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SUPREME COURT

OF THE

PHILIPPINES

FROM

JUNE 1, 2016 TO JUNE 8, 2016

SUPREME COURT
MANILA
2017

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

THIRD DIVISION

[G.R. No. 174838. June 1, 2016]

STRONGHOLD INSURANCE CO., INC., *petitioner, vs.* **PAMANA ISLAND RESORT HOTEL AND MARINA CLUB, INC.,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; JUDGMENTS; EXECUTION OF JUDGMENT; A WRIT OF EXECUTION MUST CONFORM SUBSTANTIALLY TO EVERY ESSENTIAL PARTICULAR OF THE JUDGMENT PROMULGATED, RATIONALE.—** Time and again, courts have emphasized that a writ of execution must conform substantially to every essential particular of the judgment promulgated. An execution that is not in harmony with the judgment is bereft of validity. This applies because "once a judgment becomes final and executory, all that remains is the execution of the decision which is a matter of right. The prevailing party is entitled to a writ of execution, the issuance of which is the trial court's ministerial duty.

2. **ID.; ID.; WHEN EXCEPTIONS TO THE RULE ON IMMUTABILITY OF FINAL JUDGMENTS ARE APPLIED, ENUMERATED.—** While exceptions to the rule on immutability of final judgments are applied in some cases, these are limited to the following instances: (1) the correction of clerical errors; (2) the so-called *nunc pro tunc* entries which cause no prejudice to any party; and (3) void judgments.

3. CIVIL LAW; DAMAGES; RATE OF INTEREST; GIVEN THE PROVISIONS OF THE INSURANCE CODE, WHICH IS A SPECIAL LAW, THE APPLICABLE RATE OF INTEREST SHALL BE THAT IMPOSED IN A LOAN OR FORBEARANCE OF MONEY AS IMPOSED BY THE *BANGKO SENTRAL NG PILIPINAS* (BSP).— Anent the computation of interest on Stronghold's liability, it was explained that the notice of loss was promptly served upon Stronghold, but it took more than a year to reject the claim in violation of Section 243 of the Insurance Code. Thus, double the applicable rate of interest on the principal award should be imposed. x x x A disagreement, however, concerns the question of whether an interest rate of 6% or 12% *per annum* should apply in the computation, as this subject was not specifically defined in the RTC judgment in the main case. x x x The CA explained that the double rate should be based on 12% *per annum*, as the Insurance Code pertained to a rate "twice the ceiling prescribed by the Monetary Board" and thus could only refer to the rate applicable to obligations constituting a loan or forbearance of money. The Court agrees with the CA that given the provisions of the Insurance Code, which is a special law, the applicable rate of interest shall be that imposed in a loan or forbearance of money as imposed by the Bangko Sentral ng Pilipinas (BSP), even irrespective of the nature of Stronghold's liability. In the past years, this rate was at 12% *per annum*. However, in light of Circular No. 799 issued by the BSP on June 21, 2013 decreasing interest on loans or forbearance of money, the CA's declared rate of 12% *per annum* shall be reduced to 6% *per annum* from the time of the circular's effectivity on July 1, 2013, The Court explained in *Nacar v. Gallery Frames* that the new rate imposed under the circular could only be applied prospectively, and not retroactively.

APPEARANCES OF COUNSEL

Perpetuo M. Lotilla, Jr. for petitioner.
Ma. Aleta L. Tolentino for respondent.
Laserva Cueva-Mercader & Associates Law Offices for Flowtech Construction Corp.

R E S O L U T I O N

REYES, *J.*:

This resolves the Petition for Review[1] filed by Stronghold Insurance Company, Inc. (Stronghold) assailing the Decision[2] dated July 20, 2006 and Resolution[3] dated September 26, 2006 of the Court of Appeals (CA) in CA-G.R. SP No. 94313.

The Antecedents

The case stems from an action for sum of money filed by Pamana Island Resort Hotel and Marina Club, Inc. (Pamana) and Flowtech Construction Corporation (Flowtech) against Stronghold on the basis of a Contractor's All Risk Bond of ₱9,047,960.14 obtained by Flowtech in relation to the construction of Pamana's project in Pamana Island, Subic Bay. On January 27, 1992, a fire in the project burned down cottages being built by Flowtech, resulting in losses to Pamana.[4]

In a Decision[5] dated October 14, 1999, the Regional Trial Court (RTC) of Makati City, Branch 135 declared Stronghold liable for the claim. Besides the award of insurance proceeds, exemplary damages and attorney's fees, the trial court ordered the payment of interest at double the applicable rate, following Section 243 of the Insurance Code which Stronghold was declared to have violated, and reads:

Sec. 243. The amount of any loss or damage for which an insurer may be liable, under any policy other than life insurance policy, shall be paid within thirty days after proof of loss is received by the insurer

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[1] *Rollo*, pp. 10-52.

[2] Penned by Associate Justice Martin S. Villarama, Jr. (now retired Supreme Court Justice), with Associate Justices Lucas P. Bersamin (now a Member of the Supreme Court) and Celia C. Librea-Leagogo concurring; *id.* at 55-66.

[3] *Id.* at 68.

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

[5] Issued by Judge Francisco B. Ibay; *id.* at 69-74.

and ascertainment of the loss or damage is made either by agreement between the insured and the insurer or by arbitration; but if such ascertainment is not had or made within sixty days after such receipt by the insurer of the proof of loss, then the loss or damage shall be paid within ninety days after such receipt. Refusal or failure to pay the loss or damage within the time prescribed herein will entitle the assured to collect interest on the proceeds of the policy for the duration of the delay at the rate of twice the ceiling prescribed by the Monetary Board, unless such failure or refusal to pay is based on the ground that the claim is fraudulent.

The decretal portion of the RTC judgment reads:

WHEREFORE, premises considered, judgment is hereby rendered ordering [STRONGHOLD] to pay [FLOWTECH] and [PAMANA]:

1. The proceeds of the insurance in the sum of Four Million Seven Hundred Twenty-Eight Thousand Two Hundred Ninety-Seven and 82/100 Pesos [₱4,728,297.82] with double the rate of interest thereon from the date of demand until fully paid;

2. ₱500,000[.00] as exemplary damages; and

3. ₱100,000[.00] as attorney's fees.

SO ORDERED. [6]

Stronghold's appeal seeking the reversal of the RTC judgment was denied by the CA and thereafter, by the SC. On March 4, 2005, Flowtech filed with the RTC a motion for execution, which was granted[7] on May 10, 2005. A Writ of Execution[8] was issued on May 12, 2005.[9]

Thereafter, Stronghold filed an Urgent Motion to Suspend Execution and to Rationalize Enforcement of the Decision,[10] dated August 16, 2005, contending that the interest penalty

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[6] *Id.* at 74.

[7] *Id.* at 75.

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

[9] *Id.* at 57.

[10] *Id.* at 78-81.

being demanded from it through the Sheriff was unconscionable and iniquitous. The motion was opposed by Pamana, which contended that the RTC decision had become final and thus, could no longer be amended, altered and modified. Furthermore, the double interest rate being imposed upon the award was argued to be supported by Section 243 of the Insurance Code.

Ruling of the RTC

On November 22, 2005, the RTC rendered its Order[11] granting Stronghold's motion. Interest was substantially reduced following the court's pronouncement that its computation should be reckoned from the date of promulgation of judgment until its finality and not from the date of demand until full payment as enunciated in the Decision dated October 14, 1999. The trial court reasoned:

> Engr. Edgardo C. Camering, President of [Flowtech], computed the amount of judgment, as follows:
>
> | | |
> |---|---|
> | Principal award -- | ₱4,728,297.82 |
> | Interest -- | ₱7,528,774.05 |
> | Exemplary Damages -- | ₱ 500,000.00 |
> | Attorney's Fee -- | ₱ 100,000.00 |
> | Interest -- | ₱ 419,976.00 |
> | Execution Fees, Transportation fees, and Miscellaneous fees -- | ₱ 65,500.00 |
> | total amount -- | ₱13,342,547.87 |
>
> The claim of [Flowtech] of interest in the amount of ₱419,976.00 appears to be without basis. This amount of interest must refer to the award of exemplary damages and attorney's fees. These awards do not earn interest. The Decision did not state that exemplary damages in the amount of ₱500,000.00 and attorney's fees in the amount of ₱100,000.00 are to earn interest until fully paid.
>
> x x x x x x x x x

[11] *Id.* at 85-89.

The claim of [Pamana and Flowtech] for the interest of the principal amount in the sum of ₱7,528,774.05, does not appear to be accurate. The principal amount of ₱4,728,297.82 demanded x x x was ascertained only after the trial of the case on its merits. The obligation of [Stronghold] is not a loan or [forbearance] of money. The interest on the obligation shall begin to run from the time the claim is made judicially and extrajudicially when the demand was established with certainty. But when such certainty cannot be so reasonably established at the time of the demand, the interest shall begin only from the date of judgment of the court. x x x:

x x x x x x x x x

The Decision was promulgated on October 14, 1999. **The interest on the principal amount should be reckoned from this date up to x x x December 15, 2004, when the judgment became final and executory.** The period covers five [5] years and two [2] months and one [1] day. The **total interest at 12% *per annum*** is computed as follows:

x x x x x x x x x

The amounts to be executed are as follows:

Principal award -	₱4,728,297.82
Interest -	2,933,120.64
Exemplary Damages -	500,000.00
Attorney's Fees -	100,000.00
Total -	₱8,261,418.46

WHEREFORE, premises considered, the Branch Sheriff is hereby directed to execute the total amount of ₱8,261,418.46. The previous Order of this Court suspending the implementation of the writ of execution is hereby lifted.

SO ORDERED.[12] (Emphasis ours)

Execution fees and related expenses being claimed were disallowed for lack of basis. After its motion to reconsider was denied on February 22, 2006, Pamana appealed to the CA.[13]

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[12] *Id.* at 86-89.

[13] *Id.* at 135-144.

Ruling of the CA

On July 20, 2006, the CA rendered its Decision[14] granting Pamana's petition, explaining that the RTC Decision dated October 14, 1999 had become final and executory, and thus immutable and unalterable. The CA decision's dispositive portion reads:

> WHEREFORE, premises considered, the present petition is hereby GIVEN DUE COURSE and the writ prayed for accordingly GRANTED. The assailed Orders dated November 22, 2005 and February 22, 2006 of the respondent Judge in Civil Case No. 94-385 are hereby ANNULLED and SET ASIDE.
>
> No pronouncement as to costs.
>
> SO ORDERED.[15]

Dissatisfied, Stronghold appealed to this Court.

Ruling of the Court

Immutability of Final Judgments

The Court denies the petition. As correctly pointed out by the CA, the RTC's order to implement carried substantial changes in a judgment that had become final and executory. These variations pertained to "(1) the *date from which the double rate of interest on the principal amount of the claim shall be computed; (2) up to when such interest shall run*; and (3) the applicable rate of interest."[16] Instead of "double the rate of interest [on the proceeds of insurance] from the date of demand until fully paid,"[17] the RTC's computation for purposes of execution was limited to an interest rate of 6% *per annum*, resulting in a double rate of only 12% *per annum*, to be reckoned

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

[15] *Id.* at 65.

[16] *Id.* at 61.

[17] *Id.* at 56, citing the dispositive portion of the RTC Decision dated October 14, 1999.

from the date of the trial court's judgment until it became final and executory.

Clearly, the RTC's issuances contravened a settled principle affecting execution of judgments. Time and again, courts have emphasized that a writ of execution must conform substantially to every essential particular of the judgment promulgated. An execution that is not in harmony with the judgment is bereft of validity. This applies because "once a judgment becomes final and executory, all that remains is the execution of the decision which is a matter of right. The prevailing party is entitled to a writ of execution, the issuance of which is the trial court's ministerial duty."[18]

While exceptions to the rule on immutability of final judgments are applied in some cases, these are limited to the following instances: (1) the correction of clerical errors; (2) the so-called *nunc pro tunc* entries which cause no prejudice to any party; and (3) void judgments.[19] None of these exceptions attend Stronghold's case.

Although some arguments advanced by Stronghold appeal to the substantive issues or merits of the RTC's main judgment that favored Pamana, such matters have long been settled *via* the RTC decision that had become final and executory. Anent the computation of interest on Stronghold's liability, it was explained that the notice of loss was promptly served upon Stronghold, but it took more than a year to reject the claim in violation of Section 243 of the Insurance Code.[20] Thus, double the applicable rate of interest on the principal award should be imposed.

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[18] *Spouses Golez v. Spouses Navarro*, 702 Phil. 618, 630-631 (2013); see also *University Physicians' Services, Inc. v. Marian Clinics, Inc., et al.*, 644 Phil. 1, 10 (2010).

[19] *One Shipping Corporation v. Peñafiel*, G.R. No. 192406, January 21, 2015, 746 SCRA 536, 543-544, citing *Mocorro, Jr. v. Ramirez*, 582 Phil. 357, 367 (2008).

[20] *Rollo*, p. 73.

Applicable Rate of Interest

A disagreement, however, concerns the question of whether an interest rate of 6% or 12% *per annum* should apply in the computation, as this subject was not specifically defined in the RTC judgment in the main case. The RTC, in the Order dated November 22, 2005, pegged the interest rate at 6% *per annum* by explaining that Stronghold's obligation did not equate to a loan or forbearance of money. On the other hand, the CA explained that the double rate should be based on 12% *per annum*, as the Insurance Code pertained to a rate "twice the ceiling prescribed by the Monetary Board"[21] and thus could only refer to the rate applicable to obligations constituting a loan or forbearance of money.[22]

The Court agrees with the CA that given the provisions of the Insurance Code, which is a special law, the applicable rate of interest shall be that imposed in a loan or forbearance of money as imposed by the Bangko Sentral ng Pilipinas (BSP), even irrespective of the nature of Stronghold's liability. In the past years, this rate was at 12% *per annum*. However, in light of Circular No. 799 issued by the BSP on June 21, 2013 decreasing interest on loans or forbearance of money, the CA's declared rate of 12% *per annum* shall be reduced to 6% *per annum* from the time of the circular's effectivity on July 1, 2013. The Court explained in *Nacar v. Gallery Frames*[23] that the new rate imposed under the circular could only be applied prospectively, and not retroactively.[24]

Issue of Estoppel

As regards the issue of estoppel raised by Stronghold in view of Pamanas's receipt of checks issued by the former pursuant to the RTC's order to implement, the Court rejects the argument

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[21] INSURANCE CODE, Section 243.

[22] *Rollo*, p. 64.

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

[24] *Id.* at 456.

in view of a failure to sufficiently establish that Pamana accepted the sums in full satisfaction of their claims.

WHEREFORE, the petition is **DENIED**. The Decision dated July 20, 2006 and Resolution dated September 26, 2006 of the Court of Appeals in CA-G.R. SP No. 94313 are **AFFIRMED with MODIFICATION** in that beginning July 1, 2013, the applicable interest shall be computed pursuant to Section 243 of the Insurance Code at double the rate of six percent (6%) *per annum*.

SO ORDERED.

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

Jardeleza, J., on official leave.

THIRD DIVISION

[G.R. No. 175085. June 1, 2016]

TAN SIOK[1] KUAN and PUTE CHING, *petitioners, vs.* **FELICISIMO "BOY" HO, RODOLFO C. RETURTA,[2] VICENTE M. SALAS, and LOLITA MALONZO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; PRINCIPLE OF *RES INTER ALIOS ACTA*; THE RIGHT OF A PARTY CANNOT BE

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[1] Sometimes spelled as "Siu."

[2] Sometimes spelled as "Retorta."

PREJUDICED BY AN ACT, DECLARATION OR OMISSION OF ANOTHER; EXCEPTION; NOT ESTABLISHED IN CASE AT BAR.— [T]here is merit in respondents' invocation of the principle of *res inter alios acta* or that principle which states that "the right of a party cannot be prejudiced by an act, declaration or omission of another, except as hereinafter provided, among which are: (1) admission by third party, (2) admission by co-partner or agent, (3) admission by conspirator, and (4) admission by privies." x x x In the present case, petitioners failed to establish that the defendants' alleged implied admission of a lessor-lessee relationship falls under the exceptions to the principle of *res inter alios acta* as to make such admission binding upon respondents. Although defendants and respondents were all defendants in the complaints for unlawful detainer filed by petitioners, it is very clear that defendants and respondents espoused different defenses. Contrary to defendants' position, respondents, as early as the filing of their response to petitioners' demand letter, firmly and consistently denied the existence of any lease contract between them and petitioners over the subject land.

2. **ID.; ID.; ID.; RATIONALE.—** In the case of *Tamargo v. Awingan*, the Court expounded on the rationale behind the principle of *res inter alios acta*. Citing *People v. vda. De Ramos*, the Court held that: (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.

APPEARANCES OF COUNSEL

Ching Mendoza Quilas & Associates for petitioners.
Reynaldo S. Aguas for respondents.

D E C I S I O N

PEREZ, *J.*:

Before the Court is a Petition for Review on *Certiorari*[3] assailing the Decision[4] dated June 29, 2006 and the Resolution[5] dated October 17, 2006 of the Court of Appeals (CA) in CA-G.R. SP No. 92107, which rulings reversed the Consolidated Decision[6] dated May 6, 2005 of the Regional Trial Court (RTC) in Civil Case Nos. Q-04-53505 to Q-04-53511 and the Joint Decision[7] dated July 8, 2004 of the Metropolitan Trial Court (MeTC) in Civil Case Nos. 30272 to 30278 and, in effect, dismissed for lack of merit the complaints for unlawful detainer filed by herein petitioners.

Antecedent Facts

The case at bar stems from seven (7) separate complaints for unlawful detainer filed by petitioners Tan Siu Kuan and Pute Ching against defendants Avelino Bombita (Bombita), Felix Gagarin (Gagarin), Bernardo Napolitano (Napolitano), Felicisimo "Boy" Ho (Ho), Rodolfo Returta (Returta), Vicente Salas (Salas), and Lolita Malonzo (Malonzo).

In their Complaints,[8] petitioners averred that they are the owners of a parcel of land, along with the improvements therein, located at Apollo Street, San Francisco del Monte, Quezon

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[3] *Rollo*, pp. 2-12.

[4] *Id.* at 86-97; penned by Associate Justice Magdangal M. De Leon and concurred in by Associate Justices Godardo A. Jacinto and Rosalinda Asuncion-Vicente.

[5] *Id.* at 105-108; penned by Associate Justice Magdangal M. De Leon and concurred in by Associate Justices Josefina Guevara-Salonga and Rosalinda Asuncion-Vicente.

[6] *Id.* at 46-53; penned by Judge Fatima Gonzales-Asdala.

[7] *Id.* at 35-44; penned by Presiding Judge Fernando T. Sagun, Jr.

[8] *Id.* at 13-20.

City, and covered by Transfer Certificate of Title (TCT) Nos. 279014 and 279015; that they have been leasing portions of said property to the defendants since 1972; and that on February 7, 2003 they notified defendants in writing of their failure to pay rentals, as follows:

- defendant AVELINO BOMBITA that his rentals from March 1997 to the present have not been paid in the total sum of Php17,500.00 as of December, 2002;
- defendant FELIX GAGARIN that his rentals from September 1997 to the present have not been paid in the total sum of Php16,000.00 as of December, 2002;
- defendant FELICISIMO "BOY" HO that his rentals from December 1996 to the present have not been paid in the total sum of Php28,700.00 as of December, 2002;
- defendant LOLITA MALONZO that her rentals from January, 1997 to the present have not been paid in the total sum of Php21,600.00 as of December, 2002;
- defendant BERNARDO NAPOLITANO that his rentals from September, 1997 to the present have not been paid in the total sum of Php16,000.00 as of December, 2002;
- defendant RODOLFO RETURTA that his rentals from July, 1996 to the present have [not] been [paid in] the total sum of Php23,700.00 as of December, 2002; and
- defendant VICENTE SALAS [that] his rentals from August, 1997 to the [present have] not been paid in the total sum of Php22,750.00 as of December, 2002.[9]

Defendants were given ten (10) days to pay the rentals due or else to vacate the premises and turn over the possession thereof to petitioners, but defendants allegedly ignored petitioners' demand, warranting the filing of the complaints for unlawful detainer.[10]

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[9] *Id.* at 35-44; MeTC Joint Decision.

[10] *Supra* note 8.

For their part, Bombita, Gagarin, and Napolitano (defendants) argued that the lease agreements they have executed with petitioners are void *ab initio*, petitioners being Chinese nationals who are not entitled to own real property in the Philippines. Moreover, they claimed to have been in possession of the subject premises since 1968 or some 35 years ago, thus plaintiff's action cannot be one for ejectment or unlawful detainer, but *accion publiciana* which must be filed before the RTC.[11]

On the other hand, Ho, Returta, Salas, and Malonzo, herein respondents, maintained that they have been in possession of the subject premises for 37 years without any rentals being paid to any landlord or his agents, and that there are no existing lease contracts between respondents and petitioners. In fact, in separate letters to petitioners, in response to the latter's demand letters, respondents categorically denied renting the subject premises.[12] Respondents also asserted that they have started possessing said property in 1966 by building residential houses, and that they have been in continuous possession since then. Additionally, respondents claimed that petitioners presented only photocopies of the subject TCTs and that when they presented such to the Register of Deeds of Quezon City for verification as to how such were transferred from the mother titles TCT Nos. 12505 and 12506, said office informed them that there is no single transaction recorded in the aforesaid

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[11] *Supra* note 9 at 32.

[12] CA *rollo*, pp. 61, 62, and 64; the letters identically state:

> Buong galang po naming ipinababatid sa inyo na ang nasabing demand letter ay maari pong nagkamali ng [pinagpadalhan] sapagkat kami po ay hindi umuupa sa aming bahay na tinitirahan [sapagkat] kami po o ang mga magulang namin ang nagtirik ng mga nabanggit na bahay at wala po kaming nakilalang may-ari na naningil ng paupa sa amin.
>
> Alalaong baga, ang [nabanggit] ninyong mga kliyente ninyong sina Tan Siok Kuan at Pute Ching ay ni minsan sa loob ng mahigit na tatlumpung taon naming paninirahan sa mga nabanggit na address ay hindi man lamang namin nakausap o nakatanggap ng anumang pabatid o pagpapakilala upang pagbayaran ng anumang uri ng upa o bayad.

mother titles.[13] Lastly, respondents argued that even assuming that petitioners' titles are authentic, their cause of action should have been *accion publiciana* considering that respondents are in possession and that no lease contract exists between the parties.

After trial, the MeTC-Branch 40, Quezon City ruled in favor of petitioners. As regards defendants, the MeTC held that they impliedly admitted the existence of lease contracts between them and petitioners and, as such, they cannot deny the consequent lessor-lessee relationship following the rule that a tenant is not permitted to deny the title of his landlord. As regards respondents, on the other hand, the MeTC ruled that since petitioners were able to show that the property in question was registered under their name, and since respondents merely denied the existence of a lessor-lessee relationship between them and petitioners, petitioners' averments must prevail following the tenet that in weighing contradictory declarations and statements, greater weight must generally be given to positive testimony.

Thus, the MeTC disposed of the case in this manner:[14]

WHEREFORE, premises considered, judgment is hereby rendered in favor of the herein plaintiffs TAN SIU KUAN & PUTE CHING as against all the above named defendants over that certain property located at Apollo Street, San Francisco del Monte, Quezon City covered by TRANSFER CERTIFICATE OF TITLE NOS. 270014 and 279015, both of the Registry of Deeds for Quezon City, as follows:

IN CIVIL CASE NO. 30272:

a. ordering the defendant AVELINO BOMBITA and any and all persons claiming rights under him [to] vacate the premises in question, and to peacefully surrender and turn over the possession of the same unto plaintiffs;

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[13] *Id.* at 4; per verification letter dated April 17, 1997 of Mr. Samuel Cleofe, Register of Deeds of Quezon City; as alleged in the Petition for Review before the Court of Appeals.

[14] *Rollo*, pp. 41-43.

b. ordering said defendant to pay unto plaintiff the sum of Php250.00 per month starting from February 7, 2003 until they have completely vacated the premises;

c. ordering said [defendant to] pay unto plaintiff the sum of Php10,000.00 pesos as and by way of attorney's fees, plus costs of suit.

IN CIVIL CASE NO. 30273:

[a] ordering the defendant FELIX GAGARIN and any and all persons claiming rights under him to vacate the premises in question, and to peacefully surrender and turn over the possession of the same unto plaintiffs;

b. ordering said defendant to pay unto plaintiff the sum of Php250.00 per month starting from February 7, 2003 until they have completely vacated the premises;

c. ordering said defendant to pay unto plaintiff the sum of Php10,000.00 pesos as and by way of attorney's fees, plus costs of suit.

IN CIVIL CASE NO. 30274:

a. ordering the defendant FELICISIMO "[BOY]" HO and any and all persons [claiming] rights under him to vacate the premises in question, and to peacefully surrender and turn over the possession of the same unto plaintiffs;

b. ordering said defendant to pay unto plaintiff the sum of Php350.00 per month starting from February 7, 2003 until they have completely vacated the premises;

c. ordering said defendant to pay unto plaintiff the sum of Php10,000.00 pesos as and by way of attorney's fees, plus costs of suit.

IN CIVIL CASE NO. 30275:

a. ordering the defendant LOLITA MALONZO and any and all persons claiming rights under her to vacate the premises in question, and to peacefully surrender and turn over the possession of the same unto plaintiffs;

b. ordering said defendant to pay unto plaintiffs the sum of Php300.00 per month starting from February 7, 2003 until they have completely vacated the premises;

c. ordering said defendant to pay unto plaintiffs the sum of Php10,000.00 pesos as and by way of attorney's fees, plus costs of suit.

IN CIVIL CASE NO. 30276:

a. ordering the defendant BERNARDO NAPOLITANO and any [and all] persons claiming rights under him to vacate the premises in question, and to peacefully surrender and turn over the possession of the same unto plaintiffs;

b. ordering said defendant to pay unto plaintiffs the sum of Php250.00 per month starting from February 7, 2003 until they have completely vacated the premises;

c. ordering said defendant to pay unto plaintiffs the sum of Php10,000.00 pesos as and by way of attorney's fee[s], plus costs of suit.

IN CIVIL CASE NO. 30277:

a. ordering the defendant RODOLFO RETURTA and any and all persons claiming rights under him to vacate the premises in question, and to peacefully surrender and turn over the possession of the same unto plaintiffs;

b. ordering said defendant to pay unto plaintiffs the sum of Php300.00 per month starting from February 7, 2003 until they have completely vacated the premises;

c. ordering said defendant to pay unto plaintiffs the sum of Php10,000.00 pesos as and by way of attorney's fees, plus costs of suit.

-and-

IN CIVIL CASE NO. 30278:

[a] ordering the defendant VICENTE SALAS and any and all persons claiming rights under him to vacate the premises in question, and to peacefully surrender and turn over the possession of the same unto plaintiffs;

b. ordering said defendant to pay unto plaintiffs the sum of Php350.00 per month starting from February 7, 2003 until they have completely vacated the premises; and

c. ordering said defendant to pay unto plaintiffs the sum of Php10,000.00 pesos as and by way of attorney's fees, plus costs of suit.

SO ORDERED.

Upon appeal, the RTC-Branch 87, Quezon City affirmed the MeTC. According to the RTC, the "defendant's common defense is that the complaint states no cause of action against them on the grounds that plaintiffs are [C]hinese nationals, hence, not entitled to own real properties in the Philippines; occupancy since 1968, hence, the action should have been *accion publiciana*; and absence of lessor/lessee relationship."[15] Said court then went on to address these issues, as follows: "Relative to the first three assigned errors, the Court finds that the matters have been thoroughly and judiciously passed upon by the court *a quo* in arriving at the subject decision, hence, this Court finds no compelling reason to disturb the same."[16]

Thus, the RTC ruled:[17]

In sum, the Court finds no reversible error in the decision of the court *a quo* and hereby affirms the same *en toto*.

Costs against the defendant.

SO ORDERED.

On motion, the RTC issued a Writ of Execution dated January 16, 2006.[18] On February 24, 2006, the subject premises were turned over to petitioners.[19]

In the meantime, on November 18, 2005, respondents timely filed their appeal before the CA, questioning the jurisdiction of

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[15] *Id.* at 47-48; RTC Consolidated Decision.

[16] *Id.* at 51.

[17] *Id.* at 53.

[18] RTC records, Vol. 7, pp. 341-346.

[19] *Id.* at 349-350; Certification dated February 24, 2006 of Deputy Sheriff Marcelino E. Cabigao.

the MeTC over the consolidated cases, the finding of a lessor-lessee relationship between petitioners and respondents in violation of the principle of *res inter alios acta*, and the non-dismissal of the case despite the failure of petitioners and their counsel to attend the pre-trial conference.[20]

Petitioners, on the other hand, averred that the assailed decision has already become final and executory for failure to file the Joint Motion for Reconsideration of the RTC Decision within the prescribed period and, in fact, a writ of execution has already been issued. Alternatively, they argued that since respondents refused to pay their rentals from 1997 to present, and since non-payment of rent is a valid ground for ejectment, then the lower courts were correct in ruling in their favor.[21]

After evaluating the merits of the case, the CA reversed the RTC. Although the CA upheld the jurisdiction of the MeTC, saying that the allegations in the complaints make a case for unlawful detainer and that the complaints were filed within one year from respondents' receipt of the demand letters, it nevertheless agreed with respondents that petitioners have materially failed to prove their right to eject respondents on the strength of being lessors. Moreover, the CA sustained respondents' invocation of the principle of *res inter alios acta*.

Thus, the CA held:[22]

WHEREFORE, the *Consolidated Decision* dated May 6, 2005 of the Regional Trial Court, Branch 87, Quezon City is hereby **REVERSED** and **SET ASIDE**. In its stead, a **new one is entered** dismissing the actions for unlawful detainer for lack of merit.

SO ORDERED.[23] (Citation omitted.)

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[20] CA *rollo*, pp. 7-8; Petition for Review on *Certiorari*.

[21] *Id.* at 71; Comment.

[22] *Rollo*, pp. 96-97.

[23] There appears to be a mix-up in the RTC records. In the Order dated January 5, 2012 (RTC records, Vol. 7, pp. 434-435), the RTC stated that there was already an Entry of Judgment in this case by the CA of the

The Present Petition

Petitioners filed the present petition for review on *certiorari*, raising the following issues:

I. THE CONSOLIDATED DECISION DATED 6 MAY 2005 OF THE REGIONAL TRIAL COURT OF QUEZON CITY BRANCH 87 IN CIVIL CASE NOS. 04-53507, 53508, 04-53510 and 04-53511, WHICH AFFIRMED IN TOTO THE EARLIER JOINT DECISION DATED 8 JULY 2004 OF THE METROPOLITAN TRIAL COURT, QUEZON CITY IN CIVIL CASE NOS. 30272 TO 30278 HAD BECOME FINAL AND EXECUTORY FOR FAILURE OF RESPONDENTS TO FILE THEIR JOINT MOTION FOR RECONSIDERATION WITHIN THE REGLEMENTARY PERIOD OF FIFTEEN (15) DAYS FROM RECEIPT OF THE DECISION.[24]

II. THE TENANCY RELATIONSHIP BETWEEN PETITIONERS AND RESPONDENTS WAS PROPERLY ESTABLISHED.[25]

The Ruling of the Court

Petitioners' arguments do not persuade.

Anent the first issue of whether the Joint Motion for Reconsideration of the RTC Decision was timely filed, a close review of the records yields the finding that it was.

Indeed, as capitalized on by petitioners, respondents stated in their Joint Motion for Reconsideration that they received the Decision dated May 6, 2005 on May 15, 2005, and that they filed the Joint Motion for Reconsideration only on June 29, 2005.[26] However, as explained by respondents, the statement

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Decision dated June 29, 2006. A review of the CA records shows, however, that there is as yet no entry of judgment in the said case and that petitioners timely filed the present petition on November 6, 2006, having received the notice of denial of the motion for reconsideration on October 23, 2006.

[24] *Rollo*, p. 5.

[25] *Id.* at 7.

[26] *Supra* note 18 at 230.

that they received the RTC Decision on May 15, 2005 was inadvertent and erroneous.[27] The records, particularly the certified true copies of the registry return slips from the RTC,[28] show that the RTC Decision was simultaneously mailed by the RTC to the parties only on June 7, 2005. Thus, as correctly maintained by respondents, they could not have received the RTC Decision on May 15, 2005 or before the said decision was mailed to them. Respondents then clarified that they received the RTC Decision on June 15, 2005.[29] As such, the filing of the Joint Motion for Reconsideration on June 29, 2005 was timely and the RTC Decision was not yet final and executory.

As to the second issue of whether a lessor-lessee relationship between the parties was properly established, the evidence on record generates a negative conclusion.

Except for petitioners' bare claims, they have not shown any evidence of a lease between them and respondents, be it express or implied. As keenly observed by the CA, there was no mention of how and when the alleged contract of lease started, there was no proof of prior payment of rentals or any prior demand for such payment considering petitioners' allegation that respondents failed to pay rentals since 1997 and that the case was instituted only in 2003.

Moreover, there is merit in respondents' invocation of the principle of *res inter alios acta* or that principle which states that "the right of a party cannot be prejudiced by an act, declaration or omission of another, except as hereinafter provided, among which are: (1) admission by third party, (2) admission by co-partner or agent, (3) admission by conspirator, and (4) admission by privies."[30]

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[27] CA *rollo*, p. 123; Opposition.

[28] *Supra* note 18 at 215-A.

[29] *Rollo*, p. 111.

[30] RULES OF COURT, Rule 130, Secs. 28-31.

In the case of *Tamargo v. Awingan*,[31] the Court expounded on the rationale behind the principle of *res inter alios acta*. Citing *People v. vda. De Ramos,* the Court held that:

> (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.

In the present case, petitioners failed to establish that the defendants'[32] alleged implied admission of a lessor-lessee relationship falls under the exceptions to the principle of *res inter alios acta* as to make such admission binding upon respondents. Although defendants and respondents were all defendants in the complaints for unlawful detainer filed by petitioners, it is very clear that defendants and respondents espoused different defenses. Contrary to defendants' position, respondents, as early as the filing of their response to petitioners' demand letter, firmly and consistently denied the existence of any lease contract between them and petitioners over the subject land.

WHEREFORE, finding no reversible error in the assailed rulings, the Court resolves to **DENY** the present petition. Accordingly, the Decision dated June 29, 2006 and the Resolution dated October 17, 2006 of the Court of Appeals are hereby **AFFIRMED** and the complaints for unlawful detainer filed by petitioners Tan Siu Kuan and Pute Ching against respondents Felicisimo "Boy" Ho, Rodolfo Returta, Vicente Salas, and Lolita Malonzo are **DISMISSED**.

SO ORDERED.

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

Jardeleza, J., on Wellness Leave.

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[31] 624 Phil. 312, 327 (2010).

[32] Defendants below, other than the respondents herein.

SECOND DIVISION

[G.R. No. 182537. June 1, 2016]

MACTAN-CEBU INTERNATIONAL AIRPORT AUTHORITY, *petitioner, vs.* **RICHARD E. UNCHUAN,** *respondent.*

SYLLABUS

1. CIVIL LAW; AGENCY; WITHOUT A SPECIAL POWER OF ATTORNEY SPECIFYING THE AUTHORITY TO DISPOSE OF AN IMMOVABLE, ONE CANNOT BE LEGALLY CONSIDERED AS THE REPRESENTATIVE OF THE OTHER REGISTERED CO-OWNERS OF A PROPERTY; CASE AT BAR.— The Court finds that the sale transaction executed between Atanacio, acting as an agent of his fellow registered owners, and the CAA was indeed void insofar as the other registered owners were concerned. They were represented without a written authority from them clearly in violation of the requirement under Articles 1874 and 1878 of the Civil Code, which provide: Art. 1874. When a sale of a piece of land or any interest therein is through an agent, the authority of the latter shall be in writing; otherwise, the sale shall be void. Art. 1878. Special powers of attorney are necessary in the following cases: x x x (5) To enter into any contract by which the ownership of an immovable is transmitted or acquired either gratuitously or for a valuable consideration; x x x Without a special power of attorney specifying his authority to dispose of an immovable, Atanacio could not be legally considered as the representative of the other registered co-owners of the properties in question. Atanacio's act of conveying Lot No. 4810-A and Lot No. 4810-B cannot be a valid source of obligation to bind all the other registered co-owners and their heirs because he was not clothed with any authority to enter into a contract with CAA. The other heirs could not have given their consent as required under Article 1475 of the New Civil Code because there was no meeting of the minds among the other registered co-owners who gave no written authority to Atanacio to transact on their behalf. Therefore, no contract was perfected insofar as the portions or shares of the other registered co-owners or their heirs were concerned.

2. ID.; PROPERTY; CO-OWNERSHIP; THE LAW RECOGNIZES THE ABSOLUTE RIGHT OF A CO-OWNER TO FREELY DISPOSE OF HIS *PRO-INDIVISO* SHARE AS WELL AS THE FRUITS AND OTHER BENEFITS ARISING FROM THAT SHARE INDEPENDENTLY OF THE OTHER CO-OWNERS; CASE AT BAR.— The rule is that a void contract produces no effect either against or in favor of anyone and cannot be ratified. Similarly, laches will not set in against a void transaction, as in this case, where the agent did not have a special power of attorney to dispose of the lots co-owned by the other registered owners. In fact, Article 1410 of the Civil Code specifically provides that an action to declare the inexistence of a void contract does not prescribe. The transaction entered into by Atanacio and CAA, however, was not entirely void because the lack of consent by the other co-owners in the sale was with respect to their shares only. Article 493 of the New Civil Code expressly provides: x x x recognizes the absolute right of a co-owner to freely dispose of his *pro indiviso* shares as well as the fruits and other benefits arising from that share, independently of the other co-owners. The sale of the subject lots affects only the seller's share *pro indiviso*, and the transferee gets only what corresponds to his grantor's share in the partition of the property owned in common. Since a co-owner is entitled to sell his undivided share, a sale of the entire property by one co-owner without the consent of the other co-owners is not null and void; only the rights of the co-owner/seller are transferred, thereby making the buyer a co-owner of the property. In the case at bench, although the sale transaction insofar as the other heirs of the registered owners was void, the sale insofar as the extent of Atanacio's interest is concerned, remains valid. Atanacio was one of the registered co-owners of the subject lots, but he was not clothed with authority to transact for the other co-owners. By signing the deed of sale with the CAA, Atanacio effectively sold his undivided share in the lots in question. Thus, CAA became a co-owner of the undivided subject lots. Accordingly, Atanacio's heirs could no longer alienate anything in favor of Unchuan because he already conveyed his *pro indiviso* share to CAA.

3. REMEDIAL LAW; EVIDENCE; DISPUTABLE PRESUMPTIONS; THE EFFECT OF A LEGAL PRESUMPTION UPON A BURDEN OF PROOF IS TO CREATE THE NECESSITY OF PRESENTING EVIDENCE TO MEET THE LEGAL

PRESUMPTION OR THE *PRIMA FACIE* CASE CREATED THEREBY WHICH, IF NO PROOF TO THE CONTRARY IS PRESENTED AND OFFERED WILL PREVAIL; CASE AT BAR.— Section 3, Rule 131 of the Rules of Court identifies the following as disputable presumptions: (1) private transactions have been fair and regular; (2) the ordinary course of business has been followed; and (3) there was sufficient consideration for a contract. A presumption may operate against a challenger who has not presented any proof to rebut it. "The effect of a legal presumption upon a burden of proof is to create the necessity of presenting evidence to meet the legal presumption or the *prima facie* case created thereby, and which, if no proof to the contrary is presented and offered, will prevail. The burden of proof remains where it is, but by the presumption, the one who has that burden is relieved for the time being from introducing evidence in support of the averment, because the presumption stands in the place of evidence unless rebutted." Atanacio, by affixing his signature on the deed of absolute sale, a disputable presumption arose that consideration was paid. A mere allegation that no payment was received is not sufficient to dispel such legal presumption. Furthermore, the record shows an official communication, dated October 8, 1958, from the District Land Office of Cebu to the Provincial Treasurer of Cebu stating that Provincial Voucher No. 05358 was disbursed in favor of Atanacio.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.

Gica Del Socorro Espinoza Villarmia Tan and Fernandez for respondent.

D E C I S I O N

MENDOZA, *J.*:

This petition for review on *certiorari*[1] under Rule 45 of the 1997 Rules of Civil Procedure filed by petitioner Mactan-Cebu

[1] *Rollo* pp. 114-186.

International Airport Authority (*MCIAA*), represented by the Office of the Solicitor General (*OSG*), assails the November 29, 2007 Decision[2] and the March 25, 2008 Resolution[3] of the Court of Appeals (*CA*), in CA-G.R. CV No. 01306, which affirmed the March 3, 2006 Decision[4] of the Regional Trial Court, Lapu-Lapu City, Branch 27 (*RTC*), in Civil Case No. 6120-L, an action for declaration of nullity of deed of absolute sale, quieting of title and/or payment of just compensation, rental, damages, and attorney's fees.

The Antecedents

On March 5, 2004, respondent Richard Unchuan (*Unchuan*) filed a complaint for Partial Declaration of Nullity of the Deed of Absolute Sale with Plea for Partition, Damages and Attorney's Fees before the RTC against MCIAA.[5] Unchuan later filed an Amended Complaint for Declaration of Nullity of Deed of Absolute Sale, Quieting of Title and/or Payment of Just Compensation, Rental and Damages and Attorney's Fees.[6]

In his complaint, Unchuan alleged, among others, that he was the legal and rightful owner of **Lot No. 4810-A,** with an area of 177,176 square meters, and **Lot No. 4810-B,** with an area of 2,740 square meters, both located in Barrio Buaya, Lapu-Lapu City, and covered by Original Certificate of Title (*OCT*) No. R0-1173;[7] that the title was registered under the names of the heirs of Eugenio Godinez, specifically, Teodora Tampus, Fernanda Godinez (the wife of Iscolastico Epe), Tomasa Godinez (the wife of Mateo Ibañez), Sotera Godinez (the wife

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[2] *Id.* at 194-215. Penned by Associate Justice Francisco P. Acosta with Associate Justice Pampio A. Abarintos and Associate Justice Priscilla Baltazar-Padilla, concurring.

[3] *Id.* at 217-221.

[4] *Id.* at 290-317. Penned by Acting Presiding Judge Geraldine Faith A. Econg.

[5] Records, Volume I, pp. 1-9.

[6] *Id.* at 103-112.

[7] CA *rollo*, pp. 114-115.

of Guillermo Pino), Atanasio Godinez[8] (married to Florencia Pino), Juana Godinez (the wife of Catalino Cuison), and Ambrosio Godinez (married to Mamerta Inot); and that he bought the two lots from the surviving heirs of the registered owners through several deeds of absolute sale, all dated December 7, 1998.[9]

For reference, the table below summarizes the sale transactions between Unchuan and the aforesaid surviving heirs of the original registered owners:

DEEDS OF SALE EXECUTED BY THE HEIRS (Through Representation)	**AREA (sq.m.)**
Sps. Atanacio Godinez & Florencia Pino & Teodora Tampus[10]	29,986
Sps. Ambrosio Godinez & Mamerta Inot[11]	5,997.20
Sps. Fernanda Epe & Iscolastico Epe & Teodora Tampus[12]	29,986
Sps. Ambrosio Godinez & Mamerta Inot[13]	5,997.20
Sps. Sotera Godinez & Guillermo Pino & Teodora Tampus[14]	29,986
Sps. Tomasa Godinez & Mateo Ybañez & Teodora Tampus[15]	29,986
Sps. Juana Godinez & Catalino Quizon & Teodora Tampus[16]	29,986
Sps. Ambrosio Godinez & Mamerta Inot[17]	5,997.20
Sps. Ambrosio Godinez & Mamerta Inot[18]	5,997.20

[8] Also referred to as Atanacio Godinez.

[9] Records, Volume I, pp. 12-56.

[10] Records, Volume I, Annex "B", pp. 115-121.

[11] Records, Volume I, Annex "B-1", pp. 122-123.

[12] Records, Volume I, Annex "B-2", pp. 124-129.

[13] Records, Volume I, Annex "B-3", pp. 130-132.

[14] Records, Volume I, Annex "B-4" and Annex "B-5", pp. 133-138.

[15] Records, Volume I, Annex "B-6", Annex "B-7", Annex "B-8" and Annex "B-10", pp. 139-144; 152-154.

[16] Records, Volume I, Annex "B-9", pp. 145-150.

[17] Records, Volume I, Annex "B-11", pp. 155-157.

[18] Records, Volume I, Annex "B-12", pp. 158-159.

Unchuan further alleged that he came to know that Atanacio Godinez (*Atanacio*), the supposed attorney-in-fact of all the registered owners and their heirs, already sold both lots to Civil Aeronautics Administration (*CAA*),[19] the predecessor of MCIAA; that the sale covered by the Deed of Absolute Sale,[20] dated April 3, 1958, was null and void because the registered owners and their heirs did not authorize Atanacio to sell their undivided shares in the subject lots in favor of CAA; that no actual consideration was paid to the said registered owners or their heirs, despite promises that they would be paid; that the deed of absolute sale did not bear the signature of the CAA representative; that there was no proof that the Secretary of the Department of Public Works and Highways approved the sale; and that his predecessors-in-interest merely tolerated the possession by CAA and, later, by MCIAA.[21]

In its Motion to Dismiss, dated April 27, 2004,[22] MCIAA moved for the dismissal of the said complaint citing prescription, laches and estoppel as its grounds. The RTC, however, denied the motion.[23] MCIAA later filed its Very Urgent Motion for Compulsory Joinder of Indispensable Parties,[24] but the RTC issued a denial in the Order,[25] dated November 5, 2004, and required MCIAA to file an Answer. Again, MCIAA moved for reconsideration,[26] but the RTC still denied it in the Order,[27] dated January 5, 2005.

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[19] The CAA became Bureau of Air Transportation, which later renamed Air Transportation Office.

[20] *Rollo*, pp. 501-504.

[21] *Id.* at 754.

[22] *Id.* at 241-250.

[23] *Id.* at 251.

[24] *Id.* at 252-255.

[25] *Id.* at 256-257.

[26] *Id.* at 258-275.

[27] *Id.* at 276.

In its Answer,[28] MCIAA averred that on April 3, 1958, Atanacio, acting as the representative of the heirs of Eugenio Godinez, who were the registered owners, sold Lot No. 4810-A and Lot No. 4810-B to the Republic of the Philippines, represented by CAA. Thereafter, CAA took possession of the said property upon payment of the purchase price. To corroborate the said transaction, on September 17, 1969, Atanacio, along with other former registered co-owners, signed a deed of partition attesting to the fact of sale of the two lots in favor of the government and admitted its absolute right over the same. Since then, the said lots had been in the possession of the Republic in the concept of an owner. The said real properties were declared by the Republic for taxation purposes under Tax Declaration No. 00078 and Tax Declaration No. 00092. In fact, by virtue of Republic Act (*R.A.*) No. 6958, otherwise known as "The Charter of Mactan-Cebu International Airport Authority," the Republic officially turned over the management of the said lots to MCIAA.

On March 3, 2006, the RTC rendered judgment in favor of Unchuan. The decretal portion of the decision reads:

WHEREFORE, the above as premises, this court hereby renders judgment in favor of Plaintiff Unchuan and against Defendant MCIAA and declares:

a. The Deed of Sale signed by Atanacio Godinez alienating the lands denominated as Lot Nos. 4810-A and 4810-B in favor of Defendant's predecessor-in-interest as VOID;

b. Plaintiff as the true and legal owner of Lot Nos. 4810-A and 4810-B consisting of ONE HUNDRED SEVENTY NINE THOUSAND NINE HUNDRED SIXTEEN (179,916) SQUARE METERS because the Deed of Sale between Plaintiffs predecessor-in-interest is void;

c. The Register of Deeds of Lapu-Lapu City to annotate in OCT No. RO-1173 up to the extent of the right of Plaintiff in the said land and to subsequently issue a title in his name up to such extent;

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[28] *Id.* at 277-288.

d. Defendant is directed to vacate from Lot Nos. 4810-A and 4810-B;

e. Defendant to pay the sum of TWENTY PESOS (Php20.00) per square meter per month as rental reckoned from the time of the filing of the complaint until Defendant shall vacate the same.

No pronouncement as to the cost of this suit.

SO ORDERED.[29]

The RTC held that Atanacio was not legally authorized to act as the attorney-in-fact of his brothers and sisters and to transact on their behalf because he was not clothed with a special power of attorney granting him authority to sell the disputed lots. "This lack of authority of Atanacio Godinez, therefore, has an effect of making the contract of sale between the parties' predecessors-in-interest as void except perhaps for the share of Atanacio Godinez which he could very well alienate." Moreover, the documentation of the sale was never transmitted to CAA's Manila Office; hence, the heirs did not receive any payment for the sale transaction.[30]

The RTC also noted that the deed of absolute sale presented to the trial court did not bear the signature of the then CAA Administrator which would have shown that the vendee consented to the sale. Thus, the RTC concluded that (1) there was no valid consideration for the alleged conveyance; (2) Atanacio lacked the authority to alienate the undivided shares of his co-heirs to CAA, MCIAA's predecessor-in-interest; and (3) the lack of signature of the CAA Administrator was indicative of the lack of consent from him to purchase the lots.[31]

Aggrieved, MCIAA appealed the said decision to the CA.

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[29] *Id.* at 316-317.

[30] *Id.* at 304-308.

[31] *Id.* at 313-314.

On November 29, 2007, the CA affirmed the RTC decision. The CA explained that Atanacio had no authority to act as an agent for the other registered owners and their heirs absent the special power of attorney specifically executed for such purpose as required in Article 1874 of the New Civil Code. Also, no evidence was adduced to show that the purchase price for the said lots was paid. For being a void contract, the heirs' deed of partition acknowledging the purported sale in favor of CAA was found by the CA to have produced no legal effects and not susceptible of ratification. It was of the view that prescription, estoppel or laches did not set in because a void contract could be questioned anytime and an action or defense for the declaration of its inexistence or absolute nullity was imprescriptible. It also noted that the deed of absolute sale was not signed by the then CAA authorized representative.[32]

MCIAA filed its Motion for Reconsideration,[33] dated December 18, 2007, and subsequently, its Supplemental Motion for Reconsideration,[34] dated January 30, 2008. Later, MCIAA filed its Motion for New Trial,[35] dated March 6, 2008, in which it incorporated three newly discovered evidence: a) certified true copy of the Deed of Absolute Sale executed between Atanacio Godinez and the Republic, represented by CAA, with the signature of then Administrator Urbano B. Caldoza (*Caldoza*) showing that the vendee consented to the sale;[36] b) certified true copy of the Joint Affidavit of Confirmation of Sale of Allotted Shares Already Adjudicated and Quitclaim of a Portion of Lot No. 4810, dated July 21, 1969, executed by the other heirs who did not sign the Deed of Partition acknowledging the sale; and c) certified true copy of the Provincial Voucher with attachments showing that there was

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[32] *Id.* at 201-212.

[33] *Id.* at 399-426.

[34] *Id.* at 427-448.

[35] *Id.* at 450-464.

[36] *Id.* at 470-473.

payment of the purchase price. MCIAA claimed that the said documents would prove that there was consent between the contracting parties and that the consideration was paid.

In its March 25, 2008 Resolution,[37] the CA denied MCIAA's Motion for Reconsideration. Before MCIAA received its copy of the March 25, 2008 CA Resolution, it filed a Supplemental Motion for Reconsideration adopting the said newly discovered evidence. The CA Resolution partly reads:

> After a very careful read-through of the motion for reconsideration, we find no new or substantial arguments which have not been presented in defendant-appellant's prior pleadings and which have not been taken up or considered in our Decision, save for the allegation that the proper remedy should have been a petition for just compensation.
>
> Otherwise, no further ratiocination is needed to show there was a valid sale between the registered owners of the subject lots and the Civil Aeronautics Administration (CAA), the predecessor-in-interest of defendant-appellant MCIAA. There was absolutely no competent evidence to prove that all of the registered owners of the subject properties gave their consent to the sale through their attorney-in-fact or that the CAA through its authorized representative gave his approval to the sale or that there was consideration. In addition, we see no reason to discuss again our finding that prescription, *laches*, or estoppel is unavailing against the registered owners and equally unavailing against the latter's successor's, including herein plaintiff-appellee, they having stepped into the shoes of the decedents-registered owners by operation of law.
>
> Allow us, however, to re-visit the defendant-appellant's claim that extrinsic fraud prevented it from having a fair trial and completely presenting its case before the trial court, clearly adverting to the omission of Atty. Sigfredo V. Dublin to timely apprise the OSG of the adverse claim (in favor of defendant-appellant) that was annotated in the Original Certificate of Title No. RO-1173 on October 9, 1998.
>
> In our decision, we stressed that even if there was a belated annotation of the adverse claim in OCT No. RO-1173, said annotation

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[37] *Id.* at 217-221.

is of no force and effect since the same was predicated on a void and inexistent contract. For like "the spring that cannot rise above its source," a void contract cannot create a valid and legally enforceable right.

Anent the allegation of extrinsic fraud, we are not at all persuaded there was one. "Extrinsic or collateral fraud, as distinguished from intrinsic fraud, connotes any fraudulent scheme executed by a prevailing litigant outside the trial of a case against the defeated party, or his agent, attorneys or witnesses, whereby said defeated party, is prevented from presenting fully and fairly his side of the case." . . . In other words, extrinsic fraud is one that affects and goes into the jurisdiction of the Court" or that the defendant-appellant was deprived of due process of law owing to the gross negligence of its counsel. Both do not, however, obtain under the circumstances prevailing in the instant case.

Firstly, defendant-appellant has not shown any clear and convincing evidence that the plaintiff-appellee employed actual and extrinsic fraud in procuring a favorable decision from the trial court. Sadly, it failed to show that it was prevented by the plaintiff-appellee from asserting its right over the subject properties and properly presenting its case by reason of such alleged fraud; neither was any evidence proffered to substantiate such allegation.

And secondly, it bears to stress that the failure of Atty. Sigfredo V. Dublin to fully apprise the OSG of the annotation of the defendant-appellant's adverse claim is not tantamount to gross negligence of counsel. With due and reasonable diligence, the said annotation could have been timely presented by the OSG during the presentation of evidence. It bears to stress that the office which has custody of OCT No. RO-1173 (where the adverse claim is annotated) is another government agency, The Registry of Deeds, which the OSG can easily have access to.

As we have held in our decision, the defendant-appellant's heavy reliance on the Deed of Partition which contained the phrase: "Lot No. 4810-A, with an area of ONE HUNDRED SEVENTY-SEVEN THOUSAND ONE HUNDRED SEVENTY SIX (177,176) square meters and Lot 4810-B, with [an] area of TWO THOUSAND SEVEN HUNDRED FORTY (2,740) square meters, ARE OWNED by the Civil Aeronautics Administration having bought the same from the original owners; (Emphasis supplied) "to support its assertion that the Civil Aeronautics Administration (predecessor-in-interest of MCIAA) had

indeed validly purchased the lots from the registered owners through their purported attorney-in-fact, Atanacio Godinez, is misplaced. This Court had already found and ruled that:

> ". . . At most, the above-quoted statement is a mistaken conclusion that the CAA validly purchased the subject lots. The above-quoted statement does not change the fact that the Deed of Sale in favor of CAA was void and inexistent. Neither can the same be considered as a cure for the defect of lack of consent or authority."

"Lack of consent and consideration made the deeds of sale void altogether and rendered them subject to attack at any time, conformably to the rule in Article 1410 that an action to declare the existence of void contracts does not prescribe." We would like to add that there is even "no need of an action to set aside a void and inexistent contract; in fact, such action cannot logically exist. However, an action to declare the non-existence of the contract can be maintained; and in the same action, the plaintiff may recover what he has given by virtue of the contract."[38]

Undaunted, MCIAA filed this present action, praying for the reversal of the assailed CA ruling and for a new judgment dismissing the complaint against MCIAA or, in the alternative, to remand the case to the CA to thresh out all unresolved factual issues concerning the case. To bolster, the reliefs prayed for, MCIAA offers the following:

GROUNDS RELIED UPON
IN SUPPORT OF THE PETITION

I

THE COURT OF APPEALS COMMITTED A SERIOUS ERROR IN LAW WHEN IT AFFIRMED THE MARCH 3, 2006 DECISION OF THE TRIAL COURT DESPITE THE FACT THAT:

A

THE TRIAL COURT GRAVELY ERRED IN DECLARING THAT ATANACIO GODINEZ WAS NOT AUTHORIZED TO CONVEY LOT NOS. 4810-A AND 4810-B TO CAA.

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[38] *Id.* at 217-220.

B

THE TRIAL COURT GRAVELY ERRED IN FINDING THAT RESPONDENTS' PREDECESSORS-IN-INTEREST WERE NOT PAID THE CONSIDERATION FOR THE SALE OF THE SUBJECT LOTS.

C

THE TRIAL COURT GRAVELY ERRED IN DECLARING AS VOID AND INVALID THE DEED OF ABSOLUTE SALE EXECUTED BY ATANACIO GODINEZ IN FAVOR OF THE CAA.

D

THE TRIAL COURT GRAVELY ERRED IN HOLDING THAT RESPONDENT'S PREDECESSORS-IN-INTEREST ARE NOT INDISPENSABLE PARTIES TO THE INSTANT CASE.

E

THE TRIAL COURT GRAVELY ERRED IN DECLARING THAT RESPONDENT'S CAUSE OF ACTION IS NOT BARRED BY PRESCRIPTION, LACHES AND ESTOPPEL.

II

THE COURT OF APPEALS COMMITTED A SERIOUS ERROR IN LAW BY NOT ADMITTING THE ADDITIONAL EVIDENCE SOUGHT TO BE INTRODUCED BY PETITIONER. [39]

The OSG argues that "the mere absence of a special power of attorney in favor of Atanacio Godinez does not necessarily mean that he was not authorized by his co-owners who even authorized and represented to CAA that Atanacio Godinez was their attorney-in-fact."[40] "Even granting for the sake of argument that Atanacio Godinez was not in fact authorized by the other registered co-owners to execute a deed conveying Lot Nos. 4810-A and 4810-B to CAA, such defect has nevertheless been cured when his co-owners subsequently executed on September 17, 1969 a public document denominated as Deed of Partition."[41]

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[39] *Id.* at 122-123.

[40] *Id.* at 685.

[41] *Id.* at 686.

As to the nonpayment of consideration, the OSG contends that such allegation cannot be established by mere testimonial evidence and that it must be proved by clear, positive and convincing evidence.[42] Moreover, "not only are private transactions presumed to be fair and regular and that the ordinary course of business presumed to have been followed but, also, government employees are presumed to have regularly performed their official duties. In this case, Unchuan has not overcome the foregoing legal presumptions."[43]

The OSG further avers that "the absence of the signature of Administrator Caldoza on the challenged Deed of Absolute Sale should, at best, be treated as a mere formal defect which should not affect the very substance of the contract"[44] bearing in mind that "a contract of sale is a consensual contract."[45] The OSG likewise posits that "assuming arguendo that petitioner does not possess any title or right whatsoever over the above parcels of land, its possession is justified by extraordinary prescription."[46] It also claims that laches had set in against the original registered owners for their failure to question the validity of the sale for over forty six (46) years after the sale transaction between CAA and Atanacio in 1958.[47] Thus, "the laches of the original registered owners extend to Unchuan since he stands in privity with his predecessors-in-interest."[48]

The OSG insists that extrinsic fraud was committed against it as Atty. Sigfredo Dublin (*Atty. Dublin*), the legal manager of CAA, withheld from their office, while the trial was ongoing, the information that on October 9, 1998, he had caused the

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[42] *Id.* at 691.

[43] *Id.* at 691-692.

[44] *Id.* at 696.

[45] *Id.* at 695.

[46] *Id.* at 703.

[47] *Id.* at 703-704.

[48] *Id.* at 705.

annotation of an adverse claim on OCT No. RO-1173. The OSG asserts that it was significant because the deed of absolute sale between Unchuan and the alleged heirs of the registered owners was executed only on December 7, 1998. Also suppressed from the OSG, as it claims, were the following:

1. Deed of Absolute Sale executed between Atanacio Godinez and the CAA bearing the signature of Urbano B. Caldoza, then CAA Administrator;

2. Joint Affidavit of Confirmation of Sale of Allotted Shares Already Adjudicated and Quitclaim of a Portion of Lot No. 4810, Open Cadastre, executed by the heirs of Juana Godinez.

3. Extra-Judicial Declaration of Partition and Adjudication executed by Tomasa Godinez, Atanacio Godinez, Mamerta Inot (for Ambrosio Godinez), Pedro Pino (for Sotera Godinez) and Corazon Epe (for Fernanda Godinez).

4. Provincial Voucher, dated October 3, 1958 (and its attachments) evidencing payment of the consideration for the sale of Lot Nos. 4810-A and 4810-B.

The OSG argues that these documents are very important and material to petitioner's defense and should be admitted to prevent a miscarriage of justice.

The Court's Ruling

The RTC decision, as affirmed by the CA, needs to be modified.

The Court finds that the sale transaction executed between Atanacio, acting as an agent of his fellow registered owners, and the CAA was indeed void insofar as the other registered owners were concerned. They were represented without a written authority from them clearly in violation of the requirement under Articles 1874 and 1878 of the Civil Code, which provide:

Art. 1874. When a sale of a piece of land or any interest therein is through an agent, the authority of the latter shall be in writing; otherwise, the sale shall be void.

Art. 1878. Special powers of attorney are necessary in the following cases:

x x x x x x x x x

(5) To enter into any contract by which the ownership of an immovable is transmitted or acquired either gratuitously or for a valuable consideration;

x x x x x x x x x

The significance of requiring the authority of an agent to be put into writing was amplified in *Dizon v. Court of Appeals*:[49]

When the sale of a piece of land or any interest thereon is through an agent, the authority of the latter shall be in writing; otherwise, the sale shall be void. Thus the authority of an agent to execute a contract for the sale of real estate must be conferred in writing and must give him specific authority, either to conduct the general business of the principal or to execute a binding contract containing terms and conditions which are in the contract he did execute. A special power of attorney is necessary to enter into any contract by which the ownership of an immovable is transmitted or acquired either gratuitously or for a valuable consideration. The express mandate required by law to enable an appointee of an agency (couched) in general terms to sell must be one that expressly mentions a sale or that includes a sale as a necessary ingredient of the act mentioned. For the principal to confer the right upon an agent to sell real estate, a power of attorney must so express the powers of the agent in clear and unmistakable language. When there is any reasonable doubt that the language so used conveys such power, no such construction shall be given the document.

Without a special power of attorney specifying his authority to dispose of an immovable, Atanacio could not be legally considered as the representative of the other registered co-owners of the properties in question. Atanacio's act of conveying Lot No. 4810-A and Lot No. 4810-B cannot be a valid source of obligation to bind all the other registered co-owners and

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[49] 444 Phil. 161, 165-166 (2003), citing *Cosmic Lumber Corp. v. Court of Appeals*, 332 Phil. 948, 957-958 (1996).

their heirs because he was not clothed with any authority to enter into a contract with CAA. The other heirs could not have given their consent as required under Article 1475[50] of the New Civil Code because there was no meeting of the minds among the other registered co-owners who gave no written authority to Atanacio to transact on their behalf. Therefore, no contract was perfected insofar as the portions or shares of the other registered co-owners or their heirs were concerned.

Thus, the Court cannot give any weight either to the Deed of Partition of Lot No. 4810, Open Cadastre[51] (subsequently executed by all the heirs of Ambrosio and Sotera Godinez to the effect that they had acknowledged[52] the sale of the subject lots in favor of CAA) or to other documents (such as Joint Affidavit of Confirmation of Sale of Allotted Shares Already Adjudicated and Quitclaim of a Portion of Lot No. 4810, Open Cadastre)[53] all of which gave the impression that they had ratified[54] the sale of the subject lots in favor of CAA, MCIAA's predecessor-in-interest.

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[50] Art. 1475. The contract of sale is perfected at the moment there is a meeting of minds upon the thing which is the object of the contract and upon the price.

From that moment, the parties may reciprocally demand performance, subject to the provisions of the law governing the form of contracts.

[51] *Rollo*, pp. 506-507.

[52] Lot No. 4810-A with an area of ONE HUNDRED SEVENTY SEVEN THOUSAND ONE HUNDRED SEVENTY SIX (177,176) square meters and Lot No. 4810-B, with [an] area of TWO THOUSAND SEVEN HUNDRED FORTY (2,740) square meters, are owned by the Civil Aeronautics Administration, having bought the same from the original owners.

[53] *Rollo*, pp. 474-475.

[54] 3. That this affidavit is jointly executed by US, the undersigned affiants, to establish the fact of sale and conveyance of a portion of Lot 4810 by the heirs of JUANA GODINEZ, specifically the area of some 177,173 sq. meters, more or less, of Lot 4810, to the CAA Mactan Airport, Lapulapu City, Philippines; confirming voluntarily said conveyance; quitting forever whatever right, interest and participation we have or we may have over the remaining portion of 55,426 sq. meters, of Lot 4810, by reason of the said sale and conveyance by the said heirs of JUANA GODINEZ.

The rule is that a void contract produces no effect either against or in favor of anyone and cannot be ratified.[55] Similarly, laches will not set in against a void transaction, as in this case, where the agent did not have a special power of attorney to dispose of the lots co-owned by the other registered owners. In fact, Article 1410 of the Civil Code specifically provides that an action to declare the inexistence of a void contract does not prescribe.

The transaction entered into by Atanacio and CAA, however, was not entirely void because the lack of consent by the other co-owners in the sale was with respect to their shares only. Article 493 of the New Civil Code expressly provides:

> Art. 493. Each co-owner shall have the full ownership of his part and the fruits and benefits pertaining thereto, and he may therefore alienate, assign or mortgage it, and even substitute another person in its enjoyment, except when personal rights are involved. But the effect of the alienation or the mortgage, with respect to the co-owners, shall be limited to the portion which may be allotted to him in the division upon the termination of the co-ownership.

The quoted provision recognizes the absolute right of a co-owner to freely dispose of his *pro indiviso* share as well as the fruits and other benefits arising from that share, independently of the other co-owners. The sale of the subject lots affects only the seller's share *pro indiviso*, and the transferee gets only what corresponds to his grantor's share in the partition of the property owned in common. Since a co-owner is entitled to sell his undivided share, a sale of the entire property by one co-owner without the consent of the other co-owners is not null and void; only the rights of the co-owner/seller are transferred, thereby making the buyer a co-owner of the property.[56]

In the case at bench, although the sale transaction insofar as the other heirs of the registered owners was void, the sale insofar as the extent of Atanacio's interest is concerned, remains

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[55] *Roberts v. Papio*, 544 Phil. 280, 303 (2007).

[56] *Fernandez v. Fernandez*, 416 Phil. 322, 343 (2001).

valid. Atanacio was one of the registered co-owners of the subject lots, but he was not clothed with authority to transact for the other co-owners. By signing the deed of sale with the CAA, Atanacio effectively sold his undivided share in the lots in question. Thus, CAA became a co-owner of the undivided subject lots. Accordingly, Atanacio's heirs could no longer alienate anything in favor of Unchuan because he already conveyed his *pro indiviso* share to CAA.

The Court does not accept either Unchuan's allegation that no payment was received for the transaction between Atanacio and CAA. Section 3, Rule 131 of the Rules of Court identifies the following as disputable presumptions: (1) private transactions have been fair and regular; (2) the ordinary course of business has been followed; and (3) there was sufficient consideration for a contract. A presumption may operate against a challenger who has not presented any proof to rebut it. "The effect of a legal presumption upon a burden of proof is to create the necessity of presenting evidence to meet the legal presumption or the *prima facie* case created thereby, and which, if no proof to the contrary is presented and offered, will prevail. The burden of proof remains where it is, but by the presumption, the one who has that burden is relieved for the time being from introducing evidence in support of the averment, because the presumption stands in the place of evidence unless rebutted."[57] Atanacio, by affixing his signature on the deed of absolute sale, a disputable presumption arose that consideration was paid. A mere allegation that no payment was received is not sufficient to dispel such legal presumption. Furthermore, the record shows an official communication, dated October 8, 1958, from the District Land Office of Cebu to the Provincial Treasurer of Cebu stating that Provincial Voucher No. 05358 was disbursed in favor of Atanacio.[58]

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[57] *Surtida v. Rural Bank of Malinao (Albay), Inc*., 540 Phil. 502, 514-515 (2006).

[58] *Rollo*, p. 505.

Consequently, the Court deems it just and fair to modify the disposition of the subject lots to Unchuan. Unchuan is not entitled to the whole 179,916 square meters of the property, as originally awarded by the RTC and affirmed by the CA. Atanacio's share should be excluded from the computation as his heirs were already precluded from further conveying what he, their predecessor-in-interest, had previously sold to CAA. Thus, Unchuan is only legally entitled to an unidentified 149,930 square meters of the property after excluding Atanacio's unidentified share of 29,986 square meters.

The Court notes that the lots in question were formerly undeveloped lands, but now, form part of the Mactan-Cebu International Airport. It is, thus, being used for a public purpose. It being the situation, the government or the MCIAA should initiate expropriation proceedings so that the registered owners or successors-in-interest would be compensated for their undivided shares in the lots taken from them. In the meantime, MCIAA should pay rentals thereon, after these shall have been identified and segregated, at the rate of ₱20.00 per square meter to be reckoned from the filing of the complaint.

WHEREFORE, the petition is **PARTIALLY GRANTED**. The November 29, 2007 Decision and the March 25, 2008 Resolution of the Court of Appeals (*CA*) in CA-G.R. CV No. 01306 are **AFFIRMED with MODIFICATION**. Accordingly, the dispositive portion of the decision should read as follows:

WHEREFORE, judgment is hereby rendered declaring that:

a. The Deed of Sale signed by Atanacio Godinez alienating the lands denominated as Lot No. 4810-A and Lot No. 4810-B in favor of MCIAA's predecessor-in-interest is VALID, insofar as his undivided share in the said lots is concerned, but VOID, insofar as the undivided shares of the other registered owners, who did not sign the deed, are concerned; and

b. Plaintiff Richard E. Unchuan is the true and legal owner of portions of Lot No. 4810-A and Lot

No. 4810-B consisting of One Hundred Forty Nine Thousand Nine Hundred Thirty (149,930) Square Meters.

The Register of Deeds of Lapu-Lapu City is hereby ordered to annotate in OCT No. RO-1173 the respective rights of Richard E. Unchuan and the Mactan-Cebu International Airport Authority in the said property.

The Mactan-Cebu International Airport Authority is ordered to initiate expropriation proceedings over the undivided portions of Lots No. 4810-A and 4810-B covering the said 149,930 Square Meters.

In the meantime, Mactan-Cebu International Airport Authority is ordered to pay the sum of ₱20.00 per square meter per month as rental for the use of the property reckoned from the time of the filing of the complaint until its final payment for the same.

No pronouncement as to the cost of the suit.

SO ORDERED.

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

Brion, J., on official leave.

THIRD DIVISION

[G.R. No. 187462. June 1, 2016]

RAQUEL G. KHO, *petitioner, vs.* **REPUBLIC OF THE PHILIPPINES and VERONICA B. KHO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; THE ISSUES INVOLVED IN A PETITION FOR

REVIEW ON *CERTIORARI* IS THE DETERMINATION AND APPLICATION OF EXISTING LAW AND PREVAILING JURISPRUDENCE; EXCEPTIONS.— The issues in the instant petition involve a determination and application of existing law and prevailing jurisprudence. However, intertwined with these issues is the question of the existence of the subject marriage license, which is a question of fact and one which is not appropriate for a petition for review on *certiorari* under Rule 45 of the Rules of Court. This rule, nonetheless, is not without exceptions, *viz*.: (1) When the conclusion is a finding grounded entirely on speculation, surmises and conjecture; (2) When the inference made is manifestly mistaken, absurd or impossible; (3) Where there is a grave abuse of discretion; (4) When the judgment is based on a misapprehension of facts; (5) **When the findings of fact are conflicting**; (6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee; (7) **When the findings are contrary to those of the trial court;** (8) When the findings of fact are conclusions without citation of specific evidence on which they are based; (9) When the facts set forth in the petition as well as in the petitioners' main and reply briefs are not disputed by the respondents; and (10) When the findings of fact of the Court of Appeals are premised on the supposed absence of evidence and contradicted by the evidence on record.

2. CIVIL LAW; CIVIL CODE; MARRIAGE; ESSENTIAL REQUISITES UNDER THE CIVIL CODE.— The marriage of petitioner and respondent was celebrated on June 1, 1972, prior to the effectivity of the Family Code. Hence, the Civil Code governs their union. Accordingly, Article 53 of the Civil Code spells out the essential requisites of marriage as a contract, to wit: ART. 53. ***No marriage shall be solemnized unless all these requisites are complied with*:** (1) Legal capacity of the contracting parties; (2) Their consent, freely given; (3) Authority of the person performing the marriage; and **(4) A marriage license, except in a marriage of exceptional character.**

3. ID.; ID.; ID.; ID.; SAVE MARRIAGES OF AN EXCEPTIONAL CHARACTER, THE CIVIL CODE EXPLICITLY STATES THAT NO MARRIAGE SHALL BE SOLEMNIZED WITHOUT A LICENSE FIRST BEING ISSUED BY THE LOCAL CIVIL

REGISTRAR OF THE MUNICIPALITY WHERE EITHER CONTRACTING PARTY HABITUALLY RESIDES; MARRIAGES UNDER EXCEPTIONAL CHARACTER, ENUMERATED.— Article 58 of the Civil Code makes explicit that no marriage shall be solemnized without a license first being issued by the local civil registrar of the municipality where either contracting party habitually resides, save marriages of an exceptional character authorized by the Civil Code, but not those under Article 75. Under the Civil Code, marriages of exceptional character are covered by Chapter 2, Title III, comprising Articles 72 to 79. These marriages are: (1) marriages in *articulo mortis* or at the point of death during peace or war; (2) marriages in remote places; (3) consular marriages; (4) ratification of marital cohabitation; (5) religious ratification of a civil marriage; (6) Mohammedan or pagan marriages; and (7) mixed marriages.

4. ID.; ID.; ID.; ID.; UNDER THE CIVIL CODE, MARRIAGE PERFORMED WITHOUT THE CORRESPONDING MARRIAGE LICENSE IS VOID; RATIONALE.— Article 80(3) of the Civil Code also makes it clear that a marriage performed without the corresponding marriage license is void, this being nothing more than the legitimate consequence flowing from the fact that the license is the essence of the marriage contract. The rationale for the compulsory character of a marriage license under the Civil Code is that it is the authority granted by the State to the contracting parties, after the proper government official has inquired into their capacity to contract marriage. Stated differently, the requirement and issuance of a marriage license is the State's demonstration of its involvement and participation in every marriage, in the maintenance of which the general public is interested.

5. ID.; ID.; ID.; ID.; THE CERTIFICATION OF THE LOCAL REGISTRAR THAT THEIR OFFICE HAS NO RECORD OF A MARRIAGE LICENSE IS ADEQUATE TO PROVE THE NON-ISSUANCE OF SAID LICENSE; APPLICATION IN CASE AT BAR.— Apropos is the case of *Nicdao Cariño v. Yee Cariño.* There, it was held that the certification of the Local Civil Registrar, that their office had no record of a marriage license, was adequate to prove the non-issuance of said license. It was further held that the presumed validity of the marriage of the parties had been overcome, and that it became the burden of

the party alleging a valid marriage to prove that the marriage was valid, and that the required marriage license had been secured. x x x Indeed, despite respondent's categorical claim that she and petitioner were able to obtain a marriage license, she failed to present evidence to prove such allegation. It is a settled rule that one who alleges a fact has the burden of proving it and mere allegation is not evidence. Based on the Certification issued by the Municipal Civil Registrar of Arteche, Eastern Samar, coupled with respondent's failure to produce a copy of the alleged marriage license or of any evidence to show that such license was ever issued, the only conclusion that can be reached is that no valid marriage license was, in fact, issued. Contrary to the ruling of the CA, it cannot be said that there was a simple defect, not a total absence, in the requirements of the law which would not affect the validity of the marriage. The fact remains that respondent failed to prove that the subject marriage license was issued and the law is clear that a marriage which is performed without the corresponding marriage license is null and void. x x x Furthermore, in the fairly recent case of *Abbas v. Abbas,* this Court echoed the ruling in *Republic v. CA* that, in sustaining the finding of the lower court that a marriage license was lacking, this Court relied on the Certification issued by the local civil registrar, which stated that the alleged marriage license could not be located as the same did not appear in their records. Contrary to petitioner's asseveration, nowhere in the Certification was it categorically stated that the officer involved conducted a diligent search. In this respect, this Court held that Section 28, Rule 132 of the Rules of Court does not require a categorical statement to this effect. x x x From these cases, it can be deduced that to be considered void on the ground of absence of a marriage license, the law requires that the absence of such marriage license must be apparent on the marriage contract, or at the very least, supported by a certification from the local civil registrar that no such marriage license was issued to the parties.

APPEARANCES OF COUNSEL

Cenesio Gavan for petitioner.
Office of the Solicitor General for public respondent.

D E C I S I O N

PERALTA, *J.*:

Challenged in the present petition for review on *certiorari* are the Decision[1] and Resolution[2] of the Court of Appeals (*CA*), Cebu City dated March 30, 2006 and January 14, 2009, respectively, in CA-G.R. CV No. 69218. The assailed CA Decision reversed and set aside the Decision[3] of the Regional Trial Court (*RTC*) of Borongan, Eastern Samar, Branch 2, in Civil Case No. 464, which ruled in petitioner's favor in an action he filed for declaration of nullity of his marriage with private respondent, while the CA Resolution denied petitioners' motion for reconsideration.

The present petition arose from a Petition for Declaration of Nullity of Marriage filed by herein petitioner with the RTC of Oras, Eastern Samar. Pertinent portions of the Petition allege as follows:

x x x x x x x x x

3. Sometime in the afternoon of May 31, 1972, petitioner's parents summoned one Eusebio Colongon, now deceased, then clerk in the office of the municipal treasurer, instructing said clerk to arrange and prepare whatever necessary papers were required for the intended marriage between petitioner and respondent supposedly to take place at around midnight of June 1, 1972 so as to exclude the public from witnessing the marriage ceremony;

4. Petitioner and Respondent thereafter exchanged marital vows in a marriage ceremony which actually took place at around 3:00 o'clock before dawn of June 1, 1972, on account that there was a

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[1] Penned by Associate Justice Apolinario D. Bruselas, Jr., with the concurrence of Associate Justices Arsenio J. Magpale and Vicente L. Yap, concurring; Annex "A" to Petition, *rollo*, pp. 28-40.

[2] Penned by Associate Justice Francisco P. Acosta, with Associate Justices Amy C. Lazaro-Javier and Rodil V. Zalameda, concurring; Annex "B" to Petition, *id.* at 41-43.

[3] Annex "C" to Petition, *id.* at 44-59.

public dance held in the town plaza which is just situated adjacent to the church whereas the venue of the wedding, and the dance only finished at around 2:00 o'clock of same early morning of June 1, 1972;

5. Petitioner has never gone to the office of the Local Civil Registrar to apply for marriage license and had not seen much less signed any papers or documents in connection with the procurement of a marriage license;

6. Considering the shortness of period from the time the aforenamed clerk of the treasurer's office was told to obtain the pertinent papers in the afternoon of May 31, 1972 so required for the purpose of the forthcoming marriage up to the moment the actual marriage was celebrated before dawn of June 1, 1972, no marriage license therefore could have been validly issued, thereby rendering the marriage solemnized on even date null and void for want of the most essential requisite;

7. For all intents and purposes, thus, Petitioner's and Respondent's marriage aforestated was solemnized sans the required marriage license, hence, null and void from the beginning and neither was it performed under circumstances exempting the requirement of such marriage license;

x x x x x x x x x

WHEREFORE, premises considered, it is most respectfully prayed of this Honorable Court that after due notice and hearing, judgment be rendered:

1. Declaring the contract of marriage between petitioner and respondent held on June 1, 1972, at Arteche, Eastern Samar, null and void *ab initio* and of no legal effect;

x x x x x x x x x[4]

Among the pieces of evidence presented by petitioner is a Certification[5] issued by the Municipal Civil Registrar of Arteche, Eastern Samar which attested to the fact that the Office of the Local Civil Registrar has neither record nor copy of a marriage

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

[5] See RTC Decision, *id.* at 56.

license issued to petitioner and respondent with respect to their marriage celebrated on June 1, 1972.

Respondent filed her Answer[6] praying that the petition be outrightly dismissed for lack of cause of action because there is no evidence to prove petitioner's allegation that their marriage was celebrated without the requisite marriage license and that, on the contrary, both petitioner and respondent personally appeared before the local civil registrar and secured a marriage license which they presented before their marriage was solemnized.

Upon petitioner's request, the venue of the action was subsequently transferred to the RTC of Borongan, Eastern Samar, Branch 2, where the parties submitted their respective pleadings as well as affidavits of witnesses.

On September 25, 2000, the RTC rendered its Decision granting the petition. The dispositive portion of the said Decision reads:

> WHEREFORE, in view of the foregoing, the Court hereby declares the marriage contracted between Raquel G. Kho and Veronica Borata on June 1, 1972 null and void ab initio, pursuant to Article 80 of the Civil Code and Articles 4 and 5 of the Family Code. The foregoing is without prejudice to the application of Articles 50 and 51 of the Family Code.
>
> Let a copy of this decision be furnished the Municipal Civil Registrar of Arteche, Eastern Samar for proper registration of this decree of nullity of marriage.
>
> SO ORDERED.[7]

The RTC found that petitioner's evidence sufficiently established the absence of the requisite marriage license when the marriage between petitioner and respondent was celebrated. As such, the RTC ruled that based on Articles 53 (4), 58 and 80 (3) of the Civil Code of the Philippines, the absence of the

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[6] *Rollo*, p. 64.

[7] *Id.* at 59.

said marriage license rendered the marriage between petitioner and respondent null and void *ab initio*.

Respondent then filed an appeal with the CA in Cebu City. On March 30, 2006, the CA promulgated its assailed Decision, disposing thus:

> **WHEREFORE**, in view of the foregoing, the Decision dated 25 September 2000 of Branch 2 of the Regional Trial Court of Borongan, Eastern Samar, is **REVERSED** and **SET ASIDE**. The marriage between the petitioner-appellee Raquel Kho and Veronica Kho is declared valid and subsisting for all intents and purposes.
>
> **SO ORDERED**.[8]

The CA held that since a marriage was, in fact, solemnized between the contending parties, there is a presumption that a marriage license was issued for that purpose and that petitioner failed to overcome such presumption. The CA also ruled that the absence of any indication in the marriage certificate that a marriage license was issued is a mere defect in the formal requisites of the law which does not invalidate the parties' marriage.

Petitioner filed a Motion for Reconsideration,[9] but the CA denied it in its Resolution data January 14, 2009.

Hence, the instant petition raising the following issues, to wit:

1. WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED IN ASCRIBING A SO-CALLED "ETHICAL DIMENSION" TO PETITIONER'S CAUSE, ALLUDING TO AN ALLEGED LIAISON WITH ANOTHER WOMAN AS A FACTOR IN REVERSING THE JUDGMENT OF THE LOWER COURT WHICH VOIDED HIS MARRIAGE IN QUESTION WITH RESPONDENT;

2. WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED IN APPRECIATING AGAINST PETITIONER THE

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[8] *Id.* at 39.

[9] *Id.* at 72.

FACT THAT DESPITE THE LAPSE OF 25 YEARS HE DID NOTHING TO ATTACK, EVEN COLLATERALLY, HIS APPARENTLY VOID MARRIAGE WITH RESPONDENT;

3. WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED IN ALTOGETHER DISREGARDING PETITIONER'S OBVIOUSLY OVERWHELMING DOCUMENTARY EVIDENCES OF LACK OF MARRIAGE LICENSE AND GIVING WEIGHT INSTEAD TO UNSUPPORTED PRESUMPTIONS IN FAVOR OF RESPONDENT, IN ITS ASSAILED DECISION; and

4. WHETHER OR NOT THE HONORABLE COURT OF APPEALS ERRED IN SETTING ASIDE OR REVERSING THE LOWER COURT'S JUDGMENT DECLARING THE MARRIAGE BETWEEN PETITIONER AND RESPONDENT A NULLITY FOR ABSENCE OF THE REQUISITE MARRIAGE LICENSE.[10]

Petitioner's basic contention in the present petition centers on the alleged failure of the CA to give due credence to petitioner's evidence which established the absence or lack of marriage license at the time that petitioner and respondent's marriage was solemnized. Petitioner argues that the CA erred in deciding the case not on the basis of law and evidence but rather on the ground of what the appellate court calls as ethical considerations as well as on the perceived motive of petitioner in seeking the declaration of nullity of his marriage with respondent.

The Court finds for the petitioner.

At the outset, the State, through the Office of the Solicitor General (*OSG*), raises a procedural question by arguing that the issues presented by petitioner in the present petition are factual in nature and it is not proper for this Court to delve into these issues in a petition for review on *certiorari*.

The Court does not agree.

The issues in the instant petition involve a determination and application of existing law and prevailing jurisprudence. However, intertwined with these issues is the question of the existence

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[10] *Id.* at 15.

of the subject marriage license, which is a question of fact and one which is not appropriate for a petition for review on *certiorari* under Rule 45 of the Rules of Court. This rule, nonetheless, is not without exceptions, *viz.*:

(1) When the conclusion is a finding grounded entirely on speculation, surmises and conjectures;
(2) When the inference made is manifestly mistaken, absurd or impossible;
(3) Where there is a grave abuse of discretion;
(4) When the judgment is based on a misapprehension of facts;
(5) **When the findings of fact are conflicting;**
(6) When the Court of Appeals, in making its findings, went beyond the issues of the case and the same is contrary to the admissions of both appellant and appellee;
(7) **When the findings are contrary to those of the trial court;**
(8) When the findings of fact are conclusions without citation of specific evidence on which they are based;
(9) When the facts set forth in the petition as well as in the petitioners' main and reply briefs are not disputed by the respondents; and
(10) When the findings of fact of the Court of Appeals are premised on the supposed absence of evidence and contradicted by the evidence on record.[11]

In the present case, the findings of the RTC and the CA, on whether or not there was indeed a marriage license obtained by petitioner and respondent, are conflicting. Hence, it is but proper for this Court to review these findings.

The marriage of petitioner and respondent was celebrated on June 1, 1972, prior to the effectivity of the Family Code.[12] Hence, the Civil Code governs their union. Accordingly, Article 53 of the Civil Code spells out the essential requisites of marriage as a contract, to wit:

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[11] *Geronimo v. Court of Appeals*, G.R. No. 105540, July 5, 1993, 224 SCRA 494, 498-499. (Emphasis supplied)

[12] The Family Code of the Philippines took effect on August 3, 1988.

ART. 53. ***No marriage shall be solemnized unless all these requisites are complied with:***

(1) Legal capacity of the contracting parties;
(2) Their consent, freely given;
(3) Authority of the person performing the marriage; and
(4) A marriage license, except in a marriage of exceptional character.[13]

Article 58 of the Civil Code makes explicit that no marriage shall be solemnized without a license first being issued by the local civil registrar of the municipality where either contracting party habitually resides, save marriages of an exceptional character authorized by the Civil Code, but not those under Article 75.[14] Under the Civil Code, marriages of exceptional character are covered by Chapter 2, Title III, comprising Articles 72 to 79. These marriages are: (1) marriages in *articulo mortis* or at the point of death during peace or war; (2) marriages in remote places; (3) consular marriages; (4) ratification of marital cohabitation; (5) religious ratification of a civil marriage; (6) Mohammedan or pagan marriages; and (7) mixed marriages. Petitioner's and respondent's marriage does not fall under any of these exceptions.

Article 80 (3) of the Civil Code also makes it clear that a marriage performed without the corresponding marriage license is void, this being nothing more than the legitimate consequence flowing from the fact that the license is the essence of the marriage contract.[15] The rationale for the compulsory character of a marriage license under the Civil Code is that it is the authority granted by the State to the contracting parties, after the proper government official has inquired into their capacity to contract

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[13] Emphasis supplied.

[14] Art. 75. Marriages between Filipino citizens abroad may be solemnized by consuls and vice-consuls of the Republic of the Philippines. The duties of the local civil registrar and of a judge or justice of the peace or mayor with regard to the celebration of marriage shall be performed by such consuls and vice-consuls.

[15] *Republic of the Phils. v. Dayot*, 573 Phil. 553, 568-569 (2008).

marriage.[16] Stated differently, the requirement and issuance of a marriage license is the State's demonstration of its involvement and participation in every marriage, in the maintenance of which the general public is interested.[17]

In the instant case, respondent claims that she and petitioner were able to secure a marriage license which they presented to the solemnizing officer before the marriage was performed.

The OSG, on its part, contends that the presumption is always in favor of the validity of marriage and that any doubt should be resolved to sustain such validity. Indeed, this Court is mindful of this principle as well as of the Constitutional policy which protects and strengthens the family as the basic autonomous social institution and marriage as the foundation of the family.

On the other hand, petitioner insists that the Certification issued by the Civil Registrar of Arteche, Eastern Samar, coupled with the testimony of the former Civil Registrar, is sufficient evidence to prove the absence of the subject marriage license.

The Court agrees with petitioner and finds no doubt to be resolved as the evidence is clearly in his favor.

Apropos is the case of *Nicdao Cariño v. Yee Cariño*.[18] There, it was held that the certification of the Local Civil Registrar, that their office had no record of a marriage license, was adequate to prove the non-issuance of said license.[19] It was further held that the presumed validity of the marriage of the parties had been overcome, and that it became the burden of the party alleging a valid marriage to prove that the marriage was valid, and that the required marriage license had been secured.[20]

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[16] *Id.* at 569.

[17] *Alcantara v. Alcantara,* 558 Phil. 192, 202 (2007).

[18] 403 Phil. 861 (2001).

[19] *Id.* at 869.

[20] *Id.* at 870.

As stated above, petitioner was able to present a Certification issued by the Municipal Civil Registrar of Arteche, Eastern Samar attesting that the Office of the Local Civil Registrar "has no record nor copy of any marriage license ever issued in favor of Raquel G. Kho [petitioner] and Veronica M. Borata [respondent] whose marriage was celebrated on June 1, 1972."[21] Thus, on the basis of such Certification, the presumed validity of the marriage of petitioner and respondent has been overcome and it becomes the burden of respondent to prove that their marriage is valid as it is she who alleges such validity. As found by the RTC, respondent was not able to discharge that burden.

It is telling that respondent failed to present their alleged marriage license or a copy thereof to the court. In addition, the Certificate of Marriage[22] issued by the officiating priest does not contain any entry regarding the said marriage license, Respondent could have obtained a copy of their marriage contract from the National Archives and Records Section, where information regarding the marriage license, *i.e.*, date of issuance and license number, could be obtained. However, she also failed to do so. The Court also notes, with approval, the RTC's agreement with petitioner's observation that the statements of the witnesses for respondent, as well as respondent herself, all attest to the fact that a marriage ceremony was conducted but neither one of them testified that a marriage license was issued in favor of petitioner and respondent. Indeed, despite respondent's categorical claim that she and petitioner were able to obtain a marriage license, she failed to present evidence to prove such allegation. It is a settled rule that one who alleges a fact has the burden of proving it and mere allegation is not evidence.[23]

Based on the Certification issued by the Municipal Civil Registrar of Arteche, Eastern Samar, coupled with respondent's failure to produce a copy of the alleged marriage license or of

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[21] See RTC Decision, *rollo*, p. 56.

[22] *Rollo*, p. 133.

[23] *Amor-Catalan v. Court of Appeals*, 543 Phil. 568, 575 (2007).

any evidence to show that such license was ever issued, the only conclusion that can be reached is that no valid marriage license was, in fact, issued. Contrary to the ruling of the CA, it cannot be said that there was a simple defect, not a total absence, in the requirements of the law which would not affect the validity of the marriage. The fact remains that respondent failed to prove that the subject marriage license was issued and the law is clear that a marriage which is performed without the corresponding marriage license is null and void.

As to the sufficiency of petitioner's evidence, the OSG further argues that, on the basis of this Court's ruling in *Sevilla v. Cardenas*,[24] the certification issued by the local civil registrar, which attests to the absence in its records of a marriage license, must categorically state that the document does not exist in the said office despite diligent search.

However, in *Republic of the Philippines v. Court of Appeals*,[25] this Court considered the certification issued by the Local Civil Registrar as a certification of due search and inability to find the record or entry sought by the parties despite the absence of a categorical statement that "such document does not exist in their records despite diligent search." The Court, citing Section 28,[26] Rule 132 of the Rules of Court, held that the certification of due search and inability to find a record or entry as to the purported marriage license, issued by the civil registrar, enjoys probative value, he being the officer charged under the law to keep a record of all data relative to the issuance of a marriage license. Based on said certification, the Court held that there is absence of a marriage license that would render the marriage void *ab initio*.

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[24] 529 Phil. 419, 429 (2006).

[25] G.R. No. 103047, September 2, 1994, 236 SCRA 257, 262.

[26] Sec. 28. *Proof of lack of record.* — A written statement signed by an officer having the custody of an official record or by his deputy that after diligent search, no record or entry of a specified tenor is found to exist in the records of his office, accompanied by a certificate as above provided, is admissible as evidence that the records of his office contain no such record or entry.

Moreover, as discussed in the abovestated case of *Nicdao Cariño v. Yee Cariño*,[27] this Court considered the marriage of the petitioner and her deceased husband as void *ab initio* as the records reveal that the marriage contract of petitioner and the deceased bears no marriage license number and, as certified by the local civil registrar, their office has no record of such marriage license. The court held that the certification issued by the local civil registrar is adequate to prove the non-issuance of the marriage license. Their marriage having been solemnized without the necessary marriage license and not being one of the marriages exempt from the marriage license requirement, the marriage of the petitioner and the deceased is undoubtedly void *ab initio*. This ruling was reiterated in the more recent case of *Go-Bangayan v. Bangayan, Jr.*[28]

Furthermore, in the fairly recent case of *Abbas v. Abbas*,[29] this Court echoed the ruling in *Republic v. CA*[30] that, in sustaining the finding of the lower court that a marriage license was lacking, this Court relied on the Certification issued by the local civil registrar, which stated that the alleged marriage license could not be located as the same did not appear in their records. Contrary to petitioner's asseveration, nowhere in the Certification was it categorically stated that the officer involved conducted a diligent search. In this respect, this Court held that Section 28, Rule 132 of the Rules of Court does not require a categorical statement to this effect. Moreover, in the said case, this Court ruled that:

> Under Sec. 3(m), Rule 131 of the Rules of Court, it is a disputable presumption that an official duty has been regularly performed, absent contradiction or other evidence to the contrary. We held, "The presumption of regularity of official acts may be rebutted by affirmative evidence of irregularity or failure to perform a duty." No such

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[27] *Supra* note 18.

[28] G.R. No. 201061, July 3, 2013.

[29] 702 Phil. 578, 590-592 (2013).

[30] *Supra* note 25.

affirmative evidence was shown that the Municipal Civil Registrar was lax in performing her duty of checking the records of their office, thus the presumption must stand. x x x[31]

In all the abovementioned cases, there was clear and unequivocal finding of the absence of the subject marriage license which rendered the marriage void.

From these cases, it can be deduced that to be considered void on the ground of absence of a marriage license, the law requires that the absence of such marriage license must be apparent on the marriage contract, or at the very least, supported by a certification from the local civil registrar that no such marriage license was issued to the parties.[32]

Indeed, all the evidence cited by the CA to show that a wedding ceremony was conducted and a marriage contract was signed does not operate to cure the absence of a valid marriage license.[33] As cited above, Article 80 (3) of the Civil Code clearly provides that a marriage solemnized without a license is void from the beginning, except marriages of exceptional character under Articles 72 to 79 of the same Code. As earlier stated, petitioner's and respondent's marriage cannot be characterized as among the exceptions.

As to the motive of petitioner in seeking to annul his marriage to respondent, it may well be that his motives are less than pure — that he seeks a way out of his marriage to legitimize his alleged illicit affair with another woman. Be that as it may, the same does not make up for the failure of the respondent to prove that they had a valid marriage license, given the weight of evidence presented by petitioner. The law must be applied. As the marriage license, an essential requisite under the Civil Code, is clearly absent, the marriage of petitioner and respondent is void *ab initio*.

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[31] *Abbas v. Abbas*, *supra* note 29, at 592.

[32] *Alcantara v. Alcantara*, *supra* note 17, at 203-204.

[33] *Abbas v. Abbas*, *supra* note 29, at 594.

WHEREFORE, the instant petition is **GRANTED**. The Decision and Resolution of the Court of Appeals, Cebu City, dated March 30, 2006 and January 14, 2009, respectively, in CA-G.R. CV No. 69218, are **REVERSED** and **SET ASIDE**. The Decision of the Regional Trial Court of Borongan, Eastern Samar, Branch 2, dated September 25, 2000, in Civil Case No. 464 is **REINSTATED**.

SO ORDERED.

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

Brion,[*] *J.,* on leave.

THIRD DIVISION

[G.R. No. 191936. June 1, 2016]

VIRGINIA D. CALIMAG, *petitioner, vs.* **HEIRS OF SILVESTRA N. MACAPAZ, represented by ANASTACIO P. MACAPAZ, JR.,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; DOCUMENTARY EVIDENCE; A REPRODUCTION OF THE ORIGINAL DOCUMENT CAN STILL BE ADMITTED AS SECONDARY EVIDENCE SUBJECT TO CERTAIN REQUIREMENTS SPECIFIED BY LAW; ELUCIDATED.— Rule 130, Section 3 of the Rules on Evidence provides that: "When the subject of the inquiry is the contents of a document, no evidence shall be admissible other than the original document itself, x x x." Nevertheless, a reproduction

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[*] Designated Additional Member in lieu of Associate Francis H. Jardeleza, per Raffle dated May 23, 2016.

of the original document can still be admitted as secondary evidence subject to certain requirements specified by law. In *Dantis v. Maghinang, Jr.*, it was held that: A secondary evidence is admissible only upon compliance with Rule 130, Section 5, which states that: when the original has been lost or destroyed, or cannot be produced in court, the offeror, upon proof of its execution or existence and the cause of its unavailability without bad faith on his part, may prove its contents by a copy, or by a recital of its contents in some authentic document, or by the testimony of witnesses in the order stated. Accordingly, the offeror of the secondary evidence is burdened to satisfactorily prove the predicates thereof, namely: (1) the execution or existence of the original; (2) the loss and destruction of the original or its non-production in court; and (3) the unavailability of the original is not due to bad faith on the part of the proponent/offeror. Proof of the due execution of the document and its subsequent loss would constitute the basis for the introduction of secondary evidence. x x x.

2. ID.; ID.; ID.; THE FACT OF MARRIAGE MAY BE PROVEN BY RELEVANT EVIDENCE OTHER THAN THE MARRIAGE CERTIFICATE; ESTABLISHED IN CASE AT BAR.— Jurisprudence teaches that the fact of marriage may be proven by relevant evidence other than the marriage certificate. Hence, even a person's birth certificate may be recognized as competent evidence of the marriage between his parents.x x x "A certificate of live birth is a public document that consists of entries (regarding the facts of birth) in public records (Civil Registry) made in the performance of a duty by a public officer (Civil Registrar)." Thus, being public documents, the respondents' certificates of live birth are presumed valid, and are *prima facie* evidence of the truth of the facts stated in them. "*Prima facie* evidence is defined as evidence good and sufficient on its face. Such evidence as, in the judgment of the law, is sufficient to establish a given fact, or the group or chain of facts constituting the party's claim or defense and which if not rebutted or contradicted, will remain sufficient." Verily, under Section 5 of Act No. 3753, the declaration of *either* parent of the new-born legitimate child shall be sufficient for the registration of his birth in the civil register, and only in the registration of birth of an illegitimate child does the law require that the birth certificate be signed and sworn to jointly

by the parents of the infant, or only by the mother if the father refuses to acknowledge the child. Forsooth, the Court finds that the respondents' certificates of live birth were duly executed consistent with the provision of the law respecting the registration of birth of legitimate children. The fact that only the signatures of Fidela appear on said documents is of no moment because Fidela only signed as the *declarant* or *informant* of the respondents' fact of birth as legitimate children. x x x [I]t has been held that, "*[p]ersons dwelling together in apparent matrimony are presumed, in the absence of any counter presumption or evidence special to the case, to be in fact married.* The reason is that such is the common order of society, and if the parties were not what they thus hold themselves out as being, they would be living in the constant violation of decency and of law. A presumption established by our Code of Civil Procedure is 'that a man and a woman deporting themselves as husband and wife have entered into a lawful contract of marriage.' *Semper praesumitur pro matrimonio* – Always presume marriage." Furthermore, as the established period of cohabitation of Anastacio, Sr. and Fidela transpired way before the effectivity of the Family Code, the strong presumption accorded by then Article 220 of the Civil Code in favor of the validity of marriage cannot be disregarded.

APPEARANCES OF COUNSEL

Benedictine Law Center for petitioner.
Romeo Ortiz De Belen for respondents.

D E C I S I O N

REYES, *J.*:

This is a petition for review on *certiorari*[1] assailing the Decision[2] of the Court of Appeals (CA) promulgated on October

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[1] *Rollo,* pp. 7-24.

[2] Penned by Associate Justice Martin S. Villarama, Jr. (now retired Supreme Court Associate Justice), with Associate Justices Magdangal M. De Leon and Ricardo R. Rosario concurring; *id.* at 26-39.

20, 2009 in CA-G.R. CV No. 90907 which affirmed with modification the Decision[3] dated September 28, 2007 of the Regional Trial Court (RTC) of Makati City, Branch 147, in Civil Case No. 06-173, an action for annulment of deed of sale and cancellation of title with damages. The CA Resolution[4] dated April 5, 2010 denied the motion for reconsideration thereof.

The Facts

Virginia D. Calimag (petitioner) co-owned the property, the subject matter of this case, with Silvestra N. Macapaz (Silvestra).

On the other hand, Anastacio P. Macapaz, Jr. (Anastacio, Jr.) and Alicia Macapaz-Ritua (Alicia) (respondents) are the children of Silvestra's brother, Anastacio Macapaz, Sr. (Anastacio, Sr.) and Fidela O. Poblete Vda. de Macapaz (Fidela).

The subject property, with a total area of 299 square meters, is located at No. 1273 Bo. Visaya Street, Barangay Guadalupe Nuevo, Makati City, and was duly registered in the names of the petitioner (married to Demetrio Calimag) and Silvestra under Transfer Certificate of Title (TCT) No. 183088.[5] In said certificate of title, appearing as Entry No. 02671 is an annotation of an Adverse Claim of Fidela asserting rights and interests over a portion of the said property measuring 49.5 sq.m.[6]

On November 11, 2002, Silvestra died without issue. On July 7, 2005, TCT No. 183088 was cancelled and a new certificate of title, TCT No. 221466,[7] was issued in the name of the petitioner by virtue of a Deed of Sale[8] dated January 18, 2005 whereby Silvestra allegedly sold her 99-sq.m. portion to the petitioner

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[3] *Id.* at 62-67.

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

[5] Records, p. 10.

[6] *Id.* at 11.

[7] *Id.* at 12-13.

[8] *Id.* at 14.

for ₱300,000.00. Included among the documents submitted for the purpose of cancelling TCT No. 183088 was an Affidavit[9] dated July 12, 2005 purportedly executed by both the petitioner and Silvestra. It was stated therein that the affidavit of adverse claim filed by Fidela was not signed by the Deputy Register of Deeds of Makati City, making the same legally ineffective. On September 16, 2005, Fidela passed away.[10]

On December 15, 2005, Anastacio, Jr. filed a criminal complaint for two counts of falsification of public documents under Articles 171 and 172 of the Revised Penal Code against the petitioner.[11] However, said criminal charges were eventually dismissed.

On March 2, 2006, the respondents, asserting that they are the heirs of Silvestra, instituted the action for *Annulment of Deed of Sale and Cancellation of TCT No. 221466 with Damages* against the petitioner and the Register of Deeds of Makati City.[12]

In her *Answer with Compulsory Counterclaim*,[13] the petitioner averred that the respondents have no legal capacity to institute said civil action on the ground that they are illegitimate children of Anastacio, Sr. As such, they have no right over Silvestra's estate pursuant to Article 992 of the Civil Code which prohibits illegitimate children from inheriting intestate from the legitimate children and relatives of their father and mother.

After trial, the RTC found for the respondents and rendered its Decision on September 28, 2007.[14] The *fallo* of the RTC decision reads:

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[9] *Id.* at 15.

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

[11] Records, pp. 151-152.

[12] *Id.* at 1-8.

[13] *Rollo*, pp. 59-61.

[14] *Id.* at 62-67.

WHEREFORE, premises considered, judgment is rendered as follows:

1. Declaring the Deed of Sale purportedly executed by [Silvestra] in favor of [the petitioner] on January 18, 2005 over a parcel of land covered by TCT No. 183088 of the Registry of Deeds of Makati City, as Null and Void;

2. Ordering the Registrar of Deeds of Makati City to cancel TCT No. 221466 issued in the name of [the petitioner], the same having been issued on the basis of a fraudulent/falsified Deed of Sale, and thereafter to reinstate TCT No. 183088 issued in the name of [the petitioner] and [Silvestra] with all the liens and encumbrances annotated thereon, including the adverse claim of [Fidela]; [and]

3. Ordering [the petitioner] to pay the [respondents] the sum of ₱100,000.00 as moral damages and another ₱100,000.00 as exemplary damages, ₱50,000.00 as and by way of attorney's fees, plus costs of suit.

[The petitioner's] counter-claim is dismissed for lack of merit.

SO ORDERED.[15]

The RTC found that the Deed of Sale dated January 18, 2005 presented for the cancellation of TCT No. 183088 was a forgery considering that Silvestra, who purportedly executed said deed of sale died on November 11, 2002, about three years before the execution of the said Deed of Sale.[16] Respecting the respondents' legal capacity to sue, the RTC favorably ruled in this wise:

Demetrio Calimag, Jr. sought, but failed, to impugn the personality of the [respondents] to initiate this action as the alleged heirs of [Silvestra]. **The marriage between [Anastacio, Sr.] and [Fidela] is evidenced by the Certificate of (canonical) Marriage (Exh. "M"). The name 'Fidela Obera Poblete' is indicated in [the respondents'] respective birth certificates as the mother's maiden name but Fidela**

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

[16] *Id.* at 65.

signed the same as the informant as "Fidela P. Macapaz." In both birth certificates, "Anastacio Nator Macapaz" is indicated as the name of the father.[17] (Emphasis ours)

Ruling of the CA

Aggrieved, the petitioner elevated her case to the CA resting on the argument that the respondents are without legal personality to institute the civil action for cancellation of deed of sale and title on the basis of their claimed status as legitimate children of Anastacio, Sr., the brother and sole heir of the deceased, Silvestra.[18]

On October 20, 2009, the CA rendered its Decision affirming the RTC decision with modification as to the amount of damages. The *fallo* of the assailed decision reads:

> WHEREFORE, premises considered, the present appeal is hereby DISMISSED, for lack of merit. The Decision dated September 28, 2007 of the [RTC] of Makati City, Branch 147 in Civil Case No. 06-173 is hereby AFFIRMED with MODIFICATION in that the award of moral and exemplary damages is hereby reduced from ₱100,000.00 to ₱50,000.00, respectively.
>
> With costs against the [petitioner].
>
> SO ORDERED.[19]

The CA sustained the RTC ruling that the cancellation of TCT No. 183088 and the issuance of TCT No. 221466 in the name of the petitioner were obtained through forgery. As to the question of whether the respondents are legal heirs of Silvestra and thus have the legal capacity to institute the action, the CA ruled in this wise:

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[17] *Id.* at 66.

[18] *Id.* at 31-32.

[19] *Id.* at 39.

Reviewing the evidence on record, we concur with the trial court in sustaining the appellees' legitimate filiation to Silvestra's brother, [Anastacio, Sr.] The trial court found unsuccessful the attempt of Atty. Demetrio Calimag, Jr. to assail the validity of marriage between [Anastacio, Sr.] and [Fidela] with a certification from the NSO that their office has no record of the certificate of marriage of [Anastacio, Sr.] and [Fidela], and further claiming the absence of a marriage license.

The best proof of marriage between man and wife is a marriage contract. A certificate of marriage issued by the Most Holy Trinity Parish, Alang[-]alang, Leyte (Exh. "M") as well as a copy of the marriage contract were duly submitted in evidence by the [respondents].

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The Marriage Contract (Exh. "U") in this case clearly reflects a marriage license number and in the absence of a certification from the local civil registrar that no such marriage license was issued, the marriage between [Anastacio, Sr.] and [Fidela] may not be invalidated on that ground. x x x.

x x x x x x x x x

Every intendment of the law leans toward legalizing matrimony. Persons dwelling together in apparent matrimony are presumed, in the absence of any counterpresumption or evidence special to the case, to be in fact married. This jurisprudential attitude towards marriage is based on the *prima facie* presumption that a man and a woman deporting themselves as husband and wife have entered into a lawful contract of marriage. The Courts look upon this presumption with great favor. It is not to be lightly repelled; on the contrary, the presumption is of great weight.

Here, the fact of marriage between [Anastacio, Sr.] and [Fidela] was established by competent and substantial proof. [The respondents] who were conceived and born during the subsistence of said marriage are therefore presumed to be legitimate children of [Anastacio, Sr.], in the absence of any contradicting evidence.[20] (Citations omitted)

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

The petitioner sought reconsideration,[21] but her motion was denied in the Resolution[22] dated April 5, 2010.

Hence, this petition.

Notably, even before the CA, the petitioner never assailed the factual finding that forgery was indeed committed to effect the cancellation of TCT No. 183088 and the consequent transfer of title of the property in her name. Verily, in this petition, the petitioner continues to assail the legal capacity of the respondents to institute the present action. Invoking the provisions of Article 992 of the Civil Code,[23] the petitioner insists that the respondents have no legal right over the estate left by Silvestra for being illegitimate children of Anastacio, Sr.

While the petitioner does not question that Anastacio, Sr. is the legal heir of Silvestra, she, however, claims that the respondents failed to establish their legitimate filiation to Anastacio, Sr. considering that the marriage between Anastacio, Sr. and Fidela was not sufficiently proven. According to the petitioner, the marriage contract[24] presented by the respondents is not admissible under the Best Evidence Rule for being a mere fax copy or photocopy of an alleged marriage contract, and which is not even authenticated by the concerned Local Civil Registrar. In addition, there is no mark or stamp showing that said document was ever received by said office. Further, while the respondents also presented a Certificate of (Canonical) Marriage,[25] the petitioner asserts that the same is not the marriage license required under Articles 3 and 4 of the Family Code;[26]

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[21] *Id.* at 105-112.

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

[23] ART. 992. An illegitimate child has no right to inherit *ab intestato* from the legitimate children and relatives of his father or mother; nor shall such children or relatives inherit in the same manner from the illegitimate child.

[24] *Rollo*, p. 115.

[25] *Id.* at 119.

[26] ART. 3. The formal requisites of marriage are:

that said Certificate of (Canonical) Marriage only proves that a marriage ceremony actually transpired between Anastacio, Sr. and Fidela.[27]

Moreover, the petitioner contends that the certificates of live birth of the respondents do not conclusively prove that they are legitimate children of Anastacio, Sr.

In their Comment,[28] the respondents reiterate the finding and ruling of the CA that the petitioner's argument has no leg to stand on considering that one's legitimacy can only be questioned in a direct action seasonably filed by a party who is related to the former either by consanguinity or affinity.[29]

Thereupon, the resolution of this case rests upon this fundamental issue: whether or not the respondents are legal heirs of Silvestra.

Ruling of the Court

The petition is bereft of merit.

While it is true that a person's legitimacy can only be questioned in a direct action seasonably filed by the proper

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(1) Authority of the solemnizing officer;

(2) A valid marriage license except in the cases provided for in Chapter 2 of this Title; and

(3) A marriage ceremony which takes place with the appearance of the contracting parties before the solemnizing officer and their personal declaration that they take each other as husband and wife in the presence of not less than two witnesses of legal age.

ART. 4. The absence of any of the essential or formal requisites shall render the marriage void *ab initio*, except as stated in Article 35 (2).

A defect in any of the essential requisites shall render the marriage voidable as provided in Article 45.

An irregularity in the formal requisites shall not affect the validity of the marriage but the party or parties responsible for the irregularity shall be civilly, criminally and administratively liable.

[27] *Rollo*, pp. 15-17.

[28] *Id.* at 134-144.

[29] *Id.* at 141.

party, as held in *Spouses Fidel v. Hon. CA, et al.*,[30] this Court however deems it necessary to pass upon the respondents' relationship to Silvestra so as to determine their legal rights to the subject property. Besides, the question of whether the respondents have the legal capacity to sue as alleged heirs of Silvestra was among the issues agreed upon by the parties in the pre-trial.

At first blush, the documents presented as proof of marriage between Anastacio, Sr. and Fidela, *viz*: (1) fax or photo copy of the marriage contract, and (2) the canonical certificate of marriage, cannot be used as legal basis to establish the fact of marriage without running afoul with the Rules on Evidence of the Revised Rules of Court. Rule 130, Section 3 of the Rules on Evidence provides that: "When the subject of the inquiry is the contents of a document, no evidence shall be admissible other than the original document itself, x x x." Nevertheless, a reproduction of the original document can still be admitted as secondary evidence subject to certain requirements specified by law. In *Dantis v. Maghinang, Jr.*,[31] it was held that:

> A secondary evidence is admissible only upon compliance with Rule 130, Section 5, which states that: when the original has been lost or destroyed, or cannot be produced in court, the offeror, upon proof of its execution or existence and the cause of its unavailability without bad faith on his part, may prove its contents by a copy, or by a recital of its contents in some authentic document, or by the testimony of witnesses in the order stated. Accordingly, the offeror of the secondary evidence is burdened to satisfactorily prove the predicates thereof, namely: (1) the execution or existence of the original; (2) the loss and destruction of the original or its non-production in court; and (3) the unavailability of the original is not due to bad faith on the part of the proponent/offeror. Proof of the due execution of the document and its subsequent loss would constitute the basis for the introduction of secondary evidence. x x x.[32] (Citation omitted)

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[30] 581 Phil. 169 (2008).

[31] G.R. No. 191696, April 10, 2013, 695 SCRA 599.

[32] *Id.* at 611.

On the other hand, a canonical certificate of marriage is not a public document. As early as in the case of *United States v. Evangelista*,[33] it has been settled that church registries of births, marriages, and deaths made subsequent to the promulgation of General Orders No. 68 and the passage of Act No. 190 are no longer public writings, nor are they kept by duly authorized public officials.[34] They are private writings and their authenticity must therefore be proved as are all other private writings in accordance with the rules of evidence.[35] Accordingly, since there is no showing that the authenticity and due execution of the canonical certificate of marriage of Anastacio, Sr. and Fidela was duly proven, it cannot be admitted in evidence.

Notwithstanding, it is well settled that other proofs can be offered to establish the fact of a solemnized marriage.[36] Jurisprudence teaches that the fact of marriage may be proven by relevant evidence other than the marriage certificate. Hence, even a person's birth certificate may be recognized as competent evidence of the marriage between his parents.[37]

Thus, in order to prove their legitimate filiation, the respondents presented their respective Certificates of Live Birth issued by the National Statistics Office[38] where Fidela signed as the Informant in item no. 17 of both documents.

A perusal of said documents shows that the respondents were apparently born to the same parents — their father's name is *Anastacio Nator Macapaz*, while their mother's maiden

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[33] 29 Phil. 215 (1915).

[34] *Id.* at 221.

[35] *Cercado-Siga v. Cercado, Jr.*, G.R. No. 185374, March 11, 2015, 752 SCRA 514, 525-526.

[36] *Sarmiento v. CA*, 364 Phil. 613, 620 (1999).

[37] *Macua Vda. de Avenido v. Avenido*, G.R. No. 173540, January 22, 2014, 714 SCRA 447, 455, citing *Añonuevo, et al. v. Intestate Estate of Rodolfo G. Jalandoni*, 651 Phil. 137, 147 (2010).

[38] *Rollo*, pp. 120-121.

name is *Fidela Overa Poblete*. In item no. 24 thereof where it asks: "24. *DATE AND PLACE OF MARRIAGE OF PARENTS (For legitimate birth)*" it was stated therein that respondents' parents were married on "May 25, 1955 in Alang-alang, Leyte."[39]

The petitioner asserts that said documents do not conclusively prove the respondents' legitimate filiation, albeit, without offering any evidence to the contrary. The certificates of live birth contain no entry stating whether the respondents are of legitimate or illegitimate filiation, making said documents unreliable and unworthy of weight and value in the determination of the issue at hand.

Moreover, the petitioner states that in the respondents' certificates of live birth, only the signature of Fidela appears, and that they were not signed by Anastacio, Sr. She argues that the birth certificate must be signed by the father in order to be competent evidence to establish filiation, whether legitimate or illegitimate, invoking *Roces v. Local Civil Registrar of Manila*[40] where it was held that a birth certificate not signed by the alleged father is not competent evidence of paternity.[41]

The petitioner's contentions are untenable.

"A certificate of live birth is a public document that consists of entries (regarding the facts of birth) in public records (Civil Registry) made in the performance of a duty by a public officer (Civil Registrar)."[42] Thus, being public documents, the respondents' certificates of live birth are presumed valid, and are *prima facie* evidence of the truth of the facts stated in them.[43]

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[39] *Id*.

[40] 102 Phil. 1050 (1958).

[41] *Rollo*, p. 17.

[42] *Remiendo v. People*, 618 Phil. 273 (2009); *Republic of the Philippines v. T.A.N. Properties, Inc*., 578 Phil. 441, 454 (2008), citing REVISED RULES ON EVIDENCE, Rule 132, Section 23; *People v. Delantar*, 543 Phil. 107, 127 (2007).

[43] Court Resolution dated July 13, 2011 in G.R. No. 190745 entitled "*Lourdes T. Buhay v. Letecia A. Buhay Dela-Peña*."

"*Prima facie* evidence is defined as evidence good and sufficient on its face. Such evidence as, in the judgment of the law, is sufficient to establish a given fact, or the group or chain of facts constituting the party's claim or defense and which if not rebutted or contradicted, will remain sufficient."[44]

The petitioner's assertion that the birth certificate must be signed by the father in order to be a competent evidence of legitimate filiation does not find support in law and jurisprudence. In fact, the petitioner's reliance on *Roces*[45] is misplaced considering that what was sought to be proved is the fact of paternity of an illegitimate child, and not legitimate filiation.

Verily, under Section 5 of Act No. 3753,[46] the declaration of *either* parent of the new-born legitimate child shall be sufficient for the registration of his birth in the civil register, and only in the registration of birth of an illegitimate child does the law require that the birth certificate be signed and sworn to jointly by the parents of the infant, or only by the mother if the father refuses to acknowledge the child.

The pertinent portion of Section 5 of Act No. 3753 reads:

Sec. 5. *Registration and Certification of Birth.* — The declaration of the physician or midwife in attendance at the birth or, in default thereof, **the declaration of either parent of the newborn child, shall be sufficient for the registration of a birth in the civil register.** Such declaration shall be exempt from the documentary stamp tax and shall be sent to the local civil registrar not later than thirty days after the birth, by the physician, or midwife in attendance at the birth or by either parent of the newly born child.

In such declaration, the persons above mentioned shall certify to the following facts: (*a*) date and hour of birth; (*b*) sex and nationality of infant; (*c*) names, citizenship, and religion of parents or, in case

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[44] *Tomas P. Tan, Jr. v. Jose G. Hosana*, G.R. No. 190846, February 3, 2016.

[45] *Supra* note 40.

[46] LAW ON REGISTRY OF CIVIL STATUS. Approved on November 26, 1930.

the father is not known, of the mother alone; (*d*) civil status of parents; (*e*) place where the infant was born; (*f*) and such other data as may be required in the regulations to be issued.

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In case of an illegitimate child, the birth certificate shall be signed and sworn to jointly by the parents of the infant or only the mother if the father refuses. In the latter case, it shall not be permissible to state or reveal in the document the name of the father who refuses to acknowledge the child, or to give therein any information by which such father could be identified. x x x (Emphasis Ours)

Forsooth, the Court finds that the respondents' certificates of live birth were duly executed consistent with the provision of the law respecting the registration of birth of legitimate children. The fact that only the signatures of Fidela appear on said documents is of no moment because Fidela only signed as the *declarant* or *informant* of the respondents' fact of birth as legitimate children.

Nonetheless, the respondents' certificates of live birth also intimate that Anastacio, Sr. and Fidela had openly cohabited as husband and wife for a number of years, as a result of which they had two children — the second child, Anastacio, Jr. being born more than three years after their first child, Alicia. Verily, such fact is admissible proof to establish the validity of marriage. Court Resolution dated February 13, 2013 in G.R. No. 183262 entitled *Social Security System (SSS) v. Lourdes S. Enobiso*[47] had the occasion to state:

Sarmiento v. CA is instructive anent the question of what other proofs can be offered to establish the fact of a solemnized marriage, *viz.*:

> In *Trinidad vs. Court of Appeals*, *et al.*, **this Court ruled that as proof of marriage may be presented:** a) testimony of a witness to the matrimony; b) **the couple's public and open cohabitation as husband and wife after the alleged wedlock;**

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[47] <elibrary.judiciary.gov.ph/elibsearch> visited April 14, 2016.

> c) the birth and baptismal certificate of children born during such union; and d) the mention of such nuptial in subsequent documents.[48] (Citations omitted and emphasis ours)

Moreover, in a catena of cases,[49] it has been held that, "*[p]ersons dwelling together in apparent matrimony are presumed, in the absence of any counter presumption or evidence special to the case, to be in fact married.* The reason is that such is the common order of society, and if the parties were not what they thus hold themselves out as being, they would be living in the constant violation of decency and of law. A presumption established by our Code of Civil Procedure is 'that a man and a woman deporting themselves as husband and wife have entered into a lawful contract of marriage.' *Semper praesumitur pro matrimonio* — Always presume marriage."[50]

Furthermore, as the established period of cohabitation of Anastacio, Sr. and Fidela transpired way before the effectivity of the Family Code, the strong presumption accorded by then Article 220 of the Civil Code in favor of the validity of marriage cannot be disregarded. Thus:

> Art. 220. In case of doubt, all presumptions favor the solidarity of the family. Thus, every intendment of law or facts leans toward the validity of marriage, the indissolubility of the marriage bonds, the legitimacy of children, the community of property during marriage, the authority of parents over their children, and the validity of defense for any member of the family in case of unlawful aggression.

WHEREFORE, premises considered, the petition is hereby **DENIED**. The Decision dated October 20, 2009 and Resolution dated April 5, 2010 of the Court of Appeals in CA-G.R. CV No. 90907 are **AFFIRMED.**

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[48] *Id.*

[49] *Social Security System (SSS) v. Lourdes S. Enobiso*, G.R. No. 183262, February 13, 2013, *supra* note 47; *Sevilla v. Cardenas*, 529 Phil. 419, 435 (2006); *Vda. de Jacob v. CA*, 371 Phil. 693, 708-709 (1999), citing *Perido v. Perido*, 159 Phil. 710, 716-717 (1975).

[50] *Id.*

SO ORDERED.

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

Jardeleza, J., on official leave.

SECOND DIVISION

[G.R. No. 196329. June 1, 2016]

PABLO B. ROMAN, JR., and ATTY. MATIAS V. DEFENSOR, as Officers of the Capitol Hills Golf and Country Club, Inc., *petitioners, vs.* **SECURITIES AND EXCHANGE COMMISSION, ATTY. FRANKLIN I. CUETO, ATTY. EMMANUEL Y. ARTIZA and MANUEL C. BALDEO, as members of the Management Committee; JUSTINA F. CALLANGAN, as Director of the Corporation Finance Department; ATTY. NARCISO T. ATIENZA, EUSEBIO A. ABAQUIN, ATTY. CLODUALDO C. DE JESUS, SR., ATTY. CLODUALDO ANTONIO R. DE JESUS, JR., ATTY. IRENEO T. AGUIRRE, JR., SUNDAY O. PINEDA, PORFIRIO M. FLORES, and ATTY. ZOSIMO PADRO, JR.,** *respondents.*

SYLLABUS

MERCANTILE LAW; THE SECURITIES REGULATION CODE (REPUBLIC ACT NO. 8799); THE SECURITIES AND EXCHANGE COMMISSION (SEC) RETAINS SUFFICIENT POWERS TO JUSTIFY ITS ASSUMPTION OF JURISDICTION OVER MATTERS CONCERNING ITS SUPERVISORY, ADMINISTRATIVE AND REGULATORY FUNCTION; EXPLAINED.— Under the SRC, jurisidiction on matters stated under Section 5 of P.D. No. 902-A, which was originally vested

in the SEC, has already been transferred to the RTC acting as a special commercial court. Despite the said transfer, however, the SEC still retains sufficient powers to justify its assumption of jurisdiction over matters concerning its supervisory, administrative and regulatory functions. In *SEC v. Subic Bay Golf and Country Club, Inc. (SBGCCI) and Universal International Group Development Corporation (UIGDC)*, for instance, the Court affirmed the SEC's assumption of jurisdiction over a complaint, which alleged that SBGCCI and UIGDC committed misrepresentations in the sale of their shares. The Court held in the said case that nothing prevented the SEC from assuming jurisdiction to determine if SBGCCI and UIGDC committed administrative violations and were liable under the SRC despite the complaint having raised intra-corporate issues. It also ruled that the SEC may investigate activities of corporations to ensure compliance with the law. In ruling that way, the Court cited Sections 5 and 53 of the SRC as justifications, x x x. Beyond doubt, therefore, is the authority of the SEC to hear cases regardless of whether an action involves issues cognizable by the RTC, provided that the SEC could only act upon those which are merely administrative and regulatory in character. In other words, the SEC was never dispossessed of the power to assume jurisdiction over complaints, even if these are riddled with intra-corporate allegations, if their invocation of authority is confined only to the extent of ensuring compliance with the law and the rules, as well as to impose fines and penalties for violation thereof; and to investigate even *motu proprio* whether corporations comply with the Corporation Code, the SRC and the implementing rules and regulations. x x x With such broad authority, it is beyond question that the SEC, as a regulator, has broad discretion to act on matters that relate to its express power of supervision over all corporations, partnerships or associations who are the grantees of primary franchises and/or a license or permit issued by the Government. Such grant of express power of supervision, necessarily includes the power to create a management committee following the doctrine of necessary implication. The reason is simple. The creation of a management committee is one that is premised on the immediate and speedy protection of the interest not only of minority stockholders, but also of the general public from immediate danger of loss, wastage or destruction of assets or the paralyzation of business

of a concerned corporation or entity. No body is more competent to provide such a temporary relief other than the regulatory body of these companies – the SEC.

APPEARANCES OF COUNSEL

Jose P. Fernandez for petitioners.
Redemberto R. Villanueva for respondents.
Office of the Solicitor General for public respondent.

D E C I S I O N

MENDOZA, *J.*:

This petition[1] for review on *certiorari* under Rule 45 of the Rules of Court seeks to review and reverse the November 30, 2010 Decision[2] and the March 15, 2011 Resolution[3] of the Court of Appeals (*CA*) in CA-G.R. SP No. 101613, which dismissed the petition for prohibition filed by petitioners Pablo B. Roman, Jr. (*Roman*) and Atty. Matias V. Defensor (*Defensor*), President and Corporate Secretary, respectively, of Capitol Hills Golf and Country Club, Inc., (*Capitol*). The said petition before the CA questioned the jurisdiction of respondent Securities and Exchange Commission (*SEC*) for acting upon the letter-complaint,[4] dated May 8, 2007, filed by the minority shareholders of Capitol and for issuing its December 5, 2007 Order[5] creating the Management Committee (*MANCOM*) tasked to oversee the affairs of the said company.

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[1] *Rollo*, pp. 12-30.

[2] *Id.* at 32-42. Penned by Associate Justice Stephen C. Cruz, with Associate Justices Isaias P. Dicdican and Elihu A. Ybañez, concurring.

[3] *Id.* at 44-45. Penned by Associate Justice Stephen C. Cruz, with Associate Justices Isaias P. Dicdican and Elihu A. Ybañez, concurring.

[4] *Id.* at 46-71.

[5] *Id.* at 167-168.

Factual Antecedents

On June 6, 2007, private respondents Atty. Narciso T. Atienza, Eusebio A. Abaquin, Atty. Clodualdo C. De Jesus, Sr., Atty. Clodualdo Antonio R. De Jesus, Jr., Atty. Ireneo T. Aguirre, Jr., Sunday O. Pineda, Porfirio M. Florez, and Atty. Zosimo Padro, Jr. (*private respondents*) filed a verified letter-complaint against the petitioners before the SEC.

In their letter-complaint, private respondents alleged that on April 23, 1996, a Special Board of Directors Meeting was held and, thereafter, a resolution was passed by the Board of Directors of Capitol (*Board*) authorizing Roman, as its President:

(a) To acquire for and in behalf of the corporation four (4) parcels of land located at Montalban, Rizal xxx for a consideration of ONE HUNDRED FIFTY PESOS (₱150.00) per sq.m. xxx;

(b) To enter for and in behalf of the corporation [Capitol] into a Joint Venture Agreement with ALI [Ayala Land, Inc.] for the purpose of (1) having ALI develop and market the area occupied by the first nine (9) holes of the existing golf course of the corporation into saleable lots in consideration of the payment to the corporation of a forty percent (40%) share in the proceeds of the sale of such lots (NET OF TAXES AND DISCOUNTS); and (2) granting to ALI the right to develop the Properties into a first class golf course;

(c) For the purpose of acquiring the Properties, to obtain loans from ALI for the purpose of acquiring the Montalban properties up to an aggregate amount of One Hundred Fifty Million (₱150,000,000.00) to be secured by (a) real estate mortgage on the properties; and (b) assignment of the proceeds to be paid in connection with the Joint Venture for the development of the first nine (9) holes of the existing golf course of the corporation and under the Deed of Absolute Sale, dated April 10, 1992, between ALI and the Corporation covering the sale of the former driving range of the corporation to ALI under such terms, payment scheme and conditions as the President may deem reasonable and necessary under the circumstances;

(d) To (1) negotiate, agree to terms of, execute, sign and deliver the following agreements: (a) A letter-agreement with ALI embodying the foregoing terms; (b) A deed of sale for the purchase of the Properties; (c) Joint Venture Agreement with ALI covering the first nine (9) holes of the existing golf course of the corporation; (d) Promissory Notes, real estate mortgages and assignment agreements in favor of ALI; and (e) such other documents and agreements related to or in connection with the transactions contemplated in this resolution and (2) to do any and all acts necessary and appropriate to carry this resolution into effect.[6]

It was further alleged that Roman also asked the Board to pass a resolution authorizing a third-party, Pacific Asia Capital Corporation (*Pacific Asia*), to receive from Ayala Land, Inc. (*ALI*) the proceeds of the loan, or any portion thereof, and ALI to cause the release of the proceeds of the aforesaid loan, or any portion thereof, to Pacific Asia, and that any release by ALI and receipt by Pacific Asia be deemed a valid release and receipt of such amount;[7] that the issued resolutions were erroneously made;[8] that in evident bad faith, Roman, as President of Capitol, never informed the Board that, at the time he made the proposals and before the resolutions were issued, ALI had already made substantial initial cash advance in favor of Capitol but directly payable to Pacific Asia;[9] that ALI had no legal basis to make cash advances as Roman had no authority yet to enter into any agreement with ALI; that part of the representations made by Roman was that ALI would not commence the conversion of the area occupied by the first nine (9) holes of the existing golf course of Capitol in Old Balara, Quezon City, until such time that one (1) 18 hole golf course of the promised two (2) championship golf courses in Macabud,

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[6] *Id.* at 48-49.

[7] *Id.* at 49.

[8] *Id.*

[9] *Id.*

Montalban, Rizal, would have been finished and playable; and that after more than ten (10) long years, no golf course existed or was even under construction in Macabud, Montalban, Rizal, and yet the Old Balara property had already been converted and developed into a residential subdivision called the Ayala Hillside Estate.[10]

To private respondents, all these were irregularities and anomalies amounting to fraud and misrepresentation that prompted them to ask the SEC to investigate the Board and to order the constitution of the MANCOM to temporarily oversee the affairs of Capitol.

The said complaint was then docketed as SEC Case No. 169, series of 2007.

In its letter[11] to Roman, dated July 3, 2007, the SEC informed him of the verified complaint and gave him 15 days upon receipt to file his answer to the said complaint.

In their Answer,[12] the petitioners invoked the SEC's lack of jurisdiction claiming that the complaint of private respondents involved an intra-corporate controversy. Accordingly, they argued that under the Securities Regulation Code (*SRC*), jurisdiction over such intra-corporate controversies should be with the Regional Trial Court (*RTC*) acting as special commercial court.

In its December 5, 2007 Order,[13] the SEC, after finding merit in the arguments presented in the complaint, composed the membership of the MANCOM pursuant to its authority under Section 5 of the SRC and Presidential Decree (*P.D.*) No. 902-A. Thus:

Pursuant to Section 5 of the Securities Regulation Code and Presidential Decree No. 902-A, as amended, and finding merit in the

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[10] *Id.* at 47.

[11] *Id.* at 169.

[12] *Id.* at 71-79.

[13] *Id.* at 167-168.

arguments presented for the creation of a Management Committee (Mancom) for Capitol Hills Golf and Country Club, as prayed for by the Petitioners in their letter dated May 08, 2007, the following are hereby designated to compose the Mancom of the aforenamed corporation:

Atty. Franklin I. Cueto	-	Chairman
Atty. Noel Y. Artiza	-	Member
Mr. Manuel Baldeo, Jr.	-	Member

to perform the following duties and functions, for a period of one (1) month from the date of receipt of this Order, and until further Orders from the Commission, to prevent the paralyzation of the operations of Capitol Hills Golf and Country Club, preserve its assets and protect the interests of the minority stockholders and other stakeholders:

(a) Oversee and supervise the activities of the Club upon turn over thereof to the Committee;
(b) Take custody of all the assets and properties owned or held by the Club under management;
(c) Oversee the performance of the duties and responsibilities of the management and board of directors of the Club, in order to preserve its assets and properties; and
(d) To perform or discharge the powers and functions of the Management Committee under Sec. 5 of Rule 9 of the Interim Rules of Procedure Governing Intra-Corporate Controversies under R.A. 8799, insofar as may be applicable.

The above notwithstanding, the incumbent Board of Directors and Officers shall continue to discharge their functions relative to the day to day operations of the Club and shall submit a report to the Management Committee at such time and frequency as it may determine.

SO ORDERED. [14]

The MANCOM, in turn, notified the petitioners of its assumption of duties. It also ordered that relevant documents of Capitol be made available to it.

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[14] *Id.* Penned by C.A. Gerard M. Lukban.

Subsequently, the petitioners questioned the December 5, 2007 SEC order before the CA via a petition for *prohibition* under Rule 65 of the Rules of Court. It asked the CA to enjoin the SEC from conducting further proceedings and to dismiss the case and, in addition, prayed for the issuance of a temporary restraining order and/or writ of preliminary injunction.

The Ruling of the CA

In its November 30, 2010 decision,[15] the CA dismissed the petition stating that while the letter-complaint filed by private respondents raised intra-corporate matters, the case did not necessarily involve a controversy arising purely out of intra-corporate relations so as to deprive the SEC of its jurisdiction. The CA pointed out that the said letter-complaint was seeking that the SEC investigate alleged irregularities committed by the petitioners which, if found true, would constitute serious violations of the SRC and the pertinent rules and regulations.[16] Thus, the CA concluded that private respondents were merely seeking the administrative intervention of the SEC on a matter within its competence.

The CA agreed with the Office of the Solicitor General (*OSG*), representing the SEC, that the creation of the MANCOM was authorized under SEC Memorandum Circular (*MC*) No. 11, Series of 2003. The said memorandum stated that the SEC had the power "to do any and all acts to carry out the effective implementation of the laws it is mandated to enforce, that is, constitute a management committee; appoint receivers, issue cease and desist orders to prevent fraud or injury to the public; and such other measures to carry out its role as a regulator."[17]

In brief, the CA affirmed the power of the SEC to investigate and constitute the MANCOM because such actions were

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[15] *Id.* at 32-42. Penned by Associate Justice Stephen C. Cruz, with Associate Justices Isaias P. Dicdican and Elihu A. Ybañez, concurring.

[16] *Id.* at 40.

[17] *Id.* at 40-41.

pursuant to the administrative, supervisory and oversight powers of the SEC over Capitol. According to the CA, no grave abuse of discretion could be attributed to the SEC. Hence, the petition was dismissed.[18]

The petitioners moved for reconsideration, but their motion was denied by the CA in its March 15, 2011 resolution.

Hence, this petition.

ISSUE/S

(1) WAS TAKING COGNIZANCE OF THE LETTER-COMPLAINT FILED BY THE PRIVATE RESPONDENTS BEYOND THE JURISDICTION OF THE SEC?

(2) WAS THE SEC ORDER CREATING THE MANCOM ISSUED IN EXCESS OF ITS JURISDICTION?

In its Comment,[19] the SEC submitted that it correctly took cognizance of the subject letter-complaint and appointed the MANCOM to temporarily oversee Capitol. It asserted that Section 5 of the SRC authorized the SEC to assume jurisdiction over the subject matter to determine whether the petitioners, who were officers of Capitol, violated the SRC and its implementing rules and regulations. Lastly, the SEC justified its act in creating the MANCOM on the basis of SEC-MC No. 11, Series of 2003, which included the constitution of such a committee as one of its powers.

Private respondents, in their Comment/Opposition,[20] stated that the SEC had retained its administrative, regulatory and oversight powers over corporations citing *Orendain v. BF Homes, Inc.*;[21] that in the exercise of such powers, the SEC was justified in entertaining their letter-complaint; and that as

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[18] *Id.* at 42.

[19] *Id.* at 278-291.

[20] *Id.* at 304-310.

[21] 536 Phil. 1059 (2006).

correctly appreciated by the CA, the letter-complaint readily showed that it was an invocation for the SEC to exercise its mandated power/authority by conducting an investigation on the perceived irregularities and fraudulent transactions allegedly committed by the petitioners which, if found to be true, would constitute serious violations of the SRC and its rules and regulations. Private respondents further argued that the creation of the MANCOM was justified under SEC-MC No. 11, Series of 2003.

The petitioners failed to file a reply despite the Court's several notices. In the Manifestation,[22] dated April 20, 2015, their lawyer[23] explained that the petitioners had not been responding to calls or other communication after Capitol was taken over by ALI sometime in the middle of 2011.

The Court's Ruling

The CA ruled in the negative on both scores and this Court agrees for the reasons discussed hereinafter.

On SEC's authority to take cognizance of the letter-complaint

Under the SRC, jurisdiction on matters stated under Section 5 of P.D. No. 902-A, which was originally vested in the SEC, has already been transferred to the RTC acting as a special commercial court. Despite the said transfer, however, the SEC still retains sufficient powers to justify its assumption of jurisdiction over matters concerning its supervisory, administrative and regulatory functions. In *SEC v. Subic Bay Golf and Country Club, Inc. (SBGCCI) and Universal International Group Development Corporation (UIGDC)*,[24] for instance, the Court affirmed the SEC's assumption of jurisdiction over a complaint,

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[22] *Rollo*, pp. 351-353.

[23] Atty. Jose P. Fenandez, counsel for the petitioners.

[24] G.R. No. 179047, March 11, 2015.

which alleged that SBGCCI and UIGDC committed misrepresentations in the sale of their shares. The Court held in the said case that nothing prevented the SEC from assuming jurisdiction to determine if SBGCCI and UIGDC committed administrative violations and were liable under the SRC despite the complaint having raised intra-corporate issues. It also ruled that the SEC may investigate activities of corporations to ensure compliance with the law.

In ruling that way, the Court cited Sections 5 and 53 of the SRC as justifications, to wit:

SECTION 5. *Powers and Functions of the Commission*. — 5.1. The Commission shall act with transparency and shall have the powers and functions provided by this Code, Presidential Decree No. 902-A, the Corporation Code, the Investment Houses Law, the Financing Company Act and other existing laws. Pursuant thereto the Commission shall have, among others, the following powers and functions:

(a) **Have jurisdiction and supervision over all corporations, partnerships or associations who are the grantees of primary franchises and/or a license or permit issued by the Government;**

x x x x x x x x x

(d) **Regulate, investigate or supervise the activities of persons to ensure compliance;**

x x x x x x x x x

(n) Exercise such other powers as may be provided by law as well as those which may be implied from, or which are necessary or incidental to the carrying out of, the express powers granted the Commission to achieve the objectives and purposes of these laws.

x x x x x x x x x

SECTION 53. *Investigations, Injunctions and Prosecution of Offenses*. — 53.1. **The Commission may, in its discretion, make such investigations as it deems necessary to determine whether any person has violated or is about to violate any provision of this Code,** any rule, regulation or order thereunder, or any rule of an Exchange, registered securities association, clearing agency, other self-regulatory

organization, and may require or permit any person to file with it a statement in writing, under oath or otherwise, as the Commission shall determine, as to all facts and circumstances concerning the matter to be investigated. xxx

Beyond doubt, therefore, is the authority of the SEC to hear cases regardless of whether an action involves issues cognizable by the RTC, provided that the SEC could only act upon those which are merely administrative and regulatory in character. In other words, the SEC was never dispossessed of the power to assume jurisdiction over complaints, even if these are riddled with intra-corporate allegations, if their invocation of authority is confined only to the extent of ensuring compliance with the law and the rules, as well as to impose fines and penalties for violation thereof; and to investigate even *motu proprio* whether corporations comply with the Corporation Code, the SRC and the implementing rules and regulations.

Thus, in this case, there is simply no doubt that the SEC acted properly in assuming jurisdiction over the letter-complaint filed by private respondents. A perusal of their letter-complaint demonstrates that private respondents sought the SEC's intervention in the interest of the minority stockholders by "*conducting thorough investigation*"[25] on the actions of the petitioners over "the apparent anomalies and fraud over the agreement with ALI," the growing labor unrest at [Capitol], the unpaid individual creditors some of whom have already gone into courts to enforce collection, the continuing financial mismanagement and gross negligence and incompetence shown by Mr. Pablo B. Roman, Jr., et al. in running the business affairs of [Capitol] xxx that resulted in losses, wastages and dissipation of funds of the corporation."[26] Their prayer for the SEC to exercise its investigatory powers in the end would adequately justify the assumption of jurisdiction over the letter-complaint regardless if, indeed, intra-corporate allegations were raised.

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[25] *Rollo*, p. 59.

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

As the SEC is not ousted of its regulatory and administrative jurisdiction to determine and act if administrative violations were committed,[27] no grave abuse of discretion can be attributed to it when it assumed jurisdiction over the letter-complaint. Accordingly, the Court finds no error with what was held by the CA.

On the Constitution of the MANCOM

The SEC submits that the power to constitute a management committee is based on its supervisory and regulatory functions. It cites SEC-MC No. 11, Series of 2003 as authority, which provides in part:

> 4. Notwithstanding the foregoing, the Commission, as provided in Section 5 of the SRC and the effective provisions of PD 902-A, shall have the power to do any and all acts to carry out the effective implementation of the laws it is mandated to enforce, i.e.: **constitute a Management Committee**; appoint receivers, issue Cease and Desist Orders to prevent fraud or injury to the public; and such other measures to carry out its role as a regulator.

In effect, the authority of the SEC is viewed as one that is intimately related to its functions as a regulator.

The petitioners reject this and opine that constituting the MANCOM involves an intra-corporate controversy, which is within the jurisdiction of the RTC. Invoking Section 5.2 of the SRC, they contend that the authority to create the MANCOM is exclusive to the RTC and no longer with the SEC.

Indeed, Section 5.2. of the SRC has transferred jurisdiction over intra-corporate controversies to the RTC. It provides:

> The Commission's jurisdiction over all cases enumerated **under Section 5 of Presidential Decree No. 902-A** is hereby transferred to the Courts of general jurisdiction or the appropriate Regional Trial Court: *Provided,* that the Supreme Court in the exercise of its authority

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[27] *SEC v. SBGCCI and UIGDC, supra* note 24.

may designate the Regional Trial Court branches that shall exercise jurisdiction over these cases. The Commission shall retain jurisdiction over pending cases involving intra-corporate disputes submitted for final resolution which should be resolved within one (1) year from the enactment of this Code. The Commission shall retain jurisdiction over pending suspension of payments/rehabilitation cases filed as of 30 June 2000 until finally disposed.

Relative thereto, Section 5 of P.D. No. 902-A states:

SECTION 5. In addition to the regulatory and adjudicative functions of the Securities and Exchange Commission over corporations, partnerships and other forms of associations registered with it as expressly granted under existing laws and decrees, it shall have original and exclusive jurisdiction to hear and decide cases involving

a) Devices or schemes employed by or any acts, of the board of directors, business associates, its officers or partnership, 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; and

c) Controversies in the election or appointments of directors, trustees, officers or managers of such corporations, partnerships or associations.

Clearly, any dispute concerning intra-corporate issues is now beyond the province of the SEC.

Yet, it must be stressed that under Section 5.1 (n) of the SRC, the SEC is permitted to exercise such other powers as may be provided for by law as well as those which may be implied from, or which are necessary or incidental to the carrying

out, of the express powers granted the SEC to achieve the objectives and purposes of these laws.

With such broad authority, it is beyond question that the SEC, as a regulator, has broad discretion to act on matters that relate to its express power of supervision over all corporations, partnerships or associations who are the grantees of primary franchises and/or a license or permit issued by the Government. Such grant of express power of supervision, necessarily includes the power to create a management committee following the doctrine of necessary implication.

The reason is simple. The creation of a management committee is one that is premised on the immediate and speedy protection of the interest not only of minority stockholders, but also of the general public from immediate danger of loss, wastage or destruction of assets or the paralyzation of business of a concerned corporation or entity.[28] No body is more competent to provide such a temporary relief other than the regulatory body of these companies — the SEC.

Thus, such authority is expressly sanctioned under SEC-MC No. 11, Series of 2003. Suffice it to state that such circular enjoys the presumption of validity unless this Court declares otherwise.

WHEREFORE, the petition is **DENIED**.

SO ORDERED.

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

Brion[*] and *Jardeleza, JJ.*, on official leave.

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[28] See Presidential Decree No. 1758, Amending Sections 2, 3, 5, 6 and 8 of P.D. No. 902-A.

[*] Designated additional member in lieu of Associate Justice Mariano C. del Castillo, per Raffle dated April 19, 2016.

THIRD DIVISION

[G.R. No. 201834. June 1, 2016]

ANDRES L. DIZON, *petitioner, vs.* **NAESS SHIPPING PHILIPPINES, INC. and DOLE UK (Ltd.),** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; 2000 PHILIPPINE OVERSEAS EMPLOYMENT ADMINISTRATION-STANDARD EMPLOYMENT CONTRACT (POEA-SEC); FAILURE TO COMPLY WITH THE MANDATORY REPORTING REQUIREMENTS SHALL RESULT IN THE SEAFARER'S FORFEITURE OF HIS RIGHT TO CLAIM BENEFITS UNDER THE LAW; SUSTAINED.— Settled is the rule that the entitlement of seamen on overseas work to disability benefits is a matter governed, not only by medical findings, but by law and by contract. x x x The law [Section 20(B), paragraph 3 of the 2000 Philippine Overseas Employment Administration-Standard Employment Contract *(POEA-SEC)*] specifically declares that failure to comply with the mandatory reporting requirement shall result in the seafarer's forfeiture of his right to claim benefits thereunder. In *Coastal Safeway Marine Services, Inc. v. Esguerra*, this Court expounded on the mandatory reporting requirement provided under the POEA-SEC and the consequence for failure of the seaman to comply with the requirement, *viz.:* The foregoing provision has been interpreted to mean that it is the **company-designated physician who is entrusted with the task of assessing the seaman's disability, whether total or partial, due to either injury or illness, during the term of the latter's employment. x x x For the seaman's claim to prosper, however, it is mandatory that he should be examined by a company-designated physician within three days from his repatriation. Failure to comply with this mandatory reporting requirement without justifiable cause shall result in forfeiture of the right to claim the compensation and disability benefits provided under the POEA-SEC**. Moreover, that the three-day post employment medical examination is mandatory brooks no argument, as held in

Interorient Maritime Enterprises, Inc. v. Creer: x x x Thus, the three-day period from return of the seafarer or sign-off from the vessel, whether to undergo a post-employment medical examination or report the seafarer's physical incapacity, should always be complied with to determine whether the injury or illness is work- related.

2. **ID.; ID.; THE BURDEN IS ON THE SEAFARER TO PROVE THAT HE SUFFERED FROM A WORK-RELATED INJURY OR ILLNESS DURING THE TERM OF HIS CONTRACT; RATIONALE.—** It is settled that a person who claims entitlement to the benefits provided by law must establish his right thereto by substantial evidence or "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion." Hence, the burden is on the seafarer to prove that he suffered from a work-related injury or illness during the term of his contract. Dizon has the burden to prove through substantial evidence that he is entitled to disability benefits, which includes evidence that his illness is work-related and existed during the terms of his contract.

3. **ID.; ID.; DISABILITY BENEFITS; FOR DISABILITY TO BE COMPENSABLE, ELEMENTS.—** For disability to be compensable under Section 20 (B) of the 2000 POEA-SEC, two elements must concur: (1) the injury or illness must be **work-related;** and (2) the work-related injury or illness must have **existed during the term of the seafarer's employment contract.** It is not sufficient to establish that the seafarer's illness or injury has rendered him permanently or partially disabled; it must also be shown that there is a causal connection between the seafarer's illness or injury and the work for which he had been contracted.

4. **ID.; ID.; CONDITIONS TO BE SATISFIED FOR AN OCCUPATIONAL DISEASE AND THE RESULTING DISABILITY OR DEATH TO BE COMPENSABLE, ENUMERATED.—** For an occupational disease and the resulting disability or death to be compensable, all of the following conditions must be satisfied: 1. The seafarer's work must involve the risks described herein; 2. The disease was contracted as a result of the seafarer's exposure to the describe[d] risks; 3. The disease was contacted within a period of exposure and under such other factors necessary to contract it; [and] 4. There

was no notorious negligence on the part of the seafarer. *Work-related illness,* as defined in the 2000 POEA-SEC, is any sickness resulting to disability or death as a result of an occupational disease listed under Section 32-A of this contract with the conditions set therein satisfied.

APPEARANCES OF COUNSEL

Linsangan Linsangan & Linsangan Law Offices for petitioner.

Sugay Law for respondents.

D E C I S I O N

PERALTA, *J.*:

Before this Court is a petition for review on *certiorari* filed by petitioner Andres L. Dizon assailing the Decision[1] dated February 28, 2012 and Resolution[2] dated May 9, 2012 of the Court of Appeals (*CA*) which affirmed the Decision[3] and Resolution dated October 30, 2009 and February 26, 2010, respectively, of the National Labor Relations Commission (*NLRC*) which declared respondents Naess Shipping Phils., Inc. and DOLE UK (Ltd.) not liable to pay petitioner the amount of US$66,000.00 for disability benefits and medical expenses.

The antecedents are:

Since 1976, respondents Naess Shipping Phils., Inc. and DOLE UK (Ltd.) hired petitioner Andres L. Dizon as cook for its various vessels until the termination of his contract in 2007.[4]

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[1] Penned by Associate Justice Florito S. Macalino, with Associate Justices Remedios A. Salazar-Fernando and Ramon M. Bato, Jr., concurring; *rollo*, pp. 25-30.

[2] *Id.* at 33-34.

[3] Penned by Presiding Commissioner Gerardo C. Nograles, with Commissioners Perlita B. Velasco and Romeo L. Go, concurring; CA *rollo*, pp. 32-39.

[4] *Rollo*, p. 26.

On March 6, 2006, Dizon was hired as Chief Cook and boarded DOLE COLOMBIA under the following terms and conditions:[5]

Contract Duration	:	9 months
Position	:	Chief Cook
Basic monthly salary	:	US$670.00
Hours of work	:	44 hours/week
Overtime	:	US$373.00 GOT in excess of 85 hours US$4.38/hour US$5.01/hour in excess of 90 hours
Vacation leave with pay	:	9 days/month
Point of hire	:	Manila

Dizon disembarked after completing his contract on February 14, 2007. He then went on a vacation, and was called for another employment contract after a month.[6]

When he underwent pre-employment medical examination in March 2007, he was declared unfit for sea duties due to uncontrolled hypertension and coronary artery disease as certified by the doctors of the Marine Medical and Laboratory Clinic (*MMLC*).[7] He was referred to undergo stress test and electrocardiogram (*ECG*). He then went to PMP Diagnostic Center, Inc. for diagnostic tests.[8] It was also recommended that he undergo Angioplasty.[9] His treadmill stress test showed that he had *Abnormal Stress* Echocardiography.[10] The result of his treadmill stress test stated:

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[5] *Id.* at 6-7.

[6] *Supra* note 4.

[7] CA *rollo* at 34.

[8] *Id.* at 44.

[9] *Id.*

[10] *Id.* at 33.

Abnormal Stress Echocardiography at 10.2 METS with evidence of stress-inducible ischemic myocardium at risk involving the left anterior descending and right coronary artery territories.[11]

Unconvinced with the doctor's declaration of unfitness, Dizon went to the Seamen's Hospital and submitted himself for another examination.[12] The result indicated that he was fit for sea duty.[13] He returned to MMLC and requested for a re-examination, but the same was denied.[14]

In November 2008, Dizon filed a complaint before the Department of Labor and Employment, but subsequently withdrew the same.[15]

On January 6, 2009, Dizon filed a complaint against respondents for payment of total and permanent disability benefits, sickness allowance, reimbursement of medical, hospital and transportation expenses, moral damages, attorney's fees and interest before the Labor Arbiter (*LA*).[16]

Claiming that he is entitled to permanent total disability benefit, Dizon alleged that he incurred his illness while on board the respondents' vessel.[17] He claimed that his working conditions on board were characterized by stress, heavy work load, and over fatigue.[18] He averred that Dr. Marie T. Magno re-evaluated his actual medical condition on February 16, 2009 and declared him unfit to resume his work as seafarer since his heart condition is unable to tolerate moderate to severe exertions.[19]

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[11] *Id.* at 65.

[12] *Supra* note 7.

[13] *Id.*

[14] *Id.*

[15] *Id.* at 35.

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

[17] *Supra* note 8.

[18] *Id.*

[19] *Id.* at 68.

Dizon asserted that he disclosed his hypertension prior to his last contract in 2006, but was certified fit for duty for the nine-month employment contract.[20]

For their part, respondents disavowed liability for Dizon's illness maintaining that he finished and completed his contract on board their vessel *Dole Colombia* without any incident, and that his sickness was not work-related.[21] They rejected the redeployment of Dizon since he was declared unfit for sea duty in his pre-employment medical examination. Respondents claimed that they were only exercising their freedom to choose which employees to hire.[22]

In a Decision[23] dated May 29, 2009, the LA ruled that Dizon is entitled to full disability benefits. The LA held that it can be logically concluded that Dizon's illness arose during the period of his employment since less than a month transpired between his repatriation and the pre-employment medical examination.[24] This disposition finds support from the undisputed fact that Dizon had been continuously employed by respondents for 30 years while performing similar duties under the same working conditions.[25] The LA found that the respondents failed to adduce evidence to overcome the presumption of compensability in favor of the seafarer. The dispositive portion of the decision reads:

WHEREFORE, premises considered, judgment is hereby rendered ordering Naess Shipping Phils., Inc. and/or DOLE UK (Ltd.), jointly and severally, to pay complainant Andres L. Dizon the Philippine peso equivalent at the time of actual payment of US DOLLARS SIXTY THOUSAND DOLLARS (US$60,000.00) representing permanent total

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[20] *Supra* note 8.

[21] *Supra* note 7.

[22] *Id.*

[23] Penned by Labor Arbiter Veneranda V. Guerrero, *id.* at 43-50.

[24] *Id.* at 47.

[25] *Id.*

disability benefits, plus ten percent (10%) thereof as and for attorney's fees or the aggregate amount of US DOLLARS SIXTY SIX THOUSAND (US$66,000.00).

All other claims are dismissed for lack of merit.

SO ORDERED.[26]

On appeal, the NLRC reversed and set aside the decision of LA for finding that Dizon did not comply with the mandatory post-employment medical examination within three working days upon arrival.[27] The NLRC held that Dizon failed to prove through substantial evidence that his working conditions increased the risk of contracting coronary artery disease. The *fallo* of the decision reads:

WHEREFORE, premises considered, the appeal is **GRANTED**. The Decision of the Labor Arbiter declaring Naess Shipping Phils., Inc. and/or DOLE UK (Ltd.) jointly and severally liable to pay Andres L. Dizon US Dollars Sixty Six Thousand Pesos (US$66,000.00) is **REVERSED** and **SET ASIDE**. However, for humanitarian considerations, taking into account complainant's unblemished record of thirty (30) years of service to respondents, the latter are hereby directed to pay Fifty Thousand Pesos (₱50,000.00) financial assistance to complainant.

SO ORDERED.[28]

Aggrieved, Dizon assailed the NLRC's reversal of the LA's decision before the CA through a petition for *certiorari*. The CA denied the petition and affirmed the decision of the NLRC. The dispositive portion of the decision reads:

WHEREFORE, premises considered, the petition is DENIED. The October 30, 2009 Decision and the February 26, 2010 Resolution of the Public Respondent National Labor Relations Commission are **AFFIRMED**.

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[26] *Id.* at 59-50.

[27] *Id.* at 37.

[28] *Supra* note 3, at 39.

SO ORDERED.[29]

Upon denial of his motion for reconsideration, Dizon filed before this Court the present petition raising the following issues:

I. THE HONORABLE COURT OF APPEALS COMMITTED SERIOUS ERRORS OF LAW IN RULING THAT PETITIONER IS NOT ENTITLED TO DISABILITY BENEFITS FOR FAILURE TO REPORT WITHIN 72 HOURS FROM HIS REPATRIATION.

II. THE HONORABLE COURT OF APPEALS COMMITTED SERIOUS QUESTION OF LAW IN RULING THAT THE ILLNESS OF THE PETITIONER IS NOT WORK RELATED DESPITE NOT HAVING FACTUAL NOR MEDICAL BASIS.

III. THE HONORABLE PUBLIC RESPONDENT COMMITTED SERIOUS ERRORS AMOUNTING TO GRAVE ABUSE OF DISCRETION IN NOT AWARDING MORAL AND EXEMPLARY DAMAGES AS WELL AS ATTORNEY'S FEES.

Simply, the issue to be resolved is whether the petitioner is entitled to disability benefits.

We answer in the negative and deny the instant petition.

Dizon asseverates that his right to claim total and permanent disability benefits is not forfeited when he failed to submit himself to a post-employment medical examination before the company-designated doctor within three working days upon his arrival because such failure to comply would only forfeit his claims for the 120 days sickness allowance.[30]

Settled is the rule that the entitlement of seamen on overseas work to disability benefits is a matter governed, not only by medical findings, but by law and by contract.[31]

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

[30] *Rollo*, p. 11.

[31] *Austria v. Crystal Shipping, Inc.*, G.R. No. 206256, February 24, 2016.

Section 20 (B), paragraph 3 of the 2000 Philippine Overseas Employment Administration-Standard Employment Contract (*POEA-SEC*) reads:[32]

Section 20-B. *Compensation and Benefits for Injury or Illness.* —

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

x x x x x x x x x

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

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

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

x x x x x x x x x

The law specifically declares that failure to comply with the mandatory reporting requirement shall result in the seafarer's forfeiture of his right to claim benefits thereunder.[33] In *Coastal Safeway Marine Services, Inc. v. Esguerra*,[34] this Court

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[32] Department Order No. 4, series of 2000, "*Amended Standard Terms and Conditions Governing the Overseas Employment of Filipino Seafarers On-Board Ocean-Going Vessels*."

[33] *Ceriola v. Naess Shipping Philippines, Inc.*, G.R. No. 193101, April 20, 2015.

[34] G.R. No. 185352, August 10, 2011, 671 Phil. 56-70.

expounded on the mandatory reporting requirement provided under the POEA-SEC and the consequence for failure of the seaman to comply with the requirement, *viz*.:

> The foregoing provision has been interpreted to mean that it is the **company-designated physician who is entrusted with the task of assessing the seaman's disability, whether total or partial, due to either injury or illness, during the term of the latter's employment**. Concededly, this does not mean that the assessment of said physician is final, binding or conclusive on the claimant, the labor tribunal or the courts. Should he be so minded, the seafarer has the prerogative to request a second opinion and to consult a physician of his choice regarding his ailment or injury, in which case the medical report issued by the latter shall be evaluated by the labor tribunal and the court, based on its inherent merit. **For the seaman's claim to prosper, however, it is mandatory that he should be examined by a company-designated physician within three days from his repatriation. Failure to comply with this mandatory reporting requirement without justifiable cause shall result in forfeiture of the right to claim the compensation and disability benefits provided under the POEA-SEC.**[35]

Moreover, that the three-day post employment medical examination is mandatory brooks no argument, as held in *Interorient Maritime Enterprises, Inc. v. Creer*:[36]

> The rationale for the rule [on mandatory post-employment medical examination within three days from repatriation by a company-designated physician] is that **reporting the illness or injury within three days from repatriation fairly makes it easier for a physician to determine the cause of the illness or injury. Ascertaining the real cause of the illness or injury beyond the period may prove difficult.** To ignore the rule might set a precedent with negative repercussions, like opening floodgates to a limitless number of seafarers claiming disability benefits, or causing unfairness to the employer who would have difficulty determining the cause of a claimant's illness because of the passage of time. The employer would then have no protection against unrelated disability claims.[37]

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[35] *Id*. (Citation omitted; emphasis supplied).

[36] G.R. No. 181921, September 17, 2014.

[37] *Id*. (Emphasis supplied)

In the past, this Court repeatedly denied the payment of disability benefits to seamen who failed to comply with the mandatory reporting and examination requirement.[38] Thus, the three-day period from return of the seafarer or sign-off from the vessel, whether to undergo a post-employment medical examination or report the seafarer's physical incapacity, should always be complied with to determine whether the injury or illness is work-related.[39]

To the mind of this Court, Dizon failed to substantiate his entitlement to disability benefits for a work-related illness under the POEA-SEC. It appears from the records that Dizon did not submit himself to a post employment medical examination within three days from his arrival after completing his last contract with the respondents. Dizon does not proffer an explanation or reason for his failure to comply with the said mandatory requirement given that he claims that his illness purportedly occurred during the term of his contract.

Instead, Dizon alleges that the failure to comply with the mandatory reporting and examination requirement merely forfeits his claim for sickness allowance. To substantiate his claim, he invokes the following rules in statutory construction: (a) Courts should not incorporate matters not provided in law by judicial ruling; (b) The court must look into the spirit of the law or the reason for it in construing a statute; (c) When the language admits of more than one interpretation that which tends to give effect to the manifest object of the law should be adopted; and (d) Statutes must be construed to avoid injustice.

We find Dizon's allegation that the terms "above benefits" in Section 20 (B), paragraph 3 of POEA-SEC refer only to sickness compensation, thus, the mandatory reporting requirement is applicable only to claim for sickness allowance specious.

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[38] *Jebsens Maritime, Inc. v. Undag*, G.R. No. 191491, December 14, 2011, 678 Phil. 938-951.

[39] *Supra* note 33.

In fine, this Court finds Dizon's failure to comply with the three-day post-employment medical examination fatal to his cause. We cannot over-emphasize that failure to comply with the mandatory reporting requirement without justifiable cause shall result in forfeiture of the right to claim the compensation and disability benefits provided under the POEA-SEC, thus, not confined to claim for sickness compensation mentioned in Section 20 (B), paragraph 3 of the 2000 POEA-SEC.

Dizon asserts that his coronary artery disease is work-related given that his pre-employment medical examination was less than a month since his repatriation.[40] He alleges that the medical records that respondents presented did not indicate that his illness has been declared by the company-designated doctor as not work-related.[41] Dizon insists that the working conditions prevailing during his employment on board the vessel are characterized, among others, by stress, heavy workload, over-fatigue.[42]

It is settled that a person who claims entitlement to the benefits provided by law must establish his right thereto by substantial evidence or "such relevant evidence as a reasonable mind might accept as adequate to support a conclusion."[43] Hence, the burden is on the seafarer to prove that he suffered from a work-related injury or illness during the term of his contract.[44] Dizon has the burden to prove through substantial evidence that he is entitled to disability benefits, which includes evidence that his illness is work-related and existed during the terms of his contract.

Section 20 (B), paragraph 6 of the 2000 POEA-SEC provides:

x x x x x x x x x

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[40] *Rollo*, p. 14.

[41] *Id.* at 15.

[42] *Id.* at 16.

[43] *Transmarine Carriers, Inc. v. Aligway Phil.*, G.R. No. 201793, September 16, 2015.

[44] *Id.*

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

For disability to be compensable under Section 20 (B) of the 2000 POEA-SEC, two elements must concur: (1) the injury or illness must be **work-related**; and (2) the work-related injury or illness must have **existed during the term of the seafarer's employment contract**.[45] It is not sufficient to establish that the seafarer's illness or injury has rendered him permanently or partially disabled; it must also be shown that there is a causal connection between the seafarer's illness or injury and the work for which he had been contracted.[46]

For an occupational disease and the resulting disability or death to be compensable, all of the following conditions must be satisfied:

1. The seafarer's work must involve the risks described herein;
2. The disease was contracted as a result of the seafarer's exposure to the describe[d] risks;
3. The disease was contacted within a period of exposure and under such other factors necessary to contract it; [and]
4. There was no notorious negligence on the part of the seafarer.

Work-related illness, as defined in the 2000 POEA-SEC, is any sickness resulting to disability or death as a result of an occupational disease listed under Section 32-A of this contract with the conditions set therein satisfied.[47]

Section 32-A (11) of the 2000 POEA-SEC expressly considers Cardiovascular Disease as an occupational disease if it was contracted under any of the following instances, to wit:

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[45] *Supra* note 31. (Emphasis supplied).

[46] *Id.*

[47] *Id.*

a. If the heart disease was known to have been present during employment, there must proof that an acute exacerbation was clearly precipitated by the unusual strain by reasons of the nature of his work.
b. The strain of work that brings about an acute attack must be sufficient severity and must be followed within 24 hours by the clinical signs of cardiac insult to constitute causal relationship.
c. If a person who was apparently asymptomatic before being subjected to strain at work showed signs and symptoms of cardiac injury during the performance of his work and such symptoms and signs persisted, it is reasonable to claim a causal relationship.

As can be gleaned from the above provision, it is incumbent upon the seafarer to show that he developed the cardiovascular disease under any of the three conditions to constitute the same as an occupational disease for which a seafarer may claim compensation.[48]

It is stressed that Dizon's repatriation was due to expiration of his employment contract and not because of medical reasons. His coronary artery disease which rendered him unfit for sea duty was diagnosed during a pre-employment medical examination and not in a post-employment medical examination as provided by law.

It is crucial that Dizon present concrete proof showing that he indeed acquired or contracted the illness which resulted in his disability during the term of his employment contract. Other than his uncorroborated and self-serving allegation that his ailment was work-related because his pre-employment medical examination was only less than a month from his last contract, Dizon failed to demonstrate that his illness developed under any of the conditions set forth in the POEA-SEC for the said to be considered as a compensable occupational disease.

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[48] *Bautista v. Elburg Shipmanagement Philippines, Inc.*, G.R. No. 206032, August 19, 2015.

Records are bereft of evidence to establish that Dizon, being subjected to strain at work as a Chief Cook, manifested any symptoms or signs of heart illness in the performance of his work during the term of his contract, and that such symptoms persisted. Although his hypertension was known to the respondents, there was no evidence to prove that the strain caused by Dizon's work aggravated his heart condition. There was no proof that he reported his illness while on board and after his repatriation. He did not present any written note, request, or record about any medical check-up, consultation or treatment during the term of his contract.

We note that all that Dizon put forward is a dogged insistence that his working conditions are proof enough that his work as a Chief Cook contributed to his contracting the disease, and that the short period between his repatriation and the pre employment medical examination validates his claim that he contracted his illness during the term of his contract and is work-related.

This Court is well aware of the principle that, consistent with the purposes underlying the formulation of the POEA-SEC, its provisions must be applied fairly, reasonably and liberally in favor of the seafarers, for it is only then that its beneficent provisions can be fully carried into effect.[49] However, this catchphrase cannot be taken to sanction the award of disability benefits and sickness allowance based on flimsy evidence and even in the face of an unjustified non-compliance with the three-day mandatory reporting requirement under the POEA-SEC.[50]

While this Court sympathizes with Dizon's predicament, we are, however, constrained to deny the instant petition for failing to establish by substantial evidence his entitlement to disability benefits, having failed to undergo a post-employment medical examination as required under the law without valid or justifiable reason, and to establish that his illness was contracted during

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[49] *Supra* note 32.

[50] *Id.*

the term of his contract and that the same was work-related. Since it is established that Dizon is not entitled to disability benefits, it follows that he is also not entitled to any claim for moral and exemplary damages.

WHEREFORE, the petition for review on *certiorari* dated May 22, 2012 filed by petitioner Andres L. Dizon is hereby **DENIED**. The Decision dated February 28, 2012 and Resolution dated May 9, 2012 of the Court of Appeals in CA-G.R. SP No. 114226 affirming the Decision and Resolution dated October 30, 2009 and February 26, 2010, respectively, of the National Labor Relations Commission in NLRC NCR CASE No. (OFW-M) 01-00038-09 are **SUSTAINED**.

SO ORDERED.

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

Jardeleza, J., on leave.

SECOND DIVISION

[G.R. No. 204056. June 1, 2016]

GIL MACALINO, JR., TERESITA MACALINO, ELPIDIO MACALINO, PILAR MACALINO, GILBERTO MACALINO, HERMILINA MACALINO, EMMANUEL MACALINO, EDELINA MACALINO, EDUARDO MACALINO, LEONARDO MACALINO, EILLANE[*] MACALINO, APOLLO MACALINO, MA. FE MACALINO, and GILDA MACALINO, *petitioners, vs.* **ARTEMIO PIS-AN,** *respondent.*

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[*] Also spelled as Eillanne and Eillen in some parts of the records.

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; DOCUMENTARY EVIDENCE; PAROL EVIDENCE RULE; EXCEPTION; PRESENT IN CASE AT BAR.—** What is really in issue therefore is whether the admitted contents of the said documents adequately and correctly express the true intention of the parties to the same. It has been held that "[w]hen the parties admit the contents of written documents but put in issue whether these documents adequately and correctly express the true intention of the parties, the deciding body is authorized to look beyond these instruments and into the contemporaneous and subsequent actions of the parties in order to determine such intent." In view of this and since the Parol Evidence Rule is inapplicable in this case, an examination of the parties' respective parol evidence is in order. Indeed, examination of evidence is necessarily factual and not within the province of a petition for review on *certiorari* which only allows questions of law to be raised. However, this case falls under one of the recognized exceptions to such rule, *i.e.*, when the CA's findings are contrary to that of the trial court.

2. **CIVIL LAW; PROPERTY; OWNERSHIP; QUIETING OF TITLE; IN ORDER THAT AN ACTION FOR QUIETING OF TITLE MAY PROSPER, IT IS ESSENTIAL THAT THE PLAINTIFF MUST HAVE LEGAL OR EQUITABLE TITLE TO, OR INTEREST IN, THE PROPERTY WHICH IS THE SUBJECT-MATTER OF THE ACTION.—** "Quieting of title is a common law remedy for the removal of any cloud upon or doubt or uncertainty with respect to title to real property." "In order that an action for quieting of title may prosper, it is essential that the plaintiff must have legal or equitable title to, or interest in, the property which is the subject-matter of the action. Legal title denotes registered ownership, while equitable title means beneficial ownership. In the absence of such legal or equitable title, or interest, there is no cloud to be prevented or removed."

APPEARANCES OF COUNSEL

Diocos & Associates Law Office for petitioners.
Franklin O. Esmeña for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

This Petition for Review on *Certiorari* assails the September 20, 2012 Decision[1] of the Court of Appeals (CA) in CA-G.R. CV No. 02893 which granted respondent Artemio Pis-an's (Artemio) appeal and set aside the December 12, 2008 Decision[2] of the Regional Trial Court (RTC) of Negros Oriental, Dumaguete City, Branch 40 in Civil Case No. 13725.

Factual Antecedents

Under Original Certificate of Title (OCT) No. 2393-A, Emeterio Jumento (Emeterio) was the owner of the half portion, and his children Hospicio Jumento (Hospicio) and Severina Jumento (Severina) of the other half in equal shares, of Lot 3154 consisting of 469 square meters and located in Junob, Dumaguete City, Negros Oriental. When Hospicio and Severina died single and without issue, Emeterio as their sole heir inherited the portions pertaining to them and thus became the owner of the whole lot. Subsequently, Emeterio also passed away.

Apparently, the City of Dumaguete built in the 1950's a *barangay* road which cut across said lot. As a result, Lot 3154 was divided into three portions, to wit: the portion which was converted into a *barangay* road and the portions on both sides of said *barangay* road. Sometime in the 1970's, Artemio, a grandson-in-law of Emeterio,[3] commissioned Geodetic Engineer Rodolfo B. Ridad (Eng. Ridad) to survey Lot 3154 so that taxes would be assessed only on the portions of the subject property which remained as private property.[4] Accordingly, Engr. Ridad

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[1] CA *rollo*, pp. 112-131; penned by Associate Justice Carmelita Salandanan-Manahan and concurred in by Associate Justices Ramon Paul L. Hernando and Zenaida T. Galapate-Laguilles.

[2] Records, pp. 202-206; penned by Presiding Judge Gerardo A. Paguio, Jr.

[3] TSN dated July 19, 2007, p. 4.

[4] *Id.* at 8.

came up with a sketch plan[5] (sketch plan) where the three portions of Lot 3154 were denominated as Lot 3154-A (the portion on the left side of the road), Lot 3154-B (the portion which was converted into a *barangay* road), and Lot 3154-C (the portion on the right side of the road). The sketch plan also revealed that the portion occupied by Artemio, *i.e.*, Lot 3154-A as enclosed by points 1, 2, 3, 4, 5, and 6,[6] together with a section of a dried creek, contained an area of 207 square meters.[7]

On May 3, 1995, Artemio and the other heirs of Emeterio executed an Extra Judicial Settlement of Estate and Absolute Sale[8] (Absolute Sale) adjudicating among themselves Lot 3154 and selling a 207-square meter portion of the same to the spouses Wilfredo and Judith Sillero (spouses Sillero). The document, did not, however, identify the portion being sold as Lot No. 3154-A but simply stated as follows:

> That for and in consideration of the sum of TWELVE THOUSAND PESOS (₱12,000.00) Philippine currency to them in hand paid by spouses WILFREDO SILLERO and JUDITH SILLERO, both of legal age, Filipino, with residence at Taclobo, Dumaguete City, the aforementioned heirs hereby SELL, TRANSFER and CONVEY absolutely and unconditionally, unto the said WILFREDO SILLERO and JUDITH SILLERO[,] their heirs and assigns **a portion of the above-described parcel of land [Lot 3154] which is TWO HUNDRED SEVEN (207) square meters** and which shall have access to and [to which] belong the existing road right of way, together with the building and improvements thereon.[9]

The spouses Sillero, immediately after the sale, fenced Lot No. 3154-A and built a house thereon. Not long after, they sold Lot 3154-A to petitioner Gil Macalino, Jr. (Gil) by virtue

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[5] Records, p. 153.

[6] *Id.*

[7] TSN dated April 25, 2007, p. 4.

[8] Records, pp. 14-15.

[9] *Id.* at 14; emphasis supplied.

of a Deed of Sale[10] (Deed of Sale) dated December 27, 1996 which states in part, *viz.*:

> The Vendors are the absolute owners of TWO HUNDRED SEVEN (207) square [meter-part] of [L]ot 3154 x x x **known as Sub[-]lot 3154-A** x x x [T]he whole [L]ot 3154 is covered by Original Certificate of Title No. 2393-A situated at Junob, Dumaguete City and more particularly described as follows:
>
> ORIGINAL CERTIFICATE OF TITLE NO. 2393-A
>
> A parcel of land (Lot No. 3154 of the Cadastral Survey of Dumaguete) with the improvements thereon, situated in the Municipality of Dumaguete. Bounded on the NE., and N., by Lot No. 3153; on the SE., by a road; and on the SW., by a sapa. Containing an area of FOUR HUNDRED and SIXTY NINE (469) SQUARE METERS, more or less, including [a] house under Tax Dec. No. 93-022-1587
>
> having been acquired by purchase in a document known as Extrajudicial Settlement of Estate and Absolute Sale x x x.
>
> For and in consideration of the sum of TWO HUNDRED TEN THOUSAND PESOS ONLY, Philippine currency paid by the Vendee to the Vendors, receipt whereof is hereby acknowledged by the VENDORS to their complete and entire satisfaction, [Vendors] hereby SELL, CEDE, TRANSFER, and CONVEY unto the Vendee, his heirs, successors, and assigns **the TWO HUNDRED SEVEN (207)[-]square meter [portion] of the above-described [L]ot 3154 which x x x portion is now known as SUBLOT 3154-A**, absolutely and unconditionally, and free from any lien or encumbrance;[11]

On July 2, 1998, Transfer Certificate of Title (TCT) No. 27658[12] in the names of Artemio and the other heirs of Emeterio was issued in lieu of OCT No. 2393-A. Annotated therein was the sale made by the heirs of Emeterio to the spouses Sillero and also of the latter to Gil.[13]

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[10] *Id.* at 12-13.

[11] *Id.* at 12; emphases supplied.

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

[13] *Id.* at dorsal side of 16.

Intending to have Lot 3154-A registered in his name, Gil caused the survey of the same by Geodetic Engineer Rilthe P. Dorado (Engr. Dorado) sometime in 1998.[14] Engr. Dorado, however, discovered that the portion occupied by Gil consists of 140 square meters only and not 207.[15] Believing that he was deceived, Gil filed a complaint for estafa against the spouses Sillero.[16]

On January 31, 2001, the Land Management Bureau issued an approved Subdivision Plan[17] (Subdivision Plan) wherein Lot 3154 was subdivided into four sub-lots, to wit: (1) Lot 3154-A with an area of 140 square meters; (2) Lot 3154-B or the existing *barangay* road with an area of 215 square meters; (3) Lot 3154-C with an area of 67 square meters; and (4) Lot 3154-D with an area of 47 square meters. Notably, the Subdivision Plan which was based on the survey conducted by Engr. Dorado refers not only to Lot 3154-A as Gil's property but also to Lot 3154-C. Likewise, the document does not bear the conformity of Artemio and his co-heirs but only that of Gil.

A few years later or on January 18, 2005, Gil, joined by his children and their respective spouses, namely: petitioners Gil Macalino, Jr., Teresita Macalino, Elpidio Macalino, Pilar Macalino, Gilberto Macalino, Hermilina Macalino, Emmanuel Macalino, Edelina Macalino, Eduardo Macalino, Leonardo Macalino, Eillane Macalino, Apollo Macalino, Ma. Fe Macalino, and Hilda Macalino, filed against Artemio a Complaint for Quieting of Title and Damages[18] with the RTC, docketed as Civil Case No. 13725.

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[14] See Gil's Affidavit[-]Complaint against the spouses Sillero, *id*. at 157-158.

[15] *Id.*

[16] *Id.* at 156-159.

[17] *Id.* at 36.

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

Ruling of the Regional Trial Court

Petitioners claimed that the 207-square meter property sold by the spouses Sillero to Gil consists of Lot 3154-A with an area of 140 square meters and Lot 3154-C with an area of 67 square meters. In February 2003, however, Artemio built a pig pen on Lot 3154-C. When confronted by Gil, Artemio simply ignored him. Gil thus brought the matter to the *barangay* but since conciliation proved futile, petitioners filed the said Complaint in order to quiet their title over Lot 3154-C and seek for damages.[19]

Artemio denied petitioners' allegations. He asserted that the portion sold to the spouses Sillero was limited to the area enclosed by points 1, 2, 3, 4, 5, and 6 denominated as Lot No. 3154-A in the sketch plan. Accordingly, only the said area was occupied and possessed by the said spouses as in fact, they fenced the perimeter covered only by the aforementioned points. Logically, therefore, what the spouses Sillero sold to Gil was also the same and exact property. And granting that the subject property has an area less than 207-square meters, Gil only has himself to blame since he did not exercise the diligence required of a buyer. Besides, the sale between Gil and the spouses Sillero was for a lump sum, hence the former cannot complain that the property delivered to him was lacking in area. At any rate, Gil has no cause of action against Artemio since the latter was not privy to the contract between the former and the spouses Sillero. Anent the Subdivision Plan, Artemio argued that the same does not bind him as it was made without his knowledge and consent.[20]

After trial, the RTC in its Decision[21] of December 12, 2008 ruled as follows:

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[19] *Id.* at 3-5.

[20] *Id.* at 28-30.

[21] *Id.* at 202-206.

The Extra-judicial Settlement of Estate and Absolute Sale dated May 3, 1995 and the Deed of Sale dated December 27, 1996 are common exhibits of the parties and admitted as such conveyances by them. On the basis of these documents, x x x Gil Macalino asserts that he is in fact the owner of a 207 square meter portion of Lot 3154, particularly Lots 3154-A (140 square meters) and 3154-C (67 square meters) of the approved subdivision plan. This is disputed by [Artemio] who argues that the Deed of Sale dated December 27, 1996, from Wilfredo and Judith Sillero to Gil Macalino, particularly states that they were selling a 207 square meter portion 'known as sublot 3154-A'. Due to this phrase, [Artemio] argues that the sale was for a lump sum, presuming that Gil Macalino only intended to buy Lot 3154-A and cannot claim the difference from Lot 3154-C. [Artemio] further asserts that there is no privity of contract between Gil Macalino and [Artemio] because the contract is between Gil Macalino and Wilfredo and Judith Sillero.

In the Extra-judicial Settlement of Estate and Absolute Sale dated May 3, 1995, [Artemio], as one of the signatories categorically avowed that he was selling 207 square meters of Lot 3154 to Wilfredo and Judith Sillero. This conveyance did not identify the portion sold as Lot 3154-A.

As a consequence, [Artemio] divested himself of any interest in a 207[-]square meter portion of Lot 3154 as early as May 3, 1995 when he signed the Extra-judicial Settlement of Estate [and Absolute Sale]. In signing such deed, he is now estopped from disavowing that he conveyed a lesser area to x x x Wilfredo and Judith Sillero.

The identification of the portion sold as Lot 3154-A is found only in the subsequent Deed of Sale dated December 27, 1996, which is the conveyance of the 207 square meter portion by Wilfredo and Judith Sillero to Gil Macalino. Under the principle of privity of contracts, only the Silleros can claim that they sold Lot 3154-A consisting of 140 square meters only and not 207 square meters. In truth however, the Deed of Sale by the Silleros provides that they were selling 207 square meters of Lot 3154. The deed did not state that the Silleros were selling Lot 3154-A. This then lends to the conclusion that this was not a sale by lump sum but by square meters. x x x

x x x x x x x x x

WHEREFORE, premises considered, Judgment is rendered in favor of x x x Gil Macalino against [Artemio], declaring x x x Gil Macalino

x x x the rightful owner of Lot 3154-A and Lot 3154-C of the approved subdivision plan PSD-07-048844.

SO ORDERED. [22]

Aggrieved, Artemio filed a Notice of Appeal[23] which was granted by the RTC in an Order[24] dated February 9, 2009.

Ruling of the Court of Appeals

Artemio argued before the CA that the sale between Gil and the spouses Sillero was for a lump sum. Pursuant, therefore, to Article 1542 of the Civil Code,[25] Gil cannot complain that the property delivered to him by the said spouses was lacking in area. Artemio called attention to the testimony of Judith Sillero (Judith) who categorically declared that what she and her husband bought from Artemio and his co-heirs was the property enclosed by points 1, 2, 3, 4, 5 and 6 identified as Lot 3154-A in the sketch plan and, that it was the same and exact property which they sold to Gil. Judith further said that Gil even inspected the property consisting of a fenced house and lot before he purchased the same. His inspection of the property, however, excluded the lot at the other side of the *barangay* road (Lot 3154-C)

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[22] *Id.* at 204-205.

[23] *Id.* at 207.

[24] *Id.* at 211.

[25] CIVIL CODE, Article 1542.

Article 1542 — In the sale of real estate, made for a lump sum and not at the rate of a certain sum for a unit of measure or number, there shall be no increase or decrease of the price, although there be a greater or lesser areas or number than that stated in the contract.

The same rule shall be applied when two or more immovables are sold for a single price; but if, besides mentioning the boundaries, which is indispensable in every conveyance of real estate, its area or number should be designated in the contract, the vendor shall be bound to deliver all that is included within said boundaries, even when it exceeds the area or number specified in the contract; and, should he not be able to do so, he shall suffer a reduction in the price, in proportion to what is lacking in the area or number, unless the contract is rescinded because the vendee does not accede to the failure to deliver what has been stipulated.

since it was not involved in the subject sale, she and her husband not being the owners thereof.[26]

Petitioners, for their part, fully subscribed to the Decision of the RTC.[27]

In a Decision[28] dated September 20, 2012, the CA concluded that the sale between the spouses Sillero and Gil involved Lot 3154-A only and not Lot 3154-C. The appellate court gave weight to Judith's testimony and to the fact that the Deed of Sale between the spouses Sillero and Gil expressly identified the lot subject thereof as Sub-lot 3154-A. The CA further ruled that contrary to the ruling of the RTC, the sale between Gil and the spouses Sillero was for a lump sum and not by square meter since the said deed showed that the purchase price agreed upon was based on a predetermined area of the lot (albeit erroneous since what was sold was actually 140 square meters only) and not on a per square meter basis. The dispositive portion of the CA Decision therefore reads:

> WHEREFORE, premises considered, the Appeal is GRANTED. The Decision dated December 12, 2008 of the Regional Trial Court (RTC), Branch 40, Dumaguete City in Civil Case No. 13725, is hereby SET ASIDE. Defendant-appellant Artemio Pis-an is declared as the true and legal owner of the Sixty Seven (67) square meter lot known as Lot 1354-C situated at Northern Junob, Dumaguete City.
>
> SO ORDERED.[29]

Hence, this Petition for Review on *Certiorari*.

The Parties' Arguments

Petitioners reiterate the ratiocination of the RTC that since the Absolute Sale merely stated that Artemio and his co-heirs

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[26] See Artemio's Appellant's Brief, CA *rollo*, pp. 59-80.

[27] See petitioners' Brief for Appellees, *id.* at 83-92.

[28] *Id.* at 112-131.

[29] *Id.* at 130-131.

were selling a 207-square meter portion of Lot 3154 and did not identify the portion being sold as Lot 3154-A, Artemio, by virtue of the said document, had already divested himself of any interest to such an extent (207 square meters) of Lot 3154. Thus, he cannot now lay a claim on Lot 3154-C, the area of which (67 square meters) if added to the area of Lot 3154-A (140 square meters), totals 207 square meters. Besides, Artemio is already estopped from claiming Lot 3154-C since as early as 1996, petitioners already occupied and possessed the said sub-lot by making use of the gravel, soil and stones found therein. In fact in one instance, Artemio asked Gil why the latter was hollowing out the stones and gravels from Lot 3154-C and when Gil answered that it was his lot anyway since the same was included in his purchase from the spouses Sillero, Artemio did not say or do anything.[30]

Artemio, on the other hand, basically reiterates the arguments he advanced before the CA.

