañaque City; that on March 11, 2001, he transported a male passenger from the tricycle terminal to the corner of Sta. Escolastica and Sta. Teresa streets in Parañaque City, where he saw a black Mazda car parked by the bridge of San Antonio Valley; that he (Adarna) then saw two men carrying something that they threw over the bridge where the body of "AAA" was eventually found; and that thereafter, both men entered the Mazda car with its windows

[5] Araña in some parts of the records.

rolled down on the right side. He identified these two men in open court as the appellants Constancio and Berry.

7. P/Sr. Insp. Edgardo C. Ariate (PSI Ariate) testified that he is the Chief Investigator of the Investigation Division of Precinct No. 2 of the Parañaque City Police Station; that on March 11, 2001, he received a telephone call informing him about a body of a female found hogtied and lifeless at the creek of San Antonio Valley; that he (PSI Ariate) then ordered SPO2 Odeo Cariño to conduct an investigation to verify the truth of the information; that initially, the police officers did not have any suspects to the crime; but a few weeks later, an informant surfaced and relayed to them the identities of "AAA's" assailants. The informant came out after then-Parañaque Mayor Joey Marquez (Mayor Marquez) offered a reward to anyone who could provide any lead on the identities of "AAA's" assailants. PSI Ariate added that the informant identified Berry and Constancio as the persons responsible for the crime. The informant also gave the whereabouts of the suspects which led to Berry's arrest in Muntinlupa and Constancio's arrest in Cagayan province.

The informant positively identified Berry during the course of the arrest. At the police station, Bales likewise positively identified Berry as the person who attempted to abduct her and who also took off with her bag. PSI Ariate testified that Berry confessed his participation in the crime and provided the names of his companions namely: Pagkalinawan, one alias *Burog*, and Darden.

8. "CCC" is the father of "AAA." He testified that during the preliminary investigation, he was able to ask Berry what he did to his daughter. Berry replied that it was better to not let him ("CCC") know what happened as the details of the killing would only hurt him. "CCC" added that the impression he got from speaking with Berry was that the latter admitted to him that he and his companions were the ones responsible for his daughter's death. He also asked Berry why they had to kill his daughter. To this Berry simply responded that he would help him ("CCC").

9. Fernando Sanga *y* Amparo a.k.a. Dindo Amparo (Amparo) testified that he is a reporter of the ABS-CBN Broadcasting

Corporation; that he covered the news on the murder case of "AAA," and that he personally interviewed Berry.

Amparo declared that during his interview, Berry revealed that his co-accused Constancio is his cousin, and his three companions were *alias* Burog, Pagkalinawan, and Darden, all three of whom he just met that very night; that he and his cousin Constancio, and their companions *alias* Burog, Pagkalinawan and Darden abducted "AAA" outside the Alabang Town Center after poking her with a knife; that he (Berry) at first thought that it would just be a hold-up; and that after threatening "AAA" with a knife, they placed "AAA" at the back seat of her black Mazda car and they all rode in her black car and drove to Constancio' vacant house.

During the same interview, Berry further revealed that while parked in Constancio' garage in Luxemburg Street at the Better Living Subdivision, Parañaque City, "AAA's" car was shaking with Constancio inside with "AAA;" that this led him to suspect that something was already happening inside the car. Berry also divulged that when the car door was opened, he saw "AAA" already apparently lifeless, her private parts exposed, and without her underwear. Then he (Berry) heard Constancio utter "*wala na*;" that when asked whether by that phrase "*wala na*" he meant that "AAA" was already dead, Berry replied, "yes."

In the same interview, Berry also disclosed that "AAA's" body was placed inside the trunk of her car and thrown over a bridge at San Antonio Valley III, Parañaque City; that he was prompted to reveal such information because he felt guilty about what happened. Berry claimed that he had nothing to do with "AAA's" killing and promised her family that he would help them obtain justice by becoming a witness in the case.

10. Atty. Rhonnel Suarez (Atty. Suarez) testified that he was the lawyer who assisted Berry during the custodial investigation at the Parañaque police station; that it was Berry himself who approached him at the police precinct and asked for his professional assistance during the custodial investigation; and that he fully explained to Berry and made the latter understand clearly his constitutional rights before the latter executed the

Sinumpaang Salaysay containing his extrajudicial confession. Berry freely and voluntarily affixed his signature to the *Sinumpaang Salaysay* in the presence of Atty. Suarez and two of Berry's relatives, Estrella Corate (Corate) and Florinda Buenafe (Buenafe).

Version of the Defense

1. Pagkalinawan testified that he was surprised that Berry implicated him in this case because he does not know him; that he only met Berry inside the police precinct 13 days after his arrest; and that Berry might have been subjected to torture to give the names of other persons involved in the case.

With regard to Constancio, Pagkalinawan testified that he has known him for less than a year as he was a neighbor in Bayanan, Muntinlupa; but that several months before the case, he (Pagkalinawan) and Constancio were no longer neighbors because he (Pagkalinawan) transferred to another place.

Pagkalinawan claimed that he went into hiding because he was afraid that police officers were searching for him after a reward for information concerning his whereabouts was offered.

2. Napoleon Pagkalinawan (Napoleon) is Pagkalinawan's father. He testified that on the night of March 10, 2001, at around 8:00 o'clock in the evening, he was watching television with his children, including Pagkalinawan; and that after watching television until 11:00 o'clock that evening, he (Napoleon) claimed that Pagkalinawan went to his room to sleep.

Napoleon also averred that Pagkalinawan had been living with him since birth and that Constancio was not their neighbor. He said that Pagkalinawan transferred to the house of his in-laws which was less than a kilometer away from his house.

3. Aida R. Viloria-Magsipoc (Magsipoc) testified that she is a Forensic Chemist of the National Bureau of Investigation (NBI); and that she took the buccal swabs from the inner lining of Pagkalinawan's mouth. Her final report concluded that the vomit and hair samples from "AAA's" car did not match the profile of the suspects. Magsipoc however could not say whether

Pagkalinawan and the other suspects were inside the car or not since their profile was not found in the car based on the submitted specimen.

4. Constancio testified that on February 24, 2001, his neighbor, the wife of his co-accused Pagkalinawan, informed him that NBI agents were looking for him regarding a kidnapping with murder case of a certain Calupig; that for fear of apprehension, he (Constancio) went to his cousin and co-accused Berry and stayed in the latter's house; that he then contacted his girlfriend Aiko Tiu (Aiko) and told her to stay in his house in Bayanan, Muntinlupa in the meantime; that Aiko later went to see him (Constancio) and informed him that his house had been ransacked; that his personal belongings had been taken including his wallet which contained his identification cards; that on February 27, 2001, he (Constancio) went to Baguio City to hide; that Aiko visited him there on March 14, 2001 as it was his birthday; that the next day, Aiko returned to Manila and they communicated only through text messages; that about a week later he (Constancio) was informed that his face was flashed on television with a reward offered to any person who could provide information regarding his whereabouts; that this prompted him (Constancio) to head further up north to Aparri, Cagayan on March 24, 2001; and that on March 29, 2001, he was arrested and brought to the office of Mayor Marquez where he saw his cousin Berry.

5. Aiko testified that Constancio is her live-in partner with whom she has two children; that from February 27, 2001 to March 14, 2001, while Constancio was in Baguio she called him everyday to make sure he was safe; that on March 14, 2001, she visited him in Baguio as this was his birthday; that upon her return to Manila, she learned that Constancio had been arrested; and that this surprised her since she believes that Constancio did not have anything to do with "AAA's" murder.

6. Berry testified that on March 10, 2001, he went home after work as a welder and did not go back to work the next day; that on March 29, 2001, two men in civilian clothing came to his house and informed him that they were police officers; that after opening the door, the police officers kicked him in

the chest and thereafter handcuffed him; that he asked them what crime he committed and if they were armed with a warrant of arrest but the alleged police officers failed to show him any document; that he was then brought to the Office of Mayor Marquez where he was asked about his cousin Constancio; that thereafter, he was brought to the Coastal Police Headquarters of Parañaque where he was threatened by PSI Ariate and forced to sign a *Sinumpaang Salaysay*; and that said *sinumpaang salaysay* is false.

Berry further testified that Atty. Suarez assisted him in the execution of his affidavit; that his relatives Corate and Buenafe also signed the affidavit; and that nonetheless he was not able to narrate the threats made by PSI Ariate on his life and the lives of his family. Berry stressed that he does not know who prepared the statements in his *Sinumpaang Salaysay*.

7. Corate testified that Berry is her son-in-law; that while she was at the police station, police officers asked her to sign a document without informing her of its contents.

Summary of Facts

It appears that on March 10, 2001, "AAA" went to Alabang Town Center with her friends Dacanay and Golez. After parting ways with them, "AAA" was about to board her car when she found herself confronted by Berry then armed with a knife, who was then in the company of Constancio, Pagkalinawan, Darden and *alias* "Burog." These five forcibly seized "AAA's" car and drove her to Constancio' house where she was raped and killed.

In the course of an interview with ABS-CBN Reporter Amparo, Berry revealed that while "AAA's" car was parked in Constancio' garage, the said car was moving and shaking with "AAA" inside.[6] This led him to suspect that something was already happening; that when the door of the car was opened, he (Berry) saw that "AAA" was without her underwear; and that Constancio then uttered the words, "*wala na*," indicating that "AAA" was already dead.[7]

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[6] Records, Vol. 5, TSN, July 17, 2003, p. 15.

[7] *Id.*

"AAA's" body was then placed inside the trunk of her car. Adarna, a tricycle driver, saw Berry, Constancio, and their other companions, throw something over a bridge which turned out to be "AAA's" body upon investigation by the authorities.

On the evening of March 12, 2001, Bales almost became the next victim when Berry and his companions who were still using "AAA's" car, attempted to abduct her. Fortunately for Bales, a *barangay tanod* was present at the scene and was able to foil the abduction when he shouted at the malefactors and startled them. Nonetheless, Bales' bag was taken during this incident.

Eventually, Berry and Constancio were arrested after an informant surfaced and identified them as "AAA's" assailants. The informant came out after Mayor Marquez offered a reward for information leading to the identity of persons responsible for "AAA's" rape-slay.

During the custodial investigation, where Atty. Suarez advised him of his constitutional rights and the consequences of his statements, Berry executed an extrajudicial confession which was embodied in a *Sinumpaang Salaysay*. Berry also confessed to Amparo during an interview that he did take part in the execution of the crime.

At the trial, however, Berry denounced the *Sinumpaang Salaysay* as false, and claimed that he was coerced into signing the same.

For his part, Constancio contended that he was in Baguio at the time of the commission of the crime. Both appellants denied the charges against them. These two also asserted that Berry's extrajudicial confession was inadmissible in evidence.

Ruling of the Regional Trial Court

On January 23, 2007 the RTC of Parañaque City, Branch 258 rendered its Decision finding Constancio and Berry guilty beyond reasonable doubt of the crime of Rape with Homicide and sentenced them to suffer the penalty of *reclusion perpetua*.

As for Pagkalinawan, the RTC acquitted him of the crime for failure of the prosecution to prove his guilt beyond reasonable

doubt. The RTC held that the prosecution witnesses were not at all able to positively identify Pagkalinawan as a participant in the crime, thus, he must be absolved of the crime charged.

The dispositive part of the Decision of the RTC reads:

> WHEREFORE, premises considered, considering that the prosecution was able to prove the guilt of accused NIEVES CONSTANCIO *y* BACUNGAY and ERNESTO BERRY *y* BACUNGAY beyond reasonable doubt, both accused are hereby sentenced to suffer the penalty of *RECLUSION PERPETUA* pursuant to Republic Act 9346 which repealed the death penalty law. However pursuant to Section 3 thereof, they are not eligible for parole.
>
> Accused, NIEVES CONSTANCIO *y* BACUNGAY and ERNESTO BERRY *y* BACUNGAY are also hereby ordered to jointly and severally pay the heirs of [AAA] the following amounts, to wit:
>
> 1. ₱92,290.00 as actual damages;
> 2. ₱50,000.00 as civil indemnity *ex-delicto*;
> 3. ₱50,000.00 as moral damages; and
> 4. ₱50,000.00 as exemplary damages;
>
> For failure of the prosecution to prove the guilt of accused DONARDO PAGKALINAWAN y VILLANUEVA, he is hereby ACQUITTED of the crime charged against him.
>
> Let alias warrant of arrest issue against Danny Darden and @ Burog, which need not be returned until after they have been arrested.
>
> The City Jail Warden, this jurisdiction is hereby ordered to immediately release accused, DONARDO PAGKALINAWAN from further detention unless he is being held for some other cause or causes.
>
> No pronouncement as to cost.
>
> SO ORDERED.[8]

Ruling of the Court of Appeals

In its Decision of February 24, 2012, the CA affirmed the RTC. The CA found that Constancio and Berry conspired to abduct, rape, and kill "AAA." The CA accorded credence to

[8] Records, Vol. 4, pp. 1161-1162.

the testimonies of prosecution witnesses Adarna and Bales, both of whom in the opinion of the CA positively established the identities of Constancio and Berry. The CA upheld the RTC's assessment of the credibility of these witnesses because of the trial court's unique opportunity to observe their deportment and demeanor while on the witness stand.

Also, the CA gave credence to Berry's extrajudicial confession as contained in the *Sinumpaang Salaysay* which he executed with the assistance of Atty. Suarez. Berry's extrajudicial confession was admitted as corroborative evidence of facts that likewise tend to establish the guilt of his co-accused and cousin, Constancio as shown by the circumstantial evidence extant in the records.

Invariably therefore, the CA rejected the defences of alibi and denial interposed by Constancio in light of the positive identification by the prosecution witnesses.

The CA disposed as follows:

> WHEREFORE, premises considered, the assailed Decision finding accused-appellants Nieves Constancio *y* Bacungay and Ernesto Berry *y* Bacungay guilty of the crime charged is hereby AFFIRMED.
>
> SO ORDERED.[9]

From the CA's Decision, Berry filed his notice of appeal[10] on March 8, 2012 while Constancio filed his own notice of appeal[11] on September 12, 2012.

Both appellants filed separate briefs. Berry opted not to file a Supplemental Brief and instead, adopted the arguments raised in the Appellant's Brief [12] that he filed before the CA. Constancio, on the other hand, filed a Supplemental Brief[13] raising substantially the same issues as those raised by Berry.

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[9] CA *rollo*, p. 481.

[10] *Id.* at 483-484.

[11] *Id.* at 523-524.

[12] *Id.* at 86-111.

[13] *Rollo*, pp. 84-101.

The issues raised by the appellants can be summarized as follows:

I. Whether the CA erred in lending credence to the testimonies of the prosecution witnesses.

II. Whether the CA erred in declaring Berry's extrajudicial confession admissible in evidence and in considering it against his co-accused Constancio.

III. Whether the CA erred in finding the appellants guilty beyond reasonable doubt of the crime charged.

Our Ruling

Credibility of the Prosecution's Witnesses

Appellants claim that the testimonies of the prosecution witnesses, specifically those of Bales and Adarna, were unreliable and should not have been given credit by the CA in affirming the RTC's Decision; and that the identification of the appellants made by these witnesses was not believable given the circumstances of the case.

Constancio, in particular, assails the testimony of Adarna. He argues that, "[t]he distance of several meters between [Adarna] and accused-appellant at the time he allegedly saw the latter riding in the victim's car, as well as the position of [Adarna's] tricycle relative to the vehicle wherein accused-appellant was riding in, the negligible lighting, time of day, and other circumstances make it impossible for [Adarna] to positively identify accused-appellant."[14]

Berry, on the other hand, flays Bales's testimony, calling it unreliable since her description of the suspect, "*i.e.*, 5'5" to 5'6" in height, with brush-up hair,"[15] allegedly failed to match his own features. Berry harps on the fact that Bales was unable to state in court what the suspect was wearing at the time. Likewise, Berry labels Adarna's testimony as "mere afterthoughts and of doubtful veracity."[16]

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[14] CA *rollo*, p. 169.

[15] *Id.* at 103.

[16] *Id.* at 105.

The appellants' assaults upon the credibility of the prosecution witnesses will not succeed. Firmly settled is the rule that when factual findings of the RTC are affirmed by the CA, such factual findings should not be disturbed on appeal, unless some material facts or circumstances had been overlooked or their significance misconstrued as to radically affect the outcome of the case. We find no cogent reason to set aside the factual findings of the RTC as affirmed by the CA because these factual findings are in accord with the evidence on record. What is more, the appellants have not shown that either or both the RTC and the CA had overlooked some material facts or circumstances or had misappreciated their import or significance as to radically affect the outcome of the case.

Admissibility of Berry's Extrajudicial Confession

Both appellants also argue that Berry's extrajudicial confession is inadmissible in evidence against them.

Berry insists that when he executed his extrajudicial confession, he was not provided with a competent and independent counsel of his own choice in violation of Section 12, Article III of the Constitution which provides:

> (1) Any person under investigation for the commission of an offense shall have the right to be informed of his right to remain silent and to have competent and independent counsel preferably of his own choice. If the person cannot afford the services of counsel, he must be provided with one. These rights cannot be waived except in writing and in the presence of counsel.
>
> (2) No torture, force, violence, threat, intimidation, or any other means which vitiate the free will shall be used against him. Secret detention places, solitary, *incommunicado*, or other similar forms of detention are prohibited.
>
> (3) Any confession or admission obtained in violation of this or the preceding section shall be inadmissible in evidence against him.
>
> x x x x x x x x x

Berry contends that Atty. Suarez does not qualify as a competent and independent counsel since the circumstances surrounding this lawyer's presence at the precinct during the custodial investigation was suspect. Berry specifically challenges the competence and independence of Atty. Suarez and questions his presence at the police precinct at the very moment he underwent custodial investigation.

After a close reading of the records, this Court believes that Berry's confession is admissible because it was voluntarily executed with the assistance of a competent and independent counsel in the person of Atty. Suarez. In point of fact Atty. Suarez testified that he thoroughly explained to Berry his constitutional rights and the consequences of any statements he would give. Atty. Suarez testified as follows:

ATTY. ANTONIO:

Q: So, what did you do upon your arrival at the police station?
A: Upon my arrival there, I went to the desk and it so happened that there was another case, I identified myself to the police officer who was manning the desk. And there was another case, a small case between two (2) parties who also requested my assistance so, I assisted them. And then, I told the police that I was actually looking for an accused of a rape incident, and it was at that time that someone approached me and requested my assistance.

Q: And who is this person that approached you, Mr. witness?
A: It was the accused, Berry.

Q: When he approached you what did he tell you, if any?
A: He told me, "Sir, *pwede ho bang tulungan ninyo ako*?" That's what I recalled him saying.

x x x x x x x x x

Q: So, in short, Mr. witness, it was Ernesto Berry who initially approached you and asked you to represent him?
A: That is correct because I was there in the precinct, I was infront. . . . I was there in the front desk of the police precinct and when I arrived, he was not there in the general holding area or lobby. I don't know where he came from but he was the one who approached me.

Q: Did you, in fact, represent this Ernesto Berry during his custodial investigation?
A: Yes

Q: There, is testimony of Ernesto Berry during the time that he took the witness stand, Mr. witness, that he was tortured, coerced and/or forced to sign this extra-judicial confession. What can you say about that?
A: What I can say is during the entire time that I was there, I made sure that we were alone first and foremost, and I explained to him his rights under our laws. I also remember that his relatives were present. Before I allowed the police to go inside the room, I asked that I be left alone with the accused together with his relatives, and I talked to him for a few minutes before anything happen.

x x x x x x x x x

Q: How was the extra-judicial confession taken, Mr. witness? In your presence or without your presence?
A: I recall that I was there present from the start up to the end, and never left him precisely to protect his interest.[17]

It is clear from the foregoing testimony that Atty. Suarez is a competent and independent counsel and that he was in fact chosen by Berry himself during the custodial investigation; and that he was no stranger at all to the processes and methods of a custodial investigation. In default of proof that Atty. Suarez was remiss in his duties, as in this case, this Court must hold that the custodial investigation of Berry was regularly conducted. For this reason, Berry's extrajudicial confession is admissible in evidence against him.

As expected, Berry now assails the extrajudicial confession he made to Amparo. Berry claims "he was under a very intimidating atmosphere" where "he was coerced by the police to confess and to even name 'names'."[18] Berry insists that the only incriminating part of his confession was his admission that he was present at the scene of the crime. Nonetheless, he

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[17] TSN, August 22, 2006, pp. 10-14.

[18] CA *rollo*, p. 109.

claims that he was never privy to any of the plans involving the raping or killing of "AAA."

Berry's argument does not persuade. The CA correctly held:

> It is already settled that statements spontaneously made by a suspect to news reporters on a televised interview are deemed voluntary and are admissible in evidence. In this case, there was no ample proof to show that appellant Berry's narration of events to ABS-CBN reporter Dindo Amparo was the product of intimidation or coercion, thus making the same admissible in evidence.[19]

Berry's confession is admissible in evidence because it was voluntarily made to a news reporter and not to the police authority or to an investigating officer. Amparo testified that he requested Berry for an interview in connection with his confession, and that the latter freely acceded. Hence, Berry's confession to Amparo, a news reporter, was made freely and voluntarily and is admissible in evidence.

In an attempt to escape liability as a co-conspirator, Berry argues that although he was present at the scene of the crime, he was not at all privy to any plans to rape and kill "AAA."

This argument will not hold.

A closer examination of the prosecution's evidence compels the conclusion that Berry was a co-conspirator in the rape and killing "AAA." In *People v. Foncardas*,[20] the Court held that:

> Conspiracy exists when two or more persons come to an agreement to commit an unlawful act. There is, however, no need to prove a previous agreement to commit the crime if by their overt acts, it is clear that all the accused acted in concert in the pursuit of their unlawful design. It may even be inferred from the conduct of the accused before, during and after the commission of the crime.

In this case, while there was no direct proof of a previous agreement to rape and kill "AAA," it was nonetheless clear from

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[19] *Id.* at 475, citing *People v. Andan*, 336 Phil. 91, 106 (1997).

[20] 466 Phil. 992, 1009 (2004), citing *People v. Llanes*, 394 Phil. 911, 933 (2000).

Berry's conduct that he acted in concerted effort and was united in intent, aim and purpose in executing the group's criminal design. This was established by Adarna's testimony stating that he saw Berry throw the body of "AAA" over a bridge and that he was in "AAA's" car the night she was killed. By helping his cousin and co-accused Constancio dispose of the body of "AAA," Berry became a co-conspirator by direct participation. It is immaterial that Berry was merely present at the scene of the crime since it is settled that in conspiracy, the act of one is the act of all. If it is true that Berry was not privy to the plan of raping and killing "AAA," he should have prevented the same from happening or at the very least, left the group and reported the crime to the authorities. Berry did neither and he even helped Constancio dispose of "AAA's" body. Clearly, Berry, by his overt acts, became a co-conspirator by directly participating in the execution of the criminal design.

On the other hand, Constancio argues that Berry's confession is inadmissible in evidence against him under the principle of *res inter alios acta* found in Section 28, Rule 130 of the Rules of Court, which provides that the rights of a party cannot be prejudiced by an act, declaration, or omission of another. Our ruling in *Tamargo v. Awingan*[21] pertinently explains the reason for this rule:

> [O]n a principle of good faith and mutual convenience, a man's own acts are binding upon himself, and are evidence against him. So are his conduct and declarations. Yet it would not only be rightly inconvenient, but also manifestly unjust, that a man should be bound by the acts of mere unauthorized strangers; and if a party ought not to be bound by the acts of strangers, neither ought their acts or conduct be used as evidence against him.

The general rule is that an extra-judicial confession is binding only on the confessant and is inadmissible in evidence against his co-accused since it is considered hearsay against them.[22] However, as an exception to this rule, the Court has held that

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[21] 624 Phil. 312, 327 (2010), citing *People v. Vda. De Ramos*, 451 Phil. 214, 224 (2003).

[22] *People v. Tizon, Jr.*, 434 Phil. 588, 614 (2002).

an extra-judicial confession is admissible against a co-accused when it is used as circumstantial evidence to show the probability of participation of said co-accused in the crime.[23]

In *People v. Aquino*,[24] this Court held that in order that an extra-judicial confession may be used against a co-accused of the confessant, "there must be a finding of other circumstantial evidence which when taken together with the confession would establish the guilt of a co-accused beyond reasonable doubt." Applying the rule to Constancio's case, the Court finds that the prosecution was able to show circumstantial evidence to implicate him in the crime.

Significantly, Constancio was positively identified as among those who threw the body of "AAA" over a bridge. It is significant to note that eyewitness Adarna also attests that Constancio was riding in the very same car where "AAA" was raped and killed. This fact leaves this Court without a doubt that Constancio is guilty of the crime charged as the same qualifies as circumstantial evidence showing his participation in the execution of the crime.

Short shrift must be given to Constancio's alibi because he was not able to establish that it was physically impossible for him to be at the scene of the crime the night "AAA" was abducted, raped, and killed. As correctly held by the trial court:

> x x x However, assuming *arguendo* that he went up to Baguio City on February 27, 2001, there is no physical impossibility for the said accused to go down from Baguio City and proceed to Manila which will only take him at least [sic] six (6) hours to reach and then go up again after committing the crime. x x x[25]

In line with prevailing jurisprudence, this Court hereby modifies the awards of civil indemnity, moral damages, and exemplary damages to ₱100,000.00 each.[26] In addition, interest is imposed on all damages awarded at the rate of 6% *per annum*.

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[23] *Id.*

[24] 369 Phil. 701, 725 (1999).

[25] Records, Vol. IV, p. 1156.

[26] *People v. Gambao*, G.R. No. 172707, October 1, 2013, 706 SCRA 508, 533.

WHEREFORE, the appeal is **DENIED**. The Decision of the Court of Appeals dated February 24, 2012 in CA-G.R. CR-H.C. No. 02709 is **AFFIRMED subject to the MODIFICATIONS** that appellants are ordered to solidarily pay the heirs of "AAA" civil indemnity, moral damages, and exemplary damages in the increased amounts of ₱100,000.00 each. All damages awarded shall earn interest at the rate of 6% *per annum* from finality of this Decision until fully paid.

SO ORDERED.

Carpio (Chairperson), Brion, Reyes,[*] and *Leonen, JJ*., concur.

SECOND DIVISION

[G.R. No. 210621. April 4, 2016]

ALFREDO MANAY, JR., FIDELINO SAN LUIS, ADRIAN SAN LUIS, ANNALEE SAN LUIS, MARK ANDREW JOSE, MELISSA JOSE, CHARLOTTE JOSE, DAN JOHN DE GUZMAN, PAUL MARK BALUYOT, and CARLOS S. JOSE, *petitioners, vs.* **CEBU AIR, INC.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; MOTION FOR EXTENSION OF TIME; REQUEST SHOULD BE RECKONED FROM THE ORIGINAL DUE DATE EVEN IF THIS FELL ON A SATURDAY.— Petitioners received the assailed Court of Appeals Decision on December 27, 2013. They chose to forego the filing of a motion for reconsideration. Instead, petitioners filed before this Court a Motion for Extension of Time on January 13, 2014. Under Rule 45, Section 2 of the

[*] Per Raffle dated March 28, 2016.

Rules of Court, petitioners only had 15 days or until January 11, 2014 to file their petition. Since January 11, 2014 fell on a Saturday, petitioners could have filed their pleading on the following Monday, or on January 13, 2014. In their Motion for Extension of Time, however, petitioners requested an additional 30 days *from January 13, 2014* within which to file their petition for review on certiorari. This Court already clarified the periods of extension in A.M. No. 00-2-14-SC: x x x. Thus, petitioner's request for extension of time should have been reckoned from the original due date on January 11, 2014, even if this day fell on a Saturday. A request for extension of 30 days would have ended on February 10, 2014.

2. CIVIL LAW; COMMON CARRIERS; EXTRAORDINARY DILIGENCE; INCLUDES THE ACT OF ISSUING THE CONTRACT OF CARRIAGE; THE CONTRACTUAL OBLIGATION OF THE COMMON CARRIER TO THE PASSENGER IS GOVERNED PRINCIPALLY BY WHAT IS WRITTEN THEREIN.— Article 1732 of the Civil Code defines a common carrier as "persons, corporations or firms, or associations engaged in the business of carrying or transporting passengers or goods or both, by land, water or air, for compensation, offering their services to the public." Articles 1733, 1755, and 1756 of the Civil Code outline the degree of diligence required of common carriers. x x x Respondent, as one of the four domestic airlines in the country, is a common carrier required by law to exercise extraordinary diligence. Extraordinary diligence requires that the common carrier must transport goods and passengers "safely as far as human care and foresight can provide," and it must exercise the "utmost diligence of very cautious persons . . . with due regard for all the circumstances." When a common carrier, through its ticketing agent, has not yet issued a ticket to the prospective passenger the transaction between them is still that of a seller and a buyer. The obligation of the airline to exercise extraordinary diligence commences upon the issuance of the contract of carriage. Ticketing, as the act of issuing the contract of carriage, is necessarily included in the exercise of extraordinary diligence. A contract of carriage is defined as "one whereby a certain person or association of persons obligate themselves to transport persons, things, or news from one place to another for a fixed price." x x x Once a plane ticket is issued, the common carrier binds itself to deliver the passenger safely on the date and time

stated in the ticket. The contractual obligation of the common carrier to the passenger is governed principally by what is written on the contract of carriage.

3. ID.; ID.; ID.; ID.; FULFILLED BY REQUIRING FULL REVIEW OF THE FLIGHT SCHEDULES TO BE GIVEN TO A PROSPECTIVE PASSENGER BEFORE PAYMENT; ONCE THE TICKET IS PAID FOR AND PRINTED, THE PURCHASER IS PRESUMED TO HAVE READ AND AGREED TO ALL ITS TERMS AND CONDITIONS.— The common carrier's obligation to exercise extraordinary diligence in the issuance of the contract of carriage is fulfilled by requiring a full review of the flight schedules to be given to a prospective passenger before payment. x x x Once the ticket is paid for and printed, the purchaser is presumed to have agreed to all its terms and conditions. x x x The Air Passenger Bill of Rights acknowledges that "while a passenger has the option to buy or not to buy the service, *the decision of the passenger to buy the ticket binds such passenger[.]*" Thus, the airline is mandated to place in writing all the conditions it will impose on the passenger. However, the duty of an airline to disclose all the necessary information in the contract of carriage does not remove the correlative obligation of the passenger to exercise ordinary diligence in the conduct of his or her affairs. The passenger is still expected to read through the flight information in the contract of carriage before making his or her purchase. If he or she fails to exercise the ordinary diligence expected of passengers, any resulting damage should be borne by the passenger.

APPEARANCES OF COUNSEL

Alarilla and Partners Attorneys-at-Law for petitioners.
Mantaring Alavaera Nepomuceno and Agcaoili for respondent.

D E C I S I O N

LEONEN, *J.*:

The Air Passenger Bill of Rights[1] mandates that the airline must inform the passenger *in writing* of all the conditions and

[1] DOTC-DTI Joint Adm. O. No. 1 (2012).

restrictions in the contract of carriage.[2] Purchase of the contract of carriage binds the passenger and imposes reciprocal obligations on both the airline and the passenger. The airline must exercise extraordinary diligence in the fulfillment of the terms and conditions of the contract of carriage. The passenger, however, has the correlative obligation to exercise ordinary diligence in the conduct of his or her affairs.

This resolves a Petition for Review on Certiorari[3] assailing the Court of Appeals Decision[4] dated December 13, 2013 in CA-G.R. SP. No. 129817. In the assailed Decision, the Court of Appeals reversed the Metropolitan Trial Court Decision[5] dated December 15, 2011 and the Regional Trial Court Decision[6] dated November 6, 2012 and dismissed the Complaint for Damages filed by petitioners Alfredo Manay, Jr., Fidelino San Luis, Adrian San Luis, Annalee San Luis, Mark Andrew Jose, Melissa Jose, Charlotte Jose, Dan John De Guzman, Paul Mark Baluyot, and Carlos S. Jose against respondent Cebu Air, Incorporated (Cebu Pacific).[7]

On June 13, 2008, Carlos S. Jose (Jose) purchased 20 Cebu Pacific round-trip tickets from Manila to Palawan for himself and on behalf of his relatives and friends.[8] He made the purchase at Cebu Pacific's branch office in Robinsons Galleria.[9]

Jose alleged that he specified to "Alou," the Cebu Pacific ticketing agent, that his preferred date and time of departure

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[2] DOTC-DTI Joint Adm. O. No. 1 (2012), Sec. 4.

[3] *Rollo*, pp. 15-27.

[4] *Id.* at 33-48. The Decision was penned by Associate Justice Marlene Gonzales-Sison and concurred in by Associate Justices Rosmari D. Carandang (Chair) and Edwin D. Sorongon of the Fifth Division.

[5] *Id.* at 55-63. The Decision was penned by Presiding Judge Flordeliza M. Silao of Branch 59 of the Metropolitan Trial Court, City of Mandaluyong.

[6] *Id.* at 49-54. The Decision was penned by Judge Rizalina T. Capco-Umali of Branch 212 of the Regional Trial Court, City of Mandaluyong.

[7] *Id.* at 47, Court of Appeals Decision.

[8] *Id.* at 49-50, Regional Trial Court Decision.

[9] *Id.* at 49.

from Manila to Palawan should be on July 20, 2008 at 0820 (or 8:20 a.m.) and that his preferred date and time for their flight back to Manila should be on July 22, 2008 at 1615 (or 4:15 p.m.).[10] He paid a total amount of ₱42,957.00 using his credit card.[11] He alleged that after paying for the tickets, Alou printed the tickets,[12] which consisted of three (3) pages, and recapped only the first page to him.[13] Since the first page contained the details he specified to Alou, he no longer read the other pages of the flight information.[14]

On July 20, 2008, Jose and his 19 companions boarded the 0820 Cebu Pacific flight to Palawan and had an enjoyable stay.[15]

On the afternoon of July 22, 2008, the group proceeded to the airport for their flight back to Manila.[16] During the processing of their boarding passes, they were informed by Cebu Pacific personnel that nine (9)[17] of them could not be admitted because their tickets were for the 1005 (or 10:05 a.m.)[18] flight earlier that day.[19] Jose informed the ground personnel that he personally purchased the tickets and specifically instructed the ticketing agent that all 20 of them should be on the 4:15 p.m. flight to Manila.[20]

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[10] *Id.*

[11] *Id.*

[12] *Id.* at 380-382.

[13] *Id.* at 49, Regional Trial Court Decision.

[14] *Id.*

[15] *Id.* at 50.

[16] *Id.*

[17] *Id.* at 382, plane ticket. The nine (9) passengers were Alfredo Manay, Jr., Fidelino San Luis, Adrian San Luis, Annalee San Luis, Mark Andrew Jose, Melissa Jose, Charlotte Jose, Dan John De Guzman, and Paul Mark Baluyot.

[18] *Id.*

[19] *Id.* at 50, Regional Trial Court Decision.

[20] *Id.*

Upon checking the tickets, they learned that only the first two (2) pages had the schedule Jose specified.[21] They were left with no other option but to rebook their tickets.[22] They then learned that their return tickets had been purchased as part of the promo sales of the airline, and the cost to rebook the flight would be ₱7,000.00 more expensive than the promo tickets.[23] The sum of the new tickets amounted to ₱65,000.00.[24]

They offered to pay the amount by credit card but were informed by the ground personnel that they only accepted cash.[25] They then offered to pay in dollars, since most of them were balikbayans and had the amount on hand, but the airline personnel still refused.[26]

Eventually, they pooled enough cash to be able to buy tickets for five (5) of their companions.[27] The other four (4) were left behind in Palawan and had to spend the night at an inn, incurring additional expenses.[28] Upon his arrival in Manila, Jose immediately purchased four (4) tickets for the companions they left behind, which amounted to ₱5,205.[29]

Later in July 2008, Jose went to Cebu Pacific's ticketing office in Robinsons Galleria to complain about the allegedly erroneous booking and the rude treatment that his group encountered from the ground personnel in Palawan.[30] He alleged that instead of being assured by the airline that someone would address the issues he raised, he was merely "given a run around."[31]

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[21] *Id.*

[22] *Id.*

[23] *Id.* at 35, Court of Appeals Decision.

[24] *Id.*

[25] *Id.*

[26] *Id.*

[27] *Id.*

[28] *Id.* at 36.

[29] *Id.* at 35.

[30] *Id.* at 36.

[31] *Id.*

Jose and his companions were frustrated and annoyed by Cebu Pacific's handling of the incident so they sent the airline demand letters dated September 3, 2008[32] and January 20, 2009[33] asking for a reimbursement of ₱42,955.00, representing the additional amounts spent to purchase the nine (9) tickets, the accommodation, and meals of the four (4) that were left behind.[34] They also filed a complaint[35] before the Department of Trade and Industry.[36]

On February 24, 2009, Cebu Pacific, through its Guest Services Department, sent petitioners' counsel an email[37] explaining that "ticketing agents, like Alou, recap [the] flight details to the purchaser to avoid erroneous booking[s]."[38] The recap is given one other time by the cashier.[39] Cebu Pacific stated that according to its records, Jose was given a full recap and was made aware of the flight restriction of promo tickets,[40] "which included [the] promo fare being non-refundable."[41]

Jose and his companions were unsatisfied with Cebu Pacific's response so they filed a Complaint[42] for Damages against Cebu Pacific before Branch 59 of the Metropolitan Trial Court of Mandaluyong.[43] The Complaint prayed for actual damages in the amount of ₱42,955.00, moral damages in the amount of

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[32] *Id.* at 266-268.

[33] *Id.* at 270-271.

[34] *Id.* at 36, Court of Appeals Decision.

[35] *Id.* at 272-273.

[36] *Id.* at 36, Court of Appeals Decision.

[37] *Id.* at 344.

[38] *Id.* at 36, Court of Appeals Decision.

[39] *Id.*

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

[41] *Id.* at 37, Court of Appeals Decision.

[42] *Id.* at 232-247.

[43] Cebu Pacific was referred to as "Cebu Pacific, Incorporated" in the Metropolitan Trial Court and Regional Trial Court and as "Cebu Air, Incorporated (doing business as Cebu Pacific)" before the Court of Appeals.

₱45,000.00, exemplary damages in the amount of ₱50,000.00, and attorney's fees.[44]

In its Answer,[45] Cebu Pacific essentially denied all the allegations in the Complaint and insisted that Jose was given a full recap of the tickets.[46] It also argued that Jose had possession of the tickets 37 days before the scheduled flight; hence, he had sufficient time and opportunity to check the flight information and itinerary.[47] It also placed a counterclaim of ₱100,000.00 by reason that it was constrained to litigate and it incurred expenses for litigation.[48]

On December 15, 2011, the Metropolitan Trial Court rendered its Decision ordering Cebu Pacific to pay Jose and his companions ₱41,044.50 in actual damages and ₱20,000.00 in attorney's fees with costs of suit.[49] The Metropolitan Trial Court found that as a common carrier, Cebu Pacific should have exercised extraordinary diligence in performing its contractual obligations.[50] According to the Metropolitan Trial Court, Cebu Pacific's ticketing agent "should have placed markings or underlined the time of the departure of the nine passengers"[51] who were not in the afternoon flight since it was only logical for Jose to expect that all of them would be on the same flight.[52] It did not find merit, however, in the allegation that the airline's ground personnel treated Jose and his companions rudely since this allegation was unsubstantiated by evidence.[53]

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[44] *Rollo*, p. 245, Complaint.

[45] *Id.* at 134-140.

[46] *Id.* at 137.

[47] *Id.*

[48] *Id.*

[49] *Id.* at 62, Metropolitan Trial Court Decision.

[50] *Id.* at 60.

[51] *Id.*

[52] *Id.*

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

Cebu Pacific appealed to the Regional Trial Court, reiterating that its ticketing agent gave Jose a full recap of the tickets he purchased.[54]

On November 6, 2012, Branch 212 of the Regional Trial Court of Mandaluyong rendered the Decision dismissing the appeal.[55] The Regional Trial Court affirmed the findings of the Metropolitan Trial Court but deleted the award of attorney's fees on the ground that this was granted without stating any ground under Article 2208 of the Civil Code to justify its grant.[56]

Cebu Pacific appealed to the Court of Appeals, arguing that it was not at fault for the damages caused to the passengers.[57]

On December 13, 2013, the Court of Appeals rendered the Decision granting the appeal and reversing the Decisions of the Metropolitan Trial Court and the Regional Trial Court.[58] According to the Court of Appeals, the extraordinary diligence expected of common carriers only applies to the carriage of passengers and not to the act of encoding the requested flight schedule.[59] It was incumbent upon the passenger to exercise ordinary care in reviewing flight details and checking schedules.[60] Cebu Pacific's counterclaim, however, was denied since there was no evidence that Jose and his companions filed their Complaint in bad faith and with malice.[61]

Aggrieved, Alfredo Manay, Jr., Fidelino San Luis, Adrian San Luis, Annalee San Luis, Mark Andrew Jose, Melissa Jose,

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[54] *Id.* at 52, Regional Trial Court Decision.

[55] *Id.* at 54.

[56] *Id.*

[57] *Id.* at 39-40, Court of Appeals Decision.

[58] *Id.* at 47.

[59] *Id.* at 43.

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

[61] *Id.* at 47.

Charlotte Jose, Dan John De Guzman, Paul Mark Baluyot, and Carlos S. Jose (Jose, et al.) filed before this Court a Petition for Review on *Certiorari*[62] assailing the Court of Appeals' December 13, 2013 Decision.[63]

Cebu Pacific was ordered to comment on the Petition.[64] Upon compliance,[65] Jose, et al. submitted their Reply.[66] The parties were then directed[67] to submit their respective memoranda.[68]

Jose, et al. argue that Cebu Pacific is a common carrier obligated to exercise extraordinary diligence to carry Jose, et al. to their destination at the time clearly instructed to its ticketing agent.[69] They argue that they have the decision to choose flight schedules and that Cebu Pacific should not choose it for them.[70] They insist that they have made their intended flight schedule clear to the ticketing agent and it would have been within normal human behavior for them to expect that their entire group would all be on the same flight.[71] They argue that they should not have to ask for a full recap of the tickets since they are under no obligation, as passengers, to remind Cebu Pacific's ticketing agent of her duties.[72]

Jose, et al. further pray that they be awarded actual damages in the amount of ₱43,136.52 since the Metropolitan Trial Court

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[62] *Id.* at 15, Petition for Review on *Certiorari*.

[63] *Id.* at 24.

[64] *Id.* at 75, Supreme Court Resolution dated March 10, 2014.

[65] *Id.* at 76-88, Comment.

[66] *Id.* at 461-466.

[67] *Id.* at 470-471, Supreme Court Resolution dated October 20, 2014.

[68] *Id.* at 472-488, Cebu Pacific's Memorandum, and 831-847, Alfredo Manay, Jr., *et al.*'s Memorandum.

[69] *Id.* at 837, Alfredo Manay, Jr., *et al.*'s Memorandum.

[70] *Id.*

[71] *Id.* at 838.

[72] *Id.*

erroneously failed to add the costs of accommodations and dinner spent on by four (4) of the petitioners who were left behind in Palawan.[73] They also pray for ₱100,000.00 in moral damages and ₱100,000.00 in exemplary damages for the "profound distress and anxiety"[74] they have undergone from the experience, with ₱100,000.00 in attorney's fees to represent the reasonable expenses incurred from "engaging the services of their counsel."[75]

Cebu Pacific, on the other hand, argues that the damage in this case was caused by Jose, et al.'s "gross and inexplicable [negligence.]"[76] It maintains that Jose, et al. should have read the details of their flight, and if there were errors in the encoded flight details, Jose, et al. would still have ample time to have the error corrected.[77] It argues further that its ticketing agent did not neglect giving Jose a full recap of his purchase since the tickets clearly indicated in the "Comments" section: "FULL RECAP GVN TO CARLOS JOSE."[78]

Cebu Pacific further posits that according to the Parol Evidence Rule, the plane tickets issued to Jose, et al. contain all the terms the parties agreed on, and it was agreed that nine (9) of the passengers would be on the July 22, 2008, 1005 flight to Manila.[79] It argues that Jose, et al. have not been able to present any evidence to substantiate their allegation that their intent was to be on the July 22, 2008 1615 flight to Manila.[80]

From the arguments in the parties' pleadings, the sole issue before this Court is whether respondent Cebu Air, Inc. is liable

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[73] *Id.* at 842-843.

[74] *Id.* at 843.

[75] *Id.* at 842.

[76] *Id.* at 481, Cebu Pacific's Memorandum.

[77] *Id.*

[78] *Id.* at 482.

[79] *Id.* at 483-484.

[80] *Id.* at 484.

to petitioners Alfredo Manay, Jr., Fidelino San Luis, Adrian San Luis, Annalee San Luis, Mark Andrew Jose, Melissa Jose, Charlotte Jose, Dan John De Guzman, Paul Mark Baluyot, and Carlos S. Jose for damages for the issuance of a plane ticket with an allegedly erroneous flight schedule.

I

Although it was not mentioned by the parties, a procedural issue must first be addressed before delving into the merits of the case.

Petitioners received the assailed Court of Appeals Decision on December 27, 2013.[81] They chose to forego the filing of a motion for reconsideration. Instead, petitioners filed before this Court a Motion for Extension of Time[82] on January 13, 2014.

Under Rule 45, Section 2 of the Rules of Court,[83] petitioners only had 15 days or until January 11, 2014 to file their petition. Since January 11, 2014 fell on a Saturday, petitioners could have filed their pleading on the following Monday, or on January 13, 2014.

In their Motion for Extension of Time, however, petitioners requested an additional 30 days *from January 13, 2014* within which to file their petition for review on *certiorari*.[84]

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[81] *Id.* at 3, Motion for Extension of Time (to File Petition for Review on *Certiorari*).

[82] *Id.* at 3-6.

[83] RULES OF COURT, Rule 45, Sec. 2 provides:

> Section 2. *Time for filing; extension*. — The petition shall be filed within fifteen (15) days from notice of the judgment or final order or resolution appealed from, or of the denial of the petitioner's motion for new trial or reconsideration filed in due time after notice of the judgment. On motion duly filed and served, with full payment of the docket and other lawful fees and the deposit for costs before the expiration of the reglementary period, the Supreme Court may for justifiable reasons grant an extension of thirty (30) days only within which to file the petition.

[84] *Rollo*, p. 4, Motion for Extension of Time (to File Petition for Review on *Certiorari*).

This Court already clarified the periods of extension in A.M. No. 00-2-14-SC:[85]

> Whereas, Section 1, Rule 22 of the 1997 Rules of Civil Procedure provides:
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> > Section 1. *How to compute time*. — In computing any period of time prescribed or allowed by these Rules, or by order of the court, or by any applicable statute, the day of the act or event from which the designated period of time begins to run is to be excluded and the date of performance included. If the last day of the period, as thus computed, falls on a Saturday, a Sunday, or a legal holiday in the place where the court sits, the time shall not run until the next working day.
>
> Whereas, the aforecited provision applies in the matter of filing of pleadings in courts when the due date falls on a Saturday, Sunday or legal holiday, in which case, the filing of the said pleading on the next working day is deemed on time;
>
> Whereas, the question has been raised if the period is extended *ipso jure* to the next working day immediately following where the last day of the period is a Saturday, Sunday or a legal holiday, so that when a motion for extension of time is filed, the period of extension is to be reckoned from the next working day and not from the original expiration of the period.
>
> NOW THEREFORE, the Court Resolves, for the guidance of the Bench and the Bar, to declare that *Section 1, Rule 22 speaks only of "the last day of the period" so that when a party seeks an extension and the same is granted, the due date ceases to be the last day and hence, the provision no longer applies. Any extension of time to file the required pleading should therefore be counted from the expiration of the period regardless of the fact that said due date is a Saturday, Sunday or legal holiday.* (Emphasis supplied)

Thus, petitioners' request for extension of time should have been reckoned from the original due date on January 11, 2014,

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[85] Entitled *Re: Computation of Time When the Last Day Falls on a Saturday, Sunday or a Legal Holiday and a Motion for Extension on Next Working Day is Granted* (2000).

even if this day fell on a Saturday. A request for extension of 30 days would have ended on February 10, 2014.[86]

Petitioners subsequently filed their Petition for Review on Certiorari on February 12, 2014.[87] Pursuant to A.M. No. 00-2-14-SC,[88] this Petition would have been filed out of time.

We are not, however, precluded from granting the period of extension requested and addressing the Petition filed on its merits, instead of outright dismissing it. After all, "[l]itigations should, as much as possible, be decided on the merits and not on technicalities."[89]

However, it does not follow that in the relaxation of the procedural rules, this Court automatically rules in favor of petitioners. Their case must still stand on its own merits for this Court to grant the relief petitioners pray for.

II

Common carriers are required to exercise extraordinary diligence in the performance of its obligations under the contract of carriage. This extraordinary diligence must be observed not only in the *transportation* of goods and services but also in the issuance of the contract of carriage, including its ticketing operations.

Article 1732 of the Civil Code defines a common carrier as "persons, corporations or firms, or associations engaged in the business of carrying or transporting passengers or goods or both, by land, water or air, for compensation, offering their

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[86] *Rollo*, p. 4, Motion for Extension of Time (to File Petition for Review on *Certiorari*).

[87] *Id.* at 15, Petition for Review on *Certiorari*.

[88] Entitled *Re: Computation of Time When the Last Day Falls on a Saturday, Sunday or a Legal Holiday and a Motion for Extension on Next Working Day is Granted* (2000).

[89] *Montajes v. People*, 684 Phil. 1, 11 (2012) [Per *J.* Peralta, Third Division] citing *Fabrigar v. People*, 466 Phil. 1036, 1044 (2004) [Per *J.* Callejo, Sr., Second Division].

services to the public." Articles 1733, 1755, and 1756 of the Civil Code outline the degree of diligence required of common carriers:

> ARTICLE 1733. Common carriers, from the nature of their business and for reasons of public policy, are bound to observe extraordinary diligence in the vigilance over the goods and for the safety of the passengers transported by them, according to all the circumstances of each case.
>
> x x x x x x x x x
>
> ARTICLE 1755. A common carrier is bound to carry the passengers safely as far as human care and foresight can provide, using the utmost diligence of very cautious persons, with a due regard for all the circumstances.
>
> ARTICLE 1756. In case of death of or injuries to passengers, common carriers are presumed to have been at fault or to have acted negligently, unless they prove that they observed extraordinary diligence as prescribed in articles 1733 and 1755.

Respondent, as one of the four domestic airlines in the country,[90] is a common carrier required by law to exercise extraordinary diligence. Extraordinary diligence requires that the common carrier must transport goods and passengers "safely as far as human care and foresight can provide," and it must exercise the "utmost diligence of very cautious persons . . . with due regard for all the circumstances."[91]

When a common carrier, through its ticketing agent, has not yet issued a ticket to the prospective passenger, the transaction between them is still that of a seller and a buyer. The obligation of the airline to exercise extraordinary diligence commences

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[90] DOTC Civil Aeronautics Board, Domestic Airlines http://www.cab.gov.ph/directory/domestic-airlines> (visited March 15, 2016). The other domestic commercial airlines are Philippine Airlines, Air Asia Philippines, and SkyJet. Tiger Airways Philippines and SeAir, Inc. have since been absorbed by Cebu Pacific while Zest Air has been absorbed by Air Asia Philippines.

[91] CIVIL CODE, Art. 1755.

upon the issuance of the contract of carriage.[92] Ticketing, as the act of issuing the contract of carriage, is necessarily included in the exercise of extraordinary diligence.

A contract of carriage is defined as "one whereby a certain person or association of persons obligate themselves to transport persons, things, or news from one place to another for a fixed price."[93] In *Cathay Pacific Airways v. Reyes*:[94]

> [W]hen an airline issues a ticket to a passenger confirmed on a particular flight, on a certain date, a contract of carriage arises, and the passenger has every right to expect that he would fly on that flight and on that date. If he does not, then the carrier opens itself to a suit for breach of contract of carriage.[95] (Emphasis supplied)

Once a plane ticket is issued, the common carrier binds itself to deliver the passenger safely on the date and time stated in the ticket. The contractual obligation of the common carrier to the passenger is governed principally by what is written on the contract of carriage.

In this case, both parties stipulated[96] that the flight schedule stated on the nine (9) disputed tickets was the 10:05 a.m. flight of July 22, 2008. According to the contract of carriage,

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[92] This, of course, is specific to airlines as common carriers, as an air passenger cannot board a plane without a plane ticket. On the other hand, a prospective passenger may board a bus before the bus company issues the bus ticket. In this instance, the obligation of the bus company to exercise extraordinary diligence commences upon the physical act of transporting the prospective passenger.

[93] *Crisostomo v. Court of Appeals*, 456 Phil. 845, 855 (2003) [Per *J.* Ynares-Santiago, First Division], citing 4 AGUEDO F. AGBAYANI, *COMMENTARIES AND JURISPRUDENCE ON THE COMMERCIAL LAWS OF THE PHILIPPINES* 1 (1993), in turn citing 1 Blanco 640.

[94] G.R. No. 185891, June 26, 2013, 699 SCRA 725 [Per *J.* Perez, Second Division].

[95] *Id.* at 738, citing *Japan Airlines v. Simangan*, 575 Phil. 359, 374-375 (2008) [Per *J.* R.T. Reyes, Third Division].

[96] *Rollo*, p. 59, Metropolitan Trial Court Decision.

respondent's obligation as a common carrier was to transport nine (9) of the petitioners safely on the 10:05 a.m. flight of July 22, 2008.

Petitioners, however, argue that respondent was negligent in the issuance of the contract of carriage since the contract did not embody their intention. They insist that the nine (9) disputed tickets should have been scheduled for the 4:15 p.m. flight of July 22, 2008. Respondent, on the other hand, denies this and states that petitioner Jose was fully informed of the schedules of the purchased tickets and petitioners were negligent when they failed to correct their ticket schedule.

Respondent relies on the Parol Evidence Rule in arguing that a written document is considered the best evidence of the terms agreed on by the parties. Petitioners, however, invoke the exception in Rule 130, Section 9 (b) of the Rules of Court that evidence may be introduced if the written document fails to express the true intent of the parties:[97]

> Section 9. Evidence of written agreements. — When the terms of an agreement have been reduced to writing, it is considered as containing all the terms agreed upon and there can be, between the parties and their successors in interest, no evidence of such terms other than the contents of the written agreement.
>
> However, a party may present evidence to modify, explain or add to the terms of the written agreement if he puts in issue in his pleading:
>
> (a) An intrinsic ambiguity, mistake, or imperfection in the written agreement;
>
> (b) The failure of the written agreement to express the true intent and agreement of the parties thereto;
>
> (c) The validity of the written agreement; or
>
> (d) The existence of other terms agreed to by the parties or their successors in interest after the execution of the written agreement.

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[97] *Id.* at 840-841, Alfredo Manay, Jr., *et al.*'s Memorandum.

In *ACI Philippines, Inc. v. Coquia*:[98]

> It is a cardinal rule of evidence, not just one of technicality but of substance, that the written document is the best evidence of its own contents. It is also a matter of both principle and policy that when the written contract is established as the repository of the parties stipulations, any other evidence is excluded and the same cannot be used as a substitute for such contract, nor even to alter or contradict them. This rule, however, is not without exception. Section 9, Rule 130 of the Rules of Court states that a party may present evidence to modify, explain or add to the terms of the agreement if he puts in issue in his pleading the failure of the written agreement to express the true intent and agreement of the parties.[99]

It is not disputed that on June 13, 2008, petitioner Jose purchased 20 Manila-Palawan-Manila tickets from respondent's ticketing agent. Since all 20 tickets were part of a single transaction made by a single purchaser, it is logical to presume that all 20 passengers would prefer the same flight schedule, unless the purchaser stated otherwise.

In petitioners' Position Paper before the Metropolitan Trial Court, they maintain that respondent's ticketing agent was negligent when she failed to inform or explain to petitioner Jose that nine (9) members of their group had been booked for the 10:05 a.m. flight, and not the 4:15 p.m. flight.[100]

The first page of the tickets contained the names of eight (8) passengers.[101] In the Information box on the left side of the ticket, it reads:

> Sunday, July 20, 2008 HK PHP999.00 PHP
> 5J 637 MNL-PPS 08:20-09:35

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[98] 580 Phil. 275 (2008) [Per *J.* Tinga, Second Division].

[99] *Id.* at 284, citing *Sabio v. The International Corporate Bank, Inc.*, 416 Phil. 785 (2001) [Per *J.* Ynares-Santiago, First Division].

[100] *Rollo*, p. 58, Metropolitan Trial Court Decision.

[101] *Id.* at 331, plane ticket. The eight (8) passengers were Violeta Manay, Carlos Jose, Audrey Jose, Cyde Cheraisse Jose, Julita Jose, Priscilla San Luis, Federico Jose, and Marc Louie Manay.

Tuesday, July 22, 2008 HK PHP999.00 PH
5J 640 PPS-MNL 16:15-17:30[102]

In the Comments box, it reads:

R – FULL RECAP GVN TO CARLOS JOSE//AWRE
I – FULL RECAP GVN TO CARLOS JOSE//AWRE
M – FULL RECAP GVN TO CARLOS JOSE//AWRI[103]

The second page contained the names of three (3) passengers.[104] In the Information box, it reads:

Sunday, July 20, 2008 HK PHP1,998.00 PH
5J 637 MNL-PPS 08:20-09:35
Tuesday, July 22, 2008 HK PHP999.00 PH
5J 640 PPS-MNL 16:15-17:30[105]

Under the caption "Comments," it reads:

R – FULL RECAP GVN TO CARLOS JOSE//AWRE
I – FULL RECAP GVN TO CARLOS JOSE//AWRE
M – FULL RECAP GVN TO CARLOS JOSE//AWRI[106]

The third page contained the names of nine (9) passengers.[107] In the Information box, it reads:

Sunday, July 20, 2008 HK PHP999.00 PHP
5J 637 MNL-PPS 08:20-09:35
Tuesday, July 22, 2008 HK PHP999.00 PH
5J 638 PPS-MNL 0:05-11:20[108]

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[102] *Id.*

[103] *Id.*

[104] *Id.* at 332. The three (3) passengers were Maricris Sitjar, Dianaden Ada, and Krisha Joy Saladaga.

[105] *Id.*

[106] *Id.*

[107] *Id.* at 333. The nine (9) passengers were Alfredo Manay, Jr., Fidelino San Luis, Adrian San Luis, Annalee San Luis, Mark Andrew Jose, Melissa Jose, Charlotte Jose, Dan John De Guzman, and Paul Mark Baluyot.

[108] *Id.*

In the Comments box, it reads:

R – FULL RECAP GVN TO JOSE//CARLOS AWRE
R – NON-REFUNDBLE//VALID TIL 15 OCT08 O[109]

Respondent explained that as a matter of protocol, flight information is recapped to the purchaser twice: first by the ticketing agent before payment, and second by the cashier during payment. The tickets were comprised of three (3) pages. Petitioners argue that only the first page was recapped to petitioner Jose when he made the purchase.

The common carrier's obligation to exercise extraordinary diligence in the issuance of the contract of carriage is fulfilled by requiring a full review of the flight schedules to be given to a prospective passenger before payment. Based on the information stated on the contract of carriage, all three (3) pages were recapped to petitioner Jose.

The only evidence petitioners have in order to prove their true intent of having the entire group on the 4:15 p.m. flight is petitioner Jose's self-serving testimony that the airline failed to recap the last page of the tickets to him. They have neither shown nor introduced any other evidence before the Metropolitan Trial Court, Regional Trial Court, Court of Appeals, or this Court.

Even assuming that the ticketing agent encoded the incorrect flight information, it is incumbent upon the purchaser of the tickets to at least check if all the information is correct before making the purchase. Once the ticket is paid for and printed, the purchaser is presumed to have agreed to all its terms and conditions. In *Ong Yiu v. Court of Appeals*:[110]

> While it may be true that petitioner had not signed the plane ticket, he is nevertheless bound by the provisions thereof. "Such provisions have been held to be a part of the contract of carriage, and valid and binding upon the passenger regardless of the latter's lack of knowledge

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[109] *Id.*

[110] 180 Phil. 185 (1979) [Per J. Melencio-Herrera, First Division].

or assent to the regulation." It is what is known as a contract of "adhesion," in regards which it has been said that contracts of adhesion wherein one party imposes a ready made form of contract on the other, as the plane ticket in the case at bar, are contracts not entirely prohibited. The one who adheres to the contract is in reality free to reject it entirely; if he adheres, he gives his consent.[111]

One of the terms stated in petitioners' tickets stipulates that the photo identification of the passenger must match the name entered upon booking:

Guests should present a valid photo ID to airport security and upon check-in. Valid IDs for this purpose are Company ID, Driver's License, Passport, School ID, SSS Card, TIN Card. The name in the photo-ID should match the guest name that was entered upon booking. Failure to present a valid photo ID will result in your being refused check-in.[112]

Considering that respondent was entitled to deny check-in to passengers whose names do not match their photo identification, it would have been prudent for petitioner Jose to check if all the names of his companions were encoded correctly. Since the tickets were for 20 passengers, he was expected to have checked each name on each page of the tickets in order to see if all the passengers' names were encoded and correctly spelled. Had he done this, he would have noticed that there was a different flight schedule encoded on the third page of the tickets since the flight schedule was stated directly above the passengers' names.

Petitioners' flight information was not written in fine print. It was clearly stated on the left portion of the ticket above the passengers' names. If petitioners had exercised even the slightest bit of prudence, they would have been able to remedy any erroneous booking.

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[111] *Id.* at 193, citing *Tannebaum v. National Airline, Inc.*, 13 Misc. 2d 450, 176 N.Y.S. 2d 400; *Lichten vs. Eastern Airlines*, 87 Fed. Supp. 691; *Migoski v. Eastern Air Lines, Inc.*, Fla. 63 So. 2d 634; 4 TOLENTINO, CIVIL CODE 462 (1962); and JUSTICE J.B.L. REYES, LAWYER'S JOURNAL 49 (1951).

[112] *Rollo,* pp. 331-333, plane tickets.

This is not the first time that this Court has explained that an air passenger has the correlative duty to exercise ordinary care in the conduct of his or her affairs.

