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FROM

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REPORT OF CASES

DETERMINED IN THE

SUPREME COURT OF THE PHILIPPINES

FIRST DIVISION

[A.M. No. MTJ-16-1877. June 13, 2016]
(Formerly OCA IPI No. 13-2635-MTJ)

MOAMAR PANGANDAG, *complainant, vs.* **PRESIDING JUDGE OTTOWA B. ABINAL, 8th Municipal Circuit Trial Court in Mulondo, Maguing, Lumba-Bayabao, and Taraka, Lanao del Sur,** *respondent.*

SYLLABUS

1. JUDICIAL ETHICS; JUDGES; A MUNICIPAL CIRCUIT TRIAL COURT (MCTC) JUDGE WHO TOOK COGNIZANCE OF A CRIMINAL CASE FOR GRAVE THREATS WITHOUT ALLEGATION PERTAINING TO DEMAND FOR MONEY OR IMPOSITION OF OTHER CONDITION CANNOT BE HELD ADMINISTRATIVELY LIABLE.— We adopt the recommendation of the Office of the Court Administrator and rule that Judge Abinal was not administratively liable when he took cognizance of the criminal complaint. He merely relied on the words of the Information, which do not appear to accuse Pangandag of committing grave threats accompanied by a demand for money or an imposition of any other condition. x x x The absence of an allegation pertaining to a demand for money or an imposition of any other condition would be relevant to the jurisdiction of the MCTC. Article 282 of the Revised Penal Code clearly provides that the penalty for grave threats without a condition shall be *arresto mayor*, that is, imprisonment for the maximum period

of six months. Since Section 32 (2) of the Judiciary Reorganization Act expressly grants MCTCs exclusive original jurisdiction "over all offenses punishable with imprisonment not exceeding six (6) years," we cannot fault Judge Abinal for believing that the MCTC could take cognizance of the criminal case. Without ultimately deciding on the merits of the criminal complaint in this administrative proceeding, we rule that there is no basis to hold Judge Abinal administratively liable for this charge.

2. ID.; ID.; ACTING ON A CRIMINAL COMPLAINT AND ISSUING A WARRANT OF ARREST DESPITE RELATIONSHIP TO THE PRIVATE COMPLAINANT CONSTITUTE GROSS IGNORANCE OF THE LAW OR PROCEDURE FOR FAILING TO INHIBIT HIMSELF IN THE CASE.— We find, however, that Judge Abinal indeed violated the New Code of Judicial Conduct in relation to the Rules of Court by acting on the criminal complaint and issuing a warrant of arrest despite his relationship to the private complainant. Rule 137 of the Rules of Court clearly disqualifies judges from hearing cases if they are related to one of the parties within the sixth degree of consanguinity or affinity. As expressed in Section 5 (c), Canon 3 of the New Code of Judicial Conduct, judges should not take part in proceedings in which their impartiality might reasonably be questioned, including those in which a party litigant is related to them by consanguinity or affinity. We stress that this disqualification rule was put into place to preserve the people's faith and confidence in the courts of justice. Thus, judges should not preside over a case in which they are not wholly free, disinterested, impartial, and independent. The rule on disqualification remains even if the present case merely involves the determination of probable cause and the eventual issuance of a warrant of arrest. Contrary to the insistence of Judge Abinal, the issuance of a warrant of arrest is not merely ministerial in nature. Pursuant to Section 6 (b), Rule 112 of the Rules of Court, judges are required to personally examine private complainants and witnesses, as well as any supporting documents that they may produce. The purpose is to determine whether there is probable cause to believe that the persons being prosecuted are guilty of the crime charged. Afterwards, judges would again be required to exercise judicial discretion to ascertain if there is a necessity to place the accused in custody

so that the ends of justice would not be frustrated. MCTC judges may even choose to merely issue a summons, instead of a warrant of arrest, if they do not find it necessary to place the accused under custody even after the determination of the existence of probable cause. By issuing a warrant of arrest, Judge Abinal is assumed to have applied Section 6(b), Rule 112 of the Rules of Court, which required the examination of his own niece to determine the existence of probable cause. Further, he is also deemed to have relied on her testimony to determine whether the ends of justice necessitated that Pangandag be placed in custody, instead of merely issuing summons to compel him to appear before the court. Clearly, Judge Abinal should not have participated in any of these courses of action, as he might have appeared biased in issuing the warrant of arrest that would ensure that the accused in the case filed by the judge's own niece would stand trial. Judge Abinal should have disqualified himself the moment he read the criminal complaint containing the name of his relative. He committed an administrative offense once he took cognizance of the case and issued a warrant of arrest.

3. ID.; ID.; ID.; PROPER PENALTY IS FINE OF ₱25,000 IN THE ABSENCE OF ANY MITIGATING OR AGGRAVATING CIRCUMSTANCE.— Under Section 11 thereof, a fine of "more than ₱20,000.00 but not exceeding ₱40,000.00" may be imposed if the respondent is guilty of a serious charge. Since in Paderanga this Court found an aggravating circumstance that impelled Us to impose a fine of ₱40,000, We rule in this case that a fine of ₱25,000 would be more appropriate in view of the absence of any mitigating or aggravating circumstance.

D E C I S I O N

SERENO, *C.J.*:

This administrative case concerns the complaint filed against Municipal Circuit Trial Court (MCTC) Judge Ottowa B. Abinal for gross ignorance of the law, abuse and usurpation of jurisdiction, conduct prejudicial to the interest of public service, and bias. The complaint alleges that he did not have jurisdiction to take cognizance of a criminal complaint for grave threats, since the offense carried the penalty of *reclusión temporal*. The

complaint further asserts that Judge Abinal issued a warrant of arrest despite knowing that the private complainant therein was his niece.

FACTS

Complainant Moamar Pangandag was criminally charged[1] with grave threats for allegedly threatening to commit the crime of murder against a certain Monaoray "Nahara" Abdullah and her companions. The Information was filed before the *sala* of Presiding Judge Abinal of the Mulondo, Maguing, Lumba-Bayabao, and Taraka MCTC in Lanao del Sur. Upon finding the existence of probable cause, he issued a warrant of arrest against Pangandag and two others. However, 15 days later, Judge Abinal voluntarily inhibited himself from hearing the case because of his relationship to Abdullah, who was his niece.[2] The case was eventually transferred to the presiding judge of the Marawi City MTCC.[3] The criminal complaint was later on dismissed in light of the prosecution's Motion to Withdraw Information based on the Affidavit of Desistance executed by the private complainant.[4]

Pangandag is now before this Court to complain against the actions of Judge Abinal. He insists that the MCTC did not have jurisdiction over the case, since the crime he was charged with carried the penalty of *reclusión temporal*, a prison term that exceeded six years. Further, it is argued that Judge Abinal should have disqualified himself from hearing the case in light of his relationship to the private complainant, who was his third-degree relative by consanguinity.

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[1] Information (*People v. Gamama*, Crim. Case No. 13-694-MG, Mulondo MCTC) (filed 11 June 2013), *rollo*, pp. 10-11.

[2] Order of Inhibition (*People v. Gamama*, Crim. Case No. 13-694-MG, Mulondo MCTC, 3 July 2013), *rollo*, p. 19.

[3] Memorandum of Executive Judge Wenida B.M. Papandayan, *rollo*, p. 20.

[4] Order of Dismissal (*People v. Gamama*, Crim. Case No. 13-694-MG, Mulondo MCTC, 30 Sep. 2013), *rollo*, p. 21.

In his Comment,[5] Judge Abinal explained that the MCTC had jurisdiction over the subject matter of the criminal case, since the Information did not contain any allegation that the accused demanded money or imposed a condition. Because of the absence of this assertion, he was of the opinion that Pangandag was only being charged with the second form of grave threats, which merely carried the penalty of *arresto mayor*. With regard to the second issue, while Judge Abinal admits that private complainant was indeed his niece, he stresses that this relationship was the reason why he voluntarily inhibited from the case immediately after issuing the warrant. He argues that he did not have to inhibit himself from deciding whether to issue a warrant of arrest, as it was his ministerial duty to do so.

ISSUES

The issues to be resolved by the Court are whether Judge Abinal is administratively liable for taking cognizance of the criminal complaint for grave threats against Pangandag even if (a) the MCTC has limited jurisdiction over criminal offenses; and (b) the private complainant was his niece.

RULING

We adopt the recommendation[6] of the Office of the Court Administrator and rule that Judge Abinal was not administratively liable when he took cognizance of the criminal complaint. He merely relied on the words of the Information, which do not appear to accuse Pangandag of committing grave threats accompanied by a demand for money or an imposition of any other condition. The Information reads as follows:[7]

x x x accused conspiring, confederating and mutually helping each other **moved by their personal and political resentment** which they entertained against Monaoray "Nahara" Abdullah and her companions with an **infliction upon them of a wrong amounting**

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[5] Comment of Judge Abinal, *rollo*, pp. 16-18.

[6] *Rollo*, pp. 22-24.

[7] Information, *supra* note 1, *rollo*, p. 10.

to a crime, when they were on their way to Balintao Elementary School to cast their votes, the said accused did then and there willfully, unlawfully and feloniously **threatened them by shouting and firing their guns saying that they will kill the latter** and her companions but the offenders failed to attain the purpose. (Emphases supplied)

The absence of an allegation pertaining to a demand for money or an imposition of any other condition would be relevant to the jurisdiction of the MCTC. Article 282 of the Revised Penal Code clearly provides that the penalty for grave threats without a condition shall be *arresto mayor*, that is, imprisonment for the maximum period of six months.[8] Since Section 32 (2) of the Judiciary Reorganization Act[9] expressly grants MCTCs exclusive original jurisdiction "over all offenses punishable with imprisonment not exceeding six (6) years," we cannot fault Judge Abinal for believing that the MCTC could take cognizance of the criminal case. Without ultimately deciding on the merits of the criminal complaint in this administrative proceeding, we rule that there is no basis to hold Judge Abinal administratively liable for this charge.

We find, however, that Judge Abinal indeed violated the New Code of Judicial Conduct in relation to the Rules of Court by acting on the criminal complaint and issuing a warrant of arrest despite his relationship to the private complainant. Rule 137 of the Rules of Court clearly disqualifies judges from hearing cases if they are related to one of the parties within the sixth degree

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[8] Article 282 of the Revised Penal Code reads: "Any person who shall threaten another with the infliction upon the person, honor or property of the latter or of his family of any wrong amounting to a crime, shall suffer: 1. The penalty next lower in degree than that prescribed by law for the crime he threatened to commit, if the offender shall have made the threat demanding money or imposing any other condition, even though not unlawful, and said offender shall have attained his purpose. If the offender shall not have attained his purpose, the penalty lower by two degrees shall be imposed. x x x. 2. The penalty of *arresto mayor* and a fine not exceeding 500 pesos, if the threat shall not have been made subject to a condition." See, *e.g.*: *Caluag v. People*, 599 Phil. 717 (2009); *Spouses Dizon v. Calimag*, 417 Phil. 778 (2001); *Reyes v. People*, 137 Phil. 112 (1969).

[9] Batas Pambansa Blg. 129, as amended by Republic Act No. 7691.

of consanguinity or affinity. As expressed in Section 5 (c), Canon 3 of the New Code of Judicial Conduct, judges should not take part in proceedings in which their impartiality might reasonably be questioned, including those in which a party litigant is related to them by consanguinity or affinity. We stress that this disqualification rule was put into place to preserve the people's faith and confidence in the courts of justice.[10] Thus, judges should not preside over a case in which they are not wholly free, disinterested, impartial, and independent.[11]

The rule on disqualification remains even if the present case merely involves the determination of probable cause and the eventual issuance of a warrant of arrest. Contrary to the insistence of Judge Abinal, the issuance of a warrant of arrest is not merely ministerial in nature. Pursuant to Section 6 (b), Rule 112 of the Rules of Court,[12] judges are required to personally examine private complainants and witnesses, as well as any supporting documents that they may produce. The purpose is to determine whether there is probable cause to believe that the persons being prosecuted are guilty of the crime charged. Afterwards, judges would again be required to exercise judicial discretion to ascertain if there is a necessity to place the accused in custody so that the ends of justice would not be frustrated.[13] MCTC judges

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[10] *Perez v. Suller*, 320 Phil. 1 (1995) (citing *Pimentel v. Salanga*, 128 Phil. 176 [1967]).

[11] See*: Perez v. Suller, supra* (citing *Garcia v. De La Peña*, A.M. No. MTJ-92-687 (Resolution), 9 February 1994, 229 SCRA 766; *Gutierrez v. Santos*, 112 Phil. 184 [1961]; *Geotina v. Gonzalez*, 148-B Phil. 556 [1971]; *Umale v. Villaluz*, 151-A Phil. 563 [1973]).

[12] The Rules state: "[W]ithout waiting for the conclusion of the investigation, the [Metropolitan Trial Court, Municipal Trial Court in Cities, Municipal Trial Court, or Municipal Circuit Trial Court] judge may issue a warrant of arrest if he finds after an examination in writing and under oath of the complainant and his witnesses in the form of searching questions and answers, that a probable cause exists and that there is a necessity of placing the respondent under immediate custody in order not to frustrate the ends of justice."

[13] See: *Sesbreño v. Aglugub*, 492 Phil. 461 (2005); *Flores v. Sumaljag*, 353 Phil. 10 (1998) (citing *Samulde v. Salvani*, 248 Phil. 179 [1988]; *Mantaring v. Roman*, 324 Phil. 387 [1996]); *Perez v. Suller, supra* note 10.

may even choose to merely issue a summons, instead of a warrant of arrest, if they do not find it necessary to place the accused under custody even after the determination of the existence of probable cause.

By issuing a warrant of arrest, Judge Abinal is assumed to have applied Section 6 (b), Rule 112 of the Rules of Court, which required the examination of his own niece to determine the existence of probable cause. Further, he is also deemed to have relied on her testimony to determine whether the ends of justice necessitated that Pangandag be placed in custody, instead of merely issuing summons to compel him to appear before the court. Clearly, Judge Abinal should not have participated in any of these courses of action, as he might have appeared biased in issuing the warrant of arrest that would ensure that the accused in the case filed by the judge's own niece would stand trial. Judge Abinal should have disqualified himself the moment he read the criminal complaint containing the name of his relative. He committed an administrative offense once he took cognizance of the case and issued a warrant of arrest.

In similar cases,[14] We have imposed a fine on judges who failed to inhibit themselves from sitting in cases — even as early as the preliminary investigation stage — in which one of the parties was their relative within the sixth degree of consanguinity or affinity. In *Paderanga v. Paderanga*,[15] We ruled that the gross ignorance and disregard of the rule on compulsory disqualification constitutes a serious charge pursuant to Section 8 (9), Rule 140 of the Rules of Court. Under Section 11 thereof, a fine of "more than ₱20,000.00 but not exceeding ₱40,000.00" may be imposed if the respondent is guilty of a serious charge. Since in *Paderanga* this Court found an aggravating

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[14] *Paderanga v. Paderanga*, A.M. Nos. RTJ-14-2383 & RTJ-07-2033, 17 August 2015; *Sales v. Calvan*, 428 Phil. 1 (2002); *Villaluz v. Mijarez*, 351 Phil. 836 (1998); *Perez v. Suller, supra* note 10. See generally: *Ortiz v. Jaculbe*, 500 Phil. 142 (2005); *Oktubre v. Velasco*, 478 Phil. 803 (2004). But see: *Garcia v. De La Peña, supra* note 11.

[15] *Paderanga v. Paderanga, supra.*

circumstance that impelled Us to impose a fine of ₱40,000, We rule in this case that a fine of ₱25,000 would be more appropriate in view of the absence of any mitigating or aggravating circumstance.

WHEREFORE, Judge Ottowa B. Abinal, Municipal Circuit Trial Court, Mulondo, Maguing, Lumba-Bayabao, and Taraka, Lanao del Sur, is found **GUILTY** of **GROSS IGNORANCE OF THE LAW OR PROCEDURE** for failing to immediately inhibit himself in *People v. Gamama*, Criminal Case No. 13-694-MG. Accordingly, the Court imposes the penalty of **FINE** in the amount of ₱25,000 with a **STERN WARNING** that a repetition of the same or a similar infraction shall be penalized more severely.