Our Ruling

There is no merit in the Petition.

Essentially, the Court is tasked to resolve who between petitioners and Artemio has a right over Lot 3154-C. For this determination, one pivotal question must be answered, *i.e.*, did the sale between the spouses Sillero and Gil include Lot 3154-C? The Court finds in the negative.

It is necessary to determine the true intention of the parties to the instruments relevant to this case.

Petitioners, in order to further their case, rely on the failure of the Absolute Sale to state that the 207-square meter portion conveyed by Artemio and his co-heirs to the spouses Sillero was Lot 3154-A. Artemio, on the other hand, puts emphasis on the fact that the Deed of Sale between Gil and the spouses

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[30] See petitioners' Memorandum, *rollo*, pp. 94-104.

Sillero expressly stated that the lot subject of the sale was Lot 3154-A only. Plainly, the parties' respective arguments hinge on two relevant documents which they adopted as common exhibits — (1) the Absolute Sale subject of which, among others, is the conveyance made by Artemio and his co-heirs to the spouses Sillero; and (2) the Deed of Sale between the spouses Sillero and Gil. It is worthy to note that there is no dispute regarding the contents of these documents, that is, neither of the parties contests that the Absolute Sale did not state that the 207-square meter portion sold to the spouses Sillero was Lot 3154-A nor that the Deed of Sale between Gil and the spouses Sillero expressly mentioned that the subject of the sale between them was Lot 3154-A. What is really in issue therefore is whether the admitted contents of the said documents adequately and correctly express the true intention of the parties to the same. It has been held that "[w]hen the parties admit the contents of written documents but put in issue whether these documents adequately and correctly express the true intention of the parties, the deciding body is authorized to look beyond these instruments and into the contemporaneous and subsequent actions of the parties in order to determine such intent"[31] In view of this and since the Parol Evidence Rule[32] is inapplicable in this case,[33]

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[31] *Marquez v. Espejo*, 643 Phil. 341, 345 (2010).

[32] Section 9, Rule 130 of the Rules of Court which governs the Parol Evidence Rule provides in part:

SEC. 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.

[33] As held in *Marquez v. Espejo*, *supra* note 31 at 361, the "[P]arol [E]vidence [R]ule is exclusive only as 'between the parties and their successor-in-interest.' The [P]arol [E]vidence [R]ule may not be invoked where at least one of the parties to the suit is not a party or a privy of a party to the written document in question, and does not base his claim on the instrument or assert a right originating in the instrument." Here, petitioners were not party in the Extra Judicial Settlement and Absolute Sale executed by Artemio and his co-heirs. Likewise, Artemio was not a party to the

an examination of the parties' respective parol evidence is in order. Indeed, examination of evidence is necessarily factual[34] and not within the province of a petition for review on *certiorari*[35] which only allows questions of law to be raised. However, this case falls under one of the recognized exceptions to such rule, *i.e.*, when the CA's findings are contrary to that of the trial court.[36]

The subject of the sale between Artemio and his co-heirs and the spouses Sillero was Lot 3154-A only.

As mentioned, the Absolute Sale did not specifically indicate that Artemio and his co-heirs were conveying to the spouses Sillero Lot 3154-A. It simply stated that they were selling to the said spouses a 207-square meter portion of Lot 3154. However, there should be no question that the sale was only specific to Lot 3154-A since none other than the parties to the said transaction acknowledged this. At any rate, the testimonial evidence presented by Artemio sufficiently supports the conclusion that what was sold to the spouses Sillero was indeed Lot 3154-A only.

Judith testified that since Lot 3154 consisted of 469 square meters and Artemio and his co-heirs were selling only a portion thereof, Artemio presented to her and her husband a sketch plan prior to their purchase. Artemio pointed to the portion being sold as enclosed by points 1, 2, 3, 4, 5, 6, and identified as Lot 3154-A.[37] Immediately after the sale, Judith and her husband occupied Lot 3154-A, introduced a house thereon and built a fence around it.

Deed of Sale entered into by and between Gil and the spouses Sillero. Hence, the inapplicability of the Parole Evidence Rule.

[34] *Far Eastern Surety and Insurance Co., Inc. v. People*, 721 Phil. 760, 767 (2013).

[35] *Miro v. Vda. de Erederos*, 721 Phil. 772, 785 (2013).

[36] *Virtucio v. Alegarbes*, 693 Phil. 567, 573-574 (2012).

[37] TSN dated October 10, 2006, pp. 5-6.

For his part, Rolando Pis-an (Rolando), Artemio's son and co-heir, stated during trial that the spouses Sillero never took possession of Lot 3154-C or of any other portion of Lot 3154 except for Lot 3154-A.[38] In fact, the nipa hut he built on Lot 3154-C in 1993 remained standing there even after the sale transaction with the spouses Sillero in 1995 and until the time of the trial.[39] Also, subsequent to 1995, Rolando planted various kinds of trees on Lot 3154-C[40] without any objection on the part of the spouses Sillero.

In view of the above, it cannot be any clearer that the portion of Lot 3154 subject of the Absolute Sale between Artemio and his co-heirs and the spouses Sillero was Lot 3154-A only.

The sale transaction between the spouses Sillero and Gil likewise pertains to Lot 3154-A only.

Since what the spouses Sillero bought from Artemio and his co-heirs was Lot 3154-A, it logically follows that what they sold to Gil was the same and exact property. After all, "no one can give what one does not have. A seller can only sell what he or she owns x x x, and a buyer can only acquire what the seller can legally transfer."[41] Despite this and the categorical statement in the Deed of Sale that the subject of the sale was Lot 3154-A, Gil insists that the sale includes Lot 3154-C.

However, from Gil's Affidavit[-]Complaint[42] which he executed relative to the estafa case he filed against the spouses Sillero, it can be deduced that what he bought from the latter was only Lot 3154-A on which a house stood, *viz*.:

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[38] TSN dated November 27, 2006, p. 6.

[39] *Id.* at 8.

[40] *Id.*

[41] *Heirs of Gregorio Lopez v. Development Bank of the Philippines*, G.R. No. 193351, November 19, 2014.

[42] Records, pp. 157-158.

That sometime on October 25, 1996, I purchased a portion of a piece of land with an area of about 207 square meters, more or less, from the entire [l]ot covered by TCT No. 27658 (Lot No. 3154) owned by Artemio Pis-an with an entire area of about 469 square meters which Artemio Pis-an [i]nherited from Emeterio Jumento x x x;

That after Artemio Pis-an inherited the afore-mentioned Lot No. 3154 (TCT No. 27658), Artemio Pis-an sold about 207 square meters to spouses Wilfredo and Judith Sillero, of legal age, Filipino and residing at Taclobo, Dumaguete City;

That later, Gil Macalino purchased the said portion of about 207 square meters, as aforesaid, on October 25, 1996 together with all the improvements, which included a house which was under construction and made of mixed materials x x x

That in view of the desire of complainant Gil Macalino to register his purchased portion from the entire [L]ot, he [caused] it to be surveyed by Geodetic Engineer Rilthe P. Dorado of the City Engineer's Office, Dumaguete City, sometime in April 1998 x x x

That after 1 week when Geodetic Engineer Dorado surveyed my [l]ot purchased from spouses Sillero, Engineer Dorado stop[p]ed the survey because according to him my purchased [l]ot from spouses Sillero of about 207 square meters, overlapped on the already titled Lot of LUBRUS, INC. x x x

That in other words, what was really sold to me by the spouses Wilfredo and Judith Sillero is only with an area of about 140 square meters as shown by the subdivision survey plan of Geodetic Engineer Dorado x x x

That after I learned about my purchased lot that lacked the area of about 67 square meters and especially that the house where I am now residing is built on the area having overlapped with an area of 67 square meters which was sold to me by spouses Sillero, I approached respondent x x x Wilfredo Sillero about the portion which is owned by the aforesaid [c]ompany, GLUBUS, INC., but spouses respondents Wilfredo and Judith Sillero answered me sarcastically, that "Wala koy labot ana kay ang gibaligya nako nimo 207 square meters" which means in English (I have nothing to do with that because what [we] sold to you was 207 square meters) x x x[43]

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[43] *Id.*

Notably too, the above-quoted allegations are plainly contrary to the claim later made by Gil in this case that the 67-square meter portion of the 207-square meter lot he bought from the spouses Sillero pertains to Lot 3154-C. If such was the case, there would have been no reason for him to file an estafa case against the spouses Sillero since no portion of the lot sold to him would be lacking. Otherwise stated, the 207-square meter portion he purchased from the spouses Sillero would be complete and intact — with Lot 3154-A consisting of 140 square meters on the left side of the *barangay* road on which the house where he resides stood, and Lot 3154-C consisting of 67 square meters on the other side, both of which he now claims to be in his possession from the time of sale. Again, however, such contention is clearly belied by Gil's Affidavit[-]Complaint. Besides it bears to mention that when Artemio offered Gil's Affidavit[-]Complaint as part of his evidence,[44] Gil did not deny its existence or the truth of the allegations therein but merely remarked that it is irrelevant.[45]

Moreover, in an effort to convince the Court that Lot 3154-C was included in his sale transaction with the spouses Sillero, Gil testified that when he bought a portion of the 469-square meter Lot 3154, he did not refer to a sketch plan. He merely estimated the measurement of the lot on which the house of the spouses Sillero stood (Lot 3154-A) and the lot across the road (Lot 3154-C) pointed to him by said spouses. By that, he already became satisfied that the combined area of the two lots is 207 square meters. Gil denied seeing the sketch plan where Lot 3154-A was described as enclosed by points 1, 2, 3, 4, 5 and 6. He also claimed that he signed the Deed of Sale on the assumption that the lot on the right side of the *barangay* road (Lot 3154-C) was included under the denomination "Lot 3154-A" stated in the said deed.[46]

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[44] Exhibits "10-A" and "10-B"; see Defendant's Formal Offer of Exhibits, *id.* at 149-152.

[45] See Comments (to Defendant's Formal Offer of Exhibits), *id.* at 147-148.

[46] TSN dated April 26, 2006, pp. 8-10.

The Court, however, is not convinced of Gil's testimony. It is implausible for a former Provincial Agriculturist like Gil to buy a parcel of land without being conscious of its area, meters and bounds, and location especially considering that what he was buying in this case was a mere portion of a still undivided lot. It is also unlikely for him, if he was indeed also buying Lot 3154-C, to have not inspected the said property but only looked at it from the across the road (from Lot 3154-A). Moreover, the Court could not understand why Gil would sign the Deed of Sale which indicated Lot 3154-A as the only subject thereof when as alleged by him, the agreement involved two separate and different portions of Lot 3154. Obviously, Lot 3154-A and the lot on the other side of the road (Lot 3154-C) are two separate and different portions of Lot 3154 as in fact, they were separated by the *barangay* road. Common sense, thus, dictates that the two lots cannot fall under a single denomination since they apparently have different technical descriptions. Moreover, what Gil occupied after the sale was Lot 3154-A only. His claimed possession of Lot 3154-C as correctly observed by the CA,[47] is not supported by the evidence on record.

On the other hand, Judith's testimony is more in accord with the clear import of the Deed of Sale and the ordinary course of things. She testified, *viz*.:

Q After you purchased a portion of Lot 3154 which you said has been identified as [lot] 3154-A enclosed end point 1 to 6, what did you do to the land?
A We developed the land, Sir. We applied [for] fencing permit at the City and we also applied [for] a building permit, Sir.

Q Now what improvements, if any, did you introduce x x x?
A Only the fence and also the house, Sir.

Q Now after having built the fence and the house, what happen[ed] to the property and the improvements which you introduce[d]? Did you sell it to anyone?
A After several months, we needed the money [so] we [sold] the property, Sir.

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[47] See page 13 of CA Decision, CA *rollo*, p. 124.

Q Now in what manner did you advertise the intention to sell?
A Thru the daughter[-]in[-]law of Mr. Macalino, Sir. We had advertised that we are going to sell the house and lot, Sir, and this daughter[-]in[-]law of Mr. Macalino [came to us] since Mr. Macalino [was] looking for a house and lot which he can occupy after his retirement.

Q Now eventually did you and your husband meet Gil Macalino [who] is one of the plaintiffs in this case?
A The first negotiation, Sir, was [with] his daughter[-]in[-]law since Mr. Macalino [was] still in Larena working at that time and when we negotiated the property, it was Mr. Macalino himself.

Q When you negotiated for the sale of the property with Mr. Gil Macalino himself, did he examine the perimeter, the area which you sought to sell?
A Yes. It [was] Mr. Macalino and his family who look[ed] at the property, Sir.

Q Will you please describe how Gil Macalino and his family examine[d] the property?
A He looked at the house [to find out how many rooms it has], the septic tank and also around the house, Sir, and it was quick.

Q How about the perimeter of the fence[,] did Gil Macalino and his family went around to see the perimeter of the fence with the boundaries?
A Yes, Sir, when they were inside.

Q Eventually, was the sale consummated between you and your husband and Gil Macalino?
A After he looked at the property, Sir, we went to see Atty. Lumjod.

Q What happen[ed] at the office of Atty. Lumjod?
A We agreed to the amount of the house and lot and the [payment].

Q Now, was a Deed of Sale eventually made and signed by you and Gil Macalino?
A We have documents, Sir, and it is with Atty. Lumjod.

x x x x x x x x x

Q Now in the Deed of Sale the description of the property is the whole Lot 3154 which is 469 square meters. Now in the lower portion what you sold was only [lot] 3154-A. Now, what [was] the basis of your [identification of] the portion you sold as [lot] 3154-[?] Did you show the Sketch Plan to Gil Macalino?

A Yes. I [showed] x x x him the Sketch Plan.

Q That Sketch Plan was the one marked as Exhibit "6"?

A The Sketch Plan which was prepared by Engr. Ridad, Sir. Yes, this is the Sketch Plan [referred to as] Exhibit "6".

Q Now when you agreed with Gil Macalino [regarding] the sale of [lot] 3154-A, was your agreement in lump sum amount or did you sell it in per square meter?

A The whole house and lot, Sir.

Q Now as shown in this Sketch Plan x x x across the road there are x x x words [written] "portion of lot 3154-C[". Was this included in the sale between the Pis-an family and you and your husband?

A That is not included, Sir.

Q Was this portion [lot] 3154-C included in the sale between you and Gil Macalino?

x x x x x x x x x

A That is not included.

Q Did you take possession of Lot No. 3154-C?

A No, Sir.

Q Did you turn over possession of [Lot No.] 3154-C to Gil Macalino?

A No, Sir.

Q When you bought [Lot No.] 3154-A, were there improvements on [L]ot 3154-C across the road?

A Yes, there was, Sir. There are trees, gemilina trees and acacia trees.

Q To your knowledge, who introduce[d] those improvements?

A Pis-an, Sir. That is across the road Sir. That is part of the whole lot but it is not included when I bought the

> property and if we have money, we might buy that property.[48]

The subdivision plan which refers to Lots 3154-A and 3154-C as Gil's properties cannot support petitioners' claimed right over Lot 3154-C.

Petitioners cannot rely on the Subdivision Plan describing Lots 3154-A and 3154-C as Gil's properties to support their claimed right over Lot 3154-C. For one, the said subdivision plan does not bear the conformity of Artemio and his co-heirs who remain to be the registered owners of Lot 3154. For another, there is doubt as to who really initiated the survey which led to the issuance of the Subdivision Plan. Gil claims that the same was made through the instance of the City Engineer's Office. When asked, however, of the circumstances surrounding the conduct of the said survey and his supposed participation thereon, Gil prevaricated on his answers.[49] Moreover, petitioners' own witness, Engr. Josephine Antonio, stated during cross-examination that Engr. Dorado, who conducted the survey, undertook the same not on behalf of the City Engineer's Office but in his private capacity, *viz.*:

> Q Now, Engr. Antonio, x x x, [L]ot No. 3154 appears to be registered in the name of Artemio Pis-an, Eulogio Jumento, Miraflor Pis-an, Jocelyn Pis-an, Lando Pis-an, Leon Pis-an, Llamato Pis-an and Joena Pis-an. My question is, in this subdivision plan submitted, is there any document showing that any of the registered owners of Lot No. 3154 covered by Transfer Certificate of Title No. 27658 appeared to have initiated this survey?
>
> A Mr. Gil Macalino signed the application form. And this was prepared by Engr. Dorado.

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[48] TSN dated October 10, 2006, pp. 6-11.

[49] TSN dated April 3, 2006; pp. 14-15; TSN dated April 26, 2006, pp. 4-8.

Q Now, when this was prepared by Engr. Dorado x x x can you tell us if at [that] time [in] 1999[,] Engr. Rilthe Dorado was under you x x x [in] the City Development Office?
A No. He was I think with the City Engineer's Office.

Q Does your records show whether or not Engr. Rilthe Dorado did this as part of his duties in the City Engineer's Office or in his private capacity?
A I think in his private capacity.[50]

Moreover, the said subdivision plan was issued after Gil's discovery that Lot 3154-A only consisted of 140 square meters and not 207 square meters.

Given the foregoing, the Court could only conclude that the said subdivision plan was secured to give the impression that the sale between Gil and the spouses Sillero included Lot 3154-C, the 67-square meter area of which when tacked to the 140-square meter area of Lot 3154-A completes the 207-square meter portion that Gil supposedly bought from the spouses Sillero. The said document, therefore, does not deserve any credence from this Court.

The remedy of quieting of title is not available to petitioners.

"Quieting of title is a common law remedy for the removal of any cloud upon or doubt or uncertainty with respect to title to real property."[51] "In order that an action for quieting of title may prosper, it is essential that the plaintiff must have legal or equitable title to, or interest in, the property which is the subject-matter of the action. Legal title denotes registered ownership, while equitable title means beneficial ownership. In the absence of such legal or equitable title, or interest, there is no cloud to be prevented or removed."[52]

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[50] TSN dated July 17, 2006, pp. 6-7.

[51] *Vda. de Aviles v. Court of Appeals*, 332 Phil. 513, 520 (1996).

[52] *Mananquil v. Moico*, 699 Phil. 120, 122 (2012).

Petitioners anchored their Complaint on their alleged legal title over Lot 3154-C which as above-discussed, they do not have. Hence, the action for quieting of title is unavailable to petitioners.

WHEREFORE, the Petition for Review on *Certiorari* is **DENIED**. The assailed Decision dated September 20, 2012 of the Court of Appeals in CA-G.R. CV No. 02893 is **AFFIRMED**.

SO ORDERED.

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

Brion, J., on official leave.

THIRD DIVISION

[G.R. No. 206419. June 1, 2016]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **RUBEN DELA ROSA,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; RAPE; CARNAL KNOWLEDGE OF A WOMAN WHO IS A MENTAL RETARDATE IS RAPE UNDER THE PROVISIONS OF LAW; ESTABLISHED IN CASE AT BAR.— Carnal knowledge of a woman who is a mental retardate is rape under the x x x provisions of law. Proof of force or intimidation is not necessary, as a mental retardate is not capable of giving consent to a sexual act. What needs to be proven are the facts of sexual congress between the accused and the victim, and the mental retardation of the latter. x x x While no medical examination was presented as evidence, it has been ruled that such is merely corroborative in character and is not an indispensable element for conviction in rape. Of primary importance is the clear, unequivocal and credible testimony of private complainant

which we so find in the instant case. x x x Anent AAA's mental retardation, the Court has held that the same can be proven by evidence other than medical/clinical evidence, such as the testimony of witnesses and even the observation by the trial court. Here, both clinical and testimonial evidence were presented by the prosecution to prove that AAA is a mental retardate. The Psychological Report of De Guzman, which was also testified to by her, states that after a series of tests performed on AAA, the latter was found to be suffering from Mild Level of Mental Retardation with an I.Q. of 68 and a mental age equivalent to that of a nine (9) year old.

2. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; IN RAPE CASES, PRIMORDIAL IS THE CREDIBILITY OF THE VICTIM'S TESTIMONY BECAUSE THE ACCUSED MAY BE CONVICTED SOLELY ON THE VICTIM'S TESTIMONY PROVIDED IT IS CREDIBLE, NATURAL, CONVINCING AND CONSISTENT WITH HUMAN NATURE AND THE NORMAL COURSE OF THINGS; CASE AT BAR.— In rape cases, primordial is the credibility of the victim's testimony because the accused may be convicted solely on said testimony provided it is credible, natural, convincing and consistent with human nature and the normal course of things. In this case, AAA testified in a clear, spontaneous and candid manner about the sexual abuse and positively identified appellant as her abuser, x x x It bears underscoring that the competence and credibility of mentally deficient rape victims as witnesses have been upheld by this Court where it was shown that they could communicate their ordeal capably and consistently. It lends greater credence to AAA's testimony that someone feeble-minded and guileless as her could speak so tenaciously and explicitly on the details of the rape if she not in fact suffered such crime at the hands of the appellant. Having the mental age of nine (9) bolsters AAA's credibility as a witness, considering that a victim at such a tender age would not publicly admit that she had been criminally abused unless that was the truth. There is no cogent reason to depart from the findings of the trial court with respect to the assessment of AAA's testimony, the same being clear, unequivocal and credible.

3. ID.; ID.; ID.; POSITIVE IDENTIFICATION OF THE ACCUSED, WHEN CATEGORICAL AND CONSISTENT AND WITHOUT

ANY ILL MOTIVE ON THE PART OF THE EYEWITNESS TESTIFYING ON THE MATTER, PREVAILS OVER ALIBI AND DENIAL.— Denial and alibi are inherently weak. Being negative defenses, if not substantiated by clear and convincing evidence, they would merit no weight in law and cannot be given greater evidentiary value than the testimony of credible witnesses who testified on affirmative matters. This Court has strongly ruled that between categorical testimonies that ring of truth on one hand and bare denial on the other, the former must prevail. Positive identification of the appellant, when categorical and consistent and without any ill motive on the part of the eyewitnesses testifying on the matter, prevails over alibi and denial.

4. CRIMINAL LAW; REVISED PENAL CODE; RAPE; IMPOSABLE PENALTY.— Knowledge of the offender of the mental disability of the victim at the time of the commission of the crime of rape qualifies the crime and makes it punishable by death under paragraph 10, Article 266-B of the Revised Penal Code, as amended by Republic Act No. 8353. In this case, such knowledge was properly alleged in the Information filed against the appellant, and was sufficiently proven by the prosecution as appellant in fact had lived with AAA and BBB for a considerable period of time. All told, the prosecution was able to prove that appellant is guilty beyond reasonable doubt of the crime of rape under Article 266-A, paragraph 1(d) of the Revised Penal Code, as amended by Republic Act No. 8353. The Court agrees with the appellate court that considering appellant had knowledge of AAA's mental retardation at the time of the commission of the crime, the same having been properly alleged in the Information charging appellant of the crime of rape and proven during trial, the penalty according to law would have been death. With the enactment, however, of Republic Act No. 9346, the imposition of the death penalty has been prohibited without declassifying the crime of qualified rape as heinous. Thus, the trial court and the appellate court correctly imposed the penalty of *reclusion perpetua*.

APPEARANCES OF COUNSEL

Office of the Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

R E S O L U T I O N

PEREZ, *J.*:

Before us for review is the Decision[1] of the Court of Appeals in C.A. G.R. CR-H.C. No. 03818 dated 28 September 2012, which dismissed the appeal of appellant Ruben dela Rosa and affirmed with modifications the Decision[2] of the Regional Trial Court (RTC) of Binangonan, Rizal, Branch 67, in Criminal Case No. 05-373, finding appellant guilty beyond reasonable doubt of the crime of Qualified Rape.

In line with the ruling of this Court in *People v. Cabalquinto*,[3] the real name and identity of the rape victim, as well as the members of her immediate family, are not disclosed. The rape victim shall herein be referred to as AAA, and her mother as BBB.

Appellant was charged with the crime of rape in an Information, the accusatory portion of which reads as follows:

> That, sometime in June, 2004, in the Municipality of Binangonan, Province of Rizal, Philippines and within the jurisdiction of this Honorable Court, the above named accused, taking advantage of his moral authority and influence to the offended party, did then and there willfully, unlawfully and feloniously have carnal knowledge with [AAA], a thirty-one (31) year old woman with a mental age of a nine (9) year old minor, against the latter's will and consent, the said crime having been attended by the qualifying circumstance that the accused knew of the mental disability, emotional disorder and/or physical handicap of his victim at the time of the commission of the offense, the offended party being a retardate is deprived of reason, aggravated by the circumstances of abuse of superior strength, dwelling and

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[1] *Rollo*, pp. 2-16; Penned by Associate Justice Michael P. Elbinias with Associate Justices Isaias P. Dicdican and Nina G. Antonio-Valenzuela concurring.

[2] Records, pp. 104-105; Presided by Presiding Judge Dennis Patrick Z. Perez.

[3] 533 Phil. 703 (2006).

the act having been committed with insult or in disregard of the respect due the offended party on account of her mental disability, to the damage and prejudice of said victim [AAA].[4]

Appellant pleaded not guilty to the crime charged. Trial on the merits ensued.

The prosecution presented AAA, her mother, BBB, and Nimia Hermilia C. De Guzman (De Guzman), a clinical psychologist of the National Center for Mental Health, as witnesses.

The prosecution established that appellant and his family had been living with AAA and BBB at the latter's house when sometime in June 2004, around nine o'clock in the evening, BBB saw appellant, whom AAA called "daddy," came out of her daughter's room. BBB confronted appellant about this the next day to no avail. Appellant's wife was likewise unresponsive. In time, a neighbor disclosed to BBB that AAA had told her in her stunted language, *"Daddy, pasok titi, sakit-sakit, dito pasok titi, hipo-hipo dede, halik-halik dito, iyak-iyak ako, hubad-hubad damit ko." BBB promptly asked AAA about the truth of this and the latter replied, "Opo, ganun po ako, hubad damit Daddy, dito taas, kiss-kiss, lamas-lamas."*[5]

AAA confirmed that indeed appellant had gone to her room, removed her clothes, kissed her breasts and inserted his penis into her vagina.[6]

BBB immediately brought AAA to the police station, then to Camp Crame where BBB was told that AAA exhibited physical signs of having experienced sexual intercourse several times.[7] At the mental hospital, AAA was examined by De Guzman who concluded in her report that AAA had the mental age of a nine (9) year old child.[8]

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[4] Records, p. 1.

[5] TSN, 4 October 2007, pp. 3-6.

[6] TSN, 17 January 2008, pp. 5-8.

[7] TSN, 4 October 2007, pp. 7-8.

[8] TSN, 3 May 2007, p. 9; Exhibit "A", and Records, pp. 53-54.

As sole witness for the defense, appellant interposed the defense of denial and asserted that he and his family no longer lived with AAA and her mother at the time of the alleged commission of the crime. He also averred that his wife had previously filed a complaint before the *barangay* against BBB and her sister for having maltreated appellant's child.[9]

On 28 November 2008, appellant was found guilty beyond reasonable doubt of statutory rape. The dispositive portion of the RTC Decision reads:

> The foregoing considered, we find the accused Ruben Dela Rosa **GUILTY** beyond reasonable doubt of qualified rape under Article 266-A, Paragraph 1 (d) in relation to Article 266-B, Revised Penal Code and sentence him to serve a penalty of *Reclusion Perpetua*. We further order him to pay ₱50,000.00 as moral damages and ₱50,000.00 as exemplary damages plus costs.[10]

On intermediate review, the Court of Appeals rendered the assailed decision affirming with modifications the trial court's judgment, to wit:

> **IN VIEW OF ALL THESE**, the appealed Decision convicting accused-appellant Ruben Dela Rosa in Criminal Case No. 05-373 is **AFFIRMED**, with the following **MODIFICATIONS**:
>
> a) The award of Moral Damages to be paid by accused-appellant to AAA is increased from Php50,000.00 to Php75,000.00;
> b) The award of Exemplary Damages to be paid by accused-appellant to AAA is decreased from Php50,000.00 to Php30,000.00; and,
> c) Accused-appellant is ordered to pay AAA the amount of Php75,000.00 as Civil Indemnity.[11]

Appellant filed the instant appeal. In a Resolution[12] dated 19 June 2013, appellant and the Office of the Solicitor General

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[9] TSN, 31 July 2008, pp. 3-6.

[10] Records, p. 105.

[11] *Rollo*, p. 15.

[12] *Id.* at 22.

(OSG) were asked to file their respective supplemental briefs if they so desired. Both parties opted to dispense with the filing of supplemental briefs.[13]

The Court affirms appellant's conviction.

Rape is committed as follows:

Article 266-A. *Rape; When and How committed*. — Rape is committed —

1.) By a man who shall have carnal knowledge of a woman under any of the following circumstances:

a. Through force, threat or intimidation;
b. When the offended party is deprived of reason or otherwise unconscious;
c. By means of fraudulent machination or grave abuse of authority; and
d. When the woman is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.

x x x x x x x x x

Article 266-B. *Penalty*. — Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua*.

x x x x x x x x x

The death penalty shall also be imposed if the crime of rape is committed with any of the following attendant circumstances:

x x x x x x x x x

10. When the offender knew of the mental disability, emotional disorder and/or physical handicap of the offended party at the time of the commission of the crime.[14]

Carnal knowledge of a woman who is a mental retardate is rape under the aforesaid provisions of law. Proof of force or

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[13] *Id.* at 27-28 and 30-31.

[14] Revised Penal Code, as amended by Republic Act No. 8353, otherwise known as the "*The Anti-Rape Law of 1997*."

intimidation is not necessary, as a mental retardate is not capable of giving consent to a sexual act. What needs to be proven are the facts of sexual congress between the accused and the victim, and the mental retardation of the latter.[15]

In rape cases, primordial is the credibility of the victim's testimony because the accused may be convicted solely on said testimony provided it is credible, natural, convincing and consistent with human nature and the normal course of things.[16]

In this case, AAA testified in a clear, spontaneous and candid manner about the sexual abuse and positively identified appellant as her abuser, to wit:

Q Kilala mo ba si Ruben Dela Rosa?
A Opo.

Q Nandito ba si Ruben ngayon? Ituro mo nga.
A (Witness pointing to a person wearing prisoner's uniform who when asked his name answered Ruben Dela Rosa)

Q Paano mo tinatawag si Ruben? Ben ba, papa ba o daddy?
A Daddy.

Q Noong buwan ng June, 2004, saan nakatira itong si Daddy? Sa inyo ba o sa kapit-bahay ba?
A Sa bahay namin.

Q Si Ruben ba mabait sa'yo o salbahe?
A Ni-rape ako. . .

COURT

[AAA] anong ginawa sa'yo?

WITNESS

(Witness demonstrating with hands that she was raped)

Q Saan ginawa sa'yo?
A Sa kwarto.

x x x x x x x x x

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[15] *People v. Magabo*, 402 Phil. 977, 983-984 (2001).

[16] *People v. Pascua*, 462 Phil. 245, 252 (2003).

Q Tapos nakahiga ka at pumasok sya, anong kauna-unahan nyang ginawa?
A Hinubad yung t-shirt ko tapos yung bra.

COURT

Anong ginawa nya sayo [AAA]? Hinawak-hawakan nya yung dede mo?

WITNESS
(Witness nodding)

Q Tapos ano pang ginawa bukod sa hinawakan nya yung dede mo? Hinalikan o dinede?
A Hinalikan.

x x x x x x x x x

Q Pagkahubad nya nung palda mo at nung panty mo anong ginawa nyang sumunod?
A Pinasok nya (Witness demonstrating with hands, her finger pointing to the palm that the penis of the accused was inserted to her vagina)[17]

Appellant, on the other hand, denied having raped AAA and averred that he and his family had already been living somewhere else at the time of the alleged commission of the offense. He even testified of some *barangay* complaint his wife had purportedly filed against BBB and the latter's sister, perhaps to intimate ill motive on the part of AAA and family in the filing of the instant case. Notably, except for appellant's testimony, defense did not formally offer as evidence this supposed *barangay* complaint.

Denial and alibi are inherently weak. Being negative defenses, if not substantiated by clear and convincing evidence, they would merit no weight in law and cannot be given greater evidentiary value than the testimony of credible witnesses who testified on affirmative matters.[18]

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[17] TSN, 17 January 2008, pp. 5-8.

[18] *People v. Tagana*, 468 Phil. 784, 807 (2004).

This Court has strongly ruled that between categorical testimonies that ring of truth on one hand and bare denial on the other, the former must prevail. Positive identification of the appellant, when categorical and consistent and without any ill motive on the part of the eyewitnesses testifying on the matter, prevails over alibi and denial.[19]

While no medical examination was presented as evidence, it has been ruled that such is merely corroborative in character and is not an indispensable element for conviction in rape. Of primary importance is the clear, unequivocal and credible testimony of private complainant which we so find in the instant case.[20]

It bears underscoring that the competence and credibility of mentally deficient rape victims as witnesses have been upheld by this Court where it was shown that they could communicate their ordeal capably and consistently. It lends greater credence to AAA's testimony that someone feeble-minded and guileless as her could speak so tenaciously and explicitly on the details of the rape if she not in fact suffered such crime at the hands of the appellant.[21] Having the mental age of nine (9) bolsters AAA's credibility as a witness, considering that a victim at such a tender age would not publicly admit that she had been criminally abused unless that was the truth. There is no cogent reason to depart from the findings of the trial court with respect to the assessment of AAA's testimony, the same being clear, unequivocal and credible.

Anent AAA's mental retardation, the Court has held that the same can be proven by evidence other than medical/clinical evidence, such as the testimony of witnesses and even the observation by the trial court.[22]

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[19] *Id.* at 807-808.

[20] See *People v. Lerio*, 381 Phil. 80, 88 (2000).

[21] See *People v. Toralba*, 414 Phil. 793, 800 (2001).

[22] *People v. Dalandas*, 442 Phil. 688, 697 (2002).

Here, both clinical and testimonial evidence were presented by the prosecution to prove that AAA is a mental retardate. The Psychological Report[23] of De Guzman, which was also testified to by her, states that after a series of tests performed on AAA, the latter was found to be suffering from Mild Level of Mental Retardation with an I.Q. of 68 and a mental age equivalent to that of a nine (9) year old. AAA could only reproduce tasks after a pattern, thus, verbal tests could not be administered. The Report notes that AAA talks monosyllabically, often stammers and needs a caregiver to guide and protect her.

BBB significantly described her daughter as follows:

Q Can you tell us the mental condition of your daughter?
A Ang anak ko po, mabait naman siya.

Q No, her mental condition.
A Tumutulo po ang laway nya, ganun minsan.

COURT

Q Mababa ang IQ?
A Yes, Your Honor.

PROSECUTOR ARAGONES

Q Is she mentally retarded?
A Yes, Ma'am.[24]

Given AAA's appearance, and considering that appellant and his family have lived with AAA and BBB for a length of time, appellant could only have been too aware of the apparent and noticeable fact of AAA's mental condition.[25]

The Court has held in a long line of cases that if the mental age of a woman above twelve years is that of a child below twelve years, even if she voluntarily submitted to the bestial

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[23] Exhibit "A", pp. 53-54.

[24] TSN, 4 October 2007, pp. 8-10.

[25] TSN, 4 June 2008, p. 3.

desires of the accused, or even absent the circumstances of force or intimidation or the fact that the victim was deprived of reason or otherwise unconscious, the accused would still be liable for rape under Article 266-A, paragraph 1(d) of the Revised Penal Code, as amended by Republic Act No. 8353. The rationale is that if sexual intercourse with a victim under twelve years of age is rape, then it should follow that carnal knowledge of a woman whose mental age is that of a child below twelve years would also constitute rape.[26]

Knowledge of the offender of the mental disability of the victim at the time of the commission of the crime of rape qualifies the crime and makes it punishable by death under paragraph 10, Article 266-B of the Revised Penal Code, as amended by Republic Act No. 8353. In this case, such knowledge was properly alleged in the Information filed against the appellant, and was sufficiently proven by the prosecution as appellant in fact had lived with AAA and BBB for a considerable period of time.

All told, the prosecution was able to prove that appellant is guilty beyond reasonable doubt of the crime of rape under Article 266-A, paragraph 1(d) of the Revised Penal Code, as amended by Republic Act No. 8353. The Court agrees with the appellate court that considering appellant had knowledge of AAA's mental retardation at the time of the commission of the crime, the same having been properly alleged in the Information charging appellant of the crime of rape and proven during trial, the penalty according to law would have been death. With the enactment, however, of Republic Act No. 9346,[27] the imposition of the death penalty has been prohibited without declassifying the crime of qualified rape as heinous. Thus, the trial court and the appellate court correctly imposed the penalty of *reclusion perpetua*.

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[26] *People v. Dela Paz*, 569 Phil. 684, 705 (2008) citing *People v. Itdang*, 397 Phil. 692, 704 (2000).

[27] Otherwise known as "*An Act Prohibiting the Imposition of Death Penalty in the Philippines*."

The Court modifies the appellate court's award of damages as follows: ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, and ₱100,000.00 as exemplary damages pursuant to prevailing jurisprudence.[28] Further, the amount of damages awarded should earn interest at the rate of six percent (6%) *per annum* from the finality of this judgment until said amounts are fully paid.[29]

WHEREFORE, premises considered, the Decision dated 28 September 2012 of the Court of Appeals of Manila, Thirteenth Division, in CA-G.R. CR.-H.C. No. 03818, finding appellant Ruben dela Rosa guilty beyond reasonable doubt of the crime of qualified rape in Criminal Case No. 05-373, is hereby **AFFIRMED WITH MODIFICATION**. Appellant Ruben dela Rosa is ordered to pay the private offended party as follows: ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, and ₱100,000.00 as exemplary damages. He is **FURTHER** ordered to pay interest on all damages awarded at the legal rate of six percent (6%) *per annum* from the date of finality of this judgment until fully paid.

No pronouncement as to costs.

SO ORDERED.

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

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[28] *People v. Gambao*, G.R. No. 172707, 1 October 2013, 706 SCRA 508.

[29] *People v. Vitero*, G.R. No. 175327, 3 April 2013, 695 SCRA 54, 69.

* Additional Member per Raffle dated 18 May 2016.

THIRD DIVISION

[G.R. No. 207517. June 1, 2016]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **RAUL AMARO *y* CATUBAY *alias* "LALAKS,"** *appellant.*

SYLLABUS

1. **CRIMINAL LAW; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS; ESTABLISHED IN CASE AT BAR.—** For a successful prosecution of illegal sale of dangerous drugs under Section 5, Article II of R.A. 9165, the following elements must be satisfied: (I) the identity of the buyer and the seller, the object of the sale, and the consideration; and (2) the delivery of the thing sold and the payment therefor. In the crime of illegal sale of dangerous drugs, the delivery of the illicit drug to the poseur-buyer and the receipt by the seller of the marked money consummate the illegal transaction. What matters is the proof that the transaction or sale actually took place, coupled with the presentation in court of the prohibited drug, the *corpus delicti,* as evidence. In this case, the Court believes and so holds that all the requisites for the illegal sale of shabu were met. As demonstrated by the testimonies of the prosecution witnesses and the supporting documents they presented and offered, the identities of the buyer, the seller, the prohibited drug, and the marked money, have all been proven by the required quantum of evidence. Likewise, the chain of custody did not suffer from serious flaws. The illegal drug being the *corpus delicti,* it is essential for the prosecution to establish with moral certainty and prove to the court beyond reasonable doubt that the illegal drug presented to the trial court as evidence are the same illegal drug seized from the accused, tested and found to be positive for dangerous substance.

2. **ID.; ID.; ID.; CHAIN OF CUSTODY RULE; LINKS THAT MUST BE ESTABLISHED IN THE CHAIN OF CUSTODY IN A BUY-BUST SITUATION; ENUMERATED.—** The links that must be established in the chain of custody in a buy- bust situation are as follows: (1) the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending

officer; (2) the turnover of the illegal drug seized by the apprehending officer to the investigating officer; (3) the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and (4) the turnover and submission of the seized and marked illegal drug from the forensic chemist to the court.

APPEARANCES OF COUNSEL

Office of the Solicitor General for plaintiff-appellee.
Jitender R. Chandiramani for accused-appellant.

D E C I S I O N

PERALTA, *J.*:

On appeal is the August 26, 2011 Decision[1] of the Court of Appeals (*CA*) in CA-G.R. CR HC No. 00953, which sustained the July 14, 2008 Decision[2] of the Regional Trial Court (*RTC*), Branch 30, Dumaguete City, Negros Oriental, in Criminal Case No. 17679, convicting appellant Raul Amaro *y* Catubay (*a.k.a. "Lalaks"*) of illegal sale of Methamphetamine Hydrochloride, commonly known as shabu, in violation of Section 5, Article II of Republic Act (*R.A.*) No. 9165 or the Comprehensive Dangerous Drugs Act of 2002.

On July 7, 2005, an Information was filed against appellant Amaro, which reads:

That on or about the 6th day of July 2005, in the City of Dumaguete, Philippines, and within the jurisdiction of this Honorable Court, the said accused, not being authorized by law, did, then and there wilfully, unlawfully and feloniously sell and deliver to a police poseur-buyer one (1) heat-sealed transparent plastic sachet containing 0.01 grams of white crystalline substance, of Methamphetamine Hydrocloride, commonly called shabu, a dangerous drug.

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[1] Penned by Associate Justice Gabriel T. Ingles, with Associate Justices Pampio A. Abarintos and Nina G. Antonio-Valenzuela, concurring; *rollo*, pp. 3-15.

[2] Records, pp. 271-276; CA *rollo*, pp. 14-19.

Contrary to Section 5, Article II of R.A. 9165.[3]

In his arraignment, Amaro pleaded "Not Guilty."[4] Trial ensued while he was detained in the city jail.[5]

The prosecution presented witnesses from the PNP Dumaguete Station (PO3 Remby Abella, PO2 Pio Barandog, Jr., and SPO2 Douglas Ferrer), the PNP Provincial Crime Laboratory Office (Police Senior Inspector Maria Ana Rivera-Dagasdas), the Philippine Drug Enforcement Agency (SPO1 Manuel Sanchez and SPO1 Allen June Germodo), and the media (Reysan Elloren and Juancho Gallarde). Their version of facts are as follows:

At about 11:30 a.m. on July 6, 2005, a team composed of the members of the Intelligence Operatives Section of the PNP Dumaguete Station, PDEA, and National Bureau of Investigation, implemented a buy-bust operation against Amaro in his residence located in Looc, Dumaguete City. The plan was brought about by reports received by the Intelligence Operatives of the police station that Amaro was engaged in the illegal trade of selling shabu.

The team was also armed with a search warrant, which was the result of surveillance and test buy conducted prior to the buy-bust operation. It was agreed that the buy-bust would be executed prior to the warrant. PO3 Abella was designated as the poseur-buyer. SPO2 Ferrer handed him two (2) one hundred peso (₱100.00) bills, which he marked with "RA," referring to the initials of Amaro.

As planned, while the rest of the buy-bust team concealed themselves and served as back-up, PO3 Abella approached Amaro at the back portion of his house and negotiated for the purchase of ₱200.00 worth of shabu. When Amaro received

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[3] Records, pp. 67-70.

[4] *Id.* at 121.

[5] *Id.* at 98.

the ₱200.00 marked money that PO3 Abella gave him, he went inside the house. Going back, he handed over to PO3 Abella a sachet of white crystalline substance. Upon examination, PO3 Abella immediately told him that he is a police officer and placed him under arrest. In reaction, Amaro ran inside the house, but was chased and caught by PO3 Abella. He was informed of the reason for his arrest and was apprised, in the local dialect, of his constitutional rights. A body search conducted on him resulted in the recovery of the marked bills inside his pocket.

The rest of the buy-bust team then entered Amaro's residence to serve and implement the search warrant. Barangay Councilor Nelson Merced as well as mediamen Elloren and Gallarde were present to witness. After the search, PO3 Abella marked the sachet containing shabu with "LA-BB 7-6-05" (signifying "Lalaks Amaro-Buy Bust" and the date of seizure). The sachet and the marked money[6] recovered were inventoried by PO3 Abella and the receipt[7] was signed by the team members and witnesses. A photograph[8] was also taken by PO2 Barandog, Jr. to document the event.

The day after, on July 7, 2005, PO3 Abella brought to the PNP Provincial Crime Laboratory Office for qualitative examination the sachet of shabu aside from the other items confiscated during the implementation of the warrant. The letter-request[9] and the confiscated items were received by forensic chemist, PSI Dagasdas. Per Chemistry Report No. D-117-05[10] and Certification,[11] she found that the specimen bought from Amaro, which weighed 0.01 gram, was positive for methamphetamine hydrochloride.

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[6] *Id.* at 298.

[7] *Id.* at 90.

[8] *Id.* at 154.

[9] *Id.* at 62.

[10] *Id.* at 61.

[11] *Id.* at 63.

Only Amaro testified for the defense. While he admitted that illegal drugs were being openly sold in Looc where he had lived for almost ten years, he denied that he was selling shabu. He testified that he was in his house at noontime of July 6, 2005 when PO2 Barandog, Jr., SPO1 Sanchez, and SPO1 Germodo kicked the door and went inside; that the policemen searched the house pursuant to a warrant, which was shown to him, but they were not able to recover anything; and that even if they were neither friends nor enemies, he knew PO3 Abella and PO2 Barandog, Jr. because they used to pass by his house and often saw them conduct roving or arrest of people in the area.[12]

On July 14, 2008, the RTC convicted Amaro of the crime charged. The dispositive portion of the judgment states:

> **WHEREFORE**, judgment is hereby rendered finding the accused guilty beyond reasonable doubt of violation of Section 5, Article II of R.A. 9165. He is sentenced to suffer the penalty of life imprisonment and pay the fine of ₱500,000.00 without any subsidiary imprisonment in case of insolvency. The 0.01 gram of shabu, subject of this case, and the money used in the commission of the crime are hereby forfeited in favor of the government, and to be disposed of in accordance with law.
>
> In the service of sentence, the accused shall be credited with the full time during which he has undergone preventive imprisonment, provided he agrees voluntarily in writing to abide by the same disciplinary rules imposed upon convicted prisoners.
>
> SO ORDERED.[13]

According to the RTC, Amaro had long been identified by the authorities as engaged in the selling of shabu, which lends credence to the prosecution's version that a buy-bust operation actually took place. The court also found that the integrity of the evidence relative to the shabu sold to the poseur-buyer has been well preserved. Citing jurisprudence, it further held that

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[12] TSN, June 3, 2008.

[13] Records, p. 275; CA *rollo*, p. 18.

the knowledge by the seller of an illegal or dangerous drug that the poseur-buyer is a policeman is not a ground for inferring that the sale is improbable, and that inconsistencies in the testimonies of prosecution witnesses must refer to the buy-bust itself and not to peripheral matters. For the court, Amaro's sole, uncorroborated, and self-serving denial of the accusations cannot overcome the positive and affirmative declarations of the prosecution's witnesses who detailed the buy-bust transaction. Moreover, it was noted that Amaro neither ascribed bad faith or ill motive on the part of the police nor was he able to prove its existence; thus, the presumption of regularity in the performance of official duties remains.

Amaro moved for a reconsideration of the Decision, but it was denied.[14] Subsequently, the case was elevated to the CA *via* notice of appeal.[15] However, convinced by the credibility of the prosecution witnesses and their testimony, the appellate court affirmed the RTC Decision.

In his Supplemental Brief filed before Us, Amaro notes that the trial court judge who promulgated the July 14, 2008 Decision was not the same judge who observed the testimony of PO3 Abella; hence, the CA cannot rely on the trial court's determination on the witnesses' credibility. Further, he finds it odd that while the testimony of PO3 Abella was found untenable in the case for illegal possession,[16] it was considered as credible to convict him for illegal sale. Lastly, Amaro contends that the presumption of regularity in the performance of official function

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[14] *Id.* at 281-288, 292-293.

[15] *Id.* at 296-297.

[16] On July 7, 2005, an Information for illegal possession of shabu was also filed against Amaro based on the other items seized pursuant to the search warrant implemented after the buy-bust operation. It was docketed as Criminal Case No. 17682. Joint trial ensued. After the prosecution rested its case, a demurrer to evidence was filed. The court initially denied the same, but when Amaro moved for reconsideration Criminal Case No. 17682 was dismissed on May 21, 2008 (Records, pp. 3-4, 233-241, 244-246, 259-261).

cannot defeat the accused person's constitutional right to be presumed innocent.

The appeal is unmeritorious.

According to Amaro, the trial court effectively said in its May 21, 2008 Resolution that PO3 Abella had planted evidence against the accused, which removed the presumption of regularity in the conduct of the police officer for such ill will. In addition, despite that the police officers were already armed with a search warrant, the police operatives still resolved to first execute the buy-bust rather than just serve the warrant.

The pertinent portion of the May 21, 2008 Resolution states:

> A cursory reading of the transcript of stenographic notes taken during the direct and cross examination of witness Reysan Elloren reveals that his testimony touches on the very core, the *corpus delicti*, of the crime charged in Criminal Case No. 17682, for possession of a dangerous drug. His declaration was to the effect that no drugs were found in the house and on the person of the accused and that a police officer brought the drugs recovered from the other house, not the house of the accused, and placed them on the table. On the other hand, PO3 Abella testified that he found the shabu on the table in the kitchen of the house of the accused.
>
> Their testimonies, taken together, could bring about the inference that PO3 Abella found the shabu which was recovered from another house by a police officer who put the same on the table in the house of the accused; ownership of said shabu was then attributed to the latter. Thus, the element that *accused freely and consciously possessed the dangerous drug* has not been satisfied. It is on this score alone that the Court hereby reconsiders its ruling on the Demurrer to Evidence filed by the accused, but only insofar as Criminal Case No. 17682 is concerned.[17]

Nowhere from the above-quoted could We infer the supposed conclusion of the RTC that PO3 Abella lacked good faith because he planted evidence against the accused. In fact, even the trial

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[17] Records, pp. 259-260.

court categorically stressed in its Order[18] dated September 18, 2008, which denied Amaro's motion for reconsideration, that, with the dismissal of Criminal Case No. 17682, there was never a finding of ill motive against PO3 Abella or that he planted evidence against Amaro.

Amaro had the burden of proof to overcome the presumption that the police officers handled the seized drugs with regularity, and that they properly performed their official duties. He failed. Other than erroneously relying on the purported finding of the trial court, no bad faith or planting of evidence was actually shown. He did not ascribe any improper motive on the part of the police officers as to why they would choose to falsely implicate him in a very serious crime that would cause his incarceration for life. For Amaro's failure to demonstrate with clear and convincing evidence that the members of the buy-bust operation team were illicitly motivated, or had failed to properly perform their official functions, the testimonies of prosecution witnesses deserve full faith and credit.

Amaro further argues that the way the alleged buy-bust had happened proves to be very dubious. He claims that while the street value of shabu has been pegged at around ₱2,000.00 per gram, the sachet of shabu involved in this case contains only 0.01 gram but was sold at ₱200.00 or ten (10) times more than what such quantity was actually worth; such quantity of shabu is impossible to be consumed as it is not even enough to be partaken; and the alleged buy-bust operation could not actually transpire since Amaro admitted that he already knew the police officers involved in view of their numerous operations in the Looc area. These issues are purely factual in nature that require the presentation of evidence and appreciation of probative value by the trial court. And, assuming them to be true, they are immaterial for the conviction of the crime charged.

For a successful prosecution of illegal sale of dangerous drugs under Section 5, Article II of R.A. 9165, the following

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[18] *Id.* at 292-293.

elements must be satisfied: (1) the identity of the buyer and the seller, the object of the sale, and the consideration; and (2) the delivery of the thing sold and the payment therefor.[19] In the crime of illegal sale of dangerous drugs, the delivery of the illicit drug to the poseur-buyer and the receipt by the seller of the marked money consummate the illegal transaction.[20] What matters is the proof that the transaction or sale actually took place, coupled with the presentation in court of the prohibited drug, the *corpus delicti*, as evidence.[21]

In this case, the Court believes and so holds that all the requisites for the illegal sale of shabu were met. As demonstrated by the testimonies of the prosecution witnesses and the supporting documents they presented and offered, the identities of the buyer, the seller, the prohibited drug, and the marked money, have all been proven by the required quantum of evidence.

Likewise, the chain of custody did not suffer from serious flaws. The illegal drug being the *corpus delicti*, it is essential for the prosecution to establish with moral certainty and prove to the court beyond reasonable doubt that the illegal drug presented to the trial court as evidence are the same illegal drug seized from the accused, tested and found to be positive for dangerous substance.[22] The prosecution must establish the unbroken chain of custody of the seized item —

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[19] *People v. Romel Sapitula y Paculan*, G.R. No. 209212, February 10, 2016; *People v. Lee Quijano Enad*, G.R. No. 205764, February 3, 2016; *People v. Ronaldo Casacop y Amil*, G.R. No. 210454, January 13, 2016; and *People v. Michael Ros*, G.R. No. 201146, April 15, 2015.

[20] *People v. Juan Asislo y Matio*, G.R. No. 206224, January 18, 2016.

[21] *People v. Lee Quijano Enad*, G.R. No. 205764, February 3, 2016; *People v. Fernando Ranche Havana a.k.a. Fernando Ranche Abana*, G.R. No. 198450, January 11, 2016; and *People v. Michael Ros*, G.R. No. 201146, April 15, 2015.

[22] *People v. Lee Quijano Enad*, G.R. No. 205764, February 3, 2016; *People v. Anita Miranda y Beltran*, G.R. No. 205639, January 18, 2016; *People v. Juan Asislo y Matio*, G.R. No. 206224, January 18, 2016; *People v. Fernando Ranche Havana a.k.a. Fernando Ranche Abana*, G.R. No. 198450, January 11, 2016; and *People v. Michael Ros*, G.R. No. 201146, April 15, 2015.

As held in *People of the Philippines v. Edwin Dalawis y Hidalgo*:

> 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 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 a way that every person who touched the exhibit would describe how and from whom it was received, where it was and what happened to it while in the witness' possession, the condition in which it was received and the condition in which it was delivered to the next link in the chain. These witnesses would then describe the precautions taken to ensure that there had been no change in the condition of the item and no opportunity for someone not in the chain to have possession of the same.[23]

The links that must be established in the chain of custody in a buy-bust situation are as follows: (1) the seizure and marking, if practicable, of the illegal drug recovered from the accused by the apprehending officer; (2) the turnover of the illegal drug seized by the apprehending officer to the investigating officer; (3) the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and (4) the turnover and submission of the seized and marked illegal drug from the forensic chemist to the court.[24]

In the case at bar, Amaro did not present any evidence to show that the integrity and evidentiary value of the shabu presented at the trial had been compromised at some point. On the contrary, the body of evidence adduced by the prosecution supports the conclusion that the integrity and evidentiary value of the seized evidence were preserved and safeguarded through

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[23] *People v. Lee Quijano Enad*, G.R. No. 205764, February 3, 2016.

[24] *People v. Romel Sapitula y Paculan*, G.R. No. 209212, February 10, 2016 and *People v. Lee Quijano Enad*, G.R. No. 205764, February 3, 2016.

an unbroken chain of custody. The records indicate that the illegal drug confiscated in the buy-bust was segregated, marked, inventoried, kept, and delivered to the forensic chemist by the same police officer who received them from Amaro. The poseur-buyer, PO3 Abella, immediately marked the seized plastic sachet and made an inventory receipt at the scene of the crime. Aside from the presence of the representatives from the media, DOJ, PDEA, and barangay, a photograph was also taken in order to document the arrest and seizure that transpired. The day after, PO3 Abella personally delivered the illegal drug, apart from the other items confiscated pursuant to the search warrant, to the provincial crime laboratory office. The specimen was received intact by PSI Dagasdas, who thereafter conducted the qualitative examination and found the same to be positive of shabu. When the prosecution presented the marked evidence in court, PO3 Abella and PSI Dagasdas positively identified them to be the same illegal drugs seized from Amaro. Further, the marked money was presented and identified in open court. All these support the conclusion that the prosecution submitted evidence proving beyond reasonable doubt the crucial links in the chain of custody of the shabu, starting from its seizure and confiscation until its presentation as proof of the *corpus delicti* before the RTC.

WHEREFORE, premises considered, the instant appeal is **DISMISSED**. The August 26, 2011 Decision of the Court of Appeals in CA-G.R. CR HC No. 00953, which sustained the July 14, 2008 Decision of the Regional Trial Court, Branch 30, Dumaguete City, Negros Oriental, in Criminal Case No. 17679, convicting appellant Raul Amaro *y* Catubay (a.k.a. "*Lalaks*") for illegal sale of *shabu*, in violation of Section 5, Article II of Republic Act No. 9165, is **AFFIRMED**.

SO ORDERED.

Velasco, Jr. (*Chairperson*), *Bersamin,*[*] *Perez,* and *Reyes, JJ.,* concur.

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[*] Designated Additional Member in lieu of Associate Justice Francis H. Jardeleza, per Raffle dated October 1, 2014.

THIRD DIVISION

[G.R. No. 207811. June 1, 2016]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **DELIA MOLINA *y* CABRAL,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 8042 (MIGRANT WORKERS AND OVERSEAS FILIPINOS ACT OF 1995); ILLEGAL RECRUITMENT IN LARGE SCALE; ELEMENTS.— All the elements of the crime of illegal recruitment in large scale are present, namely: (1) the offender has no valid license or authority required by law to enable him to lawfully engage in recruitment and placement of workers; (2) the offender undertakes any of the activities within the meaning of "recruitment and placement" under Article 13 (b) of the Labor Code, or any of the prohibited practices enumerated under Article 34 of the said Code (now Section 6 of R.A. 8042); and (3) the offender committed the same against three (3) or more persons, individually or as a group. More importantly, all the said elements have been established beyond reasonable doubt.

2. ID.; ID.; ILLEGAL RECRUITMENT; FAILURE TO REIMBURSE EXPENSES INCURRED BY THE WORKERS IN CONNECTION WITH THE DOCUMENTATION AND PROCESSING FOR PURPOSES OF DEPLOYMENT, IN CASES WHERE THE DEPLOYMENT DOES NOT ACTUALLY TAKE PLACE WITHOUT THE WORKER'S FAULT, IS CONSIDERED AS PERFORMING ILLEGAL RECRUITMENT; PRESENT IN CASE AT BAR.— [U]nder Section 6 of Republic Act No. 8042, illegal recruitment is defined as including any person, whether a non-licensee, non-holder, licensee or holder of authority. Thus, the contention of accused-appellant that she was a holder of a license to operate as a recruiter during the alleged period when the crimes were committed does not matter because she was still performing an act considered to be an illegal recruitment by failing to reimburse the expenses incurred by the private complainants. Under Section 6 (m) of R.A. No. 8042, failure to reimburse expenses incurred by the workers in connection with his documentation and processing for purposes of

deployment, in cases where the deployment does not actually take place without the worker's fault, is considered as performing illegal recruitment.

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.*:

This is an appeal from the Decision[1] dated December 14, 2012 of the Court of Appeals (*CA*) affirming with modification the Decision[2] dated May 31, 2010 of the Regional Trial Court (*RTC*), Branch 143, Makati City, in two cases, Criminal Case No. 07-1399 and Criminal Case No. 07-3108 against appellant Delia Molina for the crimes of illegal recruitment in a large scale and illegal recruitment, respectively.

The facts follow.

Three informations were filed against appellant alleging the following:

In Criminal Case No. 07-1399 for illegal recruitment in a large scale:

That in or about and sometime between the months of April 2006 and June 2006, in the City of Makati, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being authorized by the Department of Labor and Employment to recruit workers for overseas employment, did then and there willfully, unlawfully and feloniously recruit and promise complainant, namely:

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[1] Penned by Associate Justice Nina G. Antonio-Valenzuela, with Associate Justices Isaias P. Dicdican and Michael P. Elbinias concurring; *rollo*, pp. 2-25.

[2] Penned by Presiding Judge Zenaida T. Galapate-Laguilles, CA *rollo*, pp. 65-77.

Anthony Galiste:	₱75,000.00
Romulo Nones:	₱75,000.00
Elisa Escobar:	₱75,000.00
Geraldine Cariño:	₱75,000.00
Diony Aragaon:	₱75,000.00
Maribel Rosimo:	₱75,000.00
Gilbert Rosimo:	₱75,000.00
Eric Valdez:	₱75,000.00

for overseas job placement and in consideration of said promise, said complainants paid and delivered to accused sums of money as placement/processing fees and having failed to actually deploy said complainants without any valid reason and without the latter's fault, the said accused failed to reimburse the expenses incurred by the said private complainants in connection with the documentation and processing of their papers for purposes of their deployment, to the damage and prejudice of the above-named complainants.

Contrary to law.

In Criminal Case No. 07-3108 for illegal recruitment in a large scale with another accused Vincent Zulueta (the case against the latter was sent to the archives as he was at large):

That in or about the months of April and May 2006, in the City of Makati, Metro Manila, Philippines, a place within the jurisdiction of this Honorable Court, the above-named accused, conspiring and confederating together and both of them mutually helping and aiding one another, did then and there willfully, unlawfully, and feloniously recruit and promise employment/job placement to RICHARD COLLAMAR, CAROL COLLAMAR, and CECILLE M. BARTOLOME as factory workers in Korea, and in consideration of said promise collected from complainants the total amount of ₱225,000.00 as placement/ processing fees and both accused despite receipt of the fees from complainants failed to actually deploy said complainants without valid reasons and without the workers' fault, and despite demand to reimburse expenses to said complainants, thus, in large scale amounting to economic sabotage.

Contrary to law.

In Criminal Case No. 08-066 for illegal recruitment:

> That in or about the period from April to June 2006, in the City of Makati, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being then authorized by the Philippine Overseas Employment Administration to recruit workers for overseas employment, did then and there willfully, unlawfully and feloniously recruit and promise complainants ROSEMARIE A. RESPUETO and LEO JOHN M. ALDAY overseas employment as factory workers in South Korea, and in consideration of said promise, complainants paid and delivered to accused sums of money as placement/ processing fees, and having failed to actually deploy complainants without any valid reason and without the latter's fault, the accused failed to reimburse the expenses incurred by complainants in connection with the documentation and processing of their papers for purposes of deployment, in violation of the aforecited law.
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> Contrary to law.

At the respective arraignment of the cases mentioned above, appellant pleaded not guilty to each of the charges. Thereafter, trial on the merits ensued.

The following are the factual findings of the CA based on the trial conducted in the RTC:

Re: Criminal Case Number 07-1399.

The following persons testified for the prosecution: Elisa Escobar (hereafter, "Escobar"); Geraldine Cariño (hereafter, "Cariño"); and Diony Aragon (hereafter, "Aragon"). The evidence for the Prosecution is summarized thus: sometime in April 2006, Escobar went to the office of the Southern Cohabite Landbase Management Corporation (hereafter, "SCLMC") located at Makati City to meet Zulueta, an agent of the SCLMC. Zulueta introduced Escobar to accused-appellant. Accused-appellant told Escobar she will be employed as a factory worker in Korea within 3 months from payment of the ₱75,000.00 placement fee. Escobar tendered the said amount to Zulueta at the SCLMC office evidenced by the cash voucher dated 28 April 2006 signed by SCLAMCOR (Southern Cotabato Landbase Management Corporation). The cash voucher acknowledged receipt of the

₱75,000.00 from Escobar. It also stated that the ₱75,000.00 was for payment of the processing fee for Korea. A month after paying the placement fee, SCLMC informed Escobar she had to undergo Korean Language Training. Escobar complied. When Escobar did not hear from accused-appellant for another month, she decided to withdraw her placement fee. Accused-appellant failed to return her money, thus Escobar filed the suit for illegal recruitment.

Cariño testified she came to know accused-appellant sometime in April 2006, when Zulueta brought her to the office of the SCLMC at Makati City. Zulueta and accused-appellant told Cariño she will be employed as a factory worker in Korea within 3 months from payment of the ₱75,000.00 placement fee. Cariño tendered the said amount to Zulueta at the SCLMC office evidenced by the cash voucher dated 28 April 2006 signed by SCLAMCOR. The cash voucher acknowledged receipt of the ₱75,000.00 from Cariño. It also stated that the ₱75,000.00 was for payment of the processing fee for Korea. Accused-appellant was beside Zulueta when the latter gave the cash voucher to Cariño. Cariño was then asked to submit a medical examination and undergo Korean Language Training to expedite her application. Three months after complying with the requirements, Cariño was still not deployed for employment abroad. Cariño then filed this case against accused-appellant.

Sometime in 2006, Aragon was convinced by his friends to apply at the SCLMC. Zulueta brought him to the SCLMC office. Zulueta introduced Aragon to the accused-appellant. Accused-appellant told Aragon he will be employed as a factory worker in Korea within 3 months from payment of the ₱75,000.00 placement fee. Aragon tendered the said amount to Zulueta at the SCLMC office evidenced by the cash voucher acknowledged receipt of the ₱75,000.00 from Aragon. It also stated that the ₱75,000.00 was for payment of the processing fee for Korea. Three months after paying the placement fee, Aragon was not deployed for Korea. Aragon then asked accused-appellant to return his ₱75,000.00. Accused-appellant told Aragon she would give him ₱50,000.00, while Zulueta will give him ₱25,000.00. Aragon filed the case because accused-appellant failed to return the ₱75,000.00.[3]

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[3] *Rollo*, pp. 6-8.

Re: Criminal Case Number 07-3108

Cecille Bartolome (hereafter, "Bartolome") testified for the prosecution. The evidence of the Prosecution is summarized, thus: Bartolome met accused-appellant at the SCLMC office on 27 April 2006. In the office, accused-appellant and Zulueta told Bartolome and her companions (namely Carol Collamar, Sosen Fernandez, and Michelle Fernandez) they would be deployed to Korea as factory workers within three months from payment of the ₱75,000.00 placement fee each. Bartolome tendered the said amount to Zulueta at the SCLMC office evidenced by the cash voucher acknowledged receipt of the ₱75,000.00 from Bartolome. It also stated that the ₱75,000.00 was for payment of the processing fee for Korea. In July 2006, Bartolome and her companions went back to the SCLMC office to inquire about the progress of their application. Accused-appellant told Bartolome to wait. Bartolome was still not employed by November 2006, so she decided to withdraw her money from accused-appellant. Accused-appellant did not return the ₱75,000.00, so Bartolome reported the matter to the National Bureau of Investigation (hereafter, "NBI"). The NBI arrested accused-appellant on 5 January 2007. Accused-appellant issued PNB check number 7381 in favor of Bartolome. The check bounced for being drawn against a closed account.[4]

Re: Criminal Case Number 08-066

Leo John Alday (hereafter, "Alday") and Rosemarie Respueto (hereafter, "Respueto") testified for the Prosecution. The evidence of the Prosecution is summarized, thus: sometime in April 2006, Alday went to the SCLMC to look for employment abroad. At the SCLMC office, Alday met with Rolando Salilin (hereafter, "Salilin"), an agent of the SCLMC. Salilin promised Alday he will be employed as factory worker in Korea with a monthly salary of ₱80,000.00. Alday paid the placement fee of ₱75,000.00. A month after paying the placement fee, Alday was still not deployed for employment abroad. Alday thus filed this case against accused-appellant.

Respuesto testified in May 2006, he went to the SCLMC to look for employment abroad. At the SCLMC office, Respuesto met with Loreta Gasi (hereafter, "Gasi"), an agent of the SCLMC. Gasi promised Respuesto she will be employed as factory worker in Korea with a monthly salary of ₱80,000.00. Respueto paid the placement fee of

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[4] *Id.* at 8-9.

₱90,000.00. Two months after paying the placement fee, Respueto was still not deployed for employment abroad. In August 2006, Repuesto decided to withdraw her money. Respueto filed this case when accused-appellant failed to return her money.[5]

On the other hand, accused-appellant denied all the allegations against her and presented the following defense:

The SCLMC is a recruitment agency, registered with the Securities and Exchange Commission (*SEC*) and the Philippine Overseas Employment Administration (*POEA*). Accused-appellant is the President of the SCLMC. The SCLMC employed only three staff members, *i.e.*, Amelita Plabay (secretary), Pedrito and Leonora (liaison officers). Zulueta is not connected with the SCLMC but he was at the SCLMC office because he tried to convince accused-appellant to be a distributor of Presense Green Tea. Accused-appellant denied all the allegations against her. She denied meeting all of the private complainants prior to the filing of the case. She added SCLMC could not have conducted recruitment activities in April and May 2006 because its license to conduct business was temporarily suspended by the POEA during that period. The suspension was lifted on July 31, 2006. Accused-appellant surmised private complainants filed cases against her upon the prodding of Alan Basa. She testified when she was arrested by the NBI, Alan Basa asked her for ₱300,000.00, in exchange for the dropping of the complaints against her. When accused-appellant refused to give Alan Basa the money, the latter made sure complainants filed the cases against her.

The RTC, on May 31, 2010, promulgated the Decision convicting accused-appellant in Criminal Case No. 07-1399 for large scale illegal recruitment and Criminal Case Number 07-3108 for illegal recruitment. Accused-appellant was, however, acquitted in Criminal Case No. 08-066. The dispositive portion of the said Decision reads:

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

WHEREFORE, premises considered, judgment is hereby rendered finding accused DELIA MOLINA Y CABRA GUILTY beyond reasonable doubt of the crimes charged and she is hereby sentenced as follows:

a. In Crim. Case No. 07-1399, she is sentenced to suffer life imprisonment, to pay a fine of Five Hundred Thousand Pesos (Php500,000.00), without subsidiary imprisonment in case of insolvency, and to indemnify the offended party Elisa Escobar, Geraldine Cariño, and Diony Castillo Aragon the amount of Seventy-Five Thousand Pesos (Php75,000.00) each as actual damages and the costs;

b. In Criminal Case No. 07-3108, to suffer the indeterminate penalty of SIX (6) MONTHS and ONE (1) DAY of *prision correccional*, as minimum, to SEVEN (7) YEARS, EIGHT (8) MONTHS and TWENTY-ONE (21) DAYS of *prision mayor* as maximum and to indemnify the offended party Cecille Bartolome the amount of Seventy-Five Thousand Pesos (Php75,000.00) and the costs;

In Criminal Case No. 08-066, she is hereby ACQUITTED for insufficiency of evidence.

SO ORDERED.

Accused-appellant filed an appeal before the CA and the latter, on December 14, 2012, rendered a Decision affirming the RTC with modification, the dispositive portion of which reads, as follows:

WHEREFORE, the assailed Decision convicting accused-appellant in Criminal Case Number 07-1399 (for large scale illegal recruitment) and Criminal Case Number 07-3108 (for illegal recruitment) is AFFIRMED with Modification:

1. Criminal Case Number 07-1399 (for large scale illegal recruitment): accused-appellant is sentenced to life imprisonment, pay a fine of ₱500,000.00 without subsidiary imprisonment in case of insolvency, and to indemnify the offended party Elisa Escobar, Geraldine Cariño, and Fiony Castillo Aragon the amount of ₱75,000.00 each as actual damages, and the costs;

2. In Criminal Case Number 07-3108 (for illegal recruitment), accused-appellant is sentenced to imprisonment of six (6) years and one (1) day as minimum to 12 years as maximum, and to pay a fine

of ₱200,000.00 without subsidiary imprisonment in case of insolvency, and to indemnify Bartolome the amount of ₱75,000.00, and the costs.

SO ORDERED.

Hence, the present appeal.

Accused-appellant insists that the prosecution failed to prove the elements of the crime charged and that her guilt has not been proven beyond reasonable doubt.

The appeal must fail.

All the elements of the crime of illegal recruitment in large scale are present, namely: (1) the offender has no valid license or authority required by law to enable him to lawfully engage in recruitment and placement of workers; (2) the offender undertakes any of the activities within the meaning of "recruitment and placement" under Article 13 (b)[6] of the Labor Code, or any of the prohibited practices enumerated under Article 34 of the said Code (now Section 6 of R.A. 8042); and (3) the offender committed the same against three (3) or more persons, individually or as a group. More importantly, all the said elements have been established beyond reasonable doubt.

It was accused-appellant herself who testified that SCLMC did not have authority to operate its business on April and May, 2006, covering the dates that are alleged in the Informations filed against her, proving that the first element of the crime is present. She claimed the SCLMC's license was temporarily suspended by the POEA during the alleged date when the crimes were committed and that the suspension was lifted on July 31, 2006. Accused-appellant further admitted that the SCLMC had no authority to recruit workers for Korea because it had no job order to do so, thus:

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[6] [A]ny act of canvassing, enlisting, contracting, transporting, utilizing, hiring or procuring workers, and includes referrals, contract services, promising or advertising for employment, locally or abroad, whether for profit or not; Provided, That any person or entity which, in any manner, offers or promises for a fee employment to two or more persons shall be deemed engaged in recruitment or placement.

Atty. Tacorda: I noticed, Madam Witness, that this Job Order are all for Malaysia. Do you have any job order for Korea?

Witness: We don't have Job Order from Korea, ma'am.

Atty. Tacorda: Have you ever had job order from Korea before July 2006?

Witness: We don't have job order from Korea because only 7 agencies are allowed to deploy workers to Korea.

Atty. Tacorda: So are you saying that Southern Cotabato Landbase Management Corporation is not allowed to recruit workers from Korea for purposes of overseas employment?

Witness: Yes, ma'am.[7]

Without any authority, accused-appellant still engaged in recruitment activities by offering and promising jobs, and collecting placement fees as testified to by private complainants Escobar, Cariño and Aragon.[8] Thus, the second element of the crime is present. Article 13, par. (b) of the Labor Code, reads as follows:

(b) "Recruitment and placement" refers to any act of canvassing, enlisting, contracting, transporting, utilizing, hiring, or procuring workers, and includes referrals, contract services, promising and advertising for employment locally or abroad, whether for profit or not: Provided, That any person or entity which, in any manner, offers or promises for a fee employment to two or more persons shall be deemed engaged in recruitment and placement.

In this case, the prosecution was able to prove that accused-appellant was engaged in the recruitment and placement of the private complainant as the accused was the one who told the private complainants that they will be sent to Korea as factory workers within three months from payment of the placement fees and that the placement fees were made in the office of the SCLMC in the presence of the accused-appellant or on her instruction.

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[7] TSN, January 25, 2010, pp. 53-54.

[8] TSN, December 10, 2007, pp. 8-15; TSN, December 10, 2007, pp. 35-44; and TSN, January 14, 2008, pp. 4-15.

Anent the third element, accused-appellant committed the illegal recruitment against three or more persons, namely, Anthony Galiste, Romulo Nones, Elisa Escobar, Geraldine Cariño, Diony Aragon, Maribel Rosimo, Gilbert Rosimo and Eric Valdez.

Petitioner was also properly found guilty of the crime of simple illegal recruitment, there being one complainant and the concurrence of the two essential elements of illegal recruitment, to wit:

(a) the accused-appellant had no valid license or authority required by law to enable her to lawfully engage in recruitment and placement of workers per her testimony that SCLMC did not have authority to operate its business on April and May 2006 as its license was temporarily suspended by the POEA at that particular time.[9] Accused-appellant further testified that SCLMC had no authority to recruit workers for Korea because it had no job order for that purpose.[10]

(b) the accused-appellant engaged in recruitment and placement of private complainant Bartolome when she told the latter that she will be sent to Korea as a factory worker after payment of the placement fee[11] which private complainant Bartolome paid in the office of the SCLMC in the presence of accused-appellant.[12]

Furthermore, it is worthy to emphasize that under Section 6[13] of Republic Act No. 8042, illegal recruitment is defined as

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[9] TSN, January 25, 2010, pp. 43-52.

[10] TSN, January 25, 2010, pp. 53-54.

[11] TSN, March 10, 2008, p. 35.

[12] TSN, March 10, 2008, pp. 36-39.

[13] Sec. 6. DEFINITIONS. — For purposes of this Act, illegal recruitment shall mean any act of canvassing, enlisting, contracting, transporting, utilizing, hiring, procuring workers and includes referring, contact services, promising or advertising for employment abroad, whether for profit or not, when undertaken by a non-license or non-holder of authority contemplated under Article 13 (f) of Presidential Decree No. 442, as amended, otherwise known as the Labor Code of the Philippines. Provided, that such non-license or non-holder, who, in any manner, offers or promises for a fee employment

including any person, whether a non-licensee, non-holder, licensee or holder of authority. Thus, the contention of accused-appellant

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abroad to two or more persons shall be deemed so engaged. It shall likewise include the following acts, whether committed by any persons, whether a non-licensee, non-holder, licensee or holder of authority.

(a) To charge or accept directly or indirectly any amount greater than the specified in the schedule of allowable fees prescribed by the Secretary of Labor and Employment, or to make a worker pay any amount greater than that actually received by him as a loan or advance;

(b) To furnish or publish any false notice or information or document in relation to recruitment or employment;

(c) To give any false notice, testimony, information or document or commit any act of misrepresentation for the purpose of securing a license or authority under the Labor Code;

(d) To induce or attempt to induce a worker already employed to quit his employment in order to offer him another unless the transfer is designed to liberate a worker from oppressive terms and conditions of employment;

(e) To influence or attempt to influence any persons or entity not to employ any worker who has not applied for employment through his agency;

(f) To engage in the recruitment of placement of workers in jobs harmful to public health or morality or to dignity of the Republic of the Philippines;

(g) To obstruct or attempt to obstruct inspection by the Secretary of Labor and Employment or by his duly authorized representative;

(h) To fail to submit reports on the status of employment, placement vacancies, remittances of foreign exchange earnings, separations from jobs, departures and such other matters or information as may be required by the Secretary of Labor and Employment;

(i) To substitute or alter to the prejudice of the worker, employment contracts approved and verified by the Department of Labor and Employment from the time of actual signing thereof by the parties up to and including the period of the expiration of the same without the approval of the Department of Labor and Employment;

(j) For an officer or agent of a recruitment or placement agency to become an officer or member of the Board of any corporation engaged in travel agency or to be engaged directly on indirectly in the management of a travel agency;

(k) To withhold or deny travel documents from applicant workers before departure for monetary or financial considerations other than those authorized under the Labor Code and its implementing rules and regulations;

(l) Failure to actually deploy without valid reasons as determined by the Department of Labor and Employment; and

that she was a holder of a license to operate as a recruiter during the alleged period when the crimes were committed does not matter because she was still performing an act considered to be an illegal recruitment by failing to reimburse the expenses incurred by the private complainants. Under Section 6 (m) of R.A. No. 8042, failure to reimburse expenses incurred by the workers in connection with his documentation and processing for purposes of deployment, in cases where the deployment does not actually take place without the worker's fault, is considered as performing illegal recruitment.

It must also be noted that accused-appellant's defense of denial cannot overcome the positive testimonies of the witnesses presented by the prosecution. As is well-settled in this jurisdiction, greater weight is given to the positive identification of the accused by the prosecution witnesses than the accused's denial and explanation concerning the commission of the crime.[14]

The CA was also correct in modifying the penalty imposed by the RTC in Criminal Case No. 07-3108. The RTC mistakenly imposed the indeterminate penalty of six (6) months and one (1) day of *prision correccional*, as minimum, to seven (7) years, eight (8) months and twenty-one (21) days of *prision mayor* as maximum. Under Section 7 (a) of R.A. No. 8042, a person found guilty of illegal recruitment shall suffer the penalty

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(m) Failure to reimburse expenses incurred by the workers in connection with his documentation and processing for purposes of deployment, in cases where the deployment does not actually take place without the worker's fault. Illegal recruitment when committed by a syndicate or in large scale shall be considered as offense involving economic sabotage.

Illegal recruitment is deemed committed by a syndicate carried out by a group of three (3) or more persons conspiring or confederating with one another. It is deemed committed in large scale if committed against three (3) or more persons individually or as a group.

The persons criminally liable for the above offenses are the principals, accomplices and accessories. In case of juridical persons, the officers having control, management or direction of their business shall be liable.

[14] *People v. Gharbia*, 369 Phil. 942-953 (1999).

of imprisonment of not less than six (6) years and one (1) day but not more than twelve (12) years, and a fine of not less than two hundred thousand pesos (₱200,000.00) nor more than five hundred thousand pesos (₱500,000.00). Thus, the penalty of imprisonment of six (6) years and one (1) day, as minimum, to twelve (12) years as maximum, and the payment of a fine of two hundred thousand pesos (₱200,000.00) as imposed by the CA is more in accordance with the law penalizing the crime of simple illegal recruitment.

WHEREFORE, the appeal is **DISMISSED** and the CA Decision dated December 14, 2012 of the Court of Appeals, affirming with modification the Decision dated May 31, 2010 of the Regional Trial Court, Branch 143, Makati City, in Criminal Case No. 07-1399 and Criminal Case No. 07-3108, against appellant Delia Molina for the crimes of illegal recruitment in a large scale and illegal recruitment, respectively, is **AFFIRMED**.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 208205. June 1, 2016]

ATTY. ROMEO G. ROXAS, *petitioner, vs.* **REPUBLIC REAL ESTATE CORPORATION,** *respondent.*

[G.R. No. 208212. June 1, 2016]

REPUBLIC REAL ESTATE CORPORATION, *petitioner, vs.* **REPUBLIC OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. POLITICAL LAW; COMMISSION ON AUDIT; PRESIDENTIAL DECREE NO. 1445 (GOVERNMENT AUDITING CODE OF THE PHILIPPINES); THE LAW REQUIRES THAT ALL MONEY CLAIMS AGAINST THE GOVERNMENT MUST FIRST BE FILED BEFORE THE COMMISSION ON AUDIT, WHICH IN TURN MUST ACT UPON THEM WITHIN 60 DAYS; SUSTAINED.— The Writ of Execution and Sherriff De Jesus' Notice violate this Court's Administrative Circular No. 10-2000 and Commission on Audit Circular No. 2001- 002, which govern the issuance of writs of execution to satisfy money judgments against government. Administrative Circular No. 10-2000 dated October 25, 2000 orders all judges of lower courts to observe utmost caution, prudence, and judiciousness in the issuance of writs of execution to satisfy money judgments against government agencies. x x x For its part, Commission on Audit Circular No. 2001-002 dated July 31, 2001 requires the following to observe this Court's Administrative Circular No. 10-2000: department heads; bureau, agency, and office chief; managing heads of government-owned and/or controlled corporations; local chief executives; assistant commissioners, directors, officers-in-charge, and auditors of the Commission on Audit; and all others concerned. Chapter 4, Section 11 of Executive Order No. 292 gives the Commission on Audit the power and mandate to settle all government accounts. Thus, the finding that government is liable in a suit to which it consented does not translate to enforcement of the judgment by execution. As a rule, public funds may not be disbursed absent an appropriation of law or other specific statutory authority. Commonwealth Act No. 327, as amended by Presidential Decree No. 1445, requires that all money claims against government must first be filed before the Commission on Audit, which, in turn, must act upon them within 60 days. Only when the Commission on Audit rejects the claim can the claimant elevate the matter to this Court on certiorari and, in effect, sue the state. *Carabao, Inc. v. Agricultural Productivity Commission* has

settle that "claimants have to prosecute their money claims against the Government under Commonwealth Act 327 . . . and that the conditions provided in Commonwealth Act 327 for filing money claims against the Government must be strictly observed." x x x Any allowance or disallowance of its money claims is for the Commission on Audit to decide, subject only to RREC's remedy of appeal via a petition for certiorari before this Court.

2. REMEDIAL LAW; ACTIONS; JUDGMENTS; DOCTRINE OF *RES JUDICATA*; PURPOSE, EXPLAINED.— This Court's November 25, 1998 Decision must be respected. Pursuant to the doctrine of res judicata, our ruling in *Republic v. Court of Appeals* is the settled law of this case. In *Salud v. Court of Appeals*: The interest of the judicial system in preventing relitigation of the same dispute recognizes that judicial resources are finite and the number of cases that can be heard by the court is limited. Every dispute that is reheard means that another will be delayed. In modern times when court dockets are filled to overflowing, this concern is of critical importance. *Res judicata* thus conserves scarce judicial resources and promotes efficiency in the interest of the public at large. *Once a final judgment has been rendered, the prevailing party also has an interest in the stability of that judgment.* Parties come to the courts in order to resolve controversies; a judgment would be of little use in resolving disputes if the parties were free to ignore it and to litigate the same claims again and again. Although judicial determinations are not infallible, judicial error should be corrected through appeals procedures, not through repeated suits on the same claim. Further, *to allow relitigation creates the risk of inconsistent results and presents the embarrassing problem of determining which of two conflicting decisions is to be preferred.* Since there is no reason to suppose that the second or third determination of a claim necessarily is more accurate than the first, the first *should be left undisturbed*. x x x Thus, the most important purpose of *res judicata* is to provide repose for both the party litigants and the public. As the Supreme Court has observed, "*res judicata* thus encourages reliance on judicial decision, bars vexatious litigation, and frees the courts to resolve other disputes." x x x We cannot allow RREC to waste any more of this Court's time and resources and disturb what is already settled, lest this controversy never reaches its end.

3. ID.; ID.; ID.; A JUDGMENT, ONCE FINAL, IS IMMUTABLE AND UNALTERABLE; ELUCIDATED.— This Court's decision cannot be amended by the trial court or the sheriff. Absent an order of remand, we cannot allow attempts to adjust or vary the terms of the judgment of this Court. Neither the Regional Trial Court nor its sheriff can, in any way, directly or indirectly, alter this Court's November 25, 1998 Decision through a writ of execution or a notice purporting to implement the writ. A judgment, once final, is immutable and unalterable. x x x This Court's final and executory decision cannot be amended. It cannot be done by the trial court, much less by its sheriff. The sheriff's execution of judgment is a purely ministerial phase of adjudication. In implementing the writ, the sheriff must strictly conform to the letter of the judge's order.

4. POLITICAL LAW; ACCOUNTABILITY OF PUBLIC OFFICERS; CODE OF CONDUCT OF COURT PERSONNEL; SHERIFFS; SHERIFFS, AS AGENTS OF THE LAW, ARE DUTY BOUND TO FULFILL THEIR MANDATES WITH UTMOST DILIGENCE AND DUE CARE.— Canon VI, Section 6 of the Code of Conduct for Court Personnel state that "[c]ourt personnel shall expeditiously enforce rules and implement orders of the court *within the limits of their authority*." The sheriff cannot act as a party's agent. He or she can only act as an officer of the court which he or she represents. Sheriffs, as agents of the law, are duty-bound to fulfill their mandates with utmost diligence and due care. In executing the court's order, they cannot afford to go beyond its letter, lest they prejudice "the integrity of their office and the efficient administration of justice."

5. ID.; STATUTORY CONSTRUCTION; *VERBA LEGIS*; THERE IS NO NEED TO GO BEYOND THE ORDINARY OR LITERAL MEANING WHEN THE WORDS THEMSELVES ARE CLEAR, PLAIN AND FREE FROM AMBIGUITY; APPLICATION IN CASE AT BAR.— Republic Act No. 1899 delegated to local government units the state's sovereign right to reclaim foreshore lands. Section 1, in relation to Section 9, of Republic Act No. 1899 mandates that the reclamation must be carried out by the municipality or chartered city concerned (that is, Pasay City) and not by a private entity (that is, RREC). RREC was able to undertake reclamation work on behalf of the city only through a special power of attorney. Thus, Pasay City cannot be deprived of its share in the compensation. A plain interpretation of the

phrase "share and share alike" means that one party's share is the same with the other party's share. That is to say, RREC would receive a share equal to that of Pasay City. If this Court intended the interpretation made by RREC, then it should have instead used the phrase "in proportion to their contribution," or an analogous wording. However, this is not the case. There is no need to go beyond the ordinary or literal meaning when the words themselves are "clear, plain, and free from ambiguity. This is in line with the plain-meaning rule or *verba legis* in statutory construction.

6. LEGAL ETHICS; CODE OF PROFESSIONAL RESPONSIBILITY; THE LAWYER AND THE CLIENT; ABSENT A REIMBURSEMENT AGREEMENT, THE CHAMPERTOUS CONTRACT IS VOID; CHAMPERTOUS CONTRACT, DEFINED AND CONSTRUED.— In *Nocom v. Camerino, et al.*: A champertous contract is define as a contract between a stranger and a party to a lawsuit, whereby the stranger pursues the party's claim in consideration of receiving part or any of the proceeds recovered under the judgment; a bargain by a stranger with a party to a suit, by which such third person undertakes to carry on the litigation at his own cost and risk, in consideration of receiving, if successful, a part of the proceeds or subject sought to be recovered. An Agreement whereby the attorney agrees to pay expenses of proceedings to enforce the client's right is champertous. Such agreements are against public policy especially where as in this case, the attorney has agreed to carry on the action at its own expense in consideration of some bargain to have part of the thing in dispute. The execution of these contracts violates the fiduciary relationship between the lawyer and his client, for which the former must incur administrative sanction. As officers of the court, lawyers should not exploit nor take advantage of their clients weaknesses. Rule 16.04 of the Code of Professional Responsibility prohibits a lawyer from "lend[ing] money to a client except, when in the interest of justice, he [or she] has to advance necessary expenses in a legal matter he [or she] is handling for the client." *Bautista v. Gonzales* has settled that "[a]though a lawyer may, in good faith, advance the expenses of litigation, the same should be subject to reimbursement. Thus, absent a reimbursement agreement, the champertous contract is void. Lawyers who obtain an interest in the subject-matter of litigation create a

conflict-of-interest situation with their clients and thereby directly violate the fiduciary duties they owe their clients.

7. ID.; ID.; ID.; WHEN THE CLIENT NO LONGER WANTS ITS ATTORNEY'S SERVICES, THE COUNSEL CANNOT CONTINUE TO DESPERATELY CLING ON TO IT; VIOLATION IN CASE AT BAR.— There is no such thing as an irrevocable attorney-client relationship. As stated in *Busiños v. Ricafort*, "the relation between an attorney and his client is highly fiduciary in its nature and of a very delicate, exacting and confidential character, requiring high degree of fidelity and good faith." Thus when the client itself no longer wants its attorney's services, the counsel cannot continue to desperately cling on to it. What makes RGR & Associates' discharge as counsel even more allowable is that RREC terminated its services for a cause. In RREC's Board Resolution, the dismissal of RGR & Associates' engagement was due to its "breach of trust and confidence and clear abuse of Attorney-Client relationship[.]" Atty. Roxas' act of suing the Court of Appeals Justices without RREC's prior notice and board approval betrayed his client's trust and confidence. Canon 17 of the Code of Professional Responsibility state that "[a] lawyer owes fidelity to the cause of [one's] clients and he [or she] shall always be mindful of the trust and confidence repose in him [or her]." In *Testate Estate of the Deceased Tan Chiong Pun v. Tan,* this Court has ruled that it is unjust to require a lawyer, whose services have been terminated, to continue serving as counsel after losing his or her client's confidence. RREC's decision to remove Atty. Roxas as its counsel is clearly beyond this Court's power of review. x x x We resolve to direct Atty. Romeo G. Roxas to show cause why he should not be imposed a disciplinary sanction for his pernicious attempt not just to re-litigate the case, but also to continue arguing for RREC despite his discharge as counsel. We likewise resolve to deny Atty. Roxas' Petition for Review (Pro Hac Vice) dated August 5, 2013, and to expunge his Manifestation dated March 2, 2016 from the records of the case.

8. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; THE PETITION MAY ONLY BE HAD BY THE PARTY TO THE CASE; NOT PRESENT IN CASE AT BAR.— Atty. Roxas is not a party litigant under Section 1 Rule 3 of

the Rules of Court. Only RREC, as the party seeking for the execution of judgment, and the Republic, as the party opposing RREC's claims, stand to be benefited or injured by the pending case. Atty. Roxas is not a party-in-interest under Section 2. He has no valid interest in this case as his contingency-fee agreement with RREC is champertous and, therefore, void. Likewise, Atty. Roxas is not a party representative under Section 3 as he is no longer RREC's lawyer. Thus, insofar as RREC and the Republic are concerned, Atty. Roxas is a complete stranger to this case. Rule 45, Section 1 of the Rules of Court provides that appeals by certiorari before this Court may be had only by the *party* to the case. Atty. Raxas is neither a party nor a counsel for any of the parties here. He cannot claim legal fees by filing a petition for review on behalf of a non-client, which has moved to dismiss/expunge his petition pro hac vice. The action he pursued before this Court is not an available recourse under applicable laws or the Rules of Court. He is pursuing the wrong remedy.

APPEARANCES OF COUNSEL

R.G. Roxas & Associates for Romeo G. Roxas.
Office of the Solicitor General for public respondent.
Buñag & Associates Law Offices for Republic Real Estate Corp.

D E C I S I O N

LEONEN, *J.*:

Upon execution, this Court's decision cannot be amended by the trial court or the sheriff. Absent an order of remand, we cannot allow attempts to substantially or materially alter the terms of our final and executory judgment.

This resolves the consolidated Petitions for Review under Rule 45 of the Rules of Court. The Petitions are an offshoot of the Court of Appeals Decision in CA-G.R. SP No. 102750.

On April 24, 1959, Republic Real Estate Corporation (RREC) entered into an agreement with Pasay City for the reclamation

of the foreshore lands along Manila Bay.[1] The agreement was made on the strength of Pasay City Council Ordinance No. 121, as amended by Ordinance No. 158, which authorized RREC to reclaim 300 hectares of foreshore lands in the city.[2]

On December 19, 1961, the Republic of the Philippines (Republic) sued for recovery of possession and damages with writ of preliminary injunction.[3] The Republic questioned the agreement on three (3) grounds. First, the subject of the contract is outside the commerce of man[4] as the reclaimed area is a national park that the Republic owns.[5] Second, Pasay City Ordinance No. 121, as amended, in including the reclaimed area, went beyond[6] Republic Act No. 1899,[7] which allows municipalities and chartered cities to reclaim only "foreshore lands," not "submerged lands."[8] Lastly, the agreement was executed without approval from national government and without public bidding.[9]

This case entitled *Republic v. Court of Appeals*[10] eventually reached this Court via two (2) consolidated Petitions for Review,[11] docketed as G.R. Nos. 103882 and 105276.[12]

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[1] *Republic v. Court of Appeals*, 359 Phil. 530, 545 (1998) [Per *J.* Purisima, *En Banc*].

[2] *Id.*

[3] *Id.*

[4] *Id.* at 545.

[5] *Id.* at 553-554. See Proc. No. 41 (1954) and Act No. 3915 (1932). The reclaimed area is the Manila Bay Beach Resort, a national park.

[6] *Id.* at 564.

[7] See Rep. Act No. 1899 (1957), An Act Authorizing the Reclamation of Foreshore Lands by Chartered Cities and Municipalities.

[8] *Republic v. Court of Appeals*, 359 Phil. 530, 559-564 (1998) [Per *J.* Purisima, *En Banc*].

[9] *Id.* at 564.

[10] 359 Phil. 530 (1998) [Per *J.* Purisima, *En Banc*].

[11] *Id.* at 544.

[12] *Id.* at 530.

This Court upheld the Republic's arguments.[13] Both the agreement and Ordinance No. 121, as amended, were declared null and void for being ultra vires and contrary to Republic Act No. 1899.[14]

This Court ruled that "RREC had no authority to resume its reclamation work"[15] and that it failed to reclaim any area within the reclamation project.[16] Nevertheless, it recognized that RREC undertook partial work by using the dredge fill of 1,558,395 cubic meters[17] and mobilizing its equipment,[18] for which it incurred expenses.

Thus, despite the nullity of the agreement and RREC's failure to reclaim any land, this Court awarded RREC compensation for the work it had actually done[19] based on *quantum meruit*.[20] It pegged the reasonable value of RREC's services at ₱10,926,071.29, plus interest at the rate of 6% per annum from

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[13] The Decision was concurred in by Justices Josue N. Bellosillo, Leonardo A. Quisumbing, Jose A.R. Melo, Bernardo P. Pardo, and Jose C. Vitug (only in the result), with Separate Concurring Opinion by Justices Flerida Ruth Pineda-Romero, Artemio V. Panganiban, and Reynato S. Puno (joined by Justices Hilario G. Davide Jr. and Vicente V. Mendoza); and dissented by Chief Justice Andres Narvasa (joined by Justice Antonio M. Martinez).

[14] *Id.* at 571.

[15] *Id.* at 565.

[16] *Id.* at 570.

[17] *Id.* at 568.

[18] *Id.* at 567.

[19] *Id.* at 574.

[20] Pres. Decree No. 3-A (1973), Amending Section 7 of Presidential Decree No. 3, Dated September 26, 1972, by Providing for the Exclusive Prosecution by Administration or by Contract of Reclamation Projects, Sec. 1 provides:

SECTION 1. . . .

. . . . . .

"The provisions of any law to the contrary notwithstanding, the reclamation of areas under water, whether foreshore or inland, shall be limited to the National Government or any person authorized by it under a proper contract.

1962 until fully paid.[21] The amount was awarded to prevent the Republic's unjust enrichment at RREC and Pasay City's expense.[22] Thus:

> Although Pasay City and RREC did *not succeed in their undertaking to reclaim any area within subject reclamation project*, it appearing that something compensable was accomplished by them, following the applicable provision of law and hearkening to the dictates of equity, that no one, not even the government, shall unjustly enrich oneself/itself at the expense of another, we believe; and so hold, that Pasay City and RREC should be paid for the said actual work done and dredge-fill poured in, worth ₱10,926,071.29, as verified by the former Ministry of Public Highways, and as claimed by RREC itself in its aforequoted letter dated June 25, 1981.[23] (Emphasis supplied, citations omitted)

This Court also rejected RREC and Pasay City's claims of ownership over the lands in the reclamation area[24] and reiterated that the Cultural Center of the Philippines and the Government Service Insurance System were the rightful title holders of these lands.

In his Separate Opinion, then Associate Justice Artemio Panganiban stated that the case must be remanded for the determination of the peso value of RREC's work.[25] However, the majority did not adopt this view. The dispositive portion of this Court's Decision dated November 25, 1998 reads:

"All reclamations made in violation of this provision shall be forfeited to the State without need of judicial action.
"Contracts for reclamation still legally existing or whose validity has been accepted by the National Government shall be taken over by the National Government on the basis of *quantum meruit*, for proper prosecution of the project involved by administration."

[21] *Republic v. Court of Appeals*, 359 Phil. 530, 571 (1998) [Per *J.* Purisima, *En Banc*].

[22] *Id.* at 570.

[23] *Id.*

[24] *Id.* at 569.

[25] *Id.* at 672-673.

In G.R. No. 103882, the Petition is *GRANTED*; the Decision, dated January 28, 1992, and Amended Decision, dated April 28, 1992, of the Court of Appeals, are both *SET ASIDE*; and Pasay City Ordinance No. 121, dated May 6, 1958, and Ordinance No. 158, dated April 21, 1959, as well as the Reclamation Agreements entered into by Pasay City and Republic Real Estate Corporation (RREC) as authorized by said city ordinances, are declared *NULL* and *VOID* for being *ultra vires*, and contrary to Rep. Act 1899.

The writ of preliminary injunction issued on April 26, 1962 by the trial court a quo in Civil Case No. 2229-P is made permanent, and the notice of *lis pendens* issued by the Court of Appeals in CA G.R. CV No. 51349 ordered *CANCELLED*. The Register of Deeds of Pasay City is directed to take note of and annotate on the certificates of title involved, the cancellation of subject notice of *lis pendens*.

The petitioner, Republic of the Philippines, is hereby ordered to pay Pasay City and Republic Real Estate Corporation the sum of *TEN MILLION NINE HUNDRED TWENTY-SIX THOUSAND SEVENTY-ONE AND TWENTY-NINE CENTAVOS (₱10,926,071.29) PESOS*, plus interest thereon of six (6%) percent per annum from May 1, 1962 until full payment, which amount shall be divided by Pasay City and RREC, share and share alike.

In G.R. No. 105276, the Petition is hereby *DENIED* for lack of merit.[26] (Emphasis in the original)

Republic v. Court of Appeals became final and executory on July. 27, 1999.[27]

RREC and Pasay City filed before this Court a Petition seeking to declare a mistrial.[28] In the Resolution[29] dated February 15, 2000, this Court denied the Petition, absent any procedural error or violation of RREC and Pasay City's right to due process.[30] This Court added that:

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[26] *Id.* at 571.

[27] *Rollo* (G.R. No. 208212), p. 65, Court of Appeals Decision.

[28] *Id.* at 191, Resolution dated February 15, 2000.

[29] *Id.* at 188-192.

[30] *Id.*

This Resolution is final, and it is understood that *no further pleadings* shall be allowed. *Under pain of contempt*, petitioners and the other parties are hereby enjoined from filing any other petition or pleading in these cases[.][31] (Emphasis supplied)

RREC and Pasay City filed before this Court two (2) more pleadings: (1) a Motion for Clarification of this Court's November 25, 1998 Decision dated March 10, 2000;[32] and (2) Motion for Execution dated June 6, 2000.[33] In light of its February 15, 2000 Resolution,[34] this Court expunged from the records the Motion for Clarification on June 20, 2000,[35] and the Motion for Execution on July 11, 2000.[36]

RREC and Pasay City filed a third pleading, moving for reconsideration of the July 11, 2000 Resolution.[37] On October 17, 2000,[38] this Court denied the Motion with finality and stated that this Court was not the proper forum for executing a final and executory judgment.[39]

RREC and Pasay City were ordered, under pain of contempt,[40] to abide by the provision on execution of judgments under

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[31] *Id.* at 191.

[32] *Id.* at 193, Resolution dated June 20, 2000.

[33] *Id.* at 194, Resolution dated July 11, 2000.

[34] *Id.* at 191.

[35] *Id.* at 193.

[36] *Id.* at 194.

[37] *Id.* at 195, Resolution dated October 17, 2000.

[38] *Id.* at 195-198.

[39] *Id.* at 197.

[40] *Id.*

Rule 39, Section 1[41] of the Rules of Court. Once again, they were warned not to file further pleadings.[42]

On October 24, 2000, an Entry of Judgment was issued declaring *Republic v. Court of Appeals* final and executory as of July 27, 1999.[43]

Pasay City filed before the Regional Trial Court a Motion for Execution dated October 30, 2000[44] and an Amended Motion dated November 6, 2000.[45] On April 17, 2001, RREC joined Pasay City in filing a Motion for Execution (After Adjustment of Quantum Meruit Compensation).[46] In their alternative mode of execution,[47] RREC and Pasay City prayed for the issuance of a writ of execution for any[48] of the following:

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[41] RULES OF COURT, Rule 39, Sec. 1 provides:

SECTION 1. *Execution upon judgments or final orders*. — Execution shall issue as a matter of right, on motion, upon a judgment or order that disposes of the action or proceeding upon the expiration of the period to appeal therefrom if no appeal has been duly perfected.

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

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

[42] *Rollo* (G.R. No. 208212), p. 198.

[43] *Id.* at 730-731, Entry of Judgment.

[44] *Id.* at 107, Republic's Petition for *Certiorari* before the Court of Appeals.

[45] *Rollo* (G.R. No. 208205), p. 816, Writ of Execution.

[46] *Rollo* (G.R. No. 208212), p. 107.

[47] *Id.* at 208, Regional Trial Court Order dated November 22, 2002.

[48] *Id.* at 203. RREC and Pasay City used the phrase "or in the alternative" after the end of prayers 1, 2, 3, and 4. This shows that they did not request for all of these reliefs, only for any of them.

(1) Delivery and transfer of titles of over 109 hectares of land at the Manila Bay reclamation site;

(2) Payment of ₱54.5 million, reflecting the present value of 109 hectares of land at the Manila Bay reclamation site;

(3) Delivery and transfer of titles of over 35 hectares of land where no building has been erected at the Manila Bay reclamation site;

(4) Payment of ₱5 billion, equivalent to the offer of compromise; or

(5) Payment of ₱596,053,484.00, as the present equivalent of the peso-to-dollar conversion rate.[49]

The Republic opposed the Motion for Execution (After Adjustment of Quantum Meruit), arguing that RREC and Pasay City's Motion for Execution contravenes this Court's Decision in *Republic v. Court of Appeals*.[50]

On November 22, 2002, the Regional Trial Court denied[51] RREC and Pasay City's Motion for Execution for lack of merit.[52] It found that the Motion merely repeated "similar arguments already disposed of by the Supreme Court."[53]The trial court ruled that the writ of execution must conform to the judgment to be executed, thus:

> [O]nce the Court (SC) . . . has rendered its final judgment, *all issues between or among the parties before it one deemed resolved* and its judicial functions as regards any litigated matter related to the controversy litigated comes to an end.[54] (Emphasis supplied)

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[49] *Id.*

[50] *Rollo* (G.R. No. 208212), p. 205.

[51] *Id.* at 201-208. The Order was issued by Judge Lilia C. Lopez of Branch 109 of the Regional Trial Court, Pasay City.

[52] *Id.* at 208.

[53] *Id.* at 205.

[54] *Id.*

RREC and Pasay City moved for reconsideration.[55] On December 20, 2001, the Regional Trial Court held a clarificatory hearing[56] on the Motion for Execution.[57] It summoned Ludivinia Gador, Bank Officer VI of the Bangko Sentral ng Pilipinas,[58] who testified that the peso value of ₱10,926,071.29 in 1962 was then equivalent to ₱563,566,742.18.[59]

The trial court did not adopt this value.[60] On March 21, 2003, it denied RREC and Pasay City's Motions for Reconsideration.[61]

Aggrieved, RREC and Pasay City filed before this Court a Petition for Review on Certiorari, which this Court denied in the Resolution dated June 25, 2003.[62] They moved for reconsideration, but the Motion was denied on August 20, 2003.[63] On October 9, 2003, this Court issued an Entry of Judgment certifying that the Motion for Reconsideration is denied with finality.[64]

RREC and Pasay City moved to set aside the resolution of finality and for adjustment of arbitration award, as well as to set the earlier Motion for oral argument.[65] This Court expunged both Motions from the records in view of the Entry of Judgment having been made on September 11, 2003.[66]

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[55] *Rollo* (G.R. No. 208205), p. 11, Petition for Review.

[56] *Id.* at 246-287, TSN, December 20, 2001.

[57] *Id.* at 12, Petition for Review.

[58] *Rollo* (G.R. No. 208205), p. 251.

[59] *Id.* at 264.

[60] *Rollo* (G.R. No. 208212), pp. 209-210. The Order was issued by Pairing Judge Priscilla C. Mijares of Branch 109 of the Regional Trial Court, Pasay City.

[61] *Id.*

[62] *Rollo* (G.R. No. 208205), p. 804, Resolution dated June 25, 2003.

[63] *Id.* at 805, Resolution dated August 20, 2003.

[64] *Rollo* (G.R. No. 208212), p. 65, Court of Appeals Decision.

[65] *Rollo* (G.R. No. 208205), p. 807, Resolution dated June 15, 2005, and 808, Resolution dated July 27, 2005.

[66] *Id.*

Despite this Court's Resolutions, RREC filed on May 16, 2006 a Motion for Leave to re-open the case.[67] Again, this Court expunged the Motion from the records.[68]

On November 21, 2006, RREC moved for the issuance of a writ of execution before the Regional Trial Court.[69] On November 30, 2006, it filed another Motion for Execution, which the trial court heard on December 13, 2006.[70]

On May 8, 2007, the Regional Trial Court issued the Writ of Execution,[71] the dispositive portion of which reads:

> NOW THEREFORE, you are hereby commanded to cause the implementation of the decision of this Court as modified by the Court of Appeals and the Supreme Court upon the plaintiff thru the National Treasurer.
>
> In case sufficient personal property/ies of plaintiff cannot be found to satisfy the amount of the said judgment, costs, interest and your fees thereon, then you are hereby directed to levy the real property/ies of the said plaintiff and to sell the same or so much thereof in the manner provided for by law for the satisfaction of said judgment and that you make a return of your proceedings thereon within thirty (30) days from date.[72]

On May 11, 2007,[73] Sheriff IV Reyner S. De Jesus (Sheriff De Jesus) issued a Notice of Execution and Notice to Pay[74]

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[67] *Id.* at 809, Resolution dated June 20, 2006.

[68] *Id.*

[69] *Rollo* (G.R. No. 208212), p. 65, Court of Appeals Decision.

[70] *Id.*

[71] *Rollo* (G.R. No. 208205), pp. 811-817. The Writ of Execution was issued by Judge Tingaraan U. Guiling of Branch 109 of the Regional Trial Court, Pasay City.

[72] *Id.* at 817.

[73] *Rollo* (G.R. No. 208212), p. 227, Notice of Execution and Notice to Pay.

[74] *Id.* at 226-227, Notice of Execution and Notice to Pay.

against the Republic for ₱49,173,064,201.17 instead of the ₱10.9 million[75] ordered by this Court, to be divided between RREC and Pasay City.[76]

Sheriff De Jesus based his computation on a formula[77] that set the Philippine peso today at ₱51.58 for every one (1) peso in 1962, with compounding interests.[78] He did not attach his source for the alleged real value. The Notice of Execution and Notice to Pay reads:

> Please be informed that on May 8, 2007, a Writ of Execution was issued in the above-entitled case by HON. TINGARAAN U. GUILING, Presiding Judge of this Court, copy of which is hereto attached for your reference.
>
> By virtue of the said Writ of Execution, notice/request is hereby given for you *to pay the principal money judgment and interest compounded annually in the total amount of* ***Php49,173,064,201.17*** immediately upon receipt hereof which amount shall be divided by defendants Pasay City and Republic Real Estate Corporation, share and share alike.[79] (Emphasis supplied)

The Republic filed before the Regional Trial Court a Very Urgent Motion to Quash the Writ of Execution and the Notice of Execution and Notice to Pay,[80] but it was denied on July 3, 2007.[81] The trial court likewise denied the Republic's Motion for Reconsideration on February 28, 2008.[82]

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[75] *Republic v. Court of Appeals*, 359 Phil. 530, 571 (1998) [Per *J.* Purisima, *En Banc*].

[76] *Rollo* (G.R. No. 208212), p. 227.

[77] *Id.* at 228. Sheriff De Jesus based his computation on the following formula: ₱563,566,742.18 (principal amount multiplied by ₱51.58, which is the real value of one peso today), with compounding interest of 6% from 1962 to 1973, and 12% from 1974 to 2007.

[78] *Id.*

[79] *Id.* at 226-227.

[80] *Id.* at 229-248.

[81] *Rollo* (G.R. No. 208205), pp. 821-823.

[82] *Id.* at 824.

The Republic filed before the Court of Appeals a Petition for Certiorari[83] assailing the trial court's July 3, 2007 and February 28, 2008 Orders and seeking injunction against the writ of execution.[84]

The Court of Appeals granted[85] the Petition. It ruled that Sheriff De Jesus' Notice of Execution and Notice to Pay cannot go beyond this Court's judgment in *Republic v. Court of Appeals*,[86] thus:

> The assailed Sheriff's Notice of Execution and Notice to Pay is *palpably at variance* with what was embodied in the November 25, 1998 decision of the Supreme Court. The dispositive portion of the said decision is *categorical and unequivocal in its language* that the amount to be paid by [the Republic] to [RREC and Pasay City] is only Php10,926,071.29, plus interest at 6% per annum from May 1, 1962 until full payment. Thus, *there is no justification for the adjustment of the judgment award to its present day value*. Indubitably, the assailed Sheriff's Notice of Execution and Notice to Pay is null and void as it *does not conform to the tenor of the November 25, 1998 decision which it purports to implement*.[87] (Emphasis supplied)

The Court of Appeals held that Sheriff De Jesus' "issuances wantonly disregarded and grossly violated [Supreme Court Administrative Circular] No. 10-2000 dated October 25, 2000 . . . [and] [Commission on Audit] Circular No. 2001-002 dated July 31, 2001,"[88] which govern the execution of government

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[83] *Rollo* (G.R. No. 208212), pp. 84-143. The Petition was filed under Rule 65 of the Rules of Court.

[84] *Id.* at 139.

[85] *Id.* at 63-77. The Decision was penned by Associate Justice Sesinando E. Villon and concurred in by Associate Justices Andres B. Reyes Jr. and Jose Catral Mendoza (now Associate Justice of this Court) of the Former Fourth Division, Court of Appeals, Manila.

[86] *Id.* at 68.

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

[88] *Id.* at 74.

funds or properties.[89] Thus, the Notice of Execution and Notice to Pay is "patently null and void."[90]

The dispositive portion of the Court of Appeals Decision reads:

> **WHEREFORE**, premises considered, the petition is hereby **GRANTED**. The assailed Writ of Execution dated May 8, 2007 issued by the Regional Trial Court, Branch 109 of Pasay City and the Sheriff's Notice of Execution and Notice of Sale dated May 11, 2007 are hereby declared **NULL** and **VOID**. The Writ of Preliminary Injunction issued by this Court on August 20, 2008 is hereby made permanent.
>
> **SO ORDERED**.[91] (Emphasis in the original)

Atty. Romeo G. Roxas (Atty. Roxas) of RGR & Associates, counsel for RREC since August 6, 1990,[92] filed before this Court a Complaint[93] against the three (3) Court of Appeals Justices[94] who nullified the Writ of Execution and Sheriff De Jesus' Notice.[95] The Complaint was for the Justices' alleged misconduct and violation of Section 3 (e)[96] of Republic Act

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[89] *Id.*

[90] *Id.* at 76.

[91] *Id.*

[92] *Rollo* (G.R. No. 208205), p. 346, RREC's Position Paper.

[93] *Id.* at 301-313.

[94] *Id.* at 302. These Court of Appeals Justices were Associate Justices Sesinando E. Villon, Andres B. Reyes Jr., and Jose Catral Mendoza (now Associate Justice of this Court).

[95] *Id.* at 309-310.

[96] Rep. Act No. 3019 (1960), Anti-Graft and Corrupt Practices Act, Sec. 3(e) provides:

> *Section 3. Corrupt practices of public officers.* — In addition to acts or omissions of public officers already penalized by existing law, the following shall constitute corrupt practices of any public officer and are hereby declared to be unlawful:
>
> . . . . . .

No. 3019 in relation to Article 204[97] of the Revised Penal Code, and it prayed for their disbarment.[98] Atty. Roxas also filed a Motion for Inhibition[99] against the three (3) Justices.[100] Both the Complaint and the Motion for Inhibition were filed without RREC's authority.[101]

On June 29, 2009, RREC terminated the services of RGR & Associates,[102] Atty. Roxas' law firm, due to loss of confidence and breach of trust.[103]

Through a board resolution, RREC engaged the services of another law firm, Siguion Reyna Montecillo & Ongsiako Law Offices (Siguion Reyna) on October 29, 2009.[104] Siguion Reyna

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(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.

[97] REV. PEN. CODE, Art. 204 provides:

ARTICLE 204. Knowingly rendering unjust judgment. — Any judge who shall knowingly render an unjust judgment in any case submitted to him for decision, shall be punished by *prision mayor* and perpetual absolute disqualification.

[98] *Rollo* (G.R. No. 208205), pp. 301-303.

[99] *Id.* at 451-460.

[100] *Id.* at 354, RREC's Position Paper.

[101] Atty. Roxas' Complaint (*Id.* at 301-313) and Motion for Inhibition lack RREC's Board Resolution authorizing him to file these pleadings (*Id.* at 451-459). On May 4, 2009, RREC filed a Motion to Withdraw Motion for Inhibition stating that the Motion and the Complaint were filed without RREC's authority (*Id.* at 490). See also Board Resolution dated December 8, 2006 (*Id.* at 450), where the Board Chairperson tendered his resignation after Atty. Roxas failed to comply with RREC's directive that he should not file the Motion for inhibition until the Board so decides.

[102] *Rollo* (G.R. No. 208205), p. 347.

[103] *Id.* at 345.

[104] *Id.* at 348.

filed a Notice of Appearance on November 4, 2009.[105] RREC also filed a Manifestation informing this Court that Atty. Roxas' Complaint against the Court of Appeals Justices was filed without RREC's knowledge and conformity.[106]

On July 16, 2013, the Court of Appeals issued the Resolution[107] denying RREC and Pasay City's Motion for Reconsideration and declaring Siguion Reyna as RREC's rightful counsel of record. The dispositive portion of the Court of Appeals Resolution reads:

> **WHEREFORE**, premises considered, the instant Motion for Reconsideration filed by respondents RREC and Pasay City is hereby **DENIED**.
>
> This Court hereby **DECLARES** and **RECOGNIZES** the law firm of **Siguion Reyna, Montecillo and Ongsiako** as RREC's rightful counsel of record without prejudice to the payment of Atty. Romeo G. Roxas of attorney's fees based on the doctrine of quantum meruit.
>
> **SO ORDERED**.[108] (Emphasis in the original)

On August 5, 2013, Atty. Roxas filed before this Court the Petition docketed as G.R. No. 208205, referring to it as a Petition for Review *Pro Hac Vice*.[109] He signed the Verification and Certificate Against Non-Forum Shopping in his own name.[110]

Although he admits that he filed his Pro Hac Vice Petition in his personal capacity and without RREC's authority, Atty.

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[105] *Id*.

[106] *Id*.

[107] *Id.* at 78-83. The Resolution was penned by Associate Justice Sesinando E. Villon and concurred in by Associate Justices Andres B. Reyes Jr. and Jose Catral Mendoza (now Associate Justice of this Court) of the Former Fourth Division, Court of Appeals, Manila.

[108] *Id.* at 83.

[109] *Rollo* (G.R. No. 208205), pp. 3-53. "*Pro hac vice*" translates to "For this case only." In Atty. Roxas' *Pro Hac Vice* Petition, he uses the phrase "by himself and by counsel" (*Id.* at 3).

[110] *Id.* at 49-50.

Roxas asserts that RGR & Associates is RREC's rightful counsel.[111] He assails the Court of Appeals' July 16, 2013 Resolution, which declared Siguion Reyna as RREC's rightful counsel of record.[112]

According to Atty. Roxas, the termination of RGR & Associates' legal services was made in bad faith.[113] RREC's engagement with his firm was made allegedly "on a contingent or a 'no cure, no pay' basis[.]"[114] Thus, Atty. Roxas alleges that RGR & Associates' engagement with RREC, being one coupled with interest, was irrevocable.[115]

Atty. Roxas prays for attorney's fees beyond *quantum meruit*. Specifically, he asks for "the full amount upon the terms and conditions of his contingency contract with RREC[.]"[116] He proceeds to argue RREC's case, stating that this Court's monetary award to RREC in *Republic v. Court of Appeals* should reflect the current value of the peso,[117] which is equivalent to ₱82.5 billion.[118]

Atty. Roxas alleges that RREC actually reclaimed 55 hectares of Manila Bay.[119] He invokes the Court of Appeals' ruling, which was set aside in *Republic v. Court of Appeals*,[120] to posit that the national government illegally confiscated these

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[111] *Id.* at 294, Republic's Motion to Dismiss/Expunge the *Pro Hac Vice* Petition.

[112] *Id.* at 17.

[113] *Id.* at 23.

[114] *Id.* at 8.

[115] *Id.* at 21.

[116] *Id.* at 28.

[117] *Id.* at 29.

[118] *Id.* at 45.

[119] *Id.* at 6.

[120] *Republic v. Court of Appeals*, 359 Phil. 530, 571 (1998) [Per *J.* Purisima, *En Banc*].

reclaimed lands[121] and that as a judicial compromise, 35 hectares of open spaces in the Cultural Center Complex should be given to RREC and Pasay City.[122]

Meanwhile, on September 5, 2013, RREC, through Siguion Reyna, filed the Petition for Review on Certiorari docketed as G.R. No. 208212.[123] RREC insists that it reclaimed 55 hectares.[124]

The amount RREC prays for far exceeds what this Court adjudged in *Republic v. Court of Appeals*.[125] To justify the amount of ₱49.17 billion as judgment award,[126] RREC rehashes its claims on the present-day value of the peso, with compounding interests.[127] It recycles the same arguments that were already repeatedly rejected by this Court.[128]

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[121] *Rollo* (G.R. No. 208205), p. 44.

[122] *Id.* at 45.

[123] *Rollo* (G.R. No. 208212), pp. 31-61.

[124] *Id.* at 33.

[125] *Republic v. Court of Appeals*, 359 Phil. 530, 571 (1998) [Per *J.* Purisima, *En Banc*].

[126] *Rollo* (G.R. No. 208212), pp. 34 and 38-42.

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

[128] This Court has already denied RREC's attempts to indirectly amend the Decision in *Republic v. Court of Appeals*. We recall the other instances in which RREC sought for a recomputation and failed, thus:

(1) On April 17, 2001, RREC filed a Motion for Execution (After Adjustment of Quantum Meruit Compensation) before the Regional Trial Court (*Rollo* [G.R. No. 208212], p. 107, Petition for *Certiorari* before the Court of Appeals). The trial court denied the recomputation on November 22, 2002 (*Id.* at 201-208.), which this Court affirmed in the June 25, 2003 Resolution (*Rollo* [G.R. No. 208205], p. 805, Resolution dated June 25, 2003). On August 20, 2003, RREC's Motion for Reconsideration was denied with finality (*Id.* at 743, Resolution dated August 20, 2003).

(2) In 2003, RREC and Pasay City again filed a Motion for Adjustment of Arbitration Award (*Id.* at 807, Resolution dated June 15, 2005). This Court expunged the Motion from the records (*Id.*) in view

Likewise, RREC seeks to exclude Pasay City from receiving any amount.[129]

On September 24, 2013, RREC moved to dismiss/expunge the Pro Hac Vice Petition.[130] RREC states that Atty. Roxas' refusal to be discharged as counsel is highly irregular and unethical,[131] especially in light of his filing his own Petition assailing the Court of Appeals Decision and Resolution.[132] RREC argues that it did not consent to Atty. Roxas' filing, and on this score alone, the Pro Hac Vice Petition should be denied or expunged.[133]

In the Resolution dated September 30, 2013, this Court consolidated G.R. Nos. 208212 and 208205.[134]

On October 21, 2013, Atty. Roxas filed a Motion to Admit his Opposition/Comment on the Motion to Dismiss/Expunge.[135] This was granted[136] by this Court.

The Office of the Solicitor General filed its Consolidated Comment[137] on Atty. Roxas' Pro Hac Vice Petition and on RREC's Petition for Review, to which Atty. Roxas belatedly filed a Motion to Admit Reply, as well as his Reply.[138] These were granted and noted on August 11, 2014.[139]

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of the Entry of Judgment in *Republic v. Court of Appeals* having been made on September 11, 2003 (*Id.* at 807 and 808, Resolutions dated June 15, 2005 and July 27, 2005).

[129] *Rollo* (G.R. No. 208212), p. 56, Petition for Review.

[130] *Rollo* (G.R. No. 208205), p. 293.

[131] *Id.* at 297.

[132] *Id.* at 297-298.

[133] *Id.* at 298.

[134] *Rollo* (G.R. No. 208212), p. 615, Resolution dated September 30, 2013.

[135] *Rollo* (G.R. No. 208205), pp. 664-667.

[136] *Id.* at 827, Resolution dated January 13, 2014.

[137] *Rollo* (G.R. No. 208212), pp. 642-678.

[138] *Id.* at 766-772.

[139] *Id.* at 803, Resolution dated August 11, 2014.

RREC filed its Reply on January 27, 2015.[140]

On March 2, 2015, RREC President Catalina B. Blanco filed before this Court a Petition on Final Execution and Settlement,[141] a third pleading on the same case with the same set of facts, without the aid of counsel as the company could no longer afford Siguion Reyna's services.[142]

On April 22, 2015, Siguion Reyna filed its Withdrawal of Appearance.[143]

In the third Petition,[144] RREC President Catalina B. Blanco states the same arguments as in RREC's Petition for Review. However, she prays for the amount of ₱16,572,743,241.90 (as of March 2015) to compensate for RREC's alleged reclamation[145] of 55 hectares of land.[146] She also prays that Pasay City be given the long-term use of the idle portions of the Cultural Center Complex instead of sharing part of RREC's monetary award.[147]

On March 2, 2016, Atty. Roxas filed a Manifestation reiterating that the payment to RREC and Pasay City should reflect its current real value.[148] He argues that the award of ₱10.9 million should be equivalent to the value of the reclaimed land RREC could have purchased in 1962, which was 109 hectares at ₱10.00 per square meter.[149]

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[140] *Id.* at 807-818, RREC's Reply.

[141] *Rollo* (G.R. No. 208205), pp. 867-874, RREC's Petition on Final Execution and Settlement.

[142] *Id.*

[143] *Id.* at 897-899, Withdrawal of Appearance.

[144] *Id.* at 867-874, Petition on Final Execution and Settlement.

[145] *Id.* at 873.

[146] *Id.* at 867.

[147] *Id.* at 873.

[148] *Id.* at 902-907, Manifestation dated March 2, 2016.

[149] *Id.* at 902.

For resolution are the following issues:

First, whether this Court has jurisdiction to hear the case;

Second, whether the Court of Appeals erred in declaring the Writ of Execution and Sheriff De Jesus' Notice of Execution and Notice to Pay as null and void;

Third, whether Pasay City has a share in the monetary award granted by this Court in *Republic v. Court of Appeals*; and

Lastly, whether the Court of Appeals erred in not recognizing Atty. Romeo G. Roxas as rightful counsel of RREC.

I

The case is premature. The money claim against the Republic should have been first brought before the Commission on Audit.

The Writ of Execution and Sheriff De Jesus' Notice violate this Court's Administrative Circular No. 10-2000[150] and Commission on Audit Circular No. 2001-002,[151] which govern the issuance of writs of execution to satisfy money judgments against government.

Administrative Circular No. 10-2000 dated October 25, 2000 orders all judges of lower courts to observe utmost caution, prudence, and judiciousness in the issuance of writs of execution to satisfy money judgments against government agencies. This Court has emphasized that:

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

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[150] SC Adm. Circ. No. 10-2000 (2000), 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.

[151] COA Adm. Circ. No. 2001-002 (2001) <http://www.coa.gov.ph/phocadownloadpap/userupload/Issuances/Circulars/Circ2001/COA_C2001-002.pdf> (visited May 16, 2016).

> 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 Court 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*[*residential*] *D*[*ecree*] *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 [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[residential] D[ecree] [No.] 1445, Sections 49-50).[152] (Emphasis supplied)

For its part, Commission on Audit Circular No. 2001-002 dated July 31, 2001 requires the following to observe this Court's Administrative Circular No. 10-2000: department heads; bureau, agency, and office chiefs; managing heads of government-owned and/or controlled corporations; local chief executives; assistant commissioners, directors, officers-in-charge, and auditors of the Commission on Audit; and all others concerned.[153]

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[152] SC Adm. Circ. No. 10-2000 (2000).

[153] COA Adm. Circ. No. 2001-002 (2001) http://www.coa.gov.ph/phocadownloadpap/userupload/Issuances/Circulars/Circ2001/COA_C2001-002.pdf> (visited May 16, 2016).

Chapter 4, Section 11[154] of Executive Order No. 292[155] gives the Commission on Audit the power and mandate to settle all government accounts. Thus, the finding that government is liable in a suit to which it consented does not translate to enforcement of the judgment by execution.[156]

As a rule, public funds may not be disbursed absent an appropriation of law or other specific statutory authority.[157] Commonwealth Act No. 327,[158] as amended by Presidential

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[154] Exec. Order No. 292, book V, chap. 4, Sec. 11(1) provides:

SECTION 11. General Jurisdiction. — (1) The Commission on Audit shall have the power, authority, and duty to examine, audit, and settle all accounts pertaining to the revenue and receipts of, and expenditures or uses of funds and property, owned or held in trust by, or pertaining to, the Government, or any of its subdivisions, agencies, or instrumentalities, including government-owned or controlled corporations with original charters, and on a post-audit basis: (a) constitutional bodies, commissions and offices that have been granted fiscal autonomy under this Constitution; (b) autonomous state colleges and universities; (c) other government-owned or controlled corporations and their subsidiaries; and (d) such non-governmental entities receiving subsidy or equity, directly or indirectly, from or through the Government, which are required by law or the granting institution to submit to such audit as a condition of subsidy or equity. However, where the internal control system of the audited agencies is inadequate, the Commission may adopt such measures, including temporary or special pre-audit, as are necessary and appropriate to correct the deficiencies. It shall keep the general accounts of the Government and, for such period as may be provided by law, preserve the vouchers and other supporting papers pertaining thereto.

[155] Exec. Order No. 292 (1987), Instituting the Administrative Code of 1987.

[156] *Carabao, Inc. v. Agricultural Productivity Commission*, 146 Phil. 236 (1970) [Per *J.* Teehankee, *En Banc*].

[157] Exec. Order No. 292, book V, Chap. 8, Sec. 45(1) provides:

SECTION 45. Disbursement of Government Funds.—(1) Revenue funds shall not be paid out of any public treasury or depository except in pursuance of an appropriation law or other specific statutory authority[.]

[158] Com. Act No. 327 (1938), An Act Fixing the Time within which the Auditor General Shall Render His Decisions and Prescribing the Manner of Appeal Therefrom.

Decree No. 1445,[159] requires that all money claims against government must first be filed before the Commission on Audit, which, in turn, must act upon them within 60 days.[160]

Only when the Commission on Audit rejects the claim can the claimant elevate the matter to this Court on certiorari and, in effect, sue the state.[161] *Carabao, Inc. v. Agricultural Productivity Commission*[162] has settled that "claimants have to prosecute their money claims against the Government under Commonwealth Act 327 . . . and that the conditions provided in Commonwealth Act 327 for filing money claims against the Government must be strictly observed."[163]

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[159] Pres. Decree No. 1445 (1978), Secs. 49-50.

[160] Com. Act No. 327 (1938), Sec. 1 provides:

Section 1. In all cases involving the settlement of accounts or claims, other than those of accountable officers, the Auditor General shall act and decide the same within sixty days, exclusive of Sundays and holidays, after their presentation. If said accounts or claims need reference to other persons, office or offices, or to a party interested, the period aforesaid shall be counted from the time the last comment necessary to a proper decision is received by him.

Pres. Decree No. 1445 (1978), Sec. 49 provides:

Section 49. Period for rendering decisions of the Commission. The Commission shall decide any case brought before it within sixty days from the date of its submission for resolution. If the account or claim involved in the case needs reference to other persons or offices, or to a party interested, the period shall be counted from the time the last comment necessary to a proper decision is received by it.

[161] Pres. Decree No. 1445 (1978), Sec. 50 provides:

Section 50. Appeal from decisions of the Commission. The party aggrieved by any decision, order, or ruling of the Commission may within thirty days from his receipt of a copy thereof appeal on *certiorari* to the Supreme Court in the manner provided by law and the Rules of Court. When the decision, order, or ruling adversely affects the interest of any government agency, the appeal may be taken by the proper head of that agency.

[162] 146 Phil. 236 (1970) [Per *J*. Teehankee, *En Banc*].

[163] *Id.* at 241.

In *Star Special Watchman and Detective Agency, Inc. v. Puerto Princesa City*:[164]

> Under Commonwealth Act No. 327, as amended by Section 26 of P.D. No. 1445, it is the C[ommission] o[n] A[udit] which has primary jurisdiction to examine, audit and settle "all debts and claims of any sort" due from or owing the Government or any of its subdivisions, agencies and instrumentalities, including government-owned or controlled corporations and their subsidiaries[.][165]

RREC's procedural shortcut must be rejected. Any allowance or disallowance of its money claims is for the Commission on Audit to decide, subject only to RREC's remedy of appeal via a petition for certiorari before this Court.[166]

II

The Court of Appeals correctly declared the Writ of Execution and Sheriff De Jesus' Notice null and void. We find no reversible error in the Court of Appeals' February 27, 2009 Decision.

Republic v. Court of Appeals has long been final and executory. This Court judiciously examined and exhaustively discussed the issues raised in RREC's Petition. These are the same arguments now being raised.

RREC's relentless pursuit of this case vexes this Court. Even after *Republic v. Court of Appeals* had become final and executory, RREC repeatedly filed motions and petitions before this Court despite our express prohibition on filing further pleadings.[167] This Court called out this contumacious scheme,[168]

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[164] G.R. No. 181792, April 21, 2014, 722 SCRA 66 [Per *J.* Mendoza, Third Division].

[165] *Id.* at 87, citing *National Electrification Administration v. Morales*, 555 Phil. 74, 84-87 (2007) [Per *J.* Austria-Martinez, Third Division].

[166] *Id.*

[167] *Id.* at 722, Resolution dated February 15, 2000, and 729, Resolution dated October 17, 2000.

[168] *Id.* at 726.

cautioned RREC and Pasay City against contempt of court,[169] and on several occasions, expunged their motions from the records of the case.

In its Petition docketed as G.R. No. 208212, RREC cited the Court of Appeals' ruling that the reclamation contract was valid[170] without ever mentioning that this Court had already declared the agreement between RREC and Pasay City null and void. Disregarding our pronouncements in *Republic v. Court of Appeals*, RREC continues to insist that it had reclaimed a total of 55 hectares[171] of the Cultural Center Complex.[172]

We restate that ***RREC did not reclaim any land***, much less present any evidence to prove its allegations. Thus:

> No contracts or sub-contracts or agreements, plans, designs, and/or specifications of the reclamation project were presented to reflect any accomplishment. Not even any statement or itemization of works accomplished by contractors or subcontractors or vouchers and other relevant papers were introduced to describe the extent of RRECs accomplishment. Neither was the requisite certification from the City Engineer concerned that portions of the reclamation project not less than 50 hectares in area shall have been accomplished or completed obtained and presented by RREC.
>
> As a matter of fact, no witness ever testified on any reclamation work done by RREC, and extent thereof, as of April 26, 1962. Not a single contractor, sub-contractor, engineer, surveyor, or any other witness involved in the alleged reclamation work of RREC testified on the 55 hectares supposedly reclaimed by RREC. What work was done, who did the work, where was it commenced, and when was it completed, was never brought to light by any witness before the court. Certainly, *onus probandi* was on RREC and Pasay City to show and point out the as yet unidentified 55 hectares they allegedly

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[169] *Id.* at 722.

[170] *Id.* at 33, Petition for Review.

[171] *Id.*

[172] *Id.* at 31.

reclaimed. But this burden of proof RREC and Pasay City miserably failed to discharge.[173]

Moreover, despite our final and executory judgment in *Republic v. Court of Appeals* awarding RREC and Pasay City ₱10.9 million with 6% annual interest, RREC continues to claim entitlement to the bloated amount of ₱49.17 billion—an amount too much for reclamation work that was not only void,[174] but also deficient.[175]

RREC's compensation is based on *quantum meruit*. It was not a loan, a forbearance of money, or an obligation arising out of a valid contract. Rather, it was awarded merely based on equity, in order to prevent one party from being unjustly enriched at the expense of the other. But equity is not a one-way street. Providing justice to RREC cannot justify perpetrating injustice against the Republic.

This Court's November 25, 1998 Decision must be respected. Pursuant to the doctrine of res judicata, our ruling in *Republic v. Court of Appeals* is the settled law of this case. In *Salud v. Court of Appeals*:[176]

> The interest of the judicial system in preventing relitigation of the same dispute recognizes that judicial resources are finite and the number of cases that can be heard by the court is limited. Every dispute that is reheard means that another will be delayed. In modern times when court dockets are filled to overflowing, this concern is of critical importance. *Res judicata* thus conserves scarce judicial resources and promotes efficiency in the interest of the public at large.

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[173] *Republic v. Court of Appeals*, 359 Phil. 530, 564 (1998) [Per *J.* Purisima, *En Banc*].

[174] *Id.* at 571.

[175] *Id.* at 564.

[176] G.R. No. 100156, June 27, 1994, 233 SCRA 384 [Per *J.* Puno, Second Division].

Once a final judgment has been rendered, the prevailing party also has an interest in the stability of that judgment. Parties come to the courts in order to resolve controversies; a judgment would be of little use in resolving disputes if the parties were free to ignore it and to litigate the same claims again and again. Although judicial determinations are not infallible, judicial error should be corrected through appeals procedures, not through repeated suits on the same claim. Further, *to allow relitigation creates the risk of inconsistent results and presents the embarrassing problem of determining which of two conflicting decisions is to be preferred*. Since there is no reason to suppose that the second or third determination of a claim necessarily is more accurate than the first, the first *should be left undisturbed*.

In some cases, the public at large also has an interest in seeing that rights and liabilities once established remain fixed. If a court quiets title to land, for example, everyone should be able to rely on the finality of that determination. Otherwise, many business transactions would be clouded by uncertainty. Thus, the most important purpose of *res judicata* is to provide repose for both the party litigants and the public. As the Supreme Court has observed, "*res judicata* thus encourages reliance on judicial decision, bars vexatious litigation, and frees the courts to resolve other disputes."[177] (Emphasis supplied, citations omitted)

We cannot allow RREC to waste any more of this Court's time and resources and disturb what is already settled, lest this controversy never reaches its end.

III

This Court's decision cannot be amended by the trial court or the sheriff. Absent an order of remand, we cannot allow attempts to adjust or vary the terms of the judgment of this Court.[178] Neither the Regional Trial Court nor its sheriff can, in any way, directly or indirectly, alter this Court's November

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[177] *Id.* at 388-389.

[178] *Philippine Virginia Tobacco Administration v. Gonzales*, 180 Phil. 604, 616 (1979) [Per *J.* Fernandez, First Division].

25, 1998 Decision through a writ of execution or a notice purporting to implement the writ.

A judgment, once final, is immutable and unalterable.[179] In *Manotok Realty, Inc. v. CLT Realty Development Corporation*:[180]

> [This Court's Decision] may no longer be modified in any respect, even if the modification is meant to correct what is perceived to be an erroneous conclusion of fact or law, and regardless of whether the modification is attempted to be made by the court rendering it or by the highest court of the land.[181]

This Court's final and executory decision cannot be amended. It cannot be done by the trial court,[182] much less by its sheriff. The sheriff's execution of judgment is a purely ministerial phase of adjudication.[183] In implementing the writ, the sheriff must strictly conform to the letter of the judge's order.[184] Thus:

> [Sheriffs] have no capacity to vary the judgment and deviate [from the judge's decision] based on their own interpretation thereof.
>
> Well settled is the rule that when writs are placed in the hands of sheriffs, it is their *ministerial duty* to proceed with reasonable celerity and promptness to execute them in accordance with their mandate. *It is not their duty to decide on the truth or sufficiency of the processes committed to [them] for service* as their duty to execute a valid writ is not ministerial and not discretionary. A purely ministerial act or duty is one which an officer or tribunal performs in the context of a given set of facts, in a prescribed manner and *without regard to the*

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[179] *Manotok Realty, Inc. v. CLT Realty Development Corporation*, 512 Phil. 679, 708 (2005) [Per *J.* Sandoval-Gutierrez, Third Division].

[180] 512 Phil. 679 (2005) [Per *J.* Sandoval-Gutierrez, Third Division].

[181] *Id.* at 708.

[182] *Id.*

[183] *Bayer Phil., Inc. v. Agana*, 159 Phil. 953, 964 (1975) [Per *J.* Antonio, Second Division].

[184] *Alconera v. Pallanan*, A.M. No. P-12-3069, January 20, 2014, 714 SCRA 204, 220 [Per *J.* Velasco, Jr., Third Division].

exercise of [one's] own judgment upon the propriety or impropriety of the act done. Where a requirement is made in explicit and unambiguous terms, *no discretion is left to the sheriff [and] he [or she] must see to it that its mandate is obeyed*.

Thus, echoing the decision of the *Honorable Court in Tropical Homes vs. Fortune* "it is basic that *the only portion of the decision that becomes the subject of execution is that ordained in the dispositive portion*. Whatever may be found in the body of the decision can only be considered as part of the reason or conclusions of the court and while they may serve as a guide or enlighten to determine the *ratio decidendi* what is controlling is what appears in the dispositive part of the decision.[185]

The Republic argues that Sheriff De Jesus executed a judgment based on a computation that only he was privy to.[186] In his Notice of Execution and Notice to Pay, Sheriff De Jesus failed to provide any attachment or explanation as to the source of his calculations.[187]

The figures that resulted from his computations and his method of computing were never mentioned by this Court, the Court of Appeals, or Judge Tingaraan U. Guiling of the Regional Trial Court. The computation was based on a testimony given in 2001, at least six years ago, in a clarificatory hearing[188] before Judge Lilia C. Lopez of the Regional Trial Court, which both the lower court[189] and this Court[190] rejected.

The Notice of Execution and Notice to Pay went beyond the dispositive portion in *Republic v. Court of Appeals*. In his

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[185] *Teodosio v. Somosa, et al.*, 612 Phil. 858, 872-873 (2009) [*Per Curiam, En Banc*].

[186] *Rollo* (G.R. No. 208212), p. 661, Republic's Consolidated Comment.

[187] *Id.*

[188] *Rollo* (G.R. No. 208205), pp. 246-407, TSN, December 20, 2001.

[189] *Rollo* (G.R. No. 208212), pp. 209-210, Regional Trial Court Order dated March 21, 2003.

[190] *Rollo* (G.R. No. 208205), pp. 804 and 805, Resolutions dated June 25, 2003 and August 20, 2003.

Notice, Sheriff De Jesus modified our decreed amount of ₱10.9 million at 6% interest per annum (beginning May 1, 1962 until fully paid) to ₱49.17 *billion* at the rate of 6% per annum from 1962 to 1973 and at the rate of 12% from 1974 to present, compounded.

Canon VI, Section 6 of the Code of Conduct for Court Personnel[191] states that "[c]ourt personnel shall expeditiously enforce rules and implement orders of the court *within the limits of their authority*."

The sheriff cannot act as a party's agent. He or she can only act as an officer of the court which he or she represents.[192] Sheriffs, as agents of the law, are duty-bound to fulfill their mandates with utmost diligence and due care. In executing the court's order, they cannot afford to go beyond its letter, lest they prejudice "the integrity of their office and the efficient administration of justice."[193] In *Jereos v. Reblando*:[194]

> [T]he conduct and behavior of everyone connected with an office charged with the dispensation of justice . . . from the presiding judge to the lowliest clerk, should be circumscribed with the heavy burden of responsibility. His [or her] conduct, at all times, must not only be characterized with propriety and decorum but above all else must be above suspicion.[195]

Therefore, we resolve to refer Sheriff De Jesus' acts to the Office of the Court Administrator for proper investigation, report, and recommendation.

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[191] A.M. No. 03-06-13-SC (2004).

[192] *Spouses Villaceran v. Beltejar*, 495 Phil. 177, 186 (2005) [Per *J.* Puno, Second Division].

[193] *Legaspi v. Tobillo*, 494 Phil. 229, 238 (2005) [Per *J.* Chico-Nazario, Second Division].

[194] 163 Phil. 121 (1976) [Per *J.* Esguerra, Second Division].

[195] *Id.* at 128.

IV

Pasay City has a share in the monetary award granted in *Republic v. Court of Appeals*. The dispositive portion of the Decision reads:

> The petitioner, Republic of the Philippines, is hereby ordered to pay Pasay City and Republic Real Estate Corporation the sum of *TEN MILLION NINE HUNDRED TWENTY-SIX THOUSAND SEVENTY-ONE AND TWENTY-NINE CENTAVOS (₱10,926,071.29) PESOS*, plus interest thereon of six (6%) percent per annum from May 1, 1962 until full payment, which amount shall be divided by Pasay City and RREC, share and share alike.[196] (Emphasis in the original)

RREC argues that the phrase "share and share alike" should be interpreted to mean that "RREC and Pasay City should receive their share of the payment depending on each's [sic] share in the [reclamation] project."[197] It concludes that since Pasay City contributed nothing, it alone should receive the full amount.[198] This is erroneous.

Republic Act No. 1899 delegated to local government units the state's sovereign right to reclaim foreshore lands. Section 1,[199] in relation to Section 9,[200] of Republic Act No. 1899 mandates

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[196] *Id.* at 571.

[197] *Rollo* (G.R. No. 208212), p. 56.

[198] *Id.*

[199] Rep. Act No. 1899 (1957), Sec. 1 provides:

> Section 1. Authority is hereby granted to all municipalities, and chartered cities to undertake and carry out at their own expense the reclamation by dredging, filling, or other means, of any foreshore lands bordering them, and to establish, provide, construct, maintain and repair proper and adequate docking and harbor facilities as such municipalities and chartered cities may determine in consultation with the Secretary of Finance and the Secretary of Public Works and Communications.

[200] Rep. Act No. 1899 (1957), Sec. 9 provides:

> Sec. 9. The provisions of existing laws to the contrary notwithstanding, municipalities and chartered cities are hereby authorized and empowered to execute by administration any reclamation work or any construction

that the reclamation must be carried out by the municipality or chartered city concerned (that is, Pasay City) and not by a private entity (that is, RREC). RREC was able to undertake reclamation work on behalf of the city only through a special power of attorney.[201] Thus, Pasay City cannot be deprived of its share in the compensation.

A plain interpretation of the phrase "share and share alike" means that one party's share is the same with the other party's share. That is to say, RREC would receive a share equal to that of Pasay City. If this Court intended the interpretation made by RREC, then it should have instead used the phrase "in proportion to their contribution," or an analogous wording. However, this is not the case.

There is no need to go beyond the ordinary or literal meaning when the words themselves are "clear, plain, and free from ambiguity."[202] This is in line with the plain-meaning rule or *verba legis* in statutory construction.[203]

V

As regards RREC's Petition on Final Execution and Settlement, the Rules of Court does not provide for this remedy before this Court. Civil cases—this case included—may be elevated before us via a petition for certiorari under Rule 65 or a petition for review under Rule 45. Filing a "petition on final execution and settlement" is not a remedy provided by the Rules of Court.

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authorized in section one hereof: Provided, That all such works shall be prosecuted on the basis of plans and specifications approved by the Director of Public Works: And provided, further, That the District or City Engineer concerned shall certify every statement of accomplished worked that the same is in accordance with the approved plans and specifications.

[201] See *J.* Romero, Separate Opinion in *Republic v. Court of Appeals*, 359 Phil. 530, 580 (1998) [Per *J.* Purisima, *En Banc*].

[202] *Bolos v. Bolos*, 648. Phil. 630, 637 (2010) [Per *J.* Mendoza, Second Division].

[203] *Id.* at 637.

Assuming the Petition on Final Execution and Settlement is not one filed on appeal but one filed directly, we still cannot give it due course. Direct recourse before this Court may be had only as a last resort.[204] Absent "special, important and compelling reasons clearly and specifically spelled out in the petition,"[205] such as an issue of constitutionality, transcendental importance, or the case being one of first impression,[206] we simply cannot take action on this Petition.

Nor can we treat the Petition on Final Execution and Settlement as a petition for review.

First, two Petitions for Review were already filed arguing on RREC's behalf: on August 5, 2013 by Atty. Roxas (without RREC's authority), and on September 5, 2013 by Siguion Reyna (with RREC's authority). Neither of these Petitions has been withdrawn.

Second, RREC's Petition on Final Execution and Settlement raises substantially the same arguments and prayers as its Petition for Review filed through Siguion Reyna, which this Court has exhaustively addressed.

Thus, as the Petition on Final Execution and Settlement is a mere duplication of what has already been filed, we have no other recourse but to expunge it from the records of this case. We sternly warn RREC against filing redundant pleadings and clogging this Court's docket.

VI

Atty. Roxas' Pro Hac Vice Petition should be denied for two (2) reasons: first, it is a wrong remedy; and second, he has no legal standing to appeal on RREC's behalf.

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[204] *Diocese of Bacolod v. Commission on Elections*, G.R. No. 205728, January 21, 2015, 747 SCRA 1, 41-45 [Per *J.* Leonen, *En Banc*].

[205] *Macapagal v. People of the Philippines*, G.R. No. 193217, February 26, 2014, 717 SCRA 425, 430-431 [Per *J.* Peralta, Third Division].

[206] *Diocese of Bacolod v. Commission on Elections*, G.R. No. 205728, January 21, 2015, 747 SCRA 1, 46-47 [Per *J.* Leonen, *En Banc*].

Despite his termination as counsel, Atty. Roxas continues to insist that he is RREC's legal counsel.[207] In a letter dated June 22, 2009, he informed RREC that he would not withdraw as counsel to the case as his firm's engagement with RREC is "coupled with interest and, therefore, irrevocable[.]"[208]

Atty. Roxas claims that he was RREC's lawyer for more than 20 years.[209] He shouldered its litigation expenses "at all levels of the judiciary"[210] amounting to hundreds of millions,[211] provided the company with an office space for several years,[212] paid the allowance of former RREC President Atty. Francisco Candelaria and his staff,[213] and sustained the company's continued operations.[214] Atty. Roxas did not furnish proof to back up his allegations.

Under the March 15, 2000 letter-agreement between RREC and RGR & Associates, a decision in RREC's favor would entitle Atty. Roxas' firm to at least 3.5 hectares of land or a minimum of ₱175 million from the judgment award, depending on the land or amount to be awarded by this Court.[215] However, the letter-agreement is silent on reimbursement of RGR & Associates' advanced payment.

Even assuming Atty. Roxas pursued RREC's case at his firm's expense and on a contingent basis,[216] we cannot allow

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[207] *Rollo* (G.R. No. 208205), p. 6. Atty. Roxas argues that the Court of Appeals committed serious and reversible error when it declared, in the July 16, 2013 Resolution, that Siguion Reyna is RREC's rightful counsel.

[208] *Id.* at 314-315, Atty. Roxas' letter dated June 22, 2009.

[209] *Id.* at 314.

[210] *Id.* at 20.

[211] *Id.* at 314.

[212] *Id.* at 21.

[213] *Id.*

[214] *Id.* at 314-315.

[215] *Id.* at 447-449, Letter dated March 15, 2000.

[216] *Id.* at 5.

such an agreement. An agreement of this nature is champertous and void for being against public policy. In *Nocom v. Camerino, et al.*:[217]

> A champertous contract is defined as a contract between a stranger and a party to a lawsuit, whereby the stranger pursues the party's claim in consideration of receiving part or any of the proceeds recovered under the judgment; a bargain by a stranger with a party to a suit, by which such third person undertakes to carry on the litigation at his own cost and risk, in consideration of receiving, if successful, a part of the proceeds or subject sought to be recovered. An Agreement whereby the attorney agrees to pay expenses of proceedings to enforce the client's rights is champertous. Such agreements are against public policy especially where as in this case, the attorney has agreed to carry on the action at its own expense in consideration of some bargain to have part of the thing in dispute. The execution of these contracts violates the fiduciary relationship between the lawyer and his client, for which the former must incur administrative sanction.[218]

As officers of the court, lawyers should not exploit nor take advantage of their client's weaknesses.[219] Rule 16.04 of the Code of Professional Responsibility prohibits a lawyer from "lend[ing] money to a client except, when in the interest of justice, he [or she] has to advance necessary expenses in a legal matter he [or she] is handling for the client." *Bautista v. Gonzales*[220] has settled that "[a]though a lawyer may, in good faith, advance the expenses of litigation, the same should be subject to reimbursement."[221]

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[217] 598 Phil. 214 (2009) [Per *J.* Azcuna, First Division].

[218] *Id.* at 228, citing *Blacks Dictionary; Schnabel v. Taft Broadcasting Co., Inc.* Mo. App. 525 S.W. 2d 819, 823; *JBP Holding Corporation v. U.S.* 166 F. Supp. 324 (1958); *Sampliner v. Motion Pictures Patents Co., et al.*, 225 F. 242 (1918).

[219] *Id.*

[220] 261 Phil. 266 (1990) [*Per Curiam, En Banc*].

[221] *Id.* at 281.

Thus, absent a reimbursement agreement, the champertous contract is void.[222] Lawyers who obtain an interest in the subject-matter of litigation create a conflict-of-interest situation with their clients and thereby directly violate the fiduciary duties they owe their clients.[223] Thus:

> To permit these arrangements is to enable the lawyer to "acquire additional stake in the outcome of the action which might lead him to consider his own recovery rather than that of his client or to accept a settlement which might take care of his interest in the verdict to the sacrifice of that of his client in violation of his duty of undivided fidelity to his client's cause."[224] (Citations omitted)

This is precisely what happened here. In his desire to win the reclamation case and take his slice of the pie from the judgment award, Atty. Roxas resorted to prosecuting cases against the Court of Appeals Justices[225] without RREC's knowledge and authority and against his client's interest.[226]

Moreover, despite Siguion Reyna's Entry of Appearance dated November 4, 2009 with RREC's conformity, RGR & Associates refused to accept its discharge as counsel.[227]

Atty. Roxas is fully aware that RREC's Board of Directors already voted to terminate RGR & Associates' legal services.[228] The termination of RGR & Associates' services is not subject

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[222] *Id.*

[223] *Nocom v. Camerino, et al.*, 598 Phil. 214, 228 (2009) [Per J. Azcuna, First Division].

[224] *Conjugal Partnership of Spouses Cadavedo, et al. v. Lacaya, married to Legados*, G.R. No. 173188, January 15, 2014, 713 SCRA 397, 417 [Per J. Brion, Second Division].

[225] *Rollo* (G.R. No. 208205), p. 315, Atty. Roxas' letter dated June 22, 2009.

[226] Due to Atty. Roxas' actions, RREC terminated the services of RGR & Associates. It also withdrew the cases against the Court of Appeals Associate Justices.

[227] *Rollo* (G.R. No. 208205), p. 348, RREC's Position Paper.

[228] *Id.* at 684.

to this Court's review. A lawyer may be dismissed at any time, with or without cause. In *Lim, Jr. v. Villarosa*:[229]

> [A client] may discharge his attorney *at any time with or without cause* and thereafter employ another lawyer who may then enter his appearance. Thus, it has been held that a client is free to change his counsel in a pending case and thereafter retain another lawyer to represent him. That manner of changing a lawyer does not need the consent of the lawyer to be dismissed. Nor does it require approval of the court.[230] (Citation omitted, Emphasis supplied).

An experienced lawyer such as Atty. Roxas is expected know that a counsel's services can be withdrawn at any time.

There is no such thing as an irrevocable attorney-client relationship. As stated in *Busiños v. Ricafort*,[231] "the relation between an attorney and his client is highly fiduciary in its nature and of a very delicate, exacting and confidential character, requiring high degree of fidelity and good faith."[232] Thus, when the client itself no longer wants its attorney's services, the counsel cannot continue to desperately cling on to it.

What makes RGR & Associates' discharge as counsel even more allowable is that RREC terminated its services for a cause. In RREC's Board Resolution, the dismissal of RGR & Associates' engagement was due to its "breach of trust and confidence and clear abuse of Attorney-Client relationship[.]" Atty. Roxas' act of suing the Court of Appeals Justices without RREC's prior notice and board approval[233] betrayed his client's trust and confidence.[234]

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[229] 524 Phil. 37 (2006) [Per *J.* Puno, Second Division].

[230] *Id.* at 58.

[231] 347 Phil. 687 (1997) [*Per Curiam, En Banc*].

[232] *Id.* at 693.

[233] *Rollo* (G.R. No. 208205), p. 352, RREC's Position Paper.

[234] *Id.* at 353.

Canon 17 of the Code of Professional Responsibility states that "[a] lawyer owes fidelity to the cause of [one's] client and he [or she] shall always be mindful of the trust and confidence reposed in him [or her]."

In *Testate Estate of the Deceased Tan Chiong Pun v. Tan*,[235] this Court has ruled that it is unjust to require a lawyer, whose services have been terminated, to continue serving as counsel after losing his or her client's confidence. RREC's decision to remove Atty. Roxas as its counsel is clearly beyond this Court's power of review.

Moreover, Atty. Roxas has no legal standing to appeal the case on RREC's behalf. Rule 3 of the Rules of Court provides the following as parties to a civil suit:

RULE 3
PARTIES TO CIVIL ACTIONS

SECTION 1. *Who may be parties; plaintiff and defendant*. — Only natural or juridical persons, or entities authorized by law may be parties in a civil action. The term "plaintiff" may refer to the claiming party, the counter-claimant, the cross-claimant, or the third (fourth, etc.)—party plaintiff. The term "defendant" may refer to the original defending party, the defendant in a counterclaim, the cross-defendant, or the third (fourth, etc.)—party defendant.

SEC. 2. *Parties in interest*. — A real party in interest is the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit. Unless otherwise authorized by law or these Rules, every action must be prosecuted or defended in the name of the real party in interest.

SEC. 3. *Representatives as parties*. — Where the action is allowed to be prosecuted and defended by a representative or someone acting in a fiduciary capacity, the beneficiary shall be included in the title of the case and shall be deemed to be the real party in interest. A representative may be a trustee of an express trust, a guardian, an executor or administrator, or a party authorized by law or these Rules. An agent acting in his own name and for the benefit of an undisclosed

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[235] 121 Phil. 1239 (1965) [Per *J.* Reyes, *En Banc*].

principal may sue or be sued without joining the principal except when the contract involves things belonging to the principal. (Emphasis in the original)

Atty. Roxas is not a party litigant under Section 1. Only RREC, as the party seeking for the execution of judgment, and the Republic, as the party opposing RREC's claims, stand to be benefited or injured by the pending case. Atty. Roxas is not a party-in-interest under Section 2. He has no valid interest in this case as his contingency-fee agreement with RREC is champertous and, therefore, void. Likewise, Atty. Roxas is not a party representative under Section 3 as he is no longer RREC's lawyer.

Thus, insofar as RREC and the Republic are concerned, Atty. Roxas is a complete stranger to this case.

Rule 45, Section 1[236] of the Rules of Court provides that appeals by certiorari before this Court may be had only by the *party* to the case. Atty. Roxas is neither a party nor a counsel for any of the parties here. He cannot claim legal fees by filing a petition for review on behalf of a non-client, which has moved to dismiss/expunge his petition pro hac vice.

The action he pursued before this Court is not an available recourse under applicable laws or the Rules of Court. He is pursuing the wrong remedy.

We resolve to direct Atty. Romeo G. Roxas to show cause why he should not be imposed a disciplinary sanction for his pernicious attempt not just to re-litigate the case, but also to continue arguing for RREC despite his discharge as counsel. We likewise resolve to deny Atty. Roxas' Petition for Review

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[236] RULES OF COURT, Rule 45, Sec. 1 provides:

SEC. 1. Filing of petition with Supreme Court. — A party desiring to appeal by *certiorari* from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on *certiorari*. The petition shall raise only questions of law which must be distinctly set forth.

(Pro Hac Vice) dated August 1, 2013, and to expunge his Manifestation dated March 2, 2016 from the records of the case.

WHEREFORE, the Petition for Review dated August 30, 2013 is **DENIED**, there being no reversible error in the Court of Appeals Decision dated February 27, 2009 and Resolution dated July 16, 2013 in CA-G.R. SP No. 102750.

The Petition for Final Execution and Settlement is **EXPUNGED** from the records of the case for being a duplicate pleading, and Republic Real Estate Corporation is **STERNLY WARNED** against filing redundant pleadings and clogging this Court's docket.

Atty. Romeo G. Roxas' Petition for Review (Pro Hac Vice) dated August 1, 2013 is **DENIED** for his lack of legal standing to file the case on behalf of Republic Real Estate Corporation and for being the wrong remedy, without prejudice to his filing of a separate collection suit. The Manifestation dated March 2, 2016 is likewise **EXPUNGED** from the records of the case. Atty. Roxas is **ORDERED** to show cause why he should not be imposed a disciplinary sanction for re-litigating the case and purporting to represent a client against its will.

Finally, the Office of the Court Administrator is **ORDERED** to investigate Sheriff IV Reyner S. De Jesus' act of issuing the Notice of Execution and Notice to Pay not in accordance with the writ of execution and this Court's Decision dated November 25, 1998 in *Republic v. Court of Appeals*.

SO ORDERED.

Carpio (*Chairperson*), *del Castillo, Reyes,*[*] and *Perlas-Bernabe,*[**] *JJ.,* concur.

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[*] Designated member per Raffle dated September 22, 2014.

[**] Designated member per Raffle dated September 16, 2013.

SECOND DIVISION

[G.R. No. 208524. June 1, 2016]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **BERNARDINO PERALTA *y* MORILLO and MICHAEL AMBAS *y* REYES,** *accused,* **BERNARDINO PERALTA *y* MORILLO,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; ROBBERY WITH HOMICIDE; ELEMENTS; ESTABLISHED IN CASE AT BAR.— In *People v. Barra,* this Court enumerated the elements that the prosecution needs to prove in order to convict an accused of the crime of Robbery with Homicide, to wit: 1. The taking of personal property is committed with violence or intimidation against persons; 2. The property taken belongs to another. 3. The taking is with *animo lucrandi*; and 4. By reason of the robbery or on the occasion thereof, homicide is committed. In this case, all the above-mentioned elements had been sufficiently proven by the prosecution. The taking of Olitan's property was committed with violence and intimidation. This taking happened after Peralta and Ambas announced a hold-up in order to rob the passengers of the van of their valuables. Olitan had no choice but to hand over his cellphone, silver ring, sunglasses, and cash money to Ambas who was pointing a gun at him. And undoubtedly, homicide was also committed when Bocalbos was shot in the head on the occasion of that robbery. We thus fully agree with the RTC that all the elements of the crime of robbery with homicide had been duly established x x x.

2. ID.; ID.; ID.; ALIBI AS A DEFENSE; IF THERE IS THE LEAST POSSIBILITY OF THE ACCUSED'S PRESENCE AT THE *LOCUS CRIMINIS*, THE DEFENSE OF ALIBI WILL NOT PROSPER.— It is settled that "[f]or alibi to prosper, it is not enough for the defendant to prove that he was somewhere else when the crime was committed; he must likewise demonstrate that it is physically impossible for him to be at the scene of the crime at the time." If there is the least possibility of his presence at the *locus criminis,* the defense of alibi will not

prosper. And with respect to mere denial as a defense, the rule is that this plea cannot prevail over the positive testimony of an eyewitness to the crime.

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

DEL CASTILLO, *J.*:

This is an appeal from the November 28, 2012 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 05031 which affirmed the December 20, 2010 Decision[2] of Branch 95, Regional Trial Court (RTC) of Quezon City, in Criminal Case No. Q-07-147414, finding appellant Bernardino Peralta *y* Morillo (Peralta) and accused Michael Ambas *y* Reyes (Ambas) guilty beyond reasonable doubt of the crime of Robbery with Homicide defined and penalized in Article 294, paragraph 1 of the Revised Penal Code (RPC) and sentencing them to suffer the penalty of *reclusion perpetua*.

Proceedings before the Regional Trial Court

Peralta and Ambas were charged with the crime of Robbery with Homicide for shooting Supt. Joven Bocalbos *y* Canas (Bocalbos) in the head during an armed robbery committed inside the latter's own passenger van for hire on the night of May 23, 2007. The charge against Peralta and Ambas stemmed from the following Information:

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[1] CA *rollo*, pp. 176-199; penned by Associate Justice Franchito N. Diamante and concurred in by Associate Justices Celia C. Librea-Leagogo and Melchor Q. C. Sadang.

[2] Records, pp. 349-365, penned by Presiding Judge Henri Jean Paul B. Inting.

That on or about 23rd day of May, 2007 in Quezon City, Philippines, the said accused, conspiring and confederating with three (3) other persons whose true names, identities and whereabouts have not as yet been ascertained and mutually helping one another, armed with firearms, with intent to gain and by means of force, violence against and intimidation of persons, did then and there willfully, unlawfully, and feloniously rob Supt. Joven Bocalbos y Canas and Norberto Olitan Jr. y Espajos, in the following manner, to wit: while complainant Supt. Joven Bocalbos *y* Canas was driving his vehicle a Nissan Urban Van with plate No. XED-744 loaded with passengers cruising along Commonwealth Avenue, and at Doña Carmen Subdivision, Fairview, this City, the said accused who posed themselves as passengers of the said van, at gun point announced a holdup and thereafter rob, steal and carry away the following personal belongings, to wit:

Norberto Olitan's Cellphone a Nokia 6610i worth ₱12,000.00,
Silver ring worth ₱1,500.00
Shades worth ₱100.00 and
Cash money amounting to ₱600.00 and
Supt. Joven Bocalbos' .45 Caliber pistol
Nokia 6600 Cellphone
Some cash money of undetermined amount

That on the occasion or by reason of the offense of robbery and for the purpose of enabling the said accused to take, steal and carry away the aforesaid properties, the said accused with intent to kill, taking advantage of their superior strength attack, assault and employ personal violence upon SUPT. JOVEN BOCALBOS *y* CANAS, driver of the said van, by then and there shooting him on the head, thereby inflicting upon him mortal gunshot wound which was the direct and immediate cause of his death thereafter. To the damage and prejudice of NORBERTO OLITAN and the heirs of Supt. Joven Bocalbos.

CONTRARY TO LAW.[3]

Both Peralta and Ambas pleaded not guilty to the crime charged during their arraignment. At the pre-trial conference, the prosecution and the defense did not enter into any stipulation of facts or admissions.

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[3] Records, pp. 1-3.

Version of the Prosecution

The prosecution presented the following witnesses: Ma. Christina Bocalbos, the widow of the victim Bocalbos; Norberto Olitan, Jr. (Olitan), an eyewitness to the crime and a passenger in Bocalbos' van; and SPO3 Reynaldo Reyes (SPO3 Reyes), a police officer assigned at the Criminal Investigation and Detection Unit (CIDU), Camp Karingal, Quezon City. Their collective testimonies tended to establish these facts:

On May 23, 2007, at around 8:30 p.m., Bocalbos, the Deputy Chief of the Makati Police District, was driving his Nissan Urvan and transporting passengers as a means of earning extra income. While the van was cruising along Commonwealth Avenue, Quezon City, one of the passengers suddenly announced, "*Hold-up walang kikilos nang masama!*"[4] Consequently, Bocalbos stopped the van near the Fairview Market along the Doña Carmen Subdivision, Quezon City. An armed passenger then ordered him to vacate the driver's seat and move to the rear portion of the van. Another passenger, who was later identified as the appellant Peralta, took over the steering wheel and drove the van through a U-turn slot. After executing a U-turn, Peralta, using a firearm, shot Bocalbos in the head. Peralta's cohorts then took the valuables of the passengers. One of them, afterwards identified as the accused Ambas, took Olitan's cellphone, silver ring, sunglasses, and cash money.

After divesting the passengers of their valuables, the assailants debated about where the van should be taken. One of the robbers then asked the passengers who among them knew how to drive a vehicle. Out of fear, Olitan answered in the affirmative. He then drove the van to Shaw Boulevard at Mandaluyong City where the assailants alighted. Thereafter, Olitan brought Bocalbos to the M-tech Medical Center, but it was too late as the latter was declared dead on arrival due to the gunshot wound he suffered.

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[4] TSN, February 26, 2008, p. 10.

The following day, or on May 24, 2007, Dr. Filemon Porciuncula, a medico-legal officer assigned at the Central Police District Crime Laboratory in Quezon City, conducted an autopsy on Bocalbos' body. The autopsy showed that the cause of death of the victim was the gunshot wound in the head.

The CIDU of Camp Karingal, Quezon City conducted an investigation into the case. SPO3 Reyes of that unit was tasked to conduct a follow-up operation to identify the suspects in the killing of Bocalbos. SPO3 Reyes' team then summoned assets and informants from *Sitio* San Roque, *Barangay* Pag-asa, Quezon City. The informants were shown two cartographic sketches based on the description provided by Olitan. One of the assets recognized the suspects in the sketch as Peralta and Ambas. SPO3 Reyes and his team then proceeded to *Barangay* Pag-asa in Quezon City, where they found a person who matched the cartographic sketch. This person was then invited to the police station for further investigation.

Olitan and Edwin Camatoy (Camatoy), the van conductor, were invited to the police station to identify the suspects in a police line-up. Olitan recognized two persons in the line-up who were identified as the assailants, Peralta and Ambas. Camatoy, on the other hand, was able to identify Peralta as one of the perpetrators of the crime.

Version of the Defense

The defense presented Ernesto Reyes (Reyes), Ambas's co-worker at the Gerson Taxi Company, as well as Peralta and Ambas.

Reyes testified that he was employed as a stay-in air-conditioner technician at the Gerson Taxi Company where he had been working for over 20 years; that on May 23, 2007, at around 7:30 p.m., Ambas reported for work as a taxi driver at the Gerson's taxi compound; that he (Reyes) for his part promptly left the garage soon afterward to begin his duty; that at around 9:00 p.m., he (Reyes) saw Ambas return to the compound due to a defective air-conditioning unit in his taxi cab; that he (Reyes)

fixed the air-conditioning unit for about 15 to 20 minutes; and that thereafter, Ambas drove out of the compound again.

Ambas denied the charges against him. He claimed that on May 23, 2007, at around 7:45 p.m., he drove his taxi cab, as evidenced by a garage dispatch record; that after driving a passenger to his destination, he went to a gas station to fill up his taxi cab's LPG tank; that he then went back to the company garage to have his air-conditioning unit checked and repaired; and that he thereafter drove his taxi the whole night until the following morning at around 6:00 to 7:00 a.m.

Moreover, Ambas averred that the next day, he went to Dan Fortaleza's (Fortaleza) house at Agham, San Roque, Quezon City so that the latter could accompany him to redeem his confiscated driver's license; that he arrived at Fortaleza's house at around 10:15 a.m.; that while having lunch there, several police officers came and started searching Fortaleza's house; and that he was then arrested and brought to Camp Karingal, Quezon City for investigation.

Peralta also denied any participation in the killing of Bocalbos nor in the robbing of the passengers of the latter's van. He claimed that on the night of May 23, 2007, he was in the house of his second wife at *Barangay* Silangan in Quezon City; that the following morning, he went to Balintawak market in Caloocan City to buy fruits for his business; and that he returned to his house soon thereafter.

Peralta claimed that on May 24, 2007, while buying food in a store, he was arrested by police officers and brought to Camp Karingal, Quezon City along with another store customer.

Ruling of the Regional Trial Court

On December 20, 2010 the RTC of Quezon City, Branch 95 rendered its Decision[5] finding Peralta and Ambas guilty beyond reasonable doubt of the crime of Robbery with Homicide and

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[5] Records, pp. 349-365.

accordingly sentenced them to suffer the penalty of imprisonment of *reclusion perpetua*.

The dispositive part of the RTC's Decision reads:

> WHEREFORE, the Court finds the accused BERNARDINO PERALTA *y* MORILLO and MICHAEL AMBAS *y* REYES 'GUILTY' beyond reasonable doubt of the crime of Robbery with Homicide defined and punished in Article 294, paragraph 1 of the Revised Penal Code, and hereby sentences each one of them to suffer the penalty of RECLUSION PERPETUA; and to pay jointly and severally, the heirs of the deceased Joven Bocalbos *y* Canas x x x the sum of Php50,000.00 as civil indemnity; and the further sums of Php79,000.00 as burial expenses, Php50,000.00 as moral damages, Php5,052,180.00 as unearned income and to pay the costs; and finally to pay private complainant Norberto Olitan the amount of Php3,000.00 as temperate damages in lieu of the actual damages.
>
> IT IS SO ORDERED.[6]

Ruling of the Court of Appeals

On November 28, 2012, the CA affirmed the Decision of the RTC. Rejecting Peralta's and Ambas's bare alibis and denials, the CA found that Olitan, a passenger in the ill-fated van then driven by Bocalbos, had sufficiently established the identities of the malefactors. The CA noted that Olitan was able to see the faces of the malefactors inside the passenger van. The CA held that Olitan's physical proximity to the malefactors at the time of the robbery-killing allowed him to have a good look at their faces; and that there was no showing that he had ill motive or bias against both malefactors. As such, it held that Olitan's testimony is entitled to full faith and credit.

On the other hand, the CA gave short shrift to the two accused's denials and alibis. The CA held that their mere disavowals cannot prevail over the positive testimony of the prosecution witness Olitan who identified both accused as culprits. The CA stressed that it was not physically impossible at all for

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[6] *Id.* at 365.

Peralta and for Ambas to be at the crime scene during or at the time the crime was committed. Thus, the CA disposed of the case in the following manner:

> WHEREFORE, the instant appeal is DENIED. The Decision dated December 20, 2010 of the Regional Trial Court, Branch 95 Quezon City, in Criminal Case No. Q-07-147414 is AFFIRMED.
>
> SO ORDERED.[7]

Ambas opted not to appeal his judgment of conviction. Accordingly, an Entry of Judgment was made of that fact by the CA.[8]

Assignment of Errors

Before us, the Office of the Solicitor General and the appellant, Peralta manifested that they would adopt the pleadings filed in the CA in lieu of supplemental briefs.

In his Appellant's Brief,[9] Peralta contends that the CA gravely erred in convicting him of the crime of Robbery with Homicide despite the prosecution's failure to prove his guilt beyond reasonable doubt; that under the totality of circumstances test, the following factors should be considered in resolving the admissibility of the suspects' identification: (1) the witness' opportunity to view the criminal at the time of the crime; (2) the witness' degree of attention at that time; (3) the accuracy of any prior description given by the witness; (4) the level of certainty demonstrated by the witness at the identification; (5) the length of time between the crime and the identification; and (6) the suggestiveness of the identification procedure.[10]

According to Peralta, the prosecution failed to conclusively establish the identity of the assailants in this case. He argues

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[7] CA *rollo*, p. 198.

[8] *Id.* at 218.

[9] *Id.* at 99-116.

[10] *Id.* at 105 citing *People v. Pineda*, 473 Phil. 517, 539-540 (2004).

that since the robbery was staged at around 8:00 p.m. with the lights inside the van turned off, Olitan had a very limited opportunity to view or perceive what was happening inside the van; and hence, Olitan's testimony identifying the two accused as the perpetrators of the crime cannot support a judgment of conviction.

Our Ruling

After a careful review of the records of the case, we affirm the ruling of both the RTC and the CA finding appellant Peralta guilty beyond reasonable doubt of the crime of Robbery with Homicide.

The crime of Robbery with Homicide is defined and penalized under Article 294 of the RPC, which provides:

> 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; or when the robbery shall have been accompanied by rape or intentional mutilation or arson.
>
> x x x x x x x x x

In *People v. Barra*,[11] this Court enumerated the elements that the prosecution needs to prove in order to convict an accused of the crime of Robbery with Homicide, to wit:

1. The taking of personal property is committed with violence or intimidation against persons;
2. The property taken belongs to another;
3. The taking is with *animo lucrandi*; and
4. By reason of the robbery or on the occasion thereof, homicide is committed.

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[11] G.R. No. 198020, July 10, 2013, 701 SCRA 99, 106-107, citing *People v. Quemeggen*, 611 Phil. 487 (2009).

In this case, all the above-mentioned elements had been sufficiently proven by the prosecution. The taking of Olitan's property was committed with violence and intimidation. This taking happened after Peralta and Ambas announced a hold-up in order to rob the passengers of the van of their valuables. Olitan had no choice but to hand over his cellphone, silver ring, sunglasses, and cash money to Ambas who was pointing a gun at him. And undoubtedly, homicide was also committed when Bocalbos was shot in the head on the occasion of that robbery.

We thus fully agree with the RTC that all the elements of the crime of robbery with homicide had been duly established, *viz*.:

> x x x [T]he prosecution ably established the identit[ies] of two (2) of the perpetrators through prosecution witness Norberto Olitan. Witness Norberto Olitan identified one Michael Ambas (herein accused) as the person who was beside him inside the van and took his belongings; and one Bernardino Peralta (herein accused) as the person who took control of the van from the driver, victim Joven Bocalbos and drove it; and the person/driver of the van whom he replaced in driving the van at Shaw Boulevard.
>
> From the above discussion, there is no doubt that the crime of Robbery with Homicide was indeed committed by the accused. It can be conclusively drawn from the actions of the accused that their main intention was to rob the [van's] driver and his passengers, and that on the occasion of the robbery, a homicide was committed.[12]

Nonetheless in their appeal before the CA, the two accused challenged the testimony of Olitan. Both insisted that since the lights inside the van were turned off during the execution of the crime it was impossible for Olitan to see the faces of the malefactors and identify them with certainty. Moreover, since Olitan was leaning on the van's headrest and was not allowed to move his head, he was not in a position to see the faces of the malefactors.[13]

These arguments are clearly untenable.

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[12] Records, p. 362.

[13] CA *rollo*, p. 106.

We can find no fault with the CA's appreciation of the evidence that despite the fact that the lights inside the van were turned off, the street lights and the lights coming from passing vehicles were adequate to provide illumination for purposes of recognition and identification.[14] But even with the lights turned off, this does not mean however that in this case it was pitch black inside the van. Passengers with normal eyesight inside a motor vehicle can still see the face of the person seated near or next to him/her.

In this case, it was indubitably established that Olitan was very near Ambas when the latter took the former's personal effects. Olitan had also a person-to-person encounter with Peralta when he was asked to drive the van along Shaw Boulevard. This person-to-person encounter between Olitan and the two malefactors afforded the former the distinct opportunity to recognize and identify these malefactors. This Court has previously held that:

> x x x It is the most natural reaction for victims of criminal violence to strive to see the looks and faces of their assailants and observe the manner in which the crime was committed. Most often the face of the assailant and body movements thereof, create a lasting impression which cannot be easily erased from their memory.[15]

Against the prosecution's solid and unassailable position, all that the two accused could come up with is the defense of alibi and denial. Peralta claimed that he could not have committed the crime imputed against him because at the time the crime was committed, he was allegedly at the house of his second wife.[16] Ambas, on the other hand, claimed that he was on duty driving his taxi cab at the time the crime was committed.

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[14] *Id.* at 188.

[15] *People v. Dolar*, G.R. No. 100805, March 24, 1994, 231 SCRA 414, 423, citing *People v. Sartagoda*, G.R. No. 97525, April 7, 1993, 221 SCRA 251, 257.

[16] TSN, April 20, 2010, pp. 13-14.

It is settled that "[f]or alibi to prosper, it is not enough for the defendant to prove that he was somewhere else when the crime was committed; he must likewise demonstrate that it is physically impossible for him to be at the scene of the crime at the time."[17] If there is the least possibility of his presence at the *locus criminis*, the defense of alibi will not prosper. And with respect to mere denial as a defense, the rule is that this plea cannot prevail over the positive testimony of an eyewitness to the crime. Here, Olitan positively identified Peralta and his co-accused Ambas as the authors of the Robbery with Homicide.

All told, we find that both the RTC and the CA correctly convicted appellant of the crime of Robbery with Homicide. Anent the awards as civil indemnity and damages, we rule that certain modifications are in order, however. This Court finds that the awards of civil indemnity and moral damages in favor of Bocalbos' heirs should be increased from Php50,000.00 to Php75,000.00 to conform with prevailing jurisprudence.[18] In addition, exemplary damages in the amount of Php75,000.00 is awarded. Finally, interest at the rate of 6% *per annum* on all damages awarded is imposed from the date of finality of this Decision until fully paid.

This Court sustains the award of actual damages in the amount of Php79,000.00, which represents actual expenses incurred for the burial of the victim. Also in order was the award of damages for loss of earning capacity in the amount of Php5,052,180.00 vis-à-vis its computation by the RTC. Likewise proper is the RTC's award of temperate damages in the amount of Php3,000.00 to Olitan, as no receipts were presented during trial to prove the actual costs of the items taken from him. Under Article 2224 of the Civil Code, temperate damages may be recovered when the court finds that some pecuniary loss had been suffered but its amount cannot, from the nature of

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[17] *People v. Madeo*, 617 Phil. 638, 660 (2009).

[18] *People v. Balute*, G.R. No. 212932, January 21, 2015; *People v. Jugueta*, G.R. No. 202124, April 5, 2016.

the case, be proved with certainty. We chose not to interfere with the RTC's exercise of its discretion on this matter.

WHEREFORE, the appeal is **DISMISSED**. The November 28, 2012 Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 05031 affirming the December 20, 2010 Decision of the Regional Trial Court of Quezon City, Branch 95 in Criminal Case No. Q-07-147414 finding appellant Bernardino Peralta *y* Morillo and his co-accused Michael Ambas *y* Reyes guilty beyond reasonable doubt of the special complex crime of Robbery with Homicide and sentencing them to suffer the penalty of *reclusion perpetua* is **AFFIRMED with MODIFICATIONS** that the awards of civil indemnity and moral damages are increased to Php75,000.00 each. In addition, exemplary damages in the amount of Php75,000.00 is awarded to the heirs of Joven Bocalbos *y* Canas.

All monetary awards shall earn interest at the rate of six percent (6%) *per annum* from the date of finality of this Decision until fully pa*id.*

SO ORDERED.

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

Brion, J., on official leave.

SECOND DIVISION

[G.R. No. 211290. June 1, 2016]

OMBUDSMAN-MINDANAO, *petitioner, vs.* **LILING LANTO IBRAHIM, Project Manager, National Irrigation Administration, NIA-PIO, Lanao del Norte,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; FINDINGS OF FACT OF ADMINISTRATIVE AGENCY; FACTUAL FINDINGS OF THE OFFICE OF THE OMBUDSMAN ARE GENERALLY ACCORDED WITH GREAT WEIGHT AND RESPECT, IF NOT FINALITY BY THE COURT, DUE TO ITS SPECIAL KNOWLEDGE AND EXPERTISE ON MATTERS WITHIN ITS JURISDICTION; EXCEPTION.— The general rule is that the findings of fact of the Office of the Ombudsman are conclusive when supported by substantial evidence. The factual findings of the Office of the Ombudsman are generally accorded with great weight and respect, if not finality by the courts, due to its special knowledge and expertise on matters within its jurisdiction. However, the Court of Appeals may resolve factual issues, review and re-evaluate the evidence on record, and reverse the findings of the administrative agency if not supported by substantial evidence.

2. ID.; ACTIONS; NEW TRIAL; NEWLY DISCOVERED EVIDENCE, AS A GROUND THEREFOR; REQUISITES.— To be considered a newly discovered evidence under the Rules of Court, the following requisites must be present: (a) the evidence was discovered after trial; (b) such evidence could not have been discovered and produced at the trial with reasonable diligence; and (c) it is material, not merely cumulative, corroborative or impeaching, and is of such weight that, if admitted, will probably change the judgment.

3. ID.; EVIDENCE; WEIGHT AND SUFFICIENCY; IN ADMINISTRATIVE CASES, THE QUANTUM OF EVIDENCE NECESSARY TO FIND AN INDIVIDUAL ADMINISTRATIVELY LIABLE IS SUBSTANTIAL EVIDENCE.— In administrative cases, the quantum of evidence necessary to find an individual administratively liable is substantial evidence. Section 5, Rule 133 of the Rules of Court defines substantial evidence as that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.

APPEARANCES OF COUNSEL

Office of the Solicitor General for petitioner.
Benjamin B. Lanto and *Makabangkit B. Lanto* for respondent.
Oro Legis Lawyers And Notaries co-counsel for respondent.

D E C I S I O N

CARPIO, *J.*:

The Case

Before the Court is a petition for review on certiorari [1] assailing the 29 January 2013 Decision[2] and the 28 January 2014 Resolution[3] of the Court of Appeals Cagayan de Oro City in CA-G.R. SP No. 04242-MIN. The Court of Appeals set aside the 6 February 2007 Decision[4] which found respondent Liling Lanto Ibrahim (Ibrahim) guilty of dishonesty and grave misconduct and the 11 May 2011 Order[5] denying Ibrahim's motion for reconsideration, both issued by the Office of the Ombudsman-Mindanao (OMB-Mindanao) in Case No. OMB-M-A-06-131-D.

The Antecedent Facts

On 23 January 2003, Arobi Bansao (Bansao), President of Mapantao Irrigators Association, Inc. of Lumba-Bayabao, Lanao del Sur filed a complaint before the OMB-Mindanao against

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[1] Under Rule 45 of the Revised Rules of Court.

[2] *Rollo*, pp. 84-110. Penned by Associate Justice Edgardo A. Camello and concurred in by Associate Justices Renato C. Francisco and Oscar V. Badelles.

[3] *Id.* at 112-117.

[4] *Id.* at 133-151.

[5] *Id.* at 168-173.

Engr. Johnny V. Emmanuel (Emmanuel), Regional Irrigation Manager of the National Irrigation Administration (NIA), Region X, Cagayan de Oro City, Bernardo S. Mercado (Mercado), OIC of the Engineering Division of the same office, and Ibrahim, Provincial Irrigation Officer (PIO) of NIA, Basak, Marawi City. Bansao alleged that on 21 August 2002, the El Niño Fund CY 2002 was granted for the Municipality of Lumba-Bayabao, First District, Lanao del Sur under Advice of Allotment No. (2002) 61768-102(8). Bansao further alleged that Emmanuel, Mercado, and Ibrahim realigned the amount of ₱2,946,422.40 intended for Mapantao CIS, Lanao del Sur to Balabagan CIS, Lanao del Sur. The realignment was not approved by the NIA Deputy Administrator. Bansao also alleged that the realignment was a ruse to conceal Ibrahim's withdrawal of the El Niño funds from the Land Bank of the Philippines, Marawi City Branch, and his misappropriation of the money for his personal use.

Pursuant to the 1st Indorsement dated 16 April 2003 of the Office of the Ombudsman and Commission on Audit (COA) Regional Legal and Adjudication Office Order No. 2003-13 dated 29 September 2003, COA Auditors Ramises D. Sumail and Pompong M. Bonsalagan (referred to in this case as the audit team) conducted an investigation and required Cashier C. Maruhumbsar S. Somulung, Accounting Processor Hamim B. Ditucalan (Ditucalan), Ibrahim, and Emmanuel to submit their comments and copies of documents and vouchers relative to the complaint.

The audit team reported that the amount of ₱1,662,920 was appropriated for Balabagan CIS project for the year 2003 under ASA No. (2003)0103-101(4). As of 31 December 2003, the amount obligated was ₱42,530,[6] with a balance of ₱1,620,389.14. However, the audit team discovered that there was another appropriation for the Balabagan CIS project for the year 2002 under ASA No. (2002)60963-101 in the amount of ₱217,827.70 which was fully obligated as of 31 December 2003.

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[6] ₱42,530.86 in the Decision of the Court of Appeals.

On 14 September 2004, the audit team requested Ibrahim to submit additional documents pertaining to the Balabagan CIS project. They found that the disbursement vouchers only amounted to ₱1,200,915.31 which fell short of the realigned budget of ₱2,496,422.40 under Advice of Sub Allotment (ASA No. 2002-61768-102) with the difference of ₱1,295,507.09. The audit team also found that under the Audit Financial Statement that was submitted, there was no entry on Fund 102, indicating that the fund was already used up for the year. However, in the Cash in Bank Analysis, there was a remaining amount of ₱1,811.53 for Fund 102 as of 31 December 2003. The audit team reported that there was no proof that the realignment was approved by the Deputy Administrator or officials from the NIA Central Office.

On 9 May 2006, the Office of the OMB-Mindanao required Ibrahim to answer the complaint. In his Counter-Affidavit, Ibrahim admitted that the funds for Mapantao CIS project were realigned to Balabagan CIS project. He stated that all NIA PIOs were required to submit a listing of CIS for the allocation of the El Niño project. On 5 July 2002, he submitted a final listing for Lanao del Sur. On 21 August 2002, an Advice of Allotment on the approved listing was sent to the Office of the PIO, Lanao del Sur. On 26 August 2002, the PIO of Lanao del Sur requested for realignment of funds from Mapantao CIS to Balabagan CIS in the amount of ₱3,000,000 and from Mapantao Lubo CIS to Rugnan CIS for ₱1,000,000. NIA officials approved the alignment on 28 August 2002. Ibrahim denied that he misappropriated the funds for Mapantao CIS for his personal use. He also alleged that the copy of the alleged request for realignment that was not approved by the NIA Deputy Administrator and which was included as Annex "B" of the complaint was not an official document. Ibrahim alleged that it was only a draft that was not actually submitted to the Central Office for Approval because the NIA Regional Manager of Region 10 realized that the amount to be realigned was within his authority to act on. He added that the realignment from Mapantao CIS to Balabagan CIS was done with the consent of the Mapantao Irrigator's Association, Inc.