In *Crisostomo v. Court of Appeals*,[113] Estela Crisostomo booked a European tour with Caravan Travel and Tours, a travel agency. She was informed by Caravan's travel agent to be at the airport on Saturday, two (2) hours before her flight. Without checking her travel documents, she proceeded to the airport as planned, only to find out that her flight was actually scheduled the day before. She subsequently filed a suit for damages against Caravan Travel and Tours based on the alleged negligence of their travel agent in informing her of the wrong flight details.[114]

This Court, while ruling that a travel agency was not a common carrier and was not bound to exercise extraordinary diligence in the performance of its obligations, also laid down the degree of diligence concurrently required of passengers:

> Contrary to petitioner's claim, the evidence on record shows that respondent exercised due diligence in performing its obligations under the contract and followed standard procedure in rendering its services to petitioner. As correctly observed by the lower court, *the plane ticket issued to petitioner clearly reflected the departure date and time*, contrary to petitioner's contention. The travel documents, consisting of the tour itinerary, vouchers and instructions, were likewise delivered to petitioner two days prior to the trip. Respondent also properly booked petitioner for the tour, prepared the necessary documents and procured the plane tickets. It arranged petitioner's hotel accommodation as well as food, land transfers and sightseeing excursions, in accordance with its avowed undertaking.
>
> Therefore, it is clear that respondent performed its prestation under the contract as well as everything else that was essential to book petitioner for the tour. *Had petitioner exercised due diligence in the conduct of her affairs, there would have been no reason for her to miss the flight. Needless to say, after the travel papers were delivered to petitioner, it became incumbent upon her to take ordinary care of her concerns. This undoubtedly would require that she at least read*

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[113] 456 Phil. 845 (2003) [Per *J.* Ynares-Santiago, First Division].

[114] *Id.* at 850-851.

the documents in order to assure herself of the important details regarding the trip.[115] (Emphasis supplied)

Most of the petitioners were balikbayans.[116] It is reasonable to presume that they were adequately versed with the procedures of air travel, including familiarizing themselves with the itinerary before departure. Moreover, the tickets were issued 37 days before their departure from Manila and 39 days from their departure from Palawan. There was more than enough time to correct any alleged mistake in the flight schedule.

Petitioners, in failing to exercise the necessary care in the conduct of their affairs, were without a doubt negligent. Thus, they are not entitled to damages.

Before damages may be awarded, "the claimant should satisfactorily show the existence of the factual basis of damages and its causal connection to defendant's acts."[117] The cause of petitioners' injury was their own negligence; hence, there is no reason to award moral damages. Since the basis for moral damages has not been established, there is no basis to recover exemplary damages[118] and attorney's fees[119] as well.

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[115] *Id.* at 858-859.

[116] *Rollo*, pp. 91-92, Complaint. According to the Complaint, Fidelino San Luis, Adrian San Luis, and Annalee San Luis were American citizens and residents of California, while Mark Andrew Jose, Melissa Jose, and Charlotte Jose were Australian citizens and residents of New South Wales. Alfredo Manay, Jr., Dan John De Guzman, Paul Mark Baluyot, and Carlos S. Jose were Filipino citizens and residents of Metro Manila.

[117] *Keirulf v. Court of Appeals*, 336 Phil. 414, 431-432 (1997) [Per *J.* Panganiban, Third Division].

[118] CIVIL CODE, Art. 2234 provides:

> Art. 2234. While the amount of the exemplary damages need not be proven, the plaintiff must show that he is entitled to moral, temperate or compensatory damages before the court may consider the question of whether or not exemplary damages should be awarded[.]

[119] CIVIL CODE, Art. 2208 provides:

> Art. 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:
>
> When exemplary damages are awarded;

III

Traveling by air for leisure is a fairly new concept to the average Filipino. From 1974, there was only one local airline commanding a monopoly on domestic air travel.[120] In 1996, respondent introduced the concept of a budget airline in the Philippines, touting "low-cost services to more destinations and routes with higher flight frequency within the Philippines than any other airline."[121] In its inception, respondent offered plane fares that were "40% to 50% lower than [Philippine Airlines]."[122]

On March 1, 2007, to celebrate its new fleet of aircraft, respondent offered a promo of ₱1.00 base fare for all their domestic and international destinations.[123] The fare was non-refundable and exclusive of taxes and surcharges.[124]

Despite the conditions imposed on these "piso fares," more people were enticed to travel by air. From January to June 2007, respondent had a total number of 2,256,289 passengers while Philippines Airlines had a total of 1,981,267 passengers.[125] The domestic air travel market also had a 24% increase in the first half of 2007.[126]

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[120] Philippine Airlines, History and Milestones <http://www.philippineairlines.com/AboutUs/HistoryAndMilestone> (visited March 15, 2016).

[121] Cebu Pacific, About Cebu Pacific <https://www.cebupacificair.com/about-us/Pages/companyinfo.aspx> (visited March 15, 2016).

[122] Sunshine Lichauco De Leon, *Making Flying Fun*, Forbes Online, May 26, 2011 <http://www.forbes.com/global/2011/0606/features-cebu-pacific-lance-gokongwei-flying-fun.html> (visited March 15, 2016).

[123] Cebu Pacific, Cebu Pacific offers ₱1 fare to all domestic & International destinations, March 1, 2007 <https://www.cebupacificair.com/about-us/pages/news.aspx?id=758> (visited March 15, 2016).

[124] Cebu Pacific, Cebu Pacific marks domestic leadership with ₱1 fare to all domestic destinations, September 6, 2007 <https://www.cebupacificair.com/about-us/pages/news.aspx?id=722> (visited March 15, 2016).

[125] Cebu Pacific, CAB confirms Cebu Pacific is really the No. 1 domestic airline, August 30, 2007 <https://www.cebupacificair.com/about-us/Pages/news.aspx?id=723> (visited March 15, 2016).

[126] *Id.*, data from the Civil Aeronautics Board.

Promotional fares encouraged more Filipinos to travel by air as the number of fliers in the country increased from 7.2 million in 2005 to 16.5 million in 2010.[127] The emergence of low-cost carriers "liberalized [the] aviation regime"[128] and contributed to an "unprecedented and consistent double digit growth rates of domestic and international travel"[129] from 2007 to 2012.

This development, however, came with its own set of problems. Numerous complaints were filed before the Department of Trade and Industry and the Department of Transportation and Communications, alleging "unsatisfactory airline service"[130] as a result of flight overbooking, delays, and cancellations.[131]

This prompted concerned government agencies to issue Department of Transportation and Communications-Department of Trade and Industry Joint Administrative Order No. 1, Series of 2012, otherwise known as the Air Passenger Bill of Rights.

Section 4 of the Joint Administrative Order requires airlines to provide the passenger with accurate information before the purchase of the ticket:

Section 4. ***Right to Full, Fair, and Clear Disclosure of the Service Offered and All the Terms and Conditions of the Contract of Carriage.*** Every passenger shall, before purchasing any ticket for a contract of carriage by the air carrier or its agents, be entitled to the full, fair, and clear disclosure of all the terms and conditions of the contract of carriage about to be purchased. The disclosure shall include, among others, documents required to be presented at check-in, provisions on check-in deadlines, refund and rebooking policies, and

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[127] Sunshine Lichauco De Leon, *Making Flying Fun*, Forbes Online, May 26, 2011 <http://www.forbes.com/global/2011/0606/features-cebu-pacific-lance-gokongwei-flying-fun.html> (visited March 15, 2016).

[128] DOTC-DTI Joint Adm. O. No. 1 (2012), third whereas clause.

[129] DOTC-DTI Joint Adm. O. No. 1 (2012), third whereas clause.

[130] Raul J. Palabrica, *Truth in Airline Promos*, Philippine Daily Inquirer, December 14, 2012 <http://www.cab.gov.ph/news/765-truth-in-airline-promos> (visited March 15, 2016).

[131] *Id.*

procedures and responsibility for delayed and/or cancelled flights. These terms and conditions may include liability limitations, claim-filing deadlines, and other crucial conditions.

4.1 An air carrier shall cause the disclosure under this Section to be printed on or attached to the passenger ticket and/or boarding pass, or the incorporation of such terms and conditions of carriage by reference. Incorporation by reference means that the ticket and/or boarding pass shall clearly state that the complete terms and conditions of carriage are available for perusal and/or review on the air carrier's website, or in some other document that may be sent to or delivered by post or electronic mail to the passenger upon his/her request.

x x x x x x x x x

4.3 Aside from the printing and/or publication of the above disclosures, the same shall likewise be verbally explained to the passenger by the air carrier and/or its agent/s in English and Filipino, or in a language that is easily understood by the purchaser, placing emphasis on the limitations and/or restrictions attached to the ticket.

x x x x x x x x x

4.5 Any violation of the afore-stated provisions shall be a ground for the denial of subsequent applications for approval of promotional fare, or for the suspension or recall of the approval made on the advertised fare/rate. (Emphasis in the original)

The Air Passenger Bill of Rights recognizes that a contract of carriage is a contract of adhesion, and thus, all conditions and restrictions must be fully explained to the passenger before the purchase of the ticket:

WHEREAS, such a contract of carriage creates an asymmetrical relationship between an air carrier and a passenger, considering that, while a passenger has the option to buy or not to buy the service, the decision of the passenger to buy the ticket binds such passenger, by adhesion, to all the conditions and/or restrictions attached to the air carrier ticket on an all-or-nothing basis, without any say, whatsoever, with regard to the reasonableness of the individual conditions and restrictions attached to the air carrier ticket;[132]

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[132] DOTC-DTI Joint Adm. O. No. 1 (2012), seventh whereas clause.

Section 4.4 of the Air Passenger Bill of Rights requires that "all rebooking, refunding, baggage allowance and check-in policies" must be stated in the tickets:

4.4 The key terms of a contract of carriage, which should include, among others, the rebooking, refunding, baggage allowance and check-in policies, must be provided to a passenger and shall substantially be stated in the following manner and, if done in print, must be in bold letters:

(English)

"NOTICE:

The ticket that you are purchasing is subject to the following conditions/restrictions:

1. _____
2. _____
3. _____

Your purchase of this ticket becomes a binding contract on your part to follow the terms and conditions of the ticket and of the flight. Depending on the fare rules applicable to your ticket, non-use of the same may result in forfeiture of the fare or may subject you to the payment of penalties and additional charges if you wish to change or cancel your booking.

For more choices and/or control in your flight plans, please consider other fare types."

(Filipino)

"PAALALA:

Ang tiket na ito ay binibili ninyo nang may mga kondisyon/ restriksyon:

1. _____
2. _____
3. _____

Sa pagpili at pagbili ng tiket na ito, kayo ay sumasang-ayon sa mga kondisyon at restriksyon na nakalakip dito, bilang kontrata ninyo sa air carrier. Depende sa patakarang angkop sa iyong tiket, ang hindi paggamit nito ay maaaring mag resulta sa pagwawalang bisa sa inyong tiket o sa paniningil ng

karagdagang bayad kung nais ninyong baguhin o kanselahin ang inyong tiket.

Para sa mas maraming pagpipilian at malawak na control sa inyong flight, inaanyayahan kayong bumili ng iba pang klase ng tiket galing sa air carrier." (Emphasis in the original)

The Air Passenger Bill of Rights acknowledges that "while a passenger has the option to buy or not to buy the service, *the decision of the passenger to buy the ticket binds such passenger*[.]"[133] Thus, the airline is mandated to place in writing all the conditions it will impose on the passenger.

However, the duty of an airline to disclose all the necessary information in the contract of carriage does not remove the correlative obligation of the passenger to exercise ordinary diligence in the conduct of his or her affairs. The passenger is still expected to read through the flight information in the contract of carriage before making his or her purchase. If he or she fails to exercise the ordinary diligence expected of passengers, any resulting damage should be borne by the passenger.

WHEREFORE, the Petition is **DENIED**.

SO ORDERED.

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

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[133] DOTC-DTI Joint Adm. O. No. 1 (2012), seventh whereas clause. Emphasis supplied.

SECOND DIVISION

[G.R. No. 214567. April 4, 2016]

DRA. MERCEDES OLIVER, *petitioner, vs.* **PHILIPPINE SAVINGS BANK and LILIA CASTRO,** *respondents.*

SYLLABUS

1. CIVIL LAW; SPECIAL CONTRACTS; AGENCY; IMPLIED AGENCY; WHETHER AN AGENCY HAS BEEN CREATED IS A QUESTION OF INTENTION.— Agency can be express or implied from the acts of the principal, from his silence or lack of action, or his failure to repudiate the agency knowing that another person is acting on his behalf without authority. The question of whether an agency has been created is ordinarily a question which may be established in the same way as any other fact, either by direct or circumstantial evidence. The question is ultimately one of intention. In this case, Oliver and Castro had a business agreement wherein Oliver would obtain loans from the bank, through the help of Castro as its branch manager; and after acquiring the loan proceeds, Castro would lend the acquired amount to prospective borrowers who were waiting for the actual release of their loan proceeds. Oliver would gain 4% to 5% interest per month from the loan proceeds of her borrowers, while Castro would earn a commission of 10% from the interests. Clearly, an agency was formed because Castro bound herself to render some service in representation or on behalf of Oliver, in the furtherance of their business pursuit. x x x Accordingly, the laws on agency apply to their relationship. Article 1881 of the New Civil Code provides that the agent must act within the scope of his authority. He may do such acts as may be conducive to the accomplishment of the purpose of the agency. Thus, as long as the agent acts within the scope of the authority given by his principal, the actions of the former shall bind the latter.

2. COMMERCIAL LAW; BANKS; HIGHEST DEGREE OF DILIGENCE, REQUIRED; THE BANK IS LIABLE FOR ALLOWING AN ENCROACHMENT UPON ITS DEPOSITOR'S ACCOUNT WITHOUT PERMISSION.— In the case of banks, the degree of diligence required is more

than that of a good father of a family. Considering the fiduciary nature of their relationship with their depositors, banks are duty bound to treat the accounts of their clients with the highest degree of care. x x x [PSBank] could not prove that the withdrawal of ₱7 million was duly authorized by [its depositor] Oliver. As a banking institution, PSBank was expected to ensure that such substantial amount should only be transacted with the consent and authority of Oliver. PSBank, however, reneged on its fiduciary duty by allowing an encroachment upon its depositor's account without the latter's permission. Hence, PSBank must be held liable for such improper transaction.

3. REMEDIAL LAW; EVIDENCE; BURDEN OF PROOF; ONCE THE PLAINTIFF ESTABLISHES HIS CASE, THE BURDEN OF EVIDENCE SHIFTS TO THE DEFENDANT. — The party who alleges a fact has the burden of proving it. Section 1, Rule 131 of the Rules of Court defines "burden of proof" as "the duty of a party to present evidence on the facts in issue necessary to establish his claim or defense by the amount of evidence required by law." In civil cases, the burden of proof rests upon the plaintiff, who is required to establish his case by a preponderance of evidence. Once the plaintiff establishes his case, the burden of evidence shifts to the defendant, who, in turn, bears the burden to establish his defense.

4. CIVIL LAW; EXTRA-CONTRACTUAL OBLIGATIONS; QUASI-DELICTS; SOLIDARY LIABILITY OF EMPLOYERS FOR DAMAGES CAUSED BY THEIR EMPLOYEES; THE BANK IS SOLIDARILY LIABLE WITH ITS BRANCH MANAGER WHO CAUSED THE UNLAWFUL WITHDRAWAL.— [T]he bank should be solidarily liable with its employee for the damages committed to its depositor. Under Article 2180 of the Civil Code, employers shall be held primarily and solidarily liable for damages caused by their employees acting within the scope of their assigned tasks. Castro, as acting branch manager of PSBank, was able to facilitate the questionable transaction as she was also entrusted with Oliver's passbook. In other words, Castro was the representative of PSBank, and, at the same time, the agent of Oliver, earning commissions from their transactions. Oddly, PSBank, either consciously or through sheer negligence, allowed the double dealings of its employee with its client. Such carelessness and lack of protection of the depositors from its

own employees led to the unlawful withdrawal of the ₱7 million from Oliver's account. Although Castro was eventually terminated by PSBank because of certain problems regarding client accommodation and loss of confidence, the damage to Oliver had already been done. Thus, both Castro and PSBank must be held solidarily liable.

5. ID.; DAMAGES; MORAL DAMAGES ARE RECOVERABLE IN BREACH OF CONTRACT ONLY IN CASE OF BAD FAITH; EXEMPLARY DAMAGES AND ATTORNEY'S FEES ALSO PROPER IN CASE AT BAR.— Specifically, in *culpa contractual* or breach of contract, like in the present case, moral damages are recoverable only if the defendant has acted fraudulently or in bad faith, or is found guilty of gross negligence amounting to bad faith, or in wanton disregard of his contractual obligations. Verily, the breach must be wanton, reckless, malicious, or in bad faith, oppressive or abusive. Here, Castro and PSBank were utterly reckless in allowing the withdrawal of a huge amount from Oliver's account without her consent. The bank's negligence is a result of lack of due care and caution required of managers and employees of a firm engaged in a business so sensitive and demanding. Hence, the award of ₱100,000.00 as moral damages is warranted. The award of exemplary damages is also proper due to the failure of Castro and PSBank to prevent the unauthorized withdrawal from Oliver's account. The law allows the grant of exemplary damages to set an example for public good. The Court, however, finds that the amount of exemplary damages must be decreased to ₱50,000.00. Finally, the Court agrees with the RTC that Castro and PSBank should be held solidarily liable for attorney's fees. Article 2208 of the Civil Code is clear that attorney's fees may be recovered when exemplary damages are awarded or when the plaintiff, through the defendant's act or omission, has been compelled to litigate with third persons. A decreased amount of ₱50,000.00 attorney's fees should be sufficient.

APPEARANCES OF COUNSEL

Salud Calabazaron Del Fierro Law Firm for petitioner.

Formilleza and Santiago Law Firm for respondent Lilia Castro.

Manuel Levosado and Sison Law Offices for respondent Philippine Savings Bank.

D E C I S I O N

MENDOZA, *J.*:

This is a petition for review on *certiorari* seeking to reverse and set aside the October 25, 2013 Decision[1] and the September 12, 2014 Resolution[2] of the Court of Appeals (*CA*) in CA-G.R. CV No. 95656, which reversed the July 22, 2010 Order[3] of the Regional Trial Court, Branch 276, Muntinlupa City (*RTC*) in Civil Case No. 99-278, a case for injunction and damages.

Petitioner Mercedes Oliver (*Oliver*) was a depositor of respondent Philippine Savings Bank (*PSBank*) with account number 2812-07991-6. Respondent Lilia Castro (*Castro*) was the Assistant Vice President of PSBank and the Acting Branch Manager of PSBank San Pedro, Laguna.

Oliver's Position

In her Complaint,[4] dated October 5, 1999, Oliver alleged that sometime in 1997, she made an initial deposit of ₱12 million into her PSBank account. During that time, Castro convinced her to loan out her deposit as interim or bridge financing for the approved loans of bank borrowers who were waiting for the actual release of their loan proceeds.

Under this arrangement, Castro would first show the approved loan documents to Oliver. Thereafter, Castro would withdraw the amount needed from Oliver's account. Upon the actual release of the loan by PSBank to the borrower, Castro would then charge the rate of 4% a month from the loan proceeds as interim or bridge financing interest. Together with the interest income, the principal amount previously withdrawn from Oliver's bank

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[1] *Rollo* pp. 57-67, penned by Associate Justice Japar B. Dimaampao with Associate Justice Elihu A. Ybanez and Associate Justice Victoria Isabel A. Paredes, concurring.

[2] *Id.* at 68-70.

[3] CA *rollo*, pp. 272-280.

[4] *Id.* at 18-28.

account would be deposited back to her account. Meanwhile, Castro would earn a commission of 10% from the interest.

Their arrangement went on smoothly for months. Due to the frequency of bank transactions, Oliver even entrusted her passbook to Castro. Because Oliver earned substantial profit, she was further convinced by Castro to avail of an additional credit line in the amount of ₱10 million. The said credit line was secured by a real estate mortgage on her house and lot in Ayala Alabang covered by Transfer Certificate of Title (*TCT*) No. 137796.[5]

Oliver instructed Castro to pay ₱2 million monthly to PSBank starting on September 3, 1998 so that her credit line for ₱10 million would be fully paid by January 3, 1999.

Beginning September 1998, Castro stopped rendering an accounting for Oliver. The latter then demanded the return of her passbook. When Castro showed her the passbook sometime in late January or early February 1999, she noticed several erasures and superimpositions therein. She became very suspicious of the many erasures pertaining to the December 1998 entries so she requested a copy of her transaction history register from PSBank.

When her transaction history register[6] was shown to her, Oliver was surprised to discover that the amount of ₱4,491,250.00 (estimated at ₱4.5 million) was entered into her account on December 21, 1998. While a total of ₱7 million was withdrawn from her account on the same day, Oliver asserted that she neither applied for an additional loan of ₱4.5 million nor authorized the withdrawal of ₱7 million. She also discovered another loan for ₱1,396,310.45, acquired on January 5, 1999 and allegedly issued in connection with the ₱10 million credit line.

In Oliver's passbook,[7] there were no entries from December 17, 1998 to December 27, 1998. The transaction history register, however, showed several transactions on these very same dates

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[5] Records, Volume IV, p. 1295.

[6] *Id.* at 1308-1310.

[7] *Id.* at 1311-1314.

including the crediting of ₱4.5 million and the debiting of ₱7 million on December 21, 1998. Oliver then learned that the additional ₱4.5 million and ₱1,396,310.45 loans were also secured by the real estate mortgage,[8] dated January 8, 1998, covering the same property in Ayala Alabang.

Oliver received two collection letters,[9] dated May 13, 1999 and June 18, 1999, from PSBank referring to the non-payment of unpaid loans, to wit: (1) ₱4,491,250.00 from the additional loan and (2) ₱1,396,310.45 from the ₱10 million credit line.[10] In response, Oliver protested that she neither availed of the said loans nor authorized the withdrawal of ₱7 million from her account.[11] She also claimed that the ₱10 million loan from her credit line was already paid in full.[12]

On July 14, 1999, a final demand letter[13] was sent to Oliver by PSBank, requiring her to pay the unpaid loans. Oliver, however, still refused to pay. Subsequently, Oliver received a notice of sale[14] involving the property in Ayala Alabang, issued by Notary Public Jose Celestino Torres on September 15, 1999. The said notice informed her of the impending extra-judicial foreclosure and sale of her house and lot to be held on October 21, 1999.

As a result, Oliver filed the subject complaint against PSBank and Castro.

Castro's Position

In her Answer,[15] Castro admitted that she and Oliver agreed that the latter would lend out money to borrowers at 4% to 5%

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[8] *Id.* at 1291-1294.

[9] *Id.* at 1429-1430.

[10] Records, Volume I, pp. 22-23.

[11] Records, Volume IV, pp. 1471-1474.

[12] Records, Volume I, pp. 22-23.

[13] Records, Volume IV, p. 1307.

[14] Records, Volume V, p. 1615.

[15] *Id.* at 39-48.

interest per month provided that the former would screen them. She also acknowledged having been instructed by Oliver to pay the bank ₱2 million every month to settle the ₱10 million credit line. Nonetheless, Castro informed Oliver that the payment thereof was subject to the availability of funds in her account. She disclosed that she made some alterations and erasures in Oliver's passbook so as to reconcile the passbook with the computer printout of the bank, but denied any attempt to hide the passbook as she was able to return it sometime in January 1999.

Castro also denied the deceit imputed against her. She asserted that their arrangement was not "interim or bridge financing" inasmuch as the loans were entirely new and distinct from that granted by PSBank. When Oliver's clients multiplied, Castro advised her to apply for a credit line of ₱10 million. The said credit line was first approved in December 1997 with a term of one year.[16]

Sometime in August 1998, Castro informed Oliver about the impending expiration of her credit line. Subsequently, Oliver applied for another loan in the amount of ₱4.5 million as evidenced by a promissory note,[17] dated December 21, 1998. On January 5, 1999, another promissory note[18] was executed by Oliver to cover a loan in the amount of ₱1,396,310.45.

Castro asserted that, on December 21, 1998, upon Oliver's instruction, a total of ₱7 million was withdrawn from the latter's account and was then deposited to the account of one Ben Lim (*Lim*) on the same date. Lim was a businessman who borrowed money from Oliver. Castro knew him because he was also a depositor and borrower of PSBank San Pedro Branch.[19]

As to the amount of ₱1,396,310.45, Castro explained that it was a separate and personal loan obtained by her from Oliver.

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[16] CA *rollo*, pp. 168-169.

[17] Records, Volume IV, p. 1298.

[18] *Id.* at 1302.

[19] *Id.* at 138-139.

To secure the payment of such obligation, Castro mortgaged a property located in Camella Homes III in Tunasan, Muntinlupa City.

Castro admitted that on October 19, 1999, she was terminated by PSBank because of certain problems regarding client accommodation and loss of confidence.[20]

PSBank's Position

In its defense, PSBank averred that Oliver applied for a credit line of ₱10 million which was granted by the bank and which secured by a real estate mortgage. Because Oliver failed to pay the ₱10 million loan, she obtained another loan in the amount of ₱4.5 million, as evidenced by a promissory note. Days later, she again acquired a separate loan amounting to ₱1,396,310.45 as shown by another promissory note. Both loans were secured by a real estate mortgage, dated January 8, 1998, and the proceeds thereof were issued as proved by the release tickets,[21] dated December 21, 1998 and January 5, 1999, respectively.[22]

The RTC Decision

In its March 30, 2010 Decision,[23] the RTC dismissed the complaint and rendered judgment in favor of PSBank and Castro. According to the RTC, PSBank and Castro should not be held liable for the loan of ₱4.5 million and the withdrawal of the ₱7 million. Castro was able to submit the Debit Credit Memo[24] and the Savings Account Check Deposit Slip[25] to prove that there were some previous loan transactions between Oliver and Lim. Considering that neither PSBank nor Castro obtained the ₱7 million, there was no obligation on their part to return the amount.

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[20] *Id.* at 154-156.

[21] *Id.* at 1300, 1304.

[22] CA *rollo*, p. 273.

[23] Records, Volume V, pp. 1828-1837.

[24] Records, Volume IV, pp. 1432-1433.

[25] Records, Volume V, p. 1617.

Moreover, the trial court stated that Oliver failed to controvert PSBank's allegation that she had unpaid loan obligations. Thus, it concluded that PSBank had the right to foreclose the mortgaged property. The *fallo* reads:

> WHEREFORE, finding lack of merit, the instant case is hereby DISMISSED. Accordingly, the Writ of Preliminary Injunction is hereby LIFTED and SET ASIDE.
>
> SO ORDERED.[26]

Oliver seasonably filed her motion for reconsideration.[27] She insisted that the ₱7 million was unlawfully withdrawn. She claimed that what happened in this case was a "cash savings withdrawal" and that *there should have been a corresponding withdrawal slip for such transaction*. Also, if indeed the ₱7 million was withdrawn from her account and was credited to the account of Lim, the deposit slip for his account should have been presented.

The RTC Order

On July 22, 2010, the RTC resolved the motion and issued an order reversing its earlier decision. According to the RTC, Oliver's assertion that the withdrawal was made without her consent prevailed in the absence of any proof to the contrary. The *cash savings withdrawal slips* should have been offered in evidence by either PSBank or Castro to settle the issue of whether the amount of ₱7 million was actually withdrawn by Oliver or by her authorized representative or agent.

The RTC also rejected the position of PSBank and Castro that the erasures and alterations in Oliver's passbook were made simply to reconcile the same with the transaction history register of the bank because even after the alleged corrections, the said documents still contained different entries. Although Oliver and Lim had previous transactions, none of them pertained to the ₱7 million purportedly transferred on December 21, 1998.

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[26] *Id.* at 1837.

[27] *Id.* at 1838-1860.

With regard to PSBank, the RTC stated that it failed to exercise utmost diligence in safekeeping Oliver's deposit. Had it not been for the unauthorized, withdrawal which was attributable to the bank and Castro, the ₱4.5 million and the ₱1,396,310.45 loans would not have remained outstanding, considering that the improperly withdrawn ₱7 million was more than sufficient to discharge those liabilities.[28] The dispositive portion of the order reads:

> WHEREFORE, premises considered, the Motion for Reconsideration is hereby GRANTED. The Decision dated March 30, 2010 is hereby reconsidered and set aside. In lieu thereof, a new one is hereby rendered ordering the defendants Lilia Castro and Philippine Savings Bank to jointly and solidarily pay plaintiff Dra. Mercedes Oliver, the sums of
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> 1. ₱1,111,850.77 as actual damages;
> 2. ₱100,000.00 as moral damages;
> 3. ₱100,000.00 as attorney's fees; and
> 4. ₱100,000.00 as exemplary damages
>
> Moreover, the Writ of Preliminary Injunction is hereby made permanent.
>
> SO ORDERED.[29]

Aggrieved, Castro and PSBank appealed before the CA.

The CA Decision

On October 25, 2013, the CA granted the appeal. It *reversed* the July 22, 2010 of the RTC order and reinstated its March 30, 2010 decision. The appellate court found no compelling evidence to prove that fraud attended the processing and release of the ₱4.5 million loan as well as the withdrawal of ₱7 million from Oliver's account. The CA found that Oliver admitted signing the loan documents, the promissory notes and the release tickets pertaining to the obligations that she had contracted with PSBank. In addition, the CA stated that Oliver also failed to establish

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[28] CA *rollo*, p. 279.

[29] *Id.* at 280.

her assertion that she was manipulated and defrauded into signing the said loan documents.

The CA also found that PSBank exercised extraordinary diligence in handling Oliver's account, thus, the awards of damages were deleted. The dispositive portion of the CA decision reads:

> WHEREFORE, the Appeal is hereby GRANTED. The Order dated 22 July 2010 of the Regional Trial Court of Muntinlupa City, Branch 276, is REVERSED and SET ASIDE, and another one entered REINSTATING the Decision dated March 30, 2010, in Civil Case No. 99-278.
>
> SO ORDERED.[30]

Oliver filed her motion for reconsideration but the same was denied in the CA Resolution, dated September 12, 2014.

Hence, this petition.

ISSUES

I

WHETHER OR NOT THE COURT OF APPEALS GRAVELY ERRED IN RULING THAT THE PETITIONER FAILED TO SHOW COMPELLING EVIDENCE TO PROVE THAT FRAUD ATTENDED THE PROCESSING AND RELEASE OF THE LOAN OF ₱4.5 MILLION AS WELL AS THE WITHDRAWAL OF ₱7 MILLION PESOS FROM HER ACCOUNT.

II

WHETHER OR NOT THE COURT OF APPEALS GRAVELY ERRED WHEN IT RULED THAT THERE WAS NO EVIDENCE TO PROVE THAT THE SUM OF ₱7 MILLION WAS DEBITED FROM THE ACCOUNT OF PETITIONER SANS HER AUTHORIZATION.

III

WHETHER OR NOT THE COURT OF APPEALS GRAVELY ERRED WHEN IT RULED THAT THE RESPONDENTS

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[30] *Rollo*, p. 66.

TREATED THE PETITIONER'S ACCOUNT WITH EXTRAORDINARY DILIGENCE.

IV

WHETHER OR NOT THE COURT OF APPEALS GRAVELY ERRED WHEN IT FAILED TO HOLD THAT THE RESPONDENTS ARE JOINTLY AND SEVERALLY LIABLE TO THE PETITIONER FOR DAMAGES.[31]

In her petition for review,[32] Oliver insisted that she had no knowledge of any loan released because she never availed of any new loan from PSBank. Neither the ₱4.5 million loan nor the cash withdrawal of ₱7 million was reflected in her passbook.

Oliver further argued that the burden of proving that the withdrawal was made with her authority would lie on the part of PSBank and Castro. The cash savings withdrawal slip containing the signature of Oliver should have been presented in court. While the respondents claimed that the amount withdrawn was lent to Lim, the latter was never called to the witness stand as PSBank and Castro opted not to present him in court. Castro, aside from her self-serving testimony, failed to present any concrete proof to show that Oliver indeed lent the withdrawn ₱7 million cash to Lim.

Finally, Oliver averred that the erasures and alterations in her passbook undeniably established that Castro manipulated the same to conceal the loan release and the cash withdrawal from her account.

In her Comment,[33] Castro countered that the CA had more opportunity and facilities to examine the facts. Hence, there was no reason to depart from the rule that the findings of fact of the CA were final and conclusive and could not be reviewed on appeal. She asserted that there was no proof that the ₱7 million was withdrawn without Oliver's authority. She added

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

[32] *Id.* at 10-52.

[33] *Id.* at 87-98.

that Oliver was an astute businesswoman who knew her clients and bank deposits and who was knowledgeable of her bank transactions and was aware of her loaned amounts from the bank.

In its Comment,[34] PSBank asserted that the issues and arguments propounded by Oliver had been judiciously passed upon. On the stated facts alone, the petition, which was akin to a motion for reconsideration, should be denied outright for being *pro forma*.

In her Reply, [35] Oliver faulted PSBank and Castro for failing to present the cash withdrawal slip which would show her signature to prove that the money was withdrawn with her authority. She also reiterated that Lim should have been presented as a witness to substantiate their defense that he actually received the amount of ₱7 million.

The Court's Ruling

The petition is impressed with merit.

There was an implied agency between Oliver and Castro; the loans were properly acquired

A contract of agency may be inferred from all the dealings between Oliver and Castro. Agency can be express or implied from the acts of the principal, from his silence or lack of action, or his failure to repudiate the agency knowing that another person is acting on his behalf without authority.[36] The question of whether an agency has been created is ordinarily a question which may be established in the same way as any other fact, either by direct or circumstantial evidence. The question is ultimately one of intention.[37]

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[34] *Id.* at 100-104.

[35] *Id.* at 119-123.

[36] Article 1869, New Civil Code of the Philippines.

[37] De Leon and De Leon, Jr., *Comments and Cases on Partnership, Agency and Trusts*, 2010 ed., pp. 337-338.

In this case, Oliver and Castro had a business agreement wherein Oliver would obtain loans from the bank, through the help of Castro as its branch manager; and after acquiring the loan proceeds, Castro would lend the acquired amount to prospective borrowers who were waiting for the actual release of their loan proceeds. Oliver would gain 4% to 5% interest per month from the loan proceeds of her borrowers, while Castro would earn a commission of 10% from the interests. Clearly, an agency was formed because Castro bound herself to render some service in representation or on behalf of Oliver, in the furtherance of their business pursuit.[38]

For months, the agency between Oliver and Castro benefited both parties. Oliver, through Castro's representations, was able to obtain loans, relend them to borrowers, and earn interests; while Castro acquired commissions from the transactions. Oliver even gave Castro her passbook to facilitate the transactions.

Accordingly, the laws on agency apply to their relationship. Article 1881 of the New Civil Code provides that the agent must act within the scope of his authority. He may do such acts as may be conducive to the accomplishment of the purpose of the agency. Thus, as long as the agent acts within the scope of the authority given by his principal, the actions of the former shall bind the latter.

Oliver claims that the ₱4.5 million loan, released on December 21, 1998, and the ₱1,396,310.45 loan, released on January 5, 1999, were not acquired with her consent. Castro and PSBank, on the other hand, countered that these loans were obtained with Oliver's full consent.

The Court finds that the said loans were acquired with Oliver's authority. The promissory notes[39] and the release tickets[40] for the said loans bore her signatures. She failed to prove that her signatures appearing on the loan documents were forged. Hence,

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[38] Article 1868, New Civil Code of the Philippines.

[39] Records, Volume IV, pp. 1298 and 1302.

[40] *Id.* at 1300 and 1304.

the loan documents were reliable and these proved that the loans were processed by Castro within the scope of her authority. As the loans were validly obtained, PSBank correctly stated that Oliver had incurred a debt of ₱4.5 million and ₱1,396,310.45, or a total of ₱5,888,149.33.

₱7 million was improperly withdrawn; agent acted beyond her scope of authority

Although it was proven that Oliver authorized the loans, in the aggregate amount of ₱5,888,149.33, there was nothing in the records which proved that she also allowed the withdrawal of ₱7 million from her bank account. Oliver vehemently denied that she gave any authority whatsoever to either Castro or PSBank to withdraw the said amount.

In her judicial affidavit before the RTC, Castro initially claimed that Oliver authorized the withdrawal of ₱7 million from her bank account, to wit:

> Q: Do you know when was this 4.5 million pesos loan was credited to plaintiff's deposit account?
> A: Based on the Transaction Ledge of PS Bank, the 4.5 million pesos was credit to plaintiff's deposit account on December 21, 1998.
>
> Q: What happened after the 4.5 million pesos loan was credited to plaintiff's account?
> A: **Upon plaintiff's instruction**, 7 million was withdrawn from her account including her loaned amount to be deposited at Mr. Ben Lim's account at PS Bank, San Pedro Branch.[41]
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> [Emphasis Supplied]

During her cross-examination, however, Castro could no longer remember whether Oliver gave her the authority to withdraw the ₱7 million from her account. The transcript of stenographic notes reads:

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[41] Records, Volume II, p. 681.

Q: You said here, your statement here, "Upon Plaintiff's instruction". So, my question is, who did the Plaintiff instruct you, was it you?
A: I cannot remember, sir.

Q: You are not definite? Your statement here it is categorical. It's on page 9 of 17 in the Judicial Affidavit, the question is "What happened after the 4.5 million Pesos loan was credited to the Plaintiff's account" And your answer was, "Upon Plaintiff's instruction Seven (7) million was withdrawn from her account. My question is, this phrase, upon plaintiff's instruction, who did the Plaintiff's (sic) instruct, was it you?
A: I cannot remember, sir because I still have other officers other than me, who were assisting me during that time, so it could be the instruction even I said upon the instruction of the plaintiff, but **I cannot remember if I was the one who received the instruction from the plaintiff. It could be other officers of mine during that time, sir.**

Q: May I remind you, this is Seven (7) million Pesos?
A: Yes, sir.[42]

[Emphasis Supplied]

Verily, Castro, as agent of Oliver and as branch manager of PS Bank, utterly failed to secure the authorization of Oliver to withdraw such substantial amount. As a standard banking practice intended precisely to prevent unauthorized and fraudulent withdrawals, a bank manager must verify with the client-depositor to authenticate and confirm that he or she has validly authorized such withdrawal.[43]

Castro's lack of authority to withdraw the ₱7 million on behalf of Oliver became more apparent when she altered the passbook to hide such transaction. It must be remembered that Oliver entrusted her passbook to Castro. In the transaction history register for her account, it was clear that there was a series of dealings from December 17, 1998 to December 23, 1998. When compared with Oliver's passbook, the latter showed that the

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[42] TSN, January 27, 2009, pp. 6-7.

[43] *Philippine National Bank v. Tria*, 686 Phil. 1139, 1157 (2012).

next transaction from December 16, 1998 was on December 28, 1998. It was also obvious to the naked eye that the December 28, 1998 entry in the passbook was altered. As aptly observed by the RTC, nowhere in the testimony of Castro could be gathered that she made a detailed, plausible and acceptable explanation as to why she had to make numerous corrections in the entries in the passbook.[44] Even after the corrections allegedly done to reconcile the records, the passbook and the transaction history register still contained different entries.

Curiously, though she asserts that Oliver obtained a loan of ₱4.5 million and authorized the withdrawal of ₱7 million,[45] Castro could not explain why these transactions were not reflected in the passbook which was in her possession. Bearing in mind that the alleged unauthorized withdrawal happened on December 21, 1998, while Castro was questionably withholding the passbook, the Court is of the impression that she manipulated the entries therein to conceal the ₱7 million withdrawal.

Further, Castro claims that Oliver instructed her to withdraw the ₱7 million from her bank account and to deposit the same in Lim's account. Glaringly, Lim was not presented as a witness to substantiate her defense. Even though she testified that the ₱7 million transfer from Oliver's account to Lim's was duly documented, Castro never presented a single documentary proof of that specific transaction.

The Court is convinced that Castro went beyond the scope of her authority in withdrawing the ₱7 million from Oliver's bank account. Her flimsy excuse that the said amount was transferred to the account of a certain Lim deserves scant consideration. Hence, Castro must be held liable for prejudicing Oliver.[46]

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[44] CA *rollo*, p. 277.

[45] *Rollo*, p. 95.

[46] Art. 1898. If the agent contracts in the name of the principal, **exceeding the scope of his authority**, and the principal does not ratify the contract, it shall be void if the party with whom the agent contracted is aware of the limits of the powers granted by the principal. In this case, however, the agent is liable if he undertook to secure the principal's ratification.

PSBank failed to exercise the highest degree of diligence required of banking institutions

Aside from Castro, PSBank must also be held liable because it failed to exercise utmost diligence in the improper withdrawal of the ₱7 million from Oliver's bank account.

In the case of banks, the degree of diligence required is more than that of a good father of a family. Considering the fiduciary nature of their relationship with their depositors, banks are duty bound to treat the accounts of their clients with the highest degree of care. The point is that as a business affected with public interest and because of the nature of its functions, the bank is under obligation to treat the accounts of its depositors with meticulous care, always having in mind the fiduciary nature of their relationship.[47]

In *Simex International v. Court of Appeals*,[48] the Court held that the depositor expected the bank to treat his account with the utmost fidelity, whether such account consisted only of a few hundred pesos or of millions. The bank must record every single transaction accurately, down to the last centavo, and as promptly as possible. This has to be done if the account is to reflect at any given time the amount of money the depositor can dispose of as he sees fit, confident that the bank will deliver it as and to whomever he directs. A blunder on the part of the bank, such as the dishonor of a check without good reason, can cause the depositor not a little embarrassment if not also financial loss and perhaps even civil and criminal litigation.[49]

Time and again, the Court has emphasized that the bank is expected to ensure that the depositor's funds shall only be given to him or his authorized representative. In *Producers Bank of*

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[47] *Philippine Bank of Commerce v. Court of Appeals*, 336 Phil. 667, 682 (1997).

[48] 262 Phil. 387 (1990).

[49] *Id.* at 396.

the Phil. v. Court of Appeals,[50] the Court held that the usual banking procedure was that withdrawals of savings deposits could only be made by persons whose authorized signatures were in the signature cards on file with the bank. In the said case, the bank therein allowed an unauthorized person to withdraw from its depositor's savings account, thus, it failed to exercise the required diligence of banks and must be held liable.

With respect to withdrawal slips, the Court declared in *Philippine National Bank v. Pike*[51] that "[o]rdinarily, banks allow withdrawal by someone who is not the account holder so long as the account holder authorizes his representative to withdraw and receive from his account by signing on the space provided particularly for such transactions, usually found at the back of withdrawal slips." There, the bank violated its fiduciary duty because it allowed a withdrawal by a representative even though the authorization portion of the withdrawal slip was not signed by the depositor.

Finally, in *Cagungun v. Planters Development Bank*,[52] a case very similar to the present one, the depositors therein entrusted their passbook to the bank employees for some specific transactions. The bank employees went beyond their authority and were able to withdraw from the depositors' account without the latter's consent. The bank was held liable therein for the acts of its employees because it failed to safeguard the accounts of its depositors.

In the case at bench, it must be determined whether the ₱7 million was withdrawn from the bank with the authority of Oliver. As testified to by Castro, every withdrawal from the bank was duly evidenced by a cash withdrawal slip, a copy of which is given both to the bank and to its client.[53] Contrary to the position of the CA and that of the respondents, Oliver cannot be required

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[50] 445 Phil. 702 (2003).

[51] 507 Phil. 322-344 (2005).

[52] 510 Phil. 51-69 (2005).

[53] *Rollo*, p. 92.

to produce the cash withdrawal slip for the said transaction because, precisely, **she consistently denied giving authority to withdraw such amount** from her account.

Necessarily, the party that must have access to such crucial document would either be PSBank or Castro. They must present the said cash withdrawal slip, duly signed by Oliver, to prove that the withdrawal of ₱7 million was indeed sanctioned. Unfortunately, both PSBank and Castro failed to present the cash withdrawal slip.

During the trial, the counsel of PSBank conceded that the cash withdrawal slip for the ₱7 million transaction could not be located, to quote:

> ATTY. DEJARESCO: Your Honor, excuse me just a comment for the record we asked for two (2) years, Your Honor to subpoena this from the bank, the bank never produce (sic) the withdrawal slip two (2) years (sic), Your Honor, this case was delayed by the previous Court for two (2) years. Your Honor, no withdrawal slip was produced by the bank, Your Honor. I would just like to place it on record.
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> COURT: Were there subpoenas issued by the bank, was there an order?
>
> ATTY. DEJARESCO: Yes Your Honor, I think the good counsel was the counsel at that time would you able to confirm that it took us two (2) years to subpoena and subpoena (sic) this withdrawal slip because there must be an authority to withdraw, and it there is a signature of the plaintiff, we will admit that.
>
> **ATTY. CORPUZ: I remember having manifested that the withdrawal slip cannot be located.**
>
> ATTY. DEJARESCO: Let's put that on record, Your Honor.
>
> ATTY. CORPUS: (sic) I remember having made that manifestation, Your Honor.
>
> COURT: That's the reason why no document was produced in Court by the PS Bank?
>
> ATTY. CORPUS: (sic) With respect to the withdrawal slip only, Your Honor on December 21.

ATTY. DEJARESCO: Of that Seven (7) million from the account.

COURT: Make that on record.

ATTY. CORPUS: Yes, Your Honor.[54]

[Emphasis Supplied]

Castro, as agent of Oliver, could not produce either the said withdrawal slip allegedly authorizing the withdrawal of the ₱7 million, her testimony is quoted as follows:

ATTY. DEJARESCO:

Q: Can you show proof of the withdrawal slip?

A: The withdrawal slip.

Q: I'm asking you do you have proof?

A: None, sir.

Q: You cannot produce in Court in support of your Judicial Affidavit?

A: None.

Q: And you cannot produce that in Court?

A: As far as the withdrawal slip as for myself, none.[55]

[Emphasis Supplied]

From the foregoing, there was a clear showing of PSBank's failure to exercise the degree of diligence that it ought to have exercised in dealing with its clients. It could not prove that the withdrawal of ₱7 million was duly authorized by Oliver. As a banking institution, PSBank was expected to ensure that such substantial amount should only be transacted with the consent and authority of Oliver. PSBank, however, reneged on its fiduciary duty by allowing an encroachment upon its depositor's account without the latter's permission. Hence, PSBank must be held liable for such improper transaction.

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[54] TSN, January 27, 2009, pp. 65-66.

[55] TSN, August 9, 2011, pp. 10-11.

PSBank and Castro failed to discharge their burden and must be held solidarily liable

The party who alleges a fact has the burden of proving it. Section 1, Rule 131 of the Rules of Court defines "burden of proof" as "the duty of a party to present evidence on the facts in issue necessary to establish his claim or defense by the amount of evidence required by law." In civil cases, the burden of proof rests upon the plaintiff, who is required to establish his case by a preponderance of evidence. Once the plaintiff establishes his case, the burden of evidence shifts to the defendant, who, in turn, bears the burden to establish his defense.[56]

Here, Oliver alleged that she did not authorize the withdrawal of ₱7 million from her account. To establish her allegation, Oliver presented the following: (1) the transaction history register which showed the withdrawal of ₱7 million from her account on December 21, 1998; (2) the passbook which contained alterations to conceal the withdrawal on December 21, 1998 while in the possession of Castro; and (3) testimonial evidence that she did not allow the withdrawal of the said amount.[57] The Court is of the view that Oliver had sufficiently discharged her burden in proving that ₱7 million was withdrawn from her account without her authorization. Hence, the burden was shifted to the respondents to refute the allegation of Oliver.

As discussed above, both Castro and PSBank failed to establish the burden of their defense. They failed to present proof that Oliver authorized the said transaction. They could have presented either the cash withdrawal slip for the ₱7 million on December 21, 1999 or Lim's testimony to prove the transfer of funds to the latter's account, but they did neither. Without an iota of proof to substantiate the validity of the said transaction, the respondents unlawfully deprived Oliver of her funds.

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[56] *De Leon v. Bank of the Philippine Islands*, G.R. No. 184565, November 20, 2013, 710 SCRA 443, 453, 454.

[57] TSN, February 6, 2001, p. 13.

Indeed, the bank should be solidarily liable with its employee for the damages committed to its depositor.[58] Under Article 2180 of the Civil Code, employers shall be held primarily and solidarily liable for damages caused by their employees acting within the scope of their assigned tasks.

Castro, as acting branch manager of PSBank was able to facilitate the questionable transaction as she was also entrusted with Oliver's passbook. In other words, Castro was the representative of PSBank, and, at the same time, the agent of Oliver, earning commissions from their transactions. Oddly, PSBank, either consciously or through sheer negligence, allowed the double dealings of its employee with its client. Such carelessness and lack of protection of the depositors from its own employees led to the unlawful withdrawal of the ₱7 million from Oliver's account. Although Castro was eventually terminated by PSBank because of certain problems regarding client accommodation and loss of confidence, the damage to Oliver had already been done. Thus, both Castro and PSBank must be held solidarily liable.

Award of damages; invalid foreclosure

To recapitulate, the loans of Oliver from PSBank which were secured by real estate mortages amounted to ₱5,888,149.33. Finding PSBank and Castro solidarily liable to Oliver in the amount of ₱7 million because it was improperly withdrawn from her bank account, the Court agrees with the RTC that had it not been for the said unauthorized withdrawal, Oliver's debts amounting to ₱5,888,149.33 would have been satisfied.

Consequently, PSBank's foreclosure of the real estate mortgage covering the two (2) loans in the total amount of ₱5,888,149.33 was improper. With PSBank being found liable to Oliver for ₱7 million, after offsetting her loans would have PSBank and Castro still owing her ₱1,111,850.77, which must be suitably paid in the form of actual damages.

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[58] *Producers Bank of the Phil. v. Court of Appeals, supra* note 50.

The award of moral damages must also be upheld. Specifically, in *culpa contractual* or breach of contract, like in the present case, moral damages are recoverable only if the defendant has acted fraudulently or in bad faith, or is found guilty of gross negligence amounting to bad faith, or in wanton disregard of his contractual obligations. Verily, the breach must be wanton, reckless, malicious, or in bad faith, oppressive or abusive.[59]

Here, Castro and PSBank were utterly reckless in allowing the withdrawal of a huge amount from Oliver's account without her consent. The bank's negligence is a result of lack of due care and caution required of managers and employees of a firm engaged in a business so sensitive and demanding.[60] Hence, the award of ₱100,000.00 as moral damages is warranted.

The award of exemplary damages is also proper due to the failure of Castro and PSBank to prevent the unauthorized withdrawal from Oliver's account. The law allows the grant of exemplary damages to set an example for public good.[61] The Court, however, finds that the amount of exemplary damages must be decreased to ₱50,000.00.

Finally, the Court agrees with the RTC that Castro and PSBank should be held solidarily liable for attorney's fees. Article 2208 of the Civil Code is clear that attorney's fees may be recovered when exemplary damages are awarded or when the plaintiff, through the defendant's act or omission, has been compelled to litigate with thirds persons. A decreased amount of ₱50,000.00 attorney's fees should be sufficient.

WHEREFORE, the petition is **GRANTED**. The October 25, 2013 Decision and the September 12, 2014 Resolution of the Court of Appeals in CA-G.R. CV No. 95656 are **REVERSED** and **SET ASIDE**. The July 22, 2010 Order of the Regional Trial Court, Branch 276, Muntinlupa City in Civil Case No. 99-278 is hereby **REINSTATED** with the **MODIFICATION**

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[59] *Herbosa v. Court of Appeals*, 425 Phil. 431, 458 (2002).

[60] *Prudential Bank v. Court of Appeals*, 384 Phil. 817, 824 (2000).

[61] *Cagungun v. Planters Development Bank*, 510 Phil. 51, 65 (2005).

that the award of exemplary damages and attorney's fees be decreased to ₱50,000.00 each.

All awards shall earn interests at the rate of six percent (6%) per annum from the finality of this decision.

SO ORDERED.

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

SECOND DIVISION

[G.R. Nos. 221849-50. April 4, 2016]

DATU GUIMID P. MATALAM, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; GOVERNMENT SERVICE INSURANCE SYSTEM (GSIS) ACT OF 1997 (RA NO. 8921) AND HOME DEVELOPMENT MUTUAL FUND (RA 7742) IMPLEMENTING RULES; NON-REMITTANCE OF GSIS AND PAG-IBIG FUND PREMIUMS IS CRIMINALLY PUNISHABLE.— Republic Act No. 8291(Government Service Insurance System Act of 1997), Section 52(g) clearly provides that heads of agencies or branches of government shall be criminally liable for the failure, refusal, or delay in the payment, turnover, and remittance or delivery of such accounts to the GSIS. Similarly, the refusal or failure without lawful cause or with fraudulent intent to comply with the provisions of Republic Act No. 7742 (Home Development Mutual Fund Law), with respect to the collection and remittance of employee savings as well as the required employer contributions to the Pag-IBIG Fund, subjects the employer to criminal liabilities such as the payment of a fine, imprisonment, or both. Indeed, non-remittance of GSIS and

Pag-IBIG Fund premiums is criminally punishable. When an act is *malum prohibitum*, "[i]t is the commission of that act as defined by the law, and not the character or effect thereof, that determines whether or not the provision has been violated." x x x The non-remittance of GSIS and Pag-IBIG Fund premiums is *malum prohibitum*. What the relevant laws punish is the failure, refusal, or delay without lawful or justifiable cause in remitting or paying the required contributions or accounts.

2. ID.; ID.; ID.; ID.; PENALTIES; CASE AT BAR.— Under the Indeterminate Sentence Law, the basic goal is "to uplift and redeem valuable human material, and prevent unnecessary and excessive deprivation of personal liberty and economic usefulness[.]" However, it has also been held that "penalties shall not be standardized but fitted as far as is possible to the individual, with due regard to the imperative necessity of protecting the social order." x x x [Here,] [p]etitioner was Regional Secretary of the DAR-ARMM. He concurrently served as Vice Governor of the ARMM Region. x x x As head of the Regional Office, petitioner was a public officer who had the obligation to ensure the proper remittance of the employer's share of the premiums to the GSIS and Pag-IBIG Fund. x x x Under Section 52(g) of Republic Act No. 8291, the penalty that can be imposed upon petitioner is "imprisonment of not less than one (1) year nor more than five (5) years and a fine of not less than Ten thousand pesos (₱10,000.00) nor more than Twenty thousand pesos (₱20,000.00)." The accused shall suffer absolute perpetual disqualification from holding public office and from practicing any profession or calling licensed by the government. For violations of Rule XIII, Section 1 of the Implementing Rules and Regulations of Republic Act No. 7742, the imposable penalty is "a fine of not less but not more than twice the amount involved or imprisonment of not more than six (6) years; or both such fine and imprisonment at the discretion of the court, apart from the civil liabilities and/or obligations of the offender or delinquent employer." Considering petitioner's position and his actions of trying to pass the blame to his co-accused, we modify petitioner's sentence of imprisonment in Criminal Case No. 26707 to a minimum of three (3) years to a maximum of five (5) years. Accordingly, in Criminal Case No. 26708, petitioner is sentenced to suffer imprisonment of three (3) to six (6) years in addition to the fine imposed by the Sandiganbayan. The fine imposed is increased to ₱250,000.00.

APPEARANCES OF COUNSEL

Abdul Hafiz Tan Adil, Jr. for petitioner.

R E S O L U T I O N

LEONEN, *J.*:

This resolves the Petition for Review on Certiorari assailing the Joint Decision[1] dated April 28, 2015 and Resolution dated November 2, 2015 of the Sandiganbayan in Criminal Case Nos. 26707 to 26708. The Sandiganbayan found petitioner Datu Guimid P. Matalam (Matalam) guilty of non-remittance of the employer's share in Government Insurance System and Home Development Mutual Fund (Pag-IBIG Fund) premiums.

The Office of the Ombudsman charged Matalam, Regional Secretary of the Department of Agrarian Reform-Autonomous Region for Muslim Mindanao (DAR-ARMM), with the commission of crimes under "Section 52 (g) of Republic Act No. 8921, otherwise known as the [Government Service Insurance System (GSIS)] Act of 1997, and Section 1, Rule XIII of the Implementing Rules and Regulations of Republic Act No. 7742":[2]

Criminal Case No. 26707
(Violation of Sec. 52 (g), Republic Act No. 8291)

"That sometime in 1997, or prior to or subsequent thereto, in Cotabato City, Maguindanao, Philippines, and within the jurisdiction of this Honorable Court, accused DATU GUIMID MATALAM, a high-ranking public officer being the Regional Secretary of the Department of Agrarian Reform-Autonomous Region for Muslim

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[1] *Rollo*, pp. 35-70. The Decision was penned by Associate Justice Teresita V. Diaz-Baldos and concurred in by Associate Justices, Napoleon E. Inoturan and Maria Cristina J. Cornejo.

[2] *Id.* at 35. Rep. Act No. 7742 amended Pres. Decree No. 1752, otherwise known as the Home Development Mutual Fund Law of 1980. Rep. Act No. 7742 has been subsequently amended by Rep. Act No. 9679, otherwise known as the Home Development Mutual Fund Law of 2009. The Home Development Mutual Fund was created on June 11, 1978 under Pres. Decree No. 1530.

Mindanao (DAR-ARMM), ANSARRY LAWI and NAIMAH B. UNTE, both are low-ranking officials being the Cashier and Accountant, respectively, of the same aforestated government office, committing the offense in relation to their official duties and taking advantage of their official positions, conspiring together and taking advantage of their official positions, conspiring together and helping one another, and as such accountable officers involved in the collection and remittance of accounts to GSIS, did, there and then, willfully, unlawfully and criminally, fail and/or refuse to pay or remit the sum of TWO MILLION FOUR HUNDRED EIGHTEEN THOUSAND FIVE HUNDRED SEVENTY-SEVEN AND 33/100 PESOS (₱2,418,577.33), representing employer's contribution of [DAR Provincial Office]-Maguindanao for the period of January, 1997 to June 1998, to GSIS, it being due and demandable, without justifiable cause and despite repeated demands made.

CONTRARY TO LAW."

Criminal Case No. 26708
(Violation of Sec. 1, Rule XIII of the Implementing Rules & Regulations of Republic Act No. 7742)

"That sometime in 1997, or prior to or subsequent thereto, in Cotabato City, Maguindanao, Philippines, and within the jurisdiction of this Honorable Court, accused DATU GUIMID MATALAM, a high-ranking public officer being the Regional Secretary of the Department of Agrarian Reform-Autonomous Region for Muslim Mindanao (DAR-ARMM), ANSARRY LAWI and NAIMAH B. UNTE, both are low-ranking officials being the Cashier and Accountant, respectively, of the same aforestated government office, committing the offense in relation to their official duties and taking advantage of their official positions, conspiring together and helping one another, and as such accountable officers involved in the collection and remittance of accounts to Home Development Mutual Fund (PAG-IBIG), did, there and then, willfully, unlawfully and criminally, fail and/or refuse to pay or remit the sum of ONE HUNDRED FORTY-NINE THOUSAND ONE HUNDRED PESOS (₱149,100.00), representing employer's contribution of [DAR Provincial Office]-Maguindanao for the period of January, 1997 to June 1998, to GSIS, it being due and demandable, without justifiable cause and despite repeated demands made.

CONTRARY TO LAW."[3]

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

On August 11, 2003, Matalam was arraigned and he pleaded not guilty. [4] On October 20, 2004, Matalam's co-accused, Ansarry Lawi (Lawi) and Naimah B. Unte (Unte), were arraigned and they separately pleaded not guilty.[5]

The Prosecution presented both documentary and testimonial evidence for both criminal cases.[6] The Prosecution presented five (5) witnesses: (1) Lilia Gamut-gamutan Delangalen, Accountant III of the GSIS, Cotabato Branch; (2) Rolando Roque, Chief of Division under the Member Services Division of Pag-IBIG Fund, Cotabato Branch; (3) Husain Enden Matanog, State Auditor III of the Office of the Auditor and Resident of DAR-ARMM, DAR Regional Office; (4) Luz Cantor-Malbog, Director of Bureau C of the Department of Budget and Management; and (5) Abdulkadil Angas Alabat, Department Manager of the Land Bank of the Philippines, Cotabato Branch.[7]

According to the Prosecution, Matalam, Lawi, and Unte were the officers involved in the collection and remittance of accounts to the GSIS and Pag-IBIG Fund and, thus, were accountable for the non-remittance.[8] Matalam and his co-accused failed and/or refused to remit the required contributions without justifiable cause despite repeated demands.[9]

Matalam, for his part, presented both testimonial and documentary evidence. He claimed that his co-accused Lawi and Unte were responsible for remitting the GSIS and Pag-IBIG Fund government contributions.[10] Matalam presented a document entitled Fourth Indorsement dated April 30, 1998 addressed to Lawi, directing the latter to comment or act on the Third Indorsement of Husain Matanog. The Fourth Indorsement was

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[4] *Id.* at 38.

[5] *Id.*

[6] *Id.* at 40-58.

[7] *Id.* at 40-45.

[8] *Id.* at 39.

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

[10] *Id.* at 58.

signed by Atty. Tommy A. Ala, who was then Matalam's Chief of Staff.[11] Matalam also presented other memoranda directing Unte and Lawi to comment on the Indorsement of Husain Matanog.[12] When asked why he did not sanction Lawi and Unte upon their failure to comply with his directive, Matalam said that he did not have time to do so because he had numerous pending tasks at that time.[13]

Lawi and Unte failed to present evidence despite the opportunities given them.[14]

In the Joint Decision dated April 28, 2015, the Sandiganbayan found Matalam guilty of the crimes charged.[15]

In **Criminal Case No. 26707**,[16] the Sandiganbayan held that on July 17, 1998, Zenaida D. Ferrer, GSIS Officer-in-Charge, sent a Notice of Underpayment to Matalam, which reads:[17]

> We wish to inform you that we have validated your office Premium Master List as of 31 December 1997 and actual remittances for compulsory GSIS Premiums covering the month/s of January 1997-June 1998.
>
> Based on the Remittance Lists submitted to this office, your total actual remittances for the above-stated period is understated per attached Statement of Account.
>
> Due to this understatement, interests and surcharges will accrue from the due date to the time of payment. Kindly make necessary adjustments on your next remittances.
>
> Should there be discrepancy with the amount based on your records, please come to our office for reconciliation.

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[11] *Id.*

[12] *Id.*

[13] *Id.* at 59.

[14] *Id.* at 60.

[15] *Id.* at 35-70.

[16] The case was for violation of Rep. Act No. 8291, Sec. 52 (g).

[17] *Rollo*, p. 61.