This case is hereby ordered **RE-DOCKETED** as a regular administrative matter.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 183794. June 13, 2016]

SPOUSES JAIME and MATILDE POON, *petitioners, vs.* **PRIME SAVINGS BANK represented by the PHILIPPINE DEPOSIT INSURANCE CORPORATION as Statutory Liquidator,** *respondent.*

SYLLABUS

1. CIVIL LAW; LEASE; CLOSURE OF BUSINESS WAS NEITHER A FORTUITOUS EVENT NOR AN UNFORSEEN

EVENT THAT RENDERED THE LEASE AGREEMENT *FUNCTUS OFFICIO*; REQUISITES FOR THE APPLICATION OF THE PRINCIPLE OF *REBUS SIC STANTIBUS* UNDER ARTICLE 1267 OF THE CIVIL CODE ARE LACKING IN CASE AT BAR.— The [case of *Provident Savings Bank*] must always be read in the context of the earlier Decision in *Central Bank v. Court of Appeals*. The Court ruled in that case that the Monetary Board had acted arbitrarily and in bad faith in ordering the closure of Provident Savings Bank. Accordingly, in the subsequent case of *Provident Savings Bank* it was held that *fuerza mayor* had interrupted the prescriptive period to file an action for the foreclosure of the subject mortgage. In contrast, there is no indication or allegation that the BSP's action in this case was tainted with arbitrariness or bad faith. Instead, its decision to place respondent under receivership and liquidation proceedings was pursuant to Section 30 of Republic Act No. 7653. Moreover, respondent was partly accountable for the closure of its banking business. It cannot be said, then, that the closure of its business was independent of its will as in the case of Provident Savings Bank. The legal effect is analogous to that created by contributory negligence in quasi-delict actions. The period during which the bank cannot do business due to insolvency is not a fortuitous event, unless it is shown that the government's action to place a bank under receivership or liquidation proceedings is tainted with arbitrariness, or that the regulatory body has acted without jurisdiction. As an alternative justification for its premature termination of the Contract, respondent lessee invokes the doctrine of unforeseen event under Article 1267 of the Civil Code, which provides: Art. 1267. When the service has become so difficult as to be manifestly beyond the contemplation of the parties, the obligor may also be released therefrom, in whole or in part. The theory of *rebus sic stantibus* in public international law is often cited as the basis of the above article. Under this theory, the parties stipulate in light of certain prevailing conditions, and the theory can be made to apply when these conditions cease to exist. The Court, however, has once cautioned that Article 1267 is not an absolute application of the principle of *rebus sic stantibus*, otherwise, it would endanger the security of contractual relations. After all, parties to a contract are presumed to have assumed the risks of unfavorable developments. It is only in absolutely

exceptional changes of circumstance, therefore, that equity demands assistance for the debtor. *Tagaytay Realty Co., Inc. v. Gacutan* lays down the requisites for the application of Article 1267, as follows: 1. The event or change in circumstance could not have been foreseen at the time of the execution of the contract. 2. It makes the performance of the contract extremely difficult but not impossible. 3. It must not be due to the act of any of the parties. 4. The contract is for a future prestation. The difficulty of performance should be such that the party seeking to be released from a contractual obligation would be placed at a disadvantage by the unforeseen event. Mere inconvenience, unexpected impediments, increased expenses, or even pecuniary inability to fulfill an engagement, will not relieve the obligor from an undertaking that it has knowingly and freely contracted. The law speaks of "service." This term should be understood as referring to the performance of an obligation or a prestation. A prestation is the object of the contract; i.e., it is the conduct (to give, to do or not to do) required of the parties. In a reciprocal contract such as the lease in this case, one obligation of respondent as the lessee was to pay the agreed rents for the whole contract period. It would be hard-pressed to complete the lease term since it was already out of business only three and a half years into the 10-year contract period. Without a doubt, the second and the fourth requisites mentioned above are present in this case. The first and the third requisites, however, are lacking. It must be noted that the lease agreement was for 10 years. As shown by the unrebutted testimony of Jaime Poon during trial, the parties had actually considered the possibility of a deterioration or loss of respondent's business within that period x x x. Clearly, the closure of respondent's business was not an unforeseen event. As the lease was long-term, it was not lost on the parties that such an eventuality might occur, as it was in fact covered by the terms of their Contract. Besides, as We have previously discussed, the event was not independent of respondent's will.

2. ID.; ID.; ID.; THE FORFEITURE CLAUSE IN THE LEASE CONTRACT IS PENAL IN NATURE.— It is settled that a provision is a penal clause if it calls for the forfeiture of any remaining deposit still in the possession of the lessor, without prejudice to any other obligation still owing, in the event of the termination or cancellation of the agreement by reason of the lessee's violation of any of the terms and conditions thereof.

This kind of agreement may be validly entered into by the parties. The clause is an accessory obligation meant to ensure the performance of the principal obligation by imposing on the debtor a special prestation in case of nonperformance or inadequate performance of the principal obligation. It is evident from the above-quoted testimony of Jaime Poon that the stipulation on the forfeiture of advance rentals under paragraph 24 is a penal clause in the sense that it provides for liquidated damages. x x x In effect, the penalty for the premature termination of the Contract works both ways. As the CA correctly found, the penalty was to compel respondent to complete the 10-year term of the lease. Petitioners, too, were similarly obliged to ensure the peaceful use of their building by respondent for the entire duration of the lease under pain of losing the remaining advance rentals paid by the latter. The forfeiture clauses of the Contract, therefore, served the two functions of a penal clause, i.e., (1) to provide for liquidated damages and (2) to strengthen the coercive force of the obligation by the threat of greater responsibility in case of breach. As the CA correctly found, the prestation secured by those clauses was the parties' mutual obligation to observe the fixed term of the lease. For this reason, We sustain the lower courts' finding that the forfeiture clause in paragraph 24 is a penal clause, even if it is not expressly labelled as such.

3. ID.; ID.; ID.; ID.; REDUCTION OF THE PENALTY IN THE LEASE CONTRACT IS WARRANTED UNDER ARTICLE 1229 OF THE CIVIL CODE; INTEREST OF INNOCENT DEBTORS AND CREDITORS OF A DELINQUENT BANK ESTABLISHMENT IS AN OVERRIDING CONSIDERATION TO JUSTIFY THE 50% REDUCTION OF THE PENALTY AGREED UPON BY THE PARTIES.— We have no reason to doubt that the forfeiture provisions of the Contract were deliberately and intelligently crafted. Under Article 1196 of the Civil Code, the period of the lease contract is deemed to have been set for the benefit of both parties. Its continuance, effectivity or fulfillment cannot be made to depend exclusively upon the free and uncontrolled choice of just one party. Petitioners and respondent freely and knowingly committed themselves to respecting the lease period, such that a breach by either party would result in the forfeiture of the remaining advance rentals in favor of the aggrieved party. If this were an ordinary contest of rights of private contracting

parties, respondent lessee would be obligated to abide by its commitment to petitioners. The general rule is that courts have no power to ease the burden of obligations voluntarily assumed by parties, just because things did not turn out as expected at the inception of the contract. It must be noted, however, that this case was initiated by the PDIC in furtherance of its statutory role as the fiduciary of Prime Savings Bank. As the state-appointed receiver and liquidator, the PDIC is mandated to recover and conserve the assets of the foreclosed bank on behalf of the latter's depositors and creditors. In other words, at stake in this case are not just the rights of petitioners and the correlative liabilities of respondent lessee. Over and above those rights and liabilities is the interest of innocent debtors and creditors of a delinquent bank establishment. These overriding considerations justify the 50% reduction of the penalty agreed upon by petitioners and respondent lessee in keeping with Article 1229 of the Civil Code, which provides: Art. 1229. The judge shall equitably reduce the penalty when the principal obligation has been partly or irregularly complied with by the debtor. Even if there has been no performance, the penalty may also be reduced by the courts if it is iniquitous or unconscionable. The reasonableness of a penalty depends on the circumstances in each case, because what is iniquitous and unconscionable in one may be totally just and equitable in another. In resolving this issue, courts may consider factors including but not limited to the type, extent and purpose of the penalty; the nature of the obligation; the mode of the breach and its consequences; the supervening realities; and the standing and relationship of the parties. Under the circumstances, it is neither fair nor reasonable to deprive depositors and creditors of what could be their last chance to recoup whatever bank assets or receivables the PDIC can still legally recover. Besides, nothing has prevented petitioners from putting their building to other profitable uses, since respondent surrendered the premises immediately after the closure of its business. Strict adherence to the doctrine of freedom of contracts, at the expense of the rights of innocent creditors and investors, will only work injustice rather than promote justice in this case. Such adherence may even be misconstrued as condoning profligate bank operations. We cannot allow this to happen. We are a Court of both law and equity; We cannot sanction grossly unfair results without doing violence to Our solemn obligation to administer justice fairly and equally to all who might be affected by our decisions.

4. REMEDIAL LAW; EVIDENCE; DAMAGES AND ATTORNEY'S FEES CANNOT BE AWARDED IN THE ABSENCE OF EVIDENCE TO PROVE THE SAME.— Neither do We find any error in the trial court's denial of the damages and attorney's fees claimed by petitioners. No proof of the supposed expenses they have incurred for the improvement of the leased premises and the payment of respondent's unpaid utility bills can be found in the records. Actual and compensatory damages must be duly proven with a reasonable degree of certainty. To recover moral and exemplary damages where there is a breach of contract, the breach must be palpably wanton, reckless, malicious, in bad faith, oppressive, or abusive. Attorney's fees are not awarded even if a claimant is compelled to litigate or to incur expenses where no sufficient showing of bad faith exists. None of these circumstances have been shown in this case.

APPEARANCES OF COUNSEL

Avelino V. Sales, Jr. for petitioners.

Office of the General Counsel, Phil. Deposit Insurance Corporation for respondent.

D E C I S I O N

SERENO, *C.J.*:

Before this Court is a Petition for Review on Certiorari[1] assailing the Court of Appeals (CA) Decision[2] which affirmed the Decision [3] issued by Branch 21, Regional Trial Court (RTC) of Naga City.

The RTC ordered the partial rescission of the penal clause in the lease contract over the commercial building of Spouses

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[1] *Rollo*, pp. 4-25.

[2] *Id.* at 26-37; Dated 29 November 2007, penned by Associate Justice Edgardo P. Cruz with Associate Justices Fernanda Lampas Peralta and Normandie B. Pizarro, concurring.

[3] *Id.* at 40-50; Dated 15 April 2002, penned by Judge Ramon A. Cruz.

Jaime and Matilde Poon (petitioners). It directed petitioners to return to Prime Savings Bank (respondent) the sum of ₱1,740,000, representing one-half of the unused portion of its advance rentals, in view of the closure of respondent's business upon order by the *Bangko Sentral ng Pilipinas* (BSP).

ANTECEDENT FACTS

The facts are undisputed.

Petitioners owned a commercial building in Naga City, which they used for their bakery business. On 3 November 2006, Matilde Poon and respondent executed a 10-year Contract of Lease[4] (Contract) over the building for the latter's use as its branch office in Naga City. They agreed to a fixed monthly rental of ₱60,000, with an advance payment of the rentals for the first 100 months in the amount of ₱6,000,000. As agreed, the advance payment was to be applied immediately, while the rentals for the remaining period of the Contract were to be paid on a monthly basis.[5]

In addition, paragraph 24 of the Contract provides:

> 24. Should the lease[d] premises be closed, deserted or vacated by the LESSEE, the LESSOR shall have the right to terminate the lease without the necessity of serving a court order and to immediately repossess the leased premises. Thereafter the LESSOR shall open and enter the leased premises in the presence of a representative of the LESSEE (or of the proper authorities) for the purpose of taking a complete inventory of all furniture, fixtures, equipment and/or other materials or property found within the leased premises.
>
> The LESSOR shall thereupon have the right to enter into a new contract with another party. All advanced rentals shall be forfeited in favor of the LESSOR.[6]

Barely three years later, however, the BSP placed respondent under the receivership of the Philippine Deposit Insurance

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[4] *Id.* at 63-65.

[5] *Id.* at 63.

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

Corporation (PDIC) by virtue of BSP Monetary Board Resolution No. 22,[7] which reads:

> On the basis of the report of Mr. Candon B. Guerrero, Director of Thrift Banks and Non-Bank Financial Institutions (DTBNBFI), in his memorandum dated January 3, 2000, which report showed that the Prime Savings Bank, Inc. (a) is unable to pay its liabilities as they became due in the ordinary course of business; (b) has insufficient realizable assets as determined by the Bangko Sentral ng Pilipinas to meet its liabilities; (c) cannot continue in business without involving probable losses to its depositors and creditors; and **(d) has wilfully violated cease and desist orders under Section 37 that has become final, involving acts or transactions which amount to fraud or a dissipation of the assets of the institution**; x x x[8] (Emphasis supplied)

The BSP eventually ordered respondent's liquidation under Monetary Board Resolution No. 664.[9]

On 12 May 2000, respondent vacated the leased premises and surrendered them to petitioners.[10] Subsequently, the PDIC issued petitioners a demand letter[11] asking for the return of the unused advance rental amounting to ₱3,480,000 on the ground that paragraph 24 of the lease agreement had become inoperative, because respondent's closure constituted *force majeure*. The PDIC likewise invoked the principle of *rebus sic stantibus* under Article 1267 of Republic Act No. 386 (Civil Code) as alternative legal basis for demanding the refund.

Petitioners, however, refused the PDIC's demand.[12] They maintained that they were entitled to retain the remainder of the advance rentals following paragraph 24 of their Contract.

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[7] Dated 7 January 2000.

[8] RTC Records, p. 16 (Annex "B" of the Complaint). Emphasis supplied.

[9] Dated 27 April 2000; *id.* at 17 (Annex "C" of the Complaint).

[10] *Id.* at 18 (Annex "D" of the Complaint).

[11] *Id.* at 19 (Annex "E" of the Complaint).

[12] *Id.* at 20 (Annex "F" of the Complaint).

Consequently, respondent sued petitioners before the RTC of Naga City for a partial rescission of contract and/or recovery of a sum of money.

THE RTC RULING

After trial, the RTC ordered the partial rescission of the lease agreement, disposing as follows:

> WHEREFORE, judgment is hereby entered ordering the partial rescission of the Contract of Lease dated November 3, 1996 particularly the second paragraph of Par. 24 thereof and directing the defendant-spouses Jaime and Matilde Poon to return or refund to the Plaintiff the sum of One Million Seven Hundred Forty Thousand Pesos (₱1,740,000) representing one-half of the unused portion of the advance rentals.
>
> Parties' respective claims for damages and attorney's fees are dismissed.
>
> No costs.[13]

The trial court ruled that the second clause in paragraph 24 of the Contract was penal in nature, and that the clause was a valid contractual agreement.[14] Citing *Provident Savings Bank v. CA*[15] as legal precedent, it ruled that the premature termination of the lease due to the BSP's closure of respondent's business was actually involuntary. Consequently, it would be iniquitous for petitioners to forfeit the entire amount of ₱3,480,000.[16] Invoking its equity jurisdiction under Article 1229 of the Civil Code,[17] the trial court limited the forfeiture to only one-half of

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[13] *Rollo*, pp. 49-50.

[14] *Id.* at 48.

[15] G.R. No. 97218, 17 May 1993, 222 SCRA 125.

[16] *Rollo*, p. 48.

[17] CIVIL CODE, Article 1229 provides:

> The judge shall equitably reduce the penalty when the principal obligation has been partly or irregularly complied with by the debtor. Even if there has been no performance, the penalty may also be reduced by the courts if it is iniquitous or unconscionable.

that amount to answer for respondent's unpaid utility bills and E-VAT, as well as petitioner's lost business opportunity from its former bakery business.[18]

THE CA RULING

On appeal, the CA affirmed the RTC Decision,[19] but had a different rationale for applying Article 1229. The appellate court ruled that the closure of respondent's business was not a fortuitous event. Unlike *Provident Savings Bank*,[20] the instant case was one in which respondent was found to have committed fraudulent acts and transactions. Lacking, therefore, was the first requisite of a fortuitous event, i.e. that the cause of the breach of obligation must be independent of the will of the debtor.[21]

Still, the CA sustained the trial court's interpretation of the *proviso* on the forfeiture of advance rentals as a penal clause and the consequent application of Article 1229. The appellate court found that the forfeiture clause in the Contract was intended to prevent respondent from defaulting on the latter's obligation to finish the term of the lease. It further found that respondent had partially performed that obligation and, therefore, the reduction of the penalty was only proper. Similarly, it ruled that the RTC had properly denied petitioners' claims for actual and moral damages for lack of basis.[22]

On 10 July 2008,[23] the CA denied petitioners' Motion for Reconsideration. Hence, this Petition.

ISSUES

The issues to be resolved are whether (1) respondent may be released from its contractual obligations to petitioners on grounds

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[18] *Rollo*, p. 49.

[19] *Id.* at 37.

[20] G.R. No. 97218, 17 May 1993, 222 SCRA 125.

[21] *Rollo*, pp. 31-32.

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

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

of fortuitous event under Article 1174 of the Civil Code and unforeseen event under Article 1267 of the Civil Code; (2) the proviso in the parties' Contract allowing the forfeiture of advance rentals was a penal clause; and (3) the penalty agreed upon by the parties may be equitably reduced under Article 1229 of the Civil Code.

COURT RULING

We DENY the Petition.

Preliminarily, we address petitioners' claim that respondent had no cause of action for rescission, because this case does not fall under any of the circumstances enumerated in Articles 1381[24] and 1382[25] of the Civil Code.

The legal remedy of rescission, however, is by no means limited to the situations covered by the above provisions. The Civil Code uses rescission in two different contexts, namely: (1) rescission on account of breach of contract under Article 1191; and (2) rescission by reason of lesion or economic prejudice under Article 1381.[26] While the term "rescission" is used in Article 1191,

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[24] Art. 1381. The following contracts are rescissible:

(1) Those which are entered into by guardians whenever the wards whom they represent suffer lesion by more than one-fourth of the value of the things which are the object thereof;

(2) Those agreed upon in representation of absentees, if the latter suffer the lesion stated in the preceding number;

(3) Those undertaken in fraud of creditors when the latter cannot in any other manner collect the claims due them;

(4) Those which refer to things under litigation if they have been entered into by the defendant without the knowledge and approval of the litigants or of competent judicial authority;

(5) All other contracts specially declared by law to be subject to rescission. (1291a)

[25] Art. 1382. Payments made in a state of insolvency for obligations to whose fulfillment the debtor could not be compelled at the time they were effected, are also rescissible. (1292)

[26] *ASB Realty Corp. v. Ortigas and Co., Ltd. Partnership*, G.R. No. 202947, 9 December 2015.