Ibrahim also explained that there was no illegal double appropriation because the Balabagan CIS was a multi-million ongoing and continuing rehabilitation of the irrigation system covering four barangays, namely Barangays Bengabing, Salaman, Matimos and Bakikis, with a distance of 2.46 kilometers of its main canal and 3.71 kilometers of lateral canals. He added that the communal system had a prioritized yearly appropriated budget for repair and rehabilitation with specific program of works by NIA. He also explained that the CIS had a prioritized yearly appropriated budget and as such, it could happen that another budget such as the El Niño and the Balikatan Sagip Patubig Programs (BSPP) funds would be used simultaneously with the CIS. He stated that the rehabilitation and completion fund appropriated yearly to Balabagan CIS was different from the El Niño and BSPP appropriations that were simultaneously implemented that year. Ibrahim also explained that the delay in the submission of documents to the State Auditors was due to the three successive replacements of the accountants in the Office of the PIO of Lanao del Sur.

Ibrahim also stated that there was no irregularity in the appropriation for a new budget for the Mapantao CIS. He explained that the two appropriations were different and distinct appropriations for different projects that covered two different years. According to him, the appropriation for 2003 to Balabagan CIS for ₱1,662,920 with ASA No. (2003)0103-101(4) was an appropriation for the BSPP for 2003. The amount of ₱217,827.70 with ASA No. (2002) 60963-101, which was obligated in full as of 31 December 2002, was the BSPP appropriation for 2002. He added that it was the actual balance during audit as of April 2003. He denied that there was a difference between the realigned amount of ₱2,946,422.40 and the disbursed El Niño fund of ₱1,200,915.31. He explained that the vouchers audited by the audit team were only the ones partly prepared by Ditucalan, former Senior Accountant Processor of the PIO Lanao del Sur and they only covered disbursements from 30 August 2002 to 30 September 2002. The audit team failed to include several disbursements during the time of Ditucalan, Accountant Solaiman Saripada (Saripada), and Senior Accounting Processor Maamon Mindalano (Mindalano), totalling

₱1,098,323.33. Ibrahim also stated that the audit team failed to conduct an exit conference with the Office of the NIA PIO, Lanao del Sur.

The audit team maintained that Ibrahim was guilty of violation of Article 217 of the Revised Penal Code and that the conduct of the exit conference is within its discretion. It added that Ibrahim was negligent for not responding to their demand letters.

The Decision of the OMB-Mindanao

In its Decision dated 6 February 2007, the OMB-Mindanao found nothing unlawful in the realignment of the El Niño funds from Mapantao CIS project to Balabagan CIS project. The OMB-Mindanao found that on 1 July 2002, the NIA PIOs were required to submit a list of CIS for the allocation for the El Niño project. Ibrahim submitted a final listing of CIS for Lanao del Sur on 5 July 2002. The listing was approved and an Advice of Allotment on the approved listing was sent to the Office of the PIO, Lanao del Sur, on 21 August 2002. On 26 August 2002, the PIO, Lanao del Sur, requested for the realignment of fund from Mapantao CIS to Balabagan CIS for ₱3,000,000 and from Mapantao CIS to Rugnan CIS for ₱1,000,000. The OMB-Mindanao found that the listing for realignment was approved on 28 August 2002. The OMB-Mindanao also found that the Balabagan Communal Irrigation Project for which the fund was used was a legitimate beneficiary and it was the reason why Fund 102 was established. The OMB-Mindanao also found that during the clarificatory hearing, it was disclosed that the approval of the Deputy Administrator of the NIA was not necessary for the approval of the realignment of funds from Mapantao CIS project to Balabagan Communal Irrigation Project. The only requirement was to inform the NIA Central Management of the realignment. The responsibility to implement the project was with the NIA-Regional Office. The OMB-Mindanao found that in this case, the NIA Central Management was informed of the realignment. It also found that there was no unlawful realignment of funds for Balabagan Communal Irrigation Project because the expenditure was based on the Final List of Project Allocation as per the instruction of the NIA Central Management.

However, the OMB-Mindanao found Ibrahim liable for a shortage of ₱1,295,507.09. The OMB-Mindanao rejected Ibrahim's allegation that the audit team failed to include several disbursements made during the time of Ditucalan, Saripada, and Mindalano. It noted that some of the documents did not conform to the Program of Work as they included clothing allowance, GSIS remittances, and hazard pay. In addition, there was no entry on Fund 102 for 2002 but payments were made to Datu Sucor Baluno for the Takay Contracts from March to October 2004. The OMB-Mindanao also noted that the official receipt for ₱199,986.78 given by the Balabagan Communal Irrigators Association, Inc. (Balabagan Irrigators Association) was dated 25 January 2004 but the obligation or disbursement voucher was made on 25 March 2004. The OMB-Mindanao held that Ibrahim failed to explain the shortage of ₱1,295,507.09 which was the actual damage defrauded from the government. It ruled that Ibrahim failed in his duty as the officer-in-charge of the project and that he acted with dishonesty and grave misconduct.

The dispositive portion of the OMB-Mindanao's Decision reads:

> WHEREFORE, premises considered, this Office finds substantial evidence to hold respondent LILING LANTO IBRAHIM liable for Dishonesty and Grave Misconduct and is hereby meted the penalty of DISMISSAL FROM THE SERVICE under Section 10, Rule III of Administrative Order No. 07 as amended by Administrative Order No. 17 of the Office of the Ombudsman in relation to Section 46(b)(1) and (4) of Chapter 7 of the Revised Administrative Code of 1987 of the Civil Service Commission.
>
> The Honorable Johnny V. Emmanuel, Regional Manager of National Irrigation Administration (NIA), Region X, Cagayan de Oro City, is hereby directed to implement the Decision within ten (10) days upon receipt hereof.
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> SO DECIDED.[7]

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[7] *Rollo,* pp. 150-151.

Ibrahim filed a motion for reconsideration. In its Order dated 11 May 2011, the OMB-Mindanao denied the motion.

Ibrahim filed a petition for review before the Court of Appeals, Cagayan de Oro City assailing the OMB-Mindanao's Decision of 6 February 2007 and Order of 11 May 2011.

The Decision of the Court of Appeals

Ibrahim alleged in his petition that the OMB-Mindanao failed to consider the Summary of Obligations, a newly-discovered evidence that would prove that there was no shortage of funds and that the government was not defrauded or did not suffer any damage. The OMB-Mindanao countered that the Summary of Obligations was hardly a newly-discovered evidence as it was already raised in Ibrahim's counter-affidavit but he only submitted it as an annex to his motion for reconsideration.

In its 29 January 2013 Decision, the Court of Appeals reversed the 6 February 2007 Decision and 11 May 2011 Order of the OMB-Mindanao and dismissed the case against Ibrahim.

The Court of Appeals ruled that the Summary of Obligations was actually new on the records because while it was mentioned in Ibrahim's counter-affidavit, it was only attached to Ibrahim's motion for reconsideration. The Court of Appeals observed that the OMB-Mindanao did not consider the Summary of Obligations in resolving Ibrahim's motion for reconsideration. The Court of Appeals also noted that the complaint against Ibrahim was for unlawful realignment of funds. The Court of Appeals stated that in its 6 February 2007 Decision, the OMB-Mindanao ruled that there was no unlawful realignment of the El Niño funds from Mapantao CIS to Balabagan CIS but found Ibrahim liable for the shortage of ₱1,295,507.09 based on the report of the audit team. The Court of Appeals found that the aggregate amount of the transactions not included in the computation of the audit team covered the alleged shortage of ₱1,295,507.09. The Court of Appeals concluded that there was no shortage of funds and that the El Niño funds had been accounted for. The Court of Appeals ruled that the OMB-

Mindanao disregarded Ibrahim's evidence that refuted the findings of the audit team.

The dispositive portion of the Decision reads:

> FOR THESE REASONS, the petition is GRANTED. The Decision dated [06] February 2007 and Order dated 11 May 2011 of the Office of the Ombudsman-Mindanao are REVERSED and SET ASIDE. The case against petitioner, Case No. OMB-M-A-06-131-D, is DISMISSED.
>
> SO ORDERED.[8]

Ibrahim filed a Motion for Execution (During the Period of Appeal) while the OMB-Mindanao filed a Motion for Reconsideration on the ground that its findings, when supported by substantial evidence, are conclusive. In its 28 January 2014 Resolution, the Court of Appeals granted Ibrahim's motion for execution and denied the OMB-Mindanao's motion for reconsideration. The dispositive portion of the Resolution reads:

> Accordingly, the motion for reconsideration is DENIED.
>
> The Division Clerk of Court is directed to make an Entry of Judgment in due course.
>
> The Regional Director of the National Irrigation Administration, Region X, Cagayan de Oro City is ORDERED to effect the reinstatement of petitioner Liling Lanto Ibrahim to his previous post without loss of seniority rights, or to equivalent post should his previous post ha[d] already been filled up, and with corresponding payment of back wages.
>
> SO ORDERED.[9]

The OMB-Mindanao filed the present petition before this Court on the following grounds:

(1) The Court of Appeals erred in directing the Division Clerk of Court to make an Entry of Judgment in this case;

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[8] *Id.* at 110.

[9] *Id.* at 116-117.

(2) The Court of Appeals erred in reviewing the factual findings of [OMB-Mindanao];

(3) [The OMB-Mindanao] considered the totality of the evidence submitted by [Ibrahim] and the COA Auditors in resolving the administrative charges of dishonesty and grave misconduct against [Ibrahim] and in [imposing] upon him the penalty of dismissal from the service; and

(4) The Court of Appeals erred in considering the annexes to [Ibrahim]'s Motion for Reconsideration as newly-discovered evidence.[10]

The Issues

We resolve the following issues:

(1) Whether the Court of Appeals committed a reversible error in ordering the Clerk of Court to make an entry of judgment;

(2) Whether the annexes that Ibrahim attached to his Motion for Reconsideration before the OMB-Mindanao are newly-discovered evidence; and

(3) Whether the Court of Appeals committed a reversible error in dismissing the administrative case against Ibrahim.

The Ruling of this Court

We grant the petition in part.

Execution of the Decision Pending Appeal

In granting Ibrahim's motion for execution pending appeal, the Court of Appeals cited Section 7, Rule III of the Rules of Procedure of the Office of the Ombudsman (OMB Rules of Procedure) which states:

Section 7. Finality and execution of decision. — Where the respondent is absolved of the charge, and in case of conviction where the penalty imposed is public censure or reprimand, suspension of

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

not more than one month, or a fine equivalent to one month salary, the decision shall be final, executory and unappealable. In all other cases, the decision may be appealed to the Court of Appeals on a verified petition for review under the requirements and conditions set forth in Rule 43 of the Rules of Court, within fifteen (15) days from receipt of the written Notice of the Decision or Order denying the Motion for Reconsideration.

An appeal shall not stop the decision from being executory. In case the penalty is suspension or removal and the respondent wins such appeal, he shall be considered as having been under preventive suspension and shall be paid the salary and such other emoluments that he did not receive by reason of the suspension or removal.

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.

In its Manifestation in Lieu of Comment filed before the Court of Appeals, the Office of the Solicitor General (OSG), representing the OMB-Mindanao and the audit team, cited the same provision of the OMB Rules of Procedure, particularly that an appeal shall not stop the decision from being executory. Thus, while the OSG manifested that it was not abandoning its motion for reconsideration before the Court of Appeals or any appropriate action that may be taken after the resolution of the pending motions, it did not oppose Ibrahim's motion for execution pending appeal.

We agree that the Court of Appeals is not precluded from acting on the motion for execution pending appeal filed by Ibrahim. However, the Court of Appeals committed a reversible error in directing the Clerk of Court to make an entry of judgment. Sections 1 and 5, Rule VII of the Internal Rules of the Court of Appeals (RIRCA) provide:

Section 1. *Entry of Judgment*. — Unless a motion for reconsideration or new trial is filed or an appeal taken to the Supreme Court, judgments and final resolutions of the Court shall be entered upon expiration of fifteen (15) days from notice to the parties.

(a) With respect to the criminal aspect, entry of judgment in criminal cases shall be made immediately when the accused is acquitted or his/her withdrawal of appeal is granted. However, if the motion withdrawing an appeal is signed by the appellant only, the Court shall first take steps to ensure that the motion is made voluntarily, intelligently and knowingly or may require his/her counsel to comment thereon.

When there are several accused in a case, some of whom appealed and others did not, entry of judgment shall be made only as to those who did not appeal. The same rule shall apply where there are several accused in a case, some of whom withdrew their appeal and others did not.

(b) Entry of judgment in civil cases shall be made immediately when an appeal is withdrawn or when a decision based on a compromise agreement is rendered.

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Section 5. *Entry of Judgment and Final Resolution.* — If no appeal or motion for new trial or reconsideration is filed within the time provided in these Rules, the judgment or final resolution shall forthwith be entered by the clerk in the book of entries of judgments. The date when the judgment or final resolution becomes executory shall be deemed as the date of its entry. The record shall contain the dispositive part of the judgment or final resolution and shall be signed by the clerk, with a certificate that such judgment or final resolution has become final and executory.

The decision of the Court of Appeals is not yet final and its reversal of the decision of the OMB-Mindanao is still subject to review by this Court upon filing of a petition for review on certiorari under Rule 45. Following the RIRCA, entry of judgment should only be made when no appeal or motion for reconsideration has been timely filed. In this case, the OMB-Mindanao timely filed the present petition before this Court,

making the entry of judgment premature. Hence, the Court of Appeals committed a reversible error in ordering the Clerk of Court to make an entry of judgment pending the final disposition of the case.

Review of the Decision of the Ombudsman

The OMB-Mindanao asserts that the Court of Appeals erred in reviewing its factual findings. We do not agree.

The general rule is that the findings of fact of the Office of the Ombudsman are conclusive when supported by substantial evidence.[11] The factual findings of the Office of the Ombudsman are generally accorded with great weight and respect, if not finality by the courts, due to its special knowledge and expertise on matters within its jurisdiction.[12] However, the Court of Appeals may resolve factual issues, review and re-evaluate the evidence on record, and reverse the findings of the administrative agency if not supported by substantial evidence.

Here, the Court of Appeals noted that Ibrahim was charged with unlawfully realigning funds from the Mapantao CIS project to the Balabagan CIS project. It further noted that the OMB-Mindanao found that there was nothing unlawful in the realignment of funds and he was penalized for the alleged shortage of funds. Hence, the Court of Appeals deemed it proper to look into the Summary of Obligations and disbursement vouchers to determine if Ibrahim indeed incurred a shortage of ₱1,295,507.09 and to avoid a miscarriage of justice.

After Comparing the Table of Payments with the Summary of Obligations, the Court of Appeals found that there was no shortage of money in Ibrahim's account. The Summary of Obligations was detailed by the Court of Appeals as follows:

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[11] *Miro v. Vda. de Erederos*, 721 Phil. 772 (2013).

[12] *Id.*

No.	Date	Amount of ASA	AMOUNT	EQUITY	VAT	NET AMOUNT
		ASA Received from ROX	2,496,422.40			
1	08/30/02	Badroden Mandi — Takay Contract	148,191.12	14,819.10		133,372.02
2		Curahab Enterprises — Sand/Gravel	42,500.00			42,500.00
3	09/10/02	Curahab Enterprises — Const. Materials	263,250.00			263,250.00
4	09/10/02	Lomondaya Magad-TEVs (9/1-9/02)	2,240.00			2,240.00
5	09/10/02	Datu Sucor Baluno-CIS Equity	253,500.00			253,500.00
6	09/12/02	Jonathan Mandi-Takay Contract	49,809.60	4,980.00		44,829.60
7	09/12/02	Jonathan Mandi-Takay Contract	49,960.00	4,996.00		44,964.00
8	09/12/02	Jonathan Mandi-Takay Contract	49,448.00	4,948.80		44,499.20
9	09/12/02	Benitez K Derogonan & 6 others/CAMEL	20,721.55			20,721.55
10		Datu Sucor Baluno-Takay Contract	49,854.42	4,985.44		44,868.98
11		Datu Sucor Baluno-Takay Contract	14,169.00	1,416.90		12,752.10
12	09/15/02	Alexis Petron Station-Fuel & Oil	4,723.00			4,723.00
13	09/16/02	G.S.I.S. Remittances	5,940.00			5,940.00
14	09/18/02	Lomondaya Magad-Clothing Allowance	4,000.00			4,000.00
15	09/18/02	Lomondaya Magad W (09/10-15/02)	4,162.30			4,162.30
16	09/18/02	Ronald Macaraya — Takay Contract	34,303.50			34,303.50
17		Gaphor Pumbayabaya W/A	10,359.17			10,359.17
18	09/19/02	Hamim Ditucalan, Transp. Fare	3,200.00			3,200.00
19	09/19/02	G.S.I.S. Remittances	20,627.00			20,627.00
20	09/23/02	Maruhombsar Somulung, C/A	40,000.00			40,000.00

21	09/27/02	Ansari Baudi & 2 others, W(09/16-30/02)	11,062.47			11,062.47
22	09/30/02	Hamim Ditucalan, Reim. Fare	3,200.00			3,200.00
23	09/30/02	Noel Visitacion & 9 others (09/16-30/02)	24,400.00			24,400.00
24	09/30/02	Lomondaya Magad W(09/16-30/02)	4,481.00			4,481.00
25[13]						
26	09/30/02	Jonathan Marinay J(09/16-30/02)	1,437.53			1,437.53
27	09/30/02	Anzari D. Baudi Reimb	5,050.00			5,050.00
	Total Obligations of H.B. Ditucalan/SAP-B		1,120,589.66	36,146.24		1,084,443.42
28	11/28/02	Alexis Petron Station-Fuel & Oil	14,605.33			14,605.33
29	12/16/02	Tawano D. Mandi — Cost. Materials	28,000.00			28,000.00
30	12/17/02	Casamina Marandang, W/A	4,609.78			4,609.78
31		Nestor Cadonggog — W(12/1-15/02)	24,780.21			24,780.21
32	12/17/02	Nelsa Dicay Representation	4,350.60			4,350.60
33	12/18/02	Datu Sucor Baluno — Takay Contract	48,939.66			48,939.66
34	12/23/02	Datu Sucor Baluno — Takay Contract	26,548.20			26,548.20
35	12/23/02	Datu Sucor Baluno — Takay Contract	31,959.20			31,959.20
36	12/23/02	Datu Sucor Baluno — Takay Contract	40,280.00			40,280.00
37	12/23/02	Datu Sucor Baluno — Takay Contract	48,024.90			48,024.90
38	12/23/02	Aliusodan Macaayan — Hazard Pay/02	3,600.00			3,600.00
	Total Obligations of S.S. Saripada/SAP-B		275,697.88			275,697.88

[13] No. 25 is missing in the Decision of the Court of Appeals.

39	03/25/04	Datu Sucor Baluno — Takay Contract	265,890.24	26,589.02		239,301.22
40	03/25/04	Datu Sucor Baluno — Takay Contract	199,986.78	19,998.67		179,988.11
41	03/25/04	Datu Sucor Baluno — Takay Contract	241,963.07	24,196.30		217,766.77
42	03/25/04	Datu Sucor Baluno — Takay Contract	163,350.00	16,355.00		146,995.00
43	10/06/04	Datu Sucor Baluno — Takay Contract	47,813.63	4,781.36		43,032.27
44	10/06/04	Datu Sucor Baluno — Takay Contract	34,368.00	3,436.80		30,931.20
45	10/06/04	Datu Sucor Baluno — Takay Contract	23,447.78	2,344.72		21,103.06
46	10/06/04	Datu Sucor Baluno — Takay Contract	9,743.83	974.38		8,769.45
47	10/06/04	N & J Trading — Const. Materials	111,750.00		3,048.00	108,712.00
	Total Obligations of M.B. Mindalano/SAP-B		1,098,323.33	11,537.26	3,048.00	212,547.98
		Total Obligations		2,494,810.87		
		Balance		1,811.53[14]		

The Court of Appeals found that from the computation of disbursements of the three accountants (Ditucalan, Saripada, and Mindalano), the total amount of disbursements tallied with the realigned project, thus:

Hamim Ditucalan	(*from* Aug. 30 *to* Sept. 30, 2002)	₱1,120,589.66
Solaiman Saripada	(*from* Nov. 28 *to* Dec. 23, 2002)	275,697.88
Maamon Mindalano	(*from* Mar. 25 *to* Oct. 6, 2004)	1,098,323.33
Total Disbursements		₱2,494,610.87
Plus Cash in Bank		1,811.53
TOTAL OBLIGATION		₱2,496,422.40[15]

[14] *Rollo*, pp. 98-101.

[15] *Id.* at 102.

To find out the items left out by the audit team that led to the finding that there was a shortage, the Court of Appeals then made a chart comparing the Schedule of Payments and the Summary of Obligations, as follows:

	Schedule of Payment Annex J — Complaint		Summary of Obligations Annex 5 — Motion for Reconsideration	
ASA Received from R.O.X. No. (2002) 61786-102	2,496,422.40	Annex	2,496,422.40	Annex
DISBURSEMENTS by Hamim Ditucalan				
Badroden Mandi — Takay Contract			148,191.12	Annex 5-A, A1
Curahab Enterprises — Sand/Gravel	42,500.00	No. 21	42,500.00	Annex 5-A2
Curahab Enterprises — Const. Materials	263,250.00	No. 22	263,250.00	Annex 5-A3
Lomondaya Magad — TEVs (9/1-9/02)			2,240.00	Annex 5-A4
Datu Sucor Baluno — CIS Equity	253,500.00	No. 8	253,500.00	Annex 5-A5
Jonathan Mandi — Takay Contract	49,809.60	No. 20	49,809.60	Annex 5-A6
Jonathan Mandi — Takay Contract	49,960.00	No. 24	49,960.00	Annex 5-A7
Jonathan Mandi — Takay Contract	49,448.00	No. 18	49,448.00	Annex 5-A8
Benitez K Derogonan & 6 others/CAMEL	20,721.55	No. 12	20,721.55	Annex 5-A9
Datu Sucor Baluno — Takay Contract	49,854.42	No. 19	49,854.42	Annex 5-A10
Datu Sucor Baluno — Takay Contract	14,169.00	No. 17	14,169.00	Annex 5-A11
Alexis Petron Station — Fuel & Oil	4,723.08	No. 14	4,723.08	Annex 5-A12
G.S.I.S. Remittances	5,940.41	No. 28	5,940.41	Annex 5-A13
Lomondaya Magad — Clothing Allowance	4,000.00	No. 7	4,000.00	Annex 5-A14
Lomondaya Magad — W (09/10-15/02)	4,162.30	No. 15	4,162.30	Annex 5-A15

Ronald Macaraya — Takay Contract	34,303.50	No. 16	34,303.50	Annex 5-A16
Gaphor Pumbayabaya W/A	10,359.17	No. 27	10,359.17	Annex 5-A17
Hamim B. Ditucalan, Transp. Fare	3,200.00	No. 26	3,200.00	Annex 5-A18
G.S.I.S. Remittances	20,627.00	No. 25	20,627.00	Annex 5-A19
Maruhombsar Somulung, C/A	40,000.00	No. 30	40,000.00	Annex 5-A20
Ansari Baudi & 2 others, W(09/16-30/02)			11,062.47	Annex 5-A21
Hamim B. Ditucalan, Reim. Fare	3,200.00	No. 13	3,200.00	Annex 5-A22
Noel Visitacion & 9 others (09/16-30/02)			24,400.00	Annex 5-A23
Lomondaya Magad, W(09/16-30/02)			4,481.03	Annex 5-A24
Jonathan Marinay J (09/16-30/02)			1,437.53	Annex 5-A26
Anzari D. Baudi Reimb	5,050.00	No. 23	5,050.00	Annex 5-A27
TOTAL	928,818.03		1,120,590.18	
DISBURSEMENTS by Solaiman Saripada				
Alexis Petron Station — Fuel & Oil	14,605.33	No. 1	14,605.33	Annex 5-B1
Tawano D. Mandi — Cost. Materials	28,000.00	No. 2	28,000.00	Annex 5-B2
Casamina Marandang, W/A	4,609.78	No. 11	4,609.78	Annex 5-B3
Nestor Cadonggog — W(12/1-15/02)	24,780.21	No. 10	24,780.21	Annex 5-B4
Nelsa Dicay Representation	4,350.60	No. 9	4,350.60	Annex 5-B5
Datu Sucor Baluno — Takay Contract	48,939.66	No. 29	48,939.66	Annex 5-B6
Datu Sucor Baluno — Takay Contract	26,548.20	No. 6	26,548.20	Annex 5-B7
Datu Sucor Baluno — Takay Contract	31,959.20	No. 5	31,959.20	Annex 5-B8
Datu Sucor Baluno — Takay Contract	40,280.00	No. 4	40,280.00	Annex 5-B9

Datu Sucor Baluno — Takay Contract	48,024.90	No. 3	48,024.90	Annex 5-B10
Aliusodan Macaayan — Hazard Pay/02			3,600.00	
TOTAL	272,097.88		275,697.88	
DISBURSEMENT by Maamon Mindalano				
Datu Sucor Baluno — Takay Contract			265,890.24	Annex 5-C1
Datu Sucor Baluno — Takay Contract			199,986.78	Annex 5-C2
Datu Sucor Baluno — Takay Contract			241,963.07	Annex 5-C3
Datu Sucor Baluno — Takay Contract			163,350.00	Annex 5-C4
Datu Sucor Baluno — Takay Contract			47,813.63	Annex 5-C5
Datu Sucor Baluno — Takay Contract			34,368.00	Annex 5-C6
Datu Sucor Baluno — Takay Contract			23,447.78	Annex 5-C7
Datu Sucor Baluno — Takay Contract			9,743.83	Annex 5-C8
N & J Trading — Const. Materials			111,750.00	Annex 5-C9
TOTAL	0.00		1,098,323.33	
Total Obligations		2,494,810.87		
Balance		1,811.53[16]		

The Court of Appeals then found that the audit team failed to take into account the following disbursements:

DISBURSEMENTS by Hamim Ditucalan		
Badroden Mandi — Takay Contract	148,191.12	Annex 5-A, A1
Lomondaya Magad — TEVs (9/1-9/02)	2,200.00	Annex 5-A4
Ansari Baudi & 2 others, W(09/16-30/02)	11,062.47	Annex 5-A21
Noel Visitacion & 9 others (09/16-30/02)	24,400.00	Annex 5-A23
Lomondaya Magad, W(09/16-30/02)	4,481.03	Annex 5-A24

[16] *Id.* at 102-105.

Jonathan Marinay J(09/16-30/02)	1,437.53	Annex 5-A26
Sub-Total	191,772.15	
DISBURSEMENT by Solaiman Saripada		
Aliusodan Macaayan — Hazard Pay/02	3,600.00	
Sub-Total	3,600.00	

DISBURSEMENTS by Maamon Mindalano		
Datu Sucor Baluno — Takay Contract	265,890.24	Annex 5-C1
Datu Sucor Baluno — Takay Contract	199,986.78	Annex 5-C2
Datu Sucor Baluno — Takay Contract	241,983.07	Annex 5-C3
Datu Sucor Baluno — Takay Contract	163,350.00	Annex 5-C4
Datu Sucor Baluno — Takay Contract	47,813.63	Annex 5-C5
Datu Sucor Baluno — Takay Contract	34,368.00	Annex 5-C6
Datu Sucor Baluno — Takay Contract	23,447.78	Annex 5-C7
Datu Sucor Baluno — Takay Contract	9,743.83	Annex 5-C8
N & J Trading — Const. Materials	111,750.00	Annex 5-C9
Sub-Total	1,098,323.33	
TOTAL	1,293,695.48	
Cash in Bank	1,811.53	
TOTAL	1,295,507.01[17]	

Indeed, we agree with the Court of Appeals that the supposed shortage incurred by Ibrahim was properly accounted for. The Court of Appeals meticulously studied the Summary of Obligations and found no shortage in Ibrahim's account. In its petition, the OMB-Mindanao questioned the following disbursements, *i.e.*, the clothing allowance to Lomondaya Magad (Magad) amounting to ₱4,000, GSIS remittances amounting to ₱20,627, and hazard pay to Aliusodan Macaayan (Macaayan) amounting to ₱3,600, payments for the Takay Contracts from March 2004 to October

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[17] *Id.* at 105-106. The shortage, according to the Decision of the Court of Appeals, was ₱1,295,507.09.

2004, and payments to the Balabagan Irrigators Association amounting to ₱199,986.78.[18]

From the Summary of Obligations, the Court finds that the clothing allowance to Magad amounted to ₱4,000,[19] there were two GSIS remittances amounting to ₱5,940.41[20] and ₱20,627,[21] while the hazard pay to Macaayan amounted to ₱3,600.[22] The total amount of these disbursements is ₱34,167.41. As explained by Mindalano, the clothing allowance paid to Magad as well as the GSIS remittances[23] were obligations incurred before Ibrahim became the OIC of the PIO and were only paid during his time.[24] As regards Macaayan's hazard pay, the payment was reflected both in Saripada's Statement of Obligation and the Cost of Reconciliation accepted by the President of Balabagan Irrigators Association and the corresponding voucher was submitted to the audit team.[25] As pointed out by Ibrahim, these personnel are workers of the El Niño project and their allowances, emoluments, and remittances are chargeable to the funds of the project.[26]

The Takay Contracts were also sufficiently accounted for. Ibrahim explained that the payments were made to Datu Sucor Baluno (Datu Baluno) and he signed the receipts as President of Balabagan Irrigators Association. Ibrahim and Mindalano also explained that there was no entry on Fund 102 because

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[18] *Id.* at 67.

[19] *Id.* at 103, No. 7.

[20] *Id.*, No. 28.

[21] *Id.*, No. 25.

[22] *Id.* at 104.

[23] The explanation was only for the ₱20,627 remittance but we presume that it includes the ₱5,940.41 remittance because they were paid three days apart. *Id.* at 99.

[24] CA *rollo*, p. 162.

[25] *Id.* at 163.

[26] *Id.* at 357.

there was only an Advice of Sub Allotment (ASA No. 2002-61768-102) but the corresponding cash was not yet deposited by the Department of Budget and Management (DBM)[27] and not because the funds were already exhausted. Mindalano also submitted a Cost Reconciliation of Expenditures[28] between the NIA and Balabagan Irrigators Association signed by Datu Baluno and Sultan Salong B. Rasuman, Chief of NIA Institutional Development Section showing all the disbursements and payments. As regards the discrepancy in the dates of the disbursement voucher and the official receipt, Mindalano explained that under DBM Circular No. 2004-2 (1.2), "commitments/obligations shall be recognized as accounts payable (A/Ps) only upon receipt by the agency of the suppliers/creditors bills for goods/services delivered/rendered and project accepted."[29] It appears that instead of issuing a bill, Balabagan Irrigators Association issued a receipt, but it was only upon submission of the receipt that the money was deposited to Fund 102 and the amount was obligated. The obligation to Balabagan Irrigators Association was paid when the DBM deposited the money to Fund 102.

Newly-discovered Evidence

Before proceeding further, the Court notes that the Decision of the OMB-Mindanao dismissing Ibrahim from the service was dated 6 February 2007. Ibrahim's motion for reconsideration showed that the NIA Office received a copy of the Decision only on 9 July 2009 while Ibrahim was attending a seminar in Manila, and he only received it on 13 July 2009 when he returned to work.[30] There was no explanation on the records why it

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[27] *Id.* at 161.

[28] *Id.* at 168.

[29] *Id.* at 162, 165.

[30] Ibrahim attached a Travel Order and Certificate of Appearance showing that he was on official business in Manila from 8-11 July 2009. *Id.* at 140, 158-159.

took the OMB-Mindanao more than two years to send Ibrahim a copy of the Decision.

Ibrahim filed a motion for reconsideration on 20 July 2009 because he counted his period of filing from the date he received a copy of the Decision. The OMB-Mindanao failed to act on Ibrahim's motion. On 13 April 2011, Ibrahim filed a motion for early resolution of the case, noting that it was almost two years since he filed his motion for reconsideration and that the audit team failed to comment to refute his arguments during the period. On 30 May 2011, Ibrahim filed a motion for re-audit.[31] However, by that time, the OMB-Mindanao had already acted upon his motion for reconsideration in its 11 May 2011 Order. Again, there was nothing in the records that would show why it took the OMB-Mindanao two years to resolve Ibrahim's motion, in contravention of the OMB Rules of Procedure.

Section 8, Rule III of the OMB Rules of Procedure provides:

> Section 8. Motion for reconsideration or reinvestigation: Grounds. — Whenever allowable, a motion for reconsideration or reinvestigation may only be entertained if filed within ten (10) days from receipt of the decision or order by the party on the basis of any of the following grounds:
>
> a) New evidence had been discovered which materially affects the order, directive or decision;
>
> b) Grave errors of facts or laws or serious irregularities have been committed prejudicial to the interest of the movant.
>
> Only one motion for reconsideration or reinvestigation shall be allowed, and the Hearing Officer shall resolve the same within five (5) days from the date of submission for resolution.

To be considered a newly discovered evidence under the Rules of Court, the following requisites must be present: (a) the evidence was discovered after trial; (b) such evidence could not have been discovered and produced at the trial with reasonable diligence; and (c) it is material, not merely cumulative,

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[31] *Id.* at 328.

corroborative or impeaching, and is of such weight that, if admitted, will probably change the judgment.[32]

In this case, the Court of Appeals did not consider the Summary of Obligations as newly-discovered evidence because it was already mentioned in Ibrahim's counter-affidavit. The Court of Appeals considered the Summary of Obligations new on the records because Ibrahim only submitted it with his motion for reconsideration. According to Ibrahim, the audit team failed to get this document from the financial officers and it was disregarded by OMB-Mindanao.[33] However, the Court of Appeals also pointed out that the Summary of Obligations was already in existence during the conduct of the investigation. The Court of Appeals noted that in his Reply, Ibrahim already insisted that the Summary of Obligations and the copies of the vouchers covering all disbursements were in the possession of the OMB-Mindanao from the time he submitted his counter-affidavit. We see no reversible error on the part of the Court of Appeals in considering the Summary of Obligations.

In administrative cases, the quantum of evidence necessary to find an individual administratively liable is substantial evidence.[34] Section 5, Rule 133 of the Rules of Court defines substantial evidence as that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.[35] Here, we find that Ibrahim's guilt has not been proven with substantial evidence as to warrant his dismissal from the service.

WHEREFORE, we **DENY** the petition. We **AFFIRM** the 29 January 2013 Decision and the 28 January 2014 Resolution of the Court of Appeals Cagayan de Oro City in CA-G.R. SP No. 04242-MIN with **MODIFICATION** by canceling the entry of judgment issued by the Court of Appeals in the case.

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[32] *Amarillo v. Sandiganbayan*, 444 Phil. 487 (2003).

[33] *Rollo*, pp. 340-361.

[34] *Pia v. Gervacio, Jr.*, 710 Phil. 196 (2013).

[35] *Id.*

SO ORDERED.

Del Castillo, Mendoza, and *Leonen, JJ.,* concur.

Brion, J., on official leave.

THIRD DIVISION

[G.R. No. 211672. June 1, 2016]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JOHN HAPPY DOMINGO *y* CARAG,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS; ESTABLISHED IN CASE AT BAR.— In the prosecution of a case of illegal sale of dangerous drugs, it is necessary that the prosecution is able to establish the following essential elements: (1) the identity of the buyer and the seller, the object of the sale and the consideration; and (2) the delivery of the thing sold and its payment. What is material is the proof that the transaction or sale actually took place, coupled with the presentation in court of the *corpus delicti* as evidence. The delivery of the illicit drug to the poseur-buyer and the receipt by the seller of the marked money successfully consummate the buy-bust transaction. In this case, all of these elements were clearly established. The prosecution's evidence positively identified Police Officer 1 Marcial Eclipse (PO 1 Eclipse) as the buyer and accused-appellant as the seller of the *shabu*. The prosecution established through testimony and evidence the object of the sale, which is a heat-sealed transparent plastic sachet containing *shabu* and the two (2) marked Php100.00 bills, as the consideration thereof. Finally, the delivery of the *shabu*

sold and its payment were clearly testified to by prosecution witness PO1 Eclipse. When the police officers involved in the buy-bust operation have no motive to testify against the accused, the courts shall uphold the presumption that they performed their duties regularly. In Fact, for as long as the identity of the accused and his participation in the commission of the crime has been duly established.

2. ID.; ID.; IMPLEMENTING RULES AND REGULATIONS; CHAIN OF CUSTODY RULE; SUBSTANTIAL COMPLIANCE WITH THE LEGAL REQUIREMENTS ON THE HANDLING OF THE SEIZED ITEM IS SUFFICIENT.— The procedure to be followed in the custody and handling of the seized dangerous drugs is outlined in Section 21(a), Article II of the Implementing Rules and Regulations of R.A. No. 9165. x x x The last part of the aforequoted provision stated the exception to the strict compliance with the requirements of Section 21 of R.A. No. 9165. Although ideally the prosecution should offer a perfect chain of custody in the handling of evidence, "substantial compliance with the legal requirements on the handling of the seized item" is sufficient. This Court has consistently ruled that even if the arresting officers failed to strictly comply with the requirements under Section 21 of R.A. No. 9165, such procedural lapse is not fatal and will not render the items seized inadmissible in evidence. 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 accused. In other words, to be admissible in evidence, the prosecution must be able to present through records or testimony, the whereabouts of the dangerous drugs from the time these were seized from the accused by the arresting officers; turned-over to the investigating officer; forwarded to the laboratory for determination of their composition; and up to the time these are offered in evidence. For as long as the chain of custody remains unbroken, as in this case, even though the procedural requirements provided for in Sec. 21 of R.A. No. 9165 were not faithfully observed, the guilt of the accused will not be affected.

3. ID.; ID.; ID.; ID.; THE ACCUSED BEARS THE BURDEN OF SHOWING THAT THE EVIDENCE WAS TAMPERED OR MEDDLED WITH IN ORDER TO OVERCOME THE

PRESUMPTION OF REGULARITY IN THE HANDLING OF EXHIBITS BY POLICE OFFICERS AND THE PRESUMPTION THAT PUBLIC OFFICERS PROPERLY DISCHARGED THEIR DUTIES; NOT PRESENT IN CASE AT BAR.— The integrity of the evidence is presumed to have been preserved unless there is a showing of bad faith, ill will, or proof that the evidence has been tampered with. Accused-appellant bears the burden of showing that the evidence was tampered or meddled with in order to overcome the presumption of regularity in the handling of exhibits by public officers and the presumption that public officers properly discharged their duties. Here, accused-appellant failed to convince the Court that there was ill motive on the part of the arresting officers. Thus, the testimony of PO1 Eclipse deserves full faith and credit. Accused-appellant did not even question the credibility of the apprehending officers. He simply insisted that the civilian informant had an ax to grind against his brother for the latter's failure to repair the cell phone. It is unbelievable that the apprehending officers would go to the extent of fabricating a story just to have a reason to arrest accused-appellant and get back at the latter's brother.

APPEARANCES OF COUNSEL

Santos M. Baculi for accused-appellant.
Office of the Solicitor General for plaintiff-appellee.

D E C I S I O N

PEREZ, *J.*:

We resolve the appeal of John Happy Domingo y Carag (accused-appellant) assailing the 21 November 2012 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-HC No. 03575. The CA Decision affirmed the ruling of the Regional Trial Court (RTC), Branch 5, Tuguegarao City, Cagayan finding the accused guilty of violating Section 5, Article II of Republic Act (R.A.)

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[1] *Rollo*, pp. 2-14; Penned by Associate Justice Edwin D. Sorongon with Associate Justices Marlene Gonzales-Sison and Romeo F. Barza concurring.

No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

The Case

On 27 August 2008, the RTC promulgated a Decision[2] finding accused-appellant guilty beyond reasonable doubt of violating Section 5, Article II of R.A. No. 9165, otherwise known as the Comprehensive Dangerous Drugs Act of 2002 and sentenced him to suffer the penalty of life imprisonment and to pay a fine of Five Hundred Thousand Pesos (₱500,000.00). The RTC ruled that the evidence presented by the prosecution successfully established the elements of illegal sale of a dangerous drug as accused-appellant was caught in *flagrante delicto* in a valid buy-bust operation. It noted that the defense of denial and frame-up offered by the defense cannot overturn the presumption of regularity in the performance of official duties accorded to the apprehending officers.

On intermediate appellate review, the CA upheld the RTC ruling. It found no reason to disturb the findings of the RTC as it is in accordance with law and jurisprudence and was based on the evidence presented and proven during trial. The appellate court likewise rejected the claim of accused-appellant that he was framed-up by the apprehending officers because his brother failed to repair the cell phone of the police asset. It agreed with the RTC that it is highly unbelievable that the buy-bust team would concoct such a serious charge against accused-appellant especially considering that it is the police asset, who is not even a member of the buy-bust team, that allegedly has an issue against the brother of accused-appellant. The CA also held that the apprehending officers complied with the proper procedure in the custody and disposition of the seized drug and that the identity of the confiscated drug has been duly preserved and its chain of custody has been properly established by the prosecution.[3]

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[2] Records, pp. 159-165; Presided by Judge Jezarene C. Aquino.

[3] *Rollo*, p. 13; CA Decision.

Issue

Whether the lower courts gravely erred in finding the accused-appellant guilty for violation of Section 5, Article II of R.A. No. 9165.[4]

Our Ruling

We affirm the accused-appellant's conviction.

The elements of illegal sale of dangerous drugs

In the prosecution of a case of illegal sale of dangerous drugs, it is necessary that the prosecution is able to establish the following essential elements: (1) the identity of the buyer and the seller, the object of the sale and the consideration; and (2) the delivery of the thing sold and its payment. What is material is the proof that the transaction or sale actually took place, coupled with the presentation in court of the *corpus delicti* as evidence. The delivery of the illicit drug to the poseur-buyer and the receipt by the seller of the marked money successfully consummate the buy-bust transaction.[5]

In this case, all of these elements were clearly established. The prosecution's evidence positively identified Police Officer 1 Marcial Eclipse (PO1 Eclipse) as the buyer and accused-appellant as the seller of the *shabu*. The prosecution established through testimony and evidence the object of the sale, which is a heat-sealed transparent plastic sachet containing *shabu* and the two (2) marked Php100.00 bills, as the consideration thereof. Finally, the delivery of the *shabu* sold and its payment were clearly testified to by prosecution witness PO1 Eclipse.

Accused-appellant denied the accusation that he sold *shabu* to PO1 Eclipse and maintained that it was only in the police

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[4] CA *rollo*, p. 36; Appellant's Brief.

[5] *People v. Midenilla*, 645 Phil. 587, 601 (2010) citing *People v. Guiara*, 616 Phil. 290, 302 (2009) further citing *People v. Gonzales*, 430 Phil. 504, 513 (2002).

station that he first saw the sachet containing the white crystalline substance and the marked money allegedly taken from him. He claimed that the reason for his frame-up was the failure of his brother to repair the cell phone of the police civilian asset Boyet Relos.

Accused-appellant's defense which is anchored mainly on denial and frame-up cannot be given credence. It does not have more evidentiary weight than the positive assertions of the prosecution witnesses. His defense is unavailing considering that he was caught *in flagrante delicto* in a legitimate buy-bust operation. This Court has ruled that the defense of denial or frame-up, like alibi, has been invariably viewed by the courts with disfavor for it can just as easily be concocted and is a common and standard defense ploy in most prosecution for violation of the Dangerous Drugs Act.[6] Moreover, we agree with the lower courts that the ill-motive imputed on the apprehending officers is unworthy of belief. Accused-appellant's defense that he was framed-up because his brother found it difficult to repair the cell phone of the police asset deserves scant consideration. When the police officers involved in the buy-bust operation have no motive to testify against the accused, the courts shall uphold the presumption that they performed their duties regularly.[7] In fact, for as long as the identity of the accused and his participation in the commission of the crime has been duly established, motive is immaterial for conviction. As correctly noted by the appellate court, the person who allegedly had a grudge against the brother of the accused-appellant was not even a member of the buy-bust team. He was only a police informant. Moreover, accused-appellant was clearly identified by PO1 Eclipse as the person who sold to him for two hundred pesos a substance contained in a heat-sealed transparent plastic sachet which later on tested positive for methamphetamine hydrochloride or *shabu*.

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[6] *People v. Hernandez*, 607 Phil. 617, 635 (2009).

[7] *People v. Lim*, 607 Phil. 617, 635 (2009).

Chain of Custody Rule

Accused-appellant also submits that the lower courts failed to consider the procedural flaws committed by the arresting officers in the seizure and custody of drugs as embodied in Section 21, paragraph 1, Article II, R.A. No. 9165.[8] Accused-appellant alleged that the trial court failed to consider the admission of PO1 Eclipse that the alleged item taken from him was not photographed in the latter's presence and no inventory was made immediately after the alleged operation.

We are not persuaded. The procedure to be followed in the custody and handling of the seized dangerous drugs is outlined in Section 21 (a), Article II of the Implementing Rules and Regulations of R.A. No. 9165, which states:

(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

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[8] As amended by R.A. No. 10640, 15 July 2014. (1) The apprehending team having initial custody and control of the dangerous drugs, controlled precursors and essential chemicals, instruments/paraphernalia and/or laboratory equipment shall, immediately after seizure and confiscation, conduct a physical inventory of the seized items and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, with an elected public official and a representative of the National Prosecution Service or the media who shall be required to sign the copies of the inventory and be given a copy thereof: *Provided*, That the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures: *Provided, finally*, That noncompliance of these requirements under justifiable grounds, as long as the integrity and the evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures and custody over said items.

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[.]** (Emphasis supplied)

The last part of the aforequoted provision stated the exception to the strict compliance with the requirements of Section 21 of R.A. No. 9165. Although ideally the prosecution should offer a perfect chain of custody in the handling of evidence, "substantial compliance with the legal requirements on the handling of the seized item" is sufficient.[9] This Court has consistently ruled that even if the arresting officers failed to strictly comply with the requirements under Section 21 of R.A. No. 9165, such procedural lapse is not fatal and will not render the items seized inadmissible in evidence.[10] 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 accused.[11] In other words, to be admissible in evidence, the prosecution must be able to present through records or testimony, the whereabouts of the dangerous drugs from the time these were seized from the accused by the arresting officers; turned-over to the investigating officer; forwarded to the laboratory for determination of their composition; and up to the time these are offered in evidence. For as long as the chain of custody remains unbroken, as in this case, even

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[9] *People v. Cortez*, 611 Phil. 360, 381 (2009).

[10] *People v. Almodiel*, G.R. No. 200951, 5 September 2012, 680 SCRA 306, 323; *People v. Campos*, 643 Phil. 668, 673 (2010) citing *People v. Concepcion*, 578 Phil. 957, 971 (2008).

[11] *People v. Magundayao*, 683 Phil. 295, 321 (2012); *People v. Le*, 636 Phil. 586, 598 (2010) citing *People v. De Leon*, 624 Phil. 786, 801 (2010) further citing *People v. Naquita*, 582 Phil. 422, 442 (2008); *People v. Concepcion*, 578 Phil. 957, 971 (2008).

though the procedural requirements provided for in Sec. 21 of R.A. No. 9165 were not faithfully observed, the guilt of the accused will not be affected.[12]

Contrary to the contention of accused-appellant, this Court finds no broken links in the chain of custody over the seized drug. Records reveal that after the arrest of the accused-appellant; the seizure of the suspected *shabu* and recovery of the marked money in the latter's possession, PO1 Eclipse, with the assistance of the other members of the buy-bust team, brought accused-appellant to the police station.[13]

Upon their arrival at the police station, PO1 Eclipse handed the marked money and the confiscated plastic sachet containing white crystalline substance to their investigator,[14] PO3 Wilfredo Taguinod (PO3 Taguinod).[15] PO3 Taguinod marked the plastic sachet containing white crystalline substance with words "WAT," representing the initials of his name "Wilfredo A. Taguinod."[16] Thereafter, PO3 Taguinod turned over the confiscated plastic sachet and the marked money to the desk officer so that the incident and the confiscated items will be recorded in their blotter.[17]

PO3 Taguinod also prepared a letter-request[18] addressed to the PNP Crime Laboratory in Tuguegarao City to have the contents of the plastic sachet examined for presence of illegal drugs.[19] PO3 Taguinod then handed the said letter-request,

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[12] *People v. Manlangit*, 654 Phil. 427, 440-441 (2011) citing *People v. Rosialda*, 643 Phil. 712, 726 (2010) further citing *People v. Rivera*, 590 Phil. 894, 912-913 (2008).

[13] TSN, 19 December 2006, p. 21.

[14] *Id.* at 46.

[15] TSN, 28 March 2007, p. 16.

[16] *Id.* at 20.

[17] *Id.* at 16.

[18] Records, p. 10; Exhibit "A".

[19] TSN, 28 March 2007, pp. 22-23.

together with the confiscated plastic sachet, to PO3 Rolando Domingo who brought the same to the PNP Crime Laboratory in Tuguegarao City. Said letter-request and the plastic sachet were received by PO1 Myrna B. Janson of the PNP Crime Laboratory in Tuguegarao City.[20]

PSI Alfredo M. Quintero, Forensic Chemist of the PNP Crime Laboratory in Tuguegarao City, performed qualitative examination of the contents of the plastic sachet with the markings "WAT."[21] Said examination proved that the confiscated plastic sachet contained 0.07 gram of methamphetamine hydrochloride or *shabu* as evidenced by Chemistry Report No. D-073-2005.[22]

It is clear from the foregoing that the substance marked, tested and offered in evidence was the same item seized from accused-appellant. We have previously ruled that as long as the state can show by record or testimony that the integrity of the evidence has not been compromised by accounting for the continuous whereabouts of the object evidence at least between the time it came into the possession of the police officers until it was tested in the laboratory, then the prosecution can maintain that it was able to prove the guilt of the accused beyond reasonable doubt.[23]

The integrity of the evidence is presumed to have been preserved unless there is a showing of bad faith, ill will, or proof that the evidence has been tampered with. Accused-appellant bear the burden of showing that the evidence was tampered or meddled with in order to overcome the presumption of regularity in the handling of exhibits by public officers and the presumption that public officers properly discharged their duties.[24] Here, accused-appellant failed to convince the Court

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[20] Records, p. 10; Exhibit "A-3"; *Id.* at 24.

[21] TSN, 19 July 2007, pp. 15-16.

[22] Records, p. 7; Exhibit "B".

[23] *Malilin v. People*, 576 Phil. 576, 588 (2008) citing *Graham v. State*, 255 NE2d 652, 655.

[24] *People v. Miranda*, 560 Phil. 795, 810 (2007).

that there was ill motive on the part of the arresting officers. Thus, the testimony of PO1 Eclipse deserves full faith and credit. Accused-appellant did not even question the credibility of the apprehending officers. He simply insisted that the civilian informant had an ax to grind against his brother for the latter's failure to repair the cell phone. It is unbelievable that the apprehending officers would go to the extent of fabricating a story just to have a reason to arrest accused-appellant and get back at the latter's brother.

Imposable penalty

Section 5 of R.A. No. 9165 provides the penalty for the illegal sale of dangerous drugs, *viz*.:

> Sec. 5. *Sale, Trading, Administration, Dispensation, Delivery, Distribution and Transportation of Dangerous Drugs and/or Controlled Precursors and Essential Chemicals*. — The penalty of life imprisonment to death and a fine ranging from Five hundred thousand pesos (₱500,000.00) to Ten Million Pesos (₱10,000,000.00) shall be imposed upon any person, who, unless authorized by law, shall sell, trade administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drug, including any and all species of opium poppy regardless of the quantity and purity involved, or shall act as a broker in any of such transactions.

We sustain the penalty imposed on accused-appellant as it is in conformity with the above-quoted provision of the law.

WHEREFORE, the Decision of the Court of Appeals in CA-G.R. CR-HC No. 03575 affirming the Regional Trial Court Decision finding the accused John Happy Domingo y Carag guilty beyond reasonable doubt of violating Section 5, Article II of Republic Act No. 9165, otherwise known as the "Comprehensive Dangerous Drugs Act of 2002," sentencing him to suffer the penalty of life imprisonment and ordering him to pay a fine of Five Hundred Thousand Pesos (₱500,000.00) is hereby **AFFIRMED**.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 212493. June 1, 2016]

GABRIEL YAP, SR. duly represented by GILBERT YAP and also in his personal capacity, GABRIEL YAP, JR., and HYMAN YAP, *petitioners, vs.* **LETECIA SIAO, LYNEL SIAO, JANELYN SIAO, ELEANOR FAYE SIAO, SHELETT SIAO and HONEYLET SIAO,** *respondents.*

[G.R. No. 212504. June 1, 2016]

CEBU SOUTH MEMORIAL GARDEN, INC., *petitioner, vs.* **LETECIA SIAO, LYNEL SIAO, JANELYN SIAO, ELEANOR FAYE SIAO, SHELETT SIAO and HONEYLET SIAO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; CERTIFICATION AGAINST FORUM SHOPPING; OFFICIALS OR EMPLOYEES OF THE COMPANY WHO CAN SIGN THE VERIFICATION AND CERTIFICATION WITHOUT NEED FOR BOARD RESOLUTION, ENUMERATED; RATIONALE.— In the leading case of *Cagayan Valley Drug Corporation v. Commission on Internal Revenue,* the Court,

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[*] Additional Member per Raffle dated 18 May 2016.

in summarizing numerous jurisprudence, rendered a definitive rule that the following officials or employees of the company can sign the verification and certification without need of a board resolution: (1) the Chairperson of the Board of Directors, (2) the President of a corporation, (3) the General Manager or Acting General Manager, (4) Personnel Officer, and (5) an Employment Specialist in a labor case. The rationale behind the rule is that these officers are "in a position to verify the truthfulness and correctness of the allegations in the petition." x x x In *Fuji Television Network v. Espiritu*, we highlighted two rules relative to certification against forum-shopping. x x x (4) As to certification against forum shopping, non-compliance therewith or a defect therein, unlike in verification, is generally not curable by its subsequent submission or correction thereof, unless there is a need to relax the Rule on the ground of "substantial compliance" or presence of "special circumstances or compelling reasons." (5) The certification against forum shopping must be signed by all the plaintiffs or petitioners in a case; otherwise, those who did not sign will be dropped as parties to the case. Under reasonable or justifiable circumstances, however, as when all the plaintiffs or petitioners share a common interest and invoke a common cause of action or defense, the signature of only one of them in the certification against forum shopping substantially complies with the Rule.

2. **ID.; ID.; ID.; ID.; THE QUESTION OF FORUM SHOPPING SHOULD HAVE BEEN RAISED AT THE EARLIEST OPPORTUNITY; SUSTAINED.—** [A]ny objection as to compliance with the requirement of verification in the complaint should have been raised in the proceedings below, and not in the appellate court for the first time. In *Young v. John Keng Seng*, it was also held that the question of forum shopping cannot be raised in the Court of Appeals and in the Supreme Court, since such an issue must be raised at the earliest opportunity in motion to dismiss or a similar pleading.

3. **ID.; ACTIONS; JUDGMENTS; DOCTRINE OF THE LAW OF THE CASE; EXPLAINED.—** The "law of the case" doctrine applies in a situation where an appellate court has made a ruling on a question on appeal and thereafter remands the case to the lower court to effect the ruling; the question settled by the appellate court becomes the law of the case at the lower

court and in any subsequent appeal. It means that whatever is irrevocably established as the controlling legal rule or decision between the same parties in the same case continues to be the law of the case, whether correct on general principles or not, so long as the facts on which the legal rule or decision was predicated continue to be the facts of the case before the court. The rationale behind this rule is to enable an appellate court to perform its duties satisfactorily and efficiently, which would be impossible if a question, once considered and decided by it, were to be litigated anew in the same case upon any and every subsequent appeal. Without it, there would be endless litigation. Litigants would be free to speculate on changes in the personnel of a court, or on the chance of having propositions rewritten once gravely ruled on solemn argument and handed down as the law of a given case.

4. **ID.; SUMMARY JUDGMENT; A SUMMARY JUDGMENT IS PROPER IF, WHILE THE PLEADINGS ON THEIR FACE APPEAR TO RAISE ISSUES, THE AFFIDAVITS, DEPOSITIONS AND ADMISSIONS PRESENTED BY THE MOVING PARTY SHOW THAT SUCH ISSUES ARE NOT GENUINE.—** A summary judgment is permitted only if there is no genuine issue as to any material fact and a moving party is entitled to a judgment as a matter of law. A summary judgment is proper if, while the pleadings on their face appear to raise issues, the affidavits, depositions, and admissions presented by the moving party show that such issues are not genuine. A "genuine issue" is an issue of fact which requires the presentation of evidence as distinguished from a sham, fictitious, contrived or false claim. When the facts as pleaded appear uncontested or undisputed, then there is no real or genuine issue or question as to the facts, and summary judgment is called for. The party who moves for summary judgment has the burden of demonstrating clearly the absence of any genuine issue of fact, or that the issue posed in the complaint is patently unsubstantial so as not to constitute a genuine issue for trial. Trial courts have limited authority to render summary judgments and may do so only when there is clearly no genuine issue as to any material fact. When the facts as pleaded by the parties are disputed or contested, proceedings for summary judgment cannot take the place of trial.

APPEARANCES OF COUNSEL

Senining Belcina Atup Entise Lima-lima Bantilan Condat Borgonia & Associates for petitioners Yap.
Santiago R. Maravillas for respondents Siao.
Zamora Poblador Vasquez & Bretaña for petitioner CSMGI.

D E C I S I O N

PEREZ, *J.*:

Before this court are two consolidated cases involving two petitions for Review on *Certiorari*. These petitions assail the Decision[1] dated 9 October 2013 and Resolution[2] dated 26 March 2014 of the Court of Appeals in CA-G.R. CV No. 02037.

Petitioners in G.R. No. 212493 are deceased Gabriel Yap, Sr., represented by his son and the President of Cebu South Memorial Garden, Inc., Gilbert Yap; Gabriel Yap, Jr., in his capacity as Treasurer; and Hyman Yap, as one of the directors, while petitioner in G.R. No. 212504 is Cebu South Memorial Garden, Inc. Respondents in both cases are Letecia Siao and her children, Lynel, Janelyn, Eleonor, Shellett and Honeylet.

These consolidated cases arose from a Complaint for Specific Performance filed by petitioners Cebu South Memorial Gardens, Inc. and Gabriel Yap, Sr., both represented by Gilbert Yap against respondents Honeylet Siao and Letecia Siao on 27 April 1999. Gilbert Yap, in his own behalf, Gabriel Yap, Jr. and Hyman Yap joined the plaintiffs in their Supplemental Complaint. In their Second Amended Complaint, the petitioners alleged that Gabriel Yap, Sr. and Letecia Siao entered into a

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[1] *Rollo* (G.R. No. 212493), pp. 68-81; Penned by Associate Justice Maria Elisa Sempio Diy with Associate Justices Edgardo Delos Santos and Pamela Ann Abella Maxino concurring.

[2] *Id.* at 111-121.

Certificate of Agreement where the parties agreed on the following terms:

1. To convert the parcels of land covered by TCT Nos. 66716, 66714 and 66713, registered in the names of Spouses Sergio and Letecia Siao, into memorial lots;
2. To organize themselves into a corporation;
3. To transfer ownership of the parcels of land to Gabriel Yap who will transfer ownership thereof to the corporation;
4. To give advance payment to Letecia Siao in the amount of ₱100,000.00 per month until Letecia Siao is financially stable to support herself and her family.[3]

As a backgrounder, respondent Letecia Siao's husband Sergio Siao was indebted to petitioner Gabriel Yap, Sr. Petitioners claim that the titles to the subject parcels of land were in the possession of Gabriel Yap, Sr. as collateral for the loan. In consideration of condoning the loan, Gabriel Yap, Sr. returned the titles to Letecia Siao on the condition that the parcels of land covered by the titles would be developed into memorial lots.[4]

Petitioners claimed that respondents refused to transfer the ownership of the three parcels of land to Cebu South Memorial Garden, Inc., causing them to be exposed to numerous lawsuits from the buyers of the burial plots.

Respondents argued that Letecia Siao was coerced to sign the Certificate of Agreement, rendering it null and void.

A panel of commissioners was appointment to determine the financial standing of petitioner corporation and the actual money received by Letecia Siao.

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[3] *Rollo* (G.R. No. 212504), p. 154.

[4] *Id.* at 157.

On 31 January 2000 and during the pendency of the case before the commissioners, respondents filed a Motion for Payment of Monthly Support[5] for Leticia Siao's family and herself. Respondents relied on the agreement made by the parties during the preliminary conference to abide by the terms of the Certificate of Agreement. In a Resolution[6] dated 5 April 2000, the RTC granted the motion for monthly support and ordered Gabriel Yap, Sr. to pay immediately Letecia Siao the amount of ₱1,300,000.00. Resultantly, petitioners filed a Motion for Summary Judgment[7] on 24 May 2002 alleging that respondents had abandoned their defense of the nullity of the Certificate of Agreement when they agreed to implement its provisions. Petitioners submitted that the trial court may render a summary judgment or judgment on the pleadings based on the admitted facts.

On 1 August 2002, Judge Generosa G. Labra of Branch 23 of the Regional Trial Court (RTC) of Cebu City issued an Order denying the motion and holding that there were no existing admissions or admitted facts by respondents to be considered. Petitioners filed a Motion for Reconsideration but it was denied on 11 September 2002. Petitioners elevated the matter to the Court of Appeals.

On 10 October 2003, the Court of Appeals in CA-G.R. SP No. 73850,[8] through Associate Justice Eugenio S. Labitoria, reversed the trial court's decision and ordered its judge to render summary judgment in favor of petitioners. The appellate court ruled that by claiming benefits arising from the Certificate of Agreement, respondents had invoked the validity and effectiveness of the Agreement.

Respondents sought for reconsideration but it was denied by the appellate court. Respondents did not file an appeal before

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

[6] *Id.* at 137-141.

[7] *Id.* at 174-180.

[8] *Id.* at 187-195.

the Supreme Court within the reglementary period. Thus, the Decision became final and executory on 7 June 2004 and the same had been recorded in the Book of Entries of Judgment.[9]

In compliance with the Order that had become final, on 7 February 2006, RTC Branch 13 of Cebu City Judge Meinrado P. Paredes rendered a Summary Judgment, the dispositive portion of which reads:

> WHEREFORE, judgment is hereby rendered directing defendants to transfer to the plaintiff-movant the three (3) parcels of land covered by TCT Nos. 66714, 66713 and 66716 after this judgment shall have become final and executory.
>
> Should defendants fail to do so, the Branch Clerk of Court is directed to prepare a deed of conveyance or transfer of the said titles to the plaintiff CSMG, Inc. at the expense of defendants.[10]

The motion for reconsideration filed by respondents was denied. Once again, respondents filed an appeal under Rule 41 of the Rules of Court seeking to reverse and set aside the Summary Judgment rendered by the RTC.

On 9 October 2013, the Court of Appeals set aside the Summary Judgment on a technicality. The appellate court found that the certification against forum-shopping appended to the complaint is defective because there was no board resolution and special power of attorney vesting upon Gilbert Yap the authority to sign the certification on behalf of petitioner corporation and individual petitioners. The appellate court added that the procedural defects affected the jurisdiction of the court in that the court never acquired jurisdiction over the case because the complaints are considered not filed and are ineffectual. Petitioners filed their separate motions for reconsideration but they were denied by the appellate court.

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[9] *Id.* at 198-216.

[10] *Id.* at 216.

The following errors are grounds for the allowance of these petitions:

1. The Honorable Court of Appeals made an error in applying the law when the same resolved to reverse the decision the [c]ourt a quo on the ground that even if Gilbert Yap is the president of petitioner corporation the same had no authority to institute the complaint unless he can produce a board resolution showing his authority.

2. The Honorable Court of Appeals also erred when it entertained the issue on lack of Certificate of Non-forum shopping when the raising of said grounds is already barred by the Rules on Pleading and Omnibus Motion Rule.[11]

3. The Court of Appeals gravely erred and acted contrary to law in reversing the summary judgment and dismissing the complaints filed by petitioner on ground that the RTC Cebu had no jurisdiction over the complaint and plaintiff because the verification and certification of non-forum shopping signed by the president of the corporation was not accompanied by a board resolution considering that:

   3.1 Gilbert Yap, as President of petitioner, can sign the verification and certification even without a board resolution. Hence, his verification and certification is valid. Consequently, the complaint and second amended complaint are likewise valid.

   3.2 The Court of Appeals gravely erred and acted contrary to law in ruling that the subsequent submission of petitioner's board resolution cannot be deemed as substantial compliance to the rule on verification and certificate of non-forum shopping.

   3.3 The execution of a verification and certification of non-forum [shopping] is a formal, not a [jurisdictional] issue. It may be waived if not raised on time. In the instant case, respondents waived the alleged [defect] when they failed to raise it in a motion to dismiss or answer.

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[11] *Rollo* (G.R. No. 212493), pp. 49 and 58.

3.4 The assailed decision resolved an issue beyond its jurisdiction. Thus, it is void under the principle of coram non judice.

3.5 The validity of the complaints have been settled with finality. In its decision dated 10 October 2013, the Court of Appeals thru the another division (nineteenth division) directed RTC Cebu to render summary judgment there being no genuine issues to be tried. The Court of Appeals (Fifth Division) in the present case violated the doctrine of immutability of judgment when it dismissed the complaints, thereby effectively directing the trial court not to render any summary judgment.

4. The Court of Appeals gravely erred in reversing the summary judgment despite the fact the same is consistent with the Certificate of Agreement.[12]

Petitioner Yaps, in G.R. No. 212493 maintain that the signature of the President of the corporation is sufficient to vest authority on him to represent the corporation sans a board resolution. Petitioners stress that the Special Power of Attorney categorically granted Gilbert Yap the full authority to appear and represent Gabriel Yap, Sr. With respect to the failure of Gabriel Yap, Jr. and Hyman Yap to sign the certificate of non-forum shopping, petitioners assert that while the two men share a common interest with petitioner corporation and Gabriel Yap, Sr., these are not indispensable parties, thus their signatures are not necessary. Petitioners also submit that the issue of a defective certification of non-forum shopping was belatedly raised, thus should not have been considered.[13]

Petitioner in G.R. No. 212504 adds that the appellate court should have considered the subsequent submission of the board resolution as substantial compliance with the Rules. Petitioner also argues that the appellate court violated the doctrine of

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[12] *Rollo* (G.R. No. 212504), pp. 41-43.

[13] *Rollo* (G.R. No. 212493), pp. 50-55.

immutability of judgment when it dismissed the complaints thereby effectively directing the trial court not to render any summary judgment.[14]

Respondents filed one Comment on both petitions. They argue that petitioners, except for Gabriel Yap, Sr. are not parties to the Certificate of Agreement, thus the petitions should be dismissed because as against them no rights were violated. Respondents insist that the Certificate of Agreement is void because it involved unliquidated community properties. Respondents further claim that petitioners, other than Cebu South Memorial Garden, did not appeal the Summary Judgment before the Court of Appeals, hence, they are all bound by the denial of their Motion for Summary Judgment by the RTC. With respect to the alleged defect in the Certification of Non-forum shopping, respondents echoed the ruling of the Court of Appeals.[15]

We will first discuss the procedural aspect of this case where the Court of Appeals wholly based its decision. The appellate court ruled that the certification against forum-shopping is defective because it was signed by Gilbert Yap without a valid board resolution. In the leading case of *Cagayan Valley Drug Corporation v. Commissioner of Internal Revenue*,[16] the Court, in summarizing numerous jurisprudence, rendered a definitive rule that the following officials or employees of the company can sign the verification and certification without need of a board resolution: (1) the Chairperson of the Board of Directors, (2) the President of a corporation, (3) the General Manager or Acting General Manager, (4) Personnel Officer, and (5) an Employment Specialist in a labor case. The rationale behind the rule is that these officers are "in a position to verify the truthfulness and correctness of the allegations in the petition."[17]

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[14] *Rollo* (G.R. No. 212504), pp. 41-43.

[15] *Rollo* (G.R. No. 212493), pp. 210-232.

[16] 568 Phil. 572, 581 (2008).

[17] *Id.* at 582.

In *Cebu Metro Pharmacy, Inc. v. Euro-Med Laboratories, Pharmacy, Inc.*,[18] the President and Manager of Cebu Metro was held by the Court as having the authority to sign the verification and certification of non-forum shopping even without the submission of a written authority from the board. The Court went on to say:

> As the corporation's President and Manager, she is in a position to verify the truthfulness and correctness of the allegations in the petition. In addition, such an act is presumed to be included in the scope of her authority to act within the domain of the general objectives of the corporation's business and her usual duties in the absence of any contrary provision in the corporation's charter or by-laws.[19]

Cebu Metro also cited cases wherein the Court allowed officers of a corporation to sign the verification and certification of non-forum shopping even without a board resolution, to wit:

> x x x x x x x x x

> In *Ateneo de Naga University v. Manalo*, we held that the lone signature of the University President was sufficient to fulfill the verification requirement, because such officer had sufficient knowledge to swear to the truth of the allegations in the petition.
>
> In *People's Aircargo and Warehousing Co., Inc. v. CA*, we held that in the absence of a charter or by-law provision to the contrary, the president of a corporation is presumed to have the authority to act within the domain of the general objectives of its business and within the scope of his or her usual duties. Moreover, even if a certain contract or undertaking is outside the usual powers of the president, the corporation's ratification of the contract or undertaking and the acceptance of benefits therefrom make the corporate president's actions binding on the corporation.[20]

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[18] 647 Phil. 642 (2010).

[19] *Id.* at 653.

[20] *Id.* at 651-652 citing *Hutama RSEA/Supermax Phils., J.V. v. KCD Builders Corp.*, 628 Phil. 52, 61 (2010).

Bolstering our conclusion that the certification of non-forum shopping is valid is the subsequent appending of the board resolution to petitioners' motion for reconsideration. The Board Resolution reads:

BOARD RESOLUTION NO. 01
Series of 2013

WHEREAS, the corporation is presently facing a Civil Case entitled Cebu South Memorial Garden, Inc. versus Letecia Siao, Lynel Siao, Janelyn Siao, Eleanor Faye Siao, Shelett Siao and Honeylet Siao, and docketed as Civil Case No. CEB-23707 before the Regional Trial Court of Cebu City, Branch 13, and is mostly like to [raise] to the Court of Appeals and the Supreme Court by our corporation or by the opposing party depending on the outcome of the said case.

WHEREAS, the corporation needs to appoint its authorized representative who will be vested with the authority to sign the Verification and Certificate of Forum Shopping for any and all pleadings to be filed before the Court of Appeals and the Supreme Court as the need of the case requires.

WHEREAS, the corporation also needs to ratify the action taken by the president of the corporation in the person of Gilbert Yap who signed the Verification and the Certificate of Non-Forum Shopping in the Complaint filed by this corporation before the Regional Trial Court of Cebu City last April 27, 1999 and docketed as [Civil Case No. CEB-23707].

WHEREFORE, it is hereby resolved that:

1. The action of the president Gilbert Yap in signing the Verification and Certificate of Non-forum Shopping in [Civil Case No. CEB-23707] filed before the Regional Trial Court of Cebu City on April 27, 1999 is hereby ratified/affirmed by this Board with all legal effects and consequences.

2. The corporate president Gilbert Yap is given full authority to sign the Verification and Certificate on Non-forum Shopping for all pleadings to be filed with the Court of Appeals and after with the Supreme Court of the Philippines.[21]

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[21] *Rollo* (G.R. No. 212493), pp. 104-105.

The Board of Directors of Cebu South Memorial Garden, through a Board Resolution, not only authorized the President of the corporation to sign the Certificate of Forum-Shopping but it ratified the action taken by Gilbert Yap in signing the forum-shopping certificate.

In *Swedish Match Philippines, Inc. v. The Treasurer of the City of Manila*,[22] we held that the belated submission of a Secretary's certification constitutes substantial compliance with the rules, thus:

> Clearly, this is not an ordinary case of belated submission of proof of authority from the board of directors. Petitioner-corporation ratified the authority of Ms. Beleno to represent it in the Petition filed before the RTC, particularly in Civil Case No. 03-108163, and consequently to sign the verification and certification of non-forum shopping on behalf of the corporation. This fact confirms and affirms her authority and gives this Court all the more reason to uphold that authority.[23]

In *Cosco Philippine Shipping, Inc. v. Kemper Insurance*,[24] we cited instances wherein the lack of authority of the person making the certification of non-forum shopping was remedied through subsequent compliance by the parties therein:

> In *China Banking Corporation v. Mondragon International Philippines, Inc*., the CA dismissed the petition filed by China Bank, since the latter failed to show that its bank manager who signed the certification against non-forum shopping was authorized to do so. We reversed the CA and said that the case be decided on the merits despite the failure to attach the required proof of authority, since the board resolution which was subsequently attached recognized the pre-existing status of the bank manager as an authorized signatory.
>
> In *Abaya Investments Corporation v. Merit Philippines*, where the complaint before the Metropolitan Trial Court of Manila was instituted by petitioner's Chairman and President, Ofelia Abaya, who

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[22] G.R. No. 181277, 3 July 2013, 700 SCRA 428.

[23] *Id.* at 437.

[24] 686 Phil. 327 (2012).

signed the verification and certification against non-forum shopping without proof of authority to sign for the corporation, we also relaxed the rule. We did so taking into consideration the merits of the case and to avoid a re-litigation of the issues and further delay the administration of justice, since the case had already been decided by the lower courts on the merits. Moreover, Abaya's authority to sign the certification was ratified by the Board.[25]

In *Lim v. Court of Appeals, Mindanao Station*[26] it was ruled that the Assistant Vice-President for BPI Northern Mindanao, who was then the highest official representing the bank in the Northern Mindanao area, is in a position to verify the truthfulness and correctness of the allegations in the subject complaint, signifying his authority in filing the complaint and to sign the verification and certification against forum shopping.

In *Fuji Television Network v. Espiritu*,[27] we highlighted two rules relative to certification against forum-shopping:

x x x x x x x x x

4) As to certification against forum shopping, non-compliance therewith or a defect therein, unlike in verification, is generally not curable by its subsequent submission or correction thereof, unless there is a need to relax the Rule on the ground of "substantial compliance" or presence of "special circumstances or compelling reasons."

5) The certification against forum shopping must be signed by all the plaintiffs or petitioners in a case; otherwise, those who did not sign will be dropped as parties to the case. Under reasonable or justifiable circumstances, however, as when all the plaintiffs or petitioners share a common interest and invoke a common cause of action or defense, the signature of only one of them in the certification against forum shopping substantially complies with the Rule.

x x x x x x x x x

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[25] *Id.* at 338-339 citing *Rep. v. Coalbrine Int'l. Phils., Inc.*, 631 Phil. 487, 499 (2010).

[26] G.R. No. 192615, 30 January 2013, 689 SCRA 705, 712-713.

[27] G.R. Nos. 204944-45, 3 December 2014.

Clearly, a defect in the certification is allowed on the ground of substantial compliance as in this case.

Applying the above-mentioned rule, the signatures of petitioners Gabriel Yap, Jr. and Hyman Yap are not indispensable for the validity of the certification. These petitioners indeed share a common cause of action with Gilbert Yap in that they are impleaded as officers and directors of Cebu South Memorial Garden, the very same corporation represented by Gilbert Yap.

At any rate, any objection as to compliance with the requirement of verification in the complaint should have been raised in the proceedings below, and not in the appellate court for the first time.[28]

In *Young v. John Keng Seng*,[29] it was also held that the question of forum shopping cannot be raised in the Court of Appeals and in the Supreme Court, since such an issue must be raised at the earliest opportunity in a motion to dismiss or a similar pleading.

The Court of Appeals relied on procedural rules rather than on the merits of the case. On this score, we can remand the case to the Court of Appeals for an opportunity to rule on the substance of the case. The Court, in the public interest and expeditious administration of justice, has resolved action on the merits, instead of remanding them for further proceedings, as where the ends of justice would not be sub-served by the remand of the case or where the trial court had already received all the evidence of the parties. Briefly stated, a remand of the instant case to the Court of Appeals would serve no purpose save to further delay its disposition contrary to the spirit of fair play.[30]

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[28] *S.C. Megaworld Construction and Development Corporation v. Parada*, G.R. No. 183804, 11 September 2013, 705 SCRA 584, 596.

[29] 446 Phil. 823, 826 (2003).

[30] *Apo Fruits Corporation v. Court of Appeals*, 543 Phil. 497, 516-517 (2007).

Considering that this case has dragged on for 15 years with no concrete solution in sight, we shall proceed to discuss the merits.

We reiterate the ruling penned by Justice Labitoria of the Court of Appeals in CA-G.R. SP No. 73850[31] directing the trial court to render a summary judgment. The issues and arguments posed by respondents have already been passed upon and resolved by the Court of Appeals. By appealing the summary judgment, respondents are in effect asking the Court of Appeals to revisit the same issues. We cannot allow this under the principle of the "law of the case."

The "law of the case" doctrine applies in a situation where an appellate court has made a ruling on a question on appeal and thereafter remands the case to the lower court to effect the ruling; the question settled by the appellate court becomes the law of the case at the lower court and in any subsequent appeal. It means that whatever is irrevocably established as the controlling legal rule or decision between the same parties in the same case continues to be the law of the case, whether correct on general principles or not, so long as the facts on which the legal rule or decision was predicated continue to be the facts of the case before the court.[32]

The rationale behind this rule is to enable an appellate court to perform its duties satisfactorily and efficiently, which would be impossible if a question, once considered and decided by it, were to be litigated anew in the same case upon any and every subsequent appeal. Without it, there would be endless litigation. Litigants would be free to speculate on changes in the personnel of a court, or on the chance of having propositions rewritten once gravely ruled on solemn argument and handed down as the law of a given case.[33]

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[31] *Rollo* (G.R. No. 212504), pp. 187-195.

[32] *Export Processing Zone v. Pulido, et al.*, 671 Phil. 834, 843 (2011).

[33] *Sy v. Young*, G.R. No. 169214, 19 June 2013, 699 SCRA 8, 14.

In the Labitoria decision, the Court of Appeals directed the trial court to render a summary judgment on the ground that there was no longer any legal controversy regarding the Certificate of Agreement when respondents relied on the same agreement to ask for support. This ruling became the law of the case between the parties which cannot be disturbed. Respondents cannot raise this same issue in another petition.

In any case, we affirm the summary judgment rendered by the trial court, as directed by the Court of Appeals. A summary judgment is permitted only if there is no genuine issue as to any material fact and a moving party is entitled to a judgment as a matter of law. A summary judgment is proper if, while the pleadings on their face appear to raise issues, the affidavits, depositions, and admissions presented by the moving party show that such issues are not genuine.[34]

A "genuine issue" is an issue of fact which requires the presentation of evidence as distinguished from a sham, fictitious, contrived or false claim. When the facts as pleaded appear uncontested or undisputed, then there is no real or genuine issue or question as to the facts, and summary judgment is called for. The party who moves for summary judgment has the burden of demonstrating clearly the absence of any genuine issue of fact, or that the issue posed in the complaint is patently unsubstantial so as not to constitute a genuine issue for trial. Trial courts have limited authority to render summary judgments and may do so only when there is clearly no genuine issue as to any material fact. When the facts as pleaded by the parties are disputed or contested, proceedings for summary judgment cannot take the place of trial.[35]

Petitioners' complaint seeks for specific performance from respondents, *i.e.*, to transfer ownership of the subject properties

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[34] *Spouses Ong v. Roban Lending Corp.*, 579 Phil. 769, 779 (2008).

[35] *Cotabato Timberland Co., Inc. v. C. Alcantara and Sons, Inc.*, 474 Phil. 259, 267 (2004) citing *Evadel Realty and Development Corp. v. Spouses Soriano*, 409 Phil. 450, 461 (2001).

to petitioner corporation based on the Certificate of Agreement. As their defense, respondents challenge the validity of the Agreement. However, respondents filed a motion for support relying on the same Agreement that they are impugning. In view of this admission, respondents are effectively banking on the validity of the Agreement. Thus, there are no more issues that need to be threshed out. As aptly explained by the appellate court:

> Clearly, there is no longer any legal controversy in this case which would justify trial. By claiming benefits arising from the Certificate of Agreement, private respondents had invoked the validity and effectiveness of the Certificate of Agreement which according to them is the law between the parties.
>
> After invoking the validity and effectiveness of the Certificate of Agreement, private respondents cannot now be heard claiming that they could not be required to perform their obligations under the Certificate of Agreement because the said contract is void or that because private respondent Leticia Siao had no authority to bind the other private respondents.
>
> The application of the principle of estoppel is proper and timely in heading off private respondents efforts at renouncing their previous acts to the prejudice of petitioner. The principle of equity and natural justice, as expressly adopted in Article 1431 of the Civil Code, and pronounced as one of the CONCLUSIVE presumption under rule 131, Section 3 (a) of the Rules of Court, as follows: "Whenever a party has, by his own declaration, act or omission, intentionally and deliberately led another to believe a particular thing to be true, and to act upon such a belief, he cannot, in any litigation arising out of such declaration, act or omission, be permitted to falsify it."
>
> Private respondents, having performed affirmative acts upon which the petitioner and public respondent based their subsequent actions, cannot thereafter refute their acts or renege on the effects of the same, to the prejudice of the latter. To allow private respondents to do so would be tantamount to conferring upon them the liberty to limit their liability at their whims and caprices, which is against the very principles of equity and natural justice.[36] (Emphasis Supplied)

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[36] *Rollo* (G.R. No. 212493), pp. 126-129.

Considering the foregoing, we grant the petition.

WHEREFORE, the petitions are **GRANTED**. The Court of Appeals' Decision dated 9 October 2013 and Resolution dated 26 March 2014 in CA-G.R. CV No. 02037 are **REVERSED and SET ASIDE**. The Summary Judgment in Civil Case No. CEB-23707 rendered by the Regional Trial Court, Branch 13, Cebu City is **AFFIRMED**.

SO ORDERED.

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

Jardeleza, J., on wellness leave.

FIRST DIVISION

[G.R. No. 154069. June 6, 2016]

INTERPORT RESOURCES CORPORATION, *petitioner, vs.* **SECURITIES SPECIALISTS, INC., and R.C. LEE SECURITIES, INC.,** *respondents.*

SYLLABUS

1. CIVIL LAW; OBLIGATIONS; NOVATION; NOVATION, WHICH CONSISTS IN SUBSTITUTING A NEW DEBTOR IN THE PLACE OF THE ORIGINAL ONE, MAY BE MADE EVEN WITHOUT THE KNOWLEDGE OR AGAINST THE WILL OF THE LATTER, BUT NOT WITHOUT THE CONSENT OF THE CREDITOR.—Under the *Civil Code*, obligations may be modified by: (1) changing their object or principal conditions; or (2) substituting the person of the debtor; or (3) subrogating a third person in the rights of the creditor. Novation, which

consists in substituting a new debtor in the place of the original one, may be made even without the knowledge or against the will of the latter, but not without the consent of the creditor. x x x It should be stressed that novation extinguished an obligation between two parties.

2. MERCANTILE LAW; CORPORATION CODE; NO TRANSFER OF SHARES OF STOCK SHALL BE VALID, EXCEPT AS BETWEEN THE PARTIES, UNTIL THE TRANSFER IS RECORDED IN THE BOOKS OF THE CORPORATION.— Under Section 63 of the *Corporation Code*, no transfer of shares of stock shall be valid, except as between the parties, until the transfer is recorded in the books of the corporation so as to show the names of the parties to the transaction, the date of the transfer, the number of the certificate or certificates and the number of shares transferred.

3. CIVIL LAW; DAMAGES; EXEMPLARY DAMAGES; EXEMPLARY DAMAGES ARE IMPOSED NOT TO ENRICH ONE PARTY OR IMPOVERISH ANOTHER, BUT TO SERVE AS A DETERRENT AGAINST OR AS A NEGATIVE INCENTIVE TO CURB SOCIALLY DELETERIOUS ACTIONS.— Article 2229 of the *Civil Code* provides that exemplary damages may be imposed by way of example or correction for the public good. While exemplary damages cannot be recovered as a matter of right, they need not be proved, although 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. Exemplary damages are imposed not to enrich one party or impoverish another, but to serve as a deterrent against or as a negative incentive to curb socially deleterious actions.

APPEARANCES OF COUNSEL

Martinez & Associates Law Office for petitioner.

Cayanga Zuniga & Angel for respondent R.C. Lee Securities Inc.

Antonio R. Bautista & Partners for respondent Securities Specialist, Inc.

D E C I S I O N

BERSAMIN, *J.*:

This appeal assails the decision promulgated on February 11, 2002,[1] whereby the Court of Appeals (CA), in C.A.-G.R. SP No. 66600, affirmed the decision the Securities and Exchange Commission (SEC) rendered in SEC AC No. 501-502[2] ordering Interport Resources Corporation (Interport) to deliver 25% of the shares of stocks under Subscription Agreements Nos. 1805 and 1808-1811, or the value thereof, and to pay to respondent Securities Specialists, Inc. (SSI), jointly and severally with R.C. Lee Securities, Inc. (R.C. Lee), exemplary damages and litigation expenses.

Antecedents

In January 1977, Oceanic Oil & Mineral Resources, Inc. (Oceanic) entered into a subscription agreement with R.C. Lee, a domestic corporation engaged in the trading of stocks and other securities, covering 5,000,000 of its shares with par value of ₱0.01 per share, for a total of ₱50,000.00. Thereupon, R.C. Lee paid 25% of the subscription, leaving 75% unpaid. Consequently, Oceanic issued Subscription Agreements Nos. 1805, 1808, 1809, 1810, and 1811 to R.C. Lee.[3]

On July 28, 1978, Oceanic merged with Interport, with the latter as the surviving corporation. Interport was a publicly-listed domestic corporation whose shares of stocks were traded in the stock exchange. Under the terms of the merger, each share of Oceanic was exchanged for a share of Interport.[4]

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[1] *Rollo*, pp. 37-48; penned by Associate Justice Jose L. Sabio, Jr. (retired/deceased), with Associate Justice Oswaldo D. Agcaoili (retired) and Associate Justice Sergio L. Pestaño (retired/deceased) concurring.

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

[3] *Id.* at 12.

[4] *Id.* at 38.

On April 16, 1979 and April 18, 1979, SSI, a domestic corporation registered as a dealer in securities, received in the ordinary course of business Oceanic Subscription Agreements Nos. 1805, 1808 to 1811, all outstanding in the name of R.C. Lee, and Oceanic official receipts showing that 25% of the subscriptions had been paid.[5] The Oceanic subscription agreements were duly delivered to SSI through stock assignments indorsed in blank by R.C. Lee.[6]

Later on, R.C. Lee requested Interport for a list of subscription agreements and stock certificates issued in the name of R.C. Lee and other individuals named in the request. In response, Atty. Rhodora B. Morales, Interport's Corporate Secretary, provided the requested list of all subscription agreements of Interport and Oceanic, as well as the requested stock certificates of Interport.[7] Upon finding no record showing any transfer or assignment of the Oceanic subscription agreements and stock certificates of Interport as contained in the list, R.C. Lee paid its unpaid subscriptions and was accordingly issued stock certificates corresponding thereto.[8]

On February 8, 1989, Interport issued a call or the full payment of subscription receivables, setting March 15, 1989 as the deadline. SSI tendered payment prior to the deadline through two stockbrokers of the Manila Stock Exchange. However, the stockbrokers reported to SSI that Interport refused to honor the Oceanic subscriptions.[9]

Still on the date of the deadline, SSI directly tendered payment to Interport for the balance of the 5,000,000 shares covered by the Oceanic subscription agreements, some of which were in the name of R.C. Lee and indorsed in blank. Interport originally

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[5] *Id.* at 38.

[6] *Id.* at 64.

[7] *Id.* at 12-13.

[8] *Id.* at 13.

[9] *Id.* at 38.

rejected the tender of payment for all unpaid subscriptions on the ground that the Oceanic subscription agreements should have been previously converted to shares in Interport.[10]

SSI then required Interport to furnish it with a copy of any notice requiring the conversion of Oceanic shares to Interport shares. However, Interport failed to show any proof of the notice. Thus, through a letter dated March 30, 1989, SSI asked the SEC for a copy of Interport's board resolution requiring said conversion. The SEC, through Atty. Fe Eloisa C. Gloria, Director of Brokers and Exchange Department, informed SSI that the SEC had no record of any such resolution.[11]

Having confirmed the non-existence of the resolution, Francisco Villaroman, President of SSI, met with Pablo Roman, President and Chairman of the Board of Interport, and Atty. Pineda, Interport's Corporate Secretary, at which meeting Villaroman formally requested a copy of the resolution. However, Interport did not produce a copy of the resolution.[12]

Despite that meeting, Interport still rejected SSI's tender of payment for the 5,000,000 shares covered by the Oceanic Subscription Agreements Nos. 1805, and 1808 to 1811.[13]

On March 31, 1989, or 16 days after its tender of payment, SSI learned that Interport had issued the 5,000,000 shares to R.C. Lee, relying on the latter's registration as the owner of the subscription agreements in the books of the former, and on the affidavit executed by the President of R.C. Lee stating that no transfers or encumbrances of the shares had ever been made.[14]

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[10] *Id.* at 56.

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

[12] *Id.* at 57.

[13] *Id.*

[14] *Id.* at 57-58.

Thus, on April 27, 1989, SSI wrote R.C. Lee demanding the delivery of the 5,000,000 Interport shares on the basis of a purported assignment of the subscription agreements covering the shares made in 1979. R.C. Lee failed to return the subject shares inasmuch as it had already sold the same to other parties. SSI thus demanded that R.C. Lee pay not only the equivalent of the 25% it had paid on the subscription but the whole 5,000,000 shares at current market value.[15]

SSI also made demands upon Interport and R.C. Lee for the cancellation of the shares issued to R.C. Lee and for the delivery of the shares to SSI.[16]

On October 6, 1989, after its demands were not met, SSI commenced this case in the SEC to compel the respondents to deliver the 5,000,000 shares and to pay damages.[17] It alleged fraud and collusion between Interport and R.C. Lee in rejecting the tendered payment and the transfer of the shares covered by the subscription agreements.

On October 25, 1994, after due hearing, the Hearing Officer of the SEC's Securities Investigation and Clearing Department (SICD) rendered a decision,[18] disposing thusly:

> WHEREFORE, judgment is hereby rendered ordering respondent Interport to deliver the five (5) million shares covered by Oceanic Oil and Mineral Resources, Inc. subscription agreement Nos. 1805, 1808-1811 to petitioner SSI; and if the same not be possible to deliver the value thereof, at the market price as of the date of this judgment; and ordering both respondents, jointly and severally, to indemnify the complainant in the sum of FIVE HUNDRED THOUSAND PESOS (₱500,000.00) by way of temperate or moderate damages, to indemnify complainant in the sum of FIVE HUNDRED THOUSAND PESOS (₱500,000.00) by way of' exemplary damages; to pay for complainant's litigation expenses, including attorney's fees, reasonably in the sum

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[15] *Id.* at 15.

[16] *Id.*

[17] *Id.* at 40.

[18] *Id.* at 54-77.

of THREE HUNDRED THOUSAND pesos (₱300,000.00) and to pay the costs of suit.[19]

Both Interport and R.C. Lee appealed to the SEC *En Banc*, which ultimately ruled as follows:

After a careful review of the records of this case, we find basis in partially reversing the decision dated October 25, 1994.

It is undisputed from the facts presented and evidence adduced that the subject matter of this case pertains to the subscription agreements for which complainant paid only twenty five percent and the remaining balance of seventy five percent paid for by respondent RCL. Accordingly, to order the return of the five million shares or the payment of the entire value thereof to the complainant, without requiring the latter to pay the balance of seventy five percent will be inequitable. Accordingly, the pertinent portion of the decision is hereby revised to reflect this.

As regards the portion awarding temperate damages, the same may not be awarded. All evidence presented by Securities Specialist, Inc. pertaining to its "lost opportunity" seeking for damages for its supposed failure to sell Interport's shares, when the market was allegedly good, is merely speculative. Moreover, even if the alleged pecuniary loss of SSI would be considered, the same is again purely speculative and deserves scant consideration by the Commission. Hence, temperate damages may not be justly awarded along with the other damages prayed for.

WHEREFORE, premises considered, judgment is hereby rendered, ordering respondent Interport to deliver the corresponding shares previously covered by Oceanic Oil Mineral Resources, Inc. subscription agreements Nos. 1805-1811 to petitioner SSI, to the extent only of 25% thereof, as duly paid by petitioner SSI; and if the same will not be possible, to deliver the value thereof at the market price as of the date of this judgment and ordering both respondents jointly and severally, to indemnify the complainant in the sum of five hundred thousand pesos (₱500,000.00) by way of exemplary damages, to pay for complainant's litigation expenses, including attorney's fees, reasonably in the sum of three hundred thousand pesos (₱300,000.00) and to pay the costs of the suit.[20]

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[19] *Id.* at 77.

[20] *Id.* at 79-80.

Interport appealed to the CA,[21] which on February 11, 2002 affirmed the SEC's decision,[22] *viz.*:

> WHEREFORE, premises considered the Petition is hereby DENIED DUE COURSE and ordered DISMISSED and the challenged decision of the Securities and Exchange Commission AFFIRMED, with costs to Petitioner.
>
> SO ORDERED.

On June 25, 2002, the CA denied Interport's motion for reconsideration.[23]

Issues

Interport assigns the following errors to the CA, namely:

I

THE COURT OF APPEALS ERRED AND COMMITTED GRAVE ABUSE OF DISCRETION IN THE APPRECIATION OF THE FACTS IN HOLDING PETITIONER LIABLE TO DELIVER THE 25% OF THE SUBJECT 5 MILLION SHARES OR IF THE SAME NOT BE POSSIBLE TO DELIVER THE VALUE THEREOF DESPITE THE EVIDENCE TO THE CONTRARY.

II

THE COURT OF APPEALS ERRED IN RULING THAT PETITIONER IS LIABLE FOR EXEMPLARY DAMAGES IN THE AMOUNT OF ₱500,000.00 WITHOUT LEGAL BASIS, WHICH IS NOT IN ACCORD WITH LAW AND APPLICABLE DECISIONS OF THE SUPREME COURT.

III

THE COURT OF APPEALS ERRED IN RULING THAT PETITIONER IS LIABLE FOR ATTORNEY'S FEES IN THE AMOUNT OF ₱300,000.00 AND COSTS THERE BEING NO FACTUAL AND LEGAL BASIS,

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[21] *Id.* at 37.

[22] *Supra* note 1.

[23] *Rollo*, pp. 50-51.

WHICH IS NOT IN ACCORD WITH LAW AND APPLICABLE DECISIONS OF THE SUPREME COURT.[24]

The issues are: (a) whether or not Interport was liable to deliver to SSI the Oceanic shares of stock, or the value thereof, under Subscriptions Agreement No. 1805, and Nos. 1808 to 1811 to SSI; and (b) whether or not SSI was entitled to exemplary damages and attorney's fees.

Ruling

The appeal is partly meritorious.

1.

Interport was liable to deliver the Oceanic shares of stock, or the value thereof, under Subscription Agreements Nos. 1805, and 1808 to 1811 to SSI

Interport argues that R.C. Lee should be held liable for the delivery of 25% of the shares under the subject subscription agreements inasmuch as R.C. Lee had already received all the 5,000,000 shares upon its payment of the 75% balance on the subscription price to Interport; that it was only proper for R.C. Lee to deliver 25% of the shares under the Oceanic subscription agreements because it had already received the corresponding payment therefor from SSI for the assignment of the shares; that R.C. Lee would be unjustly enriched if it retained the 5,000,000 shares and the 25% payment of the subscription price made by SSI in favor of R.C. Lee as a result of the assignment; and that it merely relied on its records, in accordance with Section 74 of the *Corporation Code*, when it issued the stock certificates to R.C. Lee upon its full payment of the subscription price.

Interport's arguments must fail.

In holding Interport liable for the delivery of the Oceanic shares, the SEC explained:

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[24] *Id.* at 19.

x x x [T]he Oceanic subscriptions agreements were duly delivered to the Complainant SSI supported by stock assignments of respondent R.C. Lee (Exhibits "B" to "B-4" of the petitioner) and by official receipts of Oceanic showing that twenty five percent of the subscription had been paid (Exhibits "C" to "C-4"). **To this date, respondent R.C. Lee does not deny having subscribed and delivered such stock assignments to the Oceanic subscription agreements. Therefore, having negotiated them by allowing to be in street certificates, respondent R.C. Lee, as a broker, cannot now legally and morally claim any further interests over such subscriptions or the shares of stock they represent.**

x x x x x x x x x

Both respondents seek to be absolved of liability for their machinations by invoking both the rule on novation of the debtor without the creditor's consent; as well as the Corporation Code rule of non-registration of transfers in the corporation's stock and transfer book. Neither will avail in the case at bar. Art. 1293 of the New Civil Code states:

"Art. 1293. Novation which consists in substituting a new debtor in the place of the original one may be made even without the knowledge or against the will of the latter but not without the consent of the creditor" x x x.

More importantly, the allusion by the respondents likening the subscription contracts to the situation of debtor-creditor finds no basis in law. Indeed, as held by the Supreme Court, shareholders are not creditors of the corporation with respect to the shareholdings (Garcia vs. Lim Chu Sing, 59 Phil. 562).

The Memorandum of R.C. Lee, likewise cites the Opinion of the SEC dated November 12, 1976, which states "that since an assignment will involve a substitution of debtor or novation of contract, as such the consent of the creditor must be obtained" has the same effect. The opinion, however, merely restated the general rule already embodied in the Codal provision quoted above; it does not preclude previously authorized transfers. According to Tolentino —

> "When the original contract authorizes the debtor to transfer his obligations to a third person, the novation by substitution of debtor is effected when the creditor is notified that such transfer has been made" (IV Tolentino 392, 1991 ed. emphasis supplied)

But even following the argument of the respondents, when complainant SSI tendered the balance of the unpaid subscription on the subject five (5) million shares on the basis of the existing subscription agreements covering the same, respondents Interport was bound to accept payment even as the same were being tendered in the name of the registered subscriber, respondent R.C. Lee and once the payment is fully accepted in the name of respondent R.C. Lee, respondent Interport was then bound to recognize the stock assignment also tendered duly executed by respondent R.C. Lee in favor of complainant SSI.[25] (bold emphasis supplied.)

The SEC correctly categorized the assignment of the subscription agreements as a form of novation by substitution of a new debtor and which required the consent of or notice to the creditor. We agree. Under the *Civil Code*, obligations may be modified by: (1) changing their object or principal conditions; or (2) substituting the person of the debtor; or (3) subrogating a third person in the rights of the creditor.[26] Novation, which consists in substituting a new debtor in the place of the original one, may be made even without the knowledge or against the will of the latter, but not without the consent of the creditor.[27] In this case, the change of debtor took place when R.C. Lee assigned the Oceanic shares under Subscription Agreement Nos. 1805, and 1808 to 1811 to SSI so that the latter became obliged to settle the 75% unpaid balance on the subscription.

The SEC likewise did not err in appreciating the fact that Interport was duly notified of the assignment when SSI tendered its payment for the 75% unpaid balance, and that it could not anymore refuse to recognize the transfer of the subscription that SSI sufficiently established by documentary evidence.

Yet, Interport claims that SSI waived its rights over the 5,000,000 shares due to its failure to register the assignment in the books of Interport; and that SSI was estopped from claiming

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[25] *Id.* at 64-72.

[26] Article 1291, *Civil Code*.

[27] Article 1293, *Civil Code*.

the assigned shares, inasmuch as the assignor, R.C. Lee, had already transferred the same to third parties.

Interport's claim cannot be upheld. It should be stressed that novation extinguished an obligation between two parties.[28] We have stated in that respect that:

> x x x Novation may:
>
> [E]ither be extinctive or modificatory, much being dependent on the nature of the change and the intention of the parties. Extinctive novation is never presumed; there must be an express intention to novate; in cases where it is implied, the acts of the parties must clearly demonstrate their intent to dissolve the old obligation as the moving consideration for the emergence of the new one. Implied novation necessitates that the incompatibility between the old and new obligation be total on every point such that the old obligation is completely superseded by the new one. The test of incompatibility is whether they can stand together, each one having an independent existence; if they cannot and are irreconcilable, the subsequent obligation would also extinguish the first.
>
> An extinctive novation would thus have the twin effects of, *first*, extinguishing an existing obligation and, *second*, creating a new one in its stead. This kind of novation presupposes a confluence of four essential requisites: (1) a previous valid obligation, (2) an agreement of all parties concerned to a new contract, (3) the extinguishment of the old obligation, and (4) the birth of a valid new obligation. Novation is merely modificatory where the change brought about by any subsequent agreement is merely incidental to the main obligation (*e.g.*, a change in interest rates or an extension of time to pay, in this instance, the new agreement will not have the effect of extinguishing the first but would merely supplement it or supplant some but not all of its provisions.[29]

Clearly, the effect of the assignment of the subscription agreements to SSI was to extinguish the obligation of R.C.

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[28] See *Arco Pulp and Paper Co., Inc. v. Lim*, G.R. No. 206806, June 25, 2014, 727 SCRA 275, 287.

[29] *Foundation Specialists, Inc. v. Betonval Ready Concrete, Inc.*, G.R. No. 170674, August 24, 2009, 596 SCRA 697, 707.

Lee to Oceanic, now Interport, to settle the unpaid balance on the subscription. As a result of the assignment, Interport was no longer obliged to accept any payment from R.C. Lee because the latter had ceased to be privy to Subscription Agreements Nos. 1805, and 1808 to 1811 for having been extinguished insofar as it was concerned. On the other hand, Interport was legally bound to accept SSI's tender of payment for the 75% balance on the subscription price because SSI had become the new debtor under Subscription Agreements Nos. 1805, and 1808 to 1811. As such, the issuance of the stock certificates in the name of R.C. Lee had no legal basis in the absence of a contractual agreement between R.C. Lee and Interport.

Under Section 63 of the *Corporation Code*, no transfer of shares of stock shall be valid, except as between the parties, until the transfer is recorded in the books of the corporation so as to show the names of the parties to the transaction, the date of the transfer, the number of the certificate or certificates and the number of shares transferred. Hence:

> [A] transfer of shares of stock not recorded in the stock and transfer book of the corporation is non-existent as far as the corporation is concerned. As between the corporation on the one hand, and its shareholders and third persons on the other, the corporation looks only to its books for the purpose of determining who its shareholders are. It is only when the transfer has been recorded in the stock and transfer book that a corporation may rightfully regard the transferee as one of its stockholders. From this time, the consequent obligation on the part of the corporation to recognize such rights as it is mandated by law to recognize arises.[30]

This statutory rule cannot be strictly applied herein, however, because Interport had unduly refused to recognize the assignment of the shares between R.C. Lee and SSI. Accordingly, we adopt with approval the SEC's following conclusion that —

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[30] *Ponce v. Alsons Cement Corporation*, G.R. No. 139802, December 10, 2002, 393 SCRA 602, 612.

x x x To say that the ten years since the assignment had been made are a sufficient lapse of time in order for respondent SSI to be considered to have abandoned its rights under the subscription agreements, is to ignore the rule —

> "The right to have the transfer registered exists from the time of the transfers and it is to the transferee's benefit that the right be exercised early. However, since the law does not prescribed (sic) any period within which the registration should be effected the action to be enforced the right does not accrue until here has been a demand and a refusal to record the transfer." (11 Campus 310, 1990 ed., citing Won v. Wack Wack Golf, 104 Phil. 466, Emphasis Supplied).

Petitioner SSI was denied recognition of its subscription agreement on March 15, 1989; the complaint against the respondents was filed before the SEC on October 6 of that same year. This is the period of time that is to be taken into account, not the period between 1979 and 1989. The Commission thus finds that petitioner acted with sufficient dispatch in seeking to enforce its rights under the subscription agreements, and sought the intervention of this Commission within a reasonable period.

In the affidavit of respondent R.C. Lee's president, Ramon C. Lee, dated February 22, 1989, there are several averments that need to be examined, in the light of respondent R.C. Lee's claim of having acted in good faith.

The first is the statement made in paragraph 3 thereof:

> "That R.C. Lee Securities, Inc. has delivered to Interport its subscription Agreements for Twenty Five Million (25,000,000) shares of Oceanic for conversion into Interport shares however, as of date, only twenty million (20,000,000) shares have been duly covered by Interport Subscription Agreements and the Five million (5,000,000) shares still remains without Subscription Agreements."

No explanation is given for the failure of respondent Interport to convert the five (5) million shares. As can be seen from the letter of Interport to counsel of R.C. Lee, dated January 27, 1989, already mentioned above, these five (5) million shares purportedly belonging to respondent R.C. Lee do not seem to be covered by any properly identified subscription agreements. Yet respondent Interport issued

the shares without respondent R.C. Lee having anything to show for the same. On the other hand, respondent Interport refused to recognize complainant SSI's claim to five (5) millions (sic) shares inspite of the fact that its claim was fully supported by duly issued subscription agreements, stock assignment and receipts of payment of the initial subscription. x x x[31]

Subscription Agreements Nos. 1805, and 1808 to 1811 were now binding between Interport and SSI only, and only such parties were expected to comply with the terms thereof. Hence, the CA did not err in relying on the findings of the SEC, which was in a better position to pass judgment on whether or not Interport was liable to deliver to SSI the Oceanic shares under Subscription Agreements Nos. 1805, and 1808 to 1811.

2.
Interport and R.C. Lee were not liable to pay exemplary damages and attorney's fees

Article 2229 of the *Civil Code* provides that exemplary damages may be imposed by way of example or correction for the public good. While exemplary damages cannot be recovered as a matter of right, they need not be proved, although 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. Exemplary damages are imposed not to enrich one party or impoverish another, but to serve as a deterrent against or as a negative incentive to curb socially deleterious actions.[32]

SSI was not able to show that it was entitled to moral, temperate, or compensatory damages. In fact, the SEC pointed out that the award of temperate damages was not proper because SSI's alleged pecuniary loss was merely speculative in nature. Neither could SSI recover exemplary damages considering that there was no award of moral damages. Indeed, exemplary

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[31] *Rollo*, pp. 67-69.

[32] *Queensland-Tokyo Commodities, Inc. v. George*, G.R. No. 172727, September 8, 2010, 630 SCRA 304, 317-318.

damages are to be allowed only in addition to moral damages, and should not be awarded unless the claimant first establishes a clear right to moral damages.[33]

Nonetheless, the Court observes that exemplary damages were awarded in the past despite the award of moral damages being deleted because the defendant party to a contract acted in a wanton, fraudulent, oppressive or malevolent manner.[34]

In this case, the Court finds that Interport's act of refusing to accept SSI's tender of payment for the 75% balance of the subscription price was not performed in a wanton, fraudulent, oppressive or malevolent manner. In doing so, Interport merely relied on its records which did not show that an assignment of the shares had already been made between R.C. Lee and SSI as early as 1979. R.C. Lee, on the other hand, persisted in paying the 75% balance on the subscription price simply on the basis of Interport's representation that no transfer has yet been made in connection with Subscription Agreement Nos. 1805, and 1808 to 1811. Although Interport and R.C. Lee might have acted in bad faith[35] in refusing to recognize the assignment of the subscription agreements in favor of SSI, their acts certainly did not fall within the ambit of being performed in a wanton, fraudulent, oppressive or malevolent manner as to entitle SSI to an award for exemplary damages.

We delete the attorney's fees for lack of legal basis.[36]

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[33] *Delos Santos v. Papa*, G.R. No. 154427, May 8, 2009, 587 SCRA 385, 396-397.

[34] See *Crystal v. Bank of the Philippine Islands*, G.R. No. 172428, November 28, 2008, 572 SCRA 697, 706-707.

[35] Bad faith is defined in jurisprudence as a state of mind affirmatively operating with furtive design or with some motive of self interest or ill will or for ulterior purpose; see *Balbuena v. Sabay*, G.R. No. 154720, September 4, 2009, 598 SCRA 215, 227.

[36] See *Espino v. Bulut*, G.R. No. 183811, May 30, 2011, 649 SCRA 453, 461-462.

WHEREFORE, the Court **PARTIALLY GRANTS** the petition for review on *certiorari*; and **AFFIRMS** the decision promulgated on February 11, 2002 subject to the following **MODIFICATIONS**, namely:

1. **ORDERING** Interport Resources Corporation: (*a*) To accept the tender of payment of Securities Specialists, Inc. corresponding to the 75% unpaid balance of the total subscription price under Subscription Agreements Nos. 1805, 1808, 1809, 1810 and 1811; (b) To deliver 5,000,000 shares of stock and to issue the corresponding stock certificates to Securities Specialists, Inc. upon receipt of the payment of the latter under Item No. (a); (c) To cancel the stock certificates issued to R.C. Lee Securities, Inc. corresponding to the 5,000,000 shares of stock covered by Subscription Agreements Nos. 1805, 1808, 1809, 1810 and 1811; (d) To reimburse R.C. Lee Securities, Inc. the amounts it paid representing the 75% unpaid balance of the total subscription price of Subscription Agreements Nos. 1805, 1808, 1809, 1810 and 1811; and (e) In the alternative, if the foregoing is no longer possible, Interport Resources Corporation shall pay Securities Specialists, Inc. the market value of the 5,000,000 shares of stock covered by Subscription Agreements Nos. 1805, 1808, 1809, 1810 and 1811 at the time of the promulgation of this decision; and

2. **DELETING** the award for exemplary damages and attorney's fees for lack of merit.

No pronouncement on costs of suit.

SO ORDERED.

Leonardo-de Castro,[*] *Perlas-Bernabe,* and *Caguioa, JJ.,* concur.

Sereno, C.J., on leave.

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[*] Acting Chairperson per Special Order No. 2355 dated June 2, 2016.

FIRST DIVISION

[G.R. No. 160071. June 6, 2016]

ANDREW D. FYFE, RICHARD T. NUTTALL, and RICHARD J. WALD, *petitioners, vs.* **PHILIPPINE AIRLINES, INC.,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; VERIFICATION/CERTIFICATION; THE REQUIREMENT FOR VERIFICATION IS MERELY A FORMAL REQUIREMENT WHOSE DEFECT DID NOT NEGATE THE VALIDITY OR EFFICACY OF THE VERIFIED PLEADING, OR AFFECT THE JURISDICTION OF THE COURT; CASE AT BAR.— The SPA's individually signed by the petitioners vested in their counsel the authority, among others, "*to do and perform on my behalf any act and deed relating to the case, which it could legally do and perform, including any appeals or futher legal proceedings*." The authority was sufficiently broad to expressly and specially authorize their counsel, Atty. Ida Maureen V. Chao-Kho, to sign the verification/certification on their behalf. The purpose of the verification is to ensure that the allegations contained in the verified pleading are true and correct, and are not the product of the imagination or a matter of speculation; and that the pleading is filed in good faith. x x x At any rate, a finding that the verification was defective would not render the petition for review invalid. It is settled that the verification was merely a formal requirement whose defect did not negate the validity or efficacy of the verified pleading, or affect the jurisdiction of the court. x x x The lawyer of the party, in order to validly execute the certification, must be "specifically authorized" by the client for that purpose. With the petitioners being non-residents of the Philippines, the sworn certification on non-forum shopping by Atty. Chao-Kho sufficiently complied with the objective of ensuring that no similar action had been brought by them or the respondent against each other. x x x In this regard, we ought not to exact a literal compliance with Section 4, Rule 45, in relation to Section 2, Rule 42 of the *Rules of Court,* that only the party himself should execute the certification. After

all, we have not been shown by the respondent any intention on the part of the petitioners and their counsel to circumvent the requirement for the verification and certification on non-forum shopping.

2. **ID.; ID.; APPEAL AS A REMEDY IS NOT A MATTER OF RIGHT, BUT A MERE STATUTORY PRIVILEGE.—** Appeal as a remedy is not a matter of right, but a mere statutory privilege to be exercised only in the manner and strictly in accordance with the provisions of the law.

3. **MERCANTILE LAW; CORPORATION CODE; CLAIM FOR PAYMENT BROUGHT AGAINST A DISTRESSED CORPORATION SHOULD NOT PROSPER FOLLOWING THE ISSUANCE OF THE SUSPENSION ORDER BY THE SECURITIES AND EXCHANGE COMMISSION (SEC), REGARDLESS OF WHEN THE ACTION WAS FILED; ELUCIDATED.—** The Court has clarified in *Castillo v. Uniwide Warehouse Club, Inc*. why the claim for payment brought against a distressed corporation like the respondent should not prosper following the issuance of the suspension order by the SEC, regardless of when the action was filed, to wit. Jurisprudence is settled that the suspension of proceedings referred to in the law uniformly applies to all actions for claims filed against a corporation, partnership or association under management or receivership, without distinction, except only those expenses incurred in the ordinary course of business. x x x *Philippine Airlines, Inc. v. Zamora* declares that the automatic suspension of an action for claims against a corporation under a rehabilitation receiver or management committee embraces all phases of the suit, that is, the entire proceedings of an action or suit and not just the payment of claims. **The reason behind the imperative nature of a suspension or stay order in relation to the creditors claims cannot be downplayed, for indeed the indiscriminate suspension of actions for claims intends to expedite the rehabilitation of the distressed corporation by enabling the management committee or the rehabilitation receiver to effectively exercise its/his powers free from any judicial or extrajudicial interference that might unduly hinder or prevent the rescue of the debtor company. To allow such other actions to continue would only add to the burden of the management committee or rehabilitation receiver, whose time, effort and**

resources would be wasted in defending claims against the corporation, instead of being directed toward its restructuring and rehabilitation.

4. ID.; ARBITRATION LAW; ARBITRATION IS DEEMED A SPECIAL PROCEEDING BY VIRTUE OF WHICH ANY APPLICATION SHOULD BE MADE IN THE MANNER PROVIDED FOR THE MAKING AND HEARING OF MOTIONS; APPLICATION IN CASE AT BAR.— Under Section 22 of the Arbitration Law, arbitration is deemed a special proceeding, by virtue of which any application should be made in the manner provided for the making and hearing of motions, except as otherwise expressly provided in the Arbitration Law. The RTC observed that the respondent's Application to Vacate Arbitral Award was duly served personally on the petitioners, who then appeared by counsel and filed pleadings. The petitioners countered with their Motion to Dismiss *vis-à-vis* the respondent's application, specifying therein the various grounds earlier mentioned, including the lack of jurisdiction over their persons due to the improper service of summons. Under the circumstances, the requirement of notice was fully complied with, for Section 26 of the Arbitration Law required the application to be served upon the adverse party or his counsel within 30 days after the award was filed or delivered "as prescribed by law for the service upon an attorney in an action."

5. ID.; ID.; CONSTITUTIONALITY OF THE PROVISION THEREOF, SUSTAINED.— The constitutionality of Section 29 of the Arbitration Law is being challenged on the basis that Congress has thereby increased the appellate jurisdiction of the Supreme Court without its advice and concurrence, as required by Section 30, Article VI of the 1987 Constitution. x x x The challenge is unworthy of consideration. Based on the tenor and text of Section 30, Article VI of the 1987 Constitution, the prohibition against increasing the appellate jurisdiction of the Supreme Court without its advice and concurrence applies prospectively, not retrospectively. Considering that the Arbitration Law had been approved on June 19, 1953, and took effect under its terms on December 19, 1953, while the Constitution was ratified only on February 2, 1987, Section 29 of the Arbitration Law could not be declared unconstitutional.

APPEARANCES OF COUNSEL

Castillo Laman Tan Pantaleon & San Jose for petitioners.
Pal Legal Affairs Department for respondent.

D E C I S I O N

BERSAMIN, *J.*:

This case concerns the order issued by the Regional Trial Court granting the respondent's application to vacate the adverse arbitral award of the panel of arbitrators, and the propriety of the recourse from such order.

The Case

Under review are the resolutions promulgated in C.A.-G.R. No. 71224 entitled *Andrew D. Fyfe, Richard T. Nuttall and Richard J. Wald v. Philippine Airlines, Inc.* on May 30, 2003[1] and September 19, 2003,[2] whereby the Court of Appeals (CA) respectively granted the respondent's *Motion to Dismiss Appeal* (*without Prejudice to the Filing of Appellee's Brief*) and denied the petitioners' Motion for Reconsideration.

Antecedents

In 1998, the respondent underwent rehabilitation proceedings in the Securities and Exchange Commission (SEC),[3] which issued an order dated July 1, 1998 decreeing, among others, the suspension of all claims for payment against the respondent.[4]

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[1] *Rollo* (Vol. I), pp. 75-77; penned by Associate Justice Amelita G. Tolentino (retired), concurred in by Associate Justice Buenaventura J. Guerrero (retired/deceased) and Associate Justice Mariano C. del Castillo (now a Member of this Court).

[2] *Id.* at 79.

[3] SEC Case No. 06-98-6004.

[4] *Rollo* (Vol. I), pp. 149-150, 150.

To convince its creditors to approve the rehabilitation plan, the respondent decided to hire technical advisers with recognized experience in the airline industry. This led the respondent through its then Director Luis Juan K. Virata to consult with people in the industry, and in due course came to meet Peter W. Foster, formerly of Cathay Pacific Airlines.[5] Foster, along with Michael R. Scantlebury, negotiated with the respondent on the details of a proposed technical services agreement.[6] Foster and Scantlebury subsequently organized Regent Star Services Ltd. (Regent Star) under the laws of the British Virgin Islands.[7] On January 4, 1999, the respondent and Regent Star entered into a *Technical Services Agreement* (TSA) for the delivery of technical and advisory or management services to the respondent,[8] effective for five years, or from January 4, 1999 until December 31, 2003.[9] On the same date, the respondent, pursuant to Clause 6 of the TSA,[10] submitted a Side Letter,[11] the relevant portions of which stated:

For and in consideration of the services to be faithfully performed by Regent Star in accordance with the terms and conditions of the Agreement, the Company agrees to pay Regent Star as follows:

> 1.1 Upon execution of the Agreement, Four Million Seven Hundred Thousand US Dollars (US$4,700,000.00), representing advisory fees for two (2) years from the date of signature of the Agreement, with an additional amount of not exceeding One Million Three Hundred Thousand US Dollars (US$1,300,000.00) being due and demandable upon Regent Star's notice to the

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[5] *Rollo* (Vol. II), pp. 1387-1388.

[6] *Rollo* (Vol. I), pp. 421-422.

[7] *Id.* at 422.

[8] *Id.* at 286-296.

[9] *Id.* at 288.

[10] 6. Remuneration

The Company shall pay to Regent Star certain fees in an amount and on the dates agreed upon by way of a side letter with the Company.

[11] *Rollo* (Vol. I), pp. 100-103.

Company of its engagement of an individual to assume the position of CCA under the Agreement;

x x x x x x x x x

In addition to the foregoing, the Company agrees as follows:

x x x x x x x x x

In the event of a full or partial termination of the Agreement for whatever reason by either the Company or a Senior Technical Adviser/Regent Star prior to the end of the term of the Agreement, the following penalties are payable by the terminating party:

A. During the first 2 years

1. Senior Company Adviser (CCA)	-	US$800,000.00
2. Senior Commercial Adviser (SCA)	-	800,000.00
3. Senior Financial Adviser (FSA)	-	700,000.00
4. Senior Ground Services and Training Adviser (SAG)	-	500,000.00
5. Senior Engineering and Maintenance Adviser (SAM)	-	500,000.00

x x x x x x x x x

For the avoidance of doubt, it is understood and agreed that in the event that the terminating party is an individual Senior Technical Adviser the liability to pay such Termination Amount to the Company shall rest with that individual party, not with RSS. Similarly, if the terminating party is the Company, the liability to the aggrieved party shall be the individual Senior Technical Adviser, not to RSS.[12]

Regent Star, through Foster, conformed to the terms stated in the Side Letter.[13] The SEC approved the TSA on January 19, 1999.[14]

In addition to Foster and Scantlebury, Regent Star engaged the petitioners in respective capacities, specifically: Andrew

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[12] *Id.* at 100-102.

[13] *Id.* at 103.

[14] *Id.* at 104-105.

D. Fyfe as Senior Ground Services and Training Adviser; Richard J. Wald as Senior Maintenance and Engineering Adviser; and Richard T. Nuttall as Senior Commercial Adviser. The petitioners commenced to render their services to the respondent immediately after the TSA was executed.[15]

On July 26, 1999, the respondent dispatched a notice to Regent Star terminating the TSA on the ground of lack of confidence effective July 31, 1999.[16] In its notice, the respondent demanded the offsetting of the penalties due to the petitioners with the two-year advance advisory fees it had paid to Regent Star, thus:

> The side letter stipulates that "[i]n the event of a full or partial termination of the Agreement for whatever reason by either the Company or a Senior Technical Adviser/Regent Star prior to the end of the term of the Agreement, the following penalties are payable by the terminating party:"
>
> During the first 2 years:
>
> | | | |
> |---|---|---|
> | Senior Company Adviser | - | US$800,000.00 |
> | Senior Commercial Adviser | - | 800,000.00 |
> | Senior Financial Adviser | - | 700,000.00 |
> | Senior Ground Services and Training Adviser | - | 500,000.00 |
> | Senior Engineering and Maintenance Adviser | - | 500,000.00 |
> | **TOTAL** | | **US$3,300,000.00** |

There is, therefore, due to RSS from PAL the amount of US$3,300,000.00 by way of stipulated penalties.

However, RSS has been paid by PAL advance "advisory fee for two (2) years from date of signature of the Agreement" the amount of US$5,700,000. Since RSS has rendered advisory services from 4 January to 31 July 1999, or a period of seven months, it is entitled to retain only the advisory fees for seven months. This is computed as follows:

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[15] *Id.* at 14.

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

$$\frac{\text{US\$5,700,000}}{\text{24 months}} = \text{US\$237,500/month x 7} = \text{US\$1,662,500}$$

The remaining balance of the advance advisory fee, which corresponds to the unserved period of 17 months, or US$4,037,500, should be refunded by RSS to PAL.

Off-setting the amount of US$3,300,000 due from PAL to RSS against the amount of US$4,037,500 due from RSS to PAL, there remains a net balance of US$737,500 due and payable to PAL. Please settle this amount at your early convenience, but not later than August 15, 1999.[17]

On June 8, 1999, the petitioners, along with Scantlebury and Wald, wrote to the respondent, through its President and Chief Operating Officer, Avelino Zapanta, to seek clarification on the status of the TSA in view of the appointment of Foster, Scantleburry and Nuttall as members of the Permanent Rehabilitation Receiver (PRR) for the respondent.[18] A month later, Regent Star sent to the respondent another letter expressing disappointment over the respondent's ignoring the previous letter, and denying the respondent's claim for refund and set-off. Regent Star then proposed therein that the issue be submitted to arbitration in accordance with Clause 14[19] of the TSA.[20]

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

[18] *Id.* at 303.

[19] 14. Dispute Resolution and Arbitration

The parties shall use good faith efforts to settle all questions, disputes or other differences in any way arising out of or in relation to this Agreement. Any dispute should be clearly stated in writing by the aggrieved party to the other party. Both parties agree to use their best endeavours to resolve issues within 30 days of written notice of a dispute through good faith negotiations and discussions.

Upon failure of the foregoing, any dispute, controversy or claim arising out of or relating to this Agreement or the breach, termination or invalidity thereof, shall be finally settled by arbitration administered by the Philippine Dispute Resolution Center, Inc. (PDRCI) in accordance with its own International Commercial Arbitration Rules as at present in force. (see *rollo*, Vol. I, p. 294)

[20] *Rollo* (Vol. I), p. 304.

Thereafter, the petitioners initiated arbitration proceedings in the Philippine Dispute Resolution Center, Inc. (PDRCI) pursuant to the TSA.

Ruling of the PDRCI

After due proceedings, the PDRCI rendered its decision ordering the respondent to pay termination penalties,[21] *viz.*:

On issue No. 1 we rule that the Complainants are entitled to their claim for termination penalties.

When the PAL terminated the Technical Services Agreement on July 26, 1999 which also resulted in the termination of the services of the senior technical advisers including those of the Complainants it **admitted** that the termination penalties in the amount of US$3,300,000.00 as provided in the Letter dated January 4, 1999 are payable to the Senior Technical Advisers by PAL. xxx. PAL's admission of its liability to pay the termination penalties to the complainants was made also in its Answer. PAL's counsel even stipulated during the hearing that the airline company admits that it is liable to pay Complainants the termination penalties. x x x.

However, PAL argued that although it is liable to pay termination penalties the Complainants are not entitled to their respective claims because considering that PAL had paid RSS advance "advisory fees for two (2) years" in the total amount of US$5,700,000.00 and RSS had rendered advisory services for only seven (7) months from January 4, 1999 to July 31, 1999 that would entitle RSS to an (sic) advisory fees of only US$1,662,500.00 and therefore the unserved period of 17 months equivalent to US$4,037,500.00 should be refunded. And setting off the termination penalties of US$3,300,000.00 due RSS from PAL against the amount of US$4,037,500.00 still due PAL from RSS there would remain a net balance of US$737,500.00 still due PAL from RSS and/or the Senior Technical Advisers which the latter should pay pro-rata as follows: Peter W. Forster, the sum of US$178,475.00; Richard T. Nuttall, the sum of US$178,475.00; Michael R. Scantlebury; the sum of US$156,350.00, Andrew D. Fyfe, the sum of US$111,362.50; and Richard J. Wald the sum of US$111,362.50. RSS is a special company which the Senior Technical Advisers had utilized for the

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[21] *Id.* at 421-461.

specific purpose of providing PAL with technical advisory services they as a group had contracted under the Agreement. Hence when PAL signed the Agreement with RSS, it was for all intents and purposes an Agreement signed individually with the Senior Technical Advisers including the Complainants. The RSS and the five (5) Senior Technical Advisers should be treated as one and the same,

The Arbitration Tribunals is not convinced.

x x x x x x x x x

PAL cannot refuse to pay Complainants their termination penalties by setting off against the unserved period of seventeen (17) months of their advance advisory fees as the Agreement and the Side Letter clearly do not allow refund. This Arbitration Tribunal cannot read into the contract, which is the law between the parties, what the contract does not provide or what the parties did not intend. It is basic in contract interpretation that contracts that are not ambiguous are to be interpreted according to their literal meaning and *should not be interpreted beyond their obvious intendment*. x x x. The penalties work as security for the Complainants against the uncertainties of their work at PAL whose closure was a stark reality they were facing. (TSN Hearing on April 27, 2000, pp. 48-49) This would not result in unjust enrichment for the Complainants because the termination of the services was initiated by PAL itself without cause. In fact, PAL admitted that at the time their services were terminated the Complainants were performing well in their respective assigned works.[22] x x x.

PAL also presented hypothetical situations and certain computations that it claims would result to an "injustice" to PAL which would then "lose a very substantial amount of money" if the claimed refund is not allowed. PAL had chosen to pre-terminate the services of the complainants and must therefore pay the termination penalties provided in the Side Letter. If it finds itself losing "substantial" sums of money because of its contractual commitments, there is nothing this Arbitration Tribunal can do to remedy the situation. Jurisprudence teaches us that neither the law nor the courts will extricate a party from an unwise or undesirable contract that he or she entered into with all the required formalities and with full

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[22] *Id.* at 428-429, 447, 453.

awareness of its consequences. (*Opulencia vs. Court of Appeals*, 293 SCRA 385 (1998)[23]

Decision of the RTC

Dissatisfied with the outcome, the respondent filed its Application to Vacate Arbitral Award in the Regional Trial Court, in Makati City (RTC), docketed as SP Proc. M-5147 and assigned to Branch 57,[24] arguing that the arbitration decision should be vacated in view of the July 1, 1998 order of the SEC placing the respondent under a state of suspension of payment pursuant to Section 6 (c) of Presidential Decree No. 902-A, as amended by P.D. No. 1799.[25]

The petitioners countered with their Motion to Dismiss,[26] citing the following grounds, namely: (a) lack of jurisdiction over the persons of the petitioners due to the improper service of summons; (b) the application did not state a cause of action; and (c) the application was an improper remedy because the respondent should have filed an appeal in the CA pursuant to Rule 43 of the Rules of Court.[27]

On March 7, 2001, the RTC granted the respondent's Application to Vacate Arbitral Award,[28] disposing:

> WHEREFORE, the subject arbitral award dated September 29, 2000 is hereby vacated and set aside, without prejudice to the complainants' filing with the SEC rehabilitation receiver of PAL their subject claim for appropriate adjudication. The panel of arbitrators composed of lawyers Beda Fajardo, Arturo de Castro and Bienvenido Magnaye is hereby ordered discharged on the ground of manifest partiality.
>
> No pronouncement as to cost and attorney's fees.

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[23] *Id.* at 453.

[24] *Id.* at 474-528.

[25] *Id.* at 523-524.

[26] *Id.* at 612-633.

[27] *Rollo* (Vol. II), p. 1396.

[28] *Rollo* (Vol. I), pp. 1064-1069.

SO ORDERED.[29]

Anent jurisdiction over the persons of the petitioners, the RTC opined:

> On the objection that the Court has not acquired jurisdiction over the person of the complainants because summonses were not issued and served on them, the Court rules that complainants have voluntarily submitted themselves to the jurisdiction of the Court by praying the Court to grant them affirmative relief, i.e., that the Court confirm and declare final and executory the subject arbitral award. Moreover, under Sections 22 and 26 of the Arbitration Law (R.A. 876), an application or petition to vacate arbitral award is deemed a motion and service of such motion on the adverse party or his counsel is enough to confer jurisdiction upon the Court over the adverse party.
>
> It is not disputed that complainants were duly served by personal delivery with copies of the application to vacate. In fact, they have appeared through counsel and have filed pleadings. In line with this ruling, the objection that the application to vacate does not state a cause of action against complainants must necessarily fall inasmuch as this present case is a special proceeding (Sec. 22, Arbitration Law), and Section 3 (a), Rule 1 of the 1997 Rules of Civil Procedure is inapplicable here.[30]

On whether or not the application to vacate was an appropriate remedy under Sections 24 and 26 of the Arbitration Law, and whether or not the July 1, 1998 order of the SEC deprived the Panel of Arbitrators of the authority to hear the petitioners' claim, the RTC held:

> The rationale for the suspension is to enable the rehabilitation receiver to exercise his powers without any judicial or extra-judicial interference that might unduly hinder the rescue of the distressed corporation. x x x. PD No. 902-A does not provide for the duration of the suspension; therefore, it is deemed to be effective during the entire period that the corporate debtor is under SEC receivership.

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[29] *Id.* at 1069.

[30] *Id.* at 1064-1065.

There is no dispute that PAL is under receivership (Exhibits "1" and "2"). In its Order dated 1 July 1998, the SEC declared that "all claims for payment against PAL are deemed suspended." This Order effectively deprived all other tribunals of jurisdiction to hear and decide all actions for claims against PAL for the duration of the receivership.

x x x x x x x x x

Unless and until the SEC lifts the Order dated 1 July 1998, the Panel of Arbitrators cannot take cognizance of complainant' claims against PAL without violating the exclusive jurisdiction of the SEC. The law has granted SEC the exclusive jurisdiction to pursue the rehabilitation of a private corporation through the appointment of a rehabilitation receiver (Sec. 6 (d), PD No. 902-A, as amended by PD 1799). "exclusive jurisdiction precludes the idea of co-existence and refers to jurisdiction possessed to the exclusion of others. x x x. Thus, "(I)nstead of vexing the courts with suits against the distressed firm, they are directed to file their claims with the receiver who is the duly appointed officer of the SEC. x x x.[31]

After their motion for reconsideration[32] was denied,[33] the petitioners appealed to the CA by notice of appeal.

Resolution of the CA

The respondent moved to dismiss the appeal,[34] arguing against the propriety of the petitioners' remedy, and positing that Section 29 of the Arbitration Law limited appeals from an order issued in a proceeding under the Arbitration Law to a review on *certiorari* upon questions of law.[35]

On May 30, 2003, the CA promulgated the now assailed resolution granting the respondent's Motion to Dismiss Appeal.[36]

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[31] *Id.* at 1066.

[32] *Id.* at 1070-1085.

[33] *Id.* at 1101-1102.

[34] *Id.* at 1279-1285.

[35] *Id.* at 28.

[36] *Id.* at 75-77.

It declared that the appropriate remedy against the order of the RTC vacating the award was a petition for review on *certiorari* under Rule 45, *viz*.:

> The term "*certiorari*" in the aforequoted provision refers to an ordinary appeal under Rule 45, not the special action of certiorari under Rule 65. As Section 29 proclaims, it is an "appeal." This being the case, the proper forum for this action is, under the old and the new rules of procedure, the Supreme Court. Thus, Section 2(c) of Rule 41 of the 1997 Rules of Civil Procedure states that,
>
> > "*In all cases where only questions of law are raised or involved, the appeal shall be to the Supreme Court by petition for review on certiorari in accordance with Rule 45*."
>
> Furthermore, Section 29 limits the appeal to "questions of law," another indication that it is referring to an appeal by certiorari under Rule 45 which, indeed, is the customary manner of reviewing such issues.
>
> Based on the foregoing, it is clear that complainants-in-arbitration/appellants filed the wrong action with the wrong forum.
>
> WHEREFORE, premises considered, the Motion to Dismiss Appeal (*Without Prejudice to the Filing of Appellee's Brief*) is **GRANTED** and the instant appeal is hereby ordered **DISMISSED**.
>
> SO ORDERED.[37]

The petitioners moved for reconsideration,[38] but the CA denied their motion.[39]

Hence, this appeal by the petitioners.

Issues

The petitioners anchor this appeal on the following grounds, namely:

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[37] *Id.* at 77.

[38] *Id.* at 1340-1357.

[39] *Id.* at 79.

I

SECTION 29 OF THE ARBITRATION LAW, WHICH LIMITS THE MODE OF APPEAL FROM THE ORDER OF A REGIONAL TRIAL COURT IN A PROCEEDING MADE UNDER THE ARBITRATION LAW TO A PETITION FOR REVIEW ON *CERTIORARI* UNDER RULE 45 OF THE RULES, IS UNCONSTITUTIONAL FOR UNDULY EXPANDING THE JURISDICTION OF THIS HONORABLE COURT WITHOUT THIS HONORABLE COURT'S CONCURRENCE;

II

THE COURT OF APPEALS HAD JURISDICTION OVER THE CA APPEAL BECAUSE:

A.

THIS HONORABLE COURT HAS PREVIOUSLY UPHELD THE EXERCISE BY THE COURT OF APPEALS OF JURISDICTION OVER AN APPEAL INVOLVING QUESTIONS OF FACT OR OF MIXED QUESTIONS OF FACT AND LAW FROM A REGIONAL TRIAL COURT'S ORDER VACATING AN ARBITRAL AWARD

B.

WHERE, AS IN THIS CASE, THE ISSUES ON APPEAL CONCERNED THE ABSENCE OF EVIDENCE AND LACK OF LEGAL BASIS TO SUPPORT THE REGIONAL TRIAL COURT'S ORDER VACATING THE ARBITRAL AWARD, GRAVE MISCHIEF WOULD RESULT IF THE REGIONAL TRIAL COURT'S BASELESS FINDINGS OF FACT OR MIXED FINDINGS OF FACT ARE PLACED BEYOND APPELLATE REVIEW; AND

C.

THE COURT OF APPEALS' DISMISSAL OF THE CA APPEAL WOULD IN EFFECT RESULT IN THE AFFIRMATION OF THE REGIONAL TRIAL COURT'S EXERCISE OF JURISDICTION, OVER PERSONS UPON WHOM IT FAILED TO VALIDLY ACQUIRE SUCH JURISDICTION AND OF APPELLATE JURISDICTION OVER THE PDRCI ARBITRAL AWARD EVEN IF SUCH APPELLATE POWER IS EXCLUSIVELY LODGED WITH THE COURT OF APPEALS UNDER RULE 43 OF THE RULES

III

INSTEAD OF DISMISSING THE CA APPEAL OUTRIGHT, THE COURT OF APPEALS SHOULD HAVE SHORTENED THE PROCEEDINGS AND EXPEDITED JUSTICE BY EXERCISING ORIGINAL JURISDICTION OVER THE APPLICATION TO VACATE PURSUANT TO RULE 43 OF THE RULES, ESPECIALLY CONSIDERING THAT THE PARTIES HAD IN FACT ALREADY FILED THEIR RESPECTIVE BRIEFS AND THE COMPLETE RECORDS OF BOTH THE RTC APPLICATION TO VACATE AND THE PDRCI ARBITRATION WERE ALREADY IN ITS POSSESSION; AND

IV

IN THE EVENT THAT AN APPEAL FROM AN ORDER VACATING AN ARBITRAL AWARD MAY BE MADE ONLY IN *CERTIORARI* PROCEEDINGS AND ONLY TO THE SUPREME COURT, THE COURT OF APPEALS SHOULD NOT HAVE DISMISSED THE CA APPEAL, BUT IN THE HIGHER INTEREST OF JUSTICE, SHOULD HAVE INSTEAD ENDORSED THE SAME TO THIS HONORABLE COURT, AS WAS DONE IN *SANTIAGO V. GONZALES*.[40]

The petitioners contend that an appeal from the order arising from arbitration proceedings cannot be by petition for review on *certiorari* under Rule 45 of the *Rules of Court* because the appeal inevitably involves mixed questions of law and fact; that their appeal in the CA involved factual issues in view of the RTC's finding that the panel of arbitrators had been guilty of evident partiality even without having required the respondent to submit independent proof thereon; that the appropriate remedy was either a petition for *certiorari* under Rule 65 of the *Rules of Court*, or an ordinary appeal under Rule 41 of the *Rules of Court*, conformably with the rulings in *Asset Privatization Trust v. Court of Appeals*[41] and *Adamson v. Court of Appeals*,[42] respectively; and that the CA erroneously upheld the RTC's denial of their Motion to Dismiss Appeal on the basis of their counsel's voluntary appearance to seek affirmative relief because

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

[41] G.R. No. 121171, December 29, 1998, 300 SCRA 579.

[42] G.R. No. 106879, May 27, 1994, 232 SCRA 602.

under Section 20, Rule 14 of the *Rules of Court* their objection to the personal jurisdiction of the court was not a voluntary appearance even if coupled with other grounds for a motion to dismiss.

In riposte, the respondent avers that the petition for review on *certiorari* should be denied due course because of the defective verification/certification signed by the petitioners' counsel; and that the special powers of attorney (SPAs) executed by the petitioners in favor of their counsel did not sufficiently vest the latter with the authority to execute the verification/certification in their behalf.

On the merits, the respondent maintains that: (*a*) the term *certiorari* used in Section 29 of the Arbitration Law refers to a petition for review under Rule 45 of the *Rules of Court*; (*b*) the constitutional challenge against Section 29 of the Arbitration Law was belatedly made; (*c*) the petitioners' claim of lack of jurisdiction on the part of the RTC should fail because an application to vacate an arbitral award under Sections 22 and 26 of the Arbitration Law is only required to be in the form of a motion; and (*d*) the complete record of the arbitration proceedings submitted to the RTC sufficiently proved the manifest partiality and grave abuse of discretion on the part of the panel of arbitrators.

To be resolved are: (*a*) whether or not the petition for review should be dismissed for containing a defective verification/certification; and (*b*) whether or not the CA erred in dismissing the appeal of the petitioners for being an inappropriate remedy.

Ruling of the Court

We deny the petition for review on *certiorari*.

I

There was sufficient compliance with the rule on verification and certification against forum shopping

The respondent insists that the verification/certification attached to the petition was defective because it was executed

by the petitioners' counsel whose authority under the SPAs was only to execute the certification of non-forum shopping; and that the signing by the counsel of the certification could not also be allowed because the *Rules of Court* and the pertinent circulars and rulings of the Court require that the petitioners must themselves execute the same.

The insistence of the respondent is unwarranted. The SPAs individually signed by the petitioners vested in their counsel the authority, among others, "*to do and perform on my behalf any act and deed relating to the case, which it could legally do and perform, including any appeals or further legal proceedings.*" The authority was sufficiently broad to expressly and specially authorize their counsel, Atty. Ida Maureen V. Chao-Kho, to sign the verification/certification on their behalf.

The purpose of the verification is to ensure that the allegations contained in the verified pleading are true and correct, and are not the product of the imagination or a matter of speculation; and that the pleading is filed in good faith.[43] This purpose was met by the verification/certification made by Atty. Chao-Kho in behalf of the petitioners, which pertinently stated that:

> 2. Petitioners caused the preparation of the foregoing Petition for Review on *Certiorari*, and have read and understood all the allegations contained therein. Further, said allegations are true and correct based on their own knowledge and authentic records in their and the Firm's possession.[44]

The tenor of the verification/certification indicated that the petitioners, not Atty. Chao-Kho, were certifying that the allegations were true and correct based on their knowledge and authentic records. At any rate, a finding that the verification was defective would not render the petition for review invalid. It is settled that the verification was merely a formal requirement

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[43] *Bank of the Philippine Islands v. Court of Appeals*, G.R. No. 146923, April 30, 2003, 402 SCRA 449, 454.

[44] *Rollo* (Vol. I), p. 66.

whose defect did not negate the validity or efficacy of the verified pleading, or affect the jurisdiction of the court.[45]

We also uphold the efficacy of the certification on non-forum shopping executed by Atty. Chao-Kho on the basis of the authorization bestowed under the SPAs by the petitioners. The lawyer of the party, in order to validly execute the certification, must be "specifically authorized" by the client for that purpose.[46] With the petitioners being non-residents of the Philippines, the sworn certification on non-forum shopping by Atty. Chao-Kho sufficiently complied with the objective of ensuring that no similar action had been brought by them or the respondent against each other, to wit:

> 5. Significantly, Petitioners are foreign residents who reside and are presently abroad. Further, the Firm is Petitioners' sole legal counsel in the Philippines, and hence, is in a position to know that Petitioners have no other cases before any court o[r] tribunal in the Philippines;[47]

In this regard, we ought not to exact a literal compliance with Section 4, Rule 45, in relation to Section 2, Rule 42 of the *Rules of Court*, that only the party himself should execute the certification. After all, we have not been shown by the respondent any intention on the part of the petitioners and their counsel to circumvent the requirement for the verification and certification on non-forum shopping.[48]

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[45] *Navarro v. Court of Appeals*, G.R. No. 141307, March 28, 2001, 355 SCRA 672, 679.

[46] *Hydro Resources Contractors Corporation v. National Irrigation Administration*, G.R. No. 160215, November 10, 2004, 441 SCRA 614, 636.

[47] *Rollo* (Vol. I), p. 66.

[48] *Pilipinas Shell Petroleum Corporation v. John Bordman Ltd. of Iloilo, Inc.*, G.R. No. 159831, October 14, 2005, 473 SCRA 151, 162.

II
Appealing the RTC order vacating an arbitral award

The petitioners contend that the CA gravely erred in dismissing their appeal for being an inappropriate remedy, and in holding that a petition for review on *certiorari* under Rule 45 was the sole remedy under Section 29 of the Arbitration Law. They argue that the decision of the RTC involving arbitration could be assailed either by petition for *certiorari* under Rule 65, as held in *Asset Privatization Trust*, or by an ordinary appeal under Rule 41, as opined in *Adamson*.

The petitioners are mistaken.

Firstly, the assailed resolution of the CA did not expressly declare that the petition for review on *certiorari* under Rule 45 was the sole remedy from the RTC's order vacating the arbitral award. The CA rather emphasized that the petitioners should have filed the petition for review on *certiorari* under Rule 45 considering that Section 29 of the Arbitration Law has limited the ground of review to "questions of law." Accordingly, the CA correctly dismissed the appeal of the petitioners because pursuant to Section 2,[49] Rule 41 of the *Rules of Court* an appeal

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[49] Sec. 2. *Modes of appeal*. —

(a) *Ordinary appeal*. — The appeal to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its original jurisdiction shall be taken by filing a notice of appeal with the court which rendered the judgment or final order appealed from and serving a copy thereof upon the adverse party. No record on appeal shall be required except in special proceedings and other cases of multiple or separate appeals where the law or these Rules so require. In such cases, the record on appeal shall be filed and served in like manner.

(b) *Petition for review*. — The appeal to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its appellate jurisdiction shall be by petition for review in accordance with Rule 42.

(c) *Appeal by certiorari*. — In all cases where only questions of law are raised or involved, the appeal shall be to the Supreme Court by petition for review on *certiorari* in accordance with Rule 45. (n)

of questions of law arising in the courts in the first instance is by petition for review on *certiorari* under Rule 45.

It is noted, however, that since the promulgation of the assailed decision by the CA on May 30, 2003, the law on the matter underwent changes. On February 4, 2004. Republic Act No. 9285 (*Alternative Dispute Resolution Act of 2004*) was passed by Congress, and was approved by the President on April 2, 2004. Pursuant to Republic Act No. 9285, the Court promulgated on September 1, 2009 in A.M. No. 07-11-08-SC the *Special Rules of Court on Alternative Dispute Resolution*, which are now the present rules of procedure governing arbitration. Among others, the *Special Rules of Court on Alternative Dispute Resolution* requires an appeal by petition for review to the CA of the final order of the RTC *confirming, vacating, correcting or modifying* a domestic arbitral award, to wit:

Rule 19.12 *Appeal to the Court of Appeals*. — An appeal to the Court of Appeals through a petition for review under this Special Rule shall only be allowed from the following orders of the Regional Trial Court:

a. Granting or denying an interim measure of protection;

b. Denying a petition for appointment of an arbitrator;

c. Denying a petition for assistance in taking evidence;

d. Enjoining or refusing to enjoin a person from divulging confidential information;

e. Confirming, vacating or correcting/modifying a domestic arbitral award;

f. Setting aside an international commercial arbitration award;

g. Dismissing the petition to set aside an international commercial arbitration award even if the court does not decide to recognize or enforce such award;

h. Recognizing and/or enforcing an international commercial arbitration award;

i. Dismissing a petition to enforce an international commercial arbitration award;

j. Recognizing and/or enforcing a foreign arbitral award;

k. Refusing recognition and/or enforcement of a foreign arbitral award;

l. Granting or dismissing a petition to enforce a deposited mediated settlement agreement; and

m. Reversing the ruling of the arbitral tribunal upholding its jurisdiction.

Although the *Special Rules of Court on Alternative Dispute Resolution* provides that the appropriate remedy from an order of the RTC vacating a domestic arbitral award is an appeal by petition for review in the CA, not an ordinary appeal under Rule 41 of the *Rules of Court*, the Court cannot set aside and reverse the assailed decision on that basis because the decision was in full accord with the law or rule in force at the time of its promulgation.

The ruling in *Asset Privatization Trust v. Court of Appeals*[50] cannot be the governing rule with respect to the order of the RTC vacating an arbitral award. *Asset Privatization Trust* justified the resort to the petition for *certiorari* under Rule 65 only upon finding that the RTC had acted without jurisdiction or with grave abuse of discretion in confirming the arbitral award. Nonetheless, it is worth reminding that the petition for *certiorari* cannot be a substitute for a lost appeals.[51]

Also, the petitioners have erroneously assumed that the appeal filed by the aggrieved party in *Adamson v. Court of Appeals*[52] was an ordinary one. *Adamson* concerned the correctness of the ruling of the CA in reversing the decision of the trial court, not the propriety of the remedy availed of by the aggrieved party. Nor did *Adamson* expressly declare that an ordinary appeal could be availed of to assail the RTC's ruling involving

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[50] *Supra*, note 41, at 600-601.

[51] *Celino, Sr. v. Court of Appeals*, G.R. No. 170562, June 29, 2007, 526 SCRA 195, 200.

[52] *Supra*, note 42.

arbitration. As such, the petitioners' reliance on *Adamson* to buttress their resort to the erroneous remedy was misplaced.

We remind that the petitioners cannot insist on their chosen remedy despite its not being sanctioned by the Arbitration Law. Appeal as a remedy is not a matter of right, but a mere statutory privilege to be exercised only in the manner and strictly in accordance with the provisions of the law.[53]

III

Panel of Arbitrators had no jurisdiction to hear and decide the petitioners' claim

The petitioners' appeal is dismissible also because the arbitration panel had no jurisdiction to hear their claim. The RTC correctly opined that the SEC's suspension order effective July 1, 1998 deprived the arbitration panel of the jurisdiction to hear any claims against the respondent. The Court has clarified in *Castillo v. Uniwide Warehouse Club, Inc.*[54] why the claim for payment brought against a distressed corporation like the respondent should not prosper following the issuance of the suspension order by the SEC, regardless of when the action was filed, to wit:

> Jurisprudence is settled that the suspension of proceedings referred to in the law uniformly applies to all actions for claims filed against a corporation, partnership or association under management or receivership, without distinction, except only those expenses incurred in the ordinary course of business. In the oft-cited case of *Rubberworld (Phils.) Inc. v. NLRC*, the Court noted that aside from the given exception, the law is clear and makes no distinction as to the claims that are suspended once a management committee is created or a rehabilitation receiver is appointed. Since the law makes no distinction

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[53] *Boardwalk Business Ventures, Inc. v. Villareal, Jr.*, G.R. No. 181182, April 10, 2013, 695 SCRA 468, 477; *R Transport Corporation v. Philippine Hawk Transport Corporation*, G.R. No. 155737, October 19, 2005, 473 SCRA 342, 348.

[54] G.R. No. 169725, April 30, 2010, 619 SCRA 641.

or exemptions, neither should this Court. *Ubi lex non distinguit nec nos distinguere debemos*. *Philippine Airlines, Inc. v. Zamora* declares that the automatic suspension of an action for claims against a corporation under a rehabilitation receiver or management committee embraces all phases of the suit, that is, the entire proceedings of an action or suit and not just the payment of claims.

The reason behind the imperative nature of a suspension or stay order in relation to the creditors claims cannot be downplayed, for indeed the indiscriminate suspension of actions for claims intends to expedite the rehabilitation of the distressed corporation by enabling the management committee or the rehabilitation receiver to effectively exercise its/his powers free from any judicial or extrajudicial interference that might unduly hinder or prevent the rescue of the debtor company. To allow such other actions to continue would only add to the burden of the management committee or rehabilitation receiver, whose time, effort and resources would be wasted in defending claims against the corporation, instead of being directed toward its restructuring and rehabilitation.

At this juncture, **it must be conceded that the date when the claim arose, or when the action was filed, has no bearing at all in deciding whether the given action or claim is covered by the stay or suspension order. What matters is that as long as the corporation is under a management committee or a rehabilitation receiver, all actions for claims against it, whether for money or otherwise, must yield to the greater imperative of corporate revival, excepting only, as already mentioned, claims for payment of obligations incurred by the corporation in the ordinary course of business.**[55] (Bold emphasis supplied)

IV

The requirement of due process was observed

The petitioners' challenge against the jurisdiction of the RTC on the ground of the absence of the service of the summons on them also fails.

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[55] *Id.* at 648-650.

Under Section 22[56] of the Arbitration Law, arbitration is deemed a special proceeding, by virtue of which any application should be made in the manner provided for the making and hearing of motions, except as otherwise expressly provided in the Arbitration Law.

The RTC observed that the respondent's Application to Vacate Arbitral Award was duly served personally on the petitioners, who then appeared by counsel and filed pleadings. The petitioners countered with their Motion to Dismiss *vis-à-vis* the respondent's application, specifying therein the various grounds earlier mentioned, including the lack of jurisdiction over their persons due to the improper service of summons. Under the circumstances, the requirement of notice was fully complied with, for Section 26[57] of the Arbitration Law required the application to be served upon the adverse party or his counsel within 30 days after the award was filed or delivered "as prescribed by law for the service upon an attorney in an action."

V

Issue of the constitutionality of the Arbitration Law is devoid of merit

The constitutionality of Section 29 of the Arbitration Law is being challenged on the basis that Congress has thereby increased

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[56] Sec. 22. *Arbitration deemed a special proceeding.* — Arbitration under a contract or submission shall be deemed a special proceeding, of which the court specified in the contract or submission, or if none be specified, the Court of First Instance for the province or city in which one of the parties resides or is doing business, or in which the arbitration was held, shall have jurisdiction. Any application to the court, or a judge thereof, hereunder shall be made in manner provided for the making and hearing of motions, except as otherwise herein expressly provided.

[57] Sec. 26. *Motion to vacate, modify, or correct an award: when made.* — Notice of a motion to vacate, modify or correct the award must be served upon the adverse party or his counsel within thirty days after the award is filed or delivered, as prescribed by law for the service upon an attorney in an action.

the appellate jurisdiction of the Supreme Court without its advice and concurrence, as required by Section 30, Article VI of the 1987 Constitution, to wit:

> Section 30. No law shall be passed increasing the appellate jurisdiction of the Supreme Court as provided in this Constitution without its advice and concurrence.

The challenge is unworthy of consideration. Based on the tenor and text of Section 30, Article VI of the 1987 Constitution, the prohibition against increasing the appellate jurisdiction of the Supreme Court without its advice and concurrence applies prospectively, not retrospectively. Considering that the Arbitration Law had been approved on June 19, 1953, and took effect under its terms on December 19, 1953, while the Constitution was ratified only on February 2, 1987, Section 29 of the Arbitration Law could not be declared unconstitutional.

WHEREFORE, the Court **DENIES** the petition for review on *certiorari* for lack of merit; **AFFIRMS** the resolution promulgated on May 30, 2003 by the Court of Appeals in CA-G.R. CV No. 71224; and **ORDERS** the petitioners to pay the costs of suit.

SO ORDERED.

Leonardo-de Castro,[*] *Perlas-Bernabe,* and *Caguioa, JJ.,* concur.

Sereno, C.J., on leave.

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[*] Acting Chairperson per Special Order No. 2355 dated June 2, 2016.

FIRST DIVISION

[G.R. No. 168749. June 6, 2016]

SUGARSTEEL INDUSTRIAL, INC. and MR. BEN YAPJOCO, *petitioners, vs.* **VICTOR ALBINA, VICENTE UY and ALEX VELASQUEZ,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL CIVIL ACTIONS; *CERTIORARI*; THE JUDICIAL FUNCTION OF THE COURT OF APPEALS (CA) IN THE EXERCISE OF ITS *CERTIORARI* JURISDICTION OVER THE NATIONAL LABOR RELATIONS COMMISSION (NLRC) EXTENDS TO THE CAREFUL REVIEW OF THE NLRC'S EVALUATION OF THE EVIDENCE.— As a rule, the *certiorari* proceeding, being confined to the correction of acts rendered without jurisdiction, in excess of jurisdiction, or with grave abuse of discretion that amounts to lack or excess of jurisdiction, is limited in scope and narrow in character. As such, the judicial inquiry in a special civil action for *certiorari* in labor litigation ascertains only whether or not the NLRC acted without jurisdiction or in excess of its jurisdiction, or with grave abuse of discretion amounting to lack or in excess of jurisdiction. We find that the CA did not exceed its jurisdiction by reviewing the evidence and deciding the case on the merits despite the judgment of the NLRC already being final. We have frequently expounded on the competence of the CA in a special civil action for *certiorari to* review the factual findings of the NLRC. In *Univac Development, Inc. v. Soriano*, for instance, we have pronounced that the CA is "given the power to pass upon the evidence, if and when necessary, to resolve factual issues," without contravening the doctrine of the immutability of judgments. The power of the CA to pass upon the evidence flows from its original jurisdiction over the special civil action for *certiorari,* by which it can grant the writ of *certiorari* to correct errors of jurisdiction on the part of the NLRC should the latter's factual findings be not supported by the evidence on record; or when the granting of the writ of *certiorari* is necessary to do substantial justice or to prevent a substantial wrong; or when the findings of the NLRC contradict those of the LA; or when the granting of the writ of *certiorari* is necessary to arrive at a just decision in the case.

2. LABOR AND SOCIAL LEGISLATION; LABOR CODE; TERMINATION OF EMPLOYMENT BY EMPLOYER; NEGLIGENCE, AS A GROUND; IN ORDER TO WARRANT THE DISMISSAL OF THE EMPLOYEE FOR JUST CAUSE, THE LABOR CODE REQUIRES THE NEGLIGENCE TO BE GROSS AND HABITUAL.— In order to warrant the dismissal of the employee for just cause, Article 282 (b) of the *Labor Code* requires the negligence to be gross and habitual. Gross negligence is the want of even slight care, acting or omitting to act in a situation where there is duty to act, not inadvertently but willfully and intentionally, with a conscious indifference to consequences insofar as other persons may be affected. Habitual neglect connotes repeated failure to perform one's duties for a period of time, depending upon the circumstances. Obviously, a single or isolated act of negligence does not constitute a just cause for the dismissal of the employee. The ground for dismissal, according to the LA, was gross negligence. Considering, however, that the petitioners did not refute the respondents' claim that the incident was their first offense, and that the petitioners did not present any evidence to establish the supposed habitual neglect on the part of the respondents, like employment or other records indicative of the service and personnel histories of the respondents during the period of their employment, the CA reasonably found and concluded that the just cause to dismiss them was not established by substantial evidence.

APPEARANCES OF COUNSEL

Mercado Cordero Bael Acuña and Sepulveda for petitioners.

Seno Mendoza and Associates Law Offices for respondents.

D E C I S I O N

BERSAMIN, *J.*:

The crux of this appeal is the extent of the authority of the Court of Appeals (CA) to review in a special civil action for *certiorari* the findings of fact contained in the rulings of the

National Labor Relations Commission (NLRC). The petitioners insist that the CA's review is limited to the determination of whether or not the NLRC committed grave abuse of discretion amounting to lack or excess of jurisdiction; hence, it cannot disregard the findings of fact of the NLRC to resolve the issue of illegal dismissal. The respondents maintain the contrary.

The Case

On appeal is the decision promulgated on January 9, 2004,[1] whereby the CA granted the respondents' petition for *certiorari*, and overturned the decision rendered by the NLRC in favor of the petitioners.[2]

Antecedents

Respondents Victor Albina, Vicente Uy and Alex Velasquez charged the petitioners in the Regional Arbitration Branch of the National Labor Relations Commission (NLRC) in Cebu City with having illegally dismissed them as kettleman, assistant kettleman, and inspector, respectively. The CA's assailed decision detailed the following factual antecedents, to wit:

> At around 4:00 a.m. of August 16, 1996, a clog-up occurred at the kettle sheet guide. At that time, the petitioners were on duty working in their assigned areas. As a consequence, twenty (20) GI sheets were clogged-up inside the kettle, causing damage to the private respondent. On the same day, a memorandum was issued by Mr. Ben S. Yapjoco, manager of the private respondent, requiring all the petitioners to submit written explanation on the aforesaid incident and why no action shall be taken against them for gross negligence. In response to the memorandum, the petitioners submitted their respective explanations.
>
> Subsequently, in a memorandum dated August 20, 1996, Mr. Yapjoco, informed all the petitioners to attend a conference in

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[1] *Rollo*, pp. 22-32; penned by Associate Justice Hakim S. Abdulwahid (retired), with Associate Justice Delilah Vidallon-Magtolis (retired) and Associate Justice Jose L. Sabio, Jr. (retired/deceased) concurring.

[2] *Id.* at 31-32.

connection with the aforesaid incident. On August 26, 1996, individual notices of suspension were sent to the petitioners pending final decision relative to the incident. On August 29, 1996, Mr. Yapjoco again sent individual notices of termination of employment to all petitioners, stating that after the management conducted an investigation on the circumstances surrounding the incident, the petitioners were found guilty of gross neglect of duty and by reason thereof, they were terminated from their employment.[3]

In the decision rendered on April 27, 1998,[4] the Labor Arbiter (LA) ruled that although the dismissal of the respondents was justified because of their being guilty of gross negligence, the petitioners should pay them their separation pay at the rate of ½ month per year of service.

On appeal, the NLRC, observing that the ground stated in support of the respondents' appeal — that "the decision with all due respect, is not supported by evidence and is contrary to the facts obtaining" — was not among those expressly enumerated under Article 223 of the *Labor Code*, upheld the LA's decision on December 23, 1998,[5] *viz*.:

WHEREFORE, the appeal of complainants is hereby **DISMISSED** for failure of the appellants to comply with Article 223 of the Labor Code. Consequently, the decision of the Labor Arbiter is **AFFIRMED**.

SO ORDERED.[6]

On May 8, 2000, the NLRC denied the respondents' motion for reconsideration,[7] opining thusly:

We reiterate Our ruling that complainants' appeal was not filed in the manner prescribed by law, hence should be properly dismissed. Besides, even if We decide the appeal on its merits, We find no cogent

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

[4] *Id.* at 80-85.

[5] *Id.* at 43-45.

[6] *Id.* at 44.

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

reason to depart from the ruling of the Labor Arbiter supported as it is by the evidence on record.[8]

Judgment of the CA

Aggrieved, the respondents assailed the result through their petition for *certiorari* in the CA, averring that:

THE HONORABLE COMMISSION COMMITTED GRAVE ABUSE OF DISCRETION IN AFFIRMING IN TOTO THE DECISION OF THE LABOR ARBITER DECLARING THE DISMISSAL OF THE PETITIONERS AS VALID ON THE GROUND OF GROSS NEGLIGENCE.

In the judgment promulgated on January 9, 2004,[9] the CA granted the petition for *certiorari*. It ruled that the NLRC's affirmance of the LA's decision did not accord with the evidence on record and the applicable law and jurisprudence; that the dismissal of the respondents' appeal constituted grave abuse of discretion amounting to lack or excess of jurisdiction;[10] and that based on its review the respondents had been illegally dismissed considering that the petitioners did not establish that the respondents were guilty of gross and habitual neglect.

Issues

In this recourse, the petitioners submit that the CA gravely abused its discretion by disregarding the factual findings of the LA that the NLRC affirmed; that such findings, being supported by substantial evidence, were binding and conclusive on the CA; that the review of the decisions of the NLRC through *certiorari* was confined to determining issues of want or excess of jurisdiction and grave abuse of discretion amounting to lack or excess of jurisdiction; that *certiorari* required a clear showing that the respondent court or officer exercising judicial or quasi-judicial functions committed an error of jurisdiction because

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[8] *Id.* at 46.

[9] *Supra* note 1.

[10] *Id.* at 31.

an error of judgment was not necessarily grave abuse of discretion; and that the CA thus exceeded its jurisdiction in making its own findings after re-assessing the facts and the sufficiency of the evidence presented to the LA.

Did the CA depart from well-settled rules on what findings the CA could review on *certiorari*?[11]

Ruling of the Court

The petition for review on *certiorari* lacks merit. The CA acted in accordance with the pertinent law and jurisprudence.

I

As a rule, the *certiorari* proceeding, being confined to the correction of acts rendered without jurisdiction, in excess of jurisdiction, or with grave abuse of discretion that amounts to lack or excess of jurisdiction, is limited in scope and narrow in character. As such, the judicial inquiry in a special civil action for *certiorari* in labor litigation ascertains only whether or not the NLRC acted without jurisdiction or in excess of its jurisdiction, or with grave abuse of discretion amounting to lack or in excess of jurisdiction.[12]

We find that the CA did not exceed its jurisdiction by reviewing the evidence and deciding the case on the merits despite the judgment of the NLRC already being final. We have frequently expounded on the competence of the CA in a special civil action for *certiorari* to review the factual findings of the NLRC.[13]

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[11] *Rollo*, p. 11.

[12] *Empire Insurance Company v. NLRC*, G.R. No. 121879, August 14, 1998, 294 SCRA 263, 269-270.

[13] *PHILASIA Shipping Agency Corporation v. Tomacruz*, G.R. No. 181180, August 15, 2012, 678 SCRA 503, 513; *PICOP Resources, Incorporated (PRI) v. Tañeca*, G.R. No. 160828, August 9, 2010, 627 SCRA 56, 65-66; *Lirio v. Genovia*, G.R. No. 169757, November 23, 2011, 661 SCRA 126, 137; *Triumph International (Phils.), Inc. v. Apostol*, G.R. No. 164423, June 16, 2009, 589 SCRA 185, 197; *Marival Trading, Inc. v. National Labor Relations Commission*, G.R. No. 169600, June 26, 2007, 525 SCRA 708, 722.

In *Univac Development, Inc. v. Soriano,*[14] for instance, we have pronounced that the CA is "given the power to pass upon the evidence, if and when necessary, to resolve factual issues," without contravening the doctrine of the immutability of judgments. The power of the CA to pass upon the evidence flows from its original jurisdiction over the special civil action for *certiorari*, by which it can grant the writ of *certiorari* to correct errors of jurisdiction on the part of the NLRC should the latter's factual findings be not supported by the evidence on record; or when the granting of the writ of *certiorari* is necessary to do substantial justice or to prevent a substantial wrong; or when the findings of the NLRC contradict those of the LA; or when the granting of the writ of *certiorari* is necessary to arrive at a just decision in the case.[15] The premise is that any decision by the NLRC that is not supported by substantial evidence is a decision definitely tainted with grave abuse of discretion.[16] Should the CA annul the decision of the NLRC upon its finding of jurisdictional error on the part of the latter, then it has the power to fully lay down whatever the latter ought to have decreed instead *as the records warranted.* The judicial function of the CA in the exercise of its *certiorari* jurisdiction over the NLRC extends to the careful review of the NLRC's evaluation of the evidence because the factual findings of the NLRC are accorded great respect and finality only when they rest on substantial evidence. Accordingly, the CA is not to be restrained from revising or correcting such factual findings whenever warranted by the circumstances simply because the NLRC is not infallible. Indeed, to deny to the CA this power is to diminish its corrective jurisdiction through the writ of *certiorari*.

The policy of practicing comity towards the factual findings of the labor tribunals does not preclude the CA from reviewing

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[14] G.R. No. 182072, June 19, 2013, 699 SCRA 88, 97.

[15] *Id.* at 98.

[16] *INC Shipmanagement, Inc. v. Moradas*, G.R. No. 178564, January 15, 2014, 713 SCRA 475, 502.

the findings, and from disregarding the findings upon a clear showing of the NLRC's capricious, whimsical or arbitrary disregard of the evidence or of circumstances of considerable importance crucial or decisive of the controversy.[17] In such eventuality, the writ of *certiorari* should issue, and the CA, being also a court of equity, then enjoys the leeway to make its own independent evaluation of the evidence of the parties as well as to ascertain whether or not substantial evidence supported the NLRC's ruling.

II

In the assailed judgment, the CA cogently stated as follows:

> The assigned error in the petitioner's appeal that the decision of the Labor Arbiter upholding the validity of their dismissal is not supported by the evidence or is contrary to the facts obtaining, can be reasonable construed to fall under either the afore-quoted paragraph (a) or paragraph (d) of Article 223 of the Labor Code. The petitioners were meted by their employer (herein private respondent) the supreme penalty of dismissal from their employment. In appealing the assailed decision, they believe that the Labor Arbiter committed error or abuse of discretion which if not corrected would cause them grave or irreparable damage or injury. To give the rule a different interpretation would be contrary to the spirit of the Labor Code which provides for the liberal construction of the rules. Thus, in meritorious cases, liberal (not literal) interpretation of the rule becomes imperative and technicalities should not be resorted to in derogation of the intent and purpose of the rules — the proper and just determination of a litigation.[18]

We uphold the CA's setting aside of the decision of the NLRC.

To start with, the NLRC affirmed the decision of the LA based on its observation that the alleged ground for the respondents' appeal — that "the decision with all due respect,

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[17] *Norkis Trading Corporation v. Buenavista*, G.R. No. 182018, October 10, 2012, 683 SCRA 406, 422.

[18] *Supra* note 1, at 26-27.

is not supported by evidence and is contrary to the facts obtaining" — was not one of those expressly enumerated under Article 223 of the *Labor Code*.

We cannot sustain the NLRC's basis for its affirmance of the LA's decision. Article 223[19] of the *Labor Code* pertinently states:

> 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:
>
> (a) If there is *prima facie* evidence of abuse of discretion on the part of the Labor Arbiter;
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> (b) If the decision, order or award was secured through fraud or coercion, including graft and corruption;
>
> (c) If made purely on questions of law; and
>
> (d) If serious errors in the findings of facts are raised which would cause grave or irreparable damage or injury to the appellant.
>
> x x x x x x x x x.

In our view, the CA acted judiciously in undoing the too *literal* interpretation of Article 223 of the *Labor Code* by the NLRC. The enumeration in the provision of the grounds for an appeal actually encompassed the ground relied upon by the respondents in their appeal. Their phrasing of the ground, albeit not hewing closely (or literally) to that of Article 223, related to the first and the last grounds under the provision. In dismissing the appeal on that basis, the NLRC seemed to prefer form and technicality to substance and justice. Thereby, the NLRC acted arbitrarily, for its dismissal of the appeal became entirely inconsistent with the constitutional mandate for the protection to labor.[20]

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[19] Article 223, which has been renumbered Article 229 of the *Labor Code* (per DOLE Advisory No. 01, Series of 2015).

[20] *Pagdonsalan v. National Labor Relations Commission*, G.R. No. 63701, January 31, 1984, 127 SCRA 463, 467.

Secondly, the CA's overturning of the NLRC's ruling was based on its finding that the petitioners did not sufficiently establish the just and valid cause to dismiss the respondents from their employment. As the assailed judgment indicates, the CA's review was thorough and its ruling judicious. The CA thereby enforced against the petitioners the respected proposition that it was the employer who bore the burden to show that the dismissal was for just and valid cause.[21] The failure of the petitioners to discharge their burden of proof as the employers necessarily meant that the dismissal was illegal.[22] The outcome could not be any other way.

In order to warrant the dismissal of the employee for just cause, Article 282 (b) of the *Labor Code* requires the negligence to be gross and habitual. Gross negligence is the want of even slight care, acting or omitting to act in a situation where there is duty to act, not inadvertently but willfully and intentionally, with a conscious indifference to consequences insofar as other persons may be affected.[23] Habitual neglect connotes repeated failure to perform one's duties for a period of time, depending upon the circumstances.[24] Obviously, a single or isolated act of negligence does not constitute a just cause for the dismissal of the employee.[25]

The ground for dismissal, according to the LA, was gross negligence. Considering, however, that the petitioners did not

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[21] *Nissan Motors Phils., Inc. v. Angelo*, G.R. No. 164181, September 14, 2011, 657 SCRA 520, 532.

[22] *National Labor Relations Commission v. Salgarino*, G.R. No. 164376, July 31, 2006, 497 SCRA 361, 383, citing *Royal Crown Internationale v. National Labor Relations Commission*, G.R. No. 78085, October 16, 1989, 178 SCRA 569, 578.

[23] *Sanchez v. Republic*, G.R. No. 172885, October 9, 2009, 603 SCRA 229, 237.

[24] *Abel v. Philex Mining Corporation*, G.R. No. 178976, July 31, 2009, 594 SCRA 683, 696-697.

[25] *St. Luke's Medical Center, Inc. v. Notario*, G.R. No. 152166, October 20, 2010, 634 SCRA 67, 78.

refute the respondents' claim that the incident was their first offense, and that the petitioners did not present any evidence to establish the supposed habitual neglect on the part of the respondents, like employment or other records indicative of the service and personnel histories of the respondents during the period of their employment, the CA reasonably found and concluded that the just cause to dismiss them was not established by substantial evidence.

And, lastly, anent the error in the dispositive portion of the judgment of the CA, it appears that the CA's decision cited the consolidated cases of NLRC NCR Case No. 00-11-07903-94 and NLRC NCR Case No. 00-11-08208-94 as the rulings being reversed and set aside. A reading of the dispositive portion reveals that the error was limited to the reference to a different docket number. The correct docket number was instead NLRC Case No. V-000391-98 (RAB Case No. VII-10-1292-96). It should be plain that the error was clerical, not substantial, and this is borne out by the undeniable fact that the CA correctly stated the dates of the assailed decision and resolution of the NLRC, specifically December 23, 1998 and May 8, 2000, respectively. To be also noted is that the CA correctly stated August 29, 1996 as the date when the respondents were terminated.

WHEREFORE, the Court **DENIES** the petition for review on *certiorari*; and **AFFIRMS** the decision promulgated on January 9, 2004 as herein **MODIFIED**, to wit:

> **WHEREFORE,** the instant petition is GRANTED. The assailed Decision dated December 23, 1998 and Resolution dated May 8, 2000, of public respondent NLRC, Fourth Division, Cebu City in **NLRC Case No. V-000391-98 (RAB Case No. VII-10-1292-96)** are hereby REVERSED and SET ASIDE. In lieu thereof, the petitioners [Victor Albina, Vicente Uy and Alex Velasquez] are hereby reinstated with full backwages from the time their employment were terminated on August 29, 1996 up to the time the decision herein becomes final. However, if reinstatement is no longer feasible, due to the strained relations between the parties, the private respondent [Sugarsteel Industrial, Inc.] is ordered to pay the petitioners their separation pay

equivalent to one (1) month for every year of service, in addition to the backwages.

SO ORDERED.

The petitioners shall pay the costs of suit.

SO ORDERED.

Leonardo-de Castro,[*] *Perlas-Bernabe,* and *Caguioa, JJ.,* concur.

Sereno, C.J., on leave.

FIRST DIVISION

[G.R. No. 181353. June 6, 2016]

HGL DEVELOPMENT CORPORATION represented by its President, Henry G. Lim, *petitioner, vs.* **HON. RAFAEL O. PENUELA, in his capacity as Acting Presiding Judge of the Regional Trial Court, 6th Judicial Region, Branch 13, Culasi, Antique and SEMIRARA COAL CORPORATION (now SEMIRARA MINING CORPORATION),** *respondents.*

SYLLABUS

1. REMEDIAL LAW; ACTIONS; EFFECT OF JUDGMENTS; LEGAL CONCEPT OF *SUB SILENCIO*, EXPLAINED; NOT PRESENT IN CASE AT BAR.— The legal concept of

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[*] Acting Chairperson per Special Order No. 2355 dated June 2, 2016.

sub silencio finds basis in Rule 131, Section 3(o) of the Revised Rules of Court: Sec. 3. *Disputable presumptions*.—The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence: x x x (o) That all the matters within an issue raised in a case were laid before the court and passed upon by it; and in like manner that all matters within an issue raised in a dispute submitted for arbitration were laid before the arbitrators and passed upon by them[.] So even if the ruling of the court is silent as to a particular matter, for as long as said matter is within an issue raised in the case, it can be presumed, subject to evidence to the contrary, that the matter in question was already laid before the court and passed upon by it. However, *sub silencio* does not apply to the issue of forum shopping in this case. Although Semirara Mining had repeatedly raised the issue of forum shopping at various stages of the case and before different courts, it was not directly addressed by any of the courts either because it was immaterial and irrelevant to the matter at hand or it was still premature to resolve without the parties presenting evidence on the same.

2. ID.; ID.; ID.; RULE AGAINST FORUM SHOPPING; FORUM SHOPPING EXISTS WHEN THE ELEMENTS OF *LITIS PENDENTIA* ARE PRESENT OR WHERE A FINAL JUDGMENT IN ONE CASE WILL AMOUNT TO *RES JUDICATA* IN ANOTHER; ELUCIDATED.— The rule against forum shopping is embodied in Rule 7, Section 5 of the Revised Rules of Court: x x x Forum shopping exists when the elements of *litis pendentia* are present or where a final judgment in one case will amount to *res judicata* in another. *Litis pendentia* requires the concurrence of the following requisites: (1) identity of parties, or at least such parties as those representing the same interests in both actions; (2) identity of rights asserted and reliefs prayed for, the reliefs being founded on the same facts; and (3) identity with respect to the two preceding particulars in the two cases, such that any judgment that may be rendered in the pending case, regardless of which party is successful, would amount to *res judicata* in the other case. What is pivotal in determining whether forum shopping exists or not is the vexation caused the courts and parties-litigants by a party who asks different courts and/or administrative agencies to rule on the same or related cases and/or grant the same or substantially the same reliefs, in the process creating

the possibility of conflicting decisions being rendered by the different courts and/or administrative agencies upon the same issues.

3. ID.; ID.; ID.; TWO CONCEPTS OF *RES JUDICATA*, EXPLAINED; NOT APPLICABLE IN CASE AT BAR.— *Res judicata* was defined in *Selga v. Brar* as follows: *Res judicata* has two concepts. The first is bar by prior judgment under Rule 39, Section 47(b), and the second is conclusiveness of judgment under Rule 39, Section 47(c). x x x Jurisprudence taught us well that *res judicata* under the first concept or as a bar against the prosecution of a second action exists when there is identity of parties, subject matter and cause of action in the first and second actions. The judgment in the first action is final as to the claim or demand in controversy, including the parties and those in privity with them, not only as to every matter which was offered and received to sustain or defeat the claim or demand, but as to any other admissible matter which might have been offered for that purpose and of all matters that could have been adjudged in that case. In contrast, *res judicata* under the second concept or estoppel by judgment exists when there is identity of parties and subject matter but the causes of action are completely distinct. The first judgment is conclusive only as to those matters actually and directly controverted and determined and not as to matters merely involved herein. x x x Neither concept of *res judicata* applied to Civil Case No. C-146 and Civil Case No. C-20675. There could be no bar by prior judgment because the two cases involved different parties, subject matter, and causes of action. x x x Given the lack of identity of parties and subject matter between Civil Case No. C-146 and Civil Case No. C-20675, then there could likewise be no conclusiveness of judgment or estoppel by judgment between them.

4. ID.; ID.; ID.; A DISMISSAL WITH PREJUDICE IS ALREADY DEEMED AN ADJUDICATION OF THE CASE ON THE MERITS, AND IT DISALLOWS AND BARS THE REFILING OF THE COMPLAINT.— An order or a judgment is deemed final when it finally disposes of a pending action, so that nothing more can be done with it in the trial court. In other words, the order or judgment ends the litigation in the lower court. A dismissal with prejudice is already deemed an adjudication of the case on the merits, and it disallows and

bars the refiling of the complaint. It is a final judgment and the case becomes *res judicata* on the claims that were or could have been brought in it.

5. ID.; SPECIAL CIVIL ACTIONS; CONTEMPT; AN ACT TO BE CONTEMPTUOUS MUST BE CLEARLY CONTRARY OR PROHIBITED BY THE ORDER OF THE COURT; NOT ESTABLISHED IN CASE AT BAR.—Semirara Mining, in repetitively raising the issue of forum shopping through various motions and petitions and at different stages of Civil Case No. C-146, was tenacious, at worst, but not contumacious. RTC-Culasi, in refusing to rule on the issue of forum shopping during the preliminary stages of Civil Case No. C-146, only reasoned that the issue required the presentation of evidence by the parties. In *Panaligan v. Ibay,* the Court declared: [I]t is settled that an act to be considered contemptuous must be clearly contrary or prohibited by the order of the court. x x x Judge Penuela, for his part, acted in his official capacity and within the jurisdiction of his court when he issued the Orders dated July 18, 2007 and November 20, 2007. Although Judge Penuela erred in his finding that HGL committed forum shopping and in dismissing with prejudice Civil Case No. C-146 on the basis thereof, he merely made an error of judgment that was subject to appeal, and he did not in any way disobey or disrespect the Court for which he may be cited for indirect contempt.

6. ID.; ID.; *CERTIORARI*; AN ERROR OF JUDGMENT THAT THE COURT MAY COMMIT IN THE EXERCISE OF ITS JURISDICTION IS NOT CORRECTIBLE THROUGH THE ORIGINAL CIVIL ACTION OF *CERTIORARI*; RATIONALE.—The Court held in *Pure Foods Corporation v. National Labor Relations Commission* that "[w]hen a court exercises its jurisdiction, an error committed while so engaged does not deprive it of the jurisdiction being exercised when the error is committed. If it did, every error committed by a court would deprive it of its jurisdiction and every erroneous judgment would be a void judgment. This cannot be allowed. The administration of justice would not survive such a rule. Consequently, an error of judgment that the court may commit in the exercise of its jurisdiction is not correctible through the original civil action of *certiorari.*" The pronouncements of the Court in *Magestrado v. People* is also particularly instructive in this case: *Certiorari* generally lies only when there is no

appeal nor any other plain, speedy or adequate remedy available to petitioners. Here, appeal was available. It was adequate to deal with any question whether of fact or of law, whether of error of jurisdiction or grave abuse of discretion or error of judgment which the trial court might have committed. x x x As *certiorari* is not a substitute for lost appeal, we have repeatedly emphasized that the perfection of appeals in the manner and within the period permitted by law is not only mandatory but jurisdictional, and that the failure to perfect an appeal renders the decision of the trial court final and executory. This rule is founded upon the principle that the right to appeal is not part of due process of law but is a mere statutory privilege to be exercised only in the manner and in accordance with the provisions of the law. x x x The remedies of appeal and *certiorari* are mutually exclusive and not alternative or successive. A party cannot substitute the special civil action of *certiorari* under Rule 65 of the Rules of Court for the remedy of appeal. The existence and availability of the right of appeal are antithetical to the availability of the special civil action for *certiorari*.

7. ID.; ID.; ID.; PRINCIPLE OF JUDICIAL HIERARCHY; THE CONCURRENCE OF JURISDICTION OF THE SUPREME COURT, THE COURT OF APPEALS, AND THE REGIONAL TRIAL COURTS OVER PETITIONS FOR *CERTIORARI* DOES NOT GIVE A PARTY UNBRIDLED FREEDOM TO CHOOSE THE VENUE OF HIS ACTION; VIOLATION IN CASE AT BAR.— HGL further breached the principle of judicial hierarchy in directly filing its Petition for *Certiorari* before the Court. The concurrence of jurisdiction of this Court, the Court of Appeals, and the RTCs over petitions for *certiorari* "does not give a party unbridled freedom to choose the venue of his action lest he ran afoul of the doctrine of hierarchy of courts." Instead, a becoming regard for judicial hierarchy dictates that petitions for the issuance of writs of *certiorari* against first level courts should be filed with the RTC, and those against the latter, with the Court of Appeals, before resort may be had before the Court.

8. ID.; RULES OF COURT; THE COURT WILL RELAX THE APPLICATION OF ITS PROCEDURAL RULES FOR COMPELLING REASONS OR EXCEPTIONAL CIRCUMSTANCES; PRESENT IN CASE AT BAR.— Despite the defects of the Petition at bar, the Court partly grants

the same in the interests of substantive justice and equity. This is not the first time that the Court will relax the application of its procedural rules for compelling reasons or exceptional circumstances. x x x It is not lost upon the Court that HGL was able to secure a Writ of Preliminary Mandatory Injunction from RTC-Culasi on October 6, 2004, restoring possession of the subject land to HGL and restraining Semirara Mining from further encroaching on or conducting any activities on the said property, for the duration of Civil Case No. C-146. The attempt of the Sheriff to implement the said Writ on October 8, 2004 was thwarted by Semirara Mining. Semirara Mining challenged the said Writ all the way to this Court but the Court affirmed the same in the *Semirara Coal Corporation* case, which became final and executory on March 13, 2007. x x x The Court emphasizes that the right of HGL to the Writ of Preliminary Mandatory Injunction was upheld by no less than this Court. Yet, the writ of Preliminary Mandatory Injunction secured by HGL in its favor was but an empty victory. For no justifiable reason, said Writ was never enforced and HGL never enjoyed the protection and benefits of the same. For the duration the said Writ was not implemented, HGL suffered "continuing damages and material injury," expressly recognized by the Court in the *Semirara Coal Corporation case*, as a result of the failure of HGL to use the subject land for cattle-grazing. Substantive justice and equitable considerations, therefore, warrant that HGL be compensated for said damage and injury suffered 17 years ago, without having to institute yet another action. The Court is not inclined to completely overturn the dismissal of Civil Case No. C-146 by RTC-Culasi on the ground of forum shopping, even when it constituted an error of judgment, because of the failure of HGL to duly appeal the same. Nonetheless, considering the extraordinary circumstances extant in this case, the Court deems it proper to reinstate Civil Case No. C-146 and to remand it to RTC-Culasi only for the purpose of hearing and determining the damages to which HGL is entitled because of the non-enforcement of the Writ of Preliminary Mandatory Injunction dated October 6, 2004.

APPEARANCES OF COUNSEL

Villaraza Cruz Marcelo & Angangco for petitioner.
Rodrigo Berenguer & Guno for respondent Semirara.

D E C I S I O N

LEONARDO-DE CASTRO,[*] *J.*:

Before the Court is a Petition filed by petitioner HGL Development Corporation (HGL) against private respondent Semirara Mining Corporation (Semirara Mining) and public respondent Judge Rafael O. Penuela (Penuela), presiding judge of the Regional Trial Court, Branch 13, of Culasi, Antique (RTC-Culasi), to be treated either as a (1) Petition for Indirect Contempt based on Rule 71, Section 4 of the Rules of Court; or (2) Petition for *Certiorari* under Rule 65 of the Rules of Court. HGL is essentially assailing in its Petition Judge Penuela's issuance, upon motion of Semirara Mining, of the Order dated July 18, 2007 which dismissed with prejudice Civil Case No. C-146 on the ground of forum shopping, in sheer and blatant defiance of the Decision[1] and Resolution[2] of the Court in G.R. No. 166854, bearing the title *Semirara Coal Corporation (now Semirara Mining Corporation) v. HGL Development Corporation (Semirara Coal Corporation case)*.

ANTECEDENT FACTS

The institution of Civil Case No. C-146 before RTC-Culasi

Through a Coal Operating Contract dated July 11, 1977, the Department of Energy (DOE) tasked Semirara Mining with the exploration, conservation, and development of all coal resources that could be found in the entire Island of Semirara, Antique, with a total area of approximately 5,500 hectares.

HGL was granted Forest Land Grazing Lease Agreement (FLGLA) No. 184 by the Department of Environment and Natural Resources (DENR) covering 367 hectares of land located in

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[*] Per Special Order No. 2354 dated June 2, 2016.

[1] 539 Phil. 532 (2006).

[2] G.R. No. 166854, February 14, 2007.

the *barrios* of Bobog and Pontod, Island of Semirara, Municipality of Caluya, Province of Antique (subject land), for a term of 25 years effective from August 28, 1984 to December 31, 2009. HGL had been grazing cattle on the subject land since the effectivity of FLGLA No. 184.

Sometime in 1999, Semirara Mining sought from HGL permission so the trucks and other equipment of Semirara Mining could pass through a portion of the subject land. HGL granted such permission believing that Semirara Mining would only use the portion of the subject land as an alternate route to its mining site. HGL later discovered that Semirara Mining had already undertaken the following activities on the subject land: erected several buildings for its administrative offices and employees' residences; constructed an access road to the mining site; conducted blasting and excavation activities; and maintained a stockyard for its extracted coals. The objections of HGL against the continuing activities of Semirara Mining on the subject land went unheeded. Said activities of Semirara Mining had severe adverse effects on the cattle grazing on the subject land, eventually leading to the decimation of the cattle of HGL.

HGL complained against Semirara Mining before the DENR through a letter dated October 29, 1999. HGL asked the DENR to conduct an investigation of Semirara Mining and to order the latter to pay damages to HGL. There was no showing that the DENR took any action on said letter-complaint of HGL. On December 6, 2000, however, the DENR issued an Order unilaterally cancelling FLGLA No. 184 for failure of HGL to pay annual rental dues and surcharges and submit grazing reports from 1986 to 1999; and ordering HGL to vacate the subject land. HGL filed a letter of consideration dated January 12, 2001 which was denied by the DENR in its Order dated December 9, 2002. The DENR stated in said Order that it had to cancel the lease agreement with HGL after the DENR was informed by the DOE of the existence of coal deposits on the subject land and the DENR had to give way to the jurisdiction of the DOE over coal-bearing lands. HGL wrote the DENR another letter of reconsideration dated March 6, 2003, which was unacted upon until HGL withdrew said letter on August 4, 2003.

On November 17, 2003, HGL simultaneously instituted two actions before different courts. *First*, HGL instituted before the RTC, Branch 21, of Caloocan City (RTC-Caloocan), an action against the DENR for specific performance and damages, with prayer for a temporary restraining order (TRO) and/or writ of preliminary injunction, docketed as **Civil Case No. C-20675**. HGL primarily prayed in Civil Case No. C-20675 that the DENR be compelled to perform its contractual obligations under FLGLA No. 184, specifically, to respect and recognize HGL as a valid and lawful occupant of the subject land until December 31, 2009. Semirara Mining later intervened as defendant in said case. *Second*, HGL instituted before RTC-Culasi an action against Semirara Mining for recovery of possession of the subject land and damages with prayer for TRO and/or writ of preliminary mandatory injunction, docketed as **Civil Case No. C-146**, proceedings in which are the subject of the instant Petition.