Your cooperation on this matter is highly appreciated.[18]

The Sandiganbayan found that with the Notice of Underpayment were six (6) Statements of Account of Compulsory Contributions Due and Payable as of June 30, 1998, all addressed to Matalam.[19]

Further, the Sandiganbayan found that the Department of Budget and Management released the funds to the DAR-ARMM through the corresponding Advice of Notice of Cash Allocation issued.[20] According to the court:

> These funds were credited to the account of the Office of the Regional Governor of the ARMM, which had the obligation to remit to the various line agencies of the ARMM the specific amounts provided to them. *As for the remittance to DAR-ARMM, it appears based on the confirmation by Abdulkadil Angas Alabat, the Department Manager of the Cotabato Branch of Landbank of the Philippines, which has been the official depository of the ARMM since the latter's inception, that the following amounts were deposited into Account No. 0372-1054-29 maintained by DAR-ARMM for its Fund 101*[.][21] (Emphasis supplied)

Hence, the Sandiganbayan held that:

> The act constituting the offense is the failure, refusal or delay in the payment, turnover, remittance or delivery of such accounts to the GSIS within thirty (30) days from the time that the same shall have been due and demandable.
>
> Accused Matalam was admittedly the DAR-ARMM Secretary from January 1997 until 1998, and also the concurrent Vice-Governor of the ARMM Region. As the DAR-ARMM Secretary from January 1997 until 1998, [Matalam] was considered the highest official of DAR-Maguindanao. As such he falls under the first category of responsible officials. . . The thrust of his defense shifting the duty to remit to his co-accused, Lawi and Unte, is unavailing since these

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[18] *Id.*

[19] *Id.*

[20] *Id.* at 62.

[21] *Id.*

two officials fall under the second category of officials responsible for such remittance.[22]

In **Criminal Case No. 26708**,[23] the Sandiganbayan found Matalam guilty of non-remittance of the employer's share of Pag-IBIG Fund premiums.

According to the Sandiganbayan, under the pertinent rules and law, it is the employer who is penalized for the non-remittance to Pag-IBIG Fund:

> Since it is the employer who is penalized for non-remittance of the contribution under Section 5, Rule VI and Section 1, Rule XIII . . . the term "employer" should be characterized as to its exact coverage. As defined in Section 1 of Rule III of the same Implementing Rules and Regulations, an "employer" is any person, natural or juridical, domestic or foreign, who carries on in the Philippines any trade, business, industry, undertaking or activity of any kind, and uses the services of another person who is under his orders as regards such services, the government, its national and local offices, political subdivision, branches, agencies, or instrumentalities including corporations owned and/or controlled by the Government.[24]

Based on the definition of the term "employer" under the law, the Sandiganbayan ruled that it is the head of the office or the agency that has the obligation to remit the contributions. That the letters of the Pag-IBIG Fund's Chief of the Member Services Division (Cotabato Branch), which directed remittance of the employer's share to the Pag-IBIG Fund, were addressed to the Head of Office of the DAR Provincial Office in Maguindanao bolsters the correct application of the provisions of the Implementing Rules and Regulations of Republic Act No. 7742.[25]

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[22] *Id.* at 64.

[23] The case was for violation of Rule XIII, Sec. 1 of the Implementing Rules & Regulations of Rep. Act No. 7742.

[24] *Rollo*, p. 67.

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

The dispositive portion of the Sandiganbayan Decision reads:

WHEREFORE, in the light of all the foregoing, the Court hereby renders judgment as follows:

1. In **Criminal Case No. 26707**, accused **DATU GUIMID MATALAM, ANSARRY LAWI and NAIMAH UNTE** are hereby found ***Guilty*** beyond reasonable doubt of Violation of Section 52(g) of R.A. No. 8291, and are each sentenced to suffer the indeterminate penalty of imprisonment ranging from one (1) year as minimum to three (3) years as maximum, and to pay a fine of ₱20,000.00 each. They shall further suffer absolute perpetual disqualification from holding public office and from practicing any profession or calling licensed by the Government.

2. In **Criminal Case No. 26708**, accused **DATU GUIMID MATALAM** is hereby found ***Guilty*** beyond reasonable doubt of Violation of Section 1, Rule XIII of the Implementing Rules and Regulations of R.A. No. 7742, and is hereby sentenced to pay a fine of ₱190,506.00, and in addition, to pay a penalty of three percent per month of the amounts payable computed from the date the contributions fell due and until the same are paid.

For lack of basis, accused ANSARRY LAWI and NAIMAH UNTE are hereby ACQUITTED of this offense.

SO ORDERED.[26]

Matalam filed a Motion for Reconsideration of the Decision, which was denied by the Sandiganbayan on November 2, 2015.[27]

Matalam now comes before this court and assails the Sandiganbayan Decision.

Matalam argues that a review of the factual findings of the Sandiganbayan would reveal that there is reasonable doubt that he committed the crimes imputed to him.[28] Testimonies of the witnesses showed that the funds for the remittances due to GSIS and Pag-IBIG Fund were released to the Office of the Regional

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

[27] *Id.* at 87-90.

[28] *Id.* at 10.

Governor of the ARMM and not to DAR-ARMM.[29] Even if the funds were, indeed, released to DAR-ARMM, "Matalam as the Regional Secretary could not be held accountable for the non-payment or remittance, since as a matter of procedure, he merely acts as a signatory to whatever document is necessary for the payment of the employer's share to both GSIS and Pag-IBIG [Fund]."[30] It is the Office of the Regional Governor that has the duty to release the funds.[31]

Matalam insists that his duty to affix his signature as head of the office was only ministerial.[32] His signature was conditioned on his receipt of the disbursement vouchers prepared by the accountant and checked by the cashier.[33]

Matalam also claims that he was not negligent in reminding his co-accused to respond to the complaints regarding non-remittance to GSIS and Pag-IBIG Fund.[34] Matalam sent four (4) memoranda addressed to Lawi and Unte as DAR-ARMM's cashier and accountant, respectively, to respond to the complaints and to the letter of Husain Matanog, the State Auditor.[35]

In addition, the billing statements were not addressed to Matalam.[36] The billing statements were sent to the Accounting Division of DAR; hence, it should have been Unte's duty as accountant to deal with the statements or to bring them to Matalam's attention.[37]

Matalam also assails the testimony of witness Abdulkadil Alabat for being incomplete. According to Matalam, not all of

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[29] *Id.*

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

[31] *Id.* at 12.

[32] *Id.* at 18.

[33] *Id.*

[34] *Id.*

[35] *Id.*

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

[37] *Id.* at 20.

the bank statements allegedly related to ARMM's account with the Land Bank of the Philippines, Cotabato Branch, was presented in court. Moreover, based on witnesses' testimonies, the Notices of Cash Allocation were addressed to the Office of the Regional Governor of the ARMM, not to DAR-ARMM.[38]

Furthermore, Matalam argues that even if the offenses he allegedly committed are *mala prohibita*, his guilt must still be proven beyond reasonable doubt.[39] The pieces of evidence presented in this case create a reasonable doubt as to his guilt.[40] Thus, a re-evaluation of the evidence is required.[41]

The main issue in this case is whether petitioner Datu Guimid P. Matalam is guilty beyond reasonable doubt of non-remittance of the employer's share of the GSIS and Pag-IBIG Fund premiums.

We deny the Petition.

Petitioner failed to show that the Sandiganbayan committed reversible error in rendering the assailed Decision and Resolution. Petitioner is liable for the non-remittance of the contributions to GSIS and Pag-IBIG Fund.

Petitioner's liability for the non-remittance to GSIS and Pag-IBIG Fund of the employer's share in the contributions is clearly set out in the laws mandating the collection and remittance of the premiums:

Republic Act No. 8291, Sec. 52 (g):

I. PENAL PROVISIONS

SEC. 52. Penalty. —

x x x x x x x x x

(g) The *heads of the offices* of the national government, its political subdivisions, branches, agencies and instrumentalities, including

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[38] *Id.* at 24.

[39] *Id.*

[40] *Id.*

[41] *Id.* at 26.

government-owned or controlled corporations and government financial institutions, and the personnel of such offices *who are involved in the collection of premium contributions, loan amortization and other accounts due the GSIS who shall fail, refuse or delay the payment, turnover, remittance or delivery of such accounts to the GSIS within thirty (30) days from the time that the same shall have been due and demandable shall, upon conviction by final judgment,* suffer the penalties of imprisonment of not less than one (1) year nor more than five (5) years and a fine of not less than Ten thousand pesos (₱10,000.00) nor more than Twenty thousand pesos (₱20,000.00), and in addition, shall suffer absolute perpetual disqualification from holding public office and from practicing any profession or calling licensed by the government.

Sec. 1, Rule XIII of the Implementing Rules & Regulations of Republic Act No. 7742:

RULE XIII
General Provisions

SECTION 1. Penalty Clause — Pursuant to Section 23 of Presidential Decree No. 1752, as amended by Executive Order No. 35 and Republic Act No. 7742, *refusal or failure without lawful cause or with fraudulent intent to comply with the provisions of said law as well as the implementing rules and regulations* adopted by the Board of Trustees pertinent thereto, particularly with respect to registration of employees, *collection and remittance of employee savings as well as the required employer contributions, or the correct amount due, within the time set in the implementing rules and regulations or specific call or extension made by the Fund Management* shall render the employer liable to a fine of not less but not more than twice the amount involved or imprisonment of not more than six (6) years; or both such fine and imprisonment at the discretion of the court, apart from the civil liabilities and/or obligations of the offender or delinquent employer. When the offender is a corporation, public or private, the penalty shall be imposed upon the members of the governing board and the President or General Manager without prejudice to the prosecution of related offenses under the Revised Penal Code and other laws, revocation and denial of operating rights and privileges in the Philippines and deportation when the offender is a foreigner. (Emphasis supplied)

In both cases, petitioner was informed of the underpayment or non-remittance of premiums for a period of one (1) year and

six (6) months, or from January 1997 to June 1998.[42] Petitioner failed to heed the letters and billing statements, which asked him, as head of DAR-ARMM, to pay the deficiencies.

The importance of the GSIS and the Pag-IBIG Fund cannot be underscored enough. "The GSIS was created for the purpose of providing social security and insurance benefits as well as promoting efficiency and the welfare of government employees."[43] To this end, the state has adopted a policy of maintaining and preserving the actuarial solvency of GSIS funds at all times.[44]

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[42] *Id.* at 61.

[43] *GSIS v. Court of Appeals,* 350 Phil. 654, 660 (1998) [Per *J.* Romero, Third Division], citing Pres. Decree No. 1146, otherwise known as the Revised Government Service Insurance Act of 1977.

[44] Rep. Act No. 8291, Sec. 39 provides:

SECTION 39. Exemption from Tax, Legal Process and Lien. — It is hereby declared to be the policy of the State that the actuarial solvency of the funds of the GSIS shall be preserved and maintained at all times and that contribution rates necessary to sustain the benefits under this Act shall be kept as low as possible in order not to burden the members of the GSIS and their employers. Taxes imposed on the GSIS tend to impair the actuarial solvency of its funds and increase the contribution rate necessary to sustain the benefits of this Act. Accordingly, notwithstanding any laws to the contrary, the GSIS, its assets, revenues including all accruals thereto, and benefits paid, shall be exempt from all taxes, assessments, fees, charges or duties of all kinds. These exemptions shall continue unless expressly and specifically revoked and any assessment against the GSIS as of the approval of this Act are hereby considered paid. Consequently, all laws, ordinances, regulations, issuances, opinions or jurisprudence contrary to or in derogation of this provision are hereby deemed repealed, superseded and rendered ineffective and without legal force and effect.

Moreover, these exemptions shall not be affected by subsequent laws to the contrary unless this section is expressly, specifically and categorically revoked or repealed by law and a provision is enacted to substitute or replace the exemption referred to herein as an essential factor to maintain or protect the solvency of the fund, notwithstanding and independently of the guaranty of the national government to secure such solvency or liability.

The funds and/or the properties referred to herein as well as the benefits, sums or monies corresponding to the benefits under this Act shall be exempt from attachment, garnishment, execution, levy or other processes issued by the courts, quasi-judicial agencies or administrative bodies including

The fund comes from both member and employer contributions.[45] Hence, non-remittance of the contributions threatens the actuarial solvency of the fund.

In the same vein, the Pag-IBIG Fund was established pursuant to "constitutional mandates on the promotion of public welfare through ample social services, as well as its humanist commitment

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Commission on Audit (COA) disallowances and from all financial obligations of the members, including his pecuniary accountability arising from or caused or occasioned by his exercise or performance of his official functions or duties, or incurred relative to or in connection with his position or work except when his monetary liability, contractual or otherwise, is in favor of the GSIS.

[45] Rep. Act No. 8291, part C, Sec. 5 provides:

C. SOURCES OF FUNDS

SECTION 5. Contributions. — (a) It shall be mandatory for the member and the employer to pay the monthly contributions specified in the following schedule:

Monthly Compensation	Percentage of Monthly	
	Member	Employer
I. Maximum Average Monthly Compensation (AMC) Limit and Below	9.0%	12.0%
II. Over the Maximum (AMC) Limit		
- Up to the Maximum AMC Limit	9.0%	12.0%
- In Excess of the AMC Limit	9.0%	12.0%

Members of the judiciary and constitutional commissioners shall pay three percent (3%) of their monthly compensation as personal share, and their employers a corresponding three percent (3%) share for their life insurance coverage.

(b) The employer shall include in its annual appropriation the necessary amounts for its share of the contributions indicated above, plus any additional premiums that may be required on account of the hazards or risks of its employees' occupation.

(c) It shall be mandatory and compulsory for all employers to include the payment of contributions in their annual appropriations. Penal sanctions shall be imposed upon employers who fail to include the payment of contributions in their annual appropriations or otherwise fail to remit the accurate/exact amount of contributions on time, or delay the remittance of premium contributions to the GSIS. The heads of offices and agencies shall be administratively liable for non-remittance or delayed remittance of premium contributions to the GSIS.

to the interest of the working groups, in relation particularly to their need for decent shelter."[46] This continued commitment to social justice and national development through the establishment, development, promotion, and integration of a sound and viable tax-exempt mutual provident savings system for the working peoples' housing needs, with the mandatory contributory support of the employers, is seen in the subsequent amendments to the law.[47] Failure of the employer to remit its share of the contributions jeopardizes the peoples' needs and rights to decent shelter or housing.

We cannot accept petitioner's argument that the duty to remit the required amounts falls to his co-accused. Republic Act No. 8291, Section 52 (g) clearly provides that heads of agencies or branches of government shall be criminally liable for the failure, refusal, or delay in the payment, turnover, and remittance or delivery of such accounts to the GSIS.

Similarly, the refusal or failure without lawful cause or with fraudulent intent to comply with the provisions of Republic Act No. 7742, with respect to the collection and remittance of employee savings as well as the required employer contributions to the Pag-IBIG Fund, subjects the employer to criminal liabilities such as the payment of a fine, imprisonment, or both.[48]

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[46] Pres. Decree No. 1752, first whereas clause provides: The Home Development Mutual Fund was established on June 11, 1978 under Pres. Decree No. 1530.

[47] *See* Rep. Act No. 9679 (2009).

[48] Pres. Decree No. 1752 has been amended by Rep. Act No. 7742 and Rep. Act No. 9679, entitled An Act Further Strengthening the Home Development Mutual Fund, and for Other Purposes, or the Home Development Mutual Fund Law of 2009.

Rep. Act No. 9679, Sec. 25 provides:

SECTION 25. Penal Provisions. — Refusal or failure without lawful cause or with fraudulent intent to comply with the provisions of this Act, as well as the implementing rules and regulations adopted by the Board of Trustees, particularly with respect to registration of employees, collection and remittance of employee-savings as well as the employer counterparts, or the correct amount due, within the time set in the implementing rules and regulations

Indeed, non-remittance of GSIS and Pag-IBIG Fund premiums is criminally punishable.[49]

When an act is *malum prohibitum*, "[i]t is the commission of that act as defined by the law, and not the character or effect thereof, that determines whether or not the provision has been violated."[50]

In *ABS-CBN Corp. v. Gozon*,[51] we discussed the difference between acts *mala prohibita* and *mala in se*:

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or specific call or extension made by the Fund management shall constitute an offense punishable by a fine of not less than, but not more than twice, the amount involved or imprisonment of not more than six (6) years, or both such fine and imprisonment, in the discretion of the court, apart from the civil liabilities and/or obligations of the offender or delinquent. When the offender is a corporation, the penalty shall be imposed upon the members of the governing board and the president or general manager, without prejudice to the prosecution of related offenses under the Revised Penal Code and other laws, revocation and denial of operating rights and privileges in the Philippines, and deportation when the offender is a foreigner. In case of government instrumentalities, agencies or corporations, the treasurer, finance officer, cashier, disbursing officer, budget officer or other official or employee who fails to include in the annual budget the amount corresponding to the employers' contributions, or who fails or refuses or delays by more than thirty (30) days from the time such amount becomes due and demandable or to deduct the monthly contributions of the employee shall, upon conviction by final judgment, suffer the penalties of imprisonment of not more than six (6) years, and a fine of not less than, but not more than twice the amount involved.

[49] See *Estino v. People*, 602 Phil. 671 (2009) [Per *J.* Velasco, Jr., Second Division], where respondent Pescadera was convicted by the Sandiganbayan of malversation of public funds under Article 217 of the Revised Penal Code for failure to remit the GSIS contributions of the provincial government employees. Pescadera was acquitted by the Court due to lack of demand required under the law. See also *Larga v. Ranada, Jr.*, 247 Phil. 196 (1988) [Per *J.* Feliciano, Third Division], where petitioner was prosecuted for failure to remit to the HDMF employer-employee contributions under Pres. Decree No. 1752, Sec. 23. See also *Social Security System v. Department of Justice*, 556 Phil. 263 (2007) [Per *J.* Carpio, Second Division], where criminal liability for non-remittance of SSS premiums was discussed.

[50] *Martinez v. Villanueva*, 669 Phil. 14 (2011) [Per *J.* Villarama, Jr., First Division].

[51] G.R. No. 195956, March 11, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/march2015/195956.pdf> [Per *J.* Leonen, Second Division].

The general rule is that acts punished under a special law are *malum prohibitum*. "An act which is declared *malum prohibitum*, malice or criminal intent is completely immaterial."

In contrast, crimes *mala in se* concern inherently immoral acts:

> Not every criminal act, however, involves moral turpitude. It is for this reason that "as to what crime involves moral turpitude, is for the Supreme Court to determine." In resolving the foregoing question, the Court is guided by one of the general rules that crimes *mala in se* involve moral turpitude, while crimes *mala prohibita* do not, the rationale of which was set forth in "*Zari v. Flores*," to wit:
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> > *It (moral turpitude) implies something immoral in itself, regardless of the fact that it is punishable by law or not. It must not be merely mala prohibita, but the act itself must be inherently immoral. The doing of the act itself, and not its prohibition by statute fixes the moral turpitude.* Moral turpitude does not, however, include such acts as are not of themselves immoral but whose illegality lies in their being positively prohibited.
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> [These] guidelines nonetheless proved short of providing a clear-cut solution, for in *International Rice Research Institute v. NLRC*, the Court admitted that it cannot always be ascertained whether moral turpitude does or does not exist by merely classifying a crime as *malum in se* or as *malum prohibitum*. There are crimes which are *mala in se* and yet but rarely involve moral turpitude and there are crimes which involve moral turpitude and are *mala prohibita* only. In the final analysis, whether or not a crime involves moral turpitude is ultimately a question of fact and frequently depends on all the circumstances surrounding the violation of the statue.

"Implicit in the concept of *mala in se* is that of *mens rea*." *Mens rea* is defined as "the nonphysical element which, combined with the act of the accused, makes up the crime charged. Most frequently it is the criminal intent, or the guilty mind[.]"

Crimes *mala in se* presuppose that the person who did the felonious act had criminal intent to do so, while crimes *mala prohibita* do not require knowledge or criminal intent:

> In the case of mala in se *it is necessary, to constitute a punishable offense, for the person doing the act to have*

> *knowledge of the nature of his act and to have a criminal intent; in the case of mala prohibita, unless such words as "knowingly" and "willfully" are contained in the statute, neither knowledge nor criminal intent is necessary*. In other words, a person morally quite innocent and with every intention of being a law-abiding citizen becomes a criminal, and liable to criminal penalties, if he does an act prohibited by these statutes.

Hence, "*[i]ntent to commit the crime and intent to perpetrate the act must be distinguished*. A person may not have consciously intended to commit a crime; but he did intend to commit an act, and that act is, by the very nature of things, the crime itself[.]" When an act is prohibited by a special law, it is considered injurious to public welfare, and the performance of the prohibited act is the crime itself.

Volition, or intent to commit the act, is different from criminal intent. Volition or voluntariness refers to knowledge of the act being done. On the other hand, criminal intent — which is different from motive, or the moving power for the commission of the crime — refers to the state of mind beyond voluntariness. It is this intent that is being punished by crimes *mala in se*.[52] (Emphasis in the original, citations omitted)

The non-remittance of GSIS and Pag-IBIG Fund premiums is *malum prohibitum*. What the relevant laws punish is the failure, refusal, or delay without lawful or justifiable cause in remitting or paying the required contributions or accounts.

In *Saguin v. People*,[53] we have said that non-remittance of Pag-IBIG Fund premiums without lawful cause or with fraudulent intent is punishable under the penal clause of Section 23 of Presidential Decree No. 1752. However, the petitioners in *Saguin* were justified in not remitting the premiums on time as the hospital they were working in devolved to the provincial government and there was confusion as to who had the duty to remit.

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[52] *Id.* at 36-38.

[53] G.R. No. 210603, November 25, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/november2015/210603.pdf> [Per J. Mendoza, Second Division]

In this case, however, petitioner failed to prove a justifiable cause for his failure to remit the premiums. We cannot subscribe to petitioner's defense that the funds for the remittances were not directly credited to DAR-ARMM but to the account of the Office of the Regional Governor of the ARMM, which had the obligation to remit to the various line agencies of the ARMM the specific amounts provided to them.

As the Sandiganbayan found from the testimonies of the witnesses and evidence on record, the amounts meant for remittance to GSIS and Pag-IBIG Fund were indeed deposited into the bank account maintained by DAR-ARMM for its Fund 101.[54] It is settled that factual findings of the trial court are entitled to respect and finality unless it is shown that such findings are patently misplaced or without any basis.[55] Hence, petitioner's duty to ensure the remittance of the amounts to GSIS and Pag-IBIG Fund was triggered by the availability of the funds in DAR-ARMM's account.

In the assailed Decision, the Sandiganbayan in Criminal Case No. 26707, for the failure to remit the GSIS premium contributions, sentenced petitioner to suffer the indeterminate penalty of imprisonment ranging from one (1) year as minimum to three (3) years as maximum, and to pay a fine of ₱20,000.00.[56] He was also sentenced to suffer absolute perpetual disqualification from holding public office and from practicing any profession or calling licensed by government.[57] In Criminal Case No. 26708, for the non-remittance of the employer's share to the contributions to the Pag-IBIG Fund, petitioner was sentenced to pay a fine of ₱190,506.00 as well as a penalty of three percent (3%) per

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[54] *Rollo*, pp. 62-63.

[55] See *Judge Juliano v. Sandiganbayan*, 336 Phil. 49, 57 (1997) [Per *J.* Torres, Jr., *En Banc*]; *Saguin v. People*, G.R. No. 210603, November 25, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/november2015/210603.pdf> [Per *J.* Mendoza, Second Division].

[56] *Rollo*, pp. 68-69.

[57] *Id.* at 69.

month of the amounts payable computed from the date the contributions fell due and until these were paid.[58]

Under the Indeterminate Sentence Law, the basic goal is "to uplift and redeem valuable human material, and prevent unnecessary and excessive deprivation of personal liberty and economic usefulness[.]"[59] However, it has also been held that "penalties shall not be standardized but fitted as far as is possible to the individual, with due regard to the imperative necessity of protecting the social order."[60] Hence, this Court must look at certain factors when imposing penalties:

> *Considering the criminal as an individual*, some of the factors that should be considered are: (1) His age, especially with reference to extreme youth or old age; (2) his general health and physical condition; (3) his mentality, heredity and personal habits; (4) his previous conduct, environment and mode of life (and criminal record if any); (5) his previous education, both intellectual and moral; (6) his proclivities and aptitudes for usefulness or injury to society; (7) his demeanor during trial and his attitude with regard to the crime committed; (8) the manner and circumstances in which the crime was committed; (9) the gravity of the offense (note that Section 2 of Act No. 4103 excepts certain grave crimes — this should be kept in mind in assessing the minimum penalties for analogous crimes).
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> In *considering the criminal as a member of society*, his relationship, first, toward his dependents, family and associates and their relationship with him, and second, *his relationship towards society at large and the State are important factors*. The State is concerned

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[58] *Id.* Under the Implementing Rules and Regulations of Rep. Act No. 7742, rule VI, Sec. 5, employers are required to remit the contributions within fifteen (15) days from the date of collection. Refusal or failure to collect and remit shall subject the employer to the penalty of three percent (3%) per month from the date the contributions fall due and until payment thereof.

[59] *Vitangcol v. People*, G.R. No. 207406, January 13, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/january2016/207406.pdf> 12 [Per *J.* Leonen, Second Division], citing *People v. Ducosin*, 59 Phil. 109, 117 (1933) [Per *J.* Butte, *En Banc*].

[60] *People v. Ducosin*, 59 Phil. 109, 117 (1933) [Per *J.* Butte, *En Banc*].

not only in the imperative necessity of protecting the social organization against the criminal acts of destructive individuals but also in redeeming the individual for economic usefulness and other social ends. In a word, the Indeterminate Sentence Law aims to individualize the administration of our criminal law to a degree not heretofore known in these Islands. With the foregoing principles in mind as guides, the courts can give full effect to the beneficent intention of the Legislature.[61] (Emphasis supplied)

With these factors in mind, we find that the penalty imposed on petitioner should be modified. Petitioner was Regional Secretary of the DAR-ARMM.[62] He concurrently served as Vice Governor of the ARMM Region.[63] The Office of the Regional Secretary oversees several offices, including: the Office of the Assistant Regional Secretary; the Administrative and Finance Division; Operation Division; Planning Division; Legal Division; Support Services; Provincial Agrarian Reform Offices; and Municipal Agrarian Reform Offices.[64] As head of the Regional Office, petitioner was a public officer who had the obligation to ensure the proper remittance of the employer's share of the premiums to the GSIS and Pag-IBIG Fund.

In *Rios v. Sandiganbayan*,[65] this Court underscored the constitutional principle that "public office is a public trust":

This Court would like to stress adherence to the doctrine that public office is a public trust. Public officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty and efficiency, act with patriotism and justice, and lead modest lives. Public servants must bear in mind this constitutional mandate at all times to guide them in their actions during their entire tenure in the government service. "The good of

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[61] *Id.* at 118.

[62] *Rollo*, p. 35.

[63] *Id.* at 58.

[64] See *Organizational Structure of the Department of Agrarian Reform-Autonomous Region of Muslim Mindanao* <http://dar-armmgov.ph/index.php/about-dar/org-dar> (visited March 17, 2016).

[65] 345 Phil. 85, 91 (1997) [Per *J.* Romero, Third Division].

the service and the degree of morality which every official and employee in the public service must observe, if respect and confidence are to be maintained by the Government in the enforcement of the law, demand that no untoward conduct on his part, affecting morality, integrity and efficiency while holding office should be left without proper and commensurate sanction, all attendant circumstances taken into account."[66] (Citations omitted)

Under Section 52 (g) of Republic Act No. 8291, the penalty that can be imposed upon petitioner is "imprisonment of not less than one (1) year nor more than five (5) years and a fine of not less than Ten thousand pesos (₱10,000.00) nor more than Twenty thousand pesos (₱20,000.00)." The accused shall suffer absolute perpetual disqualification from holding public office and from practicing any profession or calling licensed by the government.

For violations of Rule XIII, Section 1 of the Implementing Rules and Regulations of Republic Act No. 7742, the imposable penalty is "a fine of not less but not more than twice the amount involved or imprisonment of not more than six (6) years; or both such fine and imprisonment at the discretion of the court, apart from the civil liabilities and/or obligations of the offender or delinquent employer."

Considering petitioner's position and his actions of trying to pass the blame to his co-accused, we modify petitioner's sentence of imprisonment in Criminal Case No. 26707 to a minimum of three (3) years to a maximum of five (5) years. Accordingly, in Criminal Case No. 26708, petitioner is sentenced to suffer imprisonment of three (3) to six (6) years in addition to the fine imposed by the Sandiganbayan. The fine imposed is increased to ₱250,000.00.

WHEREFORE, the Petition is **DENIED.** The Joint Decision dated April 28, 2015 and Resolution dated November 2, 2015 of the Sandiganbayan in Criminal Case Nos. 26707 to 26708 are **AFFIRMED with MODIFICATIONS** as to the penalty imposed on petitioner Datu Guimid Matalam, as follows:

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[66] *Id.*

(1) **In Criminal Case No. 26707**, accused **DATU GUIMID MATALAM . . .** [is] hereby found ***Guilty*** beyond reasonable doubt of Violation of Section 52 (g) of R[epublic] A[ct] No. 8291, and . . . sentenced to suffer the indeterminate penalty of imprisonment ranging from ***three (3) years as minimum to five (5) years as maximum,*** and to pay a fine of ₱20,000.00 each. They shall further suffer absolute perpetual disqualification from holding public office and from practicing any profession or calling licensed by the Government.

(2) In **Criminal Case No. 26708,** accused **DATU GUIMID MATALAM** is hereby found ***Guilty*** beyond reasonable doubt of Violation of Rule XIII, Section 1 of the Implementing Rules and Regulations of R[epublic] A[ct] No. 7742, and is hereby sentenced ***to pay a fine of ₱250,000.00, imprisonment with a range of three (3) years as minimum and six (6) years as maximum,*** and in addition, to pay a penalty of three percent (3%) per month of the amounts payable computed from the date the contributions fell due and until the same are paid.

SO ORDERED.

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

EN BANC

[A.M. No. P-16-3436. April 5, 2016]
(Formerly A.M. No. 13-12-261-RTC)

REPORT ON THE THEFT OF COURT EXHIBIT BY ROBERTO R. CASTRO, UTILITY WORKER I, REGIONAL TRIAL COURT, BRANCH 172, VALENZUELA CITY

SYLLABUS

POLITICAL LAW; ADMINISTRATIVE LAW; COURT EMPLOYEES; DISHONESTY AND CONDUCT PREJUDICIAL TO THE BEST INTEREST OF SERVICE; THEFT OF COURT EXHIBIT; PROPER PENALTY IS DISMISSAL FROM SERVICE.— Castro admitted that he took the 9mm caliber firearm, which was an exhibit in a criminal case, [and] placed it inside his bag. This is an admission of theft of court exhibit for which Castro should be held administratively liable. x x x Castro's misconduct in the performance of his official duties, consisting of dishonesty and conduct prejudicial to the best interest of the service, are grounds for dismissal [from service] under the Civil Service Law.

D E C I S I O N

***PER CURIAM*:**

This resolves the report[1] filed by Executive Judge Maria Nena J. Santos (Executive Judge Santos) of the Regional Trial Court (RTC) of Valenzuela City, Metro Manila with the Office of the Court Administrator (OCA), relative to the theft of court exhibit by Roberto R. Castro (Castro), a Utility Worker I at the RTC of Valenzuela City, Branch 172.

Facts

On February 4, 2013, Judge Nancy Rivas-Palmones (Judge Palmones), Presiding Judge of the RTC of Valenzuela City,

[1] *Rollo* (A.M. No. P-16-3436), pp. 2-5.

Branch 172, sent a letter-complaint[2] to Executive Judge Santos regarding the theft of court exhibit by Castro. Judge Palmones alleged that on August 31, 2011, the Internal Security of Valenzuela City Hall of Justice confiscated from Castro a caliber 9mm firearm with serial number BA009746 and a magazine therefor. Upon inquiry, Castro failed to present any license or permit to carry the firearm.[3]

Thereafter, Castro was subjected to inquest proceedings by the Valenzuela Police Station, which recommended that he be indicted for illegal possession of firearm under Presidential Decree No. 1866, as amended by Republic Act No. 8294.[4] Castro was eventually charged for illegal possession of firearm before the Metropolitan Trial Court (MeTC) of Valenzuela City, Branch 82.[5]

Judge Palmones further alleged that they later on discovered that the firearm that was confiscated from Castro is the exhibit in Criminal Case No. 210-V-98, entitled *People of the Philippines v. Anthony De Gula Lopez,* which was decided by the RTC of Valenzuela City, Branch 172, on August 10, 2012. Apparently, sometime in November 2012, a certain Maria Elizabeth De Gula Lopez requested for the release of the subject firearm in Criminal Case No. 210-V-98 considering that accused Anthony De Gula Lopez was already acquitted of the charge against him. Osita De Guzman (De Guzman), Legal Researcher of Branch 172, searched for the said firearm, but to no avail. Eventually, De Guzman went to the Valenzuela Police Station where she discovered that the missing firearm in Criminal Case No. 210-V-98 is the same firearm that was confiscated from Castro.[6]

In a separate incident, Judge Palmones, on May 25, 2011, was informed by De Guzman that a cable wire used as evidence

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

[3] *Id*. at 13.

[4] *Id*.

[5] *Id*. at 10.

[6] *Id*. at 3.

in a case was missing. The theft of the cable wire is the subject of a separate administrative case.[7]

Acting on the letter-complaint, Executive Judge Santos set the case for an informal and preliminary inquiry on February 15, 2013.[8] During the inquiry, Castro averred that the subject firearm was actually handed to him by Atty. Levi Dybongco-Banez, the Clerk of Court (COC) of Branch 172, during an inventory of exhibits, with instruction to put the gun back in the exhibit room. Instead of complying with the instruction, Castro claimed that he put the gun inside his black shoulder bag, which he kept on top of his office table.[9] He explained that he kept the gun because a certain Oca, a former utility worker in the RTC of Valenzuela City, challenged him to a gun fight outside the City Hall; he thought that the gun would be useful should Oca try to hurt him.[10]

Accordingly, Executive Judge Santos recommended that an appropriate administrative complaint be filed against Castro since the latter admitted that he took the subject firearm, which is an exhibit in Criminal Case No. 210-V-98.[11]

On July 24, 2013, the Court, upon recommendation of the OCA, placed Castro under preventive suspension and directed him to file his Comment within 10 days from notice.[12]

In October 2013, Castro filed his "*Salaysay*"[13] and his "*Sinumpaang Salaysay*,"[14] wherein he denied the allegations against him in Judge Palmones' letter-report. Contrary to his

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[7] A.M. No. 13-5-78-RTC.

[8] *Rollo* (A.M. No. P-16-3436), p. 2.

[9] *Id.* at 3.

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

[11] *Id.* at 5.

[12] *Rollo* (A.M. No. 13-5-78-RTC), *id.* at 19.

[13] *Id.* at 22-24.

[14] *Id.* at 75-77.

statements during the preliminary inquiry conducted by Executive Judge Santos, he denied that there was a gun inside his bag when he entered the Valenzuela City Hall of Justice on August 31, 2011. He insinuated that he was framed-up by the police officers, who placed a gun inside his bag when he left their office in the afternoon of the said date. While he admitted that he was indicted for the crime of illegal possession of firearms, he claimed that the MeTC of Valenzuela City, Branch 82, dismissed the indictment on March 4, 2013 for lack of evidence.

Report and Recommendation of the OCA

On November 21, 2014, the OCA issued its report,[15] which recommended that Castro be dismissed from the service with forfeiture of all benefits except accrued leave credits, if any, and with prejudice to re-employment in any government office. The OCA pointed out that Castro did not dispute the charge of illegal possession of firearm and theft of firearm from the exhibit room, although he gave reasons therefor. The OCA opined that theft of court exhibit merits the penalty of dismissal from service.

> With regard to the issue on the illegal possession of firearm which is an exhibit in a criminal case pending before his court, Mr. Castro pleads no contest as he promptly admitted to his unlawful possession of a gun, although he gave reasons why he had to possess and carry it. He asks forgiveness and another chance. However, he has given statements implying that he might go back to his old, illegal activities if he would be dismissed from the service. This is not a good sign of a truly repentant person.[16]

Ruling of the Court

The findings and recommendations of the OCA are well-taken.

Castro, during the informal investigations conducted by Executive Judge Santos, admitted that he took the 9mm caliber firearm, which was an exhibit in a criminal case, from the former COC of Branch 172 and, instead of placing it inside the exhibit

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[15] *Id*. at 83-86.

[16] *Id.*

room as instructed, placed it inside his bag.[17] This is an admission of theft of court exhibit for which Castro should be held administratively liable. It is immaterial that Castro did not bring the gun outside of the Valenzuela City Hall of Justice; the theft of the- 9mm caliber firearm was already consummated when he placed it inside his bag.

Castro's subsequent claim in his "*salaysay*"[18] dated September 25, 2013 that he was just framed-up by the police officers is but a futile attempt to evade responsibility for his indiscretion. Indeed, at no point during the informal investigations conducted by Executive Judge Santos did Castro ever deny that he took the said 9mm caliber firearm and placed it inside his bag. He merely claimed that he needed the firearm since his co-employee challenged him to a gun fight. Castro's flimsy justification for his actions shows an utter lack of respect for the office he holds. In any case, frame-up is a defense that has been invariably viewed by the Court with disfavor as it can be easily concocted.

Castro's misconduct in the performance of his official duties, consisting of dishonesty and conduct prejudicial to the best interest of the service, are grounds for dismissal under the Civil Service Law.[19]

In *In the Matter of the Loss of One (1) Tamaya Transit, An Exhibit in Criminal Case No. 193*,[20] Salvador Lopez (Salvador), a court employee, took out and pawned a wristwatch under his custody, which is an exhibit in a case. The Court held that Salvador, by taking out and pawning the wristwatch, "has shown a glaring unfitness for the position he holds which requires integrity and trustworthiness."[21] Accordingly, the Court found him guilty of dishonesty and grave misconduct and directed his dismissal from the service with forfeiture of his retirement

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[17] *Rollo* (A.M. No. P-16-3436), pp. 65-67.

[18] *Rollo* (A.M. No. 13-5-78-RTC), p. 73.

[19] Rule XIV, Sec. 23(c), on grave offenses of the Omnibus Rules Implementing Book V of Executive Order No. 292.

[20] 200 Phil. 82 (1982).

[21] *Id*. at 90.

benefits and pay and with prejudice to reinstatement to any branch of the government.

In *Re: Jovelita Olivas and Antonio Cuyco*[22] the Court found Jovelita Olivas guilty of rave misconduct for stealing several pieces of plyboard from the Court of Appeals' compound and dismissed her from the service with forfeiture of all benefits excluding leave credits, if any, and with prejudice to re-employment in any branch or agency of the government.

In view of the prevailing jurisprudence and the foregoing facts, the Court agrees with the recommendation of the OCA that Castro should be dismissed from service. "This Court has emphasized time and time again that the conduct and behavior of every one connected with an office charged with the dispensation of justice, from the presiding judge to the sheriff and to the lowliest clerk should be circumscribed with the heavy burden of responsibility."[23] In performing their duties and responsibilities, court personnel serve as sentinels of justice and any act of impropriety on their part immeasurably affects the honor and dignity of the Judiciary and the peoples' confidence in it.[24]

WHEREFORE, in consideration of the foregoing disquisitions, the Court finds Roberto R. Castro **GUILTY** of dishonesty and grave misconduct and is hereby **DISMISSED** from the service with forfeiture of all benefits excluding leave credits, if any, and with prejudice to re-employment in any branch or agency of the government, including government-owned and controlled corporations.

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Brion, Peralta, Bersamin, del Castillo, Perez, Mendoza, Reyes, Leonen, Jardeleza, and *Caguioa, JJ.,* concur.

Perlas-Bernabe, J., on leave.

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[22] 431 Phil. 379 (2002).

[23] *Ferrer v. Gapasin, Sr.,* A.M. No. P-92-736, November 16, 1993, 227 SCRA 764,769.

[24] See THE CODE OF CONDUCT FOR COURT PERSONNEL.

EN BANC

[G.R. No. 194402. April 5, 2016]

NEPTALI S. FRANCO, MELINDA L. OCAMPO, ARTEMIO P. MAGABO, represented herein by SOLEDAD MAGABO, BERNARDA C. LAVISORES, NICOMEDES B. DEYNATA, ALBERTO D. DOSAYLA, represented herein by AILENE JOY BILLONES DOSAYLA and MARIETTA U. LARRACAS, *petitioners, vs.* **ENERGY REGULATORY COMMISSION, THE HON. ZENAIDA G. CRUZ-DUCUT, in her capacity as Chairman of the Energy Regulatory Commission, DEPARTMENT OF BUDGET AND MANAGEMENT, THE SECRETARY FLORENCIO B. ABAD and RICALINDA N. ADRIATICO, the Director of the Budget and Management Bureau-A,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *MANDAMUS;* AVAILABLE TO COMPEL THE PERFORMANCE OF A MINISTERIAL DUTY; PETITIONER MUST HAVE CLEAR LEGAL RIGHT TO THE CLAIM SOUGHT— [T]he writ of *mandamus* shall only issue to command a tribunal, corporation, board or person to do an act that is required to be done, when he or it, unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust or station, or unlawfully excludes another from the use and enjoyment of a right or office, to which such other is entitled, there being no other plain, speedy and adequate remedy in the ordinary course of law. The remedy of *mandamus*, then, is available only to compel the performance of a ministerial duty. In contrast to a discretionary act, a ministerial act is one in which an officer or tribunal performs in a given state of facts, in a prescribed manner, in obedience to a mandate of legal authority, without regard to or the exercise of his own judgment upon the propriety or impropriety of an act done. Clearly, for *mandamus* to issue, it is essential that the person petitioning for it has a clear legal right to the claim sought. It will not issue to compel compliance with a duty which is

questionable or over which a substantial doubt exists. Unless the right to the relief sought is unclouded, it will be denied.

2. ID.; ID.; ID.; THE DEPARTMENT OF BUDGET AND MANAGEMENT (DBM) AND THE ENERGY REGULATORY COMMISSION (ERC) CANNOT BE COMPELLED BY *MANDAMUS* TO RELEASE PUBLIC FUNDS TO PETITIONERS WHO FAILED TO ESTABLISH A CLEAR MINISTERIAL DUTY BY THE SAID AGENCIES TO RECOGNIZE THEIR LEGAL ENTITLEMENT THERETO.— [Petitioners were former chairpersons (Franco and Ocampo) and members (Magabo and others) of the Energy Regulatory Board (ERB). They] retired under Executive Order (E.O.) No. 172 which created the said body on May 8, 1987. x x x Under Section 1 of E.O. No. 172, the Chairman and Members of ERB were entitled to retirement benefits and privileges equal to those received by the Chairman and Members of the Commission on Elections (COMELEC) x x x Subsequently, on June 8, 2001, R.A. No. 9136 x x x abolished the ERB and created the Energy Regulatory Commission (ERC) x x x. Section 39 of R.A. No. 9139 thereof provides for the retirement benefits of the Chairman and Members of the ERC, to wit: x x x **The Chairman and the members of the Commission shall x x x be entitled to the same retirement benefits and the privileges provided for the Presiding Justice and Associate Justices of the Supreme Court (SC), respectively.** x x x Petitioners filed a petition for *mandamus* before the Court of Appeals (CA) wherein they sought to compel the ERC and the DBM to adjust their monthly pensions. x x x The DBM and the ERC cannot be compelled by *mandamus* to release public funds to the petitioners since the latter failed to establish a clear ministerial duty by the said agencies to recognize their legal entitlement thereto. x x x [N]owhere does R.A. No. 9136 extend to the retired ERB Chairman and Members the retirement benefits it grants to the ERC Chairman and Members. Section 39 of R.A. No. 9136 specifically provides only for the retirement benefits of the ERC Chairman and Members.

LEONEN, *J.*, *concurring opinion*:

1. POLITICAL LAW; ELECTRIC POWER INDUSTRY REFORM ACT OF 2001 (EPIRA); RETIREMENT BENEFITS OF

THE ENERGY REGULATORY COMMISSION (ERC) NOT EXTENDED TO THE NOW DEFUNCT ENERGY REGULATORY BOARD (ERB).— Petitioners, who are retired members of the defunct Energy Regulatory Board, filed for *mandamus* "to compel . . . public respondents to adjust and release their monthly retirement pensions based on the salary levels . . . of the Energy Regulatory Commission, created [under] Republic Act No. 9136[.]" Specifically, Section 39 of Republic Act No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001 (EPIRA). x x x I concur in denying the Petition. x x x Nowhere in the EPIRA were the retirement benefits of the Energy Regulatory Commission extended to the now defunct Energy Regulatory Board. These are two different entities.

2. ID.; CONSTITUTIONAL LAW; SEPARATION OF POWERS; FISCAL AUTONOMY OF THE JUDICIARY; VIOLATED AS THE EPIRA UNCONSTITUTIONALLY REQUIRES THAT FOR ANY ADJUSTMENT IN THE COMPENSATION SCHEDULES FOR THE JUDICIARY, SIMILAR ADJUSTMENTS BE AUTOMATICALLY CONSIDERED FOR THE ERC.— Our Constitution reflects the fundamental principle of separation of powers. The distinct spheres of power and functions that divide the three branches of government safeguard against influences and inappropriate interferences among one another, both in courtesy and caution, while maintaining "interdependence" through checks and balances. *Angara v. Electoral Commission* discussed the judiciary's role as the only constitutional body with authority to determine proper allocation of powers among governmental bodies. x x x Preserving the judiciary's independence is both imperative and central in fulfilling this Court's constitutional mandate as final arbiter in upholding the rule of law. x x x Thus, the Constitution provides for fiscal autonomy of the judiciary. Thus, special laws provide for competitive retirement benefits and privileges for Justices and Judges. The Energy Regulatory Commission is "an independent quasi-judicial *regulatory* body" created by law. x x x Its scope of authority is limited to a specific industry. Its key functions relate to the restructured electric power industry under the EPIRA. Yet, for any adjustment in the compensation schedules for the judiciary, the EPIRA unconstitutionally requires that similar adjustments be automatically considered for the Energy Regulatory Commission. This violates the independence of the judiciary and its fiscal autonomy.

APPEARANCES OF COUNSEL

Alonzo and Associates for petitioners.
The Solicitor General for public respondents.
Department of Budget and Management (DBM) Legal Service for respondent DBM.

D E C I S I O N

REYES, *J.*:

Before this Court on Petition for Review[1] is the Decision[2] dated May 13, 2010 of the Court of Appeals (CA) in CA-G.R. SP No. 109733, an original action for *mandamus* under Rule 65 of the Rules of Civil Procedure, filed by retired members of the defunct Energy Regulatory Board (ERB), seeking to compel the Energy Regulatory Commission (ERC), Zenaida G. Cruz-Ducut (Ducut), in her capacity as ERC Chairman, Department of Budget and Management (DBM), DBM Secretary Florencio B. Abad, and DBM Bureau-A Director Ricalinda N. Adriatico (Adriatico) to adjust and release their monthly retirement pensions based on the salary levels now being received by the Chairman and Members of the ERC, created by Republic Act (R.A.) No. 9136, otherwise known as the Electric Power Industry Reform Act of 2001.

Antecedent Facts

Neptali Franco and Melinda Ocampo (Ocampo), former chairpersons of the ERB, and Artemio Magabo, Bernarda Lavisores, Nicomedes Deynata, Alberto Dosayla and Marietta Larracas, former members of the ERB (collectively referred to as the petitioners), retired under Executive Order (E.O.) No. 172 which created the said body on May 8, 1987. Their positions and respective dates of retirement from the ERB are as follows:

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[1] *Rollo,* pp. 3-32.

[2] Penned by Associate Justice Portia Aliño-Hormachuelos, with Associate Justices Japar B. Dimaampao and Danton Q. Bueser concurring; *id.* at 34-44.

Name	Position	Retirement Date
Neptali S. Franco	Chairman	07/01/98
Melinda L. Ocampo	Chairperson	08/14/01
Artemio P. Magabo	Member	06/16/98
Marietta U. Larracas	Member	08/14/01
Nicomedes B. Deynata	Member	08/14/01
Bernarda C. Lavisores	Member	08/16/98
Alberto D. Dosayla	Member	08/14/01[3]

Under Section 1 of E.O. No. 172, the Chairman and Members of ERB were entitled to retirement benefits and privileges equal to those received by the Chairman and Members of the Commission on Elections (COMELEC):

Sec. 1. *Energy Regulatory Board.* There is hereby created an independent Energy Regulatory Board, hereinafter referred to as the Board, the nucleus of which shall be the present Board of Energy. The Board shall be composed of a Chairman and four (4) Members to be appointed by the President, with the consent of the Commission on Appointments. x x x

x x x x x x x x x

The Chairman of the Board shall receive a compensation equal to that of a Department Undersecretary while the Board Members shall each receive a compensation equal to that of an official next in rank to a Department Undersecretary.

The Chairman and the Members of the Board, upon completion of their terms or upon becoming eligible for retirement under existing laws shall be entitled to the same retirement benefits and privileges provided for the Chairman and Members of the Commission on Elections. (Emphasis ours)

Also, Section 2-A of R.A. No. 1568,[4] as amended by R.A. No. 3595,[5] provides that in case the salary of the Auditor General or the Chairman or any Member of the COMELEC is increased

[3] *Id.* at 35-36.

[4] AN ACT TO PROVIDE LIFE PENSION TO THE AUDITOR GENERAL AND THE CHAIRMAN OR ANY MEMBER OF THE COMMISSION ON ELECTIONS. Approved on June 16, 1956.

[5] AN ACT TO AMEND REPUBLIC ACT NUMBERED FIFTEEN HUNDRED SIXTY-EIGHT (RE: GRANT OF LIFE PENSION TO THE AUDITOR-GENERAL

or decreased, such increased or decreased salary shall, for the purpose of the said Act, be deemed to be the salary or the retirement pension which shall be received by the retired Auditor General or Chairman or any Member of the COMELEC.

Subsequently, on June 8, 2001, R.A. No. 9136 was passed to reform and restructure the electric power industry and privatize the National Power Corporation (NPC). It abolished the ERB and created the ERC as an independent regulatory body vested with quasi-judicial, quasi-legislative and administrative functions to oversee the electric industry. In addition to ERB's traditional functions to regulate electric rates and services, the ERC focuses on two primary responsibilities: (1) to ensure consumer education and protection; and (2) to promote competitive operations in the electricity market.

Section 39 of R.A. No. 9136 thereof provides for the retirement benefits of the Chairman and Members of the ERC, to wit:

Sec. 39. *Compensation and Other Emoluments for ERC Personnel.* — x x x.

The Chairman and members of the Commission shall initially be entitled to the same salaries, allowances and benefits as those of the Presiding Justice and Associate Justices of the Supreme Court, respectively. **The Chairman and the members of the Commission shall, upon completion of their term or upon becoming eligible for retirement under existing laws, be entitled to the same retirement benefits and the privileges provided for the Presiding Justice and Associate Justices of the Supreme Court, respectively.** (Emphasis ours)

The petitioners filed a petition for *mandamus* before the CA wherein they sought to compel the ERC and the DBM to adjust their monthly pensions. The petitioners argued that, as retired members of the ERB, they are entitled to the retirement benefits provided in Section 39 of R.A. No. 9136, in relation to Section 2-A of R.A. No. 1568.[6]

AND THE CHAIRMAN AND MEMBERS OF THE COMMISSION ON ELECTIONS). Approved on June 22, 1963.

[6] *Rollo*, pp. 35-37.

To bolster their claim, they invoked the Decision dated August 29, 2007 of the CA 13th Division in CA-G.R. SP No. 89068, entitled "*Edward C. Castañeda, Arnaldo P. Baldonado and Welma T. Sicangco v. Hon. Eduardo R. Ermita, in his capacity as the Executive Secretary of the Office of the President and the [ERC].*"[7]

In CA-G.R. SP No. 89068, the petitioners therein, retired Members and Commissioners of the ERB, requested an adjustment in their monthly pensions under R.A. No. 9136. Their request, however, was denied on the ground that ERB has been abolished and that it was a completely different entity from the ERC. On appeal to the Office of the President (OP), the same was denied which prompted the petitioners therein to file a petition for review with the CA. On August 29, 2007, the CA 13th Division ruled that the petitioners therein were entitled to adjustments in their monthly pensions corresponding to the current levels of salaries and benefits given to the ERC Chairman and Members. There being no appeal, the ruling became final and executory on January 5, 2008.[8]

In a subsequent case also before the CA, CA-G.R. SP No. 89095, entitled "*Retired Chairmen of the [ERB, et al.] v. The [ERC] and the Department of Justice,*" a similar request dated July 16, 2002 for adjustment in their monthly pensions was filed in the ERC by retired ERB Chairmen Ponciano G.A. Mathay (Mathay) and Rex V. Tantiongco (Tantiongco) and retired ERB Members Oscar E. Ala (Ala) and J. Mario Laqui (Laqui). The ERC denied the request in a letter dated August 16, 2002 on the ground that the retirement provisions under E.O. No. 172 were inconsistent with those in R.A. No. 9136. After the ERC denied their motion for reconsideration, the petitioners therein appealed to the OP. The Department of Justice (DOJ), to which the OP endorsed the request, ruled against it, but on motion for reconsideration the DOJ advised the petitioners therein to seek the opinion of the DBM. Instead of heeding the DOJ's advice, the

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[7] *Id.* at 37.

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

petitioners therein sought the OP's final ruling. In its letter-decision dated February 18, 2005, the OP denied their request, *viz.*:

> We have carefully considered the legal arguments you presented in your letter, together with all the documents attached therewith. After a thorough analysis of the existing laws and jurisprudence on the matter, we concur with the legal opinion of the former [DOJ] Simeon A. Datumanong in his 1st Indorsement dated 17 October 2003.
>
> In this regard, we regret to inform you that we cannot accede to your request.[9]

Meanwhile, on April 16, 2008, herein petitioners together with Mathay, Tantiongco and Ala wrote then ERC Chairman Rodolfo Albano, Jr. asking anew for the upgrading of their monthly pensions. They contended that they were similarly situated with the petitioners in CA-G.R. SP No. 89068.[10]

Without waiting for the ERC to resolve their request, Mathay, Tantiangco, Ala, and the estate of Laqui filed a petition with the CA, docketed as CA-G.R. SP No. 89095,[11] assailing the OP letter-decision dated February 18, 2005. On May 9, 2008, the CA 10th Division declared that the petitioners therein were entitled to the same retirement benefits granted to the Chairman and Members of the COMELEC. However, on motion for partial reconsideration, the CA on October 15, 2008 reversed its decision and declared them entitled to monthly pensions corresponding to the current salary levels of the ERC Chairman and Members, citing the expediency of avoiding conflicting decisions between the different divisions of the appellate court.[12]

Acting on the letter-request dated April 16, 2008 of the petitioners, former Congresswoman Ducut who took over as Chairman of the ERC referred the matter to Adriatico, Bureau-A

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[9] CA Decision in *Retired Chairmen of the ERB, et al. v. The ERC and the DOJ*, CA-G.R. SP No. 89095, May 9, 2008, p. 5.

[10] *Rollo*, pp. 49-50.

[11] *Id.* at 95.

[12] *Id.* at 11-12, 95.

Director of the DBM. In her Opinion[13] dated June 29, 2009, Adriatico denied their request for pension adjustment, stating that R.A. No. 9136 specifically refers only to the retirement benefits due to members of the ERC, and the ruling in CA-G.R. SP No. 89068 cannot serve as a precedent since only decisions of the Supreme Court (SC), interpreting the laws form part of the country's legal system.

After the denial of their letter-request for pension adjustment, the petitioners filed the petition for *mandamus* in the CA to compel the ERC and the DBM to adjust and release their monthly pensions to keep up with the salary levels of the ERC Chairman and Members. On May 13, 2010, the CA Special 2nd Division dismissed the petition for lack of legal basis.[14]

Hence, this petition interposing the following issues:

I.

WHETHER OR NOT THERE IS NO LAW GRANTING THE PETITIONERS THE RIGHT TO RETIREMENT PENSIONS EQUIVALENT TO THE PRESENT SALARIES OF THE CHAIRMAN AND MEMBERS OF THE ERC.

II.

WHETHER OR NOT *MANDAMUS* IS THE APPROPRIATE REMEDY.[15]

Ruling of the Court

The petition is bereft of merit.

***Mandamus* does not lie since the petitioners failed to invoke a law specifically enjoining the performance of the act demanded.**

Central to the resolution of the present controversy is Section 29 (1) of Article VI of the 1987 Constitution which commands

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

[14] *Id.* at 34-44.

[15] *Id.* at 13.

that "[n]o money shall be paid out of the Treasury except in pursuance of an appropriation made by law." The burden of proof thereof, rests upon the petitioners.

Moreover, Section 3, Rule 65 of the 1997 Rules of Civil Procedure provides:

> **Sec. 3.** *Petition for mandamus*. — When any tribunal, corporation, board, officer or person unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust, or station, or unlawfully excludes another from the use and enjoyment of a right or office to which such other is entitled, and there is no other plain, speedy and adequate remedy in the ordinary course of law, the person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered commanding the respondent, immediately or at some other time to be specified by the court, to do the act required to be done to protect the rights of the petitioner, and to pay the damages sustained by the petitioner by reason of the wrongful acts of the respondent.

Thus, the writ of *mandamus* shall only issue to command a tribunal, corporation, board or person to do an act that is required to be done, when he or it, unlawfully neglects the performance of an act which the law specifically enjoins as a duty resulting from an office, trust or station, or unlawfully excludes another from the use and enjoyment of a right or office, to which such other is entitled, there being no other plain, speedy and adequate remedy in the ordinary course of law. The remedy of *mandamus*, then, is available only to compel the performance of a ministerial duty.[16] In contrast to a discretionary act, a ministerial act is one in which an officer or tribunal performs in a given state of facts, in a prescribed manner, in obedience to a mandate of legal authority, without regard to or the exercise of his own judgment upon the propriety or impropriety of an act done.[17]

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[16] *Torregoza v. Civil Service Commission*, G.R. No. 101526, July 3, 1992, 211 SCRA 230, 234, citing *Marcelo v. Tantuico, Jr.*, 226 Phil. 360, 366 (1986).

[17] *Henares, Jr. v. Land Transportation Franchising Regulatory Board*, 535 Phil. 835, 841 (2006).

Clearly, for *mandamus* to issue, it is essential that the person petitioning for it has a clear legal right to the claim sought. It will not issue to compel compliance with a duty which is questionable or over which a substantial doubt exists. Unless the right to the relief sought is unclouded, it will be denied.[18]

Section 1 of E.O. No. 172, the law under which the petitioners retired, specifically provides that the "*[t]he Chairman and the Members of the [ERB], upon completion of their terms or upon becoming eligible for retirement under existing laws shall be entitled to the same retirement benefits and privileges provided for the Chairman and Members of the [COMELEC]*." In contrast, Section 39 of R.A. No. 9136 provides:

Sec. 39. *Compensation and Other Emoluments for ERC Personnel.* — x x x.

The Chairman and members of the Commission shall initially be entitled to the same salaries, allowances and benefits as those of the Presiding Justice and Associate Justices of the Supreme Court, respectively. The Chairman and the members of the Commission shall, upon completion of their term or **upon becoming eligible for retirement under existing laws, be entitled to the same retirement benefits and the privileges provided for the Presiding Justice and Associate Justices of the Supreme Court, respectively.**

Section 3, Rule 65 of the Rules of Civil Procedure, speaks of a law which specifically enjoins an act to be performed as a duty by a tribunal, corporation, board, officer or person. The petitioners' request requires an interpretation of Section 39 of R.A. No. 9136 as applicable to ERB retirees under E.O. No. 172; yet, nowhere does R.A. No. 9136 extend the benefits of the new law to them, much less impose a duty upon the ERC and the DBM to adjust the retirement pensions of the petitioners to conform to the retirement benefits of the Chief Justice and Associate Justices of the SC.

R.A. No. 9136 has expressly abolished the ERB. Section 38 provides:

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[18] *Araos, et al. v. Hon. Regala, et al.,* 627 Phil. 13, 20 (2010).

Sec. 38. *Creation of the Energy Regulatory Commission.* — There is hereby created an independent, quasi-judicial regulatory body to be named the Energy Regulatory Commission (ERC). For this purpose, the existing Energy Regulatory Board (ERB) created under Executive Order No. 172, as amended, is hereby abolished.

x x x x x x x x x

The ERC assumed the extant duties and functions of the ERB, but in addition, the ERC also performs **new** and **expanded** functions intended to meet the specific needs of a **restructured electric power industry**. In *Kapisanan ng mga Kawani ng ERB v. Commissioner Barin*,[19] the Court compared the functions of the ERB and the ERC and ruled that the overlap in their powers and functions did not mean that there was no valid abolition of the ERB.[20]

Moreover, in *National Land Titles and Deeds Registration Administration v. Civil Service Commission*,[21] the Court discussed:

> [I]f the newly created office has substantially new, different or additional functions, duties or powers, so that it may be said in fact to create an office different from the one abolished, even though it embraces all or some of the duties of the old office it will be considered as an abolition of one office and the creation of a new or different one. The same is true if one office is abolished and its duties, for reasons of economy are given to an existing officer or office.[22]

Incidentally, in *Ocampo v. Commission on Audit*,[23] where a petition was filed by herein petitioner Ocampo, concerning whether she was twice entitled to retirement benefits on account of having sat in the ERB twice, first as a regular Member, and after her retirement, as Chairman; the Court held among others,

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[19] 553 Phil. 1 (2007).

[20] *Id.* at 21.

[21] G.R. No. 84301, April 7, 1993, 221 SCRA 145.

[22] *Id.* at 150.

[23] 710 Phil. 706 (2013).

that Ocampo was entitled to the retirement benefits under R.A. No. 3595.

The petitioners, retired members of the abolished ERB, cannot demand the retirement benefits granted to members of a new entity, the ERC.

The Office of the Solicitor General (OSG), in its Comment in CA-G.R. SP No. 89068, citing *Freedom from Debt Coalition v. ERC*,[24] agreed that this Court has recognized the abolition of the ERB by R.A. No. 9136; that there is no automatic adjustment in the monthly pensions of the ERB retirees since there was no appropriation for such disbursement; that while the powers of the ERB had been transferred to ERC, new and expanded powers were also granted to the ERC consistent with the revamp and restructuring of the entire system of regulation of the electric power industry. The OSG concluded that concerning their retirement pensions, the petitioners could not equate themselves to the Commissioners of the ERC.[25]

In contrast, in its Comment in the instant petition citing Section 2-A of R.A. No. 1568, as amended by R.A. No. 3595, the OSG noted that "the new compensation package under R.A. No. 9136 resulted in a great disparity between the retirement benefits being received by officials who retired under E.O. No. 172 and those that would be received upon retirement by the current Chairman and Members of the ERC."[26] It now argues that the petitioners retired under E.O. No. 172, which entitled them to an adjustment in their monthly pensions "*in case there would be an increase in the salaries and benefits being received by those presently holding the positions they previously held*;"[27] and that since R.A. No. 9136 did not expressly repeal the provisions

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[24] G.R. No. 161113, June 15, 2004, 432 SCRA 157.