"resolution" was the original term used in the old Civil Code, on which the article was based. Resolution is a principal action based on a breach by a party, while rescission under Article 1383 is a subsidiary action limited to cases of rescission for lesion under Article 1381 of the New Civil Code.[27]

It is clear from the allegations in paragraphs 12 and 13 of the Complaint[28] that respondent's right of action rested on the alleged abuse by petitioners of their right under paragraph 24 of the Contract. Respondent's theory before the trial court was that the tenacious enforcement by petitioners of their right to forfeit the advance rentals was tainted with bad faith, because they knew that respondent was already insolvent. In other words, the action instituted by respondent was for the rescission of reciprocal obligations under Article 1191. The lower courts, therefore, correctly ruled that Articles 1381 and 1382 were inapposite.

We now resolve the main issues.

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[27] *Ong v. Court of Appeals*, 369 Phil. 243 (1999).

[28] *Supra* note 6, at 6. Paragraphs 12 and 13 of the Complaint reads:

12) The refusal of defendant to return the unused portion of advance rental is a manifest **abuse of right** which contravenes **Art. 19 of the Civil Code**, which provides that:

> "Art. 19. Every person must, in the exercise of his rights and in the performance of his duties, act with justice, give everyone his due, and observe honesty and good faith."

13) The Lease Contract, particularly **Sec. 24, par. 2** thereof, which is being invoked by the defendant in refusing to return the unused portion of the advance rental, was executed during the time the bank was still of sound financial standing and profitably operating. In insisting that the terms of the provision of the contract be applied at this time, when the bank is already closed due to illiquidity, the defendant is manifestly taking undue advantage of the plaintiff's predicament. In order to protect the plaintiff from such abuse of the defendant, the provision of **Article 24 of the Civil Code** is invoked, as follows:

> "Art. 24. In all contractual, property or other relations, when one of the parties is at a disadvantage on account of his moral dependence, ignorance, indigence, mental weakness, tender age or other handicap, the courts must be vigilant for his protection."

***The closure of respondent's business was neither a fortuitous nor an unforeseen event that rendered the lease agreement* functus officio.**

Respondent posits that it should be released from its contract with petitioners, because the closure of its business upon the BSP's order constituted a fortuitous event as the Court held in *Provident Savings Bank*.[29]

The cited case, however, must always be read in the context of the earlier Decision in *Central Bank v. Court of Appeals*.[30] The Court ruled in that case that the Monetary Board had acted arbitrarily and in bad faith in ordering the closure of Provident Savings Bank. Accordingly, in the subsequent case of *Provident Savings Bank* it was held that *fuerza mayor* had interrupted the prescriptive period to file an action for the foreclosure of the subject mortgage.[31]

In contrast, there is no indication or allegation that the BSP's action in this case was tainted with arbitrariness or bad faith. Instead, its decision to place respondent under receivership and liquidation proceedings was pursuant to Section 30 of Republic Act No. 7653.[32] Moreover, respondent was partly accountable for the closure of its banking business. It cannot be said, then, that the closure of its business was independent of its will as in the case of Provident Savings Bank. The legal effect is analogous to that created by contributory negligence in quasi-delict actions.

The period during which the bank cannot do business due to insolvency is not a fortuitous event,[33] unless it is shown that

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[29] G.R. No. 97218, 17 May 2013, 222 SCRA 125.

[30] 193 Phil. 328 (1981).

[31] *Supra* note 26.

[32] The New Central Bank Act (1993).

[33] See *Spouses Larrobis, Jr. v. Philippine Veterans Bank*, 483 Phil. 33 (2004).

the government's action to place a bank under receivership or liquidation proceedings is tainted with arbitrariness, or that the regulatory body has acted without jurisdiction.[34]

As an alternative justification for its premature termination of the Contract, respondent lessee invokes the doctrine of unforeseen event under Article 1267 of the Civil Code, which provides:

> Art. 1267. When the service has become so difficult as to be manifestly beyond the contemplation of the parties, the obligor may also be released therefrom, in whole or in part.

The theory of *rebus sic stantibus* in public international law is often cited as the basis of the above article. Under this theory, the parties stipulate in light of certain prevailing conditions, and the theory can be made to apply when these conditions cease to exist.[35] The Court, however, has once cautioned that Article 1267 is not an absolute application of the principle of *rebus sic stantibus*, otherwise, it would endanger the security of contractual relations. After all, parties to a contract are presumed to have assumed the risks of unfavorable developments. It is only in absolutely exceptional changes of circumstance, therefore, that equity demands assistance for the debtor.[36]

Tagaytay Realty Co., Inc. v. Gacutan[37] lays down the requisites for the application of Article 1267, as follows:

1. The event or change in circumstance could not have been foreseen at the time of the execution of the contract.

2. It makes the performance of the contract extremely difficult but not impossible.

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[34] See *Central Bank v. Court of Appeals, supra* note 30.

[35] *Naga Telephone Co., Inc. v. Court of Appeals*, G.R. No. 107112, 24 February 1994.

[36] *So v. Food Fest Land, Inc.*, 631 Phil. 537 (2010); *PNCC v. Court of Appeals*, 338 Phil. 691 (1997).

[37] G.R. No. 160033, 1 July 2015.

3. It must not be due to the act of any of the parties.

4. The contract is for a future prestation.[38]

The difficulty of performance should be such that the party seeking to be released from a contractual obligation would be placed at a disadvantage by the unforeseen event. Mere inconvenience, unexpected impediments, increased expenses,[39] or even pecuniary inability to fulfil an engagement,[40] will not relieve the obligor from an undertaking that it has knowingly and freely contracted.

The law speaks of "service." This term should be understood as referring to the performance of an obligation or a prestation.[41] A prestation is the object of the contract; i.e., it is the conduct (to give, to do or not to do) required of the parties.[42] In a reciprocal contract such as the lease in this case, one obligation of respondent as the lessee was to pay the agreed rents for the whole contract period.[43] It would be hard-pressed to complete the lease term since it was already out of business only three and a half years into the 10-year contract period. Without a doubt, the second and the fourth requisites mentioned above are present in this case.

The first and the third requisites, however, are lacking. It must be noted that the lease agreement was for 10 years. As shown by the unrebutted testimony of Jaime Poon during trial, the parties had actually considered the possibility of a deterioration or loss of respondent's business within that period:

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[38] *Supra*.

[39] *Supra*.

[40] *Central Bank v. Court of Appeals*, 223 Phil. 266 (1985), citing *Repide v. Afzelius*, 39 Phil. 190 (1918).

[41] *Supra* note 36.

[42] *The Wellex Group, Inc. v. U-Land Airlines, Co., Ltd.*, G.R. No. 167519, 14 January 2015, 745 SCRA 563 (2015), citing *Asuncion v. Court of Appeals*, G.R. No. 109125, 2 December 1994, 238 SCRA 602.

[43] *Spouses Sy v. Andok's Litson Corp.*, 699 Phil. 184 (2012).

ATTY. SALES

Q. Now to the offer of that real estate broker for possible lease of your property at No. 38 General Luna Street, Naga City which was then the Madam Poon Bakery, wait did you tell your real estate broker?

WITNESS (JAIME POON)

A. When Mrs. Lauang approached me, she told me that she has a client who wants to lease a property in Naga City.

Q. Did she disclose to you the identity of her client?
A. Yes, Sir.

Q. What was the name of her client?
A. That is the Prime Savings Bank.

Q. After you have known that it was the Prime Savings Bank that [wanted] to lease your property located at No. 38 General Luna St., Naga City, what did you tell Mrs. Lauang[?]
A. I told her that if the price is good, I am willing to give up the place where this bakery of mine is situated.

Q. So, did Mrs. Lauang give you the quotation as to the price?
A. Yes, Sir.

Q. What was the amount?
A. She asked first if how much I demand for the price.

Q. What did you tell her?
A. I told her, if they can give me ₱100,000.00 for the rental, I will give up the place.

Q. What do you mean ₱100,000.00 rental?
A. That is only for the establishment [concerned].

Q. What was the period to be covered by the ₱100,000.00 rental?
A. That is monthly basis.

Q. So after telling Mrs. Lauang that you can be amenable to lease the place for ₱100,000.00 monthly, what if any, did Mrs. Lauang tell you?
A. She told me it is very high. And then she asked me if it is still negotiable, I answered, yes.

Q. So, what happened after your clarified to her that [it is] still negotiable?
A. She asked me if there is other condition, and I answered her, yes, if your client can give me advances I can lease my property.

x x x x x x x x x

Q. So what is your answer when you were asked for the amount of the advances?
A. I told her I need 7 million pesos because I need to pay my debts.

x x x x x x x x x

Q. Who was with her when she came over?
A. A certain guy name Ricci and said that he is the assistant manager of the Prime Savings Bank.

Q. What did you and Mr. Ricci talk about?
A. I told him the same story as I talked with Mrs. Lauang.

Q. Was the agreement finally reached between you and Mr. Ricci?
A. Not yet, Sir.

Q. What happened after that?
A. He said that he [will discuss] the matter with his higher officer, the branch manager in the person of Henry Lee.

Q. Were you able to meet this Henry Lee?
A. After a week later.

Q. Who was with Henry Lee?
A. Mrs. Lauang.

Q. Was there a final agreement on the day when you and Henry Lee met?
A. Not yet, he offered to reduce the rental and also the advances. Finally I gave way after 2 or 3 negotiations.

Q. What happened after 2 or 3 negotiations?
A. We arrived at ₱60,000.00 for monthly rentals and ₱6,000,000.00 advances for 100 months.

Q. Was the agreement between you and the representative of the Prime Savings Bank reduced into writing?
A. Yes Sir.

x x x x x x x x x

Q. Now, Mr. Poon, I would like to direct your attention to paragraphs 4 and 5 of the contract of lease which I read: Inasmuch as the leased property is presently mortgaged with

the PCI Bank, the Lessor and the Lessee hereby agree that another property with a clean title shall serve as security for herein Lessee: Provided that the mortgaged property with PCI Bank is cancelled, the Lessee agrees that the above-mentioned property shall be released to herein Lessor; paragraph 5 says: It is hereby stipulated that should the leased property be foreclosed by the PCI Bank or any other banking or financial institution, all unused rentals shall be returned by the Lessor to the Lessee. Now, my question is: Who asked or requested that paragraphs 4 and 5 be incorporated in the contract of lease?

A. Mr. Lee himself.

Q. The representative of the plaintiff?
A. Yes, Sir.

Q. For what purpose did Mr. Lee ask these matters to be incorporated?
A. **Because they are worried that my building might be foreclosed because it is under [mortgage] with the PCI Bank, that is why I gave them protection of a clean title. But I also asked them, what will happen to me, in case your bank will be closed?**

Q. **When you asked that question, what did Mr. Lee tell you?**
A. **He told me that I don't have to worry I will have ₱6,000,000 advances.**

Q. What was your protection as to the 6 million payment made by the plaintiff?
A. That is the protection for me because during that time I have my bakery and I myself [spent] 2 million for the improvement of that bakery and I have sacrificed that for the sake of the offer of lease.

Q. In what manner that you are being protected for that 6 million pesos?
A. **They said that if in case the bank will be closed that advance of 6 million pesos will be forfeited in my favor.**

Q. **And that is what is found in paragraph 24 of the Contract of Lease which I asked you to read?**
A. **That is true.**[44]

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[44] TSN, 27 November 2001, pp. 7-16. Emphasis supplied.

Clearly, the closure of respondent's business was not an unforeseen event. As the lease was long-term, it was not lost on the parties that such an eventuality might occur, as it was in fact covered by the terms of their Contract. Besides, as We have previously discussed, the event was not independent of respondent's will.

The forfeiture clause in the Contract is penal in nature.

Petitioners claim that paragraph 24 was not intended as a penal clause. They add that respondent has not even presented any proof of that intent. It was, therefore, a reversible error on the part of the CA to construe its forfeiture provision of the Contract as penal in nature.

It is settled that a provision is a penal clause if it calls for the forfeiture of any remaining deposit still in the possession of the lessor, without prejudice to any other obligation still owing, in the event of the termination or cancellation of the agreement by reason of the lessee's violation of any of the terms and conditions thereof. This kind of agreement may be validly entered into by the parties. The clause is an accessory obligation meant to ensure the performance of the principal obligation by imposing on the debtor a special prestation in case of nonperformance or inadequate performance of the principal obligation.[45]

It is evident from the above-quoted testimony of Jaime Poon that the stipulation on the forfeiture of advance rentals under paragraph 24 is a penal clause in the sense that it provides for liquidated damages.

Notably, paragraph 5 of the Contract also provides:

5. It is hereby stipulated that should the leased property be foreclosed by PCI Bank or any other banking or financial institution, all unused rentals shall be returned by the LESSOR to the LESSEE; x x x.[46]

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[45] *Fort Bonifacio Lending Corp. v. Yllas Lending Corp.*, 588 Phil. 748 (2008), citing *Country Bankers Insurance Corp. v. Court of Appeals*, 278 Phil. 463 (1991).

[46] *Rollo*, p. 63.

In effect, the penalty for the premature termination of the Contract works both ways. As the CA correctly found, the penalty was to compel respondent to complete the 10-year term of the lease. Petitioners, too, were similarly obliged to ensure the peaceful use of their building by respondent for the entire duration of the lease under pain of losing the remaining advance rentals paid by the latter.

The forfeiture clauses of the Contract, therefore, served the two functions of a penal clause, i.e., (1) to provide for liquidated damages and (2) to strengthen the coercive force of the obligation by the threat of greater responsibility in case of breach.[47] As the CA correctly found, the prestation secured by those clauses was the parties' mutual obligation to observe the fixed term of the lease. For this reason, We sustain the lower courts' finding that the forfeiture clause in paragraph 24 is a penal clause, even if it is not expressly labelled as such.

A reduction of the penalty agreed upon by the parties is warranted under Article 1229 of the Civil Code.

We have no reason to doubt that the forfeiture provisions of the Contract were deliberately and intelligently crafted. Under Article 1196 of the Civil Code,[48] the period of the lease contract is deemed to have been set for the benefit of both parties. Its continuance, effectivity or fulfillment cannot be made to depend exclusively upon the free and uncontrolled choice of just one party.[49] Petitioners and respondent freely and knowingly committed themselves to respecting the lease period, such that

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[47] *Social Security System v. Moonwalk Development and Housing Corp.*, G.R. No. 73345, 7 April 1993, 221 SCRA 119.

[48] Art. 1196. Whenever in an obligation a period is designated, it is presumed to have been established for the benefit of both the creditor and the debtor, unless from the tenor of the same or other circumstances it should appear that the period has been established in favor of one or of the other.

[49] *LL and Company Development and Agro-Industrial Corp. v. Huang Chao Chun*, 428 Phil. 665 (2002).

a breach by either party would result in the forfeiture of the remaining advance rentals in favor of the aggrieved party.

If this were an ordinary contest of rights of private contracting parties, respondent lessee would be obligated to abide by its commitment to petitioners. The general rule is that courts have no power to ease the burden of obligations voluntarily assumed by parties, just because things did not turn out as expected at the inception of the contract.[50]

It must be noted, however, that this case was initiated by the PDIC in furtherance of its statutory role as the fiduciary of Prime Savings Bank.[51] As the state-appointed receiver and

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[50] *New World Developers and Management, Inc. v. AMA Computer Learning Center, Inc.*, G.R. Nos. 187930 & 188250, 23 February 2015, 751 SCRA 331.

[51] Republic Act No. 7653 (1993), Section 30 provides:

SECTION 30. *Proceedings in Receivership and Liquidation*. — Whenever, upon report of the head of the supervising or examining department, the Monetary Board finds that a bank or quasi-bank:

(a) is unable to pay its liabilities as they become due to the ordinary course of business: Provided, That this shall not include inability to pay caused by extraordinary demands induced by financial panic in the banking community;
(b) has insufficient realizable assets, as determined by the Bangko Sentral, to meet its liabilities; or
(c) cannot continue in business without involving probable losses to its depositors or creditors; or
(d) has willfully violated a cease and desist order under Section 37 that has become final, involving acts or transactions which amount to fraud or a dissipation of the assets of the institution; in which cases, the Monetary Board may summarily and without need for prior hearing forbid the institution from doing business in the Philippines and designate the Philippine Deposit Insurance Corporation as receiver of the banking institution.

x x x x x x x x x

The receiver shall immediately gather and take charge of all the assets and liabilities of the institution, administer the same for the benefit of its creditors, and exercise the general powers of a receiver under the Revised Rules or Court but shall not, with the exception of administrative expenditures, pay or commit any act that will involve the transfer or disposition

liquidator, the PDIC is mandated to recover and conserve the assets of the foreclosed bank on behalf of the latter's depositors and creditors.[52] In other words, at stake in this case are not just the rights of petitioners and the correlative liabilities of respondent lessee. Over and above those rights and liabilities is the interest of innocent debtors and creditors of a delinquent bank establishment. These overriding considerations justify the 50% reduction of the penalty agreed upon by petitioners and respondent lessee in keeping with Article 1229 of the Civil Code, which provides:

Art. 1229. The judge shall equitably reduce the penalty when the principal obligation has been partly or irregularly complied with

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of any asset of the institution: Provided, That the receiver may deposit or place the funds of the institution in non-speculative investments. The receiver shall determine as soon as possible, but not later than ninety (90) days from take-over, whether the institution may be rehabilitated or otherwise placed in such a condition so that it may be permitted to resume business with safety to its depositors and creditors and the general public: Provided, That any determination for the resumption of business of the institution shall be subject to prior approval of the Monetary Board.