In its Complaint[3] in Civil Case No. C-146, HGL alleged that it had been in lawful possession of the subject land based on FLGLA No. 184 when it was ousted therefrom by Semirara Mining through deceit and force. HGL, thus, prayed for recovery of possession of the subject land and award of actual, moral, and exemplary damages, as well as attorney's fees and litigation expenses. HGL likewise prayed for preliminary mandatory injunction and/or TRO to enjoin Semirara Mining from continuing to encroach and take over the subject land and to restore HGL to rightful possession of said land while the case was being heard.

Semirara Mining contended in its Answer[4] that its right to possess the subject land was based on the Coal Operating Contract executed in its favor by the DOE on July 11, 1977 covering the entire Island of Semirara. The entire Island of Semirara (including the subject land) was declared a Coal Mining Reservation Area

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[3] Records, Volume 1, pp. 6-31.

[4] *Id.* at 124-135.

as early as the 1940s; and said Coal Operating Contract was executed in favor of Semirara Mining by the DOE pursuant to its exclusive jurisdiction over the exploration, utilization, and conservation of all coal resources in the said Island under Presidential Proclamation No. 649, and subsequent amendments and/or enactments related thereto.

Semirara Mining also averred that the DENR, through its Orders dated December 6, 2000 and December 9, 2002, unilaterally cancelled FLGLA No. 184 by virtue of paragraph 2 of said Agreement, which stated that the same was subject to cancellation, among other grounds, should there be a "prior and existing valid claim or interest" over the land it covered. In addition, HGL already lost its right to appeal or assail the validity of said DENR Orders since these were not elevated for review before the Office of the President and, thus, already attained finality.[5]

Trial and Appellate Court Proceedings Re: Writ of Preliminary Mandatory Injunction

RTC-Culasi, then presided by Judge Antonio B. Bantolo (Bantolo), initially heard the motion of HGL for issuance of a TRO or a writ of preliminary injunction.[6] HGL presented the testimony of Oscar Lim (Lim), administrator of HGL for the subject land, after which, it offered its documentary exhibits in open court.[7] RTC-Culasi later admitted the evidence offered by HGL over the objections of Semirara Mining.[8]

When it was the turn of Semirara Mining to present evidence, its counsel failed to appear on the scheduled hearings. Victor Consunji (Consunji), President of Semirara Mining, sent a letter

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[5] *Id.*

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

[7] *Id.* at 41, 43, 45, 47, and 61-62.

[8] *Id.* at 32-33, 61, 75, 92, 108, and 166.

dated March 19, 2004 to Judge Bantolo, and received by RTC-Culasi on March 22, 2004, asking for the postponement and resetting of the hearings set on March 23 and 24, 2004 because of the resignation of the counsel of Semirara Mining. During the hearing on March 24, 2004, HGL opposed the postponement of the hearing because (1) Consunji's letter was not in the form of a motion for postponement; (2) HGL was not furnished a copy of Consunji's letter; and (3) there was no showing that Consunji was duly authorized to represent Semirara Mining in the case.

RTC-Culasi issued an Order[9] on March 24, 2004 declaring that counsel for Semirara Mining failed to appear without justification at the hearing scheduled that day despite due notice. In addition to the grounds for opposition to the postponement propounded by HGL, RTC-Culasi also noted that there was nothing in the records to show that counsel for Semirara Mining had already withdrawn from the case and that Semirara had accepted its counsel's resignation. Hence, upon motion of HGL, RTC-Culasi already submitted for resolution the issue of whether or not a writ of preliminary mandatory injunction should be issued *pendente lite*. RTC-Culasi, in the same Order scheduled a Pre-Trial Conference in the case.

Semirara Mining filed on April 15, 2004 before RTC-Culasi an Omnibus Motion,[10] claiming accident and/or excusable negligence and existence of a meritorious defense, and praying for the following: (1) reversal of the Order dated March 24, 2004; (2) admission of its attached documentary evidence against the motion of HGL for a TRO or preliminary mandatory injunction; and (3) setting of the case for preliminary hearing of its special and affirmative defenses. In the alternative, Semirara Mining prayed for the dismissal of the case on the ground of forum shopping, questioning the propriety of the simultaneous filing by HGL of Civil Case No. C-146 before RTC-Culasi and Civil Case No. C-20675 before RTC-Caloocan.

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[9] *Id.* at 171-172.

[10] *Id.* at 176-217.

In a Resolution[11] dated June 21, 2004, RTC-Culasi denied for lack of merit the Omnibus Motion of Semirara Mining. RTC-Culasi found no reason to reverse its Order dated March 24, 2004 because there was no satisfactory proof that Semirara Mining accepted its counsel's resignation; the counsel of Semirara Mining did not file her withdrawal as such and did not furnish the opposing party with a copy of said withdrawal; and Consunji's letter dated March 19, 2004 was not a motion for postponement and was a mere scrap of paper. RTC-Culasi further refused to admit the documentary evidence attached to the Omnibus Motion of Semirara Mining for they did not undergo the proper procedure for presentation of evidence laid down in the Rules of Court, but Semirara Mining was not precluded from presenting the same evidence during trial proper. RTC-Culasi lastly denied the prayer of Semirara Mining for preliminary hearing on its affirmative defenses, taking into account the allegation of HGL in its Complaint on the urgency for the issuance of the injunctive relief because it was continuing to suffer damages from the acts of Semirara Mining. RTC-Culasi held:

> In short, the grounds relied upon in the Omnibus Motion is either not supported by convincing document/evidence and/or are evidentiary in nature that could be well threshed out and/or could be well presented during the trial on the merits. [Semirara Mining] had shut off the opening door of March 23 and March 24, 2004 the opportune time granted him.
>
> WHEREFORE**,** premises considered, [Semirara Mining's] Omnibus Motion dated April 13, 2004 is hereby denied for lack of merit.
>
> Let the Order of March 24, 2004 stands.

Semirara Mining filed a Motion for Reconsideration of the foregoing Resolution (to which HGL subsequently filed an Opposition) as well as a Request for Admission of documents proving the cancellation of FLGLA No. 184.[12] RTC-Culasi did not act on both Motions of Semirara Mining.

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[11] Records, Volume 2, pp. 407-409.

[12] *Id.* at 442-450, 454-459, and 483-488.

On September 16, 2004, RTC-Culasi issued a Resolution[13] resolving the motion of HGL for the issuance of a writ of preliminary mandatory injunction. RTC-Culasi found that:

> [HGL's] Exhibit "A" with its sub-markings — Forest Land Grazing Agreement No. [184]-FLGA — establishes the rights of [HGL] over the subject land. It also established the physical actual possession and the right to the actual physical possession of [HGL] over the subject land. Consequently, with its Exhibit "A" as well as its sub-markings [HGL] falls within the ambit of Article 539 of the Civil Code which is hereunder reproduced for quick reference as follows:
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> > "Article 539. Every possessor has a right to be respected in his possession; and should he be disturbed therein he shall be protected in or restored to his possession by the means established by the law and the Rules of Court."
> >
> > "A possessor deprived of his possession through forcible entry may within ten days from filing of the complaint present a motion to secure from the competent court, in the action for forcible entry, a writ of preliminary mandatory injunction to restore him in his possession. The court shall decide the motion within thirty (30) days from the filing thereof."
> > (see Art. 539, Civil Code)

RTC-Culasi also adjudged that the other documentary evidence submitted by HGL were supportive of the allegations in its Complaint of prior rightful possession of the subject land, eventual unlawful ouster from the same, and damages suffered. In contrast, RTC-Culasi stated that Semirara Mining failed to controvert the evidence of HGL despite due notice and/or opportunity to be heard. RTC-Culasi decreed in the end:

> WHEREFORE, premises considered. without prejudice to [Semirara Mining's] presentation of the evidence on the merits, in the meantime [HGL's] application for the Writ of Preliminary Mandatory Injunction over the subject land is granted upon a bond fixed in the amount of ₱1,000,000.00 conditioned to pay [Semirara Mining] whatever

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[13] *Id.* at 495-506.

damages it may suffer by reason of injunction if it is found later that [HGL] is not entitled thereto.[14]

Semirara Mining did not seek reconsideration of the foregoing Resolution.

After HGL posted the required bond on October 5, 2004, RTC-Culasi issued the Writ of Preliminary Mandatory Injunction[15] on October 6, 2004, ordering the Provincial Sheriff of Antique as follows:

> NOW, THEREFORE, you the Provincial Sheriff of Antique or your deputy, Culasi, Antique, is hereby commanded to restrain [Semirara Mining] or any of its agent, employee or representatives to cease and desist from encroaching the subject land or conducting any activities therein, and to restore the possession of the subject land to [HGL] or to any of its authorized agent, representative and/or administrator.

Giovanni R. Relator, Sheriff IV of RTC-Culasi, submitted a Sheriff's Report[16] dated October 11, 2004 on the service and attempted enforcement of the Writ of Preliminary Injunction, pertinent portions of which are reproduced below:

> That on October 8, 2004, the undersigned together with [HGL's] representatives, Atty. Don Carlo Ybañez, Atty. Marc Antonio, and Oscar Lim, and three (3) police officers namely: PO3 Remus Bayawa, PO2 Arnel Cuadernal and SPO1 Faustito Cagay of 315th Mobile Group, Esperanza, Culasi, Antique, went to the Semirara Coal Corporation located at Semirara, Caluya, Antique to implement and execute the Writ of Preliminary Mandatory Injunction, wherein, I personally contacted and tendered to Mr. [Juniper A. Baroquillo], Administrative Officer of [Semirara Mining] at the Sitios Bobog and Pontod, Semirara, Caluya, Antique, copies of Resolution dated September 16, 2004, Notification and the Writ of Preliminary Mandatory Injunction which he received but vehemently refused to acknowledge receipt of the same.

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[14] *Id.* at 504.

[15] Records, Volume 3, pp. 530-532.

[16] *Id.* at 528-529.

Mr. [Juniper A. Baroquillo] categorically informed me in the presence of the representative and counsel of the HGL Corporation that he and his company will not abide by any means with the Order of this Court to restore [HGL] in the premises and restrain [Semirara Mining] from conducting any activities within the area subject matter of the Writ of Preliminary Mandatory Injunction. Nevertheless, despite the refusal to abide nor acknowledge receipt of the lawful order of this Court; the undersigned delivered to him copies of Resolution, Notification and Writ of Preliminary Mandatory Injunction.

Thereafter, I informed Mr. [Juniper A. Baroquillo] that by his acts and actuations of not abiding nor acknowledging the lawful order and/or processes of the court, the same is a good ground for [HGL] to take whatever legal action they may consider under the premises.

Semirara Mining filed on October 12, 2004 a Petition for *Certiorari*[17] before the Court of Appeals, docketed as CA-G.R. CEB-SP No. 00035, assailing the Resolution dated September 16, 2004 and Writ of Preliminary Mandatory Injunction dated October 6, 2004 issued by RTC-Culasi. Semirara Mining raised, *inter alia*, the issue of forum shopping by HGL.[18] The Court of

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[17] CA *rollo* (Vol. I), pp. 2-168.

[18] Semirara Mining cited the following grounds for its Petition for *Certiorari*:

1. [HGL] has no legal right or cause of action under the principal action or complaint, much less, to the ancillary remedy of injunction;
2. [HGL] did not come to court with clean hands;
3. [Judge Bantolo] unjustifiably and arbitrarily deprived [Semirara Mining] of its fundamental right to due process by not giving it an opportunity to present evidence in opposition to the mandatory injunction;
4. [Judge Bantolo] immediately granted the application for the issuance of a writ of mandatory injunction without first resolving the pending Motion for Reconsideration dated July 12, 2004 of [Semirara Mining];
5. [Judge Bantolo] did not consider or admit the certified copies of the official records of the DENR cancelling [HGL's] FLGLA as evidence against the mandatory injunction prayed for;
6. [Judge Bantolo] should have granted [Semirara Mining's] Motion for Preliminary Hearing on its affirmative defense that [HGL] under its complaint has no cause of action against [Semirara Mining];

Appeals issued a TRO on October 13, 2004 enjoining the implementation of the assailed Resolution and Writ of RTC-Culasi.[19]

In its Decision[20] dated January 31, 2005, the Court of Appeals dismissed the Petition in CA-G.R. CEB-SP No. 00035 and affirmed the Resolution dated September 16, 2004 and Writ of Preliminary Mandatory Injunction dated October 6, 2004 of RTC-Culasi. The Court of Appeals directly addressed five of the eight issues raised by Semirara Mining in its Petition. The issue of forum shopping by HGL was one of the three which the appellate court chose not to resolve for being "immaterial and irrelevant."

Without moving for reconsideration of the Court of Appeals Decision dated January 31, 2005, Semirara Mining filed before this Court a Petition for Review on *Certiorari*,[21] docketed as G.R. No. 166854. Among the grounds for its Petition before the Court,[22] Semirara Mining reiterated that Judge Bantolo of

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7. **[Judge Bantolo] should have dismissed the complaint outright for violation of the rules on forum shopping by [HGL];** and

8. The mandatory injunction issued in the instant case is violative of the provisions of Presidential Decree [No.] 605. (*Id.* at 10-11).

[19] *Id.* at 170-171.

[20] *Id.* at 443-452; penned by Associate Justice Arsenio J. Magpale with Associate Justices Mariflor P. Punzalan Castillo and Ramon M. Bato, Jr. concurring.

[21] *Id.* at 453-825.

[22] *Id.* at 466-468; Grounds in support of Semirara Mining's petition in G.R. No. 166854: The Honorable Court of Appeals committed serious errors of law in dismissing the petition for *certiorari* and in affirming the assailed resolution of public respondent granting the application for preliminary mandatory injunction considering that:

[I] The Resolution dated 16 September 2004 and the Writ of Preliminary Mandatory Injunction dated 6 October 2004 issued by public respondent are a patent nullity as [HGL] clearly has no legal right or cause of action under its principal action or complaint, much less, to the ancillary remedy of preliminary mandatory injunction;

RTC-Culasi committed grave abuse of discretion in refusing or failing to dismiss outright the Complaint of HGL in Civil Case No. C-146 for being in violation of the rules against forum shopping. On March 2, 2005, the Court issued a TRO enjoining the implementation and enforcement of the appealed Decision of the appellate court.[23]

The Court promulgated the *Semirara Coal Corporation case* on December 6, 2006.[24]

[II] A Writ of Preliminary Mandatory Injunction cannot be used to take property out of the possession of one party and place it into that of another who has no clear legal right thereto;

[III] [HGL's] complaint in Civil Case No. C-146 is in the nature of an *accion publiciana*, not forcible entry; hence, a Writ of Preliminary Mandatory Injunction is not a proper remedy;

[IV] [Semirara Mining] was unjustifiably and arbitrarily deprived of its fundamental right to due process when it was denied the right to present evidence in opposition to the application for preliminary mandatory injunction;

[V] The public respondent deliberately withheld the resolution of [Semirara Mining's] Motion for Reconsideration dated 12 July 2004 and proceeded to prematurely issue the preliminary mandatory injunction in violation of [Semirara Mining's] right to fair play and justice;

[VI] Public respondent committed grave abuse of discretion when:

1) He refused or failed to admit in evidence and/or consider the certified public records of the DENR order cancelling [HGL's] FLGLA;

2) He refused or failed to conduct a hearing on these certified public documents which conclusively prove [HGL's] lack of cause of action under the principal action; and

3) He refused or failed to dismiss the complaint outright for [violating] the rules on forum shopping by [HGL].

[23] *Id.* at 982-984.

[24] *Semirara Coal Corporation (now Semirara Mining Corporation) v. HGL Development Corporation, supra* note 1.

The Court noted at the beginning that the Petition in CA-G.R. CEB-SP No. 00035 should not have prospered before the Court of Appeals since Semirara Mining failed to first file a motion for reconsideration of the Resolution dated September 16, 2004 and Writ of Preliminary Mandatory Injunction dated October 6, 2004 of RTC-Culasi. A motion for reconsideration is a condition *sine qua non* for the grant of the extraordinary writ of *certiorari*, as said motion was an available plain, speedy, and adequate remedy in the ordinary course of law, designed to give the trial court the opportunity to correct itself.

On the merits of the Petition of Semirara Mining, the Court ruled:

> The pivotal issue confronting this Court is whether the Court of Appeals seriously erred or committed grave abuse of discretion in affirming the September 16, 2004 Resolution of the Regional Trial Court of Antique granting the writ of preliminary mandatory injunction.
>
> Under Article 539 of the New Civil Code, a lawful possessor is entitled to be respected in his possession and any disturbance of possession is a ground for the issuance of a writ of preliminary mandatory injunction to restore the possession. Thus, [Semirara Mining's] claim that the issuance of a writ of preliminary mandatory injunction is improper because the instant case is allegedly one for *accion publiciana* deserves no consideration. This Court has already ruled in *Torre, et al. v. Hon. J. Querubin, et al.*, that prior to the promulgation of the New Civil Code, it was deemed improper to issue a writ of preliminary injunction where the party to be enjoined had already taken complete material possession of the property involved. However, with the enactment of Article 539, [HGL] is now allowed to avail of a writ of preliminary mandatory injunction to restore him in his possession during the pendency of his action to recover possession.
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> It is likewise established that a writ of mandatory injunction is granted upon a showing that (a) the invasion of the right is material and substantial; (b) the right of complainant is clear and unmistakable; and (c) there is an urgent and permanent necessity for the writ to prevent serious damage.
>
> In the instant case, it is clear that as holder of a pasture lease agreement under FLGLA No. 184, HGL has a clear and unmistakable

right to the possession of the subject property. Recall that under the FLGLA, HGL has the right to the lawful possession of the subject property for a period of 25 years or until 2009. As lawful possessor, HGL is therefore entitled to protection of its possession of the subject property and any disturbance of its possession is a valid ground for the issuance of a writ of preliminary mandatory injunction in its favor. The right of HGL to the possession of the property is confirmed by [Semirara Mining] itself when it sought permission from HGL to use the subject property in 1999. In contrast to HGL's clear legal right to use and possess the subject property, [Semirara Mining's] possession was merely by tolerance of HGL and only because HGL permitted petitioner to use a portion of the subject property so that the latter could gain easier access to its mining area in the Panaan Coal Reserve.

The urgency and necessity for the issuance of a writ of mandatory injunction also cannot be denied, considering that HGL stands to suffer material and substantial injury as a result of [Semirara Mining's] continuous intrusion into the subject property. [Semirara Mining's] continued occupation of the property not only results in the deprivation of HGL of the use and possession of the subject property but likewise affects HGL's business operations. It must be noted that [Semirara Mining] occupied the property and prevented HGL from conducting its business way back in 1999 when HGL still had the right to the use and possession of the property for another 10 years or until 2009. At the very least, the failure of HGL to operate its cattle-grazing business is perceived as an inability by HGL to comply with the demands of its customers and sows doubts in HGL's capacity to continue doing business. This damage to HGL's business standing is irreparable injury because no fair and reasonable redress can be had by HGL insofar as the damage to its goodwill and business reputation is concerned.

[Semirara Mining] posits that FLGLA No. 184 had already been cancelled by the DENR in its order dated December 6, 2000. But as rightly held by the Court of Appeals, the alleged cancellation of FLGLA No. 184 through a unilateral act of the DENR does not automatically render the FLGLA invalid since the unilateral cancellation is subject of a separate case which is still pending before the Regional Trial Court of Caloocan City. Notably, said court has issued a writ of preliminary injunction enjoining the DENR from enforcing its order of cancellation of FLGLA No. 184.

The Court of Appeals found that the construction of numerous buildings and blasting activities by petitioner were done without the consent of HGL, but in blatant violation of its rights as the lessee of the subject property. It was likewise found that these unauthorized activities effectively deprived HGL of its right to use the subject property for cattle-grazing pursuant to the FLGLA. It cannot be denied that the continuance of [Semirara Mining's] possession during the pendency of the case for recovery of possession will not only be unfair but will undeniably work injustice to HGL. It would also cause continuing damage and material injury to HGL. Thus, the Court of Appeals correctly upheld the issuance of the writ of preliminary mandatory injunction in favor of HGL.[25] (Citations omitted.)

The decretal portion of the *Semirara Coal Corporation case* reads:

WHEREFORE, the instant petition is *DENIED*. The Decision dated January 31, 2005, of the Court of Appeals in CA G.R. CEB SP No. 00035, which affirmed the Resolution dated September 16, 2004 of the Regional Trial Court of Culasi, Antique, Branch 13, as well as the Writ of Preliminary Mandatory Injunction dated October 6, 2004 issued pursuant to said Resolution, is *AFFIRMED*. The temporary restraining order issued by this Court is hereby lifted. No pronouncement as to costs.[26]

Markedly, the Court mentioned in the *Semirara Coal Corporation case* the pendency of Civil Case No. C-20675 before RTC-Caloocan in which Semirara Mining challenged the unilateral cancellation of FLGLA No. 184 by the DENR, but it made no pronouncement as to the issue of forum shopping by HGL.

The Court denied with finality the Motion for Reconsideration of Semirara Mining in a Resolution[27] dated February 14, 2007. Per Entry of Judgment[28] dated March 13, 2007, the *Semirara Coal Corporation* case became final and executory.

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[25] *Id.* at 544-547.

[26] *Id.* at 547.

[27] CA *rollo*, Volume 2, pp. 1530-1532.

[28] CA *rollo*, Volume 1, p. 1231.

Contempt Proceedings and Trial on the Merits of Civil Case No. C-146

On October 13, 2004, the same date that the Court of Appeals issued in CA-G.R. CEB-SP No. 00035 a TRO on the implementation of the Resolution dated September 16, 2004 and *Writ of Preliminary Mandatory Injunction* dated October 6, 2004 of RTC-Culasi, HGL filed before RTC-Culasi a Motion to Cite (Semirara Mining) in Contempt with Motion for Issuance of Break Open Order.[29] HGL alleged in its Motion that:

> 7. In the present case, Mr. [Juniper A. Baroquillo (Baroquillo)] deliberately refused to obey the *Writ of Preliminary Mandatory Injunction* issued by this Honorable Court. He also showed arrogant, rude and offensive behavior before the branch sheriff and two (2) lawyers — all of whom are officers of this Honorable Court who were then in the performance of official business. Mr. Baroquillo likewise interfered with the proceedings of this Honorable Court by not honoring a lawful writ issued by the latter. By doing so, Mr. Baroquillo directly impeded, obstructed and degraded the administration of justice.
>
> 8. Mr. Baroquillo expressly stated that he was acting for and in behalf of his superiors who apparently ordered him to disobey this Honorable Court's orders. Mr. Baroquillo's superiors are no other than VICTOR A. CONSUNJI and GEORGE B. BAQUIRAN, the President and Vice-President for Special Projects[,] respectively.
>
> 9. Mr. Consunji and Mr. Baquiran willfully disobeyed the lawful order of the court through Mr. Baroquillo, who acted for and in their behalf. Hence, all these persons must be cited in contempt of court.
>
> 10. Section 4, Rule 71 of the Rules of Court provides that the Court can *motu proprio* initiate contempt proceedings. With the Sheriff's return, executed by the branch sheriff, attesting to these facts, there is more than enough basis for this Honorable Court to initiate contempt proceedings against Mr. Baroquillo, Mr. Consunji and Mr. Baquiran.
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[29] Records, Volume 3, pp. 538-544.

13. Moreover, [Semirara Mining] through the above-named persons, specifically stated that they would not follow this Court's orders. They will not vacate the subject premises even if this Honorable Court demands them to do so. Hence, there is clearly a need for this Honorable Court to issue a break-open order to allow the branch sheriff and [HGL's] duly authorized representatives to enter the subject property as well as any building constructed thereon.

Hence, HGL prayed that Consunji, George B. Baquiran (Baquiran), and Baroquillo be cited in direct contempt and that a break-open order be issued to allow HGL to enter the subject land and enforce the Writ of Preliminary Mandatory Injunction dated October 6, 2004.

In the meantime, Civil Case No. C-146 proceeded to pre-trial. The parties filed their respective Pre-Trial Briefs.[30] On September 30, 2004, RTC-Culasi terminated the pre-trial proceedings and issued a Pre-trial Order.[31] The Pre-Trial Order did not contain any stipulation of facts, but identified the issues the parties were submitting for resolution, as follows:

[HGL] raised the issues for the decision of the Court:

1. Whether or not [Semirara Mining] encroached on the subject property which is leased to [HGL] for a period of 25 years and to expire on December 30, 2009;

2. Whether or not as a result of [Semirara Mining's] encroachment on the subject property, [HGL] suffered damages;

3. Whether or not [HGL] is entitled to actual [and] moral damages, and [Semirara Mining] be compelled to restore possession to [HGL] the subject land.

x x x x x x x x x

The [issues] raised by [Semirara Mining] for the Court to decide:

1. Whether or not the Complaint be dismissed for lack of payment during the time of filing of the Complaint;

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[30] Records, Volume 2, pp. 269-274 and 275-281.

[31] *Id.* at 509-512.

2. Whether or not the subsequent payment paid by [HGL] in the docket fees without leave of court is valid.

At the end of its Pre-Trial Order, RTC-Culasi gave the parties 10 days within which to file their comments, after the lapse of which, the matters stated in the said Order would be deemed conclusive and binding between the parties.

Semirara Mining filed on November 2, 2004 a Comment/Motion[32] before RTC-Culasi seeking the issuance of a new pre-trial order which would include for resolution the issues Semirara Mining raised in its pleadings and during the pre-trial proceedings but omitted in the Pre-Trial Order dated September 30, 2004, including the issue of whether or not HGL was guilty of forum shopping.

On November 12, 2004, Semirara Mining filed at the same time an Opposition to [HGL's] Motion to Cite [Semirara Mining] in Contempt and for Issuance of Break Open Order and a Motion for Deferment of Pre-Trial and Further Proceedings.[33] Semirara Mining prays for deferment of proceedings in light of the TRO

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[32] Records, Volume 3, pp. 566-569. According to Semirara Mining, the Pre-Trial Order dated September 30, 2004 did not include the following issues:

a) Whether or not complaint states a cause of action against [Semirara Mining].

b) Whether or not [HGL] may still file a case against [Semirara Mining] despite failing to exhaust all legal remedies available.

c) Whether or not regular courts [have] jurisdiction to rule that the property located in Semirara is outside the coverage of Proclamation 649.

d) Whether or not [HGL] acted with malice in deliberately failing to state that the FLGLA which is the basis of their possession has already been canceled.

e) Whether or not [Semirara Mining] is entitled to recover exemplary damages, moral damages, collection expenses, attorney's fees and cost of suit in its counterclaim.

f) Whether or not [HGL] is guilty of forum shopping.

[33] *Id.* at 576-586 and 588-594.

issued by the Court of Appeals in CA-G.R. CEB-SP No. 00035 on October 13, 2004.

In an Order[34] dated November 18, 2004, RTC-Culasi set a hearing of Civil Case No. C-146 on January 13, 2005 "on the main case on the merits and the contempt proceedings successively." Prior to the scheduled hearing, RTC-Culasi issued a Resolution[35]dated January 10, 2005 acting on the two pending incidents in the case, *i.e.*, the Comment/Motion on the Pre-Trial Order dated September 30, 2004 and Motion for Deferment of Pre-Trial and Further Proceedings, both filed by Semirara Mining, thus:

WHEREFORE, premises considered:

1. On the First Incident [Comment/Motion on the Pre-Trial Order dated September 30, 2004], being either: impliedly/expressly included in the portion of the aforequoted Pre-Trial Order of September 30, 2004, or a paraphrase of the same, or are evidentiary matters, or legal matters to be ironed out during the trial on the merits and/or among those proposals not admitted by [HGL], the matters raised in the instant Comment/Motion, as Comment, the same are hereby noted and [Semirara Mining] is not precluded from presenting evidence to that effect.

As a motion — a relief applied as the basis for the issuance of the new Pre-Trial Order — the same [is] denied being improper and/or for lack of merit.

[2.] As to the Second Incident [Motion for Deferment of Pre-Trial and Further Proceedings], the period of sixty (60) days having expired and not extended as of this writing as well as the merit of this case is not included in the subject matter in the Court of Appeals CA. G.R. CEB SP NO. 00035, the Second Incident is hereby denied for lack of merit.

During the hearing on January 13, 2005, Semirara Mining again moved for RTC-Culasi to issue a supplemental pre-trial

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[34] *Id.* at 614-615.

[35] *Id.* at 663-666.

order expressly incorporating the issues omitted from the Pre-Trial Order dated September 30, 2004.[36] RTC-Culasi, in its Order[37] dated February 15, 2005, denied the motion of Semirara Mining as the purportedly omitted issues, particularly, matters of damages and forum shopping, were still to be substantiated by evidence of the parties and there was no compelling reason for the trial court to issue such supplemental pre-trial order at that point in time. Unyielding, Semirara Mining filed a Motion for Clarification[38] of the statement of RTC-Culasi that all the issues raised by Semirara Mining were already "impliedly/ expressly included" in the Pre-Trial Order dated September 30, 2004, but this Motion was no longer acted upon by the trial court.

Civil Case No. C-146 then proceeded to trial. Lim, HGL administrator for the subject land, was recalled to the witness stand to testify on matters relating to the main case. HGL next presented Sheriff Relator as witness in the contempt proceedings.[39]

Semirara Mining filed on February 1, 2005 a Motion for Inhibition of Presiding Judge (With Motion for Cancellation of Hearing),[40] which Judge Bantolo denied in a Resolution[41] of even date.[42] Judge Bantolo ordered in the same Resolution that the hearing of Civil Case No. C-146 would proceed as scheduled.

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[36] TSN, January 13, 2005, p. 4.

[37] Records, Volume 4, p. 826.

[38] *Id.* at 855-860.

[39] Records, Volume 3, pp. 671 and 783-786.

[40] *Id.* at 753-756.

[41] *Id.* at 787-790.

[42] Semirara Mining questioned Judge Bantolo's refusal to inhibit from hearing Civil Case No. C-146 before the Court, docketed as G.R. No. 168813. However, following Judge Bantolo's retirement on January 6, 2006, the Court issued a Resolution dated March 13, 2006 dismissing the Petition in G.R. No. 168813 for being moot and academic. Said Resolution became final and executory on April 21, 2006 (Records, Volume 5, pp. 1305-1306).

Yet, on March 11, 2005, RTC-Culasi issued an Order[43] holding in abeyance the contempt proceedings instituted by HGL in view of the TRO issued by the Court in G.R. No. 166854 until the Court had resolved the propriety of the issuance of the Writ of Preliminary Mandatory Injunction; but allowed HGL to continue with its presentation of evidence on the merits of the Complaint in Civil Case No. C-146 which was not covered by the TRO.

Semirara Mining filed another Omnibus Motion[44] on April 11, 2005 praying for the annulment of the trial court proceedings conducted on March 11, 2005, as well as for the cancellation of further proceedings in Civil Case No. C-146, insisting that the TRO issued by this Court in G.R. No. 166854 enjoining Judge Bantolo to maintain the *status quo*, pertained not only to the enforcement of the Writ of Preliminary Mandatory Injunction, but also to the continuation of the proceedings in the main case. Another witness for HGL, Elizabeth R. De Leon (De Leon), was able to give her testimony during the hearings on April 15, 2005 and May 3, 2005. Semirara Mining put on record their continuing objection to the proceedings and refused to cross-examine De Leon.[45] RTC-Culasi eventually denied the Omnibus Motion of Semirara Mining in a Resolution[46] dated July 4, 2005.

HGL made a formal offer of its documentary exhibits on July 5, 2005.[47] In a Resolution[48] dated July 25, 2005, RTC-Culasi admitted all the exhibits of HGL over the objection of Semirara Mining, and considered HGL to have rested its case.

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[43] Records, Volume 4, pp. 867-868.

[44] *Id.* at 914-928.

[45] *Id.* at 970-971 and 1016-1017.

[46] *Id.* at 1056-1058.

[47] *Id.* at 1036-1052.

[48] Records, Volume 5, pp. 1081-1082.

Semirara Mining commenced the presentation of its evidence on July 29, 2005 by calling Baquiran to the witness stand. Baquiran, after being subjected to direct and cross-examinations, concluded his testimony on May 24, 2007.[49]

Meanwhile, Judge Bantolo retired from service on January 6, 2006, and in his place, Judge Penuela was appointed Presiding Judge of RTC-Culasi on January 26, 2006.

Semirara Mining filed on March 27, 2006 another Motion to Suspend Proceedings in Civil Case No. C-146 citing once more the pendency of G.R. No. 166854 before the Court and the issuance of the TRO by the Court in said case.[50] On May 30, 2006, RTC-Culasi, already presided by Judge Penuela, issued an Order[51] giving Semirara Mining two months within which to secure from the Court an order specifically enjoining the hearing of the main cause of action in Civil Case No. C-146. However, proceedings in Civil Case No. C-146 were effectively deferred even beyond the two-month period accorded to Semirara Mining in the Order dated May 30, 2006 of RTC-Culasi, with the proceedings in said case resuming only on January 24, 2007.[52]

To recall, in the interim, the Court promulgated the *Semirara Coal Corporation case* on December 6, 2006, which upheld the issuance by RTC-Culasi of the Resolution dated September 16, 2004 and Writ of Preliminary Injunction dated October 6, 2004. The *Semirara Coal Corporation case* became final and executory on March 13, 2007.

Dismissal of Civil Case No. C-146 by RTC-Culasi on the ground of forum shopping by HGL

On March 26, 2007, Semirara Mining filed a Motion to Recall or Lift the October 6, 2004 Writ of Preliminary Mandatory

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[49] Records, Volume 6, p. 1676.

[50] Records, Volume 5, pp. 1213-1261.

[51] *Id.* at 1262.

[52] *Id.* at 1307.

Injunction and/or a Motion to Dismiss,[53] anchored on the following grounds:

I.

THE WRIT OF PRELIMINARY MANDATORY INJUNCTION SHOULD BE RECALLED OR LIFTED AS THERE HAS BEEN A CHANGE IN THE SITUATION OF THE PARTIES WHICH RENDERS ITS EXECUTION OR ENFORCEMENT UNTENABLE, UNJUSTIFIABLE AND INEQUITABLE;

II.

THE PRINCIPAL ACTION IN THIS CASE, THE COMPLAINT ITSELF, SHOULD BE DISMISSED FOR VIOLATION OF [HGL] OF THE MANDATORY RULES ON FORUM SHOPPING; and

III.

BOTH THE ISSUE OF WHETHER OR NOT THE WRIT OF PRELIMINARY MANDATORY INJUNCTION SHOULD BE RECALLED OR LIFTED AND THE ISSUE OF FORUM SHOPPING ARE PREJUDICIAL ISSUES WHICH MUST FIRST BE RESOLVED BEFORE THE MANDATORY INJUNCTION CAN BE IMPLEMENTED.[54]

As to the first ground, Semirara Mining manifested before RTC-Culasi that it had just obtained a Temporary Special Land Use Permit (TSLUP)[55] on March 12, 2007 from the DENR

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[53] *Id.* at 1434-1507.

[54] *Id.* at 1435-1436.

[55] Special Land Use Permit No. 03-2007 granted Semirara Mining the following authorization:

In accordance with Section 57 of Presidential Decree No. 705, otherwise known as the Revised Forestry Code of the Philippines, as amended, Special Land Use Permit **OTHER LAWFUL PURPOSES (PLANT AND OTHER MINING FACILITIES SITES)** is hereby granted to SEMIRARA MINING CORPORATION with address at 2nd floor DMCI Plaza, 2281 Chino Roces Ave., Makati City for a period of three (3) years to occupy an aggregate area of 61.0 hectares of forestland located at Sitio Bobog and Pontod, Barrio Semirara, Caluya, Antique as described in the attached map which forms part of this Permit.

permitting Semirara Mining to occupy and use the subject land in connection with its mining operations. Semirara Mining asserted that this was a supervening event which rendered the enforcement of the Writ of Preliminary Mandatory Injunction already untenable, unjustifiable, and inequitable. Anent its second and third grounds, Semirara Mining argued that in order to prevent the possibility of conflicting decisions rendered by different *fora* upon the same subject matter and issues, RTC-Culasi must render a ruling on the issue of forum shopping which had always evaded resolution by RTC-Culasi, the Court of Appeals, and by the Court.

HGL filed on April 25, 2007 its Comment/Opposition[56] to the above-mentioned Motion.

HGL contended that the issuance of the TSLUP in favor of Semirara Mining was not a supervening event or a "change in the situation of the parties"[57] which would warrant the suspension of the execution of the Writ of Preliminary Mandatory Injunction. Semirara Mining secured the TSLUP just to create an artificial situation or a scheme to circumvent, evade, or spoil the final ruling of the Court in the *Semirara Coal Corporation case*.

HGL additionally pointed out that Semirara Mining had repeatedly raised the issue of forum shopping in its various motions and petitions filed before RTC-Culasi, the Court of

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This Permit is subject to existing Forest Laws, Rules and Regulations, Department Administrative Orders and other regulations which may hereafter be promulgated and the additional terms and conditions stipulated on the separate sheet(s) (marked as Annex "A") hereof.

The privileges granted under this permit is to be used solely by the above-named permittee for Other Lawful Purposes (Plant and other Mining Facilities Sites) purposes only.

This Permit is **NON-TRANSFERRABLE** and **NON-NEGOTIABLE** except as provided for in Section 61 of the aforesaid Decree and expires on March 12, 2010. (*Id.* at 1467.)

[56] Records, Volume 6, pp. 1513-1565.

[57] *Id.* at 1527.

Appeals, and the Court. Said motions and petitions were already resolved and decided by the said courts and although the rulings were silent on the issue of forum shopping, said issue should be presumed to have already been passed upon and settled by said courts based on the doctrine of *sub silencio* whereby "courts are presumed to have passed upon all points that were raised by the parties in their various pleadings, and that form part of the records of the case."[58]

After a further exchange of pleadings and submission of documentary evidence by the parties, RTC-Culasi issued an Order[59] dated July 18, 2007, granting the motion to dismiss Civil Case No. C-146 of Semirara Mining on the ground of forum shopping. RTC-Culasi reasoned:

> [T]his court believes the issue of forum shopping has not been touched upon and still exists which issue is now under consideration of this court.
>
> In both Regional Trial Courts of Caloocan and Culasi, Antique, [HGL] attempts to revive its cancelled FLGLA No. 184 by asking said court[s] to compel the [Semirara Mining and DENR] to respect its right over the land subject of the FLGLA. Again, it is the considered stand of this court that the issue of the validity and existence of the FLGLA would certainly resolve the cases in both Regional Trial Court[s]. In other words, there may not be identity of the parties as [Semirara Mining] is only an intervenor in RTC Caloocan, it could safely be said that in both courts there is identity of interest represented. Forum shopping is the filing of multiple suits in different courts, either simultaneously or successively, involving the same parties by asking the courts to rule on the same or related causes of action to grant the same or substantially same reliefs. Such as in this case, the ruling on the possession and the right thereof is the primary issue to be resolved. To resolve the issue on possession, the validity of the FLGLA is the first issue to be resolved.
>
> The test for determining whether a party violated the rule against forum shopping has been laid down in the case of Buan v. Lopez[,]

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[58] *Id.* at 1537.

[59] *Id.* at 1809-1824.

145 SCRA 34. Forum shopping exists where the elements of *litis pendencia* are present or where final judgment in one case will amount to res adjudicata [on] the other.

["]There thus exist[s] between the action before this Court and RTC Case No. 86-36563 identity of parties, or at least such parties represent the same interests in both actions, as well as the identity of rights asserted and relief prayed for, the relief being founded on the same facts[,] and the identity [on] the two preceding particulars is such that any judgment rendered in the other action, will, regardless of which party is successful, amount to *res adjudicata* in the action under consideration[:] all requisites, in fine, of [*auter action pendent*].["]

Consequently, where a litigant (or one representing the same interest or person) sues the same party against whom another action or actions for the alleged violation of the same right and the enforcement of the same relief is/are still pending, the defense of litis pendentia in one case is a bar to the others; and, a final judgment in one would constitute res adjudicata and this would cause the dismissal of the rest. x x x.

All the above requisites are present in the two cases filed by [HGL]. As observed by [Semirara Mining], the DENR and [Semirara Mining] have the same interests in the cases before the Caloocan Court and this Court. [HGL] asserts the validity of its FLGLA before the Caloocan Court despite its cancellation and wants the DENR to restore [HGL] the FLGLA area that is being claimed by [Semirara Mining].

The two cases filed by [HGL] was a deliberate violation of the rule on forum shopping. The principal issue that will have to be resolved by both the Caloocan and this court is the same; the validity of this FLGLA. In the Caloocan case, [HGL] is asking that the DENR Order canceling the FLGLA should not be enforced. In RTC, Culasi, Antique, [HGL] is recovering from [Semirara Mining] possession of the subject property because [HGL] has a right to the same by virtue of the FLGLA. In both cases, [HGL's] cause of action rests on the validity of the FLGLA. There are other different respondents (Semirara [Mining] is an intervenor in the Caloocan case) the ultimate objective in both actions is the same, to overturn the DENR's cancellation of the FLGLA. The objective is being litigated in these courts.

As to the recall or lifting of the Writ of Preliminary Injunction as there has been a change in the situation of the parties which renders

its execution or enforcement untenable, the Temporary Special Land Use Permit is a supervening event that may cause the stay of execution of the Writ of Preliminary Injunction. Although it is temporary, the period of three (3) years was granted and will expire or lapse after said period of time. However, considering that this court finds that [HGL] has violated the rule on forum shopping, there is no more need to discuss the issue further, being ancillary to the main action.

Hence, the Court ruled:

In View Thereof, for [HGL's] violation of the rule on Forum Shopping, this case is dismissed with prejudice.[60]

The Motion for Reconsideration of HGL filed on September 3, 2007 was denied by RTC-Culasi in its Order[61] dated November 20, 2007. HGL received notice of the denial of its Motion for Reconsideration on December 6, 2007.[62]

The Present Petition for Indirect

Contempt or for Certiorari

HGL filed the present Petition on February 6, 2008.

As a Petition for Indirect Contempt under Rule 71, Section 3 of the Rules of Court, it charges Judge Penuela and Semirara Mining, as follows:

[JUDGE PENUELA AND SEMIRARA MINING] SHOULD BE HELD LIABLE FOR INDIRECT CONTEMPT CONSIDERING THEIR WANTON AND UTTER DISOBEDIENCE, ABUSE AND UNLAWFUL INTERFERENCE WITH THE HONORABLE COURT'S DECISION AND PROCESSES, AS WELL AS CONDUCT TENDING TO DEGRADE THE ADMINISTRATION OF JUSTICE.

I

RESPONDENT JUDGE PENUELA IS GUILTY OF CONTEMPT CONSIDERING THAT:

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[60] *Id.* at 1824.

[61] *Id.* at 1907-1914.

[62] *Id.* at 1914A.

A. RESPONDENT JUDGE PENUELA UNDERMINED THE HONORABLE COURT'S *DECISION* DATED 06 DECEMBER 2006, WHICH FOUND THAT NO FORUM SHOPPING EXISTS IN THIS CASE WHEN HE RULED IN HIS QUESTIONED ORDERS DATED 18 JULY 2007 AND 20 NOVEMBER 2007 THAT PETITIONER HGL COMMITTED FORUM SHOPPING.

B. RESPONDENT JUDGE PENUELA DISOBEYED THE HONORABLE COURT'S DIRECTIVE THAT PETITIONER HGL BE IMMEDIATELY RESTORED TO THE POSSESSION OF THE SUBJECT PROPERTY WHEN HE DISMISSED THE CASE *A QUO* THEREBY RENDERING INEFFECTIVE THE WRIT OF PRELIMINARY MANDATORY INJUNCTION.

II

RESPONDENT SEMIRARA [MINING] IS GUILTY OF CONTEMPT CONSIDERING THAT:

A. RESPONDENT SEMIRARA [MINING] ENGINEERED ACTS TO UNDERMINE THE HONORABLE COURT'S *DECISION* DATED 06 DECISION 2006.

B. RESPONDENT SEMIRARA [MINING] COUNSELED *DISOBEDIENCE* TO THE HONORABLE COURT'S DECISION DATED 06 DECEMBER 2006 AND EMPLOYED A SCHEME TO ACCOMPLISH THIS OBJECTIVE.[63]

Alternatively, as a Petition for *Certiorari* under Rule 65 of the Rules of Court, it assails the Orders dated July 18, 2007 and November 20, 2007 of RTC-Culasi for having been issued with grave abuse of discretion, to wit:

I

RESPONDENT JUDGE PENUELA ACTED WITH GRAVE ABUSE OF DISCRETION AMOUNTING TO LACK OF OR EXCESS OF JURISDICTION WHEN HE DISMISSED THE CASE *A QUO* ON THE GROUND OF FORUM SHOPPING CONSIDERING THAT:

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[63] *Rollo*, pp. 28-29.

A. THE HONORABLE COURT IN ITS *DECISION* IN G.R. NO. 166854 HAD ALREADY RESOLVED TO DENY WITH FINALITY THE ARGUMENT OF PRIVATE RESPONDENT SEMIRARA [MINING] THAT PETITIONER HGL IS GUILTY OF FORUM SHOPPING. THUS, RESPONDENT JUDGE PENUELA CONTRAVENED AND EFFECTIVELY REVERSED THE RESOLUTION OF THE HONORABLE COURT ON THE SAME ISSUE OF FORUM SHOPPING.

B. EVEN ASSUMING *ARGUENDO* THAT THE HONORABLE COURT FAILED TO RESOLVE THE ISSUE ON FORUM SHOPPING, THE ISSUE OF FORUM SHOPPING WAS NEVER REMANDED BY THE HONORABLE COURT TO RESPONDENT JUDGE PENUELA FOR HIS RESOLUTION.

C. PRIVATE RESPONDENT SEMIRARA [MINING] IS BARRED FROM RAISING FORUM SHOPPING AS A GROUND IN ITS *MOTION TO RECALL* IN VIEW OF ITS FAILURE TO RAISE THE SAME GROUND IN ITS *ANSWER* DATED 26 FEBRUARY 2004 OR IN A MOTION TO DISMISS.

II

EVEN ASSUMING ARGUENDO THAT THE GROUND OF FORUM-SHOPPING MAY STILL BE RAISED, PETITIONER HGL IS NOT GUILTY OF FORUM SHOPPING BECAUSE THE RTC CALOOCAN CASE AND THE CASE *A QUO* DO NOT INVOLVE THE SAME PARTIES, SUBJECT MATTER AND RELIEFS; FURTHER, THE ISSUES IN THE RTC CALOOCAN CASE AND THE CASE A QUO ARE DIFFERENT AND DISTINCT FROM EACH OTHER.

III

RESPONDENT JUDGE PENUELA LIKEWISE COMMITTED GRAVE ABUSE OF DISCRETION WHEN HE STATED IN HIS ASSAILED *ORDER* DATED 18 JULY 2007 THAT THE TEMPORARY LAND PERMIT MAY BE A SUPERVENING EVENT THAT WARRANTS THE STAY OF EXECUTION OF THE WRIT OF PRELIMINARY MANDATORY INJUNCTION CONSIDERING THAT, THE ISSUANCE OF THE SAID TEMPORARY LAND PERMIT IS PATENTLY UNTENABLE, UNJUSTIFIABLE AND INEQUITABLE.[64]

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

HGL prays of the Court that:

1. Respondent Judge Rafael [O.] Penuela and Semirara Mining Corporation through its responsible officers be declared and cited in contempt;

2. The appropriate sanctions be imposed by the Honorable Court against respondent Judge Rafael [O.] Penuela and Semirara Mining Corporation acting through its responsible officers;

3. The Order dated 18 July 2007 and the Order dated 20 November 2007 issued by respondent Judge Penuela be REVERSED and SET ASIDE considering that the same are contemptuous, and issued arbitrarily, whimsically and with grave abuse of discretion; and

4. A new Order be issued reinstating the case a quo and directing respondent Judge Penuela to immediately cause the execution of the writ of preliminary mandatory injunction dated 06 October 2004 and to proceed with the trial of the case *a quo*.

Other reliefs just and equitable are likewise prayed for.[65]

In its Comment/Opposition[66] to the instant Petition, Semirara Mining counters:

I.

[HGL] IS USING THE INSTANT PETITION FOR CONTEMPT TO CIRCUMVENT THE RULE ON TIME AND REVIVE THE LOST REMEDY OF APPEAL

II.

[JUDGE PENUELA] IS NOT GUILTY OF CONTEMPT

a.) [Judge Penuela] properly ruled that [HGL] committed forum shopping; the doctrine of sub silencio finds no application in this case; and

b.) [HGL] did not enforce the mandatory injunction; in fact, [HGL] agreed to defer its execution pending resolution of [Semirara Mining's] Motion to Dismiss;

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[65] *Id.* at 77.

[66] *Id.* at 462-492.

III.

[SEMIRARA MINING] IS NOT GUILTY OF CONTEMPT

a.) The non-enforcement of the writ of preliminary mandatory injunction was not on account of the TSLUP; and

b.) [Judge Penuela] did not dismiss the case on the basis of the TSLUP.

IV.

THE ALTERNATIVE RELIEF OF PETITION FOR CERTIORARI CANNOT BE GIVEN DUE COURSE

a.) A petition for certiorari, under the circumstances, is not the proper remedy; and

b.) The disputed Order has long attained finality.

V.

THE INSTANT PETITION, EVEN IF TREATED AS A PETITION
FOR CERTIORARI, IS DEVOID OF MERIT

a.) The issue of forum shopping is still valid and subsisting since said issue was never resolved;

b.) [Judge Penuela] properly ruled on the issue of forum shopping;

c.) The issue of forum shopping need not be raised in the Answer; and

d.) Petitioner [HGL] is guilty of forum shopping.[67]

Judge Penuela likewise filed his Comment[68] to the petition at bar, reiterating his findings that forum shopping existed in the simultaneous filing by HGL of Civil Case No. C-146 and Civil Case No. C-20675 before RTC-Culasi and RTC-Caloocan, respectively, which consequently, warranted the dismissal of Civil Case No. C-146. It was for this reason that Judge Penuela could no longer order the implementation of the Writ of

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[67] *Id.* at 462-464.

[68] *Id.* at 493-496.

Preliminary Mandatory Injunction, which was upheld by this Court in the *Semirara Coal Corporation case*, and not because of Judge Penuela's sheer disobedience to the ruling of the Court.

The respective Manifestations of the parties with regard to the status of Civil Case No. C-20675 before RTC-Caloocan

In its Manifestation[69] filed on October 20, 2008, Semirara Mining informed the Court of the subsequent developments in Civil Case No. C-20675 before RTC-Caloocan, the action for specific performance and damages instituted by HGL against DENR, and in which, Semirara Mining intervened. RTC-Caloocan, in its Orders dated June 10, 2005 and September 22, 2005, denied the Motion to Dismiss of Semirara Mining. Semirara Mining challenged the said Orders in *certiorari* proceedings before the Court of Appeals, docketed as CA-G.R. SP No. 92238. The appellate court promulgated its Decision on January 15, 2007 reversing and setting aside the assailed Orders of RTC-Caloocan, and ordering the dismissal of Civil Case No. C-20675 in view of the failure of HGL to appeal before the Office of the President the unilateral cancellation of FLGLA No. 184 by the DENR. HGL appealed before the Court in G.R. No. 177844. In a minute Resolution dated July 2, 2008, the Court denied with finality the appeal of HGL.

HGL relates in its Counter-Manifestation,[70] filed on November 24, 2008, that the DENR separately challenged via *certiorari* before the Court of Appeals, in CA-G.R. SP No. 92311, the Orders dated June 10, 2005 and September 22, 2005 of RTC-Caloocan, denying the Motion to Dismiss of Semirara Mining. The appellate court affirmed the said Orders of RTC-Caloocan. As a result, the DENR filed a Petition for Review on *Certiorari* before the Court, docketed as G.R. No. 180401. The Court issued

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[69] *Id.* at 499-536.

[70] *Id.* at 675-710.

a minute Resolution on June 4, 2008 denying with finality the Petition of the DENR. HGL maintains that since the Resolution dated June 4, 2008 of the Court in G.R. No. 180401 first attained finality, then it must prevail over the Resolution dated July 2, 2008 of the Court in G.R. No. 177844.

THE RULING OF THE COURT

The Court finds the Petition at bar to be partly meritorious.

RTC-Culasi erred in dismissing Civil Case No. C-146 on the ground of forum shopping.

At the outset, the Court addresses the issue of whether or not RTC-Culasi could still take cognizance of the issue of forum shopping by HGL. HGL claims that the issue had been previously raised by Semirara Mining before the trial and appellate courts and deemed already passed upon by said courts *sub silencio* adverse to the interest of Semirara Mining. Semirara Mining asserts that the said issue had not yet been squarely passed upon by any court prior to the Orders dated July 18, 2007 and November 20, 2007 of RTC-Culasi.

The Court concurs with Semirara Mining.

The legal concept of *sub silencio* finds basis in Rule 131, Section 3 (o) of the Revised Rules of Court:

> Sec. 3. *Disputable presumptions*. — The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence:
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> x x x x x x x x x
>
> (o) That all the matters within an issue raised in a case were laid before the court and passed upon by it; and in like manner that all matters within an issue raised in a dispute submitted for arbitration were laid before the arbitrators and passed upon by them[.]

So even if the ruling of the court is silent as to a particular matter, for as long as said matter is within an issue raised in the case, it can be presumed, subject to evidence to the contrary,

that the matter in question was already laid before the court and passed upon by it. However, *sub silencio* does not apply to the issue of forum shopping in this case. Although Semirara Mining had repeatedly raised the issue of forum shopping at various stages of the case and before different courts, it was not directly addressed by any of the courts either because it was immaterial and irrelevant to the matter at hand or it was still premature to resolve without the parties presenting evidence on the same.

The Court retraces the proceedings in which Semirara Mining challenged the issuance by RTC-Culasi of the Resolution dated September 16, 2004 and Writ of Preliminary Mandatory Injunction dated October 6, 2004 before the Court of Appeals in CA-G.R. CEB-SP No. 00035 and then the Court in G.R. No. 166854. Semirara Mining raised the issue of forum shopping as the seventh issue in its Petition in CA-G.R. CEB-SP No. 00035. In its Decision dated January 31, 2005, the appellate court wrote:

> The instant petition was brought to US by [Semirara Mining] assailing the propriety of the Resolution dated September 16, 2004 granting the prayer of [HGL] for the issuance of a writ of preliminary mandatory injunction commanding to restrain [Semirara Mining] or any of its agents from encroaching the subject land or from conducting any activities therein, and further, to restore the possession of the subject land to [HGL] or any of its agents or representatives.
>
> Thus, this Court sees **no reason to resolve or discuss issues** #II, VI, and **VII** for being **immaterial and irrelevant** to the question of whether or not the Resolution dated September 16, 2004 was issued with grave abuse of discretion amounting to lack or in excess of jurisdiction.[71] (Emphases supplied.)

In the *Semirara Coal Corporation case*, the Court affirmed the aforementioned Decision of the Court of Appeals. Even though the Court was silent on the issue of forum shopping, its affirmation of the judgment of the appellate court could only

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[71] CA *rollo*, p. 447.

be construed as to include the latter's position with regard to the said issue.

During the preliminary stages in Civil Case No. C-146, Semirara Mining submitted several verbal and written motions for RTC-Culasi to already take cognizance of and resolve the issue of forum shopping. RTC-Culasi, then still presided by Judge Bantolo, consistently ruled that the issue required the presentation of evidence, thus, need not be resolved at that point in time. Notably, RTC-Culasi, already presided by Judge Penuela, issued Orders dated July 18, 2007 and November 20, 2007, dismissing Civil Case No. C-146 on the ground of forum shopping by HGL, only after an exchange of pleadings and submission of documentary evidence by the parties.

Yet, as to whether or not HGL violated the prohibition against forum shopping by simultaneously instituting Civil Case No. C-146 and Civil Case No. C-20675 before RTC-Culasi and RTC-Caloocan, respectively, the Court rules in the negative.

The rule against forum shopping is embodied in Rule 7, Section 5 of the Revised Rules of Court:

> Sec. 5. *Certification against forum shopping.* — The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.
>
> Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing. The submission of a false certification or non-compliance with any of the undertakings therein shall constitute indirect contempt of court,

without prejudice to the corresponding administrative and criminal actions. If the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative sanctions.

Forum shopping exists when the elements of *litis pendentia* are present or where a final judgment in one case will amount to *res judicata* in another. *Litis pendentia* requires the concurrence of the following requisites: (1) identity of parties, or at least such parties as those representing the same interests in both actions; (2) identity of rights asserted and reliefs prayed for, the reliefs being founded on the same facts; and (3) identity with respect to the two preceding particulars in the two cases, such that any judgment that may be rendered in the pending case, regardless of which party is successful, would amount to *res judicata* in the other case. What is pivotal in determining whether forum shopping exists or not is the vexation caused the courts and parties-litigants by a party who asks different courts and/or administrative agencies to rule on the same or related cases and/or grant the same or substantially the same reliefs, in the process creating the possibility of conflicting decisions being rendered by the different courts and/or administrative agencies upon the same issues.[72]

None of the above-mentioned elements existed in Civil Case No. C-146 before RTC-Culasi *vis-à-vis* Civil Case No. C-20675 before RTC-Caloocan.

There was no identity of parties in the two cases. In Civil Case No. C-146, HGL filed the action against Semirara Mining; while in Civil Case No. C-20675, HGL instituted the suit against DENR, and Semirara Mining intervened as an interested party.

There was also no identity of rights asserted and reliefs prayed for by HGL in Civil Case No. C-146 and Civil Case No. C-20675. Based on the material allegations of HGL in its Complaint in Civil Case No. C-146, it was clear that HGL was

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[72] *Yu v. Lim*, 645 Phil. 421, 431-432 (2010).

championing its **right of possession** of the subject land, of which it was unlawfully deprived by Semirara Mining. The reliefs sought by HGL were mainly (1) the recovery of possession of the subject land, and (b) the recovery of damages caused by the unlawful encroachment into and occupation of the subject land by Semirara Mining.[73] In comparison, in the material allegations in its Complaint in Civil Case No. C-20675, HGL was asserting its **right to compel DENR to comply with the latter's obligations under FLGLA No. 184**. HGL prayed for RTC-Caloocan to (1) enjoin the enforcement by the DENR of its Order dated December 6, 2000 unilaterally cancelling FLGLA No. 184; (2) order DENR to perform its obligations under FLGLA No. 184, specifically, to respect and recognize HGL as the valid and lawful occupant of the subject land until December 2009; and (3) award damages, attorney's fees, and costs of suit.[74]

Moreover, any judgment that could be rendered in Civil Case No. C-146 would not amount to *res judicata* on any judgment that could, in turn, be rendered in Civil Case No. C-20675, or *vice versa*.

Res judicata was defined in *Selga v. Brar*[75] as follows:

Res judicata has two concepts. The first is bar by prior judgment under Rule 39, Section 47(b), and the second is conclusiveness of judgment under Rule 39, Section 47(c). These concepts differ as to the extent of the effect of a judgment or final order as follows:

> SEC. 47. *Effect of judgments or final orders*. — The effect of a judgment or final order rendered by a court of the Philippines, having jurisdiction to pronounce the judgment or final order, may be as follows:
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> x x x x x x x x x

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[73] Records, Volume 1, pp. 10-12.

[74] *Id.* 249-256.

[75] 673 Phil. 581, 592-593 (2011).

(b) In other cases, the judgment or final order is, with respect to the matter directly adjudged or as to any other matter that could have been raised in relation thereto, conclusive between the parties and their successors in interest by title subsequent to the commencement of the action or special proceeding, litigating for the same thing and under the same title and in the same capacity; and

(c) In any other litigation between the same parties or their successors in interest, that only is deemed to have been adjudged in a former judgment or final order which appears upon its face to have been so adjudged, or which was actually and necessarily included therein or necessary thereto.

Jurisprudence taught us well that *res judicata* under the first concept or as a bar against the prosecution of a second action exists when there is identity of parties, subject matter and cause of action in the first and second actions. The judgment in the first action is final as to the claim or demand in controversy, including the parties and those in privity with them, not only as to every matter which was offered and received to sustain or defeat the claim or demand, but as to any other admissible matter which might have been offered for that purpose and of all matters that could have been adjudged in that case. In contrast, *res judicata* under the second concept or estoppel by judgment exists when there is identity of parties and subject matter but the causes of action are completely distinct. The first judgment is conclusive only as to those matters actually and directly controverted and determined and not as to matters merely involved herein. (Citations omitted.)

Neither concept of *res judicata* applied to Civil Case No. C-146 and Civil Case No. C-20675. There could be no bar by prior judgment because the two cases involved different parties, subject matter, and causes of action. On one hand, in Civil Case No. C-146, the parties were HGL as plaintiff and Semirara Mining as defendant; the subject matter was the subject land; and the causes of action were recovery of possession of the subject land and damages. On the other hand, in Civil Case No. C-20675, the parties were HGL as plaintiff, DENR as defendant, and Semirara Mining as intervenor; the subject matter was the contract between HGL and DENR, *i.e.*, FLGLA No. 184; and the causes of action were specific performance of the obligations of DENR under FLGLA No. 184 and recovery of

damages. Given the lack of identity of parties and subject matter between Civil Case No. C-146 and Civil Case No. C-20675, then there could likewise be no conclusiveness of judgment or estoppel by judgment between them.

While Civil Case No. C-146 and Civil Case No. C-20675 were irrefragably related, they were not the same or so similar that the institution of said cases by HGL before two RTCs constituted forum shopping. Indeed, the right of possession of the subject land of HGL was based on FLGLA No. 184, but a judgment in Civil Case No. C-20675 sustaining the unilateral cancellation by DENR of FLGLA No. 184 on December 6, 2000 would not necessarily be determinative of Civil Case No. C-146 because when HGL was purportedly unlawfully deprived of possession of the subject land by Semirara Mining in 1999, FLGLA No. 184 was still valid and subsisting.

The present Petition is not the proper remedy for correcting the error of judgment of RTC-Culasi.

There is no question that RTC-Culasi had jurisdiction over the subject matter of Civil Case No. C-146. The issuance of RTC-Culasi of the Order dated July 18, 2007, dismissing with prejudice Civil Case No. C-146 on the ground of forum shopping, and Order dated November 20, 2007, denying the Motion for Reconsideration of HGL, was an error of judgment committed in the exercise of its jurisdiction.

In addition, the dismissal with prejudice of Civil Case No. C-146 constituted the final judgment of RTC-Culasi in the case. An order or a judgment is deemed final when it finally disposes of a pending action, so that nothing more can be done with it in the trial court. In other words, the order or judgment ends the litigation in the lower court.[76] A dismissal with prejudice is already deemed an adjudication of the case on the merits, and it disallows and bars the refiling of the complaint. It is a

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[76] *Magestrado v. People*, 554 Phil. 25, 33 (2007).

final judgment and the case becomes *res judicata* on the claims that were or could have been brought in it.[77]

Given the foregoing circumstances, the proper remedy available to HGL was to assail the Orders dated July 18, 2007 and November 20, 2007 of RTC-Culasi before the Court of Appeals by filing an ordinary appeal under Rule 41 of the Revised Rules of Court, relevant portions of which are quoted below:

RULE 41
Appeal from the Regional Trial Courts

Sec. 1. *Subject of appeal.* — An appeal may be taken from a judgment or final order that completely disposes of the case, or of a particular matter therein when declared by these Rules to be appealable.

x x x x x x x x x

Sec. 2. *Modes of appeal.* —

(a) *Ordinary appeal.* — The appeal to the Court of Appeals in cases decided by the Regional Trial Court in the exercise of its original jurisdiction shall be taken by filing a notice of appeal with the court which rendered the judgment or final order appealed from and serving a copy thereof upon the adverse party. No record on appeal shall be required except in special proceedings and other cases of multiple or separate appeals where the law or these Rules so require. In such cases, the record on appeal shall be filed and served in like manner.

x x x x x x x x x

Sec. 3. *Period of ordinary appeal; appeal in habeas corpus* cases. — The appeal shall be taken within fifteen (15) days from notice of the judgment or final order appealed from. Where a record on appeal is required, the appellant shall file a notice of appeal and a record on appeal within thirty (30) days from notice of the judgment or final order. However, an appeal in *habeas corpus* cases shall be taken within forty-eight (48) hours from notice of the judgment or final order appealed from.

The period of appeal shall be interrupted by a timely motion for new trial or reconsideration. No motion for extension of time to file

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[77] *Strongworld Construction, Inc. v. Parello*, 528 Phil. 1080, 1097 (2006).

a motion for new trial or reconsideration shall be allowed. (As amended by SC Resolution, A.M. No. 01-1-03-SC, June 19, 2001)

HGL did not file any notice of appeal with RTC-Culasi. Instead, it filed the present Petition for Indirect Contempt, or alternatively, a Petition for *Certiorari*.

The Petition for Indirect Contempt of HGL rests heavily on the argument that the filing by Semirara Mining of a motion to dismiss Civil Case No. C-146 on the ground of forum shopping, as well as the grant of said motion by Judge Penuela through the Orders dated July 18, 2007 and November 20, 2007, were in sheer and blatant defiance of the final ruling of the Court in the *Semirara Coal Corporation case*. HGL avers that Semirara Mining and Judge Penuela are guilty of indirect contempt for: (1) disobedience of, or resistance to, a lawful writ, process, order, or judgment of the court; (2) abuse or interference with court processes; and (3) improper conduct impeding, obstructing, and degrading the administration of justice.

The Petition for Indirect Contempt is completely baseless.

As the Court had previously observed, the *Semirara Coal Corporation case* adjudicated on the propriety and validity of the Resolution dated September 16, 2004 and Writ of Preliminary Mandatory Injunction dated October 6, 2004 issued by RTC-Culasi. Based on the *Semirara Coal Corporation case*, HGL should be restored and kept in possession of the subject land during the pendency of Civil Case No. 146. The *Semirara Coal Corporation case* did not touch upon the issue of forum shopping, and neither did it prohibit RTC-Culasi from ever taking cognizance of and resolving said issue. Semirara Mining, in repetitively raising the issue of forum shopping through various motions and petitions and at different stages of Civil Case No. C-146, was tenacious, at worst, but not contumacious. RTC-Culasi, in refusing to rule on the issue of forum shopping during the preliminary stages of Civil Case No. C-146, only reasoned that the issue required the presentation of evidence by the parties. In *Panaligan v. Ibay*,[78] the Court declared:

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[78] 525 Phil. 22, 31 (2006).

[I]t is settled that an act to be considered contemptuous must be clearly contrary or prohibited by the order of the court. "A person cannot, for disobedience, be punished for contempt 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." The acts of complainant in the case at bar is not contrary or clearly prohibited by the order of the court. (Citation omitted.)

Judge Penuela, for his part, acted in his official capacity and within the jurisdiction of his court when he issued the Orders dated July 18, 2007 and November 20, 2007. Although Judge Penuela erred in his finding that HGL committed forum shopping and in dismissing with prejudice Civil Case No. C-146 on the basis thereof, he merely made an error of judgment that was subject to appeal, and he did not in any way disobey or disrespect the Court for which he may be cited for indirect contempt.

Moreover, as a Petition for *Certiorari* under Rule 65 of the Revised Rules of Court, the instant Petition is the wrong remedy. The Court held in *Pure Foods Corporation v. National Labor Relations Commission*[79] that "[w]hen a court exercises its jurisdiction, an error committed while so engaged does not deprive it of the jurisdiction being exercised when the error is committed. If it did, every error committed by a court would deprive it of its jurisdiction and every erroneous judgment would be a void judgment. This cannot be allowed. The administration of justice would not survive such a rule. Consequently, an error of judgment that the court may commit in the exercise of its jurisdiction is not correctible through the original civil action of *certiorari*."

The pronouncements of the Court in *Magestrado v. People*[80] is also particularly instructive in this case:

Certiorari generally lies only when there is no appeal nor any other plain, speedy or adequate remedy available to petitioners. Here,

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[79] 253 Phil. 411, 422-423 (1989).

[80] *Supra* note 76 at 33-35.

appeal was available. It was adequate to deal with any question whether of fact or of law, whether of error of jurisdiction or grave abuse of discretion or error of judgment which the trial court might have committed. But petitioners instead filed a special civil action for *certiorari*.

We have time and again reminded members of the bench and bar that a special civil action for *certiorari* under Rule 65 of the Revised Rules of Court lies only when "there is no appeal nor plain, speedy and adequate remedy in the ordinary course of law." *Certiorari* cannot be allowed when a party to a case fails to appeal a judgment despite the availability of that remedy, *certiorari* not being a substitute for lost appeal.

As *certiorari* is not a substitute for lost appeal, we have repeatedly emphasized that the perfection of appeals in the manner and within the period permitted by law is not only mandatory but jurisdictional, and that the failure to perfect an appeal renders the decision of the trial court final and executory. This rule is founded upon the principle that the right to appeal is not part of due process of law but is a mere statutory privilege to be exercised only in the manner and in accordance with the provisions of the law. Neither can petitioner invoke the doctrine that rules of technicality must yield to the broader interest of substantial justice. While every litigant must be given the amplest opportunity for the proper and just determination of his cause, free from constraints of technicalities, the failure to perfect an appeal within the reglementary period is not a mere technicality. It raises a jurisdictional problem as it deprives the appellate court of jurisdiction over the appeal.

The remedies of appeal and *certiorari* are mutually exclusive and not alternative or successive. A party cannot substitute the special civil action of *certiorari* under Rule 65 of the Rules of Court for the remedy of appeal. The existence and availability of the right of appeal are antithetical to the availability of the special civil action for *certiorari*. As this Court held in *Fajardo v. Bautista*:

> Generally, an order of dismissal, whether right or wrong, is a final order, and hence a proper subject of appeal, not *certiorari*. The remedies of appeal and *certiorari* are mutually exclusive and not alternative or successive. Accordingly, although the special civil action of *certiorari* is not proper when an ordinary

> appeal is available, it may be granted where it is shown that the appeal would be inadequate, slow, insufficient, and will not promptly relieve a party from the injurious effects of the order complained of, or where appeal is inadequate and ineffectual. Nevertheless, *certiorari* cannot be a substitute for the lost or lapsed remedy of appeal, where such loss is occasioned by the petitioner's own neglect or error in the choice of remedies. (Citations omitted.)

HGL further breached the principle of judicial hierarchy in directly filing its Petition for *Certiorari* before the Court. The concurrence of jurisdiction of this Court, the Court of Appeals, and the RTCs over petitions for *certiorari* "does not give a party unbridled freedom to choose the venue of his action lest he ran afoul of the doctrine of hierarchy of courts." Instead, a becoming regard for judicial hierarchy dictates that petitions for the issuance of writs of *certiorari* against first level courts should be filed with the RTC, and those against the latter, with the Court of Appeals, before resort may be had before the Court.[81] HGL, lastly, filed its Petition for *Certiorari* out of time. HGL received a copy of the Order dated November 20, 2007 of RTC-Culasi, denying its Motion for Reconsideration, on December 6, 2007, but filed the present Petition only on February 6, 2008, two days beyond the 60-day period for filing a petition for *certiorari* set by Rule 65, Section 4 of the Revised Rules of Court.

Still, in the interests of substantive justice and equity, the Court reinstates Civil Case No. C-146 and remands it to RTC-Culasi for the determination of damages to be awarded HGL given that the Writ of Preliminary Mandatory Injunction in its favor, affirmed by a final and

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[81] *A.L. Ang Network, Inc. v. Mondejar*, 725 Phil. 288, 297 (2014).

executory decision of the Court, was never implemented.

Despite the defects of the Petition at bar, the Court partly grants the same in the interests of substantive justice and equity. This is not the first time that the Court will relax the application of its procedural rules for compelling reasons or exceptional circumstances. As the Court ruled in *Victorio-Aquino v. Pacific Plans, Inc.*:[82]

> In any case, this Court resolves to condone any procedural lapse in the interest of substantial justice given the nature of business of respondent and its overreaching implication to society. To deny this Court of its duty to resolve the substantive issues would be tantamount to judicial tragedy as planholders, like petitioner herein, would be placed in a state of limbo as to its remedies under existing laws and jurisprudence.
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> Indeed, where strong considerations of substantive justice are manifest in the petition, the strict application of the rules of procedure may be relaxed, in the exercise of its equity jurisdiction. Thus, a rigid application of the rules of procedure will not be entertained if it will only obstruct rather than serve the broader interests of justice in the light of the prevailing circumstances in the case under consideration. It is a prerogative duly embedded in jurisprudence, as in *Alcantara v. Philippine Commercial and International Bank*, where the Court had the occasion to reiterate that:
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> > x x x In appropriate cases, the courts may liberally construe procedural rules in order to meet and advance the cause of substantial justice. Lapses in the literal observation of a procedural rule will be overlooked when they do not involve public policy, when they arose from an honest mistake or unforeseen accident, and when they have not prejudiced the adverse party or deprived the court of its authority. The aforementioned conditions are present in the case at bar.
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> > x x x x x x x x x
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> > There is ample jurisprudence holding that the subsequent and substantial compliance of an appellant may call for the

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[82] G.R. No. 193108, December 10, 2014, 144 SCRA 480, 498-500.

> relaxation of the rules of procedure. In these cases, we ruled that the subsequent submission of the missing documents with the motion for reconsideration amounts to substantial compliance. The reasons behind the failure of the petitioners in these two cases to comply with the required attachments were no longer scrutinized. What we found noteworthy in each case was the fact that the petitioners therein substantially complied with the formal requirements. We ordered the remand of the petitions in these cases to the Court of Appeals, stressing the ruling that by precipitately dismissing the petitions "the appellate court clearly put a premium on technicalities at the expense of a just resolution of the case."
>
> While it is true that the rules of procedure are intended to promote rather than frustrate the ends of justice, and the swift unclogging of court docket is a laudable objective, it nevertheless must not be met at the expense of substantial justice. This Court has time and again reiterated the doctrine that the rules of procedure are mere tools aimed at facilitating the attainment of justice, rather than its frustration. A strict and rigid application of the rules must always be eschewed when it would subvert the primary objective of the rules, that is, to enhance fair trials and expedite justice. Technicalities should never be used to defeat the substantive rights of the other party. Every party-litigant must be afforded the amplest opportunity for the proper and just determination of his cause, free from the constraints of technicalities. Considering that there was substantial compliance, a liberal interpretation of procedural rules in this labor case is more in keeping with the constitutional mandate to secure social justice." (Citations omitted.)

It is not lost upon the Court that HGL was able to secure a Writ of Preliminary Mandatory Injunction from RTC-Culasi on October 6, 2004, restoring possession of the subject land to HGL and restraining Semirara Mining from further encroaching on or conducting any activities on the said property, for the duration of Civil Case No. C-146. The attempt of the Sheriff to implement the said Writ on October 8, 2004 was thwarted by Semirara Mining. Sermirara Mining challenged the said Writ all the way to this Court but the Court affirmed the same in the *Semirara Coal Corporation case*, which became final and

executory on March 13, 2007. Just four months later, in an Order dated July 18, 2007, RTC-Culasi already dismissed with prejudice Civil Case No. C-146 on the ground of forum shopping, which, as a matter of course, already dissolved the Writ of Preliminary Injunction. The dismissal of Civil Case No. C-146 also put an end to the hearing of the motion to cite in contempt filed by HGL against Semirara Mining and several of its officers after the Sheriffs failed attempt to enforce the Writ of Preliminary Mandatory Injunction on October 8, 2004.

The Court emphasizes that the right of HGL to the Writ of Preliminary Mandatory Injunction was upheld by no less than this Court. Yet, the Writ of Preliminary Mandatory Injunction secured by HGL in its favor was but an empty victory. For no justifiable reason, said Writ was never enforced and HGL never enjoyed the protection and benefits of the same. For the duration the said Writ was not implemented, HGL suffered "continuing damage and material injury," expressly recognized by the Court in the *Semirara Coal Corporation case*, as a result of the failure of HGL to use the subject land for cattle-grazing. Substantive justice and equitable considerations, therefore, warrant that HGL be compensated for said damage and injury suffered 17 years ago, without having to institute yet another action.

The Court is not inclined to completely overturn the dismissal of Civil Case No. C-146 by RTC-Culasi on the ground of forum shopping, even when it constituted an error of judgment, because of the failure of HGL to duly appeal the same. Nonetheless, considering the extraordinary circumstances extant in this case, the Court deems it proper to reinstate Civil Case No. C-146 and to remand it to RTC-Culasi only for the purpose of hearing and determining the damages to which HGL is entitled because of the non-enforcement of the Writ of Preliminary Mandatory Injunction dated October 6, 2004.

WHEREFORE, in consideration of the extraordinary circumstances extant in this case and the interests of substantive justice and equity, the Court hereby **PARTIALLY GRANTS** the instant Petition. The Court **REINSTATES** Civil Case

No. C-146 and **REMANDS** it to the Regional Trial Court, Branch 13, of Culasi, Antique, for the specific purpose of hearing and determining the damages to be awarded to HGL for the non-enforcement of the Writ of Preliminary Mandatory Injunction dated October 6, 2004.

SO ORDERED.

Bersamin, Perlas-Bernabe, and *Caguioa, JJ.,* concur.

Sereno, C.J., on leave.

THIRD DIVISION

[G.R. No. 200180. June 6, 2016]

BENJAMIN H. CABAÑEZ, *petitioner, vs.* **MARIE JOSEPHINE CORDERO SOLANO *a.k.a.* MA. JOSEPHINE S. CABAÑEZ,** *respondent.*

SYLLABUS

1. CIVIL LAW; PRESIDENTIAL DECREE 1529 (PROPERTY REGISTRATION DECREE); AMENDMENT AND ALTERATION OF CERTIFICATE OF TITLE; THE ENUMERATED INSTANCES UNDER THE LAW ARE LIMITED TO ISSUES SO PATENTLY INSUBSTANTIAL AS NOT TO BE GENUINE ISSUES; NOT PRESENT IN CASE AT BAR.— Under settled jurisprudence, the enumerated instances for amendment or alteration of a certificate of title under Section 108 of PD 1529 are non-controversial in nature. They are limited to issues so patently insubstantial as not to be genuine issues. The

proceedings thereunder are summary in nature, contemplating insertions of mistakes which are only clerical, but certainly not controversial issues. x x x In the present case, the Court notes that in a separate action for annulment of title and recovery of ownership filed by petitioner's wife against respondent, the RTC of Makati City, Branch 137, in its decision in Civil Case No. 91-2648, dated July 5, 1993, made a categorical finding that petitioner and his wife are the lawful owners of the subject properties and ordering respondent to surrender possession thereof to the said spouses. This RTC judgment was later affirmed by the CA in its Decision in CA-G.R. CV No. 49446, dated April 29, 1997. Respondent, on the other hand, claims that she together with petitioner and his wife subsequently executed an amicable settlement dated June 22, 2000, which was approved by the RTC, wherein petitioner's wife waived her rights and interests over the said properties. She also alleged that petitioner executed an Affidavit of Declaration Against Interest, dated January 22, 2007, indicating that he has no right or interest over the subject properties. Petitioner, nonetheless, claims that he executed a subsequent Affidavit of Non-Waiver of Interest, dated January 14, 2008, claiming that he was deceived by respondent into signing the said Affidavit of Declaration Against Interest and that he was seriously ill at the time that he affixed his signature. From the foregoing, there is no question that there is a serious objection and an adverse claim on the part of an interested party as shown by petitioner's subsequent execution of his Affidavit of Non-Waiver of Interest. The absence of unanimity among the parties is also evidenced by petitioner's petition seeking the annulment of the RTC Decision which granted respondent's petition for correction of entries in the subject TCTs. These objections and claims necessarily entail litigious and controversial matters making it imperative to conduct an exhaustive examination of the factual and legal bases of the parties' respective positions. Certainly , such objective cannot be accomplished by the court through the abbreviated action under Section 108 of PD 1529. A complete determination of the issues in the present case can only be achieved if petitioner and his wife are impleaded in an adversarial proceeding. x x x In the present case, it is now apparent that before the trial court can alter the description of the civil status of respondent in the transfer certificates of title in question, it will have to receive

evidence of and determine respondent's civil status. This requires a full dress trial rendering the summary proceedings envisaged in Section 108 of PD 1529 inadequate.

2. ID.; ID.; LAND REGISTRATION CASE IS A PROCEEDING *IN REM*, AND JURISDICTION *IN REM* CANNOT BE ACQUIRED UNLESS THERE BE CONSTRUCTIVE SEIZURE OF THE LAND THROUGH PUBLICATION AND SERVICE OF NOTICE; APPLICATION IN CASE AT BAR.— Finally, it is settled that a land registration case is a proceeding *in rem*, and jurisdiction *in rem* cannot be acquired unless there be constructive seizure of the land through publication and service of notice. However, as found by the CA, respondent failed to comply with the said requirements. In all cases where the authority of the courts to proceed is conferred by a statute, and when the manner of obtaining jurisdiction is mandatory, it must be strictly complied with, or the proceedings will be utterly void. It is wrong for the CA to rule in its Amended Decision that publication is not a jurisdictional requirement for the RTC to take cognizance of respondent's petition. The appellate court's reliance on the case of *Chan v. Court of Appeals* is misplaced. In the said case, this Court considered the notice to the Register of Deeds as substantial compliance with the notice and publication requirements of the law simply because in the petition for correction filed by the petitioner therein, only the said petitioner and the Register of Deeds had an interest in the correction of titles sought for. This Court ruled that there is therefore no necessity to notify other parties who had no interest to protect in the said petition. This is not true, however, in the present case. As discussed above, on the bases of petitioner's serious objection and adverse claim, it is apparent that he has an interest to protect. Thus, the ruling in *Chan* finds no application in the instant case.

APPEARANCES OF COUNSEL

The Law Firm Of Manzano Lapena Villanueva & Associates for petitioner.

Jaromay Laurente Pamaos Law Office for respondent.

D E C I S I O N

PERALTA, *J.*:

Before the Court is a petition for review on *certiorari* seeking to reverse and set aside the Amended Decision[1] and Resolution[2] of the Court of Appeals (CA), dated August 29, 2011 and January 10, 2012, respectively, in CA-G.R. SP No. 101406.

Subject of the present controversy are two (2) parcels of land located in Alabang Hills, Muntinlupa, with land areas measuring 739 and 421 square meters, and are covered by Transfer Certificates of Title Nos. 154626 and 154627, respectively. Appearing on the face of these titles as the registered owner is herein respondent, "Maria Josephine S. Cabañez, of legal age, married to [herein petitioner] Benjamin H. Cabañez. x x x."

On February 12, 2007, respondent filed with the Regional Trial Court (RTC) of Muntinlupa City a "Petition for Correction of the Name and Marital Status of the Registered Owner of Transfer Certificates of Title (TCT) No[s.] 154626 and 154627 of the Registry of Deeds for Muntinlupa City."[3] The petition was docketed as LRC Case No. 07-007 and raffled to Branch 203. In the said petition, respondent alleged as follows:

x x x x x x x x x

1. Petitioner is of legal age, single and a resident of #21 Doña Ines St., Alabang Hills Village, Muntinlupa City;

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[1] Penned by Associate Justice Japar B. Dimaampao, with Associate Justices Rebecca de Guia-Salvador and Mario L. Guariña III, concurring; *rollo*, pp. 64-69.

[2] Penned by Associate Justice Japar B. Dimaampao, with Associate Justices Rebecca de Guia-Salvador and Rodil V. Zalameda, concurring; *id.* at 44-45.

[3] *Id.* at 116.

2. Petitioner is the owner of two parcels of land situated in Alabang, Muntinlupa City covered by Transfer Certificates of Title No. 154626 and 154627 issued by the Registry of Deed for Muntinlupa, though the same were issued under the name Ma. Josephine S. Cabanez, married to Benjamin H. Cabanez. x x x

3. Without knowing the legal implication, Petitioner erroneously made it appear that she is married to Mr. Benjamin when in truth and in fact they are not married but merely living a common-law relationship.

4. Mr. Benjamin H. Cabanez is actually married to a certain Leandra D. Cabanez who had previously filed a case against Petitioner, questioning the ownership of the said properties which case however was terminated by virtue of a compromise approved by the court in an Order dated November 23, 2000. x x x

5. Mr. Benjamin H. Cabanez has also declared that he is not actually married to the Petitioner and that he has no interest or share whatsoever in the aforesaid properties as evidenced by the hereto attached copy of the Affidavit of Declaration Against Interest dated January 22, 2007 x x x

6. No interests or rights will be affected by the correction of the name and status of Petitioner as registered owner of the said properties.

PRAYER

WHEREFORE, it is respectfully prayed of this Honorable Court that Petitioner's name and marital status appearing in Transfer Certificates of Title No. 154626 and 154627 be corrected to (sic) from "MA. JOSEPHINE S. CABANEZ, married to BENJAMIN H. CABANEZ" to ["]MARIE JOSEPHINE C. SOLANO, single" as it is the true and actual status of petitioner.

x x x x x x x x x[4]

The RTC then conducted hearings where respondent presented her evidence *ex parte*.

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[4] *Id.* at 116-117.

On June 28, 2007, the RTC of Muntinlupa, Branch 203, rendered its Decision, the dispositive portion of which reads as follows:

WHEREFORE, finding the petition to be well-founded and meritorious, the same is hereby **GRANTED**.

Accordingly, the Register of Deeds of Muntinlupa City is directed to cause the correction of the name and civil status of the registered owner of Transfer Certificate of Title Nos. 154626 and 154627 from MA. JOSEPHINE S. CABANEZ, married to BENJAMIN H. CABANEZ, to MARIE JOSEPHINE C. SOLANO, single.

SO ORDERED.[5]

The RTC held that from the evidence presented by herein respondent, it has been satisfactorily established that the subject properties should indeed be in respondent's name and that her status should be "single."

On November 23, 2007, herein petitioner filed with the CA a Petition for Annulment of Judgment[6] assailing the above Decision of the RTC on the ground that the said trial court did not acquire jurisdiction over the subject matter of the case because respondent's petition was not published in a newspaper of general circulation and that petitioner and other persons who may have interest in the subject properties were not served summons.

On January 27, 2011, the CA rendered a Decision, disposing as follows:

WHEREFORE, the instant *Petition for Annulment of Judgment* is hereby **GRANTED**. The *Decision* dated 28 June 2007 of the Regional Trial Court of Muntinlupa City, Branch 203, in LRC Case No. 07-007, is **ANNULLED** and **SET ASIDE**.

SO ORDERED.[7]

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[5] *Id.* at 120-121.

[6] *Id.* at 126.

[7] *Id.* at 244-245.

The CA ruled, among others, that respondent's petition for correction of her name and marital status as appearing in the subject TCTs should have been published in accordance with Rule 108 of the Rules of Court and that respondent failed to present sufficient evidence to prove compliance with such requirement. The appellate court also held that respondent also failed to serve summons upon petitioner, which is in violation of the latter's right to due process and of the principle of fair play.

Respondent then filed a Motion for Reconsideration[8] contending, among others, that the provisions of PD 1529, and not Rule 108 of the Rules of Court, should be applied in the present case; posting of the notice of hearing of respondent's petition is deemed constructive notice to the whole world, including petitioner; the petition filed by respondent is an action in rem where jurisdiction over the person of the defendant is not a prerequisite to confer jurisdiction on the court, provided that the court acquires jurisdiction over the *res*.

After petitioner filed its Comment,[9] the CA rendered its presently assailed Amended Decision and disposed, thus:

WHEREFORE, the *Motion for Reconsideration* is hereby **GRANTED**. The *Decision* dated 28 June 2007 of the Regional Trial Court of Muntinlupa City, Branch 203, in LRC Case No. 07-007, is **REINSTATED**. Perforce, the *Petition for Annulment of Judgment* is **DENIED**.

SO ORDERED.[10]

This time, the CA agreed with respondent and ruled that PD 1529 is the governing law and that there is nothing under the pertinent provisions of the said law which states that publication is a requirement for the RTC to acquire jurisdiction over

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[8] *Id.* at 246.

[9] *Id.* at 260.

[10] *Id.* at 15.

respondent's petition. The CA also ruled that petitioner failed to prove the existence of extrinsic fraud as a ground for annulment of the assailed judgment of the RTC.

Aggrieved, petitioner filed a Motion for Reconsideration.[11]

However, in its Resolution of January 10, 2012, the CA denied petitioner's Motion for Reconsideration.

Hence, the present petition for review on certiorari based on the following grounds:

A.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS PATENTLY ERRED IN AMENDING ITS ORIGINAL DECISION DATED JANUARY 27, 2011 CONSIDERING THAT THE REQUIREMENTS OF PUBLICATION AND SUMMONS WERE NOT COMPLIED WITH.

B.

WHETHER OR NOT THE PROCEEDING PROVIDED FOR UNDER SECTION 108 OF PRESIDENTIAL DECREE NO. 1529 IS SUMMARY IN NATURE ALBEIT THE EVIDENT PRESENCE OF OTHER INTERESTED PARTIES THAT MAY BE AFFECTED BY THE JUDGMENT AS A RESULT OF EX-PARTE PROCEEDINGS.

C.

WHETHER OR NOT THE RULING OF THE HONORABLE SUPREME COURT IN THE CASE OF *CHAN V. COURT OF APPEALS* (298 SCRA 713, 733) APPLIES IN THE INSTANT CASE WHERE IT WAS RULED THAT MERE NOTICE TO THE REGISTER OF DEEDS WAS A SUBSTANTIAL COMPLIANCE.

D.

WHETHER OR NOT AMENDMENT AND ALTERATION OF CERTIFICATES OF TITLE PROVIDED FOR UNDER SECTION 108 OF PD 1529 IS AN IN REM PROCEEDINGS THAT REQUIRES STRICT COMPLIANCE WITH THE PUBLICATION REQUIREMENT.

E.

WHETHER OR NOT SECTIONS 3 AND 4 OF RULE 108 OF THE RULES OF COURT SUPPLETORILY APPLY TO THE PROCEEDINGS

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[11] *Id.* at 17.

PROVIDED FOR UNDER SECTION 108 OF PD 1529 WHEREIN THE REQUIREMENT OF PUBLICATION IS MANDATORY.

F.

WHETHER OR NOT THE PHRASE "THE COURT MAY HEAR AND DETERMINE THE PETITION AFTER NOTICE TO ALL PARTIES IN INTEREST" IN SECTION 108 OF PD 1529 INCLUDES PUBLICATION AND SERVICE OF SUMMONS.

G.

WHETHER OR NOT THE COURT A QUO ACQUIRED JURISDICTION OVER THE SUBJECT MATTER OF THE PETITION IN THE ABSENCE OF SUMMONS AND PUBLICATION.

H.

WHETHER OR NOT PETITIONER IS AN INDISPENSABLE PARTY IN THE PETITION FOR CORRECTION OF NAME AND MARITAL STATUS IN THE TRANSFER CERTIFICATE OF TITLE NO. 154627 AND 154628.

I.

WHETHER OR NOT LEANDRA D. CABAÑEZ IS ENTITLED TO NOTICE AND SERVICE OF SUMMONS BY VIRTUE OF THE DECISION OF THE REGIONAL TRIAL COURT OF MAKATI CITY-BRANCH 137 TO THE EFFECT THAT THE PARCELS OF LAND LEGALLY BELONGED TO THEIR CONJUGAL PROPERTY.

J.

WHETHER OR NOT AN AFFIDAVIT THE CONTENTS OF WHICH WAS NOT TESTIFIED TO HAS PROBATIVE VALUE.

K.

WHETHER OR NOT THE SECURITY OR BOND MENTIONED IN SECTION 108 OF PD 1529 BEFORE ENTRY OF CORRECTION OR ALTERATION MAY BE MADE IS MANDATORY TO PROTECT THE INTEREST OF THIRD PERSON.

L.

WHETHER OR NOT THE HONORABLE COURT OF APPEALS [IS] PROCEDURALLY CORRECT IN ADMITTING THE SUPPLEMENTAL MEMORANDUM OF THE RESPONDENT DESPITE THE FACT THAT THE PETITION WAS ALREADY LONG SUBMITTED FOR DECISION.[12]

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[12] *Id.* at 40-42.

The Court finds merit in the petition, but for reasons which are not identical as those espoused by petitioner.

At the outset, it bears to reiterate that the CA ruled on the basis of the provisions of Presidential Decree No. 1529 (PD 1529), otherwise known as the Property Registration Decree. Specifically, the CA cited Sections 2 and 108 of the said law, which provide as follows:

Section 2. *Nature of registration proceedings; jurisdiction of courts.* — Judicial proceedings for the registration of lands throughout the Philippines shall be in rem and shall be based on the generally accepted principles underlying the Torrens system.

Courts of First Instance shall have exclusive jurisdiction over all applications for original registration of title to lands, including improvements and interests therein, and over all petitions filed after original registration of title, with power to hear and determine all questions arising upon such applications or petitions. The court through its clerk of court shall furnish the Land Registration Commission with two certified copies of all pleadings, exhibits, orders, and decisions filed or issued in applications or petitions for land registration, with the exception of stenographic notes, within five days from the filing or issuance thereof. (emphasis supplied)

Section 108. *Amendment and alteration of certificates.* — No erasure, alteration, or amendment shall be made upon the registration book after the entry of a certificate of title or of a memorandum thereon and the attestation of the same be Register of Deeds, except by order of the proper Court of First Instance. A registered owner of other person having an interest in registered property, or, in proper cases, the Register of Deeds with the approval of the Commissioner of Land Registration, may apply by petition to the court upon the ground that the registered interests of any description, whether vested, contingent, expectant or inchoate appearing on the certificate, have terminated and ceased; or that new interest not appearing upon the certificate have arisen or been created; or that an omission or error was made in entering a certificate or any memorandum thereon, or, on any duplicate certificate; or that the same or any person on the certificate has been changed; or that the registered owner has married, or, if registered as married, that the marriage has been terminated and no right or interests of heirs or creditors will thereby be affected; or that a corporation which owned registered land and has been

dissolved has not convened the same within three years after its dissolution; or upon any other reasonable ground; and the court may hear and determine the petition after notice to all parties in interest, and may order the entry or cancellation of a new certificate, the entry or cancellation of a memorandum upon a certificate, or grant any other relief upon such terms and conditions, requiring security or bond if necessary, as it may consider proper; Provided, however, That this section shall not be construed to give the court authority to reopen the judgment or decree of registration, and that nothing shall be done or ordered by the court which shall impair the title or other interest of a purchaser holding a certificate for value and in good faith, or his heirs and assigns, without his or their written consent. Where the owner's duplicate certificate is not presented, a similar petition may be filed as provided in the preceding section. (emphasis supplied)

All petitions or motions filed under this Section as well as under any other provision of this Decree after original registration shall be filed and entitled in the original case in which the decree or registration was entered.

The Court notes that the petition was clearly one which was filed after original registration of title, as provided under the abovequoted Section 2 of PD 1529. Moreover, respondent's petition was filed with the RTC for the purpose of correcting supposed errors which were committed when entries were made in the subject TCTs, as contemplated under Section 108 of the same law.

However, under settled jurisprudence, the enumerated instances for amendment of alteration of a certificate of title under Section 108 of PD 1529 are non-controversial in nature.[13]

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[13] *Ernesto Oppen, Inc. v. Compas*, G.R. No. 203969, October 21, 2015; *Banguis-Tambuyat v. Balcom-Tambuyat*, G.R. No. 202805, March 23, 2015; *Philippine Women's Christian Temperance Union, Inc. v. Teodoro Yangco 2nd and 3rd Generation Heirs Foundation*, G.R. No. 199595, April 2, 2014, 720 SCRA 522, 539; *Philippine Veterans Bank v. Valenzuela*, 660 Phil. 358, 366 (2011); *Tagaytay-Taal Tourist Development Corporation v. Court of Appeals (Special Ninth Division) and The City of Tagaytay*, 339 Phil. 377, 389 (1997).

They are limited to issues so patently insubstantial as not to be genuine issues. The proceedings thereunder are summary in nature, contemplating insertions of mistakes which are only clerical, but certainly not controversial issues.

As early as the case of *Tangunan v. Republic of the Philippines*,[14] which was later cited in *Angeles v. Razon, et al.*,[15] this Court, sitting *en banc*, ruled that:

> x x x the lower court did not err in finding that it lacks jurisdiction to entertain the present petition for the simple reason that it involves a controversial issue which takes this case out of the scope of Section 112 of Act No. 496 [now Section 108 of PD 1529]. While this section, among other things, authorized a person in interest to ask the court for any erasure, alteration, or amendment of a certificate of title "upon the ground that registered interests of any description, whether vested, contingent expectant, or inchoate, have terminated and ceased", and apparently the petition comes under its scope, such relief can only be granted if there is unanimity among the parties, or there is no adverse claim or serious objection on the part of any party in interest; otherwise the case becomes controversial and should be threshed out in an ordinary case or in the case where the incident properly belongs. Thus, it was held that "It is not proper to cancel an original certificate of Torrens title issued exclusively in the name of a deceased person, and to issue a new certificate in the name of his heirs, under the provisions of Section 112 of Act No. 496, when the surviving spouse claims right of ownership over the land covered by said certificate." And, in another case, where there was a serious controversy between the parties as to the right of ownership over the properties involved, this court held, "that following the principle laid down in the decision above cited, the issues herein should be ventilated in a regular action x x x."[16] (citations omitted)

In the present case, the Court notes that in a separate action for annulment of title and recovery of ownership filed by petitioner's wife against respondent, the RTC of Makati City,

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[14] 94 Phil. 171 (1953).

[15] 106 Phil. 384 (1959).

[16] *Supra* note 14, at 174-175.

Branch 137, in its decision in Civil Case No. 91-2648, dated July 5, 1993, made a categorical finding that petitioner and his wife are the lawful owners of the subject properties and ordering respondent to surrender possession thereof to the said spouses.[17] This RTC judgment was later affirmed by the CA in its Decision[18] in CA-G.R. CV No. 49446, dated April 29, 1997. Respondent, on the other hand, claims that she together with petitioner and his wife subsequently executed an amicable settlement dated June 22, 2000, which was approved by the RTC, wherein petitioner's wife waived her rights and interests over the said properties. She also alleged that petitioner executed an Affidavit of Declaration against Interest, dated January 22, 2007, indicating that he has no right or interest over the subject properties. Petitioner, nonetheless, claims that he executed a subsequent Affidavit of Non-Waiver of Interest, dated January 14, 2008, claiming that he was deceived by respondent into signing the said Affidavit of Declaration Against Interest and that he was seriously ill at the time that he affixed his signature.

From the foregoing, there is no question that there is a serious objection and an adverse claim on the part of an interested party as shown by petitioner's subsequent execution of his Affidavit of Non-Waiver of Interest. The absence of unanimity among the parties is also evidenced by petitioner's petition seeking the annulment of the RTC Decision which granted respondent's petition for correction of entries in the subject TCTs. These objections and claims necessarily entail litigious and controversial matters making it imperative to conduct an exhaustive examination of the factual and legal bases of the parties' respective positions. Certainly, such objective cannot be accomplished by the court through the abbreviated action under Section 108 of PD 1529. A complete determination of the issues in the present case can only be achieved if petitioner and his wife are impleaded in an adversarial proceeding.

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[17] See RTC Decision, *rollo*, pp. 98-102.

[18] *Id.* at 103-112.

In addition, the Court finds apropos to the instant case the ruling in the similar case of *Martinez v. Evangelista*[19] where the petitioner in the said case, being the registered owner of certain real properties, sought to strike out the words "married to x x x" appearing in the Transfer Certificates of Title covering the said properties on the ground that the same was so entered by reason of clerical error or oversight and in lieu thereof the word "single" be substituted, which according to the petitioner in the said case is his true and correct civil status. This Court held that:

> x x x changes in the citizenship of a person or in his status from legitimate to illegitimate or from married to not married are substantial as well as controversial, which can only be established in an appropriate adversary proceeding as a remedy for the adjudication of real and justifiable controversies involving actual conflict of rights the final determination of which depends upon the resolution of issues of nationality, paternity, filiation or legitimacy of the marital status for which existing substantive and procedural laws as well as other rules of court amply provide.[20]

In the present case, it is now apparent that before the trial court can alter the description of the civil status of respondent in the transfer certificates of title in question, it will have to receive evidence of and determine respondent's civil status. This requires a full dress trial rendering the summary proceedings envisaged in Section 108 of PD 1529 inadequate.

Finally, it is settled that a land registration case is a proceeding *in rem*, and jurisdiction *in rem* cannot be acquired unless there be constructive seizure of the land through publication and service of notice.[21] However, as found by the CA, respondent failed to comply with the said requirements. In all cases where the authority of the courts to proceed is conferred by a statute,

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[19] G.R. No. L-26399, January 31, 1981, 102 SCRA 551.

[20] *Id.* at 555-556.

[21] *Republic of the Philippines v. Herbieto*, 498 Phil. 227, 239 (2005); *Republic of the Philippines v. Court of Appeals*, 327 Phil. 852, 868 (1996).

and when the manner of obtaining jurisdiction is mandatory, it must be strictly complied with, or the proceedings will be utterly void.[22] It is wrong for the CA to rule in its Amended Decision that publication is not a jurisdictional requirement for the RTC to take cognizance of respondent's petition. The appellate court's reliance on the case of *Chan v. Court of Appeals*[23] is misplaced. In the said case, this Court considered the notice to the Register of Deeds as substantial compliance with the notice and publication requirements of the law simply because in the petition for correction filed by the petitioner therein, only the said petitioner and the Register of Deeds had an interest in the correction of titles sought for. This Court ruled that there is therefore no necessity to notify other parties who had no interest to protect in the said petition. This is not true, however, in the present case. As discussed above, on the bases of petitioner's serious objection and adverse claim, it is apparent that he has an interest to protect. Thus, the ruling in *Chan* finds no application in the instant case.

WHEREFORE, the instant petition is **GRANTED**. The Amended Decision and Resolution of the Court of Appeals, dated August 29, 2011 and January 10, 2012, respectively, in CA-G.R. SP No. 101406, are **REVERSED** and **SET ASIDE**. The Decision of the Court of Appeals, dated January 27, 2011, which annulled the June 28, 2007 Decision of the Regional Trial Court of Muntinlupa City, Branch 203, is **REINSTATED**.

SO ORDERED.

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

Jardeleza, J., on leave.

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[22] *Republic of the Philippines v. Court of Appeals*, G.R. No. 100995, September 14, 1994, 236 SCRA 442, 447.

[23] 359 Phil. 243 (1998).

SECOND DIVISION

[G.R. No. 203057. June 6, 2016]

BUREAU OF INTERNAL REVENUE as represented by the Commissioner of Internal Revenue, *petitioner, vs.* **MANILA HOME TEXTILE, INC.,[*] THELMA LEE and SAMUEL LEE,** *respondents.*

SYLLABUS

TAXATION; NATIONAL INTERNAL REVENUE CODE (NIRC); TAX EXEMPTION; TAX EXEMPTION SHOULD BE GRANTED ONLY BY CLEAR AND UNEQUIVOCAL PROVISION OF LAW ON THE BASIS OF LANGUAGE TOO PLAIN TO BE MISUNDERSTOOD; APPLICATION IN CASE AT BAR.— Viewed in this context, it is easy to see that petitioner has clearly made out a *prima facie* case or shown probable cause to indict respondents for tax evasion under the pertinent sections of the NIRC. Indeed, we believe that by themselves the annexes appended to the records of this case, Annexes "A" to "M", submitted in amplification of petitioner's affidavit-complaint do already provide viable support to petitioner's plea for the indictment of the said respondents for tax evasion. By contrast, respondents' argument in this case is the nebulous, murky and unsubstantiated claim of "consignment" with an alleged tax-free guaranty, not a shred or scintilla of which has been adduced in this case. To repeat, respondents have not produced even a slip of paper purporting to prove that the raw materials valued at hundreds of millions of pesos were delivered to them on "consignment." Corollary thereto, it must be borne in mind that tax exemptions, which respondents obviously want or desire to avail of in this case, are *strictissimi juris*. Indeed, taxation is the rule and tax exemption the exception. Tax exemptions should be granted only by clear and unequivocal provision of law on the basis of language too plain to be misunderstood. We hold that in this case respondents have utterly failed to make out even a *prima facie* for tax exemption in their favor.

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[*] Also spelled as MANILA HOMETEXTILE, INC. in some parts of the records.

APPEARANCES OF COUNSEL

Felix Paul R. Velasco III for petitioner.
Fortun Narvaza & Salazar for respondents.

D E C I S I O N

DEL CASTILLO, *J.*:

There is grave abuse of discretion when the determination of probable cause is exercised in an arbitrary or despotic manner due to passion or personal hostility, so patent and so gross as to amount to an evasion of a positive duty or a virtual refusal to perform a duty enjoined by law.[1]

This Petition for Review on *Certiorari* under Rule 45 of the Rules of Court impugns the May 7, 2012 Decision[2] and the July 25, 2012 Resolution[3] of the Court of Appeals (CA) in CA-G.R. SP No. 112159.

This case started out as a criminal complaint for tax evasion and perjury against respondents herein. Docketed as I.S. No. 2006-372, the Bureau of Internal Revenue (BIR), represented herein by the Commissioner of Internal Revenue (CIR), accused respondents the Manila Home Textile, Inc. (MHI), its President Thelma Lee (Thelma), and its Vice-President Samuel Lee (Samuel), and certain unidentified John Does and/or Jane Does, with having violated Sections 254,[4]

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[1] *Spouses Chua v. Hon. Ang*, 614 Phil. 416, 432 (2009); *Callo-Claridad v. Esteban*, 707 Phil. 172, 186 (2013); *Alberto v. Court of Appeals*, 699 SCRA 104, 129 (2013).

[2] CA *rollo*, pp. 271-283; penned by Presiding Justice Andres B. Reyes, Jr. and concurred in by Associate Justices Sesinando E. Villon and Amy C. Lazaro-Javier.

[3] *Id.* at 315-322.

[4] Sec. 254. **Attempt to evade or Defeat Tax.** — Any person who wilfully attempts in any manner to evade or defeat any tax imposed under this Code

255,[5] 257[6] and 267[7] of the National Internal Revenue Code (NIRC).

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or the payment thereof shall, in addition to other penalties provided by law, upon conviction thereof, be punished by a fine not less than Thirty thousand pesos (₱30,000.00) but not more than One hundred thousand pesos (₱100,000.00) and suffer imprisonment of not less than two (2) years but not more than four (4) years: Provided, That the conviction or acquittal obtained under this Section shall not be a bar to the filing of a civil suit for the collection of taxes.

[5] Sec. 255. **Failure to File Return, Supply Correct and Accurate Information, Pay Tax Withhold and Remit Tax and Refund Excess Taxes Withheld on Compensation.** — Any person required under this Code or by rules and regulations promulgated thereunder to pay any tax make a return, keep any record, or supply correct the accurate information, who willfully fails to pay such tax, make such return, keep such record, or supply correct and accurate information, or withhold or remit taxes withheld, or refund excess taxes withheld on compensation, at the time or times required by law or rules and regulations shall, in addition to other penalties provided by law, upon conviction thereof, be punished by a fine of not less than Ten thousand pesos (₱10,000.00) and suffer imprisonment of not less than one (1) year but not more than ten (10) years.

Any person who attempts to make it appear for any reason that he or another has in fact filed a return or statement, or actually files a return or statement and subsequently withdraws the same return or statement after securing the official receiving seal or stamp of receipt of internal revenue office wherein the same was actually filed shall, upon conviction therefor, be punished by a fine of not less than Ten thousand pesos (₱10,000.00) but not more than Twenty thousand pesos (₱20,000.00) and suffer imprisonment of not less than one (1) year but not more than three (3) years.

[6] Sec. 257. **Penal Liability for Making False Entries, Records or Reports, or Using Falsified or Fake Accountable Forms.** — x x x

(B) Any person who:

(1) Not being an independent Certified Public Accountant according to Section 232 (B) or a financial officer, examines and audits books of accounts of taxpayers; or

(2) Offers to sign and certify financial statements without audit; or

(3) Offers any taxpayer the use of accounting bookkeeping records for internal revenue purposes not in conformity with the requirements prescribed in this Code or rules and regulations promulgated thereunder; or

(4) Knowingly makes any false entry or enters any false or fictitious name in the books of accounts or records mentioned in the preceding paragraphs; or

It is alleged that the MHI is a duly organized domestic, corporation and registered with the Securities and Exchange Commission (SEC) under SEC Registration No. 140920; that its primary purpose is to engage in the business of manufacturing, buying, selling, exporting, importing and otherwise dealing in home textiles, apparels of all kinds, and their end-products, and any and all supplies, materials, tools, machines, appliances or apparatus employed in or related to the manufacture of said goods, for itself or as contractor, and to contract with third parties, natural or juridical persons, to supply the work, labor and materials for the manufacture and processing of such materials as independent contractors; that to facilitate importation, MHI was issued a license by the Garments and

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(5) Keeps two (2) or more sets of such records or books of accounts; or

(6) In any way commits an act or omission, in violation of the provisions of this Section; or

(7) Fails to keep the books of accounts or records mentioned in Section 232 in a native language, English or Spanish, or to make a true and complete translation as required in Section 234 of this Code, or whose books of accounts or records kept in a native language, English or Spanish, and found to be at material variance with books or records kept by him in another language; or

(8) Willfully attempts in any manner to evade or defeat any tax imposed under this Code, or knowingly uses fake of falsified revenue official receipts, Letters of Authority certificates authorizing registration, Tax Credit certificates, Tax Debit Memoranda and other accountable forms shall, upon conviction for each act or omission, be punished by a fine not less than Fifty thousand pesos (₱50,000.00) but not more than One hundred pesos (₱100,000.00) and suffer imprisonment of not less than two (2) years but not more than six (6) years.

x x x x x x x x x

[7] Sec. 267. **Declaration under Penalties of Perjury.** — Any declaration, return and other statement required under this Code, shall, in lieu of an oath, contain a written statement that they are made under the penalties of perjury. Any person who wilfully files a declaration, return or statement containing information which is not true and correct as to every material matter shall, upon conviction, be subject to the penalties prescribed for perjury under the Revised Penal Code.

Textiles Export Board (GTEB) to operate a Customs Bonded Manufacturing Warehouse (CBMW); that as a rule, the CBMW operates by having imported raw materials stored at the warehouse; that these raw materials are duty-free provided that these are utilized and consumed for the manufacture of its final product, which are intended for export, as the same would have a different treatment in terms of "tax incentives" than the regular importations; that investigation of the MHI's importations documents revealed that for the taxable years 2001 and 2002, the said company made several importations of PVC (or polyvinyl chloride) materials, woven fabrics, PVC leather and other raw materials used in the manufacture of its end-products; that on January 14, 2005 BIR issued Letter of Authority (LOA) No. 00002462[8] to the MHI advising it that BIR agents under the National Investigation Division (NID) had been authorized to examine its books of accounts and other accounting records for all internal revenue taxes for taxable years 1997 to 2002 and unverified prior years; that several attempts to serve the LOA were made by the BIR but all these efforts proved futile because MHI could not be located at the address given in its Annual Income Tax Returns and other BIR records; that indeed on March 3, 2004, GTEB issued a certification to the effect that MHI, with address at De la Paz St., Manggahan, Pasig, Metro Manila, had been inactive since 1997; and, that the SEC issued a certification on November 3, 2003 that the MHI failed to file its General Information Sheet for the years 1998-2005 and financial statements for the period 1997-2002.

It is further alleged that based on the information gathered by the NID, the MHI, through its corporate officers, directors and/or employees understated its importations and/or purchases, to wit:

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[8] CA *rollo,* pp. 147-148.

YEAR	PURCHASES/IMPORTATION
2002	₱ 976,123.00
2001	₱3,355,853.00

which information is at war with the data provided by the BIR's Amended Information, Tax Exemption and Incentives Division (AITEID) covering the MHI's Importers Detailed Report, thus —

YEAR	PURCHASES/IMPORTATION
2002	₱555,778,491.00
2001	₱431,764,487.00

In conclusion, it is alleged that the "MHI, through its corporate officers, directors and/or employees, wilfully under-declared the amount of its purchases and/or importations for taxable years 2001 and 2002 by as much as ₱428,408,634.00 and ₱554,802,368.00, respectively. This under-declaration resulted in estimated Deficiency Income Taxes in the amount of ₱43,716,161.84 for taxable year 2001, and ₱34,561,975.40 for taxable year 2002, both inclusive of interests and increments x x x."[9]

Although Thelma's and Samuel's counter-affidavits had not been appended to the records of this case, the investigating prosecutor adverted to it in his Resolution[10] of January, 30, 2007. Therein Thelma and Samuel allegedly denied the accusation against them and instead asserted that the "MHI as an independent contractor and supplier of work, labor and other materials for the manufacture of garments and similar products like handbags,"[11] in the year 2001, it merely "receive[d] various

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

[10] *Id.* at 27-35; penned by State Prosecutor II Sebastian F. Caponong, Jr. with the recommending approval of Assistant Chief State Prosecutor Miguel F. Gudio, Jr. and approved by Chief State Prosecutor Jovencito R. Zuño.

[11] *Id.* at 28.

consignments of raw materials worth ₱431,764,487.00, imported tax-free;"[12] that "[t]hese were processed at its customs bonded warehouse and eventually re-exported as finished handbags or unused materials;"[13] that it "did the same thing with respect to the ₱555,778,491.00 worth of materials it imported in 2002;"[14] that "MHI did not declare as purchases the foregoing importations of raw materials because it did not buy them;" that it "processed them into finished products for its foreign customers; the rest it returned as excess raw materials;"[15] that "[a]ll that MHI supplied in the manufacture of the finished products x x x were shipped out and re-exported under what is known in the export industry as cut, make and trim or CMT invoices;"[16] that "[u]nder its CMT arrangement, MHI could not dispose of any of its products it produced out of the imported raw materials;"[17] that "[c]onsidering that the importation and re-exportation happened four or five years ago, its records are no longer readily available;"[18] and that "[l]ikewise, a request made to the Bureau of Customs to provide copies of the export documents including CMT invoices and bills of lading proved futile."[19]

Against the foregoing backdrop, the investigating prosecutor ruled —

> Truly, criminal intent is irrelevant in a special law, however the intent to commit the prohibited act must be established. (People vs. De Gracia, 233 SCRA 716) Obviously, respondents have not been shown to have intended to deliberately understate the importation and/or purchases in their income tax returns for the years 2001 and

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[12] *Id.*

[13] *Id.*

[14] *Id.*

[15] *Id.*

[16] *Id.*

[17] *Id.*

[18] *Id.*

[19] *Id.*

2002 considering that the raw materials were imported duty-free and as clearly explained, respondents did not pay for the imported raw materials which were merely consigned to them to be used in the manufacture of finished products for re-export under CMT invoices. Thus, we cannot readily conclude that respondents intended to evade the payment of proper taxes on the mere basis of suspicion and speculation which cannot substitute for evidence. All told, this Office has not found any overt criminal act on the part of respondents which could be made the basis for a complaint for tax evasion.

WHEREFORE, premises considered, it is respectfully recommended that the complaint against respondents Thelma U. Lee and Samuel U. Lee for tax evasion and perjury be DISMISSED.[20]

Petitioner filed a motion for reconsideration but this motion was denied.

Hence, petitioner appealed to the Secretary of Justice. But on September 29, 2009 Department of Justice (DOJ) Undersecretary Ernesto L. Pineda, signing for the Secretary of Justice, resolved to dismiss the appeal.

Thereafter, petitioner instituted a Petition for *Certiorari* before the CA, thereat docketed as CA-G.R. SP No. 112159. The CA rendered judgment dismissing the Petition for *Certiorari*. The CA ruled —

Notably, [p]etitioner hastily concluded and attributed fraudulent intent on the part of herein [p]rivate [r]espondents solely by the apparent understatement of the amount of its purchases/importations, without at the very least offering proof that the amount withheld is subject to tax. To simply put it, what is there to evade when no tax is due at all? In contrast, [p]rivate [r]espondents were able to substantiate their claim that the amount they failed to include are not purchases/importations subject to tax but consignments exclusively used for the manufacture of its finished products for export, and hence duty-free. While it is true that no direct evidence was presented by [p]rivate [r]espondent to prove such fact, the records are however replete with strong circumstantial evidence inexorably leading to the same conclusion.

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[20] *Id.* at 34.

Ultimately, [p]etitioner cannot seek refuge from the adequacy or weight of the evidence of [p]rivate [r]espondents. Petitioner must be reminded that the burden is upon it as the complainant, to prove the cause of action and show to the satisfaction of the state prosecutor the facts and law upon which the claim is based.

WHEREFORE, the instant Petition for Certiorari is hereby DISMISSED for lack of merit.

SO ORDERED.[21]

Its motion for reconsideration of the foregoing CA Decision having been denied, petitioner files this Petition for Review on *Certiorari* contending that all the Resolutions issued by the investigating prosecutor, the DOJ Undersecretary, as well as the Decision and the Resolution of the CA were all tainted with grave abuse of discretion.

With this contention we agree.

As clearly made out in the complaint-affidavit filed by the petitioner with the DOJ, petitioner, in line with the governments' campaign against tax evasion conducted an inquiry or preliminary investigation to determine the MHI's tax compliance; that in the course of this inquiry or preliminary investigation, data or information culled by the petitioner from certified copies of the Income Tax Return, the VAT, and other returns which the MHI was required to file with the appropriate revenue district office/s, indeed indicated that the MHI might have understated its purchases/importations for the years 2001 and 2002; that the MHI declared in its audited financial statements purchases/ importations to the tune of ₱976,123.00 for 2002 and ₱3,355,853.00 for 2001; that by contrast, data from the BIR's AITEID showed that the MHI's importations and/or purchases were ₱555,778,491.00 for 2002, and ₱431,764,487.00 for 2001; which thus indicates that the MHI and its President, Thelma and Vice-President Samuel, deliberately understated the amounts of importation and/or purchases by as much as ₱428,408,634.00 for 2001, and ₱554,802,368.00 for 2002; and that this explains

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[21] *Id.* at 282-283.

why the MHI and its responsible corporate officers are being charged with violations of Sections 254, 255, 257 and 267 vis-a-vis Sections 52 (A), 105 and 114 (A) of the NIRC.

In refutation of the foregoing charges, Thelma and Samuel averred that they merely received on consignment the raw materials valued at ₱431,764,487.00 and ₱555,778,497.00, which were brought to the Philippines tax-free; that these raw materials were then processed at the MHI's customs bonded warehouse and eventually re-exported as finished handbags, or CMT (cut, made and trim); that if they did not declare the imported raw materials as purchases, it was because they did not in fact purchase these imported raw materials which, to repeat, were merely consigned to them tax-free; and that considering that the importations and re-exportation of these raw materials happened four or five years ago, their records are no longer available.

Viewed in this context, it is easy to see that petitioner has clearly made out a *prima facie* case or shown probable cause to indict respondents for tax evasion under the pertinent sections of the NIRC. Indeed, we believe that by themselves the annexes appended to the records of this case, Annexes "A" to "M", submitted in amplification of petitioner's affidavit-complaint do already provide viable support to petitioner's plea for the indictment of the said respondents for tax evasion. By contrast, respondents' argument in this case is the nebulous, murky and unsubstantiated claim of "consignment" with an alleged tax-free guaranty, not a shred or scintilla of which has been adduced in this case. To repeat, respondents have not produced even a slip of paper purporting to prove that the raw materials valued at hundreds of millions of pesos were delivered to them on "consignment."

Corollary thereto, it must be borne in mind that tax exemptions, which respondents obviously want or desire to avail of in this case, are *strictissimi juris*. Indeed, taxation is the rule and tax exemption the exception. Tax exemptions should be granted only by clear and unequivocal provision of law on the basis of

language too plain to be misunderstood.[22] We hold that in this case respondents have utterly failed to make out even a *prima facie* for tax exemption in their favor.

Nevertheless, we must hasten to add at this juncture that we are here only to determine probable cause. As to whether respondents are guilty of tax evasion and/or perjury under the pertinent provisions of the NIRC and other penal statutes is an issue that must be resolved during the trial of the criminal case/s where the quantum of proof required is proof beyond reasonable doubt.

On top of these, we must stress that our ruling in this case should not be construed as an unbridled license for our tax officials to engage in fishing expeditions and witch-hunting. They should not abuse their investigative powers and should exercise the same within the parameters and ambit of the law. By no means is this Court signalling that it is opening the floodgates to inundate the courts of justice with frivolous and malicious tax suits.

WHEREFORE, this Petition is hereby **GRANTED**. The Decision dated May 7, 2012 and the Resolution dated July 25, 2012 of the Court of Appeals in CA-G.R. SP No. 112159 are **REVERSED and SET ASIDE**. The Resolutions of State Prosecutor II Sebastian F. Caponong, Jr. dated January 30, 2007 and June 8, 2007 as well as the Resolution of Department of Justice Undersecretary Ernesto L. Pineda dated September 25, 2009 are also **REVOKED and NULLIFIED**. The Prosecutor General of the Department of Justice is hereby directed to promptly file the appropriate information/s for tax evasion and perjury under the pertinent provisions of the National Internal Revenue Code and other relevant penal statutes against the respondents.

SO ORDERED.

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[22] *Commissioner of Internal Revenue v. S.C. Johnson & Son, Inc.*, 368 Phil. 388 (1999); *Paseo Realty and Development Corporation v. Court of Appeals*, 483 Phil. 254 (2004).

Carpio, Acting C.J.[**] (*Chairperson*), *Mendoza,* and *Leonen, JJ.,* concur.

Brion, J., on official leave.

SECOND DIVISION

[G.R. No. 203336. June 6, 2016]

SPOUSES GERARDO and CORAZON TRINIDAD, *petitioners, vs.* **FAMA REALTY, INC. and FELIX ASSAD,** *respondents.*

SYLLABUS

REMEDIAL LAW; SPECIAL CIVIL ACTIONS; CONTEMPT; WHERE CONTEMPT IS COMMITTED AGAINST QUASI-JUDICIAL ENTITIES, THE FILING OF CONTEMPT CHARGES IN COURT IS OBSERVED ONLY WHEN THERE IS NO LAW GRANTING CONTEMPT POWERS TO THESE QUASI-JUDICIAL ENTITIES; CASE AT BAR.— Where contempt is committed against quasi-judicial entities, the filing of contempt charges in court is observed only when there is no law granting contempt powers to these quasi-judicial entities. x x x In *Robosa v. National Labor Relations Commission*, the Court made the following pronouncement: On the first issue, we stress that under Article 218 of the Labor Code, the NLRC (and the labor arbiters) may hold any offending party in contempt, directly or indirectly, and impose appropriate penalties in accordance with law. The penalty for direct contempt consists of either imprisonment or fine, the degree or amount depends on whether the contempt is against the Commission or the labor arbiter. The Labor Code, however, requires the labor arbiter or the Commission to deal

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[**] Per Special Order No. 2353 dated June 2, 2016.

with indirect contempt in the manner prescribed under Rule 71 of the Rules of Court. **Rule 71 of the Rules of Court does not require the labor arbiter or the NLRC to initiate indirect contempt proceedings before the trial court. This mode is to be observed only when there is no law granting them contempt powers.** x x x Such pronouncement applies to the HLURB as well; x x x Executive Order No. 648, the HLURB Charter, grants the HLURB Board the power to cite and declare any person, entity or enterprise in direct or indirect contempt "[w]henever any person, entity or enterprise commits any disorderly or disrespectful conduct before the Commission or in the presence of its members or authorized representatives actually engaged in the exercise of their official functions or during the conduct of any hearing or official inquiry by the said Commission, at the place or near the premises where such hearing or proceeding is being conducted which obstruct, distract, interfere or in any other way disturb, the performance of such functions or the conduct of such hearing or proceeding;" or "[w]henever any person, enterprise or entity fails or refuses to comply with or obey without justifiable reason, any lawful order, decision, writ or process of the Commission." x x x Thus, for respondents' perceived misbehavior, disobedience, and disregard of the May 24, 2012 Order of Arbiter Babiano and the HLURB Board's April 2, 1997 Decision, petitioners should have invoked the contempt powers of the HLURB instead. This Court does not have jurisdiction to resolve the instant Petition.

APPEARANCES OF COUNSEL

Fortun Narvaza & Salazar for petitioners.
Donato Zarate & Rodriguez for respondents.

D E C I S I O N

DEL CASTILLO, *J.*:

This case refers to a Petition for Contempt[1] filed directly with this Court.

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[1] *Rollo*, pp. 3-27.

Factual Antecedents

In 1991, petitioners Gerardo and Corazon Trinidad offered to buy from respondent Fama Realty, Inc. (FAMA) 14 lots of the latter's St. Charbel Executive Village located at Mindanao Avenue, Tandang Sora, Quezon City, at a total price of ₱17,620,800.00, or ₱5,000.00 to ₱5,100.00 per square meter. The parties, thus, executed Reservation Agreements[2] (RAs), pursuant to which petitioners made partial payments.

HLURB Case Nos. REM-022194-5807 and REM-A-950328-0039

Later on, a controversy arose regarding petitioners' payments, prompting them to file with the Housing and Land Use Regulatory Board (HLURB) an action for specific performance against FAMA and herein respondent Felix Assad, then FAMA President and General Manager, which was docketed as HLURB Case No. REM-022194-5807. On January 26, 1995, HLURB Arbiter Arturo M. Dublado rendered a Decision[3] in said case, decreeing thus:

> WHEREFORE, PREMISES CONSIDERED, judgment is hereby rendered directing respondent to execute the appropriate deed of sale over at least 3 lots from Lots 3 to 14, Block 1 or Lots 1 and 2, Block 12, Phase 2, with an area of at least 240 square meters each. The reservation application for the rest of the lots are hereby cancelled.
>
> All other claims are hereby dismissed.
>
> IT IS SO ORDERED.[4]

Respondents interposed an appeal before the HLURB Board of Commissioners, which was docketed as HLURB Case No. REM-A-950328-0039. On December 15, 1995, the HLURB

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[2] *Id.* at 29-30, 50-51, 65-66.

[3] *Id.* at 29-51.

[4] *Id.* at 50-51.

Board of Commissioners (Special Division) issued its Decision,[5] decreeing as follows:

WHEREFORE, THE FOREGOING PREMISES CONSIDERED, the decision appealed from is hereby MODIFIED to read as follows:

1. Directing respondents to execute the appropriate deed of absolute sale over at least three (3) lots from Lots 3 to 14, Block 1 or Lots 1 and 2, Block 12, Phase 2 with an area of at least 240 square meter[s] each. The reservation application[s] for the rest of the lots are hereby cancelled.

2. Ordering the complainants to pay respondents the amount of:

   a. ₱500,000.00 as actual damages;
   b. ₱30,000.00 as exemplary damages; and
   c. ₱50,000.00 as and by way of attorney's fees.

SO ORDERED.[6]

Petitioners moved to reconsider, whereupon the HLURB Board of Commissioners issued an April 2, 1997 Decision[7] modifying the above December 15, 1995 Decision, as follows:

WHEREFORE, premises considered, the decision in x x x and the decision in REM-A-950328-0039 (Trinidad case) are hereby MODIFIED to read as follows:

1. Declaring the rescission of the contracts as null and void;

2. Ordering respondent FAMA to execute the pertinent contract to sell as follows:

   a. x x x x x x x x x

   b. Lot 5-14, Block 1, Phase 2 to Sps. Trinidad.

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[5] *Id.* at 53-62; signed by Commissioner and Chief Executive Officer Ernesto C. Mendiola, Commissioners Luis T. Tungpalan and Teresita A. Desierto.

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

[7] *Id.* at 99-107; signed by Commissioner and Chief Executive Officer Romulo Q. Fabul, and Commissioners Teresita A. Desierto, Francisco L. Dagnalan, and Roque Arrieta Magno.

3. Ordering complainant Trinidad to update the remaining downpayments if any, and pay the amortization in accordance with the original terms of the contract x x x.

4. Ordering respondent to accept the payments of complainants; in the event FAMA refuses to accept payments, then TRINIDAD x x x is directed to deposit the same to this Board.

5. x x x x x x x x x

6. FAMA is hereby ordered to pay to this Board the amount of ₱20,000.00 as and by way of administrative fine.

SO ORDERED.[8]

Respondents then filed an appeal with the Office of the President, which in turn rendered an August 31, 1998 Decision dismissing the same and affirming the above HLURB Board of Commissioners' April 2, 1997 Decision. A subsequent motion for reconsideration was similarly rebuffed.[9]

CA-G.R. SP No. 82993

Respondents thus went up to the Court of Appeals (CA) via a Petition for Review, docketed as CA-G.R. SP No. 82993. On February 21, 2007, however, the CA issued its Decision[10] denying the petition for lack of merit, declaring as follows:

Petitioners[11] argue that their rescission and cancellation of the RAs are valid and legal as respondents[12] failed to fully pay the 30% downpayment, despite the grace period of fifteen (15) months given them; that they did not waive their right to rescind the RAs when they granted a grace period to respondents and accepted their late

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

[9] *Id.* at 71, 82.

[10] *Id.* at 64-77; penned by Associate Justice Marina L. Buzon and concurred in by Associate Justices Edgardo F. Sundiam and Monina Arevalo-Zenarosa.

[11] Herein respondents.

[12] Herein petitioners.

payments; and that the *Siska* case is not applicable because respondents did not pay the 30% downpayment in full and they did not accept the manager's check for ₱1,446,240.00 as they had already rescinded the RAs and said amount was insufficient to cover respondents' arrearages which, as of July, 1992, amounted to ₱2,892,855.31, so that respondents are not entitled to the execution of the contract to sell.

The petition is without merit.

Petitioners claim that the downpayment made by respondents amounted only to ₱3,840,000.00, while the latter insist that they paid the amount of ₱5,286,240.00, which is the required 30% downpayment. It is interesting to note that the difference of ₱1,446,240.00 is covered by the Bank of Commerce manager's check dated October 9, 1992 which respondents tendered to petitioners' counsel, who acknowledged receipt thereof on October 22, 1992. In a letter dated November 3, 1992, petitioners' counsel informed respondents that said check for ₱1,446,240.00 was not accepted by FAMA as their RAs were already cancelled and their payments were forfeited. On page 6 of respondents' motion for reconsideration of the Decision dated December 15, 1995 of the HLURB, they pointed out that the amount of ₱1,446,240.00 was not returned to them by petitioners, which the latter did not refute. It appears, therefore, that respondents had fully paid the required downpayment of ₱5,286,740.00 before the revocation or cancellation of their RAs.

The RAs granted FAMA the right to cancel the same and forfeit the payments made by respondents in the event of failure on the part of the latter to pay any installment in the downpayment as stipulated therein. As found by the HLURB and Office of the President, petitioners accepted the late payments made by respondents on the prescribed 30% downpayment. As held in *Siska Development Corporation vs. Office of the President of the Philippines*, when the seller accepted and received delayed payments beyond the grace period, it waived its right to rescind and is now estopped from exercising it. Said ruling was reiterated in *Development Bank of the Philippines vs. Court of Appeals*, which held that the seller's unqualified acceptance of late payments resulted in the loss of its right to rescind the sale on the basis of such delayed payments.

Neither did the Office of the President err in imposing an administrative fine on petitioners for unsound real estate practices

for selling to Enrica Dizon some of the lots they had already sold to respondents.

WHEREFORE, the petition for review is *DENIED* for lack of merit and the Decision dated August 31, 1998, Resolution dated March 12, 2003 and Order dated August 21, 2003 of the Office of the President are *AFFIRMED*.

SO ORDERED.[13]

Respondents moved to reconsider, but were rebuffed.[14]

G.R. No. 179811

Respondents then came to this Court on Petition for Review, docketed as G.R. No. 179811. On April 23, 2008, the Court issued a Resolution[15] denying the petition for failure to sufficiently show any reversible error in the assailed February 21, 2007 CA Decision as to warrant the exercise of its discretionary appellate jurisdiction, and for raising substantially factual issues. Said Resolution became final and executory on October 16, 2008,[16] and, in effect, the HLURB Board of Commissioners' April 2, 1997 Decision became executory as well.

Execution Proceedings in HLURB Case Nos. REM-022194-5807 and REM-A-950328-0039

On February 27, 2009, petitioners filed before the HLURB a motion for execution of the April 2, 1997 Decision. Respondents opposed the motion, after which a hearing was held.

On December 11, 2009, respondents filed a Manifestation (Re: Execution), submitting a copy of a Contact to Sell[17] for

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[13] *Rollo*, pp. 74-77.

[14] *Id.* at 6, 83.

[15] *Id.* at 79.

[16] *Id.* at 92.

[17] *Id.* at 115-121.

petitioners' signature and a Demand Letter[18] for the petitioners to pay the balance of the downpayment and amortizations as stated therein. The demand letter states, as follows:

Dear Sps. Trinidad:

We write in behalf of our clients, FAMA Realty, Inc. and Felix Assad, in connection with the two (2) Reservation Agreements (R.A. 008 and R.A. 009) executed by you and approved by our clients in [sic] April 02, 1991.

Under the said Reservation Agreements, you were supposed to pay the amount of ₱930,240.00 under R.A. 008, and ₱4,356,000.00 under R.A. 009, or a total of ₱5,286,240.00 for the two (2) agreements, which were all due on August 02, 1991. Said aggregate amount of ₱5,286,240.00 represents thirty percent (30%) down payment of the purchase price of the lots, subject of said Reservation Agreements. Under the said Agreements, it is only upon your full payment of the 30% down payment that the contracts to sell for the subject lots may be executed by FAMA Realty, Inc.

In the consolidated Decision of the HLURB Board of Commissioners in the cases entitled Sps. Gerardo & Corazon Trinidad, x x x versus FAMA Realty, Inc. & Felix Assad, x x x (HL[U]RB Case No. REM-A-950328-0039) x x x, which was affirmed by the Office of the President, the Court of Appeals and the Supreme Court, it was established that you have only paid the amount of ₱3,840,000.00, out of the amount of ₱5,286,240.00, representing the aggregate down payments under the two (2) Reservation Agreements, leaving an aggregate balance of ₱1,446,240.00, which remains unpaid of [sic] to this time.

Considering the foregoing and in connection with the execution proceedings now pending in the case between you and our client with the HLURB, DEMAND is hereby made upon you to pay the said amount of ₱1,446,240.00 to FAMA Realty, Inc. or through our law firm, within seven (7) days from receipt hereof, otherwise, much to our regret, we will be constrained to institute the proper action to protect the interest of our client, including the availment of remedies/reliefs/options provided our client under the Reservation Agreements and under existing laws.

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

We will appreciate your prompt and favorable action by communicating with us through our office address and telephone numbers.

Very truly yours,

(signed)
JEFFREY JOHN L. ZARATE
For the Firm[19]

A Writ of Execution[20] was issued and served upon respondents, who in turn sent a May 11, 2010 Letter[21] to petitioners demanding the issuance of 60 postdated checks totaling ₱12,334,560.00.

Thinking that the above amount demanded was more than what they believed was still owing to FAMA, petitioners filed with this Court in G.R. No. 179811 a Motion[22] to clarify the computation of the purchase price payable to FAMA. Petitioners explained that since only 10 lots totaling 2,424 square meters with a price of ₱5,000.00 per square meter were awarded to them under the HLURB Board of Commissioners' April 2, 1997 Decision — and not 14 lots as originally agreed under the RAs — then, essentially, they owe FAMA only the balance of ₱6,833,260.00, computed as follows:

PURCHASE PRICE:	
2,424 square meters (10 lots) X P5,000.00/sq.m. = ₱12,120,000.00	
LESS PAYMENTS MADE TO FAMA AS FINALLY DECLARED BY CA:	₱ 5,286,240.00
BALANCE:	₱ 6,833,760.00

On June 6, 2011, this Court issued a Resolution[23] declaring as follows:

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[19] *Id.*

[20] *Id.* at 81-84.

[21] *Id.* at 86.

[22] *Id.* at 92-98.

[23] *Id.* at 168-174.

It must be noted that the final and executory April 2, 1997 HLURB Decision directed that respondents need "to update the remaining down payments if any, and pay the amortization in accordance with the original terms of the contract." It is clear, therefore, that respondents need only to pay for the 10 lots awarded to them pursuant to the final and executory April 2, 1997 HLURB Decision under the original terms of the reservation applications, i.e., the agreed purchase price per square meter, for the total land area of the 10 lots.

But petitioners are apparently demanding the payment of Php17,620,800 covering the 14 lots under the reservation applications less the total downpayment already paid by respondents. This is apparent from petitioners' letter dated May 11, 2010 and the draft Contract to Sell, in which petitioners were demanding for the Php1,446,240 additional downpayment and the balance of Php12,334,560 or a total of Php13,780,800.

Obviously it is inequitable if respondents are required to pay the full amount of the original reservation applications covering 14 lots but will be given only the 10 lots awarded to them, considering that the four (4) other lots covered by the reservation application have been awarded to Enrica Dizon. Thus, from the records, it is clear that respondents should only be required to pay for the total purchase price — under the terms as agreed upon in the two reservation agreements — for the ten (10) lots. There is no dispute that respondents already paid the total amount of Php3,840,000 as downpayment, not counting the Php1,446,240 payment under the BanCom Manager's Check dated October 9, 1992 which was not encashed by petitioners.

In sum, respondents ought to pay the amount corresponding to the purchase of the 10 lots awarded to them under the terms of the reservation applications less the Php3,840,000 downpayment they have already paid petitioners. In their February 11, 2011 Manifestation, respondents expressed willingness to pay the amount of Php1,446,240 subject to the return by petitioners of the BanCom Manager's Check dated October 9, 1992, and the alleged balance of Php6,833,760 for the 10 lots, specifically Lots 5 to 14, Block 1, Phase 2 of St. Charbel Village.

The HLURB Arbiter should then compute the total amount respondents ought to pay for the 10 lots less the downpayment of Php3,840,000. Respondents, who have expressed desire to pay the total amount due, should pay, as computed by the HLURB Arbiter, the balance to petitioners.

WHEREFORE, the HLURB Arbiter is DIRECTED in HL[U]RB Case No. REM-022194-5807 to COMPUTE the total amount respondents are supposed to pay for the ten (10) lots (Lots 5 to 14, Block 1, Phase 2 of St. Charbel Village) awarded to them pursuant to the original terms under the Reservation Applications pertaining to the purchase price per square meter less the Php3,840,000 downpayment already paid by respondents. Respondents are DIRECTED to PAY petitioners the balance, as computed by the HLURB Arbiter, while petitioners are DIRECTED to EXECUTE a Deed of Absolute Sale for the said 10 lots, upon payment of the said balance.

The respondents' manifestation stating that they are ready and willing to pay the balance on the properties subject of this case (Lots 5 to 14) stating the amount and terms thereon is *NOTED*.

SO ORDERED.[24]

When the case was referred back to the HLURB, respondents filed a Compliance[25] and Motion to Adopt Computation,[26] presenting a different computation of the purchase price for the lots being purchased by petitioners, thus:

Total Amount Payable		
For 10 lots (5 lots commercial, 5 lots residential)	----------	Php84,840,000.00
Less: Downpayment	----------	Php 3,840,000.00
Balance	----------	Php81,000,000.00
Add: Stale Check	----------	Php 1,446,240.00
Total Principal amount payable	----------	Php82,446,240.00
Plus 3% interest Monthly from Sept. 1991 to Sept. 2012 = 20 yrs.	----------	Php11,191,874.40
Total amount due and demandable: principal and interest	=	Php93,638,114.40[27]

[24] *Id.* at 172-174.

[25] *Id.* at 176-177.

[26] *Id.* at 179-182.

[27] *Id.* at 176-177. In respondents' Motion to Adopt Computation, however, the principal amount claimed is ₱84,720,000.00, as opposed to ₱84,840,000.00 claimed in their Compliance.

Respondents prayed that the above computation be adopted, claiming that petitioners have been in default for the "last 20 years or so, without any justifiable reason; and had at no time made any consignation of the unpaid balance as a sign of good faith, capacity and willingness to pay the unpaid balance of the purchase price. All the while, respondents have been paying the taxes and incurring expenses to secure and maintain the property. Meanwhile x x x the assessed value and the fair market value of the property have increased several fold, a supervening event which is beyond what was originally contemplated by the parties, and which renders it unfair to stick to the original price under the agreement."[28]

Petitioners filed an Opposition,[29] claiming that respondents' new computation lacks basis and was arrived at in bad faith, and that respondents' actions are contemptuous and contrary to the final and executory April 2, 1997 HLURB Decision. They thus prayed that respondents' new computation be disregarded and expunged.

On May 24, 2012, the HLURB through Arbiter Michelle Jan B. Babiano (Arbiter Babiano) issued an Order[30] in HLURB Case No. REM-022194-5807, decreeing as follows:

> Accordingly, per the Honorable Supreme Court's Resolution of 06 June 2011, complainants shall pay respondents the balance of the purchase price in the amount of EIGHT MILLION TWO HUNDRED EIGHTY THOUSAND (₱8,280,000.00) PESOS at six percent (6%) interest per annum reckoned from 29 July 1992 and twelve percent (12%) interest per annum reckoned from 01 September 2008, the date of finality of judgment until fully paid, while respondents shall immediately execute the corresponding Deeds of Absolute Sale for the ten (10) lots subject of the case (Lots 5 to 14) upon full payment of the balance thereof.
>
> SO ORDERED.[31]

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

[29] *Id.* at 188-192.

[30] *Id.* at 194-198.

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

Respondents filed with the HLURB Board an Appeal Memorandum,[32] incorporating therein their arguments contained in their Compliance and Motion to Adopt Computation, adding that to allow petitioners to pay the balance of the purchase price at 1992 prices, and not at the current price-per-square-meter, constitutes unjust enrichment; and that in *Active Realty & Development Corporation v. Daroya*,[33] a subdivision lot buyer was allowed by this Court to recover her payments at current prices as penalty for the developer's failure to abide by its obligation to deliver the subject lot and give the buyer what is rightly hers. Respondents prayed that the May 24, 2012 Order be set aside and a new one be issued directing petitioners to pay respondents the amount of ₱80,880,000.00 constituting the balance of the purchase price for the subject 10 lots.

In a Motion to Expunge[34] and Counter-Memorandum *Ad Cautelam*,[35] petitioners sought dismissal of the appeal, arguing that the Appeal Memorandum is a prohibited pleading under Section 63, Rule 18 of the 2011 HLURB Revised Rules of Procedure[36] (HLURB Rules of Procedure); that respondents' actions are dilatory; that the appeal is an indirect attack on the final and executory April 23, 2008 and June 6, 2011 Resolutions in G.R. No. 179811 and the HLURB's executory April 2, 1997 Decision; that the HLURB Board has no jurisdiction over the appeal, as its appellate jurisdiction is limited to judgments, not orders, of its Arbiters;[37] that the computation contained in the

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[32] *Id.* at 200-212.

[33] 431 Phil. 753 (2002).

[34] *Rollo*, pp. 214-219.

[35] *Id.* at 221-232.

[36] Section 63. Prohibited Pleadings in Execution Proceedings. — Pleadings or motions in the guise of an appeal on collateral issues or questions deemed already passed upon or considered in the resolution of the case or incident shall not be entertained in the resolution of the motion for execution.

[37] Citing Section 47, Rule 13 of the 2011 HLURB Revised Rules of Procedure, which states:

appealed May 24, 2012 Order is correct and in accord with the terms of the parties' agreement, as well as the final and executory dispositions of the HLURB and Supreme Court; and that respondents failed to show that the appeal bond and fees have been paid.

Instant Petition for Contempt

On October 2, 2012, petitioners filed the present Petition, praying that respondents be cited for indirect contempt for delaying the execution of the HLURB Board's April 2, 1997 Decision; for disregarding the computations contained in the final and executory HLURB Board and Supreme Court dispositions; for filing an appeal which is tantamount to a collateral attack of said dispositions; for violating the HLURB Rules of Procedure; and for initiating another round of proceedings that touches on the merits of the case, which have already been determined with finality. Petitioners further pray that the Court order the dismissal of respondents' HLURB appeal, which to them is unauthorized and prohibited under the HLURB Rules of Procedure.

Petitioners contend that respondents' actions are contemptuous, in that they reveal a stubborn refusal to comply with their obligations adjudged in the final and executory dispositions and the May 24, 2012 Order of Arbiter Babiano; a penchant for delaying the proceedings and impeding the administration of justice; and an attempt to illegally collect more than the agreed purchase price by submitting a new computation based on the current price per square meter of the subject lots.

Section 47. Jurisdiction of the Board of Commissioners. — In the exercise of its adjudicatory authority, the Board shall have jurisdiction over the following cases:

x x x x x x x x x

(c) Appellate jurisdiction over the judgments of the Arbiters

x x x x x x x x x

Respondents' Comment

On the other hand, respondents argue in their Comment[38] that the instant Petition should be dismissed for being premature; that since petitioners have failed to pay the purchase price in full as directed by Arbiter Babiano in her May 24, 2012 Order, they may not be faulted for refusing to execute the required deeds of absolute sale; that their appeal seeks a just and equitable re-computation of the balance to be paid by petitioners, considering that supervening events have occurred which render execution of the original decision unjust and inequitable owing to the dramatic rise in the assessed and fair market value of the subject lots; that petitioners are themselves guilty of delaying the proceedings — that is, when they filed in G.R. No. 179811 a Motion to clarify the computation of the purchase price, instead of promptly paying the balance; that to date, petitioners have not paid the balance of the price, just as the RAs stipulate that the same should be paid within five years; that for failure to pay the balance as agreed, petitioners are now in default and have been so for the last 20 years or so; that since petitioners have not paid the balance, respondents are not precluded from filing an appeal before the HLURB Board; and that in filing the instant Petition, petitioners are guilty of forum shopping, since they likewise filed their opposition to the appeal before the HLURB.

Petitioners' Reply

In their Reply,[39] petitioners contend that their failure to pay the balance of the price is justified by the fact that respondents have been employing dilatory tactics aimed at delaying execution and impeding the administration of justice; that matters have been complicated further by respondents' latest maneuver of illegally rescinding the RAs on November 23, 2012, or just after they filed the unauthorized appeal before the HLURB Board; that on December 12, 2012, petitioners filed a Motion with

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[38] *Rollo*, pp. 240-253.

[39] *Id.* at 259-269.

Consignation[40] of the balance, with corresponding interest, before the HLURB; that they filed the motion for clarification in G.R. No. 179811 because respondents were charging them more than what was due under the terms of the RAs; that respondents' HLURB appeal is contemptuous, and the arguments therein without basis; and that they are not guilty of forum shopping for filing the instant Petition, which refers to a charge of contempt — on the other hand, their opposition to respondents' HLURB appeal does not include contempt charges.

Our Ruling

The Court dismisses the Petition.

Under the circumstances, petitioners should have sought to cite respondents in contempt before the HLURB itself, and not this Court.

Where contempt is committed against quasi-judicial entities, the filing of contempt charges in court is observed only when there is no law granting contempt powers to these quasi-judicial entities. Under Section 12, Rule 71 of the Rules of Court on Contempt, it is thus provided:

> Sec. 12. Contempt against quasi-judicial entities. — Unless otherwise provided by law, this Rule shall apply to contempt committed against persons, entities, bodies or agencies exercising quasi-judicial functions, or shall have suppletory effect to such rules as they may have adopted pursuant to authority granted to them by law to punish for contempt. The Regional Trial Court of the place wherein the contempt has been committed shall have jurisdiction over such charges as may be filed therefor.

In *Robosa v. National Labor Relations Commission*,[41] the Court made the following pronouncement:

> On the first issue, we stress that under Article 218 of the Labor Code, the NLRC (and the labor arbiters) may hold any offending party in contempt, directly or indirectly, and impose appropriate

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[40] *Id.* at 271-290.

[41] 681 Phil. 446 (2012).

penalties in accordance with law. The penalty for direct contempt consists of either imprisonment or fine, the degree or amount depends on whether the contempt is against the Commission or the labor arbiter. The Labor Code, however, requires the labor arbiter or the Commission to deal with indirect contempt in the manner prescribed under Rule 71 of the Rules of Court.

Rule 71 of the Rules of Court does not require the labor arbiter or the NLRC to initiate indirect contempt proceedings before the trial court. This mode is to be observed only when there is no law granting them contempt powers. As is clear under Article 218(d) of the Labor Code, the labor arbiter or the Commission is empowered or has jurisdiction to hold the offending party or parties in direct or indirect contempt. The petitioners, therefore, have not improperly brought the indirect contempt charges against the respondents before the NLRC.[42] (Emphasis supplied)

Such pronouncement applies to the HLURB as well; to restate, where contempt is committed against quasi-judicial entities, the filing of contempt charges in court is allowed only when these quasi-judicial entities are not by law granted contempt powers. Executive Order No. 648, the HLURB Charter, grants the HLURB Board the power to cite and declare any person, entity or enterprise in direct or indirect contempt "[w]henever any person, entity or enterprise commits any disorderly or disrespectful conduct before the Commission or in the presence of its members or authorized representatives actually engaged in the exercise of their official functions or during the conduct of any hearing or official inquiry by the said Commission, at the place or near the premises where such hearing or proceeding is being conducted with obstruct, distract, interfere or in any other way disturb, the performance of such functions or the conduct of such hearing or proceeding;" or "[w]henever any person, enterprise or entity fails or refuses to comply with or obey without justifiable reason, any lawful order, decision, writ or process of the Commission."[43] Accordingly, Rule 22 of the

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[42] *Id.* at 454-455.

[43] Section 5 (q), on Powers and Duties of the Commission, Article IV, on Establishment, Constitution, Powers, Duties of the Human Settlements Regulatory Commission (now HLURB).

2011 HLURB Revised Rules of Procedure, on Contempt, provides:

> Section 81. Indirect Contempt. — Any person, enterprise, or entity who fails or refuses to comply with or obey without justifiable reason any lawful order, decision, writ, or process of the Board of Commissioners or its Arbiters or Mediators, or any of its authorized officials, said person, enterprise, or entity shall, upon motion, be declared in indirect contempt and may, in addition to the fine of ₱2,000.00, be imposed a fine of ₱500.00 for each day that the violation or failure or refusal to comply continues, and order the confinement of the offender until the order or decision shall have been complied with. In case the offender is a partnership, corporation, or association or enterprise, the above fine shall be imposed on the assets of such entity and the president, managing partner, or chief executive officer thereof shall be ordered confined.

Thus, for respondents' perceived misbehavior, disobedience, and disregard of the May 24, 2012 Order of Arbiter Babiano and the HLURB Board's April 2, 1997 Decision, petitioners should have invoked the contempt powers of the HLURB instead. This Court does not have jurisdiction to resolve the instant Petition.

WHEREFORE, the Petition is **DISMISSED**.

SO ORDERED.

Carpio, Acting C.J.[*] (*Chairperson*), *Mendoza,* and *Leonen, JJ.,* concur.

Brion, J., on official leave.

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[*] Per Special Order No. 2353 dated June 2, 2016.

THIRD DIVISION

[G.R. No. 203458. June 6, 2016]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **QUIRINO BALMES *y* CLEOFE,** *appellant.*

SYLLABUS

1. **REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE TRIAL COURT'S EVALUATION AND CONCLUSION ON CREDIBILITY OF WITNESSES IN RAPE CASES ARE GENERALLY ACCORDED GREAT WEIGHT AND RESPECT, AND AT TIME EVEN FINALITY; EXCEPTION.—** The settled rule is that the trial court's evaluation and conclusion on the credibility of witnesses in rape cases are generally accorded great weight and respect, and at times even finality, and that its findings are binding and conclusive on the appellate court, unless there is a clear showing that it was reached arbitrarily or it appears from the records that certain facts or circumstances of weight, substance or value were overlooked, misapprehended or misappreciated by the lower court and which, if properly considered, would alter the result of the case. Having seen and heard the witnesses themselves and observed their behavior and manner of testifying, the trial court stood in a much better position to decide the question of credibility. Indeed, trial judges are in the best position to assess whether the witness is telling a truth or lie as they have the direct and singular opportunity to observe the facial expression, gesture and tone of voice of the witness while testifying.

2. **CRIMINAL LAW; REVISED PENAL CODE; RAPE; THE COURTS ARE GUIDED BY THREE PRINCIPLES TO DETERMINE THE INNOCENCE OR GUILT OF THE ACCUSED; ENUMERATED.—** To determine the innocence or guilt of the accused in rape cases, the courts are guided by three well-entrenched principles: (1) an accusation of rape can be made with facility and while the accusation is difficult to prove, it is even more difficult for the accused, though innocent, to disprove; (2) considering that in the nature of things, only two persons are usually involved in the crime of rape, the

testimony of the complainant should be scrutinized with great caution; and (3) the evidence for the prosecution must stand or fall on its own merits and cannot be allowed to draw strength from the weakness of the evidence for the defense. Accordingly, in resolving rape cases, the primordial or single most important consideration is almost always given to the credibility of the victim's testimony. When the victim's testimony is credible, it may be the sole basis for the accused person's conviction since, owing to the nature of the offense, in many cases, the only evidence that can be given regarding the matter is the testimony of the offended party. A rape victim's testimony is entitled to greater weight when she accuses a close relative of having raped her, as in the case of a daughter against her father.

3. **ID.; ID.; ID.; DELAY IN REPORTING AN INCIDENT OF RAPE DUE TO DEATH THREATS DOES NOT AFFECT THE CREDIBILITY OF THE COMPLAINANT; APPLICATION IN CASE AT BAR.—** Delay in reporting an incident of rape due to death threats does not affect the credibility of the complainant, nor can it be taken against her because the charge of rape is rendered doubtful only if the delay was unreasonable and unexplained. In this case, AAA testified that it took her almost a year to report the July and September 1992 incidents to her paternal grandmother because she could not go to the latter's house as Quirino was always guarding her at the time. Likewise, when she was working as a saleslady of a certain Nick Chua in Calapan public market, her father would always fetch her from work, already at the store upon its closing. BBB corroborated this, attesting that AAA was regularly scolded by Quirino and that she was never allowed to go out of the house alone.

4. **ID.; ID.; ID.; DENIAL, AS A DEFENSE; THE DIRECT, POSITIVE AND CATEGORICAL TESTIMONY OF THE PROSECUTION WITNESSES, ABSENT SHOWING OF ILL-MOTIVE PREVAILS OVER THE DEFENSE OF DENIAL; PRESENT IN CASE AT BAR.—** The direct, positive and categorical testimony of the prosecution witnesses, absent any showing of ill-motive, prevails over the defense of denial. Like alibi, denial is an inherently weak and easily fabricated defense. It is a self-serving negative evidence that cannot be given greater weight than the stronger and more trustworthy affirmative testimony of a credible witness. In the present case,

there is no showing of any improper motive on the part of AAA and the other witnesses for the prosecution to falsely testify against Quirino. In fact, he admitted in open court that, both BBB and CCC did not receive any admonition or scolding from him. Hence, the logical conclusion is that no such improper motive exists and that their testimonies are worthy of full faith and credence.

APPEARANCES OF COUNSEL

Public Attorney's Office for appellant.
Office of the Solicitor General for appellee.

D E C I S I O N

PERALTA, *J.*:

On appeal is the February 6, 2012 Decision[1] of the Court of Appeals (*CA*) in CA-G.R. CR-H.C. No. 04148, which affirmed with modification the May 7, 2009 Joint Decision[2] of Regional Trial Court (*RTC*), Branch 40, Calapan City, Oriental Mindoro, in Criminal Cases No. C-03-7163 to C-03-7165, convicting appellant Quirino Balmes *y* Cleofe of three (3) counts of rape committed against his daughter, AAA.

*for correction-justice

On January 20, 2003, three (3) separate Informations were filed charging appellant Quirino as follows:

CRIMINAL CASE NO. C-03-7163

That sometime in the month of July 1992, at Barangay Sto. Niño, City of Calapan, Province of Oriental Mindoro, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, while armed with a bladed instrument, motivated by lust and unchaste design, and by means of force and intimidation, willfully, unlawfully and feloniously did lie, and succeed in having carnal knowledge with

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[1] Penned by Associate Justice Rodil V. Zalameda, with Associate Justices Rebecca De Guia-Salvador and Normandie B. Pizarro, concurring; *rollo*, pp. 2-21.

[2] CA *rollo*, pp. 55-64.

one **AAA**, [his] own daughter, against her will and without her consent, to the damage and prejudice of the latter.

Contrary to law.[3]

CRIMINAL CASE NO. C-03-7164

That sometime in the month of September 1992 at around 1:00 in the afternoon, at Barangay Sto. Niño, City of Calapan, Province of Oriental Mindoro, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, while armed with a bladed instrument, motivated by lust and unchaste design, and by means of force and intimidation, willfully, unlawfully and feloniously did lie, and succeed in having carnal knowledge with one **AAA**, [his] own daughter, against her will and without her consent, to the damage and prejudice of the latter.

Contrary to law.[4]

CRIMINAL CASE NO. C-03-7165

That on or about the 23rd of May 2002 at around 7:30 in the evening, at Barangay Sto. Niño, City of Calapan, Province of Oriental Mindoro, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, while armed with a bladed instrument, motivated by lust and unchaste design, and by means of force and intimidation, willfully, unlawfully and feloniously did lie, and succeed in having carnal knowledge with one **AAA**, [his] own daughter, against her will and without her consent, to the damage and prejudice of the latter.

Contrary to law.[5]

In his arraignment on May 14, 2003, Quirino pleaded not guilty to the crime charged.[6] Joint trial ensued while he was detained in the provincial jail.[7]

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[3] Records (Folder I), p. 1.

[4] *Id.* (Folder II) at 1.

[5] *Id.* (Folder III) at 1.

[6] *Id.* (Folder I) at 24-25.

[7] *Id.* at 132.

Presented as witnesses for the prosecution were private complainant AAA, her brother BBB, her maternal aunt CCC, and the rural health physician who examined her, Dr. Angelita C. Legaspi. Only Quirino testified for the defense.

The facts, according to the prosecution, are as follows:

AAA was born on December 1, 1969. Her father, Quirino, is a widower whose wife, DDD, died on May 6, 1983. She has five siblings: EEE, FFF, GGG, HHH and BBB.

In the evening of July 1992, while she was asleep in the upper room of their two-storey house at Barangay Sto. Niño, Calapan City, Oriental Mindoro, AAA was awakened by her father lying beside her. Quirino, who was holding a *balisong*, told her not to create any noise since her siblings were likewise sleeping. GGG was in the same room but separated by a cabinet while HHH and BBB were downstairs. After Quirino touched AAA's entire body, including her breasts, he raised her T-shirt, lowered her pajama, and removed her underwear. She begged for mercy, uttering "*[h]uwag po itay, maawa ka sa akin*," but it fell on deaf ears. Quirino then undressed himself, moved her legs apart, and placed himself on top of her. He inserted his penis into her vagina and made a pumping motion. When AAA felt a warm substance, her father got up. Quirino warned her not to tell the incident to anybody, otherwise, she and her siblings would be killed. Because of the threat, AAA remained silent.

Two months passed, at about 1:00 p.m. in September 1992, while she was resting in the room upstairs and her siblings were attending school, AAA was again approached by Quirino. After warning her not to make any noise, he started to touch her body parts, removed her lower garments, kissed her, and licked her private organ. He then stood up, removed his shorts, placed himself on top of her, and inserted his penis into her vagina. AAA, who could not move because a *balisong* was poking at her neck, pleaded for mercy. When his carnal desires were consummated, Quirino repeated his threat to AAA, who again remained silent.

Meantime, from 1994 until 1998, AAA stayed in Manila and worked as a saleslady in a factory. She ran away because she did not like the way her father strictly administered the house and his desire to rape her everytime.[8] Moreover, after confiding to her paternal grandmother, she was advised "to go away because that would be a great shame to the family."[9] She went back to Calapan when her father and brother fetched her upon knowing that she got pregnant by her boyfriend.

On May 23, 2002, at around 7:30 p.m., AAA was again raped by her father while she was in their house, at a room with her three-year-old daughter.[10] Quirino said that he wanted to have sexual intercourse. She refused, but he insisted and threatened to kill her as well as her siblings and daughter. He touched her body parts, forcefully pulled her pajama and underwear, moved her legs apart, placed himself on top of her, inserted his penis into her vagina, and "*nagparaos*." Still afraid of her father, AAA kept her silence.

A week after, however, AAA divulged to GGG their father's bestial acts. Subsequently, on November 22, 2002, she was able to disclose the same to BBB, while her daughter had a check-up at the Ma. Estrella Clinic. On the same day, the three of them agreed to immediately go to their maternal grandmother III and aunt CCC in Barangay Loyal, Victoria, Oriental Mindoro. When Quirino failed to explain his side, they went to the Victoria Police Station, which referred them to the PNP Provincial Headquarters. The sworn statements of AAA, BBB, and CCC were then taken. As a result thereof, Quirino was later apprehended.

On May 7, 2009, the RTC convicted Quirino of the crime charged. The *fallo* of the Joint Decision states:

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[8] TSN, February 2, 2004, pp. 20-21.

[9] TSN, November 12, 2003, p. 16.

[10] At the time, BBB and GGG were attending Flores de Mayo; EEE was in Kuwait; FFF was in Manila; and HHH stowed away to a place unknown to AAA; TSN, November 13, 2003, pp. 4-5.

ACCORDINGLY, finding herein accused **Quirino Balmes y Cleofe** guilty beyond reasonable doubt as principal of the crime of three (3) counts of rape in Criminal Case No. C-03-7163 punishable then under Article 366 of the Revised Penal Code and in Criminal Case Nos. C-03-7164 and C-03-7165, now punishable under Article 266-A of the Revised Penal Code, said accused is hereby sentenced to suffer the penalty of **THREE (3) RECLUSION PERPETUA**, with all the accessory penalties as provided for by law.

Said accused is hereby directed to indemnify the private complainant [AAA] the amount of Php100,000.00 as civil indemnity, the amount of Php75,000.00 as moral damages and the amount of Php50,000.00 as exemplary damages and to pay the costs.

SO ORDERED.[11]

The RTC found that the constitutional presumption of innocence of the accused had been overcome by his guilt beyond reasonable doubt. It noted that AAA's testimony on the witness stand was positive, clear and convincing, and free from serious contradictions. In contrast, Quirino's denial of the crime charged was uncorroborated and self-serving and that his reason as to why AAA filed the rape charges against him was too flimsy and insignificant compared to the humiliation, anxiety and exposure to public trial as well as the family scandal brought about by the disclosure of the rape charges. Moreover, it was opined that the failure of the defense to present any child or relative of Quirino to support his denial is a clear manifestation that even his own family was ashamed of what he did.

On appeal, the CA saw no reason to deviate from the findings of the court *a quo* as it upheld its assessment of the credibility of the prosecution witnesses especially that of AAA's. However, in adopting the recommendation of the Office of the Solicitor General (*OSG*), the trial court's judgment was modified, thus:

WHEREFORE, premises considered, the assailed Decision is hereby **AFFIRMED** insofar as finding accused-appellant guilty beyond reasonable doubt of the crime of rape on all counts. However, the penalties must be **MODIFIED** to read as follows —

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[11] CA *rollo*, p. 64.

Accused-appellant is hereby sentenced to suffer the penalty of *reclusion perpetua* for each count of rape without eligibility for parole, in accordance with Republic Act 9364. Furthermore, accused-appellant is required to indemnify private complainant the following —

a. Civil indemnity of Seventy-Five Thousand (₱75,000.00) Pesos for each count of rape;

b. Moral damages of Seventy-Five Thousand (₱75,000.00) Pesos for each count of rape; and

c. Exemplary Damages of Thirty Thousand (₱30,000.00) Pesos for each count of rape.

SO ORDERED.[12]

Before Us, Quirino manifested that he would no longer file a Supplemental Brief considering that he had exhaustively discussed the assigned errors in his Appellant's Brief in the CA.[13] In view thereof, the OSG dispensed with the filing of a Supplemental Brief and instead submitted the case for decision.[14]

The appeal is unmeritorious.

The settled rule is that the trial court's evaluation and conclusion on the credibility of witnesses in rape cases are generally accorded great weight and respect, and at times even finality, and that its findings are binding and conclusive on the appellate court, unless there is a clear showing that it was reached arbitrarily or it appears from the records that certain facts or circumstances of weight, substance or value were overlooked, misapprehended or misappreciated by the lower court and which, if properly considered, would alter the result of the case.[15]

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[12] *Id.* at 20.

[13] *Rollo*, pp. 33-36.

[14] *Id.* at 37-40.

[15] *People v. Padilla*, 617 Phil. 170, 183 (2009); *People v. Lopez*, 617 Phil. 733, 744 (2009); and *People v. Villamor*, G.R. No. 202187, February 10, 2016.

Having seen and heard the witnesses themselves and observed their behavior and manner of testifying, the trial court stood in a much better position to decide the question of credibility.[16] Indeed, trial judges are in the best position to assess whether the witness is telling a truth or lie as they have the direct and singular opportunity to observe the facial expression, gesture and tone of voice of the witness while testifying.[17]

To determine the innocence or guilt of the accused in rape cases, the courts are guided by three well-entrenched principles: (1) an accusation of rape can be made with facility and while the accusation is difficult to prove, it is even more difficult for the accused, though innocent, to disprove; (2) considering that in the nature of things, only two persons are usually involved in the crime of rape, the testimony of the complainant should be scrutinized with great caution; and (3) the evidence for the prosecution must stand or fall on its own merits and cannot be allowed to draw strength from the weakness of the evidence for the defense.[18] Accordingly, in resolving rape cases, the primordial or single most important consideration is almost always given to the credibility of the victim's testimony.[19] When the victim's testimony is credible, it may be the sole basis for the accused person's conviction since, owing to the nature of the offense, in many cases, the only evidence that can be given regarding the matter is the testimony of the offended party.[20] A rape victim's testimony is entitled to greater weight when she accuses a close relative of having raped her, as in the case of a daughter against her father.[21]

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[16] *People v. Padilla, supra*.

[17] *People v. Lopez, supra* note 15, at 744; *People v. Madsali, et al.*, 625 Phil. 431, 451 (2010); and *People v. Villamor*, G.R. No. 202187, February 10, 2016.

[18] *People v. Padilla, supra* note 15, at 182-183.

[19] *Id.* at 183; *People v. Madsali, et al., supra* note 17, at 447; and *People v. Villamor*, G.R. No. 202187, February 10, 2016.

[20] *People v. Madsali, et al., supra* note 17, at 447.

[21] *People v. Padilla, supra* note 15, at 184.

After an exhaustive review of the entire case records, We see no reason to reverse or modify the findings of the RTC and the CA as to the credibility of AAA's testimony and the weakness of Quirino's defense of denial.

Certainly, AAA's failure to shout or wake up her siblings or her silence on the repeated rape incidents does not affect her credibility.

> x x x The Court had consistently found that there is no uniform behavior that can be expected from those who had the misfortune of being sexually molested. While there are some who may have found the courage early on to reveal the abuse they experienced, there are those who have opted to initially keep the harrowing ordeal to themselves and attempted to move on with their lives. This is because a rape victim's actions are oftentimes overwhelmed by fear rather than by reason. The perpetrator of the rape hopes to build a climate of extreme psychological terror, which would numb his victim into silence and submissiveness. In fact, incestuous rape further magnifies this terror for the perpetrator in these cases, such as the victim's father, is a person normally expected to give solace and protection to the victim. Moreover, in incest, access to the victim is guaranteed by the blood relationship, magnifying the sense of helplessness and the degree of fear.[22]

This Court has recognized that "[t]he fear of [the victim] that her father would kill her and the other members of her family, should she report the incident to her mother or the police, is not so unbelievable nor is it contrary to human experience."[23] Here, the constant fear towards Quirino was actually not experienced by AAA alone. BBB testified that prior to November 2002, he already noticed a sign that his sister was a victim of sexual molestation as she always cried whenever her father approached her.[24] Despite this observation, he did not do

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[22] *People v. Villamor*, G.R. No. 202187, February 10, 2016.

[23] *People v. Prodenciado*, G.R. No. 192232, December 10, 2014 (Resolution).

[24] TSN, March 28, 2007, pp. 11-12.

anything.[25] He also confirmed that AAA did not file a complaint because she was afraid.[26] Similarly, AAA stated that when she informed GGG, the latter did not do anything as she was also afraid.[27]

Delay in reporting an incident of rape due to death threats does not affect the credibility of the complainant, nor can it be taken against her because the charge of rape is rendered doubtful only if the delay was unreasonable and unexplained.[28] In this case, AAA testified that it took her almost a year to report the July and September 1992 incidents to her paternal grandmother because she could not go to the latter's house as Quirino was always guarding her at the time.[29] Likewise, when she was working as a saleslady of a certain Nick Chua in Calapan public market, her father would always fetch her from work, already at the store upon its closing.[30] BBB corroborated this, attesting that AAA was regularly scolded by Quirino and that she was never allowed to go out of the house alone.[31]

The fact that AAA resolved to still remain under the same roof with their father does not weaken the rape charges. Following the second incident, the eldest of her siblings, EEE, arrived from Manila and stayed in their house;[32] hence, possibly providing temporary security. More importantly, there was a real threat to the lives of her remaining younger brothers and sister, which she did not tell them due to their minority.[33] Lastly, after running away for four years, she returned to Calapan because

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[25] *Id.* at 11.

[26] *Id.* at 13.

[27] TSN, February 2, 2004, p. 17.

[28] *People v. Madsali, et al.*, *supra* note 17, at 443.

[29] TSN, February 2, 2004, p. 23.

[30] *Id.* at 25-27.

[31] TSN, November 2, 2007, p. 4.

[32] TSN, November 12, 2003, p. 14.

[33] TSN, February 2, 2004, pp. 19, 27-28.

she did not expect that her father would repeat the same ruthless act, mistakenly thinking that he already reformed himself.[34]

The direct, positive and categorical testimony of the prosecution witnesses, absent any showing of ill-motive, prevails over the defense of denial.[35] Like alibi, denial is an inherently weak and easily fabricated defense.[36] It is a self-serving negative evidence that cannot be given greater weight than the stronger and more trustworthy affirmative testimony of a credible witness.[37] In the present case, there is no showing of any improper motive on the part of AAA and the other witnesses for the prosecution to falsely testify against Quirino. In fact, he admitted in open court that, both BBB and CCC did not receive any admonition or scolding from him.[38] Hence, the logical conclusion is that no such improper motive exists and that their testimonies are worthy of full faith and credence.

Quirino alleged that he did not have a good relationship with his children since he had been castigating them for leaving the house without his permission and doing things that they wanted.[39] He claimed that he does not know exactly how many times AAA left the house from 1992 to 2002.[40] These will not suffice. Alleged motives of family feuds, resentment, or revenge are not uncommon defenses, and have never swayed the Court from lending full credence to the testimony of a complainant who

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[34] *Id.* at 23; TSN, November 13, 2003, p. 24.

[35] *People v. Padilla*, *supra* note 15, at 185; *People v. Madsali*, *et al.*, *supra* note 17, at 446; and *People v. Villamor*, G.R. No. 202187, February 10, 2016.

[36] *People v. Madsali*, *et al.*, *supra* note 17, at 446 and *People v. Villamor*, G.R. No. 202187, February 10, 2016.

[37] *People v. Lopez*, *supra* note 15, at 745 and *People v. Madsali*, *et al.*, *supra* note 17, at 446.

[38] TSN, September 1, 2008, pp. 8-9.

[39] *Id.* at 4-6.

[40] *Id.* at 6-7.

remained steadfast throughout her direct and cross-examinations.[41] Besides, no woman would cry rape, allow an examination of her private parts, subject herself (and even her entire family) to humiliation, go through the rigors of public trial, and taint her good name if her claim were not true.[42]

As the lower courts found, Quirino's defenses are weak and unconvincing. While he denied the charges against him, he failed to produce any material and competent evidence to controvert the same and justify an acquittal. He neither established his presence in another place at the time of the commission of the offense and the physical impossibility for him to be at the scene of the crime nor presented a single witness to stand in his favor.[43]

Finally, the CA correctly imposed the penalty of *reclusion perpetua* without eligibility for parole. Criminal Case Nos. C-03-7163 to 7164 occurred in 1992, while Criminal Case No. C-03-7165 transpired in 2002. At the time, the law in force[44] provided for the penalty of *reclusion perpetua* to death whenever the crime of rape is committed with the use of a deadly weapon. Considering that the aggravating circumstance of relationship between AAA and Quirino was sufficiently alleged in the Information and proven during the trial, the rape would have warranted the imposition of death penalty. However, when the RTC promulgated its Decision in 2009, Republic Act No. 9346 already prohibited the imposition of death sentence. In lieu thereof, the penalty of *reclusion perpetua* shall be imposed. Consequently, the trial court penalized Quirino to three (3) *reclusion perpetua*. As amended by the CA, pursuant to Section 3 of R.A. No. 9346, he is also no longer eligible for parole.[45]

for correction

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[41] *People v. Prodenciado*, G.R. No. 192232, December 10, 2014 (Resolution).

[42] *People v. Padilla*, *supra* note 15, at 184.

[43] See *People v. Villamor*, G.R. No. 202187, February 10, 2016.

[44] Revised Penal Code, as amended by Republic Act No. 7659 and Republic Act No. 8353.

[45] See *People v. Lopez*, *supra* note 15, at 746.

With respect to the monetary awards granted to AAA, We modify. The fairly recent case of *People v. Ireneo Jugueta*[46] held that where the penalty imposed is death but reduced to *reclusion perpetua* because of R.A. No. 9346, the civil indemnity *ex delicto*, moral damages, and exemplary damages shall be in the amount of ₱100,000.00 each. Further, interest at the rate of six percent (6%) *per annum* is imposed on all the amounts awarded, from the date of finality of this judgment until the damages are fully paid.[47]

WHEREFORE, premises considered, the instant appeal is **DISMISSED**. The February 6, 2012 Decision of the Court of Appeals in CA-G.R. CR-H.C. No. 04148, which sustained with modification the May 7, 2009 Joint Decision of the Regional Trial Court, Branch 40, Calapan City, Oriental Mindoro, in Criminal Case Nos. C-03-7163 to C-03-7165, convicting appellant Quirino Balmes *y* Cleofe of three (3) counts of rape and imposing the penalty of *reclusion perpetua* for each count, without eligibility for parole, under Republic Act No. 9346 is hereby **AFFIRMED WITH THE MODIFICATION** that Quirino Balmes should pay AAA the amount of ₱100,000.00 as civil indemnity *ex delicto*, ₱100,000.00 as moral damages, and ₱100,000.00 as exemplary damages. In addition, interest at the rate of six percent (6%) *per annum* is imposed on all the amounts awarded, from the date of finality of this judgment until the damages are fully paid.

SO ORDERED.

Velasco, Jr. (*Chairperson*), *Perez, Reyes,* and *Leonen,*[*] *JJ.*, concur.

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[46] G.R. No. 202124, April 5, 2016.

[47] Bangko Sentral ng Pilipinas Monetary Board Circular No. 799, Series of 2013, effective July 1, 2013, in *Nacar v. Gallery Frames*, 716 Phil. 267, 483 (2013). See also *People v. Edgardo Perez*, G.R. No. 208071, March 9, 2016.

[*] Designated Additional Member in lieu of Associate Justice Francis H. Jardeleza, per Raffle dated September 22, 2014.

THIRD DIVISION

[G.R. No. 203750. June 6, 2016]

JORGE B. NAVARRA, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES, HONGKONG and SHANGHAI BANKING CORPORATION,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI;* AS A GENERAL RULE, PETITIONS THAT LACK OR HAVE A DEFECTIVE CERTIFICATE OF NON-FORUM SHOPPING CANNOT BE CURED BY ITS SUBSEQUENT SUBMISSION OR CORRECTION; EXCEPTION; RATIONALE.— As a general rule, petitions that lack or have a defective certificate of non-forum shopping cannot be cured by its subsequent submission or correction, unless there is a reasonable need to relax the rules on the ground of substantial compliance or presence of special circumstances or compelling reasons. The court has the discretion to dismiss or not to dismiss an appellant's appeal but said discretion must be a sound one, to be exercised in accordance with the tenets of justice and fair play, having in mind the unique circumstances obtaining in each case. Technicalities, as much as possible, must be avoided. When technicality abandons its proper office as an aid to justice and instead becomes its great hindrance and chief enemy, it deserves scant consideration from courts. Litigations must be decided on their merits and not on sheer technicality, for rules of procedure are used to help secure, not override substantial justice. Every party litigant must be afforded the amplest opportunity for the proper and just determination of his cause. Thus, dismissal of appeals purely on technical grounds is frowned upon since the policy of the courts is to encourage hearings of appeals on their merits and not to apply the rules of procedure in a very rigid, technical sense. It would be more prudent for the courts to forego a technical lapse and allow the review of the parties' case on appeal to attain the ends of justice rather than to dispose of

the case on technicality and cause grave injustice to the parties, giving nothing but false impression of speedy disposal of cases.

2. CRIMINAL LAW; BATAS PAMBANSA BILANG 22 (BP 22); TWO WAYS OF VIOLATING BP 22, ENUMERATED.—There are two (2) ways of violating BP 22: (1) by making or drawing and issuing a check to apply on account or for value, knowing at the time of issue that the check is not sufficiently funded; and (2) by having sufficient funds in or credit with the drawee bank at the time of issue but failing to do so to cover the full amount of the check when presented to the drawee bank within a period of ninety (90) days. x x x BP 22 was enacted to address the rampant issuance of bouncing checks as payment for pre-existing obligations. The circulation of bouncing checks adversely affected confidence in trade and commerce. The State criminalized such practice because it was deemed injurious to public interests and was found to be pernicious and inimical to public welfare. It is an offense against public order and not an offense against property. It likewise covers all types of checks, and even checks that were issued as a form of deposit or guarantee were held to be within the ambit of BP 22. For all intents and purposes, the law was devised to safeguard the interest of the banking system and the legitimate public checking account user.

3. ID.; ID.; ID.; ELEMENTS OF THE FIRST SITUATION.— The elements of BP 22 under the first situation, pertinent to the present case, are: (1) The making, drawing and issuance of any check to apply for account or for value; (2) The knowledge of the maker, drawer, or issuer that at the time of issue he does not have sufficient funds in or credit with the drawee bank for the payment of such check in full upon its presentment; and (3) The subsequent dishonor of the check by the drawee bank for insufficiency of funds or credit or dishonor for the same reason had not the drawer, without any valid cause, ordered the bank to stop payment. x x x The mere act of issuing a worthless check is *malum prohibitum*; it is simply the commission of the act that the law prohibits, and not its character or effect, that determines whether or not the provision has been violated. Malice or criminal intent is completely immaterial. When the first and third elements of the offense are present, as in

this case, BP 22 creates a presumption *juris tantum* that the second elements exists. Thus, the maker's knowledge is presumed from the dishonor of the check for insufficiency of funds. The clear import of the law is to establish a *prima facie* presumption of knowledge of such insufficiency of funds under the following conditions: (1) the presentment within ninety (90) days from date of the check, and (2) the dishonor of the check and failure of the maker to make arrangements for payment in full within five (5) banking days from notice.

4. ID.; ID.; ID.; THE CRIMINAL LIABILITY OF THE PERSON WHO ISSUED THE BOUNCING CHECK IN BEHALF OF A CORPORATION STANDS INDEPENDENT OF THE CIVIL LIABILITY OF THE CORPORATION ITSELF; EXPLAINED.— When a corporate officer issues a worthless check in the corporate name, he may be held personally liable for violating a penal statute. The statute imposes criminal penalties on anyone who draws or issues a check on any bank with knowledge that the funds are not sufficient in such bank to meet the check upon presentment. Moreover, the corporate officer cannot shield himself from liability on the ground that it was a corporate act and not his personal act. The general rule is that a corporate officer who issues a bouncing corporate check can be held civilly liable when he is convicted. The criminal liability of the person who issued the bouncing checks in behalf of a corporation stands independent of the civil liability of the corporation itself, such civil liability arising from the Civil Code. But BP 22 itself fused this criminal liability with the corresponding civil liability of the corporation itself by allowing the complainant to recover such civil liability, not from the corporation, but from the person who signed the check in its behalf. Consequently, what remains to be significant are the facts that the accused had deliberately issued the checks in question to cover accounts and those same checks were dishonored upon presentment, regardless of the purpose for such issuance.

APPEARANCES OF COUNSEL

Jepthe S. Daliva for petitioner.
Office of the Solicitor General for public respondent.
Puyat Jacinto & Santos for private respondent HSBC.

D E C I S I O N

PERALTA, *J.*:

Before the Court is a petition which Jorge B. Navarra filed questioning the Court of Appeals (*CA*) Resolution[1] dated July 18, 2012 in CA-G.R. CR No. 34954, which dismissed his petition due to lack of certification against forum shopping.

The pertinent factual antecedents of the case as disclosed by the records are as follows:

Petitioner Jorge Navarra is the Chief Finance Officer of Reynolds Philippines Corporation (*Reynolds*), which has been a long time client of private respondent Hongkong and Shanghai Banking Corporation (*HSBC*). On November 3, 1998, HSBC granted Reynolds a loan line of ₱82 Million and a foreign exchange line of ₱900,000.00. Thereafter, Reynolds executed several promissory notes in HSBC's favor. Subsequently, Reynolds, through Navarra and its Vice-President for Corporate Affairs, George Molina, issued seven (7) Asia Trust checks amounting to ₱45.2 Million for the payment of its loan obligation.

On July 11, 2000, when HSBC presented the subject checks for payment, said checks were all dishonored and returned for being "Drawn Against Insufficient Funds." Thus, the bank sent Reynolds a notice of dishonor on July 21, 2000. Navarra received said notice but requested HSBC to reconsider its decision to declare the corporation in default. On September 8, 2000, HSBC sent another notice of dishonor with respect to another check in the amount of ₱3.7 Million, and demanded its payment as well as that of the six (6) other checks previously dishonored. Despite said demands, however, Reynolds refused to pay. Hence, HSBC filed Informations against Navarra and Molina for violation of *Batas Pambansa Bilang* 22 (*BP 22*) before the Makati Metropolitan Trial Court (*MeTC*).

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[1] Penned by Associate Justice Amelita G. Tolentino, with Associate Justices Ramon R. Garcia, and Danton Q. Bueser; concurring; *rollo*, pp. 31-32.

Upon arraignment, Navarra and Molina pleaded not guilty to the charge. Trial on the merits then proceeded.

On April 27, 2010, the Makati MeTC, Branch 66 rendered a Decision finding both the accused guilty of the offense charged, with a dispositive portion that reads:

> **WHEREFORE**, in view of the foregoing, the prosecution having proven the guilt of the accused beyond reasonable doubt, the Court finds accused **JORGE B. NAVARRA** and **GEORGE C. MOLINA GUILTY** of the offense of Violation of Batas Pambansa Blg. 22 on seven (7) counts under Criminal Case Nos. 312262 to 312268 and hereby sentences them to pay a **FINE** of ₱200,000.00 for each count or a total of ₱1.4 million with subsidiary imprisonment in case of insolvency.
>
> Accused **JORGE B. NAVARRA** and **GEORGE C. MOLINA** are further **ORDERED** to pay private complainant Hongkong Shanghai and Banking Corporation (HSBC) by way of civil indemnity the respective face amount of the seven (7) bounced subject checks or a TOTAL AMOUNT OF ₱45.2 millions with interest at 12% per annum from date of the filing of this complaint on February 16, 2001 until the amount is fully paid and costs of suit.
>
> **SO ORDERED**.[2]

Navarra then elevated the case to the Regional Trial Court (*RTC*). On June 8, 2011, the Makati RTC, Branch 57 affirmed the MeTC Decision, thus:

> WHEREFORE, premises considered, the decision of the Metropolitan Trial Court is hereby AFFIRMED in Toto.
>
> SO ORDERED.[3]

Thereafter, Navarra filed a petition for review before the CA which was docketed as CA-G.R. CR No. 34954. On July 18, 2012, the CA dismissed said petition for failure to attach

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[2] *Id.* at 149-159.

[3] *Id.* at 189-190.

a certification of non-forum shopping.[4] The CA likewise denied Navarra's subsequent motion for reconsideration.[5]

Hence, the instant petition.

Navarra raises the following issues to be resolved by the Court:

I.

WHETHER OR NOT THE COURT OF APPEALS COMMITTED A REVERSIBLE ERROR WHEN IT DISMISSED NAVARRA'S PETITION BASED SOLELY ON TECHNICALITIES.

II.

WHETHER OR NOT NAVARRA IS GUILTY BEYOND REASONABLE DOUBT OF VIOLATION OF BP 22.

The Court shall first tackle the procedural issue of the case. The CA dismissed Navarra's petition for failure to comply with the requirement of certification against forum shopping. It hinged its ruling on Section 5, Rule 7 of the Rules of Court which states:

Section 5. *Certification against forum shopping*. — The plaintiff or principal party shall certify under oath in the complaint or other initiatory pleading asserting a claim for relief, or in a sworn certification annexed thereto and simultaneously filed therewith: (a) that he has not theretofore commenced any action or filed any claim involving the same issues in any court, tribunal or quasi-judicial agency and, to the best of his knowledge, no such other action or claim is pending therein; (b) if there is such other pending action or claim, a complete statement of the present status thereof; and (c) if he should thereafter learn that the same or similar action or claim has been filed or is pending, he shall report that fact within five (5) days therefrom to the court wherein his aforesaid complaint or initiatory pleading has been filed.

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[4] *Id.* at 31-32.

[5] *Id.* at 33-34.

Failure to comply with the foregoing requirements shall not be curable by mere amendment of the complaint or other initiatory pleading but shall be cause for the dismissal of the case without prejudice, unless otherwise provided, upon motion and after hearing. The submission of a false certification or non-compliance with any of the undertakings therein shall constitute indirect contempt of court, without prejudice to the corresponding administrative and criminal actions. If the acts of the party or his counsel clearly constitute willful and deliberate forum shopping, the same shall be ground for summary dismissal with prejudice and shall constitute direct contempt, as well as a cause for administrative sanctions. (n)

As a general rule, petitions that lack or have a defective certificate of non-forum shopping cannot be cured by its subsequent submission or correction, unless there is a reasonable need to relax the rules on the ground of substantial compliance or presence of special circumstances or compelling reasons.[6] The court has the discretion to dismiss or not to dismiss an appellant's appeal but said discretion must be a sound one, to be exercised in accordance with the tenets of justice and fair play, having in mind the unique circumstances obtaining in each case. Technicalities, as much as possible, must be avoided. When technicality abandons its proper office as an aid to justice and instead becomes its great hindrance and chief enemy, it deserves scant consideration from courts. Litigations must be decided on their merits and not on sheer technicality, for rules of procedure are used to help secure, not override substantial justice. Every party litigant must be afforded the amplest opportunity for the proper and just determination of his cause. Thus, dismissal of appeals purely on technical grounds is frowned upon since the policy of the courts is to encourage hearings of appeals on their merits and not to apply the rules of procedure in a very rigid, technical sense. It would be more prudent for the courts to forego a technical lapse and allow the review of the parties' case on appeal to attain the ends of justice rather than to dispose of the case on technicality and cause grave

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[6] *Fernandez v. Villegas*, G.R. No. 200191, August 20, 2014.

injustice to the parties, giving nothing but false impression of speedy disposal of cases.[7]

However, even if the Court is to rule on the merits of the case, the same will still have to decide against Navarra.