[25] CA Decision in *Castañeda, et al. v. Ermita*, CA-G.R. SP No. 89068, August 29, 2007, pp. 6-7.

[26] *Rollo*, p. 93.

[27] *Id.* at 97.

relating to the retirement benefits of the Chairman and Members of the ERB, the benefits of R.A. No. 9136 should be extended to them.[28] In CA-G.R. SP No. 89095, the appellate court said:

> It must be stressed that, while the provision of *R.A. No. 9136* abolishing the ERB was declared as valid by the [SC], nonetheless, **it did not pronounce that the abolition had the effect of depriving and/or hindering retirees under the already-abolished law from seeking the readjustment of their retirement benefits.**
>
> Moreover, while the retirement benefits provided under *E.O. No. 172* may appear to be inconsistent with those provided under *R.A. No. 9136*, emphasis is laid that **the inconsistency relates only to what the retirement benefits shall consist of, and not to the grant or readjustment of the same *per se*.** In other words, while the retirement benefits granted under *R.A. No. 9136* are different from those under *E.O. No. 172*, one undisputable fact remains — ***R.A. No. 9136* contains no provision expressly stating that the abolition of the ERB carries with it the abolition, diminution, or curtailment of the right to seek readjustment of the retirement benefits granted under *E.O. No. 172*.**[29] (Citation omitted and emphasis in the original)

Yet, the same CA decision clearly ruled that "the [p]etitioners' retirement benefits should be based on the salaries of the current COMELEC Chairman and Members, **and not on the salaries of the current ERC Chairman and members**,"[30] *viz.*:

> Given the above, it is manifestly clear that Section 80 of *R.A. No. 9136* stating that, *[T]he applicability provisions of x x x [E.O. No.] 172, as amended, creating the ERB; x x x* ***shall continue to have full force and effect except insofar as they are inconsistent with this Act.*** *x x x* [It] should be construed to mean that, **since there is no express provision in *R.A. No. 9136* pertinent to the retirement benefits granted to retirees under *E.O. No. 172*, it follows then that *E.O. No. 172* continues to be the controlling law on the matter.** Specifically, the controlling provision respecting the retirement

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[28] *Id.* at 97-98.

[29] CA Decision in *Retired Chairmen of the ERB, et al. v. The ERC and the DOJ*, CA-G.R. SP No. 89095, May 9, 2008, p. 12.

[30] *Id.* at 14.

benefits of Chairmen and Members of the ERB is, therefore, Section 1(6) of *E.O. No. 172*, which states that *x x x [t]he Chairman and the Members of the Board, x x x* ***shall be entitled to the same retirement benefits and privileges provided for the Chairman and Members of the [COMELEC]***. Perforce, whether or not Section 2-A of *R.A. No. 1568, as amended*, is applicable to the Petitioners may already be of no moment because Section 1(6) of *E.O. No. 172* already **clearly and literally states** that they are entitled to the same retirement benefits granted to the Chairman and Members of the COMELEC.

All said, Our position that the Petitioners are entitled to have their retirement benefits readjusted is bolstered by the final and executory decision, August 29, 2007, rendered in CA-GR SP No. 89068 by the Thirteenth Division of this Court over which We take judicial notice of, as the same involved the same issue as the one raised at bench. At this juncture, mention must also be made that, during the pendency of the said case, the ERC issued a Resolution reversing its findings that the Petitioners are not entitled to an automatic readjustment and maintaining that it totally supports their cause, as the same is meritorious.

Stress, however, is laid that the Petitioners' retirement benefits should be based on the salaries of the current COMELEC Chairman and Members, and not on the salaries of the current ERC Chairman and members.

To explicate. Section 1(6) of *E.O. No. 172* clearly states that *x x x [t]he Chairman and the Members of the Board, x x x* ***shall be entitled to the same retirement benefits and privileges provided for the Chairman and Members of the [COMELEC].*** Applying the hornbook doctrine that, *where the words of the statute are clear, plain, and free from ambiguity, it must be given its literal meaning and applied without attempted interpretation*, it is therefore beyond cavil that the retirement benefits of retired ERB Chairmen and Members shall be based on and the same as that granted to Chairman and Members of the COMELEC. In other words, it is the increase in the benefits of the current Chairman and Members of the COMELEC, not those of the ERC, which has the effect of rendering a corresponding increase in the Petitioners' retirement benefits.[31] (Citations omitted and emphasis, italics and underscoring in the original)

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[31] *Id.* at 12-14.

On motion for partial reconsideration, however, the CA reversed its decision and declared the petitioners therein entitled to monthly pensions corresponding to the current salary levels of the ERC Chairman and Members in order to avoid a conflict with the decision of the CA 13th Division in CA-G.R. SP No. 89068.[32]

The OSG further commented that the non-adjustment of the pension of the petitioners violates the equal protection clause of the Constitution after the ERC adjusted the pensions of the petitioners in CA-G.R. SP No. 89068 and CA-G.R. SP No. 89095.[33] It also argued that in view of the identity of issues in all the three CA cases, the petitioners may invoke the doctrine of conclusiveness of judgment in the first two cases.[34] Lastly, the OSG urged that retirement laws being remedial in character must be liberally construed in favor of the retirees.[35]

The Court disagrees.

The Court has seen that the DBM and the ERC cannot be compelled by *mandamus* to release public funds to the petitioners since the latter failed to establish a clear ministerial duty by the said agencies to recognize their legal entitlement thereto. According to the DBM, the petitioners have been receiving retirement benefits on a level with the salaries of the COMELEC Chairman and Members, pursuant to Section 1 of E.O. No. 172 in relation to Section 2-A of R.A. No. 1568, as amended.

Clearly, nowhere does R.A. No. 9136 extend to the retired ERB Chairman and Members the retirement benefits it grants to the ERC Chairman and Members. Section 39 of R.A. No. 9136 specifically provides only for the retirement benefits of the ERC Chairman and Members.

With regard to the legal significance of the first two CA decisions as precedents, the DBM invoked *Commissioner of*

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[32] *Rollo*, pp. 125-126.

[33] *Id.* at 99.

[34] *Id.* at 100-103.

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

Internal Revenue v. Michel J. Lhuillier Pawnshop, Inc.,[36] which held that courts are not bound by decisions of the CA since only the SC is the final arbiter of any justiciable controversy.[37] Indeed, if the SC can disregard even its own previous rulings to correct an earlier error, and thus prevent a repeat of the misapplication of the law, then surely, this Court can also disregard the aforesaid rulings of the CA to correct what is considered to be an erroneous application of the law. Besides, pursuant to *De Leon v. Hon. Judge Cruz*,[38] the said unappealed CA decisions may bind only the parties thereto.[39]

Significant changes between E.O. No. 172 and R.A. No. 9136 clearly express the legislative intent to abolish the ERB and create an entirely new entity, the ERC with vastly expanded functions.

The jurisdiction, powers and functions of the ERB are enumerated in Section 3 of E.O. No. 172, to wit:

> Sec. 3. *Jurisdiction, Powers and Functions of the Board.* — When warranted and only when public necessity requires, the Board may regulate the business of importing, exporting, re-exporting, shipping, transporting, processing, refining, marketing and distributing energy resources. Energy resource means any substance or phenomenon which by itself or in combination with others, or after processing or refining or the application to it of technology, emanates, generates or causes the emanation or generation of energy, such as but not limited to, petroleum or petroleum products, coal, marsh gas, methane gas, geothermal and hydroelectric sources of energy, uranium and other similar radioactive minerals, solar energy, tidal power, as well as non-conventional existing and potential sources.
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> The Board shall, upon proper notice and hearing, exercise the following, among other powers and functions:

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[36] 453 Phil. 1043 (2003).

[37] *Id.* at 1059.

[38] 154 Phil. 270 (1974).

[39] *Id.* at 277.

(a) Fix and regulate the prices of petroleum products;

(b) Fix and regulate the rate schedule or prices of piped gas to be charged by duly franchised gas companies which distribute gas by means of underground pipe system;

(c) Fix and regulate the rates of pipeline concessionaries under the provisions of Republic Act No. 387, as amended, otherwise known as the "Petroleum Act of 1949," as amended by Presidential Decree No. 1700;

(d) Regulate the capacities of new refineries or additional capacities of existing refineries and license refineries that may be organized after the issuance of this Executive Order, under such terms and conditions as are consistent with the national interest;

(e) Whenever the Board has determined that there is a shortage of any petroleum product, or when public interest so requires, it may take such steps as it may consider necessary, including the temporary adjustment of the levels of prices of petroleum products and the payment to the Oil Price Stabilization Fund created under Presidential Decree No. 1956 by persons or entities engaged in the petroleum industry of such amounts as may be determined by the Board, which will enable the importer to recover its cost of importation.

In *NPC v. CA*,[40] this Court noted that "as may be gleaned from [Section 3 of E.O. No. 172], the ERB is basically a price or rate-fixing agency."[41] But now the need for a "framework for the restructuring of the electric power industry, including the privatization of the assets of NPC, the transition to the desired competitive structure, and the definition of the responsibilities of the various government agencies and private entities"[42] demanded the abolition of the ERB. Section 38 of R.A. No. 9136 provides for the creation of "an independent, quasi-judicial regulatory body to be named the [ERC]," for which purpose, "the existing [ERB] created under [E.O.] No. 172, as amended,

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[40] 345 Phil. 9 (1997).

[41] *Id.* at 30.

[42] R.A. No. 9136, Section 3.

is hereby abolished." The expanded functions of the ERC are intended to "promote competition, encourage market development, ensure customer choice and penalize abuse of market power in the restructured electricity industry."[43]

Section 43 of R.A. No. 9136 enumerates in 22 sub-paragraphs the vast new powers and functions of the ERC, among which are to:

(a) enforce the implementing rules and regulations of R.A. No. 9136;

(b) promulgate and enforce a National Grid Code and a Distribution Code;

(c) enforce the rules and regulations governing the operations of the electricity spot market and the activities of the spot market operator and other participants in the spot market, for the purpose of ensuring a greater supply and rational pricing of electricity;

(d) establish and enforce a methodology for setting transmission and distribution wheeling rates and retail rates for the captive market of a distribution utility;

(e) review and approve any changes on the terms and conditions of service of the National Transmission Corporation (TRANSCO) or any distribution utility;

(f) monitor and take remedial measures to penalize abuse of market power, cartelization, and anti-competitive or discriminatory behavior by any electric power industry participant;

(g) impose fines or penalties for any non-compliance with or breach of R.A. No. 9136, its Implementing Rules and Regulations (IRR) and the rules and regulations which it promulgates or administers;

(h) monitor the activities of the generation and supply of the electric power industry with the end in view of promoting

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[43] R.A. No. 9136, Section 43.

free market competition and ensuring that the allocation or pass through of bulk purchase cost by distributors is transparent, non-discriminatory and that any existing subsidies shall be divided pro-rata among all retail suppliers;

(i) act on applications for or modifications of certificates of public convenience and/or necessity, licenses or permits of franchised electric utilities in accordance with law and revoke, review and modify such certificates, licenses or permits in appropriate cases, such as in cases of violations of the Grid Code, Distribution Code and other rules and regulations issued by the ERC in accordance with law;

(j) act on applications for cost recovery and return on demand side management projects;

(k) in the exercise of its investigative and quasi-judicial powers, act on any complaint by or against any participant or player in the energy sector for violations of any laws, rules and regulations governing the same, including the rules on cross-ownership, anti-competitive practices and other acts of abuse of market positions by any participant or player in the energy sector, as may be provided by law, and require any person or entity to submit any report or data relative to any investigation or hearing conducted in accordance with R.A. No. 9136;

(l) inspect, on its own or through duly authorized representatives, the premises, books of accounts and records of any person or entity at any time, in the exercise of its quasi-judicial power for purposes of determining the existence of any anti-competitive behavior and/or market power abuse and any violation of rules and regulations issued by the ERC;

(m) perform such other regulatory functions as are appropriate and necessary in order to ensure the successful restructuring and modernization of the electric power industry, such as, but not limited to, the rules and guidelines under which generation companies, distribution utilities which are not publicly listed shall offer and sell to the public a portion not less than 15% of their common shares of stocks; and

(n) the ERC shall have the original and exclusive jurisdiction over all cases contesting rates, fees, fines and penalties imposed by the ERC in the exercise of the abovementioned powers, functions and responsibilities and over all cases involving disputes between and among participants or players in the energy sector.

In addition, other related functions and powers are given to ERC, *i.e.*: (i) those relating to ensuring competitive and open generation of electric power and compliance with standards set forth in R.A. No. 9136, and health, safety and with environmental clearances from other government agencies (Section 6); (ii) resolve valuation, procedures, ownership participation and other issues relating to subtransmission assets (Section 8, paragraph 5); (iii) ensure compliance by distribution utilities with technical specifications prescribed in the Distribution Code and the performance standards prescribed in the IRR (Section 23, paragraph 5); (iv) de-monopolize public utilities by ensuring that holdings in a distribution utility shall not exceed 25% of voting shares of stock (Section 28, paragraph 1); (v) issue a license to suppliers of electricity, promulgate rules and regulations on qualifications of electricity suppliers, including technical capability, financial capability, and creditworthiness (Section 29); (vi) oversee the wholesale electricity spot market (Section 30) and the retail competition and open access (Section 31); (vii) verify reasonable amounts of the NPC stranded debt and contract cost recovery (Section 32); (viii) determine the universal charge on all electricity end-users (Section 34); (ix) reduce royalties, returns and tax rates for all indigenous sources of energy (Section 35); (x) approve unbundling of business activities and rates of electric power industry participants (Section 36); (xi) establish training programs for staff to enhance ERC's technical competence in evaluation of technical performance and monitoring of compliance with service and performance standards, performance-based rate-setting reform, and environmental standards (Section 40); (xii) handle consumer complaints and ensure the adequate promotion of consumer interests (Section 41); (xiii) promulgate rules and regulations to promote competition, encourage market development and customer choice and discourage/penalize abuse of market power, cartelization

and any anticompetitive or discriminatory behavior, and *motu proprio* monitor and penalize market power abuse or anticompetitive or discriminatory act or behavior (Section 45); (xiv) ensure Power Sector Assets and Liabilities Management Corporation liquidates the NPC stranded contract costs from proceeds of sales and other property contributed to it (Section 51[e]); (xv) ensure reduction in rates of electric cooperatives due to savings from removal of loan amortizations (Section 60); (xvi) require the Department of Energy (DOE), ERC, National Electrification Administration, TRANSCO, generation companies, distribution utilities, suppliers and other electric power industry participants to submit pertinent industry reports and information (Section 62, paragraph 3); and (xvii) review all power purchase and energy conversion agreements between Philippine National Oil Company-Energy Development Corporation and NPC to remove hidden costs or extraordinary mark-ups in the cost of power or steam above their true costs (Section 69).

Section 38 thereof, thus, provides for enhanced qualifications and increased term of office from four (4) to seven (7) years of the Chairman and Members of the ERC, as follows:

> **Sec. 38.** x x x.
>
> The Commission shall be composed of a Chairman and four (4) members to be appointed by the President of the Philippines. The Chairman and the members of the Commission shall be natural-born citizens and residents of the Philippines, persons of good moral character, at least thirty-five (35) years of age, and of recognized competence in any of the following fields: energy, law, economics, finance, commerce, or engineering, with at least three (3) years actual and distinguished experience in their respective fields of expertise: *Provided*, That out of the four (4) members of the Commission, at least one (1) shall be a member of the Philippine Bar with at least ten (10) years experience in the active practice of law, and one (1) shall be a certified public accountant with at least ten (10) years experience in active practice.
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> x x x x x x x x x
>
> The Chairman of the Commission, who shall be a member of the Philippine Bar shall act as the Chief Executive Officer of the Commission.

All members of the Commission shall have a term of **seven (7) years** x x x.

x x x x x x x x x
(Emphasis ours)

In contrast, in Section 1 of E.O. No. 172, the Chairman and the Members of the ERB served for only **four (4) years,** and it did not specify that two members of the ERB must be lawyers, and one must be an accountant:

Sec. 1. *Energy Regulatory Board.* — There is hereby created an independent Energy Regulatory Board, hereinafter referred to as the Board, the nucleus of which shall be present Board of Energy. The Board shall be composed of a Chairman and four (4) Members to be appointed by the President, with the consent of the Commission on Appointments. The Chairman and the Board Members shall be natural-born citizens and residents of the Philippines. In addition, the Chairman and the Board Members shall be persons of good moral character, at least thirty-five (35) years of age, and of recognized competence in the field of law, economics, finance, banking, commerce, industry, agriculture, engineering, management or labor.

The term of office of the Chairman and the Board Members shall be four (4) years x x x.

The Court noted in *Freedom from Debt Coalition*:[44]

To achieve its aforestated goal, the law has reconfigured the organization of the regulatory body. It requires the Chairman and four (4) members of the ERC to be equipped with "at least three (3) years of active and distinguished experience" in the fields of energy, law, economics, finance, commerce or engineering, and at least one of them with ten (10) years or more of experience in the active practice of law and another one with similar experience as a certified public accountant. Their terms of office were increased to seven (7) years from the four (4) [years] provided in [E.O. No. 172] and their security of tenure assured. The Chairman and members were given the same salaries, allowances, benefits and retirement pay as the Chief Justice and Associate Justices of the [SC], a lot higher than the salary and benefits accorded the Chairman and members of the ERB which were equivalent only to those of a Department Undersecretary and the

[44] *Supra* note 24.

official next in rank, and those of the Chairman and members of the [COMELEC], respectively.[45] (Citations omitted)

In *Kapisanan ng mga Kawani ng ERB*,[46] the Court traced the gradual narrowing of regulation from that of public services in 1902, to the electricity industry and water resources in 1972, to the electric power industry and oil industry in 1977, and to the electric industry alone in 1998. It noted the expansion of the ERC's functions and concerns, since while it retains the ERB's traditional rate and service regulation functions, it now also has to promote competitive operations in the electricity market, and its concerns now encompass both the consumers and the utility investors. The Court recognized that the ERC labors under a new thrust, new policy, legal structure and regulatory framework for the electric power industry. The Court, in *Freedom from Debt Coalition*, said:

> One of the landmark pieces of legislation enacted by Congress in recent years is the [Electric Power Industry Reform Act of 2001]. It established a new policy, legal structure and regulatory framework for the electric power industry.
>
> The new thrust is to tap private capital for the expansion and improvement of the industry as the large government debt and the highly capital-intensive character of the industry itself have long been acknowledged as the critical constraints to the program. To attract private investment, largely foreign, the jaded structure of the industry had to be addressed. While the generation and transmission sectors were centralized and monopolistic, the distribution side was fragmented with over 130 utilities, mostly small and uneconomic. The pervasive flaws have caused a low utilization of existing generation capacity; extremely high and uncompetitive power rates; poor quality of service to consumers; dismal to forgettable performance of the government power sector; high system losses; and an inability to develop a clear strategy for overcoming these shortcomings.
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> Thus, the [Electric Power Industry Reform Act of 2001] provides a framework for the restructuring of the industry, including the privatization of the assets of the [NPC], the transition to a competitive

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[45] *Id.* at 172.

[46] *Supra* note 19.

structure, and the delineation of the roles of various government agencies and the private entities. The law ordains the division of the industry into four (4) distinct sectors, namely: generation, transmission, distribution and supply. Corollarily, the NPC generating plants have to privatized and its transmission business spun off and privatized thereafter.

In tandem with the restructuring of the industry is the establishment of "a strong and purely independent regulatory body." Thus, the law created the ERC in place of the [ERB].

To achieve its aforestated goal, the law has reconfigured the organization of the regulatory body. x x x.[47] (Citations omitted)

A quick review of significant legislative developments over several decades will help explain the intent of Congress to abolish the ERB in view of the altered landscape of economic regulation which saw the need both to deregulate the oil industry and to restructure the electric power industry.

On November 7, 1936, Commonwealth Act No. 146, known as the Public Service Law, created the Public Service Commission to exercise jurisdiction, supervision, and control over all public services, including the electric power service.

On April 30, 1971, R.A. No. 6173, known as the Oil Industry Commission Act, created the Oil Industry Commission (OIC) to regulate "the act and business of importing, exporting, re-exporting, shipping, transporting, processing, refining, storing, distributing, marketing, and selling crude oil, gasoline, kerosene, gas and other refined petroleum products as well as the operations and activities of natural and juridical persons, firms and entities engaged in the petroleum industry"[48] in a manner consistent with the public interest.

On October 6, 1977, Presidential Decree (P.D.) No. 1206 created the DOE,[49] the Board of Energy (BOE)[50] and the Bureau

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[47] *Freedom from Debt Coalition v. ERC, supra* note 24, at 171-172.

[48] R.A. No. 6173, Section 2.

[49] P.D. No. 1206, Section 2.

[50] P.D. No. 1206, Section 9.

of Energy Utilization[51] (BEU) to take over all the powers and functions of the OIC. Among the powers of the BOE were: (a) to regulate the prices of piped gas charged by gas companies; (b) regulate the power rates charged by electric companies, except electric cooperatives and the NPC; and (c) perform related powers and functions such as licensing and regulation of refineries, reviewing the importation costs of oil and providing remedies for unreasonable shipping costs, and taking measures to insure that gains in the prices of petroleum redound to the public interest.

On May 8, 1987, E.O. No. 172 created the ERB to assume the powers and functions of the BOE under R.A. No. 6173, as amended by P.D. No. 1206, and the regulatory and adjudicatory powers and functions exercised by the BEU.[52] The rationale of E.O. No. 172 was "to achieve a more coherent and effective policy formulation, coordination, implementation and monitoring within the energy sector" by consolidating and entrusting in one body all the regulatory and adjudicatory functions covering the energy sector. The BOE assumed the powers and functions of the Board of Power and Waterworks over the electric power industry.[53]

On December 9, 1992, R.A. No. 7638 transferred to the ERB the power to fix the rates of the NPC and the rural electric cooperatives, while the non-pricing functions of the ERB with respect to the petroleum industry were transferred to the DOE, including regulating the capacities of new refineries.[54]

On February 10, 1998, R.A. No. 8479, known as the Downstream Oil Industry Deregulation Act of 1998, was enacted to liberalize and deregulate the downstream oil industry by promoting and encouraging the entry of new participants in the said industry and prohibiting government interference with any market aspect of the oil industry, including pricing, import

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[51] P.D. No. 1206, Section 7.

[52] E.O. No. 172, Section 4.

[53] P.D. No. 1206, Section 11 (e).

[54] R.A. No. 7638, Section 18.

and export processes and facilities and the establishment of retailers and refineries.

On June 8, 2001, R.A. No. 9136 was enacted for the purpose of reforming and restructuring the electric power industry, and is considered one of the landmark laws passed by Congress in recent years.

Lastly, the clear policy of the Constitution is that no elective or appointive public officer or employee shall receive additional, double or indirect compensation not specifically authorized by law.

Section 8 of Article IX (B) of the 1987 Constitution provides:

> Section 8. No elective or appointive public officer or employee shall receive additional, double, or indirect compensation, unless specifically authorized by law, nor accept without the consent of the Congress, any present, emolument, office, or title of any kind from any foreign government.
>
> Pensions or gratuities shall not be considered as additional, double, or indirect compensation.

Section 8, Article XVI of the 1987 Constitution also provides that "*[t]he State shall, from time to time, review to upgrade the pensions and other benefits due to retirees of both the government and private sectors.*" R.A. No. 9257, known as the Expanded Senior Citizens' Act of 2003, also provides that "*retirement benefits of retirees from both the government and private sector shall be regularly reviewed to ensure their continuing responsiveness and sustainability, and to the extent practicable and feasible, shall be upgraded to be at par with the current scale enjoyed by those in actual service.*"[55] In *Santiago v. Commission on Audit*,[56] the Court also held that "[r]etirement laws should be interpreted liberally in favor of the retiree because

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[55] R.A. No. 9257, Section 2, amending R.A. No. 7432, Section 4 (k).

[56] 276 Phil. 127 (1991).

their intention is to provide for his sustenance, and hopefully even comfort, when he no longer has the stamina to continue earning his livelihood."[57]

Be that as it may, the above-cited provisions are not self-executing, and the rule remains that all pensions or gratuities must be paid only pursuant to an appropriation made by law, which is the very issue now before the Court. Indeed, it had been held that in the absence of express statutory provisions to the contrary, gratuity laws must be construed against the grant of additional or double compensation,[58] a rule which is a constitutional curb on the spending power of the government.[59]

WHEREFORE, the petition is **DENIED.**

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Brion, Peralta, Bersamin, del Castillo, Perez, Mendoza, Jardeleza, and *Caguioa, JJ.,* concur.

Leonen, J., see separate concurring opinion.

Perlas-Bernabe, J., on official leave.

CONCURRING OPINION

LEONEN, *J.*:

Petitioners, who are retired members of the defunct Energy Regulatory Board, filed for mandamus "to compel . . . public respondents to adjust and release their monthly retirement pensions based on the salary levels . . . of the Energy Regulatory Commission, created [under] Republic Act No. 9136[.]"[1] Specifically, Section 39 of Republic Act No. 9136, otherwise

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[57] *Id.* at 136.

[58] *Nunal v. Commission on Audit*, 251 Phil. 339, 344 (1989).

[59] *Herrera, et al. v. NPC, et al.*, 623 Phil. 383, 398 (2009).

[1] *Ponencia,* p. 2.

known as the Electric Power Industry Reform Act of 2001 (EPIRA), provides:

> Sec. 39. *Compensation and Other Emoluments for ERC Personnel.* — The compensation and other emoluments for the Chairman and members of the Commission and the ERC personnel shall be exempted from the coverage of Republic Act No. 6758, otherwise known as the "Salary Standardization Act." For this purpose, the schedule of compensation of the ERC personnel, except for the initial salaries and compensation of the Chairman and members of the Commission, shall be submitted for approval by the President of the Philippines. The new schedule of compensation shall be implemented within six (6) months from the effectivity of this Act and may be upgraded by the President of the Philippines as the need arises: *Provided*, That in no case shall the rate be upgraded more than once a year.
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> ***The Chairman and members of the Commission shall initially be entitled to the same salaries, allowances and benefits as those of the Presiding Justice and Associate Justices of the Supreme Court, respectively. The Chairman and the members of the Commission shall, upon completion of their term or upon becoming eligible for retirement under existing laws, be entitled to the same retirement benefits and the privileges provided for the Presiding Justice and Associate Justices of the Supreme Court, respectively.*** (Emphasis supplied)

I concur in denying the Petition.

As discussed in the ponencia, petitioners retired under Executive Order No. 172, which created the now defunct[2] Energy Regulatory Board in 1987.[3] Section 1 provides, in part, that "[t]he Chairman and the Members of the Board, upon completion of their terms or upon becoming eligible for retirement under existing laws shall be entitled *to the same retirement benefits*

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[2] Rep. Act No. 9136 (2001), Sec. 38 provides:

> Section 38. Creation of the Energy Regulatory Commission. — There is hereby created an independent, quasi-judicial regulatory body to be named the Energy Regulatory Commission (ERC). For this purpose, the existing ***Energy Regulatory Board (ERB) created under Executive Order No. 172, as amended, is hereby abolished.*** (Emphasis supplied)

[3] *Ponencia*, p. 2.

and privileges provided for the Chairman and Members of the Commission on Elections."[4]

Republic Act No. 1568,[5] as amended,[6] provides for the life pension of the Chairman and Members of the Commission on Elections. Section 2-A provides:

> Sec. 2-A. In case the salary of the Auditor General or the Chairman or any Member of the Commission on Elections is increased or decreased, such increased or decreased salary shall, for the purpose of this Act, be deemed to be the salary or the retirement pension which shall be received by the retired Auditor General or Chairman or any Member of the Commission on Elections: Provided That any benefits that have already accrued prior to such increase or decrease shall not be affected thereby.[7]

The Department of Budget and Management noted that petitioners have been receiving retirement benefits on the same level as the salaries of the Chairman and Members of the Commission on Elections.[8]

Still, petitioners insist that their retirement benefits should be based on those of the Energy Regulatory Commission, which, in turn, is pegged on the retirement benefits and privileges of Supreme Court Justices.[9]

Nowhere in the EPIRA were the retirement benefits of the Energy Regulatory Commission extended to the now defunct Energy Regulatory Board.[10] These are two different entities.

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[4] Exec. Order No. 172 (1987), Sec. 1.

[5] Rep. Act No. 1568 (1956), An Act to Provide Life Pension to the Auditor General and The Chairman or any Member of the Commission on Elections.

[6] Rep. Act No. 3595 (1963), An Act to Amend Republic Act Numbered Fifteen Hundred Sixty-Eight (Re-grant of Life Pension to the Auditor-General and the Chairman and Members of the Commission on Elections).

[7] Rep. Act No. 3595 (1963), Sec. 2-A.

[8] *Ponencia*, p. 12.

[9] Rep. Act No. 9136 (2001).

[10] *Ponencia*, p. 12.

The Board was abolished while the Commission was given expanded functions aligned with the restructuring of the electric power industry.[11] These two also differ as regards the Chairman and Members' required qualifications and terms of office.[12] The ponencia found that petitioners failed to establish a clear ministerial duty on the part of public respondents to adjust their pension and release public funds.[13]

In any event, the mirroring made in Section 39 on retirement benefits and privileges granted to Supreme Court Justices is of doubtful validity. It affects the autonomy and independence of the judiciary. Mirroring the compensation of other offices in other departments weighs heavily on any adjustment for judicial compensation.

Retirement laws aim to ensure the welfare and security of those who have devoted their prime years in employment and would have limited opportunities for gainful employment as they approach their twilight years.[14] "In government, lucrative retirement benefits act as incentive to encourage competent [and able] individuals"[15] to join public employment, to remain in service, and to render efficient work.[16]

Congress enacted a special law providing for benefits and privileges specifically for retiring Justices and Judges in order to preserve and guarantee the judiciary's independence.[17]

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

[12] *Id.* at 16-18.

[13] *Id.* at 12.

[14] *Re: Application for Survivorship Pension Benefits Under Republic Act No. 9946 of Mrs. Pacita A. Gruba, Surviving Spouse of the late Manuel K. Gruba, former CTA Associate Judge*, A.M. No. 14155-Ret, November 19, 2013 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2013/november2013/14155-Ret.pdf> 4 [Per *J.* Leonen, *En Banc*].

[15] *Id.*

[16] *Id.*, citing *Profeta v. Drilon*, G.R. No. 104139, December 22, 1992, 216 SCRA 777, 782-783 [Per *J.* Padilla, *En Banc*].

[17] *Id.* at 4-5, citing *Bengzon v. Drilon*, G.R. No. 103254, April 15, 1992, 208 SCRA 133, 153 [Per *J.* Gutierrez, Jr., *En Banc*].

Survivorship benefits strengthen the judiciary's independence by giving Justices peace of mind in knowing that, even beyond their death, their families will be provided for.[18] This reason also supports the grant of longevity pay for Justices and Judges who comply with the requirements of the law.[19]

Republic Act No. 910[20] was passed in 1953 to provide for the retirement of Supreme Court and Court of Appeals Justices, and was later amended to also cover Justices of the Sandiganbayan and Court of Tax Appeals, Judges of the Regional Trial Courts, Metropolitan Trial Courts, Municipal Trial Courts, Municipal Circuit Trial Courts, Shari'a District Courts, Shari'a Circuit Courts, and other courts hereafter established.[21] Republic Act No. 9946[22] was passed on January 13, 2010 amending

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[18] *Id.* at 5.

[19] Batas Blg. 129, Sec. 42 provides:

SEC. 42. *Longevity Pay.* — A monthly longevity pay equivalent to five percent (5%) of the monthly basic pay shall be paid to the Justices and Judges of the courts herein created to each five years of continuous, efficient, and meritorious service rendered in the judiciary: Provided, That in no case shall the total salary of each Justice or Judge concerned, after this longevity pay is added, exceed the salary of the Justice or Judge next in rank. See also *Re: Letter of Court of Appeals Justice Vicente S.E. Veloso for Entitlement to Longevity Pay for His Services as Commission Member III of the National Labor Relations Commission*, A.M. Nos. 12-8-07-CA, June 16, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/june2015/12-8-07-CA.pdf> [Per *J.* Brion, *En Banc*]. Chief Justice Sereno, Associate Justices Villarama, Jr., Mendoza, Reyes, and Perlas-Bernabe concurred. Senior Associate Justice Carpio, Associate Justices Velasco, Bersamin, Del Castillo, and Perez joined the Concurring and Dissenting Opinion of Associate Justice Leonardo-de Castro. Associate Justice Velasco wrote a Separate Opinion. Associate Justices Peralta and Leonen were on official leave. Associate Jardeleza took no part.

[20] Rep. Act No. 910 (1953), An Act to Provide for the Retirement of Justices of the Supreme Court and of the Court of Appeals, for the Enforcement of the Provisions Hereof by the Government Service Insurance System, and to Repeal Commonwealth Act Numbered Five Hundred and Thirty-Six.

[21] Rep. Act No. 9946 (2001), Sec. 1.

[22] Rep. Act No. 9946 (2010), An Act Granting Additional Retirement, Survivorship, and Other Benefits to Members of the Judiciary, Amending

Republic Act No. 910 by granting members of the judiciary additional retirement, survivorship, and other benefits.

Our Constitution reflects the fundamental principle of separation of powers.[23] The distinct spheres of power and functions that divide the three branches of government safeguard against influences and inappropriate interferences among one another, both in courtesy and caution,[24] while maintaining "interdependence"[25] through checks and balances. *Angara v. Electoral Commission*[26] discussed the judiciary's role as the only constitutional body with authority to determine proper allocation of powers among governmental bodies:

> The separation of powers is a fundamental principle in our system of government. It obtains not through express provision but by actual division in our Constitution. Each department of the government has exclusive cognizance of matters within its jurisdiction, and is supreme within its own sphere. But it does not follow from the fact that the three powers are to be kept separate and distinct that the Constitution intended them to be absolutely unrestrained and independent of each other. The Constitution has provided for an elaborate system of checks

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for the Purpose Republic Act No. 910, as amended, Providing Funds Therefor and for Other Purposes.

[23] CONST., Art. VI, Sec. (1) provides:

SECTION 1. The legislative power shall be vested in the Congress of the Philippines. . . .

CONST., Art. VII, Sec. (1) provides:

SECTION 1. The executive power shall be vested in the President of the Philippines. . . .

CONST., Art. VIII, Sec. (1) provides:

SECTION 1. The judicial power shall be vested in one Supreme Court and in such lower courts as may be established by law.

[24] See *J.* Leonen, Concurring Opinion in *Belgica v. Ochoa*, G.R. No. 208566, November 19, 2013, 710 SCRA 1, 290 [Per *J.* Perlas-Bernabe, *En Banc*]. See also *J.* Velasco, Dissenting Opinion in *Province of North Cotabato v. Government of the Republic of the Philippines*, 589 Phil. 387, 707 (2008) [Per *J.* Carpio Morales, *En Banc*].

[25] See *Planas v. Gil*, 67 Phil. 62, 74 (1939) [Per *J.* Laurel, *En Banc*].

[26] 63 Phil. 139 (1936) [Per *J.* Laurel, *En Banc*].

and balances to secure coordination in the workings of the various departments of the government.

x x x x x x x x x

But in the main, the Constitution has blocked out with deft strokes and in bold lines, allotment of power to the executive, the legislative and the judicial departments of the government. The overlapping and interlacing of functions and duties between the several departments, however, sometimes makes it hard to say just where the one leaves off and the other begins. In times of social disquietude or political excitement, the great landmarks of the Constitution are apt to be forgotten or marred, if not entirely obliterated. ***In cases of conflict, the judicial department is the only constitutional organ which can be called upon to determine the proper allocation of powers between the several departments and among the integral or constituent units thereof.***[27] (Emphasis supplied)

Preserving the judiciary's independence is both imperative and central in fulfilling this Court's constitutional mandate as final arbiter in upholding the rule of law. Thus, the principle of separation of powers gives the branches of government supreme authority in their respective spheres of vested powers and functions.[28] Thus, the Constitution provides for fiscal autonomy of the judiciary.[29] Thus, special laws provide for competitive retirement benefits and privileges for Justices and Judges.[30]

The Energy Regulatory Commission is "an independent quasi-judicial *regulatory* body"[31] created by law. It does not primarily exercise judicial power or settle actual controversies between adversarial parties. Its scope of authority is limited to a specific industry. Its key functions relate to the restructured electric power industry under the EPIRA.[32] Yet, for any adjustment in

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

[28] *Id.* at 156.

[29] CONST., Art. VIII, Sec. 3.

[30] *See* Rep. Act No. 9946 (2010).

[31] Rep. Act No. 9136 (2001), Sec. 38.

[32] Rep. Act No. 9136 (2001), Sec. 43.

the compensation schedules for the judiciary, the EPIRA unconstitutionally requires that similar adjustments be automatically considered for the Energy Regulatory Commission. This violates the independence of the judiciary and its fiscal autonomy.

ACCORDINGLY, I vote to **DENY** the Petition.

EN BANC

[G.R. No. 201852. April 5, 2016]

ROBERTO G. ROSALES, NICANOR M. BRIONES, PONCIANO D. PAYUYO, JOSE R. PING-AY, ISIDRO Q. LICO, AND JOSE TAN RAMIREZ, in their capacity as members of the Board of Directors of NATIONAL ALLIANCE FOR CONSUMER EMPOWERMENT OF ELECTRIC COOPERATIVES and on behalf of the nine million (9,000,000) member consumers of NEA-Electric Cooperatives nationwide who have contributed the Members' Contributions for Capital Expenditures (MCC) or Reinvestment Fund for Sustainable Capital Expenditures (RFSC), *petitioners, vs.* **ENERGY REGULATORY COMMISSION (ERC), ASELCO, AKELCO, ALECO, ANTECO, AURELCO, BATELEC I, BATELEC II, BENECO, BILECO, BOHECO I, BOHECO II, FIBECO, BUSECO, CAGELCO I, CAGELCO II, CASURECO I, CASURECO II, CASURECO III, CASURECO IV, CAMELCO, CAPELCO, CEBECO I, CEBECO II, CEBECO III, CENECO, CENPELCO, DORECO, DASURECO, ESAMELCO, FLECO, GUIMELCO, IFELCO, INEC, ISECO, ILECO I, ILECO II, ILECO III, ISELCO I, KAELCO, LUELCO, SORECO I, LANECO, LEYECO I/DORELCO, LEYECO II, LEYECO III, LEYECO IV, LEYECO V, PENELCO, MOELCO I, MOELCO II,**

MORESCO I, MORESCO II, MOPRECO, NORECO I, NORSAMELCO, NEECO I, NEECO II - Area I, NEECO II - Area II, PELCO I, PELCO II, CANORECO, PRESCO, QUEZELCO I, QUEZELCO II, SAMELCO I, SAMELCO II, SIARELCO, SOCOTECO I, SOCOTECO II, SOLECO, SUKELCO, SURNECO, SURSECO, I, SURSECO II, TARELCO I, TARELCO II, VRESCO, ZAMECO I, ZAMECO II, ZAMCELCO, ZANECO, ZAMSURECO I, ZAMSURECO II, BATANELCO, LUBELCO, OMECO, ORMECO, MARELCO, TIELCO, ROMELCO, BISELCO, FICELCO, MACELCO, TISELCO, BANELCO, PROSIELCO, CELCO, COTELCO, TAWELCO, SIASELCO, SULECO, BASELCO, CASELCO, LASURECO, MAGELCO, DIELCO, and COTELCO-PALMA, *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; PARTIES; LEGAL STANDING; ALLEGED TRANSCENDENTAL IMPORTANCE OF ISSUES AS GROUND TO WAIVE RULES ON STANDING; REQUISITES.— This petition for *certiorari* under Rule 65 of the Rules of Court (*Rules*) seeks to declare the illegality and unconstitutionality of the *Members' Contribution for Capital Expenditures (MCC)*, later renamed as *Reinvestment Fund for Sustainable Capital Expenditures (RFSC)*, which is being imposed by on-grid Electric Cooperatives (ECs), pursuant to the Rules and Resolution of the Energy Regulatory Commission (ERC) [specifically, Resolution No. 14 issued by the ERC]. x x x [Petitioners] view that the issues raised in this petition are of paramount public importance as it does not merely involve the constitutionality of MCC/RFSC but also the plight of the member-consumers of ECs nationwide. For them, the transcendental importance of this case cannot simply be ignored as it also involves the economic well-being of more than half of the Philippine population. x x x We do not view that the procedural rules on standing should be waived on the ground that the issues raised in this petition are of transcendental importance. To consider a matter as one of transcendental importance, all of the following must concur: (1) the public character of the funds or other assets involved

in the case; (2) the presence of a clear case of disregard of a constitutional or statutory prohibition by the public respondent agency or instrumentality of the government; and (3) the lack of any other party with a more direct and specific interest in the questions being raised.

2. POLITICAL LAW; ADMINISTRATIVE LAW; QUASI-LEGISLATIVE POWER IS EXERCISED BY ADMINISTRATIVE AGENCIES THROUGH PROMULGATION OF RULES AND REGULATIONS.— [The] Rules for Setting the Electric Cooperatives' Wheeling Rates (RSEC-WR) and Resolution No. 14 were issued by the ERC in its quasi-legislative power [and administrative functions]. x x x [T]he ERC exercised neither judicial nor quasi-judicial function. In issuing and implementing the RSEC-WR and Resolution No. 14, it was not called upon to adjudicate the rights of contending parties to exercise, in any manner, discretion of a judicial or quasi-judicial nature. x x x It was in the nature of subordinate legislation, promulgated in the exercise of its delegated power. Quasi-legislative power is exercised by administrative agencies through the promulgation of rules and regulations within the confines of the granting statute and the doctrine of non-delegation of powers flowing from the separation of the branches of the government.

3. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; DECLARATORY RELIEF; APPROPRIATE REMEDY TO ASSAIL THE VALIDITY OF A GOVERNMENT AGENCY'S ISSUANCE. — Since petitioners assail the validity of the ERC issuances and seeks to declare them as unconstitutional, a petition for declaratory relief under Rule 63 of the *Rules* is the appropriate remedy. Under the *Rules*, any person whose rights are affected by any other governmental regulation may, before breach or violation thereof, bring an action in the appropriate Regional Trial Court to determine any question of construction or validity arising, and for a declaration of his rights or duties, thereunder.

4. POLITICAL LAW; ADMINISTRATIVE LAW; EXHAUSTION OF ADMINISTRATIVE REMEDIES IS A CORNERSTONE OF OUR JUDICIAL SYSTEM.— [A]dministrative remedies should have been exhausted by filing the case in the ERC, which, has technical expertise, at the very least, to dwell on the issue. Considering that petitioners are challenging the MCC/RFSC, which is a rate component under the RSEC-WR, the

original and exclusive jurisdiction is vested with the ERC, pursuant to Section 43 of R.A. No. 9136 x x x. All actions taken by the ERC, pursuant to R.A. No. 9136, are subject to judicial review. As an independent quasi-judicial agency in the exercise of its quasi-judicial functions, its judgment, final order or resolution is appealable to the Court of Appeals *via* Rule 43 of the *Rules*, and, if still unfavorable, to this Court *via* Rule 65. The doctrine of exhaustion of administrative remedies is a cornerstone of our judicial system.

APPEARANCES OF COUNSEL

Artemio G. Tuquero and *Lope E. Feble* for petitioners.

Zenon S. Suarez for respondents FICELCO, CELCO, TIELCO and NORSAMELCO.

The Solicitor General for public respondents.

Gregorio E. Bobos II for respondent ORMECO.

SANSAET MASENDO CADIZ & BAÑOSIA LAW OFFICES for respondent ASELCO.

GO BALLAQUE AND COMPLETANO for respondent Cotabato Electric Cooperative-Palma Area.

The Law Firm of Tuanquin & Tuanquin for respondent QUEZELCO II.

De Castro & Cagampang-De Castro Law Firm for respondent BATELEC I.

Delmar O. Cariño for respondent Benguet Electric Cooperative (BENECO).

Conchito Oclarit & Eleuterio F. Diao IV for respondents MORESCO II, BUSECO & CAMELCO, MOELCO I, MOELCO II, ANECO, MORESCO I AND FIBECO.

Arnido O. Inumerable for respondent Zambales II Electric Cooperative, Inc., (ZAMECO II & PELCO II).

Rogelio P. Gula for respondent Leyte Electric Cooperative, Inc., (LEYECO II).

Peter Y. Co for respondent ZANECO, Inc.

Leonila P. Gorgolon-Licuan for respondent SIARELCO and DIELCO.

Ma. Rosafe Amelou V. Saril for respondent CENECO.

Lerios-Amboy & Delos Reyes Law Offices for respondents CANORECO, AKELCO, ANTECO, CAPELCO, OMECO,

COTELCO, COTELCO-PALMA, TARELCO I, SURNECO, INEC, MASELCO, NEECO I PELCO I, SOLECO, SURSECO I, TIELCO, NEECO-II-Area-2, MARELCO, BATELEC II, CAGELCO II, LUELCO, SAMELCO I, SAMELCO II, TARELCO II, CASURECO I, CASORECO II, CASURECO III, CASURECO IV, ALECO, DORECO, SURSECO II, FLECO, ZAMCELCO, LEYECO IV, IFELCO, LUBELCO, BANELCO, QUEZELCO I, BATELEC I, CEBECO I, CEBECO III, DASURECO, BASELCO, BATANELCO, ISECO, PENELCO, DORELCO, SORECO I, CENPELCO, ZAMECO I, ILECO I, CEBECO II, NEECO-II-Area-I, MORECO I, ROMELCO, PROSIELCO, BISELCO, LEYECO III, GUIMELCO, ILECO III, MOPRECO, AURELCO, PRESCO, BOHECO I, BOHECO II, CAGELCO I, ILECO II, BILECO, LEYECO V, SOCOTECO I, KAELCO, CELCO, ZAMSURECO I.

Diaz (+) Diaz Borromeo & Associates for respondent V-M-C Rural Electric Services Cooperative, Inc.

D E C I S I O N

PERALTA, *J.*:

This petition for *certiorari* under Rule 65 of the Rules of Court (*Rules*) seeks to declare the illegality and unconstitutionality of the *Members' Contribution for Capital Expenditures (MCC)*, later renamed as *Reinvestment Fund for Sustainable Capital Expenditures (RFSC)*, which is being imposed by on-grid Electric Cooperatives (ECs), pursuant to the following Rules and Resolution of the Energy Regulatory Commission (ERC):

1. Rules for Setting the Electric Cooperatives' Wheeling Rates (RSEC-WR), which was adopted in Resolution No. 20, Series of 2009, issued on September 23, 2009;[1] and

2. Resolution No. 14, Series of 2011, issued on July 6, 2011.[2]

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[1] Entitled "*A Resolution Adopting the Rules for Setting the Electric Cooperatives' Wheeling Rates*" (*Rollo*, pp. 68-100).

[2] Entitled "*A Resolution Modifying the Terms Members' Contribution for Capital Expenditures (MCC) to Reinvestment Fund for Sustainable Capital*

In particular, Article 5 of RSEC-WR states:

ARTICLE 5

MEMBERS' CONTRIBUTION FOR CAPITAL EXPENDITURES

5.1 Function of Members' Contribution for Capital Expenditures

The Members' Contribution for Capital Expenditures is envisioned to fund the amortization or debt service of its indebtedness associated with the expansion, rehabilitation or upgrading of the existing electric power system of the ECs in accordance with their ERC-approved Capital Expenditure Plan.

5.2 Utilization of Members' Contribution for Capital Expenditures

The utilization of the Member's Contribution fund shall be subject to the following conditions:

a. It shall be used solely for capital expenditure or any other projects approved by the Commission and not for any other purpose, even on a temporary basis;

b. The amounts collected for Members' Contribution fund shall be recognized as contribution from member-consumers;

c. The amounts collected for Members' Contribution, including interest income, shall be placed in a separate account; and

d. If the member-consumer terminates its contract with the EC, the said contribution shall not be withdrawn, instead the same shall be treated as Contribution in Aid of Construction (CIAC).

In the case of ECs registered under the CDA, the said member-contribution shall be converted into member's share capital.

5.3 Members' Contribution for Capital Expenditure Rate Cap Per Group

The EC's current tariff includes a reinvestment fund provision calculated at five percent (5%) of its unbundled retail rate (inclusive of generation, transmission, and distribution charges) as part of its Rate Unbundling Decision. This translates to an average of 22% of

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Expenditures (RFSC) and MCC-Real Property Tax (RPT) to Provision for RPT as Provided in the Rules for Setting Electric Cooperatives' Wheeling Rates (RSEC-WR)" (*Rollo*, pp. 130-138).

the 98 ECs' distribution charges (inclusive of distribution, supply and metering charges). The Members' Contribution for Capital Expenditure Rate Cap was determined by applying the 22% to the respective group's 2008 median operating costs per kWh which was the basis for the ECs' operating revenue requirements.

The result of the afore-mentioned calculation is presented in Table 7 hereunder:

TABLE 7. Members' Contribution for Capital Expenditure Rate Cap per Group

GROUP[3]	2008 level (median)	Members' contribution for CAPEX @ 22%
A	**2.420000**	**0.5324**
B	**1.820000**	**0.4004**
C	**1.680000**	**0.3696**
D	**1.140000**	**0.2508**
E	**1.320000**	**0.2904**
F	**0.990000**	**0.2178**
G	**0.690000**	**0.1518**

[3] Based on their total operating distribution cost and operating distribution cost per kWh, which, in turn, are affected by size (defined as number of customers) and consumption (defined as MWH sales per customers), the RSEC-WR classified the on-grid ECs into seven (7) groups as follows:

GROUP A
Aurora (AURELCO)
Biliran (BILECO)
Camiguin (CAMELCO)
Guimaras (GUIMELCO)
Ifugao (IFELCO)
Kalinga-Apayao (KAELCO)
Leyte III (LEYECO III)
Mt. Province (MOPRECO)
Quezon II (QUEZELCO II)
Quirino (QUIRELCO)
Siargao (SIARELCO)

5.4 Additional Members' Contribution for Capital Expenditure

The actual capital expenditure may vary among ECs. In the event that the members' contribution for capital expenditures rate caps herein authorized are insufficient for its purpose, the EC may collect

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GROUP B
Abra (ABRECO)
Antique (ANTECO)
Camarines Sur I (CASURECO I)
Camarines Sur IV (CASURECO IV)
Lanao Del Norte (LANECO)
Leyte I (LEYECO I/DORELCO)
Leyte IV (LEYECO IV)
Misamis Occidental I (MOELCI I)
Eastern Samar (ESAMELCO)
Northern Samar (NORSAMELCO)
Samar I (SAMELCO I)
Samar II (SAMELCO II)
Sorsogon (SORECO I)
Southern Leyte (SOLECO)
Surigao Del Sur I (SURSECO I)
Surigao Del Sur II (SURSECO II)

GROUP C
Bohol II (BOHECO II)
Cagayan II (CAGELCO II)
Camarines Sur III (CASURECO III)
Isabela II (ISELCO II)
Sorsogon II (SORECO II)

GROUP D
Agusan Del Sur (ASELCO)
Bukidnon II (BUSECO)
Cebu III (CEBECO III)
Davao Oriental (DORECO)
First Laguna (FLECO)
Iloilo III (ILECO III)
Maguindanao (MAGELCO)
Misamis Occidental II (MOELCI II)
Misamis Oriental II (MORESCO II)
Negros Oriental I (NORECO I)
Nueva Viscaya (NUVELCO)
Pampanga Rural (PRESCO)
Pangasinan I (PANELCO I)
Sultan Kudarat (SUKELCO)
Surigao Del Norte (SURNECO)

such additional Members' Contribution for Capital Expenditures by securing the consent of its member-consumers for such collection through existing legal procedures, provided the expenditure was approved by the Commission as part of such EC's Capital Expenditure

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Zambales I (ZAMECO I)
Zambales II (ZAMECO II)

GROUP E
Aklan (AKELCO)
Bohol I (BOHECO I)
Bukidnon I (FIBECO)
Cagayan I (CAGELCO I)
Camarines Norte (CANORECO)
Capiz (CAPELCO)
Cebu I (CEBECO I)
Cebu II (CEBECO II)
Davao Del Sur (DASURECO)
Iloilo I (ILECO I)
Iloilo II (ILECO II)
La Union (LUELCO)
Leyte V (LEYECO V)
Negros Occidental (NOCECO)
Negros Oriental II (NORECO II)
North Cotabato (COTELCO)
Nueva Ecija I (NEECO I)
Nueva Ecija II (NEECO II) Area I
Nueva Ecija II (NEECO II) Area II
Pampanga I (PELCO I)
Pangasinan III (PANELCO III)
Quezon I (QUEZELCO I)
Tarlac I (TARELCO I)
Tarlac II (TARELCO II)
V-M-C Rural Electric Service (VRESCO)
Zamboanga Del Norte (ZANECO)
Zamboanga Del Sur I (ZAMBURECO I)
Zamboanga Del Sur II (ZAMBURECO II)

GROUP F
Agusan Del Norte (ANECO)
Albay (ALECO)
Batangas I (BATELEC I)
Benguet (BENECO)
Camarines Sur II (CASURECO II)
Central Pangasinan (CENPELCO)
Davao Del Norte (DANECO)
Ilocos Norte (INEC)

Plan. Provided further that the additional member contribution is obtained prior to the incurrence of the indebtedness[;] provided finally that the collection of said additional contribution shall be subject to the principles of fairness and equity, in accordance with the objective of the EPIRA for the elimination of cross-subsidy.

Collections made pursuant to this (*sic*) provisions may be subject to the audit of the Commission at its discretion.[4]

On the other hand, Resolution No. 14 provides:

NOW, THEREFORE, be it **RESOLVED**, as the ERC hereby **RESOLVES** to **AMEND** the nomenclature of "Members' Contribution for Capital Expenditures (MCC)" and the "MCC-Real Property Tax (RPT)" to "Reinvestment Fund for Sustainable Capital Expenditures (RFSC)" and "Provision for RPT", respectively, but the nature and purpose of the same remain, to wit:

The MCC is envisioned to fund the amortization or debt service of the ECs' indebtedness associated with the expansion, rehabilitation or upgrading of their existing electric power system in accordance with their ERC-approved CAPEX Plan. The utilization of the MCC fund shall be subject to the following conditions:

1. It shall be used solely for CAPEX or any other projects approved by the ERC and not for any other purpose, even on a temporary basis;

Ilocos Sur (ISECO)
Isabela I (ISELCO I)
Misamis Oriental I (MORESCO I)
Pampanga II (PELCO II)
Peninsula (PENELCO)
San Jose City (SAJELCO)
So. Cotabato (SOCOTECO I)

GROUP G
Batangas II (BATELEC II)
Central Negros (CENECO)
Leyte II (LEYECO II)
Pampanga III (PELCO III)
So. Cotabato II (SOCOTECO II)
Zamboanga City (ZAMCELCO) (*Rollo*, pp. 75-77).

[4] *Rollo*, pp. 85-87.

2. The amounts collected for MCC fund shall be recognized as contribution from member-consumers;

3. The amounts collected for MCC, including interest income, shall be put in a separate account; and

4. If the member-consumer terminates his contract with the EC, the said contribution shall not be withdrawn instead the same shall be treated as CIAC.

In the case of ECs registered under the CDA, the said member-contribution shall be converted into member's share capital.

In the event that the MCC rate caps are insufficient for its purpose, the EC may collect such additional MCC by securing the consent of its member-consumers for such collection through existing legal procedures; Provided that, the expenditure was approved by the ERC as part of the EC's CAPEX Plan; Provided further that, the additional MCC is obtained prior to the incurrence of the indebtedness; Provided finally that, the collection of said additional MCC shall be subject to the principles of fairness and equity in accordance with the objective of the EPIRA for the elimination of cross-subsidy.[5]

The alleged grounds for the petition are as follows:

(A)

THE IMPOSITION OF MCC OR RFSC BY THE ENERGY REGULATORY COMMISSION AS A FORM OF INVESTMENT SOLICITATION TO FUND THE EXPANSION AND OTHER CAPITAL [EXPENDITURES] OF ELECTRIC COOPERATIVES IS HIGHLY IRREGULAR[,] OPPRESSIVE[,] AND UNCONSTITUTIONAL AS IT DIRECTLY VIOLATES THE DUE PROCESS AND EQUAL PROTECTION CLAUSES ON PROPERTY UNDER SECTION 1 ARTICLE III OF THE 1987 CONSTITUTION.

(B)

THE MANDATORY COLLECTION OF THE MCC OR RFSC BY THE ELECTRIC COOPERATIVES FROM ITS MEMBER-CONSUMERS WITHOUT THE PROPER EXPLICIT ACCOUNTING ENTRIES AND ACKNOWLEDGMENT OF BEING A PATRONAGE CAPITAL AND WITHOUT THE BENEFIT OF A FAIR RETURN OF THEIR INVESTMENTS OR PATRONAGE CAPITAL INPUT

[5] *Id.* at 132-133.

OR CONTRIBUTIONS IS TANTAMOUNT TO TAKING A PROPERTY WITHOUT JUST COMPENSATION AND IS VIOLATIVE OF THE PROVISION OF SECTION 9, ARTICLE III OF THE 1987 CONSTITUTION.

(C)

THE RULING OF ERC ALLOWING THE MANDATORY COLLECTION OF MCC OR RFSC BY THE ELECTRIC [COOPERATIVES] [ECs] IS UNDOUBTEDLY UNCONSTITUTIONAL AS IT DIRECTLY VIOLATES SECTION 10, ARTICLE II AND SECTION 1 & 15, ARTICLE XII OF THE 1987 CONSTITUTION.

(D)

THE UNJUST COLLECTION OF THE MCC OR RFSC BY THE ELECTRIC COOPERATIVES AS AUTHORIZED AND RULED BY ERC IS CONTRARY TO LAW AS NOWHERE IN THE PROVISIONS OF P.D. 269 DOES IT SAY THAT MEMBERS ON A VOLUNTARY AND COOPERATIVE MANNER WILL PROVIDE CAPITAL TO FUND THE CAPITAL EXPENDITURES BY THE COOPERATIVES. IT LIKEWISE VIOLATES SECTION 37 OF P.D. 269.[6]

In a nutshell, the issue for petitioners is not about the nomenclature of MCC/RFSC or how such funds are utilized but in the ERC's treatment of MCC/RFSC as a subsidy/funds for capital expenditures (CAPEX) or contribution in aid of construction (CIAC) instead of patronage capital, which is an equity or investment that must be accounted for and could be withdrawn by the member-consumers upon termination of their contract with respondent ECs.[7]

The petition is dismissed.

Legal standing of petitioners

Petitioners claim that as Board members/officers of the National Alliance for Consumer Empowerment of Electric Cooperatives (NACEELCO) they have the required legal standing to assail the validity of MCC/RFSC imposed by the ECs under the RSEC-WR and Resolution No. 14 issued by the ERC. They

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

[7] *Id.* at 37, 3683.

also stand to be benefited or injured by the judgment in this suit because they are member-consumers of the ECs who were required to and did pay the MCC/RFSC, as shown by the electric bills appended to the petition. Further, over and above their personal capacity as member-consumers, petitioners, like party-list representatives Briones of AGAP, Payuyo of APEC, and Ping-ay of NATCO, represent their constituents who are paying EC member-consumers in good standing.

Even assuming that no direct injury is or will continue to be suffered, petitioners contend that the liberal policy consistently adopted by the Court on *locus standi* must apply. They view that the issues raised in this petition are of paramount public importance as it does not merely involve the constitutionality of MCC/RFSC but also the plight of the member-consumers of ECs nationwide. For them, the transcendental importance of this case cannot simply be ignored as it also involves the economic well-being of more than half of the Philippine population. Two contesting parties are said to be laying claim on the ownership of the ECs, to wit: (1) the persons running the ECs being directly controlled by the NEA, which has not contributed any funds to fund debt-servicing except loan accommodations with high interest rates, and (2) the member-consumers of ECs who have continuously contributed their hard-earned money to fund the operations, cost, and debt-servicing of the ECs.

Only petitioners Ping-ay and Ramirez satisfy the requirement of *locus standi*.

Petitioners have no legal standing to file this petition in their capacity as NACEELCO Board members. It was not shown that respondent ECs are members of NACEELCO. Further, while petitioners claim that they represent nine million member-consumers of the ECs, they have not attached to the petition any documentary proof as regards their purported authority to file the case on their behalf.

Also, petitioners Payuyo and Rosales have no legal standing to file the case as member-consumers of the Palawan Electric Cooperative, Inc. (PALECO) and Agusan Del Norte Electric

Cooperative, Inc. (ANECO), respectively.[8] Even if ANECO is within the coverage of RSEC-WR, it is not impleaded as respondent in the petition. As for PALECO, it is neither a part of any group enumerated in RSEC-WR nor is it impleaded as respondent herein.

While the Court held that legislators have the standing to maintain inviolate the prerogatives, powers and privileges vested by the Constitution in their office and are allowed to sue to question the validity of any official action which they claim infringes their prerogatives as legislators,[9] there was no specific allegation of usurpation of legislative function in this case. Moreover, We do not view that the procedural rules on standing should be waived on the ground that the issues raised in this petition are of transcendental importance. To consider a matter as one of transcendental importance, all of the following must concur: (1) the public character of the funds or other assets involved in the case; (2) the presence of a clear case of disregard of a constitutional or statutory prohibition by the public respondent agency on instrumentality of the government; and (3) the lack of any other party with a more direct and specific interest in the questions being raised.[10] As will be shown in the discussion below, elements (2) and (3) are obviously lacking in this case.

The above notwithstanding, petitioners Ping-ay and Ramirez have the legal standing to sue. Ping-ay is a member-consumer of respondent Ilocos Sur Electric Cooperative, Inc. (ISECO).[11] On the other hand, Ramirez is undisputedly the spouse of Mary Ramirez,[12] who is the registered member-consumer of respondent Eastern Samar Electric Cooperative, Inc. (ESAMELCO). Mary, who is not one of the petitioners, only needs to be impleaded

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[8] *Id.* at 102, 107.