If the receiver determines that the institution cannot be rehabilitated or permitted to resume business in accordance with the next preceding paragraph, the Monetary Board shall notify in writing the board of directors of its findings and direct the receiver to proceed with the liquidation of the institution. The receiver shall:

x x x x x x x x x

(2) convert the assets of the institution to money, dispose of the same to creditors and other parties, for the purpose of paying the debts of such institution in accordance with the rules on concurrence and preference of credit under the Civil Code of the Philippines **and he may, in the name of the institution, and with the assistance of counsel as he may retain, institute such actions as may be necessary to collect and recover accounts and assets of, or defend any action against, the institution.** The assets of an institution under receivership or liquidation shall be deemed *in custodia legis* in the hands of the receiver and shall, from the moment the institution was placed under such receivership or liquidation, be exempt from any order of garnishment, levy, attachment, or execution. (Emphasis supplied.)

[52] *Balayan Bay Rural Bank, Inc. v. National Livelihood Development Corporation,* G.R. No. 194589, 21 September 2015.

by the debtor. Even if there has been no performance, the penalty may also be reduced by the courts if it is iniquitous or unconscionable.

The reasonableness of a penalty depends on the circumstances in each case, because what is iniquitous and unconscionable in one may be totally just and equitable in another.[53] In resolving this issue, courts may consider factors including but not limited to the type, extent and purpose of the penalty; the nature of the obligation; the mode of the breach and its consequences; the supervening realities; and the standing and relationship of the parties.[54]

Under the circumstances, it is neither fair nor reasonable to deprive depositors and creditors of what could be their last chance to recoup whatever bank assets or receivables the PDIC can still legally recover. Besides, nothing has prevented petitioners from putting their building to other profitable uses, since respondent surrendered the premises immediately after the closure of its business. Strict adherence to the doctrine of freedom of contracts, at the expense of the rights of innocent creditors and investors, will only work injustice rather than promote justice in this case.[55] Such adherence may even be misconstrued as condoning profligate bank operations. We cannot allow this to happen. We are a Court of both law and equity; We cannot sanction grossly unfair results without doing violence to Our solemn obligation to administer justice fairly and equally to all who might be affected by our decisions.[56]

Neither do We find any error in the trial court's denial of the damages and attorney's fees claimed by petitioners. No proof of the supposed expenses they have incurred for the improvement of the leased premises and the payment of respondent's unpaid utility bills can be found in the records. Actual and compensatory

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[53] *Marquez v. Elisan Credit Corporation,* G.R. No. 194642, 6 April 2015.

[54] *Ligutan v. Court of Appeals*, 427 Phil. 42 (2002).

[55] *Borromeo v. Court of Appeals*, 150-B Phil. 770 (1972).

[56] *Carceller v. Court of Appeals*, 362 Phil. 332 (1999).

damages must be duly proven with a reasonable degree of certainty.[57]

To recover moral and exemplary damages where there is a breach of contract, the breach must be palpably wanton, reckless, malicious, in bad faith, oppressive, or abusive. Attorney's fees are not awarded even if a claimant is compelled to litigate or to incur expenses where no sufficient showing of bad faith exists.[58] None of these circumstances have been shown in this case.

Finally, in line with prevailing jurisprudence,[59] legal interest at the rate of 6% per annum is imposed on the monetary award computed from the finality of this Decision until full payment.

WHEREFORE, premises considered, the Petition for Review on Certiorari is **DENIED**. The Court of Appeals Decision dated 29 November 2007 and its Resolution dated 10 July 2008 in CA-G.R. CV No. 75349 are hereby **MODIFIED** in that legal interest at the rate of 6% per annum is imposed on the monetary award computed from the finality of this Decision until full payment.

No costs.

SO ORDERED.

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

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[57] *Public Estates Authority v. Chu*, 507 Phil. 472 (2005).

[58] *Talampas Jr. v. Moldex Realty, Inc*., G.R. No. 170134, 17 June 2015.

[59] *Nacar v. Gallery Frames*, G.R. No. 189871, 13 August 2013, 703 SCRA 439, 458.

FIRST DIVISION

[G.R. No. 188829. June 13, 2016]

REPUBLIC OF THE PHILIPPINES, HON. RAUL S. GONZALEZ, in his capacity as Secretary of the Department of Justice, HON. ALIPIO F. FERNANDEZ, JR., in his capacity as Commissioner of the Bureau of Immigration, HON. ARTHEL B. CAROÑONGAN, HON. TEODORO B. DELARMENTE, HON. JOSE D. CABOCHAN, and HON. FRANKLIN Z. LITTAUA, in their capacity as members of the Board of Commissioners of the Bureau of Immigration, *petitioners, vs.* **DAVONN MAURICE C. HARP,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; ACTIONS; MOOT AND ACADEMIC CASES; THE VOLUNTARY DEPARTURE FROM THE PHILIPPINES OF ONE WHOSE PHILIPPINE CITIZENSHIP HAS BEEN PREVIOUSLY RECOGNIZED AND WHOSE INTENTION TO RETURN TO THE COUNTRY HAS BEEN MANIFESTED DOES NOT RENDER HIS APPEAL MOOT AND ACADEMIC.— Petitioners allege that it is no longer necessary to resolve the appeal of respondent because he has voluntarily departed from the Philippines and is now beyond the legal processes of the country. They argue that pursuant to the ruling in *Lewin v. The Deportation Board,* his voluntary departure has rendered his appeal moot and academic. We find this argument unmeritorious. As explained by this Court in *Gonzalez v. Pennisi, Lewin* involved an alien who entered the Philippines as a temporary visitor and eventually left without any assurance that he would be allowed to return to the country. For obvious reasons, the ruling in that case cannot be applied to others whose Philippine citizenship has also been previously recognized and whose intention to return to the country has likewise been manifested. x x x Like the respondent in *Gonzalez,* respondent herein is also a recognized citizen of the Philippines. He has fought for his citizenship and clearly demonstrated his intent

to return to the country. Consequently, we hold that his departure has not rendered this case moot and academic.

2. ID.; CIVIL PROCEDURE; APPEALS; THE DISMISSAL OF AN APPEAL FILED BEYOND THE REGLEMENTARY PERIOD IS NOT WARRANTED WHEN THE ELEMENT OF INTENT TO DELAY IS CLEARLY ABSENT.— [R]espondent explained that he was able to file his appeal with the CA only on 4 November 2004, because he had to wait for the RTC to grant him leave to withdraw his pending Petition. He asked the Court to consider the fact that the one-day delay in filing the appeal was not caused by his thoughtlessness, but by the need to ensure that he would not violate the rule against forum shopping. x x x The one-day delay in the filing of the Petition is excusable. In *Heirs of Crisostomo v. Rudex International Development Corp.*, the Court explained that the limited period of appeal was instituted to prevent parties from intentionally and unreasonably causing a delay in the. administration of justice. The dismissal of a petition is unwarranted if the element of intent to delay is clearly absent from a case. Here, it is apparent that the delay in the filing of the Petition was for a valid reason, i.e. respondent had to wait for the RTC Order allowing him to withdraw his then pending Petition. It is likewise clear that he did not intend to delay the administration of justice, as he in fact filed the appeal with the CA on the very same day the RTC issued the awaited Order. We also note that in *Gonzalez*, a case involving exactly the same circumstances, the Court ruled that the one-day delay in filing the Petition for Review with the CA was justified x x x. All things considered, a liberal construction of the rules of procedure is in order. The ends of justice would be better served by a review of this case on the merits rather than by a dismissal based on technicalities.

3. POLITICAL LAW; CITIZENSHIP; THE ISSUE OF CITIZENSHIP MAY BE THRESHED OUT AS THE OCCASION DEMANDS AND *RES JUDICATA* ONLY APPLIES ONCE A FINDING OF CITIZENSHIP IS AFFIRMED BY THE COURT IN A PROCEEDING IN WHICH THE PERSON WHOSE CITIZENSHIP IS QUESTIONED IS A PARTY, THE PERSON'S CITIZENSHIP IS RAISED AS A MATERIAL ISSUE, AND THE SOLICITOR GENERAL OR AN AUTHORIZED

REPRESENTATIVE IS ABLE TO TAKE AN ACTIVE PART.— [R]espondent was accorded recognition as a citizen on 24 February 2000. On 24 October 2000, he was issued Identification Certificate No. 018488, which confirmed his status and affirmed his entitlement to all the rights and privileges of citizenship. x x x [T]he recognition granted to respondent has not attained finality. This Court has consistently ruled that the issue of citizenship may be threshed out as the occasion demands. *Res judicata* only applies once a finding of citizenship is affirmed by the Court in a proceeding in which: (a) the person whose citizenship is questioned is a party; (b) the person's citizenship is raised as a material issue; and (c) the Solicitor General or an authorized representative is able to take an active part. Since respondent's citizenship has not been the subject of such a proceeding, there is no obstacle to revisiting the matter in this case.

4. ID.; ID.; THE RULING TO REVOKE A CERTIFICATE OF RECOGNITION MUST BE SUPPORTED BY SUBSTANTIAL EVIDENCE.— As in any administrative proceeding, the exercise of the power to revoke a certificate of recognition already issued requires the observance of the basic tenets of due process. At the very least, it is imperative that the ruling be supported by substantial evidence in view of the gravity of the consequences that would arise from a revocation. In this case, the *DOJ* relied on certain pieces of documentary and testimonial evidence to support its conclusion that respondent is not a true citizen of the Philippines x x x. The Court finds these pieces of evidence inadequate to warrant a revocation of the recognition accorded to respondent. We note that respondent was earlier recognized as a natural-born citizen of the Philippines on the strength of the documentary evidence he presented x x x. The evidence relied upon by the DOJ and the BI is simply not enough to negate the probative value of the documentary evidence submitted by respondent to prove his Philippine citizenship. Without more, the Court finds no reason to set aside the rule that public documents, particularly those related to the civil register, are "*prima facie* evidence of the facts therein contained." Hence, we rely on these documents to declare that respondent is a citizen of the Philippines.

5. ID.; ID.; SUMMARY DEPORTATION PROCEEDINGS CANNOT BE INSTITUTED AGAINST CITIZENS OF THE

PHILIPPINES.— It is settled that summary deportation proceedings cannot be instituted by the BI against citizens of the Philippines. In *Board of Commissioners v. Dela Rosa,* the Court reiterated the doctrine that citizens may resort to courts for protection if their right to live in peace, without molestation from any official or authority, is disturbed in a deportation proceeding. x x x Since respondent has already been declared and recognized as a Philippine citizen by the BI and the DOJ, he must be protected from summary deportation proceedings.

APPEARANCES OF COUNSEL

The Solicitor General for petitioners.
Eduardo R. Robles for respondent.

D E C I S I O N

SERENO, *C.J.*:

Before this Court is a Petition for Review[1] under Rule 45 of the Rules of Court assailing the Decision[2] of the Court of Appeals (CA) dated 16 July 2009 in CA-G.R. SP No. 87272. The CA nullified the Summary Deportation Order[3] issued by the Board of Commissioners of the Bureau of Immigration (BI) against respondent Davonn Maurice Harp.

Petitioners Republic of the Philippines, Hon. Raul S. Gonzalez, in his capacity as Secretary of the Department of Justice (DOJ); Hon. Alipio F. Fernandez, in his capacity as Commissioner of the BI; and Hon. Arthel B. Caroñongan; Hon. Teodoro B. Delarmente, Hon. Jose D. L. Cabochan, and Hon. Franklin Z. Littaua, in their capacities as members of the Board of Commissioners of the BI (petitioners) seek the reinstatement of

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[1] *Rollo,* pp. 13-37.

[2] *Id.* at 38-50. Penned by Associate Justice Priscilla J. Baltazar-Padilla and concurred in by Associate Justices Mariano C. del Castillo (now a member of this Court) and Monina Arevalo-Zenarosa.

[3] *Id.* at 133-141.

(a) the DOJ Resolution[4] dated 18 October 2004 revoking the Order of Recognition and Identity Certificate issued to respondent;[5] and (b) the BI Summary Deportation Order dated 26 October 2004[6] issued after the revocation. Petitioners emphasize that there is substantial evidence to support the finding that respondent is not a Philippine citizen[7] and, therefore, his summary deportation was warranted.[8]

FACTUAL ANTECEDENTS

Respondent Davonn Maurice Harp was born and raised in the United States of America to Toiya Harp and Manuel Arce Gonzalez (Manuel) on 21 January 1977.[9] While on a visit to the Philippines,[10] he was discovered by basketball talent scouts. He was invited to play in the Philippine Basketball League[11] and was eventually drafted to play in the Philippine Basketball Association (PBA).[12]

Sometime in 2002, respondent was among those invited to participate in a Senate investigation jointly conducted by the Committee on Games, Amusement, and Sports; and the Committee on Constitutional Amendments, Revision of Codes and Laws. The Senate inquiry sought to review the processes and requirements involved in the acquisition and determination of Philippine citizenship in connection with the "influx of bogus Filipino-American (Fil-Am) or Filipino-foreign (Fil-foreign) basketball players into the PBA and other basketball associations in the Philippines."[13]

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[4] *Id.* at 130-132.

[5] *Id.* at 131.

[6] *Id.* at 133-141.

[7] *Id.* at 130.

[8] *Id.* at 133.

[9] *Id.* at 40.

[10] *Id.*

[11] *Id.*

[12] *Id.*

[13] *Id.* at 58.

In the course of the inquiry, it was established that respondent had previously obtained recognition as a citizen of the Philippines from the BI[14] and the DOJ[15] upon submission of the following documents:

a) Respondent's birth certificate;

b) A certified true copy of the birth certificate of respondent's father, Manuel;

c) A Certification from the Consulate General of the Philippines stating that Manuel became a citizen of the United States of America only on 10 November 1981;

d) An affidavit affirming Manuel's Filipino citizenship at the time of respondent's birth;

e) Respondent's passport;

f) The passports of respondent's parents; and

g) The marriage contract of respondent's parents.

The Senate committees, however, found reason to doubt the Philippine citizenship of respondent. After a scrutiny of the documents he had submitted and its own field investigation of his purported background, they concluded that he had used spurious documents in support of his Petition for Recognition. In Committee Report No. 256 dated 7 August 2003, the Senate committees explained:

COMMITTEES' FINDINGS

The Committees have the honor to submit the following findings of said inquiry to the Senate after conducting seven (7) public hearings and thorough field investigations.[16]

x x x x x x x x x

D. Devonn Harp presented before the BI and the committees a certified true copy of the Certificate of Live Birth of his father,

[14] *Id.* at 54.

[15] *Id.* at 55.

[16] *Id.* at 58.

Manuel Arce Gonzales, to prove his claim for Philippine citizenship.

It appears, however, that the above certificate of birth is simulated, if not, highly suspicious.

First, the certified true copy of Manuel Arce Gonzales, in photocopy form, appears to have alterations on its face since the entries therein look to be superimposed. Some of the entries as printed in the Certificate of Live Birth appear light while the others dark, not to mention the traces of erasures thereon.

Second, Devonn Harp in his affidavit of Philippine citizenship executed in January 2000 deposed that his father is a certain Manuel S. Gonzales. The discrepancy is in the middle/initial name as the record of birth of his father indicates Manuel Arce Gonzales.

Third, upon field investigations, the marriage of Manual Arce Gonzales' parents, Devonn's alleged grandparents, namely Ernesto Prudencio Gonzalez and Natividad de la Cruz cannot be established. Certifications by offices concerned in this regard were issued and obtained by the field investigators.

Lastly, Ms. Liza T. Melgarejo, barangay secretary of Barangay Alicia, Bago Bantay, Quezon City, certified that 'as per record existing in this office (voters list 2002) there is no person registered/existing under the name of Manual Arce Gonzalez.

She further stated that Block 24, Bago Bantay, Quezon City exists. However, despite efforts exerted by the field investigators, they were not able to find lot 14, the alleged address of Devonn's relatives.[17]

In the report, the Senate committees also directed the BI and the DOJ to examine thoroughly the authenticity of the documents submitted by certain PBA players, including respondent, and to determine if they were indeed citizens of the Philippines.[18]

Pursuant to this directive, the DOJ issued Department Order No. 412 creating a special committee to investigate the citizenship of the PBA players identified in the report.[19] As part of the

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

[18] *Id.* at 65.

[19] *Id.* at 82.

investigation, respondent and the other players were required to submit their position papers to the special committee for consideration. Respondent filed his Position Paper[20] on 14 October 2004.

The DOJ special committee submitted its findings and recommendations in a Memorandum to the Secretary of Justice dated 15 October 2004.[21] With regard to respondent, the committee concluded that there was "substantial evidence to conduct summary deportation proceeding x x x for 'misrepresentation as a Filipino citizen' in applying for recognition before the Bureau of Immigration and the Department of Justice."[22] The Committee relied, in particular, on the findings of the Senate committees and the National Bureau of Investigation (NBI) on the apparent alterations made in the Certificate of Live Birth of respondent's father:

> x x x While we recognize the evidentiary rule that entries in public records like Certificate of Live Birth are prima facie evidence of the facts stated therein, it is worthy to mention that the pieces of information adduced during the Senate Committee investigation have produced clear, strong and convincing evidence to overcome the positive value of the said document.
>
> This Committee further considers the probability that the document itself may have been fraudulently tampered. We concur with the observations of the Senate Committee on the patent alterations appearing on the face of the Certificate of Live Birth of Manuel Arce Gonzales.
>
> Incidentally, the National Bureau of Investigation thru the Questioned Documents Examination Section came up with its own findings that some of the entries in the "Certificate of Live Birth of Manuel Arce Gonzales" have been substantially altered. The summary of the NBI findings are as follows:
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> Laboratory analysis of the specimen submitted under magnification using stereoscopic microscope, magnifying lens, varied lighting process and with the aid of photographic

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[20] *Id.* at 70-81.