The cardinal issues involved in the present case are more legal than factual in nature, such that the Court can duly take cognizance of and pass upon the same. Also, nothing prevents the Court from settling even questions of fact if it deems that a review or reassessment is warranted in order to avoid further delay or worse, a miscarriage of justice. At any rate, the factual question as to whether the checks were issued merely as a condition for the restructuring of the obligation or for actual payment of the loan had already been settled by the trial courts and the CA. There is no cogent reason to deviate from the findings of said courts. Absent any proof that the lower courts' findings are entirely devoid of any substantiation on record, the same must necessarily stand.[8]

There are two (2) ways of violating BP 22: (1) by making or drawing and issuing a check to apply on account or for value, knowing at the time of issue that the check is not sufficiently funded; and (2) by having sufficient funds in or credit with the drawee bank at the time of issue but failing to do so to cover the full amount of the check when presented to the drawee bank within a period of ninety (90) days.[9]

The elements of BP 22 under the first situation, pertinent to the present case, are:

(1) The making, drawing and issuance of any check to apply for account or for value;

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[7] *Martin Peñoso and Elizabeth Peñoso v. Macrosman Dona*, 549 Phil. 39, 46 (2007).

[8] *Luis S. Wong v. Court of Appeals and People of the Philippines*, 403 Phil. 830, 839 (2001).

[9] *Id.*

(2) The knowledge of the maker, drawer, or issuer that at the time of issue he does not have sufficient funds in or credit with the drawee bank for the payment of such check in full upon its presentment; and

(3) The subsequent dishonor of the check by the drawee bank for insufficiency of funds or credit or dishonor for the same reason had not the drawer, without any valid cause, ordered the bank to stop payment.[10]

Navarra maintains that the first element does not exist because the checks were not issued to apply for account or for value. He asserts that the loans which HSBC had extended were clean loans, meaning they were not secured by any kind of collateral. Thus, Reynolds had no other reason to issue the subject post-dated checks in favor of HSBC except as a condition for the possible restructuring of its loan. This flawed argument, however, has no factual basis, the trial courts having ruled that the checks were, in fact, in payment of the company's outstanding obligation, and not as a mere condition. Navarra also failed to substantiate his claim with any concrete agreement between Reynolds and HSBC that the issuance of the post-dated checks was indeed just a condition for the restructuring of the loan. Therefore, Navarra's uncorroborated claim is, at best, self-serving and thus, cannot be given weight. Neither is the argument supported by legal basis, for what BP 22 punishes is the mere issuance of a bouncing check and not the purpose for which it was issued nor the terms and conditions relating to its issuance. For to determine the reason for which checks are issued, or the terms and conditions for their issuance, will greatly erode the public's faith in the stability and commercial value of checks as currency substitutes, and bring about havoc in trade and in banking communities. The mere act of issuing a worthless check is *malum prohibitum*;[11] it is simply the commission of the act that the law prohibits, and not its character or effect, that

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[10] *Id.*

[11] *Id.*

determines whether or not the provision has been violated. Malice or criminal intent is completely immaterial.[12]

When the first and third elements of the offense are present, as in this case, BP 22 creates a presumption *juris tantum* that the second element exists. Thus, the maker's knowledge is presumed from the dishonor of the check for insufficiency of funds. The clear import of the law is to establish a *prima facie* presumption of knowledge of such insufficiency of funds under the following conditions: (1) the presentment within ninety (90) days from date of the check, and (2) the dishonor of the check and failure of the maker to make arrangements for payment in full within five (5) banking days from notice. Here, after the checks were dishonored, HSBC duly notified Reynolds of such fact and demanded for the payment of the full amount of said checks, but the latter failed to pay.[13]

The fact that Navarra signed the subject checks in behalf of Reynolds cannot, in any way, exculpate him from liability, criminal or civil. Navarra insists that he cannot be held civilly liable since he is merely a corporate officer who signed checks for the corporation.

Unfortunately, the law clearly declares otherwise. Section 1 of BP 22 provides:

Section 1. *Checks without sufficient funds.*

x x x x x x x x x

Where the check is drawn by a corporation, company or entity, the person or persons, who actually signed the check in behalf of such drawer shall be liable under this Act.

BP 22 was enacted to address the rampant issuance of bouncing checks as payment for pre-existing obligations. The circulation of bouncing checks adversely affected confidence in trade and

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[12] *Henry T. Go v. The Fifth Division, Sandiganbayan, et al.*, 558 Phil. 736, 744 (2007).

[13] *Supra* note 8.

commerce. The State criminalized such practice because it was deemed injurious to public interests and was found to be pernicious and inimical to public welfare. It is an offense against public order and not an offense against property. It likewise covers all types of checks, and even checks that were issued as a form of deposit or guarantee were held to be within the ambit of BP 22.[14] For all intents and purposes, the law was devised to safeguard the interest of the banking system and the legitimate public checking account user.[15]

When a corporate officer issues a worthless check in the corporate name, he may be held personally liable for violating a penal statute. The statute imposes criminal penalties on anyone who draws or issues a check on any bank with knowledge that the funds are not sufficient in such bank to meet the check upon presentment. Moreover, the corporate officer cannot shield himself from liability on the ground that it was a corporate act and not his personal act. The general rule is that a corporate officer who issues a bouncing corporate check can be held civilly liable when he is convicted. The criminal liability of the person who issued the bouncing checks in behalf of a corporation stands independent of the civil liability of the corporation itself, such civil liability arising from the Civil Code. But BP 22 itself fused this criminal liability with the corresponding civil liability of the corporation itself by allowing the complainant to recover such civil liability, not from the corporation, but from the person who signed the check in its behalf.[16]

Consequently, what remains to be significant are the facts that the accused had deliberately issued the checks in question to cover accounts and those same checks were dishonored upon presentment, regardless of the purpose for such issuance.[17]

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[14] *Jaime U. Gosiaco v. Leticia Ching and Edwin Casta*, 603 Phil. 457, 464 (2009).

[15] *Magno v. CA*, G.R. No. 96132, June 26, 1992.

[16] *Supra* note 14.

[17] *Alicia F. Ricaforte v. Leon L. Jurado*, 559 Phil. 97, 114 (2007).

Furthermore, the legislative intent behind the enactment of BP 22, as may be gathered from the statement of the bill's sponsor when then Cabinet Bill No. 9 was introduced before the *Batasan Pambansa*, is to discourage the issuance of bouncing checks, to prevent checks from becoming "useless scraps of paper" and to restore respectability to checks, all without distinction as to the purpose of the issuance of the checks. Said legislative intent is made all the more certain when it is considered that while the original text of the bill had contained a proviso excluding from the law's coverage a check issued as a mere guarantee, the final version of the bill as approved and enacted deleted the aforementioned qualifying proviso deliberately to make the enforcement of the act more effective. It is, therefore, clear that the real intention of the framers of BP 22 is to make the mere act of issuing a worthless check *malum prohibitum* and thus punishable under such law.[18]

It is unfortunate that despite his insistent plea of innocence, the Court fails to find any error in Navarra's conviction by the trial courts for violation of the Bouncing Checks Law. While the Court commiserates with him, as he was only performing his official duties as the finance officer of the corporation he represents, it must interpret and give effect to the statute, as harsh as it may be, because that is the law. His best recourse now is to proceed after Reynolds, in whose behalf the dishonored checks were issued, to recover the amount of damages incurred.

WHEREFORE, premises considered, the Court **DENIES** the petition for lack of merit and **AFFIRMS** the Decision of the Metropolitan Trial Court of Makati, Branch 66 dated April 27, 2010, with **MODIFICATION** as to the interest which must be six percent (6%)[19] *per annum* of the amount awarded from the time of the finality of this Decision until its full satisfaction.

SO ORDERED.

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[18] *Que v. People*, 238 Phil. 155, 160 (1987).

[19] Pursuant to the Bangko Sentral ng Pilipinas Circular No. 799, Series of 2013; *Nacar v. Gallery Frames*, G.R. No. 189871, August 13, 2013.

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

SECOND DIVISION

[G.R. No. 204769. June 6, 2016]

MAGSAYSAY MARITIME CORP., CSCS INTERNATIONAL NV and/or MARLON[*] RONO, *petitioners, vs.* **RODEL A. CRUZ,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; AS A RULE, THE SUPREME COURT IS NOT A TRIER OF FACTS AND ONLY QUESTIONS OF LAW ARE REVIEWABLE UNDER A RULE 45 PETITION; EXCEPTION; PRESENT IN CASE AT BAR.— Petitioners insist that on the 77th day from respondent's initial referral, the company-designated doctor gave him a Grade 8 disability assessment, which should have been given weight and credence. They likewise maintain that respondent committed delay and medical abandonment since he did not pursue the suggested surgery. As such, petitioners raise questions of fact, in effect, requiring the Court to re-examine the probative weight of the evidence adduced. As a rule, the Court is not a trier of fact and only questions of law are reviewable under a Rule 45 Petition. This principle applies with greater force in labor cases as questions of fact are for labor tribunals to resolve. Nonetheless, this rule admits of exceptions including instances where the findings of the lower courts or tribunals are contradictory with the other.

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[*] Spelled in some parts of the records as Marlo.

Here, considering the opposing positions of the LA and the CA, on one hand, and the NLRC on the other, the Court is compelled to resolve the factual issues and examine the evidence on record.

2. LABOR AND SOCIAL LEGISLATION; LABOR CODE; WHILE STRICT COMPLIANCE TO TECHNICAL RULES IS NOT REQUIRED IN LABOR CASES, LIBERAL POLICY SHOULD STILL BE PURSUANT TO EQUITABLE PRINCIPLES OF LAW; APPLICATION IN CASE AT BAR.— In *Misamis Oriental II Electric Service Cooperative v. Cagalawan*, the Court held that while strict compliance to technical rules is not required in labor cases, liberal policy should still be pursuant to equitable principles of law. In this regard, belated submission of evidence may be allowed only if the delay in its presentation is sufficiently justified; the evidence adduced is undeniably material to the cause of a party; and the subject evidence should sufficiently prove the allegations sought to be established. In this case, petitioners did not explain the reasons for their failure to present the September 5, 2008 Medical Report at the earliest opportunity. It was only after an unfavorable decision was rendered did petitioners present it with the CA. Petitioners' belated submission of this Report without any explanation casts doubt on its credibility especially since it does not appear to be a newly discovered evidence.

3. ID.; LABOR CONTRACT FOR SEAFARERS; CLAIM FOR DISABILITY BENEFITS; THE COMPANY-DESIGNATED DOCTOR IS EXPECTED TO ARRIVE AT A DEFINITE ASSESSMENT OF THE SEAFARER'S FITNESS TO WORK OR TO DETERMINE HIS DISABILITY WITHIN A PERIOD OF 120 OR 240 DAYS FROM REPATRIATION, OTHERWISE, THE SEAFARER IS DEEMED TOTALLY AND PERMANENTLY DISABLED AND IS THUS ENTITLED TO FULL DISABILITY COMPENSATION; CASE AT BAR.—The company-designated doctor is expected to arrive at a definite assessment of the seafarer's fitness to work or to determine his disability within a period of 120 or 240 days from repatriation. The 120-day period applies if the duration of the seafarer's treatment does not exceed 120 days. On the other hand, the 240-day period applies in case the seafarer requires further medical treatment after the lapse of the initial 120-day period. In case the company-designated doctor failed to issue a declaration within the given

periods, the seafarer is deemed totally and permanently disabled. Here, it is undisputed that respondent required medical treatment even after the lapse of 120 days from repatriation. As such, Dr. Agbayani should have made his definite assessment on respondent's condition within the aforesaid 240-day period. Unfortunately, Dr. Agbayani failed to timely issue a declaration as he only issued an assessment on respondent's disability of June 1, 2009, almost one year from the latter's repatriation. By operation of law, respondent is deemed permanently and totally disabled and is thus entitled to full disability compensation.

APPEARANCES OF COUNSEL

Del Rosario and Del Rosario Law Offices for petitioners.
Sapalo Velez Bundang & Bulilan Law Offices for respondent.

D E C I S I O N

DEL CASTILLO, *J.*:

The company-designated doctor is expected to arrive at a definite assessment of the fitness of the seafarer to work or to determine the degree of his disability within a period of 120 or 240 days from repatriation, as the case may be. If after the lapse of the 120/240-day period the seafarer remains incapacitated and the company-designated physician has not yet declared him fit to work or determined his degree of disability, the seafarer is deemed totally and permanently disabled.[1]

This Petition for Review on *Certiorari* assails the August 17, 2012 Decision[2] of the Court of Appeals (CA) in CA-G.R.

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[1] *Carcedo v. Maine Marine Philippines, Inc.*, G.R. No. 203804, April 15, 2015.

[2] CA *rollo*, pp. 403-417; penned by Associate Justice Rebecca de Guia-Salvador and concurred in by Associate Justices Apolinario D. Bruselas, Jr. and Samuel H. Gaerlan.

SP No. 120464. The CA set aside the March 31, 2011 Decision[3] of the National Labor Relations Commission (NLRC) in NLRC LAC No. 11-000944-10, and reinstated the September 27, 2010 Decision[4] of the Labor Arbiter (LA) in NLRC NCR OFW Case No. (M)11-16203-09 ordering Magsaysay Maritime Corp. (MMC) and CSCS International NV (CSCS) to jointly and severally pay Rodel A. Cruz (respondent) US$39,180.00, as disability compensation, and 10% thereof as attorney's fees. Also challenged is the December 3, 2012 CA Resolution[5] denying reconsideration of its August 17, 2012 Decision.

Factual Antecedents

On November 5, 2007, MMC, in behalf of its foreign principal, CSCS, employed respondent as housekeeping cleaner on board the vessel Costa Fortuna. Respondent's employment was for eight months (with three months extension upon mutual consent of the parties) with basic monthly salary of €306.00 and other benefits.[6] On January 27, 2008, respondent boarded the vessel.[7]

On April 23, 2008, while lifting heavy objects in the course of performing his duties, respondent experienced low back pain.[8] As a result, he was repatriated on June 19, 2008, and was immediately referred to Dr. Benigno A. Agbayani (Dr. Agbayani), the company-designated doctor.[9]

On June 20, 2008, Dr. Agbayani noted that there was no limitation on respondent's motion but the latter still complained

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[3] *Id.* at 28-35; penned by Commissioner Napoleon M. Menese and concurred in by Presiding Commissioner Raul T. Aquino and Commissioner Teresita D. Castillon-Lora.

[4] *Id.* at 160-168; penned by Labor Arbiter Arden S. Anni.

[5] *Id.* at 461-462.

[6] *Id.* at 50.

[7] *Id.* at 40.

[8] *Id.*

[9] *Id.* at 40, 58.

of pain on forward flexion of the lumbar spine.[10] On July 7, 2008, respondent's magnetic resonance imaging (MRI) scan revealed that he was afflicted with "Mild L4-5 disc bulge [but with n]o evidence of a focal disc herniation."[11] As of August 1, 2008, respondent had undergone 13 physical therapy (PT) sessions. He had shown improvement but still complained of slight but tolerable pain upon trunk flexion.[12]

On September 5, 2008, Dr. Agbayani diagnosed respondent with "Discogenic pain L4/L5; Myofacial pain syndrome erection sprain S/P Provocative Discogram and [P]ercutaneous Nucleoplasty." He gave respondent an interim disability rating of Grade 8 for "Moderate rigidity of two thirds loss of motion or lifting power of the trunk."[13]

On September 22, 2008, Dr. Agbayani declared that despite more than 20 PT sessions, respondent showed little signs of improvement and possible surgical intervention was being considered. He noted that respondent would be referred to the Pain Management Clinic.[14]

On October 2, 2008, Dr. Agbayani reported that the Pain Management Specialist recommended nucleoplasty, provocative discogram and trigger joint injection on respondent.[15] On November 4, 2008, respondent successfully underwent provocative discogram and percutaneous nucleoplasty.[16] On November 12, 2008, Dr. John Joseph O. Laceste (Dr. Laceste), Pain Management Specialist, declared that respondent's "discogenic pain over the L4-5 area has improved by at least 85% to a pain score of 0-1/10."[17]

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[10] *Id.* at 81.

[11] *Id.* at 51.

[12] *Id.* at 84.

[13] *Id.* at 445.

[14] *Id.* at 85.

[15] *Id.* at 87.

[16] *Id.* at 90.

[17] *Id.* at 91.

On December 11, 2008, respondent underwent another MRI scan revealing that he was suffering from mild degenerative changes in the lumbar spine which remained unchanged when compared to his July 7, 2008 MRI scan.[18] On December 12, 2008, Dr. Agbayani declared that respondent's illness was work-related.[19]

On January 21, 2009, respondent received sickness allowance for 120 days (from June 18, 2008 to October 15, 2008) amounting to €1,198.66.[20]

On February 12, 2009, Dr. Agbayani reported that respondent's condition had not improved despite various treatments since April 2008. Nevertheless, he reiterated that respondent's condition was work-related.[21]

On March 10, 2009, respondent's MRI scan showed that there was "small central disc protrusion with disc desiccation changes at L4-L5 level" but there were no compression deformities, spondylolisthesis nor spinal canal stenosis.[22]

On June 1, 2009, after almost one year from respondent's repatriation, Dr. Agbayani gave respondent a disability rating of Grade 8 for "moderate rigidity or two third loss of motion or lifting power of the trunk."[23]

On June 11, 2009, Dr. Laceste noted respondent's slight numbness over his right buttock and posterior thigh when standing for one to two minutes, and his pain over the L4-L5 area as well as slight tenderness of his sacro-iliac joints.[24]

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[18] *Id.* at 52.

[19] *Id.* at 92.

[20] *Id.* at 96.

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

[22] *Id.* at 53.

[23] *Id.* at 269.

[24] *Id.* at 54.

Consequently, on November 25, 2009, respondent filed a Complaint[25] for permanent and total disability benefits, sickness allowance, damages and attorney's fees against MMC, Marlon Rono, its President, and CSCS (petitioners).[26]

On February 5, 2010, respondent's physician-of-choice, Dr. Venancio P. Garduce[27] (Dr. Garduce), opined that it would be impossible for respondent to work as a seaman and recommended a disability rating of Grade 3.[28]

Respondent argued that he is entitled to disability benefits because of the reasonable connection between his work and his illness. He stressed that before his embarkation he was declared fit to work; as such, it can be logically inferred that he acquired his illness while aboard the vessel and by reason of its harsh working environment. He added that he is entitled to disability benefits as he already suffered loss and impairment in his earning capacity.[29]

Respondent denied that he is guilty of medical abandonment and insisted that he did not cause delay in his treatment.[30] According to him, his refusal to undergo surgery was valid as he previously experienced "pre-operative awareness" which caused post-traumatic stress disorder. Allegedly, he feared that he would experience the same trauma if an operation be pursued.[31]

For their part, petitioners affirmed that after having been medically repatriated respondent was diagnosed of mild L4-L5 disc bulge. They, nonetheless, asserted that respondent underwent PT sessions but in September 2008, he started to malinger and

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[25] *Id.* at 305-306.

[26] *Id.* at 40.

[27] Spelled in some part of the records as Garduque.

[28] *Id.* at 55.

[29] *Id.* at 43-45.

[30] *Id.* at 98.

[31] *Id.* at 100.

complained of pain; thus, his attending doctor referred him to a Pain Management Team. They alleged that respondent abandoned his scheduled nucleoplasty on October 24, 2008 but admitted that the procedure pushed through on November 4, 2008.[32] They also averred that respondent refused to undergo the surgery scheduled on February 23, 2009.[33] They insisted that respondent is estopped from claiming permanent and total disability benefits because the delay in his treatment is due to his own fault.[34]

Ruling of the Labor Arbiter

On September 27, 2010, the LA rendered his Decision[35] ordering MMC and CSCS to jointly and severally pay respondent disability compensation amounting to US$39,180.00 or its peso equivalent at the time of payment and 10% thereof as attorney's fees.

According to the LA, respondent already received sickness allowance for 120 days amounting to €1,198.66. Thus, the only remaining issue is whether he is entitled to disability benefits. On this, the LA gave credence to the fact that respondent was medically repatriated and that his "lumbar disc disease (disc desiccation) L4-L5 with mild disc herniation lumbar" was work-related, as confirmed by the company-designated doctor himself. Accordingly, the LA awarded disability benefits to respondent amounting to US$39,180.00 based on the Grade 3 disability rating given by respondent's physician-of-choice. He also awarded attorney's fees to respondent as he was compelled to litigate and incur expenses to protect his rights.

Petitioners appealed before the NLRC.

According to petitioners, respondent was guilty of delay and medical abandonment. They, however, contended that should

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[32] *Id.* at 58-61.

[33] *Id.* at 63.

[34] *Id.* at 66.

[35] *Id.* at 160-168.

respondent be entitled to disability benefits, the same must be pursuant to a Grade 8 disability rating given by the company-designated doctor. They also posited that the award of attorney's fees was unjustified as there were valid grounds denying respondent's claim for disability compensation.

Ruling of the National Labor Relations Commission

On March 31, 2011, the NLRC modified[36] the LA Decision. It found respondent entitled to partial and permanent disability compensation of Grade 8 amounting to US$16,795.00.

The NLRC upheld the company-designated physician's Grade 8 disability rating on the ground that it was supported by medical findings and was arrived at after close monitoring and treatment of respondent. It also deleted the award of attorney's fees as petitioners faithfully complied with their duties, including payment of sickness allowance.

On May 19, 2011, the NLRC denied[37] respondent's Motion for Reconsideration.

Respondent filed a Petition for *Certiorari* with the CA arguing that the NLRC committed grave abuse of discretion amounting to lack or excess of jurisdiction when it ruled that he is not entitled to US$39,180.00 and to attorney's fees.

Ruling of the Court of Appeals

On August 17, 2012, the CA granted[38] the Petition and accordingly set aside the March 31, 2011 NLRC Decision. The dispositive portion of the CA Decision reads:

WHEREFORE, premises considered, the petition is GRANTED and the assailed NLRC Decision dated 31 March 2011 in NLRC LAC No. 11-000944-10 is NULLIFIED and SET ASIDE. In lieu thereof, the Labor

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[36] *Id.* at 28-35.

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

[38] *Id.* at 403-417.

Arbiter's Decision dated 27 September 2010 in NLRC NCR OFW CASE No. (M)11-16203-09 is REINSTATED.[39]

The CA decreed that while it is a rule that the company-designated physician is tasked to determine the degree of disability of a seafarer, herein company-designated doctor assessed respondent's disability as Grade 8 only on June 1, 2009, or almost a year after his repatriation on June 19, 2008. It also noted that respondent failed to resume employment even after a year of continuous medical treatment, as he was still under treatment even until June 11, 2009. Furthermore, the CA held that respondent is entitled to attorney's fees equivalent to 10% of the total monetary award, pursuant to Article 2208[40] of the Civil Code.

On December 3, 2012, the CA denied[41] petitioners' Motion for Reconsideration.

Issues

Thus, petitioners filed this Petition raising the following issues:

[CAN] RESPONDENT [BE] PRESUMED TOTALLY AND PERMANENTLY DISABLED ENTITLING HIM TO MAXIMUM BENEFITS UNDER THE EMPLOYMENT CONTRACT?

AS BETWEEN THE COMPANY-DESIGNATED DOCTORS (WHO ADMINISTERED TREATMENT AND MONITORED TREATMENT) AND A PRIVATE DOCTOR FROM WHOM MERELY A 'SECOND' OPINION WAS SOUGHT, WHOSE FINDING MUST PREVAIL?[42]

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[39] *Id.* at 416-417.

[40] Article 2208. In the absence of stipulation, attorney's fees and expenses of litigation, other than judicial costs, cannot be recovered, except:

x x x x x x x x x

(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;

x x x x x x x x x

(8) In actions for indemnity under workmen's compensation and employer's liability laws[.]

[41] CA *rollo*, pp. 461-462.

[42] *Rollo*, p. 34.

Petitioners' Arguments

Petitioners posit that credence should be given to the assessment of the company-designated physician as he regularly monitored and treated respondent. They further assert that the company-designated doctor gave his declaration on respondent's condition on the 77th day from his (respondent's) initial referral, and thus within the 240-day period under the prevailing jurisprudence. They likewise maintain that respondent caused delay in his treatment; as a result he was guilty of medical abandonment.

Respondent's Argument

Respondent counters that the CA correctly reinstated the LA Decision entitling him to disability benefits because his earning capacity was impaired by reason of his ailment. He also claims that he did not cause delay or abandoned his treatment. He stresses that his refusal to continue with his surgery is justified because it is a normal choice of a person under normal circumstances. He adds that the brochure given by the company-designated doctor indicated that the final decision of whether to pursue surgery or not rests in him. He likewise maintains that he did not malinger since the feeling of pain is a usual occurrence during an operation.

Our Ruling

The Petition is without merit.

To begin with, there is now no dispute that respondent's illness is work-related, as the same had been repeatedly confirmed by the company-designated doctor himself. The remaining issues are: whether respondent is entitled to disability compensation; and, whether respondent committed medical abandonment, such that, even if he sustained a disability he is not entitled to any compensation.

Petitioners insist that on the 77th day from respondent's initial referral, the company-designated doctor gave him a Grade 8 disability assessment, which should have been given weight

and credence. They likewise maintain that respondent committed delay and medical abandonment since he did not pursue the suggested surgery. As such, petitioners raise questions of fact, in effect, requiring the Court to re-examine the probative weight of the evidence adduced.

As a rule, the Court is not a trier of fact and only questions of law are reviewable under a Rule 45 Petition. This principle applies with greater force in labor cases as questions of fact are for labor tribunals to resolve. Nonetheless, this rule admits of exceptions including instances where the findings of the lower courts or tribunals are contradictory with the other. Here, considering the opposing positions of the LA and the CA, on one hand, and the NLRC on the other, the Court is compelled to resolve the factual issues and examine the evidence on record.[43]

As above stated, petitioners contend that the company-designated doctor issued his declaration within the required period; hence, it is this declaration which should have been the basis of respondent's disability benefits.

The Court is unconvinced.

First, the Court notes that the subject September 5, 2008 Medical Report of the company-designated doctor was first presented when petitioners appended it to their Motion for Reconsideration with the CA. It was belatedly adduced even if it appears to be readily available.

In *Misamis Oriental II Electric Service Cooperative v. Cagalawan*,[44] the Court held that while strict compliance to technical rules is not required in labor cases, liberal policy should still be pursuant to equitable principles of law. In this regard, belated submission of evidence may be allowed only if the delay in its presentation is sufficiently justified; the evidence adduced is undeniably material to the cause of a party; and the subject

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[43] *Tagle v. Anglo-Eastern Crew Management, Phils., Inc.*, G.R. No. 209302, July 9, 2014, 729 SCRA 677, 687.

[44] 694 Phil. 268, 270-271, 281 (2012).

evidence should sufficiently prove the allegations sought to be established.

In this case, petitioners did not explain the reasons for their failure to present the September 5, 2008 Medical Report at the earliest opportunity. It was only after an unfavorable decision was rendered did petitioners present it with the CA. Petitioners' belated submission of this Report without any explanation casts doubt on its credibility especially since it does not appear to be a newly discovered evidence.[45]

Second, the September 5, 2008 Report of the company-designated doctor cannot be considered as material evidence that would support petitioners' position. Neither did this Report sufficiently prove that respondent is only entitled to a Grade 8 disability compensation.

Notably, the September 5, 2008 Report provides: "Interim Disability Grade: If a disability grading will be made today[,] our patient falls under 'Moderate rigidity of two thirds loss of motion or lifting power' — Grade (8) eight." [46] Being an interim disability grade, this declaration is an initial determination of respondent's condition for the time being. It is only an initial prognosis of the health status of respondent because after its issuance, respondent was still required to return for re-evaluation, and to continue therapy and medication; as such, it does not fully assess respondent's condition and cannot provide sufficient basis for the award of disability benefits in his favor.[47]

Moreover, in *Carcedo v. Maine Marine Philippines, Inc.*,[48] the Court did not give credence to the disability assessment given by the company-designated doctor as the same was merely interim and not definite. This is because after its issuance, Dario

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[45] *Id.* at 281.

[46] CA *rollo*, p. 445.

[47] See *Tagle v. Anglo-Eastern Crew Management, Phils., Inc.*, *supra* 43 note at 693-694.

[48] *Supra* note 1.

A. Carcedo (seafarer therein) still continued to require medical attention. Similarly, herein respondent needed further treatment and physical therapy even after the Interim Disability Grade was given by the company-designated doctor on September 5, 2008.

Third, we give emphasis to the finding of the CA that Dr. Agbayani in fact issued his disability rating on June 1, 2009, almost a year from respondent's repatriation.

The company-designated doctor is expected to arrive at a definite assessment of the seafarer's fitness to work or to determine his disability within a period of 120 or 240 days from repatriation. The 120-day period applies if the duration of the seafarer's treatment does not exceed 120 days. On the other hand, the 240-day period applies in case the seafarer requires further medical treatment after the lapse of the initial 120-day period. In case the company-designated doctor failed to issue a declaration within the given periods, the seafarer is deemed totally and permanently disabled.[49]

Here, it is undisputed that respondent required medical treatment even after the lapse of 120 days from repatriation. As such, Dr. Agbayani should have made his definite assessment on respondent's condition within the aforesaid 240-day period. Unfortunately, Dr. Agbayani failed to timely issue a declaration as he only issued an assessment on respondent's disability on June 1, 2009, almost one year from the latter's repatriation. By operation of law, respondent is deemed permanently and totally disabled and is thus entitled to full disability compensation.

Moreover, by reason of the lapse of the 240-day period, the opinions of the company-designated physician and of respondent's personal doctor are rendered irrelevant. As stated, after the lapse of said period, respondent is already deemed totally and permanently disabled, which entitles him to full disability benefits amounting to US$60,000.00.[50] Notably, in his complaint respondent

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[49] *Id.*

[50] *Alpha Ship Management Corp. v. Calo*, G.R. No. 192034, January 13, 2014, 713 SCRA 119, 140.

prayed for total permanent disability benefits. Also, the medical opinion of his doctor-of-choice was issued only after the filing of the complaint.

To recapitulate, the company-designated doctor's interim assessment on September 5, 2008 is a mere initial finding on respondent's condition; on the other hand, his disability rating given on June 1, 2009 was issued beyond the 240-day period. Thus, petitioners' contention — that the disability compensation in favor of respondent must be based on the disability grading given by the company-designated doctor — is untenable.

At the same time, the Court observes that while the LA Decision, which the CA reinstated, decreed that respondent is only entitled to a Grade 3 disability compensation, the LA repeatedly declared that respondent is in fact entitled to permanent and total, or to full disability compensation, to wit:

> In view of these disputed facts, this Office finds and, so hold, that [petitioners] should be held liable to [respondent] for total and permanent disability benefits x x x
>
> x x x x x x x x x
>
> [Respondent] is now in a state of permanent and total disability because of his illness. He could no longer return to his job as Housekeeping Cleaner, neither can he find any employment as seaman on board ocean-going vessel. In short, [respondent] is totally and permanently unfit for sea-service now and in the future.[51]

Similarly, the CA stressed on respondent's entitlement to permanent and total disability benefits in this manner:

> In arriving at its decision, the NLRC had obviously overlooked the fact that [respondent's] disability had already rendered him unable to perform his customary job for more than 120 days — thus making his disability **total and permanent**. x x x
>
> x x x x x x x x x

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[51] CA *rollo*, pp. 165-166.

> The records show that [respondent] was repatriated to the Philippines on June 19, 2008 and had since received continuous medical treatment. It was only a year later, or on June 1, 2009, that Dr. Agbayani was able to assess [respondent's] disability as Grade 8. However, even until June 11, 2009, [respondent] was still prescribed medication and attended to by Dr. Laceste for pain management. Due to his continuing medical treatment, [respondent] was rendered unable to work or resume employment for a continuous period of more than 120 days.[52]

Based on the foregoing, respondent is entitled to permanent and total disability compensation of US$60,000.00 because of the absence of definite assessment from the company-designated doctor within the maximum period of 240 days within which he is allowed to make his declaration; and, by the established fact that respondent is unable to return to work and had been under continuous treatment even after more than one year from his repatriation.

Finally, the Court finds no sufficient basis to conclude that respondent is guilty of medical abandonment.

As discussed, respondent was under continuous treatment from his repatriation on June 19, 2008 and even until June 11, 2009. Moreover, there is no showing that surgery was the only way to address respondent's condition as the company-designated doctor did not inform him of such fact nor warn him of the effects of his choice. Clearly, respondent did not refuse treatment to address and resolve his condition.[53] In addition, as properly declared by the LA, abandonment cannot be presumed from the acts of respondent; there must be a deliberate intention on his part by some overt acts to abandon treatment, which acts are not present here.[54]

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[52] *Id.* at 413-415; bold-facing in the original.

[53] *Eyana v. Philippine Transmarine Carriers, Inc*., G.R. No. 193468, January 28, 2015.

[54] CA *rollo*, p. 166.

In view of the foregoing, the Court holds that respondent is entitled to permanent and total disability benefits amounting to US$60,000.00.

WHEREFORE, the Petition is **DENIED**. The August 17, 2012 Decision and December 3, 2012 Resolution of the Court of Appeals in CA-G.R. SP No. 120464 are **AFFIRMED with MODIFICATION** that Magsaysay Maritime Corp. and CSCS International NV are ordered to pay Rodel A. Cruz US$60,000.00 as permanent and total disability benefits, which shall be paid in its Philippine Peso equivalent at the time of payment.

SO ORDERED.

Carpio, Acting C.J.[**] (*Chairperson*), *Mendoza*, and *Leonen, JJ.*, concur.

Brion, J., on official leave.

FIRST DIVISION

[G.R. No. 215994. June 6, 2016]

OFFICE OF THE OMBUDSMAN AND FIELD INVESTIGATION OFFICE, *petitioner, vs.* **ROLANDO B. FALLER,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE CHARGES; MISCONDUCT AND DISHONESTY, DEFINED AND EXPLAINED.— Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a

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[**] Per Special Order No. 2353 dated June 2, 2016.

public officer. To constitute an administrative offense, misconduct should relate to or be connected with the performance of the official functions and duties of a public officer. ***The misconduct is considered as 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. On the other hand, dishonesty is defined as the concealment or distortion of truth in a matter of fact relevant to one's office or connected with the performance of his duty. It implies a disposition to lie, cheat, deceive or defraud; untrustworthiness; lack of integrity; lack of honesty, probity or integrity in principle; and lack of fairness and straightforwardness; disposition to defraud, deceive or betray.

2. ID.; ID.; ID.; IN THE ABSENCE OF EVIDENCE THAT THE INFRACTIONS WERE TAINTED WITH CORRUPTION OR WILLFUL INTENT TO VIOLATE THE LAW, AN EMPLOYEE CANNOT BE HELD LIABLE FOR GRAVE MISCONDUCT; BUT HE MAY BE HELD LIABLE FOR SIMPLE MISCONDUCT.— While there were violations of established and definite rules of action, namely: (*a*) the disbursement of attorney's fees to Faller despite the fact that the GSIS Foreclosure Project did not involve any court litigation contrary to OGCC Office No. 006, series of 2004, and (*b*) the failure to comply with Section 4 (6) of PD No. 1445, and paragraph V of COA Circular No. 97-004 dated July 1, 1997 which should have been observed in the purchase of the reading materials subject of this case, there is no substantial evidence to prove that the foregoing violations were precipitated by Faller with corruption or a willful intent to violate the law so as to render him administratively liable for Grave Misconduct. Apart from admittedly receiving the checks for ₱180,000.00 purportedly as attorney's fees and ₱30,000.00 for the purchase of reading materials, both charged against the GSIS Foreclosure Project fees, records do not show that Faller directly or actively participated in the disbursement of the said funds, or authorized the same. His receipt of the sum of ₱180,000.00 was based on his assumption that the funds he received were in the nature of

attorney's fees as compensation for his work on the GSIS Foreclosure Project, which, unfortunately, does not qualify as a matter of litigation under OGCC Office Order No. 006, series of 2004 as above-explained. x x x Nonetheless, for the above-said violations, Faller should be held liable for simple misconduct. A person charged with grave misconduct may be held liable for simple misconduct if the misconduct does not involve any of the additional elements to qualify the misconduct as grave, as in this case. Faller, despite the lack of proof to show that his infractions were tainted with corruption, should have been more circumspect in complying with the pertinent OGCC and procurement rules, for which he should remain accountable.

3. ID.; ID.; ID.; WHERE IT WAS NOT SHOWN THAT THE INFRACTION WAS COMMITTED WITH INTENT TO DEFRAUD THE GOVERNMENT, LIABILITY FOR DISHONESTY CANNOT ARISE.— Neither were the foregoing infractions indicative of a disposition to deceive or lie so as to hold Faller administratively liable for dishonesty. While it has been established that Faller received the check for ₱30,000.00 purportedly as funds for the purchase of reading materials in connection with the discharge of his duties, it has not been shown, however, that he intended to defraud the government of the said amount. Moreover, the affidavits executed by Atty. Alberto C. Agra (Atty. Agra), Devanadera's successor as GCC, tend to prove that the reading materials do exist in the OGCC premises, the same having been purchased during the tenure of his predecessor – Devanadera – and turned over to him upon his assumption in office.

4. ID.; ID.; ID.; MISTAKES AND/OR IRREGULARITIES COMMITTED BY RESPONDENT AMOUNT TO SIMPLE MISCONDUCT AND CONDUCT PREJUDICIAL TO THE BEST INTEREST OF THE SERVICE; PENALTY.— Faller's mistakes and/or the irregularities involved in the contested disbursements which he actually received in an anomaly that tainted the public's perception of his office, thereby subjecting him to administrative liability for conduct prejudicial to the best interest of the service. Jurisprudence states that acts may constitute conduct prejudicial to the best interest of the service as long as they tarnish the image and integrity of his/her public office, as in this case. In these respects, therefore, the Court upholds the CA. However, considering that Faller received only

the total amount of ₱210,000.00, ₱30,000.00 of which was used to purchase the reading materials existing in the OGCC premises, he is therefore liable to return only the sum of ₱180,000.00 that he received purportedly as attorney's fees. Simple misconduct is classified as a less grave offense punishable by suspension for a period of one (1) month and one (1) days to six (6) months for the first offense, while conduct prejudicial to the best interest of the service is classified as a grave offense punishable by suspension for a period of six (6) months and one (1) day to one (1) year for the first offense. Under Section 50 of the Revised Rules on Administrative Cases in the Civil Service, if the respondent is found guilty of two (2) or more charges, the penalty for the most serious charge shall be imposed and the other charges shall be considered as aggravating circumstances. Likewise, under Section 49 of the same Rules, the maximum of the penalty shall be imposed where only aggravating and no mitigating circumstances are present, as in this case. Accordingly, the Court concurs with the CA that the penalty of suspension for one (1) year must be imposed upon Faller, and, conformably with Section 52 of the same Rules, meted the accessory penalty of disqualification from promotion for the entire period of the suspension.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Balgos Gumaru Faller Tan and Javier 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 May 22, 2014 and the Resolution[3] dated

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[1] *Rollo*, Vol. I, pp. 37-72.

[2] *Id.* at 14-30. Penned by Associate Justice Nina G. Antonio-Valenzuela with Associate Justices Vicente S.E. Veloso and Jane Aurora C. Lantion concurring.

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

December 17, 2014 of the Court of Appeals (CA) in CA-G.R. SP No. 123745, which found petitioner Rolando B. Faller (Faller) guilty of simple misconduct and conduct prejudicial to the best interest of the service and, accordingly, meted the penalty of suspension for one (1) year, directed him to restitute the amount of ₱760,000.00 to the Office of the Government Corporate Counsel (OGCC), and imposed the accessory penalty of disqualification from promotion corresponding to the one-year period of suspension.

The Facts

On May 25, 2005, the Government Service and Insurance System (GSIS), represented by its President and General Manager, Winston F. Garcia (Garcia), executed a Memorandum of Agreement[4] (MOA) with the OGCC, headed by then Government Corporate Counsel (GCC) Agnes VST Devanadera (Devanadera), whereby the OGCC agreed to handle the extrajudicial foreclosure of delinquent real estate loan accounts of GSIS (GSIS Foreclosure Project). In consideration thereof, GSIS endeavored to pay special assessment fees in accordance with the actual service that the OGCC may render.[5] The total special assessment fees received by the OGCC from the GSIS Foreclosure Project was in the amount of ₱11,845,000.00.[6]

Sometime thereafter, Devanadera issued two (2) memoranda authorizing the release of proceeds from the special assessment fees collected from the GSIS Foreclosure Project, purportedly as their partial share therefrom as attorney's fees. Thus, a Memorandum[7] dated January 23, 2007 (January 23, 2007 Memo) requested the release of the amounts of ₱500,000.00 to Devanadera and ₱200,000.00 to her then Chief of Staff and Head Executive Assistant,[8] herein respondent Rolando B. Faller

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[4] *Id.* at 245-250.

[5] *Id.* at 247.

[6] *Id.* at 251.

[7] *Id.* at 262.

[8] *Id.* at 241-242.

(Faller). The January 23, 2007 Memo was accompanied by Disbursement Voucher (DV) Nos. 2007-01-273[9] and 2007-01-274,[10] both of which were certified by Divina Gracia F. Cruz (Cruz), then Accountant III. Subsequently, Landbank Check Nos. 310159[11] for ₱450,000.00 and 310160[12] for ₱180,000.00 were issued in favor of Devanadera and Faller, respectively, co-signed by Jose Capili (Capili), the Assistant GCC for Administration, and Devanadera herself.

Likewise, Devanadera issued a Memorandum[13] dated February 8, 2007 (February 8, 2007 Memo) requesting the release of the amounts of ₱100,000.00 to Devanadera and ₱30,000.00 to Faller from the special assessment fees received from the GSIS Foreclosure Project, purportedly for the purchase of reading materials to aid them in the discharge of their duties. It was accompanied by DV Nos. 2007-02-413[14] and 2007-02-414,[15] which were both certified by Cruz. On the same day, Landbank Check Nos. 310276[16] for ₱30,000.00 and 310277[17] for ₱100,000.00 were issued in favor of Faller and Devanadera, respectively, again co-signed by Capili and Devanadera herself. SDAaTC

On January 23, 2008, the Commission on Audit (COA) issued Audit Observation Memorandum (AOM) No. 2008-002[18] finding irregularities surrounding the alleged purchase of reading

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[9] *Id.* at 261.

[10] *Id.* at 260.

[11] *Id.* at 264.

[12] *Id.* at 263.

[13] *Id.* at 268.

[14] *Id.* at 269.

[15] *Id.* at 270.

[16] *Id.* at 271.

[17] *Id.* at 272.

[18] *Id.* at 265-267.

materials amounting to ₱130,000.00 charged from the special assessment fees from the GSIS Foreclosure Project. The COA found that disbursements were made directly to the agency officials, *i.e.*, Devanadera and Faller, instead of to *bona fide* suppliers and without proper documentation, in violation of the provisions of Section 4 (6) of Presidential Decree (PD) No. 1445,[19] otherwise known as the "Government Auditing Code of the Philippines."

When herein petitioner Field Investigation Office (FIO), Office of the Ombudsman (Ombudsman) issued a *subpoena duces tecum*[20] directing the Accounting Division of the OGCC to submit before it the supporting documents relative to the OGCC's purchase of reading materials, Accountant III Ariel J. Ubiña certified[21] that no such documents were available in their records given that the procurement of these reading materials did not undergo the proper procedure which required the execution of the said documents.

Consequently, the FIO filed the instant complaint[22] against Devanadera, Faller, Cruz, and Capili: (*a*) criminally charging them with two (2) counts of violation of Article 217[23] of the Revised Penal Code or Malversation of Public Funds as well as two (2) counts of violation of Section 3 (e) of Republic Act

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[19] Entitled "ORDAINING AND INSTITUTING A GOVERNMENT AUDITING CODE OF THE PHILIPPINES," approved on June 11, 1978.

[20] *Rollo*, Vol. I, pp. 273-274. Signed by Assets Investigation Bureau Acting Director Atty. Caesar D. Asuncion.

[21] *Id.* at 275.

[22] *Id.* at 213-226.

[23] Article 217. *Malversation of public funds or property*. — Presumption of malversation. — An public officer who, by reason of the duties of his office, is accountable for public funds or property, shall appropriate the same or shall take or misappropriate or shall consent, or through abandonment or negligence, shall permit any other person to take such public funds or property, wholly or partially, or shall otherwise be guilty of the misappropriation or malversation of such funds or property shall suffer:

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No. 3019; and (*b*) administratively charging them with grave misconduct, dishonesty, and conduct prejudicial to the best interest of the service, all in connection with the disbursements charged against the special assessment fees collected from the GSIS Foreclosure Project with an aggregate amount of ₱830,000.00.

In their defense,[24] Devanadera and Faller claimed that their receipt of the attorney's fees from the GSIS Foreclosure Project fees was sanctioned under the Administrative Code of 1987 and, more specifically, under OGCC Office Order No. 006, series of 2004[25] which prescribed guidelines in the distribution of attorney's fees. They likewise contended that they indeed purchased reading materials from the funds paid to them and left them in the OGCC premises.[26] They averred that the lack of documentation was the responsibility of Cruz who, unfortunately, can no longer be located as she had already left the OGCC.[27] Finally, they claimed that they cannot be held liable for Malversation, not being "accountable officers" as contemplated under the law.[28]

For his part, Capili argued that he cannot be held liable as a co-conspirator in the absence of any positive evidence showing that he actively participated in the alleged offenses. Moreover, he claimed that his act of affixing his signature on the checks issued in favor of Devanadera and Faller was only ministerial.[29]

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[24] See Joint Counter-Affidavit dated April 27, 2009; *rollo*, Vol. I, pp. 280-304.

[25] *Id.* at 308-309.

[26] *Id.* at 296.

[27] *Id.* See also *id.* at 312.

[28] *Id.* at 294-295.

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

The Ombudsman Ruling

In a Decision[30] dated March 3, 2010, the Ombudsman found Devanadera, Faller, Cruz, and Capili guilty of grave misconduct, dishonesty, and conduct prejudicial to the best interest of the service and accordingly, ordered their dismissal. They were likewise directed to jointly and solidarily restitute to the OGCC Trust Liability Account the total amount of ₱760,000.00.[31]

The Ombudsman found dearth of evidence to show that Devanadera and Faller had actually purchased reading materials using the funds given to them, and that the said reading materials exist in the OGCC premises.[32] It pointed out that the purported purchase could have been easily substantiated with the presentation of official receipts, invoices, delivery receipts, turn-over lists, or other similar documents.[33] Thus, without positive proof that the purchase had been made or that the reading materials exist, coupled with the lack of supporting documentation, the implication was that Devanadera and Faller had appropriated to themselves the total amount of ₱130,000.00.[34]

With respect to the payment of attorney's fees, the Ombudsman ruled that the context of "attorney's fees" provided in the Administrative Code of 1987 (Section 10, Chapter 3, Title III, Book IV) is in contemplation of attorney's fees awarded by the courts in connection with a litigated case.[35] Taken together with OGCC Order No. 006, series of 2004, these are the attorney's fees which shall be further distributed to handling lawyers of

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[30] *Id.* at 161-183. Issued by Graft Investigation and Prosecution Officer II Camilo S. Correa, reviewed by Acting Director Medwin S. Dizon, recommended for approval by Acting Assistant Ombudsman Mary Susan S. Guillermo, and approved by Acting Ombudsman Orlando C. Casimiro.

[31] *Id.* at 181.

[32] *Id.* at 170.

[33] *Id.*

[34] *Id.* at 169-170, pages are apparently misarranged.

[35] *Id.*

litigated cases as incentives.[36] In this case, the GSIS Foreclosure Project was extrajudicial in character.[37] Moreover, it appears that Faller was the sole OGCC lawyer assigned to the said project whose participation was not as a litigating lawyer but as Operations Manager thereof.[38]

Furthermore, the MOA between GSIS and the OGCC specified that the fees paid by the former are special assessment fees, not attorney's fees.[39] As such, it cannot be the subject of distribution in the manner set forth under Office Order No. 006, series of 2004. Relative thereto, special assessment fees are governed by separate guidelines, distinct from those governing the distribution of attorney's fees.[40]

In view of its findings, the Ombudsman held that there was undue injury to the government when Devanadera and Faller appropriated for themselves the amount of money charged against the GSIS Foreclosure Project fees to which they were not entitled.[41] Similarly, Capili was adjudged liable as a co-signatory of the subject checks. The Ombudsman opined that as Assistant GCC, he should have been familiar with the prescribed procedure for the procurement of reading materials as well as payment of attorney's fees.[42]

Finally, the Ombudsman ruled that conspiracy existed in this case, as Devanadera, Faller, Cruz, and Capili had colluded to defraud the government of the total amount of ₱830,000.00. It appreciated the aggravating circumstance of "taking undue advantage of official position" as having attended the commission of the offense.[43]

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[36] *Id.* at 174.

[37] *Id.* at 171.

[38] *Id.*

[39] *Id.* at 172.

[40] *Id.*

[41] *Id.* at 175.

[42] *Id.* at 175-176.

[43] *Id.* at 180.

Aggrieved, Devanadera and Faller moved for reconsideration[44] while Capili moved for reinvestigation.[45] Both motions were, however, denied in an Omnibus Order[46] dated October 3, 2011.

Faller, for and on his sole behalf, elevated the matter before the CA *via* petition for review.[47]

The CA Ruling

In a Decision[48] dated May 22, 2014, the CA modified the Ombudsman ruling insofar as Faller is concerned, finding him guilty only of simple misconduct and conduct prejudicial to the best interest of the service and accordingly, imposed upon him the penalty of suspension for one (1) year with the accessory penalty of disqualification from promotion corresponding to the one (1) year period of suspension. Likewise, he was ordered to restitute to the OGCC Trust Liability Account the amount of ₱760,000.00.[49]

In so ruling, the CA found the third element that constitutes grave misconduct, *i.e.*, corruption, clear intent to violate the law or flagrant disregard of the established rule, to be lacking in this case.[50] Thus, the CA found no evidence to prove that Faller's receipt of the attorney's fees as well as the funds for the purchase of reading materials was done with a clear intent to violate the law, or was done in flagrant disregard of established

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[44] See motion for reconsideration dated June 3, 2011; *id.* at 347-357.

[45] Not attached to the *rollo*.

[46] *Rollo*, Vol. I, pp. 184-190. Issued by Graft Investigation and Prosecution Officer I Cherry Chiara L. Hernando, reviewed by Director for Preliminary Investigation, Administrative Bureau A, Medwin S. Dizon, recommended for approval by Assistant Ombudsman Aleu A. Amante, and approved by Ombudsman Conchita Carpio Morales.

[47] *Id.* at 127-160.

[48] *Id.* at 14-30.

[49] *Id.* at 29.

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

rules. Consequently, Faller can only be found guilty of simple misconduct.[51]

The CA further exonerated Faller from liability for dishonesty, finding that he "merely received attorney's fees, and amounts representing payment for reading materials." He had no hand in preparing the documents required therefor nor did he authorize any disbursement.[52]

However, the CA sustained Faller's liability for conduct prejudicial to the best interest of the service, considering that he received sums of money without compliance with the rules. In this regard, the CA held that Faller should have been more circumspect with respect to his conduct, as his involvement in the foregoing incidents diminished, or tended to diminish, the people's trust in the OGCC.[53]

The Ombudsman[54] and Faller[55] filed separate motions for partial reconsideration, which were both denied in a Resolution[56] dated December 17, 2014; hence, this petition filed by the FIO of the Ombudsman.

The Issue Before the Court

The essential issue for the Court's resolution is whether or not the CA erred when it ruled that Faller is administratively liable for simple misconduct and conduct prejudicial to the best interest of the service.

The Court's Ruling

The petition is without merit.

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[51] *Id.*

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

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

[54] *Id.* at 96-113.

[55] *Id.* at 114-123.

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

Misconduct is a transgression of some established and definite rule of action, more particularly, unlawful behavior or gross negligence by a public officer.[57] To constitute an administrative offense, misconduct should relate to or be connected with the performance of the official functions and duties of a public officer.[58] ***The misconduct is considered as 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.[59]

On the other hand, dishonesty is defined as the concealment or distortion of truth in a matter of fact relevant to one's office or connected with the performance of his duty.[60] It implies a disposition to lie, cheat, deceive or defraud; untrustworthiness; lack of integrity; lack of honesty, probity, or integrity in principle; and lack of fairness and straightforwardness;[61] disposition to defraud, deceive or betray.[62]

After a punctilious review of the records, the Court concurs with the findings of the CA that Faller should not be held administratively liable for grave misconduct and/or dishonesty.

While there were violations of established and definite rules of action, namely: (*a*) the disbursement of attorney's fees to

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[57] *Samson v. Restrivera*, 662 Phil. 45, 61 (2011).

[58] *Ganzon v. Arlos*, G.R. No. 174321, October 22, 2013, 708 SCRA 115, 124.

[59] *Miro v. Mendoza Vda. de Erederos*, G.R. Nos. 172532 and 172544-45, November 20, 2013, 710 SCRA 371, 397-398.

[60] *Balasbas v. Monayao*, G.R. No. 190524, February 17, 2014, 716 SCRA 190, 203.

[61] *Japson v. Civil Service Commission*, 663 Phil. 665, 677 (2011).

[62] *Concerned Citizen v. Gabral, Jr.*, 514 Phil. 209, 219 (2005).

Faller despite the fact that the GSIS Foreclosure Project did not involve any court litigation contrary to OGCC Office No. 006, series of 2004,[63] and (*b*) the failure to comply with Section 4 (6)[64] of PD No. 1445, and paragraph V of COA Circular No. 97-004 dated July 1, 1997[65] which should have been observed

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[63] For the purpose of giving incentives to the lawyers to exercise judicious and conscientious effort in the handling of their assigned cases and pursuant to a Resolution unanimously adopted in the AGCC's meeting on even date and pursuant to Section 10, Chapter 3, Title III, Book IV of the Administrative Code of 1987 (EO 292)[,] attorney's fees collected in cases handled by this Office shall be available for expenditure under [these] guidelines, as follows:

1. An amount equivalent to 60% of the fees actually collected shall be equitably distributed to the handling lawyers, the amount of which shall be determined by the Government Corporate Counsel upon recommendation of the Team Leader, taking into account the degree of participation and time devoted by the handling lawyer *vis-à-vis* the complexity of the case, the effort and skill required in litigating the same, and the amount actually collected as attorney's fees. (*Rollo*, Vol. I, p. 308)

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

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

[65] **V. REQUIREMENTS COMMON TO ALL PURCHASES**

In the audit of payment of supplies, materials and equipment delivered, regardless of the mode of procurement, the following documents shall be required:

1. Request for purchase or requisition of supplies, materials and equipment or its equivalent, duly approved by proper authorities;
2. Purchase/Letter Order/Contract, duly approved by officials concerned and accepted by the supplier (date of acceptance must be clearly indicated, especially when the time or date of delivery is dependent on or will be counted from the date of acceptance of the purchase/letter order/contract);
3. Original copy of the dealer's/supplier's invoice:
    a. showing the quantity, description of the articles, unit and total value, duly signed by the dealer or his representative, and

in the purchase of the reading materials subject of this case, there is no substantial evidence to prove that the foregoing violations were precipitated by Faller with corruption or a willful intent to violate the law so as to render him administratively liable for Grave Misconduct. Apart from admittedly receiving the checks for ₱180,000.00 purportedly as attorney's fees and ₱30,000.00 for the purchase of reading materials, both charged against the GSIS Foreclosure Project fees, records do not show that Faller directly or actively participated in the disbursement of the said funds, or authorized the same. His receipt of the sum of ₱180,000.00 was based on his assumption that the funds he received were in the nature of attorney's fees as compensation for his work on the GSIS Foreclosure Project, which, unfortunately, does not qualify as a matter of litigation under OGCC Office Order No. 006, series of 2004 as above-explained.

Neither were the foregoing infractions indicative of a disposition to deceive or lie so as to hold Faller administratively liable for dishonesty. While it has been established that Faller received the check for ₱30,000.00 purportedly as funds for the purchase of reading materials in connection with the discharge of his duties, it has not been shown, however, that he intended to defraud the government of the said amount. Moreover, the affidavits[66] executed by Atty. Alberto C. Agra (Atty. Agra), Devanadera's successor as GCC, tend to prove that the reading materials do exist in the OGCC premises, the same having been purchased during the tenure of his predecessor — Devanadera — and turned over to him upon his assumption in office.

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b. indicating receipt by the proper agency official of items delivered;

4. Inspection and Acceptance Report prepared by the Department/ Agency property inspector and signed by the Head of Agency or his authorized representative.

5. Evidence of availability of funds, and/or copy of the request for obligation of allotment of the National Government agencies.

[66] *Rollo*, Vol. I, pp. 198 and 382.

Nonetheless, for the above-said violations, Faller should be held liable for simple misconduct. A person charged with grave misconduct may be held liable for simple misconduct if the misconduct does not involve any of the additional elements to qualify the misconduct as grave,[67] as in this case. Faller, despite the lack of proof to show that his infractions were tainted with corruption, should have been more circumspect in complying with the pertinent OGCC and procurement rules, for which he should remain accountable.

In the same light, Faller's mistakes and/or the irregularities involved in the contested disbursements which he actually received resulted in an anomaly that tainted the public's perception of his office, thereby subjecting him to administrative liability for conduct prejudicial to the best interest of the service. Jurisprudence states that acts may constitute conduct prejudicial to the best interest of the service as long as they tarnish the image and integrity of his/her public office,[68] as in this case.

In these respects, therefore, the Court upholds the CA. However, considering that Faller received only the total amount of ₱210,000.00,[69] ₱30,000.00 of which was used to purchase the reading materials existing in the OGCC premises, he is therefore liable to return only the sum of ₱180,000.00 that he received purportedly as attorney's fees.[70]

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[67] *Santos v. Rasalan*, 544 Phil. 35, 43 (2007).

[68] *Avenido v. Civil Service Commission*, 576 Phil. 654, 662 (2008).

[69] Records show that Faller actually received checks in the amounts of ₱180,000.00 purportedly as attorney's fees and ₱30,000.00 for the purchase of the reading materials. See *rollo*, pp. 263 and 271.

[70] Section 43, Chapter 5, Book VI of the Administrative Code states:

Section 43. Liability for Illegal Expenditures. — Every expenditure or obligation authorized or incurred in violation of the provisions of this Code or of the general and special provisions contained in the annual General or other Appropriations Act shall be void. Every payment made in violation of said provisions shall be illegal and every official or employee authorizing or making such payment, or taking part therein, and every person receiving such payment shall be jointly and severally liable to the Government for the full amount so paid or received.

See *Silang v. COA*, G.R. No. 213189, September 8, 2015.

Simple misconduct is classified as a less grave offense punishable by suspension for a period of one (1) month and one (1) day to six (6) months for the first offense, while conduct prejudicial to the best interest of the service is classified as a grave offense punishable by suspension for a period of six (6) months and one (1) day to one (1) year for the first offense. Under Section 50[71] of the Revised Rules on Administrative Cases in the Civil Service, if the respondent is found guilty of two (2) or more charges, the penalty for the most serious charge shall be imposed and the other charges shall be considered as aggravating circumstances. Likewise, under Section 49[72] of the same Rules, the maximum of the penalty shall be imposed where only aggravating and no mitigating circumstances are present, as in this case. Accordingly, the Court concurs with the CA that the penalty of suspension for one (1) year must be imposed upon Faller, and, conformably with Section 52[73] of the same Rules, meted the accessory penalty of disqualification from promotion for the entire period of the suspension.

WHEREFORE, the Decision dated May 22, 2014 and the Resolution dated December 17, 2014 of the Court of Appeals

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[71] Section 50. *Penalty for the Most Serious Offense*. — If the respondent is found guilty of two (2) or more charges or counts, the penalty to be imposed should be that corresponding to the most serious charge and the rest shall be considered as aggravating circumstances.

[72] Section 49. *Manner of Imposition*. — When applicable, the imposition of the penalty may be made in accordance with the manner provided herein below:

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c. The maximum of the penalty shall be imposed where only aggravating and no mitigating circumstances are present.

x x x x x x x x x

[73] Section 52. *Administrative Disabilities Inherent in Certain Penalties*. —

x x x x x x x x x

c. The penalty of suspension shall carry with it disqualification from promotion corresponding to the period of suspension.

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in CA-G.R. SP No. 123745 are hereby **AFFIRMED** with **MODIFICATION**. Respondent Rolando B. Faller is found **GUILTY** of simple misconduct and conduct prejudicial to the best interest of the service. Accordingly, he is ordered **SUSPENDED** for a period of one (1) year and directed to restitute the total amount of ₱180,000.00 to the Office of the Government Corporate Counsel Trust Liability Account. The accessory penalty of disqualification from promotion corresponding to the one-year period of suspension is likewise imposed.

SO ORDERED.

Leonardo-de Castro (*Acting Chairperson*), *Bersamin, Perez,*[*] and *Caguioa, JJ.,* concur.

FIRST DIVISION

[A.C. No. 10465. June 8, 2016]

SPOUSES LAMBERTO V. EUSTAQUIO AND GLORIA J. EUSTAQUIO, *complainants, vs.* **ATTY. EDGAR R. NAVALES,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; DEFIANCE OF THE COURT'S ORDER OF SUSPENSION, COMMITTED.— [T]he OBC correctly pointed out that the Court's Resolution dated September 15, 2014 suspending respondent from the practice of law for a period of six (6) months became final and executory fifteen (15) days after respondent received a copy of the same on October 16, 2014. Thus, respondent should have already commenced serving his six (6)-month suspension.

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[*] Designated additional member per raffle dated March 14, 2016.

However, respondent never heeded the suspension order against him as he continued discharging his functions as an Assistant City Prosecutor for Quezon City, as evidenced by the Certification issued by MeTC-Br. 38 stating that respondent has been appearing before it as an Assistant City Prosecutor since September 2014 up to the present. x x x [A] plain reading [Section 9 of Republic Act No. (RA) 10071, otherwise known as the "Prosecution Service Act of 2010"] evidently shows that the government office of Assistant City Prosecutor requires its holder to be authorized to practice law. Hence, respondent's continuous discharge of his functions as such constitutes practice of law and, thus, a clear defiance of the Court's order of suspension against him. Under Section 27, Rule 138 of the Rules of Court, willful disobedience to any lawful order of a superior court and wilfully appearing as an attorney without authority to do so – acts which respondent is guilty of in this case – are grounds for disbarment or suspension from the practice of law[.]

2. ID.; ID.; ID.; PROPER PENALTY IS SUSPENSION FROM THE PRACTICE OF LAW FOR ONE (1) YEAR.— Anent the proper penalty to be imposed on respondent, the Court, in *Lingan v. Calubaquib*, *Feliciano v. Bautista-Lozada*, and *Ibana-Andrade v. Paita-Moya*, consistently imposed an additional six (6)-month suspension from the practice of law to erring lawyers who practiced law despite being earlier suspended. Under the foregoing circumstances, the Court deems it proper to mete the same penalty to respondent in addition to the earlier six (6)-month suspension already imposed on him, as recommended by the OBC. Thus, respondent's total period of suspension from the practice of law – and necessarily, from the holding the position of Assistant City Prosecutor as well – should be fixed at one (1) year.

D E C I S I O N

PERLAS-BERNABE, *J.*:

For the Court's resolution is a Complaint[1] dated January 16, 2010 filed by complainants spouses Lamberto V. Eustaquio

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[1] *Rollo*, pp. 2-4.

and Gloria J. Eustaquio (complainants) against respondent Atty. Edgar R. Navales (respondent), praying that respondent be meted the appropriate disciplinary sanction/s for failing to pay rent and to vacate the apartment he is leasing despite demands.

The Facts

Complainants alleged that they are the owners of an apartment located at 4-D Cavite St., Barangay Paltok, SFDM, Quezon City, which they leased to respondent under a Contract of Lease[2] dated April 16, 2005. However, respondent violated the terms and conditions of the aforesaid contract when he failed to pay monthly rentals in the aggregate amount of ₱139,000.00 and to vacate the leased premises despite repeated oral and written demands.[3] This prompted complainants to refer the matter to barangay conciliation, where the parties agreed on an amicable settlement, whereby respondent promised to pay complainants the amount of ₱131,000.00 on July 16, 2009 and to vacate the leased premises on July 31, 2009. Respondent eventually reneged on his obligations under the settlement agreement, constraining complainants to file an ejectment case[4] against him before the Metropolitan Trial Court (MeTC) of Quezon City, Branch 40 (MeTC-Br. 40), docketed as Civil Case No. 09-39689. Further, complainants filed the instant case before the Commission on Bar Discipline of the Integrated Bar of the Philippines (IBP), contending that respondent miserably failed to exemplify honesty, integrity, and respect for the laws when he failed and refused to fulfil his obligations to complainants.[5]

Despite notices,[6] respondent failed to file his Answer, to appear in the mandatory conference, and to file his position paper.

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[2] *Id.* at 10-12.

[3] See *id.* at 2.

[4] See Complaint dated August 25, 2009; *id.* at 6-8.

[5] See *id.* at 3. See also *id.* at 71-72.

[6] See Order dated January 25, 2010 (*id.* at 26), Notice of Mandatory Conference dated August 6, 2010 (*id.* at 29), and Order dated September 3, 2010 (*id.* at 31).

Meanwhile, the MeTC-Br. 40 promulgated a Decision[7] dated December 8, 2009 in the ejectment case in favor of the complainants and, accordingly, ordered respondent to vacate the leased premises and to pay complainants the following amounts: (*a*) ₱139,000.00 representing unpaid rentals as of July 2009; (*b*) further rental payments of ₱8,000.00 per month starting August 17, 2009 until the actual surrender of said premises to complainants; (*c*) attorney's fees in the amount of ₱20,000.00; and (*d*) cost of suit.[8]

During the pendency of the case, respondent was appointed as an Assistant City Public Prosecutor of Quezon City.[9]

The IBP's Report and Recommendation

In a Report and Recommendation[10] dated February 8, 2011, the IBP Investigating Commissioner found respondent administratively liable and, accordingly, recommended that he be meted the penalty of suspension from the practice of law for a period of six (6) months, with a stern warning that a repetition of the same shall be dealt with more severely.[11] It was found that respondent displayed unwarranted obstinacy in evading payment of his debts, as highlighted by his numerous promises to pay which he eventually reneged on. In this light, the IBP Investigating Commissioner concluded that respondent violated Rules 1.01 and 1.02, Canon 1 of the Code of Professional Responsibility (CPR) and, thus, should be held administratively liable.[12]

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[7] *Id.* at 60-64. Penned by Assisting Judge Mario B. Capellan.

[8] See *id.* at 64.

[9] See *id.* at 71.

[10] *Id.* at 71-74. Signed by Commissioner Salvador B. Hababag.

[11] *Id.* at 74.

[12] See *id.* at 73-74.

In a Resolution[13] dated September 28, 2013, the IBP Board of Governors adopted and approved the aforesaid report and recommendation. Thereafter, the Court issued a Resolution[14] dated September 15, 2014 adopting and approving the findings of fact, conclusions of law, and recommendations of the IBP and, accordingly, meted respondent the penalty of suspension from the practice of law for a period of six (6) months, with a stern warning that a repetition of the same shall be dealt with more severely.

As per Registry Return Card No. 957,[15] respondent received the Court's order of suspension on October 16, 2014.[16] Records are bereft of any showing that respondent filed a motion for reconsideration and, thus, the Court's order of suspension against him became final and executory.

Events Following the Finality of Respondent's Suspension

On September 7, 2015 and upon request from the Office of the Court Administrator (OCA), a Certification[17] was issued by the MeTC of Quezon City, Branch 38 (MeTC-Br. 38) stating that respondent has been appearing before it as an Assistant City Prosecutor since September 2014 up to the present. In connection with this, the MeTC-Br. 38 wrote a letter[18] dated September 8, 2015 to the Office of the Bar Confidant (OBC), inquiring about the details of respondent's suspension from the practice of law. In view of the foregoing, the OCA indorsed the matter to the OBC for appropriate action.[19]

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[13] See Notice of Resolution No. XX-2013-79 signed by National Secretary Nasser A. Marohomsalic; *id.* at 70, including dorsal portion.

[14] *Id.* at 77-78. Signed by Division Clerk of Court Edgar O. Aricheta.

[15] *Id.* at 77, including dorsal portion.

[16] See *id.* at 80.

[17] *Id.* at 82. Signed by Officer-in-Charge Marlowe T. Corrales.

[18] *Id.* at 83.

[19] See 1st Indorsement dated September 8, 2015 signed by Court Administrator Jose Midas P. Marquez; *id.* at 81.

Despite due notice from the Court,[20] respondent failed to file his comment to the aforementioned Certification issued by MeTC-Br. 38.

The OBC's Report and Recommendation

In a Report and Recommendation[21] dated February 10, 2016, the OBC recommended that respondent be further suspended from the practice of law and from holding the position of Assistant City Prosecutor for a period of six (6) months, thus, increasing his total suspension period to one (1) year, effective immediately.[22] It found that since respondent received the order of suspension against him on October 16, 2014 and did not move for its reconsideration, such order attained finality after the lapse of 15 days therefrom. As such, he should have already served his suspension. In this relation, the OBC ratiocinated that since respondent was holding a position which requires him to use and apply his knowledge in legal matters and practice of law, *i.e.*, Assistant City Prosecutor, he should have ceased and desisted from acting as such. However, as per the Certification dated September 7, 2015 of the MeTC-Br. 38, respondent never complied with his order of suspension. In view thereof, the OBC recommended to increase respondent's suspension from the practice of law and from holding the position of Assistant City Prosecutor for an additional period of six (6) months.[23]

The Issue Before the Court

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

The Court's Ruling

After due consideration, the Court sustains the findings and recommendation of the OBC and adopts the same in its entirety.

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[20] See Resolution dated October 19, 2015; *id.* at 85-86.

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

[22] *Id.* at 88.

[23] See *id.* at 87-88.

It is settled that the Court has the exclusive jurisdiction to regulate the practice of law. As such, when the Court orders a lawyer suspended from the practice of law, he must desist from performing all functions requiring the application of legal knowledge within the period of suspension. This includes desisting from holding a position in government requiring the authority to practice law.[24] The practice of law embraces any activity, in or out of court, which requires the application of law, legal procedure, knowledge, training, and experience. It includes performing acts which are characteristic of the legal profession, or rendering any kind of service which requires the use in any degree of legal knowledge or skill.[25]

In the instant case, the OBC correctly pointed out that the Court's Resolution[26] dated September 15, 2014 suspending respondent from the practice of law for a period of six (6) months became final and executory fifteen (15) days after respondent received a copy of the same on October 16, 2014. Thus, respondent should have already commenced serving his six (6)-month suspension. However, respondent never heeded the suspension order against him as he continued discharging his functions as an Assistant City Prosecutor for Quezon City, as evidenced by the Certification[27] issued by MeTC-Br. 38 stating that respondent has been appearing before it as an Assistant City Prosecutor since September 2014 up to the present.

Section 9 of Republic Act No. (RA) 10071,[28] otherwise known as the "Prosecution Service Act of 2010," provides the powers and functions of prosecutors, to wit:

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[24] *Lingan v. Calubaquib*, A.C. No. 5377, June 30, 2014, 727 SCRA 341, 344.

[25] See *Feliciano v. Bautista-Lozada*, A.C. No. 7593, March 11, 2015; citation omitted.

[26] *Rollo*, pp. 77-78.

[27] *Id.* at 82.

[28] Entitled "AN ACT STRENGTHENING AND RATIONALIZING THE NATIONAL PROSECUTION SERVICE" (April 8, 2010).

Section 9. *Powers and Functions of the Provincial Prosecutor or City Prosecutor*. — The provincial prosecutor or the city prosecutor shall:

(a) Be the law officer of the province of the city officer, as the case may be;

(b) Investigate and/or cause to be investigated all charges of crimes, misdemeanors and violations of penal laws and ordinances within their respective jurisdictions, and have the necessary information or complaint prepared or made and filed against the persons accused. In the conduct of such investigations he/she or any of his/her assistants shall receive the statements under oath or take oral evidence of witnesses, and for this purpose may by *subpoena* summon witnesses to appear and testify under oath before him/her, and the attendance or evidence of an absent or recalcitrant witness may be enforced by application to any trial court; and

(c) Have charge of the prosecution of all crimes, misdemeanors and violations of city or municipal ordinances in the courts at the province or city and therein discharge all the duties incident to the institution of criminal actions, subject to the provisions of the second paragraph of Section 5 hereof.

Verily, a plain reading of the foregoing provision evidently shows that the government office of Assistant City Prosecutor requires its holder to be authorized to practice law. Hence, respondent's continuous discharge of his functions as such constitutes practice of law and, thus, a clear defiance of the Court's order of suspension against him.

Under Section 27, Rule 138 of the Rules of Court, willful disobedience to any lawful order of a superior court and wilfully appearing as an attorney without authority to do so — acts which respondent is guilty of in this case — are grounds for disbarment or suspension from the practice of law, to wit:

Section 27. *Disbarment or suspension of attorneys by Supreme Court; grounds therefor*. — **A member of the bar may be disbarred or suspended from his office as attorney by the Supreme Court** for any deceit, malpractice, or other gross misconduct in such office, grossly immoral conduct, or by reason of his conviction of a crime involving moral turpitude, or for any violation of the oath which he

is required to take before admission to practice, or **for a willful disobedience of any lawful order of a superior court, or for corruptly or willfully appearing as an attorney for a party to a case without authority so to do**. The practice of soliciting cases at law for the purpose of gain, either personally or through paid agents or brokers, constitutes malpractice. (Emphases and underscoring supplied)

Anent the proper penalty to be imposed on respondent, the Court, in *Lingan v. Calubaquib*,[29] *Feliciano v. Bautista-Lozada*,[30] and *Ibana-Andrade v. Paita-Moya*,[31] consistently imposed an additional six (6)-month suspension from the practice of law to erring lawyers who practiced law despite being earlier suspended. Under the foregoing circumstances, the Court deems it proper to mete the same penalty to respondent in addition to the earlier six (6)-month suspension already imposed on him, as recommended by the OBC. Thus, respondent's total period of suspension from the practice of law — and necessarily, from the holding the position of Assistant City Prosecutor as well — should be fixed at one (1) year.

As a final note, it must be stressed that "[d]isbarment of lawyers is a proceeding that aims to purge the law profession of unworthy members of the bar. It is intended to preserve the nobility and honor of the legal profession. While the Supreme Court has the plenary power to discipline erring lawyers through this kind of proceedings, it does so in the most vigilant manner so as not to frustrate its preservative principle. The Court, in the exercise of its sound judicial discretion, is inclined to impose a less severe punishment if, through it, the end desire of reforming the errant lawyer is possible."[32]

WHEREFORE, respondent Atty. Edgar R. Navales is found **GUILTY** of violating Section 27, Rule 138 of the Rules of Court.

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[29] *Supra* note 24.

[30] *Supra* note 25.

[31] See A.C. No. 8313, July 14, 2015.

[32] See *Feliciano v. Bautista-Lozada*, *supra* note 25, citing *Arma v. Montevilla*, 581 Phil. 1, 8 (2008).

Accordingly, he is **SUSPENDED** from the practice of law for an additional period of six (6) months from his original six (6)-month suspension, totalling one (1) year from service of this Decision, with a **STERN WARNING** that a repetition of the same or similar acts will be dealt with more severely.

Let a copy of this Decision be furnished the Office of the Bar Confidant to be appended to respondent's personal record as a member of the Bar. Likewise, let copies of the same be served on the Integrated Bar of the Philippines, the Department of Justice, and the Office of the Court Administrator, which is directed to circulate them to all courts in the country for their information and guidance.

SO ORDERED.

Leonardo-de Castro (Acting Chairperson),[*] *Bersamin,* and *Caguioa, JJ.,* concur.

Sereno, C.J., on leave.

FIRST DIVISION

[A.C. No. 11069. June 8, 2016]

RONALDO C. FACTURAN, *complainant, vs.* **PROSECUTOR ALFREDO L. BARCELONA, JR.,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; LAWYER IN GOVERNMENT SERVICE; OBSTINATE AND

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[*] Per Special Order No. 2354 dated June 2, 2016.

DELIBERATE REFUSAL TO PERFORM HIS DUTIES AS A PROSECUTOR AMOUNTS TO VIOLATION OF RULE 6.02, CANON 6 OF THE CODE OF PROFESSIONAL RESPONSIBILITY; PENALTY IS SUSPENSION FROM THE PRACTICE OF LAW FOR ONE (1) YEAR.— The Court concurs with the IBP's factual findings and recommendation to hold respondent administratively liable, but not for violating Rule 18.03, Canon 18 of the CPR, but instead, of Rule 6.02, Canon 6 of the same Code. x x x Absent any intelligent explanation as regards his lapses in the handling of I.S. No. 04-211 and his failure to timely return the case records thereof for further action, despite the directive to do so, it can only be inferred that respondent ***not merely failed, but obstinately and deliberately refused*** to perform his duties as a prosecutor. Such refusal, under the circumstances, evidently worked to the advantage of the respondents in I.S. No. 04-211 – which included respondent's cousin, Elezar – as the absence of the case records in the office of the Provincial Prosecutor resulted in the delay in the filing of the appropriate criminal information in court against them. Hence, it is apparent that respondent used his public position as a prosecutor to advance and protect the private interest of his relative, which is clearly proscribed in the CPR. Indeed, respondent's actions and omissions in this case, *i.e.*, his failure to resolve I.S. No. 04-211 and to turn over the case records thereof despite orders to do so, appear to have been committed for the benefit of and to safeguard private interests. As a lawyer who is also a public officer, respondent miserably failed to cope with the strict demands and high standards of the legal profession. It bears stressing that a lawyer in public office is expected not only to refrain from any act or omission which might tends to lessen the trust and confidence of the citizenry in government, he must also uphold the dignity of the legal profession at all times and observe a high standard of honesty and fair dealing. Otherwise said, a lawyer in government service is a keeper of the public faith and is burdened with high degree of social responsibility, perhaps higher than her brethren in private practice. Accordingly, the Court finds that suspension for a period of one (1) year, as recommended by the IBP, should be meted upon respondent.

APPEARANCES OF COUNSEL

Diabo Dela Serna De Fiesta Canete for complainant.

D E C I S I O N

PERLAS-BERNABE, *J.*:

The instant administrative case arose from an Affidavit-Complaint[1] for disbarment anchored on gross misconduct or serious gross misconduct in office, dishonesty, and conduct unbecoming of a lawyer or prosecutor filed by complainant Ronaldo C. Facturan (complainant) against respondent Prosecutor Alfredo L. Barcelona, Jr. (respondent) before the Office of the Court Administrator (OCA).

The Facts

Complainant alleged that on June 4, 2004, he filed a complaint for qualified theft against Pilar Mendoza (Mendoza), Jose Sarcon @ Jo (Sarcon), Elezar Barcelona (Elezar), Rodrigo Arro (Arro), and Joseph Montero (Montero; collectively, Mendoza, *et al.*) before the Provincial Prosecution Office of Alabel, Sarangani Province. The case was docketed as I.S. No. 04-211 and assigned for preliminary investigation to Prosecutor Faisal D. Amerkhan (Prosecutor Amerkhan).[2]

Thereafter, or on October 26, 2004, Prosecutor Amerkhan forwarded the records of the case, together with his Resolution recommending the prosecution of Mendoza, *et al.* and the corresponding Information, to respondent for his approval and signature. However, respondent neither approved nor signed the resolution. Instead, he removed the case records from the office of the Provincial Prosecutor and brought them to his residence, where they were kept in his custody. It appears that the respondents in I.S. No. 04-211 were personally known to

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[1] *Rollo*, pp. 4-5.

[2] *Id.* at 4.

respondent, as Elezar is his cousin, while Mendoza, Sarcon, Arro, and Montero are his close friends.[3]

Aggrieved, complainant sought[4] the intervention of then Department of Justice (DOJ) Secretary Raul Gonzales (Secretary Gonzales), who, through then Chief State Prosecutor Jovencito R. Zuño (Chief State Prosecutor Zuño), endorsed[5] complainant's concerns to State Prosecutor Ringcar B. Pinote (State Prosecutor Pinote). Unfortunately, State Prosecutor Pinote could not take appropriate action on I.S. No. 04-211 as the case records were still in the possession of respondent who failed to turn them over despite the directive to do so.[6]

On July 20, 2005, complainant learned that the case records had been turned over to the Provincial Prosecution Office but without Prosecutor Amerkhan's Resolution and Information. Neither did respondent approve nor act upon the same, prompting complainant to file the present complaint for disbarment against him.[7]

In his defense,[8] respondent claimed that the "alleged malicious 'delaying' or the perceived concealment of the case record[s] was neither intentional nor due to favoritism,"[9] as he had inhibited himself from I.S. No. 04-211, which was the reason why this case was assigned to Prosecutor Amerkhan.[10] Respondent averred that as early as October 2004, complainant already knew that he was predisposed to disapprove the resolution prepared by Prosecutor Amerkhan, as the controversy merely involved a

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[3] *Id.*

[4] See letter dated March 6, 2005; *id.* at 6.

[5] *Id.* at 7.

[6] *Id.* at 8.

[7] *Id.* at 4-5.

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

[9] *Id.* at 19.

[10] *Id.*

boundary dispute.[11] Thus, he advised Prosecutor Amerkhan to conduct a clarificatory hearing instead of prematurely concluding the preliminary investigation.[12] However, Prosecutor Amerkhan failed to do so, resulting in the delay in the resolution of I.S. No. 04-211.[13]

Furthermore, respondent asseverated that, except for the fact that a criminal information had been filed on September 8, 2006, he was no longer aware of any development in I.S. No. 04-211, having been subsequently detailed to the DOJ in Manila and recently, to the Office of the City Prosecutor of Marikina City.[14] He asserted that complainant and Prosecutor Amerkhan manipulated the filing in court of I.S. No. 04-211 through the original resolution prepared by the latter.[15]

The OCA indorsed[16] complainant's Affidavit-Complaint to the Integrated Bar of the Philippines (IBP), which then set[17] the case for mandatory conference on June 26, 2007. However, only the respondent appeared, prompting the IBP to terminate the mandatory conference and ordered the submission of the parties' position papers.[18] Unfortunately, the parties did not submit the required position papers.[19]

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

[12] *Id.* at 20.

[13] *Id.* at 21.

[14] *Id.* at 20.

[15] *Id.* at 21.

[16] See 1st Indorsement dated August 16, 2005; *id.* at 2.

[17] See Notice of Mandatory Conference/Hearing dated May 29, 2007; *id.* at 30.

[18] See Order dated August 7, 2007 signed by Commissioner Leland R. Villadolid, Jr.; *id.* at 34-35.

[19] *Id.* at 40.

The IBP Report and Recommendation

In a Report[20] dated March 20, 2014, the Commission on Bar Discipline (CBD) of the IBP, through Commissioner Leland R. Villadolid, Jr. (Commissioner Villadolid), found respondent to have violated Canons 18[21] and 18.03[22] of the Code of Professional Responsibility (CPR) and recommended that he be suspended from the practice of law for a period ranging from six (6) months to two (2) years upon the discretion of the IBP Governing Board.[23]

The IBP found that the case records of I.S. No. 04-211 were removed by respondent from the office of the Provincial Prosecutor and kept in his possession.[24] Records also show that he failed to timely turn over the said case records upon order of State Prosecutor Pinote.[25] In fact, the case records remained in his possession even after he had been detailed to the DOJ in Manila in February 2005. From the foregoing, respondent's neglect to perform his duty was apparent.[26]

Furthermore, respondent failed to perform his duty of approving or disapproving Prosecutor Amerkhan's recommendation pertaining to I.S. No. 04-211.[27] As such, he is also guilty of violating Canon 6.01[28] of the CPR for his failure

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[20] *Id.* at 39-47.

[21] Canon 18 — A lawyer shall serve his client with competence and diligence.

[22] Rule 18.03 — A lawyer shall not neglect a legal matter entrusted to him, and his negligence in connection therewith shall render him liable.

[23] *Rollo*, p. 47.

[24] *Id.* at 45.

[25] *Id.*

[26] *Id.* at 46.

[27] *Id.* at 46.

[28] Rule 6.01 — The primary duty of a lawyer engaged in public prosecution is not to convict but to see that justice is done. The suppression of facts or the concealment of witnesses capable of establishing the innocence of the accused is highly reprehensible and is cause for disciplinary action.

to resolve I.S. No. 04-211 and delaying its resolution by keeping the case records in his possession.[29]

In a Resolution[30] dated December 13, 2014, the IBP Board of Governors adopted and approved the foregoing recommendation and suspended respondent from the practice of law for a period of one (1) year.

The Issue Before the Court

The sole issue for the Court's resolution is whether or not grounds exist to hold respondent administratively liable.

The Court's Ruling

The Court concurs with the IBP's factual findings and recommendation to hold respondent administratively liable, but not for violating Rule 18.03, Canon 18 of the CPR, but instead, of Rule 6.02, Canon 6 of the same Code. The pertinent rules provide:

> CANON 6 — THESE CANONS SHALL APPLY TO LAWYERS IN GOVERNMENT SERVICE IN THE DISCHARGE OF THEIR OFFICIAL TASKS.
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> x x x x x x x x x
>
> Rule 6.02 — A lawyer in the government service shall not use his public position to promote or advance his private interests, nor allow the latter to interfere with his public duties.

Generally, a lawyer who holds a government office may not be disciplined as a member of the Bar for misconduct in the discharge of his duties as a government official. He may be disciplined by this Court as a member of the Bar only when his misconduct also constitutes a violation of his oath as a lawyer.[31]

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[29] *Rollo*, p. 46.

[30] *Id.* at 38, including dorsal portion. Issued by IBP National Secretary Nasser A. Marohomsalic.

[31] *Olazo v. Justice Tinga (ret.)*, 651 Phil. 290, 298 (2010).

In this regard, Rule 6.02 above-quoted is particularly directed to lawyers in the government service, enjoining them from using one's public position to: (1) promote private interests; (2) advance private interests; or (3) allow private interests to interfere with public duties.[32]

In *Ali v. Bubong*,[33] the Court recognized that private interest is not limited to direct interest, but extends to advancing the interest of relatives.

In this case, respondent's accountability regarding I.S. No. 04-211 has been duly established. When Prosecutor Amerkhan forwarded to respondent the case records of I.S. No. 04-211, together with the resolution recommending the filing of the appropriate information in court, respondent failed to take action thereon, as records are bereft of evidence showing that he either approved or disapproved it. As the IBP had correctly opined,[34] if respondent did not concur with the findings and recommendation of Prosecutor Amerkhan, who conducted the preliminary investigation of the case, respondent should have timely disapproved his recommendation to enable complainant to take the appropriate remedy to challenge the disapproval. Moreover, the Court notes respondent's defense[35] that complainant was already aware beforehand that he (respondent) was inclined to disapprove the resolution prepared by Prosecutor Amerkhan, whom he ordered to conduct a clarificatory hearing on the case. However, if such was the case, then nothing could have prevented respondent from proceeding to disapprove the resolution. Yet, as the records bear out, he absolutely took no action thereon.

Worse, respondent removed the case records from the office of the Provincial Prosecutor and, when directed to turn them

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[32] *Abella v. Barrios, Jr.*, A.C. No. 7332, June 18, 2013, 698 SCRA 683, 691-692.

[33] 493 Phil. 172 (2005).

[34] *Rollo*, p. 46.

[35] *Id.* at 19.

over, failed to do so notwithstanding his assignment to the DOJ in Manila in February 2005. As a result, no further action had been taken on I.S. No. 04-211 in the meantime. In fact, as of June 30, 2005, respondent still had not complied with State Prosecutor Pinote's directive to return not only the case records of I.S. No. 04-211, but all the cases previously assigned to him as well.[36] Needless to state, respondent ought to have known that without the case records, no further action could be taken on any of those cases. His assignment to the DOJ in Manila in February 2005 should have even prompted him to turn over the case records of I.S. No. 04-211 for appropriate action, but he still failed to do so, without any plausible reason.

Absent any intelligent explanation as regards his lapses in the handling of I.S. No. 04-211 and his failure to timely return the case records thereof for further action, despite the directive to do so, it can only be inferred that respondent ***not merely failed, but obstinately and deliberately refused*** to perform his duties as a prosecutor. Such refusal, under the circumstances, evidently worked to the advantage of the respondents in I.S. No. 04-211 — which included respondent's cousin, Elezar — as the absence of the case records in the office of the Provincial Prosecutor resulted in the delay in the filing of the appropriate criminal information in court against them. Hence, it is apparent that respondent used his public position as a prosecutor to advance and protect the private interest of his relative, which is clearly proscribed in the CPR.

Indeed, respondent's actions and omissions in this case, *i.e.*, his failure to resolve I.S. No. 04-211 and to turn over the case records thereof despite orders to do so, appear to have been committed for the benefit of and to safeguard private interests. As a lawyer who is also a public officer, respondent miserably failed to cope with the strict demands and high standards of the legal profession.[37] It bears stressing that a lawyer in public

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[36] See *id.* at 8.

[37] *Huyssen v. Gutierrez*, 520 Phil. 117, 131 (2006).

office is expected not only to refrain from any act or omission which might tend to lessen the trust and confidence of the citizenry in government, he must also uphold the dignity of the legal profession at all times and observe a high standard of honesty and fair dealing. Otherwise said, a lawyer in government service is a keeper of the public faith and is burdened with high degree of social responsibility, perhaps higher than her brethren in private practice.[38] Accordingly, the Court finds that suspension for a period of one (1) year,[39] as recommended by the IBP, should be meted upon respondent.

WHEREFORE, respondent Prosecutor Alfredo L. Barcelona, Jr. is found **GUILTY** of violating Rule 6.02, Canon 6 of the Code of Professional Responsibility. He is hereby **SUSPENDED** from the practice of law for a period of one (1) year, effective upon his receipt of this Decision, and is **STERNLY WARNED** that a repetition of the same or similar acts will be dealt with more severely.

Let a copy of this Decision be attached to respondent's personal record as a member of the Bar. Likewise, let copies of the same be served on the Integrated Bar of the Philippines and on the Office of the Court Administrator for circulation to all courts in the country for their information and guidance.

SO ORDERED.

Leonardo-de Castro (*Acting Chairperson*),[*] *Bersamin,* and *Caguioa, JJ.,* concur.

Sereno, C.J., on leave.

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[38] *Vitriolo v. Dasig,* 448 Phil. 199, 209 (2003).

[39] See *Re: Resolution of the Court Dated 1 June 2004 in G.R. No. 72954 Against Atty. Victor C. Avecilla*, 667 Phil. 547 (2011).

[*] Per Special Order No. 2354 dated June 2, 2016.

SPECIAL FIRST DIVISION

[G.R. No. 172352. June 8, 2016]

LAND BANK OF THE PHILIPPINES, *petitioner, vs.* **ALFREDO HABABAG, SR., substituted by his wife, CONSOLACION, and children, namely: MANUEL, SALVADOR, WILSON, JIMMY, ALFREDO, JR., and JUDITH, all surnamed HABABAG,** *respondents.*

[G.R. Nos. 172387-88. June 8, 2016]

ALFREDO HABABAG, SR., substituted by his wife, CONSOLACION, and children, namely: MANUEL, SALVADOR, WILSON, JIMMY, ALFREDO, JR., and JUDITH, all surnamed HABABAG, *petitioners, vs.* **LAND BANK OF THE PHILIPPINES and the DEPARTMENT OF AGRARIAN REFORM,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; COMPREHENSIVE AGRARIAN REFORM LAW (R.A. 6657); JUST COMPENSATION; LEGAL INTEREST SHALL BE IMPOSED ON THE UNPAID BALANCE OF THE JUST COMPENSATION.— In *Apo Fruits*, the Court had illuminated that the substantiality of the payments made by the LBP is not the determining factor in the imposition of interest as nothing less than full payment of just compensation is required. The value of the landholdings themselves should be equivalent to the principal sum of the just compensation due, and that interest is due and should be paid to compensate for the unpaid balance of this principal sum after the taking has been completed x x x In the present case, the just compensation for the subject lands was finally fixed at ₱2,398,487.24, while the payments made by the LBP only amounted to ₱1,237,850.00. Hence, there remained an unpaid balance of the "principal sum of the just compensation," warranting the imposition of interest. In the recent case of *LBP v. Santos*, the Court reemphasized that just compensation contemplates of just and timely payment, and

elucidated that "prompt payment" of just compensation encompasses the **payment in full of the just compensation to the landholders as finally determined by the courts.** Hence, the requirement of the law is not satisfied by the mere deposit by the LBP with any accessible bank of the provisional compensation determined by it or by the DAR, and its subsequent release to the landowner after compliance with the legal requirements set forth by RA 6657.

2. ID.; ID.; ID.; ID.; IMPOSITION OF THE TWELVE (12) PERCENT AND SIX (6) PERCENT LEGAL INTEREST, CLARIFIED.— [T]he Court, in view of the LBP's alternative Motion for Clarification, illumines that the interest shall be pegged at the rate of twelve percent (12%) per annum (p.a.) on the unpaid balance, reckoned from the time of taking, or the time when the landowner was deprived of the use and benefit of his property, such as when *title is transferred to the Republic of the Philippines (Republic), or emancipation patents are issued by the government,* until June 30, 2013, and thereafter, at six percent(6%) p.a. until full payment. However, while the LBP averred that the landowner's title was cancelled in favor of the Republic, copies of the Republic's title/s was/were not attached to the records of these consolidated cases. Accordingly, the Court hereby directs the LBP to submit certified true copies of the Republic's title/s to the RTC upon remand of these cases, and the latter to compute the correct amount of legal interests due to the Heirs of Alfredo Hababag, Sr. reckoned from the date of the issuance of the said title/s.

APPEARANCES OF COUNSEL

Balintong Law & Notarial Office for Consolacion Hababag, *et al*.

LBP Legal Department for Land Bank of the Philippines.

R E S O L U T I O N

PERLAS-BERNABE, *J.*:

For the Court's resolution is the Land Bank of the Philippines' (LBP) Motion for Reconsideration of the September 16, 2015

Decision/Motion for Clarification of the Date of Taking[1] dated December 11, 2015, seeking: (*a*) to be discharged from the payment of legal interest on the unpaid balance of the just compensation;[2] and (*b*) clarification of the date of taking from which to reckon the computation of legal interest on the unpaid balance of the just compensation, in case its Motion for Reconsideration is denied.[3]

In the Court's September 16, 2015 Decision,[4] it affirmed the November 15, 2005 Decision[5] of the Court of Appeals (CA) in CA-G.R. SP Nos. 86066 and 86167, fixing the just compensation for the subject *69.3857 hectare lands* at ₱2,398,487.24 and imposing legal interest on the unpaid balance, but modified the imposable interest rate.[6]

The Court upheld the CA's valuation which made use of the Department of Agrarian Reform (DAR) formula as reflective of the factors set forth under Section 17 of Republic Act No. (RA) 6657,[7] and rejected the compensation fixed by the Regional Trial Court of Sorsogon City, Branch 52 (RTC) in Civil Case

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[1] Filed on December 21, 2015. *Rollo* (G.R. No. 172352), pp. 371-380; and *rollo* (G.R. Nos. 172387-88), pp. 412-421.

[2] See *rollo* (G.R. No. 172352), p. 372; and *rollo* (G.R. Nos. 172387-88), p. 413.

[3] See *rollo* (G.R. No. 172352), p. 377; and *rollo* (G.R. Nos. 172387-88), p. 418.

[4] *Rollo* (G.R. No. 172352), pp. 358-370; and *rollo* (G.R. Nos. 172387-88), pp. 399-411.

[5] *Rollo* (G.R. No. 172352), pp. 56-70; and *rollo* (G.R. Nos. 172387-88), pp. 29-43. Penned by Associate Justice Delilah Vidallon-Magtolis with Associate Justices Elvi John S. Asuncion and Jose C. Reyes, Jr. concurring.

[6] See *rollo* (G.R. No. 172352), p. 369; and *rollo* (G.R. Nos. 172387-88), p. 410.

[7] Entitled "AN ACT INSTITUTING A COMPREHENSIVE AGRARIAN REFORM PROGRAM TO PROMOTE SOCIAL JUSTICE AND INDUSTRIALIZATION, PROVIDING THE MECHANISM FOR ITS IMPLEMENTATION, AND FOR OTHER PURPOSES," approved on June 10, 1988.

No. 96-6217, which applied the Income Productivity Approach as contrary to the jurisprudential definition of just compensation in expropriation cases, *i.e.*, "market value" at the time of actual taking by the government.[8] Considering that the initial valuation in the amount of ₱1,237,850.00 paid to the landowners is lower than the just compensation finally adjudged, the Court likewise sustained the award of legal interest on the unpaid balance, but modified the imposable interest rate,[9] in line with the amendment introduced by *Bangko Sentral ng Pilipina*s-Monetary Board (BSP-MB) Circular No. 799,[10] series of 2013.[11]

I. With respect to the LBP's Motion for Reconsideration

In its Motion for Reconsideration, the LBP contends that it is not liable for the payment of interest, considering the absence of: (*a*) delay since it promptly deposited the initial valuation for the subject lands; and (*b*) substantial difference between the amount of initial valuation and the final just compensation,[12] which were purportedly the compelling circumstances in the case of *Apo Fruits Corporation vs. LBP*[13] (*Apo Fruits*), cited[14] by the Court in its September 16, 2015 Decision to justify the imposition of interest.

The argument is specious.

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[8] See *rollo* (G.R. No. 172352), pp. 366-367; and *rollo* (G.R. Nos. 172387-88), pp. 407-408.

[9] *Rollo* (G.R. No. 172352), p. 368; and *rollo* (G.R. Nos. 172387-88), p. 409.

[10] Entitled "Subject: Rate of interest in the absence of stipulation" (July 1, 2013).

[11] See *Nacar v. Gallery Frames*, G.R. No. 189871, August 13, 2013, 703 SCRA 439, 455-456.

[12] *Rollo* (G.R. No. 172352), p. 374; and *rollo* (G.R. Nos. 172387-88), p. 415.

[13] 647 Phil. 251 (2010).

[14] *Rollo* (G.R. No. 172352), p. 368; and *rollo* (G.R. Nos. 172387-88), p. 409.

In *Apo Fruits*, the Court had illuminated that the substantiality of the payments made by the LBP is not the determining factor in the imposition of interest as nothing less than full payment of just compensation is required. The value of the landholdings themselves should be equivalent to the principal sum of the just compensation due, and that interest is due and should be paid to compensate for the unpaid balance of this principal sum after the taking has been completed, *viz*.:

> [T]he interest involved in the present case "runs as a **matter of law** and follows as a matter of course from the right of the landowner to be placed in as good a position as money can accomplish, as of the date of taking."
>
> Furthermore, the allegedly considerable payments made by the LBP to the petitioners cannot be a proper premise in denying the landowners the interest due them under the law and established jurisprudence. **If the just compensation for the landholdings is considerable, this compensation is not undue because the landholdings the owners gave up in exchange are also similarly considerable** x x x. When the petitioners surrendered these sizeable landholdings to the government, the incomes they gave up were likewise sizeable and cannot in any way be considered miniscule. The incomes due from these properties, expressed as interest, are what the government should return to the petitioners after the government took over their lands without full payment of just compensation. In other words, ***the value of the landholdings themselves should be equivalent to the principal sum of the just compensation due; interest is due and should be paid to compensate for the unpaid balance of this principal sum after taking has been completed***. This is the compensation arrangement that should prevail if such compensation is to satisfy the constitutional standard of being "just."
>
> x x x x x x x x x
>
> If the full payment of the principal sum of the just compensation is legally significant at all under the circumstances of this case, the significance is only in putting a stop to the running of the interest due because the principal of the just compensation due has been paid. To close our eyes to these realities is to condone what is effectively a confiscatory action in favor of the LBP.

x x x **[T]he interest**, however enormous it may be, **cannot be inequitable and unconscionable because it resulted directly from the application of law and jurisprudence** — standards that have taken into account fairness and equity in setting the interest rates due for the use or forebearance of money.

x x x x x x x x x

It would be utterly fallacious, too, to argue that this Court should tread lightly in imposing liabilities on the LBP because this bank represents the government and, ultimately, the public interest. Suffice it to say that public interest refers to what will benefit the public, not necessarily the government and its agencies whose task is to contribute to the benefit of the public. Greater public benefit will result if government agencies like the LBP are conscientious in undertaking its tasks in order to avoid the situation facing it in this case. **Greater public interest would be served if it can contribute to the credibility of the government's land reform program through the conscientious handling of its part of this program.**[15] (Emphases and italics in the original, underscoring supplied.)

In the present case, the just compensation for the subject lands was finally fixed at ₱2,398,487.24,[16] while the payments made by the LBP only amounted to ₱1,237,850.00.[17] Hence, there remained an unpaid balance of the "principal sum of the just compensation," warranting the imposition of interest.

In the recent case of *LBP v. Santos*,[18] the Court reemphasized that just compensation contemplates of just and timely payment, and elucidated that "prompt payment" of just compensation encompasses the **payment in full of the just compensation to the landholders as finally determined by the courts.** Hence, the requirement of the law is not satisfied by the mere deposit

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[15] *Apo fruits vs. LBP*, *supra* note 13, at 285-287.

[16] *Rollo* (G.R. No. 172352), p. 364; and *rollo* (G.R. Nos. 172387-88), p. 405.

[17] *Rollo* (G.R. No. 172352), p. 368; and *rollo* (G.R. Nos. 172387-88), p. 409.

[18] See G.R. Nos. 213863 and 214021, January 27, 2016.

by the LBP with any accessible bank of the provisional compensation determined by it or by the DAR, and its subsequent release to the landowner after compliance with the legal requirements set forth by RA 6657.

Accordingly, the LBP's Motion for Reconsideration should be denied with finality.

II. With respect to the LBP's Motion for Clarification of the Date of Taking

That being said, the Court, in view of the LBP's alternative Motion for Clarification, illumines that the interest shall be pegged at the rate of twelve percent (12%) per annum (p.a.) on the unpaid balance, reckoned from the time of taking,[19] or the time when the landowner was deprived of the use and benefit of his property,[20] such as when *title is transferred to the Republic of the Philippines (Republic), or emancipation patents are issued by the government*,[21] until June 30, 2013, and thereafter, at six percent (6%) p.a. until full payment.[22] However, while the LBP averred that the landowner's title was cancelled in favor of the Republic,[23] copies of the Republic's title/s was/were not attached to the records of these consolidated cases. Accordingly, the Court hereby directs the LBP to submit certified true copies of the Republic's title/s to the RTC upon remand of these cases, and the latter to compute the correct amount of legal interests due to the Heirs of Alfredo Hababag, Sr. reckoned from the date of the issuance of the said titles/s.

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[19] See *LBP v. Heirs of Alsua*, G.R. No. 211351, February 4, 2015, 750 SCRA 121, 140.

[20] *Id.* See also *LBP v. Lajom*, G.R. Nos. 184982 and 185048, August 20, 2014, 733 SCRA 511, 523.

[21] See *LBP v. Santos*, *supra* note 18.

[22] See *LBP v. Heirs of Alsua*, *supra* note 19, at 140.

[23] See *rollo* (G.R. No. 172352), p. 374; and *rollo* (G.R. Nos. 172387-88), p. 415.

WHEREFORE, the Court hereby **RESOLVES** to:

1. **DENY WITH FINALITY** the Land Bank of the Philippines' (LBP) Motion for Reconsideration of the Court's Decision dated September 16, 2015; and

2. **GRANT** the LBP's Motion for Clarification of the Date of Taking by declaring that the awarded twelve percent (12%) annual legal interest on the unpaid balance of the just compensation shall be computed from the date of taking, *i.e.*, when title/s was/were transferred to the Republic of the Philippines (Republic), until June 30, 2013, and thereafter, a six percent (6%) annual legal interest shall be imposed until full payment.

However, in light of the absence of showing of the date of issuance of the Republic's title/s, the Court hereby **REMANDS** the records of these cases to the Regional Trial Court of Sorsogon City, Branch 52 (RTC), and **DIRECTS**:

a. The LBP to furnish the RTC certified true copies of the Republic's title/s; and

b. The RTC to compute the correct amount of legal interests due to the Heirs of Alfredo Hababag, Sr. reckoned from the date of the issuance of the Republic's title/s.

SO ORDERED.

Leonardo-de Castro (Acting Chairperson),[*] *Bersamin,* and *Perez, JJ.,* concur.

Sereno, C.J., on leave.

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[*] Per Special Order No. 2354 dated June 2, 2016.

THIRD DIVISION

[G.R. No. 185331. June 8, 2016]

SPOUSES ABELARDO VALARAO and FRANCISCA VALARAO, *petitioners, vs.* **MSC and COMPANY, INC.,** *respondent.*

Burgos vs. Sps. Naval, et al.

SYLLABUS

REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; DOCTRINE OF IMMUTABILITY OF JUDGMENT APPLIED SINCE NONE OF THE EXCEPTIONS OBTAINS IN CASE AT BAR.— The Court then finds no reversible error on the part of the CA in declaring its decision already final and executory. Corollary to this comes the applicability of the doctrine of finality or immutability of judgment explained by the Court in a line of cases x x x[.] The doctrine admits of certain exceptions, which are usually applied to serve substantial justice, particularly in the following instances: (1) the correction of clerical errors; (2) the so-called *nunc pro tunc* entries which cause no prejudice to any party; (3) void judgments; and (4) whenever circumstances transpire after the finality of the decision, rendering its execution unjust and inequitable. None of these circumstances attends the present case.

APPEARANCES OF COUNSEL

Benigno M. Puno for petitioners.
Randolfo L. Fajardo for respondent.

R E S O L U T I O N

REYES, *J.*:

This resolves the petition for review on *certiorari*[1] filed by spouses Abelardo Valarao and Francisca Valarao (petitioners)

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[1] *Rollo,* pp. 3-30.

to assail the Decision[2] dated February 21, 2008 of the Court of Appeals (CA) in CA-GR CV No. 87275. The petitioners likewise assail the CA Resolution[3] dated October 15, 2008 declaring that the CA Decision dated February 21, 2008 had become final, and the Entry of Judgment[4] that was issued pursuant to such resolution.

The Antecedents

The case stems from a civil case for sum of money, damages and rescission instituted by MSC and Company, Inc. (respondent) against the petitioners before the Regional Trial Court (RTC) of the City of Malolos, Bulacan, Branch 81. The respondent alleged that on September 26, 1997, it entered into a Memorandum of Agreement (MOA) with the petitioners, whereby the former, as contractor, was to develop for residential use the latter's landholding in Marungko, Angat, Bulacan. In the parties' subsequent agreement denominated as Contract Agreement, the petitioners undertook to reimburse the respondent's expenses for the project's topographic survey, site relocation, subdivision plans and specifications. They also agreed to give an advance payment of ₱8,550,000.00 as mobilization expenses for land development, to be paid to the respondent upon the contract's execution. For the duration of the project, the respondent would prepare bi-monthly progress billings, to be satisfied by the petitioners within 15 days from submission, subject to an interest of 24% *per annum* in case of delay or default in payment.[5]

After the petitioners failed to pay in full the stipulated expenses for mobilization, pre-development expenses and the respondent's

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[2] Penned by Associate Justice Myrna Dimaranan Vidal, with Associate Justices Jose L. Sabio, Jr. and Jose C. Reyes, Jr. concurring; CA *rollo*, pp. 146-159.

[3] *Id.* at 188.

[4] *Id.* at 189.

[5] *Id.* at 147.

progress billings, despite demand and even after the latter had completed 30% of the project, the respondent instituted the court action for sum of money, damages and rescission.[6]

In their amended answer to the complaint, the petitioners countered, among several defenses, that the respondent stopped the project's construction for no justifiable reason. Furthermore, the respondent allegedly failed to fulfill its undertaking under their MOA to assist the petitioners in obtaining a loan from financial institutions.[7]

On April 5, 2006, the RTC rendered its Decision[8] in Civil Case No. 86-M-2000, favoring the respondent. The dispositive portion of the decision reads:

> **WHEREFORE**, premises considered, judgment is hereby rendered in favor of the [respondent] and against the [petitioners], ordering the [petitioners], jointly and severally,
>
> 1. On the first cause of action, to pay [the respondent] the amount of Sixteen Million Three Hundred Forty[-]Nine Thousand and Thirty[-]Five Pesos and Sixty Centavos (₱16,349,035.60) with legal rate of interest from the date this judgment is rendered less the mobilization expenses deemed extinguished by reason of force majeure;
>
> 2. On the second cause of action, ordering the rescission and termination of the MOA and the Contract Agreement;
>
> 3. Dismissing the claim for damages;
>
> 4. Ordering the payment of Fifty [T]housand Pesos as and by way of attorney's fees; and
>
> 5. To pay the costs of the suit.
>
> **SO ORDERED**.[9]

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[6] *Id.* at 147-148.

[7] *Id.* at 149.

[8] Issued by Judge Herminia V. Pasamba; *rollo*, pp. 31-42.

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

Feeling aggrieved, the petitioners appealed to the CA, which however denied the appeal in its Decision dated February 21, 2008, with decretal portion that reads:

> **WHEREFORE**, premises considered, the reliefs prayed for in the instant appeal are hereby **DENIED** and the assailed Decision of the Court a quo dated 05 April 2006 is **AFFIRMED** with **Modification**. The imposition of the legal interest shall be reckoned from the finality of this Decision until fully paid.
>
> **SO ORDERED**.[10]

In a Resolution[11] dated October 15, 2008, the CA declared that its Decision had attained finality on March 19, 2008, considering that "no motion for reconsideration or Supreme Court petition has been filed by [the respondent] and that no Supreme Court petition has been filed by the [petitioners]."[12] In a Motion to Delete Resolutions with Manifestation[13] filed by the petitioners with the CA, it was claimed that a Motion for Reconsideration[14] dated March 11, 2008 was filed by the petitioners. They alleged that the motion remained unacted upon, until the CA issued an entry of judgment in the case.

Given the foregoing, the petitioners filed the present petition for review on *certiorari* under Rule 45 of the Rules of Court.

The Present Petition

From their arguments, the petitioners submit two issues for the Court's resolution: *first,* whether or not the CA committed a reversible error in declaring that its Decision dated February 21, 2008 had become final and executory; and *second*, whether or not the CA committed a reversible error in affirming the RTC decision that favored the respondent.

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[10] CA *rollo,* p. 158.

[11] *Id.* at 188.

[12] *Id.*

[13] *Rollo,* p. 110.

[14] CA *rollo,* pp. 160-180.

Ruling of the Court

The Court denies the petition.

The Court underscores the fact that the CA had issued on October 15, 2008 a Resolution declaring the Decision dated February 21, 2008 to have become final, citing the report of its Judicial Records Division that no party filed a petition with this Court. This circumstance was reiterated in an Entry of Judgment also issued by the CA, further elaborating that the CA decision had become final on March 19, 2008 with respect to the respondent and on June 20, 2008 with respect to the petitioners. In impugning the foregoing issuances of the CA, the petitioners repeatedly referred to a motion for reconsideration which they allegedly filed, through counsel, with the appellate court on March 11, 2008. If we were to rely solely on the petition and its attachments, the petitioners failed to sufficiently establish before the Court the fact of a timely filing of the motion in due form, as the copy of the motion[15] attached to the petition lacked material portions, including the end of its prayer and the required signature of counsel.

More importantly, other records indicate that the subject motion for reconsideration had in fact been resolved, as it was already denied by the CA. Such fact was declared in a Resolution[16] dated November 19, 2008, copy of which was attached by the respondent to their Comment on the petition. The resolution likewise disputed the petitioners' claim that the CA failed to take action on their Motion to Delete Resolutions and Manifestation, as it reads:

Considering the Decision in the above-entitled case had long become final and executory and Entry of Judgment issued, for failure of counsel for [the petitioners] to file a timely Motion for Extension/ Petition with the Supreme Court despite receipt of the May 28, 2008 Resolution denying his Motion for Reconsideration on June 4, 2008, per reply to tracer of the Postmaster posted on July 18, 2008, [the

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[15] *Rollo*, pp. 90-107.

[16] *Id.* at 149.

petitioners'] Motion to Delete Resolutions with Manifestation dated November 3, 2008 is only NOTED. Further pleadings and/or motion/s shall no longer be entertained.[17]

Clearly, there appeared to be significant incidents before the CA that remained undisclosed in the petition. This was confirmed upon the Court's perusal of the CA *rollo* in CA-GR CV No. 87275. As cited in CA Resolution dated November 19, 2008, forming part of the *rollo* is Resolution[18] dated May 28, 2008, which already denied the petitioners' motion for reconsideration and with dispositive portion that reads:

> After a judicious perusal of the instant motion, vis-à-vis the challenged Decision, We find that the arguments proffered by the [petitioners] have already been carefully considered, discussed and thoroughly passed upon by this Court in the said Decision. Thus, in the absence of any convincing and meritorious reason to disturb the challenged judgment[, the] instant motion is hereby **DENIED**.
>
> **SO ORDERED**.[19]

The Court then finds no reversible error on the part of the CA in declaring its decision already final and executory. Corollary to this comes the applicability of the doctrine of finality or immutability of judgment explained by the Court in a line of cases, to wit:

> Under the doctrine of finality of judgment or immutability of judgment, a decision that has acquired finality becomes immutable and unalterable, and may no longer be modified in any respect, even if the modification is meant to correct erroneous conclusions of fact and law, and whether it be made by the court that rendered it or by the Highest Court of the land. Any act which violates this principle must immediately be struck down.[20]

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[17] *Id.*

[18] CA *rollo*, pp. 182-183.

[19] *Id.* at 183.

[20] *Gadrinab v. Salamanca*, G.R. No. 194560, June 11, 2014, 726 SCRA 315, 328-329, citing *FGU Insurance Corp. v. RTC of Makati City, Br. 66, et al.*, 659 Phil. 117, 123 (2011).

The doctrine admits of certain exceptions, which are usually applied to serve substantial justice, particularly in the following instances: (1) the correction of clerical errors; (2) the so-called *nunc pro tunc* entries which cause no prejudice to any party; (3) void judgments; and (4) whenever circumstances transpire after the finality of the decision, rendering its execution unjust and inequitable.[21] None of these circumstances attends the present case.

The petitioners then erred in filing the present petition, as the remedy has become unavailable to it following the finality of the appellate court's decision. Accordingly, there is likewise no need for the Court to discuss and resolve the other issue raised in the petition, as it pertains to factual matters and the merits of the case.

WHEREFORE, the petition is **DENIED**.

SO ORDERED.

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

Peralta and *Jardeleza, JJ.*, on official leave.

SECOND DIVISION

[G.R. No. 189516. June 8, 2016]

EDNA MABUGAY-OTAMIAS, JEFFREN M. OTAMIAS and MINOR JEMWEL M. OTAMIAS, represented by their mother EDNA MABUGAY OTAMIAS, *petitioners, vs.* **REPUBLIC OF THE PHILIPPINES, represented**

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[21] *Gadrinab v. Salamanca, id.* at 329.

by COL. VIRGILIO O. DOMINGO, in his capacity as the Commanding Officer of the PENSION AND GRATUITY MANAGEMENT CENTER (PGMC) OF THE ARMED FORCES OF THE PHILIPPINES, *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; AFP MILITARY PERSONNEL RETIREMENT AND SEPARATION DECREE OF 1979 (P.D. NO. 1638); RETIREMENT BENEFITS OF MILITARY PERSONNEL MAY BE WAIVED.— When Colonel Otamias executed the Deed of Assignment, he effectively waived his right to claim that his retirement benefits are exempt from execution. The right to receive retirement benefits belongs to Colonel Otamias. His decision to waive a portion of his retirement benefits does not infringe on the right of the third persons, but even protects the right of his family to receive support. In addition, the Deed of Assignment should be considered as the law between the parties, and its provisions should be respected in the absence of allegations that Colonel Otamias was coerced or defrauded in executing it. The general rule is that a contract is the law between parties and parties are free to stipulate terms and conditions that are not contrary to law, morals, good customs, public order, or public policy. The Deed of Assignment executed by Colonel Otamias was not contrary to law; it was in accordance with the provisions on support in the Family Code. Hence, there was no reason for the AFP PGMC not to recognize its validity.

2. ID.; ID.; ID.; EXEMPTION OF MILITARY PERSONNEL RETIREMENT BENEFITS FROM EXECUTION UNDER SECTION 31 OF P.D. NO. 1638 VIS-À-VIS THE RIGHT TO RECEIVE SUPPORT UNDER THE FAMILY CODE, CONSTRUED; WAIVER OF RETIREMENT BENEFITS OF A MILITARY OFFICIAL IN FAVOR OF THE SPOUSE AND LEGITIMATE CHILDREN IS VALID SINCE IT IS BASED ON THE RIGHT TO RECEIVE SUPPORT UNDER THE FAMILY CODE.— Based on the Family Code, Colonel Otamias is obliged to give support to his family, petitioners in this case. However, he retired in 2003, and his sole source of

income is his pension. Judgments in actions for support are immediately executory, yet under Section 31 of Presidential Degree No. 1638, his pension cannot be executed upon. However, considering that Colonel Otamias has waived a portion of his retirement benefits through his Deed of Assignment, resolution on the conflict between the Civil Code provisions on support and Section 31 of Presidential Degree No. 1638 should be resolved in a more appropriate case. x x x *Republic v. Yahon* is an analogous case because it involved the grant of support to the spouse of a retired member of the Armed Forces of the Philippines. x x x The 1987 Constitution gives much importance to the family as the basic unit of society, such that Article XV is devoted to it. The passage of the Family Code further implemented Article XV of the Constitution. This Court has recognized the importance of granting support to minor children, provided that the filiation of the child is proven. In this case, the filiation of Jeffren M. Otamias and Jemwel M. Otamias was admitted by Colonel Otamias in the Deed of Assignment. Even before the passage of the Family Code, this Court has given primarily consideration to the right of a child to receive support. In *Samson v. Yatco*, a petition for support was dismissed with prejudice by the trial court on the ground that the minor asking for support was not present in court during trial. An appeal was filed, but it was dismissed for having been filed out of time. This Court relaxed the rules of procedure and held that "[i]f the order of dismissal with prejudice of the petition for support were to stand, the petitioners would be deprived of their right to present and future support."

3. REMEDIAL LAW; CIVIL PROCEDURE; PARTIES; NON-INCLUSION OF THE AFP FINANCE CENTER IN AN ACTION FOR SUPPORT WAS PROPER CONSIDERING THAT IT WAS NEITHER A REAL PARTY IN INTEREST NOR A NECESSARY PARTY— The non-inclusion of the AFP PGMC or the AFP Finance Center in the action for support was proper, considering that both the AFP PGMC and the AFP Finance Center are not the persons obliged to give support to Edna, et al. Thus, it was not real party-in-interest. Nor was the AFP PGMC a necessary party because complete relief could be obtained even without impleading the AFP PGMC.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioners.
Office of the Solicitor General for respondent.

D E C I S I O N

LEONEN, *J.*:

A writ of execution lies against the pension benefits of a retired officer of the Armed Forces of the Philippines, which is the subject of a deed of assignment drawn by him granting support to his wife and five (5) children. The benefit of exemption from execution of pension benefits is a statutory right that may be waived, especially in order to comply with a husband's duty to provide support under Article XV of the 1987 Constitution and the Family Code.

Petitioner Edna Mabugay-Otamias (Edna) and retired Colonel Francisco B. Otamias (Colonel Otamias) were married on June 16, 1978 and had five (5) children.[1]

On September 2000, Edna and Colonel Otamias separated due to his alleged infidelity.[2] Their children remained with Edna.[3]

On August 2002, Edna filed a Complaint-Affidavit against Colonel Otamias before the Provost Marshall Division of the Armed Forces of the Philippines.[4] Edna demanded monthly support equivalent to 75% of Colonel Otamias' retirement benefits.[5] Colonel Otamias executed an Affidavit, stating:

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[1] *Rollo* p. 58, Regional Trial Court Decision.

[2] *Id.*

[3] *Id.*

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

[5] *Id.* at 75, Edna Mabugay-Otamias' Affidavit-Complaint filed before the AFP Provost Marshall.

That sometime in August or September 2002, I was summoned at the Office of the Provost Marshal, Philippine Army, in connection with a complaint affidavit submitted to said Office by my wife Mrs. Edna M. Otamias signifying her intention 75% of my retirement benefits from the AFP;

That at this point, I can only commit 50% of my retirement benefits to be pro-rated among my wife and five (5) children;

That in order to implement this compromise, I am willing to enter into Agreement with my wife covering the same;

That I am executing this affidavit to attest to the truth of the foregoing facts and whatever legal purpose it may serve.[6]

On February 26, 2003, Colonel Otamias executed a Deed of Assignment where he waived 50% of his salary and pension benefits in favor of Edna and their children.[7] The Deed of Assignment was considered by the parties as a compromise agreement.[8] It stated:

This Assignment, made and executed unto this 26th day of February 2003 at Fort Bonifacio, Makati City, by the undersigned LTC Francisco B. Otamias, 0-0-111045 (INP) PA, of legal age, married and presently residing at Dama De Noche St., Pembo, Makati City.

WITNESSETH

WHEREAS, the undersigned affiant is the legal husband of EDNA M. OTAMIAS and the father of Julie Ann, Jonathan, Jennifer, Jeffren and Jemwel all residing at Patag, Cagayan de Oro City;

WHEREAS, the undersigned will be retiring from the military service and expects to receive retirement benefits from the Armed Forces of the Philippines;

WHEREAS, the undersigned had expressed his willingness to give a share in his retirement benefits to my wife and five (5) abovenamed children;

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[6] *Id.* at 76, Col. Otamias' Affidavit dated February 20, 2002.

[7] *Id.* at 11.

[8] *Id.*

NOW, THEREFORE, for and in consideration of the foregoing premises, the undersigned hereby stipulated the following:

1. That the undersigned will give to my legal wife and five (5) children FIFTY PERCENT (50%) of my retirement benefits to be pro-rated among them.

2. That a separate check(s) be issued and to be drawn and encash [sic] in the name of the legal wife and five (5) children pro-rating the fifty (50%) percent of my retirement benefits.

IN WITNESS WHEREOF, I have hereunto set my hand this 26th day of February 2003 at Fort Bonifacio, Makati City.[9]

Colonel Otamias retired on April 1, 2003.[10]

The agreement was honored until January 6, 2006.[11] Edna alleged that "the A[rmed] F[orces] [of the] P[hilippines] suddenly decided not to honor the agreement"[12] between Colonel Otamias and his legitimate family.

In a letter[13] dated April 3, 2006, the Armed Forces of the Philippines Pension and Gratuity Management Center (AFP PGMC) informed Edna that a court order was required for the AFP PGMC to recognize the Deed of Assignment.[14]

In another letter[15] dated April 17, 2006, the AFP PGMC reiterated that it could not act on Edna's request to receive a portion of Colonel Otamias' pension "unless ordered by [the] appropriate court."[16]

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[9] *Id.* at 77, Deed of Assignment.

[10] *Id.* at 58, Regional Trial Court Decision dated February 27, 2007.

[11] *Id.* at 11, Petition for Review on *Certiorari*.

[12] *Id.*

[13] *Id.* at 79.

[14] *Id.* at 11.

[15] *Id.* at 80.

[16] *Id.*

Heeding the advice of the AFP PGMC, Edna, on behalf of herself and Jeffren M. Otamias and Jemwel M. Otamias (Edna, et al.), filed before the Regional Trial Court of Cagayan de Oro, Misamis Oriental an action for support, docketed as F.C. Civil Case No. 2006-039.[17]

The trial court's Sheriff tried to serve summons on Colonel Otamias several times, to no avail.[18] Substituted service was resorted to.[19] Colonel Otamias was subsequently declared in default for failure to file a responsive pleading despite order of the trial court.[20]

The trial court ruled in favor of Edna, et al. and ordered the automatic deduction of the amount of support from the monthly pension of Colonel Otamias.[21]

The dispositive portion of the trial court's Decision stated:

> ALL THE FOREGOING CONSIDERED, and in consonance with the legal obligation of the defendant to the plaintiffs, the Armed Forces of the Philippines, through its Finance Center and/or appropriate Finance Officer thereof, is thereby ordered to release to Edna Mabugay Otamias and minor Jemwel M. Otamias, herein represented by his mother Edna, their fifty (50%) per cent share of each of the monthly pension due to Colonel Francisco B. Otamias, AFP PA (Retired).
>
> Defendant Francisco Otamias is also ordered to pay plaintiff Edna M. Otamias, fifty (50%) per cent of whatever retirement benefits he has already received from the Armed Forces of the Philippines AND the arrears in support, effective January 2006 up to the time plaintiff

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[17] *Id.* at 105-110, Complaint.

[18] *Id.* at 59, Court of Appeals Decision dated February 27, 2007.

[19] *Id.*

[20] *Id.* at 85, Order dated September 25, 2006 issued by Judge Evelyn Gamotin Nery of Branch 19, Regional Trial Court, Cagayan de Oro City, Misamis Oriental.

[21] *Id.* at 58-60. The Decision was penned by Judge Evelyn Gamotin Nery, Presiding Judge of Branch 19, Regional Trial Court, Cagayan de Oro City, Misamis Oriental.

receives her share direct from the Finance Center of the Armed Forces of the Philippines.

IT IS SO ORDERED.[22]

The Armed Forces of the Philippines, through the Office of the Judge Advocate General, filed a Manifestation/Opposition[23] to the Decision of the trial court, but it was not given due course due to its late filing.[24]

Edna, et al., through counsel, filed a Motion for Issuance of Writ of Execution[25] dated February 22, 2008. The trial court granted the Motion, and a writ of execution was issued by the trial court on April 10, 2008.[26]

The Armed Forces of the Philippines Finance Center (AFP Finance Center), through the Office of the Judge Advocate General, filed a Motion to Quash[27] the writ of execution and argued that the AFP Finance Center's duty to disburse benefits is ministerial. It releases benefits only upon the AFP PGMC's approval.[28]

The trial court denied the Motion to Quash and held that:

> Under the law and existing jurisprudence, the "right to support" is practically equivalent to the "right to life." The "right to life" always takes precedence over "property rights." The "right to support/life" is also a substantive right which always takes precedence over technicalities/procedural rules. It being so, technical rules must yield to substantive justice. Besides, this Court's Decision dated February 27, 2007 has long acquired finality, and as such, is ripe for enforcement/execution.

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[22] *Id.* at 60.

[23] *Id.* at 86-90, Copy of the Manifestation/Opposition.

[24] *Id.* at 91, Order dated July 12, 2007.

[25] *Id.* at 92-94, Motion for Issuance of Writ of Execution.

[26] *Id.* at 12, Petition.

[27] *Id.* at 62-72.

[28] *Id.*

THE FOREGOING CONSIDERED, the instant Motion is hereby DENIED.[29]

The AFP PGMC moved for reconsideration of the order denying the Motion to Quash,[30] but the Motion was also denied by the trial court in the Order[31] dated August 6, 2008.

A Notice of Garnishment was issued by the trial court on July 15, 2008 and was received by the AFP PGMC on September 9, 2008.[32]

The AFP PGMC filed before the Court of Appeals a Petition for Certiorari and Prohibition.[33]

The Court of Appeals granted[34] the Petition for Certiorari and Prohibition and partially nullified the trial court's Decision insofar as it directed the automatic deduction of support from the pension benefits of Colonel Otamias.

The Court of Appeals discussed that Section 31[35] of Presidential Decree No. 1638, otherwise known as the AFP

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[29] *Id.* at 61, Order denying the Motion to Quash.

[30] *Id.* at 12.

[31] *Id.* at 73-74, Order dated August 6, 2008.

[32] *Id.* at 12. The Petition states that the Notice of Garnishment was received by the AFP PGMC on September 9, 2009. However, it seems that the more appropriate year would be September 9, 2008, in view of the material dates in this case.

[33] *Id.*

[34] *Id.* at 131-143. The Decision was penned by Associate Justice Elihu A. Ybañez and concurred in by Associate Justices Rodrigo F. Lim, Jr. (Chair) and Ruben C. Ayson of the Twenty Third Division, Court of Appeals, Mindanao Station.

[35] Pres. Decree No. 1638 (1979), Sec. 31 provides:

Section 31. The benefits authorized under this Decree, except as provided herein, shall not be subject to attachment, garnishment, levy, execution or any tax whatsoever; neither shall they be assigned, ceded, or conveyed to any third person: Provided, that if a retired or separated officer or enlisted man who is entitled to any benefit under this Decree has unsettled money

Military Personnel Retirement and Separation Decree of 1979, "provides for the exemption of the monthly pension of retired military personnel from execution and attachment[,]"[36] while Rule 39, Section 13 of the Rules of Court provides:

SEC. 13. *Property exempt from execution*. — Except as otherwise expressly provided by law, the following property, and no other, shall be exempt from execution:

. . . . . .

(1) The right to receive legal support, or money or property obtained as such support, or any pension or gratuity from the Government[.]

The Court of Appeals also cited *Pacific Products, Inc. vs. Ong*:[37]

[M]oneys sought to be garnished, as long as they remain in the hands of the disbursing officer of the Government, belong to the latter, although the defendant in garnishment may be entitled to a specific portion thereof. And still another reason which covers both of the foregoing is that every consideration of public policy forbids it.[38]

In addition, the AFP PGMC was not impleaded as a party in the action for support; thus, it is not bound by the Decision.[39]

The dispositive portion of the Court of Appeals Decision reads:

WHEREFORE, the petition is **GRANTED**. The assailed Decision of the Regional Trial Court, Branch 19, Cagayan de Oro City dated

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and/or property accountabilities incurred while in the active service, not more than fifty per centum of the pension gratuity or other payment due such officer or enlisted or his survivors under this Decree may be withheld and be applied to settle such accountabilities.

[36] *Rollo*, p. 139.

[37] 260 Phil. 583 (1990) [Per *J.* Medialdea, First Division].

[38] *Id.* at 591, citing *Director of Commerce and Industry v. Concepcion*, 43 Phil. 384, 386 (1922) [Per *J.* Malcolm, *En Banc*].

[39] *Rollo*, p. 141.

February 27, 2007 in Civil Case No. 2006-039 is **PARTIALLY NULLIFIED** in so far as it directs the Armed Forces of the Philippines Finance Center to automatically deduct the financial support in favor of private respondents, Edna Otamias and her children Jeffren and Jemwel Otamias, from the pension benefits of Francisco Otamias, a retired military officer. The Order dated June 10, 2008, Order dated August 6, 2008 and Writ of Execution dated April 10, 2008, all issued by the court *a quo* are likewise **SET ASIDE**. Perforce, let a writ of permanent injunction issue enjoining the implementation of the assailed Writ of Execution dated April 10, 2008 and the corresponding Notice of Garnishment dated July 15, 2008. No pronouncement as to costs.

SO ORDERED.[40] (Emphasis in the original)

Edna, et al. moved for reconsideration, but the Motion was denied by the Court of Appeals.[41]

Edna, et al. filed before this Court a Petition for Review on Certiorari[42] on November 11, 2009. In the Resolution[43] dated January 20, 2010, this Court required respondent to comment.

In the Resolution[44] dated August 4, 2010, this Court noted the Comment filed by the Office of the Solicitor General and required Edna, et al. to file a reply.[45]

A Reply[46] was filed on September 27, 2010.

Edna, et al. argue that the Deed of Assignment Colonel Otamias executed is valid and legal.[47]

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[40] *Id.* at 142.

[41] *Id.* at 145-147, Court of Appeals Resolution dated August 11, 2009. The Resolution was penned by Associate Justice Elihu A. Ybañez and concurred in by Associate Justices Rodrigo F. Lim, Jr. (Chair) and Ruben C. Ayson of the Twenty Third Division, Court of Appeals, Mindanao Station.

[42] *Id.* at 9-22.

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

[44] *Id.* at 199.

[45] *Id.*

[46] *Id.* at 205-212.

[47] *Id.* at 15.

They claim that Section 31 of Presidential Decree No. 1638[48] "does not include support";[49] hence, the retirement benefits of Colonel Otamias can be executed upon.

Edna, et al. also argue that the Court of Appeals erred in granting respondent's Petition because it effectively rendered the Deed of Assignment of no force and effect.[50] On the other hand, the trial court's Decision implements the Deed of Assignment and Edna, et al.'s right to support.[51]

Further, the AFP PGMC had already recognized the validity of the agreement and had made payments to them until it suddenly stopped payment.[52] After Edna, *et al.* obtained a court order, the AFP PGMC still refused to honor the Deed of Assignment.[53]

The Armed Forces of the Philippines, through the Office of the Solicitor General, argues that it was not a party to the case filed by Edna, et al.[54] Thus, "it cannot be compelled to release part of the monthly pension benefits of retired Colonel Otamias in favor of [Edna, et al]."[55]

The Office of the Solicitor General avers that the AFP PGMC never submitted itself to the jurisdiction of the trial court.[56] It was not a party to the case as the trial court never acquired jurisdiction over the AFP PGMC.[57]

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[48] Establishing a New System of Retirement and Separation for Military Personnel of the Armed Forces of the Philippines and for Other Purposes (1979).

[49] *Rollo*, p. 15.

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

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

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

[53] *Id.*

[54] *Id.* at 186, Comment.

[55] *Id.*

[56] *Id.* at 187.

[57] *Id.*

The Office of the Solicitor General also argues that Section 31 of Presidential Decree No. 1638 and Rule 39, Section 13 (1) of the Rules of Court support the Court of Appeals Decision that Colonel Otamias' pension benefits are exempt from execution.[58]

Section 31 of Presidential Decree No. 1638 "does not deprive the survivor/s of a retired or separated officer or enlisted man of their right to support."[59] Rather, "[w]hat is prohibited is for respondent [AFP PGMC] to segregate a portion of the pension benefit in favor of the retiree's family while still in the hands of the A[rmed] F[orces] [of the] P[hilippines]."[60]

Thus, the AFP PGMC "cannot be compelled to directly give or issue a check in favor of [Edna, et al.] out of the pension gratuity of Col. Otamias."[61]

In their Reply,[62] Edna, et al. argue that the Armed Forces of the Philippines should not be allowed to question the legal recourse they took because it was an officer of the Armed Forces of the Philippines who had advised them to file an action for support.[63]

They argue that the phrase "while in the active service" in Section 31 of Presidential Decree No. 1638 refers to the "time when the retired officer incurred his accountabilities in favor of a private creditor[,]"[64] who is a third person. The phrase also "serves as a timeline designed to separate the debts incurred by the retired officer after his retirement from those which he incurred prior thereto."[65]

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[58] *Id.* at 193.

[59] *Id.* at 194.

[60] *Id.*

[61] *Id.* at 195.

[62] *Id.* at 205-212.

[63] *Id.* at 206.

[64] *Id.* at 208.

[65] *Id.*

Further, the accountabilities referred to in Section 31 of Presidential Decree No. 1638 refer to debts or loans, not to support.[66]

The issues for resolution are:

First, whether the Court of Appeals erred in ruling that the AFP Finance Center cannot be directed to automatically deduct the amount of support needed by the legitimate family of Colonel Otamias; and

Second, whether Colonel Otamias' pension benefits can be executed upon for the financial support of his legitimate family.

The Petition is granted.

I

Article 6 of the Civil Code provides:

Article 6. Rights may be waived, unless the waiver is contrary to law, public order, public policy, morals or good customs, or prejudicial to a third person with a right recognized by law.

The concept of waiver has been defined by this Court as:

a voluntary and intentional relinquishment or abandonment of a known existing legal right, advantage, benefit, claim or privilege, which except for such waiver the party would have enjoyed; the voluntary abandonment or surrender, by a capable person, of a right known by him to exist, with the intent that such right shall be surrendered and such person forever deprived of its benefit; or such conduct as warrants an inference of the relinquishment of such right; or the intentional doing of an act inconsistent with claiming it.[67]

In determining whether a statutory right can be waived, this Court is guided by the following pronouncement:

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[66] *Id.*

[67] *F.F. Cruz & Co., Inc. v. HR Construction Corporation*, 684 Phil. 330, 351 (2012) [Per J. Reyes, Second Division], citing *People v. Donato*, 275 Phil. 146, 150 (1991) [Per J. Davide, Jr., *En Banc*].

[T]he doctrine of waiver extends to rights and privileges of any character, and, since the word 'waiver' covers every conceivable right, it is the general rule that a person may waive any matter which affects his property, and any alienable right or privilege of which he is the owner or which belongs to him or to which he is legally entitled, whether secured by contract, conferred with statute, or guaranteed by constitution, **provided such rights and privileges rest in the individual, are intended for his sole benefit, do not infringe on the rights of others, and further provided the waiver of the right or privilege is not forbidden by law, and does not contravene public policy;** and the principle is recognized that everyone has a right to waive, and agree to waive, the advantage of a law or rule made solely for the benefit and protection of the individual in his private capacity, if it can be dispensed with and relinquished without infringing on any public right, and without detriment to the community at large[.][68] (Emphasis in the original)

When Colonel Otamias executed the Deed of Assignment, he effectively waived his right to claim that his retirement benefits are exempt from execution. The right to receive retirement benefits belongs to Colonel Otamias. His decision to waive a portion of his retirement benefits does not infringe on the right of third persons, but even protects the right of his family to receive support.

In addition, the Deed of Assignment should be considered as the law between the parties, and its provisions should be respected in the absence of allegations that Colonel Otamias was coerced or defrauded in executing it. The general rule is that a contract is the law between parties and parties are free to stipulate terms and conditions that are not contrary to law, morals, good customs, public order, or public policy.[69]

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[68] *Id.*

[69] *Viesca v. Gilinsky*, 553 Phil. 498, 498-499 (2007) [Per J. Chico-Nazario, Third Division]; *Spouses Chung v. Ulanday Construction, Inc.* 647 Phil. 1 (2010) [Per J. Brion, Third Division]; *Spouses Mallari v. Prudential Bank* (*now Bank of the Philippine Islands*), 710 Phil. 490, 500 (2013); *Benson Industries Employees Union v. Benson Industries*, G.R. No. 200746, August 6, 2014, 732 SCRA 318, 320 [Per J. Perlas-Bernabe, Second Division];

The Deed of Assignment executed by Colonel Otamias was not contrary to law; it was in accordance with the provisions on support in the Family Code. Hence, there was no reason for the AFP PGMC not to recognize its validity.

Further, this Court notes that the AFP PGMC granted the request for support of the wives of other retired military personnel in a similar situation as that of petitioner in this case. Attached to the Petition are the affidavits of the wives of retired members of the military, who have received a portion of their husbands' pensions.[70]

One affidavit stated:

> 4. That when I consulted and appeared before the Office of PGMC, I was instructed to submit a Special Power of Authority from my husband so they can release part of his pension to me;
>
> 5. That my husband signed the Special Power of Attorney at the PGMC ceding 50% of his pension to me; the SPA form was given to us by the PGMC and the same was signed by my husband at the PGMC; . . .
>
> . . . . . .
>
> 7. That the amount was deposited directly to my account by the PGMC-Finance Center AFP out of the pension of my husband;
>
> 8. That only the Special Power of Attorney was required by the PGMC in order for them to segregate my share of my husband's pension and deposit the same to my account[.][71]

New World Developers & Management, Inc. v. AMA Computer Learning Center, Inc., G.R. No. 187930, February 23, 2015, 751 SCRA 331, 332 [Per *C.J.* Sereno, First Division]. See also CIVIL CODE, Art. 1306, which provides:

> Article 1306. The contracting parties may establish such stipulations, clauses, terms and conditions as they may deem convenient, provided they are not contrary to law, morals, good customs, public order, or public policy.

[70] *Rollo* pp. 98-99, Affidavit of Marina Hermosilla Vestal. See also *rollo*, pp. 102-103, Affidavit of Eleonor D. Lanuza.

[71] *Id.* at 98.

The other affidavit stated:

> 8. That my husband signed the Special Power of Attorney at the PGMC ceding 50% of his pension to me; the SPA form was given to us by the PGMC and the same was signed by my husband at the PGMC[.][72]

In addition, the AFP PGMC's website informs the public of the following procedure:

> **Tanong:** My husband-retiree cut-off my allotment. How can I have it restored?
>
> **Sagot:** Pension benefits are separate properties of the retiree and can not [sic] be subject of a Ocurt [sic] Order for execution nor can they be assigned to any third party (Sec. 31, PD 1638, as amended). However, a valid Special Power of Attorney (SPA) by the retiree himself empowering the AFP Finance Center to deduct certain amount from his lumpsum [sic] or pension pay as the case may be, as a rule, is a valid waiver of rights which can be effectively implemented by the AFP F[inance] C[enter].[73]

Clearly, the AFP PGMC allows deductions from a retiree's pension for as long as the retiree executes a Special Power of Attorney authorizing the AFP PGMC to deduct a certain amount for the benefit of the retiree's beneficiary.

It is curious why Colonel Otamias was allowed to execute a Deed of Assignment by the administering officer when, in the first place, the AFP PGMC's recognized procedure was to execute a Special Power of Attorney, which would have been the easier remedy for Colonel Otamias' family.

Instead, Colonel Otamias' family was forced to incur litigation expenses just to be able to receive the financial support that Colonel Otamias was willing to give to Edna, et al.

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[72] *Id.* at 102.

[73] Frequently Asked Question, Armed Forces of the Philippines — Pension & Gratuity Management Center <http://www.afppension.ghq-mfo.com/FAQs.pdf> (visited May 3, 2016).

II

Section 31 of Presidential Decree No. 1638 provides:

Section 31. The benefits authorized under this Decree, except as provided herein, shall not be subject to attachment, garnishment, levy, execution or any tax whatsoever; neither shall they be assigned, ceded, or conveyed to any third person: Provided, That if a retired or separated officer or enlisted man who is entitled to any benefit under this Decree has unsettled money and/or property accountabilities incurred while in the active service, not more than fifty per centum of the pension gratuity or other payment due such officer or enlisted man or his survivors under this Decree may be withheld and be applied to settle such accountabilities.

Under Section 31, Colonel Otamias' retirement benefits are exempt from execution. Retirement benefits are exempt from execution so as to ensure that the retiree has enough funds to support himself and his family.

On the other hand, the right to receive support is provided under the Family Code. Article 194 of the Family Code defines support as follows:

Art. 194. Support comprises everything indispensable for sustenance, dwelling, clothing, medical attendance, education and transportation, in keeping with the financial capacity of the family.

The education of the person entitled to be supported referred to in the preceding paragraph shall include his schooling or training for some profession, trade or vocation, even beyond the age of majority. Transportation shall include expenses in going to and from school, or to and from place of work.

The provisions of the Family Code also state who are obliged to give support, thus:

Art. 195. Subject to the provisions of the succeeding articles, the following are obliged to support each other to the whole extent set forth in the preceding article:

(1) The spouses;

(2) Legitimate ascendants and descendants;

(3) Parents and their legitimate children and the legitimate and illegitimate children of the latter;

(4) Parents and their illegitimate children and the legitimate and illegitimate children of the latter; and

(5) Legitimate brothers and sisters, whether of the full or half-blood.

Art. 196. Brothers and sisters not legitimately related, whether of the full or half-blood, are likewise bound to support each other to the full extent set forth in Article 194 except only when the need for support of the brother or sister, being of age, is due to a cause imputable to the claimant's fault or negligence.

Art. 197. For the support of legitimate ascendants; descendants, whether legitimate or illegitimate; and brothers and sisters, whether legitimately or illegitimately related, only the separate property of the person obliged to give support shall be answerable provided that in case the obligor has no separate property, the absolute community or the conjugal partnership, if financially capable, shall advance the support, which shall be deducted from the share of the spouses obliged upon the liquidation of the absolute community or of the conjugal partnership[.]

The provisions of Rule 39 of the Rules of Court that are applicable to this case are in apparent conflict with each other. Section 4 provides that judgments in actions for support are immediately executory. On the other hand, Section 13 (1) provides that the right to receive pension from government is exempt from execution, thus:

RULE 39

EXECUTION, SATISFACTION, AND EFFECT OF JUDGMENTS

. . . . . .

SEC. 4. *Judgments not stayed by appeal. — Judgments in actions* for injunction, receivership, accounting and support, and such other judgments as are now or may hereafter be declared to be immediately executory, *shall be enforceable after their rendition and shall not, be stayed by an appeal taken therefrom, unless otherwise ordered by the trial court*. On appeal therefrom, the appellate court in its discretion may make an order suspending, modifying, restoring or granting the injunction, receivership, accounting, or award of support.

The stay of execution shall be upon such terms as to bond or otherwise as may be considered proper for the security or protection of the rights of the adverse party.

. . . . . .

SEC. 13. *Property exempt from execution.* — Except as otherwise expressly provided by law, the following property, and no other, shall be exempt from execution:

. . . . . .

(1) *The right to receive* legal support, or money or property obtained as such support, or any *pension or gratuity from the Government*;

. . . . . .

But no article or species of property mentioned in this section shall be exempt from execution issued upon a judgment recovered for its price or upon a judgment of foreclosure of a mortgage thereon. (Emphasis supplied)

Based on the Family Code, Colonel Otamias is obliged to give support to his family, petitioners in this case. However, he retired in 2003, and his sole source of income is his pension. Judgments in actions for support are immediately executory, yet under Section 31 of Presidential Decree No. 1638, his pension cannot be executed upon.

However, considering that Colonel Otamias has waived a portion of his retirement benefits through his Deed of Assignment, resolution on the conflict between the civil code provisions on support and Section 31 of Presidential Decree No. 1638 should be resolved in a more appropriate case.

III

Republic v. Yahon[74] is an analogous case because it involved the grant of support to the spouse of a retired member of the Armed Forces of the Philippines.

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[74] G.R. No. 201043, June 16, 2014, 726 SCRA 438 [Per *J.* Villarama, Jr., First Division].

In *Republic v. Yahon*, Daisy R. Yahon filed a Petition for the Issuance of Protection Order under Republic Act No. 9262.[75] She alleged that she did not have any source of income because her husband made her resign from her job.[76] The trial court issued a temporary restraining order, a portion of which stated:

> **To insure that petitioner [Daisy R. Yahon] can receive a fair share of respondent's retirement and other benefits, the following agencies thru their heads are directed to WITHHOLD any retirement, pension[,] and other benefits of respondent, S/SGT. CHARLES A. YAHON,** a member of the Armed Forces of the Philippines assigned at 4ID, Camp Evangelista, Patag, Cagayan de Oro City until further orders from the court:
>
> 1. Commanding General/Officer of the Finance Center of the Armed Forces of the Philippines, Camp Emilio Aguinaldo, Quezon City;
>
> 2. The Management of RSBS, Camp Emilio Aguinaldo, Quezon City;
>
> 3. The Regional Manager of PAG-IBIG, Mortola St., Cagayan de Oro City.[77] (Emphasis in the original)

The trial court subsequently granted Daisy's Petition and issued a permanent protection order[78] and held:

> Pursuant to the order of the court dated February 6, 2007, respondent, S/Sgt. Charles A. Yahon is directed to give it to petitioner 50% of whatever retirement benefits and other claims that may be due or released to him from the government and the said share of petitioner shall be automatically deducted from respondent's benefits and claims and be given directly to the petitioner, Daisy R. Yahon.

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[75] The Anti-Violence Against Women and Their Children Act of 2004 (2004).

[76] *Republic v. Yahon*, G.R. No. 201043, June 16, 2014, 726 SCRA 438, 444 [Per *J.* Villarama, Jr., First Division].

[77] *Id.* at 442-443.

[78] *Id.* at 445.

Let copy of this decision be sent to the Commanding General/ Officer of Finance Center of the Armed Forces of the Philippines, Camp Emilio Aguinaldo, Quezon City; the Management of RSBS, Camp Emilio Aguinaldo, Quezon City and the Regional Manager of PAG-IBIG, Mortola St., Cagayan de Oro City for their guidance and strict compliance.[79]

In that case, the AFP Finance Center filed before the trial court a Manifestation and Motion stating that "it was making a limited and special appearance"[80] and argued that the trial court did not acquire jurisdiction over the Armed Forces of the Philippines. Hence, the Armed Forces of the Philippines is not bound by the trial court's ruling.[81]

The Armed Forces of the Philippines also cited *Pacific Products*, where this Court ruled that:

A rule, which has never been seriously questioned, is that money in the hands of public officers, although it may be due government employees, is not liable to the creditors of these employees in the process of garnishment. One reason is, that the State, by virtue of its sovereignty may not be sued in its own courts except by express authorization by the Legislature, and to subject its officers to garnishment would be to permit indirectly what is prohibited directly. Another reason is that moneys sought to be garnished, as long as they remain in the hands of the disbursing officer of the Government, belong to the latter, although the defendant in garnishment may be entitled to a specific portion thereof. And still another reason which covers both of the foregoing is that every consideration of public policy forbids it.[82] (Citations omitted)

This Court in *Republic v. Yahon* denied the Petition and discussed that because Republic Act No. 9262 is the later enactment, its provisions should prevail,[83] thus:

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[79] *Id.* at 446.

[80] *Id.*

[81] *Id.* at 447.

[82] *Id.* at 454, citing *Pacific Products, Inc. v. Ong*, 260 Phil. 583, 591 (1990) [Per *J.* Medialdea, First Division].

[83] *Id.* at 453-454.

We hold that Section 8 (g) of R.A. No. 9262, being a later enactment, should be construed as laying down an exception to the general rule above stated that retirement benefits are exempt from execution. The law itself declares that the court shall order the withholding of a percentage of the income or salary of the respondent by the employer, which shall be automatically remitted directly to the woman "[*n*]*otwithstanding other laws to the contrary*."[84] (Emphasis in the original)

IV

The 1987 Constitution gives much importance to the family as the basic unit of society, such that Article XV[85] is devoted to it.

The passage of the Family Code further implemented Article XV of the Constitution. This Court has recognized the importance

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[84] *Id.* at 453.

[85] CONST., Art. XV provides:

ARTICLE XV

The Family

SECTION 1. The State recognizes the Filipino family as the foundation of the nation. Accordingly, it shall strengthen its solidarity and actively promote its total development.

SECTION 2. Marriage, as an inviolable social institution, is the foundation of the family and shall be protected by the State.

SECTION 3. The State shall defend:

(1) The right of spouses to found a family in accordance with their religious convictions and the demands of responsible parenthood;

(2) The right of children to assistance, including proper care and nutrition, and special protection from all forms of neglect, abuse, cruelty, exploitation, and other conditions prejudicial to their development;

(3) The right of the family to a family living wage and income; and

(4) The right of families or family associations to participate in the planning and implementation of policies and programs that affect them.

SECTION 4. The family has the duty to care for its elderly members but the State may also do so through just programs of social security. (Emphasis supplied)

of granting support to minor children, provided that the filiation of the child is proven. In this case, the filiation of Jeffren M. Otamias and Jemwel M. Otamias was admitted by Colonel Otamias in the Deed of Assignment.[86]

Even before the passage of the Family Code, this Court has given primary consideration to the right of a child to receive support. In *Samson v. Yatco*,[87] a petition for support was dismissed with prejudice by the trial court on the ground that the minor asking for support was not present in court during trial. An appeal was filed, but it was dismissed for having been filed out of time. This Court relaxed the rules of procedure and held that "[i]f the order of dismissal with prejudice of the petition for support were to stand, the petitioners would be deprived of their right to present and future support."[88]

In *Gan v. Reyes*,[89] Augustus Caezar R. Gan (Gan) questioned the trial court's decision requiring him to give support and claimed that that he was not the father of the minor seeking support. He also argued that he was not given his day in court. This Court held that Gan's arguments were meant to delay the execution of the judgment, and that in any case, Gan himself filed a Motion for Leave to Deposit in Court Support Pendente Lite:

> In all cases involving a child, his interest and welfare are always the paramount concerns. There may be instances where, in view of the poverty of the child, it would be a travesty of justice to refuse him support until the decision of the trial court attains finality while time continues to slip away. An excerpt from the early case of *De Leon v. Soriano* is relevant, thus:

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[86] *Rollo*, p. 77, Deed of Assignment. One of the preambular clauses stated: "WHEREAS, the undersigned affiant is the legal husband of EDNA M. OTAMIAS and the father of Julie Ann, Jonathan, Jennifer, Jeffren and Jemwel all residing at Patag, Cagayan de Oro City."

[87] 111 Phil. 781 (1961) [Per *J.* Padilla, *En Banc*].

[88] *Id.* at 787.

[89] 432 Phil. 105 (2002) [Per *J.* Bellosillo, Second Division].

The money and property adjudged for support and education should and must be given presently and without delay because if it had to wait the final judgment, the children may in the meantime have suffered because of lack of food or have missed and lost years in school because of lack of funds. One cannot delay the payment of such funds for support and education for the reason that if paid long afterwards, however much the accumulated amount, its payment cannot cure the evil and repair the damage caused. The children with such belated payment for support and education cannot act as gluttons and eat voraciously and unwisely, afterwards, to make up for the years of hunger and starvation. Neither may they enrol in several classes and schools and take up numerous subjects all at once to make up for the years they missed in school, due to non-payment of the funds when needed.[90]

V

The non-inclusion of the AFP PGMC or the AFP Finance Center in the action for support was proper, considering that both the AFP PGMC and the AFP Finance Center are not the persons obliged to give support to Edna, et al. Thus, it was not a real party-in-interest.[91] Nor was the AFP PGMC a necessary party because complete relief could be obtained even without impleading the AFP PGMC.[92]

WHEREFORE, the Petition is **GRANTED**. The Court of Appeals Decision dated May 22, 2009 and Resolution dated

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[90] *Id.* at 112-113, citing *De Leon v. Soriano*, 95 Phil. 806, 816 (1954) [Per *J.* Montemayor, *En Banc*].

[91] RULES OF COURT, Rule 3, Sec. 2 provides:

SEC. 2. Parties in interest. — A real party in interest is the party who stands to be benefited or injured by the judgment in the suit, or the party entitled to the avails of the suit. Unless otherwise authorized by law or these Rules, every action must be prosecuted or defended in the name of the real party in interest.

[92] RULES OF COURT, Rule 3, Sec. 8 provides:

SEC. 8. Necessary Party. — A necessary party is one who is not indispensable but who ought to be joined as a party if complete relief is to be accorded as to those already parties, or for a complete determination or settlement of the claim subject of the action.

August 11, 2009 in CA-G.R. SP No. 02555-MIN are **REVERSED** and **SET ASIDE**. The Regional Trial Court Decision dated February 27, 2007 in F.C. Civil Case No. 2006-039 is **REINSTATED**.

SO ORDERED.

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

Brion, J., on official leave.

THIRD DIVISION

[G.R. No. 193374. June 8, 2016]

HEIRS OF THE LATE GERRY[*] ECARMA, NAMELY: AVELINA SUIZA-ECARMA, DENNIS ECARMA, JERRY LYN ECARMA PEÑA, ANTONIO ECARMA and NATALIA ECARMA SANGALANG, *petitioners, vs.* **COURT OF APPEALS and RENATO A. ECARMA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEAL BY *CERTIORARI* UNDER RULE 45 DISTINGUISHED FROM A PETITION FOR *CERTIORARI* UNDER RULE 65.— An appeal by *certiorari* under Rule 45 of the Rules of Court is different from a petition for *certiorari* under Rule 65 thereof. A special civil action for *certiorari* may be availed of only if the lower tribunal has acted without or in excess of jurisdiction,

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[*] Spelled as Jerry Ecarma in some of the pleadings and in the body of this Decision.

or with grave abuse of discretion amounting to lack or excess of jurisdiction, and if there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law. Simply imputing in a petition that the ruling sought to be reviewed is tainted with grave abuse of discretion does not magically transform a petition into a special civil action for *certiorari.*

2. ID.; ID.; APPEALS; DISMISSAL OF AN APPEAL IS A FINAL ORDER AND THE PROPER REMEDY OF THE AGGRIEVED PARTY IS A RULE 45 PETITION.— The appellate court's outright dismissal of therein appellants' appeal was a final order which left it with nothing more to do to resolve the case. That disposition is a final and executory order, appealable to, and may be questioned before, this Court by persons aggrieved thereby, such as herein petitioners, *via* Rule 45. Moreover, the dismissal of therein appellants', herein petitioners', appeal before the CA is expressly allowed by Section 1 (f), Rule 50 of the Rules of Court. The appellate court, therefore, cannot be charged with grave abuse of discretion as there is no showing that, in the exercise of its judgment, it acted in a capricious, whimsical, arbitrary or despotic manner tantamount to lack of jurisdiction. Absent grave abuse of discretion, petitioners should have filed a petition for review on *certiorari* under Rule 45 instead of a petition for *certiorari* under Rule 65. The soundness of the ruling dismissing petitioners' appeal before the appellate court is a matter of judgment with respect to which the remedy of the party aggrieved is a Rule 45 petition. An error of judgment committed by a court in the exercise of its legitimate jurisdiction is not the same as grave abuse of discretion. Errors of judgment are correctible by appeal, while those of jurisdiction are reviewable by certiorari.

3. ID.; ID.; ID.; DISMISSAL OF AN APPEAL FOR FAILURE TO COMPLY WITH THE CONTENT REQUIREMENT UNDER SECTION 13, RULE 44 OF THE RULES OF COURT IS PROPER.— The CA correctly dismissed herein petitioners' Appellants' Brief for failure to comply with the content requirement specified under Section 13 of Rule 44. Petitioners are adamant, however, that they complied with the required content specified in the rules even attaching a sample copy of an Appellant's Brief found in Guevarra's Legal Forms which was purportedly their guideline in revising and submitting their Supplemental Appellants' Brief to the appellate court.

We assiduously went through the Supplemental Appellants' Brief of herein petitioners and as the CA have, we likewise find it wanting, a lame attempt at compliance through superficial changes, devoid of substance. In fact, the Supplemental Appellants' Brief could only cite Section 1, Rule 74 of the Rules of Court as its sole legal authority in questioning the RTC, Branch 220's Order of Partition. Petitioners, even in their present petition before us, are unable to grasp the necessity of supporting and anchoring their arguments with legal basis. They cannot simply cite one section of one rule without expounding thereon.

4. CIVIL LAW; CO-OWNERSHIP; A CO-OWNER CANNOT PRECLUDE THE OTHER OWNERS FROM EXERCISING ALL INCIDENCES OF THEIR FULL OWNERSHIP.— The impasse between the parties is due to herein petitioners' persistent objection to proposals for the partition of the subject properties. The deceased Gerry Ecarma, Rodolfo Ecarma and herein petitioners consistently opposed the proposed partition of the administrator, respondent Renato, since such is ostensibly "not feasible, impractical and renders detrimental use of the Kitanlad property." However, it is apparent that Gerry Ecarma and his heirs (herein petitioners) completely object to any kind of partition of the subject properties, contravening even the proposed sale thereof. We note that petitioners have been careful not to proffer that the subject properties are indivisible or that physical division of thereof would render such unserviceable since Article 495 of the Civil Code provides the remedy of termination of co-ownership in accordance with Article 498 of the same Code, *i.e.*, sale of the property and distribution of the proceeds. Ineluctably, therefore, herein petitioners' absolute opposition to the partition of the subject properties which are co-owned has no basis in law. As mere co-owners, herein petitioners, representing the share of the deceased Gerry Ecarma, cannot preclude the other owners likewise compulsory heirs of the deceased spouses Natalio and Arminda, from exercising all incidences of their full ownership.

APPEARANCES OF COUNSEL

Oscar A. Pascua for petitioners.
Jordan M. Pizarras for respondents.

D E C I S I O N

PEREZ, *J.*:

We here have another case of heirs quarrelling over inherited properties, some of them refusing their partition.

Before us is a Petition for *Certiorari*[1] under Rule 65 of the Rules of Court assailing the twin Resolutions[2] of the Court of Appeals (CA) in CA-G.R. CV No. 92375 for having been issued with grave abuse of discretion amounting to lack of or in excess of jurisdiction. The appellate court dismissed outright the appeal of petitioners, heirs of Gerry Ecarma for a number of procedural defects, including failure to comply with Section 13, Rule 44 of the Rules of Court on the contents of their appellants' brief. Petitioners sought to appeal the two (2) Orders[3] of the Regional Trial Court (RTC), Branch 220, Quezon City in SP PROC. No. Q-90-6332 which approved the Project of Partition proposed by respondent Renato Ecarma, administrator in the intestate proceedings to settle the estate of decedent Arminda *vda*. de Ecarma covering four (4) properties.

Because of the outright dismissal of their appeal before the CA, we have a dearth of facts we had to glean from the bare pleadings of petitioners.

The decedent Arminda was married to Natalio Ecarma who predeceased her on 9 May 1970. During their marriage, they acquired several properties and begat seven (7) children:

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[1] *Rollo*, pp. 3-18.

[2] *Id.* at 19-25; dated 31 March 2010 and 22 June 2010, respectively; penned by Associate Justice Amy C. Lazaro-Javier with Justices Mario L. Guariña III and Sesinando E. Villon, concurring.

[3] Both the *Rollo* and the CA *rollo* do not include a copy of the Regional Trial Court, Branch 220, Quezon City's Order of Partition dated 28 July 2005. Moreover, even herein petitioners' Appellants' Brief filed with the Court of Appeals fail to attach said Order. We simply cited the Order from herein petitioners' attachment of their Record on Appeal to the Petition for *Certiorari* at bench.

(1) Angelita; (2) Rodolfo; (3) respondent Renato; (4) Maria Arminda; (5) Gerry Anthony Ecarma, husband and father respectively of herein petitioners Avelina Suiza Ecarma, Dennis Ecarma, Gerry Lyn Ecarma Pena, Antonio Ecarma and Natalia Ecarma Sangalang (collectively petitioners and/or heirs of Gerry Ecarma); (6) Fe Shirley; and (7) Rolando.

After Natalio's death, his heirs executed an Extrajudicial Settlement of Estate[4] covering four (4) properties designated as Kitanlad, Cuyapo and Lala (consisting of two separate lots), half of which was specifically noted as pertaining to herein decedent Arminda's share in their property regime of conjugal partnership of gains. In the same Extrajudicial Settlement of Estate signed by all the heirs, the four (4) properties were partitioned among them: Arminda was assigned an undivided two-ninth's (2/9's) proportion and all their children in equal proportion of one-ninth (1/9) each. Significantly, despite the partition agreement, no physical division of the properties was effected, Natalio's heirs remaining in co-ownership (pro indiviso) even at the time of their mother's, decedent Arminda's, death on 17 April 1983.

On 18 May 1990, after his petition for the probate of Arminda's will was dismissed by the RTC, Branch 86, Quezon City, respondent Renato filed the subject intestate proceedings before the RTC, Branch 220.

On 30 January 1991, Renato was appointed Special Administrator by the RTC, Branch 220.

After what appears to be continuing conflict between Gerry Ecarma and the other heirs of Natalio and Arminda over actual division of their inherited properties, by 9 March 2005, Renato unequivocally moved to terminate their co-ownership: he filed a Project of Partition of the Kitanlad Property, alleging that:

1. This probate case has been left unresolved for 16 years now because of the incessant opposition by Oppositor and legal heir,

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[4] *Rollo,* pp. 58-61.

Jerry Ecarma, the only legal heir who stays in Kitanlad, for reasons they had ventilated already in this Court in their previous pleadings. x x x

2. This Court has ordered the sale of the assets of the estate in an earlier order, but efforts to sell the Kitanlad property, the most contentious issue, by the Regular Administrator, [Renato Ecarma], has been thwarted by Jerry for reasons already known by this Court. x x x

3. The law frowns on the indivision of property held in common indefinitely. Furthermore, the legal heirs, except Jerry and perhaps the Oppositor, have expressed their desire to have the Kitanlad property partitioned. The fairest legal way to partition the property without any legal heir getting a share bigger than the others is to sell the property and divide the net proceeds, but Jerry's objection to its sale at a price which will attract interested buyers has rendered nugatory this option. The next best option, with no legal heir getting an undue advantage over the others, is to divide the property longitudinally from the frontage down to the other end in seven equal parts. Although this option will render the improvements unusable, it must be realised that these improvements are now fully depreciated. The duplex house is 57 years old, while the apartments are now 40 years old. All seven parts will be equal to each other in all their aspects: the measurements, length and width, will be the same, each part will have a frontage to the street. Each legal heir will have complete control over his/her portion. He/she may keep it if he/she wishes, or sell it if he/she desires. Allocation of these seven parts will be by lot.[5]

On 7 April 2005, Renato filed another motion, Omnibus Motion: Project of Partition of the Lala and Cuyapo Properties.

Finding the motions impressed with merit, the RTC, Branch 220, on 28 July 2005,[6] issued a lengthy Order approving the proposed partition of the properties:

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[5] *Id.* at 33-34.

[6] The Petition erroneously states the date of the Order of Partition as 28 July 2006.

1. That the property be divided longitudinally from the frontage down to the other end in seven (7) equal parts. The shares of Jerry Ecarma and Rodolfo Ecarma shall be contiguous to each other on one side of the property nearest the main entrance, while the shares of the other five (5) legal heirs shall comprise the balance thereof. Following this general guideline, Jerry Ecarma and Rodolfo Ecarma shall determine among themselves their respective share. Similarly, the five (5) remaining legal heirs shall determine among themselves by draw of lot their respective shares. They shall submit to the Petitioner/Regular Administrator their choice of their specific shares not later [than] fifteen (15) days upon receipt of this Order. Should they fail to comply, the Regular Administrator is hereby directed to assign the respective share of each legal heir.

x x x x x x x x x

II. Cuyapo Property

1. The Cuyapo farm lot shall be partitioned into seven (7) equal parts substantially in accordance with Annex "A" of the "Partial Project of Partition of Estate" dated 22 June 1992. Lots 1 and 2 will be allocated to Jerry Ecarma and Rodolfo Ecarma, so that the remaining balance will remain contiguous to one another. The remaining balance, as prayed for, can now be donated by the five (5) other legal heirs to the Armed Forces of the Philippines (AFP). This manner of partition will effectuate the desire of the five (5) remaining legal heirs to donate their share to the AFP.

2. The Regular Administrator is hereby directed to cause the partition and titling of the property.

3. Expenses for the partition and titling of the property shall be for the personal account of each legal heir, which shall be deducted from their share of the estate.

III. Lala Property

1. The Lala Property consisting of two (2) farm lots contiguous to each other, one consisting of more than six (6) hectares and the other more than 13 hectares shall each be partitioned into seven (7) equal parts substantially in accordance with

> Annex "B" of the aforecited "Partial Project of Partition of Estate" dated 22 June 1992, as submitted by the Regular Administrator. Lots 6 and 7 of the six-hectare lot will while Lots 1 and 2 of the 13-hectare lot will be likewise allocated to Jerry Ecarma and each other. The remaining balance can now be donated by the five (5) other legal heirs to the AFP. This manner of partition will effectuate the desire of the five (5) remaining legal heirs to donate their shares to the AFP.[7]

Gerry Ecarma filed a motion for reconsideration on the following grounds: (1) the project of partition of the Kitanlad properties is not feasible, impractical and detrimental to the interests of the heirs of the Spouses Natalio and Arminda Ecarma; (2) the planned partition is not in accordance with the wishes of the decedents, the spouses Natalio and Arminda; and (3) the RTC, Branch 220, as the court settling the intestate estate of Arminda, has no jurisdiction over part of the subject properties which do not form part of Arminda's estate, such undivided share already pertaining to the other heirs as part of their inheritance from their deceased father, Natalio.

The other oppositor to the partition, Rodolfo Ecarma, likewise filed a Motion for Reconsideration of the 28 July 2005 Order of Partition on the main ground, akin to the 3rd ground raised by Gerry in his motion, that the RTC, Branch 220 acted without or in excess of jurisdiction by ordering the partition of the subject properties, portions of which do not belong to the intestate estate of Arminda.

After Renato filed his Comment/Opposition to the two motions for reconsideration, the RTC, Branch 220, finding no cogent reason to reverse or modify its prior order of partition, issued an Order denying Gerry's and Renato's motions.

Thereafter, Gerry filed both a Notice of Appeal and a Record on Appeal before the RTC, Branch 220 to bring up on appeal to the CA the trial court's partition order.

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[7] CA *rollo,* pp. 9-10.

It appears that sometime before 4 May 2009, counsel of Gerry Ecarma filed a Notice of Death of Gerry Ecarma before the appellate court and was subsequently required by the latter to submit a certified true copy of Gerry Ecarma's death certificate within a prescribed period.[8]

Meanwhile, herein petitioners, presumably in substitution of the deceased Gerry Ecarma, filed their Appellants' Brief pursuant to the order of the appellate court. From this incident of herein petitioners' Appellants' Brief before the CA, and its contents, the controversy has reached us.

Renato forthwith filed a Motion to Dismiss Appellants' Brief, to which the CA required a comment from petitioner.[9]

The Resolutions of the CA finding insufficient herein petitioners' Appellants' Brief are now before us. The CA ruled that:

> The Court x x x finds [petitioners'] submission [that their brief substantially complied with the requirements under Section 13, Rule 44 of the Rules of Court] to be utterly devoid of merit. Indeed, [petitioners'] brief does not contain a subject index, table of cases and authorities, statement of case, statement of facts and page references to the record in violation of Section 13, Rule 44 of the 1997 Rules of Civil Procedure. x x x
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> x x x x x x x x x
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> Non-compliance with these requirements warrants the dismissal of appeal under Section 1(f), Rule 50.
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> x x x x x x x x x
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> [Petitioners] could have easily cured these multiple defects in the same manner their counsel did with his MCLE compliance and SPA. But, they opted not to. Instead, they stubbornly insist, albeit erroneously, that their appellants' brief substantially complied with the requirements. They failed, however, to point out with specificity what part or parts of their brief contain their so-called substantial

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[8] *Id.* at 43.

[9] *Id.* at 79.

compliance. Surely, the Court cannot countenance [petitioners'] careless attitude, if not irreverent disregard, of the procedural rules intended precisely to ensure orderly administration of justice.

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Accordingly, the appeal is DISMISSED.[10]

Petitioners moved for reconsideration of the dismissal of their appeal, attaching a Supplemental Appellants' Brief[11]to their motion. However, the appellate court again deemed the Supplemental Appellants' Brief to be unsatisfactory and non-compliant with the rules and denied petitioners' motion for reconsideration:

Notably, the new appeal brief, just like the original one, does not contain reference to the relevant portions of the record pertaining to its statement of facts. Further, the subject index does not contain a summary of arguments and reference to the specific pages of the brief, and the supporting laws and authorities.[12]

From that denial, petitioners filed this petition for *certiorari* under Rule 65 of the Rules of Court almost sixty (60) days from the time they received the appellate court's denial of their motion for reconsideration.

At the outset, we see through petitioners' obvious ploy to avoid the necessary consequence of their failure to file, within the required fifteen-day period, the correct remedy of appeal by *certiorari* under Rule 45[13] of the Rules of Court, from the assailed ruling of the CA. On this score alone, the present petition should have been dismissed outright.

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[10] *Rollo*, pp. 20-22.

[11] *Id.* at 97-98; Annex "N" of the Petition.

[12] *Id.* at 25.

[13] **SEC. 1.** *Filing of petition with Supreme Court.* — A party desiring to appeal by *certiorari* from a judgment or final order or resolution of the Court of Appeals, the Sandiganbayan, the Regional Trial Court or other courts whenever authorized by law, may file with the Supreme Court a verified petition for review on *certiorari*. The petition shall raise only questions of law which must be distinctly set forth.

Petitioners simple allegation of grave abuse of discretion in the CA's dismissal of their appeal cannot substitute for the correct remedy of a lost appeal.[14]

Notably, as they have stubbornly done so in the appellate court, petitioners urge us to reverse these adverse rulings of the appellate court without abiding by the rules therefor.

First. An appeal by *certiorari* under Rule 45 of the Rules of Court is different from a petition for *certiorari* under Rule 65 thereof. A special civil action for certiorari may be availed of only if the lower tribunal has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and if there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law.[15] Simply imputing in a petition that the ruling sought to be reviewed is tainted with grave abuse of discretion does

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SEC. 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.

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[14] *Sps. Saguan v. PBC*, 563 Phil. 696 (2007).

[15] RULES OF COURT, Rule 65, Sec. 1.

Certiorari*, Prohibition and *Mandamus

Section 1. *Petition for certiorari.* — When any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of 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 the 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.

The petition shall be accompanied by a certified true copy of the judgment, order or resolution subject thereof, copies of all pleadings and documents relevant and pertinent thereto, and sworn certification of non-forum shopping as provided in the third paragraph of Section 3, Rule 46.

not magically transform a petition into a special civil action for *certiorari*.

The appellate court's outright dismissal of therein appellants' appeal was a final order which left it with nothing more to do to resolve the case.[16] That disposition is a final and executory order, appealable to, and may be questioned before, this Court by persons aggrieved thereby, such as herein petitioners, *via* Rule 45.

Moreover, the dismissal of therein appellants', herein petitioners', appeal before the CA is expressly allowed by Section 1 (f),[17] Rule 50 of the Rules of Court. The appellate court, therefore, cannot be charged with grave abuse of discretion as there is no showing that, in the exercise of its judgment, it acted in a capricious, whimsical, arbitrary or despotic manner tantamount to lack of jurisdiction. Absent grave abuse of discretion, petitioners should have filed a petition for review on *certiorari* under Rule 45 instead of a petition for *certiorari* under Rule 65. The soundness of the ruling dismissing petitioners' appeal before the appellate court is a matter of judgment with respect to which the remedy of the party aggrieved is a Rule 45 petition. An error of judgment committed by a court in the exercise of its legitimate jurisdiction is not the same as grave abuse of discretion. Errors of judgment are correctible by appeal, while those of jurisdiction are reviewable by *certiorari*.[18]

Even if we were to take a liberal stance and consider this present petition as that filed under Rule 45 of the Rules of

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[16] *Raymundo v. Vda. de Suarez, et al.*, 593 Phil. 28, 48 (2008).

[17] **Section 1.** *Grounds for dismissal of appeal*. — An appeal may be dismissed by the Court of Appeals, on its own motion or on that of the appellee, on the following grounds:

x x x x x x x x x

(f) Absence of specific assignment of errors in the appellant's brief, or of page references to the record as required in section 13, paragraphs (a), (c), (d) and (f) of Rule 44;

x x x x x x x x x

[18] *Supra* note 15.

Court raising grave error in the appellate courts' ruling, such cannot cure the unavoidable consequence of dismissal for failure to file an appeal within the reglementary fifteen-day period provided under Section 2[19] of Rule 45.

Second. The CA correctly dismissed herein petitioners' Appellants' Brief for failure to comply with the content requirement specified under Section 13[20] of Rule 44.

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[19] *Id.* note 13.

[20] **Section 13.** *Contents of appellant's brief.* — The appellant's brief shall contain, in the order herein indicated, the following:

(a) A subject index of the matter in the brief with a digest of the arguments and page references, and a table of cases alphabetically arranged, textbooks and statutes cited with references to the pages where they are cited;

(b) An assignment of errors intended to be urged, which errors shall be separately, distinctly and concisely stated without repetition and numbered consecutively;

(c) Under the heading "Statement of the Case," a clear and concise statement of the nature of the action, a summary of the proceedings, the appealed rulings and orders of the court, the nature of the judgment and any other matters necessary to an understanding of the nature of the controversy with page references to the record;

(d) Under the heading "Statement of Facts," a clear and concise statement in a narrative form of the facts admitted by both parties and of those in controversy, together with the substance of the proof relating thereto in sufficient detail to make it clearly intelligible, with page references to the record;

(e) A clear and concise statement of the issues of fact or law to be submitted, to the court for its judgment;

(f) Under the heading "Argument," the appellant's arguments on each assignment of error with page references to the record. The authorities relied upon shall be cited by the page of the report at which the case begins and the page of the report on which the citation is found;

(g) Under the heading "Relief," a specification of the order or judgment which the appellant seeks; and

(h) In cases not brought up by record on appeal, the appellant's brief shall contain, as an appendix, a copy of the judgment or final order appealed from.

Petitioners are adamant, however, that they complied with the required content specified in the rules even attaching a sample copy of an Appellant's Brief found in Guevarra's Legal Forms which was purportedly their guideline in revising and submitting their Supplemental Appellants' Brief to the appellate court.[21]

We assiduously went through the Supplemental Appellants' Brief of herein petitioners and as the CA have, we likewise find it wanting, a lame attempt at compliance through superficial changes, devoid of substance.[22]

In fact, the Supplemental Appellants' Brief could only cite Section 1, Rule 74 of the Rules of Court as its sole legal authority in questioning the RTC, Branch 220's Order of Partition.[23] Petitioners, even in their present petition before us, are unable to grasp the necessity of supporting and anchoring their arguments with legal basis. They cannot simply cite one section of one rule without expounding thereon.

In the recent case of *Lui Enterprises, Inc. v. Zuellig Pharma Corporation, et al.*,[24] we reiterated the faithful adherence to the rules on the specific contents of an Appellant's Brief as provided in Section 14, Rule 44 of the Rules of Court:

Lui Enterprises did not comply with the rules on the contents of the appellant's brief

Under Rule 50, Section 1, paragraph (f) of the 1997 Rules of Civil Procedure, the Court of Appeals may, on its own motion or that of the appellee, dismiss an appeal should the appellant's brief lack specific requirements under Rule 44, Section 13, paragraphs (a), (c), (d), and (f):

> Section 1. *Grounds for dismissal of appeal.* — An appeal may be dismissed by the Court of Appeals, on its own motion or on that of the appellee, on the following grounds:
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> x x x x x x x x x

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[21] *Supra* note 11.

[22] *De Liano v. Court of Appeals*, 421 Phil. 1033 (2001).

[23] CA *rollo*, pp. 145 and 154.

[24] G.R. No. 193494, March 12, 2014, 719 SCRA 88.

(f) Absence of specific assignment of errors in the appellant's brief, or of page references to the record as required in Section 13, paragraphs (a), (c), (d), and (f) of Rule 44[.]

These requirements are the subject index of the matter in brief, page references to the record, and a table of cases alphabetically arranged and with textbooks and statutes cited:

Section 13. *Contents of the appellant's brief.* — The appellant's brief shall contain, in the order herein indicated, the following:

(a) A subject index of the matter in brief with a digest of the arguments and page references, and a table of cases alphabetically arranged, textbooks and statutes cited with references to the pages where they are cited;

x x x x x x x x x

(c) Under the heading "Statement of the Case," a clear and concise statement of the nature of the action, a summary of the proceedings, the appealed rulings and orders of the court, the nature of the controversy, with page references to the record;

(d) Under the heading "Statement of Facts," a clear and concise statement in a narrative form of the facts admitted by both parties and of those in controversy, together with the substance of the proof relating thereto in sufficient detail to make it clearly intelligible, with page references to the record;

x x x x x x x x x

(f) Under the heading "Argument," the appellant's arguments on each assignment of error with page references to the record. The authorities relied upon shall be cited by the page of the report at which the case begins and the page of the report on which the citation is found;

x x x x x x x x x

Lui Enterprises' appellant's brief lacked a subject index, page references to the record, and table of cases, textbooks and statutes cited. Under Rule 50, Section 1 of the 1997 Rules of Civil Procedure, the Court of Appeals correctly dismissed Lui Enterprises' appeal.

Except for cases provided in the Constitution, appeal is a "purely statutory right." The right to appeal "must be exercised in the manner prescribed by law" and requires strict compliance with the Rules of Court on appeals. Otherwise, the appeal shall be dismissed, and its dismissal shall not be a deprivation of due process of law.

In *Mendoza v. United Coconut Planters Bank, Inc*., this court sustained the Court of Appeals' dismissal of Mendoza's appeal. Mendoza's appellant's brief lacked a subject index, assignment of errors, and page references to the record. In *De Liano v. Court of Appeals*, this court also sustained the dismissal of De Liano's appeal. De Liano's appellant's brief lacked a subject index, a table of cases and authorities, and page references to the record.

There are exceptions to this rule. In *Philippine Coconut Authority v. Corona International, Inc*., the Philippine Coconut Authority's appellant's brief lacked a clear and concise statement of the nature of the action, a summary of the proceedings, the nature of the judgment, and page references to the record. However, this court found that the Philippine Coconut Authority substantially complied with the Rules. Its appellant's brief apprise[d] [the Court of Appeals] of the essential facts and nature of the case as well as the issues raised and the laws necessary [to dispose of the case]." This court "[deviated] from a rigid enforcement of the rules" and ordered the Court of Appeals to resolve the Philippine Coconut Authority's appeal.

In *Go v. Chaves*, Go's 17-page appellant's brief lacked a subject index. However, Go subsequently filed a subject index. This court excused Go's procedural lapse since the appellant's brief "[consisted] only of 17 pages which [the Court of Appeals] may easily peruse to apprise it of [the case] and of the relief sought." This court ordered the Court of Appeals to resolve Go's appeal "in the interest of justice."

In Philippine Coconut Authority and Go, the appellants substantially complied with the rules on the contents of the appellant's brief. Thus, this court excused the appellants' procedural lapses.

In this case, Lui Enterprises did not substantially comply with the rules on the contents of the appellant's brief. It admitted that its appellant's brief lacked the required subject index, page references to the record, and table of cases, textbooks, and statutes cited. However, it did not even correct its admitted "technical omissions" by filing an amended appellant's brief with the required contents. Thus, this case does not allow a relaxation of the rules. The Court of Appeals did not err in dismissing Lui Enterprises' appeal.

Rules on appeal "are designed for the proper and prompt disposition of cases before the Court of Appeals." With respect to the appellant's brief, its required contents are designed "to minimize the [Court of Appeals'] labor in [examining] the record upon which the appeal is heard and determined."

The subject index serves as the brief's table of contents. Instead of "[thumbing] through the [appellant's brief]" every time the Court of Appeals Justice encounters an argument or citation, the Justice deciding the case only has to refer to the subject index for the argument or citation he or she needs. This saves the Court of Appeals time in reviewing the appealed case. Efficiency allows the justices of the appellate court to substantially attend to this case as well as other cases.

Page references to the record guarantee that the facts stated in the appellant's brief are supported by the record. A statement of fact without a page reference to the record creates the presumption that it is unsupported by the record and, thus, "may be stricken or disregarded altogether."

As for the table of cases, textbooks, and statutes cited, this is required so that the Court of Appeals can easily verify the authorities cited "for accuracy and aptness."

Lui Enterprises' appellant's brief lacked a subject index, page references to the record, and a table of cases, textbooks, and statutes cited. These requirements "were designed to assist the appellate court in the accomplishment of its tasks, and, overall, to enhance the orderly administration of justice." This court

> will not disregard rules on appeal "in the guise of liberal construction." For this court to liberally construe the Rules, the party must substantially comply with the Rules and correct its procedural lapses. Lui Enterprises failed to remedy these errors.
>
> All told, the Court of Appeals did not err in dismissing Lui Enterprises' appeal. It failed to comply with Rule 44, Section 13, paragraphs (a), (c), (d), and (f) of the 1997 Rules of Civil Procedure on the required contents of the appellant's brief.

Third. While we sustain the appellate court's dismissal of herein petitioners' appeal, we find it imperative to rule on the merits of the RTC, Branch 220's Order of Partition to forestall any further delay in the settlement of decedent Arminda's estate which has been pending since 1990 where Order of Partition of the subject properties was issued on 28 July 2005. We note also that petitioners themselves pray for a ruling thereon.

There is no quarrel from any of the parties that the subject properties were originally part of the conjugal partnership of gains property regime of the deceased spouses Natalio and Arminda.[25] The nature of these properties as part of the spouses'

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[25] See CIVIL CODE, Articles 143 and 153 and FAMILY CODE, Articles 105, 116-117.

> **Art. 143.** All property of the conjugal partnership of gains is owned in common by the husband and wife.
>
> **Art. 153.** The following are conjugal partnership property:
>
> (1) That which is acquired by onerous title during the marriage at the expense of the common fund, whether the acquisition be for the partnership, or for only one of the spouses;
>
> (2) That which is obtained by the industry, or work, or as salary of the spouses, or of either of them;
>
> (3) The fruits, rents or interests received or due during the marriage, coming from the common property or from the exclusive property of each spouse.

FAMILY CODE, Articles 105, 116-117.

> **Art. 105.** During the pendency of legal separation proceedings the court shall make provision for the care of the minor children in accordance with the circumstances and may order the conjugal

conjugal properties was confirmed in the Extrajudicial Settlement of the Estate of Natalio signed by all his heirs, his spouse Arminda and their children, including predecessor of herein petitioners, Gerry Ecarma.[26]

Essentially, pursuant to this Extrajudicial Settlement, Arminda was apportioned two-ninth's (2/9's) share, while her children were equally ascribed one-ninth (1/9) portion, of the subject properties. Upon Arminda's death, her heirs' rights to the succession (covering Arminda's share in the subject properties) vested and their co-ownership over the subject properties has consolidated by operation of law.[27] Effectively, without a valid

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partnership property or the income therefrom to be set aside for their support; and in default thereof said minor children shall be cared for in conformity with the provisions of this Code; but the Court shall abstain from making any order in this respect in case the parents have by mutual agreement, made provision for the care of said minor children and these are, in the judgment of the court, well cared for.

Art. 116. When one of the spouses neglects his or her duties to the conjugal union or brings danger, dishonor or material injury upon the other, the injured party may apply to the court for relief.

The court may counsel the offender to comply with his or her duties, and take such measures as may be proper.

Art. 117. The wife may exercise any profession or occupation or engage in business. However, the husband may object, provided:

(1) His income is sufficient for the family, according to its social standing, and

(2) His opposition is founded on serious and valid grounds.

In case of disagreement on this question, the parents and grandparents as well as the family council, if any, shall be consulted. If no agreement is still arrived at, the court will decide whatever may be proper and in the best interest of the family.

[26] *Rollo*, pp. 58-61.

[27] CIVIL CODE, Articles 774 and 777.

Art. 774. Succession is a mode of acquisition by virtue of which the property rights and obligations to the extent of the value of the inheritance, of a person are transmitted through his death to another or others either by his will or by operation of law.

Art. 777. The rights to the succession are transmitted from the moment of the death of the decedent.

will of Arminda, and as Arminda's compulsory heirs,[28] herein parties (specifically Gerry Ecarma prior to his death and

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[28] CIVIL CODE, Articles 778, 886, 887 and 960.

Art. 778. Succession may be:

(1) Testamentary;
(2) Legal or intestate; or
(3) Mixed.

Art. 886. Legitime is that part of the testator's property which he cannot dispose of because the law has reserved it for certain heirs who are, therefore, called compulsory heirs.

Art. 887. The following are compulsory heirs:

(1) Legitimate children and descendants, with respect to their legitimate parents and ascendants;

(2) In default of the foregoing, legitimate parents and ascendants, with respect to their legitimate children and descendants;

(3) The widow or widower;

(4) Acknowledged natural children, and natural children by legal fiction;

(5) Other illegitimate children referred to in Article 287.

Compulsory heirs mentioned in Nos. 3, 4, and 5 are not excluded by those in Nos. 1 and 2; neither do they exclude one another.

In all cases of illegitimate children, their filiation must be duly proved.

The father or mother of illegitimate children of the three classes mentioned, shall inherit from them in the manner and to the extent established by this Code.

Art. 960. Legal or intestate succession takes place:

(1) If a person dies without a will, or with a void will, or one which has subsequently lost its validity;

(2) When the will does not institute an heir to, or dispose of all the property belonging to the testator. In such case, legal succession shall take place only with respect to the property of which the testator has not disposed;

(3) If the suspensive condition attached to the institution of heir does not happen or is not fulfilled, or if the heir dies before the testator, or repudiates the inheritance, there being no substitution, and no right of accretion takes place;

(4) When the heir instituted is incapable of succeeding, except in cases provided in this Code.

substitution by herein petitioners) all *ipso facto* co-owned the subject properties in equal proportion being compulsory heirs of the deceased spouses Natalio and Arminda.[29]

There appears to be no clear objection, therefore, to the RTC, Branch 220's Order of Partition approving the proposal of the

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[29] CIVIL CODE, Articles 1078, 979, 980, 887 and 888.

Art. 1078. Where there are two or more heirs, the whole estate of the decedent is, before its partition, owned in common by such heirs, subject to the payment of debts of the deceased.

Art. 979. Legitimate children and their descendants succeed the parents and other ascendants, without distinction as to sex or age, and even if they should come from different marriages.