[9] *Sergio R. Osmeña III v. Power Sector Assets and Liabilities Management Corporation, et al.*, G.R. No. 212686, September 28, 2015.

[10] See *Chamber of Real Estate and Builders' Ass'ns., Inc. v. Energy Regulatory Commission (ERC), et al.*, 638 Phil. 542, 556-557 (2010).

[11] *Rollo*, p. 105.

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

as a *pro-forma* party to the suit based on Section 4, Rule 4 of the *Rules*.[13] The determination of whether Mary is a party who is indispensable or necessary or neither indispensable nor necessary would no longer matter since, as We said, Ping-ay possesses the required *locus standi* for the Court to already take cognizance of the case.

It is a general rule that every action must be prosecuted or defended in the name of the real party-in-interest, who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit.

Jurisprudence defines interest as "material interest, an interest in issue and to be affected by the decree, as distinguished from mere interest in the question involved, or a mere incidental interest. By real interest is meant a present substantial interest, as distinguished from a mere expectancy or a future, contingent, subordinate, or consequential interest." "To qualify a person to be a real party-in-interest in whose name an action must be prosecuted, he must appear to be the present real owner of the right sought to be enforced."

"Legal standing" or *locus standi* calls for more than just a generalized grievance. The concept has been defined as a personal and substantial interest in the case such that the party has sustained or will sustain direct injury as a result of the governmental act that is being challenged. The gist of the question of standing is whether a party alleges such personal stake in the outcome of the controversy as to assure that concrete adverseness which sharpens the presentation of issues upon which the court depends for illumination of difficult constitutional questions.

A party challenging the constitutionality of a law, act, or statute must show "not only that the law is invalid, but also that he has sustained or is in immediate, or imminent danger of sustaining some direct injury as a result of its enforcement, and not merely that he suffers thereby in some indefinite way." It must shown that he has been, or is about to be, denied some right or privilege to which he is lawfully entitled, or that he is about to be subjected to some burdens or penalties by reason of the statute complained of.[14]

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[13] *Navarro v. Hon. Judge Escobido*, 621 Phil. 1, 19 (2009).

[14] *Jose J. Ferrer, Jr. v. City Mayor Herbert Bautista, etc., et al.*, G.R. No. 210551, June 30, 2015.

Tested by the foregoing standards, petitioners Ping-ay and Ramirez clearly have legal standing to file the petition. They are real parties-in-interest to assail the constitutionality and legality of RSEC-WR and Resolution No. 14. Their cause of action to declare invalid the subject Rule and Resolution is related to their right to seek a refund of the payments made and to stop future imposition of the MCC/RFSC.

Rule 65 as a Remedy

Despite the legal standing of petitioners Ping-ay and Ramirez, their choice of remedy to question the validity of RSEC-WR and Resolution No. 14 is inexcusably inapposite.

Section 1, Rule 65 of the *Rules* mandates:

> SECTION 1. *Petition for certiorari*. — When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of its or his jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require. x x x

The Court agrees with respondents that RSEC-WR and Resolution No. 14 were issued by the ERC in its quasi-legislative power.

> A respondent is said to be exercising *judicial function* where he has the power to determine what the law is and what the legal rights of the parties are, and then undertakes to determine these questions and adjudicate upon the rights of the parties.
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> *Quasi-judicial function*, on the other hand, is "a term which applies to the actions, discretion, *etc*., of public administrative officers or bodies . . . required to investigate facts or ascertain the existence of facts, hold hearings, and draw conclusions from them as a basis for their official action and to exercise discretion of a judicial nature."
>
> Before a tribunal, board, or officer may exercise judicial or quasi-judicial acts, it is necessary that there be a law that gives rise to

some specific rights of persons or property under which adverse claims to such rights are made, and the controversy ensuing therefrom is brought before a tribunal, board, or officer clothed with power and authority to determine the law and adjudicate the respective rights of the contending parties.[15]

As defined above, the ERC exercised neither judicial nor quasi-judicial function. In issuing and implementing the RSEC-WR and Resolution No. 14, it was not called upon to adjudicate the rights of contending parties to exercise, in any manner, discretion of a judicial or quasi-judicial nature. Instead, RSEC-WR and Resolution No. 14 were done in the exercise of the ERC's quasi-legislative and administrative functions. It was in the nature of subordinate legislation, promulgated in the exercise of its delegated power. Quasi-legislative power is exercised by administrative agencies through the promulgation of rules and regulations within the confines of the granting statute and the doctrine of non-delegation of powers flowing from the separation of the branches of the government.[16] Particularly, the ERC applied its rule-making power as expressly granted by Republic Act (R.A.) No. 9136 ("Electric Power Industry Reform Act of 2001" or EPIRA), to wit:

SEC. 43. *Functions of the ERC*. — The ERC shall x x x be responsible for the following key functions in the restructured industry:

x x x x x x x x x

f. **In the public interest, establish and enforce a methodology for setting** transmission and **distribution wheeling rates and retail rates for the captive market of a distribution utility**, taking into account all relevant considerations, including the efficiency or inefficiency of the regulated entities. The rates must be such as to allow the recovery of just and reasonable costs and a reasonable return on rate base (RORB) to enable the entity to operate viably. The ERC may adopt alternative forms of internationally-accepted rate-setting methodology as it may deem appropriate. The rate-setting

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[15] *Liga ng mga Barangay National v. City Mayor of Manila*, 465 Phil. 524, 540-541 (2004).

[16] *Gil G. Cawad, et al. v. Florencio B. Abad, et al.*, G.R. No. 207145, July 28, 2015.

methodology so adopted and applied must ensure a reasonable price of electricity. The rates prescribed shall be non-discriminatory. To achieve this objective and to ensure the complete removal of cross subsidies, the cap on the recoverable rate of system losses prescribed in Section 10 of Republic Act No. 7832, is hereby amended and shall be replaced by caps which shall be determined by the ERC based on load density, sales mix, cost of service, delivery voltage and other technical considerations it may promulgate. The ERC shall determine such form of rate-setting methodology, which shall promote efficiency. In case the rate setting methodology used is RORB, it shall be subject to the following guidelines:

(i) For purposes of determining the rate base, the TRANSCO or any distribution utility may be allowed to revalue its eligible assets not more than once every three (3) years by an independent appraisal company: *Provided, however,* That ERC may give an exemption in case of unusual devaluation: *Provided, further,* That the ERC shall exert efforts to minimize price shocks in order to protect the consumers;

(ii) Interest expenses are not allowable deductions from permissible return on rate base;

(iii) In determining eligible cost of services that will be passed on to the end-users, the ERC shall establish minimum efficiency performance standards for the TRANSCO and distribution utilities including systems losses, interruption frequency rates, and collection efficiency;

(iv) Further, in determining rate base, the TRANSCO or any distribution utility shall not be allowed to include management inefficiencies like cost of project delays not excused by *force majeure*, penalties and related interest during construction applicable to these unexcused delays; and

(v) **Any significant** operating costs or **project investments of the** TRANSCO and **distribution utilities** which **shall become part of the rate base** shall be subject to verification by the ERC to ensure that the contracting and procurement of the equipment, assets and services have been subjected to transparent and accepted industry procurement and purchasing practices to protect the public interest. (Emphasis supplied)[17]

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[17] Rule 15 of the IRR of R.A. No. 9136 provides:

Granting *arguendo*, that the MCC/RFSC imposition is in the exercise of the ERC's quasi-judicial function, still, the petition should have been filed before the Court of Appeals, which may

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Section 5. *Ratemaking Design and Methodology*. —

(a) The ERC shall, in the public interest, establish and enforce a methodology for setting transmission and distribution wheeling rates and Retail Rates for the Captive Market of a Distribution Utility, taking into account all relevant considerations, including the efficiency or inefficiency of the regulated entities, as well as the expansion or improvement of the Transmission facilities pursuant to a plan approved by the ERC under Section 10 of Rule 6 on Transmission Sector, and the Distribution Utilities under Rule 7 on Distribution Sector. The rates must be such as to allow the recovery of just and reasonable costs and a reasonable RORB to enable the entity to operate viably. The ERC may adopt alternative forms of internationally-accepted rate-setting methodology as it may deem appropriate. The rate-setting methodology so adopted and applied must ensure a reasonable price of electricity. The rates prescribed shall be nondiscriminatory and shall take into consideration, among others, the franchise tax. To achieve this objective and to ensure the complete removal of cross subsidies, the cap on the recoverable rate of system losses prescribed in Section 10 of Republic Act No. 7832, is hereby amended and shall be replaced by caps which shall be determined by the ERC based on load density, sales mix, cost of service, delivery voltage and other technical considerations it may promulgate. The ERC shall determine such form of rate-setting methodology, which shall promote efficiency. In case the rate setting methodology used is RORB, it shall be subject to the following guidelines:

(i) For purposes of determining the rate base, the TRANSCO or its Buyer or Concessionaire or any Distribution Utility may be allowed to revalue its eligible assets not more than once every three (3) years by an independent appraisal company: *Provided, however*, That ERC may give an exemption in case of unusual devaluation: *Provided, further*, That the ERC shall exert efforts to minimize price shocks in order to protect the consumers;

(ii) Interest expenses are not allowable deductions from permissible RORB;

(iii) In determining eligible cost of services that will be passed on to the End-users, the ERC shall establish minimum efficiency performance standards for the TRANSCO or its Buyer or Concessionaire and Distribution Utilities including systems losses, interruption frequency rates, and collection efficiency;

(iv) Further, in determining rate base, the TRANSCO or its Buyer or Concessionaire or any Distribution Utility shall not be allowed to include management inefficiencies like cost of project delays not

entertain a petition for *certiorari* whether or not the same is in aid of its appellate jurisdiction.[18] Indeed, petitioners violated the principle of hierarchy of courts. As We said in one case:

> x x x The petitioners appear to have forgotten that the Supreme Court is a court of last resort, not a court of first instance. The hierarchy of courts should serve as a general determinant of the appropriate forum for Rule 65 petitions. The concurrence of jurisdiction among the Supreme Court, Court of Appeals and the Regional Trial Courts to issue writs of *certiorari*, prohibition, *mandamus*, *quo warranto*, *habeas corpus* and injunction does not give the petitioners the unrestricted freedom of choice of forum. By directly filing Rule 65 petitions before us, the petitioners have unduly taxed the Court's time and attention which are better devoted to matters within our exclusive jurisdiction. Worse, the petitioners only contributed to the overcrowding of the Court's docket. We also wish to emphasize that the trial court is better equipped to resolve cases of this nature since this Court is not a trier of facts and does not normally undertake an examination of the contending parties' evidence.[19]

Since the Court of Appeals and the Supreme Court have original concurrent jurisdiction over petitions for *certiorari*, the rule on hierarchy of courts determines the venue of recourses to these courts. In original petitions for *certiorari*, this Court will not directly entertain special civil action unless the redress

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excused by *force majeure*, penalties and related interest during construction applicable to these unexcused delays;

(v) Any significant operating costs or project investments of the TRANSCO or its Buyer or Concessionaire and Distribution Utilities which shall become part of the rate base shall be subject to verification by the ERC to ensure that the contracting and procurement of the equipment, assets and services have been subjected to transparent and accepted industry procurement and purchasing practices to protect the public interest; and

(vi) The interest incurred during construction may be capitalized and included in the rate base upon commissioning of the asset.

x x x x x x x x x

[18] Rule 65, Sec. 4.

[19] *Kalipunan ng Damayang Mahihirap, Inc. v. Robredo*, G.R. No. 200903, July 22, 2014, 730 SCRA 322, 332-333.

desired cannot be obtained elsewhere based on exceptional and compelling circumstances to justify immediate resort to this Court,[20] which We found none in the present case that likewise involves factual questions. Time and again, it has been held that this Court is not a trier of fact.[21]

Glaringly, petitioners did not comply with the rule that "*there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law*." Since petitioners assail the validity of the ERC issuances and seeks to declare them as unconstitutional, a petition for declaratory relief under Rule 63 of the *Rules* is the appropriate remedy. Under the *Rules*, any person whose rights are affected by any other governmental regulation may, before breach or violation thereof, bring an action in the appropriate Regional Trial Court to determine any question of construction or validity arising, and for a declaration of his rights or duties, thereunder.[22]

Noticeably, administrative remedies should have been exhausted by filing the case in the ERC, which, has technical expertise, at the very least, to dwell on the issue. Considering that petitioners are challenging the MCC/RFSC, which is a rate component under the RSEC-WR, the original and exclusive jurisdiction is vested with the ERC, pursuant to Section 43 of R.A. No. 9136, which states:

> SEC. 43. *Functions of the ERC*. — The ERC shall x x x be responsible for the following key functions in the restructured industry:
>
> x x x x x x x x x
>
> u. **The ERC shall have the original and exclusive jurisdiction over all cases contesting rates**, fees, fines and penalties **imposed by the ERC in the exercise of the abovementioned powers, functions and responsibilities** and over all cases involving

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[20] *Chamber of Real Estate and Builders' Ass'ns., Inc. v. Energy Regulatory Commission (ERC), et al., supra* note 10, at 559.

[21] *Heirs of Spouses Hilario and Bernardina N. Marinas v. Bernardo Frianeza, et al.*, G.R. No. 179741, December 9, 2015.

[22] Rule 63, Sec. 1.

disputes between and among participants or players in the energy sector. (Emphasis supplied)[23]

All actions taken by the ERC, pursuant to R.A. No. 9136, are subject to judicial review. As an independent quasi-judicial agency in the exercise of its quasi-judicial functions, its judgment, final order or resolution is appealable to the Court of Appeals *via* Rule 43 of the *Rules*, and, if still unfavorable, to this Court *via* Rule 65.

The doctrine of exhaustion of administrative remedies is a cornerstone of our judicial system.[24] As opined in a case:

The doctrine of exhaustion of administrative remedies allows administrative agencies to carry out their functions and discharge their responsibilities within the specialized areas of their respective competence. The doctrine entails lesser expenses and provides for the speedier resolution of controversies. Therefore, direct recourse to the trial court, when administrative remedies are available, is a ground for dismissal of the action.

The doctrine, however, is not without exceptions. Among the exceptions are: (1) where there is *estoppel* on the part of the party invoking the doctrine; (2) where the challenged administrative act is patently illegal, amounting to lack of jurisdiction; (3) where there

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[23] Rule 3 of the IRR of R.A. No. 9136 provides:

Section 4. *Responsibilities of the ERC.* —

x x x x x x x x x

(n) The ERC shall have the original and exclusive jurisdiction over all cases contesting rates, fees, fines and penalties imposed in the exercise of its powers, functions and responsibilities and over all cases involving disputes between and among participants or players in the energy sector relating to the foregoing powers, functions and responsibilities.

x x x x x x x x x

(p) All actions taken by the ERC pursuant to the Act are subject to judicial review and the requirements of due process and the cardinal rights and principles applicable to quasi-judicial bodies.

x x x x x x x x x

[24] *United Overseas Bank of the Philippines, Inc. v. The Board of Commissioners-HLURB*, G.R. No. 182133, June 23, 2015.

is unreasonable delay or official inaction that will irretrievably prejudice the complainant; (4) where the amount involved is relatively so small as to make the rule impractical and oppressive; (5) where the question involved is purely legal and will ultimately have to be decided by the courts of justice; (6) where judicial intervention is urgent; (7) where the application of the doctrine may cause great and irreparable damage; (8) where the controverted acts violate due process; (9) where the issue of non-exhaustion of administrative remedies had been rendered moot; (10) where there is no other plain, speedy and adequate remedy; (11) where strong public interest is involved; and (12) in *quo warranto* proceedings.[25]

Assuming, for argument's sake, that this case falls under any of the recognized exceptions, just the same, the petition must be dismissed for being filed out of time. Under the *Rules*, a petition for *certiorari* should be filed not later than sixty (60) days from notice of the judgment, order or resolution sought to be assailed. In this case, Resolution No. 20, which adopted the RSEC-WR, and Resolution No. 14 were issued by the ERC on September 23, 2009 and July 6, 2011, respectively. The petition was filed only on May 31, 2012, which is manifestly way beyond the reglementary period.[26]

It is significant to note that, in drafting RSEC-WR, the ERC conducted a series of expository hearings and public consultations for all ECs in Luzon, Visayas, and Mindanao, and that it was only after taking into account the various manifestations, comments, and oppositions during the public consultations that a new methodology for setting the ECs' wheeling rates was developed. The *Whereas* clauses of Resolution No. 20 narrated this long and tedious process:

WHEREAS, the current rates of ECs are no longer responsive since the costs of providing electric service to the consumers increased significantly from the time their rates were determined by the Commission based on 2000 test year;

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[25] *Department of Finance v. Hon. Dela Cruz, Jr.*, G.R. No. 209331, August 24, 2015.

[26] *Rollo*, p. 3.

WHEREAS, the ECs are cognizant of the inherent regulatory lag in the current cash flow rate-setting methodology adopted through a quasi-judicial process which is further exacerbated by the fact that if all the one hundred twenty (120) ECs file their respective rate applications with each application to the resolved in one (1) month, it will take the Commission one hundred twenty (120) months or ten (10) years, to resolved all the applications;

WHEREAS, the Commission has conducted studies to establish a new rate-setting methodology for ECs that will address their present problems and resolve the regulatory lag in the resolution of rate applications, particularly, the "Benchmarking Methodology";

WHEREAS, the results of said "Benchmarking Methodology" studies were subjected to several expository and public consultations which were held on various dates and venues. The ECs attended and actively participated in the said expository and public consultations and submitted data to the Commission reflecting their respective costs of service as part of the "Benchmarking Methodology studies;

WHEREAS, the rates as determined in the said "Benchmarking Methodology" encourage the ECs to be financially self-sufficient, efficient and member-customer responsive;

WHEREAS, on May 3 and 4, 2007, the Commission conducted a series of expository hearings for all ECs in Luzon, Visayas and Mindanao on the proposed "Benchmarking Methodology" for ECs;

WHEREAS, on May 17, 2007, the Commission conducted a public consultation on the "Classification of ECs for Regulatory Purposes and the Proposed Efficiency Benchmarking Methodology";

WHEREAS, on various dates, the Commission conducted a series of Expository Public Consultations for all ECs in Luzon, Visayas and Mindanao on the classification of on-grid ECs and the determination of the functionalized benchmark Operation and Maintenance (O&M) rate, Capital Expenditure (CAPEX) rate, proposed customer segmentation, proposed benchmark rate design, new lifeline charges, performance indices, transition period and rate comparison;

WHEREAS, after considering all the comments and manifestations during the various public consultations, the Commission developed a new methodology for setting the ECs' wheeling rates embodied in a document denominated as "Rules for Setting the Electric Cooperatives' Wheeling Rates" (RSEC-WR);

WHEREAS, on April 4, 2009, the General Managers of all the on-grid Electric Cooperatives (ECs) in the Philippines adopted Resolution No. 1, Series of 2009, entitled "*A Resolution Imploring Upon the Energy Regulatory Commission to Implement a New Rate-Setting Methodology for Setting the Electric Cooperatives' Wheeling Rates (RSEC-WR)*";

WHEREAS, on April 21, 2009, the Commission issued a Notice of proposed Rule-Making (Notice), wherein it treated the Resolution adopted by the General Managers of all the on-grid ECs as a petition to initiate rule-making by the ECs that are signatories thereto, docketed as ERC Case No. 2009-007 RM, entitled "*In the Matter of the Petition by the On-Grid Electric Cooperatives for the Adoption of the Rules for Setting the Electric Cooperatives' Wheeling Rates.*" The Draft RSEC-WR adopted the Rule-Making proceedings under Rule 21 of the Commission's Rules of Practice and Procedure. All interested parties were directed to submit their respective comments on the Draft RSEC-WR until May 15, 2009 and said petition was set for public hearings on various dates and venues;

WHEREAS, on various dates, several ECs and interested parties submitted their respective comments on the Draft RSEC-WR;

WHEREAS, from May 17 to July 20, 2009, the Commission conducted public hearings on the instant petition at the respective localities of the ninety-six (96) on-grid ECs;

WHEREAS, on August 19, 2009, the Commission posted at its website and published in newspapers of general circulation in the Philippines the revised Draft RSEC-WR for solicitation of comments from interested parties;

WHEREAS, on various dates, several ECs and interested parties submitted their respective comments on the revised Draft RSEC-WR;

WHEREAS, in accordance with the aforesaid mandate and after a careful consideration of the various views and comments submitted by the interested parties, the Commission adopts and promulgates the RSEC-WR[.][27]

As ordered by the ERC, copies of Resolution No. 20 were furnished to the University of the Philippines Law Center — Office of the National Administrative Register (UPLC-ONAR),

[27] *Id.* at 98-100.

Philippine Rural Electric Cooperatives' Association, Inc. (PHILRECA),[28] and all on-grid ECs. In addition, PHILRECA was directed to publish the RSEC-WR in a newspaper of general circulation in the Philippines.[29]

Petitioners could have filed their comment/opposition to the draft of RSEC-WR or appealed its final version. Alternatively, they could have filed a comment/opposition, motion for reconsideration, petition for relief from judgment or appeal with regard to the rate adjustment applications of their respective ECs. The records of this case, voluminous as it is, is bereft of evidence that they did.

Finally, it bears to stress that a petition for *certiorari* under Rule 65 is the proper remedy when the respondent has committed grave abuse of discretion amounting to lack or excess of jurisdiction.

> The term "grave abuse of discretion" has a specific meaning. An act of a court or tribunal can only be considered as with grave abuse of discretion when such act is done in a "capricious or whimsical exercise of judgment as is equivalent to lack of jurisdiction." The abuse of discretion must be so patent and gross as to amount to an "evasion of a positive duty or to a virtual refusal to perform a duty enjoined by law, 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." Furthermore, the use of a petition for *certiorari* is restricted only to "truly extraordinary cases wherein the act of the lower court or quasi-judicial body is wholly void. x x x"[30]

The stringent criterion imposed by the above-quoted precludes Us from giving due course to this petition. The ERC rests on solid legal grounds as it is in indubitably empowered to establish and enforce a methodology for setting the distribution wheeling rates of respondent ECs. The delegation of legislative powers

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[28] PHILRECA is the national association of all electric cooperatives organized and registered pursuant to the provisions of P.D. No. 269, as amended. (*Rollo*, p. 3532).

[29] *Rollo*, p. 100.

[30] *Yu v. Judge Reyes-Carpio*, 667 Phil. 474, 481-482 (2011).

by the Congress to the ERC is explicit in Section 43 (f) and (u) of R.A. No. 9136, which is elaborated in Section 5 (a), Rule 15 and Section 4 (n), Rule 3, respectively, of the IRR; hence, the presumption of regularity of MCC/RFSC must be upheld.

As a new regulatory framework for the on-grid[31] ECs, RSEC-WR is designed to achieve the following:

> 1. Develop a tariff setting methodology that would be more responsive to the needs of the ECs given the objectives of the EPIRA;
> 2. Encourage reforms in the structure and operations of the ECs for greater efficiency and lower costs;
> 3. Introduce incentives in the framework that will allow efficiency gains to be shared between the EC and the end-users; and
> 4. Develop a regulatory framework that will ease regulatory burden and cut down regulatory lag for implementation.[32]

Prior to the RSEC-WR, the ECs operated under a cash flow regulatory regime, which allows the ECs to generate revenues sufficient to cover payroll, operations and maintenance outlays, debt service, including interest and allowance strictly for reinvestment purposes.[33] The ECs' tariff structure was equivalent to the Distribution, Supply, and Metering (DSM) Charges, which consisted of Operations and Maintenance Expenses (OPEX), Payroll and Other Revenue Item (ORI), Capital Expenditures (CAPEX) or Reinvestment Fund and Debt Service.[34] With the enactment of R.A. No. 9136, the operating and the capital costs are unbundled.[35] The DSM Charges represent only operating

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[31] Sec. 4 of R.A. 9513 ("Renewable Energy Act of 2008") provides:

> (kk) "*On-Grid System*" refers to electrical systems composed of interconnected transmission lines, distribution lines, substations, and related facilities for the purpose of conveyance of bulk power on the grid of the Philippines[.]

[32] *Rollo*, p. 72.

[33] *Id.* at 69.

[34] *Id.* at 131.

[35] Pursuant to the declared policy of the State to ensure transparent and reasonable prices of electricity, R.A. No. 9136 mandates distribution utilities like electric cooperatives to functionally and structrually identify, separate

costs, while a separate charge, Members' Contribution for Capital Expenditures (MCC) represent the ECs debt service and capital expenditure requirements.[36] In the new tariff structure under the RSEC-WR, the OPEX, Payroll and ORI are translated into DSM Charges, while the Reinvestment Fund and Debt Service are translated into MCC.[37]

As admitted by respondents, the MCC is not a new imposition on the member-consumers of the ECs. Before the formulation of said MCC Charge, the rates of all the ECs already include a Reinvestment Fund provision calculated at five percent (5%) of their unbundled retail rates, inclusive of Generation, Transmission and Distribution Charges.[38] The intent of the RSEC-WR in translating Reinvestment Fund into MCC is to recognize the fact that said MCC Charge indeed represents contributions from the member-consumers for the expansion, rehabilitation and upgrading of the ECs' distribution system which should be reflected in their bills for greater transparency.[39] When MCC was eventually designated as RFSC, only the appellation changed; its nature and purpose remain the same.

Under Presidential Decree (P.D.) No. 269,[40] respondent ECs are vested with all powers necessary or convenient for the

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and unbundle their rates, charges, and costs. (See Sections 2 (c) and 26 of R.A. No. 9136 as well as Sec. 4 [j.] Rule 3, Sec. 4 [b.] and [m.] Rule 7, and Sec. 3 [a] Rule 15 of its IRR).

[36] *Rollo*, p. 78.

[37] *Id.* 131.

[38] *Id.*

[39] *Id.*

[40] CREATING THE "NATIONAL ELECTRIFICATION ADMINISTRATION" AS A CORPORATION, PRESCRIBING ITS POWERS AND ACTIVITIES, APPROPRIATING THE NECESSARY FUNDS THEREFOR AND DECLARING A NATIONAL POLICY OBJECTIVE FOR THE TOTAL ELECTRIFICATION OF THE PHILIPPINES ON AN AREA COVERAGE SERVICE BASIS, THE ORGANIZATION, PROMOTION AND DEVELOPMENT OF ELECTRIC COOPERATIVES TO ATTAIN THE SAID OBJECTIVE, PRESCRIBING TERMS AND CONDITIONS FOR THEIR OPERATIONS, THE REPEAL OF REPUBLIC ACT NO. 6038, AND FOR OTHER PURPOSES (Issued and took effect on August 6, 1973)

accomplishment of its corporate purpose that is supportive of the declared State policy of promoting sustainable development in the rural areas through rural electrification.[41] Such powers include, but are not limited to the power:

x x x x x x x x x

(g) To construct, purchase, lease as lessee, or otherwise acquire, and to equip, maintain, and operate, and to sell, assign, convoy, lease as lessor, mortgage, pledge, or otherwise dispose of or encumber, electric transmission and distribution lines or systems, electric generating plants, lands, buildings, structures, dams, plants, and equipment, and any other real or personal property, tangible or intangible, which shall be deemed necessary, convenient or appropriate to accomplish the purpose for which the cooperative is organized;

(h) To purchase, lease as lessee, or otherwise acquire, and to use, and exercise and to sell, assign, convey, mortgage, pledge or otherwise dispose of or encumber franchises, rights, privileges, licenses and easements;

x x x x x x x x x

(j) To construct, acquire, own, operate and maintain electric subtransmission and distribution lines along, upon, under and across publicly owned lands and public thoroughfares, including, without limitation, all roads, highways, streets, alleys, bridges and causeways. In the event of the need of such lands and thoroughfares for the primary purpose of the government, the electric cooperative shall be properly compensated;

(j-1) To construct, acquire, own, operate and maintain generating facilities within its franchise area. x x x

x x x x x x x x x

(p) To do and perform any other acts and things, and to have and exercise any other powers which may be necessary, convenient or appropriate to accomplish the purpose for which the cooperative is organized.[42]

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[41] Sec. 2 of P.D. No. 269, as amended by Sec. 2 (a) of R.A. No. 10531 ("*National Electrification Administration Reform Act of 2013*") which was signed into law on May 7, 2013.

[42] Section 16 of P.D. No. 269, as amended by Sec. 9 of R.A. No. 10531.

Further, Section 35 of P.D. 269, which remains untouched despite amendments to the law, provides:

> SEC. 35. *Non-profit, Non-discriminatory, Area Coverage Operation and Service*. — A cooperative shall be operated on a non-profit basis for the mutual benefit of its members and patrons; shall, as to rates and services make or grant no unreasonable preference or advantage to any member or patron nor subject any member or patron to any unreasonable prejudice or disadvantage; shall not establish or maintain any unreasonable difference as to rates or services either as between localities or as between classes of service; shall not give, pay or receive any rebate or bonus, directly or indirectly, or mislead its members in any manner as to rates charged for its services; and shall furnish service on an area coverage basis; *Provided*, **That for any extension of service which if treated on the basis of standard terms and conditions is so costly as to jeopardize the financial feasibility of the cooperative's entire operation, the cooperative may require such contribution in aid of construction**, such facilities extension deposit, such guarantee of minimum usage for a minimum term or such other reasonable commitment on the part of the person to be served as may be necessary and appropriate to remove such jeopardy, but no difference in standard rates for use of service shall be imposed for such purpose.
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> x x x x x x x x x[43]
>
> (Emphasis supplied)

The MCC/RFSC is, therefore, an instrument to realize the foregoing statutory powers and prerogatives of ECs. It is a charge that is vital to ensure the quality, reliability, security, and affordability of electric power supply. To prevent any prejudice to the public interest, the ERC is authorized to establish and enforce a methodology for setting transmission and distribution wheeling rates and retail rates that takes into account all relevant considerations, such as the expansion or improvement of the transmission facilities pursuant to the ERC-approved plan.[44]

In closing, the Court observes that the ECs, whether under the control and supervision of the National Electrification

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[43] Identical to Sec. 37 of R.A. No. 6038, which was expressly repealed by P.D. No. 269.

[44] Sec. 5 (a) Rule 15, IRR of R.A. No. 9136.

Administration (NEA) or registered with the Cooperative Development Authority (CDA), use the RSEC-WR or collect MCC/RFSC contributions from their member-consumers.[45] Petitioners, however, excluded as parties to this case the CDA-registered ECs, such as QUIRELCO (in Group A), ABRECO (in Group B), ISELCO II (in Group C), SORECO II (in Group C), PANELCO I (in Group D), NUVELCO (in Group D), NORECO II (in Group E), and DANECO (in Group F), SAJELCO (in Group F), and PELCO III (in Group G).[46] Instead, what they impleaded were the nineteen (19) off-grid[47] ECs, namely: BATANELCO, LUBELCO, OMECO, ORMECO, MARELCO, TIELCO, ROMELCO, BISELCO, FICELCO, MASELCO, TISELCO, BANELCO, PROSIELCO, CELCO, TAWELCO, SIASELCO, SULECO, BASELCO, and DIELCO.[48] It is contended that although these ECs are not covered by RSEC-WR, the ERC authorizes them to collect a Reinvestment Fund as component of their over-all rate.[49]

If petitioners admit that the ECs, whether they belong to the off-grid or on-grid category and whether they are CDA or NEA registered, are proper parties to the petition as they will either suffer or benefit from the decision of the Court,[50] then they

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[45] See Comment of MORESCO I, MORESCO II, BUSECO, CAMELCO, MOELCI-I, MOELCI-II, LANECO, FIBECO, and VRESCO (*Rollo*, pp. 209, 340, 443, 568, 1033-1034, 1137, 1235-1236, 1359-1360, 3619). However, in the Comment of LEYECO II, it stated that ECs under the CDA operate for profit; thus, their rates formula is Return-On-Rate-Base (RORB) such that its power rate computation has profit factor component. (*Rollo*, p. 1848)

[46] See Comment of SUKELCO (*Rollo*, p. 1757).

[47] Sec. 4 of R.A. 9513 ("*Renewable Energy Act of 2008*") provides:

(jj) "*Off-Grid Systems*" refer to electrical systems not connected to the wires and related facilities of the On-Grid Systems of the Philippines[.]

[48] See Answer-In-Intervention of PHILRECA (*Rollo*, p. 3544).

[49] See Comment of impleaded off-grid ECs (BATANELCO, LUBELCO, OMECO, ORMECO, MARELCO, TIELCO, ROMELCO, BISELCO, MASELCO, BANELCO, PROSIELCO, BASELCO, and DIELCO) as well as the Answer-In-Intervention of PHILRECA (*Rollo*, pp. 860, 2610, 2793, 3071, 3547).

[50] See Petitioners' Comment and Reply to Answer-In-Intervention of PHILRECA (*Rollo*, p. 3928).

should have equally impleaded as parties to the case the CDA-registered ECs and the off-grid ECs. As indispensable parties, CDA-registered ECs should have been joined as petitioners or respondents pursuant to Section 7, Rule 3 of the *Rules*.[51] The reason behind this compulsory joinder of indispensable parties is the complete determination of all possible issues, not only between the parties themselves but also as regards other persons who may be affected by the judgment.[52] While relief may be afforded to petitioners without the presence of the CDA-registered ECs, it is uncertain whether the case can be finally decided on its merits without taking into account, if not prejudicing, the rights and interests of the latter.

There being no meritorious reason for Us to suspend the rules of procedure, any discussion on substantive issues raised for resolution are unnecessary.

WHEREFORE, the petition is **DISMISSED** for inexcusable procedural and technical defects. Costs against petitioner.

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Brion, Bersamin, del Castillo, Perez, Mendoza, Reyes, Leonen, and *Caguioa, JJ.*, concur.

Leonardo-de Castro, J., no part.

Jardeleza, J., no part prior OSG action.

Perlas-Bernabe, J., on leave.

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[51] SEC. 7. *Compulsory joinder of indispensable parties*. — Parties in interest without whom no final determination can be had of an action shall be joined either as plaintiffs or defendants.

[52] *Crisologo v. JEWM Agro-Industrial Corporation*, G.R. No. 196894, March 3, 2014, 717 SCRA 644, 656.

EN BANC

[G.R. No. 202124. April 5, 2016]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **IRENEO JUGUETA,** *accused-appellant.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; FACTUAL FINDINGS OF TRIAL COURT, RESPECTED. —** [F]actual findings of the trial court, its assessment of the credibility of witnesses and the probative weight of their testimonies, and the conclusions based on these factual findings are to be given the highest respect. Thus, generally, the Court will not recalibrate and re-examine evidence that had been analyzed and ruled upon by the trial court and affirmed by the CA.

2. **CRIMINAL LAW; IN CONSPIRACY, THE ACT OF ONE IS THE ACT OF ALL.—** Conspiracy exists when two or more persons come to an agreement regarding the commission of a crime and decide to commit it. Proof of a prior meeting between the perpetrators to discuss the commission of the crime is not necessary as long as their concerted acts reveal a common design and unity of purpose. In such case, the act of one is the act of all. Here, the three men undoubtedly acted in concert as they went to the house of Norberto together, each with his own firearm. It is, therefore, no longer necessary to identify and prove that it is the bullet particularly fired from appellant's firearm that killed the children.

3. **ID.; MURDER; QUALIFYING CIRCUMSTANCES; TREACHERY; WHEN AN ADULT PERSON ILLEGALLY ATTACKS A CHILD, TREACHERY EXISTS.—** Murder is defined under Article 248 of the Revised Penal Code as the unlawful killing of a person, which is not parricide or infanticide, attended by circumstances such as treachery or evident premeditation. The presence of any one of the circumstances enumerated in Article 248 of the Code is sufficient to qualify a killing as murder. x x x As held in *People v. Fallorina*, the essence of treachery is the sudden and unexpected attack on an unsuspecting victim without the slightest provocation on

his part. Minor children, who by reason of their tender years, cannot be expected to put up a defense. When an adult person illegally attacks a child, treachery exists.

4. ID.; ATTEMPTED MURDER.— As to the charge of multiple attempted murder, the last paragraph of Article 6 of the Revised Penal Code states that a felony is attempted when the offender commences the commission of a felony directly by overt acts, and does not perform all the acts of execution which should produce the felony by reason of some cause or accident other than his own spontaneous desistance.

5. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; NOT AFFECTED BY TRIVIAL INCONSISTENCIES.— [T]he supposed inconsistencies in Norberto's testimony, x x x are too trivial and inconsequential to put a dent on said witness's credibility. x x x As ruled in *People v. Cabtalan*, "[m]inor inconsistencies and discrepancies pertaining to trivial matters do not affect the credibility of witnesses, as well as their positive identification of the accused as the perpetrators of the crime." Both the trial court and the CA found Norberto's candid and straightforward testimony to be worthy of belief.

6. ID.; CRIMINAL PROCEDURE; INFORMATION; MUST CHARGE ONLY ONE OFFENSE OR THE SAME IS DEFECTIVE; WAIVED WHERE ACCUSED FAILS TO QUASH THE INFORMATION.— As a general rule, a complaint or information must charge only one offense, otherwise, the same is defective. x x x [S]ince appellant entered a plea of not guilty during arraignment and failed to move for the quashal of the Informations, he is deemed to have waived his right to question the same. Section 9 of Rule 117 provides that "[t]he failure of the accused to assert any ground of a motion to quash before he pleads to the complaint or information, either because he did not file a motion to quash or failed to allege the same in said motion, shall be deemed a waiver of any objections except those based on the grounds provided for in paragraphs (a), (b), (g), and (i) of Section 3 of this Rule." It is also well-settled that when two or more offenses are charged in a single complaint or information but the accused fails to object to it before trial, the court may convict him of as many offenses as are charged and proved, and impose upon him the proper penalty for each offense.

7. CRIMINAL LAW; AGGRAVATING CIRCUMSTANCES; DWELLING.— In *People v. Agcanas*, the Court stressed that "[i]t has been held in a long line of cases that dwelling is aggravating because of the sanctity of privacy which the law accords to human abode. He who goes to another's house to hurt him or do him wrong is more guilty than he who offends him elsewhere." Dwelling aggravates a felony where the crime is committed in the dwelling of the offended party provided that the latter has not given provocation therefor.

8. ID.; MURDER WITH ORDINARY AGGRAVATING CIRCUMSTANCE OF DWELLING; PROPER PENALTY.— In view of the attendant ordinary aggravating circumstance, the Court must modify the penalties imposed on appellant. Murder is punishable by *reclusion perpetua* to death, thus, with an ordinary aggravating circumstance of dwelling, the imposable penalty is death for each of two (2) counts of murder. However, pursuant to Republic Act (RA) No. 9346, proscribing the imposition of the death penalty, the penalty to be imposed on appellant should be *reclusion perpetua* for each of the two (2) counts of murder without eligibility of parole. With regard to the four (4) counts of attempted murder, the penalty prescribed for each count is *prision mayor*. With one ordinary aggravating circumstance, the penalty should be imposed in its maximum period. Applying the Indeterminate Sentence Law, the maximum penalty should be from ten (10) years and one (1) day to twelve (12) years of *prision mayor*, while the minimum shall be taken from the penalty next lower in degree, *i.e.*, *prision correccional*, in any of its periods, or anywhere from six (6) months and one (1) day to six (6) years. This Court finds it apt to impose on appellant the indeterminate penalty of four (4) year, two (2) months and one (1) day of *prision correccional*, as minimum, to ten (10) years and one (1) day of *prision mayor*, as minimum, for each of the four (4) counts of attempted murder.

9. ID.; CRIMINAL CASES WHERE THE IMPOSABLE PENALTY IS *RECLUSION PERPETUA* TO DEATH; DAMAGES.— Anent the award of damages, the Court deems it proper to address the matter in detail as regards criminal cases where the imposable penalty is *reclusion perpetua* to death. Generally, in these types of criminal cases, there are three kinds of damages awarded by the Court; namely: civil indemnity, moral, and exemplary damages. Likewise, actual

damages may be awarded or temperate damages in some instances.

10. ID.; ID.; ID.; CIVIL INDEMNITY; DISCUSSED.— [C]ivil indemnity *ex delicto* is the indemnity authorized in our criminal law for the offended party, in the amount authorized by the prevailing judicial policy and apart from other proven actual damages, which itself is equivalent to actual or compensatory damages in civil law. This award stems from Article 100 of the RPC which states, "Every person criminally liable for a felony is also civilly liable." It is to be noted that civil indemnity is, technically, not a penalty or a fine; hence, it can be increased by the Court when appropriate. x x x In our jurisdiction, civil indemnity is awarded to the offended party as a kind of monetary restitution or compensation to the victim for the damage or infraction that was done to the latter by the accused, which in a sense only covers the civil aspect. Precisely, it is civil indemnity. Thus, in a crime where a person dies, in addition to the penalty of imprisonment imposed to the offender, the accused is also ordered to pay the victim a sum of money as restitution. Also, it is apparent from Article 2206 that the law only imposes a minimum amount for awards of civil indemnity, which is ₱3,000.00. The law did not provide for a ceiling. Thus, although the minimum amount for the award cannot be changed, increasing the amount awarded as civil indemnity can be validly modified and increased when the present circumstance warrants it.

11. ID.; ID.; ID.; MORAL DAMAGES, DISCUSSED.— The second type of damages the Court awards are moral damages, which are also compensatory in nature. x x x Similarly, in American jurisprudence, moral damages are treated as "compensatory damages awarded for mental pain and suffering or mental anguish resulting from a wrong." They may also be considered and allowed "for resulting pain and suffering, and for humiliation, indignity, and vexation suffered by the plaintiff as result of his or her assailant's conduct, as well as the factors of provocation, the reasonableness of the force used, the attendant humiliating circumstances, the sex of the victim, [and] mental distress." The rationale for awarding moral damages has been explained in *Lambert v. Heirs of Rey Castillon*: "[T]he award of moral damages is aimed at a restoration, within the limits possible, of the spiritual status quo ante; and therefore, it must be proportionate to the suffering inflicted." Corollarily, moral

damages under Article 2220 of the Civil Code also does not fix the amount of damages that can be awarded. It is discretionary upon the court, depending on the mental anguish or the suffering of the private offended party. The amount of moral damages can, in relation to civil indemnity, be adjusted so long as it does not exceed the award of civil indemnity.

12. ID.; ID.; ID.; EXEMPLARY DAMAGES; DISCUSSED.— [T]he Civil Code of the Philippines provides, [for] exemplary damages [under Article 2229 and 2230]. x x x Also know as "punitive" or "vindictive" damages, exemplary or corrective damages are intended to serve as a deterrent to serious wrong doings, and as a vindication of undue sufferings and wanton invasion of the rights of an injured or a punishment for those guilty of outrageous conduct. These terms are generally, but not always, used interchangeably. In common law, there is preference in the use of exemplary damages when the award is to account for injury to feelings and for the sense of indignity and humiliation suffered by a person as a result of an injury that has been maliciously and wantonly inflicted, the theory being that there should be compensation for the hurt caused by the highly reprehensible conduct of the defendant – associated with such circumstances as willfulness, wantonness, malice, gross negligence or recklessness, oppression, insult or fraud or gross fraud – that intensifies the injury. The terms punitive or vindictive damages are often used to refer to those species of damages that may be awarded against a person to punish him for his outrageous conduct. In either case, these damages are intended in good measure to deter the wrongdoer and others like him from similar conduct in the future.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

PERALTA, *J.*:

This resolves the appeal from the Decision[1] of the Court of Appeals (CA) dated January 30, 2012 in CA-G.R. CR HC No. 03252. The CA affirmed the judgments of the Regional Trial Court (RTC), Branch 61, Gumaca, Quezon, finding accused-appellant Ireneo Jugueta *y* Flores guilty beyond reasonable doubt of Double Murder in Criminal Case No. 7698-G and Multiple Attempted Murder in Criminal Case No. 7702-G.

In Criminal Case No. 7698-G, appellant was charged with Double Murder, defined and penalized under Article 248 of the Revised Penal Code, allegedly committed as follows:

> That on or about the 6th day of June 2002, at about 9:00 o'clock in the evening, at Barangay Caridad Ilaya, Municipality of Atimonan, Province of Quezon, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, armed with a caliber .22 firearm, with intent to kill, qualified by treachery and evident premeditation, did then and there willfully, unlawfully and feloniously attack, assault and shoot with said firearm Mary Grace Divina, a minor, 13 years old, who suffered the following:
>
> "Gunshot wound -
>
> Point of Entry – lower abdomen, right, 2 cm. from the midline and 6 cm. from the level of the umbilicus, directed upward toward the left upper abdomen."

and Claudine Divina, a minor, 3 ½ years of age, who suffered the following:

> "Gunshot wound -
>
> Point of Entry - 9th ICS along the mid-axillary line, right, 1 cm. diameter
>
> Point of Exit - 7th ICS mid-axillary line, left;"

which directly caused their instant death.

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[1] Penned by Associate Justice Jane Aurora T. Lantion, with Associate Justices Isaias P. Dicdican and Rodil V. Zalameda, concurring; *rollo*, pp. 2-21.

That the crime committed in the dwelling of the offended party who had not given provocation for the attack and the accused took advantage of nighttime to facilitate the commission of the offense.

Contrary to law.[2]

In Criminal Case No. 7702-G, appellant, together with Gilbert Estores and Roger San Miguel, was charged with Multiple Attempted Murder, allegedly committed as follows:

That on or about 9:00 o'clock in the evening of 6th day of June, 2002, at Barangay Caridad Ilaya, Municipality of Atimonan, Province of Quezon, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and mutually helping one another, armed with short firearms of undetermined calibres, with intent to kill, qualified by treachery, with evident premeditation and abuse of superior strength, did then and there wilfully, unlawfully and feloniously attack, assault, and shoot with the said firearms the house occupied by the family of Norberto Divina, thereby commencing the commission of the crime of Murder, directly by overt acts, but did not perform all the acts of execution which would have produced it by reason of some cause or accident other than the spontaneous desistance of the accused, that is, the occupants Norberto Divina, his wife Maricel Divina and children Elizabeth Divina and Judy Ann Divina, both elementary pupils and who are minors, were not hit.

CONTRARY TO LAW.[3]

Roger San Miguel, however, moved for reinvestigation of the case against them. At said proceedings, one Danilo Fajarillo submitted his sworn statement stating that on June 6, 2002, he saw appellant with a certain "Hapon" and Gilbert Estores at the crime scene, but it was only appellant who was carrying a firearm while the other two had no participation in the shooting incident. Fajarillo further stated that Roger San Miguel was not present at the crime scene. Based on the sworn statement of Fajarillo, the Provincial Prosecutor found no *prima facie*

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[2] Record, Vol. 1, pp. 2-3.

[3] Record, Vol. II, p. 2.

case against Gilbert Estores and Roger San Miguel.[4] Thus, upon motion of the prosecution, the case for Attempted Murder against Gilbert Estores and Roger San Miguel was dismissed, and trial proceeded only as to appellant.[5]

At the trial, the prosecution presented the testimonies of Norberto Divina, the victim, and Dr. Lourdes Taguinod who executed the Medico-Legal Certificate and confirmed that the children of Norberto, namely, Mary Grace and Claudine, died from gunshot wounds. Dr. Taguinod noted that the trajectory of the bullet wounds showed that the victims were at a higher location than the shooter, but she could not tell what kind of ammunitions were used.[6]

Norberto testified that the appellant is his brother-in-law. He recounted that in the evening of June 6, 2002, as his entire family lay down on the floor of their one-room nipa hut to sleep, the "sack" walling of their hut was suddenly stripped off, and only the supporting bamboo (fences) remained. With the covering of the wall gone, the three (3) men responsible for the deed came into view. Norberto clearly saw their faces which were illuminated by the light of a gas lamp hanging in their small hut. Norberto identified the 3 men as appellant, Gilbert Estores and Roger San Miguel. The 3 men ordered Norberto to come down from his house, but he refused to do so. The men then uttered, "*Magdasal ka na at katapusan mo na ngayon.*" Norberto pleaded with them, saying, "*Maawa kayo sa amin, matanda na ako at marami akong anak. Anong kasalanan ko sa inyo*?" Despite such plea for mercy, a gunshot was fired, and Norberto immediately threw his body over his children and wife in an attempt to protect them from being hit. Thereafter, he heard successive gunshots being fired in the direction where his family huddled together in their hut.[7]

When the volley of shots ceased and the three (3) men left, Norberto saw that his two (2) young daughters were wounded.

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[4] Order of the Provincial Prosecutor, Record, Vol. I, pp. 12-14.

[5] RTC Order, Record, Vol. II, pp. 66-67.

[6] TSN, February 5, 2004, Folder of TSN's.

[7] TSN, March 3, 2004, Folder of TSN's.

His wife went out of their house to ask for help from neighbors, while he and his older daughter carried the two (2) wounded children out to the street. His daughter Mary Grace died on the way to the hospital, while Claudine expired at the hospital despite the doctors' attempts to revive her.[8]

In answer to questions of what could have prompted such an attack from appellant, Norberto replied that he had a previous altercation with appellant who was angered by the fact that he (Norberto) filed a case against appellant's two other brothers for molesting his daughter.[9]

On the other hand, appellant was only able to proffer denial and alibi as his defense. Appellant's testimony, along with those of Gilbert Estores, Roger San Miguel, Isidro San Miguel and Ruben Alegre, was that he (appellant) was just watching TV at the house of Isidro San Miguel, where he had been living for several years, at the time the shooting incident occurred. However, he and the other witnesses admitted that said house was a mere five-minute walk away from the crime scene.[10]

Finding appellant's defense to be weak, and ascribing more credence to the testimony of Norberto, the trial court ruled that the evidence clearly established that appellant, together with two other assailants, conspired to shoot and kill the family of Norberto. Appellant was then convicted of Double Murder in Criminal Case No. 7698-G and Multiple Attempted Murder in Criminal Case No. 7702-G.

The dispositive portion of the trial court's judgment in Criminal Case No. 7698-G reads:

> WHEREFORE and in view of all the foregoing, the Court finds accused Ireneo Jugueta guilty beyond reasonable doubt for Double Murder defined and punished under Article 248 of the Revised Penal Code and is hereby sentenced to suffer *Reclusion Perpetua* for the

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[8] *Id.*

[9] TSN, June 28, 2004, Folder of TSN's.

[10] TSN's, February 10, 2005, April 7, 2005, February 15, 2006, August 3, 2006, September 6, 2006 and June 7, 2006.

death of Mary Grace Divina and to indemnify her heirs in the amount of Php50,000.00 and another to suffer *Reclusion Perpetua* for the death of Claudine Divina and accused is further ordered to indemnify the heirs of Claudine Divina in the sum of Php50,000.00. In addition, he is hereby ordered to pay the heirs of the victims actual damages in the amount of Php16,150.00 and to pay for the costs.

SO ORDERED.[11]

On the other hand, the dispositive portion of the trial court's judgment in Criminal Case No. 7702-G, reads:

WHEREFORE and in view of all the foregoing, the Court finds accused Ireneo Jugueta guilty beyond reasonable doubt for Multiple Attempted Murder defined and penalized under Article 248 in relation to Article 51 of the Revised Penal Code and is hereby sentenced to suffer the penalty of FOUR (4) YEARS and TWO (2) MONTHS of *Prision Correccional* as minimum to EIGHT (8) YEARS and ONE (1) DAY of *Prision Mayor* as maximum for each of the offended parties; Norberto Divina, Maricel Divina, Elizabeth Divina and Judy Ann Divina. Further, accused is ordered to pay for the costs of the suit.

SO ORDERED.[12]

Aggrieved by the trial court's judgments, appellant appealed to the CA. On January 30, 2012, the CA rendered a Decision affirming appellant's conviction for the crimes charged.[13]

Dissatisfied with the CA Decision, appellant elevated the case to this Court. On July 30, 2012, the Court issued a Resolution[14] notifying the parties that they may submit their respective Supplemental Briefs. Both parties manifested that they will no longer submit supplemental briefs since they had exhaustively discussed their positions before the CA.[15]

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[11] Record, Vol. I, pp. 293-294.

[12] Record, Vol. II, p. 131.

[13] *Supra* note 1.

[14] *Rollo*, p. 27.

[15] *Rollo*, pp. 33-34.

The main issue advanced in the Appellant's Brief deals with the inconsistencies in Norberto's testimony, such as his failure to state from the beginning that all three assailants had guns, and to categorically identify appellant as the one holding the gun used to kill Norberto's children.

The appeal is unmeritorious.

At the outset, it must be stressed that factual findings of the trial court, its assessment of the credibility of witnesses and the probative weight of their testimonies, and the conclusions based on these factual findings are to be given the highest respect. Thus, generally, the Court will not recalibrate and re-examine evidence that had been analyzed and ruled upon by the trial court and affirmed by the CA.[16]

The evidence on record fully supports the trial court's factual finding, as affirmed by the CA, that appellant acted in concert with two other individuals, all three of them carrying firearms and simultaneously firing at Norberto and his family, killing his two young daughters. Norberto clearly saw all of the three assailants with their firearms as there is illumination coming from a lamp inside their house that had been laid bare after its walling was stripped off, to wit:

Q: When the wall of your house was stripped off by these three persons at the same time, do you have light in your house?
A: Yes, sir.

Q: What kind of light was there?
A: A gas lamp.

Q: Where was the gas lamp placed at that time?
A: In the middle of our house.

x x x x x x x x x

Q: When did they fire a shot?
A: On the same night, when they had stripped off the wallings.

Q: How many gunshots did you hear?
A: Only one.

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[16] *People of the Philippines v. Renandang Mamaruncas*, 680 Phil. 192, 211 (2012).

Q: Do you know the sound of a gunshot? A firearm?
A: Yes, sir, it is loud? (sic)

x x x x x x x x x

Q: After the first shot, was there any second shot?
A: After that, successive fire shot (sic) followed and my youngest and eldest daughters were hit.

x x x x x x x x x

Q: How many of the three were holding guns at that time?
A: All of them.

Q: You mean to tell the honorable court that these three persons were having one firearm each?
A: Yes, sir.

Q: And they fired shots at the same time?
A: Yes, sir.

Q: To what direction these three persons fired (sic) their firearms during that night?
A: To the place where we were.

Q: When those three persons were firing their respective firearms, what was your position then?
A: I ordered my children to lie down.

Q: How about you, what was your position when you were ordering your children to lie down?
A: (witness demonstrated his position as if covering his children with his body and ordering them to line (sic) down face down)

Q: Mr. Witness, for how long did these three persons fire shots at your house?
A: Less than five minutes, sir.

Q: After they fired their shots, they left your house?
A: Yes, sir.

Q: And when these persons left your house, you inspected your children to see what happened to them?

A: Yes, sir, they were hit. x x x[17]

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[17] TSN, July 14, 2004, pp. 6-8.

Appellant and the two other malefactors are equally responsible for the death of Norberto's daughters because, as ruled by the trial court, they clearly conspired to kill Norberto's family. Conspiracy exists when two or more persons come to an agreement regarding the commission of a crime and decide to commit it. Proof of a prior meeting between the perpetrators to discuss the commission of the crime is not necessary as long as their concerted acts reveal a common design and unity of purpose. In such case, the act of one is the act of all.[18] Here, the three men undoubtedly acted in concert as they went to the house of Norberto together, each with his own firearm. It is, therefore, no longer necessary to identify and prove that it is the bullet particularly fired from appellant's firearm that killed the children.

Murder is defined under Article 248 of the Revised Penal Code as the unlawful killing of a person, which is not parricide or infanticide, attended by circumstances such as treachery or evident premeditation.[19] The presence of any one of the circumstances enumerated in Article 248 of the Code is sufficient to qualify a killing as murder.[20] The trial court correctly ruled

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[18] *People v. Nazareno*, 698 Phil. 187, 193 (2012).

[19] *People v. Adviento, et al.*, 684 Phil. 507, 519 (2012).

[20] Art. 248. Murder. — Any person who, not falling within the provisions of Article 246 shall kill another, shall be guilty of murder and shall be punished by *reclusion temporal* in its maximum period to death, if committed with any of the following attendant circumstances:

1. With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense or of means or persons to insure or afford impunity.

2. In consideration of a price, reward, or promise.

3. By means of inundation, fire, poison, explosion, shipwreck, stranding of a vessel, derailment or assault upon a street car or locomotive, fall of an airship, by means of motor vehicles, or with the use of any other means involving great waste and ruin.

4. On occasion of any of the calamities enumerated in the preceding paragraph, or of an earthquake, eruption of a volcano, destructive cyclone, epidemic or other public calamity.

5. With evident premeditation.

6. With cruelty, by deliberately and inhumanly augmenting the suffering of the victim, or outraging or scoffing at his person or corpse.

that appellant is liable for murder because treachery attended the killing of Norberto's two children, thus:

> x x x Evidence adduced show that the family of Norberto Divina, were all lying down side by side about to sleep on June 6, 2002 at around 9:00 o'clock in the evening, when suddenly their wall made of sack was stripped off by [appellant] Ireneo Jugueta, Roger San Miguel and Gilberto Alegre (sic) [Gilbert Estores]. They ordered him to go out of their house and when he refused despite his plea for mercy, they fired at them having hit and killed his two (2) daughters. The family of Norberto Divina were unarmed and his children were at very tender ages. Mary Grace Divina and Claudine who were shot and killed were 13 years old and 3 ½ years old respectively. In this case, the victims were defenseless and manifestly overpowered by armed assailants when they were gunned down. There was clear showing that the attack was made suddenly and unexpectedly as to render the victims helpless and unable to defend themselves. Norberto and his wife and his children could have already been asleep at that time of the night. x x x[21]

Verily, the presence of treachery qualified the killing of the hapless children to murder. As held in *People v. Fallorina*,[22] the essence of treachery is the sudden and unexpected attack on an unsuspecting victim without the slightest provocation on his part. Minor children, who by reason of their tender years, cannot be expected to put up a defense. When an adult person illegally attacks a child, treachery exists.

As to the charge of multiple attempted murder, the last paragraph of Article 6 of the Revised Penal Code states that a felony is attempted when the offender commences the commission of a felony directly by overt acts, and does not perform all the acts of execution which should produce the felony by reason of some cause or accident other than his own spontaneous desistance. In *Esqueda v. People*,[23] the Court held:

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[21] *Supra* note 11, at 287.

[22] 468 Phil. 816, 840 (2004), citing *People v. Bustamante*; 445 Phil. 345, 363-364 (2003); *People v. Magno*, 379 Phil. 531, 554 (2000).

[23] 607 Phil. 480, 505 (2009).

If one inflicts physical injuries on another but the latter survives, the crime committed is either consummated physical injuries, if the offender had no intention to kill the victim, or frustrated or attempted homicide or frustrated murder or attempted murder if the offender intends to kill the victim. Intent to kill may be proved by evidence of: (a) motive; (b) the nature or number of weapons used in the commisison of the crime; (c) the nature and number of wounds inflicted on the victim; (d) the manner the crime was committed; and (e) the words uttered by the offender at the time the injuries are inflicted by him on the victim.

In this case, the prosecution has clearly established the intent to kill on the part of appellant as shown by the use of firearms, the words uttered[24] during, as well as the manner of, the commission of the crime. The Court thus quotes with approval the trial court's finding that appellant is liable for attempted murder, *viz.*:

In the case at bar, the perpetrators who acted in concert commenced the felony of murder first by suddenly stripping off the wall of their house, followed by successive firing at the intended victims when Norberto Divina refused to go out of the house as ordered by them. If only there were good in aiming their target, not only Mary Grace and Claudine had been killed but surely all the rest of the family would surely have died. Hence, perpetrators were liable for Murder of Mary Grace Divina and Claudine Divina but for Multiple Attempted Murder for Norberto Divina, Maricel Divina, Elizabeth Divina and Judy Ann Divina. But as [appellant] Ireneo Jugueta was the only one charged in this case, he alone is liable for the crime committed.[25]

Meanwhile, the supposed inconsistencies in Norberto's testimony, *i.e.*, that he failed to state from the very beginning that all three assailants were carrying firearms, and that it was the shots from appellant's firearm that killed the children, are too trivial and inconsequential to put a dent on said witness's credibility. An examination of Norberto's testimony would show that there are no real inconsistencies to speak of. As ruled in

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[24] *"Magdasal ka na at katapusan mo na ngayon."*

[25] *Supra* note 12, at 128-129.

People v. Cabtalan,[26] "[m]inor inconsistencies and discrepancies pertaining to trivial matters do not affect the credibility of witnesses, as well as their positive identification of the accused as the perpetrators of the crime."[27] Both the trial court and the CA found Norberto's candid and straightforward testimony to be worthy of belief and this Court sees no reason why it should not conform to the principle reiterated in *Medina, Jr. v. People*[28] that:

> Time and again, this Court has deferred to the trial court's factual findings and evaluation of the credibility of witnesses, especially when affirmed by the CA, in the absence of any clear showing that the trial court overlooked or misconstrued cogent facts and circumstances that would justify altering or revising such findings and evaluation. This is because the trial court's determination proceeds from its first-hand opportunity to observe the demeanor of the witnesses, their conduct and attitude under grilling examination, thereby placing the trial court in unique position to assess the witnesses' credibility and to appreciate their truthfulness, honesty and candor x x x.[29]

The records of this case, particularly the testimonies of the witnesses, reveal no outstanding or exceptional circumstance to justify a deviation from such long-standing principle. There is no cogent reason to overturn the trial court's ruling that the prosecution evidence, particularly the testimony of Norberto Divina identifying appellant as one of the assailants, is worthy of belief. Thus, the prosecution evidence established beyond any reasonable doubt that appellant is one of the perpetrators of the crime.

However, the Court must make a clarification as to the nomenclature used by the trial court to identify the crimes for which appellant was penalized. There is some confusion caused by the trial court's use of the terms "Double Murder" and "Multiple Attempted Murder" in convicting appellant, and yet imposing penalties which nevertheless show that the trial court

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[26] 682 Phil. 164 (2012).

[27] *People v. Cabtalan*, *supra*, at 168.

[28] G.R. No. 161308, January 15, 2014, 713 SCRA 311.

[29] *Medina, Jr. v. People*, *supra*, at 320.

meant to penalize appellant for two (2) separate counts of Murder and four (4) counts of Attempted Murder.

The facts, as alleged in the Information in Criminal Case No. 7698-G, and as proven during trial, show that appellant is guilty of 2 counts of the crime of Murder and not Double Murder, as the killing of the victims was not the result of a single act but of several acts of appellant and his cohorts. In the same vein, appellant is also guilty of 4 counts of the crime of Attempted Murder and not Multiple Attempted Murder in Criminal Case No. 7702-G. It bears stressing that the Informations in this case failed to comply with the requirement in Section 13, Rule 110 of the Revised Rules of Court that an information must charge only one offense.