[21] *Id.* at 82-129.

[22] *Id.* at 113.

enlargements, reveal evidence of alteration by mechanical erasures (scraping off), obliteration and superimposition on the following areas of the questioned Certificate of Live Birth, as shown by fiber disturbance, differences in type design of typewriter used, typewriter ribbon, tint/shade of writing instrument, and traces of outlines of the original entries could be deciphered as:

- On item no. 3 — in the now appearing typewritten name "Manuel" in Name of Child: Manuel Arce Gonzalez. Traces of the original entry could be deciphered as "N-erto".
- On item no. 6 — in the now appearing typewritten entry "Aug. 11" in Date of Birth: Aug. 11, 1957. The original entry could possibly be "Aug. 13, 1957".
- On item no. 12 — in the now appearing typewritten middle name "Dela Cruz" and the last name "Arce" in Name of Mother: Natividad Dela Cruz Arce. The original entry could partially be deciphered as Natividad Cab-as Breva.
- On item no. 14 — in the now appearing typewritten figure "7" in Age of Mother (at the time of his birth): 37. The original entry could be deciphered as "3".
- On item no. 17a — in the handwritten middle initial "A" and last name "Gonzalez" in Informants Signature written as Natividad A. Gonzalez. The original entry could not be deciphered as portions of it had been covered by the new superimposed entry.
- On item no. 18b — in the handwritten last name "Gonzalez" appearing below the typewritten name Natividad A. Gonzalez. The original entry could not be deciphered due to extensive erasure.
- On the three (3) now appearing handwritten surnames "Gonzalez" in Affidavit To Be Accomplished in Case of An Illegitimate Child (dorsal side of the Certificate of Live Birth). The original entries underneath the three (3) Gonzales signatures could be deciphered as "Breva."[23] (citations omitted; underscoring in the original)

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[23] *Id.* at 109-111.

Acting on the basis of the special committee's findings, DOJ Secretary Gonzalez issued a Resolution dated 18 October 2004[24] revoking the recognition accorded to respondent and five other PBA players.[25] Secretary Gonzalez also directed the BI to undertake summary deportation proceedings against them.

On 20 October 2004, respondent and another PBA player, Michael Alfio Pennisi, filed a Petition for Prohibition with Application for a 72-hour Temporary Restraining Order and Preliminary Injunction with the Regional Trial Court of Pasig City.[26] The petition sought to enjoin the DOJ and the BI proceedings for the revocation of citizenship and the summary deportation of respondent and Pennisi.[27]

On 26 October 2004, the BI ordered the summary deportation of respondent. It noted that the recognition previously accorded to him as a Filipino citizen had been revoked by the DOJ because of the spurious documents submitted in support thereof.[28] Consequently, the BI considered him an improperly documented alien subject to summary deportation proceedings pursuant to BI Memorandum Order Nos. ADD-01-031 and ADD-01-035.[29]

Upon receipt of the Summary Deportation Order, respondent withdrew his petition for prohibition before the RTC.[30] He thereafter filed a Petition for Review with an application for injunction before the CA[31] to seek the reversal of the DOJ Resolution and the BI Summary Deportation Order.

In a Decision dated 16 July 2009,[32] the CA granted the Petition and set aside the deportation order. It held that respondent, who

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[24] *Id.* at 130-132.

[25] *Id.* at 131.

[26] *Id.* at 142-159.

[27] *Id.* at 142.

[28] *Id.* at 139.

[29] *Id.*

[30] *Id.* at 43.

[31] *Id.*

[32] *Id.* at 38-50.

was a recognized citizen of the Philippines, could not be summarily deported;[33] and that his citizenship may only be attacked through a direct action in a proceeding that would respect his rights as a citizen:

> Concomitant to his status as a recognized Filipino citizen, petitioner, therefore, cannot just be summarily deported by the BI. The BI no longer has jurisdiction to revoke the order of recognition it had granted to petitioner as the same order had already become final and executory pursuant to Book VII, Chapter 3, Section 15 of the Administrative Code of 1987. It must be noted that the order of recognition was issued 18 February 2000 and IC No. 018488 was issued on 24 October 2000. The Summary Deportation Order, on the other hand, was issued on 26 October 2004 or more than four years after petitioner was conferred recognition of his Filipino citizenship.
>
> It is worth stressing that when the BI acknowledged petitioner's Filipino citizenship through the issuance of the order of recognition (with the affirmation of the DOJ) and IC No. 018488, the same is the last official act of the government which granted petitioner the rights of a Filipino citizen, the right to due process included. x x x.
>
> x x x x x x x x x
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> Moreover, the Summary Deportation Order collaterally attacks the Filipino citizenship of petitioner. 'This cannot be done. In our jurisdiction, an attack on a person's citizenship may only be done through a direct action for its nullity.' A Filipino citizen has the right to be secure in the enjoyment of the privileges accorded to him attendant to his citizenship. He has the right to live peacefully without perturbation from the authorities. Should he be disturbed by deportation proceedings, like in the instant case, he can resort to the courts for his protection. x x x[34]

The CA, however, refused to settle the main controversy involving the citizenship of respondent.[35] Citing his incorrect resort to a Rule 43 petition to assail the DOJ Resolution, the

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[33] *Id.* at 48.

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

[35] *Id.* at 43.

appellate court opted to resolve only the issues pertaining to the Summary Deportation Order.[36]

ARGUMENTS RAISED

Petitioners assert that in granting the Petition for Review filed by respondent, the CA erred for the following reasons: (1) his appeal was rendered moot and academic by his voluntary departure from the Philippines;[37] (2) the CA had no jurisdiction over his appeal because the petition had been filed out of time;[38] and (3) the appellate court used his Philippine citizenship as a basis to set aside the Summary Deportation Order despite the DOJ's valid revocation of the recognition accorded to him.[39]

Respondent, on the other hand, maintains that he is a recognized natural-born Philippine citizen, who cannot be deprived of his rights and summarily deported by the BI.[40] He alleges that his citizenship was duly established when he filed his petition for recognition before the DOJ and the BI,[41] and that the recognition they granted to him cannot be overturned merely on the basis of the "unfounded conjectures and baseless speculations" of the Senate committees, the DOJ and the NBI.[42]

OUR RULING

We **DENY** the Petition.

Respondent's appeal was not rendered moot and academic by his voluntary departure from the Philippines.

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[36] *Id.*

[37] *Id.* at 21-22.

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

[39] *Id.* at 25-32.

[40] *Id.* at 455-457; 461-462.

[41] *Id.* at 457-459.

[42] *Id.* at 459-460.

Petitioners allege that it is no longer necessary to resolve the appeal of respondent because he has voluntarily departed from the Philippines and is now beyond the legal processes of the country.[43] They argue that pursuant to the ruling in *Lewin v. The Deportation Board*,[44] his voluntary departure has rendered his appeal moot and academic.

We find this argument unmeritorious. As explained by this Court in *Gonzalez v. Pennisi*,[45] Lewin involved an alien who entered the Philippines as a temporary visitor and eventually left without any assurance that he would be allowed to return to the country. For obvious reasons, the ruling in that case cannot be applied to others whose Philippine citizenship has also been previously recognized and whose intention to return to the country has likewise been manifested. In *Gonzalez*, this Court stated:

> However, we agree with respondent that the factual circumstances in *Lewin* are different from the case before us. In *Lewin*, petitioner was an alien who entered the country as a temporary visitor, to stay for only 50 days. He prolonged his stay by securing several extensions. Before his last extension expired, he voluntarily left the country, upon filing a bond, without any assurance from the deportation board that he would be admitted to the country upon his return. The court found that he did not return to the country, and at the time he was living in another country. The court ruled that Lewin's voluntary departure from the country, his long absence, and his status when he entered the country as a temporary visitor rendered academic the question of his deportation as an undesirable alien.
>
> In this case, respondent, prior to his deportation, was recognized as a Filipino citizen. He manifested his intent to return to the country because his Filipino wife and children are residing in the Philippines. The filing of the petitions before the Court of Appeals and before this court showed his intention to prove his Filipino lineage and citizenship, as well as the error committed by petitioners in causing

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[43] *Id.* at 21.

[44] 114 Phil. 248 (1962).

[45] 628 Phil. 194 (2010).

his deportation from the country. He was precisely questioning the DOJ's revocation of his certificate of recognition and his summary deportation by the BI.[46]

Therefore, we rule that respondent's deportation did not render the present case moot.

Like the respondent in *Gonzalez*, respondent herein is also a recognized citizen of the Philippines. He has fought for his citizenship and clearly demonstrated his intent to return to the country.[47] Consequently, we hold that his departure has not rendered this case moot and academic.

The filing of respondent's Petition before the CA was not unreasonably delayed.

Petitioners also argue that the Petition of respondent before the CA should have been dismissed on the ground of late filing.[48] They allege that he only had until 3 November 2004 to file an appeal of the DOJ Resolution, since he received a copy thereof on 19 October 2004.[49] Petitioners contend that because his Petition was filed only on 4 November 2004, the DOJ Resolution had already become final and executory, and the CA no longer had the authority to modify it.[50]

In his Comment,[51] respondent explained that he was able to file his appeal with the CA only on 4 November 2004, because he had to wait for the RTC to grant him leave to withdraw his pending Petition.[52] He asked the Court to consider the fact that the one-day delay in filing the appeal was not caused by his

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[46] *Id.*

[47] *Rollo*, p. 451.

[48] *Id.* at 22-24.

[49] *Id.* at 23.

[50] *Id.* at 24.

[51] *Id.* at 447-464.

[52] *Id.* at 452.

thoughtlessness, but by the need to ensure that he would not violate the rule against forum shopping.[53]

We rule for respondent. The one-day delay in the filing of the Petition is excusable.

In *Heirs of Crisostomo v. Rudex International Development Corp.*,[54] the Court explained that the limited period of appeal was instituted to prevent parties from intentionally and unreasonably causing a delay in the administration of justice. The dismissal of a petition is unwarranted if the element of intent to delay is clearly absent from a case.[55] Here, it is apparent that the delay in the filing of the Petition was for a valid reason, i.e., respondent had to wait for the RTC Order allowing him to withdraw his then pending Petition. It is likewise clear that he did not intend to delay the administration of justice, as he in fact filed the appeal with the CA on the very same day the RTC issued the awaited Order.[56]

We also note that in *Gonzalez*,[57] a case involving exactly the same circumstances, the Court ruled that the one-day delay in filing the Petition for Review with the CA was justified:

A one-day delay does not justify the appeal's dismissal where no element of intent to delay the administration of justice could be attributed to the petitioner. The Court has ruled:

> The general rule is that the perfection of an appeal in the manner and within the period prescribed by law is, not only mandatory, but jurisdictional, and failure to conform to the rules will render the judgment sought to be reviewed final and unappealable. By way of exception, unintended lapses are disregarded so as to give due course to appeals filed beyond the reglementary period on the basis of strong and compelling

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[53] *Id.* at 452-453.

[54] 671 Phil. 721 (2011).

[55] *Id.*

[56] *Rollo*, p. 161.

[57] *Supra* note 45.

> reasons, such as serving the ends of justice and preventing a grave miscarriage thereof. The purpose behind the limitation of the period of appeal is to avoid an **unreasonable** delay in the administration of justice and to put an end to controversies.

Respondent had a valid excuse for the late filing of the petition before the Court of Appeals. It is not disputed that there was a pending petition for prohibition before the trial court. Before filing the petition for review before the Court of Appeals, respondent had to withdraw the petition for prohibition before the trial court. The trial court granted the withdrawal of the petition only on 4 November 2004, the date of filing of the petition for review before the Court of Appeals. Under the circumstances, we find the one-day delay in filing the petition for review excusable. (Citations omitted and capitalized in the original)

We find no reason to depart from the above ruling. All things considered, a liberal construction of the rules of procedure is in order. The ends of justice would be better served by a review of this case on the merits rather than by a dismissal based on technicalities.

The DOJ erroneously revoked the recognition accorded to respondent.

Before proceeding to resolve the central issue in this controversy, we first clarify the parameters of this ruling. The Court is aware that respondent has failed to appeal the CA's dismissal of his Petition insofar as it refers to the DOJ Resolution. While we affirm the doctrine that the resolutions of the DOJ cannot be challenged via a petition for review under Rule 43, the Court believes that the Summary Deportation Order is necessarily intertwined with the DOJ Resolution. The propriety of the deportation proceedings against respondent cannot be determined without passing upon the DOJ's findings on his citizenship.

In the interest of putting an end to the entire controversy, we shall resolve all issues raised by the parties in relation to the DOJ Resolution and the Summary Deportation Order, in particular: (a) the finality of the recognition accorded to respondent as a citizen of the Philippines; (b) the validity of

the DOJ Resolution; and (c) the legality of the Summary Deportation Order.

a) Finality of the Recognition Accorded to Respondent

As the agency tasked to "provide immigration and naturalization regulatory services" and "implement the laws governing citizenship and the admission and stay of aliens,"[58] the DOJ has the power to authorize the recognition of citizens of the Philippines. Any individual born of a Filipino parent is a citizen of the Philippines[59] and is entitled to be recognized as such. [60] Recognition is accorded by the BI and the DOJ to qualified individuals, provided the proper procedure is complied with and the necessary documents are submitted.[61] In this case, respondent was accorded recognition as a citizen on 24 February 2000. On 24 October 2000, he was issued Identification Certificate No. 018488, which confirmed his status and affirmed his entitlement to all the rights and privileges of citizenship.[62]

Petitioners, however, are correct in saying that the recognition granted to respondent has not attained finality. This Court has consistently ruled that the issue of citizenship may be threshed out as the occasion demands.[63] *Res judicata* only applies once a finding of citizenship is affirmed by the Court in a proceeding in which: (a) the person whose citizenship is questioned is a party; (b) the person's citizenship is raised as a material issue; and (c) the Solicitor General or an authorized representative is able to take an active part.[64] Since respondent's citizenship has

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[58] Administrative Code of 1987, Book IV, Title III, Chapter 1, Section 3.

[59] 1987 Constitution, Article IV, Section 1(2); see also 1973 Constitution, Article III, Section 1(2).

[60] Bureau of Immigration Law Instruction No. RBR-99-002.

[61] *Id.*

[62] *Rollo*, p. 56.

[63] *Gonzalez v. Pennisi*, 628 Phil. 194 (2010); *Go, Sr. v. Ramos*, 614 Phil. 451 (2009); *Tecson v. COMELEC*, 468 Phil. 421 (2004).

[64] *Go, Sr. v. Ramos, supra*.

not been the subject of such a proceeding, there is no obstacle to revisiting the matter in this case.

b) Validity of the DOJ Resolution

As in any administrative proceeding, the exercise of the power to revoke a certificate of recognition already issued requires the observance of the basic tenets of due process. At the very least, it is imperative that the ruling be supported by substantial evidence[65] in view of the gravity of the consequences that would arise from a revocation.

In this case, the DOJ relied on certain pieces of documentary and testimonial evidence to support its conclusion that respondent is not a true citizen of the Philippines: (a) the findings of the Senate committees[66] and the NBI[67] that alterations were made in the Certificate of Live Birth of Manuel; (b) the discrepancy between the middle initial found in Manuel's birth certificate and that which appears in respondent's affidavit of citizenship;[68] (c) the results of the Senate's field investigations of respondent's relatives;[69] and (d) a Certification from the Secretary of *Barangay* Alicia, Bago Bantay, Quezon City, stating that "Manuel Arce Gonzalez" was not included in the 2002 list of voters in that *barangay*.[70]

The Court finds these pieces of evidence inadequate to warrant a revocation of the recognition accorded to respondent.

We note that respondent was earlier recognized as a natural-born citizen of the Philippines on the strength of the documentary evidence he presented. He has established that (a) he is the son of Manuel, as indicated in his birth certificate;[71] and (b) Manuel

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[65] *Gonzalez v. Pennisi, supra.*

[66] *Rollo,* p. 61.

[67] *Id.* at 110-111.

[68] *Id.* at 61.

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

[70] *Id.* at 62.

[71] CA *rollo,* p. 46.

was a Filipino citizen when respondent was born, as shown by the former's Certificate of Live Birth[72] and Naturalization Certificate,[73] as well as a Certification[74] issued by the Consulate General of the Philippines in San Francisco. In its Resolution, however, the DOJ decided to attach more importance to the "clear and convincing" rebuttal evidence from the Senate committees and the NBI, which supposedly outweighed the probative value of these authenticated documents.

We are not convinced.

First, the reports relied upon by the DOJ as evidence of the alleged alterations made in Manuel's Certificate of Live Birth are far from conclusive.

From Senate Committee Report No. 256 dated 7 August 2003, it appears that the supposed discovery of alterations was based on a mere photocopy of Manuel's Certificate of Live Birth.[75] Since the original document was not inspected, the committees could not make any categorical finding of purported alterations. They were only able to conclude that Manuel's birth certificate *appeared to be* "simulated, if not, highly suspicious."[76] The Court cannot rely on this inconclusive finding. In the same way that forgery cannot be determined on the basis of a comparison of photocopied instruments,[77] the conclusion that a document has been altered cannot be made if the original is not examined.

Neither can the Court accord any probative value to the NBI report on the questioned document. We note that not only did petitioners fail to submit a copy of this report to the Court; the quoted portions of the report in the Petition and the DOJ Resolution also failed to identify the specimen used by the NBI

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[72] *Id.* at 45.