An adopted child succeeds to the property of the adopting parents in the same manner as a legitimate child.

Art. 980. The children of the deceased shall always inherit from him in their own right, dividing the inheritance in equal shares.

Art. 887. The following are compulsory heirs:

(1) Legitimate children and descendants, with respect to their legitimate parents and ascendants;

(2) In default of the foregoing, legitimate parents and ascendants, with respect to their legitimate children and descendants;

(3) The widow or widower;

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Compulsory heirs mentioned in Nos. 3, 4, and 5 are not excluded by those in Nos. 1 and 2; neither do they exclude one another.

In all cases of illegitimate children, their filiation must be duly proved.

The father or mother of illegitimate children of the three classes mentioned, shall inherit from them in the manner and to the extent established by this Code.

Art. 888. The legitime of legitimate children and descendants consists of one-half of the hereditary estate of the father and of the mother.

The latter may freely dispose of the remaining half, subject to the rights of illegitimate children and of the surviving spouse as hereinafter provided.

administrator, herein respondent Renato, for the equal division of the properties:

> 1. The Kitanlad property: longitudinally from the frontage down to the other end with the shares of the [oppositors to the partition] Jerry Ecarma and Rodolfo Ecarma contiguous to each other on one side of the property nearest to the main entrance; and
>
> x x x x x x x x x
>
> 2. The Cuyapo and Lala properties: partitioned into seven (7) equal parts with Jerry's and Rodolfo's respective shares contiguous to each other, and the remainder to be donated by the other legal heirs, as manifested by them, to the Armed Forces of the Philippines (AFP).

Their objection to the actual partition notwithstanding, herein petitioners and even Rodolfo Ecarma cannot compel the other co-heirs to remain in perpetual co-ownership over the subject properties. Article 494, in relation to Article 1083, of the Civil Code provides:

> Art. 494. No co-owner shall be obliged to remain in the co-ownership. Each co-owner may demand at any time the partition of the thing owned in common, insofar as his share is concerned.
>
> Nevertheless, an agreement to keep the thing undivided for a certain period of time, not exceeding ten years, shall be valid. This term may be extended by a new agreement.
>
> A donor or testator may prohibit partition for a period which shall not exceed twenty years.
>
> Neither shall there be any partition when it is prohibited by law.
>
> No prescription shall run in favor of a co-owner or co-heir against his co-owners or co-heirs so long as he expressly or impliedly recognizes the co-ownership.
>
> Art. 1083. Every co-heir has a right to demand the division of the estate unless the testator should have expressly forbidden its partition, in which case the period of indivision shall not exceed twenty years as provided in Article 494. This power of the testator to prohibit division applies to the legitime.

Even though forbidden by the testator, the co-ownership terminates when any of the causes for which partnership is dissolved takes place, or when the court finds for compelling reasons that division should be ordered, upon petition of one of the co-heirs.

The impasse between the parties is due to herein petitioners' persistent objection to proposals for the partition of the subject properties. The deceased Gerry Ecarma, Rodolfo Ecarma and herein petitioners consistently opposed the proposed partition of the administrator, respondent Renato, since such is ostensibly "not feasible, impractical and renders detrimental use of the Kitanlad property." However, it is apparent that Gerry Ecarma and his heirs (herein petitioners) completely object to any kind of partition of the subject properties, contravening even the proposed sale thereof.

We note that petitioners have been careful not to proffer that the subject properties are indivisible or that physical division of thereof would render such unserviceable since Article 495[30] of the Civil Code provides the remedy of termination of co-ownership in accordance with Article 498[31] of the same Code, *i.e.*, sale of the property and distribution of the proceeds. Ineluctably, therefore, herein petitioners' absolute opposition to the partition of the subject properties which are co-owned has no basis in law. As mere co-owners, herein petitioners, representing the share of the deceased Gerry Ecarma, cannot preclude the other owners likewise compulsory heirs of the deceased spouses Natalio and Arminda, from exercising all incidences of their full ownership.[32]

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[30] **Art. 495.** Notwithstanding the provisions of the preceding article, the co-owners cannot demand a physical division of the thing owned in common, when to do so would render it unserviceable for the use for which it is intended. But the co-ownership may be terminated in accordance with Article 498.

[31] **Art. 498.** Whenever the thing is essentially indivisible and the co-owners cannot agree that it be allotted to one of them who shall indemnify the others, it shall be sold and its proceeds distributed.

[32] CIVIL CODE, Article 427 and 428 on Ownership.

Art. 427. Ownership may be exercised over things or rights.

WHEREFORE, the petition is **DISMISSED**. The Court of Appeal's dismissal of the Appeal in CA-G.R. CV No. 92375 is **FINAL**. Costs against petitioners.

SO ORDERED.

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

Peralta, J., on official leave.

Jardeleza, J., on wellness leave.

FIRST DIVISION

[G.R. No. 194235. June 8, 2016]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JAY GREGORIO *y* AMAR @ "JAY," ROLANDO ESTRELLA *y* RAYMUNDO @ "BONG," DANILO BERGONIA *y* ALELENG @ "DANNY," EFREN GASCON *y* DELOS SANTOS @ "EFREN," RICARDO SALAZAR *y* GO @ "ERIC," AND JOHN DOE,** *accused-appellants.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; KIDNAPPING FOR RANSOM; ESSENTIAL ELEMENTS, PROVEN IN

Art. 428. The owner has the right to enjoy and dispose of a thing, without other limitations than those established by law.

The owner has also a right of action against the holder and possessor of the thing in order to recover it.

CASE AT BAR.— In prosecuting a case involving the crime of kidnapping for ransom, the following elements must be established: (i) the accused was a private person; (ii) he kidnapped or detained or in any manner deprived another of his or her liberty; (iii) the kidnapping or detention was illegal; and (iv) the victim was kidnapped or detained for ransom. The RTC, affirmed by the Court of Appeals, found that the prosecution was able to prove beyond reasonable doubt the essential elements of the crime of kidnapping for ransom, giving weight and credence to the prosecution witnesses' testimonies.

2. ID.; ID.; ID.; THAT PART OF THE RANSOM MONEY WAS NOT RECOVERED IS IMMATERIAL AS LONG AS IT WAS DULY ESTABLISHED THAT THE MOTIVE FOR KIDNAPPING WAS TO EXTORT RANSOM.— That the PACER Manhunt Team was unable to recover from accused-appellants part of the ransom amounting to ₱1,000,000.00 is immaterial, it being sufficient that accused-appellants' motive for kidnapping Jimmy, *i.e.*, the collection of ransom, was duly established. x x x It is clear in the present case that accused-appellants kidnapped Jimmy so that they could collect ransom in exchange for Jimmy's release. Jimmy, while blindfolded on board the Tamaraw FX, overheard accused-appellants demanding ransom from his parents. Lucina negotiated with accused-appellants to bring down the amount of ransom. Accused-appellants gave instructions on how the ransom payout was to be done. Marlon delivered the ransom per accused-appellants' instructions. Accused-appellants Jay, Rolando, and Ricardo were actually present at the time and place of payout. Members of the PACER Manhunt Team witnessed the ransom payout take place between Marlon and accused-appellant Ricardo. Hence, regardless of the actual amount of ransom subsequently agreed upon, delivered, and/or recovered, it had been sufficiently established that accused-appellants' motive for kidnapping Jimmy was to extort ransom from Jimmy's family.

3. ID.; ID.; ID.; IN VIEW OF CONSPIRACY AMONG FIVE ACCUSED, THEY ARE ALL EQUALLY LIABLE AS PRINCIPALS.— There is likewise no cogent basis for us to overturn the finding by the Court of Appeals of conspiracy

among all five accused-appellants and holding them all equally liable as principals for the crime of kidnapping for ransom. x x x Based on the prosecution's evidence, each of the accused-appellants, plus Jojo, had intentional, direct, and substantial participation in Jimmy's kidnapping for ransom. Jimmy's abduction, his being taken to and holed up in a house in Ilocos Norte under guard, the ransom demand and negotiation, and finally, the ransom payout, which all happened in a span of six days, took planning and coordination among accused-appellants and Jojo. Accused-appellant Efren, in particular, was among the four men who abducted Jimmy in Meycauayan, Bulacan on October 8, 2002. Accused-appellant Efren also kept guard over Jimmy for six days in Dingras, Ilocos Norte. Therefore, accused-appellant Efren could not be a mere accomplice as his presence at the scene/s of the crime was definitely more than just to give moral support; his presence and company were indispensable and essential to the perpetration of the kidnapping for ransom.

4. ID.; ID.; ID.; PENALTY AND CIVIL LIABILITY.— Since accused-appellants' guilt for the crime of kidnapping for ransom had been established beyond reasonable doubt, they should be meted the penalty of death under Article 267 of the Revised Penal Code, as amended. However, Republic Act No. 9346 already prohibited the imposition of the death penalty. Consequently, the Court of Appeals correctly sentenced accused-appellants to *reclusion perpetua* in lieu of death, without eligibility for parole. In accordance with existing jurisprudence, accused-appellants are jointly and severally liable to pay Jimmy ₱100,000.00, as civil indemnity; ₱100,000.00, as moral damages; and ₱100,000.00, as exemplary damages, all with interest at the rate of six percent (6%) per *annum* from the date of finality of this judgment until fully paid.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.

Public Attorney's Office for accused-appellants J. Gregorio, *et al.*

Romarico F. Lutap for accused-appellant E. Gascon.

D E C I S I O N

LEONARDO-DE CASTRO,[*] *J.*:

Before Us on appeal is the Decision[1] dated May 27, 2010 of the Court of Appeals in CA-G.R. CR.-H.C. No. 01776, which affirmed with modification the Decision[2] dated October 10, 2005 of the Regional Trial Court (RTC) of Malolos City, Bulacan, Branch 12 in Criminal Case Nos. 2867-M-2002, 2868-M-2002, 2869-M-2002, 2870-M-2002. The RTC ruled in Criminal Case No. 2867-M-2002 that: (a) accused-appellants Jay Gregorio *y* Amar (Jay), Rolando Estrella *y* Raymundo (Rolando), and Ricardo Salazar *y* Go (Ricardo) were guilty beyond reasonable doubt as principals of the crime of kidnapping for ransom under Article 267 of the Revised Penal Code, as amended by Republic Act No. 7659;[3] and (b) accused-appellants Danilo Bergonia *y* Aleleng (Danilo) and Efren Gascon *y* delos Santos (Efren) were guilty beyond reasonable doubt as accomplices for the same crime of kidnapping for ransom. In Criminal Case Nos. 2868-M-2002, 2869-M-2002, and 2870-M-2002, which were jointly tried and resolved with Criminal Case No. 2867-M-2002, the RTC acquitted accused-appellants Jay, Rolando, and Efren of the charges for violation of Presidential Decree No. 1866, as amended, or illegal possession of firearms, and ordered the dismissal of said cases. The appellate court modified the penalties imposed upon accused-appellants and damages awarded to the victim Jimmy Ting *y* Sy (Jimmy).

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[*] Per Special Order No. 2354 dated June 2, 2016.

[1] *Rollo*, pp. 2-27; penned by Associate Justice Franchito N. Diamante with Associate Justices Josefina Guevara-Salonga and Francisco P. Acosta concurring.

[2] CA *rollo*, pp. 16-33; penned by Judge Crisanto C. Concepcion.

[3] An Act to Impose the Death Penalty on Certain Heinous Crimes, Amending for that Purpose the Revised Penal Code, As Amended, Other Special Penal Laws, and for Other Purposes.

I
THE ANTECEDENTS

The Information[4] dated October 21, 2002, filed before the RTC, charged the five accused-appellants, together with a John Doe, with kidnapping for ransom under Article 267 of the Revised Penal Code, as amended, allegedly committed as follows:

> That between the period October 8 to 14, 2002 in Meycauayan, and Guiguinto both in Bulacan, Dingras, Laoag and Badoc, all in Ilocos Norte, and within the jurisdiction of this Honorable Court the above-named accused, conspiring, confederating and mutually helping one [an]other, with threats and intimidation, with the use of firearms did then and there, willfully, unlawfully and feloniously take, carry away and deprive JIMMY TING y SY, male, of his liberty against his will for the purpose of extorting money as in fact a demand for money in the amount of Fifty Million Pesos Philippine Currency (₱50,000,000.00) was made as a condition for his release that the amount of One Million Seven Hundred Eighty Thousand Pesos (₱1,780,000.00) ransom money was actually paid.

The case was docketed as Criminal Case No. 2867-M-2002.

Three other Informations, all dated October 21, 2002, were filed and docketed before the RTC as Criminal Case Nos. 2868-M-2002, 2869-M-2002, and 2870-M-2002, separately charging accused-appellants Jay, Rolando, and Efren, respectively, with violation of Presidential Decree No. 1866, for purportedly carrying outside their residences and having in their possession, without lawful authority to carry and possess, the following: (a) accused-appellant Jay, one caliber .45 pistol colt with SN#121854 and one magazine with 14 live ammunition; (b) accused-appellant Rolando, one caliber .45 pistol colt Mark IV with SN#1757394 and one magazine loaded with ammunition; and (c) accused-appellant Efren, one caliber .38 paltik revolver and 16 live ammunition.

All aforementioned criminal cases were tried together.

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[4] Records, pp. 3-4.

During their arraignment on February 27, 2003, accused-appellants pleaded not guilty to the charges against them.[5] Thereafter, trial ensued.

Version of the Prosecution

The prosecution presented as witnesses Jimmy, the kidnap victim; Lucina Ting (Lucina), Jimmy's mother; Girlie Ting (Girlie), Jimmy's sister; Marlon delos Santos (Marlon), Jimmy's cousin; Lilibeth Corpuz (Lilibeth), Branch Manager of International Exchange Bank (IEB), EDSA Caloocan; Atty. Melchor S. Latina (Latina), Director of Legal Services, Globe Telecom; and Police Superintendent (P/Supt.) Isagani Nerez (Nerez) and Police Senior Inspector (P/Sr. Insp.) Robert Lingbawan (Lingbawan) of Police Anti-Crime Emergency Response (PACER), Camp Crame, Quezon City.

As gathered from their collective testimonies, on October 8, 2002, Tuesday, Jimmy, Vice-President and Chief Executive Officer of Styrotech Corporation (Styrotech), left the office in Meycauayan, Bulacan, at around 7:00 p.m. Jimmy was on his way home in Malabon City with Girlie on board a Honda CRV driven by their cousin, Michelle Sitosta (Michelle), when said vehicle had a flat tire. Jimmy immediately called for assistance from their maintenance personnel, Bhong Pulga (Bhong) and Johnny, who arrived a few minutes later. While Jimmy was watching Johnny change the flat tire at the left rear portion of the vehicle, four men approached Jimmy from behind and asked his name. One of the men poked Jimmy with a gun. Upon seeing the four men with a gun, Girlie grabbed Michelle and they ran away out of fear. The four men represented themselves as agents of the National Bureau of Investigation (NBI) and accused Jimmy of possessing illegal/prohibited drugs, saying "*May drugs ka, sumama ka sa amin*."[6] As Jimmy was being ushered towards the road, a maroon Tamaraw FX pulled over. The armed man

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[5] *Id.* at 142-146.

[6] TSN, April 3, 2003, p. 10.

hit Jimmy's head with the gun and pushed Jimmy inside the Tamaraw FX.

In the meantime, Girlie and Michelle sought help from a nearby house, which was about 200 meters away from their Honda CRV. A good samaritan accompanied Girlie and Michelle to the nearest *barangay* station and lent his cellular phone to Girlie so that she may inform her mother, Lucina, about the incident. When Girlie and Michelle went back to their vehicle, Jimmy was already gone.

Inside the Tamaraw FX, the kidnappers took Jimmy's cellular phone and wallet, tied his hands, and blindfolded him. The kidnappers told Jimmy that they were members of the New People's Army (NPA) and they were taking him to their Commander. Fifteen minutes after exiting a toll gate at the North Diversion Road, the Tamaraw FX stopped. Jimmy sensed that some of the kidnappers alighted from the vehicle. Somebody boarded the Tamaraw FX, sat beside Jimmy, and introduced himself as the Commander. Jimmy would later identify accused-appellant Jay as the Commander. The Tamaraw FX again sped off five minutes later and entered the North Diversion Road. Along the way, accused-appellant Jay asked Jimmy questions about the ownership of Styrotech and the financial status of his family. The kidnappers continued to threaten Jimmy saying, "*Parang mahahatulan ka kapag hindi ka nakipag-cooperate, papatayin ka namin, so huwag kang papalag*."[7]

Using Jimmy's cellular phone, the kidnappers initially tried to contact Lucina at her residence but she was not home. The kidnappers next called Jimmy's father. Jimmy heard the driver of the Tamaraw FX, who he subsequently identified as accused-appellant Rolando, utter, "*Magandang gabi, Mr. Ting, nasa amin ang anak mong si Jimmy Ting . . . Nasaan ka? . . . Nasa Taiwan ka? Umuwi ka na*." The kidnappers were finally able to reach Lucina at around 10:00 p.m., and accused-appellant Rolando said to her, "*Magandang gabi Mrs., nasa amin si*

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[7] *Id.* at 18.

Jimmy . . . Maghanda kayo ng pera . . . Tatawag na lang uli kami." The kidnappers demanded ₱50,000,000.00 from Lucina for Jimmy's release. When Lucina pleaded that she did not have such an amount, the kidnappers ordered her to raise the same.[8]

After a long drive, the kidnappers made a stop-over to buy food. They gave Jimmy a hamburger and mineral water. The Commander temporarily removed Jimmy's blindfold so that he could eat his food, which gave Jimmy the chance to see his kidnappers' faces, except John Doe's.[9]

Thirty minutes later, the kidnappers put back Jimmy's blindfold. The group travelled for two to three hours more until Jimmy felt that the Tamaraw FX was negotiating a rough road. After another 20-minute drive, the Tamaraw FX stopped at an unknown destination. It was already around 5:00 a.m. to 6:00 a.m. of the following day, October 9, 2002, Wednesday. The kidnappers removed Jimmy's blindfold, untied his hands, and led him inside a house where Jimmy saw the owner of the house and three children sleeping on the floor. The owner of the house woke the children up and ordered them to leave. The kidnappers instructed Jimmy to sit and rest. Shortly thereafter, four of the six kidnappers went back to Manila, leaving behind two of them, namely, accused-appellants Ricardo and Efren,[10] to guard Jimmy. Jimmy fell asleep on a wooden bench out of exhaustion. Jimmy spent the rest of the day eating, watching television, and sleeping. The door and windows of the house were kept closed. Whenever Jimmy needed to answer the call of nature, he had to stand on a chair and urinate through a window.

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[8] *Id.* at 20-24.

[9] This John Doe was one of the kidnappers who pushed Jimmy inside the Tamaraw FX, sat at the front passenger side of the Tamaraw FX and who was one of the four kidnappers who left for Manila in the morning of October 9, 2002 (TSN April 3, 2003, pp. 21-23).

[10] TSN, April 3, 2003, pp. 32-33.

On October 10, 2002, Jimmy had breakfast with accused-appellants Ricardo and Efren. Throughout the day, Jimmy struck up short conversations with accused-appellant Efren about the latter's life in the province and as a member of the NPA. Accused-appellants Ricardo and Efren had opened the windows of the house, affording Jimmy the opportunity to observe the surrounding area. As Jimmy walked around the house, he saw a trophy with the inscription: Dingras, Ilocos, which gave him an idea of his location. Around 3:00 p.m. of the same day, accused-appellants Ricardo and Efren and the owner of the house started drinking beer, but they soon stopped after accused-appellant Jay called and caught them having a drinking session. Accused-appellants Ricardo and Efren threatened Jimmy that the members of the NPA operating in the area were constantly watching them.

In the early afternoon of October 11, 2002, Friday, accused-appellant Danilo arrived at the house and handed Jimmy a cellular phone. Accused-appellants Efren and Danilo instructed Jimmy to call and describe his situation to Lucina. Upon Jimmy's entreaty that he did not want his mother to worry about him, accused-appellants Efren and Danilo permitted Jimmy to merely tell Lucina to cooperate with the kidnappers. Accused-appellant Efren told Jimmy later in the afternoon that accused-appellant Danilo actually arrived there to execute Jimmy, but accused-appellant Efren would try to convince accused-appellant Danilo to spare Jimmy's life. That night, accused-appellant Danilo approached and told Jimmy that he would no longer kill him.

On October 12, 2002, Saturday, Jimmy learned that accused-appellant Jay would be arriving with two companions. Jimmy felt terrified because he believed that accused-appellant Jay was coming to personally kill him. To avoid accused-appellant Jay, accused-appellant Efren decided to transfer Jimmy to his own house. Accused-appellant Efren and Jimmy travelled by foot for 10 minutes, then rode a tricycle for another five to 10 minutes to accused-appellant Efren's house.

Accused-appellant Efren directed Jimmy to pretend to be his boss. Jimmy met accused-appellant Efren's wife, daughter,

and parents. Accused-appellant Efren and Jimmy stayed at the house for only about an hour, then they took a tricycle and headed for the highway. Accused-appellant Efren and Jimmy lingered around the vicinity of the highway for about another hour. After being informed by accused-appellant Danilo that accused-appellant Jay was already gone and it was safe to go back, accused-appellant Efren and Jimmy returned to the first house. Accused-appellant Ricardo was also no longer at the house. Still, accused-appellants Efren and Danilo and Jimmy did not stay long at said house. The three of them went back to accused-appellant Efren's house where they spent the rest of the day.

On October 13, 2002, Sunday, accused-appellant Efren told Jimmy that they would bring him home but they would have to leave during the night to avoid being seen by the NPA. At around 5:30 p.m., accused-appellants Efren and Danilo and Jimmy left for Laoag City, on board accused-appellant Efren's tricycle. Jimmy, believing that they were constantly being monitored by the NPA, persuaded accused-appellants Efren and Danilo that they should hire a private vehicle instead of taking a public bus. Accused-appellant Efren hired a Mitsubishi Lancer from a certain Elmer Valenzuela (Elmer) for ₱1,500.00.[11] Inside the Mitsubishi Lancer were Elmer, the driver/owner of the vehicle; Fernando Gascon (Fernando), accused-appellant Efren's brother and Elmer's substitute driver;[12] accused-appellants Efren and Danilo; and Jimmy.

Meanwhile, in Pasig City, Lucina had been in constant communication with the kidnappers since Jimmy's abduction on October 8, 2002, negotiating the amount of ransom for her son's release. Per the kidnappers' instructions, Lucina deposited ₱50,000.00 on October 10, 2002 and another ₱50,000.00 on October 14, 2002 to Jimmy's savings account with IEB. Lilibeth, IEB Branch Manager, confirmed that the said amounts were

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[11] TSN, May 15, 2003, p. 9.

[12] TSN, October 14, 2003, pp. 16-17.

deposited with the bank but were later withdrawn through the automated teller machine (ATM). Subsequently, the kidnappers agreed to accept ₱1,680,000.00 as ransom and ordered that the said amount be delivered to them on October 14, 2002, at around 8:00 a.m., at the Shell Gas Station along the Expressway in Malolos, Bulacan. Lucina, suffering from severe nervousness, asked the kidnappers if her nephew, Marlon, could bring the ransom to them. The kidnappers acceded to Lucina's request.

Simultaneously, PACER was actively conducting an investigation of the kidnapping incident and formed a Response Team and Manhunt Team headed by P/Supt. Nerez and P/Sr. Insp. Lingbawan, respectively. Based on information gathered, the PACER Response Team proceeded to Ilocos Norte and coordinated with the local police. On October 14, 2002, Monday, the PACER Response Team established a checkpoint in Badoc, along the main highway traversing Ilocos Norte to Ilocos Sur. At around 8:00 a.m. of said day, the PACER Response Team flagged down a Mitsubishi Lancer with plate number UJH 480. P/Supt. Nerez recognized Jimmy, who was seated behind the driver, and ordered Jimmy to get out and the rest of the passengers to remain inside the car. P/Supt. Nerez led Jimmy away from the Mitsubishi Lancer as members of the PACER Response Team arrested Elmer, Fernando, and accused-appellants Efren and Danilo.[13] A .38 caliber pistol was recovered from accused-appellant Efren.

After his rescue by the PACER Response Team, Jimmy had the opportunity to talk to his mother, Lucina. Jimmy then informed P/Supt. Nerez that there might still be a chance to catch the other kidnappers as Jimmy's family was on its way to meet the kidnappers for the ransom payout. P/Supt. Nerez immediately relayed the information to P/Sr. Insp. Lingbawan.

As instructed, Marlon proceeded on October 14, 2002 to the Shell Gas Station along the Expressway in Malolos, Bulacan,

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[13] Elmer Valenzuela and Fernando Gascon were not included as suspects as they were later released or discharged.

with the PACER Manhunt Team discreetly following behind him. Marlon initially parked his vehicle in front of Lutong Bahay, but was directed by the kidnappers to transfer to a parking space in front of Burger King. Marlon noticed a maroon Tamaraw FX parked behind him. Moments later, a man alighted from the Tamaraw FX, walked towards Marlon's vehicle, and opened the front door at the passenger's side. As Marlon handed the man the ransom, he got the chance to see the latter's face, and he would subsequently identify the man as accused-appellant Ricardo.[14] After accused-appellant Ricardo returned to the Tamaraw FX, Marlon received a call from the kidnappers, who apologized to him for the inconvenience and told him that he could already leave. Thus, Marlon left the place ahead of the kidnappers in the Tamaraw FX.

P/Sr. Insp. Lingbawan witnessed accused-appellant Ricardo approach Marlon's vehicle, receive a brown bag containing the ransom from Marlon, and board a maroon Tamaraw FX with plate number TTE 334. After the payout, the PACER Manhunt Team trailed the Tamaraw FX. At around 3:00 a.m. on October 15, 2002, the Tamaraw FX parked at a Shell Gas Station in Carmen, Pangasinan. At this point, P/Sr. Insp. Lingbawan received by radio a command from P/Supt. Nerez to already arrest the persons on board the Tamaraw FX. The PACER Manhunt Team arrested accused-appellants Jay, Rolando, and Ricardo and recovered only a portion of the ransom amounting to ₱600,000.00. Two .45 caliber pistols were confiscated from accused-appellants Jay and Rolando. At the PACER Headquarters in Camp Crame, Quezon City, that same day, Jimmy personally saw and identified all five accused-appellants as his kidnappers. Jimmy also executed a *Sinumpaang Salaysay*, recounting in detail his kidnapping. According to Jimmy, there was a sixth kidnapper who was not among those caught and present at the court room during the trial.

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[14] TSN, September 4, 2003, p. 8.

Version of the Defense

Testifying for the defense were accused-appellants Rolando, Ricardo, Efren, and Danilo. The following narrative was put together from their respective testimonies:

Jojo Salazar (Jojo), accused-appellant Ricardo's brother and the "John Doe" in the Information, was escorting Jimmy, a rich Very Important Person (VIP), for a vacation somewhere in the northern Philippines. For this purpose, Jojo hired accused-appellants Jay, Ricardo, Efren, and Danilo to assist him, and accused-appellant Rolando to transport all of them to Ilocos on October 8, 2002.

At around 4:00 p.m. on October 8, 2002, accused-appellants Jay, Ricardo, Efren, and Danilo assembled at Jojo's house in Guiguinto, Bulacan. When accused-appellant Rolando arrived with his Tamaraw FX, Jojo and accused-appellants Ricardo, Efren, and Danilo boarded the vehicle and they proceeded to Meycauayan, Bulacan to fetch Jimmy. After picking up Jimmy in Meycauayan, the group went back to Jojo's house in Guiguinto to also pick up accused-appellant Jay. The group then proceeded to Ilocos.

Upon arriving in Dingras, Ilocos Norte, Jimmy, Jojo, and accused-appellants Jay, Ricardo, and Efren alighted from the Tamaraw FX while accused-appellants Rolando and Danilo remained in the vehicle. Afterwards, Jojo and accused-appellant Jay got on the Tamaraw FX again and together with accused-appellants Rolando and Danilo, returned to Bulacan.

In Ilocos Norte, Jimmy stayed at accused-appellant Efren's house for approximately one week. There, Jimmy spent his vacation roaming around the other towns in Dingras, swimming in a nearby river, and playing with accused-appellant Efren's children. Accused-appellant Danilo went back to Dingras within that week to deliver Jimmy's allowance from Lucina.

On October 14, 2002, Jimmy already wanted to return to Manila and asked accused-appellant Efren to hire a vehicle. Accused-appellant Efren's brother, Fernando, recommended

Elmer, who owned a Mitsubishi Lancer. On board the Mitsubishi Lancer were Elmer, as driver; Fernando, as substitute driver; accused-appellants Efren and Danilo; and Jimmy. On route to Manila, the group passed a checkpoint in Ilocos. The people manning the checkpoint identified accused-appellants Efren and Danilo as kidnappers and arrested them.

That same day, accused-appellants Jay, Rolando, and Ricardo were on board the Tamaraw FX, waiting for Jimmy and his companions at the Shell Gas Station in Pangasinan when their exits were blocked by vehicles that parked in front of them and along the highway. The men who alighted from said vehicles were armed with long rifles which they aimed at accused-appellants Jay, Rolando, and Ricardo. Two men banged on the driver's door of the Tamaraw FX and when accused-appellant Rolando opened the door, the men pulled accused-appellants Jay, Rolando, and Ricardo out of the Tamaraw FX, and then blindfolded, handcuffed, mauled, and robbed them.

Accused-appellant Ricardo denied ever meeting Marlon and receiving ransom from the latter.

Ruling of the RTC

The RTC promulgated a Decision on October 10, 2005 finding accused-appellants Jay, Rolando, and Ricardo guilty as principals and accused-appellants Efren and Danilo guilty as accomplices of the crime of kidnapping for ransom. The RTC though acquitted accused-appellants Jay, Rolando, and Efren of the offense of illegal possession of firearms. The dispositive portion of the RTC judgment reads:

> WHEREFORE, finding herein accused Rolando Estrella *y* Raymundo, Jay Gregorio *y* Amar and Ricardo Salazar *y* Go, guilty as principals beyond reasonable doubt of the crime of kidnapping for ransom as charged, they and each of them are hereby sentenced to suffer the capital punishment of death, the Court strongly recommending to the Chief Executive, thru the Department of Justice, the commutation of this penalty meted out on them to life imprisonment only, pursuant to Art. 5 of the Revised Penal Code.

Finding also herein accused Efren Gascon *y* delos Santos and Danilo Bergonia *y* Aleleng guilty merely as accomplices beyond reasonable doubt of the same crime as charged, they and each of them are hereby sentenced to suffer the penalty of reclusion perpetua, without any circumstance, aggravating or mitigating, found attendant in its commission. Being detention prisoners they and each of them shall be credited with the full time during which they had undergone preventive imprisonment, pursuant to the provisions of Art. 29 of the Revised Penal Code.

All the above-named five (5) accused are likewise sentenced to indemnify the private offended party and his parents in the amount of ₱100,000.00 as moral damages subject to the corresponding filing fees as a first lien, and to pay the costs of the proceedings all in proportionate shares among the five (5) of them.

On ground of reasonable doubt accused Rolando Estrella, Jay Gregorio and Efren Gascon are hereby acquitted of the offense of illegal possession of firearms and ammunitions or violations of PD 1866 as charged in Criminal Cases Nos. 2868-M-2002, 2869-M-2002, and 2870-M-2002, which cases are hereby dismissed.[15]

Ruling of the Court of Appeals

Given the imposition of the death penalty on three of the five accused-appellants, the kidnapping-for-ransom case was elevated before the Court of Appeals for automatic review, where it was docketed as CA-G.R. CR.-H.C. No. 01776. On May 27, 2010, the appellate court rendered a Decision affirming with modification the RTC judgment. According to the Court of Appeals, there was conspiracy among all five accused-appellants, thus, they should all be equally liable as principals for the crime of kidnapping for ransom. The appellate court imposed the penalty of *reclusion perpetua* on accused-appellants taking into account the enactment in 2006 of Republic Act No. 9346, otherwise known as An Act Prohibiting the Imposition of Death Penalty in the Philippines; and ordered accused-appellants to pay Jimmy the additional sum of ₱100,000.00 as exemplary damages. The Court of Appeals decreed:

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[15] CA *rollo*, pp. 32-33.

WHEREFORE, for the reasons stated, the appealed judgment finding accused-appellants guilty beyond reasonable doubt for the crime of kidnapping for ransom is hereby **AFFIRMED with MODIFICATION** that they shall all suffer the penalty of *reclusion perpetua* and to indemnify the private offended party in solidum ₱100,000.00, as moral damages, and ₱100,000.00, as exemplary damages.

With costs.[16]

In a Resolution issued in July 2010, the Court of Appeals gave due course to accused-appellants' Notice of Appeal and directed that the entire records of the case be elevated to us with dispatch.

The Present Appeal

We issued on January 10, 2011 a Resolution[17] directing the parties to file their respective supplemental pleadings. The plaintiff-appellee and accused-appellants, save for accused-appellant Efren, filed their respective Manifestations,[18] stating that they have no intention of filing any supplemental pleading. Accused-appellant Efren filed his Supplemental Brief.[19]

Accused-appellants raise in their brief a lone assignment of error, *viz.*:

THE COURT A QUO GRAVELY ERRED IN FINDING THE ACCUSED-APPELLANTS GUILTY BEYOND REASONABLE DOUBT OF THE CRIME OF KIDNAPPING FOR RANSOM.[20]

Accused-appellants contend that they were made to believe they were merely escorting Jimmy, a VIP, during his vacation

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[16] *Rollo*, pp. 26-27.

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

[18] Office of the Solicitor General's Manifestation (*rollo*, pp. 55-59); Accused-appellants' Manifestation (In Lieu of Supplemental Brief) (*rollo*, pp. 63-66).

[19] *Rollo*, pp. 67-81.

[20] CA *rollo*, p. 45.

in Ilocos Norte; that Jojo orchestrated the kidnapping to get money and left the unwitting accused-appellants to suffer the consequences; that Jimmy identified accused-appellants as his kidnappers because of accused-appellants' presence in the place where Jimmy was held captive; that the failure of the police officers to recover the missing ₱1,000,000.00 ransom indicates someone, other than accused-appellants, is guilty of kidnapping Jimmy; and that accused-appellants would not have been so lenient and would have guarded Jimmy with their lives if it was really their intention to secure a ransom for Jimmy's release. Accused-appellants question the credibility of the prosecution's witnesses as said witnesses' testimonies were incredible, being contrary to common observation or experience. Accused-appellants stress that any doubt should be resolved in favor of the accused based on the principle that it is better to liberate a guilty man than to unjustly keep in prison one whose guilt has not been proven by the required quantum of evidence.

In his Supplemental Brief, accused-appellant Efren similarly assigns a single error on the part of the Court of Appeals:

THE COURT OF APPEALS ERRED IN AFFIRMING THE DECISION OF THE TRIAL COURT BY FINDING THE ACCUSED EFREN D. GASCON GUILTY BEYOND REASONABLE DOUBT FOR THE CRIME OF KIDNAPPING WITH RANSOM AND MODIFYING HIS PARTICIPATION FROM AN ACCOMPLICE TO A PRINCIPAL.[21]

Accused-appellant Efren maintains that Jojo was the real culprit who planned Jimmy's abduction and who was able to get away with the ransom. Accused-appellant Efren asserts that he was made to believe he was escorting or accompanying a VIP to Dingras, Ilocos Norte for a vacation, and in good faith, he only dutifully performed his assigned task. In keeping with Filipino custom and tradition, accused-appellant Efren offered his humble abode to Jimmy as a visitor and treated Jimmy as a member of the family. Accused-appellant Efren calls attention

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[21] *Rollo*, p. 67.

to several points in the prosecution's version of events that were allegedly contrary to human nature and experience and negate Jimmy's kidnapping, or at least, accused-appellant Efren's knowledge of the same, to wit: (a) if Jimmy was really a kidnap victim, accused-appellant Efren would not have brought him home at the risk of the safety of accused-appellant Efren's family; (b) Jimmy had freedom of mobility and money at his disposal while he was at accused-appellant Efren's home; (c) accused-appellant Efren's home was surrounded by neighboring houses and accessible to public transport; (d) Jimmy was allowed to choose which vehicle to hire to go home and to transact freely with the car owner; and (e) Marlon, who delivered the ransom, did not even know how much money he was carrying. Raising even more doubts are the facts that none of the persons present during the supposed kidnapping, namely, Girlie, Michelle, or Bhong, testified before the RTC to corroborate Jimmy's testimony; and that there were conflicting reports on the amounts of ransom allegedly paid and recovered from accused-appellants. Lastly, accused-appellant Efren maintains that given the reasonable doubt on his participation in the kidnapping for ransom, then there is also no legal basis for the Court of Appeals to modify accused-appellant Efren's participation in the commission of said crime from accomplice to principal.

II
RULING OF THE COURT

The appeal has no merit.

Article 267 of the Revised Penal Code, as amended, defines and prescribes the penalty for the crime of kidnapping:

> 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.

The penalty shall be death where the kidnapping or detention was committed for the purpose of extorting ransom from the victim or any other person, even if none of the circumstances above-mentioned were present in the commission of the offense.

When the victim is killed or dies as a consequence of the detention or is raped, or is subjected to torture or dehumanizing acts, the maximum penalty shall be imposed.

In prosecuting a case involving the crime of kidnapping for ransom, the following elements must be established: (i) the accused was a private person; (ii) he kidnapped or detained or in any manner deprived another of his or her liberty; (iii) the kidnapping or detention was illegal; and (iv) the victim was kidnapped or detained for ransom.[22]

The RTC, affirmed by the Court of Appeals, found that the prosecution was able to prove beyond reasonable doubt the essential elements of the crime of kidnapping for ransom, giving weight and credence to the prosecution witnesses' testimonies.

After evaluating the evidence presented by both sides during trial, the RTC adjudged:

[I]n the face of the clear and categorical word of Jimmy that he was abducted by the herein accused thru force and intimidation, without any reason to lie when he said that they held him captive for one week in a strange barrio in Ilocos he had never gone to before, the defense of said accused that [Jimmy] went with them voluntarily for a vacation in that place not at all fit for such leisure, must necessarily fall by its own weight of improbabilities. And the word of [Jimmy's] mother Lucina Ting and his cousin Marlon delos Santos no doubt has shown that the accused herein kidnapped [Jimmy] for ransom

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[22] *People v. Lugnasin*, G.R. No. 208404, February 24, 2016.

which was actually delivered to them for his release. The Court, however, entertains its doubt if the one-million-peso part of it that strangely was not recovered by the police upon their surprise capture, has redounded to their benefit. Even the ₱100,000.00 deposited by Mrs. [Lucina] Ting to the ATM account of Jimmy during his captivity was shown withdrawn not necessarily by them without the help of Jimmy who never said that he was made to withdraw it or tell them how to do so from his account. In fact, the ransom that drove them to kidnap Jimmy all turned out for naught, as the smaller portion of it in the amount of ₱680,000.00 (or ₱679,000.00 as so accounted by the police) was successfully recovered and necessarily returned to his parents.

The law is indeed hard, but even in the case of the herein five (5) accused who are not that hardened but even seemingly amateurish in perpetrating their crime without unnecessary maltreatment to their victim, it is still the law on kidnapping for ransom. Art. 267 of the Revised Penal Code, as well as its amending Republic Act No. 7659, provides, that, "The penalty shall be death where the kidnapping or detention was committed for the purpose of extorting ransom from the victim or any other person" x x x. The kidnappers found guilty as principal cannot avoid the imposition of this supreme penalty. Like what the Supreme Court has done, however, in the case of People vs. Chua Huy, et al., 87 Phil. 258, those who acted as guards of Jimmy Ting must be held only as accomplices.[23]

The Court of Appeals, after reviewing the evidence on record, concluded, thus:

We have meticulously reviewed the records and we are convinced beyond cavil that the prosecution adduced proof beyond reasonable doubt that the accused-appellants conspired to kidnap Jimmy Ting for the purpose of extracting money from his family and that herein accused-appellants are all perpetrators thereof.

Jimmy positively identified the accused-appellants as the culprits. The trial court found his testimony credible. It is doctrinal that findings of trial courts on the credibility of witnesses deserve a high degree of respect and will not be disturbed on appeal absent a clear showing that the trial court had overlooked, misunderstood or misapplied some

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[23] CA *rollo*, pp. 29-31.

facts or circumstances of weight and substance which could reverse a judgment of conviction. In fact, in some instances, such findings are even accorded finality. This is so because the assignment of value to a witness' testimony is essentially the domain of the trial court, not to mention that it is the trial judge who has the direct opportunity to observe the demeanor of a witness on the stand which opportunity provides him unique facility in determining whether or not to accord credence to the testimony or whether the witness is telling the truth or not. It is evident from the testimony of Jimmy Ting before the trial court that indeed, the kidnapping or detention did take place and that he was held against his will from October 8-14, 2002. He was able to recount his ordeal, replete with details that he could not have simply concocted.

Moreover, the kidnapping of the victim was really committed for the purpose of extracting ransom. It is apparent in the testimony of Jimmy Ting, who was quite emphatic in identifying the accused and narrating the circumstances surrounding the demand for ransom money.

"x x x x x x
x x x

Q: You said they were conversing with each other, would you still recall what language or dialect were they conversing?
A: They are conversing in Tagalog. Some of the conversations I can remember is that they were telling me that "Parang mahahatulan ka kapag hindi ka nakipag-cooperate, papatayin ka namin, so huwag kang papalag." Those are some of the statements that I heard.

Q: Aside from these conversations when you were cruising North Diversion Road, what other things happened inside?
A: Then the commander on the right started to ask the phone number of my parents.

Q: Was he able to get the phone number of your parents from you?
A: Yes, ma'am.

Q: It was the commander who asked you?
A: Yes, ma'am.

Q: After getting the number of your parents, what did he do?
A: First, they called our household and unfortunately my parents was (sic) not yet home. Then, second, they called my Dad thru his cellphone.

Q: First call was in your house?
A: Yes, ma'am.

Q: How did you know that it was your house that was ...?
A: Because I gave them my household telephone number.

Q: Whose cellphone was used in calling your house?
A: My cellphone.

Q: Who made the call?
A: I can hear that the commander on my right started to dial the number, then probably after it rings (sic) I just heard he just passed it on (sic) the front side, the voices coming from the driver's side.

Q: After the phone was passed to the driver's side, was there any conversation after that?
A: Yes, ma'am, The driver said "Nandiyan ba si Mrs. Ting?" Because I told the commander to look for my Mom because probably she is at home. Because at that time my father was in Taiwan.

Q: Aside from what you heard, "Nandiyan ba si Mrs. Ting?," what else did you hear?
A: I heard from the driver that "Tatawag na lang kami uli" because I assumed that my mother is not home, so the driver just said "Tatawag na lang kami uli."

Q: After that, what happened?
A: After that the commander again asked me (sic) the cellphone number of my Dad. So at that time I can only remember the cellphone of my Dad. I cannot remember the cellphone of my Mom.

Q: After asking your father's cellphone number, was he able to get it from you?
A: Yes, ma'am.

Q: What did he do with the number?
A: He dialed the number and again he passed the phone to the front at the driver's side.

Q: How did you know?
A: Because just the same from the start when they dialed at our household I can hear the tones of the phone, dialing at the right side, Then again, I can hear him saying that "Eto na."

Q: When he passed it to the driver, what happened next?
A: I heard that the driver said "Magandang gabi Mr. Ting, nasa amin ang anak mong si Jimmy Ting."

Q: That was the only words that you heard?
A: After that I just heard the driver said "Nasaan ka?," then he also said that "Nasa Taiwan ka? Umuwi ka na."

Q: After saying that, what happened next?
A: After that the conversation was cut. Then the commander started to ask my mother's number.

Q: You said earlier that you gave the household number, this time what kind of number was he asking for?
A: My mother's number because at that time I cannot remember. So I told the commander just look at the phone book of my phone.

Q: Was he able to find your mother's number in your cellphone?
A: Yes, sir.

Q: Was he able to use that number?
A: Yes, ma'am.

Q: Was he able to call your mother?
A: Yes, ma'am.

Q: What transpired between their conversation?
A: Again the same thing the commander dialed the number, then he forwarded the phone again to the driver. The conversation I heard was "Magandang gabi Mrs. nasa amin si Jimmy," then I just heard "Maghanda kayo ng pera," worth fifty million (₱50M) 'yong pinahahanda.

Q: After hearing that, what else transpired?
A: After hearing that they just cut off the conversation. I just remember that he said "Tatawag na lang kami uli," then the conversation was cut.

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The statements of Jimmy Ting was (sic) corroborated by his mother Lucina Ting who testified:

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Q: While on your way home, what happened, if any?
A: While on my way home I received a call from my daughter Girlie and (sic) told me that her brother Jimmy was abducted by an (sic) armed men.

Q: What did you do upon learning that your son was abducted by armed men?
A: I was shocked. I don't know what to do. I called my husband and told him what happened.

Q: What did your husband tell you upon learning that your son was abducted?
A: Because at that time he was in Taiwan. He was not here. He told me that he will call up his friends to assist me and help me.

Q: What else did he tell you?
A: He said we have to wait for the kidnappers to call me.

Q: Did the kidnapper contact you or call you?
A: Yes, ma'am.

Q: Where did they contact you?
A: At the same day about 10:00 o'clock in the evening.

Q: What did they use in contacting you? In calling you?
A: They used the cellphone of my son.

Q: How did you know that it was the cellphone of your son?
A: It appears in my cellphone and telephone number.

Q: The one who called you to your cellphone, was it a female?
A: He is a male, ma'am.

Q: What did that male person tell you?
A: They told me that they have my son and they are demanding us ₱50,000,000.00 for the release of my son.

Q: What was your reply to the demand of ₱50,000,000?
A: I don't have that big money. At that moment I have ₱90,000.00 on my hand and I offered it to him.

Q: Did the one who call (sic) you accept the ₱90,000.00 available?
A: No, ma'am.

Q: What did he tell you?
A: They just told me to raise the money and they will call up the next day.

Q: Did he call the next day?
A: Yes, ma'am.

Q: What did he tell you this time?
A: They are asking me if I prepared the money, ₱50,000,000.00.

Q: What was your reply?
A: I don't have that big money. I only have at that time ₱300,000.00.

Q: What was the reaction of the one who called you to that ₱300,000.00?
A: They are insisting for the ₱50,000,000.00 ransom.

Q: What did he tell you?
A: He told me to find the money or to raise money, ₱50,000,000.00.

Q: Did the one who called you the other day call you again? The next day?
A: Yes, the same person.

Q: What was, how many times did that person call you?
A: Always everyday, from October 8 to October 14.

Q: What was the tenor of your conversation, or what was the subject all about?
A: Always asking me the money, the ransom money.

Q: In the amount of - ?
A: ₱50,000,000.00.

Q: Were you able to raise that ₱50,000,000.00?
A: No, ma'am.

Q: How much were you able to raise?
A: I almost raised around ₱1,680,000.00.

Q: When you told the one who called you that you were only able to raise the amount of ₱1,680,000.00, what did he tell you?
A: They told me to make ready the money and they will call up again, and will give instruction for the pay off.

Q: When was that?
A: That was on October 14.

Q: Were you able to give that amount of ₱1,680,000.00 to the kidnapper?
A: Yes, ma'am.

Q: Were you the one who actually delivered that amount?
A: No. ma'am.

Q: Why?
A: At that time I was nervous and I cannot drive. I told the kidnapper if possible I let my nephew Marlon to bring the money.

Q: Could you tell the full name of Marlon?
A: Marlon delos Santos ma'am.

Q: Did the kidnapper accede to your request that it will be Marlon, your nephew, who will deliver the amount?
A: Yes, ma'am.

Q: What did you do after talking with that person or the one negotiating?
A: I told him that Marlon delos Santos will be the one to bring the money and the kidnappers told me that they will call up again for the final instruction.

Q: How much all in all were you able to give to the kidnappers for the release of your son?
A: ₱1,780,000.00, ma'am.

Q: And you said earlier that on October 14 you were only able to raise ₱1.680M, where is that difference of ₱100,000.00?
A: On October 10, they called up and told me to deposit ₱50,000.00 on the ITM (sic) of my son and another one, ₱50,000.00, on October 14 for the ITM (sic) of my son.

Q: Were you able to deposit ₱50,000.00 on October 10 to the ITM (sic) account of Jimmy Ting?
A: Yes, ma'am.

Q: How about the other ₱50,000.00 on October 14, were you able to deposit it?
A: Yes, ma'am.

Q: Do you have any proof that indeed you deposited the total amount of ₱100,000.00?
A: I asked the bank to give me the ATM Statement of account of Jimmy Ting.

Q: When did you secure a copy of that bank statement?
A: After the rescue of my son, ma'am.

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Based on the foregoing statements, it was clearly established that efforts have been made to raise and deliver the ransom. The elements of kidnapping as embodied under Article 267 of the Revised Penal Code, having been sufficiently proven, and the appellants, being private individuals, having been clearly identified by the kidnap victim, this Court affirms the finding of appellants' guilt of the crime of kidnapping for ransom.[24] (Citations omitted.)

Accused-appellants question the credibility of the prosecution witnesses. However, the familiar and well-entrenched doctrine is that the assessment of the credibility of witnesses lies within the area and competence of the trier of facts, in this case, the trial court and, to a certain extent, the Court of Appeals. This doctrine is based on the time-honored rule that the matter of assigning values to declarations on the witness stand is best and most commonly performed by the trial judge who, unlike appellate magistrates, is in the best position to assess the credibility of the witnesses who appeared before his/her sala as he/she had personally heard them and observed their deportment and manner of testifying during the trial.[25] We further elucidated in *People v. Eduarte*[26] that:

Basic is the rule that factual findings of trial courts, including their assessment of the witnesses' credibility, are entitled to great weight and respect by this Court, particularly when the Court of Appeals affirms the findings.

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Factual findings of the trial court are entitled to respect and are not to be disturbed on appeal, unless some facts and circumstances of weight and substance, having been overlooked or misinterpreted,

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[24] *Rollo*, pp. 16-22.

[25] *Magno v. People*, 516 Phil. 72, 81 (2006).

[26] 603 Phil. 504, 512-513 (2009).

might materially affect the disposition of the case. In the case under consideration, we find that the trial court did not overlook, misapprehend, or misapply any fact or value for us to overturn the findings of the trial court. Prevailing jurisprudence uniformly holds that findings of fact of the trial court, particularly when affirmed by the Court of Appeals, are binding upon this Court. (Citations omitted.)

We apply the foregoing general rule to the instant case absent any compelling reason to deviate from the factual findings of the RTC, as affirmed by the Court of Appeals, especially the credibility and probative weight accorded to the prosecution witnesses' testimonies. Neither the RTC nor the Court of Appeals overlooked, misinterpreted, or misapplied a material fact that would have changed the outcome of the case. To the contrary, the prosecution witnesses' testimonies presented a cohesive, detailed, and convincing account of Jimmy's kidnapping for ransom. At least two prosecution witnesses corroborated one another on every turn of events from October 8 to October 15, 2002: from Jimmy's actual abduction, to the ransom negotiation, to the ransom payout, and to Jimmy's rescue and accused-appellants' apprehension by the PACER teams.

That the PACER Manhunt Team was unable to recover from accused-appellants part of the ransom amounting to ₱1,000,000.00 is immaterial, it being sufficient that accused-appellants' motive for kidnapping Jimmy, *i.e.*, the collection of ransom, was duly established. We reiterate our pronouncements in *People v. Bisda*[27] on the qualifying circumstance of extorting ransom from a kidnap victim or his/her family:

The purpose of the offender in extorting ransom is a qualifying circumstance which may be proved by his words and overt acts before, during and after the kidnapping and detention of the victim. Neither actual demand for nor actual payment of ransom is necessary for the crime to be committed, Ransom as employed in the law is so used in its common or ordinary sense; meaning, a sum of money or other thing of value, price, or consideration paid or demanded for redemption of a kidnapped or detained person, a payment that releases from

[27] 454 Phil. 194, 234-235 (2003).

captivity. It may include benefits not necessarily pecuniary which may accrue to the kidnapper as a condition for the release of the victim. (Citations omitted.)

It is clear in the present case that accused-appellants kidnapped Jimmy so that they could collect ransom in exchange for Jimmy's release. Jimmy, while blindfolded on board the Tamaraw FX, overheard accused-appellants demanding ransom from his parents. Lucina negotiated with accused-appellants to bring down the amount of ransom. Accused-appellants gave instructions on how the ransom payout was to be done. Marlon delivered the ransom per accused-appellants' instructions. Accused-appellants Jay, Rolando, and Ricardo were actually present at the time and place of payout. Members of the PACER Manhunt Team witnessed the ransom payout take place between Marlon and accused-appellant Ricardo. Hence, regardless of the actual amount of ransom subsequently agreed upon, delivered, and/or recovered, it had been sufficiently established that accused-appellants' motive for kidnapping Jimmy was to extort ransom from Jimmy's family.

There is likewise no cogent basis for us to overturn the finding by the Court of Appeals of conspiracy among all five accused-appellants and holding them all equally liable as principals for the crime of kidnapping for ransom.

Our following explication on conspiracy in *Mangangey v. Sandiganbayan*[28] is significant in the case at bar:

There is conspiracy when two or more persons come to an agreement concerning the commission of a felony and decide to commit it. Direct proof of previous agreement to commit a crime is not necessary. Conspiracy may be shown through circumstantial evidence, deduced from the mode and manner in which the offense was perpetrated, or inferred from the acts of the accused themselves when such lead to a joint purpose and design, concerted action, and community of interest. Conspiracy must be proven as convincingly as the criminal act itself — like any element of the offense charged, conspiracy must be established by proof beyond reasonable doubt. For a co-conspirator

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[28] 569 Phil. 383, 399-400 (2008).

to be liable for the acts of the others, there must be intentional participation in the conspiracy with a view to further a common design. Except for the mastermind, it is necessary that a co-conspirator should have performed some overt act — actual commission of the crime itself, active participation as a direct or indirect contribution in the execution of the crime, or moral assistance to his co-conspirators by being present at the commission of the crime or by exerting moral ascendancy over the other co-conspirators.

In this case, the ascertained facts abovementioned and the encashment of the contract payment check obtained through the falsified certificate of inspection prove the commission of the crime. Wandag's guilt has been proven with moral certainty. As co-conspirators of Wandag, petitioners are equally guilty, for in a conspiracy, every act of one of the conspirators in furtherance of a common design or purpose of such a conspiracy is the act of all. (Citations omitted.)

We quote with approval the justification of the Court of Appeals for its finding of conspiracy:

However, We do not agree with the trial court that [accused-appellants] Danilo Bergonia *y* Aleleng and Efren Gascon *y* delos Santos are liable only as accomplices for they merely acted as guards. If We are to examine closely the statements of the victim, at the time of this abduction, there were six persons inside the vehicle including the victim himself. After they exited a toll gate, the vehicle stopped and another man joined them on board the vehicle. The day following his rescue, Jimmy Ting was able to identify five of the six persons who were responsible for his abduction at the PACER Office. Only one was not around, Jojo Salazar, who was referred to as John Doe in this case. This only goes to show that they all conspired to kidnap the victim. Hence, they are all equally liable as principals in the commission thereof. We do not subscribe to the tale of the [accused-appellants] that they merely associated with one Jojo Salazar and that they were made to believe that they would only be escorting a very important person who is on his way to Ilocos for a vacation. Such postulations are merely feeble attempts to escape liability. For one, if indeed [accused-appellant] Efren Gascon had no idea that Jimmy Ting was being held against his will, why would he tell the latter that he is going to help him escape?

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Undoubtedly, in perpetrating the kidnapping for ransom, conspiracy existed among herein accused-appellants. Viewed in its totality, the individual participation of each of them pointed to a joint purpose and criminal design. Jojo Salazar held the victim at gunpoint while the latter was waiting for the mechanics to finish fixing the flat tire of his car and forced him to ride a Tamaraw FX.

[Accused-appellant] Efren Gascon and Jojo Salazar sandwiched him in the car and transported him to a house where he was detained for six (6) days. [Accused-appellant] Rolando Estrella negotiated with the victim's mother for the ransom payment. Further, the other named [accused-appellants] set out to the designated place of ransom payment. These acts were complementary to one another and were geared toward the attainment of a common ultimate objective. That objective was to extort a ransom of ₱50 million (which was later reduced to ₱1.780 million through bargaining by the victim's mother) in exchange for the victim's freedom.[29] (Citations omitted.)

Based on the prosecution's evidence, each of the accused-appellants, plus Jojo, had intentional, direct, and substantial participation in Jimmy's kidnapping for ransom. Jimmy's abduction, his being taken to and holed up in a house in Ilocos Norte under guard, the ransom demand and negotiation, and finally, the ransom payout, which all happened in a span of six days, took planning and coordination among accused-appellants and Jojo. Accused-appellant Efren, in particular, was among the four men who abducted Jimmy in Meycauayan, Bulacan on October 8, 2002. Accused-appellant Efren also kept guard over Jimmy for six days in Dingras, Ilocos Norte. Therefore, accused-appellant Efren could not be a mere accomplice as his presence at the scene/s of the crime was definitely more than just to give moral support; his presence and company were indispensable and essential to the perpetration of the kidnapping for ransom.[30]

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[29] *Rollo*, pp. 22-25.

[30] *Cf. People v. Gambao*, 718 Phil. 507 (2013), wherein one of the accused-appellants, Thian Perpenian, was declared a mere accomplice in the kidnapping for ransom as she only arrived at the place where the kidnapped victim was being kept after the actual abduction, chose to keep silent about the kidnapping, and even stayed the night.

Accused-appellants' denial and attempt to put the entire blame for Jimmy's kidnapping with ransom on Jojo, who remains at large, deserve our scant consideration. Accused-appellants' claim that they were merely recruited to transport and escort Jimmy on his vacation in Ilocos is illogical, implausible, and specious, nothing more than a desperate attempt to provide a legitimate excuse for their presence during the commission of the crime.

It bears to stress that Jimmy twice identified the five accused-appellants except Jojo who was at large as his kidnappers, at Camp Crame right after his rescue and before the RTC during trial.

In addition, when they took the witness stand, prosecution witnesses Girlie clearly recognized accused-appellant Efren as one of Jimmy's abductors on the night of October 8, 2002;[31] and Marlon categorically pinpointed accused-appellant Ricardo as the person who received the ransom from him.[32]

The prosecution witnesses' positive identification of accused-appellants as Jimmy's kidnappers rendered accused-appellants' defense unavailing. It is well-settled that greater weight is given to the positive identification of the accused by the prosecution witnesses than to the accused's denial and explanation concerning the commission of the crime.[33]

Moreover, accused-appellants utterly failed to allege, much less, prove, any ill or ulterior motive on the part of Jimmy and the other prosecution witnesses to fabricate a story and to falsely charge accused-appellants with a very serious crime. Where there is no evidence to show any dubious or improper motive why a prosecution witness should bear false witness against the accused or falsely implicate him in a heinous crime, the testimony is worthy of full faith and credit.[34]

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[31] TSN, August 2, 2005, p. 12.

[32] TSN, September 4, 2003, p. 8.

[33] *People v. Taneo*, 348 Phil. 277, 297 (1998).

[34] *Ureta v. People*, 436 Phil. 148, 160 (2002).

Since accused-appellants' guilt for the crime of kidnapping for ransom had been established beyond reasonable doubt, they should be meted the penalty of death under Article 267 of the Revised Penal Code, as amended. However, Republic Act No. 9346[35] already prohibited the imposition of the death penalty. Consequently, the Court of Appeals correctly sentenced accused-appellants to *reclusion perpetua* in lieu of death, without eligibility for parole.[36]

In accordance with existing jurisprudence, accused-appellants are jointly and severally liable to pay Jimmy ₱100,000.00, as civil indemnity; ₱100,000.00, as moral damages; and ₱100,000.00, as exemplary damages, all with interest at the rate of six percent (6%) per *annum* from the date of finality of this judgment until fully paid.[37]

WHEREFORE, premises considered, the Decision dated May 27, 2010 of the Court of Appeals in CA-G.R. CR.-H.C. No. 01776, is **AFFIRMED with MODIFICATION**. Accused-appellants Jay Gregorio *y* Amar, Rolando Estrella *y* Raymundo, Ricardo Salazar *y* Go, Danilo Bergonia *y* Aleleng, and Efren Gascon *y* delos Santos are found **GUILTY** beyond reasonable doubt of the crime of kidnapping for ransom, for which they are sentenced to suffer the penalty of *reclusion perpetua*, without eligibility of parole, and ordered to jointly and severally pay private complainant Jimmy Ting the following:

1. ₱100,000.00 as civil indemnity,
2. ₱100,000.00 as moral damages, and
3. ₱100,000.00 as exemplary damages.

All monetary awards shall earn six percent (6%) interest per *annum* from the finality of this Decision until fully paid.

SO ORDERED.

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[35] Republic Act No. 9346, otherwise known as "An Act Prohibiting the Imposition of Death Penalty in the Philippines."

[36] *People v. Lugnasin*, *supra* note 22.

[37] *Id.*

Bersamin, Perlas-Bernabe, and *Caguioa, JJ,* concur.

Sereno, C.J., on leave.

THIRD DIVISION

[G.R. No. 196962. June 8, 2016]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **JOAN SONJACO *y* STA. ANA,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. NO. 9165); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS, ESTABLISHED IN CASE AT BAR.— The prosecution was able to establish with moral certainty the following elements for all prosecutions for illegal sale of dangerous drugs: (1) proof that the transaction or sale took place; and (2) the presentation in court of the *corpus delicti* or the illicit drug as evidence. Appellant was apprehended, indicted and convicted by way of a buy-bust operation, a form of entrapment whereby ways and means are resorted to for the purpose of trapping and capturing the lawbreakers in the execution of their criminal plan. The commission of the offense of illegal sale of dangerous drugs, like *shabu*, merely requires the consummation of the selling transaction which happens the moment the buyer receives the drug from the seller. The crime is already consummated once the police officer has gone through the operation as a buyer whose offer was accepted by the accused, followed by the delivery of the dangerous drugs to the former. Appellant was caught *in flagrante delicto* delivering two (2) plastic sachets containing white crystalline substance to PO1 Marmonejo, the *poseur buyer*, in exchange for ₱200.00. PO1 Marmonejo positively identified appellant in open court to be the same person who sold to him the items which upon examination was confirmed to be methylamphetamine hydrochloride or *shabu*. Upon presentation of the same in open

court, another member of the buy-bust team, PO1 Mendoza, duly identified the items to be the same objects sold to the *poseur buyer* by appellant.

2. ID.; ID.; ILLEGAL POSSESSION OF DANGEROUS DRUGS; ELEMENTS; ACCUSED FAILED TO SATISFACTORILY EXPLAIN THE ABSENCE OF *ANIMUS POSSIDENDI*.— [T]o sustain a prosecution for illegal possession of dangerous drugs, the following elements must be established: (1) the accused is in possession of an item or object identified to be prohibited or a regulated drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed said drug. Obtained through a valid search the police officers conducted pursuant to Section 13, Rule 126 of the Rules of Court, the sachets recovered from appellant's person all tested positive for Methylamphetamine hydrochloride or *shabu*. Mere possession of a prohibited drug constitutes *prima facie* evidence of knowledge or *animus possidendi* sufficient to convict an accused in the absence of any satisfactory explanation of such possession. The burden of evidence to explain the absence of *animus possidendi* rests upon the accused, and this, in the case at bar, the appellant failed to do.

3. ID.; ID.; NON-COMPLIANCE WITH THE REQUIREMENTS OF SECTION 21 OF R.A. NO. 9165 IS IMMATERIAL AS LONG AS THE INTEGRITY AND THE EVIDENTIARY VALUE OF THE SEIZED ITEMS HAVE BEEN PRESERVED.— Anent the supposed failure to comply with the procedures prescribed by Section 21 of R.A. 9165, jurisprudence has it that non-compliance with these procedures does not render void the seizures and custody of drugs in a buy-bust operation. What is of utmost importance is the preservation of the integrity and evidentiary value of the seized items because the same will be utilized in ascertaining the guilt or innocence of the accused. The chain of custody requirement ensures the preservation of the integrity and evidentiary value of the seized items in order to remove unnecessary doubts concerning the identity of the evidence. In addition to the inventory made of the seized items, the prosecution was able to prove an unbroken chain of custody of the illegal drugs from their seizure and marking to their submission to the Southern Police District Crime Laboratory for analysis, to the identification of the same during the trial of the case. As long as the chain

of custody is unbroken, even though the procedural requirements of Section 21 of R.A. No. 9165 were not faithfully observed, the guilt of the appellant will not be affected.

4. ID.; ID.; PENALTIES FOR ILLEGAL SALE AND ILLEGAL POSSESSION OF DANGEROUS DRUGS.— R.A. No. 9165 or the Comprehensive Dangerous Drugs Act of 2002 prescribes life imprisonment to death and a fine ranging from ₱500,000.00 to ₱10,000,000.00 as penalties for violations of Section 5, Article 11 thereof. The passage of Republic Act No. 9346 proscribes the imposition of the death penalty, thus the appellate court correctly affirmed the penalty of life imprisonment and fine of ₱500,000.00 prescribed by the RTC. Under Section 11, Article II of R.A. No. 9165, illegal possession of less than five (5) grams of *shabu* is penalized with imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from ₱300,000.00 to ₱400,000.00. Applying the *Indeterminate Sentence Law*, the minimum period of the imposable shall not fall below the minimum period set by law and the maximum period shall not exceed the maximum period allowed under the law. The Court of Appeals likewise correctly affirmed the penalty of imprisonment of twelve (12) years and one (1) day as minimum term to fourteen (14) years and one (1) day as maximum term, together with the fine of ₱300,000.00 imposed by the RTC.

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

PEREZ, *J.*:

Before us for review is the Decision[1] of the Court of Appeals in CA-G.R. CR.-H.C. No. 03211 dated 27 October 2010, which

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[1] *Rollo*, pp. 2-24; Penned by Associate Justice Jane Aurora C. Lantion with Associate Justices Andres B. Reyes, Jr. and Japar B. Dimaampao concurring.

dismissed the appeal of appellant Joan Sonjaco *y* Sta. Ana and affirmed the Judgment[2] dated 10 July 2007 of the Regional Trial Court (RTC), Branch 65 of the City of Makati in Criminal Case Nos. 05-1506 and 05-1507, finding appellant guilty beyond reasonable doubt of violation of Sections 5 and 11, Article II of Republic Act (R.A.) No. 9165, or the Comprehensive Dangerous Drugs Act of 2002.

Appellant was charged with violation of Sections 5 and 11 of Article II of R.A. No. 9165, to wit:

CRIMINAL CASE NO. 05-1506

That on or about the 6th day of August 2005, in the City of Makati, Philippines and a place within the jurisdiction of this Honorable Court, the above-named accused, not being lawfully authorized by law, did then and there willfully, unlawfully and feloniously sell, distribute, and transport zero point zero one (0.01) gram of Methylamphetamine hydrochloride which is a dangerous drug in consideration of two hundred (Php200.00) pesos.[3]

CRIMINAL CASE NO. 05-1507

That on or about the 6th day of August 2005, in the City of Makati, Philippines and a place within the jurisdiction of this Honorable Court, the above-named accused, not being lawfully authorized to possess any dangerous drug and without the corresponding license or prescription, did then and there willfully, unlawfully and feloniously have in her possession zero point one five (0.15) gram of Methylamphetamine hydrochloride which is a dangerous drug.[4]

At her arraignment, appellant pleaded not guilty to the offenses charged. Joint trial ensued.

The prosecution presented as witnesses Police Officer 1 Honorio Marmonejo, Jr. (PO1 Marmonejo) who acted as the

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[2] Records, pp. 97-103; Penned by Acting Presiding Judge Eugene C. Paras.

[3] *Id.* at 3.

[4] *Id.* at 4.

poseur-buyer and PO1 Percieval Mendoza (PO1 Mendoza), a member of the buy-bust team. The prosecution and the defense agreed to dispense with the testimony of Forensic Chemical Offices Sharon Lontoc Fabros of the Philippine National Police Laboratory who examined the seized drugs.

The prosecution established that based on information received on 6 August 2005, that appellant and a certain *alias* Kenkoy were engaged in illegal drug trade in Pateros Street, *Barangay* Olympia, Makati City Police Superintendent Marieto Valerio (P/Supt. Valerio) formed a buy-bust team composed of PO1 Marmonejo, PO1 Mendoza, PO1 Randy Santos and SPO3 Luisito Puno and two (2) other anti-drug agents Eduardo Monteza and Herminia Facundo. After a surveillance of the area and coordination with the Philippine Drug Enforcement Agency (PDEA) were made, P/Supt. Valerio briefed the team. PO1 Marmonejo was designated as *poseur-buyer* and two (2) pieces of One Hundred Peso (₱100) bills marked with the initials "MMV" were provided for the operation. At five o'clock in the afternoon of that day, PO1 Marmonejo and the police asset, on board a tricycle driven by PO1 Mendoza, proceeded to the target area. The other members of the buy-bust team positioned themselves nearby. The police asset called appellant and told her that PO1 Marmonejo wanted to buy *shabu*. Appellant asked PO1 Marmonejo how much, to which he replied, "*katorse lang*" or ₱200.00 worth of *shabu*. Appellant then took out from her pocket two (2) transparent plastic sachets containing a white crystalline substance, one of which she handed to PO1 Marmonejo in exchange for two (2) One Hundred Peso (₱100) bills. Appellant pocketed the other plastic sachet.[5]

Upon consummation of the transaction, PO1 Marmonejo revealed that he was a police officer and immediately apprehended appellant, apprised her of her constitutional rights and asked her to empty her pockets. PO1 Marmonejo recovered money in the amount of Five Hundred Forty Pesos (₱540.00),

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[5] *Id.* at 170-181; TSN, 19 October 2005; *id.* at 269-275; TSN, 21 February 2007.

a mobile phone, and three (3) other plastic sachets containing white crystalline substance. PO1 Marmonejo marked the sachet sold to him as "BONG" while the three (3) other sachets as "JOAN," "JOAN 1," and JOAN 2." Appellant was brought to the police station for investigation and PO1 Marmonejo submitted the seized sachets to the Southern Police District Crime Laboratory.[6] The Forensic Laboratory Report[7] confirmed that the sachets contained methylamphetamine hydrochloride or *shabu*. The sachets of *shabu* purchased and recovered from appellant,[8] the inventory of the seized items,[9] the marked buy-bust money[10] and the Final Police Investigation Report[11] were likewise presented in court.

Appellant testified on her behalf and vehemently denied the indictment. She claimed innocence and asserted that she had been at her mother-in-law's house when three (3) police officers entered the house and forcibly brought her to the police station and there attempted to extort money from her in exchange for her liberty.[12]

On 10 July 2007, the RTC rendered judgment finding appellant guilty beyond reasonable doubt of the crimes charged. The dispositive portion of the RTC Decision reads:

WHEREFORE, in view of the foregoing, judgment is rendered as follows:

1. In Criminal Case No. 05-1506, the [c]ourt finds accused JOAN SONJACO **GUILTY** of the charge for violation of Sec. 5, Article II,

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[6] *Id.* at 182-183; TSN, 21 February 2007.

[7] *Id.* at 83.

[8] *Id.* at 71-72; Formal Offer of Evidence, Exhibits "N", "O", "P" and "Q".

[9] *Id.* at 81; Exhibit "H".

[10] *Id.* at 76; Exhibits "D" and "E".

[11] *Id.* at 79; Exhibit "G".

[12] *Id.* at 387-393; TSN, 24 April 2007.

R.A. 9165 and sentences her to suffer LIFE imprisonment and to pay a fine of FIVE Hundred Thousand (₱500,000.00) pesos;

2. In Criminal Case No. 05-1507, the [c]ourt finds accused JOAN SONJACO y STA. ANA **GUILTY** of the charge for violation of Sec. 11, Article II, R.A. 9165 and sentences her to suffer the indeterminate sentence of Twelve (12) years and one (1) day as minimum to Fourteen (14) Years and one (1) day as maximum and to pay a fine of THREE Hundred Thousand (₱300,000.00) pesos.

The period of detention of the accused should be given full credit.

Let the dangerous drug subject matter of this case be disposed of in the manner provided for by law.[13]

Appellant moved for a reconsideration of the case which the RTC denied.[14] The RTC reiterated that the testimony of the poseur-buyer sufficiently established all the elements of the crimes charged. The other witness could not be expected to corroborate the poseur-buyer's testimony on all the material points as the former only served as support officer. More importantly, the inconsistencies are too minor to cause a dent on the credibility of both prosecution witnesses. The RTC further said that the inventory sheet of the seized items from appellant, witnessed by two disinterested persons, belies any claim of irregularity. Lastly, the certification faxed by PDEA two (2) hours after the buy-bust operation evidenced an actual coordination earlier made.

Appellant filed a Notice of Appeal on 10 January 2008.[15] On 27 October 2010, the Court of Appeals rendered the assailed judgment affirming the RTC's decision. The Court of Appeals found appellant guilty of the crimes charged, or violation of Sections 5 and 11, Article II of R.A. No. 9165.

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[13] *Id.* at 103.

[14] *Id.* at 129; Order dated 8 January 2008.

[15] *Id.* at 132.

Appellant appealed his conviction before this Court. In a Resolution[16] dated 14 September 2011, appellant and the Office of the Solicitor General (OSG) were asked to file their respective supplemental briefs if they so desired. Both parties dispensed with the filing of supplemental briefs.[17]

The Court finds no merit in the appeal.

The prosecution was able to establish with moral certainty the following elements required for all prosecutions for illegal sale of dangerous drugs: (1) proof that the transaction or sale took place; and (2) the presentation in court of the *corpus delicti* or the illicit drug as evidence.[18] Appellant was apprehended, indicted and convicted by way of a buy-bust operation, a form of entrapment whereby ways and means are resorted to for the purpose of trapping and capturing the lawbreakers in the execution of their criminal plan.[19] The commission of the offense of illegal sale of dangerous drugs, like *shabu*, merely requires the consummation of the selling transaction which happens the moment the buyer receives the drug from the seller. The crime is already consummated once the police officer has gone through the operation as a buyer whose offer was accepted by the accused, followed by the delivery of the dangerous drugs to the former.[20]

Appellant was caught *in flagrante delicto* delivering two (2) plastic sachets containing white crystalline substance to PO1 Marmonejo, the *poseur buyer*, in exchange for ₱200.00. PO1 Marmonejo positively identified appellant in open court to be the same person who sold to him the items which upon examination was confirmed to be methylamphetamine hydrochloride or *shabu*. Upon presentation of the same in open court, another member of the buy-bust team, PO1 Mendoza,

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[16] *Rollo*, p. 32.

[17] *Id.* at 34-41.

[18] *People v. Almeida*, 463 Phil. 637, 647 (2003).

[19] *Cruz v. People*, 597 Phil. 722, 728 (2009).

[20] *People v. Unisa*, 674 Phil. 89, 108 (2011).

duly identified the items to be the same objects sold to the *poseur buyer* by appellant.[21]

On the other hand, to sustain a prosecution for illegal possession of dangerous drugs, the following elements must be established: (1) the accused is in possession of an item or object identified to be a prohibited or a regulated drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed said drug.[22] Obtained through a valid search the police officers conducted pursuant to Section 13, Rule 126 of the Rules of Court,[23] the sachets recovered from appellant's person all tested positive for Methylamphetamine hydrochloride or *shabu*. Mere possession of a prohibited drug constitutes *prima facie* evidence of knowledge or *animus possidendi* sufficient to convict an accused in the absence of any satisfactory explanation of such possession.[24] The burden of evidence to explain the absence of *animus possidendi* rests upon the accused, and this, in the case at bar, the appellant failed to do.[25]

Credence was properly accorded to the testimonies of the prosecution witnesses, who are law enforcers. When police officers have no motive to testify falsely against the accused, courts are inclined to uphold this presumption. In this case, no evidence has been presented to suggest any improper motive on the part of the police enforcers in arresting appellant. We accord great respect to the findings of the trial court on the matter of credibility of the witnesses in the absence of any palpable error or arbitrariness in its findings.[26] Against the

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[21] Records, p. 160; TSN, 19 October 2005; *id.* at 279-280; TSN, 21 February 2007.

[22] *People v. Concepcion*, 414 Phil. 247, 255 (2001).

[23] Section 13. *Search incident to a lawful arrest.* — A person lawfully arrested may be searched for dangerous weapons or anything which may have been used or constitute proof in the commission of an offense without a search warrant.

[24] *Asiatico v. People*, 673 Phil. 74, 81 (2011).

[25] *Abuan v. People*, 536 Phil. 672, 695 (2006).

[26] *People v. Buenaventura*, 677 Phil. 230, 240 (2011).

positive testimonies of both prosecution witnesses, appellant's plain denial of the offenses charged, unsubstantiated by any credible and convincing evidence simply fails. The defenses of denial and frame-up have been viewed with disfavor due to the ease of their concoction and the fact that they have become common and standard defense ploys in prosecutions for illegal sale and possession of dangerous drugs.[27] The inconsistencies, if any, in their testimonies, as alleged by appellant, the Court agrees with both the RTC and the appellate court, are but minor and cannot overturn a conviction established by competent and credible evidence. It has been settled that the witnesses' testimonies need only to corroborate one another on material details surrounding the actual commission of the crime.[28]

Anent the supposed failure to comply with the procedures prescribed by Section 21 of R.A. 9165, jurisprudence has it that non-compliance with these procedures does not render void the seizures and custody of drugs in a buy-bust operation.[29] What is of utmost importance is the preservation of the integrity and evidentiary value of the seized items because the same will be utilized in ascertaining the guilt or innocence of the accused.[30] The chain of custody requirement ensures the preservation of the integrity and evidentiary value of the seized items in order to remove unnecessary doubts concerning the identity of the evidence.[31] In addition to the inventory made of the seized items, the prosecution was able to prove an unbroken chain of custody of the illegal drugs from their seizure and marking to their submission to the Southern Police District Crime Laboratory for analysis, to the identification of the same during the trial of the case.[32] As long as the chain of custody is unbroken, even

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[27] *People v. Mantalaba*, 669 Phil. 461, 475 (2011).

[28] *People v. Cruz*, 623 Phil. 261, 276 (2009).

[29] See *People v. Daria*, 615 Phil. 744, 758 (2009).

[30] *People v. Amansec*, 678 Phil. 831, 856 (2011) citing *People v. Campomanes*, 641 Phil. 610, 622-623 (2010).

[31] *People v. Dela Rosa*, 655 Phil. 630, 650 (2011).

[32] Records, pp. 279-294; TSN, 21 February 2007.

though the procedural requirements of Section 21 of R.A. No. 9165 were not faithfully observed, the guilt of the appellant will not be affected.[33]

Notably, appellant raised the buy-bust team's alleged non-compliance with Section 21, Article II of R.A. No. 9165 only on appeal. Failure to raise this issue during trial is fatal to the cause of appellant.[34] It has been ruled that when a party desires the court to reject the offered evidence, he must so state in objection form. Without such objection, he cannot raise the question for the first time on appeal.[35]

R.A. No. 9165 or the Comprehensive Dangerous Drugs Act of 2002 prescribes life imprisonment to death and a fine ranging from ₱500,000.00 to ₱10,000,000.00 as penalties for violations of Section 5, Article II thereof. The passage of Republic Act No. 9346 proscribes the imposition of the death penalty,[36] thus the appellate court correctly affirmed the penalty of life imprisonment and fine of ₱500,000.00 prescribed by the RTC. Under Section 11, Article II of R.A. No. 9165, illegal possession of less than five (5) grams of *shabu* is penalized with imprisonment of twelve (12) years and one (1) day to twenty (20) years and a fine ranging from ₱300,000.00 to ₱400,000.00. Applying the *Indeterminate Sentence Law*, the minimum period of the imposable penalty shall not fall below the minimum period set by law and the maximum period shall not exceed the maximum period allowed under the law.[37] The Court of Appeals likewise correctly affirmed the penalty of imprisonment of twelve (12) years and one (1) day as minimum term to fourteen (14) years and one (1) day as maximum term, together with the fine of ₱300,000.00 imposed by the RTC.

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[33] *People v. Manlangit*, 654 Phil. 427, 442 (2010).

[34] *People v. Torres*, 710 Phil. 398, 412 (2013).

[35] *People v. Sta. Maria*, 545 Phil. 520, 534 (2007).

[36] *People v. Concepcion*, 578 Phil. 957, 979-980 (2008).

[37] *Sy v. People*, 671 Phil. 164, 182 (2011).

WHEREFORE, premises considered, the appeal is **DISMISSED** for lack of merit. The Decision dated 27 October 2010 of the Court of Appeals in CA-G.R. CR.-H.C. No. 03211 affirming the conviction of Joan Sonjaco y Sta. Ana by the Regional Trial Court, Branch 65, of Makati City in Criminal Case Nos. 05-1506 and 05-1507 for violation of Sections 5 and 11, Article II of Republic Act No. 9165, sentencing her to suffer respectively, the penalty of life imprisonment and a fine of ₱500,000.00, and the indeterminate sentence of twelve (12) years and one (1) day as minimum term to fourteen (14) years and one (1) day as maximum term and a fine of ₱300,000.00, is hereby **AFFIRMED**.

SO ORDERED.

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

Peralta, J., on official leave.

Jardeleza, J., on wellness leave.

THIRD DIVISION

[G.R. No. 200081. June 8, 2016]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **EDGARDO T. CRUZ,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; QUALIFIED THEFT; ELEMENTS, PRESENT IN CASE AT BAR.— [T]he elements of Qualified Theft committed with grave abuse of confidence are as follows: 1. Taking of personal property; 2. That the said property belongs to another; 3. That the said taking be done with intent to gain; 4. That it be done without

the owner's consent; 5. That it be accomplished without the use of violence or intimidation against persons, nor of force upon things; [and] 6. That it be done with grave abuse of confidence. All the elements of Qualified Theft are present in this case. x x x As sufficiently discussed by the trial court, besides Cruz's own admission that he took the unaccounted money without Carlos' knowledge and authority, Cruz's guilt was also proven through the following circumstantial evidence: Cruz, as the manager of Chromax, had sole access to the money and other collectibles of Chromax; he had sole authority to issue receipts; he gave commissions without Carlos' authority; he forged the amount in the sales report and receipts; and finally, insinuated that it was Albaitar who misappropriated the money without providing any scintilla of proof to support his accusations. x x x [T]he combination of the circumstantial evidence draws no other logical conclusion, but that Cruz stole the money with grave abuse of confidence.

2. ID.; ID.; ID.; PROPER PENALTY FOR QUALIFIED THEFT WHERE THE AMOUNT INVOLVED IS ₱97,984.— The penalty for qualified theft is based on the value of the property stolen, which in this case is ₱97,984.00. To compute for the imposable penalty, we must first take the basic penalty for theft, which is *prision mayor* in its minimum and medium periods to be imposed in the maximum period, that is, eight (8) years, eight (8) months and one (1) day to ten (10) years of *prision mayor*. To determine the additional years of imprisonment to be added to the basic penalty, the amount of ₱22,000.00 is deducted from ₱97,984.00, which leaves a difference of ₱75,984.00. This amount is then divided by ₱10,000.00, disregarding any amount less than ₱10,000.00. The resulting quotient of 7 is equivalent to 7 years, which is added to the basic penalty. In this case, because Cruz committed qualified theft, his penalty is two degrees higher than the penalty for simple theft, which is *reclusion temporal* in its medium and maximum periods to be imposed in its maximum period or eighteen (18) years, two months, and twenty-one (21) days to twenty (20) years, which shall be added to the resulting quotient of 7 years. The resulting sum shall then be the imposable penalty. Thus, the range of the imposable penalty is twenty-five (25) years, two (2) months, and twenty-one (21) days to twenty-seven (27) years. Moreover, as the crime committed is qualified theft, we do not apply the rule in simple theft that the maximum

penalty cannot exceed twenty (20) years. The penalty for qualified theft has no such limitation. His penalty exceeds twenty (20) years of *reclusion temporal*, the penalty that should be imposed, therefore, is *reclusion perpetua.*

3. REMEDIAL LAW; EVIDENCE; CIRCUMSTANTIAL EVIDENCE; DEFINED; REQUIREMENTS TO SUSTAIN CONVICTION, SUFFICIENTLY MET IN CASE AT BAR.— Circumstantial evidence is defined as that which "goes to prove a fact or series of facts other than the facts in issue, which, if proved, may tend by inference to establish a fact in issue." Rule 133, Section 4 of the Revised Rules of Court provides for the requirements in order for circumstantial evidence can sustain conviction: (a) there is more than one circumstance; (b) the facts from which the inferences are derived are proven; and (c) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt. Contrary to the defense's allegation that the pieces of circumstantial evidence presented were insufficient, a perusal of the records reveal otherwise. Based on the evidence, there is more than one circumstance which can prove Cruz's guilt.

APPEARANCES OF COUNSEL

Campanilla Ponce Law Firm for accused-appellant.
Office of the Solicitor General for plaintiff-appellee.

D E C I S I O N

PEREZ, *J.*:

Before us is an appeal from the Decision[1] of the Court of Appeals (CA) dated 29 April 2011 in CA-G.R. CR No. 32134 affirming the Decision[2] of the Regional Trial Court (RTC) of

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[1] *Rollo*, pp. 2-17; penned by Associate Justice Franchito N. Diamante with Associate Justices Josefina Guevara-Salonga and Mariflor P. Punzalan Castillo, concurring. Justice Estela M. Perlas-Bernabe took part in the proceedings in the Court of Appeals, see also, *rollo*, p. 23.

[2] CA *rollo*, pp. 261-268; penned by Presiding Judge Isagani A. Geronimo.

Pasig City, Branch 262 of Pateros, Metro Manila dated 27 May 2008 in Criminal Case No. 123851, entitled *People v. Cruz*, which found accused-appellant Edgardo T. Cruz guilty of the crime of Qualified Theft punishable under Article 310 of the Revised Penal Code and sentenced him to suffer the penalty of *reclusion perpetua*.

Facts

Sometime in November 2000, private complainant Eduardo S. Carlos (Carlos) put up a business engaged in the sale of tires, batteries, and services for wheel alignment, wheel balancing and vulcanizing under the name and style of Chromax Marketing (Chromax).

During the infancy of Chromax, Carlos sought the help of accused-appellant Edgardo T. Cruz (Cruz) to register and manage the business, *i.e.*, attend to the needs of the customers, receive orders, issue receipts and accept payments, and to prepare daily sales report for Carlos to be able to monitor the number of sales made, credits given, and total amount collected.

When Chromax began to gain recognition, Carlos employed several other employees. However, despite the rise of number of clients they were servicing, Chromax's financial capital remained unimpressive. Thus, upon inquiry prompted by suspicion, Carlos discovered through his sister, Eliza Cruz, that Cruz was stealing from Chromax.

On 19 February 2002, Carlos, as part of his routine, checked the daily sales report containing the list of payments and balances of customers. Upon examination, he discovered that the remaining balance of their customers and Cruz's advances (*vale*) totaled to ₱97,984.00.[3] At the bottom of the balance sheet[4] was an acknowledgment that the amount stated as lost was actually used by Cruz, which reads, "Mr. Eddie Carlos (sic) Amount

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[3] Exhibit "A-2", records, p. 110.

[4] Sometimes referred to as ledger or daily sales report, which was written in a yellow piece of paper.

stated lost was actually used by me for my personal use and (sic) which I promise to pay you back."[5]

Upon further investigation, Carlos also discovered an irregularity in the receipts issued to services rendered to Miescor covering the same transaction with an invoice number 0287. The discrepancies were between the amounts as indicated in the receipt issued to Miescor and the receipt shown to him by Cruz. The receipt issued to Miescor indicated the amount of ₱1,259.00[6] while the receipt shown to him by Cruz contained the amount of ₱579.00.[7]

Thus, on 18 July 2002, Carlos filed a criminal complaint for qualified theft against Cruz.

The Information

That, on or about the 19th day of February, 2002, or prior thereto, in the Municipality of Pateros, Metro Manila, Philippines and within the jurisdiction of this Honorable Court, the above-named accused, being then an employee of Chromax Marketing, enjoying the trust and confidence reposed upon him by his employer, with intent to gain, grave abuse of confidence and without the knowledge and consent of the owner thereof, did, then and there willfully, unlawfully and feloniously take, steal and carry away cash money amounting to Php97,984.00 representing sales proceeds of Chromax Marketing products and services, belonging to said Chromax Marketing owned by herein complainant Edgardo Carlos y Santos, to the damage and prejudice of the owner thereof in the aforesaid amount.

CONTRARY TO LAW.[8]

During arraignment, Cruz pleaded not guilty to the crime charged. Thereafter, trial on the merits ensued. The prosecution presented two witnesses, namely: (1) Carlos, who testified that

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[5] Exhibit "A-3", records, p. 110.

[6] Exhibit "B", *id.* at 111.

[7] Exhibit "C", *id.* at 112.

[8] Records, p. 1.

he knew Cruz two years before they set up Chromax and denied that he knew nothing about granting commissions to Miescor drivers; and (2) Keithly Cruz, who testified that as a cashier at Chromax, she saw Cruz hand a yellow piece of paper[9] to Carlos, which she also saw was personally prepared by Cruz contrary to Cruz's allegation that the balance sheet as written in the yellow piece of paper was forged.[10]

On the other hand, the defense presented its sole witness, Cruz, who denied liability for qualified theft. He insinuated that Chromax started losing money from the time another employee, Jeffrey Albaitar (Albaitar), was employed. Moreover, with only few months since Albaitar was employed, Albaitar was already able to buy a brand new cellphone valued at ₱11,000.00. Finally, Cruz averred that his purported signature and declaration in the balance sheet that the missing collectible sum of money was allegedly used by him for personal use were forged.

Ruling of the RTC

On 27 May 2008, the RTC convicted Cruz finding him guilty beyond reasonable doubt of the crime of Qualified Theft in Criminal Case No. 123851.

The RTC opined that Cruz's admission of taking the amount stated as loss for his personal use is enough to sustain his conviction. The RTC, citing *People v. Mercado*,[11] held that "the declaration of the accused expressly acknowledging his guilt to the offense may be given in evidence against him, and any person otherwise competent to testify as a witness, who heard the confession, is competent to testify as to the substance of what he heard, if he understood it."

The RTC went on further stating that even without Cruz's extrajudicial admission, there is enough circumstantial evidence

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[9] Also referred to as the daily sales report, ledger or balance sheet.

[10] TSN, 29 October 2004.

[11] 445 Phil. 813, 822 (2003).

to uphold his conviction. The RTC ruled that the following circumstances were established by the prosecution which prove that it was only Cruz who had sales control and supervision of Chromax from receipt of payment, issuance of receipts, and credit collections:

1. [Cruz] is the manager and in-charge of cash purchase and sales of merchandise of Chromax Marketing.
2. Being the manager, he receives payments, issues receipts and handles credit collections of the company.
3. He likewise prepares daily sales reports.
4. Aside from [Cruz], who goes to work daily, Carlos and his immediate family have access to the cash register. However, they seldom go to Chromax Marketing except Carlos who visits 2 to 3 times a week.
5. [Cruz] cannot validly explain the shortages when confronted by Carlos. He just blamed Albaitar for a missing ₱100.00.[12]

Therefore, based on the pieces of evidence presented, the prosecution established "an unbroken chain leading to fair and reasonable conclusion that [Cruz] took the subject amount loss."[13]

The RTC rejected Cruz's allegation that Carlos authorized Cruz to grant commissions to Miescor's drivers. The RTC stated that assuming Carlos indeed authorized Cruz to give commissions, such authority is not a license to steal. The dispositive portion of the Decision of the RTC reads:

WHEREFORE, premises considered, judgment is hereby rendered finding accused **EDGARDO T. CRUZ GUILTY** beyond reasonable doubt of the crime of Qualified Theft and sentencing him to suffer the penalty of *reclusion perpetua*. Further, accused is ordered to pay the private complainant in the amount of Php97,984.00 as actual damages.[14]

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[12] Records, p. 193.

[13] *Id.*

[14] *Id.* at 194.

Ruling of the Court of Appeals

The CA affirmed the ruling of the RTC and found that all the elements of theft, together with the circumstances that led to the appreciation of the crime as qualified theft, were sufficiently established by the prosecution.

In the case at bar, Cruz was entrusted to receive payments, issue receipts, and oversee all aspects pertaining to cash purchases and sale of merchandise of the business. By taking advantage of and gravely abusing the trust and confidence of Carlos, Cruz was able to appropriate the proceeds of the missing amounts for his personal benefit.

What is glaring is Cruz failed to provide any justifiable reason as to why the collectible balance in the balance sheet could not be accounted for in spite of the undisputed fact that he was personally responsible for the accounting and safekeeping of the same.

The CA also took note that Cruz's categorical acknowledgment in the balance sheet that he used the amount of money for his personal benefit with a promise that the same will be paid, plus the fact that Cruz in open court, testified that aside from having personally prepared the balance sheet, he also acknowledged his personal responsibility therefor.

As regards the defense's contention that his conviction was merely based on circumstantial evidence, the CA ruled that, "[d]irect evidence is not the sole means of establishing guilt beyond reasonable doubt since circumstantial evidence, if sufficient, can supplant its absence. The crime charged may also be proved by circumstantial evidence, x x x."[15]

It is this submission that forms the basis of the present appeal the argument being that the CA erred in convicting Cruz on the basis of insufficient circumstantial evidence.

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[15] *Rollo*, p. 13.

Our Ruling

The appeal is bereft of merit.

Theft, as defined in Article 308 of the Revised Penal Code (RPC) provides:

> Art. 308. *Who are liable for theft*. — Theft is committed by any person who, with intent to gain but without violence against or intimidation of persons nor force upon things, shall take personal property of another without the latter's consent.
>
> Theft is likewise committed by:
>
> 1. Any person who, having found lost property, shall fail to deliver the same to the local authorities or to its owner;
>
> 2. Any person who, after having maliciously damaged the property of another, shall remove or make use of the fruits or object of the damage caused by him; and
>
> 3. Any person who shall enter an enclosed estate or a field where trespass is forbidden or which belongs to another and without the consent of its owner, shall hunt or fish upon the same or shall gather cereals, or other forest or farm products.[16]

Based on the foregoing, the elements of the crime of theft are: (1) there was taking of personal property; (2) the property belongs to another; (3) the taking was without the consent of the owner; (4) the taking was done with intent to gain; and (5) the taking was accomplished without violence or intimidation against the person or force upon things.[17]

However, when theft is committed with grave abuse of confidence, the crime appreciates into qualified theft punishable under Article 310 of the RPC, to wit:

> Art. 310. *Qualified Theft*. — The crime of theft shall be punished by the penalties next higher by two degrees than those respectively specified in the next preceding article, if committed by a domestic

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[16] Article 308, Revised Penal Code.

[17] *Valenzuela v. People*, 552 Phil. 381, 415 (2007).

servant, or with grave abuse of confidence, or if the property stolen is motor vehicle, mail matter or large cattle or consists of coconuts taken from the premises of the plantation or fish taken from a fishpond or fishery, or if property is taken on the occasion of fire, earthquake, typhoon, volcanic eruption, or any other calamity, vehicular accident or civil disturbance.[18]

Therefore, the elements of Qualified Theft committed with grave abuse of confidence are as follows:

1. Taking of personal property;
2. That the said property belongs to another;
3. That the said taking be done with intent to gain;
4. That it be done without the owners consent;
5. That it be accomplished without the use of violence or intimidation against persons, nor of force upon things; [and]
6. That it be done with grave abuse of confidence.[19] (Emphasis omitted)

All the elements of Qualified Theft are present in this case.

First. The defense contends that the prosecution was not able to prove Cruz's guilt by direct evidence. The defense's contention is incorrect. The records reveal that it is by Cruz's own admission why a conviction can be sustained. As already stated, Cruz declared that he took the money for his personal use, "Mr. Eddie Carlos (sic) Amount stated lost was actually used by me for my personal use and (sic) which I promise to pay you back."[20]

Nevertheless, even without Cruz's own admission and direct evidence proving Cruz's guilt, a conviction can still be sustained. As correctly held by the CA, direct evidence is not the sole means to establish guilt because the accused's guilt can be proven by circumstantial evidence.

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[18] Article 310, Revised Penal Code.

[19] *People v. Mirto*, 675 Phil. 895, 906 (2011).

[20] Exhibit "A-3", *rollo*, p. 110.

Circumstantial evidence is defined as that which "goes to prove a fact or series of facts other than the facts in issue, which, if proved, may tend by inference to establish a fact in issue."[21] Rule 133, Section 4 of the Revised Rules of Court provides for the requirements in order for circumstantial evidence can sustain conviction: (a) there is more than one circumstance; (b) the facts from which the inferences are derived are proven; and (c) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.[22] Contrary to the defense's allegation that the pieces of circumstantial evidence presented were insufficient, a perusal of the records reveal otherwise. Based on the evidence, there is more than one circumstance which can prove Cruz's guilt.[23]

As sufficiently discussed by the trial court, besides Cruz's own admission that he took the unaccounted money without Carlos' knowledge and authority, Cruz's guilt was also proven through the following circumstantial evidence: Cruz, as the manager of Chromax, had sole access to the money and other collectibles of Chromax; he had sole authority to issue receipts; he gave commissions without Carlos' authority; he forged the amount in the sales report and receipts; and finally, insinuated that it was Albaitar who misappropriated the money without providing any scintilla of proof to support his accusations.

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[21] *Bacolod v. People*, G.R. No. 206236, July 15, 2013, 701 SCRA 229, 234.

[22] Rule 133, Section 4 of the Revised Rules of Court.

[23] 1. [Cruz] is the manager and in-charge of cash purchase and sales of merchandise of Chromax Marketing.

Being the manager, he receives payments, issues receipts and handles credit collection of the company.

2. He likewise prepares daily sales reports.

3. Aside from [Cruz], who goes to work daily, Carlos and his immediate family have access to the cash register. However, they seldom go to Chromax Marketing except Carlos who visits 2 to 3 times a week.

4. [Cruz] cannot validly explain the shortages when confronted by Carlos. He just blamed Albaitar for a missing ₱100.00.

Contrary to the defense's allegation that due to lack of direct evidence the Court cannot uphold Cruz's conviction, circumstantial evidence is not a "weaker" form of evidence. The Rules of Court does not distinguish between direct and circumstantial evidence insofar as their probative value is concerned. In the case at bar, the combination of the circumstantial evidence draws no other logical conclusion, but that Cruz stole the money with grave abuse of confidence.

Second. It is undisputed that the money unaccounted for was owned by Carlos. While Cruz is the manager of Chromax, whose authority is limited to receiving payments, issuing receipts, and overseeing all aspects pertaining to cash purchases and sale of merchandise of the business, he has no right to dispose of the same, and Carlos, as the owner of Chromax, has sole power of dominion over the proceeds therefrom.

Third. Cruz himself admitted that he took the money for his benefit. During his direct examination, Cruz admitted it was an advance or *vale* which he used for his mother's hospitalization:

Q: Now, there is an entry here, this one named vale, what is this vale all about?
A: Yun po yung cash advance ko kay Mr. Carlos.

Q: And when did you incur this vale of ₱12,000.00?
A: I cannot remember. That's the time my mother was hospitalized.[24]

Fourth. Contrary to Cruz's allegation that the unaccounted money he gave as commission to Miescor drivers was authorized by Carlos, the records reveal otherwise. As clearly established by the prosecution, Cruz's act of giving commissions were baseless:

Q: Also in relation to the invoice receipt wherein you said you discovered that he overpriced the transaction, can you remember that? The sales invoice issued to Miescor?
A: "Ang ibig ko pong sabihin dun, iba yung report n'ya sa [akin. Iba] yung resibong ine-rereport n'ya para magawa n'ya yung

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[24] TSN, January 13, 2006, p. 242.

instruction ko na daily sales report, iba naman ang ini-issue n'ya sa customer."

Q: Are you not [a]ware of the fact that he did this because he wants the drivers of the Miescor to have a commission on this overpricing?
A: No, sir.[25]

Therefore, Cruz misappropriated the unaccounted money without Carlos' knowledge or consent.

Fifth. It is indisputable that the act was accomplished without the use of violence or intimidation against persons, or of force upon things as Cruz had free access to the cashier of Chromax.

Sixth. As Chromax's manager, Cruz had access to Chromax's cashier. He was entrusted to receive payments, issue receipts, and oversee all aspects pertaining to cash purchases and sale of merchandise of the business. Indeed, his position entails a high degree of confidence as he had access to the lists of sales report and the cash of the daily sales. However, Cruz took advantage of this trust and confidence. He exploited his position to take the money and was able to accomplish the crime with grave abuse of confidence.

As regards the defense's insinuation that it was Albaitar who misappropriated the money, such bare allegations must fail. It cannot prevail over the overwhelming evidence proving his guilt.

Cruz averred that his purported signature and declaration in the balance sheet that the missing collectible sum of money which he supposedly used for personal purpose were forged. His testimony belies any allegation of forgery:

Q: Now, you said earlier that when you gave this one to Mr. Carlos, he did not execute this portion and from this Exhibits "A", "A-1", "A-2", "A-4", "A-5". From Exhibits "A-3" and "A-1".
A: At first[,] I only gave him this paper.

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[25] TSN, 16 April 2004, pp. 133-134.

Q: When was that?
A: I only wrote this on the 19th of February.

Q: This portion? Exhibits "A-3" and "A-1"?
A: Yes, sir.

Q: And this portion Exhibits "A"[,] "A-2" up to "A-5"?
A: I prepared that on the 10th of February.

Q: Now, what was the reason why you wrote this portion marked as Exhibits "A-3" and "A-1"?
A: He asked me to sign this paper proving that I prepared this and I knew that I was supposed to pay all this because I'm responsible. "So in good faith. tsaka medyo ano na rin po ako nun, paring iba na ang naramdaman ko, dahil yung responsibility ko parang inalis na nya dun na lang ako sa labas kaya sabi ko baka hindi ako magtagal. So in good faith ko po naisulat ito." (Witness pointing to "A-3" and "A-1").[26]

Premises considered, we find no cogent reason to reverse the conviction of Cruz, who was able to perpetrate the crime of qualified theft through grave abuse of confidence.

Imposable Penalty

The penalty for qualified theft is based on the value of the property stolen, which in this case is ₱97,984.00. To compute for the imposable penalty, we must first take the basic penalty for theft, which is *prision mayor* in its minimum and medium periods to be imposed in the maximum period, that is, eight (8) years, eight (8) months and one (1) day to ten (10) years of *prision mayor*. To determine the additional years of imprisonment to be added to the basic penalty, the amount of ₱22,000.00 is deducted from ₱97,984.00, which leaves a difference of ₱75,984.00. This amount is then divided by ₱10,000.00, disregarding any amount less than ₱10,000.00. The resulting quotient of 7 is equivalent to 7 years, which is added to the basic penalty.[27]

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[26] TSN, 13 January 2006, pp. 243-244.

[27] *Miranda v. People*, 680 Phil. 126, 136 (2012).

In this case, because Cruz committed qualified theft, his penalty is two degrees higher than the penalty for simple theft, which is *reclusion temporal* in its medium and maximum periods to be imposed in its maximum period or eighteen (18) years, two (2) months, and twenty-one (21) days to twenty (20) years, which shall be added to the resulting quotient of 7 years. The resulting sum shall then be the imposable penalty. Thus, the range of the imposable penalty is twenty-five (25) years, two (2) months, and twenty-one (21) days to twenty-seven (27) years.

Moreover, as the crime committed is qualified theft, we do not apply the rule in simple theft that the maximum penalty cannot exceed twenty (20) years. The penalty for qualified theft has no such limitation. His penalty exceeds twenty (20) years of *reclusion temporal*, the penalty that should be imposed, therefore, is *reclusion perpetua*.[28]

WHEREFORE, the appeal is **DISMISSED**. The Decision dated 27 May 2008 of the Regional Trial Court in Criminal Case No. 123851 is **AFFIRMED**, sentencing accused-appellant to serve the penalty of *reclusion perpetua* and ordering him to pay private complainant in the amount of ₱97,984.00 as actual damages, which shall earn legal interest of six percent (6%) per annum from date of finality of this Court's Decision until full payment as per BSP Circular No. 799, Series of 2013.

SO ORDERED.

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

Peralta, J., on official leave.

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[28] *San Diego v. People*, G.R. No. 176114, April 08, 2015.

[*] Per Raffle dated 28 March 2016.

SECOND DIVISION

[G.R. No. 202047. June 8, 2016]

LIGHT RAIL TRANSIT AUTHORITY, *petitioner, vs.* **NOEL B. PILI, MEDEL I. LIRIO, RODERICK B. JAMON, VICTORINO A. MACHICA, RONNIE C. VALORIA, VIRGILIO M. FLORES, RENATO C. PALMA, ANGELITO V. GUINTO, RAMIRO M. FELICIANO, ENRIQUE L. CIUBAL, ELMER P. TABIGAN, VENANCIO T. MADRIA, MAXIMO M. VITANGCOL, RODOLFO L. PAGUIO, ARNEL F. MAGSALIN, JULIANA N. DOLOR, NOEL C. CRUZ, SANDY C. JARILLA, BERTITO I. SERVIDAD, ALAN R. CORPUZ, ROBERT D. PABLO, ROBERT H. MONTEREY, HENRY L. LIAO, ROLANDO C. CEBANICO, VELIENTE S. FANTASTICO, MA. EMILIAN S. CRUZ, EDGARDO G. GAMBAYAN, GERARDO M. RUMBAWA, DANTE D. PALOMARA, MA. TERESA B. DE LOS REYES, JOSE ALLAN S. PACIFICO, RESTITUTO R. MALAPO, EARL G. PONGCO, LUCILO C. DEL MONTE, RUEL F. MAGBALANA, MARLYN V. VILLANUEVA, JUDITH C. BANEZ, GERMAN N. DE LUNA, FREDERICK B. DEL CORRO, CLODUALDO B. PASIOLAN, ROLANDO I. NAVARRO, and PACIANO J. VILLANUEVA,**[*] *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; NATIONAL LABOR RELATIONS COMMISSION (NLRC); JURISDICTION; THE NLRC ACQUIRED JURISDICTION OVER LIGHT RAIL TRANSIT AUTHORITY (LRTA) AS FAR AS THE MONETARY CLAIMS ARE CONCERNED BECAUSE LRTA ASSUMED THE MONETARY OBLIGATIONS OF METRO TO ITS EMPLOYEES.— The NLRC acquired

[*] Also referred to in the records as Paciano J. Villavieja, Jr.

jurisdiction over LRTA not because of the employer-employee relationship of the respondents and LRTA (because there is none) but rather because LRTA expressly assumed the monetary obligations of Metro to its employees. In the Agreement, LRTA was obligated to reimburse Metro for the latter's Operating Expenses which included the salaries, wages and fringe benefits of certain employees of Metro. Moreover, the Board of Directors of LRTA issued Resolution No. 00-44 where again, LRTA assumed the monetary obligations of Metro more particularly to update the Metro Inc. Employees Retirement Fund and to ensure that it fully covers all the retirement benefits payable to the employees of Metro. It is clear from the foregoing, and it is also not denied by LRTA, that it has assumed the monetary obligations of Metro to its employees. As such, the NLRC may exercise jurisdiction over LRTA on the issue of the monetary obligations. To repeat, NLRC can exercise jurisdiction over LRTA not because of the existence of any employer-employee relationship between LRTA and the respondents, but rather because LRTA clearly assumed voluntarily the monetary obligations of Metro to its employees. We therefore find no error on the part of NLRC when it exercised jurisdiction over LRTA which solidarily obligated itself to pay the monetary obligations of Metro.

2. ID.; ID.; ID.; THE NLRC CANNOT EXERCISE JURISDICTION OVER LRTA INSOFAR AS THE ILLEGAL DISMISSAL COMPLAINT IS CONCERNED.— [A]s far as the claim of illegal dismissal is concerned, we find that NLRC cannot exercise jurisdiction over LRTA. The NLRC and Labor Arbiter erred when it took cognizance of such matter. In *Hugo v. LRTA,* we have already addressed the issue of jurisdiction in relation to illegal dismissal complaints. In the said case, the employees of Metro filed an illegal dismissal and unfair labor practice complaint against Metro and LRTA. x x x Pili admits that he was employed by Metro. However, in the same breath, he argues that the doctrine of piercing the corporate veil should be applied and LRTA should also be considered his employer. We find this argument untenable. Pili cannot claim to be employed by LRTA merely on the bare allegation that the corporate veil must be pierced based on LRTA's ownership of the shares of stock of Metro. This Court has already rejected such proposition – there is no sufficient evidence to support the application of the doctrine of piercing the corporate veil and LRTA, even after it purchased all the

shares of stock of Metro, maintained and continued to have its separate juridical personality. Worse, if LRTA was his true employer, as he claims, it is CSC which would have jurisdiction to hear his complaint against LRTA. LRTA is a government-owned and controlled corporation – any allegation of illegal dismissal against it by its employees should have been brought to the CSC. However, the fact remains that Pili was an employee of Metro alone – the Labor Arbiter and NLRC could not have acquired jurisdiction over LRTA insofar as the illegal dismissal complaint is concerned.

3. REMEDIAL LAW; JUDGMENTS; DOCTRINE OF *STARE DECISIS*, APPLIED.— [W]e find that the application of the doctrine of *stare decisis* is in order. The doctrine of *stare decisis et non quieta movere* means "to adhere to precedents, and not to unsettle things which are established." Under this doctrine, when this Court has once 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, where facts are substantially the same; regardless of whether the parties and property are the same. The basic facts in this petition are the same as those in the case of *LRTA v. Mendoza*. Thus, we find that LRTA is solidarily liable for the monetary claims of respondents, in light of this Court's findings in said case. It is the duty of the Court to apply the previous ruling in *LRTA v. Mendoza*, in accordance with the doctrine of *stare decisis*. Once a case has been decided one way, any other case involving exactly the same point at issue, as in the present case, should be decided in the same manner.

APPPEARANCES OF COUNSEL

Bernardo V. Cabal for petitioner.
Rogelio B. De Guzman for respondents.

D E C I S I O N

CARPIO, *Acting C.J.*:

The Case

This is a petition for review on *certiorari* under Rule 45 of the Rules of Court. Petitioner Light Rail Transit Authority

(LRTA) challenges the 1 June 2011 Decision[1] and 23 May 2012 Resolution[2] of the Court of Appeals (CA) in CA-G.R. SP No. 107593 which set aside the 24 June 2008 Resolution[3] of the National Labor Relations Commission (NLRC) and reinstated the 27 October 2005 Decision[4] of the Labor Arbiter.

The Facts

LRTA is a government-owned and controlled corporation created under Executive Order (EO) No. 603[5] for the "construction, operation, maintenance, and/or lease of light rail transit systems in the Philippines."[6] It entered into a ten-year operations and management agreement (Agreement) with Meralco Transit Organization, Inc. (MTOI) from 8 June 1984 to 8 June 1994. MTOI, a corporation organized under the Corporation Code, hired its own employees and thereafter entered into collective bargaining agreements (CBAs) with the unions of its employees. However, on 7 April 1989, the Commission on Audit declared the Agreement between LRTA and MTOI void. As a result, on 9 June 1989, LRTA purchased all the shares of stock of MTOI and renamed MTOI to Metro Transit Organization, Inc. (Metro) and formally declared Metro as its wholly-owned subsidiary.

The Agreement between LRTA and Metro expired on 8 June 1994, and was thereafter extended on a month-to-month basis. On 25 July 2000, the union of rank-and-file employees of Metro

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[1] *Rollo*, pp. 190-204. Penned by Associate Justice Danton Q. Bueser, with Associate Justices Hakim S. Abdulwahid and Ricardo R. Rosario concurring.

[2] *Id.* at 219-222.

[3] *Id.* at 111-126.

[4] *Id.* at 71-90.

[5] Entitled "Creating a Light Rail Transit Authority, Vesting the Same with Authority to Construct and Operate the Light Rail Transit (LRT) Project and Providing Funds Therefor." Issued on 12 July 1980.

[6] Section 2, Article 1, EO No. 603.

staged a strike over a bargaining deadlock which resulted in the paralysis in the operations of Metro. On 31 July 2000, the Agreement expired when LRTA decided no longer to renew. On 30 September 2000, Metro ceased its operations.

Respondents[7] were employees of Metro who have been terminated upon the expiration of the Agreement. While the rest of the respondents filed cases involving purely monetary claims in the form of separation pays, balances of separation pays, and other unpaid claims, respondent Noel B. Pili (Pili), in addition to his monetary claims, alleged that he was illegally dismissed.

Pili was employed by Metro on 29 November 1984, and was holding the position of Liaison Assistant when he was dismissed on 30 September 2000, when Metro stopped its operations. He received the first fifty percent (50%) of his separation pay in accordance with the CBA with Metro. On 29 May 2003, he received the amount of ₱63,117.65 as financial assistance for which he was compelled to execute a Release, Waiver and Quitclaim. Based on the foregoing, Pili argues that his dismissal was illegal and violative of his security of tenure. He alleges that the mere fact of the expiration of the Agreement was not sufficient to justify his dismissal. He also claims that the Release, Waiver and Quitclaim he executed does not bar him from demanding the benefits to which he is legally entitled to or from contesting the legality of his dismissal.

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[7] Noel B. Pili, Medel I. Lirio, Roderick B. Jamon, Victorino A. Machica, Ronnie C. Valoria, Virgilio M. Flores, Renato C. Palma, Angelito V. Guinto, Ramiro M. Feliciano, Enrique L. Ciubal, Elmer P. Tabigan, Venancio T. Madria, Maximo M. Vitangcol, Rodolfo L. Paguio, Arnel F. Magsalin, Juliana N. Dolor, Noel C. Cruz, Sandy C. Jarilla, Bertito I. Servidad, Alan R. Corpuz, Robert D. Pablo, Robert H. Monterey, Henry L. Liao, Rolando C. Cebanico, Veliente S. Fantastico, Ma. Emilian S. Cruz, Edgardo G. Gambayan, Gerardo M. Rumbawa, Dante D. Palomara, Ma. Teresa B. De los Reyes, Jose Allan S. Pacifico, Restituto R. Malapo, Earl G. Pongco, Lucilo C. Del Monte, Ruel F. Magbalana, Marlyn V. Villanueva, Judith C. Banez, German N. De luna, Frederick B. Del Corro, Clodualdo B. Pasiolan, Rolando I. Navarro, and Paciano J. Villanueva.

On the other hand, the rest of the respondents filed cases for purely monetary claims. They assert that under Article 4.05 of the Agreement, LRTA contractually bound itself to shoulder and provide all "Operating Expenses" of Metro. Operating Expenses is defined in the Agreement as:

> x x x all salaries, wages and fringe benefits (both direct and indirect) up to the rank of Manager, and a lump sum amount to be determined annually as top Management compensation (above the rank of Manager up to the President).[8]

The respondents, except Pili, further allege that LRTA sanctioned and approved all the CBAs Metro entered with its employees; that LRTA and Metro jointly declared the continued implementation of the Agreement; and that there would be no interruption in the employment of the employees of the former MTOI (now Metro). On 17 November 1997, LRTA approved the severance pay of the employees of Metro amounting to one and a half months salary per year of service. They claim that this shows that the LRTA bound itself solidarily liable with Metro.

On 28 July 2000, the Board of Directors of LRTA issued Resolution No. 00-44 where LRTA officially assumed the obligation to ensure that the Metro, Inc. Employees Retirement Fund is updated and that it fully covers all retirement benefits payable to the employees of Metro. Based on the foregoing, the respondents — except Pili — argue that the LRTA is liable for their monetary claims.

LRTA, on the other hand, argues that NLRC cannot exercise jurisdiction over it as it is a government-owned and controlled corporation, and that only the Civil Service Commission (CSC) can take cognizance of the matter. Further, LRTA maintains that it has a separate legal personality from Metro, and thus there can be no illegal dismissal and no basis for the monetary claims of the employees of Metro.

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[8] Article 1.05, Agreement.

The Ruling of the Labor Arbiter

On 27 October 2005, Labor Arbiter Catalino R. Laderas rendered his Decision in favor of Pili and the rest of the respondents. The Labor Arbiter found that Pili was illegally dismissed and that LRTA was solidarily liable with Metro for the monetary claims. The dispositive portion of the Decision states:

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

1. Ordering the respondents Metro Transit Organization and LRTA to pay complainant Noel Pili jointly and severally the amount of ₱379,710 representing backwages for eight (8) months and balance of his separation pay plus ten [sic] (10%) of the monetary award as attorney's fee.

a. unpaid wages/salaries for August and September 2000 of:

₱31,848.00	to	Arnel F. Magsalin
₱31,548.00	to	Angelito V. Guinto
₱30,928.00	to	Enrique L. Ciubal
₱31,538.00	to	Ronnie C. Valoria
₱31,046.00	to	Maximo M. Vitangcol
₱31,046.00	to	Ramiro M. Feliciano
₱31,538.00	to	Virgilio M. Flores
₱31,046.00	to	Vena[n]cio T. Madria
₱30,906.00	to	Ruel F. Magbalana
₱30,728.00	to	Renato C. Palima
₱28,004.00	to	Victorino A. Machica
₱27,804.00	to	Rodolfo L. Paguio
₱21,136.00	to	Roderick B. Jamon
₱18,170.00	to	Elmer P. Tabigan

b. unpaid 13th month and earned leave benefits of:

₱42,097.68	to	Angelito V. Guinto
₱25,749.91	to	Enrique L. Ciubal
₱36,138.16	to	Ronnie C. Valoria
₱36,178.90	to	Ramiro M. Feliciano
₱39,400.82	to	Virgilio M. Flores

₱28,015.96	to	Vena[n]cio T. Madria
₱45,626.15	to	Renato C. Palima
₱31,948.09	to	Victorino A. Machica
₱15,381.08	to	Roderick B. Jamon

c. unpaid hazard pays for August and September 2000 of:

₱1,400.00	to	Arnel F. Magsalin
₱1,400.00	to	Angelito V. Guinto
₱1,400.00	to	Enrique L. Ciubal
₱1,400.00	to	Ronnie C. Valoria
₱1,400.00	to	Maximo M. Vitangcol
₱1,400.00	to	Ramiro M. Feliciano
₱1,400.00	to	Virgilio M. Flores
₱1,400.00	to	Vena[n]cio T. Madria
₱1,400.00	to	Ruel F. Magbalana
₱1,400.00	to	Renato C. Palima
₱1,400.00	to	Victorino A. Machica
₱1,400.00	to	Rodolfo L. Paguio
₱1,400.00	to	Roderick B. Jamon
₱1,400.00	to	Elmer P. Tabigan

d. amounts of unsupplied rice subsidiaries for August and September 2000 of:

₱2,000.00	to	Arnel F. Magsalin
₱2,000.00	to	Angelito V. Guinto
₱2,000.00	to	Enrique L. Ciubal
₱2,000.00	to	Ronnie C. Valoria
₱2,000.00	to	Maximo M. Vitangcol
₱2,000.00	to	Ramiro M. Feliciano
₱2,000.00	to	Virgilio M. Flores
₱2,000.00	to	Vena[n]cio T. Madria
₱2,000.00	to	Ruel F. Magbalana
₱2,000.00	to	Renato C. Palima
₱2,000.00	to	Victorino A. Machica
₱2,000.00	to	Rodolfo L. Paguio
₱2,000.00	to	Roderick B. Jamon
₱2,000.00	to	Elmer P. Tabigan

e. reimbursement for over deductions for settled accountabilities and/or 10% retention from the first fifty percent (50%) separation pay of:

₱45,557.33	to	Ma. Theresa B. Delos Reyes
₱ 8,471.82	to	Roberto H. Monterey
₱ 8,994.75	to	Edgardo G. Gambayan

f. Fifty percent (50%) balance of separation pay of:

₱455,473.32	to	Ma. Theresa B. Delos Reyes
₱294,703.50	to	Juliana N. Dolor
₱198,428.25	to	Roberto H. Monterey
₱201,429.92	to	Rolando C. Cebanico
₱193,301.85	to	Edgardo G. Gambayan
₱281,203.02	to	Rolando I. Navarro
₱189,300.00	to	Jose Allan S. Pacifico
₱212,148.00	to	Lucilo C. Del Monte
₱184,884.00	to	Earl G. Ponco
₱188,640.00	to	Allan R. Corpuz
₱188,520.00	to	Ma. Emilian S. Cruz
₱236,748.00	to	German N. De Luna
₱186,396.00	to	Robert D. Pablo
₱236,808.00	to	Frederick B. Del Corro
₱186,648.00	to	Medel I. Lirio
₱242,628.00	to	Paciano J. Villavieja, Jr.
₱224,376.00	to	Noel C. Cruz
₱179,061.58	to	V[e]liente S. Fantastico
₱185,786.68	to	Sandy C. Jarilla
₱204,556.18	to	Dante D. Palomara
₱177,686.46	to	Henry L. Liao
₱107,383.32	to	Bertito I. Servidad
₱105,592.08	to	Gerardo M. Rumbawa
₱ 91,719.00	to	Clodualdo B. Pasiolan
₱ 74,550.00	to	Judith C. Banez
₱ 53,866.71	to	Marlyn V. Villanueva
₱ 51,035.63	to	Restituto R. Malapo

with legal interests thereon from June 1, 2001 until actually and fully paid; and

g. severance pays of:

₱406,062.00	to	Arnel F. Magsalin
₱378,576.00	to	Angelito V. Guinto
₱371,136.00	to	Enrique L. Ciubal
₱378,456.00	to	Ronnie C. Valoria
₱372,552.00	to	Maximo M. Vitangcol
₱359,978.37	to	Ramiro M. Feliciano
₱365,683.11	to	Virgilio M. Flores
₱358,581.30	to	Vena[n]cio T. Madria
₱356,964.30	to	Ruel F. Magbalana
₱345,690.00	to	Renato C. Palima
₱213,600.51	to	Victorino A. Machica
₱194,558.49	to	Rodolfo L. Paguio
₱ 79,260.00	to	Roderick B. Jamon
₱ 60,760.73	to	Elmer P. Tabigan

with legal interest thereon from October 1, 2000 until actually and fully paid.

Respondents are further ordered to pay solidarily to complainants an amount equivalent to ten percent (10%) of the total awards, as and by way of attorney's fees.

Other claims dismissed.

SO ORDERED.[9]

On 5 December 2005, LRTA appealed to the NLRC. LRTA averred that the Labor Arbiter acted with grave abuse of discretion in (1) taking cognizance of the case against LRTA despite the fact that it is a government-owned and controlled corporation with an original charter; (2) holding LRTA guilty of illegal dismissal despite the lack of employer-employee relationship between LRTA and Pili; and (3) awarding separation pay and other benefits to the respondents despite the utter lack of factual and legal basis.[10]

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[9] *Rollo*, pp. 87-90.

[10] *Id.* at 91-108.

The Ruling of the NLRC

On 24 June 2008, the NLRC found that there was no illegal dismissal as Pili's dismissal was valid on account of the termination of the Agreement between Metro and LRTA.[11] The NLRC issued a Resolution modifying in part the Decision of the Labor Arbiter, to wit:

> WHEREFORE, premises considered the separate appeals are partly GRANTED and the Decision dated 27 October 2005 is MODIFIED deleting the finding of illegal dismissal and award of backwages to complainant-appellee Pili, ordering respondents-appellants METRO and LRTA to pay complainant-appellee Pili the balance of his separation pay in the amount of ₱165,398.35 plus ten percent (10%) of the award as attorney's fees and affirming the monetary awards in the appealed Decision in its entirety including the 10% attorney's fees to complainants-appellees Lirio, et al.
>
> SO ORDERED.[12]

The Motion for Partial Reconsideration[13] filed by LRTA was denied by the NLRC. Thereafter, LRTA filed a petition for *certiorari* under Rule 65 before the CA on 10 November 2008.[14]

The Ruling of the CA

In a Decision dated 1 June 2011, the CA set aside the Resolution of the NLRC and reinstated the 27 October 2005 Decision of the Labor Arbiter *in toto*.[15] The CA found that Pili was illegally dismissed as the expiration of the Agreement between LRTA and Metro was not a valid ground to terminate Pili's employment. The CA held:

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[11] *Id.* at 111-126.

[12] *Id.* at 125.

[13] *Id.* at 127-142.

[14] *Id.* at 148-178.

[15] *Id.* at 203-204.

Indeed, and as stated above, Article 283 allows an employer to terminate the services of his employees in case of closure of business as a result of grave financial losses. But the employer must comply with the clearance or report required under the Labor Code and its implementing rules before the employment of the employees.

Nevertheless, employers who contemplate terminating the services of their workers cannot be so arbitrary and ruthless as to find flimsy excuses for their decisions. Thus must be so, considering that the dismissal of an employee from work involves not only the loss of his position but more important, his means of livelihood.

x x x x x x x x x

In the case at bar, private respondent Pili's employment was terminated on account of the expiration of the management contract between petitioner LRTA and Metro. Such cause for termination of employment is not within the contemplation of Article 283. Further, there is no indication that Metro was closing shop after the termination of its management contract with petitioner LRTA. Much less, it was not proved that Metro was closing its business due to financial losses or business reverses. Thus, the termination of Pili's employment by Metro cannot be justified and, therefore, illegal.[16]

In a Resolution dated 23 May 2012, the CA denied the Motion for Reconsideration[17] filed by LRTA. Hence, this petition.

The Issues

In this petition, the LRTA seeks a reversal of the decision of the CA, and raises the following arguments:

A. THE HONORABLE COURT OF APPEALS DECIDED A QUESTION OF LAW NOT IN ACCORD WITH THE APPLICABLE DECISION OF THIS HONORABLE COURT ON THE LACK OF JURISDICTION OF THE LABOR ARBITER AND THE NATIONAL LABOR RELATIONS COMMISSION OVER PETITIONER AND THE LABOR COMPLAINTS AGAINST PETITIONER; and

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[16] *Id.* at 202-203.

[17] *Id.* at 205-216.

B. ASSUMING ARGUENDO THAT THE LABOR ARBITER AND THE NLRC HAVE SUCH JURISDICTION, THE HONORABLE COURT OF APPEALS DECIDED A QUESTION OF SUBSTANCE NOT IN ACCORD WITH THE APPLICABLE LAW AND DECISIONS OF THIS HONORABLE COURT ON ARTICLE[S] 106 AND 107 OF THE LABOR CODE GOVERNING THE EXTENT OF LIABILITIES OF INDIRECT EMPLOYERS.[18]

The Ruling of the Court

The petition has no merit.

Jurisdiction of the NLRC over LRTA — Monetary Claims

We find no error with the NLRC taking cognizance of the cases against Metro and LRTA as far as the monetary claims are concerned. This is despite the fact that LRTA is a government-owned and controlled corporation with an original charter.

All of the respondents allege that they were employed by Metro. Thus, there is no real issue as far as the employer-employee relationship is concerned — the respondents themselves do not claim to be employed by LRTA. While Pili claims that LRTA should also be considered his true employer based on the doctrine of piercing the corporate veil, this argument, as discussed below is baseless and erroneous. The employees were employed solely by Metro as Metro and LRTA each maintained their separate juridical personalities. We have already consistently recognized, in clear and categorical terms, that LRTA, even after it purchased all the shares of stock of Metro, maintained and continued to have its separate and juridical personality.[19] Nonetheless, the argument of LRTA that only the CSC may exercise jurisdiction over it — even for monetary claims, must necessarily fail.

The NLRC acquired jurisdiction over LRTA not because of the employer-employee relationship of the respondents and

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[18] *Id.* at 23.

[19] See *Light Rail Transit Authority v. Venus, Jr.*, 520 Phil. 233 (2006) and *Hugo v. Light Rail Transit Authority*, 630 Phil. 145 (2010).

LRTA (because there is none) but rather because LRTA expressly assumed the monetary obligations of Metro to its employees. In the Agreement, LRTA was obligated to reimburse Metro for the latter's Operating Expenses which included the salaries, wages and fringe benefits of certain employees of Metro. Moreover, the Board of Directors of LRTA issued Resolution No. 00-44 where again, LRTA assumed the monetary obligations of Metro more particularly to update the Metro, Inc. Employees Retirement Fund and to ensure that it fully covers all the retirement benefits payable to the employees of Metro.

It is clear from the foregoing, and it is also not denied by LRTA, that it has assumed the monetary obligations of Metro to its employees. As such, the NLRC may exercise jurisdiction over LRTA on the issue of the monetary obligations. To repeat, NLRC can exercise jurisdiction over LRTA not because of the existence of any employer-employee relationship between LRTA and the respondents, but rather because LRTA clearly assumed voluntarily the monetary obligations of Metro to its employees. We therefore find no error on the part of NLRC when it exercised jurisdiction over LRTA which solidarily obligated itself to pay the monetary obligations of Metro.

Jurisdiction of the NLRC over LRTA — Illegal Dismissal

However, as far as the claim of illegal dismissal is concerned, we find that NLRC cannot exercise jurisdiction over LRTA. The NLRC and Labor Arbiter erred when it took cognizance of such matter.

In *Hugo v. LRTA*,[20] we have already addressed the issue of jurisdiction in relation to illegal dismissal complaints. In the said case, the employees of Metro filed an illegal dismissal and unfair labor practice complaint against Metro and LRTA. We held that the Labor Arbiter and NLRC did not have jurisdiction over LRTA, to wit:

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[20] 630 Phil. 145 (2010).

> The Labor Arbiter and the NLRC **do not have jurisdiction over LRTA.** Petitioners themselves admitted in their complaint that LRTA "is a government agency organized and existing pursuant to an original charter (Executive Order No. 603)" and that they are employees of METRO.[21] (Emphasis and underscoring in the original)

Pili admits that he was employed by Metro. However, in the same breath, he argues that the doctrine of piercing the corporate veil should be applied and LRTA should also be considered his employer. We find this argument untenable. Pili cannot claim to be employed by LRTA merely on the bare allegation that the corporate veil must be pierced based on LRTA's ownership of the shares of stock of Metro. This Court has already rejected such proposition — there is no sufficient evidence to support the application of the doctrine of piercing the corporate veil and LRTA, even after it purchased all the shares of stock of Metro, maintained and continued to have its separate juridical personality.[22]

Worse, if LRTA was his true employer, as he claims, it is CSC which would have jurisdiction to hear his complaint against LRTA. LRTA is a government-owned and controlled corporation — any allegation of illegal dismissal against it by its employees should have been brought to the CSC. However, the fact remains that Pili was an employee of Metro alone — the Labor Arbiter and NLRC could not have acquired jurisdiction over LRTA insofar as the illegal dismissal complaint is concerned.

Monetary Claims of the Former Employees of Metro

The respondents, except Pili, all have purely monetary claims against LRTA. They all anchor their claims on the Agreement, more particularly the definition of Operating Expenses in relation to Article 4.05.1 thereof, which states that LRTA shall reimburse Metro for the latter's Operating Expenses. Moreover, LRTA's

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[21] *Id.* at 151.

[22] See *Light Rail Transit Authority v. Venus, Jr.*, 520 Phil. 233 (2006) and *Hugo v. Light Rail Transit Authority*, *supra* note 19.

Resolution No. 00-44 provides that LRTA assumes the obligation to ensure full payment of the retirement/separation pay of the employees of Metro. LRTA had already paid the first fifty percent (50%) of the separation pay to some of the employees of Metro. Therefore, the respondents, except Pili, are merely claiming their unpaid balance, or the unpaid separation pay, unpaid wages and other benefits which have accrued during their employment with Metro.

This Court has already resolved this very issue on the monetary claims of the employees of Metro as against LRTA. In *LRTA v. Mendoza*,[23] we found that LRTA is liable for the monetary claims of the employees of Metro. The respondents in the said case were employees of Metro who, similar to the respondents in this case, have been separated due to the expiration of the Agreement between LRTA and Metro. We held:

> *First*. LRTA obligated itself to fund METRO's retirement fund to answer for the retirement or severance/resignation of METRO employees as part of METRO's "operating expenses." Under Article 4.05.1 of the O & M agreement between LRTA and Metro, "The Authority shall reimburse METRO for x x x OPERATING EXPENSES x x x." In the letter to LRTA dated July 12, 2001, the Acting Chairman of the METRO Board of Directors at the time, Wilfredo Trinidad, reminded LRTA that funding provisions for the retirement fund have always been considered operating expenses of Metro. The coverage of operating expenses to include provisions for the retirement fund has never been denied by LRTA.
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> x x x x x x x x x
>
> The clear language of Resolution No. 00-44, to our mind, established the LRTA's obligation for the 50% unpaid balance of the respondents' separation pay. Without doubt, it bound itself to provide the necessary funding to METRO's Employee Retirement Fund to fully compensate the employees who had been involuntary retired by the cessation of operations of METRO. This is not at all surprising considering that METRO was a wholly owned subsidiary of the LRTA.

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[23] G.R. No. 202322, 19 August 2015.

Second. Even on the assumption that the LRTA did not obligate itself to fully cover the separation benefits of the respondents and others similarly situated, it still cannot avoid liability for the respondents' claim. It is solidarity [*sic*] liable as an indirect employer under the law for the respondents' separation pay. This liability arises from the O & M agreement it had with METRO, which created a principal-job contractor relationship between them, an arrangement it admitted when it argued before the CA that METRO was an independent job contractor who, it insinuated, should be solely responsible for the respondents' claim.[24]

Thus, based on (1) the Agreement where LRTA bound itself to be liable for the Operating Expenses of Metro; (2) Resolution No. 00-44 which contained LRTA's declaration to bind itself for the payment of the separation pay of Metro's employees; and (3) the solidary liability of an indirect employer under Articles 107[25] and 109[26] of the Labor Code and Department Order No. 18-02, s. 2002 (which implements Articles 106-109 of the Labor Code),[27] we found LRTA liable for the monetary claims of the respondents therein.

Accordingly, we find that the application of the doctrine of *stare decisis* is in order. The doctrine of *stare decisis et non quieta movere* means "to adhere to precedents, and not to unsettle

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[24] *Id.*

[25] Art. 107. Indirect employer. — The provisions of the immediately preceding article shall likewise apply to any person, partnership, association or corporation which, not being an employer, contracts with an independent contractor for the performance of any work, task, job or project.

[26] Art. 109. Solidary liability. — The provisions of existing laws to the contrary notwithstanding, every employer or indirect employer shall be held responsible with his contractor or subcontractor for any violation of any provision of this Code. For purposes of determining the extent of their civil liability under this Chapter, they shall be considered as direct employers.

[27] Section 19. x x x. — In addition, the principal shall also be solidarily liable in case the contract between the principal and contractor or subcontractor is preterminated for reasons not attributable to the fault of the contractor or subcontractor.

things which are established."[28] Under this doctrine, when this Court has once 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, where facts are substantially the same; regardless of whether the parties and property are the same.[29]

The basic facts in this petition are the same as those in the case of *LRTA v. Mendoza*.[30] Thus, we find that LRTA is solidarily liable for the monetary claims of respondents, in light of this Court's findings in said case. It is the duty of the Court to apply the previous ruling in *LRTA v. Mendoza*,[31] in accordance with the doctrine of *stare decisis*. Once a case has been decided one way, any other case involving exactly the same point at issue, as in the present case, should be decided in the same manner.[32]

We find no reversible error in the CA ruling, insofar as the monetary claims are concerned.

WHEREFORE, we **DENY** the petition.

SO ORDERED.

Del Castillo, Mendoza, and *Leonen, JJ.,* concur.

Brion, J., on official leave.

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[28] *Ty v. Banco Filipino Savings and Mortgage Bank*, 689 Phil. 603 (2012).

[29] *Id.*

[30] *Supra* note 23.

[31] *Supra* note 23.

[32] *Ty v. Banco Filipino Savings and Mortgage Bank, supra* note 28.

SPECIAL FIRST DIVISION

[G.R. No. 203932. June 8, 2016]

PHILIPPINE AIRLINES, INC., *petitioner, vs.* **ENRIQUE LIGAN, EDUARDO MAGDARAOG, JOLITO OLIVEROS, RICHARD GONCER, EMELITO SOCO, VIRGILIO P. CAMPOS, JR., LORENZO BUTANAS, RAMEL BERNARDES, NELSON M. DULCE, CLEMENTE R. LUMAYNO, ARTHUR M. CAPIN, ALLAN BENTUZAL, and JEFFREY LLENES,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; RETRENCHMENT; ELEMENTS THAT MUST CONCUR TO BE A VALID GROUND FOR DISMISSAL OF EMPLOYEES.— While retrenchment is a valid exercise of management prerogative, it is well settled that economic losses as a ground for dismissing an employee is factual in nature, and in order for a retrenchment scheme to be valid, **all** of the following elements under Article 283 of the Labor Code must concur or be present, to wit: (1) That retrenchment is reasonably necessary and likely to prevent business losses which, if already incurred, are not merely *de minimis*, but substantial, serious, actual and real, or if only expected, are reasonably imminent as perceived objectively and in good faith by the employer; (2) That the employer served written notice both to the employees and to the Department of Labor and Employment at least one month prior to the intended date of retrenchment; (3) That the employer pays the retrenched employees separation pay equivalent to one (1) month pay or at least one-half (1/2) month pay for every year of service, whichever is higher; (4) That the employer exercises its prerogative to retrench employees in good faith for the advancement of its interest and not to defeat or circumvent the employees' right to security of tenure; and, (5) That the employer uses fair and reasonable criteria in ascertaining who would be dismissed and who would be retained

among the employees, such as status, efficiency, seniority, physical fitness, age, and financial hardship for certain workers.

2. ID.; ID.; ID.; ID.; ID.; ABSENCE OF ONE ELEMENT RENDERS THE RETRENCHMENT AN IRREGULAR EXERCISE OF MANAGEMENT PREROGATIVE; PETITIONER ADVANCED NO JUSTIFICATION TO DISMISS OR RETRENCH ITS EMPLOYEES.— The absence of one element renders the retrenchment scheme an irregular exercise of management prerogative. The employer's obligation to exhaust all other means to avoid further losses without retrenching its employees is a component of the first element enumerated above. To impart operational meaning to the constitutional policy of providing full protection to labor, the employer's prerogative to bring down labor costs by retrenching must be exercised essentially as a measure of last resort, after less drastic means have been tried and found wanting. PAL has insisted that the NLRC erroneously relied on an inexistent CA decision, and therefore its decision is void, but the CA in its resolution of September 27, 2012 has concluded that "[a] perusal of the Decision of the NLRC shows that it is not without basis," that the NLRC "made findings of facts, analyzed the legal aspects of the case taking into consideration the evidence presented and formed conclusions after noting the relevant facts of the case." But more importantly, the Court cannot lose sight of the settled rule that in illegal dismissal cases, the onus to prove that the employee was not dismissed, or if dismissed, that his dismissal was not illegal, rests on the employer, and that its failure to discharge this burden signifies that the dismissal is not justified and therefore illegal. Unfortunately, in this petition, PAL has advanced no such justification whatsoever to dismiss or retrench the respondents. The Court is left with no conclusion: PAL's petition is misleading and clearly baseless and dilatory.

APPEARANCES OF COUNSEL

Bienvenido T. Jamoralin, Jr. for petitioner.
Manuel Legaspi for respondents.
Caesar A.M. Tabotabo, collaborating counsel for respondents.

R E S O L U T I O N

REYES, *J.*:

This resolves the Motion for Reconsideration[1] of the Court's Resolution[2] dated November 12, 2012 denying the petition outright for failure to show reversible error in the Decision[3] dated February 15, 2012 and Resolution[4] dated September 27, 2012 of the Court of Appeals (CA) in CA-G.R. CEB SP No. 00922, which dismissed the petition for review on *certiorari* of Philippine Airlines, Inc. (PAL) from the Decision[5] dated August 27, 2004 and Resolution[6] dated April 25, 2005 of the National Labor Relations Commission (NLRC), 4th Division, Cebu City in NLRC Case No. V-000112-2000.

The Facts

PAL and Synergy Services Corporation (Synergy) entered into a station services agreement and a janitorial services agreement whereby Synergy provided janitors and station attendants to PAL at Mactan airport. Enrique Ligan, Eduardo Magdaraog, Jolito Oliveros, Richard Goncer, Emelito Soco, Virgilio P. Campos, Jr., Lorenzo Butanas, Ramel Bernardes, Nelson M. Dulce, Clemente R. Lumayno, Arthur M. Capin, Allan Bentuzal, and Jeffrey Llenes (respondents) were among

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[1] *Rollo*, pp. 551-556.

[2] *Id.* at 550.

[3] Penned by Associate Justice Nina G. Antonio-Valenzuela, with Associate Justices Myra V. Garcia-Fernandez and Abraham B. Borreta concurring; *id.* at 22-35.

[4] Penned by Associate Justice Pamela Ann Abella Maxino, with Associate Justices Edgardo L. Delos Santos and Zenaida T. Galapate-Laguilles concurring; *id.* at 37-42.

[5] Penned by Presiding Commissioner Gerardo C. Nograles, with Commissioners Edgardo M. Enerlan and Oscar S. Uy concurring; *id.* at 68-73.

[6] *Id.* at 75-77.

the personnel of Synergy posted at PAL to carry out the contracted tasks. Claiming to be performing duties directly desirable and necessary to the business of PAL, the respondents, along with 12 other co-employees, filed complaints in March 1992 against PAL and Synergy in the NLRC Region VII Office in Cebu City for regularization of their status as employees of PAL, underpayment of salaries and non-payment of premium pay for holidays, premium pay for rest days, service incentive leave pay, 13th month pay and allowances.[7]

In the Decision dated August 29, 1994, the Labor Arbiter (LA) ruled that Synergy was an independent contractor and dismissed the complaint for regularization, but granted the complainants' money claims.[8] On appeal, the NLRC, 4th Division, Cebu City on January 5, 1996 declared Synergy a labor-only contractor and ordered PAL to accept the complainants as regular employees and as such, to pay their salaries, allowances and other benefits under the Collective Bargaining Agreement subsisting during the period of their employment.[9] PAL went to this Court on *certiorari*, but pursuant to *St. Martin Funeral Home v. NLRC*,[10] the case was referred to the CA. On September 29, 2000, the CA, in CA-G.R. SP No. 52329, affirmed the NLRC *in toto*.[11]

On petition for review, this Court, on February 29, 2008, affirmed but modified the NLRC decision,[12] as follows:

WHEREFORE, the [CA] Decision of September 29, 2000 is *AFFIRMED* with MODIFICATION.

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[7] *Id.* at 23.

[8] *Philippine Airlines, Inc. v. Ligan, et al.*, 570 Phil. 497, 502-503 (2008).

[9] *Id.* at 503-504.

[10] 356 Phil. 811 (1998).

[11] *Philippine Airlines, Inc. v. Ligan, et al.*, *supra* note 8, at 504; *rollo*, p. 24.

[12] *Philippine Airlines, Inc. v. Ligan, et al.*, 570 Phil. 497 (2008).

[PAL] is ORDERED to:

a) accept respondents ENRIQUE LIGAN, EMELITO SOCO, ALLAN PANQUE, JOLITO OLIVEROS, RICHARD GONCER, NONILON PILAPIL, AQUILINO YBANEZ, BERNABE SANDOVAL, RUEL GONCER, VIRGILIO P. CAMPOS, JR., ARTHUR M. CAPIN, RAMEL BERNARDES, LORENZO BUTANAS, BENSON CARESUSA, JEFFREY LLENOS, ROQUE PILAPIL, ANTONIO M. PAREJA, CLEMENTE R. LUMAYNO, NELSON TAMPUS, ROLANDO TUNACAO, CHERRIE ALEGRES, EDUARDO MAGDADARAUG, NELSON M. DULCE and ALLAN BENTUZAL as its regular employees in their same or substantially equivalent positions, and pay the **wages and benefits due** them as regular employees plus **salary differential** corresponding to the difference between the wages and benefits given them and those granted to petitioner's other regular employees of the same rank; and

b) pay respondent BENEDICTO AUXTERO **salary differential**; **backwages** from the time of his dismissal until the finality of this decision; and **separation pay**, in lieu of reinstatement, equivalent to one (1) month pay for every year of service until the finality of this decision.

There being no data from which this Court may determine the monetary liabilities of petitioner, the case is REMANDED to the [LA] solely for that purpose.

SO ORDERED.[13] (Emphasis, italics and underscoring in the original)

On motion for reconsideration by PAL, the Court on April 30, 2009 modified the above decision,[14] to read as follows:

WHEREFORE, the [CA] Decision of September 29, 2000 is AFFIRMED with MODIFICATION.

[PAL] is *ORDERED* to recognize respondents ENRIQUE LIGAN, EMELITO SOCO, ALLAN PANQUE, JOLITO OLIVEROS, RICHARD GONCER, NONILON PILAPIL, AQUILINO YBANEZ,

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[13] *Id.* at 515.

[14] *Philippine Airlines, Inc. v. Ligan, et al.*, 605 Phil. 327 (2009).

BERNABE SANDOVAL, RUEL GONCER, VIRGILIO P. CAMPOS, JR., ARTHUR M. CAPIN, RAMEL BERNARDES, LORENZO BUTANAS, BENSON CARISUSA, JEFFREY LLENES, ANTONIO M. PAREJA, CLEMENTE R. LUMAYNO, NELSON TAMPUS, ROLANDO TUNACAO, CHERIE ALEGRES, EDUARDO MAGDADARAUG, NELSON M. DULCE and ALLAN BENTUZAL as its regular employees in their same or substantially equivalent positions, and pay the wages and benefits due them as regular employees plus salary differential corresponding to the difference between the wages and benefits given them and those granted to petitioner's other regular employees of the same or substantially equivalent rank, up to June 30, 1998, without prejudice to the resolution of the illegal dismissal case.

There being no data from which this Court may determine the monetary liabilities of petitioner, the case is *REMANDED* to the [LA] solely for that purpose.

SO ORDERED.[15] (Emphasis, italics and underscoring in the original)

Meanwhile, while the above regularization cases were pending in the CA, PAL terminated its service agreements with Synergy effective June 30, 1998, alleging serious business losses. Consequently, Synergy also terminated its employment contracts with the respondents, who forthwith filed individual complaints[16] for **illegal dismissal** against PAL. PAL in turn filed a third-party complaint[17] against Synergy.[18]

In his Decision[19] dated July 27, 1998, Executive LA Reynoso A. Belarmino declared that Synergy was an independent contractor and the respondents were its regular employees, and therefore Synergy was solely liable for the payment of their separation pay, wage differential, and attorney's fees. In their appeal to the NLRC, docketed as NLRC Case No. V-000112-

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[15] *Id.* at 335-336.

[16] *Rollo*, pp. 78-79.

[17] *Id.* at 90-92.

[18] *Id.* at 24.

[19] *Id.* at 206-216.

2000, the respondents cited seven previous cases wherein the NLRC also declared that Synergy was a labor-only contractor. They argued that Synergy and PAL dismissed them without just cause.[20]

In the Decision[21] dated August 27, 2004, the NLRC found that the functions performed by the respondents under Synergy's service contracts with PAL indicated that they were directly related to PAL's air transport business, that Synergy serviced PAL exclusively and had no other clients, that its activities were carried out within PAL's premises and PAL shared supervision and control over the respondents. In declaring that the respondents were regular employees of PAL, the NLRC cited a CA case, *Philippine Airlines, Inc. v. NLRC,* CA-G.R. SP No. 50138, dated April 30, 1999, with similar factual findings which also ruled that Synergy was a labor-only contactor and a mere agent of PAL. After ruling that the respondents were dismissed without just cause and without observance of procedural due process, the NLRC ordered PAL to pay them separation pay, backwages, and wage differential. The *fallo* of NLRC decision reads:

> WHEREFORE, the Decision dated 27 July 1998 of the Executive [LA] is SET ASIDE and a new one is rendered declaring [PAL] to have illegally dismissed the complainants, and ordering [PAL] to pay to the thirteen (13) complainants the following:
>
> 1. SEPARATION PAY in lieu of reinstatement from the start of their employment until the finality of this decision, computed as described above;
> 2. BACKWAGES from the time compensation is withheld from them until the finality of this decision[; and]
> 3. Wage differentials of ₱390.00 for each complainant.
>
> All other claims are dismissed for lack of merit.
>
> SO ORDERED.[22]

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[20] *Id.* at 70.

[21] *Id.* at 68-73.

[22] *Id.* at 73.

PAL moved for reconsideration arguing that as janitors, the respondents were hired under a permissible job-contracting arrangement. In its Resolution dated April 25, 2005 denying the motion for reconsideration,[23] the NLRC pointed out that in fact most of the respondents worked as station attendants or station loaders, not janitors, and that PAL could have submitted their contracts as janitors, but did not. The NLRC also noted that in all seven previous cases appealed to it involving the same parties, it invariably ruled that PAL was the employer of the respondents and Synergy was a labor-only contractor.

On petition for review on *certiorari* to the CA, docketed as CA-G.R. CEB SP No. 00922,[24] PAL's main contention was that since only this Court's decisions form part of jurisprudence, the NLRC erred in adopting the CA decision in CA-G.R. SP No. 50138 which held that Synergy was a labor-only contractor, although it was still on review in this Court.

On February 15, 2012, the CA dismissed PAL's petition,[25] and on September 27, 2012, it also denied its motion for reconsideration.[26]

Hence, the instant petition for review on *certiorari*[27] was filed by PAL, raising a sole legal issue, as follows:

WHETHER OR NOT THE DECISION OF THE [NLRC] WHICH WAS ARRIVED AT BY SIMPLY ADOPTING THE SUPPOSED "FINDINGS AND CONCLUSION" OF THE [CA] IN A NON-EXISTENT DECISION IS A VALID AND LEGALLY BINDING DECISION.[28]

On November 12, 2012, the Court denied the petition outright for failure to show any reversible error committed by the CA.[29]

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[23] *Id.* at 75-77.

[24] *Id.* at 44-63.

[25] *Id.* at 22-35.

[26] *Id.* at 37-42.

[27] *Id.* at 3-17.

[28] *Id.* at 8.

[29] *Id.* at 550.

On January 24, 2013, PAL moved for reconsideration of the denial,[30] to which the respondents filed their "Vehement Opposition with Motion to Sanction the Petitioner for Forum Shopping."[31]

The motion for reconsideration is denied.

A.

In the illegal dismissal cases before the LA, the issue was whether the termination of the respondents' employment by Synergy in June 1998 was without just cause and observance of due process. In the instant petition, PAL argues in the main that in reversing the LA, the NLRC (in NLRC Case No. V-000112-2000) cited for its factual and legal basis an inexistent CA decision, docketed as CA-G.R. SP No. 50138. Culling from its own "Compliance" dated April 4, 2006 in CA-G.R. CEB SP No. 00922,[32] PAL tells the Court that CA-G.R. SP No. 50138 is actually entitled "*Anita Danao, Owner of Wonder Baker v. NLRC and Eufemio Famis*," not "*Philippine Airlines, Inc. v. NLRC*" as mistakenly mentioned by the NLRC, and that it was promulgated on December 31, 1999, not April 30, 1999; that a verification with the CA docket section showed that another PAL case, CA-G.R. SP No. 50161, is actually dated April 30, 1999 and involved the issue of payment of 13th month pay to PAL employees, but had nothing to do with Synergy or its status as a labor-only contractor; and, that what was actually elevated from the NLRC, 4th Division, to this Court, and then referred to the CA pursuant to *St. Martin Funeral Home*, was CA-G.R. SP No. 52329, decided on September 29, 2000, not CA-G.R. SP No. 50138.

In its assailed decision, the CA pointed out that both CA-G.R. SP No. 00922 and CA-G.R. SP No. 52329 involve the same facts and employer, PAL, and the herein respondents were

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[30] *Id.* at 551-556.

[31] *Id.* at 560-564.

[32] *Id.* at 308-310.

among the complainants in the regularization cases. Noting that this Court in G.R. No. 146408 has ruled that the respondents were regular employees of PAL, the CA ruled that they cannot be whimsically terminated by PAL but it must show that: (1) their dismissal was for any of the causes authorized in Article 282 of the Labor Code; and (2) they were given opportunity to be heard and to defend theirselves.[33] Article 282 of the Labor Code reads:

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 representatives; and
e. Other causes analogous to the foregoing.

According to the CA, PAL failed to show that the respondents were guilty of any of the causes above-mentioned. Neither was due process observed by PAL in dismissing them, who were merely notified of their termination through a notice sent to them by Synergy, which reads.

> PAL has terminated our contract effective June 30, 1998. In view of this contract termination by PAL, our contract with employees like you who have been contracted as Station Loader/Station Attendant, will be terminated also on 30 June 1998.
>
> Please be guided accordingly.[34]

Moreover, PAL cannot deny that all along it had always known of the ruling in CA-G.R. SP No. 52329, which as PAL itself

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[33] *Id.* at 32.

[34] *Id.* at 33.

also pointed out, was elevated for review to this Court in G.R. No. 146408. PAL is aware that G.R. No. 146408 was decided on February 29, 2008, and its motion for reconsideration was resolved on April 30, 2009, whereas the instant petition was filed only on November 6, 2012. As the petitioner in CA-G.R. SP No. 52329, PAL even attached in Annex "E" of this petition a copy of the decision in CA-G.R. SP No. 52329.[35] PAL has thus always known that the issue therein was whether Synergy was a labor-only contractor or a legitimate contractor; that the respondents were adjudged as regular employees of PAL entitled to all the benefits of its regular employees, that Synergy was a labor-only contractor and thus a mere agent of PAL.

As the petitioner in G.R. No. 146408, PAL certainly cannot pretend ignorance of the Court's decision therein. Moreover, on April 28, 2008, the respondents had manifested in CA-G.R. CEB SP No. 00922 that a decision had been rendered in G.R. No. 146408,[36] with a copy thereof attached; on May 26, 2008, PAL itself also manifested that it had filed a motion for reconsideration in G.R. No. 146408, which then prompted the CA to suspend the resolution of CA-G.R. CEB SP No. 00922, since the regularization cases are intimately connected to the illegal dismissal cases.

In Resolution dated April 30, 2009 in G.R. No. 146408, this Court mentioned that PAL had revealed for the first time in its Motion for Reconsideration the matter of the lay-off of the respondents on June 30, 1998 due to financial woes;[37] that the respondents likewise disclosed that they were all terminated in June 1998 in the guise of retrenchment. Except for the employees who had died, they either accepted settlement earlier, or had been declared as employee of Synergy.[38]

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[35] *Id.* at 322-333.

[36] See CA Decision dated February 15, 2012; *id.* at 29.

[37] *Philippine Airlines, Inc. v. Ligan, et al.*, *supra* note 14, at 334.

[38] *Id.* at 331.

The Court further noted that PAL in its motion for reconsideration from the CA's decision in CA-G.R. SP No. 52329 also invoked its financial difficulties, not by way of defense to a charge of illegal dismissal but to manifest that supervening events had rendered it impossible to comply with the order to accept the respondents as regular employees.[39]

B.

In G.R. No. 146408, the Court noted that the termination of the respondents in June 1998 was in disregard of a subsisting temporary restraining order which the Court issued in 1996 to preserve the *status quo*, before the case was transferred to the CA in January 1999. The Court also held that PAL failed to establish such economic losses which rendered impossible its compliance with the order to accept the respondent as regular employees. Thus:

> Other than its bare allegations, [PAL] presented nothing to substantiate its impossibility of compliance. In fact, [PAL] waived this defense by failing to raise it in its Memorandum filed on June 14, 1999 before the [CA]. x x x.[40] (Citation omitted)

While retrenchment is a valid exercise of management prerogative, it is well settled that economic losses as a ground for dismissing an employee is factual in nature, and in order for a retrenchment scheme to be valid, **all** of the following elements under Article 283 of the Labor Code must concur or be present,[41] to wit:

> (1) That retrenchment is reasonably necessary and likely to prevent business losses which, if already incurred, are not merely *de minimis*, but substantial, serious, actual and real, or if only expected, are reasonably imminent as perceived objectively and in good faith by the employer;

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[39] *Id.* at 334.

[40] *Philippine Airlines, Inc. v. Ligan, et al.*, *supra* note 8, at 514.

[41] *Flight Attendants and Stewards Association of the Philippines (FASAP) v. Philippine Airlines, Inc., et al.*, 617 Phil. 687, 717 (2009).

(2) That the employer served written notice both to the employees and to the Department of Labor and Employment at least one month prior to the intended date of retrenchment;

(3) That the employer pays the retrenched employees separation pay equivalent to one (1) month pay or at least one-half (½) month pay for every year of service, whichever is higher;

(4) That the employer exercises its prerogative to retrench employees in good faith for the advancement of its interest and not to defeat or circumvent the employees' right to security of tenure; and,

(5) That the employer uses fair and reasonable criteria in ascertaining who would be dismissed and who would be retained among the employees, such as status, efficiency, seniority, physical fitness, age, and financial hardship for certain workers.

The absence of one element renders the retrenchment scheme an irregular exercise of management prerogative. The employer's obligation to exhaust all other means to avoid further losses without retrenching its employees is a component of the first element enumerated above. To impart operational meaning to the constitutional policy of providing full protection to labor, the employer's prerogative to bring down labor costs by retrenching must be exercised essentially as a measure of last resort, after less drastic means have been tried and found wanting.[42]

PAL has insisted that the NLRC erroneously relied on an inexistent CA decision, and therefore its decision is void, but the CA in its resolution of September 27, 2012 has concluded that "[a] perusal of the Decision of the NLRC shows that it is not without basis,"[43] that the NLRC "made findings of facts, analyzed the legal aspects of the case taking into consideration the evidence presented and formed conclusions after noting

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[42] *Lopez Sugar Corporation v. Federation of Free Workers*, 267 Phil. 212, 221 (1990).

[43] *Rollo*, p. 38.

the relevant facts of the case."[44] But more importantly, the Court cannot lose sight of the settled rule that in illegal dismissal cases, the onus to prove that the employee was not dismissed, or if dismissed, that his dismissal was not illegal, rests on the employer, and that its failure to discharge this burden signifies that the dismissal is not justified and therefore illegal.[45] Unfortunately, in this petition, PAL has advanced no such justification whatsoever to dismiss or retrench the respondents. The Court is left with no conclusion: PAL's petition is misleading and clearly baseless and dilatory.

WHEREFORE, the motion for reconsideration is **DENIED** with finality.

SO ORDERED.

Leonardo-de Castro,[*] *Bersamin,* and *Caguioa, JJ.,* concur.

Sereno, C.J., on leave.

THIRD DIVISION

[G.R. No. 204441. June 8, 2016]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **MICHAEL KURT JOHN BULAWAN *Y* ANDALES,** *accused-appellant.*

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

[45] *Great Southern Maritime Services Corporation v. Acuña,* 492 Phil. 518, 530-531 (2005).

[*] Acting Chairperson per Special Order No. 2354 dated June 2, 2016 vice Chief Justice Maria Lourdes P. A. Sereno.

SYLLABUS

1. CRIMINAL LAW; COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. NO. 9165); ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS.— For a successful prosecution of offenses involving the illegal sale of dangerous drugs under Section 5, Article II of R.A. 9165; the following elements must be present: (1) the identities of the buyer and seller, object, and consideration; and (2) the delivery of the thing sold and the payment for it. What is material is proof that the transaction or sale actually took place, coupled with the presentation in court of evidence of *corpus delicti.*

2. ID.; ID.; ID.; WHEN THE OFFER TO PURCHASE DANGEROUS DRUGS AND THE RECEIPT OF THE CONSIDERATION BY THE ACCUSED WERE NOT ESTABLISHED, ACCUSED DESERVES AN ACQUITTAL.— In the case at bar, there is more reason to acquit accused-appellant of the crime of illegal sale of dangerous drugs as the prosecution was not able to prove that there was even a consideration for the supposed transaction. The prosecution claimed that there was prior negotiation between the confidential informant and accuse-appellant. The prosecution, however, failed to adduce any evidence of such prior negotiation. In fact, nothing can be gained from the records and from the testimonies of the witnesses as to how the supposed confidential informant conducted the alleged negotiation with accused-appellant. Repeatedly, this Court has reminded the prosecution of its duty to present a complete picture of the buy-bust operation – "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 sale." In the present case, no information was presented by the prosecution on the prior negotiation between the confidential informant and accused-appellant. Moreover, the testimony of I01 de la Cerna failed to show any kind of confirmation of the alleged prior negotiation. Thus, there is no proof of the offer to purchase dangerous drugs, as well as the promise of the consideration.

3. ID.; ID.; CHAIN OF CUSTODY RULE; FAILURE TO ESTABLISH EVERY LINK IN THE CHAIN OF CUSTODY

OF THE SEIZED DRUGS, THUS COMPROMISING ITS IDENTITY AND INTEGRITY, ACCUSED CANNOT BE HELD LIABLE FOR ILLEGAL POSSESSION OF DANGEROUS DRUGS.— In the case at bar, as the seized substance was not sealed, the prosecution should have presented all the officers who handled said evidence from the time it left the person of the accused to the time it was presented in open court. The prosecution did not. Time and again, this Court has held that "the failure to establish, through convincing proof, that the integrity of the seized items has been adequately preserved through an unbroken chain of custody is enough to engender reasonable doubt on the guilt of an accused. x x x A conviction cannot be sustained if there is a persistent doubt on the identity of the drug." x x x In the present case, however, as the prosecution failed to establish every link in the chain of custody of the subject dangerous drugs, thus compromising its identity and integrity, accused-appellant cannot be held liable for illegal possession of dangerous drugs.

APPEARANCES OF COUNSEL

Office of the Solicitor General for plaintiff-appellee.
Cabanlet & Cabanlet Law Firm for accused-appellant.

D E C I S I O N

PEREZ, *J.*:

Before the Court is an appeal assailing the Decision[1] dated 25 October 2012 of the Court of Appeals in CA-G.R. CR No. 00798-MIN, which affirmed with modification the Judgment[2] dated 24 August 2010 of the Regional Trial Court (RTC), Cagayan de Oro City, Branch 25 in Criminal Case No.

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[1] Penned Associate Justice Jhosep Y. Lopez, with Associate Justices Edgardo A. Camello and Renato C. Francisco concurring; CA *rollo*, pp. 75-94.

[2] Penned by Presiding Judge Arthur L. Abundiente; *id.* at 32-42.

2008-714, effectively finding (accused-appellant) Michael Kurt John Bulawan *y* Andales guilty beyond reasonable doubt of violation of Section 5, Article II of Republic Act No. 9165 (R.A. No. 9165) or the *Comprehensive Dangerous Drugs Act of 2002*.

Accused-appellant was charged with violation of Section 5, Article II of R.A. No. 9165, as follows:

> That on November 10, 2008, at more or less 10:55 in the evening at Gusa National Highway, Cagayan de Oro City, Philippines, and within the jurisdiction of the Honorable Court, the above-named accused, without being authorized by law to sell, trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit or transport any dangerous drugs, did then and there willfully, unlawfully, criminally and knowingly sell and/or offer to sell and give away to the arresting officer IO1 Rodolfo S. de la Cerna, Jr., acting as poseur buyer, one (1) pack of dried marijuana fruiting tops with stalks wrapped in a magazine paper weighing 13.98 grams, which upon qualitative examinations conducted thereon, give positive result to the test for the presence of aforesaid dangerous drug.[3]

Upon arraignment, accused-appellant, duly assisted by counsel, pleaded not guilty to the charge.[4] Trial on the merits followed.

The prosecution relied on the testimony of IO1 Rodolfo S. De La Cerna, Jr. (IO1 de la Cerna) of the Philippine Drug Enforcement Agency (PDEA), who testified as follows:

> *That he executed an Affidavit in connection with this case [Exh. "F"]. On November 10, 2008, at about 10:55 in the evening, he was along Gusa [N]ational Highway, particularly in front of "Starwood " acting as a poseur buyer for marijuana. That the said operation was headed by IO1 Neil Pimentel and they were backed up by PO3 Benjamin Jay Reycitez and IO1 Gerald Pica. He was with their confidential informant who informed him that there was already a*

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[3] Information; RTC Records, p. 3.

[4] Order dated 5 December 2008; *id.* at 21.

transaction negotiated earlier for the purchase of [₱]1,000.00 worth of marijuana. They waited for the subject of the buy-bust for about five minutes. The accused arrived and he was introduced to him by their CI. After he was introduced, the accused handed to him the marijuana wrapped in a magazine paper. After the accused gave him the marijuana, he inspected it if to verify if it was indeed marijuana and after confirming it, he made a "miss-call" signal to their team leader who was inside the vehicle which was parked about 10 to 15 meters away from them. He then immediately announced that he is a PDEA agent and he informed the accused of the latter's violation. On questioning of the Court, he testified that there were only three of them, two [2] from the PDEA [he and Pimentel] and one [1] from the CAIDTF [Reycitez]. *He ordered them to "appraise the rights" of the accused when the latter was already arrested*. When asked by the Court why he was the only person who executed the Affidavit, he answered that he was the *poseur buyer* and that he was responsible for the arrest of the accused, and it was already dark, it was already 11:00 o'clock in the evening. He however testified that *it is not a normal procedure in the office that only one officer will execute an affidavit*. He further testified that *he did not prepare the buy bust money in the amount of [₱]1,000.00 and that when he met the accused, he had no [₱]1,000.00 with him and that he arrested the accused when the latter showed him the marijuana. He then informed the accused of his rights and when the other members arrived, he conducted an inventory [Exhibit "G"] right at the place, and then proceeded to the Office where he made the markings "RDC". He prepared a laboratory request for examination [Exh. A] and he delivered the request including the specimen [Exhibit B] as well as the accused to the crime laboratory for examination. The result was positive [Exhibit "C" and Exhibit "D"]. He also took photographs of the accused [Exhibit "H"]. Finally, he identified the accused who answered with the name Michael Kurt John Bulawan.*[5]

On cross examination, the witness testified that:

Before he arrived at Gusam the CI had already contacted the accused and that he did not give any money to the accused. He did not also bring any money for the buy-bust operation and that the

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[5] CA *rollo*, pp. 33-34.

accused delivered the marijuana even without first receiving the money; that there was no pre-payment prior to the agreed time of delivery and that he did not promise the accused that he will pay after the delivery. He brought cellphone during the operation while the rest of the team brought with them their firearms and some documents. The mediamen arrived at the office, not at the place where the operation took place.[6]

The defense, on the other hand, hinged their case on the testimony of accused-appellant, to wit:

That on November 10, 2008 at about 10:00 o'clock in the evening, he was at his house preparing to sleep when he received a text message from his friend Joey Maalyao of Camella requesting him to go out from his house and inviting him to attend the birthday party of the classmate of his wife, a nursing student. He told Joey that he will not go out because he was tired as he had just took (sic) an exam. However, Joey insisted so he went out of his house and saw the service vehicle of Joey, a Tamaraw FX parked at about 500 meters away. His house is in the interior part. He then approached the vehicle and he became aware that there were companions inside the tinted vehicle and he asked Joey who were these persons and Joey answered that they were his cousins. There were about four of them inside the vehicle, one was the driver, one was at the passenger side and there were two at the back. Joey was seated at the front seat. When he was informed by Joey that they were his cousins, he went inside the vehicle. When the engine started, and was in the vicinity of Lapasan the men inside started to search him bodily and they got his cellphone, wallet, and coins. They held his neck and hands and told him it was an arrest. He then asked Joey was (sic) offense had him (sic) committed against him and why his companions were searching him and Joey told him to be considerate since he was just pressured by those men. One of the men beside him handed marijuana to him and to use it inside the vehicle. Then he was brought to the office and they took his picture in front of the vehicle of his friend. The man who took the picture, he identified later as IO1 De la Cerna. That de la Cerna took out something from the vehicle owned by Joey and forced him

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[6] *Id.* at 34.

to point them out. He was then handcuffed by de la Cerna and was forced again to point out to the items which were wrapped with a newspaper, then he was brought back to the office and was detained thereat. At about 2:00 o'clock dawn he was brought to the PNP Crime laboratory at Patag, and Joey was with them, then he was brought back to their office. He stayed in the office for three days. They parted ways with Joey when he was already committed at the BJMP in Lumbia. He was later informed that the PDEA agents did it to him in exchange for Joey because Joey was arrested in Carmen. He learned of this information from his friend who is a neighbor of Joey in Camella and who visited him at Lumbia.[7]

After weighing the evidence, the RTC convicted accused-appellant of illegal possession of dangerous drugs under Section 11, Article II of R.A. No. 9165. The RTC found that although the identity of the alleged buyer, seller, and object were established, two elements of illegal sale of dangerous drugs were still missing — the consideration and the payment. As testified to by IO1 de la Cerna himself, he did not bring any buy-bust money and that there was no payment of the alleged marijuana he received from accused-appellant.[8]

Nevertheless, the RTC found accused-appellant liable for possession of dangerous drugs, which crime is necessarily included in the offense charged. The RTC then disposed of the case in this manner:

WHEREFORE, premises considered, this Court finds the accused **MICHAEL KURT JOHN BULAWAN Y ANDALES GUILTY BEYOND REASONABLE DOUBT of the offense defined and penalized under Section 11, Article II of R.A. 9165, the offense proved which is included in the offense charged in the Information, and hereby sentences him to suffer the penalty of imprisonment for twelve [12] years and one [1] day to thirteen [13] years, and to pay the Fine of Three Hundred Thousand Pesos [₱300,000.00], without subsidiary penalty in case of insolvency.**

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[7] *Id.* at 34-35.

[8] *Rollo,* p. 63.

The accused shall be entitled to be credited in full of his preventive detention and the period of his actual incarceration shall be deducted from the number of years with which the accused is to serve his sentence.

SO ORDERED.[9]

Accused-appellant went before the Court of Appeals. After a review of the records, the appellate court found accused-appellant guilty of illegal sale of dangerous drugs under Section 5, Article II of R.A. No. 9165.

Citing *People v. Concepcion*,[10] the Court of Appeals held that Section 5, Article II of R.A. No. 9165 covers not only the sale of dangerous drugs but also the mere act of delivery after the offer to buy by the entrapping officer has been accepted by the seller.[11]

The Court of Appeals further held that, in convicting accused-appellant of Section 5, Article II of R.A. No. 9165, accused-appellant's right against double jeopardy was not violated. Citing *U.S. v. Abijan*,[12] the appellate court held that when an accused appeals from the sentence of the trial court, he waives his constitutional safeguard against double jeopardy and throws the whole case open to the review of the appellate court, which is then called upon to render judgment as the law and justice dictate, whether favorable or unfavorable to them, and whether they are assigned as errors or not.[13]

Thus, the Court of Appeals ruled:

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[9] *Id.* at 66.

[10] G.R. No. 178876, 27 June 2008.

[11] CA Decision; CA *rollo*, p. 93.

[12] 1 Phil. 83, 85 (1902).

[13] CA Decision; CA *rollo*, p. 92.

WHEREFORE, premises considered, the Decision of the Regional Trial Court, Branch 25, Cagayan de Oro in Criminal Case No. 2008-714 is AFFIRMED with MODIFICATION that accused-appellant MICHAEL KURT JOHN BULAWAN y ANDALES is found guilty of violating Section 5, Article II of Republic Act No. 9165 otherwise known as the Dangerous Drugs Act of 2002. He is hereby sentenced to suffer the penalty of life imprisonment, without eligibility of parole, and to pay the fine of Five Hundred Thousand Pesos ([₱]500,000.00).

SO ORDERED.[14]

Accused-appellant is now before the Court, raising the following issues:[15]

I.

THE COURT OF APPEALS ERRED IN RULING THAT A BUY-BUST OPERATION WAS ACTUALLY CONDUCTED.

II.

THE COURT OF APPEALS ERRED IN RULING THAT THE CHAIN OF CUSTODY OF THE *CORPUS DELICTI* WAS ESTABLISHED SUFFICIENTLY.

III.

THE COURT OF APPEALS ERRED IN UPHOLDING THE PRESUMPTION OF REGULARITY IN THE PERFORMANCE OF DUTIES OF THE ARRESTING OFFICERS.

IV.

THE COURT OF APPEALS ERRED IN FINDING THAT THE GUILT OF THE ACCUSED-APPELLANT WAS PROVEN BEYOND REASONABLE DOUBT.

V.

THE COURT OF APPEALS ERRED IN CONVICTING THE ACCUSED-APPELLANT OF A CRIME NOT CHARGED IN THE INFORMATION.

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[14] *Id.* at 93.

[15] Appellant's Supplemental Brief; *rollo*, p. 160.

In sum, accused-appellant argues that his guilt was not established beyond reasonable doubt, and that he cannot be convicted of delivery or possession of dangerous drugs when such was not charged in the Information.[16]

After a thorough review of the records, we acquit accused-appellant.

Accused-appellant is charged, particularly, with unlawfully selling and/or offering to sell or give away marijuana.[17]

For a successful prosecution of offenses involving the illegal sale of dangerous drugs under Section 5, Article II of R.A. 9165; the following elements must be present: (1) the identities of the buyer and seller, object, and consideration; and (2) the delivery of the thing sold and the payment for it. What is material is proof that the transaction or sale actually took place, coupled with the presentation in court of evidence of *corpus delicti*.[18]

In the case at bar, it is readily apparent that no sale was consummated as the consideration, much less its receipt by accused-appellant, were not established. As testified on by IO1 de la Cerna:

Pros. Borja:

To witness, proceeding.

Q You mentioned earlier that there was a negotiation for the purchase of ₱1,000.00 peso worth of marijuana, did you prepare money for that operation?

A No, sir.

Q You mean when you met the accused, there was no ₱1,000.00 with you?

A No, sir.

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[16] *Id.* at 167.

[17] Information; RTC Records, p. 3.

[18] *People v. Gaspar*, 669 Phil. 122, 135 (2011).

Q And you arrested him after he showed to you the marijuana?

A After he gave to me the marijuana sir.[19]

x x x x x x x x x

Court:

Q Did you bring the money at that time?

A No, Ma'am.

Q You mean you are supposed to conduct a buybust operation, you did not bring any money to be given to the accused?

A It is agreed upon to conduct delivery.

Q What you are trying to tell this Court therefore, is that the accused delivered drugs without receiving first the money?

A Yes, sir.[20]

x x x x x x x x x

Court:

To witness.

Q There was no pre-payment prior to the agreed time of delivery?

A No Your Honor.

Q You did not also promise him that you will pay it only after the delivery?

A No, Your Honor.[21]

In *People v. Dasigan*,[22] where the marked money was shown to therein accused-appellant but was not actually given to her as she was immediately arrested when the shabu was handed over to the poseur-buyer, the Court acquitted said accused-

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[19] TSN of IO1 Dela Cerna, 21 May 2009; *rollo*, p. 76.

[20] *Id.* at 85.

[21] *Id.* at 86.

[22] G.R. No. 206229, 4 February 2015.

appellant of the crime of illegal sale of dangerous drugs. Citing *People v. Hong Yen E*,[23] the Court held therein that it is material in illegal sale of dangerous drugs that the sale actually took place, and what consummates the buy-bust transaction is the delivery of the drugs to the poseur-buyer and, in turn, the seller's receipt of the marked money. While the parties may have agreed on the selling price of the *shabu* and delivery of payment was intended, these do not prove consummated sale. Receipt of the marked money, whether done before delivery of the drugs or after, is required.

In the case at bar, there is more reason to acquit accused-appellant of the crime of illegal sale of dangerous drugs as the prosecution was not able to prove that there was even a consideration for the supposed transaction.

The prosecution claimed that that there was prior negotiation between the confidential informant and accused-appellant. The prosecution, however, failed to adduce any evidence of such prior negotiation. In fact, nothing can be gained from the records and from the testimonies of the witnesses as to how the supposed confidential informant conducted the alleged negotiation with accused-appellant.

Repeatedly, this Court has reminded the prosecution of its duty to present a complete picture of the buy-bust operation — "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 sale."[24]

In the present case, no information was presented by the prosecution on the prior negotiation between the confidential informant and accused-appellant. Moreover, the testimony of IO1 de la Cerna failed to show any kind of confirmation of the alleged prior negotiation. Thus, there is no proof of the offer

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[23] 701 Phil. 280, 285 (2013).

[24] *People v. Dela Cruz*, 666 Phil. 593, 606 (2011).

to purchase dangerous drugs, as well as the promise of the consideration.

Also, the Court finds that the prosecution failed to establish the identity and integrity of the *corpus delicti* of the offense charged.

In *People v. Torres*,[25] we held that the identity of the prohibited drug must be proved with moral certainty. It must also be established with the same degree of certitude that the substance bought or seized during the buy-bust operation is the same item offered in court as exhibit. In this regard, paragraph 1, Section 21, Article II of R.A. No. 9165 (the chain of custody rule) provides for safeguards for the protection of the identity and integrity of dangerous drugs seized, to wit:

> 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.[26]

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[25] 710 Phil. 398 (2013).

[26] *Id.* at 408-409.

However, this Court has also said that while the chain of custody should ideally be perfect, in reality it is not "as it is almost always impossible to obtain an unbroken chain." The most important factor is the preservation of the integrity and the evidentiary value of the seized items as they will be used to determine the guilt or innocence of the accused.[27]

In the case at bar, the chain of custody of the seized alleged marijuana was not sufficiently established, thereby casting doubt on the identity and integrity of the supposed evidence.

The foregoing is IO1 dela Cerna's testimony on the handling of the seized alleged marijuana:[28]

Q And you mentioned about marijuana, if that marijuana be shown to you, will you be able to identify it?

A Yes, sir.

Q Which I am showing to you this marijuana leaves wrapped in a magazine paper, is this the one you said delivered to you?

A Yes, sir.

Q And why do you say that this is the one?

A I put marking on it.

Q Where did you place the marking?

A At the left portion sir.

Q Where did you make the marking?

A At the office sir.

That is all that was said as regards the handling of the seized item. The prosecution failed to prove that the identity and integrity of the seized item was preserved — whether it was kept by IO1 dela Cerna from the time accused-appellant allegedly handed

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[27] *People v. Loks*, G.R. No. 203433, 27 November 2013, 711 SCRA 187, 196.

[28] TSN, 21 May 2009; *rollo*, p. 78.

it to him until the time he marked it in the office, whether IO1 dela Cerna turned it over to his superior as is the usual procedure, whether it was returned to IO1 dela Cerna for it to be brought to the crime laboratory, whether the specimen was intact when the crime laboratory received it, whether the crime laboratory officers marked and sealed the seized item after it was tested, and whether the proper officers observed the mandated precautions in preserving the identity and integrity of the seized item until it was presented in open court.

On the contrary, what we can deduce from IO1 dela Cerna's testimony is the fact that the seized item was not placed in a plastic container and sealed upon confiscation. As sworn to by PSI Erma Condino Salvacion, the forensic chemist who conducted the laboratory test on the seized item, what she tested were "suspected Marijuana leaves wrapped in a magazine paper with markings 'RDC-D'."[29] Also, when the said item was presented in open court for identification, it was still wrapped in magazine paper.[30]

In *People v. Habana*,[31] as reiterated in *People v. Martinez, et al.*,[32] we ruled that:

> Usually, the police officer who seizes the suspected substance turns it over a supervising officer, who would then send it by courier to the police crime laboratory for testing. Since it is unavoidable that possession of the substance changes hand a number of times, it is imperative for the officer who seized the substance from the suspect to place his marking on its plastic container and seal the same, preferably with adhesive tape that cannot be removed without leaving a tear on the plastic container. At the trial, the officer can then identify the seized substance and the procedure he observed to preserve its integrity until it reaches the crime laboratory.

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[29] Affidavit of PSI Erma Condino Salvacion; RTC Records, p. 59.

[30] TSN, 21 May 2009; *rollo*, p. 78.

[31] 628 Phil. 334, 341-342 (2010).

[32] 652 Phil. 347, 371 (2010).

If the substance is not in a plastic container, the officer should put it in one and seal the same. In this way the substance would assuredly reach the laboratory in the same condition it was seized from the accused. Further, after the laboratory technician tests and verifies the nature of the substance in the container, he should put his own mark on the plastic container and seal it again with a new seal since the police officer's seal has been broken. At the trial, the technician can then describe the sealed condition of the plastic container when it was handed to him and testify on the procedure he took afterwards to preserve its integrity.

If the sealing of the seized substance has not been made, the prosecution would have to present every police officer, messenger, laboratory technician, and storage personnel, the entire chain of custody, no matter how briefly one's possession has been. Each of them has to testify that the substance, although unsealed, has not been tampered with or substituted while in his care. (Emphasis supplied.)

In the case at bar, as the seized substance was not sealed, the prosecution should have presented all the officers who handled said evidence from the time it left the person of the accused to the time it was presented in open court. The prosecution did not.

Time and again, this Court has held that "the failure to establish, through convincing proof, that the integrity of the seized items has been adequately preserved through an unbroken chain of custody is enough to engender reasonable doubt on the guilt of an accused. x x x A conviction cannot be sustained if there is a persistent doubt on the identity of the drug."[33]

On a final note, in *People v. Maongco*[34] we clarified that possession is necessarily included in the sale of dangerous drugs. Thus:

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[33] *People v. Salonga*, G.R. No. 194948, 2 September 2013, 704 SCRA 536, 548, citing *People v. De Guzman y Danzil*, 630 Phil. 637, 654 (2010).

[34] G.R. No. 196966, 23 October 2013, 708 SCRA 547.

Well-settled in jurisprudence that the crime of illegal sale of dangerous drugs necessarily includes the crime of illegal possession of dangerous drugs. The same ruling may also be applied to the other acts penalized under Article II, Section 5 of Republic Act No. 9165 because for the accused to be able to trade, administer, dispense, deliver, give away to another, distribute, dispatch in transit, or transport any dangerous drug, he must necessarily be in possession of said drugs.[35]

In the present case, however, as the prosecution failed to establish every link in the chain of custody of the subject dangerous drugs, thus compromising its identity and integrity, accused-appellant cannot be held liable for illegal possession of dangerous drugs.

WHEREFORE, premises considered, we **GRANT** the appeal. The Court **ACQUITS** accused-appellant Michael Kurt John Bulawan *y* Andales and **ORDERS** his immediate release from detention, unless he is detained for another lawful cause.

SO ORDERED.

Velasco, Jr. (*Chairperson*), *Mendoza,*[*] and *Reyes, JJ.*, concur.

Peralta, J., on official leave.

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[35] *Id.* at 567.

[*] As per raffle dated 24 February 2016.

SECOND DIVISION

[G.R. No. 205061. June 8, 2016]

EMERITA G. MALIXI, *petitioner, vs.* **MEXICALI PHILIPPINES and/or FRANCESCA MABANTA,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; NATIONAL LABOR RELATIONS COMMISSION (NLRC); NLRC RULES OF PROCEDURE; THE APPEAL BEFORE THE NLRC WAS FILED ON TIME; RECEIPT BY THE COUNSEL OF RECORD IS THE RECKONING POINT OF THE REGLEMENTARY PERIOD.— Section 6, Rule III of the 2005 Revised Rules of Procedure of the NLRC (2005 NLRC Rules) expressly mandates that "(f)or purposes of appeal, the period shall be counted from receipt of such decisions, resolutions, or orders by the counsel or representative of record." This procedure is in line with the established rule that if a party has appeared by counsel, service upon him shall be made upon his counsel. "The purpose of the rule is to maintain a uniform procedure calculated to place in competent hands the prosecution of a party's case." Thus, Section 9, Rule III of the NLRC Rules provides that "(a)ttorneys and other representatives of parties shall have authority to bind their clients in all matters of procedure x x x." Accordingly, the 10-day period for filling an appeal with the NLRC should be counted from the receipt by respondents' counsel of a copy of the Labor Arbiter's Decision on October 15, 2009. Petitioner's contention that the reckoning period should be the date respondents actually received the Decision on October 13, 2009 is bereft of any legal basis. As mentioned, when a party to a suit appears by counsel, service of every judgment and all others of the court must be sent to the counsel. Notice to counsel is an effective notice to the client, while notice to the client and not his counsel is not notice in law. Therefore, receipt of notice by the counsel of record is the reckoning point of the reglementary period. From the receipt of the Labor Arbiter's Decision by respondent's counsel on October 15, 2009, the 10th day falls on October 25, 2009 which is a Sunday, hence, Monday, October 26, 2009, is the last day to file the appeal. Consequently, respondents' appeal was timely filed.

2. ID.; ID.; THE NLRC HAS AUTHORITY TO RESOLVE THE APPEAL ON ITS MERITS DESPITE BEING A NON-ISSUE IN THE MOTION FOR RECONSIDERATION.— The essence of procedural due process is that a party to a case must be given sufficient opportunity to be heard and to present evidence. Indeed, petitioner had this opportunity to present her own case and submit evidence to support her allegations. She has submitted her position paper with supporting documents as well as reply to respondents' position paper to refute respondents' evidence before the Labor Arbiter. On the basis of these documents submitted by the parties, the NLRC then resolve the merits of respondents' appeal. The Court finds that the NLRC has authority to rely on the available evidence obtaining in the records. Article 221 of the Labor Code allows the NLRC to decide the case on the basis of the position papers and other documents submitted by the parties without resorting to the technical rules of evidence observed in the regular courts of justice. After all, the NLRC is not bound by the technical niceties of law and procedure and the rules obtaining in the courts of law. In any event, the NLRC is mandated to use every and all reasonable means to ascertain the facts in each case speedily and objectively, without regard to technicalities of law or procedure, all in the interest of due process.

3. ID.; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; PETITIONER WAS NOT ILLEGALY DISMISSED BUT VOLUNTARILY RESIGNED FROM MEXICALI.— "Resignation is the voluntary act of an employee who is in a situation where one believes that personal reasons cannot be sacrificed in favor of the exigency of the service, and one has no other choice but to dissociate oneself from employment. It is a formal pronouncement or relinquishment of an office, with the intention of relinquishing the office accompanied by the act of relinquishment. As the intent to relinquish must concur with the overt act of relinquishment, the acts of the employee before and after the alleged resignation must be considered in determining whether he or she, in fact, intended to sever his or her employment." Here, petitioner tendered her resignation letter preparatory to her transfer to Calexico for a higher position and pay. In the said letter, she expressed her gratitude and appreciation for the two months of her employment with Mexicali and intimated that she regrets having to leave the company. Clearly, expressions of gratitude

and appreciation as well as manifestation of regret in leaving the company negates the notion that she was forced and coerced to resign. In the same vein, an inducement for a higher position and salary cannot defeat the voluntariness of her actions. It should be emphasized that petitioner had an option to decline the offer for her transfer, however, she opted to resign on account of a promotion and increased pay. "In termination cases, the employee is not afforded any option; the employee is dismissed and his only recourse is to institute a complaint for illegal dismissal against his employer x x x." Clearly, this does not hold true for petitioner in the instant case. Further, as aptly observed by the CA, petitioner is a managerial employee, who, by her educational background could not have coerced, forced or induced into resigning from her work.

4. ID.; ID.; ID.; THERE WAS NO EMPLOYER-EMPLOYEE RELATIONSHIP AT THE TIME OF ALLEGED DISMISSAL; ELEMENTS OF AN EMPLOYER-EMPLOYEE RELATIONSHIP, NOT ESTABLISHED.— [T]here was no existing employer-employee relationship between petitioner and Mexicali. To prove petitioner's claim of an employer-employee relationship, the following should be established by competent evidence: "(1) the selection and engagement of the employee; (2) the payment of wages; (3) the power of dismissal; and (4) the power of control over the employee's conduct." "Although no particular form of evidence is required to prove the existence of the relationship, and any competent and relevant evidence to prove the relationship may be admitted, a finding that the relationship exists must nonetheless rest on substantial evidence, which is that amount of relevant evidence that a reasonable mind might accept as adequate to justify a conclusion." We find that petitioner failed to establish her claim based on the aforementioned criteria. As to petitioner's allegation that it was Teves who selected and hired her as store manager of Calexico and likewise, together with Luna, initiated her dismissal, suffice it to state that bare allegations, unsubstantiated by evidence, are not equivalent to proof. Nevertheless, Teves merely informed petitioner of the management's intention to transfer her and thereafter advised her to execute a resignation letter, to which she complied. Nowhere was there any allegation or proof that Teves was the one who directly hired her as store manager of Calexico. Also, Teves and Luna merely initiated petitioner's dismissal. The

end-of-contract purportedly signed by Luna to effectuate her termination was not presented. Again, mere allegation is not synonymous with proof. No substantial evidence was adduced to show that respondents had the power to wield petitioner's termination from employment. Anent the element of control, petitioner failed to cite a single instance to prove that she was subject to the control of respondents insofar as the manner in which she should perform her work as store manager. The bare assertion that she was required to work from Friday through Wednesday is not enough indication that the performance of her job was subject to the control of respondents. On the other hand, the payslips presented by petitioner reveal that she received her salary from Calexico and no longer from Mexicali starting the month of October 2008.