As a general rule, a complaint or information must charge only one offense, otherwise, the same is defective. The reason for the rule is stated in *People of the Philippines and AAA v. Court of Appeals, 21st Division, Mindanao Station, et al.*,[30] thus:

> The rationale behind this rule prohibiting duplicitous complaints or informations is to give the accused the necessary knowledge of the charge against him and enable him to sufficiently prepare for his defense. The State should not heap upon the accused two or more charges which might confuse him in his defense. Non-compliance with this rule is a ground for quashing the duplicitous complaint or information under Rule 117 of the Rules on Criminal Procedure and the accused may raise the same in a motion to quash before he enters his plea, otherwise, the defect is deemed waived.

However, since appellant entered a plea of not guilty during arraignment and failed to move for the quashal of the Informations, he is deemed to have waived his right to question the same. Section 9 of Rule 117 provides that "[t]he failure of the accused to assert any ground of a motion to quash before he pleads to the complaint or information, either because he did not file a motion to quash or failed to allege the same in said motion, shall be deemed a waiver of any objections except those based on the grounds provided for in paragraphs (a), (b), (g), and (i) of Section 3 of this Rule."

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[30] G.R. No. 183652, February 25, 2015.

It is also well-settled that when two or more offenses are charged in a single complaint or information but the accused fails to object to it before trial, the court may convict him of as many offenses as are charged and proved, and impose upon him the proper penalty for each offense.[31] Appellant can therefore be held liable for all the crimes alleged in the Informations in Criminal Case Nos. 7698-G and 7702-G, *i.e.*, 2 counts of murder and 4 counts of attempted murder, respectively, and proven during trial.

Meanwhile, in *People v. Nelmida*,[32] the Court explained the concept of a complex crime as defined in Article 48[33] of the Revised Penal Code, thus:

> In a complex crime, two or more crimes are actually committed, however, in the eyes of the law and in the conscience of the offender they constitute only one crime, thus, only one penalty is imposed. There are two kinds of complex crime. The first is known as a compound crime, or when a single act constitutes two or more grave or less grave felonies while the other is known as a complex crime proper, or when an offense is a necessary means for committing the other. The classic example of the first kind is when a single bullet results in the death of two or more persons. A different rule governs where separate and distinct acts result in a number killed. Deeply rooted is the doctrine that when various victims expire from separate shot, such acts constitute separate and distinct crimes.[34]

Here, the facts surrounding the shooting incident clearly show that appellant and the two others, in firing successive and indiscriminate shots at the family of Norberto from their respective firearms, intended to kill not only Norberto, but his entire family.

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[31] *People of the Philippines and AAA v. Court of Appeals, 21st Division, Mindanao Station, et al., supra.*

[32] 694 Phil. 529, 581 (2012).

[33] Art. 48. Penalty for Complex Crimes — When a single act constitutes two or more grave or less grave felonies, or when an offense is a necessary means for committing the other, the penalty for the most serious crime shall be imposed, the same to be applied in its maximum period.

[34] *People v. Nelmida, supra* note 32, at 569-570. (Emphasis omitted)

When several gunmen, as in this case, indiscriminately fire a series of shots at a group of people, it shows their intention to kill several individuals. Hence, they are committing not only one crime. What appellant and his cohorts committed cannot be classified as a complex crime because as held in *People v. Nelmida*,[35] "each act by each gunman pulling the trigger of their respective firearms, aiming each particular moment at different persons constitute distinct and individual acts which cannot give rise to a complex crime."[36]

Furthermore, the Court notes that both the trial court and the CA failed to take into account dwelling as an ordinary, aggravating circumstance, despite the fact that the Informations in Criminal Case Nos. 7698-G and 7702-G contain sufficient allegations to that effect, to wit:

Criminal Case No. 7698-G for Double Murder:

That the crime was committed in the dwelling of the offended party who had not given provocation for the attack and the accused took advantage of nighttime to facilitate the commission of the offense.[37]

Criminal Case No. 7702-G for Multiple Attempted Murder:

x x x the above-named accused, conspiring and confederating together and mutually helping one another, armed with short firearms of undetermined calibres, with intent to kill, qualified by treachery, with evident premeditation and abuse of superior strength, did then and there wilfully, unlawfully and feloniously attack, assault, and shoot with the said firearms the house occupied by the family of Norberto Divina, thereby commencing the commission of the crime of Murder, directly by overt acts, but did not perform all the acts of execution which would have produced it by reason of some cause or accident other than the spontaneous desistance of the accused x x x[38]

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[35] *Supra* note 32.

[36] *People v. Nelmida, supra,* at 570.

[37] *Supra* note 2.

[38] *Supra* note 3.

In *People v. Agcanas*,[39] the Court stressed that "[i]t has been held in a long line of cases that dwelling is aggravating because of the sanctity of privacy which the law accords to human abode. He who goes to another's house to hurt him or do him wrong is more guilty than he who offends him elsewhere." Dwelling aggravates a felony where the crime is committed in the dwelling of the offended party provided that the latter has not given provocation therefor.[40] The testimony of Norberto established the fact that the group of appellant violated the victims' home by destroying the same and attacking his entire family therein, without provocation on the part of the latter. Hence, the trial court should have appreciated dwelling as an ordinary aggravating circumstance.

In view of the attendant ordinary aggravating circumstance, the Court must modify the penalties imposed on appellant. Murder is punishable by *reclusion perpetua* to death, thus, with an ordinary aggravating circumstance of dwelling, the imposable penalty is death for each of two (2) counts of murder.[41] However, pursuant to Republic Act (RA) No. 9346, proscribing the imposition of the death penalty, the penalty to be imposed on appellant should be *reclusion perpetua* for each of the two (2) counts of murder without eligibility for parole. With regard to the four (4) counts of attempted murder, the penalty prescribed for each count is *prision mayor*. With one ordinary aggravating circumstance, the penalty should be imposed in its maximum period. Applying the Indeterminate Sentence Law, the maximum penalty should be from ten (10) years and one (1) day to twelve (12) years of *prision mayor*, while the minimum shall be taken from the penalty next lower in degree, *i.e.*, *prision correccional*, in any of its periods, or anywhere from six (6) months and one (1) day to six (6) years. This Court finds it apt to impose on

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[39] 674 Phil. 626, 635 (2011).

[40] *People v. Evangelio*, 672 Phil. 229, 248-249 (2011).

[41] Revised Penal Code, Art. 63, par. (1), provides, in part, that when the penalty consists of two (2) indivisible penalties and is attended by one or more aggravating circumstances, the greater penalty shall be applied, and in this case, the death penalty shall be imposed.

appellant the indeterminate penalty of four (4) years, two (2) months and one (1) day of *prision correccional*, as minimum, to ten (10) years and one (1) day of *prision mayor*, as minimum, for each of the four (4) counts of attempted murder.

Anent the award of damages, the Court deems it proper to address the matter in detail as regards criminal cases where the imposable penalty is *reclusion perpetua* to death. Generally, in these types of criminal cases, there are three kinds of damages awarded by the Court; namely: civil indemnity, moral, and exemplary damages. Likewise, actual damages may be awarded or temperate damages in some instances.

First, civil indemnity *ex delicto* is the indemnity authorized in our criminal law for the offended party, in the amount authorized by the prevailing judicial policy and apart from other proven actual damages, which itself is equivalent to actual or compensatory damages in civil law.[42] This award stems from Article 100 of the RPC which states, "Every person criminally liable for a felony is also civilly liable."

It is to be noted that civil indemnity is, technically, not a penalty or a fine; hence, it can be increased by the Court when appropriate.[43] Article 2206 of the Civil Code provides:

> Art. 2206. The amount of damages for death caused by a crime or quasi-delict shall be at least three thousand pesos, even though there may have been mitigating circumstances. In addition:
>
> (1) The defendant shall be liable for the loss of the earning capacity of the deceased, and the indemnity shall be paid to the heirs of the latter; such indemnity shall in every case be assessed and awarded by the court, unless the deceased on account of permanent physical disability not caused by the defendant, had no earning capacity at the time of his death;
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> (2) If the deceased was obliged to give support according to the provisions of Article 291, the recipient who is not an

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[42] *People v. Combate*, 653 Phil. 487, 504 (2010), citing *People v. Victor*, 354 Phil. 195, 209 (1998).

[43] *Corpuz v. People of the Philippines*, G.R. No. 180016, April 29, 2014, 724 SCRA 1, 57.

> heir called to the decedent's inheritance by the law of testate or intestate succession, may demand support from the person causing the death, for a period not exceeding five years, the exact duration to be fixed by the court;
>
> (3) The spouse, legitimate and illegitimate descendants and ascendants of the deceased may demand moral damages for mental anguish by reason of the death of the deceased.

In our jurisdiction, civil indemnity is awarded to the offended party as a kind of monetary restitution or compensation to the victim for the damage or infraction that was done to the latter by the accused, which in a sense only covers the civil aspect. Precisely, it is civil indemnity. Thus, in a crime where a person dies, in addition to the penalty of imprisonment imposed to the offender, the accused is also ordered to pay the victim a sum of money as restitution. Also, it is apparent from Article 2206 that the aw only imposes a minimum amount for awards of civil indemnity, which is ₱3,000.00. The law did not provide for a ceiling. Thus, although the minimum amount for the award cannot be changed, increasing the amount awarded as civil indemnity can be validly modified and increased when the present circumstance warrants it.[44]

The second type of damages the Court awards are moral damages, which are also compensatory in nature. *Del Mundo v. Court of Appeals*[45] expounded on the nature and purpose of moral damages, *viz.*:

> Moral damages, upon the other hand, may be awarded to compensate one for manifold injuries such as physical suffering, mental anguish, serious anxiety, besmirched reputation, wounded feelings and social humiliation. These damages must be understood to be in the concept of grants, not punitive or corrective in nature, calculated to compensate the claimant for the injury suffered. Although incapable of exactness and no proof of pecuniary loss is necessary in order that moral damages may be awarded, the amount of indemnity being left to the discretion of the court, it is imperative, nevertheless, that (1) injury must have

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

[45] G.R. No. 104576, January 20, 1995, 240 SCRA 348, 356-357.

been suffered by the claimant, and (2) such injury must have sprung from any of the cases expressed in Article 2219[46] and Article 2220[47] of the Civil Code. x x x.

Similarly, in American jurisprudence, moral damages are treated as "compensatory damages awarded for mental pain and suffering or mental anguish resulting from a wrong."[48] They may also be considered and allowed "for resulting pain and suffering, and for humiliation, indignity, and vexation suffered by the plaintiff as result of his or her assailant's conduct, as well as the factors of provocation, the reasonableness of the force used, the attendant humiliating circumstances, the sex of the victim, [and] mental distress."[49]

The rationale for awarding moral damages has been explained in *Lambert v. Heirs of Rey Castillon*: "[T]he award of moral

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[46] Art. 2219. Moral damages may be recovered in the following and analogous cases:

(1) A criminal offense resulting in physical injuries;
(2) Quasi-delicts causing physical injuries;
(3) Seduction, abduction, rape or other lascivious acts;
(4) Adultery or concubinage;
(5) Illegal or arbitrary detention or arrest;
(6) Illegal search;
(7) Libel, slander or any other form of defamation;
(8) Malicious prosecution;
(9) Acts mentioned in Article 309;
(10) Acts and actions referred to in Articles 21, 26, 27, 28, 29, 30, 32, 34, and 35.

The parents of the female seduced, abducted, raped or abused, referred to in No. 3 of this article, may also recover moral damages.

The spouse, descendants, ascendants, and brother and sisters may bring the action mentioned in No. 9 of this article, in the order named.

[47] Art. 2220. Willful injury to property may be a legal ground for awarding moral damages if the court should find that, under the circumstances, such damages are justly due. The same rule applies to breaches of contract where the defendant acted fraudulently or in bad faith.

[48] *Bagumbayan Corp. v. Intermediate Appellate Court*, G.R. No. 66274, September 30, 1984, 132 SCRA 441, 446.

[49] 6A C.J.S. Assault § 68.

damages is aimed at a restoration, within the limits possible, of the spiritual *status quo ante*; and therefore, it must be proportionate to the suffering inflicted."[50]

Corollarily, moral damages under Article 2220[51] of the Civil Code also does not fix the amount of damages that can be awarded. It is discretionary upon the court, depending on the mental anguish or the suffering of the private offended party. The amount of moral damages can, in relation to civil indemnity, be adjusted so long as it does not exceed the award of civil indemnity.[52]

Finally, the Civil Code of the Philippines provides, in respect to exemplary damages, thus:

ART. 2229. Exemplary 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.

ART. 2230. In criminal offenses, exemplary damages as a part of the civil liability may be imposed when the crime was committed with one or more aggravating circumstances. Such damages are separate and distinct from fines and shall be paid to the offended party.

Also known as "punitive" or "vindictive" damages, exemplary or corrective damages are intended to serve as a deterrent to serious wrong doings, and as a vindication of undue sufferings and wanton invasion of the rights of an injured or a punishment for those guilty of outrageous conduct. These terms are generally, but not always, used interchangeably. In common law, there is preference in the use of exemplary damages when the award is to account for injury to feelings and for the sense of indignity and humiliation suffered by a person as a result of an injury

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[50] G.R. No. 160709, February 23, 2005, 452 SCRA 285, 296.

[51] Art. 2220. Willful injury to property may be a legal ground for awarding moral damages if the court should find that, under the circumstances, such damages are justly due. The same rule applies to breaches of contract where the defendant acted fraudulently or in bad faith.

[52] *Lito Corpuz v. People of the Philippines, supra* note 43, at 59.

that has been maliciously and wantonly inflicted,[53] the theory being that there should be compensation for the hurt caused by the highly reprehensible conduct of the defendant – associated with such circumstances as willfulness, wantonness, malice, gross negligence or recklessness, oppression, insult or fraud or gross fraud[54] – that intensifies the injury. The terms punitive or vindictive damages are often used to refer to those species of damages that may be awarded against a person to punish him for his outrageous conduct. In either case, these damages are intended in good measure to deter the wrongdoer and others like him from similar conduct in the future.[55]

The term aggravating circumstances used by the Civil Code, the law not having specified otherwise, is to be understood in its broad or generic sense. The commission of an offense has a two-pronged effect, one on the public as it breaches the social order and the other upon the private victim as it causes personal sufferings, each of which is addressed by, respectively, the prescription of heavier punishment for the accused and by an award of additional damages to the victim. The increase of the penalty or a shift to a graver felony underscores the exacerbation of the offense by the attendance of aggravating circumstances, whether ordinary or qualifying, in its commission. Unlike the criminal liability which is basically a State concern, the award of damages, however, is likewise, if not primarily, intended for the offended party who suffers thereby. It would make little sense for an award of exemplary damages to be due the private offended party when the aggravating circumstance is ordinary but to be withheld when it is qualifying. Withal, the ordinary

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[53] *People v. Dalisay*, 620 Phil. 831, 844 (2009), citing *People v. Catubig*, 416 Phil. 102, 119 (2001), citing *American Cent. Corp. v. Stevens Van Lines, Inc.*, 103 Mich App 507, 303 NW2d 234; *Morris v. Duncan*, 126 Ga 467, 54 SE 1045; *Faircloth v. Greiner*, 174 Ga app 845, 332 SE 2d 905; §731, 22 Am Jur 2d, p. 784*; American Surety Co. v. Gold*, 375 F 2d 523, 20 ALR 3d 335; *Erwin v. Michigan*, 188 Ark 658, 67 SW 2d 592.

[54] §762, 22 Am Jur 2d, pp. 817-818.

[55] §733, 22 Am Jur 2d, p. 785; Symposium: Punitive Damages, 56 So Cal LR 1, November 1982.

or qualifying nature of an aggravating circumstance is a distinction that should only be of consequence to the criminal, rather than to the civil, liability of the offender. In fine, relative to the civil aspect of the case, an aggravating circumstance, whether ordinary or qualifying, should entitle the offended party to an award of exemplary damages within the unbridled meaning of Article 2230 of the Civil Code.[56]

The reason is fairly obvious as to why the Revised Rules of Criminal Procedure[57] requires aggravating circumstances, whether ordinary or qualifying, to be stated in the complaint or information. It is in order not to trample on the constitutional right of an accused to be informed of the nature of the alleged offense that he or she has committed. A criminal complaint or information should basically contain the elements of the crime, as well as its qualifying and ordinary aggravating circumstances, for the court to effectively determine the proper penalty it should impose. This, however, is not similar in the recovery of civil liability. In the civil aspect, the presence of an aggravating circumstance, even if not alleged in the information but proven during trial would entitle the victim to an award of exemplary damages.

Being corrective in nature, exemplary damages, therefore, can be awarded, not only due to the presence of an aggravating

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[56] *People v. Catubig, supra* note 53, at 119-120.

[57] Rule 110 of the Rules of Court provides:

Sec. 8. Designation of the offense. — The complaint or information shall state the designation of the offense given by the statute, aver the acts or omissions constituting the offense, and **specify its qualifying and aggravating circumstances**. If there is no designation of the offense, reference shall be made to the section or subsection of the statute punishing it. (Emphasis supplied)

Sec. 9. Cause of the accusations. — The acts or omissions complained of as constituting the offense and **the qualifying and aggravating circumstances must be stated in ordinary and concise language** and not necessarily in the language used in the statute but in terms **sufficient to enable a person of common understanding to know what offense is being charged as well as its qualifying and aggravating circumstances and for the court to pronounce judgment.** (Emphasis supplied)

circumstance, but also where the circumstances of the case show the highly reprehensible or outrageous conduct of the offender. In much the same way as Article 2230 prescribes an instance when exemplary damages may be awarded, Article 2229, the main provision, lays down the very basis of the award. Thus, in *People v. Matrimonio*,[58] the Court imposed exemplary damages to deter other fathers with perverse tendencies or aberrant sexual behavior from sexually abusing their own daughters. Also, in *People v. Cristobal*,[59] the Court awarded exemplary damages on account of the moral corruption, perversity and wickedness of the accused in sexually assaulting a pregnant married woman. In *People v. Cañada*,[60] *People v. Neverio*[61] and *People v. Layco, Sr.*,[62] the Court awarded exemplary damages to set a public example, to serve as deterrent to elders who abuse and corrupt the youth, and to protect the latter from sexual abuse.

Existing jurisprudence pegs the award of exemplary damages at ₱30,000.00,[63] despite the lack of any aggravating circumstance. The Court finds it proper to increase the amount to ₱50,000.00 in order to deter similar conduct.

If, however, the penalty for the crime committed is death, which cannot be imposed because of the provisions of R.A. No. 9346, prevailing jurisprudence[64] sets the amount of ₱100,000.00 as exemplary damages.

Before awarding any of the above mentioned damages, the Court, however, must first consider the penalty imposed by law. Under RA 7659 or *An Act to Impose the Death Penalty on Certain Heinous Crimes, Amending for that Purpose the*

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[58] G.R. Nos. 82223-24, November 13, 1992, 215 SCRA 613, 634.

[59] 322 Phil. 551 (1996).

[60] 617 Phil. 587 (2009).

[61] 613 Phil. 507 (2009).

[62] 605 Phil. 877 (2009).

[63] *People v. Abellera*, 553 Phil. 307 (2007).

[64] *People v. Gambao*, G.R. No. 172707, October 1, 2013, 706 SCRA 508, 533-534.

Revised Penal Laws, and for Other Purposes, certain crimes under the RPC and special penal laws were amended to impose the death penalty under certain circumstances.[65] Under the same law, the following crimes are punishable by *reclusion perpetua*: piracy in general,[66] mutiny on the high seas,[67] and simple rape.[68] For the following crimes, RA 7659 has imposed the penalty of *reclusion perpetua* to death: qualified piracy;[69] qualified bribery under certain circumstances;[70] parricide;[71]

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[65] *People v. Combate*, *supra* note 41, at 509.

[66] Art. 122. *Piracy in general and mutiny on the high seas or in Philippine waters*. — The penalty of *reclusion perpetua* shall be inflicted upon any person who, on the high seas, or in Philippine waters, shall attack or seize a vessel or, not being a member of its complement nor a passenger, shall seize the whole or part of the cargo of said vessel, its equipment or passengers. The same penalty shall be inflicted in case of mutiny on the high seas or in Philippine waters.

[67] *Id.*

[68] Art. 335. *When and how rape is committed*. — Rape is committed by having carnal knowledge of a woman under any of the following circumstances:

1. By using force or intimidation;
2. When the woman is deprived of reason or otherwise unconscious; and
3. When the woman is under twelve years of age or is demented.

The crime of rape shall be punished by *reclusion temporal*. x x x

[69] Art. 123. *Qualified piracy*. — The penalty of *reclusion perpetua* to death shall be imposed upon those who commit any of the crimes referred to in the preceding article, under any of the following circumstances:

1. Whenever they have seized a vessel by boarding or firing upon the same;
2. Whenever the pirates have abandoned their victims without means of saving themselves or;
3. Whenever the crime is accompanied by murder, homicide, physical injuries or rape.

[70] Art. 211-A. *Qualified Bribery*. — If any public officer is entrusted with law enforcement and he refrains from arresting or prosecuting an offender who has committed a crime punishable by *reclusion perpetua* and/or death in consideration of any offer, promise, gift or present, he shall suffer the penalty for the offense which was not prosecuted. x x x

[71] Art. 246. *Parricide*. — Any person who shall kill his father, mother, or child, whether legitimate or illegitimate, or any of his ascendants, or descendants, or his spouse, shall be guilty of parricide and shall be punished by the penalty of *reclusion perpetua* to death.

murder;[72] infanticide, except when committed by the mother of the child for the purpose of concealing her dishonor or either of the maternal grandparents for the same purpose;[73] kidnapping and serious illegal detention under certain circumstances;[74] robbery with violence against or intimidation of persons under certain circumstances;[75] destructive arson, except when death

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[72] Art. 248. *Murder*. — Any person who, not falling within the provisions of Article 246 shall kill another, shall be guilty of murder and shall be punished by *reclusion perpetua*, to death if committed with any of the following attendant circumstances:

1. With treachery, taking advantage of superior strength, with the aid of armed men, or employing means to weaken the defense or of means or persons to insure or afford impunity.
2. In consideration of a price, reward or promise.
3. By means of inundation, fire, poison, explosion, shipwreck, stranding of a vessel, derailment or assault upon a railroad, fall of an airship, or by means of motor vehicles, or with the use of any other means involving great waste and ruin.
4. On occasion of any of the calamities enumerated in the preceding paragraph, or of an earthquake, eruption of a volcano, destructive cyclone, epidemic or other public calamity.
5. With evident premeditation.
6. With cruelty, by deliberately and inhumanly augmenting the suffering of the victim, or outraging or scoffing at his person or corpse.

[73] Art. 255. *Infanticide*. — The penalty provided for parricide in Article 246 and for murder in Article 248 shall be imposed upon any person who shall kill any child less than three days of age.

[74] Art. 267. *Kidnapping and serious illegal detention*. — Any private individual who shall kidnap or detain another, or in any other manner deprive him of his liberty, shall suffer the penalty of *reclusion perpetua* to death:

1. If the kidnapping or detention shall have lasted more than three days.
2. If it shall have been committed simulating public authority.
3. If any serious physical injuries shall have been inflicted upon the person kidnapped or detained; or if threats to kill him shall have been made.
4. If the person kidnapped or detained shall be a minor, except when the accused is any of the parents, female or a public officer.

x x x x x x x x x

[75] Art. 294. R*obbery with violence against or intimidation of persons — Penalties*. — Any person guilty of robbery with the use of violence against or intimidation of any person shall suffer:

results as a consequence of the commission of any of the acts penalized under the article;[76] attempted or frustrated rape, when a homicide is committed by reason or on occasion thereof;

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1. The penalty of *reclusion perpetua* to death, when by reason or on occasion of the robbery, the crime of homicide shall have been committed, or when the robbery shall have been accompanied by rape or intentional mutilation or arson.

x x x x x x x x x.

[76] Art. 320. *Destructive Arson.* — The penalty of *reclusion perpetua* to death shall be imposed upon any person who shall burn:

1. One (1) or more buildings or edifices, consequent to one single act of burning, or as a result of simultaneous burnings, committed on several or different occasions.

2. Any building of public or private ownership, devoted to the public in general or where people usually gather or congregate for a definite purpose such as, but not limited to, official governmental function or business, private transaction, commerce, trade, workshop, meetings and conferences, or merely incidental to a definite purpose such as but not limited to hotels, motels, transient dwellings, public conveyances or stops or terminals, regardless of whether the offender had knowledge that there are persons in said building or edifice at the time it is set on fire and regardless also of whether the building is actually inhabited or not.

3. Any train or locomotive, ship or vessel, airship or airplane, devoted to transportation or conveyance, or for public use, entertainment or leisure.

4. Any building, factory, warehouse installation and any appurtenances thereto, which are devoted to the service of public utilities.

5. Any building the burning of which is for the purpose of concealing or destroying evidence of another violation of law, or for the purpose of concealing bankruptcy or defrauding creditors or to collect from insurance.

Irrespective of the application of the above enumerated qualifying circumstances, the penalty of *reclusion perpetua* to death shall likewise be imposed when the arson is perpetrated or committed by two (2) or more persons or by a group of persons, regardless of whether their purpose is merely to burn or destroy the building or the burning merely constitutes an overt act in the commission or another violation of law.

The penalty of *reclusion perpetua* to death shall also be imposed upon any person who shall burn:

1. Any arsenal, shipyard, storehouse or military powder or fireworks factory, ordnance, storehouse, archives or general museum of the Government.

plunder;[77] and carnapping, when the driver or occupant of the carnapped motor vehicle is killed or raped in the course of the commission of the carnapping or on the occasion thereof.[78] Finally, RA 7659 imposes the death penalty on the following crimes:

(a) In qualified bribery, when it is the public officer who asks or demands the gift or present.

b) In kidnapping and serious illegal detention: (i) when the kidnapping or detention was committed for the purpose of extorting ransom from the victim or any other person; (ii) when the victim is killed or dies as a consequence of the detention; (iii) when the victim is raped, subjected to torture or dehumanizing acts.

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2. In an inhabited place, any storehouse or factory of inflammable or explosive materials.

x x x x x x x x x

[77] Republic Act No. 7080 (1991), Sec. 2. *Definition of the Crime of Plunder; Penalties*. — Any public officer who, by himself or in connivance with members of his family, relatives by affinity or consanguinity, business associates, subordinates or other persons, amasses, accumulates or acquires ill-gotten wealth through a combination or series of overt criminal acts as described in Section 1 (d) hereof in the aggregate amount or total value of at least Fifty million pesos (₱50,000,000.00) shall be guilty of the crime of plunder and shall be punished by *reclusion perpetua* to death. Any person who participated with the said public officer in the commission of an offense contributing to the crime of plunder shall likewise be punished for such offense. In the imposition of penalties, the degree of participation and the attendance of mitigating and extenuating circumstances, as provided by the Revised Penal Code, shall be considered by the court. The court shall declare any and all ill-gotten wealth and their interests and other incomes and assets including the properties and shares of stocks derived from the deposit or investment thereof forfeited in favor of the State.

[78] Republic Act No. 6539 (1972), Sec. 14. *Penalty for Carnapping*. — Any person who is found guilty of carnapping, as this term is defined in Section Two of this Act, shall, irrespective of the value of motor vehicle taken, be punished by x x x the penalty of *reclusion perpetua* to death shall be imposed when the owner, driver or occupant of the carnapped motor vehicle is killed or raped in the course of the commission of the carnapping or on the occasion thereof.

(c) In destructive arson, when as a consequence of the commission of any of the acts penalized under Article 320, death results.

(d) In rape: (i) when by reason or on occasion of the rape, the victim becomes insane or homicide is committed; (ii) when committed with any of the following attendant circumstances: (1) when the victim is under eighteen (18) years of age and the offender is a parent, ascendant, step-parent, guardian, relative by consanguinity or affinity within the third civil degree, or the common-law-spouse of the parent of the victim; (2) when the victim is under the custody of the police or military authorities; (3) when the rape is committed in full view of the husband, parent, any of the children or other relatives within the third degree of consanguinity; (4) when the victim is a religious or a child below seven years old; (5) when the offender knows that he is afflicted with Acquired Immune Deficiency Syndrome (AIDS) disease; (6) when committed by any member of the Armed Forces of the Philippines or the Philippine National Police or any law enforcement agency; and (7) when by reason or on the occasion of the rape, the victim has suffered permanent physical mutilation.

From these heinous crimes, where the imposable penalties consist of two (2) indivisible penalties or single indivisible penalty, all of them must be taken in relation to Article 63 of the RPC, which provides:

> Article 63. *Rules for the application of indivisible penalties*. –In all cases in which the law prescribes a single indivisible penalty, it shall be applied by the courts regardless of any mitigating or aggravating circumstances that may have attended the commission of the deed.

In all cases in which the law prescribes a penalty composed of two indivisible penalties, the following rules shall be observed in the application thereof:

> 1. when in the commission of the deed there is present only one aggravating circumstance, the greater penalty shall be applied.

2. when there are neither mitigating nor aggravating circumstances in the commission of the deed, the lesser penalty shall be applied.

3. when the commission of the act is attended by some mitigating circumstance and there is no aggravating circumstance, the lesser penalty shall be applied.

4. when both mitigating and aggravating circumstances attended the commission of the act, the courts shall reasonably allow them to offset one another in consideration of their number and importance, for the purpose of applying the penalty in accordance with the preceding rules, according to the result of such compensation. (Revised Penal Code, Art. 63)

Thus, in order to impose the proper penalty, especially in cases of indivisible penalties, the court has the duty to ascertain the presence of any mitigating or aggravating circumstances. Accordingly, in crimes where the imposable penalty is *reclusion perpetua* to death, the court can impose either *reclusion perpetua* or death, depending on the mitigating or aggravating circumstances present.

But with the enactment of RA 9346 or *An Act Prohibiting the Imposition of Death Penalty in the Philippines*, the imposition of death penalty is now prohibited. It provides that in lieu of the death penalty, the penalty of *reclusion perpetua* shall be imposed when the law violated makes use of the nomenclature of the penalties of the RPC.[79]

As a result, the death penalty can no longer be imposed. Instead, they have to impose *reclusion perpetua*. Despite this, the principal consideration for the award of damages, following the ruling in *People v. Salome*[80] and *People v. Quiachon*,[81] is "the penalty provided by law or imposable for the offense because of its heinousness, not the public penalty actually imposed on the offender."[82]

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[79] RA 9346, Sec. 2.

[80] 532 Phil. 368, 385 (2006).

[81] 532 Phil. 414, 428 (2006).

[82] See *People v. Sarcia*, 615 Phil. 97 (2009).

When the circumstances surrounding the crime would justify the imposition of the death penalty were it not for RA 9346, the Court has ruled, as early as July 9, 1998 in *People v. Victor*,[83] that the award of civil indemnity for the crime of rape when punishable by death should be ₱75,000.00 We reasoned that "[t]his is not only a reaction to the apathetic societal perception of the penal law and the financial fluctuations over time, but also an expression of the displeasure of the Court over the incidence of heinous crimes against chastity."[84] Such reasoning also applies to all heinous crimes found in RA 7659. The amount was later increased to ₱100,000.00.[85]

In addition to this, the Court likewise awards moral damages. In *People v. Arizapa*,[86] ₱50,000.00 was awarded as moral damages without need of pleading or proving them, for in rape cases, it is recognized that the victim's injury is concomitant with and necessarily results from the odious crime of rape to warrant per se the award of moral damages.[87] Subsequently, the amount was increased to ₱75,000.00 in *People v. Soriano*[88] and ₱100,000.00 in *People v. Gambao*.[89]

Essentially, despite the fact that the death penalty cannot be imposed because of RA 9346, the imposable penalty as provided by the law for the crime, such as those found in RA 7569, must be used as the basis for awarding damages and not the actual penalty imposed.

Again, for crimes where the imposable penalty is death in view of the attendance of an ordinary aggravating circumstance but due to the prohibition to impose the death penalty, the actual

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[83] *Supra* note 41.

[84] *People v. Victor*, *supra*, at 210.

[85] *People v. Gambao*, *supra* note 64, at 533.

[86] 384 Phil. 766 (2000).

[87] *People v. Arizapa*, *supra*.

[88] 436 Phil. 719 (2002).

[89] *Supra* note 64.

penalty imposed is *reclusion perpetua*, the latest jurisprudence[90] pegs the amount of ₱100,000.00 as civil indemnity and ₱100,0000.00 as moral damages. For the qualifying aggravating circumstance and/or the ordinary aggravating circumstances present, the amount of ₱100,000.00 is awarded as exemplary damages aside from civil indemnity and moral damages. Regardless of the attendance of qualifying aggravating circumstance, the exemplary damages shall be fixed at ₱100,000.00. "[T]his is not only a reaction to the apathetic societal perception of the penal law and the financial fluctuation over time, but also an expression of the displeasure of the Court over the incidence of heinous crimes x x x."[91]

When the circumstances surrounding the crime call for the imposition of *reclusion perpetua* only, there being no ordinary aggravating circumstance, the Court rules that the proper amounts should be ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages and ₱75,000.00 exemplary damages, regardless of the number of qualifying aggravating circumstances present.

When it comes to compound and complex crimes, although the single act done by the offender caused several crimes, the fact that those were the result of a single design, the amount of civil indemnity and moral damages will depend on the penalty and the number of victims. For each of the victims, the heirs should be properly compensated. If it is multiple murder without any ordinary aggravating circumstance but merely a qualifying aggravating circumstance, but the penalty imposed is death because of Art. 48 of the RPC wherein the maximum penalty shall be imposed,[92] then, for every victim who dies, the heirs shall be indemnified with ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages and ₱100,000.00 as exemplary damages.

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[90] *People v. Gambao, supra* note 64.

[91] *People v. Victor, supra* note 42, at 210.

[92] ARTICLE 48. *Penalty for complex crimes.*— When a single act constitutes two or more grave or less grave felonies, or when an offense is a necessary means for committing the other, the penalty for the most serious crime shall be imposed, the same to be applied in its maximum period.

In case of a special complex crime, which is different from a complex crime under Article 48 of the RPC, the following doctrines are noteworthy:

In *People of the Philippines v. Conrado Laog*,[93] this Court ruled that special complex crime, or more properly, a composite crime, has its own definition and special penalty in the Revised Penal Code, as amended. Justice Regalado, in his Separate Opinion in the case of *People v. Barros*,[94] explained that composite crimes are "neither of the same legal basis as nor subject to the rules on complex crimes in Article 48 [of the Revised Penal Code], since they do not consist of a single act giving rise to two or more grave or less grave felonies [compound crimes] nor do they involve an offense being a necessary means to commit another [complex crime proper]. However, just like the regular complex crimes and the present case of aggravated illegal possession of firearms, only a single penalty is imposed for each of such composite crimes although composed of two or more offenses."[95]

In *People v. De Leon*,[96] we expounded on the special complex crime of robbery with homicide, as follows:

> In robbery with homicide, the original criminal design of the malefactor is to commit robbery, with homicide perpetrated on the occasion or by reason of the robbery. The intent to commit robbery must precede the taking of human life. The homicide may take place before, during or after the robbery. It is only the result obtained, without reference or distinction as to the circumstances, causes or modes or persons intervening in the commission of the crime that has to be taken into consideration. There is no such felony of robbery with homicide through reckless imprudence or simple negligence. The constitutive elements of the crime, namely, robbery with homicide, must be consummated.
>
> It is immaterial that the death would supervene by mere accident; or that the victim of homicide is other than the victim

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[93] 674 Phil. 444 (2011).

[94] 315 Phil. 314 (1995).

[95] *Id.* at 338.

[96] 608 Phil. 701 (2009).

of robbery, or that two or more persons are killed, or that aside from the homicide, rape, intentional mutilation, or usurpation of authority, is committed by reason or on the occasion of the crime. Likewise immaterial is the fact that the victim of homicide is one of the robbers; the felony would still be robbery with homicide. Once a homicide is committed by or on the occasion of the robbery, the felony committed is robbery with homicide. All the felonies committed by reason of or on the occasion of the robbery are integrated into one and indivisible felony of robbery with homicide. The word "homicide" is used in its generic sense. Homicide, thus, includes murder, parricide, and infanticide.[97]

In the special complex crime of rape with homicide, the term "homicide" is to be understood in its generic sense, and includes murder and slight physical injuries committed by reason or on occasion of the rape.[98] Hence, even if any or all of the circumstances (treachery, abuse of superior strength and evident premeditation) alleged in the information have been duly established by the prosecution, the same would not qualify the killing to murder and the crime committed by appellant is still rape with homicide. As in the case of robbery with homicide, the aggravating circumstance of treachery is to be considered as a generic aggravating circumstance only. Thus we ruled in *People v. Macabales*:[99]

Finally, appellants contend that the trial court erred in concluding that the aggravating circumstance of treachery is present. They aver that treachery applies to crimes against persons and not to crimes against property. However, we find that the trial court in this case correctly characterized treachery as a generic aggravating, rather than qualifying, circumstance. Miguel

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[97] *People v. De Leon*, *supra*, at 716-717, citing *People v. Salazar*, 342 Phil. 745, 765 (1997); *People v. Abuyen*, G.R. No. 77285, September 4, 1992, 213 SCRA 569, 582; *People v. Ponciano*, G.R. No. 86453, December 5, 1991, 204 SCRA 627, 639 and *People v. Mangulabnan, et al*., 99 Phil. 992, 999 (1956).

[98] *People v. Nanas*, 415 Phil. 683 (2001), citing *People v. Penillos*, G.R. No. 65673, January 30, 1992, 205 SCRA 546, 564 and *People v. Sequiño*, 332 Phil. 90 (1996).

[99] 400 Phil. 1221 (2000).

> was rendered helpless by appellants in defending himself when his arms were held by two of the attackers before he was stabbed with a knife by appellant Macabales, as their other companions surrounded them. In *People v. Salvatierra,* we ruled that when alevosia (treachery) obtains in the special complex crime of robbery with homicide, such treachery is to be regarded as a generic aggravating circumstance. Robbery with homicide is a composite crime with its own definition and special penalty in the Revised Penal Code. There is no special complex crime of robbery with murder under the Revised Penal Code. Here, treachery forms part of the circumstances proven concerning the actual commission of the complex crime. Logically it could not qualify the homicide to murder but, as generic aggravating circumstance, it helps determine the penalty to be imposed.[100]

Applying the above discussion on special complex crimes, if the penalty is death but it cannot be imposed due to RA 9346 and what is actually imposed is the penalty of *reclusion perpetua*, the civil indemnity and moral damages will be ₱100,000.00 each, and another ₱100,000.00 as exemplary damages in view of the heinousness of the crime and to set an example. If there is another composite crime included in a special complex crime and the penalty imposed is death, an additional ₱100,000.00 as civil indemnity, ₱100,000.00 moral damages and ₱100,000.00 exemplary damages shall be awarded for each composite crime committed.

For example, in case of Robbery with Homicide[101] wherein three (3) people died as a consequence of the crime, the heirs

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[100] *People v. Macabales*, *supra*, at 1236-1237, citing *People v. Vivas*, G.R. No. 100914, May 6, 1994, 232 SCRA 238, 242.

[101] Art. 294. Robbery with violence against or intimidation of persons; Penalties. — Any person guilty of robbery with the use of violence against or intimidation of any person shall suffer:

1. The penalty of *reclusion perpetua* to death, when by reason or on occasion of the robbery, the crime of homicide shall have been committed.

2. The penalty of *reclusion temporal* in its medium period to *reclusion perpetua* when the robbery shall have been accompanied by rape or intentional mutilation, or if by reason or on occasion of such robbery, any of the physical

of the victims shall be entitled to the award of damages as discussed earlier. This is true, however, only if those who were killed were the victims of the robbery or mere bystanders and not when those who died were the perpetrators or robbers themselves because the crime of robbery with homicide may still be committed even if one of the robbers dies.[102] This is also applicable in robbery with rape where there is more than one victim of rape.

In awarding civil indemnity and moral damages, it is also important to determine the stage in which the crime was committed and proven during the trial. Article 6 of the RPC provides:

> Art. 6. Consummated, frustrated, and attempted felonies. — Consummated felonies, as well as those which are frustrated and attempted, are punishable.
>
> A felony is consummated when all the elements necessary for its execution and accomplishment are present; and it is frustrated when an offender performs all the acts of execution which would produce the felony as a consequence but which, nevertheless, do not produce it by reason of causes independent of the will of the perpetrator.

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injuries penalized in subdivision 1 of Article 263 shall have been inflicted; Provided, however, that when the robbery accompanied with rape is committed with a use of a deadly weapon or by two or more persons, the penalty shall be *reclusion perpetua* to death (As amended by PD No. 767).

3. The penalty of *reclusion temporal*, when by reason or on occasion of the robbery, any of the physical injuries penalized in subdivision 2 of the article mentioned in the next preceding paragraph, shall have been inflicted.

4. The penalty of *prision mayor* in its maximum period to *reclusion temporal* in its medium period, if the violence or intimidation employed in the commission of the robbery shall have been carried to a degree clearly unnecessary for the commission of the crime, or when the course of its execution, the offender shall have inflicted upon any person not responsible for its commission any of the physical injuries covered by sub-divisions 3 and 4 of said Article 263. (As amended by R.A. 18)

5. The penalty of *prision correccional* in its maximum period to *prision mayor* in its medium period in other cases. (As amended by R.A. 18).

[102] *People v. De Leon*, *supra* note 96; *People v. Ebet*, 649 Phil. 181 (2010).

There is an attempt when the offender commences the commission of a felony directly by overt acts, and does not perform all the acts of execution which should produce the felony by reason of some cause or accident other than his own spontaneous desistance.

As discussed earlier, when the crime proven is consummated and the penalty imposed is death but reduced to *reclusion perpetua* because of R.A. 9346, the civil indemnity and moral damages that should be awarded will each be ₱100,000.00 and another ₱100,000.00 for exemplary damages or when the circumstances of the crime call for the imposition of *reclusion perpetua* only, the civil indemnity and moral damages should be ₱75,000.00 each, as well as exemplary damages in the amount of ₱75,000.00. If, however, the crime proven is in its frustrated stage, the civil indemnity and moral damages that should be awarded will each be ₱50,000.00, and an award of ₱25,000.00 civil indemnity and ₱25,000.00 moral damages when the crime proven is in its attempted stage. The difference in the amounts awarded for the stages is mainly due to the disparity in the outcome of the crime committed, in the same way that the imposable penalty varies for each stage of the crime. The said amounts of civil indemnity and moral damages awarded in cases of felonies in their frustrated or attempted stages shall be the bases when the crimes committed constitute complex crime under Article 48 of the RPC. For example, in a crime of murder with attempted murder, the amount of civil indemnity, moral damages and exemplary damages is ₱100,000.00 each, while in the attempted murder, the civil indemnity, moral damages and exemplary damages is ₱25,000.00 each.

In a special complex crime, like robbery with homicide, if, aside from homicide, several victims (except the robbers) sustained injuries, they shall likewise be indemnified. It must be remembered that in a special complex crime, unlike in a complex crime, the component crimes have no attempted or frustrated stages because the intention of the offender/s is to commit the principal crime which is to rob but in the process of committing the said crime, another crime is committed. For example, if on the occasion of a robbery with homicide, other victims sustained injuries, regardless of the severity, the crime committed is still

robbery with homicide as the injuries become part of the crime, "Homicide", in the special complex crime of robbery with homicide, is understood in its generic sense and now forms part of the essential element of robbery,[103] which is the use of violence or the use of force upon anything. Hence, the nature and severity of the injuries sustained by the victims must still be determined for the purpose of awarding civil indemnity and damages. If a victim suffered mortal wounds and could have died if not for a timely medical intervention, the victim should be awarded civil indemnity, moral damages, and exemplary damages equivalent to the damages awarded in a frustrated stage, and if a victim suffered injuries that are not fatal, an award of civil indemnity, moral damages and exemplary damages should likewise be awarded equivalent to the damages awarded in an attempted stage.

In other crimes that resulted in the death of a victim and the penalty consists of divisible penalties, like homicide, death under tumultuous affray, reckless imprudence resulting to homicide, the civil indemnity awarded to the heirs of the victim shall be ₱50,000.00 and ₱50,000.00 moral damages without exemplary damages being awarded. However, an award of ₱50,000.00 exemplary damages in a crime of homicide shall be added if there is an aggravating circumstance present that has been proven but not alleged in the information.

Aside from those discussed earlier, the Court also awards temperate damages in certain cases. The award of ₱25,000.00 as temperate damages in homicide or murder cases is proper when no evidence of burial and funeral expenses is presented in the trial court.[104] Under Article 2224 of the Civil Code, temperate damages may be recovered, as it cannot be denied that the heirs of the victims suffered pecuniary loss although

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[103] Revised Penal Code, Art. 293. *Who are guilty of robbery*. — Any person who, with intent to gain, shall take any personal property belonging to another, by means of violence against or intimidation of any person, or using force upon anything, shall be guilty of robbery.

[104] *People v. Tagudar*, 600 Phil. 565, 590 (2009), citing *People v. Dacillo*, 471 Phil. 497, 510 (2004).

the exact amount was not proved.[105] In this case, the Court now increases the amount to be awarded as temperate damages to ₱50,000.00.

In the case at bar, the crimes were aggravated by dwelling, and the murders committed were further made atrocious by the fact that the victims are innocent, defenseless minors – one is a mere 3½-year-old toddler, and the other a 13-year-old girl. The increase in the amount of awards for damages is befitting to show not only the Court's, but all of society's outrage over such crimes and wastage of lives.

In summary:

I. For those crimes[106] like, Murder,[107] Parricide,[108] Serious Intentional Mutilation,[109] Infanticide,[110] and other crimes involving death of a victim where the penalty consists of indivisible penalties:

1.1 Where the penalty imposed is death but reduced to *reclusion perpetua* because of RA 9346:

a. Civil indemnity – ₱100,000.00
b. Moral damages – ₱100,000.00
c. Exemplary damages – ₱100,000.00

1.2 Where the crime committed was not consummated:

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[105] *Id.*, citing *People v. Surongon*, 554 Phil. 448, 458 (2007).

[106] Article 255, RPC.

[107] Article 248, RPC.

[108] Article 246, RPC.

[109] Article 262, RPC.

[110] Note that if the crime penalized in Article 255 [Infanticide] was committed by the mother of the child for the purpose of concealing her dishonor, she shall suffer the penalty of *prision mayor* in its medium and maximum periods, and if said crime was committed for the same purpose by the maternal grandparents or either of them, the penalty shall be *reclusion temporal*. (As amended by R.A. 7659). Hence, the damages to be awarded should be the same as in Roman Numeral Number Five (V) of the summary, *i.e.*, In other crimes that result in the death of the victim and the penalty consists of divisible, because the prescribed penalties are divisible.

a. Frustrated:

i. Civil indemnity – ₱75,000.00
ii. Moral damages – ₱75,000.00
iii. Exemplary damages – ₱75,000.00

b. Attempted:

i. Civil indemnity – ₱50,000.00
ii. Exemplary damages – ₱50,000.00
iii. Exemplary damages – ₱50,000.00

2.1 Where the penalty imposed is *reclusion perpetua*, other than the above-mentioned:

a. Civil indemnity – ₱75,000.00
b. Moral damages – ₱75,000.00
c. Exemplary damages – ₱75,000.00

2.2 Where the crime committed was not consummated:

a. Frustrated:

i. Civil indemnity – ₱50,000.00
ii. Moral damages – ₱50,000.00
iii. Exemplary damages – ₱50,000.00

b. Attempted:

i. Civil indemnity – ₱25,000.00
ii. Moral damages – ₱25,000.00
iii. Exemplary damages – ₱25,000.00

II. For Simple Rape/Qualified Rape:

1.1 Where the penalty imposed is Death but reduced to *reclusion perpetua* because of RA 9346:

a. Civil indemnity – ₱100,000.00
b. Moral damages – ₱100,000.00
c. Exemplary damages[111] – ₱100,000.00

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[111] Exemplary damages in rape cases are awarded for the inherent bestiality of the act committed even if no aggravating circumstance attended the commission of the crime.

1.2 Where the crime committed was not consummated but merely attempted:[112]

a. Civil indemnity – ₱50,000.00
b. Moral damages – ₱50,000.00
c. Exemplary damages – ₱50,000.00

2.1 Where the penalty imposed is *reclusion perpetua*, other than the above-mentioned:

a. Civil indemnity – ₱75,000.00
b. Moral damages – ₱75,000.00
c. Exemplary damages – ₱75,000.00

2.2 Where the crime committed was not consummated, but merely attempted:

a. Civil indemnity – ₱25,000.00
b. Moral damages – ₱25,000.00
c. Exemplary damages – ₱25,000.00

III. For Complex crimes under Article 48 of the Revised Penal Code where death, injuries, or sexual abuse results, the civil indemnity, moral damages and exemplary damages will depend on the penalty, extent of violence and sexual abuse; and the number of victims where the penalty consists of indivisible penalties:

1.1 Where the penalty imposed is Death but reduced to *reclusion perpetua* because of RA 9346:

a. Civil indemnity – ₱100,000.00
b. Moral damages – ₱100,000.00
c. Exemplary damages – ₱100,000.00

1.2 Where the penalty imposed is *reclusion perpetua*, other than the above-mentioned:

a. Civil indemnity – ₱75,000.00
b. Moral damages – ₱75,000.00
c. Exemplary damages – ₱75,000.00

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[112] There is no frustrated stage in the crime of rape.

The above Rules apply to every victim who dies as a result of the crime committed. In other complex crimes where death does not result, like in Forcible Abduction with Rape, the civil indemnity, moral and exemplary damages depend on the prescribed penalty and the penalty imposed, as the case may be.

IV. For Special Complex Crimes like Robbery with Homicide,[113] Robbery with Rape,[114] Robbery with Intentional Mutilation,[115] Robbery with Arson,[116] Rape with Homicide,[117] Kidnapping with Murder,[118] Carnapping with Homicide[119] or Carnapping with Rape,[120] Highway Robbery with Homicide,[121] Qualified Piracy,[122] Arson with Homicide,[123] Hazing with Death, Rape, Sodomy or Mutilation[124] and other crimes with death, injuries, and sexual abuse as the composite crimes, where the penalty consists of indivisible penalties:

1.1 Where the penalty imposed is Death but reduced to *reclusion perpetua* because of RA 9346:

a. Civil indemnity – ₱100,000.00
b. Moral damages – ₱100,000.00
c. Exemplary damages – ₱100,000.00

In Robbery with Intentional Mutilation, the amount of damages is the same as the above if the penalty imposed is Death but reduced to *reclusion perpetua* although death did not occur.

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[113] Art. 294 (1), RPC.

[114] *Id.*

[115] *Id.*

[116] *Id.*

[117] Art. 266-A, RPC as amended by RA 8353.

[118] Art. 267, RPC.

[119] RA No. 6539.

[120] *Id.*

[121] P.D. 532.

[122] Art. 123, RPC.

[123] Art. 320, RPC.

[124] RA No. 8049.

1.2 For the victims who suffered mortal/fatal wounds[125] and could have died if not for a timely medical intervention, the following shall be awarded:

a. Civil indemnity – ₱75,000.00
b. Moral damages – ₱75,000.00
c. Exemplary damages – ₱75,000.00

1.3 For the victims who suffered non-mortal/non-fatal injuries:

a Civil indemnity – ₱50,000.00
b. Moral damages – ₱50,000.00
c. Exemplary damages – ₱50,000.00

2.1 Where the penalty imposed is *reclusion perpetua,* other than the above-mentioned:

a. Civil indemnity – ₱75,000.00
b. Moral damages – ₱75,000.00
c. Exemplary damages – ₱75,000.00

In Robbery with Intentional Mutilation, the amount of damages is the same as the above if the penalty imposed is *reclusion perpetua*.

2.2 For the victims who suffered mortal/fatal wounds and could have died if not for a timely medical intervention, the following shall be awarded:

a. Civil indemnity – ₱50,000.00
b. Moral damages – ₱50,000.00
c. Exemplary damages – ₱50,000.00

2.3 For the victims who suffered non-mortal/non-fatal injuries:

a. Civil indemnity – ₱25,000.00
b. Moral damages – ₱25,000.00
c. Exemplary damages – ₱25,000.00

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[125] This is so because there are no stages of the component crime in special complex crimes but the victims must be compensated as if the component crimes were separately committed.

In Robbery with Physical Injuries,[126] the amount of damages shall likewise be dependent on the nature/severity of the wounds sustained, whether fatal or non-fatal.

The above Rules do not apply if in the crime of Robbery with Homicide, the robber/s or perpetrator/s are themselves killed or injured in the incident.

Where the component crime is rape, the above Rules shall likewise apply, and that for every additional rape committed, whether against the same victim or other victims, the victims shall be entitled to the same damages unless the other crimes of rape are treated as separate crimes, in which case, the damages awarded to simple rape/qualified rape shall apply.

V. In other crimes that result in the death of a victim and the penalty consists of divisible penalties, *i.e.*, Homicide, Death under Tumultuous Affray, Infanticide to conceal the dishonour of the offender,[127] Reckless Imprudence Resulting to Homicide, Duel, Intentional Abortion and Unintentional Abortion, *etc.*:

1.1 Where the crime was consummated:

a. Civil indemnity – ₱50,000.00
b. Moral damages – ₱50,000.00

1.2 Where the crime committed was not consummated, except those crimes where there are no stages, *i.e.*, Reckless Imprudence and Death under tumultuous affray:

a. Frustrated:

i. Civil indemnity – ₱30,000.00
ii. Moral damages – ₱30,000.00

b. Attempted:

i. Civil indemnity – ₱20,000.00
ii. Moral damages – ₱20,000.00

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[126] Art. 294 (3), RPC.

[127] If the crime of infanticide in Art. 255 of the RPC was committed by the mother of the child or by the maternal grandparent/s in order to conceal her dishonor, the penalties against them are divisible, *i.e.*, *prision mayor* in its medium and maximum periods, and *reclusion temporal*, respectively.

If an aggravating circumstance was proven during the trial, even if not alleged in the Information,[128] in addition to the above mentioned amounts as civil indemnity and moral damages, the amount of ₱50,000.00 exemplary damages for consummated; ₱30,000.00 for frustrated; and ₱20,000.00 for attempted, shall be awarded.

VI. A. In the crime of Rebellion where the imposable penalty is *reclusion perpetua* and death occurs in the course of the rebellion, the heirs of those who died are entitled to the following:[129]

a. Civil indemnity – ₱100,000.00
b. Moral damages – ₱100,000.00
c. Exemplary damages – ₱100,000.00[130]

B. For the victims who suffered mortal/fatal wounds in the course of the rebellion and could have died if not for a timely medical intervention, the following shall be awarded:

a. Civil indemnity – ₱75,000.00
b. Moral damages – ₱75,000.00
c. Exemplary damages – ₱75,000.00

C. For the victims who suffered non-mortal/non-fatal injuries:

a. Civil indemnity – ₱50,000.00
b. Moral damages – ₱50,000.00
c. Exemplary damages – ₱50,000.00

VII. In all of the above instances, when no documentary evidence of burial or funeral expenses is presented in court, the amount of ₱50,000.00 as temperate damages shall be awarded.

To reiterate, Article 2206 of the Civil Code provides that the minimum amount for awards of civil indemnity is ₱3,000.00,

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[128] See *People v. Catubig*, *supra* note 53.

[129] Although the penalty prescribed by law is *reclusion perpetua*, the damages awarded should be the same as those where the penalty is death due to the gravity of the offense and the manner of committing the same.

[130] In order to deter the commission of the crime of rebellion and serve as an example, exemplary damages should be awarded.

but does not provide for a ceiling. Thus, although the minimum amount cannot be changed, increasing the amount awarded as civil indemnity can be validly modified and increased when the present circumstance warrants it.[131]

Prescinding from the foregoing, for the two (2) counts of murder, attended by the ordinary aggravating circumstance of dwelling, appellant should be ordered to pay the heirs of the victims the following damages: (1) ₱100,000.00 as civil indemnity for each of the two children who died; (2) ₱100,000.00 as moral damages for each of the two victims; (3) another ₱100,000.00 as exemplary damages for each of the two victims; and (4) temperate damages in the amount of ₱50,000.00 for each of the two deceased. For the four (4) counts of Attempted Murder, appellant should pay ₱50,000.00 as civil indemnity, ₱50,000.00 as moral damages and ₱50,000.00 as exemplary damages for each of the four victims. In addition, the civil indemnity, moral damages, exemplary damages and temperate damages payable by the appellant are subject to interest at the rate of six percent (6%) per annum from the finality of this decision until fully paid.[132]

Lastly, this Court echoes the concern of the trial court regarding the dismissal of the charges against Gilberto Estores and Roger San Miguel who had been identified by Norberto Divina as the companions of appellant on the night the shooting occurred. Norberto had been very straightforward and unwavering in his identification of Estores and San Miguel as the two other people who fired the gunshots at his family. More significantly, as noted by the prosecutor, the testimonies of Estores and San Miguel, who insisted they were not at the crime scene, tended to conflict with the sworn statement of Danilo Fajarillo, which was the basis for the Provincial Prosecutor's ruling that he finds no probable cause against the two. Danilo Fajarillo's sworn statement said that on June 6, 2002, he saw appellant with a certain "Hapon" and Gilbert Estores at the

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[131] *Supra* note 38.

[132] See *Dario Nacar v. Gallery Frames and/or Felipe Bordey, Jr.*, G.R. No. 189871, August 13, 2013, 703 SCRA 439, 459.

crime scene, but it was only appellant who was carrying a firearm and the two other people with him had no participation in the shooting incident. Said circumstances bolster the credibility of Norberto Divina's testimony that Estores and San Miguel may have been involved in the killing of his two young daughters.

After all, such reinvestigation would not subject Estores and San Miguel to double jeopardy because the same only attaches if the following requisites are present: (1) a first jeopardy has attached before the second; (2) the first jeopardy has been validly terminated; and (3) a second jeopardy is for the same offense as in the first. In turn, a first jeopardy attaches only (a) after a valid indictment; (b) before a competent court; (c) after arraignment; (d) when a valid plea has been entered; and (e) when the accused has been acquitted or convicted, or the case dismissed or otherwise terminated without his express consent.[133] In this case, the case against Estores and San Miguel was dismissed before they were arraigned. Thus, there can be no double jeopardy to speak of. Let true justice be served by reinvestigating the real participation, if any, of Estores and San Miguel in the killing of Mary Grace and Claudine Divina.

WHEREFORE, the instant appeal is **DISMISSED**. The Decision of the Court of Appeals dated January 30, 2012 in CA-G.R. CR HC No. 03252 is **AFFIRMED** with the following **MODIFICATIONS**:

(1) In Criminal Case No. 7698-G, the Court finds accused-appellant Ireneo Jugueta **GUILTY** beyond reasonable doubt of two (2) counts of the crime of murder defined under Article 248 of the Revised Penal Code, attended by the aggravating circumstance of dwelling, and hereby sentences him to suffer two (2) terms of *reclusion perpetua* without eligibility for parole under R.A. 9346. He is **ORDERED** to **PAY** the heirs of Mary Grace Divina and Claudine Divina the following amounts for each of the two victims: (a) ₱100,000.00 as civil indemnity; (b) ₱100,000.00 as moral damages; (c) ₱100,000.00 as exemplary damages; and (d) ₱50,000.00 as temperate damages.

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[133] *Quiambao v. People*, G.R. No. 185267, September 17, 2014, 735 SCRA 345, 356-357.

(2) In Criminal Case No. 7702-G, the Court finds accused-appellant Ireneo Jugueta **GUILTY** beyond reasonable doubt of four (4) counts of the crime of attempted murder defined and penalized under Article 248 in relation to Article 51 of the Revised Penal Code, attended by the aggravating circumstance of dwelling, and sentences him to suffer the indeterminate penalty of four (4) years, two (2) months and one (1) day of *prision correccional*, as minimum, to ten (10) years and one (1) day of *prision mayor*, as maximum, for each of the four (4) counts of attempted murder. He is **ORDERED** to **PAY** moral damages in the amount of ₱50,000.00, civil indemnity of ₱50,000.00 and exemplary damages of ₱50,000.00 to each of the four victims, namely, Norberto Divina, Maricel Divina, Elizabeth Divina and Judy Ann Divina.

(3) Accused-appellant Ireneo Jugueta is also **ORDERED** to **PAY** interest at the rate of six percent (6%) *per annum* from the time of finality of this decision until fully paid, to be imposed on the civil indemnity, moral damages, exemplary damages and temperate damages.

(4) Let the Office of the Prosecutor General, through the Department of Justice, be **FURNISHED** a copy of this Decision. The Prosecutor General is **DIRECTED** to immediately conduct a **REINVESTIGATION** on the possible criminal liability of Gilbert Estores and Roger San Miguel regarding this case. Likewise, let a copy of this Decision be furnished the Secretary of Justice for his information and guidance.

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Brion, Bersamin, del Castillo, Perez, Mendoza, Reyes, Leonen, and *Caguioa, JJ.,* concur.

Jardeleza, J., no part.

Perlas-Bernabe, J., on leave.

EN BANC

[G.R. No. 215548. April 5, 2016]

UNDERSECRETARY AUSTERE A. PANADERO AND REGIONAL DIRECTOR RENE K. BURDEOS, BOTH OF THE DEPARTMENT OF INTERIOR AND LOCAL GOVERNMENT (DILG), *petitioners, vs.* **COMMISSION ON ELECTIONS,** *respondent.*

[G.R. No. 215726. April 5, 2016]

UNDERSECRETARY AUSTERE A. PANADERO AND REGIONAL DIRECTOR RENE K. BURDEOS, BOTH OF THE DEPARTMENT OF INTERIOR AND LOCAL GOVERNMENT (DILG), *petitioners, vs.* **COMMISSION ON ELECTIONS AND MOHAMMAD EXCHAN GABRIEL LIMBONA,** *respondents.*

[G.R. No. 216158. April 5, 2016]

MANGONDAYA ASUM TAGO, *petitioner, vs.* **COMELEC AND MOHAMMAD EXCHAN GABRIEL LIMBONA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; CONTEMPT; A DISOBEDIENCE TO THE COURT BY ACTING IN OPPOSITION TO ITS AUTHORITY, JUSTICE AND DIGNITY; ELUCIDATED.— "The power to punish for contempt is inherent in all courts and is essential to the preservation of order in judicial proceedings and to the enforcement of judgments, orders, and mandates of the court, and consequently, to the due administration of justice." Contempt is defined as a disobedience to the court by acting in opposition to its authority, justice and dignity. It signifies not only a willful disregard or disobedience of the court's orders, but such conduct which tends to bring the authority of the court and the administration of law into disrepute or in some manner to impede

the due administration of justice. It is a conduct that tends to bring the authority and administration of the law into disrespect or to interfere with or prejudice parties-litigant or their witnesses during litigation. By jurisprudence, the power to punish for contempt, however, should be used sparingly with caution, restraint, judiciousness, deliberation, and due regard to the provisions of the law and the constitutional rights of the individual.