[73] *Id.* at 48.

[74] *Id.* at 44.

[75] *Id.* at 58.

[76] *Id.*

[77] See: *Heirs of Gregorio v. Court of Appeals*, 360 Phil. 753 (1998).

for its examination.[78] As an appellate court, we cannot look beyond the record to affirm or reverse a ruling.[79] Because of the absence of these crucial facts from the records of the case, the purported contents of the report are unsupported assertions to which the Court can give very little weight.

Moreover, the repeated allegations[80] of respondent that the NBI examined only a copy of his father's birth certificate, and not the original document, remained uncontroverted. The only response of the OSG to this objection is that it remains the responsibility of respondent to show proof that the document he relies upon is genuine.[81] It must be emphasized, however, that Manuel's birth certificate, a public document and an official record in the custody of the Civil Registrar, enjoys the presumption of regularity and authenticity.[82] To defeat these presumptions, the party making the allegation must present clear, positive and convincing evidence of alteration.[83] For obvious reasons, this burden cannot be discharged by the mere submission of an inconclusive report from the Senate Committee and the presentation of an excerpt of an NBI report on the purported alterations.

Second, the Court is not convinced that the other pieces of evidence relied upon by the DOJ sufficiently contradict the claimed Philippine citizenship of respondent. The veracity of that claim is certainly not negated by the results of the field investigation of the Senate, specifically its failure to obtain a record of the

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[78] *Rollo*, pp. 110-111.

[79] The fifth cardinal right in due process in administrative proceedings as stated in *Ang Tibay v. CIR* [69 Phil. 635 (1940)] requires that the decision must be rendered on the evidence presented at the hearing, or at least contained in the record and disclosed to the parties affected; Also see: *Russell v. Southard*, 53 U.S. 139, 158; 13 L. Ed. 927 (1851); and *Holmes v. Trout*, 32 U.S. 171; 8 L. Ed. 647 (1833).

[80] *Rollo*, pp. 186, 460.

[81] *Id.* at 483.

[82] RULES OF COURT, Rule 130, Section 44; Rule 132, Section 23.

[83] *Ladignon v. Court of Appeals*, 390 Phil. 1161 (2000).

marriage between the grandparents of respondent and its inability to find any of his relatives. There are a number of possible explanations for these circumstances — for instance, the marriage of his grandparents may not have been properly reported or the record thereof may have been lost or destroyed; his relatives, on the other hand, may have died or transferred to another place of residence. Based solely on the available pieces of evidence, it is impossible for us to conclude that he deceived the DOJ and the BI about his citizenship.

As to the Certification issued by the Secretary of *Barangay* Alicia, Bago Bantay, Quezon City, the Court finds it irrelevant. Since Manuel became a naturalized American citizen on 10 November 1981,[84] it is only logical that his name no longer appears in the 2002 list of voters in the *barangay*. Finally, the inconsistency between his middle initial in his birth certificate and that which appears in the affidavit of citizenship submitted by respondent has been adequately explained as a mere typographical error.

The evidence relied upon by the DOJ and the BI is simply not enough to negate the probative value of the documentary evidence submitted by respondent to prove his Philippine citizenship. Without more, the Court finds no reason to set aside the rule that public documents, particularly those related to the civil register, are "*prima facie* evidence of the facts therein contained."[85] Hence, we rely on these documents to declare that respondent is a citizen of the Philippines.

c) Validity of the Summary Deportation Order

It is settled that summary deportation proceedings cannot be instituted by the BI against citizens of the Philippines.[86] In *Board of Commissioners v. Dela Rosa*,[87] the Court reiterated the doctrine

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[84] *Rollo*, pp. 51-52.

[85] Civil Code, Article 410; See also Rules of Court, Rule 130, Section 44.

[86] *Chua Hiong v. Deportation Board*, 96 Phil. 665 (1995).

[87] 274 Phil. 1156 (1991).

that citizens may resort to courts for protection if their right to live in peace, without molestation from any official or authority, is disturbed in a deportation proceeding. In that case, we stated:

> However, the rule enunciated in the above-cases admits of an exception, at least insofar as deportation proceedings are concerned. Thus, what if the claim to citizenship of the alleged deportee is satisfactory? Should the deportation proceedings be allowed to continue or should the question of citizenship be ventilated in a judicial proceeding? In Chua Hiong *vs.* Deportation Board (96 Phil. 665 [1955]), this Court answered the question in the affirmative, and We quote:
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> > **When the evidence submitted by a respondent is conclusive of his citizenship, the right to immediate review should also be recognized and the courts should promptly enjoin the deportation proceedings.** A citizen is entitled to live in peace, without molestation from any official or authority, and if he is disturbed by a deportation proceeding, he has the unquestionable right to resort to the courts for his protection, either by a writ of habeas corpus or of prohibition, on the legal ground that the Board lacks jurisdiction. **If he is a citizen and evidence thereof is satisfactory, there is no sense nor justice in allowing the deportation proceedings to continue, granting him the remedy only after the Board has finished its investigation of his undesirability.**
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> > . . . And if the right (to peace) is precious and valuable at all, it must also be protected on time, to prevent undue harassment at the hands of ill-meaning or misinformed administrative officials. Of what use is this much boasted right to peace and liberty if it can be availed of only after the Deportation Board has unjustly trampled upon it, besmirching the citizen's name before the bar of public opinion? (Emphases supplied)

Since respondent has already been declared and recognized as a Philippine citizen by the BI and the DOJ, he must be protected from summary deportation proceedings. We affirm the ruling of the CA on this matter:

> True, "[t]he power to deport an alien is an act of the State. It is an act by or under the authority of the sovereign power. It is a police measure against undesirable aliens whose presence in the country

is found to be injurious to the public good and domestic tranquility of the people." However, in this controversy, petitioner is not an alien. He is a Filipino citizen duly recognized by the BI, the DOJ and the DFA x x x.[88] (Citations omitted)

A final word. The Court is compelled to make an observation on the cavalier way by which the BI, the DOJ and the Senate committee handled this matter. The DOJ and the BI relied on inconclusive evidence — in particular, on questionable reports based on photocopied documents — to take away the citizenship of respondent and even justify his deportation. These acts violate our basic rules on evidences[89] and, more important, the fundamental right of every person to due process.[90]

The Senate committee, for its part, did acknowledge that further investigation of the citizenship of respondent and the authenticity of the documents he submitted was necessary.[91] However, it still proceeded to conclude that his father's Certificate of Live Birth had been simulated and altered.[92] For evident reasons, it was unfair and careless for the committee to make those statements, given the admitted fact that it had examined a mere photocopy of the document. At the least, it cast aspersions on the reputations of respondent and his family and placed the authenticity of public records under suspicion. Even if an

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[88] *Rollo*, p. 49.

[89] Rule 133, Section 5 of the Rules of Court states:

> In cases filed before administrative or quasi-judicial bodies, a fact may be deemed established if it is supported by substantial evidence, or that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.

[90] In the landmark case of *Ang Tibay v. CIR* [69 Phil. 635 (1940)], the Court emphasized that the right to due process in administrative proceedings obligates a tribunal to ensure that there is substantial evidence to support its finding or conclusion. Similarly, Section 10 of the Senate Rules of Procedure Governing Inquiries in Aid of Legislation recognize the applicability in such inquiries of judicial rules of evidence when they affect substantive rights.

[91] *Id.* at 65.

[92] *Id.* at 61.

investigation later controverts the contents of the report, the damage can no longer be completely undone.

The conduct of these three institutions is quite puzzling to the Court considering that any one of them could have simply required the appropriate agencies to present the original documents for inspection. Alternatively, these agencies could have been asked to repeat their examination of the documents using original specimens to determine whether alterations had indeed been made. It is most unfortunate that they failed to use their legal authority to make sure that there was sufficient evidence before they revoked his citizenship.

Furthermore, considering the gravity of the allegation that respondent submitted forged documents to support his claim, government institutions and agencies cannot make this accusation irresponsibly. The detrimental effects of one reckless allegation — on the right of a person to reputation and livelihood, among others — are clearly exemplified in this case. We also emphasize that what is at stake is the citizenship of an individual. This Court will not sanction a revocation of this most basic of rights[93] on frivolous grounds.

WHEREFORE, the Petition is **DENIED**. The Resolution of the Department of Justice dated 18 October 2004 and the Summary Deportation Order dated 26 October 2004 issued by the Bureau of Immigration are hereby **SET ASIDE**.

SO ORDERED.

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

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[93] In his Dissent in *Perez v. Brownell*, 356 U.S. 44, 64; 2 L. Ed. 2d 603, 617 (1958) Chief Justice Warren of the United States Supreme Court explained the nature of the right to citizenship:

> Citizenship is man's basic right for it is nothing less than the right to have rights. Remove this priceless possession and there remains a stateless person, disgraced and degraded in the eyes of his countrymen. He has no lawful claim to protection from any nation, and no nation may assert rights on his behalf.

FIRST DIVISION

[G.R. No. 190506. June 13, 2016]

CORAL BAY NICKEL CORPORATION, *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

SYLLABUS

1. TAXATION; VALUE ADDED TAX (VAT); VAT RULE FOR PEZA REGISTERED ENTERPRISES; RMC 74-99 DISREGARDED THE DISTINCTION UNDER THE OLD VAT RULE AND TOOK INTO CONSIDERATION THE CROSS BORDER DOCTRINE AND THE DESTINATION PRINCIPLE.— Prior to the effectivity of RMC 74-99, the old VAT rule for PEZA-registered enterprises was based on their choice of fiscal incentives, namely: (1) if the PEZA-registered enterprise chose the 5% preferential tax on its gross income in lieu of all taxes, as provided by Republic Act No. 7916, as amended, then it was VAT-exempt; and (2) if the PEZA-registered enterprise availed itself of the income tax holiday under Executive Order No. 226, as amended, it was subject to VAT at 10% 17 (now, 12%). Based on this old rule, *Toshiba* allowed the claim for refund or credit on the part of Toshiba Information Equipment (Phils.), Inc. This is not true with the petitioner. With the issuance of RMC 74-99, the distinction under the old rule was disregarded and the new circular took into consideration the two important principles of the Philippine VAT system: the Cross Border Doctrine and the Destination Principle. Thus, *Toshiba* opined: x x x ***This old rule clearly did not take into consideration the Cross Border Doctrine essential to the VAT system or the fiction of the ECOZONE as a foreign territory.*** It relied totally on the choice of fiscal incentives of the PEZA-registered enterprise. x x x ***Such distinction was abolished by RMC No. 74-99, which categorically declared that all sales of goods, properties, and services made by a VAT-registered supplier from the Customs Territory to an ECOZONE enterprise shall be subject to VAT, at zero percent (0%) rate, regardless of the latter's type or class of PEZA registration; and, thus, affirming the nature of a PEZA-registered or an ECOZONE enterprise as***

a VAT-exempt entity. Furthermore, Section 8 of Republic Act No. 7916 mandates that PEZA shall manage and operate the ECOZONE as a separate customs territory. The provision thereby establishes the fiction that an ECOZONE is a foreign territory separate and distinct from the customs territory. Accordingly, the sales made by suppliers from a customs territory to a purchaser located within an ECOZONE will be considered as exportations. Following the Philippine VAT system's adherence to the Cross Border Doctrine and Destination Principle, the VAT implications are that "no VAT shall be imposed to form part of the cost of goods destined for consumption outside of the territorial border of the taxing authority."

2. ID.; ID.; ID.; ID.; PURCHASES OF GOODS AND SERVICES BY THE PETITIONER THAT WERE DESTINED FOR CONSUMPTION SHOULD BE FREE OF VAT, HENCE NO INPUT VAT SHOULD THEN BE PAID, RENDERING PETITIONER NOT ENTITLED TO CLAIM A TAX REFUND OR CREDIT; PROPER RECOURSE OF THE PETITIONER WAS AGAINST THE SELLER WHO HAD SHIFTED TO IT THE OUTPUT VAT.— The petitioner's principal office was located in Barangay Rio Tuba, Bataraza, Palawan. Its plant site was specifically located inside the Rio Tuba Export Processing Zone — a special economic zone (ECOZONE) created by Proclamation No. 304, Series of 2002, in relation to Republic Act No. 7916. As such, the purchases of goods and services by the petitioner that were destined for consumption within the ECOZONE should be free of VAT; hence, no input VAT should then be paid on such purchases, rendering the petitioner not entitled to claim a tax refund or credit. Verily, if the petitioner had paid the input VAT, the CTA was correct in holding that the petitioner's proper recourse was not against the Government but against the seller who had shifted to it the output VAT following RMC No. 42-03 x x x We should also take into consideration the nature of VAT as an indirect tax. Although the seller is statutorily liable for the payment of VAT, the amount of the tax is allowed to be shifted or passed on to the buyer. However, reporting and remittance of the VAT paid to the BIR remained to be the seller/supplier's obligation. Hence, the proper party to seek the tax refund or credit should be the suppliers, not the petitioner.

APPEARANCES OF COUNSEL

Du-Baladad & Associates for petitioner.
The Solicitor General for respondent.

D E C I S I O N

BERSAMIN, *J.*:

This appeal is brought by a taxpayer whose claim for the refund or credit pertaining to its alleged unutilized input tax for the third and fourth quarters of the year 2002 amounting to ₱50,124,086.75 had been denied by the Commissioner of Internal Revenue. The Court of Tax Appeals (CTA) *En Banc* and in Division denied its appeal.

We sustain the denial of the appeal.

Antecedents

The petitioner, a domestic corporation engaged in the manufacture of nickel and/or cobalt mixed sulphide, is a VAT entity registered with the Bureau of Internal Revenue (BIR). It is also registered with the Philippine Economic Zone Authority (PEZA) as an Ecozone Export Enterprise at the Rio Tuba Export Processing Zone under PEZA Certificate of Registration dated December 27, 2002.[1]

On August 5, 2003,[2] the petitioner filed its Amended VAT Return declaring unutilized input tax from its domestic purchases of capital goods, other than capital goods and services, for its third and fourth quarters of 2002 totalling ₱50,124,086.75. On June 14, 2004,[3] it filed with Revenue District Office No. 36 in Palawan its Application for Tax Credits/Refund (BIR Form 1914) together with supporting documents.

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[1] *Rollo*, p. 54.

[2] *Id.* at 63, 69.

[3] *Id.* at 73.

Due to the alleged inaction of the respondent, the petitioner elevated its claim to the CTA on July 8, 2004 by petition for review, praying for the refund of the aforesaid input VAT (CTA Case No. 7022).[4]

After trial on the merits, the CTA in Division promulgated its decision on March 10, 2008 [5] denying the petitioner's claim for refund on the ground that the petitioner was not entitled to the refund of alleged unutilized input VAT following Section 106 (A) (2) (a) (5) of the National Internal Revenue Code (NIRC) of 1997, as amended, in relation to Article 77 (2) of the Omnibus Investment Code and conformably with the Cross Border Doctrine. In support of its ruling, the CTA in Division cited *Commissioner of Internal Revenue v. Toshiba Information Equipment (Phils.), Inc. (Toshiba)*[6] and Revenue Memorandum Circular ("RMC") No. 42-03.[7]

After the CTA in Division denied its Motion for Reconsideration[8] on July 2, 2008,[9] the petitioner elevated the matter to the CTA *En Banc* (CTA EB Case No. 403), which also denied the petition through the assailed decision promulgated on May 29, 2009.[10]

The CTA *En Banc* denied the petitioner's Motion for Reconsideration through the resolution dated December 10, 2009.[11]

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[4] *Id.* at 132.

[5] *Id.* at 85-101; penned by Associate Justice Olga Palanca-Enriquez with Associate Justices Juanito C. Castañeda, Jr. and Erlinda P. Uy concurring.

[6] G.R. No. 150154, August 9, 2005, 466 SCRA 221.

[7] *Clarifying Certain Issues Raised Relative to the Processing of Claims for Value-Added Tax (VAT) Credit/Refund, Including Those Filed with the Tax and Revenue Group, One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center, Department of Finance (OSS) by Direct Exporters; dated July 15, 200*3.

[8] *Rollo*, pp. 102-106.

[9] *Id.* at 107-108.

[10] *Id.* at 130-144.

[11] *Id.* at 43-45.

Hence, this appeal, whereby the petitioner contends that *Toshiba* is not applicable inasmuch as the unutilized input VAT subject of its claim was incurred from May 1, 2002 to December 31, 2002 as a VAT-registered taxpayer, not as a PEZA-registered enterprise; that during the period subject of its claim, it was not yet registered with PEZA because it was only on December 27, 2002 that its Certificate of Registration was issued;[12] that until then, it could not have refused the payment of VAT on its purchases because it could not present any valid proof of zero-rating to its VAT-registered suppliers; and that it complied with all the procedural and substantive requirements under the law and regulations for its entitlement to the refund.[13]

Issue

Was the petitioner, an entity located within an ECOZONE, entitled to the refund of its unutilized input taxes incurred before it became a PEZA-registered entity?

Ruling of the Court

The appeal is bereft of merit.

We first explain why we have given due course to the petition for review on *certiorari* despite the petitioner's premature filing of its judicial claim in the CTA.

The petitioner filed with the BIR on June 10, 2004 its application for tax refund or credit representing the unutilized input tax for the third and fourth quarters of 2002. Barely 28 days later, it brought its appeal in the CTA contending that there was inaction on the part of the petitioner despite its not having waited for the lapse of the 120-day period mandated by Section 112 (D) of the 1997 NIRC. At the time of the petitioner's appeal, however, the applicable rule was that provided under BIR Ruling No. DA-489-03,[14] issued on December 10, 2003, to wit:

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[12] *Id.* at 22.