5. COMMERCIAL LAW; CORPORATIONS; PIERCING THE VEIL OF CORPORATE FICTION; THE LABOR ARBITER FAILED TO PROVIDE A CLEAR JUSTIFICATION FOR THE APPLICATION OF THE DOCTRINE.— The Labor Arbiter's finding that the two corporations are one and the same with interlocking board of directors has no factual basis. It is basic that "a corporation is an artificial being invested with a personality separate and distinct from those of the stockholders and from other corporations to which it may be connected or related." Clear and convincing evidence is needed to warrant the application of the doctrine of piercing the veil of corporate fiction. In our view, the Labor Arbiter failed to provide a clear justification for the application of the doctrine. The Articles of Incorporation and By-Laws of both corporations show that they have distinct business locations and distinct business purposes. It can also be gleaned therein that they have a different set of incorporators or directors since only two out of the five directors of Mexicali are also directors of Calexico. At any rate, the Court has ruled that the existence of interlocking directors, corporate officers and shareholders is not enough justification to disregard the separate corporate personalities. To pierce the veil of corporate fiction, there should be clear and convincing proof that fraud, illegality or inequity has been committed against third persons. For while respondents' act of not issuing employment contract and ID may be an indication of the proof required, however, this, by itself, is not sufficient evidence to pierce the corporate veil between Mexicali and Calexico.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
Lustre Santos and Associates Law Firm for respondents.

D E C I S I O N

DEL CASTILLO, *J.*:

Before us is a Petition for Review on *Certiorari*[1] seeking to set aside the August 29, 2012 Decision[2] of the Court of Appeals (CA) in CA-G.R. SP No. 115413, which dismissed the Petition for *Certiorari* filed therewith and affirmed the May 28, 2010 Resolution[3] of the National Labor Relations Commission (NLRC) reinstating respondents Mexicali Philippines (Mexicali) and Francesca Mabanta's appeal, partly granting it and ordering petitioner Emerita G. Malixi's (petitioner) reinstatement but without the payment of backwages. Likewise assailed is the December 14, 2012 Resolution[4] of the CA denying petitioner's Motion for Reconsideration.[5]

Antecedent Facts

This case arose from an Amended Complaint[6] for illegal dismissal and non-payment of service charges, moral and exemplary damages and attorney's fees filed by petitioner against

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[1] *Rollo*, pp. 10-29.

[2] CA *rollo*, pp. 191-201; penned by Associate Justice Amelita G. Tolentino and concurred in by Associate Justices Ramon R. Garcia and Socorro B. Inting.

[3] *Id.* at 131-145; penned by Commissioner Pablo C. Espiritu, Jr. and concurred in by Presiding Commissioner Alex A. Lopez and Commissioner Gregorio O. Bilog, III.

[4] *Id.* at 226-227.

[5] *Id.* at 202-209.

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

respondents Mexicali and its General Manager, Francesca Mabanta, on February 4, 2009 before the Labor Arbiter, docketed as NLRC NCR Case No. 12-17618-08.

Petitioner alleged that on August 12, 2008, she was hired by respondents as a team leader assigned at the delivery service, receiving a daily wage of Three Hundred Eighty Two Pesos (₱382.00) sans employment contract and identification card (ID). In October 2008, Mexicali's training officer, Jay Teves (Teves), informed her of the management's intention to transfer and appoint her as store manager at a newly opened branch in Alabang Town Center, which is a joint venture between Mexicali and Calexico Food Corporation (Calexico), due to her satisfactory performance. She was apprised that her monthly salary as the new store manager would be Fifteen Thousand Pesos (₱15,000.00) with service charge, free meal and side tip. She then subsequently submitted a resignation letter[7] dated October 15, 2008, as advised by Teves. On October 17, 2008, she started working as the store manager of Mexicali in Alabang Town Center although, again, no employment contract and ID were issued to her. However, in December 2008, she was compelled by Teves to sign an end-of-contract letter by reason of a criminal complaint for sexual harassment she filed on December 3, 2008 against Mexicali's operations manager, John Pontero (Pontero), for the sexual advances made against her during Pontero's visits at Alabang branch.[8] When she refused to sign the end-of-contract letter, Mexicali's administrative officer, Ding Luna (Luna), on December 15, 2008, personally went to the branch and caused the signing of the same. Upon her vehement refusal to sign, she was informed by Luna that it was her last day of work.

Respondents, however, denied responsibility over petitioner's alleged dismissal. They averred that petitioner has resigned from Mexicali in October 2008 and hence, was no longer

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[7] *Id.* at 41.

[8] See Malixi's Complaint Affidavit, *id.* at 34-35.

Mexicali's employee at the time of her dismissal but rather an employee of Calexico, a franchisee of Mexicali located in Alabang Town Center which is a separate and distinct corporation.

In her reply, petitioner admitted having resigned from Mexicali but averred that her resignation was a condition for her promotion as store manager at Mexicali's Alabang Town Center branch. She asserted that despite her resignation, she remained to be an employee of Mexicali because Mexicali was the one who engaged her, dismissed her and controlled the performance of her work as store manager in the newly opened branch.

Proceedings before the Labor Arbiter

In a Decision[9] dated August 27, 2009, the Labor Arbiter declared petitioner to have been illegally dismissed by respondents. By piercing the veil of corporate fiction, the Labor Arbiter ruled that Mexicali and Calexico are one and the same with interlocking board of directors. The Labor Arbiter sustained petitioner's claim that she is an employee of Mexicali as she was hired at Calexico by Mexicali's corporate officers and also dismissed by them and hence, held Mexicali responsible for petitioner's dismissal. The Labor Arbiter then observed that petitioner was only forced to resign as a condition for her promotion, thus, cannot be utilized by Mexicali as a valid defense. As the severance from employment was attended by fraud, petitioner was awarded moral and exemplary damages. The dispositive portion of the Decision reads:

> WHEREFORE, premises considered, respondents are hereby declared guilty of illegal dismissal and ORDERED to reinstate complainant to her former position even pending appeal. All the respondents are hereby jointly and severally ordered to pay complainant the following:
>
> 1. Full backwages from date of dismissal to date of actual reinstatement which to date amounts to ₱139,013.94.

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[9] *Id.* at 51-55; penned by Labor Arbiter Ariel Cadiente-Santos.

2. Moral damages in the sum of ₱100,000.00.
3. Exemplary damages in the sum of ₱50,000.00.

SO ORDERED.[10]

Proceedings before the National Labor Relations Commission

On October 26, 2009, respondents filed an Appeal Memorandum with Prayer for Injunction[11] with the NLRC, averring that the Labor Arbiter erred in: (1) holding them liable for the acts of Calexico, which is a separate entity created with a different purpose, principal office, directors/incorporators, properties, management and business plans from Mexicali as evidenced by their respective Articles of Incorporation and By-Laws;[12] (2) ruling that petitioner's resignation was not voluntary; and, (3) ruling that there is an employer-employee relationship between petitioner and Mexicali on the basis of petitioner's mere allegation that she was hired and dismissed by Mexicali's officers.

In a Resolution[13] dated November 25, 2009, the NLRC dismissed the appeal for having been filed beyond the 10-day reglementary period to appeal. The NLRC noted that the Appeal Memorandum was filed only on October 26, 2009 despite respondents' receipt of the Labor Arbiter's Decision on October 13, 2009 (as stated in the Appeal Memorandum).

Respondents filed a Motion for Reconsideration and Motion for Issuance of TRO/Injunction[14] explaining that the Appeal Memorandum filed by them contained a typographical error as to the date of actual receipt of the Labor Arbiter's Decision; that while a copy of the said decision was received by them on October 13, 2009, the same was only received by their counsel

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

[11] *Id.* at 57-66.

[12] Mexicali's Articles of Incorporation and By-Laws, *id.* at 68-93; Calexico's Articles of Incorporation and By-laws, *id.* at 94-112.

[13] *Id.* at 114-116.

[14] *Id.* at 117-119.

of record on October 15, 2009[15] which is the reckoning date of the 10-day reglementary period within which to appeal.

In a Resolution[16] dated May 28, 2010, the NLRC granted respondents' motion and reinstated the appeal. The NLRC ruled that pursuant to its Rules of Procedure, the date to reckon the 10-day reglementary period should be the date when the counsel actually received the copy of the Labor Arbiter's Decision and that respondents' appeal was filed on time.

The NLRC likewise ruled on the merits of the appeal. It partly granted it by sustaining respondents' contention that Mexicali and Calexico are separate and distinct entities, Calexico being the true employer of petitioner at the time of her dismissal. Contrary to the findings of the Labor Arbiter, petitioner voluntarily resigned from Mexicali to transfer to Calexico in consideration of a higher pay and upon doing so severed her employment ties with Mexicali. The NLRC, nevertheless, ordered Mexicali, being the employer of Teves and Luna who caused petitioner's termination from her employment with Calexico, to reinstate petitioner to her job at Calexico but without paying her any backwages. The dispositive portion of the NLRC Resolution reads:

> WHEREFORE, premises considered, this Commission GRANTS the Motion for Reconsideration of its 25 November 2009 Resolution which dismissed the appeal for having been filed out of time.
>
> This Commission also PARTLY GRANTS the appeal of respondents-appellants and the Decision of the Labor Arbiter dated 27 August 2009 is MODIFIED ordering Mexicali Food Corporation to cause the reinstatement of complainant-appellee to his former position as store manager at its franchisee Calexico Food Corporation within ten (10) days from receipt of this Resolution without backwages.
>
> SO ORDERED.[17]

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[15] See Postmaster's Certification dated December 14, 2009, *id.* at 120.

[16] *Id.* at 131-145.

[17] *Id.* at 144.

Proceedings before the Court of Appeals

Petitioner sought recourse with the CA via Petition for *Certiorari*.[18] It was petitioner's contention that the NLRC erred in reinstating respondents' appeal despite being filed beyond the reglementary period; in resolving the issue of dismissal considering that only the timeliness of the appeal was the sole issue raised in respondents' motion for reconsideration; and in holding that she was not illegally dismissed but voluntarily resigned from Mexicali.

In a Decision[19] dated August 29, 2012, the CA dismissed the Petition for *Certiorari* and affirmed the May 28, 2010 Resolution of the NLRC. The CA ruled that the NLRC correctly reinstated respondents' appeal and properly resolved the issues raised therein to conform with the well-settled principle of expeditious administration of justice. The CA also agreed with the NLRC that there was no illegal dismissal since petitioner voluntarily tendered her resignation to assume a position in Calexico.

Petitioner moved for reconsideration which was denied by the CA in its Resolution[20] of December 14, 2012.

Hence, this Petition.

Issues

I

WHETHER THE COURT OF APPEALS ERRED IN SUSTAINING THE NATIONAL LABOR RELATIONS COMMISSION'S DECISION REINSTATING THE RESPONDENTS' APPEAL DESPITE BEING FILED OUT OF TIME.

II

WHETHER THE COURT OF APPEALS ERRED IN SUSTAINING THE NATIONAL LABOR RELATIONS COMMISSION'S

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[18] *Id.* at 2-19.

[19] *Id.* at 191-201.

[20] *Id.* at 226-227.

RESOLUTION (*TO THE RESPONDENTS' MOTION FOR RECONSIDERATION*) PARTLY GRANTING THE RESPONDENTS' APPEAL (*REGARDING THE ISSUE OF ILLEGAL DISMISSAL*) DESPITE BEING A NON-ISSUE IN THEIR MOTION FOR RECONSIDERATION.

III

WHETHER THE COURT OF APPEALS COMMITTED A REVERSIBLE ERROR IN HOLDING THAT THERE WAS NO ILLEGAL DISMISSAL.

IV

WHETHER THE COURT OF APPEALS COMMITTED A REVERSIBLE ERROR IN HOLDING THAT THE PETITIONER RESIGNED FROM HER EMPLOYMENT WITH THE RESPONDENTS.

V

WHETHER THE COURT OF APPEALS COMMITTED A REVERSIBLE ERROR IN FAILING TO RULE ON THE ISSUE OF WHETHER OR NOT THE PETITIONER IS ENTITLED TO THE AWARD OF MORAL AND EXEMPLARY DAMAGES RENDERED BY THE LABOR ARBITER, DESPITE BEING RAISED IN THE PETITIONER'S PETITION FOR CERTIORARI.[21]

Petitioner maintains that the CA gravely erred in affirming the NLRC's reinstatement of respondents' appeal despite being filed out of time and the NLRC's ruling that there was no illegal dismissal, arguing that it is a non-issue in respondents' motion for reconsideration and there was absence of any valid cause for terminating her employment with Mexicali.

Our Ruling

The Petition has no merit.

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[21] *Rollo*, pp. 16-17.

The appeal before the NLRC was filed on time.

Section 6, Rule III of the 2005 Revised Rules of Procedure of the NLRC (2005 NLRC Rules) expressly mandates that "(f)or purposes of appeal, the period shall be counted from receipt of such decisions, resolutions, or orders by the counsel or representative of record." This procedure is in line with the established rule that if a party has appeared by counsel, service upon him shall be made upon his counsel.[22] "The purpose of the rule is to maintain a uniform procedure calculated to place in competent hands the prosecution of a party's case."[23] Thus, Section 9, Rule III of the NLRC Rules provides that "(a)ttorneys and other representatives of parties shall have authority to bind their clients in all matters of procedure x x x."

Accordingly, the 10-day period for filing an appeal with the NLRC should be counted from the receipt by respondents' counsel of a copy of the Labor Arbiter's Decision on October 15, 2009. Petitioner's contention that the reckoning period should be the date respondents actually received the Decision on October 13, 2009 is bereft of any legal basis. As mentioned, when a party to a suit appears by counsel, service of every judgment and all orders of the court must be sent to the counsel. Notice to counsel is an effective notice to the client, while notice to the client and not his counsel is not notice in law.[24] Therefore, receipt of notice by the counsel of record is the reckoning point of the reglementary period.[25] From the receipt of the Labor Arbiter's Decision by respondent's counsel on October 15, 2009, the 10th day falls on October 25, 2009 which is a Sunday, hence, Monday, October 26, 2009, is the last day to file the appeal. Consequently, respondents' appeal was timely filed.

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[22] RULES OF COURT, Rule 13, Sec. 2.

[23] *Mancenido v. Court of Appeals*, 386 Phil. 627, 636 (2000).

[24] *Ramos v. Spouses Lim*, 497 Phil. 560, 564-565 (2005).

[25] *Waterfront Cebu City Casino Hotel, Inc. v. Ledesma*, G.R. No. 197556, March 25, 2015.

The NLRC has authority to resolve the appeal on its merits despite being a non-issue in respondents' motion for reconsideration.

Petitioner still argues that the NLRC gravely abused its discretion in ruling on the merits of the case despite being a non-issue in the motion for reconsideration. She contends that in resolving the issue of the legality or illegality of her dismissal, which was not raised in respondents' motion for reconsideration, the NLRC deprived her of the opportunity to properly refute or oppose respondents' evidence thereby violating her right to due process.

The contention is untenable. The essence of procedural due process is that a party to a case must be given sufficient opportunity to be heard and to present evidence.[26] Indeed, petitioner had this opportunity to present her own case and submit evidence to support her allegations. She has submitted her position paper with supporting documents as well as reply to respondents' position paper to refute respondents' evidence before the Labor Arbiter.

On the basis of these documents submitted by the parties, the NLRC then resolved the merits of respondents' appeal. The Court finds that the NLRC has authority to rely on the available evidence obtaining in the records. Article 221 of the Labor Code allows the NLRC to decide the case on the basis of the position papers and other documents submitted by the parties without resorting to the technical rules of evidence observed in the regular courts of justice.[27] After all, the NLRC is not bound by the technical niceties of law and procedure and the

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[26] *Robusta Agro Marine Products, Inc. v. Gorombalem*, 256 Phil. 545, 550 (1989).

[27] *Suarez v. National Labor Relations Commission*, 355 Phil. 236, 243 (1998) citing *Manila Doctors Hospital v. National Labor Relations Commission*, G.R. No. 64897, February 28, 1985, 235 SCRA 262, 265-267.

rules obtaining in the courts of law.[28] In any event, the NLRC is mandated to use every and all reasonable means to ascertain the facts in each case speedily and objectively, without regard to technicalities of law or procedure, all in the interest of due process.[29]

Petitioner voluntarily resigned from Mexicali. No employer-employee relationship between petitioner and Mexicali at the time of alleged dismissal.

Ruling on the substantive matters, the Court finds that there exists no employer-employee relationship between petitioner and respondents as to hold the latter liable for illegal dismissal.

The CA, affirming the NLRC, found that petitioner voluntarily resigned from Mexicali. Petitioner, however, claims that she was induced into resigning considering the higher position and attractive salary package; moreover, she avers that her resignation cannot effectively sever her employment ties with Mexicali.

We disagree. "Resignation is the voluntary act of an employee who is in a situation where one believes that personal reasons cannot be sacrificed in favor of the exigency of the service, and one has no other choice but to dissociate oneself from employment. It is a formal pronouncement or relinquishment of an office, with the intention of relinquishing the office accompanied by the act of relinquishment. As the intent to relinquish must concur with the overt act of relinquishment, the acts of the employee before and after the alleged resignation must be considered in determining whether he or she, in fact, intended to sever his or her employment."[30] Here, petitioner tendered her resignation letter preparatory to her transfer to Calexico for a higher position and pay. In the said letter, she

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[28] *Bantolino v. Coca-Cola Bottlers Phils., Inc.*, 451 Phil. 839, 846 (2003).

[29] The 2005 Revised Rules of Procedure of the National Labor Relations Commission, Rule VII, Section 10.

[30] *Bilbao v. Saudi Arabian Airlines*, 678 Phil. 793, 802 (2011).

expressed her gratitude and appreciation for the two months of her employment with Mexicali and intimated that she regrets having to leave the company. Clearly, expressions of gratitude and appreciation as well as manifestation of regret in leaving the company negates the notion that she was forced and coerced to resign. In the same vein, an inducement for a higher position and salary cannot defeat the voluntariness of her actions. It should be emphasized that petitioner had an option to decline the offer for her transfer, however, she opted to resign on account of a promotion and increased pay. "In termination cases, the employee is not afforded any option; the employee is dismissed and his only recourse is to institute a complaint for illegal dismissal against his employer x x x."[31] Clearly, this does not hold true for petitioner in the instant case. Further, as aptly observed by the CA, petitioner is a managerial employee, who, by her educational background could not have been coerced, forced or induced into resigning from her work.

Upon petitioner's resignation, petitioner ceased to be an employee of Mexicali and chose to be employed at Calexico. Petitioner, however, claims that Mexicali and Calexico are one and the same and that Mexicali was still her employer upon her transfer to Calexico since she was hired and dismissed by Mexicali's officers and that Mexicali exercised the power of control over her work performance.

We rule otherwise. The Labor Arbiter's finding that the two corporations are one and the same with interlocking board of directors has no factual basis. It is basic that "a corporation is an artificial being invested with a personality separate and distinct from those of the stockholders and from other corporations to which it may be connected or related."[32] Clear and convincing evidence is needed to warrant the application of the doctrine

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[31] *Samaniego v. National Labor Relations Commission*, G.R. No. 93059, June 3, 1991, 198 SCRA 111, 118.

[32] *Kukan International Corporation v. Hon. Judge Reyes*, 646 Phil. 210, 232 (2010).

of piercing the veil of corporate fiction.[33] In our view, the Labor Arbiter failed to provide a clear justification for the application of the doctrine. The Articles of Incorporation and By-Laws of both corporations show that they have distinct business locations and distinct business purposes. It can also be gleaned therein that they have a different set of incorporators or directors since only two out of the five directors of Mexicali are also directors of Calexico. At any rate, the Court has ruled that the existence of interlocking directors, corporate officers and shareholders is not enough justification to disregard the separate corporate personalities.[34] To pierce the veil of corporate fiction, there should be clear and convincing proof that fraud, illegality or inequity has been committed against third persons.[35] For while respondents' act of not issuing employment contract and ID may be an indication of the proof required, however, this, by itself, is not sufficient evidence to pierce the corporate veil between Mexicali and Calexico.

More importantly, there was no existing employer-employee relationship between petitioner and Mexicali. To prove petitioner's claim of an employer-employee relationship, the following should be established by competent evidence: "(1) the selection and engagement of the employee; (2) the payment of wages; (3) the power of dismissal; and (4) the power of control over the employee's conduct."[36] "Although no particular form of evidence is required to prove the existence of the relationship, and any competent and relevant evidence to prove the relationship may be admitted, a finding that the relationship exists must nonetheless rest on substantial evidence, which is that amount of relevant evidence that a reasonable mind might accept as

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[33] *Manila Hotel Corp. v. National Labor Relations Commission*, 397 Phil. 1, 19 (2000).

[34] *Velarde v. Lopez, Inc.*, 464 Phil. 525, 538 (2004).

[35] *Philippine National Bank v. Hydro Resources Contractors Corporation*, 706 Phil. 297, 308-309 (2013).

[36] *McBurnie v. Ganzon*, G.R. Nos. 178034 & 178117, 186984-85, October 17, 2013, 707 SCRA 646, 690.

adequate to justify a conclusion."[37] We find that petitioner failed to establish her claim based on the aforementioned criteria. As to petitioner's allegation that it was Teves who selected and hired her as store manager of Calexico and likewise, together with Luna, initiated her dismissal, suffice it to state that bare allegations, unsubstantiated by evidence, are not equivalent to proof.[38] Nevertheless, Teves merely informed petitioner of the management's intention to transfer her and thereafter advised her to execute a resignation letter, to which she complied. Nowhere was there any allegation or proof that Teves was the one who directly hired her as store manager of Calexico. Also, Teves and Luna merely initiated petitioner's dismissal. The end-of-contract purportedly signed by Luna to effectuate her termination was not presented. Again, mere allegation is not synonymous with proof. No substantial evidence was adduced to show that respondents had the power to wield petitioner's termination from employment. Anent the element of control, petitioner failed to cite a single instance to prove that she was subject to the control of respondents insofar as the manner in which she should perform her work as store manager. The bare assertion that she was required to work from Friday through Wednesday is not enough indication that the performance of her job was subject to the control of respondents. On the other hand, the payslips[39] presented by petitioner reveal that she received her salary from Calexico and no longer from Mexicali starting the month of October 2008.

This Court is, therefore, convinced that petitioner is no longer an employee of respondents considering her resignation. In the absence of an employer-employee relationship between petitioner and respondents, petitioner cannot successfully claim that she was dismissed, much more illegally dismissed, by the latter. The dismissal of petitioner's complaint against respondents is, therefore, proper.

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[37] *Legend Hotel (Manila) v. Realuyo*, 691 Phil. 226, 236-237 (2012).

[38] *Martin v. Court of Appeals*, G.R. No. 82248, January 30, 1992, 205 SCRA 591, 597.

[39] CA *rollo*, p. 31.

In the Resolution dated May 28, 2010, however, the NLRC ordered respondents to reinstate petitioner as store manager at Calexico but without the payment of backwages, ratiocinating that Mexicali's officers (Teves and Luna) wrongly arrogated upon themselves the power to dismiss petitioner. We view that the NLRC erred in this respect. It is to be noted that Calexico is not a party to this case. "It is well-settled that no man shall be affected by any proceeding to which he is a stranger, and strangers to a case are not bound by a judgment rendered by the court."[40] "Due process requires that a court decision can only bind a party to the litigation and not against one who did not have his day in court."[41] An adjudication in favour of or against Calexico, a stranger to this case, is hence void.

WHEREFORE, the Petition is **DENIED**. The August 29, 2012 Decision and December 14, 2012 Resolution of the Court of Appeals in CA-G.R. SP No. 115413 affirming the May 28, 2010 Resolution of the National Labor Relations Commission are **AFFIRMED** with **MODIFICATION** that the order for respondent Mexicali Food Corporation to cause the reinstatement of petitioner Emerita G. Malixi to her former position as store manager at Calexico Food Corporation without backwages is **DELETED**. The Complaint against respondents Mexicali Philippines and/or Francesca Mabanta is **DISMISSED**.

SO ORDERED.

Carpio, Acting C.J.[*] (*Chairperson*), *Mendoza*, and *Leonen, JJ.*, concur.

Brion, J., on official leave.

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[40] *Atilano II v. Judge Asaali*, 694 Phil. 488, 495 (2012).

[41] *Fermin v. Hon. Judge Esteves*, 573 Phil. 12, 18 (2008).

[*] Per Special Order No. 2353 dated June 2, 2016.

THIRD DIVISION

[G.R. No. 205097. June 8, 2016]

CORAZON D. ISON, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; *ESTAFA*; ELEMENTS.— The elements of estafa by means of deceit as defined under Article 315(2)(a) of the RPC are as follows: (1) that there must be a false pretense, fraudulent means; (2) that such false pretense, fraudulent act or fraudulent means must be made or executed prior to or simultaneously with the commission of the fraud; (3) that the offended party must have relied on the false pretense, fraudulent act or fraudulent means, that is, he was induced to part with his money or property because of the false pretense, fraudulent act or fraudulent means; and (4) that as a result thereof, the offended party suffered damage. "The false pretense or fraudulent act must be committed prior to or simultaneously with the commission of the fraud, it being essential that such false statement or representation constitutes the very cause or the only motive which induces the offended party to part with his money. In the absence of such requisite, any subsequent act of the accused, however fraudulent and suspicious it might appear, cannot serve as basis for prosecution for estafa under the said provision."

2. ID.; ID.; ID.; ID.; ACCUSED'S MISREPRESENTATION WHICH INDUCED PRIVATE COMPLAINANTS TO PART WITH THEIR MONEY, NOT ESTABLISHED.— [T]he Court is thus unpersuaded by the claim that Ison's representation or misrepresentation constituted the very cause or the only motive which induced the private complainants to part with their money. "Where the inculpatory facts and circumstances are susceptible of two or more interpretations, one of which is consistent with the innocence of the accused while the other may be compatible with the finding of guilt, the Court must acquit the accused because the evidence does not fulfil the test of moral certainty required for conviction." In the case at bar, the prosecution failed to prove beyond reasonable doubt that Ison misrepresented herself as the owner of the fishponds and entered into the Contract

to Sell without authority from Col. Vergara. It was likewise not amply established that the private complainants were completely unaware of the pertinent facts concerning the fishponds' ownership. Hence, the essential element of reliance upon the misrepresentation, which should have induced the private complainants to part with their money, is wanting. Inevitably, the Court is constrained to uphold the presumption of innocence in Ison's favor and acquit her.

3. ID.; ID.; ID.; ALTHOUGH THE ACCUSED WAS ACQUITTED, REIMBURSEMENT OF THE AMOUNT PAID PLUS INTEREST IS ORDERED.— While Ison cannot be made criminally liable, it is undisputed that she received the amount of ₱150,000.00 from the private complainants as down payment for the fishponds. Lest unjust enrichment results, reimbursement of the amount is in order. Further, pursuant to the doctrine in *Nacar v. Gallery Frames*, Ison shall be liable for the payment of interests. Thus, the amount of ₱150,000.00, which she had received, shall be subject to an annual interest of twelve percent (12%) computed from the filing of the complaint on September 15, 2005 until June 30, 2013. Thereafter, from July 1, 2013 onwards until full satisfaction of the amount due, the applicable annual interest shall be six percent (6%).

APPEARANCES OF COUNSEL

Jonathan T. Sempio for petitioner.
Office of the Solicitor General for respondent.

D E C I S I O N

REYES, *J.*:

The instant petition for review on *certiorari*[1] assails the Decision[2] and Amended Decision[3] of the Court of Appeals (CA),

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[1] *Rollo*, pp. 3-37.

[2] Penned by Associate Justice Hakim S. Abdulwahid, with Associate Justices Marlene Gonzales-Sison and Leoncia Real-Dimagiba concurring; *id.* at 42-62.

[3] *Id.* at 64-66.

dated January 30, 2012 and October 30, 2012, respectively, in CA-G.R. CR No. 33471, which affirmed with modification the Decision[4] rendered on April 30, 2010 by the Regional Trial Court (RTC) of Binangonan, Rizal, Branch 67, convicting Corazon D. Ison (Ison), now 76 years old, of Estafa under Article 315 (2) (a)[5] of the Revised Penal Code (RPC).

Antecedent Facts

As summed up by the Office of the Solicitor General (OSG), the prosecution's version of the facts is as follows:

> Sometime in September 2004, [Ison] offered to sell two (2) parcels of fishpond[6] [located in Barangay Pilapila, Binangonan, Rizal] with areas of two thousand seventeen (2,017) square meters and forty-six (46) square meters to Atty. Hermenegildo Ramos, Jr. (Ramos) and Edgar Barroga (Barroga). The contract price for said fishponds was Eight Hundred Thousand Pesos (Php800,000.00) which included all improvements, fishes, fingerlings, privileges, plants, trees, and two motorized bancas.
>
> [Ison] persuaded Ramos and Barroga to buy the fishponds after showing them Laguna Lake Development Authority (LLDA) permits and receipts either in her name or in the name of her husband.
>
> Ramos and Barroga were convinced of [Ison's] ownership of the fishponds and agreed to buy the same. After executing the Contract

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[4] Penned by Presiding Judge Dennis Patrick Z. Perez; *id.* at 39-40.

[5] Art. 315. Swindling (*estafa*). — Any person who shall defraud another by any of the means mentioned herein below shall be punished by:

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2. By means of any of the following false pretenses or fraudulent acts executed prior to or simultaneously with the commission of the fraud:

(a) By using fictitious name, or falsely pretending to possess power, influence, qualifications, property, credit, agency, business or imaginary transactions, or by means of other similar deceits.

x x x x x x x x x

[6] Covered by Tax Declaration Nos. 00-BI-031-00-0771 and 00-BI-031-00-0772; *rollo*, pp. 44-45.

to Sell[7] dated September 15, 2004, Ramos and Barroga paid [Ison] One Hundred Thousand Pesos (Php100,000.00) in cash as partial payment. Thereafter, Ramos and Barroga took possession of the fishponds. Ramos and Barroga visited the fishponds often, bought feeds and operated the same. Ramos and Barroga also made [Ison's] caretaker, Ariel Genodipa, as their caretaker.

On November 4, 2004, Ramos and Barroga paid [Ison] an additional Fifty Thousand Pesos (Php50,000.00) representing two equal installments of Twenty-Five Thousand Pesos (Php25,000.00).

Thereafter, Ramos and Barroga received a call from a certain Ligaya Tupaz who told them that Colonel Pedro Vergara (Vergara) was the real owner of the fishponds.

On December 27, 2004, a meeting was set for Ramos, Barroga, [Ison] and Vergara. Vergara, however, left before the meeting started. During the meeting, [Ison] admitted that she first sold the fishponds to Vergara before she sold the same to Ramos and Barroga. Ramos and Barroga then asked [Ison] to return their money plus interest and damages. [Ison] promised to return the money but reneged on her promise.

Meanwhile, on January 2, 2005, Vergara and eight *mamumukot* entered the fishponds, harvested the fish and took possession of the same.

Ramos and Barroga then sent demand letters dated January 3, 2005 and January 10, 2005 to [Ison].

When [Ison] failed to comply, Ramos and Barroga filed a complaint for Estafa against her.

During her arraignment, [Ison] pleaded "not guilty" to the crime charged.[8] (Citations omitted)

Ison, on the other hand, claims that she remains to be the registered owner of the fishponds. In November of 2003, she sold the same to Colonel Pedro Vergara (Col. Vergara), who designated her as caretaker thereof. Within a year from the purchase, Col. Vergara did not earn from the fishponds'

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[7] Quoted partially in the assailed CA decision, *id.* at 46-47.

[8] *Id.* at 79-81.

operation. Thereafter, he authorized Ison to sell the property for ₱850,000.00, out of which ₱150,000.00 shall be paid to the agents. Since the permits and other documents relative to the ownership and operation of the fishponds are still in Ison's name, Col. Vergara authorized her to sign the deed evidencing the sale for the sake of expediency in the transactions.[9]

Ison alleges that she was introduced to Atty. Hermenegildo Ramos, Jr. (Atty. Ramos) and Edgar Barroga (Edgar) (collectively, the private complainants) by three agents, to wit, Rommel Estacio, Jude Paralejas and Jess Barroga (Jess).[10] Jess is the father of Edgar. When Ison met with the private complainants in the fishponds, the latter brought a ready made Contract to Sell. Initially, Ison wanted for cash to be outrightly paid. Hence, she refused to sign the contract, which stipulated that the purchase would be in an installment basis. Jess then assured Ison that Atty. Ramos can easily make the payments and that the Contract to Sell would be a mere formality. Ison thus received ₱50,000.00 in cash and ₱50,000.00 in check and the private complainants promised that the balance would be paid in December 2004. Ison informed Col. Vergara of the agreement.[11]

In November of 2004, Ison reminded Atty. Ramos about the balance due. Atty. Ramos paid Ison ₱50,000.00. Later, in December, Atty. Ramos told Ison that the payments would be made in an installment basis as stipulated in the Contract to Sell. Ison informed Edgar and Jess of Atty. Ramos' stance.[12]

On December 8, 2004, Ison, Col. Vergara, and the private complainants met in Tropical Hut in Sta. Lucia. As Col. Vergara had to fetch somebody from the airport, he left even before the discussions started. The private complainants then demanded

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[9] *Id.* at 8-9, 45.

[10] Referred to as "*Jesus Barroga*" in some parts of the records.

[11] *Rollo*, pp. 9-10.

[12] *Id.* at 10.

for Ison to reimburse the ₱150,000.00, which they had previously paid.[13]

Since either the payment of the balance by the private complainants or the reimbursement by Ison had not been made, Col. Vergara harvested the fishes in the ponds. Subsequently, the private complainants met Ison in SM Megamall for the latter to return the ₱150,000.00, which she had previously received. However, Atty. Ramos refused to accept the money and instead offered the said amount to Ison in exchange for the latter's testimony in the suit intended to be filed against Col. Vergara for harvesting the fishes. Even after conferring with her lawyer, Ison was still undecided whether or not to testify against Col. Vergara. Eventually, Atty. Ramos filed cases against Ison and Col. Vergara.[14]

Col. Vergara admitted that he authorized Ison to sell the fishponds. However, he claimed that he was unaware of the execution of the Contract to Sell between Ison and the private complainants. Ison now alleges that Col. Vergara's denial was made for him to evade criminal liability relative to the harvest of the fishes in the ponds.[15]

On September 15, 2005, an Information[16] was filed against Ison charging her with estafa under Article 315 (2) (a) of the RPC.

Rulings of the RTC and CA

On April 30, 2010, the RTC convicted Ison as charged in the Information in Criminal Case No. 05-362. The dispositive portion of the decision reads:

Based on the foregoing, we find accused [Ison] **GUILTY** beyond reasonable doubt of committing Estafa under Article 315 (2[a]) of

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

[14] *Id.* at 11.

[15] *Id.*

[16] *Id.* at 43.

the [RPC] and sentence her to suffer an indeterminate penalty of 2 years, 11 months and 10 days of *Prision Correccional* in its Minimum and Medium periods as minimum to 20 years of *Reclusion Temporal* as Maximum[.] We also **ORDER** her to pay [the private complainants] the amount of ₱150,000.00 which she defrauded from them and costs. All other claims for damages are **DISMISSED** for lack of basis.

SO ORDERED.[17]

The conviction was based on the following grounds:

To convict Ison of Estafa under Article 315(2[a]) of the [RPC], the prosecution must prove beyond a reasonable doubt that she defrauded [the private complainants] of ₱150,000.00 as payment for fishponds fees by falsely pretending to possess power, influence, qualifications as the owner x x x when [they actually] belonged to someone else. The prosecution was able to show a document where Ison represented herself as the owner of the fishponds and the testimony from [Atty.] Ramos that she was not. This is further buttressed by Ison's admission that she was not the owner but Col. Vergara and her defense is that [the private complainants] knew this fact and still induced her to sign the Contract to Sell as a formality and that it was they who reneged on their "real agreement" of a down payment plus the full balance by December 2004. Further[,] she tried to return the money in exchange for settling the cases. The trouble with this story is that it is so incredible that only a fool can swallow it. If such a story were true, then she could simply refuse to accept the payment or deal with [the private complainants] in the first place to protect the interests of [Col. Vergara], her supposed principal. Further[,] there is no proof on record that [Col. Vergara] authorized [Ison] to sell the fishponds to [the private complainants] under the terms she describes. Records will show that she was even supposed to present him presumably to prove this but he did not testify. Further, we doubt that if she actually disclosed that [Col. Vergara] was the true owner that they would continue to deal with her and not with him considering that [Atty.] Ramos is a lawyer with [sic] a stickler for legalities. The indisputable fact is that she represented herself in a public document as the owner of these properties as she [offered to sell them] to [the private complainants] when she was not[,] to their damage in the amount of ₱150,000.00 and the lost fishponds. Further, she candidly

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[17] *Id.* at 40.

admitted that she was trying to settle this case and an offer of compromise by an accused in a criminal case may be received as an implied admission of guilt (Section 27, Rule 130) x x x Ison can only offer her uncorroborated self-serving denial, an inherently weak and incredible defense which will not help her beat the rap.[18] (Citations omitted)

On January 30, 2012, the CA denied Ison's appeal, but modified the penalty imposed by the RTC pursuant to the provisions of the Indeterminate Sentence Law. The decretal portion of the assailed decision[19] is quoted below:

WHEREFORE, the appeal is **DENIED**. The assailed *Decision* dated April 30, 2010 of the RTC, Branch 67, Binangonan[,] Rizal, in Criminal Case No. 05-362, is **AFFIRMED with MODIFICATION**, sentencing [Ison] to the indeterminate penalty of imprisonment of four (4) years and two (2) months of *prision correccional*, as minimum, to eighteen (18) years and one (1) day of *reclusion temporal*, as maximum.

SO ORDERED.[20]

The CA explained that:

The elements of estafa under [Article 315(2[a]) of the RPC] are: (1) there must be a false pretense, fraudulent act or fraudulent means; (2) such false pretense, fraudulent act or fraudulent means must be made or executed prior to or simultaneously with the commission of the fraud; (3) the offended party must have relied on the false pretense, fraudulent act, or fraudulent means, that is, he was induced to part with his money or property because of the false pretense, fraudulent act, or fraudulent means; and (4) as a result thereof, the offended party suffered damage.

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Indeed, the totality of the evidence extant in the records points to two relevant facts determinative of [Ison's] culpability: (1) adverse

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

[19] *Id.* at 42-62.

[20] *Id.* at 61.

to Col. Vergara's ownership of the subject properties and without disclosing such fact to [the private complainants] when she made her offer to sell or even at the time of the execution of the *Contract to Sell*, [Ison], through fraudulent and deceitful pretense of ownership, misrepresented herself as the true and lawful owner of the subject properties, making [the private complainants] believe she had full power to dispose thereof; and (2) with complete reliance on such misrepresentation, [the private complainants] entered into the *Contract* and paid [Ison] the partial consideration of ₱150,000.00 in the hope of acquiring ownership of the subject properties, but which resulted in their defraudation. Contrary to [Ison's] claim of [the private complainants'] knowledge of Col. Vergara's ownership of the subject properties prior to the execution of the *Contract*, the evidence reveals that [the private complainants] were notified of an adverse claim only in November 2004 when Mrs. Vergara informed them that she and [her husband] are the owners thereof. [The private complainants] confirmed such ownership only during their meeting with Col. Vergara and [Ison] on December 27, 200[4] when the latter admitted having earlier sold the subject properties to Col. Vergara. In fact, her own testimony during the trial on January 7, 2009 proves that [the private complainants] learned of Col. Vergara's ownership only after the execution of the *Contract*. x x x:

x x x x x x x x x

Where a party recognizes and admits that the ownership of a property belongs to another, the party's untruthful assertion of ownership over said property by a false claim of true and lawful ownership thereof and by the performance of acts consistent with such purported ownership is a clear case of deceit and misrepresentation. Furthermore, by recognizing that ownership belongs to another, the party admits that he is not in a position to transfer ownership of the property. Hence, one who, by invoking his false claim of ownership, transfers ownership to another despite his lack of authority to do so, is guilty of fraud and deceit.

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Indubitably, the parody between [Ison's] recognition of Col. Vergara's ownership of the subject properties and her false pretense of true and lawful ownership thereof clearly evinces fraud and deception. The strength of this false pretense facilitated the execution of the *Contract to Sell* on the basis of which, [the private complainants]

were compelled to part with ₱150,000.00, enabling [Ison] to unjustifiably and fraudulently profit.[21] (Citations omitted)

On October 30, 2012, the CA rendered the herein assailed Amended Decision[22] reiterating the conviction but lowering the minimum period of the indeterminate penalty imposed to six (6) months and one (1) day of *prision correccional* in view of Ison's advanced age.

Issues

Aggrieved, Ison presents before the Court the issues of whether or not (1) deceit, as an essential element of estafa, has been proven, and (2) the RTC and CA had ignored, misconstrued or misunderstood material facts and circumstances, which if considered, would result to her acquittal.[23]

In support of the issues raised, Ison insists that when the Contract to Sell was executed, she was still the registered owner of the fishponds despite the prior sale to Col. Vergara. The private complainants cannot feign ignorance of the foregoing circumstances considering that Jess, who was among the three agents, is the father of Edgar. It is illogical to believe that Jess did not relay the information to his son. Further, Ison, as the registered owner of the fishponds, signed the Contract to Sell not to deceive any party, but only for ease and convenience in facilitating the transactions.[24]

Ison postulates that a simple breach of contract was committed. If only Atty. Ramos paid the balance of ₱700,000.00 in December of 2004 pursuant to their verbal agreement, Col. Vergara would not have harvested the fishes in January of 2005, and ownership over the ponds would have been transferred to the private complainants.[25]

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[21] *Id.* at 55-58.

[22] *Id.* at 64-66.

[23] *Id.* at 12-13.

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

[25] *Id.* at 18.

Further, Col. Vergara never denied that he authorized Ison to sell the fishponds. Col. Vergara merely stated that he was unaware of the execution of the Contract to Sell so as to evade liability for harvesting the fishes in the ponds. Besides, Col. Vergara's attendance in the meeting between Ison and the private complainants held in Tropical Hut sometime in December of 2004 negates the claim that Col. Vergara was unaware of the contract's execution. He was there to exact full payment from the private complainants. However, Col. Vergara set aside the agreement in January of 2005 when he proceeded to harvest the fishes in the ponds despite Ison's protestations to wait for the private complainants to pay the full price or consideration.[26]

Moreover, Col. Vergara, as the party to be primarily prejudiced if the Contract to Sell is to be enforced, did not file any complaints against Ison. It is thus argued that Col. Vergara's inaction was attributable to the fact that he actually authorized Ison to sell the fishponds. Noteworthy are the stipulations contained in the RTC's Order dated January 7, 2009, to wit: (a) Jess was among the agents, who looked for prospective buyers of the fishponds; (b) Ison was authorized by Col. Vergara to sell the fishponds on a cash basis albeit there was no documentary evidence to that effect; and (c) the private complainants promised to pay the balance in December of 2004. Having been unrefuted, the prosecution is bound by the foregoing stipulations.[27]

Ison also laments that the Contract to Sell is inadmissible in evidence for being irrelevant and incompetent. The said contract did not reflect the real intent of the parties and was also not properly notarized.[28]

Ison likewise denies that she proposed a compromise to the private complainants. It was the latter's counsel who asked her to pay ₱220,000.00 in exchange for the withdrawal of the complaint.[29]

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

[27] *Id.* at 23, 26.

[28] *Id.* at 24-25.

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

The OSG, in its Comment,[30] contends that the conviction should be affirmed. Ison's fraudulent acts, to wit: (a) presentation of the Laguna Lake Development Authority permits in her and her husband's names; (b) operation of an ice plant in the fishponds' vicinity; and (c) her misrepresentation of Ariel Genodipa (Genodipa) as her caretaker for the fishponds had induced the private complainants to enter into a Contract to Sell and part with their money. Further, Ison's admission that she was no longer the owner of the fishponds when she sold the same to the private complainants runs counter to her plea of innocence.

Anent the relevance and admissibility of the Contract to Sell, the OSG argues that it was entered into voluntarily and is reflective of the true intent of the parties.

Ruling of the Court

The Court grants the instant petition.

The elements of the crime are lacking.

The elements of estafa by means of deceit as defined under Article 315 (2) (a) of the RPC are as follows: (1) that there must be a false pretense, fraudulent act or fraudulent means; (2) that such false pretense, fraudulent act or fraudulent means must be made or executed prior to or simultaneously with the commission of the fraud; (3) that the offended party must have relied on the false pretense, fraudulent act or fraudulent means, that is, he was induced to part with his money or property because of the false pretense, fraudulent act or fraudulent means; and (4) that as a result thereof, the offended party suffered damage.[31]

"The false pretense or fraudulent act must be committed prior to or simultaneously with the commission of the fraud, it being essential that such false statement or representation constitutes

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[30] *Id.* at 79-92.

[31] *Aricheta v. People*, 560 Phil. 170, 180-181 (2007).

the very cause or the only motive which induces the offended party to part with his money. In the absence of such requisite, any subsequent act of the accused, however fraudulent and suspicious it might appear, cannot serve as basis for prosecution for estafa under the said provision."[32]

In the case at bar, Ison was charged for allegedly causing damage to the private complainants when she misrepresented herself as the owner of the fishponds and entering into a Contract to Sell relative thereto when she had no authority to do so. It is hence indispensable to resolve the following questions: (a) Did Ison misrepresent herself to the private complainants as the owner of the fishponds?; and (b) Were the private complainants induced to part with the amount of ₱150,000.00 by reason of Ison's alleged misrepresentations?

After an examination of the records and the parties' arguments, the Court departs from the conclusions drawn by the RTC and the CA for reasons discussed hereunder.

Col. Vergara's Affidavit,[33] which is part of the evidence submitted by the prosecution, states that he "*requested [Ison] to look for a buyer of [the fishponds] in CASH in the amount of EIGHT HUNDRED FIFTY THOUSAND PESOS (₱850,000.00)*."[34] According to Col. Vergara, the Contract to Sell was executed without his knowledge and consent. Later, Col. Vergara discovered that his designated fishponds caretaker, Genodipa, was already receiving salaries from the private complainants. When Col. Vergara inquired from Ison, the latter admitted having sold the fishponds to the private complainants in an installment and not cash basis. However, the private complainants reneged on their commitment to fully pay the balance of ₱700,000.00 by December of 2004. Despite such non-payment, the private complainants started exercising ownership rights over the fishponds. On December 27, 2004,

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[32] *Id.* at 181.

[33] *Rollo*, pp. 67-69.

[34] *Id.* at 67.

Col. Vergara, who wished to be paid for the value of the fishponds, attended the meeting in Tropical Hut between Ison and the private complainants. Sensing that no payment was forthcoming, Col. Vergara left early. He told those present that he was "*not a privy to their transaction*," and "*advised them to settle the matter among themselves*."[35] In January of 2005, he caused the harvesting of the fishes in the ponds.

A perusal of Col. Vergara's Affidavit yields the following observations. *First*, he, in fact, asked Ison to look for a buyer of the fishponds, albeit no written document was issued and the extent of the given authority was not discussed. *Second*, Col. Vergara did not explicitly deny that he granted Ison the authority to sign any contract considering that the latter still remains to be the registered owner of the fishponds. *Third*, in the meeting held in December of 2004 in Tropical Hut, Col. Vergara exhibited little interest as shown by his early departure and his utterance to the effect that Ison and the private complainants should settle the matter among themselves. *Fourth*, Col. Vergara, being the owner of the fishponds and the one who would sustain the most damage as a result of any unauthorized sale, never filed any complaint, criminal or otherwise, against Ison. Col. Vergara's disinterest in filing a complaint or testifying against Ison militates against the private complainants' claim that Ison had no authority to enter into the transaction.

In rendering a conviction, the RTC and CA cited that while the Contract to Sell indicated that Ison is the true and lawful owner of the fishponds, she herself admitted the mistruth in the representation. Hence, the court *a quo* concluded that Ison clearly employed deceit.

The Court now inquires whether or not Ison indeed employed false pretenses or fraudulent acts, relied upon by the private complainants, who in turn were induced to part with the amount of ₱150,000.00. To this, the Court answers in the negative.

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[35] *Id.* at 68.

As discussed above, Col. Vergara had asked Ison to look for a buyer. Although there is no conclusive proof as to the exact extent or limit of the authority granted to Ison, the fact remains that she acted upon a color thereof. Col. Vergara's disinterest in prosecuting Ison for any unlawful acts lends credence to the foregoing circumstance.

Other pieces of circumstantial evidence further cast a cloud of doubt upon the private complainants' allegation of misrepresentation by Ison. As pointed out by the defense, Jess was among the three agents, who introduced Ison to the private complainants. Jess is the father of private complainant Edgar. It is thus more logical to infer that Jess informed his son about matters pertinent to the status and ownership of the fishponds. Besides, the private complainants visited the fishponds and talked to Genodipa, the caretaker. It can be presumed that Atty. Ramos knows the intricacies of the law, had made the necessary inquiries as to the fishponds' ownership, and had observed due diligence and precaution before agreeing to part with the amount of ₱150,000.00 given to Ison.

Considering the above, the Court is thus unpersuaded by the claim that Ison's representation or misrepresentation constituted the very cause or the only motive which induced the private complainants to part with their money.

"Where the inculpatory facts and circumstances are susceptible of two or more interpretations, one of which is consistent with the innocence of the accused while the other may be compatible with the finding of guilt, the Court must acquit the accused because the evidence does not fulfill the test of moral certainty required for conviction."[36]

In the case at bar, the prosecution failed to prove beyond reasonable doubt that Ison misrepresented herself as the owner of the fishponds and entered into the Contract to Sell without authority from Col. Vergara. It was likewise not amply established that the private complainants were completely

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[36] *Aricheta v. People*, *supra* note 31, at 184.

unaware of the pertinent facts concerning the fishponds' ownership. Hence, the essential element of reliance upon the misrepresentation, which should have induced the private complainants to part with their money, is wanting. Inevitably, the Court is constrained to uphold the presumption of innocence in Ison's favor and acquit her.

Reimbursement of the amount paid plus interests are due from Ison.

While Ison cannot be made criminally liable, it is undisputed that she received the amount of ₱150,000.00 from the private complainants as down payment for the fishponds. Lest unjust enrichment results, reimbursement of the amount is in order.

Further, pursuant to the doctrine in *Nacar v. Gallery Frames*,[37] Ison shall be liable for the payment of interests. Thus, the amount of ₱150,000.00, which she had received, shall be subject to an annual interest of twelve percent (12%) computed from the filing of the complaint on September 15, 2005 until June 30, 2013. Thereafter, from July 1, 2013 onwards until full satisfaction of the amount due, the applicable annual interest shall be six percent (6%).

ALL THE FOREGOING CONSIDERED, the petition is **GRANTED**. The Decision and Amended Decision of the Court of Appeals dated January 30, 2012 and October 30, 2012, respectively, in CA-G.R. CR No. 33471 convicting Corazon D. Ison of Estafa are **REVERSED and SET ASIDE**. Corazon D. Ison is **ACQUITTED** on the basis of reasonable doubt, but is hereby **DIRECTED to REIMBURSE** the private complainants, Atty. Hermenegildo Ramos, Jr. and Edgar Barroga, of the amount of ONE HUNDRED FIFTY THOUSAND PESOS (₱150,000.00). The said amount shall be subject to the payment of an annual interest of twelve percent (12%) to be computed from September 15, 2005 to June 30, 2013, and thereafter, six percent (6%) from July 1, 2013 until full satisfaction thereof.

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

SO ORDERED.

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

Peralta, J., on official leave.

SECOND DIVISION

[G.R. No. 208137. June 8, 2016]

MARIA CECILIA OEBANDA, Executive Director and/or THE OCCUPANTS and EMPLOYEES OF VISAYAN FORUM FOUNDATION, INC., *petitioners, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; SEARCH WARRANT; THE TRIAL JUDGE ASKED PROBING AND EXHAUSTIVE QUESTIONS TO APPLICANT AND WITNESSES IN THE DETERMINATION OF PROBABLE CAUSE BEFORE THE SEARCH WARRANT WAS ISSUED.— [T]he records show that Judge Cabochan personally examined NBI Agents Villasfer and Mercado, the applicants for the search warrant, as well as their witnesses, Villacorte and Aguilar. The interrogations conducted by the trial judge showed that the applicants and their witnesses had personal knowledge of the offense petitioners committed or were then committing. The judge properly asked how the applicants came

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[*] Additional Member per Raffle dated June 8, 2016 *vice* Associate Justice Francis H. Jardeleza.

to know of the falsification, where it was committed, what was involved, the extent of their participation, and what they have seen and observed inside Visayan Forum's premises. We believe that the questions propounded on them were searching and probing. The trial judge made an independent assessment of the evidence submitted and concluded that the evidence adduced and the testimonies of the witnesses support a finding of probable cause which warranted the issuance of a search warrant for violation of Article 172(2) of the Revised Penal Code. Absent a showing to the contrary, it is presumed that a judicial function has been regularly performed. The judge has the prerogative to give his own judgment on the application of the search warrant by his own evaluation of the evidence presented before him. We cannot substitute our own judgment to that of the judge.

2. ID.; ID.; ID.; SEARCH WARRANT, DEFINED; SUBSTANTIVE AND PROCEDURAL REQUIREMENTS FOR ISSUANCE.— A search warrant is an order in writing issued in the name of the People of the Philippines, signed by a judge and directed to a peace officer, commanding him to search for personal property described therein and bring it before the court. x x x [A] search warrant may be issued only if there is probable cause in connection with a specific offense alleged in an application based on the personal knowledge of the applicant and his witnesses. This is the substantive requirement for the issuance of a search warrant. Procedurally, the determination of probable cause is a personal task of the judge before whom the application for search warrant is filed, as he has to examine the applicant and his or her witnesses in the form of "searching questions and answers" in writing and under oath. The warrant, if issued, must particularly describe the place to be searched and the things to be seized. In the issuance of a search warrant, probable cause requires such facts and circumstances which would lead a reasonably discrete and prudent man to believe that an offense has been committed and that the objects sought in connection with the offense are in the place sought to be searched. In *People v. Punzalan*, we held that there is no exact test for the determination of probable cause in the issuance of search warrants. It is a matter wholly dependent on the finding of trial judges in the process of exercising their judicial function.

3. ID.; ID.; ID.; PROBABLE CAUSE FOR ISSUANCE OF SEARCH WARRANT, SUFFICIENTLY ESTABLISHED; THE TRIAL JUDGE COMPLIED WITH ALL THE REQUIREMENTS FOR THE ISSUANCE OF THE SEARCH WARRANT IN CASE AT BAR.— [T]he records show that the applicants for the search warrant and their witnesses were able to sufficiently convince the judge of the existence of probable cause based on their own personal knowledge, or what they have actually seen and observed, in Visayan Forum's premises. The NBI Agents related to the RTC how they entered Visayan Forum, in the guise of representing themselves as part of the audit team of B.F. Medina and Company. The NBI Agents personally saw that Visayan Forum's employees and occupants altered and fabricated documents and official receipts covered by USAID funding. They even photocopied some documents and receipts proving such fabrication. Also, the NBI Agents were able to particularly describe Visayan Forum's premises, exactly locating the place to be searched with sketches of the buildings and various floors and rooms. Further, they described in great detail the things that were seized — documents, receipts, books of account and records, and computers used by Visayan Forum's employees. Likewise, the NBI Agents' witnesses, Villacorte and Aguilar, were able to substantiate the statements and allegations of the NBI Agents by testifying on what they have personally seen and experienced while working in Visayan Forum, and how they came to know that fraud was being perpetrated by the company. Thus, the applicants' and their witnesses' testimonies, together with the affidavits they presented, are adequate proof to establish that there exists probable cause to issue the search warrant for violation of Article 172 (2) of the Revised Penal Code. x x x When a finding of probable cause for the issuance of a search warrant is made by a trial judge, the finding is accorded respect by the reviewing courts. Here, in issuing the search warrant, Judge Cabochan sufficiently complied with the requirements set by the Constitution and the Rules of Court. Therefore, we find nothing irregular in Judge Cabochan's issuance of the search warrant. Judge Cabochan complied with all the procedural and substantive requirements for the issuance of a search warrant and we are bound by her finding of probable cause for issuing Search Warrant No. 4811 (12).

APPEARANCES OF COUNSEL

Flaminiano Arroyo and Dueñas for petitioners.
Office of the Solicitor General for respondent.

D E C I S I O N

CARPIO, Acting *C.J.*:

The Case

This is a petition for review on certiorari[1] assailing the (1) Order[2] dated 19 November 2012, denying the Urgent Motion to Quash Search Warrant dated 24 September 2012, and (2) Order[3] dated 3 June 2013, denying the Motion for Reconsideration dated 26 December 2012, of the Regional Trial Court (RTC) of Quezon City, Branch 102. The Orders issued by the RTC pertain to Search Warrant No. 4811 (12)[4] for violation of Article 172 (2) of the Revised Penal Code or the crime of falsification by private individuals and use of falsified documents.

The Facts

In a letter dated 6 August 2012, the United States Office of Inspector General, through Special Agent Daniel Altman, sought the assistance of the National Bureau of Investigation (NBI) to investigate alleged financial fraud committed by Visayan Forum Foundation, Inc. (Visayan Forum), a non-stock, non-profit corporation, against the United States Agency for International Development (USAID). Visayan Forum was then receiving funding from USAID which suspected that Visayan Forum was fabricating documents and official receipts for purchase of goods and services to justify expenses and advances covered by USAID funding.

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[1] Under Rule 45 of the Rules of Court.

[2] *Rollo*, pp. 47-50. Penned by Presiding Judge Ma. Lourdes A. Giron.

[3] *Id.* at 51-54.

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

On 29 August 2012, two NBI Agents, Atty. Dennis R. Villasfer and Atty. Erickson Donn R. Mercado, entered the premises of Visayan Forum with principal address at No. 18, 12th Avenue, Brgy. Socorro, Cubao, Quezon City. The NBI Agents represented themselves to be part of the audit team of B.F. Medina and Company, an independent external audit firm accredited by USAID and engaged by Visayan Forum to conduct an audit of its USAID funds. After gaining entry, the NBI Agents went through boxes, sifted through documents and photocopied some documents and receipts.

On 31 August 2012, the NBI Agents, under the authorization of the NBI Deputy Director for Special Investigation Service, jointly applied for a search warrant with the RTC of Quezon City, Branch 98. The NBI Agents cited violation of Article 172 (2) of the Revised Penal Code[5] and alleged that petitioners Maria Cecilia Oebanda (Oebanda), the Executive Director of Visayan Forum, and/or the occupants and employees of Visayan Forum are in possession or have in their control falsified private documents which were used and are being used to defraud the donors of USAID, to its damage and prejudice.

On the same date, Judge Evelyn Corpus-Cabochan (Judge Cabochan), the Presiding Judge of RTC of Quezon City, Branch 98, conducted a hearing on the application for search

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[5] Art. 172. *Falsification by private individual and use of falsified documents.* — The penalty of *prision correccional* in its medium and maximum periods and a fine of not more than ₱5,000 shall be imposed upon:

1. Any private individual who shall commit any of the falsifications enumerated in the next preceding article in any public or official document or letter of exchange or any other kind of commercial document; and

2. Any person who, to the damage of a third party, or with the intent to cause such damage, shall in any private document commit any of the acts of falsification enumerated in the next preceding article.

Any person who shall knowingly introduce in evidence in any judicial proceeding or to the damage of another or who, with the intent to cause such damage, shall use any of the false documents embraced in the next preceding article, or in any of the foregoing subdivisions of this article, shall be punished by the penalty next lower in degree.

warrant. Plaintiff People of the Philippines presented the following witnesses: (1) Atty. Dennis R. Villasfer, NBI Agent, Anti-Graft Division; (2) Atty. Erickson Donn R. Mercado, NBI Agent, Anti-Graft Division; (3) Maria Analie L. Villacorte (Villacorte), a former bookkeeper of Visayan Forum; and (4) Celestina M. Aguilar (Aguilar), an auditor from B.F. Medina and Company.

After Judge Cabochan personally examined the applicants, the two NBI Agents, and their witnesses, and was satisfied of the existence of facts upon which the application was based, Judge Cabochan issued Search Warrant No. 4811 (12) against Visayan Forum. The relevant portion of the warrant states:

> You are hereby commanded to make an immediate search in the day time of the premises above-described and forthwith seize and take possession of the following personal property:
>
> a) Following Books of Accounts and records covering periods from 2005-2011: General Ledger, Subsidiary Ledger on Advances from Employees, Bank Statements, Reconciliation Statements, Cash Disbursement Books, Check Vouchers, Journal Vouchers, Daily Time Records, Service Contract of all Employees, Service Contracts of all Contractors billed to the USAID Port Project, Fund Accountability Statements;
>
> b) Desktops and Laptops of the Finance Manager, Finance Officer, Bookkeeper and Administration Officer;
>
> c) Unused pre-printed Official Receipts, Official Receipts and Petty Cash Vouchers which can be bought from bookstore, VFFI Cash Vouchers and Stationeries.
>
> and bring said property to the undersigned to be dealt with as the law directs.
>
> This Search Warrant should be valid for ten (10) days from date of issuance.[6]

In the afternoon of 31 August 2012, the NBI implemented the search warrant against Visayan Forum and seized more than

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[6] *Rollo,* p. 56.

30 boxes of documents, as well as the computers of the finance manager, finance officer, and administration officer.

On 24 September 2012, petitioners filed an Urgent Motion[7] to Quash the Search Warrant on the ground of lack of probable cause to issue the search warrant.

In an Order dated 19 November 2012, Presiding Judge Ma. Lourdes A. Giron of the RTC of Quezon City, Branch 102, denied the motion. Judge Cabochan of RTC of Quezon City, Branch 98, who originally issued the search warrant, inhibited herself from the case.

On 26 December 2012, petitioners filed a motion for reconsideration. This was denied in an Order dated 3 June 2013.

Hence, this petition.

The Issue

The main issue is whether the RTC committed reversible error in finding that probable cause exists to issue Search Warrant No. 4811 (12).

The Ruling of the Court

The petition lacks merit.

At the outset, this petition was filed under Rule 45 of the Rules of Court which is limited to questions of law. For a question to be one of law, it must not involve an examination of the probative value of the evidence presented by the litigants or any of them.

In *Microsoft Corp. v. Maxicorp, Inc.*,[8] we held that the pivotal issue of whether there was probable cause to issue the search warrant is a question of fact. In the present case, the resolution of this issue would require this Court to inquire into the probative value of the evidence presented before the RTC. Petitioners

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[7] *Id.* at 57-68.

[8] 481 Phil. 550 (2004).

have raised an argument that requires us to make an examination of the transcript of stenographic notes taken during the search warrant proceedings. This is exactly the situation which Section 1, Rule 45 of the Rules of Court prohibits by requiring the petition to raise only questions of law.

Because this Court is not a trier of facts, a re-examination of factual findings cannot be done through a petition for review on certiorari under Rule 45 of the Rules of Court. This Court is not duty-bound to analyze and weigh again the evidence considered in the RTC.[9] Further, this case does not fall under any of the exceptions[10] laid down in the Rules.

However, in order to put *finis* to this case, we will discuss and go through the issues submitted by petitioners.

On whether the judge asked probing and exhaustive questions

Petitioners submit that the judge who issued the search warrant did not sufficiently ask probing, exhaustive, and extensive questions. Petitioners insist that the judge must not simply rehash the contents of the affidavits but must make her own extensive inquiry on the intent and justification of the application.

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[9] *Diokno v. Cacdac*, 553 Phil. 405 (2007).

[10] See *Uy v. Villanueva*, 553 Phil. 69 (2007).

Rule 45 of the Rules of Court provides that only questions of law shall be raised in an appeal by *certiorari* before this Court. This rule, however, admits of certain exceptions: (1) when the findings are grounded entirely on speculations, surmises, or conjectures; (2) when the inference made is manifestly mistaken, absurd, or impossible; (3) when there is a grave abuse of discretion; (4) when the judgment is based on misappreciation of facts; (5) when the findings of fact are conflicting; (6) when in making its findings, the same are contrary to the admissions of both appellant and appellee; (7) when the findings are contrary to those of the trial court; (8) when the findings are conclusions without citation of specific evidence on which they are based; (9) when the facts set forth in the petition as well as in the petitioner's main and reply briefs are not disputed by the respondent; and (10) when the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record.

In an application for search warrant, the mandate of the judge is for him to conduct a full and searching examination of the complainant and the witnesses he may produce. The searching questions propounded to the applicant and the witnesses must depend on a large extent upon the discretion of the judge. Although there is no hard-and-fast rule as to how a judge may conduct his examination, it is axiomatic that the said examination must be probing and exhaustive and not merely routinary, general, peripheral or perfunctory. He must make his own inquiry on the intent and factual and legal justifications for a search warrant. The questions should not merely be repetitious of the averments stated in the affidavits/deposition of the applicant and the witnesses.[11]

In the present case, the Transcript of Stenographic Notes,[12] comprised of 72 pages which was taken during the hearing, shows that Judge Cabochan extensively interrogated the two NBI Agents who applied for the search warrant. By representing themselves to be part of the audit team of B.F. Medina and Company, the two NBI Agents were able to freely enter and move around Visayan Forum's premises. There, the NBI Agents were able to sufficiently observe the layout of the office buildings, the location of relevant documents and equipment, and the movement of the employees. Most importantly, the NBI Agents were able to distinctly describe the alleged wrongful acts that Visayan Forum committed and was committing at that time. The relevant portions of NBI Agent Villasfer's testimony state:

Atty. Villasfer: Your Honor, this document is the Joint Application for Search Warrant which I executed together with agent Atty. Erickson Donn R. Mercado. Your Honor, last August 29, 2012 at around 10:00 o'clock in the morning we conducted a Surveillance together with the auditors from BF Medina. Atty. Erickson Mercado and I posed as one of the staff of the auditing firm and went to the subject area and we acted as auditors and we personally observed the documents and the rooms in the buildings and we saw the other documents and unused receipts fabricated by the VFFI, Your Honor.

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[11] *People v. De los Reyes*, 484 Phil. 271 (2004).

[12] *Rollo*, pp. 86-157.

x x x x x x x x x

Court: When you went to the premises which you wanted to be searched at No. 18 12th Avenue, Brgy. Socorro, Cubao, Quezon City, what have you seen or what have you observed?

Atty. Villasfer: Your Honor, when we conducted the auditing, we saw from the documents presented to us located at the building, at the back of the compound because there are two (2) buildings, Your Honor. **At the ground floor, we saw the altered documents. These are receipts being altered and fabricated for purposes of their audit being conducted by the B.F. Medina and Company.** Furthermore, we went there to verify the information given by the witnesses.

x x x x x x x x x

Court: What other things have you seen when you went there at the subject premises?

Atty. Villasfer: Official Receipts, Your Honor, Books of Account and records covering period from 2005 to 2011; General Ledger, Subsidiary Ledger on Advances from Employees, Bank Statements, Reconciliation Statements, Cash Disbursement Books, Cash Vouchers, Journal Vouchers, Daily Time Records, Service Contract of all Employees, Service Contracts of all Contractors billed to the USAID Port Project, Fund Accountability Statements, Desktops and Laptops of the Finance Manager, Finance Officer, Bookkeepers and Administrative Officer, unused pre-printed Official Receipts, Official Receipts and Petty Cash Vouchers which can be bought from bookstores, VFFI Cash Vouchers and Stationeries, Your Honor.

Court: Earlier, you said that you have access to the folders?

Atty. Villasfer: Yes, Your Honor.

Court: Please clarify. Were you able to really examine one by one all these things, that's why you were able to identify?

Atty. Villasfer: Yes, Your Honor. **We opened the boxes and examined the folders, and we personally verified and [saw] the Official Receipts, altered documents are there, Your Honor.**[13] (Emphasis supplied)

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[13] *Id.* at 90, 92-93, 95-96.

The other applicant, NBI Agent Mercado, corroborated NBI Agent Villasfer's testimony and explained what he had observed from the surveillance. The relevant portions of his testimony provide:

x x x x x x x x x

Court: Earlier you heard your co-applicant Atty. Villasfer testified, what can you say about his testimony?

Atty. Mercado: Yes, Your Honor, I confirmed the truthfulness of the statements being made by my co-applicant and in addition, Your Honor, in the course of our surveillance and investigation, we also have a chance to photocopy these receipts, these documents from VFFI and we were able also to make a sketch of the place, particularly Agent Villasfer together with our one witness, they were able to go to the second, third floors of both buildings. In our application, we have the attached sketch of the building, Your Honor. And, in addition, Your Honor, I also observed the demeanor of the people there, elusive/evasive because we posed as members or staff of the auditing company, we can freely loiter around without being detected that we are NBI Agents. We are aware that the people there will not question us considering that they are familiar with new faces since the auditors bring with them staff, their OJTs when they go there. So in that case, we can freely access all possible rooms where these documents subject of this Application for Search Warrant are kept.[14]

The records also show that the NBI Agents' two witnesses, Villacorte and Aguilar, submitted their respective affidavits and were subjected to the same probing questioning by the trial judge. The testimony of Villacorte states:

x x x x x x x x x

Court: Do you affirm and confirm that you have voluntarily executed your Affidavit without fear or pressure from anyone?

Ms. Villacorte: Yes, Your Honor.

Court: Now, you tell me how did you become a witness here?

Ms. Villacorte: Because I do not want to become a part of the crime because I might get involve, Your Honor.

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[14] *Id.* at 100-101.

Court: Why, what did you do?

Ms. Villacorte: I resigned from the Visayan Forum last July 15, 2012, Your Honor.

Court: How were the NBI Agents able to get in touch with you in order to utilize you as a witness now?

Ms. Villacorte: Because at the time of the audit, the auditors came to know me because I was still there, Your Honor.

Court: Why did they single you out, why not any other employee or employees?

Ms. Villacorte: Because I was the bookkeeper of USAID, Your Honor.

Court: How many bookkeepers are there in your office, if you know?

Ms. Villacorte: The bookkeepers are one of our project bases, Your Honor, and, I was the one handling the USAID department, Your Honor.

x x x x x x x x x

Court: x x x. Those pre-printed receipts the applicants want now to be seized, where are those said receipts?

Ms. Villacorte: In the locker, Your Honor.

Court: You are sure about that?

Ms. Villacorte: We have not used it yet and the[y] were left, and that is what they will use just in case there were remaining unliquidated accounts, Your Honor.

Court: What you did was you used those booklets to cover for the other expenses of the VFFI?

Ms. Villacorte: Yes, Your Honor.

x x x x x x x x x

Court: And where are those unused receipts?

Ms. Villacorte: Before the auditors came, we placed those unused receipts in the boxes.

Court: Including those partially used receipts in a booklet?

Ms. Villacorte: Yes, Your Honor, x x x.

x x x x x x x x x

Court: As of the date of the application for the Search Warrant you were no longer connected with the VFFI?

Ms. Villacorte: Yes, Your Honor.

Court: By the way, all these documents stated by the other witness Ms. Aguilar regarding the things that were asked by Mrs. Oebanda about the pre-printed receipts, booklets, etcetera, pertaining to questions and answers numbers 23 to 27 of your Sinumpaang Salaysay quoted as follows:

"23. T: Bakit kayo ipinatawag ni Mrs. Oebanda kung natatandaan mo?

S: Sinabi nga po niya sa amin na may mga auditors na darating para i-audit ang USAID fund. Nagbigay po sya ng instruction na kailangan punuan ng mga resibo an[g] mga unliquidated na cash advances."

"24. T: Anong ibig kahulugan ng punuan ng resibo?

S: Ibig pong sabihin ay maghanap o gumawa po kami ng resibo at pagkatapos ay gagawa[n] din po namin ng liquidation report at iyon naman ang i-attach namin sa mga vouchers."

"25. T: Ginawa nyo ba naman ang inuutos ni Mrs. Oebanda?

S: Opo."

"26. T: Alam mo ba na ito ay mali?

S: Alam ko po na ito ay mali."

"27. T: Bakit ginawa mo pa din?

S: Dahil sa takot ko na ako po ay mawalan ng trabaho kapag hindi ako sumunod."

where are those documents as stated in your Sinumpaang Salaysay which you accomplished or fabricated upon the orders of Mrs. Oebanda?

Ms. Villacorte: Those were the documents we presented to the auditors, Your Honor.[15]

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[15] *Id.* at 114-115, 151-152, 155-157.

Aguilar, one of the auditors that was with the NBI Agents when Visayan Forum was audited, gave a more detailed picture of the fraud indicators which she had observed in the course of her audit of Visayan Forum. The relevant portions provide:

x x x x x x x x x

Court: Earlier, the two applicants here for Search Warrant stated that when they entered the premises to be searched, they said that they posed as auditors of your company?

Ms. Aguilar: Yes, Your Honor.

Court: And according to them, you Mrs. Aguilar were with them when they entered the premises, will you confirm that?

Ms. Aguilar: Yes, Your Honor. I confirm that and also my father, the managing partner of our firm was with us, Mr. Benjamin F. Medina.

Court: And also everything they have stated about the sketch of the building and that you are also very much aware of the set-up of that building one and building two?

Ms. Aguilar: Yes, Your Honor, but on that day, Atty. Dennis came with me to inspect the various floors of the two buildings. I just made an alibi that it's part of our audit procedures.

Court: And you also confirm the fact that based on the sketches that are attached now to the application for Search Warrant, will you confirm that it is also of your own personal knowledge that those properties listed in their application for Search Warrant under paragraph 2 sub-paragraphs (a), (b), and (c) were really found within the subject premises as shown from the marked sketches?

Ms. Aguilar: Yes, Your Honor.

Court: The reason for this is because you were one of the companions of Atty. Villasfer when you went to the subject premises?

Ms. Aguilar: Yes, Your Honor. **And I was also the one who showed to both of them the altered receipts and invoices and also the other documents relating to our audit findings.**

x x x x x x x x x

Court: Those things were not covered by your Affidavit, Mrs. Aguilar. Do you confirm now what Atty. Villasfer manifested a while ago?

Ms. Aguilar: Yes, Your Honor. **Actually, it is included in my Affidavit as one of our audit findings because one of our audit findings [is] alterations of receipts and invoices.** I think it is number ten (10) or eleven (11), Your Honor. **And I showed to the applicants some of the photocopied vouchers that we notice[d] that were altered** because, Your Honor, this organization, we had the entrance conference [i]n January of this year. Based on routine audits, they will be given two weeks to prepare for us, but they allow[ed] us to start the audit only in April. So there were delays in the audit, Your Honor.

Court: It was supposed to be [i]n January 2012 but you were allowed only when?

Ms. Aguilar: April 18, 2012, Your Honor, to be exact. On that date, on April 18, there were still some missing documents that we already requested [from] them during our entrance conference, Your Honor. **And, we observed that while we were conducting our audit field work, they were also doing manufacturing of documents. We clearly observed many documents that were altered during our audit and I have some examples of photocop[ied] documents.** x x x. Your Honor, this NGO, they received grants from USAID, not only from USAID, but from other donor agencies, twelve to be exact including the USAID. What they do is, they received grants and these grants are supposed to help traffic victims which they have in their different regional offices. However, we validated the authenticity of the number of the actual beneficiaries from third party confirmations. **We need confirmation with DSWD and we noted that based on their record and their reports to the DSWD, there were various inconsistencies.** Many, I just included maybe two (2) of the inconsistencies in the number. And also we validated with the USAID. **The report that they submitted to the USAID, there were also inconsistencies.** x x x. **So, as auditors, these are indicators of fraud.** x x x.

Court: What were these documents which you discovered: the books of Books of Accounts, Ledgers, etcetera, as listed in the application?

Ms. Aguilar: Yes, Your Honor.

Court: Will you explain further?

Ms. Aguilar: The thirty-two boxes for the check vouchers and journal vouchers were there, Your Honor[.] [W]hen we went back on Wednesday, August 29, 2012, [h]owever, there [were] five (5) to six (6) boxes which [were] missing already.

Court: Missing?

Ms. Aguilar: Yes, Your Honor. And, these boxes we initially audited them during our first month of field work. So what we did, I am curious as an auditor where those documents are. x x x.

Court: Which are already missing?

Ms. Aguilar: Yes, Your Honor. And, I have also suspicions, Your Honor, of pre-printed booklets because there are various pre-printed booklets of original receipts which the company used, they are non-existing anymore. They just used the company name and the address and they had it printed by the printing press, their favored printing press and they used it as a sort of justification for their expenditures. But, as auditors, we are trying to se[e] whether they are valid or not. So, I am also suspecting that [they are] hiding these documents.

Court: Why did you have suspicions?

Ms. Aguilar: Because, of course, if they had it pre-printed, they wouldn't show it to us.

Court: What about those other documents, which you suspected were already missing at the time when you went back to make an audit of these accounts or the existing ledgers?

Ms. Aguilar: Because during our field work sometime in June, when we audit, there are schedules from 10:00 to 5:00. We come home then we go there the following day, we noticed that there were ballpens left on a table and **when we check[ed] the vouchers, most of them they tampered [them] already or they removed something and they changed [them] to [other] document[s]**. So what we did, we taped the boxes and I signed them to seal them. Those were audited already, that's what we did. Then I counted it and I knew that five to six boxes were missing because initially, [there were] thirty-eight (38) boxes. But, thirty-two (32) [were] only left when we came back that June.

x x x x x x x x x

Court: Well, that was just your suspicion.

Ms. Aguilar: Yes, just like what I've said, Your Honor, **these are indicators of fraud and indicators of their intentions to conceal or destroy all incriminating evidence.**

x x x x x x x x x

Ms. Aguilar: x x x. And also we want to secure the computers because the data that [were] presented to us, attached to [these] documents inside the boxes, they are computer printed.

Court: That's why you wanted also to get all those computers and the laptops.

Ms. Aguilar: Yes, Your Honor **because during the course of our audit, they changed the figures and dates and sometimes the names of the employees if it is cash advance**.[16] (Emphasis supplied)

Clearly, the records show that Judge Cabochan personally examined NBI Agents Villasfer and Mercado, the applicants for the search warrant, as well as their witnesses, Villacorte and Aguilar. The interrogations conducted by the trial judge showed that the applicants and their witnesses had personal knowledge of the offense petitioners committed or were then committing. The judge properly asked how the applicants came to know of the falsification, where it was committed, what was involved, the extent of their participation, and what they have seen and observed inside Visayan Forum's premises. We believe that the questions propounded on them were searching and probing. The trial judge made an independent assessment of the evidence submitted and concluded that the evidence adduced and the testimonies of the witnesses support a finding of probable cause which warranted the issuance of a search warrant for violation of Article 172 (2) of the Revised Penal Code.

Absent a showing to the contrary, it is presumed that a judicial function has been regularly performed.[17] The judge has the prerogative to give his own judgment on the application of the

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[16] *Id.* at 124-126, 129-135, 137, 141.

[17] Section 3, Rule 131 of the Rules of Court:

Section 3. *Disputable presumptions*. — The following presumptions are satisfactory if uncontradicted, but may be contradicted and overcome by other evidence:

x x x x x x x x x

(m) That official duty has been regularly performed;

x x x x x x x x x

search warrant by his own evaluation of the evidence presented before him. We cannot substitute our own judgment to that of the judge.

On whether there was probable cause to issue the search warrant

A search warrant is an order in writing issued in the name of the People of the Philippines, signed by a judge and directed to a peace officer, commanding him to search for personal property described therein and bring it before the court.[18] The relevant provisions on the issuance of a search warrant for personal property, as governed by Rule 126 of the Rules of Court, state:

> Section 4. *Requisites for issuing search warrant*. — A search warrant shall not issue except upon probable cause in connection with one specific offense 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 things to be seized which may be anywhere in the Philippines.
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> Section 5. *Examination of complainant; record*. — The judge must, before issuing the warrant, personally examine in the form of searching questions and answers, in writing and under oath, the complainant and the witnesses he may produce on facts personally known to them and attach to the record their sworn statements, together with the affidavits submitted.
>
> Section 6. *Issuance and form of search warrant*. — If the judge is satisfied of the existence of facts upon which the application is based or that there is probable cause to believe that they exist, he shall issue the warrant, which must be substantially in the form prescribed by these Rules.

To paraphrase this rule, a search warrant may be issued only if there is probable cause in connection with a specific offense alleged in an application based on the personal knowledge of the applicant and his witnesses. This is the substantive

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[18] Section 1, Rule 126 of the Rules of Court.

requirement for the issuance of a search warrant. Procedurally, the determination of probable cause is a personal task of the judge before whom the application for search warrant is filed, as he has to examine the applicant and his or her witnesses in the form of "searching questions and answers" in writing and under oath. The warrant, if issued, must particularly describe the place to be searched and the things to be seized.[19]

In the issuance of a search warrant, probable cause requires such facts and circumstances which would lead a reasonably discrete and prudent man to believe that an offense has been committed and that the objects sought in connection with the offense are in the place sought to be searched.[20] In *People v. Punzalan*,[21] we held that there is no exact test for the determination of probable cause in the issuance of search warrants. It is a matter wholly dependent on the finding of trial judges in the process of exercising their judicial function.

Here, the records show that the applicants for the search warrant and their witnesses were able to sufficiently convince the judge of the existence of probable cause based on their own personal knowledge, or what they have actually seen and observed, in Visayan Forum's premises. The NBI Agents related to the RTC how they entered Visayan Forum, in the guise of representing themselves as part of the audit team of B.F. Medina and Company. The NBI Agents personally saw that Visayan Forum's employees and occupants altered and fabricated documents and official receipts covered by USAID funding. They even photocopied some documents and receipts proving such fabrication. Also, the NBI Agents were able to particularly describe Visayan Forum's premises, exactly locating the place to be searched with sketches of the buildings and various floors and rooms. Further, they described in great detail the things that were seized — documents, receipts, books of account and records, and computers used by Visayan Forum's employees.

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[19] *Coca-Cola Bottlers, Phils., Inc. v. Gomez*, 591 Phil. 642 (2008).

[20] *Santos v. Pryce Gases, Inc.*, 563 Phil. 781 (2007).

[21] G.R. No. 199087, 11 November 2015.

Likewise, the NBI Agents' witnesses, Villacorte and Aguilar, were able to substantiate the statements and allegations of the NBI Agents by testifying on what they have personally seen and experienced while working in Visayan Forum, and how they came to know that fraud was being perpetrated by the company. Thus, the applicants' and their witnesses' testimonies, together with the affidavits they presented, are adequate proof to establish that there exists probable cause to issue the search warrant for violation of Article 172 (2) of the Revised Penal Code.

In *Century Chinese Medicine Co. v. People*,[22] we held that the determination of probable cause does not call for the application of rules and standards of proof that a judgment of conviction requires after trial on the merits. As implied by the words themselves, "probable cause" is concerned with probability, not absolute or even moral certainty. The prosecution need not present at this stage proof beyond reasonable doubt.

When a finding of probable cause for the issuance of a search warrant is made by a trial judge, the finding is accorded respect by the reviewing courts. Here, in issuing the search warrant, Judge Cabochan sufficiently complied with the requirements set by the Constitution[23] and the Rules of Court.[24] Therefore, we find nothing irregular in Judge Cabochan's issuance of the search warrant. Judge Cabochan complied with all the procedural and substantive requirements for the issuance of a search warrant and we are bound by her finding of probable cause for issuing Search Warrant No. 4811 (12).

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[22] 720 Phil. 795 (2013).

[23] Section 2, Article III Bill of Rights states:

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.

[24] Section 4, Rule 126 of the Rules of Court.

WHEREFORE, the petition is **DENIED**. The Orders dated 19 November 2012 and 3 June 2013 of the Regional Trial Court of Quezon City, Branch 102 are **AFFIRMED**. The validity of Search Warrant No. 4811 (12) is **SUSTAINED**.

SO ORDERED.

Del Castillo, Mendoza, and *Leonen, JJ.*, concur.

Brion, J., on official leave.

SECOND DIVISION

[G.R. No. 208146. June 8, 2016]

VIRGINIA DIO, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES and TIMOTHY DESMOND,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; MOTION TO QUASH; IF THE MOTION TO QUASH IS BASED ON DEFECTIVE INFORMATION CURABLE BY AMENDMENT, THE PROSECUTION MUST BE GIVEN THE OPPORTUNITY TO AMEND IT.— If a motion to quash is based on a defect in the information that can be cured by amendment, the court shall order that an amendment be made. Rule 117, Section 4 of the Rules of Court states: SEC. 4. Amendment of complaint or information. — If the motion to quash is based on an alleged defect of the complaint or information which can be cured by amendment, the court shall order that an amendment be made. x x x This Court has held that failure to provide the prosecution with the opportunity to amend is an arbitrary exercise of power. In *People v. Sandiganbayan*: When a motion to quash is filed challenging the validity and sufficiency of an Information, and the defect may be cured by amendment, courts must deny the motion to

quash and order the prosecution to file an amended Information. x x x In this case, petitioner Virginia Dio has not yet been arraigned; thus, Rule 117, Section 4 of the Rules of Court applies. If the information is defective, the prosecution must be given the opportunity to amend it before it may be quashed.

2. ID.; ID.; ID.; FOR AN INFORMATION TO BE QUASHED BASED ON THE PROSECUTOR'S LACK OF AUTHORITY TO FILE IT, THE LACK OF AUTHORITY MUST BE EVIDENT ON THE FACE OF THE INFORMATION.— [F]or quashal of an information to be sustained, the defect of the information must be evident on its face. In *Santos v. People*: First, a motion to quash should be based on a defect in the information which is evident on its face. x x x For an information to be quashed based on the prosecutor's lack of authority to file it, the lack of the authority must be evident on the face of the information. The Informations here do not allege that the venue of the offense was other than Morong, Bataan. Thus, it is not apparent on the face of the Informations that the prosecutor did not have the authority to file them. The proper remedy is to give the prosecution the opportunity to amend the Informations. If the proper venue appears not to be Morong, Bataan after the Informations have been amended, then the trial court may dismiss the case due to lack of jurisdiction, as well as lack of authority of the prosecutor to file the information.

3. CRIMINAL LAW; REVISED PENAL CODE *VIS-À-VIS* ANTI-CYBERCRIME LAW (RA 10175); LIBEL; WHETHER SENDING EMAILS TO PUBLIC OFFICIALS IS SUFFICIENTLY "PUBLIC" AS REQUIRED BY SAID LAWS IS A MATTER OF DEFENSE THAT SHOULD BE RAISED DURING TRIAL; GRIEVANCE CHANNELED THROUGH PUBLIC AUTHORITIES PARTAKES OF A DEGREE OF PROTECTED FREEDOM OF EXPRESSION AND THE SCOPE AND EXTENT OF THAT PROTECTION CANNOT BE GROUNDED IN ABSTRACTION.— Whether emailing or, as in this case, sending emails to the persons named in the Informations — who appear to be officials of Subic Bay Metropolitan Authority where Subic Bay Marine Exploratorium is found — is sufficiently "public," as required by Articles 353 and 355 of the Revised Penal Code and by the Anti-Cybercrime Law, is a matter of defense that should be properly raised during

> trial. Passionate and emphatic grievance, channelled through proper public authorities, partakes of a degree of protected freedom of expression. Certainly, if we remain faithful to the dictum that public office is a public trust, some leeway should be given to the public to express disgust. The scope and extent of that protection cannot be grounded in abstractions. The facts of this case need to be proven by evidence; otherwise, this Court exercises barren abstractions that may wander into situations only imagined, not real.

APPEARANCES OF COUNSEL

Ponce Enrile Reyes & Manalastas for petitioner.
Office of the Solicitor General for public respondent.

D E C I S I O N

LEONEN, *J.*:

When a motion to quash an information is based on a defect that may be cured by amendment, courts must provide the prosecution with the opportunity to amend the information.

This resolves a Petition for Review on Certiorari[1] assailing the Court of Appeals Decision[2] dated January 8, 2013 and Resolution[3] dated July 10, 2013. The Court of Appeals reversed and set aside the Regional Trial Court Order that quashed the Informations charging petitioner Virginia Dio (Dio) with libel because these Informations failed to allege publication.[4]

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[1] *Rollo*, pp. 3-22. The Petition was filed under Rule 45 of the Rules of Court.

[2] *Id.* at 24-32. The Decision, docketed as CA-G.R. CR No. 32514, was penned by Associate Justice Amelita G. Tolentino and concurred in by Associate Justices Ramon R. Garcia and Danton Q. Bueser of the Fourth Division, Court of Appeals, Manila.

[3] *Id.* at 34-35. The Resolution was penned by Associate Justice Amelita G. Tolentino and concurred in by Associate Justices Ramon R. Garcia and Danton Q. Bueser of the Fourth Division, Court of Appeals, Manila.

[4] *Id.* at 31.

Private respondent Timothy Desmond (Desmond) is the Chair and Chief Executive Officer of Subic Bay Marine Exploratorium, of which Dio is Treasurer and Member of the Board of Directors.[5]

On December 9, 2002, Desmond filed a complaint against Dio for libel.[6] Two (2) separate Informations, both dated February 26, 2003, were filed and docketed as Criminal Case Nos. 9108 and 9109.[7] The Information in Criminal Case No. 9108 reads:

> That on or about July 6, 2002 in Morong, Bataan, Philippines, and within the jurisdiction of this Honorable Court, the said accused with malicious intent to besmirch the honor, integrity and reputation of Timothy Desmond, Chairman and Chief Executive Office of Subic Bay Marine Exploratorium, did then and there willfully, unlawfully, and feloniously send electronic messages to the offended party and to other persons namely: Atty. Winston Ginez, John Corcoran, and Terry Nichoson which read as follows:
>
> 'NOW THAT WE ARE SET TO BUILD THE HOTEL SO THAT YOU COULD SURVIVED, (sic) YOU SHOULD STOP YOUR NONSENSE THREAT BECAUSE YOU COULD NOT EVEN FEED YOUR OWN SELF UNLESS WE PAY YOUR EXHORBITANT (sic) SALARY, HOUSE YOU ADN (sic) SUPPORT ALL YOUR PERSONAL NEEDS. YOU SHOULD BE ASHAMED IN DOING THIS. AS FAR AS WE ARE CONCERNED, YOU ARE NOTHING EXCEPT A PERSON WHO IS TRYING TO SURVIVED (sic) AT THE PRETEXT OF ENVIRONMENTAL AND ANIMAL PROTECTOR [sic]. YOU ARE PADI (sic) TO THE LAST CENTS ON ALL YOUR WORK IN THE WORK (sic). AT THE SAME TIME, YOU BLOATED THE PRICE OF EACH ANIMAL YOU BROUGHT TO THE PHILIPPINES from US$500,000.00 to US$750,000.00 each so that you could owned (sic) more shares that you should. Please look into this deeply.
>
> IF YOU INSISTS (sic) TO BE CALLED AN ENVIRONMENTAL AND ANIMAL PROTECTOR IN OUR COUNTRY, THEN YOU AND YOUR WIFE SHOULD STOP BLEEDING THE COMPANY WITH YOUR MONTHLY PAYROLL OF ALMOST ₱1 MILLION A MONTH.'

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[5] *Id.* at 24.

[6] *Id.*

[7] *Id.*

The above-quoted electronic message being defamatory or constituting an act causing or tending to cause dishonor, discredit or contempt against the person of the said Timothy Desmond, to the damage and prejudice of the said offended party.

CONTRARY TO LAW.[8]

The Information in Criminal Case No. 9109 reads:

That on or about July 13, 2002 in Morong, Bataan, Philippines, and within the jurisdiction of this Honorable Court, the said accused, with malicious intent to besmirch the honor, integrity and reputation of Timothy Desmond, Chairman and Chief Executive Office of Subic Bay Marine Exploratorium, did then and there willfully, unlawfully, and feloniously send electronic messages to the [sic] Atty. Winston Ginez and Fatima Paglicawan, to the offended party, Timothy Desmond and to other persons namely: Hon. Felicito Payumo, SBMA Chariman [sic], Terry Nichoson, John Corcoran, and Gail Laule which read as follows:

'Dear Winston and Fatima:

UNDER THE LEADERSHIP OF TIM DESMOND AS CHAIRMAN AND CHIEF EXECUTIVE OFFICER OF SBME, AS OF THIS DATE THE COMPANY HAD INCURRED A LOSS OF MORE THAN ONE HUNDRED MILLION. A BALANCE SHEET SUBMITTED TODAY BY THEIR ACCOUNTANT JULIET REFLECT AND (sic) ASSETS OF MORE THAN THREE HUNDRED MILLION PESOS, 50% OF WHICH IS OVERVALUED AND NON-EXISTENT. TIM DESMOND AND FAMILY HAD ACCUMULATED A (sic) SHARES OF MORE THAN 70% OF THE RECORDED PAID UP CAPITAL BY OVERVALUING OF THE ASSETS CONTRIBUTION, PAYMENT TO THEIR OWN COMPANY IN THE USA, ETC. AT THE SAME TIME, TIM DESMOND AND FAMILY BLEED THE COMPANY FROM DATE OF INCORPORATION TO PRESENT FOR AN AVERAGE OF ONE MILLION PER MONTH FOR THEIR PERSONAL GAIN, LIKE SALARY, CAR, ET, [sic] ETC.'

The above-quoted electronic message being defamatory or constituting an act causing or tending to cause dishonor, discredit or

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[8] *Id.* at 28.

contempt against the person of the said Timothy Desmond, to the damage and prejudice of the said offended party.

CONTRARY TO LAW.[9]

On April 22, 2003, Dio filed a Petition to suspend the criminal proceedings,[10] but it was denied in the Order dated February 6, 2004.[11]

Dio moved for reconsideration of the February 6, 2004 Order.[12] She also moved to quash the Informations, arguing that the "facts charged do not constitute an offense."[13] In its Order[14] dated July 13, 2004, the trial court denied both Motions. The dispositive portion of the Order reads:

> Premises considered, the Motion for Reconsideration of the Order dated February 6, 2004 and the Motion to Quash, both filed for accused, as well as the Motion for Issuance of a Hold Departure Order filed by the Prosecution, are hereby DENIED.
>
> Arraignment will proceed as previously set on July 20, 2005 at 9:00 a.m.
>
> SO ORDERED.[15]

Dio moved for partial reconsideration of the July 13, 2004 Order, but the Motion was denied in the trial court's Order dated September 13, 2005.[16]

On October 11, 2005, Dio filed a Motion for leave of court to file a second motion for reconsideration.[17] She also filed an

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

[10] *Id.* at 25.

[11] *Id.*

[12] *Id.*

[13] *Id.*

[14] *Id.*

[15] *Id.*

[16] *Id.*

[17] *Id.*

Omnibus Motion to quash the Informations for failure to allege publication and lack of jurisdiction, and for second reconsideration with leave of court.[18]

The trial court's Order dated February 7, 2006 denied both Motions and scheduled Dio's arraignment on March 9, 2006.[19] Dio moved for partial reconsideration.[20]

The trial court granted Dio's Motion for Partial Reconsideration in its February 12, 2009 Order,[21] the dispositive portion of which reads:

> WHEREFORE, the Motion for Partial Reconsideration filed by the accused in Criminal Cases (sic) Nos. 9108 and 9109, on the ground that the Informations in the said cases fail (sic) to allege publication, is GRANTED and, accordingly, the Informations filed against the accused are thereby QUASHED and DISMISSED.
>
> No finding as to costs.
>
> SO ORDERED.[22]

After filing a Notice of Appeal on March 5, 2009,[23] Desmond raised before the Court of Appeals the following issues:

I

WHETHER OR NOT THE LOWER COURT ERRED IN UPHOLDING THE ACCUSED'S ARGUMENT THAT THE PRESENT CHARGES SHOULD BE QUASHED FOR FAILURE OF THE INFORMATIONS TO ALLEGE PUBLICATION.

II

WHETHER OR NOT THE LOWER COURT ERRED IN DISMISSING THE CASE AND QUASHING THE INFORMATIONS

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[18] *Id.*

[19] *Id.*

[20] *Id.*

[21] *Id.* at 26.

[22] *Id.*

[23] *Id.*

WITHOUT GIVING THE PROSECUTOR THE OPPORTUNITY TO AMEND THE INFORMATIONS.[24]

In its January 8, 2013 Decision, the Court of Appeals sustained that the Informations did not substantially constitute the offense charged.[25] It found that the Informations did not contain any allegation that the emails allegedly sent by Dio to Desmond had been accessed.[26] However, it found that the trial court erred in quashing the Informations without giving the prosecution a chance to amend them pursuant to Rule 117, Section 4 of the Rules of Court:

> Although we agree with the trial court that the facts alleged in the Informations do not substantially constitute the offense charged, the most prudent thing to do for the trial court is to give the prosecution the opportunity to amend it and make the necessary corrections. Indeed, an Information may be defective because the facts charged do not constitute an offense, however, the dismissal of the case will not necessarily follow. The Rules specifically require that the prosecution should be given a chance to correct the defect; the court can order the dismissal only upon the prosecution's failure to do so. The trial court's failure to provide the prosecution with this opportunity constitutes an arbitrary exercise of power.[27]

The dispositive portion reads:

> WHEREFORE, premises considered, the appeal is GRANTED. The order of the Regional Trial Court of Balanga City, Branch 3 dated February 12, 2009 in Criminal Case Nos. 9108 and 9109 is REVERSED AND SET ASIDE. The case is remanded to the trial court and the Public Prosecutor of Balanga City is hereby DIRECTED to amend the Informations.
>
> SO ORDERED.[28]

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

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

[26] *Id.* at 29.

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

[28] *Id.* at 31.

Dio moved for reconsideration,[29] but the Court of Appeals denied the Motion in its July 10, 2013 Resolution.[30]

Hence, this Petition was filed.

Desmond and the Office of the Solicitor General filed their Comments,[31] to which Dio filed her Reply.[32] On April 2, 2014, this Court gave due course to the Petition and required the parties to submit their respective memoranda.[33]

The Office of the Solicitor General filed on June 11, 2014 a Manifestation and Motion[34] adopting its Comment. Desmond and Dio filed their memoranda on June 19, 2014[35] and July 10, 2014,[36] respectively.

Dio stresses that "venue is jurisdictional in criminal cases."[37] Considering that libel is limited as to the venue of the case, failure to allege "where the libelous article was printed and first published"[38] or "where the offended party actually resided at the time of the commission of the offense"[39] is a jurisdictional defect. She argues that jurisdictional defects in an Information are not curable by amendment, even before arraignment. To support this position, she cites *Agustin v. Pamintuan*:[40]

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[29] *Id.* at 36-44.

[30] *Id.* at 34-35.

[31] *Id.* at 57-70, Desmond's Comment, and 76-87, Office of the Solicitor General's Comment.

[32] *Id.* at 90-97.

[33] *Id.* at 99.

[34] *Id.* at 100.

[35] *Id.* at 104-116.

[36] *Id.* at 130-151.

[37] *Id.* at 139.

[38] *Id.* at 140.

[39] *Id.*

[40] 505 Phil. 103 (2005) [Per *J.* Callejo, Sr., Second Division].

We do not agree with the ruling of the CA that the defects in the Informations are merely formal. Indeed, the absence of any allegations in the Informations that the offended party was actually residing in Baguio City, where the crimes charged were allegedly committed, is a substantial defect. Indeed, the amendments of the Informations to vest jurisdiction upon the court cannot be allowed.[41] (Citations omitted)

Dio also cites *Leviste v. Hon. Alameda*,[42] where this Court has stated that not all defects in an Information are curable by amendment prior to arraignment:

It must be clarified though that not all defects in an information are curable by amendment prior to entry of plea. An information which is void *ab initio* cannot be amended to obviate a ground for quashal. An amendment which operates to vest jurisdiction upon the trial court is likewise impermissible.[43] (Citations omitted)

Dio argues that the Informations were void as the prosecutor of Morong, Bataan had no authority to conduct the preliminary investigation of the offenses charged.[44] The complaint filed before the prosecutor did not allege that the emails were printed and first published in Morong Bataan, or that Desmond resided in Morong, Bataan at the time of the offense.[45] In the absence of these allegations, the prosecutor did not have the authority to conduct the preliminary investigation or to file the information.[46]

Dio further argues that publication, one of the elements of libel, was not present in the case. She asserts that emailing does not constitute publication under Article 355 of the Revised Penal Code. As there was no allegation in the Informations that the emails were received, accessed, and read by third persons

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[41] *Id.* at 113.

[42] 640 Phil. 620 (2010) [Per J. Carpio Morales, Third Division].

[43] *Id.* at 640.

[44] *Rollo*, pp. 15-16. Petition.

[45] *Id.*

[46] *Id.*

other than Desmond, there could be no publication.[47] Further, emails are not covered under Article 355 of the Revised Penal Code. Thus, at the time the allegedly libelous emails were sent, there was no law punishing this act.[48]

Finally, Dio argues that she sent the emails as private communication to the officers of the corporation, who were in the position to act on her grievances.[49] The emails were sent in good faith, with justifiable ends, and in the performance of a legal duty.[50]

The primordial issue for resolution is whether an information's failure to establish venue is a defect that can be cured by amendment before arraignment.

The Petition is denied.

I

If a motion to quash is based on a defect in the information that can be cured by amendment, the court shall order that an amendment be made. Rule 117, Section 4 of the Rules of Court states:

> SEC. 4. Amendment of complaint or information. — If the motion to quash is based on an alleged defect of the complaint or information which can be cured by amendment, the court shall order that an amendment be made.
>
> If it is based on the ground that the facts charged do not constitute an offense, the prosecution shall be given by the court an opportunity to correct the defect by amendment. The motion shall be granted if the prosecution fails to make the amendment, or the complaint or information still suffers from the same defect despite the amendment.

This Court has held that failure to provide the prosecution with the opportunity to amend is an arbitrary exercise of

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[47] *Id.* at 147.

[48] *Id.* at 145.

[49] *Id.* at 147.

[50] *Id.*

power.[51] In *People v. Sandiganbayan*:[52]

> When a motion to quash is filed challenging the validity and sufficiency of an Information, and the defect may be cured by amendment, courts must deny the motion to quash and order the prosecution to file an amended Information. Generally, a defect pertaining to the failure of an Information to charge facts constituting an offense is one that may be corrected by an amendment. In such instances, courts are mandated not to automatically quash the Information; rather, it should grant the prosecution the opportunity to cure the defect through an amendment. This rule allows a case to proceed without undue delay. By allowing the defect to be cured by simple amendment, unnecessary appeals based on technical grounds, which only result to prolonging the proceedings, are avoided.
>
> More than this practical consideration, however, is the due process underpinnings of this rule. As explained by this Court in *People v. Andrade*, the State, just like any other litigant, is entitled to its day in court. Thus, a court's refusal to grant the prosecution the opportunity to amend an Information, where such right is expressly granted under the Rules of Court and affirmed time and again in a string of Supreme Court decisions, effectively curtails the State's right to due process.[53]

In this case, petitioner Virginia Dio has not yet been arraigned; thus, Rule 117, Section 4 of the Rules of Court applies. If the information is defective, the prosecution must be given the opportunity to amend it before it may be quashed.

Petitioner claims that Rule 117, Section 4 of the Rules of Court applies only to informations that can be cured by amendment. She argues that before a court orders that an

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[51] *Go v. Bangko Sentral ng Pilipinas*, 619 Phil. 306, 321 (2009) [Per *J.* Brion, Second Division].

[52] G.R. No. 160619, September 9, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/september2015/160619.pdf> [Per *J.* Jardeleza, Third Division].

[53] *Id.* at 10, citing *People v. Andrade*, G.R. No. 187000, November 24, 2014 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2014/november2014/187000.pdf> [Per *J.* Peralta, Third Division].

amendment be made, or otherwise gives the prosecution an opportunity to amend an information, it must first establish that the defective information can be cured by amendment.

Petitioner relies on *Agustin* to argue the proscription of an amendment of an information in order to vest jurisdiction in the court. This is misplaced.

In *Agustin*, the accused in the criminal case was already arraigned under a defective information that failed to establish venue.[54] The Court of Appeals held that the defect in the information was merely formal and, consequently, could be amended even after plea, with leave of court. Thus, this Court held:

> We do not agree with the ruling of the CA that the defects in the Informations are merely formal. Indeed, the absence of any allegations in the Informations that the offended party was actually residing in Baguio City, where the crimes charged were allegedly committed, is a substantial defect. Indeed, the amendments of the Informations to vest jurisdiction upon the court cannot be allowed.[55]

In turn, *Agustin* cited *Agbayani v. Sayo*.[56] However, *Agbayani* does not involve the amendment of a defective information before or after arraignment. Subsequent cases have cited *Agustin* as basis that amendment of an information to vest jurisdiction in the trial court is impermissible. Thus, in Leviste, this Court cited *Agustin* and stated that certain amendments are impermissible even before arraignment:

> It must be clarified though that not all defects in an information are curable by amendment prior to entry of plea. An information which is void *ab initio* cannot be amended to obviate a ground for quashal. An amendment which operates to vest jurisdiction upon the trial court is likewise impermissible.[57]

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[54] *Id.* at 112.

[55] *Id.* at 113.

[56] 178 Phil. 574 (1979) [Per *J.* Aquino, Second Division].

[57] *Id.* at 640.

It may appear that *Leviste* supports petitioner's contention that an amendment operating to vest jurisdiction in the trial court is impermissible. However, the statement in *Leviste was obiter dictum*. It cites only *Agustin*, which did not involve the amendment of an information *before arraignment*.

Aside from *obiter dictum* in jurisprudence, petitioner provides no legal basis to reverse the Court of Appeals' determination that the defective informations may be amended before arraignment. Although the cases petitioner cited involved defective informations that failed to establish the jurisdiction of the court over the libel charges, none involved the amendment of an information *before arraignment*. Thus, these cannot be controlling over the facts of this case.

II

A defect in the complaint filed before the fiscal is not a ground to quash an information. In *Sasot v. People*:[58]

> Section 3, Rule 117 of the 1985 Rules of Criminal Procedure, which was then in force at the time the alleged criminal acts were committed, enumerates the grounds for quashing an information, to wit:
>
> a) That the facts charged do not constitute an offense;
>
> b) That the court trying the case has no jurisdiction over the offense charged or the person of the accused;
>
> c) That the officer who filed the information had no authority to do so;
>
> d) That it does not conform substantially to the prescribed form;
>
> e) That more than one offense is charged except in those cases in which existing laws prescribe a single punishment for various offenses;
>
> f) That the criminal action or liability has been extinguished;
>
> g) That it contains averments which, if true, would constitute a legal excuse or justification; and

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[58] 500 Phil. 527 (2005) [Per *J.* Austria-Martinez, Second Division].

h) That the accused has been previously convicted or in jeopardy of being convicted, or acquitted of the offense charged.

Nowhere in the foregoing provision is there any mention of the defect in the complaint filed before the fiscal and the complainant's capacity to sue as grounds for a motion to quash.[59]

On the other hand, lack of authority to file an information is a proper ground. In *Cudia v. Court of Appeals*:[60]

With respect to the second requisite, however, it is plainly apparent that the City Prosecutor of Angeles City had no authority to file the first information, the offense having been committed in the Municipality of Mabalacat, which is beyond his jurisdiction. Presidential Decree No. 1275, in relation to Section 9 of the Administrative Code of 1987, pertinently provides that:

"Section 11. The provincial or the city fiscal shall:

. . . . . .

(b) Investigate and/or cause to be investigated *all charges of crimes, misdemeanors and violations of all penal laws and ordinances within their respective jurisdictions* and have the necessary information or complaint prepared or made against the persons accused. In the conduct of such investigations he or his assistants shall receive the sworn statements or take oral evidence of witnesses summoned by subpoena for the purpose.

. . . . . .

It is thus the Provincial Prosecutor of Pampanga, not the City Prosecutor, who should prepare informations for offenses committed within Pampanga but outside of Angeles City. An information, when required to be filed by a public prosecuting officer, cannot be filed by another. It must be exhibited or presented by the prosecuting attorney or someone authorized by law. If not, the court does not acquire jurisdiction.

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[59] *Id.* at 536.

[60] 348 Phil. 190 (1998) [Per *J.* Romero, Third Division].

Petitioner, however, insists that his failure to assert the lack of authority of the City Prosecutor in filing the information in question is deemed a waiver thereof. As correctly pointed out by the Court of Appeals, petitioner's plea to an information before he filed a motion to quash may be a waiver of all objections to it insofar as formal objections to the pleadings are concerned. But by clear implication, if not by express provision of the Rules of Court, and by a long line of uniform decisions, questions relating to want of jurisdiction may be raised at any stage of the proceeding. It is a valid information signed by a competent officer which, among other requisites, confers jurisdiction on the court over the person of the accused (herein petitioner) and the subject matter of the accusation. In consonance with this view, an infirmity in the information, such as lack of authority of the officer signing it, cannot be cured by silence, acquiescence, or even by express consent.

In fine, there must have been a valid and sufficient complaint or information in the former prosecution. If, therefore, the complaint or information was insufficient because it was so defective in form or substance that the conviction upon it could not have been sustained, its dismissal without the consent of the accused cannot be pleaded. As the fiscal had no authority to file the information, the dismissal of the first information would not be a bar to petitioner's subsequent prosecution. Jeopardy does not attach where a defendant pleads guilty to a defective indictment that is voluntarily dismissed by the prosecution.

Petitioner next claims that the lack of authority of the City Prosecutor was the error of the investigating panel and the same should not be used to prejudice and penalize him. It is an all too familiar maxim that the State is not bound or estopped by the mistakes or inadvertence of its officials and employees. To rule otherwise could very well result in setting felons free, deny proper protection to the community, and give rise to the possibility of connivance between the prosecutor and the accused.

Finally, petitioner avers that an amendment of the first information, and not its dismissal, should have been the remedy sought by the prosecution. Suffice it to say that this Court, in *Galvez vs. Court of Appeals* has ruled that even if amendment is proper, pursuant to Section 14 of Rule 110, it is also quite plausible under the same provision that, instead of an amendment, an information may be dismissed to

give way to the filing of a new information.[61] (Emphasis in the original, citations omitted)

However, for quashal of an information to be sustained, the defect of the information must be evident on its face. In *Santos v. People*:[62]

First, a motion to quash should be based on a defect in the information which is evident on its face. The same cannot be said herein. The Information against petitioner appears valid on its face; and that it was filed in violation of her constitutional rights to due process and equal protection of the laws is not evident on the face thereof. As pointed out by the CTA First Division in its 11 May 2006 Resolution, the more appropriate recourse petitioner should have taken, given the dismissal of similar charges against Velasquez, was to appeal the Resolution dated 21 October 2005 of the Office of the State Prosecutor recommending the filing of an information against her with the DOJ Secretary.[63]

For an information to be quashed based on the prosecutor's lack of authority to file it, the lack of the authority must be evident on the face of the information.

The Informations here do not allege that the venue of the offense was other than Morong, Bataan. Thus, it is not apparent on the face of the Informations that the prosecutor did not have the authority to file them.

The proper remedy is to give the prosecution the opportunity to amend the Informations. If the proper venue appears not to be Morong, Bataan after the Informations have been amended, then the trial court may dismiss the case due to lack of jurisdiction, as well as lack of authority of the prosecutor to file the information.

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[61] *Id.* at 199-202.

[62] 585 Phil. 337 (2008) [Per *J.* Chico-Nazario, Third Division].

[63] *Id.* at 361, citing *Gozos v. Hon. Tac-An*, 360 Phil. 453, 464 (1998) [Per *J.* Mendoza, Second Division].

III

Article 355 of the Revised Penal Code provides:

> Article 355. Libel by means of writings or similar means. — A libel committed by means of writing, printing, lithography, engraving, radio, phonograph, painting, theatrical exhibition, cinematographic exhibition, or any similar means, shall be punished by prision correccional in its minimum and medium periods or a fine ranging from 200 to 6,000 pesos, or both, in addition to civil action which may be brought by the offended party.

Petitioner argues that at the time of the offense, emails were not covered under Article 355 of the Revised Penal Code. Petitioner claims this is bolstered by the enactment of Republic Act No. 10175, otherwise known as the Anti-Cybercrime Law, which widened the scope of libel to include libel committed through email, among others.[64]

Whether emailing or, as in this case, sending emails to the persons named in the Informations — who appear to be officials of Subic Bay Metropolitan Authority where Subic Bay Marine Exploratorium is found — is sufficiently "public," as required by Articles 353 and 355 of the Revised Penal Code and by the Anti-Cybercrime Law, is a matter of defense that should be properly raised during trial.

Passionate and emphatic grievance, channelled through proper public authorities, partakes of a degree of protected freedom of expression.[65] Certainly, if we remain faithful to the dictum

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[64] *Rollo*, p. 145, Memorandum.

[65] See *J.* Leonen, Dissenting and Concurring Opinion in *Disini v. Secretary of Justice*, G.R. No. 203335, February 18, 2014, 716 SCRA 237, 602-621 [Per *J.* Abad, *En Banc*], which proffered the view that continued criminalization of libel, especially in platforms using the internet unqualifiedly produces a "chilling effect" that stifles freedom of expression:

> "The crime of libel in its 1930 version in the Revised Penal Code was again reenacted through the Cybercrime Prevention Act of 2012. It simply added the use of the internet as one of the means to commit the criminal acts. The reenactment of these archaic provisions is unconstitutional for many reasons. At minimum, it failed to take into consideration refinements

that public office is a public trust,[66] some leeway should be given to the public to express disgust. The scope and extent of that protection cannot be grounded in abstractions. The facts

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in the interpretation of the old law through decades of jurisprudence. It now stands starkly in contrast with the required constitutional protection of freedom of expression.

. . . . . .

With the definite evolution of jurisprudence to accommodate free speech values, it is clear that the reenactment of the old text of libel is now unconstitutional. Articles 353, 354, and 355 of the Revised Penal Code — and by reference, Section 4(c)4 of the law in question — are now overbroad as it prescribes a definition and presumption that have been repeatedly struck down by this court for several decades.

. . . . . .

The effect on speech of the dangerously broad provisions of the current law on libel is even more palpable in the internet.

. . . . . .

The broad and simplistic formulation now in Article 353 of the Revised Penal Code essential for the punishment of cyber libel can only cope with these variations produced by the technologies in the Internet by giving law enforcers wide latitude to determine which acts are defamatory. There are no judicially determinable standards. The approach will allow subjective case-by-case ad hoc determination. There will be no real notice to the speaker or writer. The speaker or writer will calibrate speech not on the basis of what the law provides but on who enforces it.

This is quintessentially the chilling effect of this law.

The threat of being prosecuted for libel stifles the dynamism of the conversations that take place in cyberspace. These conversations can be loose yet full of emotion. These can be analytical and the product of painstaking deliberation. Other conversations can just be exponential combinations of these forms that provide canisters to evolving ideas as people from different communities with varied identities and cultures come together to test their messages.

Certainly, there will be a mix of the public and the private; the serious and the not so serious. But, this might be the kind of democratic spaces needed by our society: a mishmash of emotion and logic that may creatively spring solutions to grave public issues in better and more entertaining ways than a symposium of scholars. Libel with its broad bright lines, thus, is an anachronistic tool that may have had its uses in older societies: a monkey wrench that will steal inspiration from the democratic mob" (*Id.* at 50-62).

[66] CONST., Art. XI, Sec. 1.

of this case need to be proven by evidence; otherwise, this Court exercises barren abstractions that may wander into situations only imagined, not real.

IV

Good faith is not among the grounds for quashing an information as enumerated in Rule 117, Section 3 of the Rules of Court. It is not apparent on the face of the Informations, and what is not apparent cannot be the basis for quashing them. In *Danguilan-Vitug v. Court of Appeals*:[67]

> We find no reason to depart from said conclusion. Section 3, Rule 117 of the Revised Rules of Court enumerates the grounds for quashing an information. Specifically, paragraph (g) of said provision states that the accused may move to quash the complaint or information where it contains averments which, if true, would constitute a legal excuse or justification. Hence, for the alleged privilege to be a ground for quashing the information, the same should have been averred in the information itself and secondly, the privilege should be absolute, not only qualified. Where, however, these circumstances are not alleged in the information, quashal is not proper as they should be raised and proved as defenses. With more reason is it true in the case of merely qualifiedly privileged communications because such cases remain actionable since the defamatory communication is simply presumed to be not malicious, thereby relieving the defendant of the burden of proving good intention and justifiable motive. The burden is on the prosecution to prove malice. Thus, even if the qualifiedly privileged nature of the communication is alleged in the information, it cannot be quashed especially where prosecution opposes the same so as not to deprive the latter of its day in court, but prosecution can only prove its case after trial on the merits. In *People v. Gomez* we held, inter alia:
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> > "The claim of the accused . . . that the letter is privileged communication is not a ground for a motion to quash. It is a matter of defense which must be proved after trial of the case on the merits."[68] (Citations omitted)

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[67] G.R. No. 103618, May 20, 1994, 232 SCRA 460 [Per *J.* Romero, Third Division].

[68] *Id.* at 467-468.

Thus, the Court of Appeals did not err in disregarding petitioner's purported good faith. This should be a matter of defense properly raised during trial.

WHEREFORE, the Petition for Review on Certiorari dated July 29, 2013 is **DENIED**. The Court of Appeals Decision dated January 8, 2013 and Resolution dated July 10, 2013 are **AFFIRMED**.

SO ORDERED.

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

Brion, J., on official leave.

FIRST DIVISION

[G.R. No. 208383. June 8, 2016]

FIRST MEGA HOLDINGS, CORP., *petitioner, vs.* **GUIGUINTO WATER DISTRICT,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE CODE OF 1987 (EO 292); GOVERNMENT OWNED OR CONTROLLED CORPORATIONS ARE GENERALLY PROHIBITED TO ENGAGE THE SERVICES OF PRIVATE COUNSEL; REQUIREMENTS FOR EXCEPTION TO APPLY.— As a general rule, government-owned or controlled corporations, their subsidiaries, other corporate off springs, and government acquired asset corporations (collectively referred to as GOCCs) are not allowed to engage the legal services of private counsels. Section 10, Chapter 3, Title III, Book IV of Executive Order No. (EO) 292, otherwise known as the "Administrative Code of 1987,"

is clear that the OGCC shall act as the principal law office of GOCCs. Accordingly, Section 1 of AO No. 130, s. 1994 enjoined GOCCs to exclusively refer all legal matters pertaining to them to the OGCC, unless their respective charters expressly name the Office of the Solicitor General (OSG) as their legal counsel. Nonetheless, **in exceptional cases, private counsel can be hired with the prior written conformity and acquiescence of the Solicitor General or the Government Corporate Counsel, and the prior written concurrence of the Commission on Audit (COA).** Case law holds that the lack of authority on the part of a private lawyer to file a suit in behalf of any GOCC shall be a sufficient ground to dismiss the action filed by the said lawyer.

2. ID.; ID.; ID.; ID.; RESPONDENT FAILED TO COMPLY WITH THE REQUIREMENTS BEFORE IT HIRED THE SERVICES OF PRIVATE COUNSEL; IT LIKEWISE FAILED TO ESTABLISH THE PRESENCE OF EXCEPTING CIRCUMSTANCE WHICH WOULD WARRANT A DEVIATION FROM THE GENERAL RULE.— In the present case, respondent failed to comply with the requirements concerning the engagement of private counsel before it hired the services of Dennis C. Pangan & Associates, which filed, on its behalf, a protest against petitioner's WPA. *First*, it failed to secure the prior conformity and acquiescence of the OGCC and the written concurrence of the COA, in accordance with existing rules and regulations. And *second*, it failed to establish the presence of extraordinary or exceptional circumstances that would warrant a deviation from the above-mentioned general rule, or that the case was of a complicated or peculiar nature that would be beyond the range of reasonable competence expected from the OGCC. To be sure, the Court cannot allow the invocation of the existence of a JVA with Hiyas Water as an excepting circumstance because it would render nugatory the role of the OGCC as the principal law office of all GOCCs. Neither can the representation that Hiyas Water shall shoulder the lawyer's fees be considered an excepting circumstance because the case was filed in the name of respondent, not in the name of Hiyas Water. Besides, even assuming that the extant circumstances in the case are enough to qualify it as an exceptional case where the hiring of private counsel may be allowed, the requirements of securing the prior written conformity and acquiescence of the Government Corporate Counsel and the prior written concurrence of the COA must still be complied with before a GOCC may hire a private lawyer.

3. CIVIL LAW; WATER CODE OF THE PHILIPPINES (P.D. NO. 1067); THE DRILLING OF A WELL AND APPROPRIATION OF WATER WITHOUT THE NECESSARY PERMITS CONSTITUTE GRAVE OFFENSES; THE NATIONAL WATER RESOURCES BOARD (NWRB) WAS WELL WITHIN ITS AUTHORITY TO DENY PETITIONER'S WATER PERMIT APPLICATION (WPA).— Records show that petitioner drilled a deep well and installed a water pump without having first secured the necessary permit to drill. Moreover, despite the NWRB's November 3, 2009 CDO refraining it from operating the water pump, petitioner extracted water from the deep well. The drilling of a well and appropriation of water without the necessary permits constitute grave offenses under Section 82 of the IRR, and shall subject the violator who is not a permittee or grantee — as petitioner in this case — to the imposition of appropriate fines and penalties, and the stoppage of the use of water, without prejudice to the institution of a criminal/civil action as the facts and circumstances may warrant. There having been a willful and deliberate non-observance and/or non-compliance with the IRR and the NWRB's lawful order, which would have otherwise subjected a permittee or grantee to a summary revocation/suspension of its water permit or other rights to use water, the NWRB was well within its authority to deny petitioner's WPA. To rule otherwise would effectively emasculate it and prevent it from exercising its regulatory functions.

APPEARANCES OF COUNSEL

Eric Cortes for petitioner.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated March 20, 2013 and the

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[1] *Rollo*, pp. 9-23.

[2] *Id.* at 27-39. Penned by Associate Justice Apolinario D. Bruselas, Jr. with Associate Justices Rebecca De Guia-Salvador and Samuel H. Gaerlan concurring.

Resolution[3] dated July 25, 2013 of the Court of Appeals (CA) in CA-G.R. SP No. 122971, which denied petitioner First Mega Holdings Corp.'s (petitioner) petition for review of the Resolutions dated September 2, 2010[4] and December 2, 2011[5] of the National Water Resources Board (NWRB) in Water Use Conflict Case No. 2009-045 denying petitioner's application for a water permit.

The Facts

On February 26, 2009, petitioner filed with the NWRB Water Permit Application No. III-BUL-2009-02-068[6] (WPA) for the installation of a deep well that would supply the water resources requirements of its gasoline station and commercial complex in Barangay Malis, Guiguinto, Bulacan (subject premises).[7]

On May 19, 2009, respondent Guiguinto Water District (respondent) filed its Protest[8] against petitioner's WPA, averring that: (*a*) the water level in Guiguinto, Bulacan (Guiguinto) is at a critical level and the water exploration to be conducted by petitioner would hamper the water requirements of the said municipality and be detrimental to its water service; (*b*) petitioner disregarded and violated existing laws, rules, and regulations because it had already started drilling operations before it sought the NWRB's approval; and (*c*) respondent has the capacity to supply the petitioner's water requirements.[9]

Petitioner filed its answer,[10] praying for the dismissal of the protest on the grounds that the same was belatedly

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[3] *Id.* at 40-41.

[4] *Id.* at 42-45. Penned by Executive Director, CESO III, Vicente S. Paragas.

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

[6] CA *rollo*, p. 57, including dorsal portion.

[7] See Judicial Affidavit dated March 15, 2010; *id.* at 58-59, including dorsal portion. See also *rollo*, p. 28.

[8] Dated May 19, 2009. *Id.* at 38-41.

[9] See *id.* at 39-40. See also *rollo*, pp. 28-29.

[10] See Answer (With Motion for Issuance of a Provisional Authority to Start Drilling Operations) dated June 8, 2009; CA *rollo*, pp. 42-51.

filed,[11] and that respondent failed to substantiate its claim that the water level in Guiguinto is at a critical level.[12] It averred that: (*a*) its water requirements would only be minimal, which could not possibly affect the water level in Guiguinto; and (*b*) it would not be cost-effective to source water from respondent since there is no existing water pipeline available within a one-kilometer radius where petitioner could connect.[13] It further denied having started drilling operations and consequently moved for the issuance of a provisional authority to do so in order to cope with the timetable for its construction activities.[14]

The NWRB Proceedings

On September 14, 2009, respondent filed an Omnibus Motion for the issuance of a Cease and Desist Order[15] (CDO) and to hold petitioner in contempt, alleging, among others, that the latter had already finished its drilling operations without the necessary permit, which petitioner denied. Ocular inspection of the subject premises revealed that a deep well was already in place; thus, on November 3, 2009, the NWRB issued a CDO[16] against petitioner to refrain from operating a water pump. Notwithstanding the CDO, a second ocular inspection revealed that petitioner operated the deep well in question starting April 25, 2010.[17]

Hence, on September 2, 2010, the NWRB issued a Resolution[18] (September 2, 2010 Resolution) denying petitioner's WPA on account of: (*a*) petitioner's violation of Presidential Decree

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[11] See *id.* at 43-44.

[12] See *id.* at 44-46.

[13] See *id.* at 45-46.

[14] See *id.* at 48-49.

[15] Not attached to the *rollo*.

[16] Not attached to the *rollo*.

[17] See *rollo*, p. 44.

[18] *Id.* at 42-45.

No. (PD) 1067,[19] otherwise known as the "Water Code of the Philippines" (Water Code); and (*b*) petitioner's open defiance of its lawful order. It further observed that the area subject of the WPA is among the eight (8) identified critical areas in Metro Manila in need of urgent attention as identified in NWRB Resolution No. 001-0904,[20] and that respondent can provide the water supply requirement of petitioner. It ordered petitioner to cease and desist from operating and utilizing the deep well, and directed its Monitoring and Enforcement Division to pull out the pump and motor, and seal the deep well.[21]

Aggrieved, petitioner filed a Petition for Reconsideration/ Reinvestigation,[22] contending that: (*a*) the entire proceedings should be nullified on the ground that respondent was represented by a private firm, Dennis C. Pangan & Associates, instead of the Office of the Government Corporate Counsel (OGCC), in violation of Administrative Order No. 130[23] dated May 19, 1994 (AO No. 130, s. 1994);[24] and (*b*) the denial of the WPA was based on alleged violation of the Water Code and not on the merits.[25]

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[19] Entitled "A DECREE INSTITUTING A WATER CODE; THEREBY REVISING AND CONSOLIDATING THE LAWS GOVERNING THE OWNERSHIP, APPROPRIATION, UTILIZATION, EXPLOITATION, DEVELOPMENT, CONSERVATION AND PROTECTION OF WATER RESOURCES," approved on December 31, 1976.

[20] Entitled "Policy Recommendations for Metro Manila Critical Areas," issued by the NWRB on September 22, 2004. See CA *rollo*, pp. 101-103.

[21] See *rollo*, pp. 44-45.

[22] With Prayer for the Nullification of Proceedings and for Posting of Requisite Bond dated October 1, 2010. CA *rollo*, pp. 60-67.

[23] Entitled "DELINEATING THE FUNCTIONS AND RESPONSIBILITIES OF THE OFFICE OF THE SOLICITOR GENERAL AND THE OFFICE OF THE GOVERNMENT' CORPORATE COUNSEL."

[24] See CA *rollo*, pp. 61-62.

[25] CA *rollo*, p. 63.

For its part, respondent (*a*) moved to implement[26] the September 2, 2010 Resolution; and (*b*) opposed[27] the Petition for Reconsideration/Reinvestigation, averring that AO No. 130, s. 1994 does not apply to it, considering that the business of distributing water to the Municipality of Guiguinto has been given to Hiyas Water Resources, Inc. (Hiyas Water) under a Joint Venture Agreement (JVA) between the parties, and that the latter pays for the fees of the private firm.[28]

In a Resolution[29] dated December 2, 2011, the NWRB denied the petition for reconsideration/reinvestigation, ruling that the fact that respondent was not represented by the OGCC will not render the proceedings null and void because requiring a reinvestigation on such legal technicality would not serve the interest of justice. Besides, since petitioner did not question the appearance of a private law firm in respondent's behalf during the hearing, the NWRB had the right to presume that such representation was properly authorized in the absence of proof to the contrary. It further pointed out that the denial of petitioner's WPA was not based on the grounds raised in respondent's protest but on petitioner's blatant disregard and open defiance of the NWRB's lawful orders, and on the fact that the area where the proposed water source is located is within an identified critical area in need of urgent attention.[30] Consequently, it directed its Monitoring and Enforcement Division to impose against petitioner, for appropriating water without permit, a fine in the amount of ₱1,000.00 per day reckoned from April 25, 2010 when the deep well became operational until the same is fully sealed,[31] pursuant to

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[26] See Motion to Implement dated October 5, 2010; *id.* at 68-70.

[27] See Comment/Opposition (To the Petition for Reconsideration/ Reinvestigation) and Reply (To the Comment/Opposition to Protestant's Motion to Implement) dated March 11, 2011; *id.* at 78-83.

[28] See *id.* at 80-81.

[29] *Rollo*, pp. 46-49.

[30] See *id.* at 47-48.

[31] *Id.* at 49.

Section 82 (L)[32] of the Water Code of the Philippines Amended Implementing Rules and Regulations[33] (IRR).

On the other hand, the NWRB granted respondent's motion to implement the September 2, 2010 Resolution on the basis of paragraph 2,[34] Article 88, Chapter VII of the Water Code.[35]

Unperturbed, petitioner filed a petition for review[36] before the CA, docketed as CA-G.R. SP No. 122971.

The CA Ruling

In a Decision[37] dated March 20, 2013, the CA denied the petition,[38] thereby upholding the NWRB's September 2, 2010 and December 2, 2011 Resolutions. It ruled that while the private law firm which appeared as respondent's counsel failed to secure the written conformity and acquiescence of the OGCC in violation of AO No. 130, s. 1994, it would be more beneficial to confer

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[32] Section 82. *Grave Offenses*. — A fine of more than Eight Hundred (₱800.00) Pesos but not exceeding One Thousand (₱1,000.00) Pesos per day of violation and/or revocation of the water permit/grant of any other right to the use of water shall be imposed for any of the following violations:

x x x x x x x x x

1) appropriation of water without a permit.

[33] Adopted on March 21, 2005.

[34] Article 88. . . .

The decisions of the Council on water rights controversies shall be immediately executory and the enforcement thereof may be suspended only when a bond, in an amount fixed by the Council to answer for damages occasioned by the suspension or stay of execution, shall have been filed by the appealing party, unless the suspension is by virtue of an order of a competent court.

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[35] *Rollo*, p. 48.

[36] With Prayer for a Temporary Restraining Order and/or Writ of Preliminary Injunction dated February 8, 2012; CA *rollo*, pp. 9-25.

[37] *Rollo*, pp. 27-39.

[38] *Id.* at 38.

legitimacy to its appearance rather than declare the entire proceedings null and void, as no substantial prejudice was caused to the interest of petitioner, respondent, and the State.[39]

The CA likewise upheld the denial of petitioner's WPA, holding that aside from petitioner's violation of the Water Code requirement of a water permit prior to the appropriation of water, the NWRB had substantial basis to deny its WPA. Considering that in the water resources assessment, Guiguinto was identified as one of the critical areas in Metro Manila and its adjacent areas due to over-extraction of ground water, such predicament prompted NWRB to take the necessary measures to prevent further ground water level decline and water quality deterioration in Guiguinto. Having the duty to control and regulate the utilization, exploitation, development, conservation, and protection of water resources of the State, it was, therefore, within its power to deny petitioner a water permit to pursue a water right which is merely a privilege.[40]

Undaunted, petitioner sought reconsideration,[41] which was, however, denied in a Resolution[42] dated July 25, 2013; hence, this petition.

The Issue Before the Court

The essential issue for the Court's resolution is whether or not the CA correctly upheld the NWRB's denial of petitioner's WPA.

The Court's Ruling

As a general rule, government-owned or controlled corporations, their subsidiaries, other corporate off springs, and

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[39] See *id.* at 33-35.

[40] See *id.* at 37-38.

[41] See motion for reconsideration dated April 17, 2013; CA *rollo*, pp. 136-145.

[42] *Rollo*, pp. 40-41.

government acquired asset corporations (collectively referred to as GOCCs) are not allowed to engage the legal services of private counsels.[43] Section 10,[44] Chapter 3, Title III, Book IV of Executive Order No. (EO) 292,[45] otherwise known as the "Administrative Code of 1987," is clear that the OGCC shall act as the principal law office of GOCCs. Accordingly, Section 1 of AO No. 130, s. 1994 enjoined GOCCs to exclusively refer all legal matters pertaining to them to the OGCC, unless their respective charters expressly name the Office of the Solicitor General (OSG) as their legal counsel. Nonetheless, **in exceptional cases, private counsel can be hired with the prior written conformity and acquiescence of the Solicitor General or the Government Corporate Counsel, and the prior written concurrence of the Commission on**

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[43] See *The Law Firm of Laguesma Magsalin Consulta and Gastardo v. The Commission on Audit*, G.R. No. 185544, January 13, 2015.

[44] Section 10. Office of the Government Corporate Counsel. — The Office of the Government Corporate Counsel (OGCC) shall act as the principal law office of all government-owned or controlled corporations, their subsidiaries, other corporate offsprings and government acquired asset corporations and shall exercise control and supervision over all legal departments or divisions maintained separately and such powers and functions as are now or may hereafter be provided by law. In the exercise of such control and supervision, the Government Corporate Counsel shall promulgate rules and regulations to effectively implement the objectives of the Office.

The OGCC is authorized to receive the attorney's fees adjudged in favor of their client government-owned or controlled corporations, their subsidiaries, other corporate offsprings and government acquired asset corporations. These attorney's fees shall accrue to a special fund of the OGCC, and shall be deposited in an authorized government depository as a trust liability and shall be made available for expenditure without the need for a Cash Disbursement Ceiling, for purposes of upgrading facilities and equipment, granting of employees' incentive pay and other benefits, and defraying such other incentive expenses not provided for in the General Appropriations Act as may be determined by the Government Corporate Counsel.

[45] Entitled "Instituting the 'Administrative Code of 1987,'" approved on July 25, 1987.

Audit (COA).[46] Case law holds that the lack of authority on the part of a private lawyer to file a suit in behalf of any GOCC shall be a sufficient ground to dismiss the action filed by the said lawyer.[47]

In the present case, respondent failed to comply with the requirements concerning the engagement of private counsel before it hired the services of Dennis C. Pangan & Associates, which filed, on its behalf, a protest against petitioner's WPA. *First*, it failed to secure the prior conformity and acquiescence of the OGCC and the written concurrence of the COA, in accordance with existing rules and regulations. And *second*, it failed to establish the presence of extraordinary or exceptional circumstances that would warrant a deviation from the above-mentioned general rule, or that the case was of a complicated or peculiar nature that would be beyond the range of reasonable competence expected from the OGCC.

To be sure, the Court cannot allow the invocation[48] of the existence of a JVA with Hiyas Water as an excepting circumstance because it would render nugatory the role of the OGCC as the principal law office of all GOCCs. Neither can

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[46] See also (*a*) Memorandum Circular No. 9, entitled "PROHIBITING GOVERNMENT-OWNED OR CONTROLLED CORPORATIONS (GOCCs) FROM REFERRING THEIR CASES AND LEGAL MATTERS TO THE OFFICE OF THE SOLICITOR GENERAL, PRIVATE LEGAL COUNSEL OR LAW FIRMS AND DIRECTING THE GOCCs TO REFER THEIR CASES AND LEGAL MATTERS TO THE OFFICE OF THE GOVERNMENT CORPORATE COUNSEL, UNLESS OTHERWISE AUTHORIZED UNDER CERTAIN EXCEPTIONAL CIRCUMSTANCES," issued by former President Joseph Ejercito Estrada on August 27, 1998; and (*b*) COA Circular No. 95-011, entitled "PROHIBITION AGAINST EMPLOYMENT BY GOVERNMENT AGENCIES AND INSTRUMENTALITIES, INCLUDING GOVERNMENT-OWNED OR CONTROLLED CORPORATIONS, OF PRIVATE LAWYERS TO HANDLE THEIR LEGAL CASES," issued on December 4, 1995.

[47] See *Phividec Industrial Authority v. Capitol Steel Corporation*, 460 Phil. 493, 506 (2003); citations omitted.

[48] See CA *rollo*, p. 80.

the representation[49] that Hiyas Water shall shoulder the lawyer's fees be considered an excepting circumstance because the case was filed in the name of respondent, not in the name of Hiyas Water. Besides, even assuming that the extant circumstances in the case are enough to qualify it as an exceptional case where the hiring of private counsel may be allowed, the requirements of securing the prior written conformity and acquiescence of the Government Corporate Counsel and the prior written concurrence of the COA must still be complied with before a GOCC may hire a private lawyer.

Public policy considerations are behind the imposition of the requirements relative to the engagement by GOCCs of private counsel. In *Phividec Industrial Authority v. Capitol Steel Corporation*,[50] the Court held:

> It was only with the enactment of Memorandum Circular No. 9 in 1998 that an exception to the general prohibition was allowed for the first time since P.D. No. 1415 was enacted in 1978. However, indispensable conditions precedent were imposed before any hiring of private lawyer could be effected. First, private counsel can be hired only in **exceptional cases**. Second, the GOCC must first secure the written conformity and acquiescence of the Solicitor General or the Government Corporate Counsel, as the case may be, before any hiring can be done. And third, the written concurrence of the COA must also be secured prior to the hiring.
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> **There are strong reasons behind this public policy**. One is the need of the government to curtail unnecessary public expenditures, such as the legal fees charged by private lawyers against GOCCs. x x x:
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> x x x x x x x x x
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> *The other factor is anchored on the perceived strong ties of the OGCC lawyers to their client government corporations. Thus, compared to outside lawyers the OGCC lawyers are expected to be imbued with a deeper sense of fidelity to the government's cause*

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[49] See *id.* at 81.

[50] *Supra* note 47.

and more attuned to the need to preserve the confidentiality of sensitive information.

Evidently, OGCC is tasked by law to serve as the law office of GOCCs *to the exclusion* of private lawyers. Evidently again, there is a strong policy bias against the hiring by GOCCs of private counsel.[51] (Emphases and underscoring supplied)

In *Land Bank of the Philippines v. Luciano*,[52] the Court explained the exercise of the OGCC's mandate as the principal law office of GOCCs in this wise:

It may strike as disruptive to the flow of a GOCC's daily grind to require the participation of the OGCC as its principal law office, or the exercise of control and supervision by the OGCC over the acts of the GOCC's legal departments. For reasons such as proximity and comfort, the GOCC may find it convenient to rely instead on its in-house legal departments, or more irregularly, on private practitioners. Yet **the statutory role of the OGCC as principal law office of GOCCs is one of long-standing, and we have to recognize such function as part of public policy**. Since the jurisdiction of the OGCC includes all GOCCs, its perspective is less myopic than that maintained by a particular legal department of a GOCC. It is not inconceivable that left to its own devices, the legal department of a given GOCC may adopt a legal position inconsistent with or detrimental to other GOCCs. **Since GOCCs fall within the same governmental framework, it would be detrimental to have GOCCs foisted into adversarial positions by their respective legal departments. Hence, there is indubitable wisdom in having one overseer over all these legal departments which would ensure that the legal positions adopted by the GOCCs would not conflict with each other or the government.**[53] (Emphases supplied)

Hence, the protest filed by respondent against petitioner's WPA should have been dismissed outright for lack of authority of Dennis C. Pangan & Associates to represent respondent

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[51] *Id.* at 503-504.

[52] See the Court's Resolution dated July 13, 2005 in G.R. No. 165428.

[53] *Id.*

considering that, at the outset, respondent had already identified itself as a government corporation.[54]

This notwithstanding, the NWRB, as the chief coordinating and regulating agency for all water resources management development activities,[55] was authorized to act upon petitioner's WPA.

It is well to note that in an application for a water permit before the NWRB, the presence of a protest converts the proceeding to a water controversy,[56] which shall then be governed by the rules prescribed for resolving water use controversies,[57] *i.e.*, Rule IV[58] of the IRR. However, absent a protest, or where a protest cannot be considered[59] — as in this case where the protestant, a GOCC, was not properly represented by the OGCC — the application shall subsist. The existence of a protest is only one of the factors that the NWRB may consider in granting or denying a water permit application.[60] The filing of an improper protest only deprives the NWRB of the authority to consider the substantial issues raised in the protest[61] but does not strip it of the power to act on the application.

Where extraction of ground water is sought, as in this case, a permit to drill must first be secured from the NWRB.[62] However,

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[54] See CA *rollo*, p. 38.

[55] See Section 2 of PD 424.

[56] See *Buendia v. City of Iligan*, 497 Phil. 97, 109 (2005).

[57] See Section 10 (B), in relation to Section 12 (A), Rule I of the IRR.

[58] *I.e.*, Procedure in Conflict Resolution.

[59] See *Buendia v. City of Iligan*, *supra* note 56.

[60] Under Article 16 of PD 1067, the following shall also be considered:

a) prior permits granted;
b) the availability of water;
c) the water supply needed for beneficial use;
d) possible adverse effects;
e) land-use economics; and
f) other relevant factors.

[61] See *Buendia v. City of Iligan*, *supra* note 56.

[62] See Section 45, Rule II of the IRR, and Section 64 of PD 1067.

before a permit to drill is issued, the NWRB shall conduct a field investigation to determine any adverse effect that may be caused to public or private interests. Only after it has determined that the application meets the requirements and is not prejudicial to any public or private interests shall it issue the permit to drill[63] which shall be regarded as a temporary permit, until the rate of water withdrawal/yield of the well has been determined and assessed,[64] and the application is finally (*a*) approved and a water permit is issued subject to such conditions as the NWRB may impose, or (*b*) disapproved and returned to the applicant, stating the reasons therefor.[65] It should be emphasized that it is only through a duly issued water permit[66] that any person acquires the right to appropriate water, or to take or divert waters from a natural source in the manner and for any purpose allowed by law.[67]

In the present case, even if the protest filed by respondent is disregarded, the NWRB correctly denied petitioner's WPA for its flagrant disregard of the Water Code and its IRR. Records show that petitioner drilled a deep well and installed a water pump without having first secured the necessary permit to drill. Moreover, despite the NWRB's November 3, 2009 CDO refraining it from operating the water pump, petitioner extracted water from the deep well.

The drilling of a well and appropriation of water without the necessary permits constitute grave offenses under Section 82 of the IRR, and shall subject the violator who is not a permittee or grantee — as petitioner in this case — to the imposition of appropriate fines and penalties, and the stoppage of the use of water, without prejudice to the institution of a criminal/civil

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[63] See Section 12 (A), Rule I of the IRR.

[64] See Section 12 (A) (4) and (B), Rule I of the IRR.

[65] See Sections 13 and 14, Rule I of the IRR.

[66] See Articles 9 and 13 of PD 1067.

[67] See Article 9 of PD 1067.

action as the facts and circumstances may warrant.[68] There having been a willful and deliberate non-observance and/or non-compliance with the IRR and the NWRB's lawful order, which would have otherwise subjected a permittee or grantee to a summary revocation/suspension of its water permit or other rights to use water,[69] the NWRB was well within its authority to deny petitioner's WPA. To rule otherwise would effectively emasculate it and prevent it from exercising its regulatory functions.

More importantly, the NWRB, in Resolution No. 001-0904 had already identified Guiguinto as one of the critical areas in need of urgent attention based on its water resources assessment which, thus, impelled it to take the necessary measures to prevent further ground water level decline and water quality deterioration in Guiguinto. In fact, the NWRB had imposed a total ban on deep water drilling in Metro Manila, as well as Guiguinto, Bocaue, Marilao, and Meycauayan in Bulacan, and Dasmariñas in Cavite to prevent over-extraction of ground water.[70]

WHEREFORE, the petition is **DENIED**. The Decision dated March 20, 2013 and the Resolution dated July 25, 2013 of the Court of Appeals in CA-G.R. SP No. 122971 are hereby **AFFIRMED** insofar as it upheld the denial of petitioner First Mega Holdings Corp.'s Water Permit Application No. III-BUL-2009-02-068.

SO ORDERED.

Leonardo-de Castro (*Acting Chairperson*),[*] *Bersamin,* and *Caguioa, JJ.,* concur.

Sereno, C.J., on leave.

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[68] See Section 86 of the IRR.

[69] See Section 89 of the IRR.

[70] "Paje Asks Public to Report Illegal Deep Wells to DENR, NWRB," September 24, 2015 <http://www.denr.gov.ph/news-and-features/latest-news/2329-paje-asks-public-to-report-illegal-deep-wells-to-denr-nwrb.html> (visited on May 11, 2016).

[*] Per Special Order No. 2354 dated June 2, 2016.

FIRST DIVISION

[G.R. No. 208475. June 8, 2016]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **MANUEL REBANUEL *y* NADERA,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; STATUTORY RAPE; ELEMENTS, ESTABLISHED IN CASE AT BAR.— The elements of statutory rape are found in the Revised Penal Code, as amended by Republic Act No. 8353, which reads: Article 266-A. *Rape, When and How Committed*. — Rape is Committed — 1) By a man who shall have carnal knowledge of a woman under any of the following circumstances: x x x x 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. As regards this provision, we have previously held that: When the offended party is under 12 years of age, the crime committed is "termed statutory rape as it departs from the usual modes of committing rape. What the law punishes is carnal knowledge of a woman below 12 years of age. **Thus, the only subject of inquiry is the age of the woman and whether carnal knowledge took place.** The law presumes that the victim does not and cannot have a will of her own on account of her tender years." x x x We affirm the Court of Appeals in finding that the prosecution satisfactorily established all the elements of statutory rape in this case. The prosecution established the victim's age by clear and convincing evidence, *i.e.*, a certified true copy of her birth certificate and the testimony of an employee of the Local Civil Registrar's Office, who confirmed that based on official records, AAA was born on October 16, 1993, and thus was only nine years old at the time the incident happened on January 3, 2003. The Court of Appeals also noted that appellant did not controvert AAA's age, which made the matter an undisputed fact.

2. ID.; ID.; HYMENAL LACERATION IS NOT AN ELEMENT OF STATUTORY RAPE.— The healed laceration on the victim's hymen does not serve to acquit appellant either. Hymenal laceration is not an element of statutory rape, as long

as there is enough proof of entry of the male organ into the *labia* of the *pudendum* of the female organ of the offended party who is below 12 years of age.

3. ID.; ID.; PENALTY AND CIVIL LIABILITY.— Appellant is sentenced to the penalty of *reclusion perpetua* and ordered to pay AAA the following: civil indemnity of Seventy-Five Thousand Pesos (₱75,000.00), moral damages of Seventy-Five Thousand Pesos (₱75,000.00), and exemplary damages of Seventy-Five Thousand Pesos (₱75,000.00). All monetary awards for damages shall earn interest at the legal rate of 6% per annum from date of finality of this Decision until fully paid.

4. REMEDIAL LAW; EVIDENCE; DEFENSES OF DENIAL AND ALIBI CANNOT PREVAIL IN VIEW OF THE STRENGTH OF THE PROSECUTION'S EVIDENCE; IT WAS NOT PHYSICALLY IMPOSSIBLE FOR THE ACCUSED TO BE AT THE CRIME SCENE ON THE NIGHT OF THE INCIDENT.— The defenses of alibi and denial are weak compared to the positive identification during trial of appellant by the minor victim as the man who raped her. It was not shown that it was **physically impossible** for him to be at the scene of the crime on the night of the incident. Furthermore, appellant's already weak denial and alibi, even if corroborated by his nephew and his son-in-law, deserve scant consideration given the strength of the prosecution's evidence.

5. ID.; ID.; CREDIBILITY OF WITNESSES; FACTUAL FINDINGS OF THE TRIAL COURT WHEN AFFIRMED BY THE COURT OF APPEALS SHALL NOT BE DISTURBED.— We find no reason to reverse the findings of the lower court on the material facts, bolstered by the Court of Appeals' affirmation of such findings. We have held that factual findings of the trial court regarding the credibility of witnesses are accorded great weight and respect especially if affirmed by the Court of Appeals. The lower court was in the best position to weigh the evidence presented during trial and ascertain the credibility of the witnesses who testified. Trial courts have firsthand account of the witnesses' demeanor and deportment in court during trial and this Court shall not supplant its own interpretation of the testimonies for that of the trial judge since he/she is in the best position to determine the issue of credibility of witnesses, being the one who had face-to-face interaction with the same. There is no showing that the lower court

overlooked, misunderstood, or misapplied facts or circumstances of weight which would have affected the outcome of the case. In the absence of misapprehension of facts or grave abuse of discretion of the court *a quo*, and especially when the findings of the judge have been adopted and affirmed by the Court of Appeals, the factual findings of the trial court shall not be disturbed.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

LEONARDO-DE CASTRO,[*] *J.*:

Before this Court is an automatic review of the August 30, 2012 Decision[1] of the Court of Appeals in CA-G.R. CEB-CR.-H.C. No. 00815, which affirmed with modification the July 9, 2007 Judgment[2] of the Regional Trial Court (RTC), Branch 63, Bayawan City, Negros Oriental, in Criminal Case No. 212, finding appellant Manuel Rebanuel guilty beyond reasonable doubt of the crime of rape under Article 266-A of the Revised Penal Code and imposing the penalty of *reclusion perpetua* under Article 266-B of the Revised Penal Code, as amended by Republic Act No. 8353.

The Information[3] dated January 19, 2004 charging appellant Rebanuel reads as follows:

The undersigned accuses MANUEL REBANUEL *y* NADERA of the crime of RAPE, committed as follows:

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[*] Per Special Order No. 2354 dated June 2, 2016.

[1] *Rollo*, pp. 3-16; penned by Associate Justice Zenaida T. Galapate Laguilles with Associate Justices Edgardo L. Delos Santos and Pamela Ann Abella Maxino concurring.

[2] CA *rollo*, pp. 31-36; penned by Judge Orlando C. Velasco.

[3] Records, p. 1.

That on the 3rd day of January 2003, around 7:00 x x x in the evening, at x x x Negros Oriental, Philippines, within the jurisdiction of this Honorable Court, the said accused, did then and there willfully, unlawfully and feloniously have carnal knowledge with [AAA,[4]] a minor, 9 years of age.

Contrary to Article 266-A, paragraph 1(d) of the Revised Penal Code of the Philippines, as amended by Republic Act No. 8353.

On arraignment, appellant pleaded not guilty.[5]

The case proceeded to trial. The evidence respectively presented by the prosecution and the defense are summarized below.

Evidence for the Prosecution

AAA testified[6] that on January 3, 2003 at around seven o'clock in the evening, in Sta. Catalina, Negros Oriental, she and her sister BBB went to the "Beta House" to watch a movie.[7] The "Beta House" is located about 30 to 40 meters from the house where AAA and her family live. Along the way, AAA saw a neighbor, appellant, following her and her sister. She easily recognized him because of the illumination coming from the "Beta House." When she entered, appellant collected the entrance fee from her. Afterwards, AAA went outside towards the back portion of the "Beta House" to urinate. As she was pulling up her panties, she saw appellant approaching her, and she was

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[4] The real names of the private complainant and those of her immediate family members are withheld in consonance with *People v. Cabalquinto*, 533 Phil. 703 (2006), Republic Act No. 7610 (Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act), Republic Act No. 9262 (Anti-Violence Against Women and Their Children Act of 2004), and A.M. No. 04-10-11-SC (Rule on Violence Against Women and Their Children).

[5] Records, p. 52.

[6] TSN, August 25, 2004, pp. 1-23.

[7] Owned by Endrico Rebanuel, this is a house where movies are regularly shown for a fee and where singing or "videoke" sessions are held. (See TSN, March 10, 2005, pp. 1-6.)

able to recognize him because of the light coming from the "Beta House." Appellant then pulled her to a hilly area about three meters away from the "Beta House" and told her not to shout because her father might hear. AAA pleaded with appellant not to harm her for fear that she will be scolded by her father. Despite this, appellant covered AAA's mouth with his right hand, removed her panties and his underwear, while standing behind her. Appellant, then in his fifties, pushed his penis into AAA's vagina. Due to the repeated pushing of appellant's penis against her vagina, AAA instantly felt pain. Appellant, however, failed to fully penetrate AAA. Around the time for the generator to be turned off and for the children to leave the "Beta House," appellant went home, which was a few meters away. AAA cried after being left in that situation, put on her panties, then immediately returned home. She did not reveal the incident to her father as appellant told her that her father might kill appellant and she did not want that to happen. During her testimony, AAA positively identified appellant as the man who raped her.[8]

CCC, private complainant's mother, testified that while they were at home on June 5, 2003 at around nine o'clock in the morning, AAA suddenly embraced her and said, "Ma, don't kill me, Manuel Rebanuel raped me." AAA also told her that the incident happened on January 3, 2003 at around seven o'clock in the evening. Thereafter, CCC consulted the officials of their *barangay*, brought AAA to the Department of Social Welfare and Development (DSWD), and sought their help. She also reported the incident to the police.[9]

Dr. Victor Nuico, Municipal Health Officer of Sta. Catalina, Negros Oriental, examined AAA on June 9, 2003 and wrote the following findings in the Medical Certificate:

> Introitus admits 1 finger with difficulty.
> Hymen — a suspect old healed laceration at 2 o'clock position.[10]

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[8] TSN, August 25, 2004, pp. 4-17.

[9] TSN, October 14, 2004, pp. 4-12.

[10] Records, p. 9.

Dr. Nuico testified that the old laceration could have been inflicted more than two weeks before the medical examination because of the absence of a contusion.[11]

Julie Panot, who works at the Local Civil Registrar of Sta. Catalina, testified that based on their records, AAA was born on October 16, 1993.[12]

Senior Police Officer 4 Nenette May Vivares of the Women and Children's Concerns Desk-PNCO, Sta. Catalina Police Station, testified that on June 5, 2003, AAA and her parents came to the police station and reported that appellant raped AAA on January 3, 2003 at around seven o'clock in the evening.[13]

Evidence for the Defense

Appellant Rebanuel, in his defense, interposed denial and alibi. He testified that he knew AAA, daughter of his neighbors, DDD and CCC, who lived about 10 arms' length away from his house. He held a grudge against AAA's parents because they refused to allow a certain Lariosa to build a house between appellant's residence and theirs. On January 3, 2003, he went to his farm located about one kilometer away. At around six o'clock in the evening, he returned home and ate supper. An hour later, at around seven o'clock, he went to watch a movie at the "Beta House" opened by his nephew Endrico Rebanuel, located about one arm's length away from his house. He was accompanied by his son-in-law, Rodulfo Dagupan. When they arrived, they met AAA and her sister who were going out from the "Beta House." Inside the "Beta House," he was seated at the last row beside Rodulfo and Endrico who was seated on the other side. He did not leave his seat until the movie ended at around nine o'clock in the evening. Thereafter, he went home with Rodulfo and slept.[14]

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[11] TSN, December 9, 2004, pp. 6-8.

[12] *Id.* at 11-14.

[13] TSN, January 26, 2005, pp. 8-11.

[14] TSN, October 26, 2006.

Endrico Rebanuel, appellant's nephew and owner of the "Beta House," stated that sometime in the evening of January 3, 2003, he saw appellant arrive from the farm and eat supper at his house located about 15 meters away from where Endrico lived. At around six o'clock in the evening, the "Beta House" opened for a videoke, and Endrico saw AAA and her sister inside. When the videoke ended at around seven o'clock, he saw AAA and her sister leave the "Beta House" and meet appellant who was then on his way in. Endrico did not see appellant leave the "Beta House" from the time that the movie started at seven o'clock until it ended at nine o'clock in the evening. Appellant was seated beside Endrico near the door.[15] Endrico's testimony was corroborated by Rodulfo Dagupan.[16]

After trial, the RTC rendered judgment convicting appellant, and the dispositive portion reads as follows:

> WHEREFORE, the prosecution having proved the guilt of the accused beyond reasonable doubt of the crime of Rape defined in Article 266-A, paragraph 1(d) and penalized in Article 266-B of the Revised Penal Code, accused MANUEL REBANUEL *y* NADERA is CONVICTED. He is sentenced to the penalty of imprisonment of *Reclusion Perpetua*. He is hereby ordered to pay complainant [AAA] the sum of Seventy-Five Thousand Pesos (Php75,000.00), as civil indemnity; Seventy-Five Thousand Pesos (Php75,000.00), as moral damages; and Twenty-Five Thousand Pesos (Php25,000.00), as exemplary damages.
>
> Accused being meted with capital punishment, let the entire records of this case be forwarded to the Court of Appeals Visayas, Cebu City for review.[17]

Appellant went to the Court of Appeals, asserting that the trial court erred in convicting him of the crime charged.

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[15] TSN, March 10, 2005, pp. 5-19.

[16] TSN, July 14, 2005, pp. 3-19.

[17] CA *rollo*, p. 36.

DECISION OF THE COURT OF APPEALS

The Court of Appeals affirmed the judgment of conviction but modified the RTC decision as to the award of damages. The Court of Appeals discussed as follows:

> As to whether or not appellant had carnal knowledge with [AAA], to determine the innocence or guilt of the accused in rape cases, the courts are guided by three well-entrenched principles: (1) an accusation of rape can be made with facility and while the accusation is difficult to prove, it is even more difficult for the accused, though innocent, to disprove; (2) considering that in the nature of things, only two persons are usually involved in the crime of rape, the testimony of the complainant should be scrutinized with great caution; and (3) the evidence for the prosecution must stand or fall on its own merits and cannot be allowed to draw strength from the weakness of the evidence for the defense.
>
> In the case at bar, **the prosecution established appellant's guilt beyond reasonable doubt**. A careful perusal of [AAA's] testimony shows that indeed, on January 3, 2003, appellant followed her when she was on her way to the Beta House, and later when she went out to urinate outside, brought her to a hilly portion about three (3) meters away, covered her mouth, removed her underwear and sexually molested her against her will. She positively recognized appellant, a neighbor who resided about ten (10) [arms'] length away from their house, whose face she easily recognized by the illumination coming out from the Beta House. **Her testimony was clear and straightforward and replete with material details which could not possibly be a product of the imagination of a young child of tender years who was innocent to the ways of the world. When she appeared before the trial court, she cried when she testified about the defloration that appellant did to her. Further, the trial court found [AAA's] testimony to be categorical and straightforward in positively identifying appellant as the person who raped her.** It is a well-entrenched rule that in rape cases, the evaluation of the credibility of witnesses is best addressed to the sound discretion of the trial judge whose conclusion thereon deserves much weight and respect because the judge had the direct opportunity to observe them on the stand and ascertain if they were telling the truth or not. The appellate courts will not interfere with the trial court's assessment, absent any indication that material facts of substance or value was overlooked or that the trial court gravely

abused its discretion. Here, We find no reason to reverse the trial court's finding which was primarily based upon a vantage point.[18] (Emphases added, citations omitted.)

The Court of Appeals found no merit in appellant's assertion that since the place where the alleged rape was committed was surrounded with houses and was populated, it was improbable for the crime of rape to be committed, stating that it is a "settled rule that lust is no respecter of time and place and rape may even be committed in the same room where other family members also sleep."[19]

As to appellant's allegation that AAA was coached since she looked at her mother when she testified in court, the Court of Appeals checked the records and found that AAA looked at her mother when she was asked about her signature in the affidavit she had executed.[20] Appellant also insisted that CCC was laughing during her testimony. The Court of Appeals stressed that these pertained to trivial matters which did not in any way disprove that appellant raped AAA and that these matters were not essential to the crime of rape which was duly proven by AAA in the testimony she gave candidly and truthfully, narrating her harrowing experience in the hands of appellant without any coaching from her mother or anyone else.[21]

The Court of Appeals likewise found unmeritorious appellant's contention that AAA's behavior in not asking for help is contrary to human experience; thus, he should be acquitted. The Court of Appeals cited *People v. Tejero*[22] where this Court held:

It is not accurate to say that there is a typical reaction or norm of behavior among rape victims, as not every victim can be expected to act conformably with the usual expectation of mankind and there

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[18] *Rollo*, pp. 10-11.

[19] *Id.* at 12.

[20] TSN, August 25, 2004, p. 17.

[21] *Rollo*, p. 12.

[22] 688 Phil. 543, 556-557 (2012).

is no standard behavioral response when one is confronted with a strange or startling experience, each situation being different and dependent on the various circumstances prevailing in each case.

Besides, in rape cases, physical resistance need not be established when intimidation is exercised upon the victim and the latter submits herself out of fear. Intimidation is addressed to the mind of the victim and is therefore subjective. Barely out of childhood, there was nothing AAA could do but resign to appellant's evil desires to protect her life. Minor victims like AAA are easily intimidated and browbeaten into silence even by the mildest threat on their lives. (Citations omitted.)

The Court of Appeals further held:

On the other hand, [AAA's] failure to immediately report the defloration did to her will not negate the finding of rape. **Delay in reporting rape cases does not by itself undermine the charge, where the delay is grounded in threats from the accused. Delay in revealing the commission of a crime such as rape does not necessarily render such charge unworthy of belief because the victim may choose to keep quiet rather than expose her defilement to the harsh glare of public scrutiny. Only when the delay is unreasonable or unexplained may it work to discredit the complainant. Here, [AAA] reasonably explained that she did not reveal to her parents the harrowing experience she went through in the hands of appellant for fear that her father might commit a crime and kill appellant for the beastly act the latter did to her.** x x x.

We uphold the trial court's ruling that appellant's defense of alibi deserves scant consideration. Alibi is an inherently weak defense because it is easy to fabricate and highly unreliable. To merit approbation, the accused must adduce clear and convincing evidence that he was in a place other than the *situs criminis* at the time the crime was committed, such that it was physically impossible for him to have been at the scene of the crime when it was committed. **Since alibi is a weak defense for being easily fabricated, it cannot prevail over and is worthless in the face of the positive identification by a credible witness that an accused perpetrated the crime. Indisputably, [AAA] positively identified appellant as her molester whom she knew for being her neighbor who resided about ten (10) [arms'] length away from their house.**[23] (Emphases added, citations omitted.)

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[23] *Rollo,* pp. 13-14.

The Court of Appeals thus affirmed with modification the RTC judgment, and we quote the *fallo* of the Decision:

> **WHEREFORE**, the *Judgment* dated July 9, 2007 of the Regional Trial Court ("RTC"), 7th Judicial Region, Branch 63, Bayawan City, Negros Oriental, in Criminal Case No. 212, finding appellant **MANUEL REBANUEL y NADERA GUILTY** beyond reasonable doubt of the crime of Rape under Article 266-B of the Revised Penal Code, is **AFFIRMED with the following modifications:**
>
> a) The award of civil x x x indemnity of Php75,000.00 is reduced to Php50,000.00;
>
> b) The award of moral damages of Php75,000.00 is reduced to Php50,000.00;
>
> c) The award of exemplary damages of Php25,000.00 is increased to Php30,000.00;
>
> d) Appellant is ORDERED to pay the victim [AAA] 6% interest *per annum* on all the civil damages from the date of the finality of this decision.
>
> Costs against appellant.[24]

On September 27, 2012, appellant filed his Notice of Appeal[25] of the Court of Appeals decision to this Court, under Section 13 (c), Rule 124 of the 2000 Rules of Criminal Procedure.

Plaintiff-Appellee adopted its Brief[26] dated January 31, 2011 filed before the Court of Appeals and waived its right to file a Supplemental Brief before this Court.

THIS COURT'S RULING

We affirm the decisions of the Court of Appeals and the RTC, with slight modification as to the damages to be awarded, based on latest jurisprudence.

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

[25] *Id.* at 17.

[26] CA *rollo*, pp. 47-90.

The elements of statutory rape are found in the Revised Penal Code, as amended by Republic Act No. 8353, which reads:

> Article 266-A. *Rape, When and How Committed*. — Rape is Committed —
>
> 1) By a man who shall have carnal knowledge of a woman under any of the following circumstances:
>
> x x x x x x x x x
>
> 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.

As regards this provision, we have previously held that:

> When the offended party is under 12 years of age, the crime committed is "termed statutory rape as it departs from the usual modes of committing rape. What the law punishes is carnal knowledge of a woman below 12 years of age. **Thus, the only subject of inquiry is the age of the woman and whether carnal knowledge took place.** The law presumes that the victim does not and cannot have a will of her own on account of her tender years." x x x.[27] (Emphasis ours, citation omitted.)

We affirm the Court of Appeals in finding that the prosecution satisfactorily established all the elements of statutory rape in this case. The prosecution established the victim's age by clear and convincing evidence, *i.e.*, a certified true copy of her birth certificate[28] and the testimony of an employee of the Local Civil Registrar's Office, who confirmed that based on official records, AAA was born on October 16, 1993, and thus was only nine years old at the time the incident happened on January 3, 2003. The Court of Appeals also noted that appellant did not controvert AAA's age, which made the matter an undisputed fact.[29]

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[27] *People v. Crisostomo*, 725 Phil. 542, 551 (2014), citing *People v. Dollano, Jr.*, 675 Phil. 827, 843 (2011).

[28] Records, p. 88.

[29] *Rollo*, p. 9.

The defenses of alibi and denial are weak compared to the positive identification during trial of appellant by the minor victim as the man who raped her. It was not shown that it was **physically impossible** for him to be at the scene of the crime on the night of the incident. Furthermore, appellant's already weak denial and alibi, even if corroborated by his nephew and his son-in-law, deserve scant consideration given the strength of the prosecution's evidence. As we have previously held:

> For alibi to succeed as a defense, the accused must establish by clear and convincing evidence (a) his presence at another place at the time of the perpetration of the offense and (b) the physical impossibility of his presence at the scene of the crime. x x x. Clearly, there was no physical impossibility for him to be present at the scene of the crime at the time of the commission thereof. This is, undeniably, evidence of his presence at the *locus criminis*.
>
> Accused-appellant's denial in this case, unsubstantiated by clear and convincing evidence, is negative, self-serving evidence, which cannot be given greater evidentiary weight than the testimony of the complaining witness who testified on affirmative matters. His denial and alibi cannot prevail over the affirmative testimony of AAA, a minor less than 12 years old, who narrated how accused-appellant inserted his penis into her vagina.[30] (Citation omitted.)

The healed laceration on the victim's hymen does not serve to acquit appellant either. Hymenal laceration is not an element of statutory rape, as long as there is enough proof of entry of the male organ into the *labia* of the *pudendum* of the female organ of the offended party who is below 12 years of age.[31] As we held in *People v. Escoton*:[32]

> **We stress that in rape cases the accused may be convicted based solely on the testimony of the victim, provided that such testimony is credible, natural, convincing and consistent with human nature and the normal course of things.** In this regard, the trial court is

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[30] *People v. Gragasin*, 613 Phil. 574 (2009).

[31] See *People v. Pacheco*, 632 Phil. 624, 634-635 (2010).

[32] 625 Phil. 74, 86-87 (2010).

in the best position to assess the credibility of the victim, having personally heard her and observed her deportment and manner of testifying during the trial. In the absence of any showing that the trial court overlooked, misunderstood, or misapplied some factor or circumstances of weight that would affect the result of the case, or that the judge acted arbitrarily, the trial court's assessment of credibility deserves the appellate court's highest respect. Here, the appellant fails to persuade us to depart from this principle and to apply the exception.

The testimony of rape victims are given full weight and credence, considering that no young woman, especially of tender age, would concoct a story of defloration, allow an examination of her private parts, and thereafter pervert herself by being subjected to a public trial, if she was not motivated solely by the desire to seek justice for the wrong done to her. It is highly improbable that a girl of tender years who is not yet exposed to the ways of the world, would impute to any man a crime so serious as rape if what she claims is false. Considering that the victim in this case underwent a harrowing experience and exposed herself to the rigors of public trial, it is unlikely that she would concoct false accusations against the appellant, who is her uncle. (Emphases added, citations omitted.)

Thus, We find no reason to reverse the findings of the lower court on the material facts, bolstered by the Court of Appeals' affirmation of such findings. We have held that factual findings of the trial court regarding the credibility of witnesses are accorded great weight and respect especially if affirmed by the Court of Appeals. The lower court was in the best position to weigh the evidence presented during trial and ascertain the credibility of the witnesses who testified. Trial courts have firsthand account of the witnesses' demeanor and deportment in court during trial and this Court shall not supplant its own interpretation of the testimonies for that of the trial judge since he/she is in the best position to determine the issue of credibility of witnesses, being the one who had face-to-face interaction with the same.[33] There is no showing that the lower court overlooked, misunderstood, or misapplied facts or circumstances

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[33] *People v. Delfin*, G.R. No. 190349, December 10, 2014, 744 SCRA 413, 425.

of weight which would have affected the outcome of the case.[34] In the absence of misapprehension of facts or grave abuse of discretion of the court *a quo*, and especially when the findings of the judge have been adopted and affirmed by the Court of Appeals, the factual findings of the trial court shall not be disturbed.[35]

We modify the award of moral damages and civil indemnity, however, in accordance with the current policy of the Court in cases of rape where the penalty imposed is *reclusion perpetua*.[36]

WHEREFORE, the Decision of the Court of Appeals in CA-G.R. CEB-CR.-H.C. No. 00815 affirming the Judgment dated July 9, 2007 of the Regional Trial Court, 7th Judicial Region, Branch 63, Bayawan City, Negros Oriental, in Criminal Case No. 212, is **AFFIRMED WITH MODIFICATION**. Appellant Manuel Rebanuel *y* Nadera is **GUILTY** beyond reasonable doubt of the crime of rape as defined in Article 266-A (1) (d) and penalized in Article 266-B of the Revised Penal Code, as amended by Republic Act No. 8353. Appellant is sentenced to the penalty of *reclusion perpetua* and ordered to pay AAA the following: civil indemnity of Seventy-Five Thousand Pesos (₱75,000.00), moral damages of Seventy-Five Thousand Pesos (₱75,000.00), and exemplary damages of Seventy-Five Thousand Pesos (₱75,000.00). All monetary awards for damages shall earn interest at the legal rate of 6% per annum from date of finality of this Decision until fully paid.

Costs against appellant.

SO ORDERED.

Bersamin, Perlas-Bernabe, and *Caguioa, JJ.,* concur.

Sereno, C.J., on leave.

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[34] *People v. Pacheco, supra* note 31 at 635.

[35] *People v. Delfin, supra* note 33 at 425.

[36] *People v. Jugueta*, G.R. No. 202124, April 5, 2016.

SECOND DIVISION

[G.R. No. 209038. June 8, 2016]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **RONALD BACALAN GABUYA and RYANNEAL MENESES GIRON,** *accused-appellants.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; ROBBERY WITH RAPE; ELEMENTS, ESTABLISHED IN CASE AT BAR.— After a careful review of the records of the case, this Court finds the appeal devoid of merit. Both the RTC of Cebu City, Branch 24, and the CA correctly found the appellants guilty beyond reasonable doubt of robbery with rape under Article 294, paragraph 1 of the RPC. Indeed, the State in this case had satisfactorily established the following essential elements of that felony: "a) the taking of personal property is committed with violence or intimidation against persons; b) the property taken belongs to another; c) the taking is done with *animo lucrandi*, and d) the robbery is accompanied by rape."

2. ID.; ID.; ID.; PROPER PENALTY AND CIVIL LIABILITY.— Under Article 294, paragraph 1, when robbery is accompanied by rape, the penalty is *reclusion perpetua* to death. Although the trial court imposed the death penalty, the CA correctly modified the penalty to *reclusion perpetua*, without eligibility for parole, pursuant to RA 9346. The amount of civil damages awarded by the CA, should be modified, however. Based on prevailing jurisprudence, the awards of civil indemnity and moral damages in favor of "AAA" should be increased from ₱75,000.00 to ₱100,000.00. The same jurisprudential teaching also directs that the award of exemplary damages should also be upgraded from ₱30,000.00 to ₱100,000.00.

APPEARANCES OF COUNSEL

Office of the Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellants.

D E C I S I O N

DEL CASTILLO, *J.*:

This is an appeal from the June 20, 2013 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 00441, which affirmed the January 31, 2006 Decision[2] of the Regional Trial Court (RTC) of Cebu City, Branch 24, in Criminal Case No. CBU-62026, finding appellants Ronald Bacalan Gabuya (Gabuya) and Ryanneal Meneses Giron (Giron) guilty beyond reasonable doubt of the crime of robbery with rape defined and penalized in Article 294, paragraph 1 of the Revised Penal Code (RPC), and sentencing them to death.

Proceedings before the Regional Trial Court

Gabuya and Giron were charged with the crime of robbery with rape for robbing "AAA" by taking her personal belongings through violence and intimidation and thereafter taking turns raping her. The charge against them stemmed from the following Information:

That on or about the 18th day of March, 2002, at about 12:20 A.M., in the City of Cebu, Philippines, and within the jurisdiction of this Honorable Court, the said accused, armed with a knife, conniving and confederating together and mutually helping each other, poked said knife at one "AAA"[3] and announced a "hold-up" with deliberate intent, with violence and intimidation upon person, took turns in divesting her bag, with its contents such as wristwatch, one casio

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[1] CA *rollo*, pp. 100-117; penned by Associate Justice Carmelita Salandanan-Manahan and concurred in by Associate Justices Ramon Paul L. Hernando and Ma. Luisa Quijano-Padilla.

[2] *Id.* at 59-65; penned by Judge Olegario R. Sarmiento, Jr.

[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, together with that of her immediate family members, is withheld and fictitious initials instead are used to represent her, both to protect her privacy. [*People v. Cabalquinto*, 533 Phil. 703 (2006).]

calculator; cash money and coin purse with a total value of ₱2,965.00 from the possession of and belonging to said "AAA" while the latter was walking along Visitacion St., a public highway against her will, to the damage and prejudice of the latter in the amount aforestated, and on the occasion thereof, dragged said victim to a vacant lot and then there take turns in having sexual intercourse with said victim while the other accused held her shoulders, without the consent and against the will of the complainant.

CONTRARY TO LAW.[4]

Upon arraignment, both Gabuya and Giron pleaded not guilty to the crime charged. After pre-trial conference, trial on the merits followed.

Version of the Prosecution

The prosecution presented the following witnesses: the victim, "AAA;" the arresting officer, PO2 Albert Makinano (PO2 Makinano); the examining doctor of "AAA," Dr. Raymond Anthony Jude Maniwang (Dr. Maniwang); and the other arresting officer, PO1 Dennis Labra (PO1 Labra). Their collective testimonies tended to establish the following events:

On March 18, 2002, at around 12:20 a.m., "AAA" was walking along Visitacion Street, Cebu City on her way home from work when she saw two men with familiar faces near a lamp post by the CAP Building. She noticed that the two men were following her.

At first, "AAA" was not alarmed as she continued on her way. However, she noticed that when she walked fast, the men who were following her picked up speed, too. As a result, "AAA" became frightened. When she turned around to see the men who were following her, she saw that they were already very close behind her. At this point, Gabuya quickly pointed a knife at her neck and held her left shoulder.[5] He told her not to shout

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[4] Records, p. 1.

[5] TSN, September 3, 2002, p. 9.

or else he would kill her.[6] Gabuya and Giron then dragged her to a vacant lot along Visitacion Street. These two took all of her belongings which consisted of a bag; ₱450.00 in cash; coin purse containing ₱15.00; wristwatch worth ₱1,800.00; Casio calculator worth ₱700.00; ID cards; and other personal belongings.[7]

"AAA" was then pushed to the ground. Giron removed "AAA's" pants and underwear while Gabuya touched her breasts. Giron also removed his short pants and brief; went on top of "AAA;" inserted his penis into her private parts; and then pumped his lower body against her private parts. While Giron was doing this, Gabuya was over "AAA's" head, holding her, while his right hand was pointing a knife at her, threatening to kill her if she shouts for help. "AAA" tried to get Giron off her body but was no match to his strength.

After sating his lust, Giron then swapped places with Gabuya. Gabuya went on top of "AAA;" inserted his penis into the latter's private parts; and then forcibly copulated with her.

When a woman suddenly appeared in the vacant lot, Gabuya quickly stood up. Giron and Gabuya then dressed up, took "AAA's" bag and personal belongings, and left the scene of the crime. "AAA" then dressed up and asked for help from the passer-by who accompanied "AAA" to her house. Once home, "AAA" told her landlord of her harrowing experience. The latter then brought her to the Cebu City Medical Center for medical examination.

Dr. Maniwang examined "AAA." He found a punctured wound, one caused by a sharp-pointed object, at the right portion of "AAA's" neck; multiple minor superficial abrasions scattered all over her body; and a 1x1 cm. abrasion at the anterior neck, left side. Dr. Maniwang found that the wounds on the victim's body are consistent with possible struggle in a robbery with rape case. With respect to the allegation of rape, Dr. Marilee

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[6] *Id.* at 10.

[7] *Id.*

Solaña (Dr. Solaña), attending physician on duty and an OB GYNE, found deep lacerations at the 4 and 7 o'clock positions of "AAA's" hymen. Dr. Solaña also found traces of spermatozoa in "AAA's" private parts. After her medical examination, "AAA" went to the Fuente Osmeña Police Station where she reported the robbery with rape.

PO2 Makinano was the officer on duty to whom "AAA" reported the crime. Along with PO3 Labra and other police officers, they immediately conducted a hot pursuit operation. The police officers eventually caught the appellants in an alley at the back portion of the CAP building. After being informed of their Constitutional rights, Gabuya and Giron were then arrested. The police officers recovered from their possession a Casio calculator, and two fifty peso bills. At the police station, "AAA" positively identified Gabuya and Giron as the persons who robbed and violated her.

Version of the Defense

Gabuya and Giron interposed the defense of denial and alibi.

Gabuya claimed that on March 18, 2002, around 12:20 in the early morning, he was asleep in his house in Sambag II, Cebu City. He was roused up by Police Officer Artemio Tumakay (PO Tumakay) at 6:00 in the morning in connection with a robbery with multiple rape wherein he was implicated. He was then brought to the police station where a girl was asked to point at him. The girl did not point at him, however. Instead, according to him, she just stared at him and went out. After this, he was mauled by PO Tumakay who accused him of robbing and raping the girl.

The other appellant, Giron, likewise claimed that he was asleep in his house in Sambag II, Cebu City at the date and time the robbery and rape were committed. Giron asserted that he woke up around 9:30 in the morning when Sambag II *Barangay* Councilor Wengaweng Belarmino went to his house informing him that someone had been robbed and that the robber's description provided by the victim matched his facial features.

He was then invited to go to the police station. But when he and his father arrived at the police station, "AAA" merely stared at him, nodded, and then left.

Ruling of the Regional Trial Court

On January 31, 2006, the RTC of Cebu City, Branch 24, gave judgment finding both Gabuya and Giron guilty beyond reasonable doubt of the crime of robbery with rape as defined and penalized under Article 294, paragraph 1 of the RPC; this judgment was based on the positive identification by the victim "AAA" and the corroborating medical examination conducted on her. The RTC observed that:

> x x x ["AAA"] positively identified the two suspects to be the same persons who robbed and raped her. She cannot be mistaken because she has been familiar with the two since they were seen by her around the vicinity of CAP and along Visitacion Street whenever she comes home from work. During that fateful evening, when she noticed that there were persons who followed her, she was frightened and when they were about 8 meters away, she turned around to have a good look at the said persons and saw the two familiar faces of the accused who were seen earlier as she passed by the CAP building. An hour after the incident, she immediately and positively identified the culprits at the police station. The police officers who responded to the alarm and in the hot pursuit operation, collared accused at an alley in the interior portion at the back of CAP. The arresting officers were able to seize from them the calculator owned by the victim and the two fifty-peso bills which is the amount left of the ₱480.00 cash money taken from her.
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> It is established in evidence that there was forceful penile penetration as shown by the medical certificate and presence of spermatozoa. The puncture wound indubitably indicates that a sharp instrument was pointed to her neck. The abrasions and hematoma found in the body of the victim [are] consistent with the struggle put up by the rape victim, as evidence of rape abound.[8]

The dispositive part of the RTC's Decision reads:

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[8] Records, pp. 95-96.

WHEREFORE, finding the two accused GUILTY beyond reasonable doubt of the crime charged, this Court hereby sentences each to suffer the supreme penalty of DEATH by lethal injection. They are jointly and solidarily adjudged liable to indemnify the victim as follows:

1. One Hundred Thousand Pesos (₱100,000.00) — as civil indemnity ex delicto;

2. One Hundred Thousand Pesos (₱100,000.00) — as moral damages;

3. One Thousand Pesos (₱1,000.00) in medical expenses;

4. One Thousand Four Hundred Pesos (₱1,400.00) unearned income;

They are also ordered to restore unto the complainant the wristwatch or if not feasible, to pay the value thereof; and to return the money taken in cash amounting to ₱380.00. The two fifty-peso bills, as well as the calculator, used as evidence, is released and returned to her.

SO ORDERED.[9]

Ruling of the Court of Appeals

Both appellants elevated their case to the CA. They argued that because they were not assisted by counsel at the time of their arrest and during the police line-up, it follows that their out-of-court identification by "AAA" was inadmissible against them; and that in any event the prosecution had failed to prove beyond reasonable doubt all the essential elements of the crime of robbery with rape.

The CA gave short shrift to the appellants' argument. The CA ruled that "AAA's" identification of the appellants was convincing and credible because she was familiar with them, as indeed she had seen these appellants a number of times prior to the incident; that assuming *arguendo* that the out-of-court identification of these appellants by "AAA" was defective, this defect was cured by the subsequent positive identification of

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

these appellants by "AAA" in open court. Upon this point, the CA ratiocinated as follows:

> x x x Inadmissibility of these out-of-court identifications [does] not render the in-court identification of accused-appellants inadmissible for being the 'fruits of the poisonous tree.' These in-court identifications were what formed the bases of the trial court's conviction of the accused-appellants. As they were not derived or drawn from the illegal arrest of accused-appellants or as a consequence thereof, they are admissible as evidence against them.[10]

Rebuffing appellants' contention that the prosecution failed to prove the elements of robbery with rape, the CA declared thus:

> In the present case, rape was undoubtedly committed by the accused-appellants when they forcibly dragged the victim to a vacant lot, removed her clothes, and took turns in raping her by placing their penis inside her vagina. Contrary to defendants-appellants' allegations that the victim did not shout or never resisted on the carnal acts, thus, there was no element of force or intimidation, records revealed and as already discussed above, the victim was continuously intimidated by accused-appellants' threat of killing her when she resists or shouts. AAA has no other recourse but to give in to accused-appellants' orders so as to preserve her life and safety. In any case, the law does not impose upon a rape victim the burden of proving resistance. Physical resistance need not be established in rape when intimidation is exercised upon the victim and she submits herself against her will to the rapist's lust because of fear for life and personal safety.
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> Moreover, the Supreme Court has ruled that due to its intimate nature, rape is usually a crime bereft of witnesses, and, more often than not, the victim is left to testify for herself. Thus, in the resolution of rape cases, the victim's credibility becomes the primordial consideration. It is settled that when the victim's testimony is straightforward, convincing, and consistent with human nature and the normal course of things, unflawed by any material or significant inconsistency, it passes the test of credibility, and the accused may be convicted solely on the basis thereof. The trial court's assessment

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[10] CA *rollo*, p. 109.

of the witnesses' credibility is given great weight and is even conclusive and binding.

In the present case, the victim gave a straightforward and positive narrative of the events which only evinces the veracity of her testimony. The medical certificate issued by Dr. Maniwang is likewise consistent with the possibility that the complainant had been a victim of rape. In addition, AAA promptly reported the incident to the police further bolstering her credibility. The incident occurred in the early hours of March 18, 2002, and immediately after going to the hospital for examination, she went to the Fuente [Osmeña] Police Station and exposed her ordeal in the hands of the accused-appellants.

Besides, the accused-appellants failed to prove any ulterior or improper motive which could have induced the victim and her witness to testify against or falsely implicate them in the commission of the crime. Indeed, if an accused had really nothing to do with the crime, it is against the natural order of events and human nature and against the presumption of good faith that the prosecution witness would falsely testify against the former. Thus, we adhere to the established rule that in the absence of any evidence to show that the witnesses for the prosecution were actuated by any improper motive, their identification of the accused-appellants should be given full faith and credit.[11]

The CA thus disposed decretally as follows:

WHEREFORE, premises considered, the appeal is DENIED. The January 31, 2006 Decision of the Regional Trial Court of Cebu City in Criminal Case Number CBU-62026 convicting accused-appellants for the crime of Robbery with Multiple Rape is hereby AFFIRMED with MODIFICATIONS.

Accused-appellants Ronald Gabuya and Ryanneal Giron are found guilty beyond reasonable doubt of the special complex crime of robbery with rape and are hereby sentenced to *reclusion perpetua* without eligibility of parole pursuant to R.A. 9346. They are ordered to make reparation for the value of the items they unlawfully took; such as the wristwatch, cash amounting to Php380.00, two (2) fifty peso bills, and calculator. They are solidarily liable to pay AAA Php75,000.00 as civil indemnity; Php75,000.00 as moral damages, Php30,000.00

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[11] *Id.* at 112-113.

as exemplary damages and interest at the rate of six percent (6%) per annum on all the damages awarded from date of finality of this judgment until fully paid. The award of medical expense and unearned income are DELETED.

SO ORDERED.[12]

Our Ruling

After a careful review of the records of the case, this Court finds the appeal devoid of merit. Both the RTC of Cebu City, Branch 24, and the CA correctly found the appellants guilty beyond reasonable doubt of robbery with rape under Article 294, paragraph 1 of the RPC. Indeed, the State in this case had satisfactorily established the following essential elements of that felony: "a) the taking of personal property is committed with violence or intimidation against persons; b) the property taken belongs to another; c) the taking is done with *animo lucrandi*, and d) the robbery is accompanied by rape."[13]

Under Article 294, paragraph 1, when robbery is accompanied by rape, the penalty is *reclusion perpetua* to death. Although the trial court imposed the death penalty, the CA correctly modified the penalty to *reclusion perpetua*, without eligibility for parole, pursuant to RA 9346.

The amount of civil damages awarded by the CA, should be modified, however. Based on prevailing jurisprudence, the awards of civil indemnity and moral damages in favor of "AAA" should be increased from ₱75,000.00 to ₱100,000.00.[14] The same jurisprudential teaching also directs that the award of exemplary damages should also be upgraded from ₱30,000.00 to ₱100,000.00.

WHEREFORE, the appeal is **DISMISSED**. The Decision of the Court of Appeals dated June 20, 2013 in CA-G.R. CR-H.C. No. 00441, is **AFFIRMED**, **subject to**

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[12] *Id.* at 116-117.

[13] *People v. Amper*, 634 Phil. 283, 290 (2010).

[14] *People v. Jugueta*, G.R. No. 202124, April 5, 2016.

the MODIFICATION that the appellants Ronald Bacalan Gabuya and Ryanneal Meneses Giron are ordered to solidarily pay "AAA" the increased amounts of ₱100,000.00 as civil indemnity; ₱100,000.00 as moral damages; and another ₱100,000.00 as exemplary damages.

SO ORDERED.

Carpio, Acting C.J.[*] (*Chairperson*), *Mendoza,* and *Leonen, JJ.,* concur.

Brion, J., on official leave.