2. POLITICAL LAW; OMNIBUS ELECTION CODE; COMMISSION ON ELECTIONS (COMELEC); VESTED WITH POWER TO PUNISH FOR CONTEMPT UNDER ARTICLE VII, SECTION 52(e) THEREOF.— The COMELEC is vested with the power to punish for contempt. Article VII, Section 52(e) of the Omnibus Election Code expressly gives it the power to "[p]unish contempts provided for in the Rules of Court in the same procedure and with the same penalties provided therein. Any violation of any final and executory decision, order or ruling of the Commission shall constitute contempt thereof." The pertinent provision on indirect contempt in the Rules of Court referred to is Rule 71, Section 3, x x x substantially reproduced in Section 2, Rule 29 of the COMELEC Rules of Procedure defining indirect contempt. x x x Section 3, Rule 29 of the COMELEC Rules of Procedure prescribes the imposable penalties for indirect contempt committed against the COMELEC. x x x As defined by jurisprudence, indirect contempt is one committed out of or not in the presence of the court that tends to belittle, degrade, obstruct or embarrass the court and justice, as distinguished from direct contempt which is characterized by misbehavior committed in the presence of or so near a court or judge as to interrupt the proceedings before the same.

APPEARANCES OF COUNSEL

Khanini Gandamra for petitioner Mangondaya Asum Tago.
Edgar A. Masorong for respondent in G.R. No. 215726.

D E C I S I O N

REYES, *J.*:

Before the Court are consolidated petitions for *certiorari* docketed as G.R. No. 215548,[1] G.R. No. 215726[2] and G.R. No. 216158,[3] which assail the Resolutions dated November 17, 2014[4] and January 5, 2015[5] of the Commission on Elections (COMELEC) *en banc*, in EM. No. 14-005, citing Department of Interior and Local Government (DILG) Undersecretary Austere A. Panadero (Usec. Panadero), DILG Regional Director Rene K. Burdeos (RD Burdeos) and Mangondaya Asum Tago (Tago) (petitioners) in indirect contempt and providing penalties therefor, following the DILG's implementation of the Decision[6] dated September 30, 2009 of the Office of Ombudsman (Ombudsman) in OMB-L-A-08-0530-H, against Mohammad Exchan Gabriel Limbona (Limbona).

The Antecedents

In the Decision rendered by the Office of the Deputy Ombudsman for Luzon on September 30, 2009 and approved by then Ombudsman Ma. Merceditas N. Gutierrez on October 23, 2009,[7] Limbona was among the persons[8] found to be guilty of grave misconduct, oppression and conduct prejudicial to the best interest of the service, which he committed while he was still the Chairman of Barangay Kalanganan Lower, Pantar, Lanao del Norte, and in relation to the killing of Hadji Abdul Rasid Onos, the former Municipal Vice Mayor of Pantar. Limbona

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[1] *Rollo* (G.R. No. 215548), pp. 3-43.

[2] *Rollo* (G.R. No. 215726), pp. 3-37.

[3] *Rollo* (G.R. No. 216158), pp. 3-20A.

[4] *Rollo* (G.R. No. 215548), pp. 47-55.

[5] *Rollo* (G.R. No. 215726), pp. 39-42.

[6] *Rollo* (G.R. No. 215548), pp. 92-132.

[7] *Id.* at 7.

[8] Along with Mayor Norlainie Mitmug Limbona and Mapunud Buisan Gabriel.

was meted the penalty of dismissal from public service, with the accessory penalties of cancellation of eligibility, forfeiture of retirement benefits and perpetual disqualification from re-employment in the government service. In the dispositive portion of the decision, the DILG Secretary was directed to immediately implement the ruling against Limbona, pursuant to Section 7, Rule III of Administrative Order No. 17 (Ombudsman Rules of Procedure) in relation to Memorandum Circular No. 1, series of 2006. Limbona moved for reconsideration, but this was denied by the Ombudsman in a Joint Order[9] dated March 22, 2010.

On November 15, 2013, the Ombudsman issued an Order[10] forwarding to the DILG Secretary a copy of its Decision against Limbona for implementation, as it had become final and executory in 2011. The order indicated that Limbona had been elected as Municipal Mayor of Pantar. Acting on the order, Usec. Panadero issued, on April 3, 2014, a Memorandum[11] directing RD Burdeos, as the RD of the DILG Region X Office, to cause the immediate implementation of the Ombudsman decision insofar as Limbona was concerned.

On April 21, 2014, however, RD Burdeos reported that he received from Limbona's counsel a copy of the Resolution[12] dated June 6, 2013 issued by the COMELEC First Division, dismissing the petition for disqualification filed against Limbona. The petition, entitled *Malik T. Alingan v. Mohammad Limbona*, docketed as SPA No. 13-252 (DC), questioned Limbona's eligibility to run for public office in the 2013 elections after the Ombudsman found him guilty in 2009 in OMB-L-A-08-0530-H. In the COMELEC resolution, Limbona was declared to still be qualified to run for public office, citing the case of *Aguinaldo v. Santos*[13] (*Aguinaldo* doctrine), holding that "a public official cannot be removed for administrative misconduct

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[9] *Rollo* (G.R. No. 215548), pp. 133-142.

[10] *Id.* at 143-145.

[11] *Id.* at 146-148.

[12] *Id.* at 149-152.

[13] G.R. No. 94115, August 21, 1992, 212 SCRA 768.

committed during a prior term, since his re-election to office operates as a condonation of the officer's previous misconduct to the extent of cutting off the right to remove him therefor."[14] Thus, the resolution reads in part:

> In other words, misconduct committed by [Limbona] in 2008 have been condoned by the people of Pantar, Lanao del Norte[,] when they elected him as their Mayor in 2010. Hence, such fact cannot serve as ground for his disqualification for purposes of the 2013 elections.
>
> **WHEREFORE**, premises considered, the instant Petition is hereby **DISMISSED**. [Limbona] is **QUALIFIED** to run for Municipal Mayor of Pantar, Lanao del Norte.
>
> **SO ORDERED**.[15]

On April 30, 2014, Usec. Panadero then sought clarification from Ombudsman Conchita Carpio-Morales on the applicability of the *Aguinaldo* doctrine in Limbona's case in light of the COMELEC First Division's resolution.[16] Pending receipt of the Ombudsman's reply, Usec. Panadero also issued on even date a Memorandum,[17] addressed to RD Burdeos, directing him to proceed with the implementation of the Ombudsman's decision. He explained that:

> Pending such clarification, you are hereby directed to proceed with the implementation of the Ombudsman Decision and Joint Order dated 30 September 2009 and 22 March 2010, respectively, pursuant to Ombudsman Memorandum Circular No. 01, series of 2006 in relation to the case of Office of the *Ombudsman vs. De Chavez, et al.* that the decision of the Ombudsman is immediately executory pending appeal and may not be stayed by the filing of an appeal or the issuance of an injunctive writ.
>
> For compliance.[18] (Citation omitted)

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[14] *Id.* at 773.

[15] *Rollo* (G.R. No. 215548), p. 152.

[16] *Id.* at 156-159.

[17] *Id.* at 160.

[18] *Id.*

Limbona, on the other hand, sought the Office of the President's (OP) revocation and/or recall of the DILG Memoranda dated April 3, 2014 and April 30, 2014, relative to the implementation of the Ombudsman's decision against him.[19]

On May 5, 2014, the DILG served the dismissal order of Limbona, which led to his removal from office and the assumption to the mayoralty of then Vice Mayor Tago.[20] Displeased by the DILG's actions, Limbona filed with the COMELEC a petition[21] to cite the petitioners for indirect contempt. In his petition, he also sought the COMELEC's issuance of an injunctive writ that would enjoin the performance of any act that would directly or indirectly contravene the tenor and substance of the COMELEC First Division's resolution.

Meanwhile, Usec. Panadero followed up from the Ombudsman its reply to the clarification sought by the DILG on Limbona's case.[22] The DILG later received from the Ombudsman an Indorsement[23] dated June 23, 2014 still referring to the DILG the said Ombudsman decision "for implementation, with the information that [therein] respondents' petitions filed with the [CA] and Supreme Court had all been dismissed."[24]

In their Comment[25] on the petition for indirect contempt, Usec. Panadero and RD Burdeos contended, among other arguments, that: *first*, the petition was premature because the COMELEC First Division's resolution was not yet final, as it remained pending with the COMELEC *en banc*; *second*, the COMELEC had no jurisdiction over the petitioners and the decision of the Ombudsman; and *third*, the petitioners were

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[19] *Id.* at 212-225.

[20] *Id.* at 161-162.

[21] *Id.* at 169-181.

[22] *Id.* at 168.

[23] *Id.* at 182.

[24] *Id.*

[25] *Id.* at 183-211.

not in bad faith but were merely implementing a final and executory decision of the Ombudsman.

In the meantime, the motion for reconsideration filed by Malik Alingan against the COMELEC First Division's Resolution dated June 6, 2013 was later resolved by the COMELEC *en banc*. On August 8, 2014, the DILG received a copy of the COMELEC *en banc's* Resolution[26] dated July 8, 2014, which affirmed with modification its division's Resolution. The COMELEC *en banc* disagreed with the First Division's application of the *Aguinaldo* doctrine. It said that the doctrine on condonation could not apply in Limbona's case because he was elected as Mayor for the term 2010-2013, which was different from his position as Barangay Chairman in 2007-2010 when his administrative case was filed. The COMELEC *en banc*, nonetheless, declared that Limbona was qualified to run for public office because he was not removed from his post as Barangay Chairman, and was able to finish his term prior to the finality of the Ombudsman's decision. Section 40 (b) of the Local Government Code (LGC) disqualifies from running for any elective local position "those removed from office as a result of an administrative case."[27]

On August 5, 2014, the COMELEC issued a Certificate of Finality [28] covering COMELEC Resolutions dated June 6, 2013 and July 8, 2014. These COMELEC resolutions were assailed in a petition docketed as G.R. No. 213291, which was dismissed *via* this Court's Resolutions dated March 24, 2015[29] and June 16, 2015.[30] Meanwhile, Limbona's petition with the OP for the revocation and/or recall of the DILG's Memoranda dated April 3, 2014 and April 30, 2014 was dismissed in a Decision[31] dated December 5, 2014.

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[26] *Id.* at 80-89.

[27] *Id.* at 86-88.

[28] *Id.* at 77-79.

[29] *Id.* at 492.

[30] *Id.* at 493.

[31] *Id.* at 261-265.

Ruling of the COMELEC

On November 17, 2014, the COMELEC *en banc* issued its Resolution[32] citing the petitioners in indirect contempt. It explained:

> The violation of the final and executory resolution of the Comelec constitutes contempt. The [COMELEC] already ruled that the Ombudsman Decision cannot be the cause of the disqualification or ouster of [Limbona]. The [petitioners] completely disregarded the ruling despite their knowledge and receipt of the Entry of Judgment thereof. The fact that the DILG is not a party to the case cannot be used to circumvent the Resolution of [COMELEC]. They themselves admit of the receipt of the same. It behooves the [COMELEC] the motivation of the [petitioners] to blatantly disobey the Resolutions of [COMELEC].
>
> All told, the [COMELEC] finds the [petitioners] [to have] disobeyed the legal order/resolution of [COMELEC].[33]

No penalty for the contempt was provided in the aforequoted COMELEC resolution, the dispositive portion of which reads:

> **WHEREFORE**, premises considered, petition is hereby **GRANTED**. The [COMELEC] (*En Banc*) hereby **RESOLVES** to **CITE [THE PETITIONERS] in CONTEMPT.**
>
> **SO ORDERED**.[34]

Among the petitioners, only Tago filed a motion for reconsideration before the COMELEC *en banc*, assailing the abovequoted resolution.

The Present Petitions

G.R. No. 215548

The foregoing prompted the filing on December 17, 2014 by Usec. Panadero and RD Burdeos, through the Office of the

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[32] *Id.* at 47-55.

[33] *Id.* at 54.

[34] *Id.*

Solicitor General (OSG), the Petition for *Certiorari* (under Rule 64 of the Rules of Court)[35] docketed as G.R. No. 215548, contending that: (1) the COMELEC had no jurisdiction over the acts of the Ombudsman; (2) there was no basis to hold the parties in contempt; and (3) the *Aguinaldo* doctrine does not apply to the case of Limbona. They, thus, asked the Court to set aside the COMELEC resolution citing them in contempt.

G.R. No. 215726

On January 5, 2015, after the petition in G.R. No. 215548 had been filed, the COMELEC *en banc* issued a Resolution[36] resolving Tago's motion for reconsideration of the COMELEC *en banc's* Resolution dated November 17, 2014. The COMELEC *en banc* denied Tago's motion, imposed penalties upon the petitioners for indirect contempt, and ordered their arrest. The dispositive portion of the new resolution reads:

> **WHEREFORE**, premises considered, the instant Motion for Reconsideration is DENIED. The Resolution of [COMELEC] dated November 17, 2014 is AFFIRMED *in toto*.
>
> Accordingly, a fine of One thousand pesos (Php1,000.00) and a penalty of imprisonment for six (6) months is imposed against [the petitioners].
>
> Let a warrant of arrest be issued against [the petitioners].
>
> **SO ORDERED.**[37]

Aggrieved, Usec. Panadero and RD Burdeos filed with the Court another Petition for *Certiorari* With a Very Urgent Application for a Writ of Preliminary Injunction and/or Temporary Restraining Order[38] (TRO) docketed as G.R. No. 215726, which sought to set aside the COMELEC *en banc's* Resolutions dated November 17, 2014 and January 5, 2015.

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

[36] *Rollo* (G.R. No. 215726), pp. 39-42.

[37] *Id.* at 42.

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

They argued that the COMELEC cannot *motu proprio* amend its decision by imposing upon them the penalties of fine and imprisonment. They further reiterated their argument that the COMELEC did not have jurisdiction over the petitioners and the acts of the Ombudsman.

Acting on the application for a TRO against the issuance of warrants of arrest pending determination of the merits of the petition, the Court issued, on January 8, 2015, a TRO to enjoin the COMELEC, its agents, representatives, or persons acting in its place and stead, from implementing the COMELEC Resolution dated January 5, 2015 effective immediately until further orders from the Court.[39]

G.R. No. 216158

On February 5, 2015, Tago filed his own Petition for *Certiorari* with Motion to Adopt,[40] docketed as G.R. No. 216158, against the COMELEC and Limbona. Tago argued, among several grounds, that the petitioners did not commit acts constituting indirect contempt as defined by law. His assumption to office, in particular, was supported by legal bases given the issuances of the Ombudsman and the DILG, in light of pertinent provisions on succession under the LGC. Tago further adopted the petition filed by the OSG for Usec. Panadero and RD Burdeos.

The Issue

The core issue for the Court's resolution is whether the COMELEC committed grave abuse of discretion amounting to lack or excess of jurisdiction in finding the petitioners in contempt of court and imposing the penalties of fine and imprisonment.

Ruling of the Court

At the outset, the Court emphasizes that its determination in the pending petitions shall be limited to the COMELEC resolutions on the finding of indirect contempt and the penalties imposed therefor, being the issuances assailed *via* the three

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[39] *Id.* at 322-324.

[40] *Rollo* (G.R. No. 216158), pp. 3-20A.

consolidated petitions. While the Ombudsman's ruling in OMB-L-A-08-0530-H and the COMELEC's disposition in SPA No. 13-252 (DC) are related to the finding of contempt, the subject matters thereof were covered by separate petitions before the Court,[41] and are beyond the cover of the Court's present review.

The Court grants the petitions.

Power of contempt

"The power to punish for contempt is inherent in all courts and is essential to the preservation of order in judicial proceedings and to the enforcement of judgments, orders, and mandates of the court, and consequently, to the due administration of justice."[42] Contempt is defined as a disobedience to the court by acting in opposition to its authority, justice and dignity. It signifies not only a willful disregard or disobedience of the court's orders, but such conduct which tends to bring the authority of the court and the administration of law into disrepute or in some manner to impede the due administration of justice. It is a conduct that tends to bring the authority and administration of the law into disrespect or to interfere with or prejudice parties-litigant or their witnesses during litigation.[43] By jurisprudence, the power to punish for contempt, however, should be used sparingly with caution, restraint, judiciousness, deliberation, and due regard to the provisions of the law and the constitutional rights of the individual.[44]

The COMELEC is similarly vested with the power to punish for contempt. Article VII, Section 52 (e) of The Omnibus Election Code expressly gives it the power to "[p]unish contempts provided for in the Rules of Court in the same procedure and with the same penalties provided therein. Any violation of any

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[41] *Rollo* (G.R. No. 215548), pp. 144, 492-495.

[42] *Bank of the Philippine Islands v. Labor Arbiter Calanza, et al.*, 647 Phil. 507, 514 (2010).

[43] *Roxas, et al. v. Judge Tipon, et al.*, 688 Phil. 372, 382 (2012).

[44] *Office of the Court Administrator v. Judge Lerma*, 647 Phil. 216, 243 (2010).

final and executory decision, order or ruling of the Commission shall constitute contempt thereof." The pertinent provision on indirect contempt in the Rules of Court referred to is Rule 71, Section 3, which provides:

Sec. 3. *Indirect contempt to be punished after charge or hearing.* — After a charge in writing has been filed, and an opportunity given to the respondent to comment thereon within such period as may be fixed by the court and to be heard by himself or counsel, a person guilty of any of the following acts may be punished for indirect contempt:

(a) Misbehavior of an officer of a court in the performance of his official duties or in his official transactions;

(b) Disobedience of or resistance to a lawful writ, process, order or judgment of a court, including the act of a person who, after being dispossessed or ejected from any real property by the judgment or process of any court of competent jurisdiction, enters or attempts or induces another to enter into or upon such real property, for the purpose of executing acts of ownership or possession, or in any manner disturbs the possession given to the person adjudged to be entitled thereto;

(c) Any abuse of or any unlawful interference with the processes or proceedings of a court not constituting direct contempt under Section 1 of this Rule;

(d) Any improper conduct tending, directly or indirectly, to impede, obstruct, or degrade the administration of justice;

(e) Assuming to be an attorney or an officer of a court, and acting as such without authority;

(f) Failure to obey a subpoena duly served; and

(g) The rescue, or attempted rescue, of a person or property in the custody of an officer by virtue of an order or process of a court held by him.

But nothing in this section shall be so construed as to prevent the court from issuing process to bring the respondent into court, or from holding him in custody pending such proceedings.

The foregoing provision is substantially reproduced in Section 2, Rule 29 of the COMELEC Rules of Procedure defining indirect contempt which reads:

Sec. 2. *Indirect Contempt.* — After charge in writing has been filed with the Commission or Division, as the case may be, and an opportunity given to the respondent to be heard by himself or counsel, a person guilty of the following acts may be punished for indirect contempt:

a. Misbehavior of the responsible officer of the Commission in the performance of his official duties or in his official transactions;

b. Disobedience of or resistance to a lawful writ, process, order, judgment or command of the Commission or any of its Divisions, or injunction or restraining order granted by it;

c. Any abuse of or any unlawful interference with the process or proceedings of the Commission or any of its Divisions not constituting direct contempt under Section 1 of this Rules;

d. Any improper conduct tending, directly or indirectly, to impede, obstruct, or degrade the administration of justice by the Commission or any of its Divisions;

e. Assuming to be an attorney and acting as such without authority; and

f. Failure to obey a subpoena duly served.

Section 3, Rule 29 of the COMELEC Rules of Procedure prescribes the imposable penalties for indirect contempt committed against the COMELEC, to wit:

Sec. 3. *Penalty for Indirect Contempt.* — If adjudged guilt, the accused may be punished by a fine not exceeding one thousand (₱1,000.00) pesos or imprisonment for not more than six (6) months, or both, at the discretion of the Commission or Division.

The petitioners were charged, cited and punished for a supposed indirect contempt committed against the COMELEC. As defined by jurisprudence, indirect contempt is one committed out of or not in the presence of the court that tends to belittle, degrade, obstruct or embarrass the court and justice, as distinguished from direct contempt which is characterized by

misbehavior committed in the presence of or so near a court or judge as to interrupt the proceedings before the same.[45]

For the COMELEC *en banc*, the petitioners' contemptuous act pertained to their alleged "violation of the final and executory resolution of the [COMELEC]."[46] Usec. Panadero and RD Burdeos, in particular, dismissed Limbona from his post as Municipal Mayor of Pantar on the basis of the Ombudsman's decision finding him guilty in an administrative case. As the COMELEC already ruled that the Ombudsman's decision failed to disqualify Limbona from the mayoralty post, the dismissal of the latter and Tago's resulting assumption to office were blatant disobedience of a legal order or resolution of the COMELEC. The contempt was then premised on Section 2 (b) of Rule 29 of the COMELEC Rules of Procedure, *i.e.*, disobedience of or resistance to a lawful writ, process, order, judgment or command of the Commission or any of its Divisions, or injunction or restraining order granted by it.

The petitioners are not guilty of indirect contempt

Upon review, the Court finds that the actions of the petitioners do not constitute indirect contempt.

In serving the dismissal order of Limbona and allowing Tago to assume the vacated mayoralty post, the petitioners could not be said to have disobeyed the resolutions of the COMELEC in the disqualification case, much less did so, in a manner that was characterized with contempt against the COMELEC. Contrary to the COMELEC's stance, the COMELEC's Resolution in SPA No. 13-252 (DC) and the Ombudsman's Decision in OMB-L-A-08-0530-H involved two distinct issues, such that the implementation of one agency's ruling would not necessarily result in a violation of the other.

To be specific, SPA No. 13-252 (DC) was instituted to question the qualification of Limbona as a candidate for the 2013 elections,

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[45] *Commissioner Rodriguez v. Judge Bonifacio*, 398 Phil. 441, 466-467 (2000).

[46] *Rollo* (G.R. No. 215548), p. 54.

an issue that was well within the jurisdiction of the COMELEC. In order to properly resolve such issue, and given the arguments that were raised to seek his disqualification, the COMELEC was called upon to refer to Section 40 of the LGC, which reads:

Sec. 40. *Disqualifications*. — The following persons are disqualified from running from any elective local position:

(a) Those sentenced by final judgment for an offense involving moral turpitude or for an offense punishable by one (1) year or more of imprisonment, within two (2) years after serving sentence;

(b) Those removed from office as a result of an administrative case;

(c) Those convicted by final judgment for violating the oath of allegiance to the Republic;

(d) Those with dual citizenship;

(e) Fugitives from justice in criminal or nonpolitical cases here or abroad;

(f) Permanent residents in a foreign country or those who have acquired the right to reside abroad and continue to avail of the same right after the effectivity of this Code; and

(g) The insane or feeble-minded. (Emphasis ours)

Notwithstanding Section 40 (b) of the LGC, the COMELEC decided in favor of Limbona's qualification only for the reason that he was not removed from office prior to 2013, but was able to complete his term despite the Ombudsman case that was filed against him. The Court underscores the fact that the COMELEC's decision to allow Limbona's candidacy was not a disregard of the Ombudsman's Decision in OMB-L-A-08-0530-H. There was instead a clear recognition of the fact of conviction in the administrative case, except that no removal as required by law had transpired during Limbona's prior tenure as public official. Even as it declared Limbona qualified to run for the 2013 elections, the COMELEC could not have set aside the consequences attached to the Ombudsman's finding of guilt. Moreso, the Ombudsman's decision against Limbona was neither nullified nor set aside by the ruling of the COMELEC.

The actions of the DILG, in turn, were mere implementation of the Ombudsman's decision, as records indicated the failure to previously effect the consequences attached to the finding of guilt. By acting on the Ombudsman's order to implement its decision, the DILG neither argued nor declared Limbona to be disqualified from the mayoralty. That Limbona was qualified to run for the 2013 elections, however, did not mean that he could no longer be dismissed from the service as a result of his administrative case. The DILG could still implement the Ombudsman's decision, as it did so, with the service of the dismissal order upon Limbona, without disobeying the COMELEC. The Ombudsman's decision even carried sanctions other than dismissal from the public service, such as the accessory penalties of cancellation of eligibility, forfeiture of retirement benefits and perpetual disqualification from re-employment in the government service. While the administrative case was pertinent to the disqualification issue, these penalties could not have been rendered ineffective simply by the COMELEC's decision in the disqualification case.

As COMELEC Commissioner Christian Robert S. Lim correctly supplied in his Dissenting Opinion[47] from the majority's decision to cite the petitioners in contempt, he explained that:

> The ponencia failed to establish the metes and bounds of how the assailed act constituted disobedience and defiance of the *Decision* in **SPA No. 13-252 (DC).** x x x **If it be asked what lawful writ, process, order, judgment or command of the Commission was disobeyed or resisted by the [petitioners], the answer is none whatever.** A finding of contempt cannot be presumed by a mere inference from surrounding circumstances. The disqualification in **SPA Case No. 13-252 (DC)** and the removal of [Limbona] as contained in the dismissal order of the DILG, although intimately related, are two different subject matters which are independent of each other. The purpose of a disqualification case is to prevent a candidate from running, if elected, from serving, or to prosecute him or her for violation of the election laws. In **SPA Case No. 13-252 (DC),** [Limbona] was sought to be disqualified on account of the *Ombudsman Decision* which found merit in the complaint for grave misconduct and sentenced

[47] *Id.* at 56-65.

him with the penalty of dismissal from service with the accessory penalties x x x. The issue boils down to whether [Limbona] was removed from office as a result of an administrative case, thus, rendering him disqualified from running for any elective local position. On the other hand, the purpose of an execution or implementation of a judgment is to put the final judgment of the court into effect. In the case of **OMB-L-A-08-0530-H**, the issue boils down to how the DILG will implement the penalty of dismissal from service with the accessory penalties of cancellation of eligibility, forfeiture of retirement benefits and perpetual disqualification for reemployment in the government service. x x x.[48]

In *Rivulet Agro-Industrial Corporation v. Paruñgao, et al.*,[49] the Court emphasized:

To be considered contemptuous, an act must be clearly contrary to or prohibited by the order of the court. Thus, a person cannot be punished for contempt for disobedience of an order of the Court, unless the act which is forbidden or required to be done is clearly and exactly defined, so that there can be no reasonable doubt or uncertainty as to what specific act or thing is forbidden or required.[50] (Citation omitted)

In any case, even granting that the issuances of the COMELEC should have barred the DILG from the service of the dismissal order, the petitioners could not be considered guilty of contempt. By jurisprudence, intent and good faith may be crucial in contempt cases. As the Court held in *Saint Louis University, Inc. v. Olairez*:[51]

In contempt, the intent goes to the gravamen of the offense. Thus, the good faith or lack of it, of the alleged contemnor is considered. Where the act complained of is ambiguous or does not clearly show on its face that it is contempt, and is one which, if the party is acting in good faith, is within his rights, the presence or absence of a contumacious intent is, in some instances, held to be determinative

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[48] *Id.* at 63-64.

[49] 701 Phil. 444 (2013).

[50] *Id.* at 452.

[51] G.R. No. 162299, March 26, 2014, 720 SCRA 74.

of its character. x x x To constitute contempt, the act must be done willfully and for an illegitimate or improper purpose.[52] (Citations omitted)

Contrary to the COMELEC's finding, the DILG did not blatantly disregard the resolutions of the COMELEC. Records indicate that it did not simply ignore the COMELEC issuances, notwithstanding the fact that it only obtained notice thereof through Limbona's counsel and not directly from the COMELEC. Considering that the implementation of the order to dismiss Limbona was upon the instance of the Ombudsman, the DILG still took recourse by seeking clarification from the Ombudsman, which nonetheless later reiterated the instruction to implement the decision in the administrative case. These circumstances show good faith on the part of the petitioners, and negate a supposed intent to plainly disobey the COMELEC.

It was thus erroneous for the COMELEC to punish the DILG officials for contempt, for the acts that they performed upon the Ombudsman's directive, especially since the order upon them in the dispositive portion of the Ombudsman's decision was patent that:

> **The Honorable Secretary, [DILG]** with respect to respondents Mayor Norlainie Mitmug Limbona (a.k.a. Lai) and [Limbona], x x x are hereby **directed to implement this DECISION immediately upon receipt thereof** pursuant to Section 7, Rule III of [Ombudsman Rules of Procedure] in relation to Memorandum Circular No. 1, Series of 2006 dated 11 April 2006 and to promptly inform this Office of the action taken hereon.[53] (Emphasis ours)

The DILG officials' disobedience to the said order would have similarly resulted in the imposition of penalties upon them by the Ombudsman. They were bound by prevailing rules affecting the implementation of the agency's decisions, particularly Section 7, Rule III of the Ombudsman Rules of Procedure, which provides sanctions for non-compliance, to wit:

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[52] *Id.* at 91-92.

[53] *Rollo* (G.R. No. 215548), pp. 129-130.

Sec. 7. *Finality and execution of decision.* — x x x.

x x x x x x x x x

A decision of the Office of the Ombudsman in administrative cases shall be executed as a matter of course. The Office of the Ombudsman shall ensure that the decision shall be strictly enforced and properly implemented. **The refusal or failure by any officer without just cause to comply with an order of the Office of the Ombudsman to remove, suspend, demote, fine, or censure shall be a ground for disciplinary action against said officer**. (Emphasis ours)

Lastly, with the DILG being merely tasked to implement the Ombudsman's order, Limbona's recourse to nullify the actions of the DILG officials or the instructions of the Ombudsman to pursue the implementation of its decision, towards the end of keeping his post as Municipal Mayor of Pantar, could not be allowed through a petition for contempt. He had, in fact, filed with the OP a petition to revoke and/or recall Usec. Panadero's memoranda that ordered the implementation of the Ombudsman's decision, but this was still dismissed by the OP on the ground that the petitioners were justified in their implementation of the Ombudsman's decision. The OP said that to revoke Usec. Panadero's memoranda would be to encroach upon the disciplining authority of the Ombudsman.[54]

The foregoing circumstances, taken collectively, lead the Court to rule that the petitioners were not guilty of indirect contempt. The COMELEC committed grave abuse of discretion amounting to lack or excess of jurisdiction in issuing the Resolutions dated November 17, 2014 and January 5, 2015. There is grave abuse of discretion when a court or quasi-judicial body acts in a capricious, whimsical, arbitrary or despotic manner in the exercise of its judgment, as when the assailed order is bereft of any factual and legal justification.[55]

WHEREFORE, the petitions are **GRANTED.** The Resolutions dated November 17, 2014 and January 5, 2015 of the Commission

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[54] *Id.* at 265.

[55] *Aquino v. Ng*, 555 Phil. 253, 258 (2007).

on Elections *en banc* in EM. No. 14-005 are **ANNULLED** and **SET ASIDE.**

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Brion, Peralta, Bersamin, del Castillo, Perez, Mendoza, Leonen, Jardeleza, and *Caguioa, JJ.*, concur.

Perlas-Bernabe, J., on official leave.

EN BANC

[G.R. No. 216607. April 5, 2016]

ARLENE LLENA EMPAYNADO CHUA, *petitioner, vs.* **COMMISSION ON ELECTIONS, IMELDA E. FRAGATA, and KRYSTLE MARIE C. BACANI,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ELECTION LAWS; OMNIBUS ELECTION CODE; CERTIFICATE OF CANDIDACY; THE COMELEC MAY CANCEL A CERTIFICATE OF CANDIDACY THROUGH A VERIFIED PETITION FILED EXCLUSIVELY ON THE GROUND OF FALSE MATERIAL REPRESENTATION CONTAINED THEREIN.— A person files a certificate of candidacy to announce his or her candidacy and to declare his or her eligibility for the elective office indicated in the certificate. Section 74 of the Omnibus Election Code [states] the contents of a certificate of candidacy x x x The Commission on Elections has the ministerial duty to receive and acknowledge receipt of certificates of candidacy. However, under Section 78 of the Omnibus Election Code, the Commission may deny due course or cancel a certificate of candidacy through a verified petition filed *exclusively* on the ground that "any

material representation contained therein as required under Section 74 hereof is false." The "material representation" referred to in Section 78 is that which involves the eligibility or qualification for the office sought by the person who filed the certificate. Section 78 must, therefore, be read "in relation to the constitutional and statutory provisions on qualifications or eligibility for public office." Moreover, the false representation "must consist of a deliberate attempt to mislead, misinform, or hide a fact which would otherwise render a candidate ineligible." A person intending to run for public office must not only possess the required qualifications for the position for which he or she intends to run. The candidate must also possess none of the grounds for disqualification under the law.

2. ID.; ID.; DISQUALIFICATION; GROUNDS; PERMANENT RESIDENT OF A FOREIGN COUNTRY; TO DISQUALIFY A CANDIDATE RUNNING FOR LOCAL ELECTIVE POSITION, PETITIONER MAY CHOOSE WHETHER TO FILE A PETITION TO CANCEL CERTIFICATE OF CANDIDACY OR TO FILE A PETITION FOR DISQUALIFICATION.— Section 68 of the Omnibus Election Code provides for grounds in filing a petition for disqualification. x x x Apart from the grounds provided in Section 68, any of the grounds in Section 12 of the Omnibus Election Code as well as in Section 40 of the Local Government Code may likewise be raised in a petition for disqualification. x x x Disqualifications specifically applicable to those running for local elective positions are found in Section 40 of the Local Government Code. x x x [Here,] [p]rivate respondent Fragata alleges in her Petition that petitioner is a permanent resident in the United States, a green card holder who, prior to the filing of her Certificate of Candidacy for Councilor, has resided in the State of Georgia for 33 years. She anchors her Petition on Section 40 of the Local Government Code, which disqualifies permanent residents of a foreign country from running for any elective local position. It is true that under Section 74 of the Omnibus Election Code, persons who file their certificates of candidacy declare that they are not a permanent resident or immigrant to a foreign country. Therefore, a petition to deny due course or cancel a certificate of candidacy may likewise be filed against a permanent resident of a foreign country seeking an elective post in the Philippines on the ground of material misrepresentation in the certificate of candidacy. What remedy to avail himself

or herself of, however, depends on the petitioner. If the false material representation in the certificate of candidacy relates to a ground for disqualification, the petitioner may choose whether to file a petition to deny due course or cancel a certificate of candidacy or a petition for disqualification, so long as the petition filed complies with the requirements under the law.

3. ID.; ID.; ID.; PETITION FOR DISQUALIFICATION FILED ON THE DAY OF PROCLAMATION IS TIMELY.— [Private respondent] asserted that petitioner was a permanent resident disqualified to run for Councilor under Section 40 of the Local Government Code. [The petition] therefore, was a petition for disqualification. Under Rule 25, Section 3 of the Rules of Procedure of the Commission, a petition for disqualification "shall be filed any day after the last day for filing of certificates of candidacy, but not later that the date of proclamation." Private respondent Fragata filed her Petition on the date of petitioner's proclamation on May 15, 2013. The Commission on Elections did not gravely abuse its discretion in taking cognizance of private respondent Fragata's Petition.

4. ID.; ID.; COMELEC RULES OF PROCEDURE; WHEN PROPER AND WHO MAY BE PERMITTED TO INTERVENE; THOSE WHO BELIEVE THAT THEY ARE ENTITLED TO THE POSITION MAY PROVE THEIR LEGAL INTEREST IN THE MATTER OF LITIGATION AND MAY PROPERLY INTERVENE FOR A COMPLETION OF THE CASE.— [T]he Commission on Elections correctly admitted private respondent Bacani's pleading-in-intervention. An adverse decision against petitioner would require a pronouncement as to who should assume the position of Councilor. Hence, those who believe that they are entitled to the position may prove their legal interest in the matter in litigation and may properly intervene for a complete disposition of the case. Private respondent Bacani claims that she is entitled to the position of Councilor. In her Motion to Intervene, she argues for petitioner's disqualification and alleges the circumstances surrounding petitioner's dual citizenship. She then cites *Maquiling*, arguing that she should be proclaimed in lieu of petitioner because she obtained the sixth highest number of votes among the qualified candidates. Private respondent Bacani's intervention was, therefore, proper.

5. ID.; LOCAL GOVERNMENT CODE; DISQUALIFICATION FROM RUNNING FOR ANY ELECTIVE LOCAL POSITION; DUAL CITIZENSHIP AT THE TIME OF FILING OF CERTIFICATE OF CANDIDACY; PRESENT AS THERE WAS FAILURE TO EXECUTE SWORN AND PERSONAL RENUNCIATION OF FOREIGN CITIZENSHIP WHICH WAS PARTICULARLY REQUIRED OF THOSE SEEKING ELECTIVE PUBLIC OFFICE.— Petitioner was born to Filipino parents in 1967, which makes her a natural-born Filipino under the 1935 Constitution. Ten years later, on December 7, 1977, petitioner became a naturalized American. Hence, she lost her Filipino citizenship pursuant to Section 1 of Commonwealth Act No. 63. It was on September 21, 2011 when petitioner took an Oath of Allegiance to the Republic of the Philippines, thus reacquiring her Filipino citizenship. From September 21, 2011 up to the present, however, petitioner failed to execute a sworn and personal renunciation of her foreign citizenship particularly required of those seeking elective public office. x x x Petitioner cannot claim that she has renounced her American citizenship by taking the Oath of Allegiance. The oath of allegiance and the sworn and personal renunciation of foreign citizenship are separate requirements, the latter being an *additional* requirement for qualification to run for public office. x x x With petitioner's failure to execute a personal and sworn renunciation of her American citizenship, petitioner was a dual citizen at the time she filed her Certificate of Candidacy on October 3, 2012. Under Section 40 of the Local Government Code, she was disqualified to run for Councilor in the Fourth District of Manila during the 2013 National and Local Elections.

6. ID.; ID.; PERMAMENT VACANCIES IN THE SANGGUNIAN (SECTION 45); RULE OF SUCCESSION UNDER SECTION 45 WOULD NOT APPLY IF THE PERMANENT VACANCY WAS CAUSED BY ONE WHOSE CERTIFICATE OF CANDIDACY WAS VOID *AB INITIO*.— The permanent vacancies referred to in Section 45 are those arising "when an elective local official fills a higher vacant office, refuses to assume office, fails to qualify, dies, is removed from office, voluntarily resigns, or is otherwise permanently incapacitated to discharge the functions of his office." In these situations, the vacancies were caused by those whose certificates of candidacy were valid at the time of the filing "but subsequently had to be cancelled because of a violation of law that took place, or a legal impediment

that took effect, after the filing of the certificate of candidacy." The rule on succession under Section 45, however, would not apply if the permanent vacancy was caused by one whose certificate of candidacy was void ab initio. Specifically with respect to dual citizens, their certificates of candidacy are void *ab initio* because they possess "a substantive [disqualifying circumstance] . . . [existing] prior to the filing of their certificate of candidacy." Legally, they should not even be considered candidates. The votes casted for them should be considered stray and should not be counted. In cases of vacancies caused by those with void ab initio certificates of candidacy, the person legally entitled to the vacant position would be the candidate who garnered the next highest number of votes among those eligible.

APPEARANCES OF COUNSEL

Julie Ann V. Chang for petitioner.
The Solicitor General for public respondent.
Nicdao Law Office for private respondents.

D E C I S I O N

LEONEN, *J.*:

Dual citizens are disqualified from running for any elective local position. They cannot successfully run and assume office because their ineligibility is inherent in them, existing prior to the filing of their certificates of candidacy. Their certificates of candidacy are void *ab initio*, and votes cast for them will be disregarded. Consequently, whoever garners the next highest number of votes among the eligible candidates is the person legally entitled to the position.

This resolves a Petition for Certiorari and Prohibition[1] assailing the Commission on Elections Resolutions dated October 17, 2013[2]

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[1] *Rollo*, pp. 3-19.

[2] *Id.* at 32-52. The Resolution was signed by Presiding Commissioner Elias R. Yusoph and Commissioners Maria Gracia Cielo M. Padaca and Luie Tito F. Guia of the Second Division.

and January 30, 2015.[3] The Commission on Elections annulled the "proclamation of . . . Arlene Llena Empaynado Chua as Councilor for the Fourth District of Manila[,]"[4] and directed the Board of Canvassers to reconvene and proclaim Krystle Marie C. Bacani (Bacani) as Councilor for having garnered the next highest number of votes.[5]

On October 3, 2012, Arlene Llena Empaynado Chua (Chua) filed her Certificate of Candidacy[6] for Councilor for the Fourth District of Manila during the May 13, 2013 National and Local Elections. The Fourth District of Manila is entitled to six (6) seats in the Sangguniang Panlungsod.[7]

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[3] *Id.* at 22-31. The Resolution was signed by Chairman Sixto S. Brillantes, Jr. and Commissioners Lucenito N. Tagle, Elias R. Yusoph, Christian Robert S. Lim, Al A. Parreño, Luie Tito F. Guia, and Arthur D. Lim of the COMELEC *En Banc*.

[4] *Id.* at 51, COMELEC Second Division Resolution dated October 17, 2013.

[5] *Id.*

[6] *Id.* at 100.

[7] Rep. Act No. 7166 (1991), Sec. 3 (c), in relation to Rep. Act No. 6636 (1987), Sec. 2. Rep. Act No. 7166 (1991), Sec. 3 (c) provides:

Section 3. *Election of Members of the Sangguniang Panlalawigan, Sangguniang Panlungsod and Sangguniang Bayan*. — The elective members of the Sangguniang Panlalawigan, Sangguniang Panlungsod and Sangguniang Bayan shall be elected as follows:

. . . . . .

c. The number and election of elective members of the Sangguniang Panlungsod and Sangguniang Bayan in the Metro Manila Area, City of Cebu, City of Davao and any other city with two (2) or more legislative districts shall continue to be governed by the provisions of Sections 2 and 3 of Republic Act No. 6636: Provided, That, the Municipalities of Malabon, Navotas, San Juan, Mandaluyong, Muntinlupa, Las Piñas and Taguig shall have twelve (12) councilors, and Pateros, ten (10): Provided, further, That, the Commission shall divide each of the municipalities in Metro Manila Area into two (2) districts by barangay for purposes of representation in the Sangguniang Bayan as nearly as practicable according to the number of inhabitants, each comprising a compact, contiguous and adjacent territory[.]

After the conduct of elections, Chua garnered the sixth highest number of votes.[8] She was proclaimed by the Board of Canvassers on May 15, 2013.[9]

On the date of Chua's proclamation, however, Imelda E. Fragata (Fragata) filed a Petition[10] captioned as a "petition to declare [Chua] as a nuisance candidate"[11] and "to deny due course and/or cancel [Chua's] Certificate of Candidacy."[12] Fragata was allegedly a registered voter in the Fourth District[13] who claimed that Chua was unqualified to run for Councilor on two grounds: Chua was not a Filipino citizen, and she was a permanent resident of the United States of America.[14] Fragata specifically alleged the following in her Petition:

> 3. [Chua] is not a Filipino Citizen.
>
> 4. Prior to the filing of her candidacy, [Chua] has been living in the United States of America (USA) for at least 33 years.
>
> 5. [Chua] is an immigrant and was validly issued a Green Card by the Government of the USA.

Rep. Act No. 6636 (1987), Sec. 2 provides:

Section 2. *Metro Manila Area*. — For purposes of the Local Elections on January 18, 1988, the City of Manila, Quezon City and the City of Caloocan shall have six (6) councilors for each of their representative districts who shall be residents thereof to be elected by the qualified voters therein. The City of Pasay and the Municipalities of Makati, Parañaque, Pasig, Marikina, and Valenzuela, each of which comprises a representative district, shall have twelve (12) councilors each to be elected at large by the qualified voters of the said city or municipality. All the other municipalities within the Metropolitan Manila area shall have ten (10) councilors each, with the exception of the Municipality of Pateros which shall have eight (8) councilors, to be elected at large by their respective qualified voters.

[8] *Rollo*, p. 23, COMELEC *En Banc* Resolution dated January 30, 2015.

[9] *Id.*

[10] *Id.* at 95-98.

[11] *Id.* at 95.

[12] *Id.*

[13] *Id.*

[14] *Id.* at 96.

6. She resided and continues to reside [in Georgia, USA].

7. [Chua] has been a Registered Professional Nurse in the State of Georgia, USA since November 17, 1990.

8. . . . [Chua's] Professional License in the USA is still to expire in 31 January 2014.[15]

The last paragraph of the Petition prayed that Chua "be disqualified as a candidate for the position of councilor in the Fourth District of the City of Manila[.]"[16]

Answering the Petition, Chua contended that she was a natural-born Filipino, born to Filipino parents in Cabanatuan City, Nueva Ecija.[17] With respect to her residency, Chua alleged that she had been residing in Sampaloc, Manila since 2008[18] and had more than complied with the one-year period required to run for Councilor.[19]

According to Chua, Fragata's Petition was belatedly filed,[20] whether it was treated as one for declaration of a nuisance candidate[21] or for denial of due course or cancellation of certificate of candidacy.[22] Fragata filed her Petition on May 15, 2013,

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[15] *Id.*

[16] *Id.* at 97.

[17] *Id.* at 104, Verified Answer.

[18] *Id.* at 118, Barangay Certification dated May 21, 2010.

[19] *Id.* at 110, Verified Answer.

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

[21] COMELEC Rules of Procedure, as amended by Resolution No. 9523, Rule 24, Sec. 3 provides: Section 3. Period to File the Petition. — The Petition shall be filed personally or through an authorized representative, within five (5) days from the last day for the filing of certificates of candidacy. In case of a substitute candidate, the Petition must be filed within five (5) days from the time the substitute candidate filed his certificate of candidacy.

[22] COMELEC Rules of Procedure, as amended by Resolution No. 9523, Rule 23, Sec. 2 provides:

Section 2. *Period to File Petition.* — The Petition must be filed within five (5) days from the last day for filing of certificate of candidacy; but not later

which was beyond five (5) days from October 5, 2012, the last day of the filing of certificates of candidacy.[23] The Petition was also filed beyond 25 days from October 3, 2012,[24] the date Chua filed her Certificate of Candidacy.[25]

Chua stressed that she had already been proclaimed on May 15, 2013, the same date that Fragata filed her Petition; hence, Fragata's proper remedy was to file a petition for quo warranto[26] under Section 253 of the Omnibus Election Code. Chua prayed that the Commission dismiss Fragata's Petition.[27]

On June 19, 2013, Bacani filed a Motion to Intervene with Manifestation and Motion to Annul Proclamation.[28] Bacani alleged that she likewise ran for Councilor in the Fourth District of Manila, and that after the canvassing of votes, she ranked seventh among all the candidates, next to Chua.[29] Should Chua be disqualified, Bacani claimed that she should be proclaimed Councilor[30] following this Court's ruling in *Maquiling v. Commission on Elections*.[31]

Bacani argued that Chua, being a dual citizen, was unqualified to run for Councilor.[32] Based on an Order of the Bureau of

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than twenty five (25) days from the time of filing of the certificate of candidacy subject of the Petition. In case of a substitute candidate, the Petition must be filed within five (5) days from the time the substitute candidate filed his certificate of candidacy.

[23] *Rollo*, p. 107, Verified Answer.

[24] *Id.* at 100, Certificate of Candidacy.

[25] *Id.* at 109, Verified Answer.

[26] *Id.* at 111.

[27] *Id.* at 112.

[28] *Id.* at 133-140.

[29] *Id.* at 133.

[30] *Id.* at 136-137.

[31] 709 Phil. 408 (2013) [Per *C.J.* Sereno, *En Banc*].

[32] *Rollo*, p. 134, Motion to Intervene with Manifestation and Motion to Annul Proclamation.

Immigration, Chua was allegedly naturalized as an American citizen on December 7, 1977.[33] She was issued an American passport[34] on July 14, 2006.

Chua took an Oath of Allegiance to the Republic of the Philippines on September 21, 2011.[35] Nonetheless, Chua allegedly continued on using her American passport, specifically on the following dates:

October 16, 2012	Departure for the United States
December 11, 2012	Arrival in the Philippines
May 30, 2013	Departure for the United States[36]

Moreover, Chua did not execute an oath of renunciation of her American citizenship.[37]

With Chua being a dual citizen at the time she filed her Certificate of Candidacy, Bacani prayed that the Commission on Elections annul Chua's proclamation.[38]

In her Comment/Opposition (to the Motion to Intervene of Krystle Marie Bacani),[39] Chua argued that the Motion was a belatedly filed petition to deny due course or cancel a certificate of candidacy, having been filed after the day of the elections.[40] According to Chua, the Motion should not even be considered since she was already proclaimed by the Board of Canvassers.[41] Thus, Chua prayed that the Motion to Intervene be denied and expunged from the records of the case.[42]

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[33] *Id.*

[34] *Id.* at 129.

[35] *Id.* at 134, Motion to Intervene with Manifestation and Motion to Annul Proclamation.

[36] *Id.* at 135.

[37] *Id.*

[38] *Id.* at 137.

[39] *Id.* at 146-153.

[40] *Id.* at 149-152.

[41] *Id.* at 151.

[42] *Id.* at 152.

The Commission on Elections then ordered the parties to file their respective memoranda.[43]

In her Memorandum,[44] Chua maintained that Fragata's Petition was filed out of time and should have been outright dismissed.[45] Reiterating that she had already been proclaimed, Chua argued that Fragata's proper remedy was a petition for quo warranto.[46]

Countering Chua's claims, Fragata and Bacani restated in their Joint Memorandum[47] that Chua was a dual citizen disqualified from running for any elective local position.

The Commission on Elections Second Division resolved Fragata's Petition. Ruling that Bacani had a legal interest in the matter in litigation, it allowed Bacani's Motion to Intervene.[48] The Commission said that should Fragata's Petition be granted, the votes for Chua would not be counted.[49] In effect, Bacani would garner the sixth highest number of votes among the qualified candidates, which would earn her a seat in the Sangguniang Panlungsod of Manila.[50]

With respect to the nature of Fragata's Petition, the Commission on Elections held that it was one for disqualification, regardless of the caption stating that it was a petition to declare Chua a nuisance candidate.[51] The Petition alleged a ground for disqualification under Section 40 of the Local Government Code,[52] specifically, that Chua was a permanent resident in the United States.

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[43] *Id.* at 24, COMELEC *En Banc* Resolution dated January 30, 2015.

[44] *Id.* at 175-196.

[45] *Id.* at 186.

[46] *Id.* at 190-191.

[47] *Id.* at 154-169.

[48] *Id.* at 39-41, COMELEC Second Division Resolution dated October 17, 2013.

[49] *Id.*

[50] *Id.*

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

[52] *Id.*

Since Fragata filed a petition for disqualification, Rule 25, Section 3 of the Commission on Elections Rules of Procedure governed the period for its filing.[53] Under the Rules, a petition for disqualification should be filed "any day after the last day for filing of certificates of candidacy, but not later than the date of the proclamation." Fragata filed the Petition within this period, having filed it on the date of Chua's proclamation on May 15, 2013.[54]

The Commission no longer discussed whether Chua was a permanent resident of the United States. Instead, it found that Chua was a dual citizen when she filed her Certificate of Candidacy.[55] Although she reacquired her Filipino citizenship in 2011 by taking an Oath of Allegiance to the Republic of the Philippines, petitioner failed to take a sworn and personal renunciation of her American citizenship required under Section 5 (2) of the Citizenship Retention and Re-acquisition Act of 2003.[56]

Considering that Chua is a dual citizen, the Commission held that Chua was disqualified to run for Councilor pursuant to Section 40 of the Local Government Code.[57] Consequently, Chua's Certificate of Candidacy was void *ab initio*, and all votes casted for her were stray.[58] Chua's proclamation was likewise voided, and per *Maquiling*, Bacani was declared to have garnered the sixth highest number of votes.[59]

Thus, in the Resolution dated October 17, 2013, the Commission on Elections Second Division ruled in favor of Fragata and Bacani.[60] The dispositive portion of the October 17, 2013 Resolution reads:

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[53] *Id.*

[54] *Id.* at 42, COMELEC Second Division Resolution dated October 17, 2013.

[55] *Id.* at 46.

[56] *Id.* at 43-44.

[57] *Id.* at 50-51.

[58] *Id.* at 51.

[59] *Id.* at 47-51.

[60] *Id.* at 51.

WHEREFORE, premises considered, the Commission (Second Division) **RESOLVES**, as it hereby **RESOLVED**:

1. To **ANNUL** the proclamation of respondent Arlene Llena Empaynado Chua as Councilor for the Fourth District of Manila;

2. To **DIRECT** the Board of Canvassers of the City of Manila to **CONVENE** and **PROCLAIM** Intervenor Krystle Marie C. Bacani as the duly elected Councilor of the Fourth District of the City of Manila, having obtained the sixth highest number of votes for said position.

Let the Deputy Executive Director for Operations implement this Resolution.

SO ORDERED.[61]

Chua moved for reconsideration,[62] but the Commission on Elections En Banc denied the Motion in the Resolution dated January 30, 2015.

Arguing that the Commission issued its October 17, 2013 and January 30, 2015 Resolutions with grave abuse of discretion, Chua filed before this Court a Petition for Certiorari and Prohibition with prayer for issuance of temporary restraining order and/or writ of preliminary injunction.[63] Fragata and Bacani jointly filed their Comment,[64] while the Commission on Elections filed its Comment[65] through the Office of the Solicitor General.

Chua emphasizes that she was already proclaimed as a duly elected Councilor.[66] Assuming that she was ineligible to run for office, this created a permanent vacancy in the Sangguniang Panlungsod, which was to be filled according to the rule on succession under Section 45 of the Local Government Code,

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[61] *Id.*

[62] *Id.* at 53-69.

[63] *Id.* at 3-4, Urgent Petition for *Certiorari* and Prohibition.

[64] *Id.* at 205-215.

[65] *Id.* at 219-238.

[66] *Id.* at 13, Urgent Petition for *Certiorari* and Prohibition.

and not by proclamation of the candidate who garnered the next highest number of votes.[67]

Chua maintains that Fragata belatedly filed her Petition before the Commission on Elections.[68] Since Fragata filed a Petition to deny due course or cancel certificate of candidacy, it should have been filed within five (5) days from the last day for filing of certificates of candidacy, but not later than 25 days from the time of the filing of the certificate of candidacy assailed.[69] Fragata filed the Petition on May 15, 2013, more than 25 days after Chua filed her Certificate of Candidacy on October 3, 2012.[70] The Commission on Elections, therefore, should have outright dismissed Fragata's Petition.[71]

With her already proclaimed, Chua argues that the Commission on Elections should have respected the voice of the people.[72] Chua prays that the Resolutions annulling her proclamation and subsequently proclaiming Bacani be set aside.[73]

As for Fragata and Bacani as well as the Commission on Elections, all maintain that Fragata's Petition was a petition for disqualification assailing Chua's citizenship and status as a permanent resident in the United States.[74] The Petition, which Fragata filed on the date of Chua's proclamation, was filed within the reglementary period.[75]

The Commission on Elections stresses that Chua was a dual citizen at the time she filed her Certificate of Candidacy.[76]

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[67] *Id.* at 9-11.

[68] *Id.* at 11.

[69] *Id.* at 13.

[70] *Id.*

[71] *Id.*

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

[73] *Id.* at 16-17.

[74] *Id.* at 210, Fragata and Bacani's Joint Comment, and 231, COMELEC's Comment.

[75] *Id.*

[76] *Id.* at 227-228, COMELEC's Comment.

Consequently, she was ineligible to run for Councilor and was correctly considered a non-candidate.[77] All the votes casted in Chua's favor were correctly disregarded, resulting in Bacani garnering the next highest number of votes.[78] Following *Maquiling*, the Commission argues that Bacani was validly proclaimed as Councilor, and, contrary to Chua's claim, the rule on succession under Section 45 of the Local Government Code did not apply, with the disqualifying circumstance existing prior to the filing of the Certificate of Candidacy.[79]

Although Chua was already proclaimed, the Commission on Elections argues that "[t]he will of the people as expressed through the ballot cannot cure the vice of ineligibility, especially if they mistakenly believed that the candidate was qualified."[80] Fragata, Bacani, and the Commission on Elections pray that the Petition for Certiorari and Prohibition be dismissed.[81]

The issues for this Court's resolution are the following:

First, whether private respondent Imelda E. Fragata filed a petition for disqualification or a petition to deny due course or cancel certificate of candidacy; and

Second, whether the rule on succession under Section 45 of the Local Government Code applies to this case.

We dismiss the Petition. The allegations of private respondent Fragata's Petition before the Commission on Elections show that it was a timely filed petition for disqualification. Moreover, the Commission on Elections did not gravely abuse its discretion in disqualifying petitioner Arlene Llena Empaynado Chua, annulling her proclamation, and subsequently proclaiming private respondent Krystle Marie C. Bacani, the candidate who garnered the sixth highest number of votes among the qualified candidates.

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[77] *Id.* at 228 and 235.

[78] *Id.* at 235.

[79] *Id.* at 233-235.

[80] *Id.* at 236.

[81] *Id.* at 212, Fragata and Bacani's Joint Comment, and 237, COMELEC's Comment.

I

As this Court has earlier observed in *Fermin v. Commission on Elections*,[82] members of the bench and the bar have "indiscriminately interchanged"[83] the remedies of a petition to deny due course or cancel certificate of candidacy and a petition for disqualification, thus "adding confusion to the already difficult state of our jurisprudence on election laws."[84]

The remedies, however, have different grounds and periods for their filing. The remedies have different legal consequences.

A person files a certificate of candidacy to announce his or her candidacy and to declare his or her eligibility for the elective office indicated in the certificate.[85] Section 74 of the Omnibus Election Code on the contents of a certificate of candidacy states:

> 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 section which he seeks to represent; the political party to which he belongs; civil status; his date of birth; residence; his post office address for all election purposes; his profession or occupation; that he will support and defend the Constitution of the Philippines and will maintain true faith and allegiance thereto; that he will obey the laws, legal orders, and decrees promulgated by the duly constituted authorities; that he is not a permanent resident or immigrant to a foreign country; that the obligation imposed by his oath is assumed voluntarily, without mental reservation or purpose of evasion; and that the facts stated in the certificate of candidacy are true to the best of his knowledge.
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> Unless a candidate has officially changed his name through a court approved proceeding, a candidate shall use in a certificate of candidacy the name by which he has been baptized, or if has not been baptized in any church or religion, the name registered in the office of the

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[82] 595 Phil. 449 (2008) [Per *J.* Nachura, *En Banc*].

[83] *Id.* at 457.

[84] *Id.*

[85] ELECTION CODE, Sec. 74.

local civil registrar or any other name allowed under the provisions of existing law or, in the case of a Muslim, his *Hadji* name after performing the prescribed religious pilgrimage: *Provided*, That when there are two or more candidates for an office with the same name and surname, each candidate, upon being made aware of such fact, shall state his paternal and maternal surname, except the incumbent who may continue to use the name and surname stated in his certificate of candidacy when he was elected. He may also include one nickname or stage name by which he is generally or popularly known in the locality.

The person filing a certificate of candidacy shall also affix his latest photograph, passport size; a statement in duplicate containing his bio-data and program of government not exceeding one hundred words, if he so desires.

The Commission on Elections has the ministerial duty to receive and acknowledge receipt of certificates of candidacy.[86] However, under Section 78 of the Omnibus Election Code,[87] the Commission may deny due course or cancel a certificate of candidacy through a verified petition filed *exclusively* on the ground that "any material representation contained therein as required under Section 74 hereof is false." The "material representation" referred to in Section 78 is that which involves the eligibility or qualification for the office sought by the person who filed the certificate.[88] Section 78 must, therefore, be read "in relation to the constitutional and statutory provisions on

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[86] ELECTION CODE, Sec. 76.

[87] ELECTION CODE, Sec. 78 provides:

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.

[88] *Villafuerte v. Commission on Elections*, G.R. No. 206698, February 25, 2014, 717 SCRA 312, 323 [Per *J.* Peralta, *En Banc*].

qualifications or eligibility for public office."[89] Moreover, the false representation "must consist of a deliberate attempt to mislead, misinform, or hide a fact which would otherwise render a candidate ineligible."[90]

A person intending to run for public office must not only possess the required qualifications for the position for which he or she intends to run. The candidate must also possess none of the grounds for disqualification under the law. As Justice Vicente V. Mendoza said in his Dissenting Opinion in *Romualdez-Marcos v. Commission on Elections*,[91] "that an individual possesses the qualifications for a public office does not imply that he is not disqualified from becoming a candidate or continuing as a candidate for a public office and vice-versa."[92]

Section 68 of the Omnibus Election Code provides for grounds in filing a petition for disqualification:

> Sec. 68. ***Disqualifications***. — Any candidate who, in action or protest in which he is a party is declared by final decision of a competent court guilty of, or found by the Commission of having (a) given money or other material consideration to influence, induce or corrupt the voters or public officials performing electoral functions; (b) committed acts of terrorism to enhance his candidacy; (c) spent in his election campaign an amount in excess of that allowed by this Code; (d) solicited, received or made any contribution prohibited under Sections 89, 95, 96, 97 and 104; or (e) violated any of Sections 80, 83, 85, 86 and 261, paragraphs d, e, k, v, and cc, sub-paragraph 6, shall be disqualified from continuing as a candidate, or if he has been elected, from holding the office. Any person who is a permanent resident of or an immigrant of a foreign country in accordance with the residence requirement provided for in the election laws.

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[89] *Fermin v. Commission on Elections*, 595 Phil. 449, 465-466 (2008) [Per *J.* Nachura, *En Banc*].

[90] *Villafuerte v. Commission on Elections*, G.R. No. 206698, February 25, 2014, 717 SCRA 312, 323 [Per *J.* Peralta, *En Banc*].

[91] 318 Phil. 329 (1995) [Per *J.* Kapunan, *En Banc*].

[92] *J.* Mendoza, Dissenting Opinion in *Romualdez-Marcos v. Commission on Elections*, 318 Phil. 329, 464-465 (1995) [Per *J.* Kapunan, *En Banc*].

Apart from the grounds provided in Section 68, any of the grounds in Section 12 of the Omnibus Election Code as well as in Section 40 of the Local Government Code may likewise be raised in a petition for disqualification. Section 12 of the Omnibus Election Code states:

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 has been 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.