[13] *Id.* at 15.

[14] *Commissioner of Internal Revenue v. San Roque Power Corp.*, G.R. Nos. 187485, 196113, 197156, February 12, 2013, 690 SCRA 336, 469.

It appears, therefore, that it is not necessary for the Commissioner of Internal Revenue to first act unfavorably on the claim for refund before the Court of Tax Appeals could validly take cognizance of the case. This is so because of the positive mandate of Section 230 of the Tax Code and also by virtue of the doctrine that the delay of the Commissioner in rendering his decision does not extend the reglementary period prescribed by statute.

Incidentally, the taxpayer could not be faulted for taking advantage of the full two-year period set by law for filing his claim for refund [with the Commissioner of Internal Revenue]. Indeed, no provision in the tax code requires that the claim for refund be filed at the earliest instance in order to give the Commissioner an opportunity to rule on it and the court to review the ruling of the Commissioner of Internal Revenue on appeal. x x x

As pronounced in *Silicon Philippines, Inc. vs. Commissioner of Internal Revenue*,[15] the exception to the mandatory and jurisdictional compliance with the 120+30 day-period is when the claim for the tax refund or credit was filed in the period between December 10, 2003 and October 5, 2010 during which BIR Ruling No. DA-489-03 was still in effect. Accordingly, the premature filing of the judicial claim was allowed, giving to the CTA jurisdiction over the appeal.

As to the main issue, we sustain the assailed decision of the CTA *En Banc*.

The petitioner's insistence, that *Toshiba* is not applicable because Toshiba Information Equipment (Phils.), Inc., the taxpayer involved thereat, was a PEZA-registered entity during the time subject of the claim for tax refund or credit, is unwarranted. The most significant difference between *Toshiba* and this case is that Revenue Memorandum Circular No. 74-99[16] was not yet in effect at the time Toshiba Information Equipment

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[15] G.R. No. 173241, March 25, 2015.

[16] *Tax Treatment of Sales of Goods, Property and Services Made by a Supplier from the Customs Territory to a PEZA Registered Enterprise; and Sale Transactions Made by PEZA Registered Enterprises Within and Without the ECOZONE;* October 15, 1999.

(Phils.), Inc. brought its claim for refund. Regardless of the distinction, however, *Toshiba* actually discussed the VAT implication of PEZA-registered enterprises and ECOZONE-located enterprises in its entirety, which renders *Toshiba* applicable to the petitioner's case.

Prior to the effectivity of RMC 74-99, the old VAT rule for PEZA-registered enterprises was based on their choice of fiscal incentives, namely: (1) if the PEZA-registered enterprise chose the 5% preferential tax on its gross income in lieu of all taxes, as provided by Republic Act No. 7916, as amended, then it was VAT-exempt; and (2) if the PEZA-registered enterprise availed itself of the income tax holiday under Executive Order No. 226, as amended, it was subject to VAT at 10%[17] (now, 12%). Based on this old rule, *Toshiba* allowed the claim for refund or credit on the part of Toshiba Information Equipment (Phils.), Inc.

This is not true with the petitioner. With the issuance of RMC 74-99, the distinction under the old rule was disregarded and the new circular took into consideration the two important principles of the Philippine VAT system: the Cross Border Doctrine and the Destination Principle. Thus, *Toshiba* opined:

> The rule that any sale by a VAT-registered supplier from the Customs Territory to a PEZA-registered enterprise shall be considered an export sale and subject to zero percent (0%) VAT was clearly established only on 15 October 1999, upon the issuance of RMC No. 74-99. Prior to the said date, however, whether or not a PEZA-registered enterprise was VAT-exempt depended on the type of fiscal incentives availed of by the said enterprise. This old rule on VAT-exemption or liability of PEZA-registered enterprises, followed by the BIR, also recognized and affirmed by the CTA, the Court of Appeals, and even this Court, cannot be lightly disregarded considering the great number of PEZA-registered enterprises which did rely on it to determine its tax liabilities, as well as, its privileges.
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> According to the old rule, Section 23 of Rep. Act No. 7916, as amended, gives the PEZA-registered enterprise the option to choose between two sets of fiscal incentives: (a) The five percent (5%)

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[17] *Commissioner of Internal Revenue v. Toshiba Information Equipment (Phils.), Inc., supra* note 6.

preferential tax rate on its gross income under Rep. Act No. 7916, as amended; and (b) the income tax holiday provided under Executive Order No. 226, otherwise known as the Omnibus Investment Code of 1987, as amended.

x x x x x x x x x

This old rule clearly did not take into consideration the Cross Border Doctrine essential to the VAT system or the fiction of the ECOZONE as a foreign territory. It relied totally on the choice of fiscal incentives of the PEZA-registered enterprise. Again, for emphasis, the old VAT rule for PEZA-registered enterprises was based on their choice of fiscal incentives: (1) If the PEZA-registered enterprise chose the five percent (5%) preferential tax on its gross income, in lieu of all taxes, as provided by Rep. Act No. 7916, as amended, then it would be VAT-exempt; (2) If the PEZA-registered enterprise availed of the income tax holiday under Exec. Order No. 226, as amended, it shall be subject to VAT at ten percent (10%). ***Such distinction was abolished by RMC No. 74-99, which categorically declared that all sales of goods, properties, and services made by a VAT-registered supplier from the Customs Territory to an ECOZONE enterprise shall be subject to VAT, at zero percent (0%) rate, regardless of the latter's type or class of PEZA registration; and, thus, affirming the nature of a PEZA-registered or an ECOZONE enterprise as a VAT-exempt entity***.[18] (underscoring and emphasis supplied)

Furthermore, Section 8 of Republic Act No. 7916 mandates that PEZA shall manage and operate the ECOZONE as a separate customs territory. The provision thereby establishes the fiction that an ECOZONE is a foreign territory separate and distinct from the customs territory. Accordingly, the sales made by suppliers from a customs territory to a purchaser located within an ECOZONE will be considered as exportations. Following the Philippine VAT system's adherence to the Cross Border Doctrine and Destination Principle, the VAT implications are that "no VAT shall be imposed to form part of the cost of goods destined for consumption outside of the territorial border of the taxing authority"[19] Thus, *Toshiba* has discussed that:

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[18] *Id.* at 229-231.

[19] Section 2, Revenue Memorandum Circular No. 74-99.

This Court agrees, however, that PEZA-registered enterprises, **which would necessarily be located within ECOZONES, are VAT-exempt entities**, not because of Section 24 of Rep. Act No. 7916, as amended, which imposes the five percent (5%) preferential tax rate on gross income of PEZA-registered enterprises, in lieu of all taxes; but, rather, **because of Section 8 of the same statute which establishes the fiction that ECOZONES are foreign territory.**

It is important to note herein that respondent Toshiba is located within an ECOZONE. An ECOZONE or a Special Economic Zone has been described as —

. . . [S]elected areas with highly developed or which have the potential to be developed into agro-industrial, industrial, tourist, recreational, commercial, banking, investment and financial centers whose metes and bounds are fixed or delimited by Presidential Proclamations. An ECOZONE may contain any or all of the following: industrial estates (IEs), export processing zones (EPZs), free trade zones and tourist/recreational centers.

The national territory of the Philippines outside of the proclaimed borders of the ECOZONE shall be referred to as the Customs Territory.

Section 8 of Rep. Act No. 7916, as amended, mandates that the PEZA shall manage and operate the ECOZONES as a separate customs territory; **thus, creating the fiction that the ECOZONE is a foreign territory. As a result, sales made by a supplier in the Customs Territory to a purchaser in the ECOZONE shall be treated as an exportation from the Customs Territory.** Conversely, sales made by a supplier from the ECOZONE to a purchaser in the Customs Territory shall be considered as an importation into the Customs Territory.[20] (underscoring and emphasis are supplied)

The petitioner's principal office was located in Barangay Rio Tuba, Bataraza, Palawan.[21] Its plant site was specifically located inside the Rio Tuba Export Processing Zone — a special economic zone (ECOZONE) created by Proclamation No. 304, Series of 2002, in relation to Republic Act No. 7916. As such,

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[20] *Commissioner of Internal Revenue v. Toshiba Information Equipment (Phils.), Inc.*, *supra* note 6, at 223-225.

[21] *Rollo*, p. 11.

the purchases of goods and services by the petitioner that were destined for consumption within the ECOZONE should be free of VAT; hence, no input VAT should then be paid on such purchases, rendering the petitioner not entitled to claim a tax refund or credit. Verily, if the petitioner had paid the input VAT, the CTA was correct in holding that the petitioner's proper recourse was not against the Government but against the seller who had shifted to it the output VAT following RMC No. 42-03,[22] which provides:

> In case the supplier alleges that it reported such sale as a taxable sale, the substantiation of remittance of the output taxes of the seller (input taxes of the exporter-buyer) can only be established upon the thorough audit of the suppliers' VAT returns and corresponding books and records. It is, therefore, imperative that the processing office recommends to the concerned BIR Office the audit of the records of the seller.
>
> In the meantime, the claim for input tax credit by the exporter-buyer should be denied without prejudice to the claimant's right to seek reimbursement of the VAT paid, if any, from its supplier.

We should also take into consideration the nature of VAT as an indirect tax. Although the seller is statutorily liable for the payment of VAT, the amount of the tax is allowed to be shifted or passed on to the buyer.[23] However, reporting and remittance of the VAT paid to the BIR remained to be the seller/supplier's obligation. Hence, the proper party to seek the tax refund or credit should be the suppliers, not the petitioner.

In view of the foregoing considerations, the Court must uphold the rejection of the appeal of the petitioner. This Court has repeatedly pointed out that a claim for tax refund or credit is

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[22] *Clarifying Certain Issues Raised Relative to the Processing of Claims for Value-Added Tax (VAT) Credit/Refund, Including Those Filed with the Tax and Revenue Group, One-Stop Shop Inter-Agency Tax Credit and Duty Drawback Center, Department of Finance (OSS) by Direct Exporters;* dated July 15, 2003.

[23] *Consolidated Value-Added Tax Regulations of 2005*, REVENUE REGULATIONS NO. 16-05; took effect on November 1, 2005.

similar to a tax exemption and should be strictly construed against the taxpayer. The burden of proof to show that he is ultimately entitled to the grant of such tax refund or credit rests on the taxpayer.[24] Sadly, the petitioner has not discharged its burden.

WHEREFORE, the Court **AFFIRMS** the decision promulgated on May 29, 2009 in CTA EB Case No. 403; and **ORDERS** the petitioner to pay the costs of suit.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 190644. June 13, 2016]

NDC TAGUM FOUNDATION, INC., ANITA B. SOMOSO, and LIDA U. NATAVIO, *petitioners, vs.* **EVELYN B. SUMAKOTE,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; RULE 45 PETITION; A FACTUAL ISSUE CANNOT BE THRESHED OUT THEREIN; EXCEPTION; PRESENT IN CASE AT BAR.— Dismissals have two facets: the legality of the act of dismissal, which constitutes substantive due process; and the legality of the manner of dismissal, which constitutes procedural due process. In this case, it is not disputed that respondent was terminated from employment for just cause under Article 282 of the Labor Code. The only question to be

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[24] *BPI Leasing Corporation v. Court of Appeals*, G.R. No. 127624, November 18, 2003, 416 SCRA 4, 14.

determined is whether the procedural due process requirements for a valid dismissal were complied with. This is a factual issue. Ordinarily, We do not allow this kind of question to be threshed out in a Rule 45 petition. The divergence between the factual findings of the NLRC and those of the CA, however, constrain Us to revisit the evidence on record.

2. LABOR AND SOCIAL LEGISLATION; LABOR CODE; OMNIBUS RULES IMPLEMENTING THE LABOR CODE; TERMINATION OF EMPLOYMENT; PROCEDURAL REQUIREMENTS.— Book VI, Rule 1, Section 2 of the Omnibus Rules Implementing the Labor Code, provides: "SECTION 2. Security of tenure.— (a) In cases of regular employment, the employer shall not terminate the service of an employee except for just or authorized causes as provided by law, and subject to the requirements of due process. x x x (d) In all cases of termination of employment, the following standards of due process shall be substantially observed: For termination of employment based on just causes as defined in Article 282 of the Labor Code: (i) A written notice served on the employee specifying the ground or grounds for termination, and giving said employee reasonable opportunity within which to explain his side. (ii) A hearing or conference during which the employee concerned, with the assistance of counsel if he so desires is given opportunity to respond to the charge, present his evidence, or rebut the evidence presented against him. (iii) A written notice of termination served on the employee, indicating that upon due consideration of all the circumstances, grounds have been established to justify his termination."

3. ID.; ID.; ID.; ID.; ID.; ALL THAT IS REQUIRED IS A FAIR AND REASONABLE OPPORTUNITY FOR THE EMPLOYEE TO EXPLAIN THE CONTROVERSY AT HAND.— The first letter sent by petitioners did not ask respondent to submit an explanation. It appears, rather, that they had already decided to find a replacement for her and that they were only waiting for the confirmation of her transfer to the UM x x x. It is settled that a full adversarial hearing or conference is not required. All that is required is a fair and reasonable opportunity for the employee to explain the controversy at hand. Yet, even if we consider the letter dated 4 September 2003 as the first notice, there would still be a breach of the procedural due process requirement. The breach

occurred when petitioners did not call a hearing or conference during which respondent could have presented her defense. Instead, they placed her right away under preventive suspension for five (5) days. Then they dismissed her from employment while she was still serving her preventive suspension. Clearly, the alleged opportunities given for her to explain her side, through the letters dated 4 and 15 September 2003, fell short of the minimum standard of what constitutes an opportunity to be heard in administrative proceedings, i.e., a fair and reasonable chance to defend oneself against the bases cited for one's dismissal.

4. CIVIL LAW; CIVIL CODE; OBLIGATIONS AND CONTRACTS; DAMAGES; ATTORNEY'S FEES; NOT AWARDED WHERE NO SUFFICIENT SHOWING OF BAD FAITH IS REFLECTED IN A PARTY'S PERSISTENCE IN PURSUING A CASE OTHER THAN AN ERRONEOUS CONVICTION OF THE RIGHTEOUSNESS OF THE COMPLAINT.— [A]ttorney's fees are not awarded where, as in this case, no sufficient showing of bad faith is reflected in a party's persistence in pursuing a case other than an erroneous conviction of the righteousness of the complaint. The power of the court to award attorney's fees under Article 2208 demands factual, legal, and equitable justification.

APPEARANCES OF COUNSEL

Alabastro & Olaguer Law Offices for petitioners.
Batacan Montejo & Vicencio Law Firm for respondent.

D E C I S I O N

SERENO, *C.J.*:

Before this Court is a Petition for Review on Certiorari assailing the Court of Appeals (CA) Decision[1] which affirmed the

[1] *Rollo*, pp. 34-50. Decision dated 27 April 2009; penned by Associate Justice Jane Aurora C. Lantion with Associate Justices Romulo V. Borja and Edgardo T. Lloren concurring.

Resolution[2] issued by the National Labor Relations Commission (NLRC) dismissing the complaint for illegal dismissal filed by Evelyn B. Sumakote (respondent) against the NDC[3] Tagum Foundation; and Anita B. Somoso (Somoso) and Lida U. Natavio (Natavio), its President and Administrator, respectively. The CA, however, modified the NLRC ruling by awarding, in favor of respondent nominal damages in the amount of ₱30,000 for petitioners' noncompliance with the hearing requirement in dismissal cases.

ANTECEDENT FACTS

Respondent was a full-time nursing instructor at the College of Nursing of the NDC Tagum Foundation before she was appointed as its dean in 1996. Beginning 1999, she also operated a nursing review and caregiver training center while simultaneously working at the NDC Tagum Foundation.[4]

While respondent was still under contract with the NDC Tagum Foundation, the University of Mindanao (UM) engaged her services as consultant for the establishment of the UM's Nursing Department.[5] In February 2003, she was interviewed for deanship at the UM; and within that month, her appointment as full-time program head was approved by the president of the university. She was also listed as faculty member in the permit application it submitted to the Commission on Higher Education (CHED).[6]

In a letter dated 11 February 2003, Natavio advised respondent that her engagement with the UM was in conflict with the interests of the NDC Tagum Foundation, and that it was an act of disloyalty. Moreover, even her work attendance was already

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[2] CA *Rollo*, pp. 42-47; Resolution dated 25 July 2005; penned by Presiding Commissioner Salic B. Dumarpa with Commissioners Proculo T. Sarmen and Jovito C. Cagaanan concurring.

[3] *Rollo*, p. 15; "NDC" is spelled out as "North Davao College" in paragraph 10.03 of the Petition for Review.

[4] *Id.* at 34-35.

[5] CA *Rollo*, p. 326.

[6] *Id.* at 407-409.

affected. She was then requested to formally declare her plan to leave the NDC Tagum Foundation, so it could appoint a new dean.[7]

Respondent did not respond to the letter. On April 2003, she declined the appointment at the UM, as she had decided to stay with the NDC Tagum Foundation.[8]

On 4 September 2003, respondent received another letter from Natavio requiring the former to explain why she should not be dismissed on the ground of neglect of duty because of her moonlighting activities. The letter also stated that respondent not only had poor work attendance, but also neglected to update the school curriculum.[9]

On the following day, respondent submitted a written explanation denying the charges of neglect. She contended that she had not received any compensation from the UM; therefore, her work there could not be considered as moonlighting. She also questioned the timing of the management's objection to her review and training center, considering that it had been operational since 1999.[10]

On 15 September 2003, petitioners placed respondent on preventive suspension for five days pending the outcome of the management's investigation of her supposed moonlighting activities and her reported attempts to pirate some of the school's instructors for transfer to the UM. In a letter of even date, Somoso notified respondent of the latter's preventive suspension and directed her to explain why she should not be dismissed based on the reports.[11]

The next day, respondent submitted a letter denying the latest allegation and seeking a clarification of her employment status.