SECOND DIVISION

[G.R. No. 209146. June 8, 2016]

PROVINCE OF ANTIQUE and MUNICIPALITY OF CALUYA, *petitioners, vs.* **HON. RECTO A. CALABOCAL, Judge-Designate, Regional Trial Court, Branch 43, Roxas, Oriental Mindoro, PROVINCE OF ORIENTAL MINDORO, and MUNICIPALITY OF BULALACAO,** *respondents.*

SYLLABUS

1. POLITICAL LAW; LOCAL GOVERNMENT CODE OF 1991; BOUNDARY DISPUTE EXISTS WHEN AN ISLAND IS BEING CLAIMED BY DIFFERENT LOCAL GOVERNMENT UNITS (LGUs).— A ***boundary dispute*** involving different local government units is defined in the

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[*] Per Special Order No. 2353 dated June 2, 2016.

Implementing Rules and Regulations (IRR) of the Local Government Code. Specifically, Rule III, Article 15 states: RULE III Settlement of Boundary Disputes ARTICLE 15. Definition and Policy. — **There is a boundary dispute when a portion or the whole of the territorial area of an LGU is claimed by two or more LGUs.** Boundary disputes between or among LGUs shall, as much as possible, be settled amicably. Based on this definition, a *boundary dispute* may involve "a portion or the whole" of a local government unit's territorial area. Nothing in this provision excludes a dispute over an island. So long as the island is being claimed by different local government units, there exists a boundary dispute.

2. ID.; ID.; SETTLEMENT OF BOUNDARY DISPUTE BETWEEN TWO LGU'S IS GOVERNED BY SECTIONS 118 AND 119 OF THE LOCAL GOVERNMENT CODE OF 1991.— Having established that the case involves a boundary dispute, the procedure to resolve the same is that established under the Local Government Code. Under the said law, "the respective legislative councils of the contending local government units have jurisdiction over their boundary disputes." Sections 118 and 119 of the Local Government Code state: SECTION 118. *Jurisdictional Responsibility for Settlement of Boundary Dispute*. — Boundary disputes between and among local government units shall, as much as possible, be settled amicably. To this end: x x x (c) **Boundary disputes involving municipalities or component cities of different provinces shall be jointly referred for settlement to the Sanggunians of the provinces concerned.** x x x SECTION 119. *Appeal*. — Within the time and manner prescribed by the Rules of Court, any party may elevate the decision of the Sanggunian concerned to the proper Regional Trial Court having jurisdiction over the area in dispute. The Regional Trial Court shall decide the appeal within one (1) year from the filing thereof. Pending final resolution of the disputed area prior to the dispute shall be maintained and continued for all legal purposes. x x x As the Court has previously ruled, it is "only upon the failure of these intermediary steps will resort to the RTC follow, as specifically provided in Section 119 of the [Local Government Code.]"

3. ID.; ID.; ID.; JURISDICTION OF THE REGIONAL TRIAL COURT (RTC), UPHELD; FILING OF THE CASE BEFORE THE RTC WAS WARRANTED UNDER THE

CIRCUMSTANCES IN CASE AT BAR.— Respondents' resort to filing a case before the RTC was warranted under the circumstances of this case. It must be emphasized that respondents followed the procedure laid down in the Local Government Code. They took all the necessary steps to settle the dispute within the procedure set out in the law, and by all indication, was prepared to see the matter thru in order to lay the issue to rest. However, petitioners failed to perform their concomitant responsibility under the same law, leaving respondents with no other recourse but to bring the matter to court. Petitioners cannot demand that respondents now follow the procedure when they themselves have made it impossible for any party to follow the same. The Province of Antique's Resolution No. 142-2012 dated 25 May 2012, stating that the Province of Antique was not amenable to any form of settlement, effectively blocked any way to continue following the steps in the IRR. As such, respondents' petition before the RTC must be upheld. Otherwise, they will be left without any recourse or legal remedy to assert their claim over Liwagao Island. Such uncertainty is unacceptable, as the fate of the island's residents rests in the immediate resolution of the dispute.

APPEARANCES OF COUNSEL

Roberto Q. Operiano for petitioners.

Kristine Grace L. Suarez for the Province of Oriental Mindoro and Municipality of Bulalacao.

D E C I S I O N

CARPIO, *Acting C.J.*:

Before this Court is a Petition for *Certiorari* and Prohibition with Prayer for Preliminary Injunction and Temporary Restraining Order[1] filed by the Province of Antique and the Municipality of Caluya (petitioners) against Judge Recto A. Calabocal (Judge Calabocal), Judge-Designate of the Regional

[1] *Rollo*, pp. 10-33. Under Rule 65 of the Rules of Court.

Trial Court (RTC) of Roxas, Oriental Mindoro, Branch 43, and the Province of Oriental Mindoro and the Municipality of Bulalacao, Oriental Mindoro (respondents).

The case before the Court stems from a dispute between the Province of Antique and the Province of Oriental Mindoro for "territorial jurisdiction, dominion, control and administration"[2] over Liwagao Island,[3] a 114-hectare island located between the two provinces.[4] This dispute led to Civil Case No. C-566, a petition for "Recovery and Declaration of Political Jurisdiction/ Dominion and Mandamus"[5] filed by respondents against petitioners before the RTC of Roxas, Oriental Mindoro. Assailed in this petition are the Orders issued by Judge Calabocal on 23 April 2013,[6] denying petitioners' affirmative defense of lack of jurisdiction, and on 17 July 2013,[7] denying their subsequent motion for reconsideration.

The Facts

Based on the petition filed by respondents before the RTC, sometime between the years 1978 and 1979, Dolores Bago (Mayor Bago), then Mayor of the Municipality of Bulalacao, Oriental Mindoro, agreed to lend the administration of Liwagao Island to Oscar Lim (Mayor Lim), then Mayor of the Municipality of Caluya, Antique.[8] The agreement was made orally and without executing any formal documents to this effect. The condition attached to the agreement was that the island would be returned upon termination of either party's terms in office.

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[2] *Id.* of 39.

[3] Also called Libago Island. *Id.* at 43.

[4] *Id.*

[5] *Id.* at 38-59.

[6] *Id.* at 34-35.

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

[8] *Id.* at 39.

The terms of both mayors ended in 1987. Mayor Lim allegedly returned Liwagao Island to the Municipality of Bulalacao. However, the Municipality of Caluya continued to exercise administration over the island.[9]

On 15 April 2002, the Sangguniang Panlalawigan of Oriental Mindoro passed a resolution confirming its jurisdictional rights and dominion over Liwagao Island.[10] However, according to respondents, the Municipality of Caluya and the Province of Antique continued to claim and exercise authority over Liwagao Island.[11]

Respondents claim that despite the fact that it is the Province of Oriental Mindoro and the Municipality of Bulalacao that provide government services to the island, petitioners "continued collecting real property taxes" from Liwagao's inhabitants.[12]

On 20 February 2012, the Sangguniang Panlalawigan of Oriental Mindoro passed Resolution No. 1454-2012 entitled *Resolution Calling for the Conduct of a Joint Session between the Sangguniang Panlalawigan of the Province of Oriental Mindoro and the Sangguniang Panlalawigan of the Province of Antique for the Settlement of Jurisdictional Claim over the Island of Liwagao*.[13]

Upon receiving a copy of Resolution No. 1454-2012, the Vice Governor of Antique wrote the Sangguniang Panlalawigan of Oriental Mindoro of her willingness to conduct a joint session to settle the boundary dispute. However, on 25 May 2012, the Sangguniang Panlalawigan of Antique issued Resolution No. 142-2012 informing Oriental Mindoro that it was not amenable to any form of settlement over the jurisdiction of Liwagao Island and asserted that the same rightfully belongs to their province.[14]

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[9] *Id.* at 48.

[10] *Id.* at 50.

[11] *Id.* at 50-51.

[12] *Id.* at 52.

[13] *Id.* at 60.

[14] *Id.* at 54.

Thereafter, the Sangguniang Panlalawigan of Oriental Mindoro issued a resolution directing the Provincial Legal Office to file the necessary legal action to claim Liwagao Island.[15]

Thus, on 12 September 2012, respondents filed their petition before the RTC of Roxas, Oriental Mindoro.

On the other hand, in their Answer before the RTC, petitioners claimed that "the maps of [NAMRIA] and DENR show Liwagao Island to be part of Caluya, Antique."[16] Petitioners asserted that "all national agencies of the government have always considered the island to be part of Caluya." Likewise, the people living there have always recognized Caluya's jurisdiction over the island as evidenced by the fact that they have "registered their births, paid real property taxes and voted in Caluya, Antique."[17]

In the same Answer, petitioners set up the defense of lack of jurisdiction of the RTC. They argued that "under Section 118, paragraph (c) of the Local Government Code, jurisdiction over boundary disputes between municipalities of different provinces is vested on the Sangguniang Panlalawigans of the provinces involved."[18]

The Orders of the RTC

The RTC issued the first of its assailed orders on 23 April 2013 ruling on the special and affirmative defenses invoked by the Province of Antique and the Municipality of Caluya. Specifically, petitioners argued that the case involved a boundary dispute that should have first been brought to the Sangguniang Panlalawigan concerned for settlement.[19]

The RTC disagreed:

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[15] *Id.*

[16] *Id.* at 14.

[17] *Id.*

[18] *Id.*

[19] *Id.* at 34.

The respondent claimed that the subject government unit is a part of its territory. Clearly, the issue revolves and gravitates on who between the petitioner and respondent is the owner of sitio Liwagao, barangay Maasim, and not merely a boundary dispute because both parties claim the whole government unit of sitio Liwagao and not merely a part thereof to constitute it as boundary dispute to fall under Section 118, paragraph c of the Local Government Code.

The respondent claims that it should have been brought first to the Sangguniang Panlalawigan concern (sic) for settlement. The court is not in accord with such contention because the Sanggunian of Antique already issued Resolution No. 142-2012 dated May 25, 2012 to the effect that it categorically declared that the Sangguniang Panlalawigan of Antique is not amenable to any form of settlement on the alleged dispute of jurisdiction or dominion over the Island of Liwagao. Such resolution of the Sangguniang Panlalawigan of Antique absolutely slammed or closed the door to any amicable settlement with the petitioners. Hence, the court believes that it would be an exercise in futility for the petitioners to agree with respondents' argument.

As correctly pointed out by Atty. Kristine Grace L. Suarez in her memorandum, that there is no law precluding a party to a case from availing of any legal remedies available. In this case, the petitioners logically opted to institute this case which is an action for recovery and declaration of jurisdiction/dominion.

ACCORDINGLY, the instant affirmative defense of lack of jurisdiction is hereby DENIED. x x x.[20]

Petitioners filed a Motion for Reconsideration. The RTC denied the motion in its second assailed Order of 17 July 2013, holding that:

x x x The real issue in this case is not a boundary dispute between the petitioners and respondents but whether or not the former can recover back what it had lent to the latter. The respondents were just trying to complicate the issue by making it appear that it is a boundary dispute which it had already closed the door for any settlement.

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[20] *Id.* at 34-35.

Since time immemorial, Liwagao Island was under the peaceful and exclusive territorial and political jurisdiction by the Municipality of Bulalacao, Oriental Mindoro. In fact, voluminous documents clearly show that Liwagao is within the Municipality of Bulalacao, Oriental Mindoro. This alone strongly indicates that the issue in this case is not a boundary dispute because these documents indicate that Liwagao Island is within the Municipality of Bulalacao, Oriental Mindoro. If it is true as claimed by the respondents that Liwagao Island is within its territorial and political jurisdiction, why would then Mayor Lim of Caluya, Antique still need to secure the consent of the then Mayor Bago of Bulalacao, Oriental Mindoro to temporarily exercise jurisdiction over the Island of Liwagao. To the mind of this court, this is an admission on the part of the respondent that the subject island is within the Municipality of Bulalacao, Oriental Mindoro.[21]

Petition for *Certiorari* and Prohibition with Prayer for Preliminary Injunction and TRO

Petitioners subsequently filed the present petition praying for:

a) A temporary restraining order and writ of preliminary injunction be immediately issued enjoining all proceedings of the court a quo and of the respondent judge during the pendency of the case;

b) A writ of certiorari be issued, reversing the questioned Orders of the respondent judge dated April [23], 2013 and July 17, 2013 in Civil Case No. C-566, and dismissing Civil Case No. C-566, and

c) A writ of prohibition be issued permanently enjoining respondent judge from taking cognizance of this case[.][22]

The Court, in a Resolution dated 14 October 2013, issued a temporary restraining order "enjoining the respondents, the RTC, Branch 43, Roxas, Oriental Mindoro, their representatives, agents or other persons acting on their behalf from further proceeding with the enforcement of the Orders dated 23 April 2013 and 17 July 2013 of the RTC, Branch 43, Roxas, Oriental Mindoro in

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[21] *Id.* at 37.

[22] *Id.* at 29.

Civil Case No. C-566 during the pendency of the instant case."[23]

Petitioners' Arguments

In the case at bar, petitioners aver that, *first*, the RTC committed grave abuse of discretion amounting to lack or excess of jurisdiction when it ruled that the case does not involve a boundary dispute.[24] Petitioners insist that the case involves a boundary dispute, which simply refers to when "two entities disagree as to where the boundary between them lies."[25] They further assert that "it does not matter whether what is involved in said dispute is the whole or only a part of a local government unit. What determines whether there is a boundary dispute is that there is disagreement as to whether the boundary lies between two territories."[26]

Second, petitioners assert that the RTC erred in assuming jurisdiction over respondents' petition because "the Sangguniang Panlalawigans of both the provinces of Antique and Oriental Mindoro, sitting jointly, have primary, original and exclusive jurisdiction over this boundary dispute."[27] They contend that under the Local Government Code, "a boundary dispute between municipalities of different provinces shall be referred first for settlement to the sanggunians of the provinces jointly" and if no settlement is reached, the case shall be jointly tried by the sanggunians concerned.[28] After trial, the aggrieved party may appeal the decision to the RTC having jurisdiction over the area.

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[23] *Id.* at 78.

[24] *Id.* at 16.

[25] *Id.*

[26] *Id.* at 17.

[27] *Id.* at 18.

[28] *Id.* at 19.

Third, petitioners argue that the "RTC only has jurisdiction over an appeal from the decision of the Sangguniang Panlalawigans in a boundary dispute in accordance with Sec. 119 of the Local Government Code." They aver that the petition filed with the RTC was not an appeal but an original complaint,[29] which alleges that the parties concerned failed to settle the dispute. It is clear, petitioners claim, that "the respondents brought this action in the RTC as a result of the failure of settlement between the parties, not as an appeal from a decision of both the Sangguniang Panlalawigans of Antique and Oriental Mindoro."[30]

Lastly, the RTC "cannot exercise appellate jurisdiction over [respondents' petition] since there was no petition [for the adjudication of the boundary dispute] that was filed and decided by the Sangguniang Panlalawigans of Antique and Oriental Mindoro."[31] Such petition should be in the form of a resolution and filed with either of the two sanggunians. Resolution No. 1454-2012 of the Province of Oriental Mindoro x x x "did not qualify as such petition because it only called for the conduct of a joint session between the two sanggunians x x x. The resolution did not lay claim over Liwagao Island x x x. Much less did it state the grounds, reasons or justification for a claim, as required by the Implementing Rules and Regulations (IRR) of the Local Government Code."[32]

Respondents' Arguments

In their Comment,[33] respondents initially argue for the dismissal of the petition on technical grounds. Specifically, respondents allege that (1) the instant case was filed one day after the lapse of the 60-day reglementary period to file a petition for *certiorari*/prohibition; (2) petitioners also failed to attach

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[29] *Id.* at 20.

[30] *Id.* at 21.

[31] *Id.*

[32] *Id.*

[33] *Id.* at 97-117.

a certified true copy of the assailed RTC orders and to file the required number of copies of the petition; and (3) petitioners failed to pay the filing fee within the reglementary period.

Next, respondents argue that petitioners failed to adhere to the doctrine of hierarchy of courts.[34] Citing past decisions of this Court, respondents assert that following said doctrine, a special civil action assailing the order of the RTC should be filed with the Court of Appeals and not with this Court.[35]

Respondents contend that the RTC has jurisdiction over their petition because the same is not an appeal but an "an original legal action to recover and get back the Island of Liwagao."[36] They emphasize that the petition they filed before the RTC is not one for settlement of boundary dispute but for "recovery of jurisdiction/dominion over a property."[37] According to respondents, the two actions differ from each other in that in the action they filed, they seek to "RECOVER possession, jurisdiction and dominion over a property whose ownership had previously been vested to them" while in case of settlement of boundary dispute, "what is being prayed for is to CLAIM a property whose ownership is in question."[38]

Respondents insist that "there is no boundary dispute"[39] in this case. They argue that the boundary lines between the Province of Oriental Mindoro and the Province of Antique "[have] long been set forth and known to the parties" and that the "issue on the possession of Liwagao Island x x x only cropped up when the Municipality of Bulalacao lent the island to the Municipality of Caluya in the late 1970s."[40]

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[34] *Id.* at 104.

[35] *Id.*

[36] *Id.* at 106.

[37] *Id.* at 107.

[38] *Id.* at 108.

[39] *Id.*

[40] *Id.*

Likewise, respondents aver that "there is no law precluding a party from availing of any legal remedies available to him/her under the law."[41] Citing previous Court decisions, respondents insist that a party may resort to an original action to affirm its rights over what it claims to be its territory.[42]

Finally, respondents argue that even "assuming it is the Sangguniang Panlalawigans of the Provinces of Oriental Mindoro and Antique that have jurisdiction over the[ir] petition x x x the factual circumstances rendered it impossible for these legislative bodies to resolve the issue involving the Island of Liwagao."[43] Respondents point out that, prior to filing the petition before the RTC, it had already made several attempts to "amicably discuss the issue on jurisdictional claim."[44] However, the Sangguniang Panlalawigan of Antique categorically proclaimed that it was not amenable to any form of settlement.[45]

The Issue

The sole issue in this case is whether the RTC has jurisdiction over the respondents' petition for recovery of property and declaration of territorial and political jurisdiction/dominion over Liwagao Island.

The Court's Ruling

The petition is dismissed for lack of merit. Contrary to petitioners' claim, the RTC has jurisdiction over the dispute. However, the RTC's ruling that the case does not involve a boundary dispute is incorrect.

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[41] *Id.* at 109.

[42] *Id.*

[43] *Id.* at 111.

[44] *Id.* at 112.

[45] *Id.*

The Case Involves a Boundary Dispute

Respondents insist that this case stems from an original action for "recovery/declaration of territorial and political jurisdiction/ dominion" and not a boundary dispute; hence, it is not within the purview of Section 118 of the Local Government Code.

Respondents' argument is erroneous.

A ***boundary dispute*** involving different local government units is defined in the Implementing Rules and Regulations (IRR)[46] of the Local Government Code.[47] Specifically, Rule III, Article 15 states:

RULE III
Settlement of Boundary Disputes

ARTICLE 15. Definition and Policy. — **There is a boundary dispute when a portion or the whole of the territorial area of an LGU is claimed by two or more LGUs.** Boundary disputes between or among LGUs shall, as much as possible, be settled amicably. (Emphasis supplied)

Based on this definition, a *boundary dispute* may involve "a portion or the whole" of a local government unit's territorial area. Nothing in this provision excludes a dispute over an island. So long as the island is being claimed by different local government units, there exists a boundary dispute.

The allegations in the complaint filed before the RTC point to a boundary dispute, as defined under the Local Government Code.

Respondents are asserting their lawful jurisdiction over Liwagao Island as against another local government unit that currently has jurisdiction over the same. Therefore, whether the case is denominated as recovery of possession or claim of ownership, respondents' objective is the same: for respondents to regain their alleged territorial jurisdiction over Liwagao Island.

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[46] Administrative Order No. 270. Issued on 21 February 1992.

[47] Republic Act No. 7160.

Respondent Province of Oriental Mindoro itself acknowledges that the conflict is a "boundary row" between itself and the Province of Antique.[48] As stated in Resolution No. 1454-2012, the Province of Oriental Mindoro claims to "adhere to the basic principle of amicably settling said boundary dispute, as laid down in the provision of the Local Government Code of 1991[.]"[49]

Thus, they are bound by their own assertions and cannot now claim that the conflict does not involve a boundary dispute.

Settlement of Boundary Disputes Governed By Local Government Code of 1991

Having established that the case involves a boundary dispute, the procedure to resolve the same is that established under the Local Government Code. Under the said law, "the respective legislative councils of the contending local government units have jurisdiction over their boundary disputes."[50] Sections 118 and 119 of the Local Government Code state:

SECTION 118. *Jurisdictional Responsibility for Settlement of Boundary Dispute*. — Boundary disputes between and among local government units shall, as much as possible, be settled amicably. To this end:

(a) Boundary disputes involving two (2) or more Barangays in the same city or municipality shall be referred for settlement to the Sangguniang Panlungsod or Sangguniang Bayan concerned.

(b) Boundary disputes involving two (2) or more municipalities within the same province shall be referred for settlement to the Sangguniang Panlalawigan concerned.

(c) **Boundary disputes involving municipalities or component cities of different provinces shall be jointly referred for settlement to the Sanggunians of the provinces concerned.**

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[48] *Rollo*, p. 60.

[49] *Id.*

[50] *NHA v. Commission on the Settlement of Land Problems*, 535 Phil. 766, 773 (2006).

(d) Boundary disputes involving a component city or municipality on the one hand and a highly urbanized city on the other, or two (2) or more highly urbanized cities, shall be jointly referred for settlement to the respective Sanggunians of the parties.

(e) In the event the Sanggunian fails to effect an amicable settlement within sixty (60) days from the date the dispute was referred thereto, it shall issue a certification to that effect. Thereafter, the dispute shall be formally tried by the Sanggunian concerned which shall decide the issue within sixty (60) days from the date of the certification referred to above.

SECTION 119. *Appeal*. — Within the time and manner prescribed by the Rules of Court, any party may elevate the decision of the Sanggunian concerned to the proper Regional Trial Court having jurisdiction over the area in dispute. The Regional Trial Court shall decide the appeal within one (1) year from the filing thereof. Pending final resolution of the disputed area prior to the dispute shall be maintained and continued for all legal purposes. (Emphasis supplied)

The specific procedure in settling boundary disputes is outlined in Rule III of the IRR of the Local Government Code:

RULE III
Settlement of Boundary Disputes

x x x x x x x x x

ARTICLE 17. Procedures for Settling Boundary Disputes. — The following procedures shall govern the settlement of boundary disputes:

(a) Filing of petition — The sanggunian concerned may initiate action by filing a petition, in the form of a resolution, with the sanggunian having jurisdiction over the dispute.

x x x x x x x x x

(g) Failure to settle — In the event the sanggunian fails to amicably settle the dispute within sixty (60) days from the date such dispute was referred thereto, it shall issue a certification to that effect and copies thereof shall be furnished the parties concerned.

(h) Decision — Within sixty (60) days from the date the certification was issued, the dispute shall be formally tried and decided by the sanggunian concerned. Copies of the decision shall, within fifteen

(15) days from the promulgation thereof, be furnished the parties concerned, DILG, local assessor, COMELEC, NSO, and other NGAs concerned.

(i) Appeal — Within the time and manner prescribed by the Rules of Court, any party may elevate the decision of the sanggunian concerned to the proper Regional Trial Court having jurisdiction over the dispute by filing therewith the appropriate pleading, stating among others, the nature of the dispute, the decision of the sanggunian concerned and the reasons for appealing therefrom. The Regional Trial Court shall decide the case within one (1) year from the filing thereof. Decisions on boundary disputes promulgated jointly by two (2) or more sangguniang panlalawigans shall be heard by the Regional Trial Court of the province which first took cognizance of the dispute.

As the Court has previously ruled, it is "only upon the failure of these intermediary steps will resort to the RTC follow, as specifically provided in Section 119 of the [Local Government Code.]"[51]

The RTC has Jurisdiction Over the Case

Respondents' resort to filing a case before the RTC was warranted under the circumstances of this case.

It must be emphasized that respondents followed the procedure laid down in the Local Government Code. They took all the necessary steps to settle the dispute within the procedure set out in the law, and by all indication, was prepared to see the matter thru in order to lay the issue to rest.

However, petitioners failed to perform their concomitant responsibility under the same law, leaving respondents with no other recourse but to bring the matter to court. Petitioners cannot demand that respondents now follow the procedure when they themselves have made it impossible for any party to follow the same. The Province of Antique's Resolution No. 142-2012 dated 25 May 2012, stating that the Province of Antique was not

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[51] See *Municipality of Pateros v. Court of Appeals*, 607 Phil. 104, 119 (2009).

amenable to any form of settlement, effectively blocked any way to continue following the steps in the IRR.

As such, respondents' petition before the RTC must be upheld. Otherwise, they will be left without any recourse or legal remedy to assert their claim over Liwagao Island. Such uncertainty is unacceptable, as the fate of the island's residents rests in the immediate resolution of the dispute.

WHEREFORE, the petition is **DISMISSED**. The Orders dated 23 April 2013 and 17 July 2013 issued by the Regional Trial Court of Roxas, Oriental Mindoro, Branch 43, in Civil Case No. C-566 are **AFFIRMED**. The temporary restraining order issued by the Court in its Resolution dated 14 October 2013 is **LIFTED**. The RTC is **ORDERED** to hear and decide the case with dispatch.

SO ORDERED.

Del Castillo, Mendoza, and *Leonen, JJ.,* concur.

Brion, J., on official leave.

THIRD DIVISION

[G.R. No. 211026. June 8, 2016]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **RENATO B. SUEDAD,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; QUALIFIED RAPE; THE ONLY SUBJECT OF INQUIRY IS THE AGE OF THE WOMAN AND WHETHER CARNAL KNOWLEDGE TOOK PLACE.— Sexual congress with a

girl under 12 years old is always rape. In this type of rape, force and intimidation are immaterial; the only subject of inquiry is the age of the woman and whether carnal knowledge took place. The law presumes that the victim does not and cannot have a will of her own on account of her tender years; the child's consent is immaterial because of her presumed incapacity to discern evil from good.

2. ID.; ID.; ID.; PROPER PENALTY IS *RECLUSION PERPETUA* FOR EACH COUNT OF RAPE.— The courts properly appreciated the circumstances of minority and relationship that qualify the crime of rape and increase the severity of the penalty. AAA was eleven (11) years old at the time of the rape incidents and appellant is her father. The passage of Republic Act No. 9346 however debars the imposition of the death penalty without declassifying the crime of qualified rape as heinous. Thus, the appellate correctly reduced the penalty from death penalty to *reclusion perpetua* for each count of rape.

3. ID.; ID.; ID.; CIVIL LIABILITY; AWARD OF DAMAGES, INCREASED.— We, however, modify the appellate court's award of damages and increase it as follows for each count of rape: ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, and ₱100,000.00 as exemplary damages pursuant to prevailing jurisprudence. Further, the amount of damages awarded should earn interest at the rate of 6% *per annum* from the finality of this judgment until said amounts are fully paid.

4. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; FACTUAL FINDINGS OF THE TRIAL COURT, ACCORDED RESPECT; TESTIMONY OF THE CHILD VICTIM GIVEN FULL WEIGHT AND CREDIT.— In rape cases, primordial is the credibility of the victim's testimony because the accused may be convicted solely on said testimony provided it is credible, natural, convincing and consistent with human nature and the normal course of things. It is also well-settled that the trial court's findings on the credibility of witnesses and of their testimonies are entitled to the highest respect and will not be disturbed on appeal, in the absence of any clear showing that the court overlooked, misunderstood or misapplied some facts or circumstances of the case. This is because the trial court, having seen and heard the witnesses themselves, and observed their behavior and manner of testifying, is in a better position to decide the question

of credibility. x x x The Court finds no reason to disbelieve AAA's testimony which both the trial and appellate courts found credible and straightforward. Testimonies of child victims are given full weight and credit, for when a woman or a girl-child says that she has been raped, she says in effect all that is necessary to show that rape was indeed committed. Youth and maturity are generally badges of truth and sincerity.

5. ID.; ID.; ID.; DEFENSE OF DENIAL CANNOT PREVAIL OVER CHILD-VICTIM'S CLEAR NARRATION OF FACTS AND POSITIVE IDENTIFICATION OF THE ACCUSED; IT IS HIGHLY INCONCEIVABLE FOR A DAUGHTER TO IMPUTE AGAINST HER OWN FATHER A CRIME AS HEINOUS AS INCEST RAPE.— The Court finds unmeritorious appellant's defense of denial. Aside from being weak, it is self-serving evidence undeserving of weight in law, if not substantiated by clear and convincing proof as in the case at bar, and hence cannot prevail over AAA's clear narration of facts and positive identification of appellant. More importantly, it is highly inconceivable for a daughter like AAA to impute against her own father a crime as serious and despicable as incest rape, unless the imputation was the plain truth. In fact, it takes a certain amount of psychological depravity for a young woman to concoct a story that would put her own father to jail for the rest of his remaining life and drag the rest of the family including herself to a lifetime of shame. AAA's vacillation, if any, in making the rape accusation does not impair her credibility as a witness nor undermine her charges, particularly when the delay can be attributed to a pattern of fear instilled by the threats of one who exercises moral ascendancy over her.

6. ID.; ID.; ID.; ACCUSED'S ALLEGATION THAT ILL MOTIVES PROMPTED THE FILING OF THE CHARGES AGAINST HIM CANNOT PROSPER IN THE FACE OF AFFIRMATIVE AND CATEGORICAL DECLARATIONS ESTABLISHING HIS ACCOUNTABILITY FOR THE CRIME.— The Court is also not convinced by appellant's proposition that ill feelings and ill motives of AAA, her mother and grandmother prompted the filing of the charges against him. Ill-motives become inconsequential where there are affirmative or categorical declarations establishing appellant's accountability for the felony. Not a few persons convicted of

rape have attributed the charges against them to family feuds, resentment or revenge, however, these have never swayed us from giving full credence to the testimony of a complainant for rape, especially a minor, AAA in the case at bar, who remained steadfast and unyielding throughout the long and tedious direct and cross-examination that she was sexually abused. It would take a certain degree of perversity on the part of a parent, especially a mother, to concoct a false charge of rape and then use her daughter as an instrument to settle her grudge.

APPEARANCES OF COUNSEL

Public Attorney's Office for accused-appellant.
Office of the Solicitor General for petitioner.

D E C I S I O N

PEREZ, *J.*:

Before us for review is the Decision[1] of the Court of Appeals in CA-G.R. CR.-H.C. No. 00955-MIN dated 6 September 2013, which dismissed the appeal of appellant Renato B. Suedad and affirmed with modification the Decision[2] of the Regional Trial Court (RTC) of Isulan, Sultan Kudarat, Branch 19, in Criminal Case Nos. 115 and 117-118, finding appellant Renato Bolivar Suedad guilty beyond reasonable doubt of three (3) counts of Qualified Rape.

In line with the ruling of this Court in *People v. Cabalquinto*,[3] the real name and identity of the rape victim, as well as the members of her immediate family, are not disclosed. The rape victim shall herein be referred to as AAA, and her mother as BBB.

Appellant was charged with four (4) counts of qualified rape in the Informations that read as follows:

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[1] *Rollo*, pp. 3-25; Penned by Associate Justice Henri Jean Paul B. Inting with Associate Justices Edgardo A. Camello and Jhosep Y. Lopez concurring.

[2] Records, pp. 376-403; Presided by Presiding Judge Roberto L. Atco.

[3] 533 Phil. 703 (2006).

CRIMINAL CASE NO. 115

That sometime on October 20, 2008 at about 5:00 o'clock in the afternoon, inside their house at Purok [x x x], Barangay [x x x.], Municipality of Isulan, Province of Sultan Kudarat and within the jurisdiction of the Honorable Court, the said accused, with lewd and unchaste designs did then and there willfully, unlawfully and feloniously had carnal knowledge of his daughter, [AAA], an eleven years old child, against her will and consent, which act of the accused demeans, degrades and debases the intrinsic worth of the child as a human being.

CONTRARY TO [LAW], particularly Article [266-A] paragraph 1 in relation to Article [266-B] of the Revised Penal Code of the Philippines and Republic Act 7610.

CRIMINAL CASE NO. 116

That sometime in the night during the last week of October 2008, at their house at Purok [x x x], Barangay [x x x], Municipality of Bagumbayan, Province of Sultan Kudarat and within the jurisdiction of the Honorable Court, the said accused, with lewd and unchaste designs did then and there willfully, unlawfully and feloniously had carnal knowledge of his daughter, [AAA], an eleven years old child, against her will and consent, which act of the accused demeans, degrades and debases the intrinsic worth of the child as a human being.

CONTRARY TO LAW, particularly Article [266-A] paragraph 1 in relation to Article [266-B] of the Revised Penal Code of the Philippines and Republic Act 7610.

CRIMINAL CASE NO. 117

That sometime on November 26, 2008 at about 11:00 o'clock in the evening, at the house of her grandmother, at Purok [x x x], Barangay [x x x], Municipality of Bagumbayan, Province of Sultan Kudarat and within the jurisdiction of the Honorable Court, the said accused, with lewd and unchaste designs did then and there willfully, unlawfully and feloniously had carnal knowledge of his daughter, [AAA], an eleven years old child, against her will and consent, which act of the accused demeans, degrades and debases the intrinsic worth of the child as a human being.

CONTRARY TO LAW, particularly Article 266-A paragraph 1 in relation to Article [266-B] of the Revised Penal Code of the Philippines and Republic Act 7610.

CRIMINAL CASE NO. 118

That sometime on March 20, 2009 at about 9:00 o'clock in the morning, in their house at Purok [x x x], Barangay [x x x], Municipality of Bagumbayan, Province of Sultan Kudarat and within the jurisdiction of the Honorable Court, the said accused, with lewd and unchaste designs did then and there willfully, unlawfully and feloniously had carnal knowledge of his daughter, [AAA], an eleven years old child, against her will and consent, which act of the accused demeans, degrades and debases the intrinsic worth of the child as a human being.

CONTRARY TO LAW, particularly Article 266-A paragraph 1 in relation to Article 266-B of the Revised Penal Code of the Philippines and Republic Act 7610.[4]

Appellant pleaded not guilty to all the charges. At the pre-trial conference, it was stipulated that AAA was born on 5 July 1997 and that appellant is her natural/biological father. Trial on the merits ensued.

The prosecution presented AAA, her mother, BBB, her maternal grandmother, CCC, AAA's maternal aunt, DDD, and Dr. Raul Manansala (Dr. Manansala), the Municipal Health Officer of Bagumbayan, as witnesses.

The prosecution established that AAA is the only child of BBB and appellant, born to them on 5 July 1997.[5] When AAA was less than two (2) years old, BBB had to work overseas and AAA was left in the care of her father. BBB only came home occasionally.[6]

AAA's ordeal began when she was eleven (11) years old, on 20 October 2008, when her father's initial gestures of affection

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[4] Records, pp. 377-378.

[5] *Id.* at 11.

[6] TSN, 24 November 2009, pp. 3-8.

led to a sexual intimacy AAA had known to only belong to a husband and wife.[7] AAA narrated in detail how she was helplessly and hopelessly ravaged by her own father in their own home.[8] AAA alleged that appellant repeated the unspeakable acts on the last week of October 2008 though she vaguely remembers the particulars.[9]

Then again on 26 November 2008, AAA recounted that during her paternal grandmother's wake held at the house of the deceased, while sleeping in one of the rooms, appellant woke her, choked her and succeeded in having sexual congress with her.[10]

On 13 March 2009, within the confines of their house, appellant once more had carnal knowledge of AAA.[11]

Emboldened by the knowledge that her mother BBB would be home soon, AAA disclosed her sufferings to her grandmother CCC on 15 April 2009 despite the threats to her life.[12] The next day, AAA, accompanied by her aunt, was subjected to a physical examination by Dr. Manansala. His findings were contained in a medico-legal report[13] which states:

> PARTIAL HEALED LACERATION 9 o'clock, 3 o'clock, HYMEN ADMIT (SIC) 1 FINGER WITH EASE

During the direct examination, Dr. Manansala explained that an eleven (11) year old girl who has had frequent sexual contact may suffer full or partial lacerations depending on the thickness of the hymen. A thick and elastic hymen may accommodate

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[7] Records, p. 12.

[8] TSN, 1 December 2009, pp. 12-23.

[9] TSN, 2 December 2009, pp. 7-14.

[10] *Id.* at 14-21.

[11] TSN, 3 December 2009, pp. 3-7.

[12] *Id.* at 10; TSN, 8 December 2009, p. 24.

[13] Records, p. 10.

the male anatomy without lacerations. AAA was found to have a thick hymen.[14]

AAA stayed with CCC until BBB's arrival during which period the latter first learned of AAA's torment. A complaint against appellant was filed before the prosecutor's office on 21 April 2009.[15]

Appellant, for his part, admitted to having indeed been physically intimate with AAA during the days of the alleged sexual abuses but denied the rape charges.[16] He countered that there were ill motives in filing the criminal charges against him. Appellant averred that AAA held a grudge against him when he discovered a sensual letter the former wrote to one Marvin, her alleged boyfriend, and has threatened to reveal this fact to her mother BBB.[17] He also asserted that CCC had long planned to file criminal cases against him to take away AAA from him.[18] Moreover, CCC and appellant have had many quarrels over several issues.[19]

The defense also presented a nephew and a niece to support appellant's denial of the rape charges on 26 November 2008 and 20 March 2009, respectively.[20]

On 9 June 2011, appellant was found guilty beyond reasonable doubt of three (3) counts of qualified rape. The dispositive portion of the RTC Decision reads:

WHEREFORE, premises all considered, the court hereby rendered a judgment, as follows:

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[14] TSN, 25 November 2009, pp. 3-13.

[15] TSN, 24 November 2009, pp. 9 and 19-20.

[16] TSN, 18 January 2011, pp. 11-13.

[17] *Id.* at 5-7.

[18] *Id.* at 10.

[19] *Id.* at 3 and 8-11.

[20] TSN, 5 October 2010, pp. 3-4 and 8; TSN, 22 June 2010, pp. 8 and 10-14.

a) In Criminal Case No. 116, it finds that the prosecution failed to present a clear and convincing evidence to sustain it in finding the accused guilty as he is charged, hence, the accused is hereby **ACQUITTED**.

b) In Criminal Cases Nos. 115, 117 and 118, the court finds the evidence adduced by the prosecution as sufficient, clear and convincing to hold the accused criminally responsible as he is charged.

Consequently, accused Renato Suedad y Bolivar is hereby found ***GUILTY*** beyond reasonable doubt of the crimes of rape he committed against the victim on ***October 20, 2008***, on ***November 26, 2008*** and that on ***March 20, 2009***.

Accordingly, he is hereby sentenced to suffer the penalty of imprisonment of ***reclusion perpetua each in said cases***. He is further ordered to pay his victim, the amount of ₱50,000.00 each case, as indemnity and the amount of ₱30,000.00 each case, as moral damages.[21]

On intermediate review, the Court of Appeals rendered the assailed decision affirming with modification the trial court's judgment, to wit:

WHEREFORE, the instant appeal is DENIED. The June 9, 2011 Decision of the Regional Trial Court, Branch 19, Isulan, Sultan Kudarat in Criminal Cases Nos. 115 and 117-118 is hereby AFFIRMED with MODIFICATION. Accused-appellant BBB is found GUILTY of qualified rape and is sentenced to suffer the penalty of *reclusion perpetua* without eligibility for parole for each case. He is further ORDERED to pay AAA the amount of ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages and ₱30,000.00 exemplary damages on each count of rape with interest on all damages awarded at the legal rate of six percent (6%) per annum from the date of the finality of this Decision.[22]

Appellant filed the instant appeal. In a Resolution[23] dated 31 March 2014, appellant and the Office of the Solicitor General

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[21] Records, pp. 402-403.

[22] *Rollo*, p. 25.

[23] *Id.* at 31.

(OSG) were asked to file their respective supplemental briefs if they so desired. Both parties no longer filed supplemental briefs.

We affirm the appellant's conviction.

Rape is committed as follows:

Article 266-A. *Rape; When and How committed*. — Rape is committed —

1. By a man who shall have carnal knowledge of a woman under any of the following circumstances:

a. Through force, threat or intimidation;

b. When the offended party is deprived of reason or otherwise unconscious;

c. By means of fraudulent machination or grave abuse of authority; and

d. When the woman is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.

x x x x x x x x x

Article 266-B. *Penalties*. — Rape under paragraph 1 of the next preceding article shall be punished by *reclusion perpetua*.

x x x x x x x x x

The death penalty shall also be imposed if the crime of rape is committed with any of the following attendant circumstances:

x x x x x x x x x

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.

x x x x x x x x x

Sexual congress with a girl under 12 years old is always rape. In this type of rape, force and intimidation are immaterial; the only subject of inquiry is the age of the woman and whether carnal knowledge took place. The law presumes that the victim

does not and cannot have a will of her own on account of her tender years; the child's consent is immaterial because of her presumed incapacity to discern evil from good.[24]

In rape cases, primordial is the credibility of the victim's testimony because the accused may be convicted solely on said testimony provided it is credible, natural, convincing and consistent with human nature and the normal course of things.[25]

It is also well-settled that the trial court's findings on the credibility of witnesses and of their testimonies are entitled to the highest respect and will not be disturbed on appeal, in the absence of any clear showing that the court overlooked, misunderstood or misapplied some facts or circumstances of the case. This is because the trial court, having seen and heard the witnesses themselves, and observed their behavior and manner of testifying, is in a better position to decide the question of credibility.[26]

The trial court lent full credence to AAA's testimony that appellant raped her on three (3) occasions. AAA clearly, spontaneously and categorically testified that her father sexually abused her first at their house on 20 October 2008, then at her deceased paternal grandmother's house on 26 November 2008 and again at their house on 20 March 2009. In fact, these instances may only be a fraction of the several times appellant has had sexual congress with AAA leading her to sadly report that appellant *treated her as his wife*.[27]

The Court finds no reason to disbelieve AAA's testimony which both the trial and appellate courts found credible and straightforward. Testimonies of child victims are given full weight and credit, for when a woman or a girl-child says that she has been raped, she says in effect all that is necessary to

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[24] *People v. Sabal, Jr.*, 734 Phil. 742, 745 (2014).

[25] *People v. Pascua*, 462 Phil. 245, 252 (2003).

[26] *People v. Paculba*, 628 Phil. 662, 673 (2010).

[27] Records, p. 12.

show that rape was indeed committed. Youth and maturity are generally badges of truth and sincerity.[28]

AAA's testimony was corroborated by the findings of Dr. Manansala showing that AAA had lacerations on her female anatomy. Hymenal lacerations, whether healed or fresh, are the best evidence of forcible defloration. When the consistent and straightforward testimony of a rape victim is consistent with medical findings, there is sufficient basis to warrant a conclusion that the essential requisites of carnal knowledge have been established.[29]

The Court finds unmeritorious appellant's defense of denial. Aside from being weak, it is self-serving evidence undeserving of weight in law, if not substantiated by clear and convincing proof as in the case at bar, and hence cannot prevail over AAA's clear narration of facts and positive identification of appellant. More importantly, it is highly inconceivable for a daughter like AAA to impute against her own father a crime as serious and despicable as incest rape, unless the imputation was the plain truth. In fact, it takes a certain amount of psychological depravity for a young woman to concoct a story that would put her own father to jail for the rest of his remaining life and drag the rest of the family including herself to a lifetime of shame.[30] AAA's vacillation, if any, in making the rape accusation does not impair her credibility as a witness nor undermine her charges, particularly when the delay can be attributed to a pattern of fear instilled by the threats of one who exercises moral ascendancy over her.[31]

The Court also rejects appellant's contention that he could not have raped AAA on 26 November 2008 during his mother's

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[28] *People v. Aguilar*, 643 Phil. 643, 654 (2010) citing *People v. Corpuz*, 517 Phil. 622, 636-637 (2006).

[29] *People v. Perez*, 595 Phil. 1232, 1258 (2008).

[30] *People v. Felan*, 656 Phil. 464, 470 (2011).

[31] *People v. Vitero*, 708 Phil. 49, 62 (2013) citing *People v. Simoro*, 449 Phil. 370, 381 (2003).

wake as the house then was full of people. Suffice it to say that lust does not respect either time or place and that sexual abuse is committed in even in the most unlikely places. Indeed, the evil in man has no conscience-the beast in him bears no respect for time and place, driving him to commit rape anywhere.[32]

The Court is also not convinced by appellant's proposition that ill feelings and ill motives of AAA, her mother and grandmother prompted the filing of the charges against him. Ill-motives become inconsequential where there are affirmative or categorical declarations establishing appellant's accountability for the felony. Not a few persons convicted of rape have attributed the charges against them to family feuds, resentment or revenge, however, these have never swayed us from giving full credence to the testimony of a complainant for rape, especially a minor, AAA in the case at bar, who remained steadfast and unyielding throughout the long and tedious direct and cross-examination that she was sexually abused. It would take a certain degree of perversity on the part of a parent, especially a mother, to concoct a false charge of rape and then use her daughter as an instrument to settle her grudge.[33]

All told, appellant's guilt of the crimes charged was established beyond reasonable doubt.

The courts properly appreciated the circumstances of minority and relationship that qualify the crime of rape and increase the severity of the penalty. AAA was eleven (11) years old at the time of the rape incidents and appellant is her father. The passage of Republic Act No. 9346 however debars the imposition of the death penalty without declassifying the crime of qualified rape as heinous. Thus, the appellate correctly reduced the penalty from death penalty to *reclusion perpetua* for each count of rape.

We, however, modify the appellate court's award of damages and increase it as follows for each count of rape: ₱100,000.00

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[32] *People v. Alipio*, 618 Phil. 38, 47 (2009).

[33] See *People v. Santos*, 532 Phil. 752, 767 (2006).

as civil indemnity, ₱100,000.00 as moral damages, and ₱100,000.00 as exemplary damages pursuant to prevailing jurisprudence.[34] Further, the amount of damages awarded should earn interest at the rate of 6% *per annum* from the finality of this judgment until said amounts are fully paid.[35]

WHEREFORE, premises considered, the Decision dated 6 September 2013 of the Court of Appeals of Cagayan de Oro City, Twenty-Second Division, in CA-G.R. CR.-H.C. No. 00955-MIN, finding appellant Renato B. Suedad guilty beyond reasonable doubt of three (3) counts of the crime of qualified rape in Criminal Case Nos. 115 and 117-118, is hereby **AFFIRMED** with **MODIFICATION**. Appellant Renato B. Suedad is ordered to pay the private offended party for each count of qualified rape as follows: ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages and ₱100,000.00 as exemplary damages. He is **FURTHER** ordered to pay interest on all damages awarded at the legal rate of six percent (6%) *per annum* from the date of finality of this judgment until fully paid.

No pronouncement as to costs.

SO ORDERED.

Velasco, Jr. (*Chairperson*), *Reyes,* and *Perlas-Bernabe,*[*] *JJ.,* concur.

Peralta, J., on official leave.

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[34] *People v. Gambao*, 718 Phil. 507 (2013).

[35] *People v. Vitero*, *supra* note 32 at 65.

* Additional Member per Raffle dated 3 September 2014.

THIRD DIVISION

[G.R. No. 211212. June 8, 2016]

SUN LIFE OF CANADA (PHILIPPINES), INC., *petitioner, vs.* **MA. DAISY S. SIBYA, JESUS MANUEL S. SIBYA III, JAIME LUIS S. SIBYA, and The Estate of the deceased ATTY. JESUS SIBYA, JR.,** *respondents.*

SYLLABUS

1. **COMMERCIAL LAW; INSURANCE; INSURER LOSES ITS RIGHT TO RESCIND THE POLICY UPON THE DEATH OF THE INSURED THREE MONTHS FROM THE ISSUANCE OF THE POLICY.—** In the present case, Sun Life issued Atty. Jesus Jr.'s policy on February 5, 2001. Thus, it has two years from its issuance, to investigate and verify whether the policy was obtained by fraud, concealment, or misrepresentation. Upon the death of Atty. Jesus Jr., however, on May 11, 2001, or a mere three months from the issuance of the policy, Sun Life loses its right to rescind the policy. As discussed in *Manila Bankers*, the death of the insured within the two-year period will render the right of the insurer to rescind the policy nugatory. As such, the incontestability period will now set in.

2. **REMEDIAL LAW; EVIDENCE; CONCEALMENT AS A DEFENSE FOR THE INSURER TO AVOID LIABILITY MUST BE ESTABLISHED BY CLEAR AND CONVINCING EVIDENCE; FAILURE OF THE INSURER TO PROVE ITS ALLEGATION WILL RENDER IT LIABLE TO PAY THE INSURANCE PROCEEDS.—** As correctly observed by the CA, Atty. Jesus Jr. admitted in his application his medical treatment for kidney ailment. Moreover, he executed an authorization in favor of Sun Life to conduct investigation in reference with his medical history. x x x Indeed, the intent to defraud on the part of the insured must be ascertained to merit rescission of the insurance contract. Concealment as a defense for the insurer to avoid liability is an affirmative defense and the duty to establish such defense by satisfactory and convincing evidence rests upon the provider or insurer. In the present case, Sun Life failed to clearly and satisfactorily establish its allegations, and is therefore liable to pay the proceeds of the insurance.

APPEARANCES OF COUNSEL

Padlan Salvador Coloma & Associates for petitioner.
Egargo Puertollano Gervacio & Garrido Law Offices for respondents.

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 November 18, 2013 and Resolution[3] dated February 13, 2014 of the Court of Appeals (CA) in CA-G.R. CV. No. 93269. In both instances, the CA affirmed the Decision[4] dated March 16, 2009 of the Regional Trial Court (RTC) of Makati City, Branch 136, in Civil Case No. 01-1506, ordering petitioner Sun Life of Canada (Philippines), Inc. (Sun Life) to pay Ma. Daisy S. Sibya (Ma. Daisy), Jesus Manuel S. Sibya III, and Jaime Luis S. Sibya (respondents) the amounts of ₱1,000,000.00 as death benefits, ₱100,000.00 as moral damages, ₱100,000.00 as exemplary damages, and ₱100,000.00 as attorney's fees and costs of suit. Insofar as the charges for violation of Sections 241 and 242 of Presidential Decree No. 612, or the Insurance Code of the Philippines, however, the CA modified the decision of the RTC and absolved Sun Life therein.

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[1] *Rollo*, pp. 33-54.

[2] Penned by Associate Justice Nina G. Antonio-Valenzuela, with Associate Justices Isaias P. Dicdican and Michael P. Elbinias concurring; *id.* at 6-18.

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

[4] Rendered by Acting Presiding Judge Rowena De Juan-Quinagoran; *id.* at 84-88.

Statement of Facts of the Case

On January 10, 2001, Atty. Jesus Sibya, Jr. (Atty. Jesus Jr.) applied for life insurance with Sun Life. In his Application for Insurance, he indicated that he had sought advice for kidney problems.[5] Atty. Jesus Jr. indicated the following in his application:

"Last 1987, had undergone lithotripsy due to kidney stone under Dr. Jesus Benjamin Mendoza at National Kidney Institute, discharged after 3 days, no recurrence as claimed."[6]

On February 5, 2001, Sun Life approved Atty. Jesus Jr.'s application and issued Insurance Policy No. 031097335. The policy indicated the respondents as beneficiaries and entitles them to a death benefit of ₱1,000,000.00 should Atty. Jesus Jr. dies on or before February 5, 2021, or a sum of money if Atty. Jesus Jr. is still living on the endowment date.[7]

On May 11, 2001, Atty. Jesus Jr. died as a result of a gunshot wound in San Joaquin, Iloilo. As such, Ma. Daisy filed a Claimant's Statement with Sun Life to seek the death benefits indicated in his insurance policy.[8]

In a letter dated August 27, 2001, however, Sun Life denied the claim on the ground that the details on Atty. Jesus Jr.'s medical history were not disclosed in his application. Simultaneously, Sun Life tendered a check representing the refund of the premiums paid by Atty. Jesus Jr.[9]

The respondents reiterated their claim against Sun Life thru a letter dated September 17, 2001. Sun Life, however, refused to heed the respondents' requests and instead filed a Complaint

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[5] *Id.* at 6-7.

[6] *Id.* at 7.

[7] *Id.*

[8] *Id.*

[9] *Id.*

for Rescission before the RTC and prayed for judicial confirmation of Atty. Jesus Jr.'s rescission of insurance policy.[10]

In its Complaint, Sun Life alleged that Atty. Jesus Jr. did not disclose in his insurance application his previous medical treatment at the National Kidney Transplant Institute in May and August of 1994. According to Sun Life, the undisclosed fact suggested that the insured was in "renal failure" and at a high risk medical condition. Consequently, had it known such fact, it would not have issued the insurance policy in favor of Atty. Jesus Jr.[11]

For their defense, the respondents claimed that Atty. Jesus Jr. did not commit misrepresentation in his application for insurance. They averred that Atty. Jesus Jr. was in good faith when he signed the insurance application and even authorized Sun Life to inquire further into his medical history for verification purposes. According to them, the complaint is just a ploy to avoid the payment of insurance claims.[12]

Ruling of the RTC

On March 16, 2009, the RTC issued its Decision[13] dismissing the complaint for lack of merit. The RTC held that Sun Life violated Sections 241, paragraph 1 (b), (d), and (e)[14] and

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[10] *Id.*

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

[12] *Id.* at 8.

[13] *Id.* at 84-88.

[14] Sec. 241. (1) No insurance company doing business in the Philippines shall refuse, without just cause, to pay or settle claims arising under coverages provided by its policies, nor shall any such company engage in unfair claim settlement practices. Any of the following acts by an insurance company, if committed without just cause and performed with such frequency as to indicate a general business practice, shall constitute unfair claim settlement practices:

x x x x x x x x x

(b) failing to acknowledge with reasonable promptness pertinent communications with respect to claims arising under its policies;

242[15] of the Insurance Code when it refused to pay the rightful claim of the respondents. Moreover, the RTC ordered Sun Life to pay the amounts of ₱1,000,000.00 as death benefits, ₱100,000.00 as moral damages, ₱100,000.00 as exemplary damages, and ₱100,000.00 as attorney's fees and costs of suit.

The RTC held that Atty. Jesus Jr. did not commit material concealment and misrepresentation when he applied for life insurance with Sun Life. It observed that given the disclosures and the waiver and authorization to investigate executed by Atty. Jesus Jr. to Sun Life, the latter had all the means of ascertaining the facts allegedly concealed by the applicant.[16]

Aggrieved, Sun Life elevated the case to the CA.

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x x x x x x x x x

(d) not attempting in good faith to effectuate prompt, fair and equitable settlement of claims submitted in which liability has become reasonably clear; or

(e) compelling policyholders to institute suits to recover amounts due under its policies by offering without justifiable reason substantially less than the amounts ultimately recovered in suits brought by them.

x x x x x x x x x

[15] Sec. 242. The proceeds of a life insurance policy shall be paid immediately upon maturity of the policy, unless such proceeds are made payable in installments or as an annuity, in which case the installments, or annuities shall be paid as they become due: *Provided, however*, That in the case of a policy maturing by the death of the insured, the proceeds thereof shall be paid within sixty days after presentation of the claim and filing of the proof of the death of the insured. Refusal or failure to pay the claim within the time prescribed herein will entitle the beneficiary to collect interest on the proceeds of the policy for the duration of the delay at the rate of twice the ceiling prescribed by the Monetary Board, unless such failure or refusal to pay is based on the ground that the claim is fraudulent.

The proceeds of the policy maturing by the death of the insured payable to the beneficiary shall include the discounted value of all premiums paid in advance of their due dates, but are not due and payable at maturity.

[16] *Rollo*, p. 86.

Ruling of the CA

On appeal, the CA issued its Decision[17] dated November 18, 2013 affirming the RTC decision in ordering Sun Life to pay death benefits and damages in favor of the respondents. The CA, however, modified the RTC decision by absolving Sun Life from the charges of violation of Sections 241 and 242 of the Insurance Code.[18]

The CA ruled that the evidence on records show that there was no fraudulent intent on the part of Atty. Jesus Jr. in submitting his insurance application. Instead, it found that Atty. Jesus Jr. admitted in his application that he had sought medical treatment for kidney ailment.[19]

Sun Life filed a Motion for Partial Reconsideration[20] dated December 11, 2013 but the same was denied in a Resolution[21] dated February 13, 2014.

Undaunted, Sun Life filed an appeal by way of petition for review on *certiorari* under Rule 45 of the Rules of Court before this Court.

The Issue

Essentially, the main issue of the instant case is whether or not the CA erred when it affirmed the RTC decision finding that there was no concealment or misrepresentation when Atty. Jesus Jr. submitted his insurance application with Sun Life.

Ruling of the Court

The petition has no merit.

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[17] *Id.* at 6-18.

[18] *Id.* at 17.

[19] *Id.* at 14.

[20] *Id.* at 19-28.

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

In *Manila Bankers Life Insurance Corporation v. Aban*,[22] the Court held that if the insured dies within the two-year contestability period, the insurer is bound to make good its obligation under the policy, regardless of the presence or lack of concealment or misrepresentation. The Court held:

> Section 48 serves a noble purpose, as it regulates the actions of both the insurer and the insured. Under the provision, an insurer is given two years — from the effectivity of a life insurance contract and while the insured is alive — to discover or prove that the policy is void *ab initio* or is rescindible by reason of the fraudulent concealment or misrepresentation of the insured or his agent. **After the two-year period lapses, or when the insured dies within the period, the insurer must make good on the policy, even though the policy was obtained by fraud, concealment, or misrepresentation.** This is not to say that insurance fraud must be rewarded, but that insurers who recklessly and indiscriminately solicit and obtain business must be penalized, for such recklessness and lack of discrimination ultimately work to the detriment of *bona fide* takers of insurance and the public in general.[23] (Emphasis ours)

In the present case, Sun Life issued Atty. Jesus Jr.'s policy on February 5, 2001. Thus, it has two years from its issuance, to investigate and verify whether the policy was obtained by fraud, concealment, or misrepresentation. Upon the death of Atty. Jesus Jr., however, on May 11, 2001, or a mere three months from the issuance of the policy, Sun Life loses its right to rescind the policy. As discussed in *Manila Bankers*, the death of the insured within the two-year period will render the right of the insurer to rescind the policy nugatory. As such, the incontestability period will now set in.

Assuming, however, for the sake of argument, that the incontestability period has not yet set in, the Court agrees, nonetheless, with the CA when it held that Sun Life failed to show that Atty. Jesus Jr. committed concealment and misrepresentation.

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[22] 715 Phil. 404 (2013).

[23] *Id.* at 415.

As correctly observed by the CA, Atty. Jesus Jr. admitted in his application his medical treatment for kidney ailment. Moreover, he executed an authorization in favor of Sun Life to conduct investigation in reference with his medical history. The decision in part states:

> Records show that in the Application for Insurance, [Atty. Jesus Jr.] admitted that he had sought medical treatment for kidney ailment. When asked to provide details on the said medication, [Atty. Jesus Jr.] indicated the following information: year ("*1987*"), medical procedure ("*undergone lithotripsy due to kidney stone*"), length of confinement ("*3 days*"), attending physician ("*Dr. Jesus Benjamin Mendoza*") and the hospital ("*National Kidney Institute*").
>
> It appears that [Atty. Jesus Jr.] also signed the Authorization which gave [Sun Life] the opportunity to obtain information on the facts disclosed by [Atty. Jesus Jr.] in his insurance application. x x x
>
> x x x x x x x x x
>
> Given the express language of the Authorization, it cannot be said that [Atty. Jesus Jr.] concealed his medical history since [Sun Life] had the means of ascertaining [Atty. Jesus Jr.'s] medical record.
>
> With regard to allegations of misrepresentation, we note that [Atty. Jesus Jr.] was not a medical doctor, and his answer "*no recurrence*" may be construed as an honest opinion. Where matters of opinion or judgment are called for, answers made in good faith and without intent to deceive will not avoid a policy even though they are untrue.[24]
> (Citations omitted and italics in the original)

Indeed, the intent to defraud on the part of the insured must be ascertained to merit rescission of the insurance contract. Concealment as a defense for the insurer to avoid liability is an affirmative defense and the duty to establish such defense by satisfactory and convincing evidence rests upon the provider or insurer.[25] In the present case, Sun Life failed to clearly and satisfactorily establish its allegations, and is therefore liable to pay the proceeds of the insurance.

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

[25] *Philamcare Health Systems, Inc. v. CA*, 429 Phil. 82, 92 (2002).

Moreover, well-settled is the rule that this Court is not a trier of facts. Factual findings of the lower courts are entitled to great weight and respect on appeal, and in fact accorded finality when supported by substantial evidence on the record.[26]

WHEREFORE, the petition for review is **DENIED**. The Decision dated November 18, 2013 and Resolution dated February 13, 2014 of the Court of Appeals in CA-G.R. CV. No. 93269 are hereby **AFFIRMED**.

SO ORDERED.

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

Peralta and *Jardeleza, JJ.*, on official leave.

FIRST DIVISION

[G.R. No. 211604. June 8, 2016]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **DARYL POLONIO *y* TUANGCAY,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CIRCUMSTANTIAL EVIDENCE, IF SUFFICIENT AND COMPETENT, MAY WARRANT THE CONVICTION OF THE ACCUSED OF RAPE; REQUISITES.— To emphasize **"[c]ircumstantial evidence, if sufficient and competent, may warrant the conviction of the accused of rape."** In *People v. Lupac*, the Court considered circumstantial evidence as the victim was unconscious at the time of the alleged rape. The Court said: x x x **Direct evidence was not the only means of proving rape beyond**

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[26] *Spouses Bernales v. Heirs of Julian Sambaan*, 624 Phil. 88, 97 (2010).

reasonable doubt. Circumstantial evidence would also be the reliable means to do so, provided that (*a*) there was more than one circumstance; (*b*) the facts from which the inferences were derived were proved; and (*c*) the combination of all the circumstances was such as to produce a conviction beyond reasonable doubt. What was essential was that the unbroken chain of the established circumstances led to no other logical conclusion except the appellant's guilt.

2. ID.; ID.; CREDIBILITY OF WITNESSES; THE COURT MAINTAINED THE SANCTITY OF THE FACTUAL FINDINGS OF THE TRIAL COURT WHEN AFFIRMED BY THE COURT OF APPEALS.— [B]oth the RTC and the Court of Appeals declared AAA's testimony and those of CCC and PO1 Patil-ao to be credible and convincing. We thus find it unnecessary to disturb the findings and conclusions of the RTC and the Court of Appeals. This Court has repeatedly maintained the sanctity of the factual findings of the trial courts, especially when affirmed by the Court of Appeals.

3. CRIMINAL LAW; RAPE; ELEMENTS.— The Anti-Rape Law of 1997, Republic Act No. 8353, defines when and how rape is committed: Article 266-A. *Rape; When and How Committed*. — Rape is Committed — 1) By a man who shall have carnal knowledge of a woman under any of the following circumstances; a) Through force, threat or intimidation; b) When the offended party is deprived of reason or is otherwise unconscious[.] The elements of the crime charged in this case are: (1) that the offender had carnal knowledge of a female, and (2) that the same was committed by using force, threat or intimidation.

4. ID.; ID.; PENALTY AND CIVIL LIABILITY.— [W]e deny the petition and affirm the judgment of conviction. However, we hereby modify the penalties awarded in keeping with recent jurisprudence. We hold that accused is also liable for **exemplary damages** even if no aggravating circumstances attended the commission of the crime, because of the inherent bestiality of the act of rape. x x x Likewise, for simple rape with the penalty of *reclusion perpetua*, *People v. Jugueta* has increased the amount of moral damages to Seventy-Five Thousand Pesos (₱75,000.00), thus we modify the award accordingly. Furthermore, the Court imposes legal interest of 6% *per annum* on each of the civil liabilities, reckoned from the finality of this judgment until full payment.

APPEARANCES OF COUNSEL

The Solicitor General for plaintiff-appellee.
Public Attorney's Office for accused-appellant.

D E C I S I O N

LEONARDO-DE CASTRO,[*] *J.*:

Before this Court is an appeal from the October 30, 2013 Decision[1] of the Court of Appeals in CA-G.R. CR.-H.C. No. 04594, which affirmed the March 5, 2010 Decision[2] of the Regional Trial Court (RTC), Branch 25, Tagudin, Ilocos Sur, in Criminal Case No. 870-T, finding accused-appellant Daryl Polonio *y* Tuangcay guilty beyond reasonable doubt of the crime of rape, sentencing him to the penalty of *reclusion perpetua*, and ordering him to pay the victim AAA[3] Seventy-Five Thousand Pesos (₱75,000.00) as civil indemnity and Fifty Thousand Pesos (₱50,000.00) as moral damages.

The Information dated August 23, 2005 reads as follows:

The undersigned Provincial Prosecutor accuses DARYL POLONIO y TUANGCAY of the crime of Rape, defined under Article 266-A and penalized under Article 266-B of the Revised Penal Code, as amended by Republic Act No. 8353, committed as follows:

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[*] Per Special Order No. 2354 dated June 2, 2016.

[1] *Rollo*, pp. 2-9; penned by Associate Justice Manuel M. Barrios with Associate Justices Remedios A. Salazar-Fernando and Normandie B. Pizarro concurring.

[2] CA *rollo*, pp. 29-50; penned by Presiding Judge Sixto D. Diompoc.

[3] The real names of the private complainant and those of her immediate family members are withheld in consonance with *People v. Cabalquinto*, 533 Phil. 703 (2006), Republic Act No. 7610 (Special Protection of Children Against Child Abuse, Exploitation and Discrimination Act), Republic Act No. 9262 (Anti-Violence Against Women and Their Children Act of 2004), and A.M. No. 04-10-11-SC (Rule on Violence Against Women and Their Children).

That on or about the 10th day of February 2005, in the municipality of Cervantes, province of Ilocos Sur, Philippines, and within the jurisdiction of this Honorable Court, the above-named accused, did then and there willfully, unlawfully, and feloniously have carnal knowledge of [AAA], a sixteen (16)-year-old girl, by means of force and intimidation and against the latter's will and consent.[4]

Upon arraignment, accused pleaded not guilty of the crime charged in the complaint.[5] After the prosecution presented witnesses and formally offered documentary exhibits, the accused filed a demurrer to evidence[6] on the ground that the evidence adduced by the prosecution is insufficient to overcome the presumption of innocence. The accused then moved for the dismissal of the case and the RTC submitted the matter for resolution. The RTC denied the motion and scheduled the reception of evidence for the defense.[7]

We have summarized the findings of fact from the RTC decision, which was affirmed by the Court of Appeals, below.

CCC, 58 years old, married, a maintenance employee of Bessang Pass Memorial Hospital, testified on July 5, 2006 that he is the uncle of AAA whose mother is his first cousin. AAA is staying with him and his wife BBB in their house because the school where she is studying is far from the *barangay* where her immediate family resides. CCC testified that AAA was 16 years old when the alleged rape happened as evidenced by her birth certificate showing that she was born on October 14, 1988. CCC further testified that on February 10, 2005, he arrived in their house between 4:00 and 5:00 p.m. and was told by their neighbor Joel Caud that somebody was at their backyard garden. Caud allegedly told CCC that he saw a person on top of another person and the one on top was boxing the person lying on the ground. CCC immediately proceeded to the backyard garden

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[4] CA *rollo*, p. 13.

[5] Records, p. 26.

[6] *Id.* at 167-170.

[7] *Id.* at 176.

and saw a person about 10 meters away in a squatting position with his two hands raised, carrying his niece AAA who was naked below the waist. He also noticed that while the person was carrying AAA, she appeared to be unconscious because she was not moving. When the person noticed CCC's presence, he ran away towards the west, still carrying AAA, but upon reaching a fence, he threw AAA over it. CCC ran after the man but was unable to catch him. He instead rescued AAA, gathered her panties and shorts, and put them back on her body while she was still unconscious.[8]

CCC asked Caud to run after the man but Caud was not able to catch him either. CCC called Placido Pasuli, another student staying with them, to call CCC's son for them to bring AAA to the Bessang Pass Memorial Hospital, together with his wife BBB. CCC came to know later on, through his own investigation on February 11, 2005, that the person he saw carrying AAA was the accused. He positively identified the accused in open court as one and the same person whom he saw on that afternoon carrying the unconscious AAA without her underwear and who threw AAA over the fence.[9]

CCC stated that AAA was hospitalized and showed medical certificates dated February 16 and 18, 2005, which he identified in court. He noticed that while AAA was confined in the hospital and still unconscious, she had a lump on her head and her mouth was bloodied. CCC also identified during his testimony the panties and shorts worn by AAA at the time of the alleged crime.[10]

Police Officer (PO) 1 Milagros Patil-ao, a Philippine National Police (PNP) member of Quirino Police Station, testified for the prosecution on September 18, 2006 and stated that on February 10, 2005, the police station received information from BBB that her niece AAA was found bloodied at their backyard.

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[8] CA *rollo*, p. 30.

[9] *Id.* at 31.

[10] *Id.*

Together with PO3 Cabansay, PO1 Patil-ao proceeded immediately to the alleged crime scene, which was the backyard garden of BBB. There PO1 Patil-ao saw AAA whose hair was disheveled and whose eyeballs seemed to be rolling. She was carried by CCC on his back. They brought her to Bessang Pass Memorial Hospital, about 200 meters away, for medical treatment. A doctor and a nurse attended AAA and told the witness that AAA had been raped. PO1 Patil-ao, together with her fellow police officers, took the panties and short pants to be used as evidence. She noticed that the panties had blood stains. She presented the panties and shorts during her testimony.[11] When identified in court, the underwear still had blood stains while the shorts were full of dirt. The witness also recovered a pair of red slippers and a piece of wood from the alleged crime scene, which became part of the evidence for the prosecution.

AAA was already 18 years old and under the custody of the Department of Social Welfare and Development (DSWD) at the time of her testimony on January 29, 2007. She testified that when the alleged rape happened in February 2005, she was 16 years old and studying in high school. While she was watering the plants in her aunt's garden in the afternoon of the day the alleged crime took place, a male person whom she did not know approached her. When asked during direct examination if said male person was inside the courtroom, AAA positively identified the accused. She said that the accused clubbed her on the head three times with a piece of wood. He also boxed her. Before she lost consciousness, to protect herself, she bit the assailant's finger that was stuck inside her mouth. When she regained consciousness, she was already at the Bessang Pass Memorial Hospital with her aunt, Dr. Allan Licyayo, and her uncle. The doctor told her that she was raped. Police officers took her statements and reduced them into writing, which she then signed.[12]

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[11] *Id.* at 32.

[12] *Id.* at 33.

AAA positively identified the pink shorts and panties that she was wearing when the alleged rape happened. She said she felt ashamed, hurt, and very angry considering that she had suffered so many injuries inflicted upon her by accused, including the lacerations in her vagina.[13]

The defense presented the accused on February 17, 2009. He alleged that on February 10, 2005, at around 10:00 in the morning, he was drinking gin and brandy with his cousins Oliver Gascao and George Laus at a store in Poblacion, Cervantes, Ilocos Sur. They went outside the store and continued drinking up to 2:00 in the afternoon. While outside, two unidentified men approached and boxed him and Gascao for no apparent reason. He was hit on the mouth and this made him dizzy. They ran away and he took the shortcut path leading to their place. While he was running, he allegedly met someone at the curve and instinctively boxed that person, thinking that it was the same person who had boxed him earlier. The person fell down. He sat on his stomach and boxed the person again. He allegedly did not know the gender of the person he had boxed until he later learned that she is female. The woman pleaded with accused not to box her anymore and then he ran away to hide at the nearby mango and bamboo clusters for about 10 to 15 minutes. He then proceeded to his uncle's house in Barangay Rosario, Cervantes, Ilocos Sur. He later on came to know the identity of the person he had boxed as AAA, and he also received news that AAA had been raped. He admitted that AAA had bitten his finger and that he had it medically examined. He denied CCC's allegations that he was on his way westward towards a fence carrying AAA without her panties and shorts. He also denied running away leaving his slippers. He avouched that he did not rape AAA but he admitted that he boxed her for the reason stated above.[14]

On cross-examination, the accused stated that Senior Police Officer (SPO)1 Casela and PO Pascua brought him to Bessang

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[13] *Id.* at 34.

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

Pass Memorial Hospital to have a personal confrontation with AAA. He admitted that Dr. Licyayo physically examined his already infected middle finger, which was bitten by AAA on February 10, 2005, for which he was issued a medical certificate.[15]

The prosecution recalled AAA to the witness stand on August 3, 2009 to rebut the testimony of the accused. She denied that she was the one whom the accused met at a curve, as she was at the garden watering the plants at the back of her aunt's house, where the accused clubbed her three times with a piece of wood.[16]

The RTC considered this as a case where the private offended party could not testify on the actual commission of the rape because she was rendered unconscious at the time the alleged crime was perpetrated. Thus, the court ruled based on circumstantial evidence under Section 4, Rule 133 of the Revised Rules on Evidence.[17] The RTC also based its decision on the Supreme Court ruling that it is the totality or the unbroken chain of the circumstances proved that leads to no other conclusion than the guilt of the accused.

The RTC found that the prosecution adequately established that the accused was within the vicinity where the incident happened; that the accused knocked AAA out by clubbing her thrice with a piece of wood and punching different parts of her body; and that when she regained consciousness, she was already at the hospital and the doctor who attended to her issued a medical certificate showing that she sustained several injuries and the medical findings are consistent with the fact that the panties

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[15] *Id.* at 36.

[16] *Id.*

[17] SECTION 4. *Circumstantial evidence, when sufficient.* — Circumstantial evidence is sufficient for conviction if:

(a) There is more than one circumstance;
(b) The facts from which the inferences are derived are proven; and
(c) The combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.

used by the victim had blood stains. Taken together, the circumstances established beyond moral certainty that AAA was ravished while she was deprived of consciousness and the accused was the one culpable for defiling her. The pieces of evidence adduced by the prosecution constitute an unbroken chain of events which clearly points to the accused as the guilty person.[18]

The RTC held that the defenses of alibi and denial used by the accused are self-serving and deserve scant consideration. The accused offered explanations during his testimony that were too flimsy to be given consideration. He did not even present his alleged two companions to corroborate his claim that they were approached by two other men who boxed him without provocation.[19]

The dispositive portion of the RTC Decision reads as follows:

> WHEREFORE, in view of all the foregoing considerations this Court finds the accused DARYL POLONIO Y TUNGCAY guilty beyond reasonable doubt of rape and is hereby sentenced to suffer the penalty of RECLUSION PERPETUA and further order the accused to pay the victim [AAA] Seventy-Five Thousand pesos (₱75,000.00) as civil indemnity and Fifty Thousand pesos (₱50,000.00) as moral damages.[20]

The accused questioned the RTC Decision before the Court of Appeals, assigning the following errors:

> I.
>
> THE COURT *A QUO* GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT DESPITE THE PROSECUTION'S FAILURE TO PROVE HIS GUILT BEYOND REASONABLE DOUBT.

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[18] CA *rollo*, pp. 37-48.

[19] *Id.* at 49.

[20] *Id.* at 50.

II.

ASSUMING, WITHOUT CONCEDING, THAT THE ACCUSED-APPELLANT INDEED SEXUALLY MOLESTED THE PRIVATE COMPLAINANT, THE COURT *A QUO* GRAVELY ERRED IN CONVICTING HIM DESPITE THE FAILURE OF THE INFORMATION TO PROPERLY APPRISE HIM OF HIS OFFENSE.[21]

The Court of Appeals found that the appeal has no merit. We quote below the pertinent portions of the Court of Appeals decision:

> Article 266-A, paragraph 1 of the Revised Penal Code, as amended by Republic Act No. 8353, defines Rape as an act committed by a man who has carnal knowledge of a woman under any of the following circumstances: (a) through force, threat or intimidation; (b) when the offended party is deprived of reason or is otherwise unconscious; (c) by means of fraudulent machination or grave abuse of authority; and, (d) when the offended party is under twelve (12) years of age or is demented, even though none of the circumstances mentioned above be present.
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> **In this instance, accused-appellant admitted that he used force and violence against the victim AAA.** He testified that he boxed AAA and when she fell, accused-appellant sat on her stomach and boxed her again. It has also been established that when CCC saw accused-appellant carrying AAA, the latter was unconscious and in a state of undress. It was CCC who put back AAA's shorts and underwear on her after accused-appellant threw her on the ground before he jumped over the fence to escape. Notably, AAA's underwear had bloodstains, and this was seen by PO1 Milagros Patil-ao at the hospital. While conducting the investigation, AAA likewise complained to PO1 Patil-ao about the pain she felt in her private part. The Medical Certificate executed by Dr. Licyayo also noted that AAA actually sustained a laceration in her vagina at 6 o'clock position.
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> **The categorical narration by AAA of her encounter with accused-appellant and the physical evidence that clearly proved sexual intercourse support the conclusion that accused-appellant did, in fact, commit rape against AAA through force or**

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[21] *Id.* at 60.

intimidation. Force as an element of rape is that which is needed to overpower the resistance of the offended party and to consummate the offense. In this case, the three (3) blows to the head with a stick and several blows using his fist that caused AAA's unconsciousness definitely enabled accused-appellant to carry out his evil deed without any defense on the part of AAA.

It is of no moment that there was no witness who actually saw accused-appellant in the act of having carnal knowledge with AAA, nor that AAA was then in a state of unconsciousness. For one thing, jurisprudence abound that the crime of rape, more often than not, happens only between the assailant and the victim. **Hence, a conviction may be based on circumstantial evidence which is indirect or presumptive evidence that refers to a set of facts from which the existence of the allegation sought to be proved may be inferred. The only requirements are: (a) there is more than one circumstance; (b) the facts from which the inferences are derived are proven; and, (c) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt. These circumstances also need to be consistent with each other and with the theory that the accused is guilty.**

In this case, it is undenied (*sic*) **that accused-appellant committed violence against AAA by striking and boxing her several times even as the latter was already prostrate on the ground. It was also established that accused-appellant mounted AAA and that the latter was without her shorts and underwear. Accused-appellant tried to escape while carrying the half-naked AAA but eventually dropped her on the ground in his escape. It was CCC who put back her underwear and shorts. There was blood on her underwear. AAA complained to PO1 Patil-ao of pain in her vagina. Upon examination, Dr. Ronaldo Licyayo confirmed that AAA suffered a laceration at 6 o'clock position which is indicative of vaginal penetration. It is also worth stressing that after the incident, accused-appellant fled and became a fugitive until his arrest fifteen (15) days later. All these point to a conclusion of guilt on the part of accused-appellant.**

Accused-appellant's denial that he merely boxed, but did not rape AAA [does] not deserve belief. Denial, much like alibi, is one of the weakest defenses as it is easy to fabricate. Pitted against the certificate issued by Dr. Licyayo, affirmative testimony given by AAA, CCC, and PO1 Patil-ao, the defense of denial put up by accused-appellant cannot stand.

WHEREFORE, in view of the foregoing, the Decision dated 05 March 2010 of the Regional Trial Court, Branch 25, Tagudin, Ilocos Sur is **AFFIRMED**.[22] (Citations omitted, emphases supplied.)

Accused-appellant adopted his arguments in his brief before the Court of Appeals as his arguments in the present petition. He mainly questions the conclusion reached by the RTC, as affirmed by the Court of Appeals, finding him guilty based on circumstantial evidence. He avers that the pieces of evidence presented by the prosecution are not enough to prove his guilt beyond reasonable doubt.[23]

The appeal is without merit.

To emphasize, **"[c]ircumstantial evidence, if sufficient and competent, may warrant the conviction of the accused of rape."**[24] In *People v. Lupac*,[25] the Court considered circumstantial evidence as the victim was unconscious at the time of the alleged rape. The Court said:

> Lastly, Lupac assails the absence of credible direct evidence about his having carnal knowledge of AAA because she herself, being then asleep and unconscious, could not reliably attest to his supposed deed. Consequently, he argues that the evidence against him did not amount to proof beyond reasonable doubt.
>
> Lupac's argument hews closely to what the Court has stated in *People v. Campuhan* to the effect that there must be proof beyond reasonable doubt of at least the introduction of the male organ into the *labia* of the *pudendum* of the female genital organ, which required some degree of penetration beyond the vulva in order to touch the *labia majora* or the *labia minora*.
>
> The position of Lupac is bereft of merit, however, because his conviction should still stand even if direct evidence to prove penile

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[22] *Rollo*, pp. 6-8.

[23] CA *rollo*, pp. 57-71.

[24] *People v. Belgar*, G.R. No. 182794, September 8, 2014, 734 SCRA 347, 348.

[25] 695 Phil. 505, 514-516 (2012).

penetration of AAA was not adduced. **Direct evidence was not the only means of proving rape beyond reasonable doubt. Circumstantial evidence would also be the reliable means to do so, provided that (*a*) there was more than one circumstance; (*b*) the facts from which the inferences were derived were proved; and (*c*) the combination of all the circumstances was such as to produce a conviction beyond reasonable doubt. What was essential was that the unbroken chain of the established circumstances led to no other logical conclusion except the appellant's guilt.**

The following circumstances combined to establish that Lupac consummated the rape of AAA, namely: (*a*) when AAA went to take her afternoon nap, the only person inside the house with her was Lupac; (*b*) about an hour into her sleep, she woke up to find herself already stripped naked as to expose her private parts; (*c*) she immediately felt her body aching and her vaginal region hurting upon her regaining consciousness; (*d*) all doors and windows were locked from within the house, with only her and the brief-clad Lupac inside the house; (*e*) he exhibited a remorseful demeanor in unilaterally seeking her forgiveness (*Pasensiya ka na AAA*), even spontaneously explaining that he did not really intend to do "*that*" to her, showing his realization of the gravity of the crime he had just committed against her; (*f*) her spontaneous, unhesitating and immediate denunciation of the rape to Tita Terry and her mother (*hindot* being the term she used); and (*g*) the medico-legal findings about her congested vestibule within the *labia minora*, deep fresh bleeding laceration at 9 o'clock position in the hymen, and abraded and U-shaped posterior fourchette proved the recency of infliction of her vaginal injuries.

The fact that all her injuries x x x were confined to the posterior region area of her genitals signified the forceful penetration of her with a blunt instrument, like an erect penis. (Citations omitted, emphasis supplied.)

The Anti-Rape Law of 1997, Republic Act No. 8353, defines when and how rape is committed:

Article 266-A. *Rape; When and How Committed*. — Rape is Committed —

1) By a man who shall have carnal knowledge of a woman under any of the following circumstances;

a) Through force, threat or intimidation;

b) When the offended party is deprived of reason or is otherwise unconscious[.]

The elements of the crime charged in this case are: (1) that the offender had carnal knowledge of a female, and (2) that the same was committed by using force, threat or intimidation.[26]

As can be readily seen above, both the RTC and the Court of Appeals declared AAA's testimony and those of CCC and PO1 Patil-ao to be credible and convincing. We thus find it unnecessary to disturb the findings and conclusions of the RTC and the Court of Appeals. This Court has repeatedly maintained the sanctity of the factual findings of the trial courts, especially when affirmed by the Court of Appeals. As we held in *People v. Quintos*:[27]

> The observance of the witnesses' demeanor during an oral direct examination, cross-examination, and during the entire period that he or she is present during trial is indispensable especially in rape cases because it helps establish the moral conviction that an accused is guilty beyond reasonable doubt of the crime charged. Trial provides judges with the opportunity to detect, consciously or unconsciously, observable cues and microexpressions that could, more than the words said and taken as a whole, suggest sincerity or betray lies and ill will. These important aspects can never be reflected or reproduced in documents and objects used as evidence.
>
> Hence, "[t]he evaluation of the witnesses' credibility is a matter best left to the trial court because it has the opportunity to observe the witnesses and their demeanor during the trial. Thus, the Court accords great respect to the trial court's findings," more so when the Court of Appeals affirmed such findings. (Citations omitted.)

In *People v. Belgar*,[28] the Court also affirmed the RTC and the Court of Appeals in finding the accused guilty of rape based on circumstantial evidence, as follows:

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[26] *People v. Belgar*, *supra* note 24 at 353.

[27] G.R. No. 199402, November 12, 2014, 740 SCRA 179, 190-191.

[28] *Supra* note 24 at 357-360.

Like the RTC and the CA, we find AAA's narration of her ordeal as credible and truthful. The assessment by the RTC on the credibility of AAA should be respected because the trial court had personally observed her demeanor while testifying. This appreciation held true because the CA affirmed the factual findings of the RTC.

We likewise note that AAA did not hesitate or waver in her narration even during her rigorous cross examination. As such, her sole but credible testimony as the rape victim sufficed to convict the accused of his crime. It is remarkable, indeed, that there was neither allegation nor proof of any ill motive on her part or on the part of her family in accusing him of raping her.

Belgar's alibi was rightly rejected. Alibi, to prosper, must be substantiated with clear and convincing evidence. He must demonstrate not only that he was somewhere else when the crime occurred, but also that it was physically impossible for him to be at the crime scene when the crime was committed. But he failed to adequately support his alibi. Although he attested that on January 20, 2000, he slept in his house situated in Barangay San Miguel, Tigaon, Camarines Sur continuously from 8:00 p.m. until getting up at 5:00 a.m. of the next day, he did not dispute that his house was but two kilometers away from where the rape was committed. Both *barangays* were actually within the Municipality of Tigaon, rendering it not physically impossible for him to leave his house during the period that he allegedly was home in order to reach AAA's house by midnight to commit the crime.

The commission of the rape was competently established although AAA had been unconscious during the commission of the act. Proof of the commission of the crime need not always be by direct evidence, for circumstantial evidence could also sufficiently and competently establish the crime beyond reasonable doubt. Indeed, the Court affirmed convictions for rape based on circumstantial evidence. In this connection, circumstantial evidence is sufficient for conviction if the conditions set forth in Section 4, Rule 133 of the *Rules of Court* are shown to exist, to wit:

Section 4. *Circumstantial evidence, when sufficient.* — Circumstantial evidence is sufficient for conviction if:

(a) There is more than one circumstance;

(b) The facts from which the inferences are derived are proven; and

(c) The combination of all the circumstances is such as to produce a conviction beyond reasonable doubt.

In *People v. Perez*, we affirmed the conviction of the accused for rape based on circumstantial evidence, there being no direct proof of the sexual intercourse. The accused was charged with having carnal knowledge of the 16-year old victim through force, intimidation and against her will. The Prosecution established that he had entered the victim's room and had covered her nose and mouth with a chemically-laced cloth, causing her to lose consciousness. Upon waking up, she felt pain in her vagina, and she then saw blood and a white substance in her vagina. Her clothes were in disarray and her underwear was in the corner of the room. He was no longer around. Nonetheless, the Court held:

> **Conviction for rape may be based on circumstantial evidence when the victim cannot testify on the actual commission of the rape as she was rendered unconscious when the act was committed, provided that more than one circumstance is duly proved and that the totality or the unbroken chain of the circumstances proven lead to no other logical conclusion than the appellant's guilt of the crime charged.** Cristina's positive identification of the appellant as the person who came to the room where she slept one early morning towards the end of May 1994, and that he covered her nose and mouth with a foul smelling handkerchief until she lost consciousness, the blood and white substance she found on her vagina which ached the following morning, her torn shorts and her panty removed, all lead to one inescapable conclusion that the appellant raped her while she was unconscious. (Citations omitted, emphases ours.)

Thus, we deny the petition and affirm the judgment of conviction. However, we hereby modify the penalties awarded in keeping with recent jurisprudence. We hold that accused is also liable for **exemplary damages** even if no aggravating circumstances attended the commission of the crime, because of the inherent bestiality of the act of rape. The Court discussed this recently in *People v. Jugueta*:[29]

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[29] G.R. No. 202124, April 5, 2016.

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 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.

x x x x x x x x x

Being corrective in nature, exemplary damages, therefore, can be awarded, not only due to the presence of an aggravating 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. x x x. (Citations omitted.)

Likewise, for simple rape with the penalty of *reclusion perpetua*, *People v. Jugueta* has increased the amount of moral damages to Seventy-Five Thousand Pesos (₱75,000.00), thus we modify the award accordingly. Furthermore, the Court imposes legal interest of 6% *per annum* on each of the civil liabilities, reckoned from the finality of this judgment until full payment.

WHEREFORE, the **Decision** of the Court of Appeals in CA-G.R. CR.-H.C. No. 04594, which affirmed the March 5, 2010 **Decision** of the Regional Trial Court, Branch 25, Tagudin, Ilocos Sur, in Criminal Case No. 870-T, is **AFFIRMED WITH MODIFICATION**. Accused-appellant **DARYL POLONIO *y* TUANGCAY** is found **GUILTY** beyond reasonable doubt of the crime of rape and is hereby sentenced to the penalty of *reclusion perpetua* and ordered to pay AAA the following: civil indemnity of Seventy-Five Thousand Pesos (₱75,000.00), moral damages of Seventy-Five Thousand Pesos (₱75,000.00), and exemplary damages of Seventy-Five Thousand Pesos (₱75,000.00). All monetary awards for damages shall earn interest at the legal rate of 6% per annum from date of finality of this Decision until fully paid.

Costs against accused-appellant.

SO ORDERED.

Bersamin, Perlas-Bernabe, and *Caguioa, JJ.,* concur.

Sereno, C.J., on leave.

SECOND DIVISION

[G.R. No. 212960. June 8, 2016]

SAMAHANG MANGGAGAWA SA GENERAL OFFSET PRESS, INC., *petitioner, vs.* **GENERAL OFFSET PRESS, INC., JUANITA TIU and JOJI TIU,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; DISMISSAL OF EMPLOYEE; REINSTATEMENT; TWO-FOLD TEST TO DETERMINE WHETHER AN EMPLOYEE WAS ENTITLED TO ACCRUED WAGES DURING THE PERIOD WHEN HE WAS SUPPOSED TO BE REINSTATED.— The two-fold test in *Garcia* was also applied in *Paz* in order to determine whether an employee was entitled to the accrued wages during that period when he was supposed to have been reinstated. x x x (1) there must be actual delay or the fact that the order of reinstatement pending appeal was not executed prior to its reversal; and (2) the delay must not be due to the employer's unjustified act or omission. If the delay is due to the employer's unjustified refusal, the employer may still be required to pay the salaries notwithstanding the reversal of the Labor Arbiter's decision.

2. ID.; ID.; ID.; ID.; WHEN REINSTATEMENT OF EMPLOYEE WAS LEGALLY IMPOSSIBLE DUE TO A VALID CLOSURE OF BUSINESS OPERATION, EMPLOYER CANNOT BE ORDERED TO PAY BACKWAGES BEYOND THE DATE OF CLOSURE.— In this case, the first test has been undeniably met. What remains is the issue of whether the delay or failure to reinstate was due to GOPI's unjustified act or omission. GOPI ceased operation way back in March 2002. This was declared valid by the 2004 decision of the NLRC which, in turn, was affirmed by the CA and, subsequently, by this Court. Eventually, it attained finality on March 12, 2010. With the case at bench being similar to the cases of *Garcia* and *Paz,* the Court agrees with the CA that the valid closure of GOPI's operation made it legally impossible to reinstate the complainants who were members of petitioner SMGOPI. Accordingly, GOPI cannot be ordered to pay backwages beyond the date of closure.

APPEARANCES OF COUNSEL

Pro-labor Legal Assistance Center for petitioner.
Baizas Magsino Recinto Law Offices for respondents.

D E C I S I O N

MENDOZA, *J.*:

This petition for review on *certiorari* under Rule 45 seeks to annul and set aside the December 19, 2013 Decision[1] and the May 29, 2014 Resolution[2] of the Court of Appeals (*CA*) in CA-G.R. SP No. 126761, which affirmed the February 1, 2012[3] and July 25, 2012[4] Resolutions of the National Labor Relations Commission (*NLRC*), directing the return of the garnished amount to the respondent, General Offset Press, Inc. (*GOPI*).

The Antecedents

Petitioner Samahang Manggagawa sa General Offset Press, Inc. (*SMGOPI*) and its forty (40) members filed a complaint for illegal dismissal, damages and attorney's fees against GOPI. The Labor Arbiter (*LA*) ruled in favor of the complainants and ordered the reinstatement of the 25 employees and the payment of ₱50,000.00 to each, as moral damages; and dismissed with prejudice the complaints of the other 15 employees for being moot and academic as they had already entered into some amicable settlement with GOPI.[5]

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[1] Penned by Associate Justice Agnes Reyes-Carpio with Associate Justice Noel G. Tijam and Associate Justice Pricilla J. Baltazar-Padilla, concurring. *Rollo*, pp. 24-34.

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

[3] *Id.* at 149-153.

[4] *Id.* at 160-162.

[5] LA Decision, dated December 23, 2003. *Id.* at 57-78.

Pending the appeal of GOPI before the NLRC, the complainants moved for execution pending appeal which was granted by the LA. The corresponding writ of execution[6] was issued immediately the following day. GOPI's account at BPI, Katipunan-Blue Ridge Branch, in the amount of ₱79,530.26 was garnished and ordered released upon the complainants' motion. Thereafter, the said amount was deposited with the NLRC Cashier.[7]

The appeal pending before the NLRC was eventually resolved against the complainants. The LA decision was reversed, vacated and set aside; the unfair labor practice against GOPI was dismissed; its closure was declared valid; and the employees' strike was found to be illegal. GOPI, however, was ordered to pay each of the complainant financial assistance equivalent to one (1) month salary for every year of service.[8] The financial assistance was subsequently deleted upon GOPI's motion for reconsideration.[9]

The complainants then appealed the NLRC decision to the CA. On February 11, 2009, the CA affirmed the findings of the NLRC. The case was eventually elevated before this Court but the petition was denied on October 14, 2009 for its failure to sufficiently show any reversible error in the CA decision. The said decision became **final and executory** on March 12, 2010 and was entered in the Book of Entries.[10]

For this reason, GOPI filed its Motion to Release (Garnished Amount and Appeal Bond), on February 17, 2011 before the LA. In its May 4, 2011 Order,[11] the LA granted the motion insofar as the appeal bond was concerned. Thus:

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[6] NLRC Order, dated June 10, 2004. *Id.* at 92-94.

[7] *Id.* at 26.

[8] NLRC Decision, dated December 15, 2004. *Id.* at 79-90.

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

[10] *Id.* at 97-98.

[11] *Id.* at 130-131.

WHEREFORE, premises above considered, the NLRC Cashier is hereby directed to release to respondents, their appeal/cash bond of ₱100,000.00 duly deposited thereat under O.R. No. 4308533 dated February 6, 2004. While the garnished amount of ₱79,530.26 representing payment of all complainants' reinstatement salaries should be released to them, subject to usual government accounting and auditing procedures.

SO ORDERED.[12]

Finding this unacceptable, GOPI appealed the order to the NLRC, arguing that the garnished amount must be released to it and not to the complainants because of the subsequent reversal of the LA finding of illegal dismissal. The NLRC, in its September 29, 2011 Decision,[13] denied the appeal for lack of merit and affirmed the LA order. It explained:

x x x We rule that despite the reversal of the 23 December 2003 Decision, **complainants are still entitled to the garnished sum** of ₱79,530.26 representing their accrued wages corresponding to the period from 29 January to 29 April 2004.[14] [Emphasis Supplied]

Undaunted, GOPI moved for reconsideration of the said decision. In its assailed **February 1, 2012** Resolution, the NLRC granted the motion. Thus, the dispositive portion reads:

WHEREFORE, respondents' motion for reconsideration is GRANTED, and the Decision promulgated on 29 September 2011 is REVERSED and SET ASIDE. The **garnished sum** of ₱79,530.26 is directed to be **returned to respondents**.

SO ORDERED.[15] [Emphases Supplied]

The complainants sought reconsideration arguing that GOPI failed to reinstate them pursuant to the original ruling of the

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[12] *Id.* at 131.

[13] *Id.* at 133-139.

[14] *Id.* at 138.

[15] *Id.* at 152.

LA as stated in its December 23, 2003 decision, which was immediately executory. The NLRC, however, denied their motion in its assailed **July 25, 2012** Resolution.

Not satisfied, SMGOPI elevated the matter to the CA via a petition for *certiorari* attributing grave abuse of discretion on the part of the NLRC in reversing itself and ordering the release of the garnished amount to GOPI when it was supposed to compensate the complainants for their salaries during that time when GOPI failed to reinstate them pending appeal of the LA decision.[16]

After a review of the assailed orders of the NLRC, the CA denied the petition in its challenged decision, dated December 19, 2013. It explained that, consistent with the finding of the NLRC, reinstatement was not viable considering the closure of the corporation and the payment of separation pay, the alternative to reinstatement, was not doable either because the complainants were found to have engaged in prohibited acts during a strike which was the basis for their dismissal.[17] Thus,

> WHEREFORE, in view of the foregoing, the instant Petition is DENIED. The Resolutions, dated February 1, 2012 and July 25, 2012, issued by public respondent National Labor Relations Commission (NLRC) in NLRC NCR LAC No. 039684-04, are AFFIRMED.
>
> SO ORDERED.[18]

SMGOPI moved for reconsideration but its motion was denied by the CA in the assailed resolution, dated May 29, 2014, stating that all the arguments raised therein had all been discussed and there were no new arguments raised.[19]

SMGOPI is now before this Court via this petition for review on *certiorari* under Rule 45 raising this lone.

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[16] *Id.* at 28.

[17] *Id.* at 30-33.

[18] *Id.* at 33-34.

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

ISSUE

Did the Court of Appeals commit an error of law in holding that the garnished amount should be returned to respondents notwithstanding that the same is supposed to compensate the workers for their reinstatement salaries pending appeal?[20]

The task at hand is to determine who is entitled to the garnished amount pursuant to the existing law and the prevailing jurisprudence.

SMGOPI argues that the complainants were entitled to the garnished amount because GOPI failed to reinstate them despite the clear directive of the LA, citing **Article 223** (now Article 229) of the Labor Code which provides that an order of reinstatement by the LA is immediately executory even pending appeal.

> Art. 223. Appeal. x x x.
>
> In any event, the decision of the Labor Arbiter reinstating a dismissed or separated employee, insofar as the reinstatement aspect is concerned, shall immediately be executory, even pending appeal. The employee shall either be admitted back to work under the same terms and conditions prevailing prior to his dismissal or separation or, at the option of the employer, merely reinstated in the payroll. The posting of a bond by the employer shall not stay the execution for reinstatement provided herein.

SMGOPI claims that the garnished amount was supposed to cover the accrued wages of the complainants from January 29 to April 29, 2004 or that period when they were supposed to have been reinstated.

Although the findings of the LA were subsequently reversed and overturned by the NLRC, SMGOPI argues, citing the 2011 case of *Islriz Trading v. Capada* (*Islriz*),[21] that the complainants

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[20] *Id.* at 15.

[21] 656 Phil. 9 (2011).

were still entitled to their accrued salaries from the time GOPI received the LA decision declaring the termination of their employment illegal up to the time when the NLRC overturned the same.

The Court's Ruling

The Court rules against SMGOPI.

Although the Court's pronouncement in *Islriz* has not been overturned, that case is not on all fours with the case at bench. To begin with, Islriz Trading was not under any justifiable circumstance that would excuse it from reinstating the complainants-employees or exercising any of the other options under Article 223 of the Labor Code. Thus, the Court held Islriz Trading liable for the accrued salaries of its dismissed employees.[22]

A careful reading of *Islriz* also teaches that an employee may still be barred from claiming his accrued salaries as when the delay or failure to reinstate said employee was not the fault of the employer. *Islriz*, in discussing the case of *Garcia v. Philippine Airlines, Inc.*[23] (Garcia), stated:

> x x x The (C)ourt went on to declare that after the Labor Arbiter's decision is reversed by a higher tribunal, the employee may be barred from collecting the accrued wages, if it is shown that **the delay in enforcing the reinstatement pending appeal was without fault on the part of the employer**. x x x.[24]

In *Garcia*, the immediate obligation of Philippine Airlines (*PAL*) to reinstate its employees could not attach because it was then under corporate rehabilitation and the claims against it were suspended. Similarly, in the 2014 case of *Philippine Airlines, Inc. v. Paz*[25] (*Paz*), the Court considered the situation

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[22] *Id.* at 29.

[23] 596 Phil. 510, 541 (2009).

[24] *Islriz Trading v. Capada*, *supra* note 21, at 23.

[25] G.R. No. 192924, November 26, 2014, 743 SCRA 1.

of PAL being under rehabilitation receivership to be sufficient to justify the delay or failure to comply with the reinstatement order of the LA.

In *Paz*, the employee obtained a favorable ruling from the LA for his illegal dismissal case against PAL but it was reversed on appeal by the NLRC. PAL was under rehabilitation receivership during the entire period when the illegal dismissal case was being heard. Similarly, the question raised there was whether Paz could collect reinstatement salaries which he was supposed to have received from the time that PAL received a copy of the LA decision ordering his reinstatement and until the said decision was overturned by the NLRC. The Court in the said case ruled that the employee was not entitled to reinstatement salaries.[26]

The two-fold test in *Garcia* was also applied in *Paz* in order to determine whether an employee was entitled to the accrued wages during that period when he was supposed to have been reinstated.

> x x x (1) there must be actual delay or the fact that the order of reinstatement pending appeal was not executed prior to its reversal; and (2) the delay must not be due to the employer's unjustified act or omission. If the delay is due to the employer's unjustified refusal, the employer may still be required to pay the salaries notwithstanding the reversal of the Labor Arbiter's decision.[27]

In this case, the first test has been undeniably met. What remains is the issue of whether the delay or failure to reinstate was due to GOPI's unjustified act or omission.

GOPI ceased operation way back in March 2002. This was declared valid by the 2004 decision of the NLRC which, in turn, was affirmed by the CA and, subsequently, by this Court. Eventually, it attained finality on March 12, 2010.

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[26] *Id.* at 14-15.

[27] *Garcia v. Phil. Airlines, Inc.*, *supra* note 23, at 541.

With the case at bench being similar to the cases of *Garcia* and *Paz*, the Court agrees with the CA that the valid closure of GOPI's operation made it legally impossible to reinstate the complainants who were members of petitioner SMGOPI. Accordingly, GOPI cannot be ordered to pay backwages beyond the date of closure. The NLRC aptly stated it, when it wrote:

> Invariably, an employer may not be ordered to pay backwages beyond the date of closure of business where such closure was due to legitimate business reasons and not merely an attempt to defeat the order of reinstatement. Employee is entitled to backwages up to date of closure.[28]

WHEREFORE, the petition is **DENIED**.

SO ORDERED.

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

Brion, J., on official leave.

SECOND DIVISION

[G.R. No. 214122. June 8, 2016]

AUTOZENTRUM ALABANG, INC., *petitioner, vs.* **SPOUSES MIAMAR A. BERNARDO and GENARO F. BERNARDO, JR., DEPARTMENT OF TRADE AND INDUSTRY, ASIAN CARMAKERS CORPORATION, and BAYERISHE MOTOREN WERKE (BMW) A.G.,** *respondents.*

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[28] *Rollo,* p. 151.

SYLLABUS

1. COMMERCIAL LAW; CONSUMER ACT OF THE PHILIPPINES (RA 7394); DECEPTIVE, UNFAIR, AND UNCONSCIONABLE SALES ACTS OR PRACTICES; BY REPRESENTING TO ITS CUSTOMER THAT THE PRODUCT IS NEW AND ORIGINAL WHEN IN FACT IT IS RECONDITIONED OR SECOND-HAND, PETITIONER COMMITTED A DECEPTIVE SALES ACT.— RA 7394 specifically provides that an act of a seller is **deceptive** when it represents to a consumer that a product is new, original or unused, when in fact, it is deteriorated, altered, reconditioned, reclaimed or second-hand. A representation is not confined to words or positive assertions; it may consist as well of deeds, acts or artifacts of a nature calculated to mislead another and thus allow the fraud-feasor to obtain an undue advantage. Failure to reveal a fact which the seller is, in good faith, bound to disclose may generally be classified as a deceptive act due to its inherent capacity to deceive. Suppression of a material fact which a party is bound in good faith to disclose is equivalent to a false representation. A case where the defendant repainted an automobile, worked it over to resemble a new one and represented that the automobile being sold was new, was found to be "a false representation of an existing fact; and, if it was material and induced the plaintiff to accept something entirely different from that which he had contracted for, it clearly was a fraud which, upon its discovery and a tender of the property back to the seller, entitled the plaintiff to rescind the trade and recover the purchase money." In the present case, both the DTI and the CA found that Autozentrum sold a defective car and represented a second-hand car as brand new to Spouses Bernardo. x x x [B]y claiming that its initial intention was for the car to be used by one of its executive officers, Autozentrum effectively admitted ownership of the car prior to its purchase by Spouses Bernardo. Autozentrum failed to present evidence that its intention did not occur. On the other hand, Autozentrum's registration of the car under its name and Campilan's letter bolster the fact that the car was pre-owned and used by Autozentrum. For failure to reveal its prior registration of the car in its name, and for representing an altered and second-hand car as brand new to Spouses Bernardo, Autozentrum committed a deceptive sales act, in violation of Section 50 of RA 7394.

2. ID.; ID.; ID.; ID.; PETITIONER IS ORDERED TO RETURN THE VALUE OF THE CAR WITH 6% INTEREST PER ANNUM AND TO PAY AN ADMINISTRATIVE FINE.— Records show that Autozentrum already possessed the car since 8 August 2011. Thus, the DTI Hearing Officer and the CA correctly applied RA 7394 and DTI Department Administrative Order No. 007-06 when they ordered Autozentrum to return to Spouses Bernardo the value of the car amounting to ₱2,990,000 and to pay an administrative fine of ₱160,000 and an additional administrative fine of not more than ₱1,000 for each day of continuing violation. Section 1 of Resolution No. 796 of the Monetary Board of the Bangko Sentral ng Pilipinas dated 16 May 2013 provides: "The rate of interest for the loan or forbearance of any money, goods or credits and the rate allowed in judgments, in the absence of an express contract as to such rate of interest, shall be six percent (6%) per annum." Thus, Autozentrum is ordered to pay the value of the car amounting to ₱2,990,000 with a legal interest rate of 6% per annum from the finality of this Decision until the amount is fully paid.

APPEARANCES OF COUNSEL

Mercedes Buhayang-Margallo for petitioner.

Ocampo & Manalo Law Firm for respondent Asian Carmakers Corporation.

Law Firm Of Pichay & Montubig for respondents Sps. Miamar A. Bernardo and Genaro F. Bernardo, Jr.

D E C I S I O N

CARPIO, *Acting C.J.*:

The Case

This petition for review[1] assails the Decision dated 30 June 2014[2] and Resolution dated 4 September 2014[3] of the Court of

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[1] *Rollo*, pp. 11-38. Under Rule 45 of the 1997 Rules of Civil Procedure.

[2] *Id.* at 60-73. Penned by Associate Justice Romeo F. Barza, with Associate Justices Hakim S. Abdulwahid and Ramon A. Cruz concurring.

[3] *Id.* at 74-76.

Appeals (CA) in CA-G.R. SP No. 127748, which affirmed the Decision dated 30 April 2012[4] of the Department of Trade and Industry (DTI).

The Facts

On 12 November 2008, respondents Spouses Miamar A. Bernardo and Genaro F. Bernardo, Jr. (Spouses Bernardo) bought a 2008 BMW 320i sports car, in the amount of ₱2,990,000, from petitioner Autozentrum Alabang, Inc. (Autozentrum), a domestic corporation and authorized dealer of BMW vehicles. Autozentrum was authorized to deliver a brand new car to Spouses Bernardo.[5]

On 12 October 2009, Spouses Bernardo brought the car to BMW Autohaus, the service center of respondent Asian Carmakers Corporation (ACC), because its ABS brake system and steering column malfunctioned. On 26 October 2009, six days after the car's release, Spouses Bernardo returned the car to BMW Autohaus due to the malfunctioning of the electric warning system and door lock system. Sometime in March 2010, the car was brought again to BMW Autohaus because its air conditioning unit bogged down. BMW Autohaus repaired the car under its warranty.

In September 2010, Spouses Bernardo brought the car to BMW Autohaus, under an insurance claim, for the replacement of its two front wheels due to the damage of its wishbone component. BMW Autohaus performed the repairs and discovered that one of the rear tires did not have Running Flat Technology (RFT), when all of its tires should have RFT. Upon being informed, Autozentrum replaced the ordinary tire with an RFT tire.

On 13 January 2011, Spouses Bernardo brought the car to ACC because the car's fuel tank was leaking. ACC replaced the fuel tank without cost to the Spouses Bernardo. On 17 January

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[4] *Id.* at 39-50. Penned by Hearing Officer Maria Fatima B. Pacampara.

[5] *Id.* at 182.

and 26 January 2011, Spouses Bernardo sent letters to Autozentrum, demanding for the replacement of the car or the refund of their payment.

In his letter dated 29 January 2011,[6] Autozentrum's Aftersales Manager Ron T. Campilan (Campilan) replied that the car purchased by Spouses Bernardo was certified pre-owned or used, and that Autozentrum's legal department was still examining their demand.

On 24 February 2011, Spouses Bernardo filed a complaint for refund or replacement of the car and damages with the DTI against respondents Autozentrum, ACC, and Bayerishe Motoren Werke (BMW) A.G. for violation of Article 50 (b) and (c), in relation to Article 97, of the Consumer Act of the Philippines or Republic Act No. (RA) 7394.

In their Supplemental Complaint dated 23 September 2011, Spouses Bernardo alleged that they brought the car again to Autozentrum after the electrical system and programming control units malfunctioned on 4 June 2011. The car was released to them five days later, but was towed to Autozentrum on 8 August 2011, because its engine emitted smoke inside the car. Autozentrum has custody of the car until now.

The DTI Ruling

In a Decision dated 30 April 2012, DTI Hearing Officer Maria Fatima B. Pacampara (Hearing Officer) ruled that Autozentrum violated the Consumer Act of the Philippines particularly the provisions on defective products and deceptive sales. In concluding that the car was defective, the Hearing Officer considered that the major malfunctions in the car do not usually happen in such a short period of usage, and Autozentrum did not present proof that the malfunctions were caused by ordinary wear and tear.

The Hearing Officer further held Autozentrum liable for deceptive sales because the car was not brand new at the time

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[6] *Id.* at 185-186.

of sale, contrary to what Autozentrum represented to Spouses Bernardo. However, the Hearing Officer exculpated ACC and BMW, since there was no proof that the defects were due to design and manufacturing, and they were not privy to the sale of the car.

The dispositive portion of the Decision reads:

> WHEREFORE, in view of the foregoing, this Honorable Office finds in favor of the Complainant. The Respondent Autozentrum, having violated the provisions of the Consumer Act particularly on defective products and deceptive sales act, is hereby ordered to:
>
> 1. To pay an administrative fine of ONE HUNDRED SIXTY THOUSAND PESOS (Php160,000.00) and the additional administrative fine of not more than One Thousand Pesos (Php1,000.00) for each day of continuing violation, at the DTI-NCR Cashier's Office at the 12th Floor, Trafalgar Plaza, HV Dela Costa St., Salcedo Village, Makati City;
>
> 2. To refund, in favor of the Complainant, the purchase price of the subject vehicle [in the] amount of Two Million Nine Hundred and Ninety Thousand Pesos (Php2,990,000.00) for the amount of the memory stick [sic] bought from the Respondent.
>
> SO ORDERED.[7]

In a Resolution dated 14 September 2012, the DTI Appeals Committee affirmed the findings of the Hearing Officer, but modified the amount to be reimbursed to Spouses Bernardo taking into account the depreciation of the car, as follows:

> WHEREFORE, premises considered, the instant appeal is hereby dismissed. The decision finding respondent to have violated the provisions of the Consumer Act is affirmed with modification in paragraph 2 thereof. In view of the fact that the complainants had made use of the vehicle for two (2) years, the Committee modifies par. 1 of the dispositive portion of the decision pursuant to the case entitled Sps. Eslao vs. Ford Cars Alabang, Adm. Case No. 07-43. Said decision was appealed to the Court of Appeals through petition for certiorari (CA-G.R. SP No. 111859) and Supreme Court through

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[7] *Id.* at 49-50.

petition for review on certiorari (Ford Cars Alabang vs. Sps. Ike and Mercelita Eslao, et al. (G.R. No. 194250) wherein the Court resolves to deny the petition for failure to show any reversible error in the challenged resolution. The decision dated 11 March 2009 in Adm. Case No. 07-43 which was partly modified in the Resolution dated 1 October 2009 of the DTI-Appeals Committee was then fully implemented. On that basis, the Committee modifies par. 2 of the dispositive portion of the assailed decision to read as follows:

2. To reimburse the total purchase price of the subject BMW 320i unit less the beneficial use of the vehicle.

Record shows that complainant already used the vehicle for two (2) years before the filing of the complaint. In this regard, the Committee deems it proper and reasonable to apply COA Circular No. 2003-07 dated 11 December 2003 entitled Revised Estimated Useful Life in Computing Depreciation for Government Property. By analogy, such circular provides the basis for computing the depreciation value of a vehicle. Under par. 4 of the said Circular, a residual value equivalent to 10% of the acquisition cost/appraised value shall be deducted before dividing the same by the Estimated Useful Life. Annex "A" thereof provides that the Estimated Useful Life (in years) of motor vehicles is seven (7) years.

Thus, the complainant is entitled to the reimbursement, computed as follows:

Acquisition cost x 10%
Php2,990,000.00 x 10% = Php299,000.00 (Residual Value)

Acquisition cost less the residual value
Php2,990,000.00 - Php299,000.00 = Php2,691,000.00

Php2,691,000.00/7 years (estimated useful life) = Php384,428.57
(depreciated value per year)

Depreciated value x the number of beneficial use
Php384,428.57 x 2 (the no. of years vehicle was used before filing of the complaint) = Php768,857.14

Acquisition Cost - Depreciation value for 2 years

Php2,990,000.00 - Php768,857.14 = Php2,221,142.90
(remaining value of the vehicle)

The complainant shall be reimbursed the amount of two million two hundred twenty one thousand one hundred forty two pesos and

ninety centavos (Php2,221,142.90), however, the subject vehicle shall be returned to the respondent.

SO ORDERED.[8]

Hence, Autozentrum filed an appeal with the CA.

The Decision of the CA

In a Decision dated 30 June 2014, the CA ruled in favor of Spouses Bernardo. The CA found that the car was defective and not brand new. Thus, the CA held that Autozentrum should be liable under Article 1561, in relation to Article 1567, of the Civil Code, and not under Articles 97 and 98 of RA 7394. The CA ruled that a two-year depreciation value should not be deducted from the purchase price of the car, since Autozentrum did not submit proof of depreciation.

The CA also held Autozentrum liable for deceptive sales under Article 50 (c) of RA 7394, because it represented an altered and second-hand vehicle as a brand new one. The dispositive portion of the Decision reads:

> WHEREFORE, finding the petition for certiorari bereft of merit, the same is hereby DISMISSED. The assailed resolution of the DTI is hereby AFFIRMED with MODIFICATION in that as regards the amount of refund/reimbursement of the purchase price of the subject vehicle, petitioner is hereby ORDERED to pay the full amount of TWO MILLION NINE HUNDRED NINETY THOUSAND PESOS (Php2,990,000.00).
>
> SO ORDERED.[9]

In a Resolution dated 4 September 2014, the CA denied the motion for reconsideration filed by Autozentrum.

Hence, this petition.

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[8] *Id.* at 57 and 59.

[9] *Id.* at 72-73.

The Issues

Autozentrum raises the following issues for resolution:

I. THE HONORABLE ADJUDICATING OFFICER GRAVELY ABUSED HER DISCRETION AND/OR EXCEEDED HER AUTHORITY IN RULING THAT THE PETITIONER VIOLATED ARTICLE 97 OF THE CONSUMER ACT OF THE PHILIPPINES WHEN THE LAW AND EVIDENCE CLEARLY SHOW IT DID NOT.

II. THE HONORABLE ADJUDICATING OFFICER GRAVELY ABUSED HER DISCRETION IN RULING THAT THE PETITIONER HAD VIOLATED ART. 50 OF THE CONSUMER ACT OF THE PHILIPPINES (R.A. 7394) ON PROHIBITION AGAINST DECEPTIVE SALES ACTS OR PRACTICES WHEN THE FACTS OF THE CASE POINT THAT IT DID NOT.

III. THE HONORABLE ADJUDICATING OFFICER GRAVELY ABUSED HER DISCRETION AND/OR EXCEEDED HER AUTHORITY IN ORDERING SOLELY THE PETITIONER TO REFUND THE ENTIRE PURCHASE PRICE OF THE SUBJECT VEHICLE.

IV. ASSUMING ARGUENDO THAT THE PETITIONER HAS INDEED VIOLATED THE SAID ARTS. 97 AND/OR 50 OF THE CONSUMER ACT OF THE PHILIPPINES, THE HONORABLE ADJUDICATING OFFICER [GRAVELY] ABUSED HER DISCRETION AND/OR EXCEEDED HER AUTHORITY IN IMPOSING THE AMOUNT OF THE PENALTIES IMPOSED.

V. THE OFFICE OF THE DTI SECRETARY THROUGH THE APPEALS COMMITTEE COMMITTED [AN] ERROR IN AFFIRMING THE DECISION OF THE ADJUDICATING OFFICER.

VI. THE COURT OF APPEALS COMMITTED AN ERROR IN AFFIRMING WITH MODIFICATION THE RESOLUTION/ DECISION OF THE OFFICE OF THE DTI SECRETARY AND IN DENYING PETITIONER'S MOTION FOR RECONSIDERATION.[10]

The Ruling of the Court

The petition has no merit.

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

Spouses Bernardo allege that Autozentrum violated Article 50 (b) and (c), in relation to Article 97, of RA 7394, when it sold to them a defective and used car, instead of a brand new one. Autozentrum, however, claims that Spouses Bernardo failed to prove the elements of deceit or misrepresentation under Article 50, and injury under Article 97.

The relevant provisions of RA 7394 or the Consumer Act of the Philippines are:

Article 50. *Prohibition Against Deceptive Sales Acts or Practices.* — A deceptive act or practice by a seller or supplier in connection with a consumer transaction violates this Act whether it occurs before, during or after the transaction. An act or practice shall be deemed deceptive whenever the producer, manufacturer, supplier or seller, through concealment, false representation of fraudulent manipulation, induces a consumer to enter into a sales or lease transaction of any consumer product or service.

Without limiting the scope of the above paragraph, **the act or practice of a seller or supplier is deceptive when it represents that:**

a) a consumer product or service has the sponsorship, approval, performance, characteristics, ingredients, accessories, uses, or benefits it does not have;
b) a consumer product or service is of a particular standard, quality, grade, style, or model when in fact it is not;
c) a consumer product is new, original or unused, when in fact, it is in a deteriorated, altered, reconditioned, reclaimed or second-hand state;
d) a consumer product or service is available to the consumer for a reason that is different from the fact;
e) a consumer product or service has been supplied in accordance with the previous representation when in fact it is not;
f) a consumer product or service can be supplied in a quantity greater than the supplier intends;
g) a service, or repair of a consumer product is needed when in fact it is not;
h) a specific price advantage of a consumer product exists when in fact it does not;
i) the sales act or practice involves or does not involve a warranty, a disclaimer of warranties, particular warranty terms or other rights, remedies or obligations if the indication is false; and

j) the seller or supplier has a sponsorship, approval, or affiliation he does not have.

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Article 97. *Liability for the Defective Products*. — Any Filipino or foreign manufacturer, producer, and any importer, shall be liable for redress, independently of fault, for damages caused to consumers by defects resulting from design, manufacture, construction, assembly and erection, formulas and handling and making up, presentation or packing of their products, as well as for the insufficient or inadequate information on the use and hazards thereof.

A product is defective when it does not offer the safety rightfully expected of it, taking relevant circumstances into consideration, including but not limited to:

a) presentation of product;
b) use and hazards reasonably expected of it;
c) the time it was put into circulation.

A product is not considered defective because another better quality product has been placed in the market.

The manufacturer, builder, producer or importer shall not be held liable when it evidences:

a) that it did not place the product on the market;
b) that although it did place the product on the market such product has no defect;
c) that the consumer or a third party is solely at fault.[11] (Emphasis supplied)

RA 7394 specifically provides that an act of a seller is **deceptive** when it represents to a consumer that a product is new, original or unused, when in fact, it is deteriorated, altered, reconditioned, reclaimed or second-hand. A representation is not confined to words or positive assertions; it may consist as well of deeds, acts or artifacts of a nature calculated to mislead another and thus allow the fraud-feasor to obtain an undue advantage.[12] Failure to reveal a fact which the seller is, in good

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[11] The Consumer Act of the Philippines, Articles 50 and 97.

[12] *Guinhawa v. People of the Philippines*, 505 Phil. 383 (2005).

faith, bound to disclose may generally be classified as a deceptive act due to its inherent capacity to deceive.[13] Suppression of a material fact which a party is bound in good faith to disclose is equivalent to a false representation.[14]

A case where the defendant repainted an automobile, worked it over to resemble a new one and represented that the automobile being sold was new, was found to be "a false representation of an existing fact; and, if it was material and induced the plaintiff to accept something entirely different from that which he had contracted for, it clearly was a fraud which, upon its discovery and a tender of the property back to the seller, entitled the plaintiff to rescind the trade and recover the purchase money."[15]

In the present case, both the DTI and the CA found that Autozentrum sold a defective car and represented a second-hand car as brand new to Spouses Bernardo. In finding that the evidence weighs heavily in favor of Spouses Bernardo, the DTI and the CA gave considerable weight to the following facts: (1) the condition of the car in just 11 months from the date of purchase; (2) Autozentrum's Aftersales Manager Campilan's letter declaring that the vehicle was certified pre-owned or used; (3) one of the tires was not RFT; and (4) the Land Transportation Office (LTO) registration papers stating that Autozentrum was the previous owner of the car. As public documents, the LTO registration papers are prima facie evidence of the facts stated therein.[16]

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[13] *Id.*, citing *Testo v. Russ Dunmire Oldsmobile, Inc.*, 83 A.L.R., 3rd ed., p. 680 (1976); 554 P.2d 349.

[14] *Id.*, citing *Tyler v. Savage*, 143 U.S. 79, 12 S.Ct. 340, 36 L.Ed. 82.

[15] *Id.*, citing *Snellgrove v. Dingelhoef*, 103 S.E. 418 (1920).

[16] Rules of Court, Rule 132, Section 23 states: "Documents consisting of entries in public records made in the performance of a duty by a public officer are *prima facie* evidence of the facts therein stated. All other public documents are evidence, even against a third person, of the fact which gave rise to their execution and of the date of the latter."

By reason of the special knowledge and expertise of the DTI over matters falling under its jurisdiction, it is in a better position to pass judgment on the issues; and its findings of fact in that regard, especially when affirmed by the CA, are generally accorded respect, if not finality, by this Court.[17]

Moreover, by claiming that its initial intention was for the car to be used by one of its executive officers, Autozentrum effectively admitted ownership of the car prior to its purchase by Spouses Bernardo. Autozentrum failed to present evidence that its intention did not occur. On the other hand, Autozentrum's registration of the car under its name and Campilan's letter bolster the fact that the car was pre-owned and used by Autozentrum. For failure to reveal its prior registration of the car in its name, and for representing an altered and second-hand car as brand new to Spouses Bernardo, Autozentrum committed a deceptive sales act, in violation of Section 50 of RA 7394.

However, Autozentrum cannot be liable under Article 97 of RA 7394 because Spouses Bernardo failed to present evidence that Autozentrum is the manufacturer, producer, or importer of the car and that damages were caused to them due to defects in design, manufacture, construction, assembly and erection, formulas and handling and making up, presentation or packing of products, as well as for the insufficient or inadequate information on the use and hazards thereof.

RA 7394 provides the penalties for deceptive, unfair, and unconscionable sales acts or practices, as follows:

> Article 60. *Penalties*. — a) Any person who shall violate the provisions of Title III, Chapter I, shall upon conviction, be subject to a fine of not less than Five Hundred Pesos (₱500.00) but not more than Ten Thousand Pesos (₱10,000.00) or imprisonment of not less than five (5) months but not more than one (1) year or both, upon the discretion of the court.

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[17] *Aowa Electronic Philippines, Inc. v. Department of Trade and Industry*, 664 Phil. 233 (2011).

b) In addition to the penalty provided for in paragraph (1), the court may grant an injunction restraining the conduct constituting the contravention of the provisions of Articles 50 and 51 and/or actual damages **and such other orders as it thinks fit to redress injury to the person caused by such conduct**.

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Article 164. *Sanctions*. — After investigation, **any of the following administrative penalties may be imposed even if not prayed for in the complaint**:

a) the issuance of a cease and desist order, *Provided*, however, That such order shall specify the acts that respondent shall cease and desist from and shall require him to submit a report of compliance therewith within a reasonable time;

b) the acceptance of a voluntary assurance of compliance or discontinuance from the respondent which may include any or all of the following terms and conditions:

1) an assurance to comply with the provisions of this Act and its implementing rules and regulations;
2) an assurance to refrain from engaging in unlawful acts and practices or unfair or unethical trade practices subject of the formal investigation;
3) an assurance to comply with the terms and conditions specified in the consumer transaction subject of the complaint;
4) an assurance to recall, replace, repair, or refund the money value of defective products distributed in commerce;
5) an assurance to reimburse the [complainant] out of any money or property in connection with the complaint, including expenses in making or pursuing the complaint, if any, and to file a bond to guarantee compliance therewith.

c) **restitution or rescission of the contract without damages;**

d) condemnation and seizure of the consumer product found to be hazardous to health and safety unless the respondent files a bond to answer for any damage or injury that may arise from the continued use of the product;

e) **the imposition of administrative fines in such amount as deemed reasonable by the Secretary, which shall in no case be less than Five Hundred Pesos (₱500.00) nor more than Three Hundred Thousand Pesos (₱300,000.00) depending on the gravity of the**

offense, and an additional fine of not more than One Thousand Pesos (₱1,000.00) for each day of continuing violation.[18] (Emphasis supplied)

DTI Department Administrative Order No. 007-06[19] reiterates the power of the DTI Adjudication Officer to impose the following penalties upon the respondent, if warranted, and even if these have not been prayed for by the complainant: "(3) The restitution or rescission of the contract without damages; x x x (5) The imposition of an administrative fine in such amount as deemed reasonable by the Adjudication Officer, which shall in no case be less than Five Hundred Pesos (₱500.00) nor more than Three Hundred Thousand Pesos (₱300,000.00) depending on the gravity of the offense, and [an] additional administrative fine of not more than One Thousand Pesos (₱1,000.00) for each day of continuing violation x x x."

The DTI is tasked with protecting the consumer against deceptive, unfair, and unconscionable sales acts or practices.[20] Thus, the DTI can impose restitution or rescission of the contract without damages and payment of administrative fine ranging from ₱500 to ₱300,000, plus ₱1,000 for each day of continuing violation. Rescission creates the obligation to return the things which were the object of the contract, together with their fruits, and the price with its interest; consequently, it can be carried out only when he who demands rescission can return whatever he may be obliged to restore.[21] Rescission abrogates the contract from its inception and requires a mutual restitution of the benefits received.[22]

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[18] The Consumer Act of the Philippines, Articles 60 and 164.

[19] Dated 14 July 2006.

[20] The Consumer Act of the Philippines, Articles 48 and 49.

[21] Civil Code of the Philippines, Article 1385.

[22] *Supercars Management & Development Corporation v. Flores*, 487 Phil. 259 (2004).

Records show that Autozentrum already possessed the car since 8 August 2011. Thus, the DTI Hearing Officer and the CA correctly applied RA 7394 and DTI Department Administrative Order No. 007-06 when they ordered Autozentrum to return to Spouses Bernardo the value of the car amounting to ₱2,990,000 and to pay an administrative fine of ₱160,000 and an additional administrative fine of not more than ₱1,000 for each day of continuing violation.

Section 1 of Resolution No. 796 of the Monetary Board of the Bangko Sentral ng Pilipinas dated 16 May 2013 provides: "The rate of interest for the loan or forbearance of any money, goods or credits and the rate allowed in judgments, in the absence of an express contract as to such rate of interest, shall be six percent (6%) per annum." Thus, Autozentrum is ordered to pay the value of the car amounting to ₱2,990,000, with a legal interest rate of 6% per annum from the finality of this Decision until the amount is fully paid.

WHEREFORE, we **DENY** the petition and **AFFIRM** with **MODIFICATION** the Decision dated 30 June 2014 and Resolution dated 4 September 2014 of the Court of Appeals in CA-G.R. SP No. 127748. We **ORDER** petitioner Autozentrum Alabang, Inc. **to RETURN** to respondents Spouses Miamar A. Bernardo and Genaro F. Bernardo, Jr. the value of the car amounting to ₱2,990,000, with 6% interest per annum from the finality of this Decision until the amount is fully paid.

SO ORDERED.

Del Castillo, Mendoza, and *Leonen, JJ.,* concur.

Brion, J., on official leave.

SECOND DIVISION

[G.R. No. 217943. June 8, 2016]

J. MELLIZA ESTATE DEVELOPMENT COMPANY, INC., represented by its director, ATTY. RAFAEL S. VILLANUEVA, *petitioner, vs.* **ROSENDO SIMOY, GREGORIO SIMOY and CONSEJO SIMOY,** *respondents.*

SYLLABUS

LABOR AND SOCIAL LEGISLATION; AGRARIAN LAWS; PRESIDENTIAL DECREE NO. 27 (P.D. NO. 27) *VIS-A-VIS* COMPREHENSIVE AGRARIAN REFORM LAW OF 1988 (R.A. NO. 6657); RIGHT OF RETENTION; VAST LAND OWNERSHIP DISQUALIFIES PETITIONER FROM EXERCISING ITS RIGHT OF RETENTION OVER THE SUBJECT LANDS.— The Court agrees with respondents that petitioner has more than enough properties registered in its name. Of the total landholdings of petitioner and that of its corporate stockholders, only eight (8) hectares have been subjected to the OLT. Even if the land areas owned by its corporate stockholders would be excluded, petitioner still has 68.2140 hectares in its name. Its vast land ownership of 68.2140 definitely disqualifies it from exercising its right of retention over the subject lands under P.D. No. 27 and R.A. No. 6657. Although petitioner is correct in saying that a landowner who failed to exercise his right of land retention may do so under R.A. No. 6657, such landowner must, nevertheless, be qualified to retain land. Unfortunately, petitioner in this case is not qualified to retain the subject land because it has 68.2140 hectares of collective landholdings as evidenced by the electronic copies of the TCTs on record. As it is not entitled to retain land under the combined application of P.D. No. 27 and R.A. No. 6657, it is also disqualified to retain land under R.A. No. 6657.

APPEARANCES OF COUNSEL

Catacutan Law Office for petitioner.
Patrick Lloyd D. Gellada for respondents.
Roberto Cal Catolico, co-counsel for respondents.

D E C I S I O N

MENDOZA, *J.*:

This petition for review under Rule 45 of the Rules of Court challenges the August 27, 2014 Decision[1] and the March 24, 2015 Resolution[2] of the Court of Appeals (*CA*) in CA-G.R. SP No. 04944, which affirmed the July 10, 2009 Decision[3] and the January 25, 2010 Resolution[4] of the Office of the President (*OP*). The issuances of the OP reversed and set aside the June 20, 2005 Order[5] of the Secretary of the Department of Agrarian Reform (*DAR*) granting the application for retention filed by the petitioner, J. Melliza Estate Development Company, Inc. (*petitioner*).

The CA summarized the facts of the case as follows:

> The present controversy arose from an application for retention filed by Melliza Estate Development Company, Inc., (petitioner) over a portion of the landholding situated at Barangay San Jose, San Miguel, Iloilo, identified as Lot No. 665, covered by Transfer Certificate of Title No. T-76786 containing an area of 87,313 square meters, or 8.7313 hectares and registered in the name of the petitioner.
>
> The said lot was transferred to respondents Rosendo Simoy, Gregorio Simoy and Consejo Simoy, as evidenced by TCT No. EP-

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[1] *Rollo*, pp. 66-78. Penned by Associate Justice Marie Christine Azcarraga-Jacob and concurred in by Associate Justices Ramon Paul L. Hernando and Marilyn B. Lagura-Yap.

[2] *Id.* at 92-96.

[3] *Id.* at 206-210.

[4] *Id.* at 168-170.

[5] *Id.* at 183-188.

7881, TCT No. EP-7882, TCT No. EP-7880 and TCT No. EP-7883, which were registered in the Register of Deeds for the Province of Iloilo on 30 August 1998, pursuant to Emancipation Patent (EP) Nos. A-112160, A-112161, A-112163, A-112164-H issued by the Department of Agrarian Reform (DAR). Respondents were farmer-beneficiaries of the landholding chosen by the petitioner as its retention area under Presidential Decree No. 27. Hence, petitioner sought to cancel the said EPs on the ground that it applied to retain the land subject of the EPs.

The Municipal Agrarian Reform Office (MARO) of Malo, Iloilo, recommended the approval of the application for retention to which the Provincial Agrarian Reform Office (PARO) for Iloilo province concurred in an endorsement letter to the Regional Director of DAR Regional Office No. 6. In an Order, dated 22 May 2001, by the Regional Director, the latter upheld petitioner's right of retention and approved its chosen retention area by citing Section 6 of RA 6657 which provides for a five (5) hectare retention limit for landowners.

Consequently, respondents filed a Motion for Reconsideration on the ground that the petitioner had already availed of its right of conversion over the 55.01 hectares located at Barangay Jibao-an, Pavia, Iloilo, hence, it should be disqualified from other landholdings. However, the Motion was denied by the Regional Director in his Order dated 9 July 2001 ruling that the arguments advanced by the movants have already been considered and exhaustively discussed.

Subsequently, respondents filed their Notice of Appeal but the same was denied by the Regional Director in an Order of Finality dated 07 August 2001, on the ground that the appeal was filed out of time.

Aggrieved, respondents appealed their case to the Secretary of Agrarian Reform. In resolving the appeal, the DAR Secretary, in his Order dated 20 June 2005, still found the appeal devoid of merit and affirmed the findings of the Regional Director.

Undaunted, respondents filed their Memorandum on Appeal with the Office of the President on 21 July 2005. In a Decision, dated 10 July 2009, the Office of the President resolved to give due course to the appeal and reversed and set aside the Order issued by the DAR Secretary. Thereafter, petitioner moved for reconsideration of the

decision of the Office of the President but the same was denied in a Resolution dated 25 January 2010.[6]

On August 27, 2014, the CA rendered a decision in favor of Rosendo, Gregorio and Consejo, all surnamed Simoy (*respondents*).

The CA explained that petitioner's insistence that the order of the DAR Regional Director granting its application for retention had already attained finality and, therefore, could no longer be reconsidered, reversed or modified, could not be sustained because: *first*, issues of retention were within the domain of the DAR Secretary, who, by virtue of his special competence, should be given an opportunity to settle the issues involved in a certain case; *second*, rules of procedure were construed liberally in administrative proceedings as administrative bodies were not bound by the technicalities applicable to courts of law; and *third*, the welfare of the landless farmers and farm workers received the highest consideration in promoting social justice, strict application of the rules might be brushed aside in the interest of substantial justice.

The CA, thus, declared that petitioner could not exercise the right of retention under Republic Act (*R.A.*) 6657, also known as The Comprehensive Agrarian Reform Law of 1988 (CARL), because, pursuant to Administrative Order (*A.O.*) No. 02, Series of 2003, petitioner had waived its right of retention by failing to exercise the same before its receipt of notice of coverage; by failing to manifest an intention to exercise its right to retain within sixty (60) calendar days from receipt of the notice of the CARL coverage; and by performing acts which constituted estoppel by laches. The CA added that it took petitioner more than eleven (11) years from the time of the issuance of Emancipation Patents (*EPs*) to file its application for retention on October 17, 2000. Therefore, granting its application for retention would be unjust and prejudicial to the farmer-beneficiaries who had already acquired vested rights of absolute ownership on the subject lot.

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

Hence, the CA disposed as follows:

WHEREFORE, with the foregoing disquisition, the instant petition is DISMISSED for lack of merit.

Accordingly, the assailed Decision dated 10 July 2009 and Resolution dated 25 January 2010 of the Office of the President in O.P. Case No. 05-H-250 are hereby AFFIRMED.

SO ORDERED.[7]

Hence, this petition, anchored on the following:

GROUNDS

I

THE COURT OF APPEALS ERRED IN SUSTAINING THE DECISION OF THE OFFICE OF THE PRESIDENT THAT ALTHOUGH PETITIONER IS "ENTITLED TO RETENTION," YET "IT IS NOW BARRED TO EXERCISE SUCH RIGHT" BY REASON OF ALLEGED DELAY OR LACHES, WHEN THERE IS NO SUCH CIRCUMSTANCE PRESENT IN THE CASE, AS PETITIONER FILED ITS APPLICATION FOR RETENTION PURSUANT TO THE PROVISION OF R.A. 6657 AND OF THE NEW RETENTION RIGHTS PRONOUNCED BY THE SUPREME COURT IN THE CASE OF "ASSOCIATION OF SMALL LANDOWNERS OF THE PHILS., INC., ET. AL V. HONORABLE SECRETARY OF AGRARIAN REFORM" AND FOLLOWING THE APPLICABLE DAR ADMINISTRATIVE ORDER ON THE MATTER.

II

THE COURT OF APPEALS ERRED IN DISREGARDING THE DECISIONS OF THE DAR REGIONAL DIRECTOR AND THE DAR SECRETARY IN THE EXERCISE OF THEIR PRIMARY JURISDICTION AND COMPETENCE AS ADMINISTRATIVE BODIES SPECIALIZED IN

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[7] *Id.* at 78.

IMPLEMENTING AGRARIAN REFORM LAWS WHEN IT GRANTED PETITIONER RETENTION RIGHTS, INSTEAD OF RESPECTING THEIR DECISION IN DUE RESPECT TO THE EXPRESS PROVISION OF SECTION 54 OF R.A. 6657 THAT "THE FINDINGS OF FACT OF THE DAR SHALL BE FINAL AND CONCLUSIVE IF BASED ON SUBSTANTIAL EVIDENCE."

III

CONSEQUENTLY, THE COURT OF APPEALS ERRED IN AFFIRMING THE DECISION OF THE OFFICE OF THE PRESIDENT IN DENYING PETITIONER THE EXERCISE OF ITS RETENTION RIGHTS, INSTEAD OF SUSTAINING THE EARLIER DECISIONS OF THE REGIONAL DIRECTOR AND THE DAR SECRETARY.[8]

Expounding on the foregoing, petitioner argues that landholders, who were unable to exercise their right of retention under Presidential Decree (*P.D.*) No. 27, were given a new right of retention by R.A. No. 6657, or the CARL; that this new retention right was confirmed by the Court in its decision in *Association of Small Landowners of the Phils., Inc. v. Secretary of Agrarian Reform*[9] (*Small Landowners*); that it had seasonably availed of such retention rights by filing its application on October 17, 2000, which date was within the sixty (60)-day period from the issuance of DAR A.O. No. 05, Series of 2000, issued on August 30, 2000; that the CA had erroneously agreed with the OP that there was delay or laches on the part of petitioner as the application was not filed within sixty (60) days from receipt of the "Notice of Coverage," under DAR A.O. No. 02-03; that the CA erroneously applied A.O. No. 02-03, and not A.O. No. 05-00, in affirming the decision of the OP; that the filing, processing and approval of petitioner's application for

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[8] *Id.* at 40-41.

[9] 256 Phil. 777 (1989).

retention all happened during the effectivity of A.O. No. 05-00; that A.O. No. 02-03 was only issued on January 16, 2003 at least two (2) years after the date of the filing of the application and of its approval; that A.O. 02-03 cannot have retroactive effect on petitioner's application; that the "Notice of Coverage" procedure does not apply to petitioner's application; that respondents have not yet acquired a vested right of ownership over the subject lot after having complied with their obligation to pay their amortization; and that the issuance of the EPs in the name of respondents was not a bar to the granting of petitioner's retention rights.

Respondents' Counter-Position

Respondents counter that although it is true that a landowner who has not availed of his right of retention under P.D. No. 27 may avail of such right under R.A. No. 6657 in light of the ruling of the Court in *Small Landowners*, which was reiterated in *Daez v. Court of Appeals*[10] (*Daez*), this is still subject to the condition that the landowner is qualified to such right of retention; that petitioner was not qualified because it owned more than fifty (50) hectares of landholding; that the ruling of the Court in the case of *Heirs of Juan Griño, Sr. rep. by Remedios C. Griño vs. DAR* (*Griño*)[11] is applicable in this case; that petitioner pointed out in its Comment filed before the CA that it had 188.3586 hectares of landholding and only six (6) hectares was subject of the Operation Land Transfer (OLT); that petitioner had still 182.3586 hectares remaining; that petitioner had already 68.2150 hectares while its stockholders had a total 135.8317 hectares of landholdings; and that the issue of whether or not petitioner timely filed its application for retention on October 17, 2000 is no longer important because the petitioner was not qualified for retention rights due to its vast landholdings.

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[10] 382 Phil. 742 (2000).

[11] 26 Phil. 808 (2006).

All the arguments presented by both parties boil down to this lone issue of whether or not the CA erred in denying petitioner's application for land retention.

The Court's Ruling

The petition lacks merit.

Right of retention expressly recognized and enshrined in the 1987 Constitution

The 1987 Constitution expressly recognizes the landowner retention rights under Article XIII, Section 4, to wit:

> Section 4. The State shall, by law, undertake an agrarian reform program founded on the right of farmers and regular farmworkers, who are landless, to own directly or collectively the lands they till or, in the case of other farmworkers, to receive a just share of the fruits thereof. To this end, the State shall encourage and undertake the just distribution of all agricultural lands, subject to such priorities and reasonable retention limits as the Congress may prescribe, taking into account ecological, developmental, or equity considerations, and subject to the payment of just compensation. In determining retention limits, the State shall respect the right of small landowners. The State shall further provide incentives for voluntary land-sharing.[12]

P.D. No. 27 and R.A. No. 6657

In the case of *Heirs of Sandueta v. Robles*[13] (*Sandueta*), the Court expounded on the concept, nature, purpose, restrictions and coverage or applicability of the right of retention.

> The right of retention, as protected and enshrined in the Constitution, balances the effects of compulsory land acquisition by granting the landowner the right to choose the area to be retained subject to legislative standards. Necessarily, since the said right is granted to limit the effects of compulsory land acquisition against the landowner, it is a prerequisite that the land falls under the coverage of the OLT

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[12] *Department of Agrarian Reform v. Carriedo*, G.R. No. 176549, January 20, 2016.

[13] 721 Phil. 883 (2013).

Program of the government. If the land is beyond the ambit of the OLT Program, the landowner need not — as he should not — apply for retention since the appropriate remedy would be for him to apply for exemption. As explained in the case of *Daez v. CA* (*Daez*):

Exemption and retention in agrarian reform are two (2) distinct concepts.

P.D. No. 27, which implemented the Operation Land Transfer (OLT) Program, covers tenanted rice or corn lands. The requisites for coverage under the OLT program are the following: (1) the land must be devoted to rice or corn crops; and (2) there must be a system of share-crop or lease-tenancy obtaining therein. If either requisite is absent, a landowner may apply for exemption. If either of these requisites is absent, the land is not covered under OLT. Hence, a landowner need not apply for retention where his ownership over the entire landholding is intact and undisturbed.

If the land is covered by the OLT Program which hence, renders the right of retention operable, PD 27 — issued on October 21, 1972 — confers in favor of covered landowners who cultivate or intend to cultivate an area of their tenanted rice or corn land the right to retain an area of not more than seven (7) has thereof. Subsequently, or on June 10, 1998, Congress passed R.A. 6657 which modified the retention limits under PD 27. In particular, Section 6 of RA 6657 states that covered landowners are allowed to retain a portion of their tenanted agricultural land not, however, to exceed an area of five (5) has. and, further thereto, provides that an additional three (3) has. may be awarded to each child of the landowner, subject to the following qualifications: (1) that he is at least fifteen (15) years of age; and (2) that he is actually tilling the land or directly managing the farm. In the case of Heirs of Aurelio Reyes v. Garilao (Reyes), however, the Court held that a landowner's retention rights under RA 6657 are restricted by the conditions set forth in LOI 474 issued on October 21, 1976 which reads:

> WHEREAS, last year I ordered that small landowners of tenanted rice/corn lands with areas of less than twenty-four hectares but above seven hectares shall retain not more than seven hectares of such lands except when they own other agricultural lands containing more than seven hectares or land used for residential, commercial, industrial or other urban purposes from which they derive adequate income to support themselves and their families;

WHEREAS, the Department of Agrarian Reform found that in the course of implementing my directive there are many landowners of tenanted rice/corn lands with areas of seven hectares or less who also own other agricultural lands containing more than seven hectares or lands used for residential, commercial, industrial or other urban purposes where they derive adequate income to support themselves and their families;

WHEREAS, it is therefore necessary to cover said lands under the Land Transfer Program of the government to emancipate the tenant-farmers therein.

NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines, do hereby order the following:

1. You shall undertake to place under the Land Transfer Program of the government pursuant to Presidential Decree No. 27, all tenanted rice/corn lands with areas of seven hectares or less belonging to landowners who own other agricultural lands of more than seven hectares in aggregate areas or lands used for residential, commercial, industrial or other urban purposes from which they derive adequate income to support themselves and their families.

2. Landowners who may choose to be paid the cost of their lands by the Land Bank of the Philippines shall be paid in accordance with the mode of payment provided in Letter of Instructions No. 273 dated May 7, 1973.

Based on the above-cited provisions, it may be readily observed that LOI 474 amended PD 27 by removing any right of retention from persons who own:

(a) other agricultural lands of more than seven (7) has. in aggregate areas; or

(b) lands used for residential, commercial, industrial or other urban purposes from which they derive adequate income to support themselves and their families.

To clarify, in *Santiago v. Ortiz-Luis*, the Court, citing the cases of *Ass'n. of Small Landowners and Reyes*, stated that while landowners who have not yet exercised their retention rights under PD 27 are entitled to new retention rights provided for by RA 6657,

the limitations under LOI 474 would equally apply to a landowner who filed an application under RA 6657.

x x x x x x x x x

Nevertheless, while the CA properly upheld the denial of the petition for retention, the Court must point out that the November 24, 2009 DARCO Order inaccurately phrased Romulo Sandueta's entitlement to the remaining 14.0910-hectare landholding, outside of the 4.6523-hectare subject portion, as a vestige of his retention right. Since the 14.0910-hectare landholding was not shown to be tenanted and, hence, outside the coverage of the OLT Program, there would be no right of retention, in its technical sense, to speak of. Keeping with the Court's elucidation in Daez, **retention is an agrarian reform law concept which is only applicable when the land is covered by the OLT Program**; this is not, however, the case with respect to the 14.0910-hectare landholding. Thus, if only to correct any confusion in terminology, Romulo Sandueta's right over the 14.0910-hectare landholding should not be deemed to be pursuant to any retention right but rather to his ordinary right of ownership as it appears from the findings of the DAR that the landholding is not covered by the OLT Program.[14] [Emphases Supplied]

Petitioner not entitled to exercise its retention right over the subject land

In this case, the piece of land that was the subject of retention, measuring 87,313 square meters or 8.7313 hectares and registered in petitioner's name, was transferred to respondents and registered in the Register of Deeds, Province of Iloilo, on August 30, 1998, pursuant to the EPs issued by the DAR. Respondents were farmer-beneficiaries of the landholding chosen by petitioner as its retention area under P.D. No. 27.

At this point, petitioner basically contends that it is entitled to new retention rights under R.A. No. 6657 and based on the decision of the Court in *Small Landowners and Daez* cases. Respondents, on the other hand, argue that the petitioner should

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[14] *Id.* at 890-894.

not be granted retention rights because it has still vast landholdings or more than enough properties in its name.

Respondents are correct.

Records show that based on the Order[15] of the Regional Director of DAR Regional Office No. 6, dated May 22, 2001, petitioner submitted certifications, among others, to support its application for retention, dated October 17, 2000, which included the certification, dated April 3, 2001, issued by the Office of the City Assessor of Iloilo City and the certification, dated April 4, 2001, issued by the Office of the Provincial Assessor of the Province of Iloilo, confirming that petitioner had no agricultural lands registered in its name in the city and province of Iloilo. The Order[16] of the DAR Secretary, dated June 20, 2005, however, explicitly stated that petitioner had aggregate agricultural landholdings of 68.2140 hectares covered by the following Transfer Certificates of Title (*TCTs*):

TCT No. 76779 (2.6884 has.)
TCT No. 76780 (.2894 ha.)
TCT No. 76781 (.4791 has.)
TCT No. 76782 (.1934 ha.)
TCT No. 76783 (6.3882 has.)
TCT No. 76784 (1.0739 ha.)
TCT No. 76785 (2.3539 has.)
TCT No. 76786 (8.7313 has.)
TCT No. 76787 (1.5738 has.)
TCT No. 76788 (39.4806 has.)
TCT No. 76789 (.9943 ha.)

All these lands were placed under the OLT program of the government.

This fact has been affirmed by the electronic copies of the TCTs[17] on record submitted by no less than the respondents.

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[15] *Rollo*, pp. 195-199.

[16] *Id.* at 200-205.

[17] *Id.* at 264-325.

All the said TCTs are still in the name of J. Melliza Estates Development Company, Inc. and existing in the Register of Deeds of the Province of Iloilo. Among the said TCTs, only TCT No. 76785 has been cancelled. Moreover, respondents claim that aside from this 68.2140 landholding of petitioner, six (6) of its corporate stockholders have total landholdings of 1,358,317 square meters or 135.8317 hectares embraced in one (1) title — TCT No. T-66933 issued on September 1, 1971.

The Court agrees with respondents that petitioner has more than enough properties registered in its name. Of the total landholdings of petitioner and that of its corporate stockholders, only eight (8) hectares have been subjected to the OLT. Even if the land areas owned by its corporate stockholders would be excluded, petitioner still has 68.2140 hectares in its name. Its vast land ownership of 68.2140 definitely disqualifies it from exercising its right of retention over the subject lands under P.D. No. 27 and R.A. No. 6657.

Although petitioner is correct in saying that a landowner who failed to exercise his right of land retention may do so under R.A. No. 6657, such landowner must, nevertheless, be qualified to retain land. Unfortunately, petitioner in this case is not qualified to retain the subject land because it has 68.2140 hectares of collective landholdings as evidenced by the electronic copies of the TCTs on record. As it is not entitled to retain land under the combined application of P.D. No. 27 and R.A. No. 6657, it is also disqualified to retain land under R.A. No. 6657.

The case of *Pangilinan v. Balatbat*[18] applies. In the said case, petitioner filed a petition for cancellation of Certificates of Land Transfer (CLTs) issued in favor of his tenants pursuant to P.D. No. 27. The Court wrote:

In this case, the DARAB and the Court of Appeals agreed that respondents' total landholding is **25.2548** hectares, and that 9.8683 hectares thereof was riceland, which was subjected to Operation Land

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[18] 694 Phil. 605 (2012).

Transfer, while 15.3864 hectares was sugarland. In addition, the PARAD and the DARAB found that the 15.3864 hectares of sugarland was subdivided by respondents into a 4.8836 subdivision lot to support themselves and their family; hence, under LOI No. 474 and Administrative Order No. 4, series of 1991, the PARAD and the DARAB held that respondents are no longer entitled to retain seven hectares of the land subject to Operation Land Transfer. The decisions of the PARAD and the DARAB are supported by the Court's ruling in Heirs of *Aurelio Reyes v. Garilao* cited above. As the PARAD and the DARAB found that respondents are **disqualified to retain** the parcel of land, which is the subject matter of this case, there was **no ground to cancel the emancipation patent of petitioner;** hence, the DARAB affirmed the decision of the PARAD dismissing respondents' complaint for lack of merit.[19] [Emphases Supplied]

Also in the cited case of *Sandueta*, the Court did not favor retention when the landowner had more than what could be kept. Thus:

In this case, records reveal that aside from the 4.6523-hectare tenanted riceland covered by the OLT Program, i.e., the subject portion, petitioners' predecessors-in-interest, Sps. Sandueta, own other agricultural lands with a total area of 14.0910 has which therefore triggers the application of the first disqualifying condition under LOI 474 as above-highlighted. As such, **petitioners, being mere successors-in-interest, cannot be said to have acquired any retention right to the subject portion. Accordingly, the subject portion would fall under the complete coverage of the OLT Program hence, the 5 and 3-hectare retention limits as well as the landowner's right to choose the area to be retained under Section 6 of RA 6657 would not apply altogether**.[20] [Emphasis and Underscoring Supplied]

Considering that petitioner failed to qualify for retention, there is no need to discuss the other issues raised.

WHEREFORE, the petition is **DENIED**.

SO ORDERED.

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[19] *Id.* at 634 (2012).

[20] *Supra* note 15, at 893-894 (2013).

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

Brion, J., on official leave.

FIRST DIVISION

[G.R. No. 219468. June 8, 2016]

JOSE BURGOS, JR., *petitioner, vs.* **SPOUSES ELADIO SJ. NAVAL and ARLINA B. NAVAL, and AMALIA B. NAVAL,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; THE 1987 ADMINISTRATIVE CODE; THE AUTHORITY TO REPRESENT THE PEOPLE OF THE PHILIPPINES IN AN APPEAL ON THE CRIMINAL ASPECT OF THE CASE IS VESTED IN THE OFFICE OF THE SOLICITOR GENERAL (OSG).— Jurisprudence dictates that it is the OSG which possesses the requisite authority to represent the People in an appeal on the criminal aspect of a case. The OSG is "the law office of the Government whose specific powers and functions include that of representing the Republic and/or the [P]eople before any court in any action which affects the welfare of the people as the ends of justice may require." Section 35 (1), Chapter 12, Title III, Book IV of the 1987 Administrative Code provides that: Section 35. Powers and Functions. — **The Office of the Solicitor General shall represent the Government of the Philippines,** its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation or matter requiring the services of lawyer. x x x It shall have the following specific powers and functions: (1) **Represent the Government in the Supreme Court and the Court of Appeals in all criminal proceedings**[.] x x x In *People v. Piccio (Piccio),* this Court held that x x x **the**

People are therefore deemed as the real parties in interest in the criminal case and, therefore, only the OSG can represent them in criminal proceedings pending in the CA or in this Court.

2. REMEDIAL LAW; CRIMINAL PROCEDURE; A PETITION SEEKING THE REINSTATEMENT OF AN INFORMATION MUST BE FILED WITH THE AUTHORIZATION OF THE OSG, WHICH IS THE REAL PARTY IN INTEREST IN CRIMINAL PROCEEDINGS; FAILURE TO GET THE OSG'S CONSENT WARRANTS DISMISSAL OF THE PETITION.— In this case, records show that Burgos's petition for *certiorari* in **CA-G.R. SP No. 138203** sought for **the reinstatement of the Information and/or a ruling that the crime has not yet prescribed.** Accordingly, the same was not intended to merely preserve his interest in the civil aspect of the case. Thus, as his *certiorari* petition was filed seeking for relief/s in relation to the criminal aspect of the case, it is necessary that the same be filed with the authorization of the OSG, which, by law, is the proper representative of the People, the real party in interest in the criminal proceedings. As the CA aptly noted, "[t]o this date, the [OSG] as appellant's counsel of the [People] has not consented to the filing of the present suit." There being no authorization given — as his request to the OSG filed on April 10, 2015 was not shown to have been granted — the *certiorari* petition was rightfully dismissed.

3. ID.; ID.; ID.; ID.; WHERE THE CRIMINAL CASE FOR *ESTAFA* THROUGH FALSIFICATION OF PUBLIC DOCUMENT WAS DISMISSED ON THE SOLE GROUND OF PRESCRIPTION, THE REMEDY OF THE AGGRIEVED PARTY IS TO FILE A CIVIL CASE UNDER RULE 111 OF THE CRIMINAL PROCEDURE.— It must, however, be clarified that the CA's dismissal of Burgos's *certiorari* petition is without prejudice to his filing of the appropriate action to preserve his interest in the civil aspect of the *Estafa* through Falsification of Public Documents case, provided that the parameters of Rule 111 of the Rules of Criminal Procedure are complied with. It is noteworthy to point out that "[t]he extinction of the penal action does not carry with it the extinction of the civil action where[:] (*a*) the acquittal is based on reasonable doubt as only preponderance of evidence is

required; (*b*) the court declares that the liability of the accused is only civil; and (*c*) the civil liability of the accused does not arise from or is not based upon the crime of which the accused was acquitted. The civil action based on delict may, however, be deemed extinguished if there is a finding on the final judgment in the criminal action that the act or omission from which the civil liability may arise did not exist." In this case, the RTC did not render any ruling that the act or omission from which the civil liability may arise did not exist; instead, the RTC granted the motion to quash and thereby, dismissed the criminal case on the sole ground of prescription. Any misgivings regarding the propriety of that disposition is for the People, thru the OSG, and not for Burgos to argue. As earlier intimated, Burgos's remedy is to institute a civil case under the parameters of Rule 111 of the Rules of Criminal Procedure.

APPEARANCES OF COUNSEL

Cris T. Paculanang for petitioner.
Vallestero & Associates Law Office for respondents.

R E S O L U T I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Resolutions dated March 5, 2015[2] and July 2, 2015[3] of the Court of Appeals (CA) in CA-G.R. SP No. 138203, which denied petitioner Jose Burgos, Jr.'s (Burgos) petition for *certiorari*[4] before it for his lack of authority to initiate and bring the same in the name of the People of the Philippines (People).

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[1] *Rollo*, pp. 3-24.

[2] *Id.* at 26-28. Penned by Associate Justice Amy C. Lazaro-Javier with Associate Justices Celia C. Librea-Leagogo and Melchor Q. C. Sadang concurring.

[3] *Id.* at 30.

[4] *Id.* at 31-47.

The Facts

This case stemmed from a letter-complaint[5] dated April 26, 2012 filed by Burgos, before the Office of the Provincial Prosecutor, Taytay, Rizal, charging respondents spouses Eladio and Arlina Naval (Sps. Naval) and their daughter, Amalia Naval (Amalia; collectively respondents), of the crime of *Estafa* through Falsification of Public Documents. Burgos alleged that he and his wife, Rubie S. Garcia-Burgos, were the registered owners of a lot with an area of 1,389 square meters, situated in the Municipality of Taytay, Rizal, covered by Transfer Certificate of Title (TCT) No. 550579 (subject lot).[6] On November 19, 1996, the subject lot was purportedly mortgaged to a certain Antonio Assad,[7] and subsequently, Burgos decided to obtain a loan from Sps. Naval in order to avoid foreclosure. Respondents agreed and asked spouses Burgos to sign some blank documents in return — to which they faithfully complied.[8]

Sometime in February 2011, Burgos allegedly discovered that TCT No. 550579 was cancelled, and a new one was issued, *i.e.*, TCT No. 644582,[9] in favor of Sps. Naval on April 1, 1998. He claimed that the blank documents which he and his wife previously signed turned out to be a receipt[10] and a Deed of Absolute Sale[11] over the subject lot through the ploy and conspiracy of respondents. Thereafter, or on February 11, 2013, an Information[12] was filed before the Regional Trial Court of Antipolo City, Branch 97 (RTC), docketed as Criminal Case

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[5] *Id.* at 55-57.

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

[7] See Real Estate Mortgage with Power to Sell; *id.* at 62-64.

[8] See *id.* at 55-56.

[9] *Id.* at 66-69.

[10] *Id.* at 72.

[11] *Id.* at 73-75.

[12] *Id.* at 78-79. Issued by Assistant Provincial Prosecutor Teresita Carigma-Palos.

No. 13-45768, accusing respondents of having committed the aforesaid crime.[13]

Before arraignment, respondents filed a motion to quash[14] based on the following grounds: (*a*) that their criminal liability has been extinguished due to prescription;[15] (*b*) that the information failed to charge Amalia with an offense;[16] and (*c*) that they were not afforded the opportunity of a preliminary investigation.[17] Respondents averred that since the information was filed on February 11, 2013, beyond the reglementary period of ten (10) years from the registration of the title on April 1, 1998, the crime had already prescribed. They also claimed that the information did not contain any specific charge against Amalia. Finally, they maintained that they were deprived of their right to dispute the allegations of the complaint during the preliminary investigation.[18]

The RTC Ruling

In an Order[19] dated August 14, 2013, the RTC granted respondents' motion and, consequently, dismissed the case on the ground of prescription.

The RTC essentially observed that the prescriptive period for the alleged crime commenced from the time Burgos had constructive notice of the alleged falsification, *i.e.*, when the document was registered with the Register of Deeds on April 1, 1998. Therefore, since more than ten (10) years had elapsed when the information was filed on February 11, 2013, the subject crime had prescribed.[20]

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[13] See *id.* at 56-57.

[14] Filed on May 8, 2013. *Id.* at 80-82.

[15] *Id.* at 80.

[16] *Id.* at 81.

[17] *Id.* at 82.

[18] See *id.* at 81-82.

[19] *Id.* at 50-53. Penned by Presiding Judge Miguel S. Asuncion.

[20] See *id.* at 51-53.

Aggrieved, Burgos moved for reconsideration,[21] which was denied in an Order[22] dated July 14, 2014. Notably, the RTC declared that it could not order the public prosecutor to amend the information to include the specific amount of damage sustained by Burgos amounting to ₱8,500,000.00, as it would improperly infringe his executive functions.[23] Thus, Burgos elevated the matter to the CA *via* a petition for *certiorari*, docketed as CA-G.R. SP No. 138203.

The CA Ruling

In a Resolution[24] dated March 5, 2015, the CA dismissed the petition for failure of Burgos to join the People in his *certiorari* petition as required by the Administrative Code of 1987.[25]

Unstirred, Burgos moved for reconsideration,[26] which was likewise denied in a Resolution dated July 2, 2015. Significantly, the CA observed that the Office of the Solicitor General (OSG) has not consented to the filing of the *certiorari* petition;[27] hence, this petition before the Court.

The Issue Before the Court

The issue for the Court's resolution is whether or not the CA correctly dismissed the *certiorari* petition on the ground

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[21] See motion for reconsideration (to the Order dated August 14, 2013) filed on September 16, 2013; *id.* at 88-92.

[22] *Id.* at 48-49.

[23] *Id.*

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

[25] Section 35 (1), Chapter 12, Title III of Book IV of Executive Order No. 292, entitled "INSTITUTING THE 'ADMINISTRATIVE CODE OF 1987'" signed on July 25, 1987, mandates the OSG to represent the "Government in the Supreme Court and the Court of Appeals in all Criminal proceedings; x x x."

[26] See motion for reconsideration filed on April 15, 2015; *rollo*, pp. 93-99.

[27] *Id.* at 30.

that the People, as represented by the OSG, was not impleaded as a party.

The Court's Ruling

In his petition, Burgos averred that the CA Resolutions dated March 5, 2015 and July 2, 2015 should be declared null and void for having been issued with grave abuse of discretion amounting to lack or excess of jurisdiction. He claimed that he already complied with the directive to furnish the OSG with a copy of the *certiorari* petition before the CA,[28] and that he even made a letter dated April 7, 2015,[29] requesting the OSG for authority to appear and prosecute the case on behalf of the People. Relatedly, he prayed for the reinstatement of the Information and/or a declaration that prescription has not yet set in as the crime of *Estafa* through Falsification of Public Documents was only discovered sometime in February 2011.[30]

In their comment,[31] respondents maintained that Burgos nevertheless failed to furnish the OSG with a copy of the *certiorari* petition filed before the CA as mandated by Section 3,[32] Rule 46 of the Rules of Court, which is a sufficient

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[28] *Id.* at 94.

[29] Through Burgos's counsel, Atty. Cris T. Paculanang. *Id.* at 103.

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

[31] Filed on February 11, 2016. *Id.* at 105-110.

[32] **Section 3.** ***Contents and filing of petition; effect of noncompliance with requirements.*** — x x x.

x x x x x x x x x

It shall be filed in seven (7) clearly legible copies together with proof of service thereof on the respondent with the original copy intended for the court indicated as such by the petitioner, and shall be accompanied by a clearly legible duplicate original or certified true copy of the judgment, order, resolution, or ruling subject thereof, such material portions of the record as are referred to therein, and other documents relevant or pertinent thereto. x x x

x x x x x x x x x

ground for its dismissal.[33] In fact, they averred that Burgos did not even attempt to change or amend the title of the petition from "Jose Burgos, Jr." to "People of the Philippines."[34] Moreover, they pointed out that Burgos's letter-request for authority addressed to the OSG was filed only on April 10, 2015 or nine (9) days after Burgos's receipt of the adverse March 5, 2015 CA Resolution, further alleging that mere request from the OSG is not tantamount to authority.[35]

The Court finds for respondents.

Jurisprudence dictates that it is the OSG which possesses the requisite authority to represent the People in an appeal on the criminal aspect of a case.[36] The OSG is "the law office of the Government whose specific powers and functions include that of representing the Republic and/or the [P]eople before any court in any action which affects the welfare of the people as the ends of justice may require."[37] Section 35 (1), Chapter 12, Title III, Book IV of the 1987 Administrative Code[38] provides that:

> Section 35. Powers and Functions. — **The Office of the Solicitor General shall represent the Government of the Philippines**, its agencies and instrumentalities and its officials and agents in any litigation, proceeding, investigation or matter requiring the services of lawyer. x x x. It shall have the following specific powers and functions:

The failure of the petitioner to comply with any of the foregoing requirements shall be sufficient ground for the dismissal of the petition. (Emphasis supplied)

[33] *Rollo*, p. 108.

[34] *Id.* at 109.

[35] *Id.*

[36] See *People v. Piccio*, G.R. No. 193681, August 6, 2014, 732 SCRA 254, 261.

[37] *Gonzales v. Chavez*, G.R. No. 97351, February 4, 1992, 205 SCRA 816, 845.

[38] See Executive Order No. 292.

> (1) **Represent the Government in the Supreme Court and the Court of Appeals in all criminal proceedings**; represent the Government and its officers in the Supreme Court, the Court of Appeals, and all other courts or tribunals in all civil actions and special proceedings in which the Government or any officer thereof in his official capacity is a party. (Emphases supplied)

In *People v. Piccio* (*Piccio*),[39] this Court held that "if there is a dismissal of a criminal case by the trial court or if there is an acquittal of the accused, it is only the OSG that may bring an appeal on the criminal aspect representing the People. The rationale therefor is rooted in the principle that the party affected by the dismissal of the criminal action is the People and not the petitioners who are mere complaining witnesses. For this reason, **the People are therefore deemed as the real parties in interest in the criminal case and, therefore, only the OSG can represent them in criminal proceedings pending in the CA or in this Court**. In view of the corollary principle 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 by the party entitled to the avails of the suit, an appeal of the criminal case not filed by the People as represented by the OSG is perforce dismissible. The private complainant or the offended party may, however, file an appeal without the intervention of the OSG but only insofar as the civil liability of the accused is concerned. **He may also file a special civil action for *certiorari* even without the intervention of the OSG, but only to the end of preserving his interest in the civil aspect of the case.**"[40]

In this case, records show that Burgos's petition for *certiorari* in **CA-G.R. SP No. 138203 sought for the reinstatement of the Information and/or a ruling that the crime has not yet prescribed**.[41] Accordingly, the same was not intended to merely preserve his interest in the civil aspect of the case. Thus, as his

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[39] *Supra* note 36.

[40] *Id.* at 261-262; emphases and underscoring supplied.

[41] See *rollo*, p. 43.

certiorari petition was filed seeking for relief/s in relation to the criminal aspect of the case, it is necessary that the same be filed with the authorization of the OSG, which, by law, is the proper representative of the People, the real party in interest in the criminal proceedings. As the CA aptly noted, "[t]o this date, the [OSG] as appellant's counsel of the [People] has not consented to the filing of the present suit."[42] There being no authorization given — as his request to the OSG filed on April 10, 2015 was not shown to have been granted — the *certiorari* petition was rightfully dismissed.

It must, however, be clarified that the CA's dismissal of Burgos's *certiorari* petition is without prejudice to his filing of the appropriate action to preserve his interest in the civil aspect of the *Estafa* through Falsification of Public Documents case, provided that the parameters of Rule 111 of the Rules of Criminal Procedure are complied with.[43]

It is noteworthy to point out that "[t]he extinction of the penal action does not carry with it the extinction of the civil action where[:] (*a*) the acquittal is based on reasonable doubt as only preponderance of evidence is required; (*b*) the court declares that the liability of the accused is only civil; and (*c*) the civil liability of the accused does not arise from or is not based upon the crime of which the accused was acquitted. The civil action based on delict may, however, be deemed extinguished if there is a finding on the final judgment in the criminal action that the act or omission from which the civil liability may arise did not exist."[44] In this case, the RTC did not render any ruling that the act or omission from which the civil liability may arise did not exist; instead, the RTC granted the motion to quash and thereby, dismissed the criminal case on the sole ground of prescription. Any misgivings regarding

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[42] *Id.* at 30.

[43] See *People v. Piccio*, *supra* note 36, at 262.

[44] *Hun Hyung Park v. Eung Won Choi*, 544 Phil. 431, 444 (2007). See also Section 2, Rule 111 of the Revised Rules of Criminal Procedure.

the propriety of that disposition is for the People, thru the OSG, and not for Burgos to argue. As earlier intimated, Burgos's remedy is to institute a civil case under the parameters of Rule 111 of the Rules of Criminal Procedure.

WHEREFORE, the petition is **DENIED**. The Resolutions dated March 5, 2015 and July 2, 2015 of the Court of Appeals in CA-G.R. SP No. 138203 are hereby **AFFIRMED**.

SO ORDERED.

Leonardo-de Castro[*] (*Acting Chairperson*), *Bersamin,* and *Caguioa, JJ.,* concur.

Sereno, C.J., on leave.

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[*] Per Special Order No. 2354 dated June 2, 2016.

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— An appeal by *certiorari* under Rule 45 of the Rules of Court is different from a petition for *certiorari* under Rule 65 thereof; special civil action for *certiorari* may be availed of only if the lower tribunal has acted without or in excess of jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and if there is no appeal or any other plain, speedy, and adequate remedy in the ordinary course of law. (*Id*.)

— Petitions that lack or have a defective certificate of non-forum shopping cannot be cured by its subsequent submission or correction, unless there is a reasonable need to relax the rules on the ground of substantial compliance or presence of special circumstances or compelling reasons; dismissal of appeals purely on technical grounds is frowned upon since the policy of the courts is to encourage hearings of appeals on their merits and not to apply the rules of procedure in a very rigid, technical sense. (Navarra *vs.* People, G.R. No. 203750, June 6, 2016) p. 439

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— The concurrence of jurisdiction of the Supreme Court, the Court of Appeals, and the RTCs over petitions for *certiorari* does not give a party unbridled freedom to choose the venue of his action lest he ran afoul of the doctrine of hierarchy of courts; instead, a becoming regard for judicial hierarchy dictates that petitions for the issuance of writs of *certiorari* against first level courts should be filed with the RTC, and those against the latter, with the Court of Appeals, before resort may be had before the Court. (HGL Dev't. Corp. *vs.* Hon. Penuela, G.R. No. 181353, June 6, 2016) p. 329)

COMPREHENSIVE AGRARIAN REFORM LAW (R.A. NO. 6657)

Just compensation — Contemplates of just and timely payment and elucidated that "prompt payment" of just compensation encompasses the payment in full of the just compensation to the landholders as finally determined by the courts. (Land Bank of the Phils. *vs.* Hababag, Sr., G.R. No. 172352, June 8, 2016) p. 503

— Interest shall be pegged at the rate of twelve percent (12%) per annum on the unpaid balance, reckoned from the time of taking, or the time when the landowner was deprived of the use and benefit of his property. (*Id.*)

COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. NO. 9165)

Chain of custody rule — Even if the arresting officers failed to strictly comply with the requirements under Sec. 21 of R.A. No. 9165, such procedural lapse is not fatal and will not render the items seized inadmissible in evidence; what is of utmost importance is the preservation of the integrity and evidentiary value of the seized items, as

turnover of the illegal drug seized by the apprehending officer to the investigating officer; (3) the turnover by the investigating officer of the illegal drug to the forensic chemist for laboratory examination; and (4) the turnover and submission of the seized and marked illegal drug from the forensic chemist to the court. (People *vs.* Amaro *y* Catubay *alias* "Lalaks," G.R. No. 207517, June 1, 2016) p. 139

Illegal possession of dangerous drugs — The following elements must be established: (1) the accused is in possession of an item or object identified to be prohibited or a regulated drug; (2) such possession is not authorized by law; and (3) the accused freely and consciously possessed said drug. (People *vs.* Sonjaco *y* Sta. Ana, G.R. No. 196962, June 8, 2016) p. 598

Illegal sale of dangerous drugs — Elements for all prosecutions for illegal sale of dangerous drugs: (1) proof that the transaction or sale took place; and (2) the presentation in court of the *corpus delicti* or the illicit drug as evidence. (People *vs.* Sonjaco *y* Sta. Ana, G.R. No. 196962, June 8, 2016) p. 598

— Prosecution's duty to present a complete picture of the buy-bust operation, 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 sale. (People *vs.* Bulawan *y* Andales, G.R. No. 204441, June 8, 2016) p. 655

— The following elements must be present: (1) the identities of the buyer and seller, object, and consideration; and (2) the delivery of the thing sold and the payment for it; what is material is proof that the transaction or sale actually took place, coupled with the presentation in court of evidence of *corpus delicti.* (*Id.*)

— The following elements must be satisfied: (I) the identity of the buyer and the seller, the object of the sale, and the consideration; and (2) the delivery of the thing sold and

CONTEMPT

Contempt of court — An act to be considered contemptuous must be clearly contrary or prohibited by the order of the court. (HGL Dev't. Corp. *vs.* Hon. Penuela, G.R. No. 181353, June 6, 2016) p. 329

— Where contempt is committed against quasi-judicial entities, the filing of contempt charges in court is observed only when there is no law granting contempt powers to these quasi-judicial entities. (Sps. Trinidad *vs.* Fama Realty, Inc., G.R. No. 203336, June 6, 2016) p. 407

CO-OWNERSHIP

Rights of co-owners — A co-owner cannot preclude the other owners from exercising all incidences of their full ownership. (Heirs of the Late Gerry Ecarma *vs.* CA, G.R. No. 193374, June 8, 2016) p. 542

Sale by a co-owner — A co-owner has the absolute right to freely dispose of his *pro indiviso* shares as well as the fruits and other benefits arising from that share, independently of the other co-owners; the sale of the subject lots affects only the seller's share *pro indiviso*, and the transferee gets only what corresponds to his grantor's share in the partition of the property owned in common. (Mactan-Cebu Int'l. Airport Authority *vs.* Unchuan, G.R. No. 182537, June 1, 2016) p. 23

CORPORATIONS

Claims against — Automatic suspension of an action for claims against a corporation under a rehabilitation receiver or management committee embraces all phases of the suit, that is, the entire proceedings of an action or suit and not just the payment of claims. (Fyfe *vs.* Phil. Airlines, Inc., G.R. No. 160071, June 6, 2016) p. 292

Doctrine of piercing the veil of corporate fiction — The existence of interlocking directors, corporate officers and shareholders is not enough justification to disregard the separate corporate personalities; to pierce the veil of corporate fiction, there should be clear and convincing

(2) That the employer served written notice both to the employees and to the Department of Labor and Employment at least one month prior to the intended date of retrenchment; (3) That the employer pays the retrenched employees separation pay equivalent to one (1) month pay or at least one-half (1/2) month pay for every year of service, whichever is higher; (4) That the employer exercises its prerogative to retrench employees in good faith for the advancement of its interest and not to defeat or circumvent the employees' right to security of tenure; and (5) That the employer uses fair and reasonable criteria in ascertaining who would be dismissed and who would be retained among the employees, such as status, efficiency, seniority, physical fitness, age, and financial hardship for certain workers. (Phil. Airlines, Inc. *vs*. Ligan, G.R. No. 203932, June 8, 2016) p. 642

— The absence of one element renders the retrenchment scheme an irregular exercise of management prerogative. (*Id*.)

ESTAFA

Commission of — The elements of estafa by means of deceit as defined under Art. 315(2)(a) of the RPC are as follows: (1) that there must be a false pretense, fraudulent means; (2) that such false pretense, fraudulent act or fraudulent means must be made or executed prior to or simultaneously with the commission of the fraud; (3) that the offended party must have relied on the false pretense, fraudulent act or fraudulent means, that is, he was induced to part with his money or property because of the false pretense, fraudulent act or fraudulent means; and (4) that as a result thereof, the offended party suffered damage. (Ison *vs*. People, G.R. No. 205097, June 8, 2016) p. 690

EVIDENCE

Circumstantial evidence — Direct evidence was not the only means of proving rape beyond reasonable doubt; circumstantial evidence would also be the reliable means to do so, provided that: (*a*) there was more than one

— When the subject of the inquiry is the contents of a document, no evidence shall be admissible other than the original document itself; when the original has been lost or destroyed, or cannot be produced in court, the offeror, upon proof of its execution or existence and the cause of its unavailability without bad faith on his part, may prove its contents by a copy, or by a recital of its contents in some authentic document, or by the testimony of witnesses in the order stated. (*Id*.)

Parol evidence — When the parties admit the contents of written documents but put in issue whether these documents adequately and correctly express the true intention of the parties, the deciding body is authorized to look beyond these instruments and into the contemporaneous and subsequent actions of the parties in order to determine such intent. (Macalino, Jr. *vs.* Pis-An, G.R. No. 204056, June 1, 2016) p. 105

Proof beyond reasonable doubt — Where the exculpatory facts and circumstances are susceptible of two or more interpretations, one of which is consistent with the innocence of the accused while the other may be compatible with the finding of guilt, the Court must acquit the accused because the evidence does not fulfill the test of moral certainty required for conviction. (Ison *vs*. People, G.R. No. 205097, June 8, 2016) p. 690

Res inter alios acta — A man's own acts are binding upon himself and are evidence against him, so are his conduct and declarations; 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. (Tan Siok Kuan *vs.* Ho, G.R. No. 175085, June 1, 2016) p. 10

— The right of a party cannot be prejudiced by an act, declaration or omission of another, except: (1) admission by third party; (2) admission by co-partner or agent; (3) admission by conspirator; and (4) admission by privies. (*Id*.)

GOVERNMENT AUDITING CODE OF THE PHILIPPINES (P.D. NO. 1445)

Application of — The finding that government is liable in a suit to which it consented does not translate to enforcement of the judgment by execution; public funds may not be disbursed absent an appropriation of law or other specific statutory authority; P.D No. 1445 requires that all money claims against government must first be filed before the Commission on Audit which in turn must act upon them within 60 days. (Atty. Roxas *vs.* Rep. Real Estate Corp., G.R. No. 208205, June 1, 2016) p. 163

INSURANCE

Concealment — Concealment as a defense for the insurer to avoid liability is an affirmative defense and the duty to establish such defense by satisfactory and convincing evidence rests upon the provider or insurer. (Sun Life of Canada (Phils.), Inc. *vs.* Sibya, G.R. No. 211212, June 8, 2016) p. 817

Policy — The death of the insured within the two-year period will render the right of the insurer to rescind the policy nugatory; as such, the incontestability period will now set in. (Sun Life of Canada (Phils.), Inc. *vs.* Sibya, G.R. No. 211212, June 8, 2016) p. 817

JUDGMENTS

Doctrine of immutability of judgment — Doctrine admits of certain exceptions, which are usually applied to serve substantial justice, particularly in the following instances: (1) the correction of clerical errors; (2) the so-called *nunc pro tunc* entries which cause no prejudice to any party; (3) void judgments; and (4) whenever circumstances transpire after the finality of the decision, rendering its execution unjust and inequitable. (Sps. Valarao *vs.* MSC and Co., G.R. No. 185331, June 8, 2016) p. 511

Doctrine of law of the case — Applies in a situation where an appellate court has made a ruling on a question on appeal and thereafter remands the case to the lower court to

— The certification of the Local Civil Registrar that their office had no record of a marriage license was adequate to prove the non-issuance of said license. (*Id*.)

Marriages of exceptional character — Article 58 of the Civil Code makes explicit that no marriage shall be solemnized without a license first being issued by the local civil registrar of the municipality where either contracting party habitually resides, save marriages of an exceptional character; Under the Civil Code, marriages of exceptional character are covered by Chapter 2, Title III, comprising Arts. 72 to 79; These marriages are: (1) marriages in *articulo mortis* or at the point of death during peace or war; (2) marriages in remote places; (3) consular marriages; (4) ratification of marital cohabitation; (5) religious ratification of a civil marriage; (6) Mohammedan or pagan marriages; and (7) mixed marriages. (Kho *vs.* Rep. of the Phils., G.R. No. 187462, June 1, 2016) p. 43

MIGRANT WORKERS AND OVERSEAS FILIPINOS ACT OF 1995 (R.A. NO. 8042)

Illegal recruitment — Failure to reimburse expenses incurred by the workers in connection with his documentation and processing for purposes of deployment in cases where the deployment does not actually take place without the worker's fault, is considered as performing illegal recruitment. (People *vs.* Molina *y* Cabral, G.R. No. 207811, June 1, 2016) p. 150

— Illegal recruitment ·in large scale is present if: (I) the offender has no valid license or authority required by law to enable him to lawfully engage in recruitment and placement of workers; (2) the offender undertakes any of the activities within the meaning of "recruitment and placement" under Art. 13 (b) of the Labor Code, or any of the prohibited practices enumerated under Art. 34 of the said Code (now Sec. 6 of R.A. No. 8042); and (3) the offender committed the same against three (3) or more persons, individually or as a group. (*Id*.)

either injury or illness, during the term of the latter's employment; for the seaman's claim to prosper, however, it is mandatory that he should be examined by a company-designated physician within three days from his repatriation, failure to comply with this mandatory reporting requirement without justifiable cause shall result in forfeiture of the right to claim the compensation and disability benefits provided under the POEA-SEC; the three-day period from return of the seafarer or sign-off from the vessel, whether to undergo a post-employment medical examination or report the seafarer's physical incapacity, should always be complied with to determine whether the injury or illness is work- related. (*Id*.)

— For an occupational disease and the resulting disability or death to be compensable, all of the following conditions must be satisfied: (1) The seafarer's work must involve the risks described herein; (2) The disease was contracted as a result of the seafarer's exposure to the described risks; (3) The disease was contacted within a period of exposure and under such other factors necessary to contract it; and (4) There was no notorious negligence on the part of the seafarer. (*Id*.)

— For disability to be compensable under Sec. 20 (B) of the 2000 POEA-SEC, two elements must concur: (1) the injury or illness must be work-related; and (2) the work-related injury or illness must have existed during the term of the seafarer's employment contract; it is not sufficient to establish that the seafarer's illness or injury has rendered him permanently or partially disabled; it must also be shown that there is a causal connection between the seafarer's illness or injury and the work for which he had been contracted. (*Id*.)

— The company-designated doctor is expected to arrive at a definite assessment of the seafarer's fitness to work or to determine his disability within a period of 120 or 240 days from repatriation; the 120-day period applies if the duration of the seafarer's treatment does not exceed 120 days; on the other hand, the 240-day period applies in

case the seafarer requires further medical treatment after the lapse of the initial 120-day period; in case the company-designated doctor failed to issue a declaration within the given periods, the seafarer is deemed totally and permanently disabled. (Magsaysay Maritime Corp. *vs.* Cruz, G.R. No. 204769, June 6, 2016) p. 451

PLEADINGS

Verification — The purpose of the verification is to ensure that the allegations contained in the verified pleading are true and correct and are not the product of the imagination or a matter of speculation and that the pleading is filed in good faith; verification was merely a formal requirement whose defect did not negate the validity or efficacy of the verified pleading, or affect the jurisdiction of the court. (Fyfe *vs.* Phil. Airlines, Inc., G.R. No. 160071, June 6, 2016) p. 292

Verification and certification against forum shopping — Objection as to compliance with the requirement of verification in the complaint should have been raised in the proceedings below, and not in the appellate court for the first time; the question of forum shopping cannot be raised in the Court of Appeals and in the Supreme Court, since such an issue must be raised at the earliest opportunity in a motion to dismiss or a similar pleading. (Yap, Sr. *vs.* Siao, G.R. No. 212493, June 1, 2016) p. 257

— The following officials or employees of the company can sign the verification and certification without need of a board resolution: (1) the Chairperson of the Board of Directors, (2) the President of a corporation, (3) the General Manager or Acting General Manager, (4) Personnel Officer; and (5) an Employment Specialist in a labor case. (*Id*.)

PRESUMPTIONS

Disputable presumptions — The following as disputable presumptions: (1) private transactions have been fair and regular; (2) the ordinary course of business has been followed; and (3) there was sufficient consideration

RES JUDICATA

Concept of — Two concepts; the first is bar by prior judgment under Rule 39, Sec. 47(b), and the second is conclusiveness of judgment under Rule 39, Sec. 47(c); *res judicata* under the first concept or as a bar against the prosecution of a second action exists when there is identity of parties, subject matter and cause of action in the first and second actions; the judgment in the first action is final as to the claim or demand in controversy, including the parties and those in private with them, not only as to every matter which was offered and received to sustain or defeat the claim or demand, but as to any other admissible matter which might have been offered for that purpose and of all matters that could have been adjudged in that case; in contrast, *res judicata* under the second concept or estoppel by judgment exists when there is identity of parties and subject matter but the causes of action are completely distinct. (HGL Dev't. Corp. *vs.* Hon. Penuela, G.R. No. 181353, June 6, 2016) p. 329

Principle of — Encourages reliance on judicial decision, bars vexatious litigation, and frees the courts to resolve other disputes. (Atty. Roxas *vs.* Rep. Real Estate Corp., G.R. No. 208205, June 1, 2016) p. 163

ROBBERY WITH HOMICIDE

Commission of — Elements to wit: (1) the taking of personal property is committed with violence or intimidation against persons; (2) the property taken belongs to another; (3) the taking is with *animo lucrandi*; and (4) by reason of the robbery or on the occasion thereof, homicide is committed. (People *vs.* Peralta *y* Morillo, G.R. No. 208524, June 1, 2016) p. 209

ROBBERY WITH RAPE

Commission of — Elements are: a) the taking of personal property is committed with violence or intimidation against persons; b) the property taken belongs to another; c) the taking is done with *animo lucrandi;* and d) the robbery

is, the creation of a management committee is one that is premised on the immediate and speedy protection of the interest not only of minority stockholders, but also of the general public from immediate danger of loss, wastage or destruction of assets or the penalization of business of a concerned corporation or entity. (*Id*.)

SHERIFFS

Duties — As agents of the law, sheriffs are duty-bound to fulfill their mandates with utmost diligence and due care; in executing the court's order, they cannot afford to go beyond its letter, lest they prejudice the integrity of their office and the efficient administration of justice. (Atty. Roxas *vs.* Rep. Real Estate Corp., G.R. No. 208205, June 1, 2016) p. 163

SOLICITOR GENERAL

Powers — A petition seeking the reinstatement of an information must be filed with the authorization of the OSG, which is the real party in interest in criminal proceedings; failure to get OSG's consent warrants dismissal of the petition. (Burgos, Jr. *vs.* Sps. Naval, G.R. No. 219468, June 8, 2016) p. 881

— It is the OSG which possesses the requisite authority to represent the People in an appeal on the criminal aspect of a case; the OSG is the law office of the Government whose specific powers and functions include that of representing the Republic and/or the People before any court in any action which affects the welfare of the people as the ends of justice may require. (*Id*.)

STATUTES

Interpretation of — Supreme Court may relax the application of its procedural rules for compelling reasons or exceptional circumstances. (HGL Dev't. Corp. *vs.* Hon. Penuela, G.R. No. 181353, June 6, 2016) p. 329

— While strict compliance to technical rules is not required in labor cases, liberal policy should still be pursuant to equitable principles of law; belated submission of evidence

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