This 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.

Disqualifications specifically applicable to those running for local elective positions are found in Section 40 of the Local Government Code:

SECTION 40. ***Disqualifications***. — The following persons are disqualified from running for any elective local position:

(a) Those sentenced by final judgment for an offense involving moral turpitude or for an offense punishable by one (1) year or more of imprisonment, within two (2) years after serving sentence;

(b) Those removed from office as a result of an administrative case;

(c) Those convicted by final judgment for violating the oath of allegiance to the Republic;

(d) Those with dual citizenship;

(e) Fugitives from justice in criminal or nonpolitical cases here or abroad;

(f) Permanent residents in a foreign country or those who have acquired the right to reside abroad and continue to avail of the same right after the effectivity of this Code; and

(g) The insane or feeble-minded.

Private respondent Fragata alleges in her Petition that petitioner is a permanent resident in the United States, a green card holder who, prior to the filing of her Certificate of Candidacy for Councilor, has resided in the State of Georgia for 33 years. She anchors her Petition on Section 40 of the Local Government Code, which disqualifies permanent residents of a foreign country from running for any elective local position.

It is true that under Section 74 of the Omnibus Election Code, persons who file their certificates of candidacy declare that they are not a permanent resident or immigrant to a foreign country. Therefore, a petition to deny due course or cancel a certificate of candidacy may likewise be filed against a permanent resident of a foreign country seeking an elective post in the Philippines on the ground of material misrepresentation in the certificate of candidacy.[93]

What remedy to avail himself or herself of, however, depends on the petitioner. If the false material representation in the certificate of candidacy relates to a ground for disqualification, the petitioner may choose whether to file a petition to deny due course or cancel a certificate of candidacy or a petition for disqualification, so long as the petition filed complies with the requirements under the law.[94]

Before the Commission on Elections, private respondent Fragata had a choice of filing either a petition to deny due course or cancel petitioner's certificate of candidacy or a petition for disqualification. In her Petition, private respondent Fragata did not argue that petitioner made a false material representation in her Certificate of Candidacy; she asserted that petitioner was a permanent resident disqualified to run for Councilor under Section 40 of the Local Government Code. Private respondent Fragata's Petition, therefore, was a petition for disqualification.

It follows that private respondent Fragata timely filed her Petition before the Commission on Elections. Under Rule 25,

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[93] See *Jalosjos, Jr. v. Commission on Elections*, 696 Phil. 601, 632 (2012) [Per *J.* Carpio, *En Banc*].

[94] *Id.*

Section 3 of the Rules of Procedure of the Commission, a petition for disqualification "shall be filed any day after the last day for filing of certificates of candidacy, but not later than the date of proclamation." Private respondent Fragata filed her Petition on the date of petitioner's proclamation on May 15, 2013. The Commission on Elections did not gravely abuse its discretion in taking cognizance of private respondent Fragata's Petition.

In addition, the Commission on Elections correctly admitted private respondent Bacani's pleading-in-intervention.

An adverse decision against petitioner would require a pronouncement as to who should assume the position of Councilor. Hence, those who believe that they are entitled to the position may prove their legal interest in the matter in litigation[95] and may properly intervene for a complete disposition of the case.

Private respondent Bacani claims that she is entitled to the position of Councilor. In her Motion to Intervene, she argues for petitioner's disqualification and alleges the circumstances surrounding petitioner's dual citizenship. She then cites *Maquiling*, arguing that she should be proclaimed in lieu of petitioner because she obtained the sixth highest number of votes among the qualified candidates. Private respondent Bacani's intervention was, therefore, proper.

II

The Commission on Elections did not gravely abuse its discretion in disqualifying petitioner, annulling her proclamation, and subsequently proclaiming private respondent Bacani as the duly elected Councilor for the Fourth District of Manila.

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[95] COMELEC Rules of Procedure, Rule 8, Sec. 1 provides:

Section 1. *When Proper and Who may be Permitted to Intervene*. — Any person allowed to initiate an action or proceeding may, before or during the trial of an action or proceeding, be permitted by the Commission, in its discretion, to intervene in such action or proceeding, if he has legal interest in the matter in litigation, or in the success of either of the parties, or an interest against both, or when he is so situated as to be adversely affected by such action or proceeding.

Petitioner was born to Filipino parents in 1967, which makes her a natural-born Filipino under the 1935 Constitution.[96] Ten years later, on December 7, 1977, petitioner became a naturalized American. Hence, she lost her Filipino citizenship pursuant to Section 1 of Commonwealth Act No. 63.[97]

It was on September 21, 2011 when petitioner took an Oath of Allegiance to the Republic of the Philippines, thus reacquiring her Filipino citizenship.[98] From September 21, 2011 up to the

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[96] CONST. (1935), Art. IV, Sec. 1 provides:

Sec. 1. The following are citizens of the Philippines:

(1) Those who are citizens of the Philippine Islands at the time of the adoption of this Constitution.
(2) Those born in the Philippine Islands of foreign parents who, before the adoption of this Constitution, had been elected to public office in the Philippine Islands.
(3) Those whose fathers are citizens of the Philippines.
(4) Those whose mothers are citizens of the Philippines and, upon reaching the age of majority, elect Philippine citizenship.
(5) Those who are naturalized in accordance with law.

[97] Com. Act No. 63 (1936), Sec. 1 provides:

Sec. 1. *How citizenship may be lost.* — A Filipino citizen may lose his citizenship in any of the following ways and/or events:
(1) By naturalization in a foreign country[.]

[98] Rep. Act No. 9225 (2003), Sec. 3 provides:

Sec. 3. *Retention of Philippine Citizenship*. — Any provision of law to the contrary notwithstanding, natural-born citizens of the Philippines who have lost their Philippine citizenship by reason of their naturalization as citizens of a foreign country are hereby deemed to have re-acquired Philippine citizenship upon taking the following oath of allegiance to the Republic:

"I _____, solemnly swear (or affirm) that I will support and defend the Constitution of the Republic of the Philippines and obey the laws and legal orders promulgated by the duly constituted authorities of the Philippines, and I hereby declare that I recognize and accept the supreme authority of the Philippines and will maintain true faith and allegiance thereto; and that I impose this obligation upon myself voluntarily without mental reservation or purpose of evasion." Natural-born citizens of the Philippines who, after the effectivity of this Act, become citizens of a foreign country shall retain their Philippine citizenship upon taking the aforesaid oath.

present, however, petitioner failed to execute a sworn and personal renunciation of her foreign citizenship particularly required of those seeking elective public office. Section 5 (2) of the Citizenship Retention and Re-acquisition Act of 2003 provides:

> SECTION 5. *Civil and Political Rights and Liabilities*. — Those who retain or re-acquire Philippine citizenship under this Act shall enjoy full civil and political rights and be subject to all attendant liabilities and responsibilities under existing laws of the Philippines and the following conditions:
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> . . . . . .
>
> (2) Those seeking elective public office in the Philippines shall meet the qualifications for holding such public office as required by the Constitution and existing laws and, at the time of the filing of the certificate of candidacy, make a personal and sworn renunciation of any and all foreign citizenship before any public officer authorized to administer an oath[.]

Petitioner cannot claim that she has renounced her American citizenship by taking the Oath of Allegiance. The oath of allegiance and the sworn and personal renunciation of foreign citizenship are separate requirements, the latter being an *additional* requirement for qualification to run for public office. In *Jacot v. Dal*:[99]

> [T]he oath of allegiance contained in the Certificate of Candidacy, which is substantially similar to the one contained in Section 3 of Republic Act No. 9225, does not constitute the personal and sworn renunciation sought under Section 5(2) of Republic Act No. 9225. It bears to emphasize that the said oath of allegiance is a general requirement for all those who wish to run as candidates in Philippine elections; while the renunciation of foreign citizenship is an additional requisite only for those who have retained or reacquired Philippine citizenship under Republic Act No. 9225 and who seek elective public posts, considering their special circumstance of having more than one citizenship.[100]

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[99] 592 Phil. 661 (2008) [Per *J.* Chico-Nazario, *En Banc*].

[100] *Id.* at 673.

With petitioner's failure to execute a personal and sworn renunciation of her American citizenship, petitioner was a dual citizen at the time she filed her Certificate of Candidacy on October 3, 2012. Under Section 40 of the Local Government Code, she was disqualified to run for Councilor in the Fourth District of Manila during the 2013 National and Local Elections.

Petitioner, however, argues that the Commission on Elections gravely abused its discretion in proclaiming private respondent Bacani, the mere seventh placer among the candidates for Councilor and, therefore, not the electorate's choice. Petitioner maintains that the vacancy left by her disqualification should be filled according to the rule on succession under Section 45 (a) (1) of the Local Government Code, which provides:

> SECTION 45. ***Permanent Vacancies in the Sanggunian***. — (a) Permanent vacancies in the sanggunian where automatic successions provided above do not apply shall be filled by appointment in the following manner:
>
> (1) The President, through the Executive Secretary, in the case of the sangguniang panlalawigan and the sangguniang panlungsod of highly urbanized cities and independent component cities[.]

The permanent vacancies referred to in Section 45 are those arising "when an elective local official fills a higher vacant office, refuses to assume office, fails to qualify, dies, is removed from office, voluntarily resigns, or is otherwise permanently incapacitated to discharge the functions of his office."[101] In these situations, the vacancies were caused by those whose certificates of candidacy were valid at the time of the filing "but subsequently had to be cancelled because of a violation of law that took place, or a legal impediment that took effect, after the filing of the certificate of candidacy."[102]

The rule on succession under Section 45, however, would not apply if the permanent vacancy was caused by one whose

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[101] LOCAL GOVT. CODE, Sec. 44.

[102] See *Jalosjos, Jr. v. Commission on Elections*, 696 Phil. 601, 633 (2012) [Per *J*. Carpio, *En Banc*].

certificate of candidacy was void ab initio. Specifically with respect to dual citizens, their certificates of candidacy are void ab initio because they possess "a substantive [disqualifying circumstance] . . . [existing] prior to the filing of their certificate of candidacy."[103] Legally, they should not even be considered candidates. The votes casted for them should be considered stray and should not be counted.[104]

In cases of vacancies caused by those with void ab initio certificates of candidacy, the person legally entitled to the vacant position would be the candidate who garnered the next highest number of votes among those eligible.[105] In this case, it is private respondent Bacani who is legally entitled to the position of Councilor, having garnered the sixth highest number of votes among the eligible candidates. The Commission on Elections correctly proclaimed private respondent Bacani in lieu of petitioner.

Petitioner may have garnered more votes than private respondent Bacani. She may have already been proclaimed. Nevertheless, elections are more than a numbers game. Hence, in *Maquiling*:

> The ballot cannot override the constitutional and statutory requirements for qualifications and disqualifications of candidates. When the law requires certain qualifications to be possessed or that certain disqualifications be not possessed by persons desiring to serve as elective public officials, those qualifications must be met before one even becomes a candidate. When a person who is not qualified is voted for and eventually garners the highest number of votes, even the will of the electorate expressed through the ballot cannot cure the defect in the qualifications of the candidate. To rule otherwise is to trample upon and rent asunder the very law that sets forth the qualifications and disqualifications of candidates. We might as well write off our election laws if the voice of the electorate is the sole

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[103] *Maquiling v. Commission on Elections*, 709 Phil. 408, 448 (2013) [Per *C.J.* Sereno, *En Banc*].

[104] *Id.* at 450.

[105] *Id.* at 447-450.

determinant of who should be proclaimed worthy to occupy elective positions in our republic.

. . . . . .

As in any contest, elections are governed by rules that determine the qualifications and disqualifications of those who are allowed to participate as players. When there are participants who turn out to be ineligible, their victory is voided and the laurel is awarded to the next in rank who does not possess any of the disqualifications nor lacks any of the qualifications set in the rules to be eligible as candidates.[106]

All told, petitioner Arlene Llena Empaynado Chua is a dual citizen correctly disqualified from running for the position of Councilor in the Fourth District of Manila during the 2013 National and Local elections. With her dual citizenship existing prior to the filing of the certificate of candidacy, her Certificate of Candidacy was void *ab initio*. She was correctly considered a non-candidate. All votes casted for her were stray, and the person legally entitled to the position is private respondent Krystle Marie C. Bacani, the candidate with the next highest number of votes among the eligible candidates. The Commission on Elections did not gravely abuse its discretion in annulling Chua's proclamation and subsequently proclaiming private respondent Bacani.

WHEREFORE, the Petition for Certiorari and Prohibition is **DISMISSED**. This Decision is immediately executory.

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Brion, Peralta, Bersamin, del Castillo, Perez, Mendoza, Reyes, Jardeleza, and *Caguioa, JJ.*, concur.

Leonardo-de Castro, J., concurs in the result.

Perlas-Bernabe, J., on leave.

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[106] *Id.* at 444-447.

EN BANC

[G.R. No. 222702. April 5, 2016]

RAPPLER, INC., *petitioner, vs.* **ANDRES D. BAUTISTA,** *respondent*.

SYLLABUS

1. POLITICAL LAW; ELECTIONS; MEMORANDUM OF AGREEMENT (MOA) ON THE 2016 PRESIDENTIAL AND VICE-PRESIDENTIAL DEBATES; MANDATES LEAD NETWORKS TO ALLOW OTHER WEBSITES TO LIVE STREAM NATIONAL DEBATES UPON COMPLIANCE WITH COPYRIGHT CONDITIONS.— [In the] Memorandum of Agreement (MOA) on the 2016 presidential and vice-presidential debates, x x x [p]etitioner is alleging that it is being discriminated [as the] right to broadcast by live streaming online the audio of the debates is denied petitioner. x x x Under Part VI (C), paragraph 19 of the MOA, the Lead Networks are expressly mandated to "**allow the debates they have produced to be shown or streamed on other websites,**" but "**subject to copyright conditions *or* separate negotiations with the Lead Networks.**" The use of the word "**or**" means that compliance with the "copyright conditions" is sufficient for petitioner to exercise its right to live stream the debates in its website. x x x Under the MOA, the Lead Networks are mandated to promote the debates for maximum audience. **The MOA recognizes the public function of the debates and the need for the widest possible dissemination of the debates. The MOA has not reserved or withheld the reproduction of the debates to the public but has in fact expressly allowed the reproduction of the debates "subject to copyright conditions."** Thus, petitioner may live stream the debate in its entirety by complying with the "copyright conditions," x x x The political nature of the national debates and the public's interest in the wide availability of the information for the voters' education certainly justify allowing the debates to be shown or streamed in other websites for wider dissemination, in accordance with the MOA. Therefore, the debates should be allowed to be live streamed on other websites, including

petitioner's, as expressly mandated in Part VI (C), paragraph 19 of the MOA.

2. REMEDIAL LAW; PETITION FOR *CERTIORARI* AND PROHIBITION; DISMISSAL; COURT SETS ASIDE PROCEDURAL LAPSES WHERE CASE INVOLVES URGENT TRANSCENDENTAL ISSUES OF PUBLIC INTEREST; CASE AT BAR.— Respondent argues that the petition should be dismissed for its procedural defects. In several cases, this Court has acted liberally and set aside procedural lapses in cases involving transcendental issues of public interest, especially when time constraint is a factor to be considered, as in this case. x x x The urgency to resolve this case is apparent considering that the televised debates have already started and only two of the scheduled four national debates remain to be staged. And considering the importance of the debates in informing the electorate of the positions of the presidential and vice-presidential candidates on vital issues affecting the nation, this case falls under the exception laid down in *GMA Network, Inc. v. Commission on Elections.*

LEONEN, *J.*, *concurring opinion*:

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; PETITION FOR CERTIORARI AND PROHIBITION; REMEDIES IN DETERMINING THE EXISTENCE OF ANY GRAVE ABUSE OF DISCRETION PURSUANT TO THE COURT'S CONSTITUTIONAL MANDATE TO RESOLVE CONTROVERSIES INVOLVING ACTS DONE BY A GOVERNMENT INSTRUMENTALITY.— A petition for certiorari and prohibition lies when an officer gravely abuses his or her discretion. The Constitution provides for this Court's expanded power of judicial review "to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government." x x x Procedurally, our Rules of Court provides for two (2) remedies in determining the existence of any grave abuse of discretion pursuant to this Court's constitutional mandate: that is, the special civil actions for certiorari and prohibition under Rule 65. A petition for certiorari may be filed "[w]hen any tribunal, board or officer *exercising judicial or quasi-judicial functions* has acted without or in excess of its or his jurisdiction, or with grave abuse of

discretion amounting to lack or excess of jurisdiction[.]" A petition for prohibition may be filed "[w]hen the proceedings of any tribunal, corporation, board, officer or person, whether exercising *judicial, quasi-judicial or ministerial functions*, are without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction[.]"

2. ID.; ID.; ID.; ID.; NOT LIMITED TO JUDICIAL OR QUASI-JUDICIAL ACTIONS BUT INCLUDES GOVERNMENT INFRINGEMENT OF FUNDAMENTAL RIGHTS.— Procedural lapses pursuant to the Rules of Court cannot limit this Court's constitutional powers, including its duty to determine the existence of "grave abuse of discretion amounting to lack or excess of jurisdiction" by any governmental branch or instrumentality. This constitutional mandate does not qualify the nature of the action by a governmental branch or instrumentality; thus, limiting this to only judicial or quasi-judicial actions will be constitutionally suspect. To be sure, Article VIII, Section 1 does not do away with the policy of judicial deference. It cannot be read as license for active interference by this Court in the acts of other constitutional departments and government organs since judicial review requires the existence of a justiciable case with a ripe and actual controversy. Further, the existence of "grave abuse of discretion" requires capriciousness, arbitrariness, and actions without legal or constitutional basis. In my view, the Constitution itself has impliedly amended the Rules of Court, and it is time to expressly articulate this amendment to remove any occasion for misinterpretation. It is our constitutional mandate to protect the People against government's infringement of fundamental rights, including actions by the Commission on Elections.

3. POLITICAL LAW; FAIR ELECTIONS ACT (RA NO. 9006); MEMORANDUM OF AGREEMENT (MOA) UNDER SECTION 7.3; IT IS THE COMELEC ACTING AS *CONSTITUTIONAL COMMISSION* THAT IS EMPOWERED TO REQUIRE NETWORKS TO SPONSOR NATIONAL DEBATES AMONG PRESIDENTIAL AND VICE-PRESIDENTIAL CANDIDATES.— The Memorandum of Agreement refers to Section 7.3 of Republic Act No. 9006, otherwise known as the Fair Elections Act. This provision states that "[t]he COMELEC [Commission on Elections] may require

national television and radio networks to sponsor at least three (3) national debates among presidential candidates and at least one (1) national debate among vice presidential candidates[.]" Section 7.3 clearly empowers the Commission on Elections acting as a constitutional commission—and not the Commission on Elections Chair—to require networks to sponsor these debates. The alleged authority of the Chair was only "to create the Technical Working Group for the conduct of the presidential debate in connection with the May 9, 2016 election."

4. ID.; FUNDAMENTAL CONSTITUTIONAL RIGHTS; FREEDOM OF SPEECH IS AFFECTED WHEN GOVERNMENT GRANTS BENEFITS TO SOME MEDIA OUTLETS WHILE UNREASONABLY DENYING THE SAME PRIVILEGES TO THE OTHERS.— The Petition raises very serious concerns about a fundamental constitutional right. The Constitution mandates that "[n]o law shall be passed abridging the freedom of speech, of expression, or of the press, or the right of the people peaceably to assemble and petition the government for redress of grievances." This proscription applies not only to legislations but even to governmental acts. x x x Freedom of speech is affected when government grants benefits to some media outlets, i.e. lead networks, while unreasonably denying the same privileges to the others. This has the effect of stifling speech especially when the actions of a government agency such as the Commission on Elections have the effect of endowing a monopoly in the market of free speech. x x x Freedom of expression is a fundamental and preferred right. Any governmental act in prior restraint of speech—that is, any "official governmental restrictions on the press or other forms of expression in advance of actual publication or dissemination"—carries a heavy burden of unconstitutionality. Speech restraint regulation may also be either content-based, "based on the subject matter of the utterance or speech," or content-neutral, "merely concerned with the incidents of the speech, or one that merely control the time, place and manner, and under well defined standards." The effect of government's mandate empowering lead networks from excluding other media is a prior restraint, albeit indirectly. The evil of prior restraint is not made less effective when a private corporation exercises it on behalf of government.

5. ID.; CONSTITUTIONAL LAW; BILL OF RIGHTS; RIGHT OF THE PEOPLE TO INFORMATION ON MATTERS OF PUBLIC CONCERN; THE COMELEC'S POWER OF SUPERVISION AND REGULATION OVER MEDIA DURING ELECTION PERIOD SHOULD NOT BE EXERCISED IN A WAY THAT CONSTRICTS AVENUES FOR PUBLIC DISCOURSE.— Article II, Section 24 of the Constitution states that "[t]he State recognizes the vital role of communication and information in nation building." Article III, Section 7 provides that "[t]he right of the people to information on matters of public concern shall be recognized." These provisions create a constitutional framework of opening all possible and available channels for expression to ensure that information on public matters have the widest reach. In this age of information technology, media has expanded from traditional print, radio, and television. Internet has sped data gathering and multiplied the types of output produced. x x x Article IX-C, Section 4 on the Commission on Elections' power of supervision or regulation of media, communication, or information during election period is situated within this context. The Commission on Elections' power of supervision and regulation over media during election period should not be exercised in a way that constricts avenues for public discourse.

APPEARANCES OF COUNSEL

Disini & Disini Law Office for petitioner.
The Solicitor General for respondent.

R E S O L U T I O N

CARPIO, *J.*:

Petitioner Rappler, Inc. (petitioner) filed a petition for *certiorari* and prohibition against Andres D. Bautista (respondent), in his capacity as Chairman of the Commission on Elections (COMELEC). The petition seeks to nullify Part VI (C), paragraph 19 and Part VI (D), paragraph 20 of the Memorandum of Agreement (MOA) on the 2016 presidential and vice-presidential debates, for being executed without or in

excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction and for violating the fundamental rights of petitioner protected under the Constitution. The MOA, signed on 13 January 2016, was executed by the COMELEC through its Chairman, respondent Bautista, and the *Kapisanan ng mga Brodkaster ng Pilipinas* (KBP), and the various media networks, namely: ABS-CBN Corporation, GMA Network, Inc., Nine Media Corporation, TV5 Network, Inc., Philstar Daily, Inc., Philippine Daily Inquirer, Inc., Manila Bulletin Publishing Corporation, Philippine Business Daily Mirror Publishing, Inc., and petitioner. Under the MOA, the KBP was designated as Debate Coordinator while ABS-CBN, GMA, Nine Media, and TV5, together with their respective print media partners were designated as Lead Networks.

Petitioner alleged that on 21 September 2015, respondent called for a meeting with various media outlets to discuss the "PiliPinas 2016 Debates," for presidential and vice-presidential candidates, which the COMELEC was organizing.[1] Respondent showed a presentation explaining the framework of the debates, in which there will be three presidential debates and one vice presidential debate. Respondent proposed that petitioner and Google, Inc. be in charge of online and social media engagement. Respondent announced during the meeting that KBP will coordinate with all media entities regarding the organization and conduct of the debates.

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[1] Section 7.3 of Republic Act No. 9006 (Fair Election Act) provides:

7.3. The COMELEC may require national television and radio networks to sponsor at least three (3) national debates among presidential candidates and at least one (1) national debate among vice presidential candidates. The debates among presidential candidates shall be scheduled on three (3) different calendar days: the first debate shall be scheduled within the first and second week of the campaign period; the second debate within the fifth and sixth week of the campaign period; and the third debate shall be scheduled within the tenth and eleventh week of the campaign period.

The sponsoring television or radio network may sell airtime for commercials and advertisements to interested advertisers and sponsors. The COMELEC shall promulgate rules and regulations for the holding of such debates.

On 22 September 2015, petitioner sent a proposed draft for broadcast pool guidelines to COMELEC and the KBP. A broadcast pool has a common audio and video feed of the debates, and the cost will be apportioned among those needing access to the same. KBP informed petitioner that the proposal will be discussed in the next meeting.

On 19 October 2015, another meeting was held at the COMELEC office to discuss a draft MOA on the debates. In the draft, petitioner and Google's participation were dropped in favor of the online outlets owned by the Lead Networks. After the meeting, the representatives of the Lead Networks drew lots to determine who will host each leg of the debates. GMA and its partner Philippine Daily Inquirer sponsored the first presidential debate in Mindanao on 21 February 2016; TV5, Philippine Star, and Businessworld sponsored the second phase of presidential debate in the Visayas on 20 March 2016; ABS-CBN and Manila Bulletin will sponsor the presidential debate to be held in Luzon on 24 April 2016; and the lone vice-presidential debate will be sponsored by CNN, Business Mirror, and petitioner on 10 April 2016. Petitioner alleged that the draft MOA permitted online streaming, provided proper attribution is given the Lead Network.

On 12 January 2016, petitioner was informed that the MOA signing was scheduled the following day. Upon petitioner's request, the draft MOA was emailed to petitioner on the evening of 12 January 2016. Petitioner communicated with respondent its concerns regarding certain provisions of the MOA particularly regarding online streaming and the imposition of a maximum limit of two minutes of debate excerpts for news reporting. Respondent assured petitioner that its concerns will be addressed afterwards, but it has to sign the MOA because time was of the essence. On 13 January 2016, petitioner, along with other media networks and entities, executed the MOA with the KBP and the COMELEC for the conduct of the three presidential debates and one vice-presidential debate. Petitioner alleged that it made several communications with respondent and the COMELEC Commissioners regarding its concerns on some of the MOA provisions, but petitioner received no response. Hence, this petition.

In this petition for *certiorari* and prohibition, petitioner prays for the Court to render judgment:

> a. Declaring null and void, for being unconstitutional, pertinent parts of the Memorandum of Agreement that violate the rights of the Petitioner, specifically Part VI (C), paragraph 19 and Part VI (D), paragraph 20 [of the MOA];
>
> b. Prohibiting the Respondent from implementing specifically Part VI (C), paragraph 19 and Part VI (D), paragraph 20 of the MOA;
>
> c. Pending resolution of this case, issuing a Preliminary Injunction enjoining the Respondent from implementing Part VI (C), paragraph 19 and Part VI (D), paragraph 20 of the MOA; and
>
> d. Pending resolution of this case, issuing a Preliminary Mandatory Injunction requiring the Respondent to ensure an unimpaired and equal access to all mass media, online or traditional, to all the Debates.[2]

Part VI (C), paragraph 19 and Part VI (D), paragraph 20 of the MOA read:

VI

ROLES AND RESPONSIBILITIES OF THE LEAD NETWORKS

x x x x x x x x x

C. ONLINE STREAMING

x x x x x x x x x

19. Subject to copyright conditions or separate negotiations with the Lead Networks, allow the debates they have produced to be shown or streamed on other websites;

D. NEWS REPORTING AND FAIR USE

20. Allow a maximum of two minutes of excerpt from the debates they have produced to be used for news reporting or fair use by

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[2] *Rollo*, p. 28.

other media or entities as allowed by the copyright law: Provided, that the use of excerpts longer than two minutes shall be subject to the consent of the Lead Network concerned;[3]

Respondent argues that the petition should be dismissed for its procedural defects. In several cases, this Court has acted liberally and set aside procedural lapses in cases involving transcendental issues of public interest,[4] especially when time constraint is a factor to be considered, as in this case. As held in *GMA Network, Inc. v. Commission on Elections*:[5]

> Respondent claims that *certiorari* and prohibition are not the proper remedies that petitioners have taken to question the assailed Resolution of the COMELEC. Technically, respondent may have a point. However, considering the very important and pivotal issues raised, and the limited time, such technicality should not deter the Court from having to make the final and definitive pronouncement that everyone else depends for enlightenment and guidance. "[T]his Court has in the past seen fit to step in and resolve petitions despite their being the subject of an improper remedy, in view of the public importance of the issues raised therein.[6]

The urgency to resolve this case is apparent considering that the televised debates have already started and only two of the scheduled four national debates remain to be staged.[7] And

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[3] *Id.* at 40-41.

[4] *Kapisanan ng mga Kawani ng Energy Regulatory Board v. Commissioner Barin*, 553 Phil. 1 (2007); *Rivera v. Hon. Espiritu*, 425 Phil. 169 (2002).

[5] G.R. Nos. 205357, 205374, 205592, 205852, and 206360, 2 September 2014, 734 SCRA 88.

[6] *Id.* at 126.

[7] The first presidential debate, sponsored by GMA and its print media partner, Philippine Daily Inquirer, was held in Cagayan de Oro City on 21 February 2016. The second presidential debate, sponsored by TV5 and its partners, Philippine Star and BusinessWorld, was held in Cebu City on 20 March 2016. ABS-CBN and its print media partner, Manila Bulletin, will sponsor the last presidential debate, which will be held in Pangasinan on 24 April 2016. The sole vice-presidential debate will be sponsored by CNN Philippines, in partnership with Business Mirror and petitioner Rappler, in Manila on 10 April 2016, <http://www.philstar.com/news-feature/2016/02/24/1556331/

considering the importance of the debates in informing the electorate of the positions of the presidential and vice-presidential candidates on vital issues affecting the nation, this case falls under the exception laid down in *GMA Network, Inc. v. Commission on Election*s.

Petitioner is a signatory to the MOA. In fact, the sole vice-presidential debate, to be held in Manila on 10 April 2016, will be sponsored by CNN Philippines (owned and operated by Nine Media Corporation) and its partners Business Mirror and petitioner. Petitioner, however, is alleging that it is being discriminated particularly as regards the MOA provisions on live audio broadcast via online streaming. Petitioner argues that the MOA grants radio stations the right to simultaneously broadcast live the audio of the debates, even if the radio stations are not obliged to perform any obligation under the MOA. Yet, this right to broadcast by live streaming online the audio of the debates is denied petitioner and other online media entities, which also have the capacity to live stream the audio of the debates. Petitioner insists that it signed the MOA believing in good faith the issues it has raised will be resolved by the COMELEC.

The provisions on Live Broadcast and Online Streaming under the MOA read:

VI

ROLES AND RESPONSIBILITIES OF THE LEAD NETWORKS

x x x x x x x x x

B1. LIVE BROADCAST

10. Broadcast the debates produced by the Lead Networks in their respective television stations and other news media platforms;

11. Provide a live feed of the debate to other radio stations, other than those of the Lead Network's, for simultaneous broadcast;

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infographic-presidential-debates-schedule>;<http://cnnphilippines.com/news/2016/01/13/comelec-presidential-debates-cnn-philippines-gma-abs-cbn-tv5-philippine-star-rappler-business-mirror-manila-bulletin.html>.

12. Provide a live feed of the debates produced by them to radio stations not belonging to any of the Lead Networks for simultaneous broadcast;

x x x x x x x x x

C. ONLINE STREAMING

17. Live broadcast the debates produced by the Lead Networks on *their* respective web sites and social media sites for free viewing by the public;

18. Maintain a copy of the debate produced by the Lead Network on its on-line site(s) for free viewing by the public during the period of elections or longer;

19. Subject to copyright conditions or separate negotiations with the Lead Networks, allow the debates they have produced to be shown or streamed on other websites;[8] (Boldfacing and underscoring supplied)

Petitioner's demand to exercise the right to live stream the debates is a contractual right of petitioner under the MOA. Under Part VI (C), paragraph 19 of the MOA, the Lead Networks are expressly mandated to **"allow the debates they have produced to be shown or streamed on other websites,"** but **"subject to copyright conditions *or* separate negotiations with the Lead Networks."** The use of the word "**or**" means that compliance with the "copyright conditions" is sufficient for petitioner to exercise its right to live stream the debates in its website.

The "copyright conditions" refer to the limitations on copyright as provided under Section 184.1 (c) of the Intellectual Property Code (IPC), thus:

SEC. 184. *Limitations on Copyright.* — 184.1 Notwithstanding the provisions of Chapter V, the following acts shall not constitute infringement of copyright:

x x x x x x x x x

(c) **The reproduction or communication to the public by mass media** of articles on current political, social, economic, scientific or

[8] *Rollo*, p. 40.

religious topic, lectures, **addresses and other works of the same nature, which are delivered in public if such use is for information purposes and has not been expressly reserved; *Provided*, That the source is clearly indicated;** (Sec. 11, P.D. No. 49) (Boldfacing and underscoring supplied)

Under this provision, the debates fall under "**addresses and other works of the same nature**." Thus, the copyright conditions for the debates are: (1) **the reproduction or communication to the public by mass media of the debates is for information purposes**; (2) **the debates have not been expressly reserved by the Lead Networks** (copyright holders); and (3) **the source is clearly indicated**.

Condition 1 is complied because the live streaming by petitioner is obviously for information purposes. Condition 2 is also complied because Part VI (C), paragraph 19 of the MOA expressly "**allow[s] the debates x x x to be shown or streamed on other websites**," including petitioner's website. This means that the "reproduction or communication (of the debates) to the public by mass media x x x has not been expressly reserved" or withheld. Condition 3 is complied by clearly indicating and acknowledging that the source of the debates is one or more of the Lead Networks.

Part VI (C), paragraph 19 of the MOA, which expressly allows the debates produced by the Lead Networks to be shown or streamed on other websites, **clearly means that the Lead Networks have not "expressly reserved" or withheld the use of the debate audio for online streaming**. In short, the MOA expressly allows the live streaming of the debates subject only to compliance with the "copyright conditions." Once petitioner complies with the copyright conditions, petitioner can exercise the right to live stream the audio of the debates as expressly allowed by the MOA.

Under the MOA, the Lead Networks are mandated to promote the debates for maximum audience.[9] **The MOA recognizes the**

[9] Under Part VI (A) (7) of the MOA, the Lead Networks shall "[p]romote the debates for maximum audience."

public function of the debates and the need for the widest possible dissemination of the debates. The MOA has not reserved or withheld the reproduction of the debates to the public but has in fact expressly allowed the reproduction of the debates "subject to copyright conditions." Thus, petitioner may live stream the debate in its entirety by complying with the "copyright conditions," including the condition that "the source is clearly indicated" and that there will be no alteration, which means that the streaming will include the proprietary graphics used by the Lead Networks. If petitioner opts for a clean feed without the proprietary graphics used by the Lead Networks, in order for petitioner to layer its own proprietary graphics and text on the same, then petitioner will have to negotiate separately with the Lead Networks. Similarly, if petitioner wants to alter the debate audio by deleting the advertisements, petitioner will also have to negotiate with the Lead Networks.

Once the conditions imposed under Section 184.1 (c) of the IPC are complied with, the information — in this case the live audio of the debates — now forms part of the public domain. There is now freedom of the press to report or publicly disseminate the live audio of the debates. In fact, the MOA recognizes the right of other mass media entities, not parties to the MOA, to reproduce the debates subject only to the same copyright conditions. The freedom of the press to report and disseminate the live audio of the debates, subject to compliance with Section 184.1 (c) of the IPC, can no longer be infringed or subject to prior restraint. Such freedom of the press to report and disseminate the live audio of the debates is now protected and guaranteed under Section 4, Article III of the Constitution, which provides that "[N]o law shall be passed abridging the freedom x x x of the press."

The presidential and vice-presidential debates are held primarily for the benefit of the electorate to assist the electorate in making informed choices on election day. Through the conduct of the national debates among presidential and vice-presidential candidates, the electorate will have the "opportunity to be informed of the candidates' qualifications and track record, platforms and programs, and their answers to significant issues

of national concern."[10] The political nature of the national debates and the public's interest in the wide availability of the information for the voters' education certainly justify allowing the debates to be shown or streamed in other websites for wider dissemination, in accordance with the MOA.

Therefore, the debates should be allowed to be live streamed on other websites, including petitioner's, as expressly mandated in Part VI (C), paragraph 19 of the MOA. The respondent, as representative of the COMELEC which provides over-all supervision under the MOA, including the power to "resolve issues that may arise among the parties involved in the organization of the debates,"[11] should be directed by this Court

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[10] Stated on one of the WHEREAS clauses of the MOA.

[11] The MOA enumerates the roles and responsibilities of the COMELEC:

IV

ROLES AND RESPONSIBILITIES OF COMELEC

The COMELEC shall:

1. Formulate the policies, rules, and guidelines to be followed in organizing and conducting the debates pursuant to Section 7.3 of R.A. 9006;

2. Resolve issues that may arise among the parties involved in the organization of the debates;

3. Arrange the participation of the candidates in the debates, including the negotiations of the terms and conditions of participation. In this regard, a separate memorandum of agreement shall be executed between COMELEC and the participating candidates in order to specify the candidates' roles and the rules which shall be binding upon them;

4. Approve the venue, format and mechanics for the debates;

5. Approve the debate moderators, panelists, and on-site live audiences for the debates proposed by the Lead Networks;

6. Approve the topics of the debates, in consultation with the Lead Networks, to ensure that they are in accordance with the objectives defined above and are consistent with the relevant election laws;

7. Enlist the support of other agencies or organizations in the preparation and conduct of the debates;

8. Provide guidelines for media coverage of the debates in accordance with election laws and this Agreement;

9. Provide over-all supervision for the debates.

to implement Part VI (C), paragraph 19 of the MOA, which allows the debates to be shown or live streamed unaltered on petitioner's and other websites subject to the copyright condition that the source is clearly indicated.

WHEREFORE, we **PARTIALLY GRANT** the petition. Respondent Andres D. Bautista, as Chairman of the COMELEC, is directed to implement Part VI (C), paragraph 19 of the MOA, which allows the debates to be shown or live streamed unaltered on petitioner's and other websites subject to the copyright condition that the source is clearly indicated. Due to the time constraint, this Resolution is immediately executory.

SO ORDERED.

Sereno, C.J., Velasco, Jr., Leonardo-de Castro, Brion, Peralta, Bersamin, del Castillo, Perez, Mendoza, Reyes, Jardeleza, and *Caguioa, JJ.*, concur.

Leonen, J., concurs. See separate opinion.

Perlas-Bernabe, J., on official leave.

CONCURRING OPINION

LEONEN, *J.*:

I concur.

In addition, I disagree that petitioner availed itself of the wrong remedy in raising before this Court a controversy involving the fundamental right to free speech.

I

Respondent argues that petitioner availed itself of the wrong remedy since certiorari cannot challenge "'purely executive or administrative functions' of agencies."[1] Moreover, prohibition cannot lie as respondent was not exercising any ministerial

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[1] *Rollo*, p. 183, Comment, citing *Spouses Dacudao v. Secretary Gonzales*, 701 Phil. 96, 108 (2013) [Per *J.* Bersamin, *En Banc*].

function in entering into the Memorandum of Agreement on behalf of the Commission on Elections.[2] Respondent submits that petitioner ultimately seeks the reformation of a contract, and such cause of action should have been brought before the trial courts.[3]

A petition for certiorari and prohibition lies when an officer gravely abuses his or her discretion.

The Constitution provides for this Court's expanded power of judicial review "to determine whether or not there has been a grave abuse of discretion amounting to lack or excess of jurisdiction on the part of any branch or instrumentality of the Government."[4] This proviso was borne out of our country's experience under Martial Law, to extend judicial review "to review political discretion that clearly breaches fundamental values and principles congealed in provisions of the Constitution."[5] Under the present Constitution, this Court has the power to resolve controversies involving acts done by any government branch or instrumentality with grave abuse of discretion.[6]

Procedurally, our Rules of Court provides for two (2) remedies in determining the existence of any grave abuse of discretion pursuant to this Court's constitutional mandate: that is, the special civil actions for certiorari and prohibition under Rule 65.[7]

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[2] *Id.*

[3] *Id.* at 183-184.

[4] CONST., Art. VIII, Sec. 1.

[5] See *J.* Leonen, Concurring Opinion in *Belgica v. Ochoa*, G.R. Nos. 208566, November 19, 2013, 710 SCRA 1, 290 [Per *J.* Perlas-Bernabe, *En Banc*].

[6] *Id.*

[7] *Araullo v. Aquino III*, G.R. Nos. 209287, July 1, 2014, 728 SCRA 1, 71 [Per *J.* Bersamin, *En Banc*]. Chief Justice Sereno, Associate Justices Peralta, Villarama, Jr., Perez, Mendoza, and Reyes concurred. Senior Associate Justice Carpio wrote a Separate Opinion. Associate Justice Velasco joined Associate Justice Del Castillo's Separate Concurring and Dissenting Opinion. Associate Justice Brion wrote a Separate Opinion. Associate Justices

A petition for certiorari may be filed "[w]hen any tribunal, board or officer *exercising judicial or quasi-judicial functions* has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction[.]"[8] A petition for prohibition may be filed "[w]hen the proceedings of any tribunal, corporation, board, officer or person, whether exercising *judicial, quasi-judicial or ministerial functions,* are without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction[.]"[9]

Still, respondent's contention that he only exercised administrative functions[10] in relation to the Memorandum of Agreement fails to convince. Jurisprudence holds that the remedies of *certiorari* and prohibition have broader scope before this Court:

> With respect to the Court, however, the remedies of *certiorari* and prohibition are necessarily broader in scope and reach, and the writ of certiorari or prohibition may be issued to correct errors of jurisdiction committed not only by a tribunal, corporation, board or officer exercising judicial, quasi-judicial or ministerial functions but also to set right, undo and restrain any act of grave abuse of discretion amounting to lack or excess of jurisdiction by any branch or instrumentality of the Government, *even if the latter does not exercise judicial, quasi-judicial or ministerial functions*. This application is expressly authorized by the text of the second paragraph of Section 1, supra.

Perlas-Bernabe and Leonen wrote Separate Concurring Opinions. Associate Justice Leonardo-de Castro took no part. In this Court's February 3, 2015 Resolution <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/february2015/209287.pdf>8 [Per *J.* Bersamin, *En Banc*], the *ponencia* discussed; "The procedural challenges raised by the respondents, being a mere rehash of their earlier arguments herein, are dismissed for being already passed upon in the assailed decision." See also *Diocese of Bacolod v. Commission on Elections*, G.R. No. 205728, January 21, 2015 http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudencc/2015/january2015/205728.pdf> 11 [Per *J.* Leonen, *En Banc*].

[8] RULES OF COURT, Rule 65, Sec. 1. Emphasis supplied.

[9] RULES OF COURT, Rule 65, Sec. 2. Emphasis supplied.

[10] *Rollo*, p. 183, Comment.

Thus, petitions for certiorari and prohibition are appropriate remedies to raise constitutional issues and to review and/or prohibit or nullify the acts of legislative and executive officials.

Necessarily, in discharging its duty under Section 1, supra, to set right and undo any act of grave abuse of discretion amounting to lack or excess of jurisdiction by any branch or instrumentality of the Government, the Court is not at all precluded from making the inquiry provided the challenge was properly brought by interested or affected parties. The Court has been thereby entrusted expressly or by necessary implication with both the duty and the obligation of determining, in appropriate cases, the validity of any assailed legislative or executive action. This entrustment is consistent with the republican system of checks and balances.[11] (Emphasis supplied, citations omitted)

We recognize the need for a studied balance between complying with our duty under Article VIII, Section 1 of the Constitution and ensuring against acting as an advisory organ. We maintain our policy of judicial deference, but always vigilant against any grave abuse of discretion with its untold repercussions on fundamental rights.

Procedural lapses pursuant to the Rules of Court[12] cannot limit this Court's constitutional powers, including its duty to determine the existence of "grave abuse of discretion amounting to lack or excess of jurisdiction" by any governmental branch or instrumentality.[13]

This constitutional mandate does not qualify the nature of the action by a governmental branch or instrumentality; thus, limiting this to only judicial or quasi-judicial actions will be constitutionally suspect. To be sure, Article VIII, Section 1 does not do away with the policy of judicial deference. It cannot be read as license for active interference by this Court in the

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[11] *Araullo v. Aquino III*, G.R. No. 209287, July 1, 2014, 728 SCRA 1, 74-75 [Per *J.* Bersamin, *En Banc*].

[12] *Rollo*, pp. 183-189, Comment. Respondent raises, among others, wrong remedy and failure to implead indispensable parties.

[13] CONST., Art. VIII, Sec. 1.

acts of other constitutional departments and government organs[14] since judicial review requires the existence of a justiciable case with a ripe and actual controversy.[15] Further, the existence of "grave abuse of discretion" requires capriciousness, arbitrariness, and actions without legal or constitutional basis.[16]

In my view, the Constitution itself has impliedly amended the Rules of Court, and it is time to expressly articulate this amendment to remove any occasion for misinterpretation.

It is our constitutional mandate to protect the People against government's infringement of fundamental rights, including actions by the Commission on Elections.[17]

II

The Memorandum of Agreement refers to Section 7.3 of Republic Act No. 9006, otherwise known as the Fair Elections Act. This provision states that "[t]he COMELEC [Commission on Elections] may require national television and radio networks to sponsor at least three (3) national debates among presidential candidates and at least one (1) national debate among vice presidential candidates[.]"[18]

Section 7.3 clearly empowers the Commission on Elections acting as a constitutional commission — and not the Commission on Elections Chair — to require networks to sponsor these debates. The alleged authority of the Chair was only "to create the Technical Working Group for the conduct of the presidential debate in connection with the May 9, 2016 election." The Commission on Elections Minute Resolution No. 15.0560 reads:

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[14] See *Angara v. Electoral Commission*, 63 Phil. 139, 157-159 (1936) [Per *J.* Laurel, *En Banc*].

[15] CONST., Art. VIII, Sec. 1.

[16] See *J.* Leonen, Concurring Opinion in *Belgica v. Ochoa*, G.R. No. 208566, November 19, 2013, 710 SCRA 1, 290 [Per *J.* Perlas-Bernabe, *En Banc*].

[17] *Diocese of Bacolod v. Commission on Elections*, G.R. No. 205728, January 21, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/january2015/205728.pdf> 12 [Per *J.* Leonen, *En Banc*].

[18] Rep. Act No. 9006 (2001), Sec. 7.3.

15-0560 IN THE MATTER OF THE CREATION OF THE TE[CHNICAL] [WORKING] GROUP FOR THE CONDUCT OF THE PRESIDENTIAL DEBATE PURSUANT TO REPUBLIC ACT NO. 9006, IN CONNECTION WITH THE MAY 9, 2016 ELECTIONS

In view of Republic Act No. 9006, otherwise known as the "Fair Election Act", which provides for the holding of free, orderly, honest, peaceful, and credible election through fair election practices, and Section 7.3 thereof, which provides that the Commission on Elections may require national television and radio networks to sponsor at least three (3) national debates among presidential candidates and at least one (1) among vice presidential candidates, the Commission **RESOLVED**, as its hereby **RESOLVES**, to **authorize** Chairman J. Andres D. Bautista to create the Technical Working Group for the conduct of the presidential debate in connection with the May 9, 2016 Elections, with representatives from the Offices of the Members of the Commission en banc.

Let the Office of the Chairman implement this Resolution.

SO ORDERED.[19] (Emphasis in the original)

Authority to create a technical working group does not equate to authority to enter into the assailed Memorandum of Agreement with the Lead Networks. Technical working groups often involve bringing together a pool of experts and representatives from the relevant interest groups to discuss ideas and proposals. This falls under the preparatory phase, not the executory stage. Members of a technical working group are not necessarily the same parties and signatories of any contract, memorandum, rules, or issuance resulting from their consultative meetings. By analogy, this Court can resolve to create a technical working group composed of trial court judges, among others, to aid its Special Committee in reviewing our Rules of Procedure, but it is still this Court, sitting En Banc, that will resolve to approve any recommended proposal by the group.[20]

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[19] *Rollo*, p. 200, Excerpt from the Minutes of the Regular *En Banc* Meeting of the Commission on Elections Held on July 29, 2015.

[20] *See, for example,* A.M. No. 08-8-7-SC (2016), The 2016 Revised Rules of Procedure for Small Claims Cases.

Even the Civil Code provides that "[i]f the agent contracts in the name of the principal, exceeding the scope of his [or her] authority, and the principal does not ratify the contract, it shall be void if the party with whom the agent contracted is aware of the limits of the powers granted by the principal[.]"[21] There is no showing that a Commission on Elections resolution explicitly authorizing respondent to enter the Memorandum of Agreement was attached to the Agreement as to assure the parties of respondent's authority to sign on behalf of the Commission on Elections. There is also no showing that the Commission on Elections has resolved to approve or ratify the Memorandum of Agreement respondent signed.

III

The requirement under Rule 65 that there be no other plain, speedy, and adequate remedy in the ordinary course of law[22] also exists. The debates pursuant to the Memorandum of Agreement have already been scheduled. Petitioner alleged that it was already denied the right to cover the February 21, 2016 Presidential Debate by GMA7, the first of the three (3) presidential debates to be organized in accordance with the Memorandum of Agreement.[23]

While the Memorandum of Agreement includes an arbitration clause for dispute resolution,[24] the judiciary has the solemn duty in the allocation of constitutional boundaries and the resolution of conflicting claims on constitutional authority, thus:

> In cases of conflict, the judicial department is the only constitutional organ which can be called upon to determine the proper allocation of powers between the several departments and among the integral or constituent units thereof.

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[21] CIVIL CODE, Art. 1898.

[22] RULES OF COURT, Rule 65, Secs. 1 and 2.

[23] *Rollo*, p. 12, Petition for *Certiorari* and Prohibition with Prayer for a Preliminary Mandatory Injunction.

[24] *Id.* at 43, Memorandum of Agreement, part XII. 2.

. . . The Constitution sets forth in no uncertain language the restrictions and limitations upon governmental powers and agencies. If these restrictions and limitations are transcended it would be inconceivable if the Constitution had not provided for a mechanism by which to direct the course of government along constitutional channels, for then the distribution of powers would be mere verbiage, the bill of rights mere expressions of sentiment, and the principles of good government mere political apothegms. Certainly, the limitations and restrictions embodied in our Constitution are real as they should be in any living constitution[.][25]

IV

The Petition raises very serious concerns about a fundamental constitutional right.

The Constitution mandates that "[n]o law shall be passed abridging the freedom of speech, of expression, or of the press, or the right of the people peaceably to assemble and petition the government for redress of grievances."[26] This proscription applies not only to legislations but even to governmental acts.[27]

ABS-CBN v. Commission on Elections,[28] for example, involved respondent's Resolution approving the issuance of a restraining order for the petitioner to stop conducting exit surveys.[29] This Court nullified the assailed Commission on Elections Resolution.[30]

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[25] See *Angara v. Electoral Commission*, 63 Phil. 139, 157 (1936) [Per *J*. Laurel]. See also *Araullo v. Aquino III*, G.R. No. 209287, July 1, 2014, 728 SCRA 1, 70-71 [Per *J*. Bersamin, *En Banc*].

[26] CONST., Art. III, Sec. 4.

[27] See *Diocese of Bacolod v. Commission on Elections*, G.R. No. 205728, January 21, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/january2015/205728.pdf> 32 [Per *J*. Leonen, *En Banc*].

[28] 380 Phil. 780 (2000) [Per *J*. Panganiban, *En Banc*].

[29] *Id.* at 787. See also *Diocese of Bacolod v. Commission on Elections*, G.R. No. 205728, January 21, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/january2015/205728.pdf> 32 [Per *J*. Leonen, *En Banc*].

[30] *ABS-CBN Broadcasting Corporation v. Commission on Elections*, 380 Phil. 780, 800 (2000) [Per *J*. Panganiban, *En Banc*].

It held that "exit polls and the dissemination of their results through mass media constitute an essential part of the freedoms of speech and of the press."[31]

The evil sought to be prevented in the protection of free speech is especially grave during elections. In *Osmeña v. Commission on Elections*,[32] this Court mentioned how "discussion of public issues and debate on the qualifications of candidates in an election are essential to the proper functioning of the government established by our Constitution."[33] *Adiong v. Commission on Elections*[34] has explained the importance of protecting free speech that contributes to the web of information ensuring the meaningful exercise of our right of suffrage:

> We have adopted the principle that debate on public issues should be uninhibited, robust, and wide open and that it may well include vehement, caustic and sometimes unpleasantly sharp attacks on government and public officials. Too many restrictions will deny to people the robust, uninhibited, and wide open debate, the generating of interest essential if our elections will truly be free, clean and honest.
>
> We have also ruled that the preferred freedom of expression calls all the more for the utmost respect when what may be curtailed is the dissemination of information to make more meaningful the equally vital right of suffrage.[35] (Citations omitted)

Freedom of speech is affected when government grants benefits to some media outlets, *i.e.*, lead networks, while unreasonably denying the same privileges to the others. This has the effect of stifling speech especially when the actions of

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[31] *Id.* at 787.

[32] 351 Phil. 692 (1998) [Per *J.* Mendoza, *En Banc*].

[33] *Id.* at 719.

[34] G.R. No. 103956, March 31, 1992, 207 SCRA 712 [Per *J.* Gutierrez, Jr., *En Banc*].

[35] *Adiong v. Commission on Elections*, G.R. No. 103956, March 31, 1992, 207 SCRA 712, 716 [Per *J.* Gutierrez, Jr., *En Banc*]. See also *Mutuc v. Commission on Elections*, 146 Phil. 798, 805-806 (1970) [Per *J.* Fernando, *En Banc*].

a government agency such as the Commission on Elections have the effect of endowing a monopoly in the market of free speech. In *Diocese of Bacolod v. Commission on Elections*,[36] we examined free speech in light of equality in opportunity and deliberative democracy:

> The scope of the guarantee of free expression takes into consideration the constitutional respect for human potentiality and the effect of speech. It valorizes the ability of human beings to express and their necessity to relate. On the other hand, a complete guarantee must also take into consideration the effects it will have in a deliberative democracy. Skewed distribution of resources as well as the cultural hegemony of the majority may have the effect of drowning out the speech and the messages of those in the minority. In a sense, social inequality does have its effect on the exercise and effect of the guarantee of free speech. Those who have more will have better access to media that reaches a wider audience than those who have less. Those who espouse the more popular ideas will have better reception than the subversive and the dissenters of society. To be really heard and understood, the marginalized view normally undergoes its own degree of struggle.[37]

Here, respondent contends that entering into the Memorandum of Agreement does not trigger Article IX-C, Section 4 of the Constitution as this provision involves its coercive power, while the Memorandum of Agreement was consensual.[38] Moreover, the provision pertains to equal opportunity for candidates and not mass media entities:

> Section 4. The Commission may, during the election period, supervise or regulate the enjoyment or utilization of all franchises or permits for the operation of transportation and other public utilities, media of communication or information, all grants, special privileges, or concessions granted by the Government or any subdivision, agency, or instrumentality thereof, including any government-owned or —

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[36] G.R. No. 205728, January 21, 2015 http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/january2015/205728.pdf> [Per *J.* Leonen, *En Banc*].

[37] *Id.* at 62.

[38] *Rollo*, p. 191, Comment.

controlled corporation or its subsidiary. Such supervision or regulation shall aim to ensure equal opportunity, time, and space, and the right to reply, including reasonable, equal rates therefor, for public information campaigns and forums among candidates in connection with the objective of holding free, orderly, honest, peaceful, and credible elections.[39]

Article II, Section 24 of the Constitution states that "[t]he State recognizes the vital role of communication and information in nation building." Article III, Section 7 provides that "[t]he right of the people to information on matters of public concern shall be recognized." These provisions create a constitutional framework of opening all possible and available channels for expression to ensure that information on public matters have the widest reach. In this age of information technology, media has expanded from traditional print, radio, and television. Internet has sped data gathering and multiplied the types of output produced. The evolution of multimedia introduced packaging data into compact packets such as "infographics" and "memes." Many from this generation no longer listen to the radio or watch television, and instead are more used to live streaming videos online on their cellular phones or laptops. Social media newsfeeds allow for real-time posting of video excerpts or "screen caps," and engaging comments and reactions that stimulate public discussions on important public matters such as elections. Article IX-C, Section 4 on the Commission on Elections' power of supervision or regulation of media, communication, or information during election period is situated within this context. The Commission on Elections' power of supervision and regulation over media during election period should not be exercised in a way that constricts avenues for public discourse.

V

Freedom of expression is a fundamental and preferred right.[40] Any governmental act in prior restraint of speech — that is,

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[39] CONST., Art. IX-C, Sec. 4.

[40] See *Diocese of Bacolod v. Commission on Elections*, G.R. No. 205728, January 21, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/

any "official governmental restrictions on the press or other forms of expression in advance of actual publication or dissemination"[41] — carries a heavy burden of unconstitutionality.[42] Speech restraint regulation may also be either content-based, "based on the subject matter of the utterance or speech," or content-neutral, "merely concerned with the incidents of the speech, or one that merely controls the time, place or manner, and under well defined standards."[43]

The effect of government's mandate empowering lead networks from excluding other media is a prior restraint, albeit indirectly. The evil of prior restraint is not made less effective when a private corporation exercises it on behalf of government.

In *GMA Network, Inc. v. Commission on Elections*,[44] this Court declared as unconstitutional Section 9 (a) of Resolution No. 9615, as amended,[45] that interpreted the 120- and 180-minute airtime allocation for television and radio advertisements under Section 6 of the Fair Elections Act as total aggregate per candidate instead of per station as previously applied. A Concurring

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jurisprudence/2015/january2015/205728.pdf>41 [Per *J.* Leonen, *En Banc*], citing *Reyes v. Bagatsing*, 210 Phil. 457, 475 (1983) [Per *C.J.* Fernando, *En Banc*]; *Adiong v. Commission on Elections*, G.R. No. 103956, March 31, 1992, 207 SCRA 712, 715 and 717 [Per *J.* Gutierrez, Jr., *En Banc*]; *Philippine Blooming Mills Employees Organization v. Philippine Blooming Mills Co.*, Inc., 151-A Phil. 656, 676 (1973) [Per *J.* Makasiar, *En Banc*].

[41] *Chavez v. Gonzales*, 569 Phil. 155, 203 (2008) (Per *C.J.* Puno, *En Banc*].

[42] See *J.* Leonen, Concurring Opinion in *GMA Network, Inc. v. Commission on Elections*, G.R. Nos. 205357, September 2, 2014 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/september2014/205357_leonen.pdf> 2 [Per *J.* Peralta, *En Banc*], citing *Iglesia ni Cristo v. Court of Appeals*, 328 Phil. 893, 928 (1996) [Per *J.* Puno, *En Banc*]; *Social Weather Station v. Commission on Elections*, 409 Phil. 571, 584-585 (2001) [Per *J.* Mendoza, *En Banc*].

[43] *Chavez v. Gonzale*s, 569 Phil. 155, 203 (2008) [Per *C.J.* Puno, *En Banc*].

[44] *GMA Network, Inc. v. Commission on Elections*, G.R. Nos. 205357, September 2, 2014 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/september2014/205357.pdf> [Per *J.* Peralta, *En Banc*].

[45] *Id.* at 45.

Opinion discussed free speech scrutiny against any kind of prior restraint:

> While the Commission on Elections does have the competence to interpret Section 6, it must do so without running afoul of the fundamental rights enshrined in our Constitution, especially of the guarantee of freedom of expression and the right to suffrage. ***Not only must the Commission on Elections have the competence, it must also be cognizant of our doctrines in relation to any kind of prior restraint.***
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>
> What Resolution No. 9615 does not take into consideration is that television and radio networks are not similarly situated. ***The industry structure consists of network giants with tremendous bargaining powers that dwarf local community networks.*** Thus, a candidate with only a total aggregate of 120/180 minutes of airtime allocation will choose a national network with greater audience coverage to reach more members of the electorate. Consequently, the big networks can dictate the price, which it can logically set at a higher price to translate to more profits. This is true in any setting especially in industries with high barriers to entry and where there are few participants with a high degree of market dominance. ***Reducing the airtime simply results in a reduction of speech and not a reduction of expenses.***
>
> Resolution No. 9615 may result in local community television and radio networks not being chosen by candidates running for national offices. Hence, advertisement by those running for national office will generally be tailored for the national audience. This new aggregate time may, therefore, mean that local issues which national candidates should also address may not be the subject of wide-ranging discussions.
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> x x x x x x x x x
>
> ***Election regulations are not always content-neutral regulations, and even if they were, they do not necessarily carry a mantle of immunity from free speech scrutiny. The question always is whether the regulations are narrowly tailored so as to meet a significant governmental interest and so that there is a lesser risk of excluding ideas for a public dialogue. The scrutiny for regulations which restrict speech during elections should be greater considering that these exercises substantiate the important right to suffrage.*** Reducing airtime to extremely low levels reduce information to slogans and

sound bites which may impoverish public dialogue. We know that lacking the enlightenment that comes with information and analysis makes the electorate's role to exact accountability from elected public officers a sham[.][46] (Emphasis supplied, citations omitted)

Petitioner points out that "[r]espondent surrendered the [Commission on Elections'] bargaining position and rather than asking the Lead Networks for concessions to ensure broader participation of other media outlets, the [r]espondent granted them exclusive rights which they would have enjoyed only if they produced their own debates without [the Commission on Elections'] participation."[47]

Undoubtedly, respondent as Chair and without proper authorization from the Commission on Elections En Banc facilitated and endorsed a contract that favored lead networks at the expense of smaller internet-based media outlets like petitioner. His doing so magnified the standpoints of those arbitrarily considered as lead and weakened the expression of the point of view of others. Certainly, the laudable effort to inform the public on substantial issues in the upcoming elections should not be purchased at the cost of the fundamental freedoms of those with less capital.

ACCORDINGLY, I vote to **PARTIALLY GRANT** the Petition. The respondent Andres D. Bautista, as Chair of the Commission on Elections, is directed to implement Part VI (C), paragraph 19 of the Memorandum of Agreement, which allows the debates to be shown or live-streamed unaltered in petitioner's and other websites subject to the copyright condition that the source is clearly indicated.

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[46] See *J.* Leonen, Concurring Opinion in *GMA Network, Inc. v. Commission on Elections*, G.R. Nos. 205357, September 2, 2014 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/september2014/205357_leonen.pdf> 8, 10-12 [Per *J.* Peralta, *En Banc*].

[47] *Rollo*, p. 12, Petition for *Certiorari* and Prohibition with Prayer for a Preliminary Mandatory Injunction.

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— Where there is no evidence to indicate that the prosecution witness was actuated by improper motive, the presumption is that she was not so actuated and that her testimony is entitled to full faith and credit; application. (*Id*.)

Testimony of — Against the positive testimonies of the prosecution witnesses, appellant's plain denial of the offense charged, unsubstantiated by any credible and convincing evidence, must simply fail. (People *vs*. Dela Cruz *y* Gumabat @ "Eddie", G.R. No. 205414, April 4, 2016) p. 620

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