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[7] *Id.* at 70.

[8] *Id.* at 67.

[9] *Id.* at 76.

[10] *Id.* at 77.

[11] *Id.* at 79.

In addition, she prayed that the management's decision be made only after a proper investigation.[12] In a letter dated 17 September 2003, petitioners notified her of her dismissal from employment effective 18 September 2003.[13]

Upon a Complaint filed by respondent, the labor arbiter declared her dismissal illegal, ordering her reinstatement and the payment of back wages, as well as moral and exemplary damages.[14]

The NLRC reversed the arbiter's Decision. It ruled that respondent was dismissed for just cause because her moonlighting activities constituted dishonesty, serious misconduct, and gross neglect of duty.[15]

The CA, upon Petition for Certiorari filed by respondent, affirmed the findings of the NLRC that she had been dismissed for cause. The appellate court, however, found that she was not afforded the opportunity to be heard. In view of this failing, it ordered petitioners to pay her nominal damages in the amount of ₱30,000.[16]

Petitioners moved for the reconsideration of the award of nominal damages,[17] but the CA denied their motion.[18] Hence, this Petition.

ISSUE

The lone issue to be resolved is whether the CA erred in holding that respondent was not given the opportunity to be heard and to present her defense prior to her dismissal.

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[12] *Id.* at 80.

[13] *Id.* at 81.

[14] *Id.* at 64.

[15] *Id.* at 42-47.

[16] *Rollo*, pp. 48-50.

[17] *Id.* at 51-61.

[18] *Id.* at 62-64.

COURT RULING

We DENY the Petition.

Dismissals have two facets: the legality of the act of dismissal, which constitutes substantive due process; and the legality of the manner of dismissal, which constitutes procedural due process.[19]

In this case, it is not disputed that respondent was terminated from employment for just cause under Article 282 of the Labor Code. The only question to be determined is whether the procedural due process requirements for a valid dismissal were complied with. This is a factual issue. Ordinarily, We do not allow this kind of question to be threshed out in a Rule 45 petition. The divergence between the factual findings of the NLRC and those of the CA, however, constrain Us to revisit the evidence on record.[20]

Book VI, Rule I, Section 2 of the Omnibus Rules Implementing the Labor Code, provides:

SECTION 2. Security of tenure. — (a) In cases of regular employment, the employer shall not terminate the service of an employee except for just or authorized causes as provided by law, and subject to the requirements of due process.

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(d) In all cases of termination of employment, the following standards of due process shall be substantially observed:

For termination of employment based on just causes as defined in Article 282 of the Labor Code:

(i) A written notice served on the employee specifying the ground or grounds for termination, and giving said employee reasonable opportunity within which to explain his side.

(ii) A hearing or conference during which the employee concerned, with the assistance of counsel if he so desires is given

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[19] *Lopez v. Alturas Group of Companies*, 663 Phil. 121 (2011), citing *Tirazona v. Court of Appeals*, 572 Phil. 334 (2008).

[20] *Castillo v. Prudentialife Plans, Inc.*, G.R. No. 196142, 26 March 2014.

opportunity to respond to the charge, present his evidence, or rebut the evidence presented against him.

(iii) A written notice of termination served on the employee, indicating that upon due consideration of all the circumstances, grounds have been established to justify his termination.

In *King of Kings Transport v. Mamac*,[21] this Court elaborated on the above-quoted procedural requirements as follows:

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

(2) After serving the first notice, the employers should schedule and conduct a hearing or conference wherein the employees will be given an opportunity to (1) explain and clarify their defenses to the charge against them; (2) present evidence in support of their defenses; and (3) rebut the evidence presented against them by the management. During the hearing or conference, the employees are given the chance to defend themselves personally, with the assistance of a representative or counsel of their choice. Moreover, the conference or hearing could be used by the parties as an opportunity to come to an amicable settlement.

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

[21] 553 Phil. 108 (2007).

the employees have been considered; and (2) grounds have been established to justify the severance of their employment.[22]

In this case, petitioners argue that respondent was given four notices, referring to the letters dated 11 February 2003, 4 September 2003, 15 September 2003, and 17 September 2003. They claim that all these letters afforded her the opportunity to explain her side and, therefore, she was given ample opportunity to be heard.

We do not agree.

The first letter sent by petitioners did not ask respondent to submit an explanation. It appears, rather, that they had already decided to find a replacement for her and that they were only waiting for the confirmation of her transfer to the UM:

> In this connection, we feel that it would be best if you would just concentrate working with the University of Mindanao full-time. And we shall highly appreciate it if you can formally advise us of your plans to separate from us so that we will assign somebody in [sic] your position as dean of the College of Nursing.
>
> May we hear from you in writing within three (3) days from your receipt of this letter so we can also prepare as what we have to do for the good of school [sic].[23]

It is settled that a full adversarial hearing or conference is not required.[24] All that is required is a fair and reasonable opportunity for the employee to explain the controversy at hand.[25] Yet, even if we consider the letter dated 4 September 2003 as the first notice, there would still be a breach of the procedural due process requirement. The breach occurred when petitioners did not call a hearing or conference during which respondent could have presented her defense.[26] Instead, they placed her

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[22] *Id.* at 115-116.

[23] CA *Rollo*, p. 70.

[24] *Toyota Alabang v. Games*, G.R. No. 206612, 17 August 2015.

[25] *Concepcion v. Minex Import Corp./Minerama Corp.*, 679 Phil. 491 (2012).

[26] *Agullano v. Christian Publishing*, 588 Phil. 43 (2008).

right away under preventive suspension for five (5) days. Then they dismissed her from employment while she was still serving her preventive suspension.

Clearly, the alleged opportunities given for her to explain her side, through the letters dated 4 and 15 September 2003, fell short of the minimum standard of what constitutes an opportunity to be heard in administrative proceedings, i.e., a fair and reasonable chance to defend oneself against the bases cited for one's dismissal.

Somoso and Natavio now lament that they should not have been impleaded in this case. They claim that because they were not the actual employers of respondent, they are entitled to attorney's fees.[27]

Suffice it to say that attorney's fees are not awarded where, as in this case, no sufficient showing of bad faith is reflected in a party's persistence in pursuing a case other than an erroneous conviction of the righteousness of the complaint. The power of the court to award attorney's fees under Article 2208 demands factual, legal, and equitable justification.[28]

Finally, in line with prevailing jurisprudence,[29] legal interest at the rate of 6% per annum is imposed on the nominal damages awarded from the finality of this Decision until full payment.

WHEREFORE, premises considered, the Petition for Review on Certiorari is **DENIED**. The Court of Appeals Decision dated 27 April 2009 is **AFFIRMED with MODIFICATION** in that legal interest at the rate of 6% per annum is imposed on the award of damages from the finality of this Decision until full payment.

SO ORDERED.

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

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[27] *Rollo,* p. 90.

[28] *ABS-CBN Broadcasting Corp. v. Court of Appeals*, 361 Phil. 499 (1999).

[29] *G.J.T. Rebuilders Machine Shop v. Ambos*, G.R. No. 174184, 28 January 2015, citing *Nacar v. Gallery Frames*, G.R. No. 189871, 13 August 2013, 703 SCRA 439, 458.

FIRST DIVISION

[G.R. No. 193455. June 13, 2016]

NATIONAL POWER CORPORATION, *petitioner*, *vs.* **HEIRS OF GREGORIO RAMORAN, NAMELY: DELFIN R. PINEDA, ESPERANZA PINEDA MAGPALI, DIGNA PINEDA ARZADON, CARIDAD R. PINEDA, IMELDA ZIAPNO, TERESITA PINEDA DELFIN, ESTER R. PINEDA, FE Y. UZON, PACENCIA ERFE VERSOZA, IMPRESSION V. CLEMENTE, ALL REPRESENTED BY DELFIN R. PINEDA, ATTORNEY-IN-FACT,** *respondents.* **SPOUSES ARNULFO R. VERSOZA AND PRISCILLA M. VERSOZA; SPOUSES DOMINGO AND DOMINGA GOMEZ; and ERLINDA GOMEZ-OCAY, IN HER BEHALF AND IN BEHALF OF CARLITO, MEDELINA, ANGELISTA, SILVERA, LOLITA, & ROMBERTO, ALL SURNAMED GOMEZ,** *intervenor-respondents.*

SYLLABUS

1. POLITICAL LAW; INHERENT POWERS OF THE STATE; EMINENT DOMAIN; JUST COMPENSATION; AMOUNTS TO AN EFFECTIVE FORBEARANCE ON THE PART OF THE STATE SUBJECT TO THE APPLICABLE INTEREST RATE AT 12% PER ANNUM, COMPUTED FROM THE TIME THE PROPERTY WAS TAKEN UNTIL THE FULL AMOUNT OF JUST COMPENSATION WAS PAID, BUT EFFECTIVE 1 JULY 2013, THE PREVAILING RATE OF INTEREST FOR LOANS OR FORBEARANCE OF MONEY IS 6% PER ANNUM, IN THE ABSENCE OF AN EXPRESS CONTRACT AS TO SUCH RATE OF INTEREST.— In *Republic* [*v. Court of Appeals*], this Court said that just compensation amounted to an ffective forbearance on the part of the state. Applying *Eastern Shipping Lines*, the Court fixed the applicable interest rate at 12% per annum, computed from the time the property was taken until the full amount of just compensation was paid, in order to eliminate the issue of the constant fluctuation and inflation of the value

of the currency over time. Nevertheless, in line with the recent circular of the Monetary Board of the Bangko Sentral ng Pilipinas (BSP-MB) No. 799, Series of 2013, effective 1July 2013, the prevailing rate of interest for loans or forbearance of money is six percent (6%) per annum, in the absence of an express contract as to such rate of interest.

2. ID.; ID.; ID.; ID.; CONCEPT OF "DELAY"; REFERS TO THE FACT THAT THE PROPERTY WAS TAKEN FOR PUBLIC USE BEFORE COMPENSATION WAS DEPOSITED WITH THE COURT HAVING JURISDICTION OVER THE CASE.— The only question that remains is whether there has been a delay in the payment of just compensation for the remaining portion of the property that would warrant the imposition of 12% legal interest. The issue being one of fact, We accord great respect to the finding of the trial court as affirmed by the CA, that the taking of the 23,228-square-meter portion preceded the payment or deposit of just compensation. Petitioner does not even contradict this finding, but merely attributes the delay in the resolution of the case to intervenor-respondents, who had asserted their legal interest over the property, and to the court-appointed commissioners, who had failed to submit their reports on time. Petitioner appears to have misunderstood the concept of "delay" in expropriation cases. The term does not pertain to the length of time that elapsed from the filing of the Complaint until its resolution. Rather, it refers to the fact that property was taken for public use before compensation was deposited with the court having jurisdiction over the case. The argument that the resolution of the case was prolonged by several factors is therefore unmeritorious.

3. ID.; ID.; ID.; ID.; ID.; BETWEEN THE TAKING OF THE PROPERTY AND THE ACTUAL PAYMENT, LEGAL INTERESTS ACCRUE IN ORDER TO PLACE THE OWNERS IN A POSITION AS GOOD AS THE POSITION THEY WERE IN BEFORE THE TAKING OCCURRED.— Clearly, there was delay because [the] property was taken for public use before compensation was paid or deposited with the court. Without prompt payment, compensation cannot be considered "just," for property owners are made to suffer the consequence of being immediately deprived of their land, while being made to wait for a decade or more, before actually receiving

> the amount necessary to cope with their loss. Hence, between the taking of the property and the actual payment, legal interests accrue in order to place the owners in a position as good as the position they were in before the taking occurred. x x x [T]he RTC and the CA imposed legal interest from the time of the filing of the Complaint on 10 February 1995. Both courts, however, failed to determine when petitioner actually took possession of the property. Absent such finding, We are left to rely on the records showing that a Writ of Possession was issued on 2 March 1995. Since it is from this fact that the date of the deprivation of property can be established, it is only proper that accrual of legal interest should begin on that date, not on the date of the filing of the Complaint.

APPEARANCES OF COUNSEL

Tiburcio C. Maningding for respondents Heirs of G. Ramoran.
Corleto R. Castro for respondent Sps. Versoza.
Public Attorney's Office for respondent Sps. Gomez.

D E C I S I O N

SERENO, *C.J.*:

This is a Petition for Review on Certiorari filed by the National Power Corporation (petitioner) through the Office of the Solicitor General assailing the Court of Appeals (CA) Decision[1] in CA-G.R. CV No. 90778. The CA denied petitioner's appeal from the Decision[2] issued by the Regional Trial Court (RTC) Branch 38 in Lingayen, Pangasinan, in Civil Case No. 17355. The RTC imposed legal interest at the rate of 12% per annum from the filing of the complaint until full payment.[3]

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[1] *Rollo*, pp. 40-57; dated 18 August 2010, penned by Associate Justice Ramon R. Garcia and concurred in by Associate Justices Rosmari D. Carandang and Manuel M. Barrios.

[2] *Id.* at 203-210; dated 2 May 2007, penned by Judge Teodoro C. Fernandez.

[3] *Id.* at 11.

The issue is whether the CA properly sustained the imposition of 12%, instead of 6%, legal interest on the amount of just compensation for the unpaid portion of the property.

We affirm the ruling of the CA with the modification that the legal interest shall be 12% from 2 March 1995 until 30 June 2013, and 6% from 1 July 2013 until full satisfaction.

FACTS

Petitioner is a government-owned and controlled corporation created and existing by virtue of Republic Act (R.A.) No. 6395.[4] On 10 February 1995, it filed a Complaint[5] for eminent domain against respondents before the RTC. The complaint was for the expropriation of **67,984** square meters of land in *Barangay* Pangascasan, Sual, Pangasinan, covered by Original Certificate of Title (OCT) No. P-8665 issued in the name of Gregoria Ramoran.[6] The property was to form part of the Sual Coal-Fired Thermal Power Plant project.[7]

On 23 February 1995, petitioner sent respondents a Notice to Take Possession[8] informing them that it had already deposited ₱2,030 — the assessed value of the property — with the Philippine National Bank, Lingayen, Pangasinan. On 27 February 1995, petitioner filed an Urgent Ex-Parte Motion for Issuance of Writ of Possession,[9] after which, a Writ of Possession[10] was issued in its favor on 2 March 1995.

In the course of the proceedings, individual motions for intervention were filed by Spouses Arnulfo and Priscilla Versoza, Spouses Domingo and Dominga Gomez, and Erlinda Gomez-Ocay in her own behalf and also in behalf of Carlito, Medelina,

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[4] *Id.* at 12.

[5] *Id.* at 62-68.

[6] *Id.* at 14.

[7] *Id.* at 43.

[8] See *id.* at 81.

[9] See *id.* at 84-86.

[10] See *id.* at 88.

Angelista, Silvera, Lolita & Romberto, all surnamed Gomez (collectively, intervenor-respondents), in which they claimed legal interest over the property sought to be expropriated.[11] Spouses Versoza pointed out that the entire area sought to be expropriated was not just 67,984 but 91,212 square meters,[12] and records showed that the land covered by OCT No. P-8665 indeed had an area of **91,212** square meters.[13] Petitioner did not dispute the fact that it had taken possession of the entire 91,212 square meters.

On 24 October 1995, the RTC issued an Order for the creation of a committee that would determine the amount of just compensation.[14] On 18 May 1998, the trial court adopted one commissioner's recommendation for compensation of the land at ₱10 per square meter, or a total of ₱1,029,840.[15] On 30 May 2000, a partial compromise agreement,[16] providing for the distribution of this amount corresponding to the 67,984-square-meter portion of the property, was executed by respondents and intervenor-respondents Spouses Versoza. The agreement was approved by the RTC on the same day.[17] On 3 October 2000, a compromise agreement,[18] which fixed the shares in terms of ratios and percentages of the remaining 23,228 square meters, was executed by the respondents and intervenor-respondents. The agreement was approved by the trial court on the same day.[19]

The just compensation for 67,984 square meters having been resolved, petitioner filed a Manifestation.[20] It submitted that

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[11] *Id.* at 44-45, 47.

[12] *Id.* at 44.

[13] See copy of OCT No. P-8665, *id.* at 70.

[14] *Id.* at 45.

[15] *Id.* at 46.

[16] See *id.* at 144-145.

[17] See Decision dated 30 May 2000, *id.* at 146-147.

[18] See *id.* at 159-160.

[19] See Decision dated 3 October 2000, *id.* at 161-162.

[20] *Id.* at 163-164.

the only issue left was the classification of, and just compensation for, the remaining 23,228 square meters.

On 2 May 2007, the RTC ordered petitioner to pay ₱1,675,290[21] for the remaining portion, with legal interest of 12% per annum from 10 February 1995 until full payment.[22] In its Motion for Partial Reconsideration,[23] petitioner insisted that pursuant to *National Power Corporation v. Angas*,[24] the rate should only be 6%. When the motion was denied by the trial court,[25] petitioner appealed to the CA.[26]

The Petition for Review was denied by the CA, which cited *Land Bank of the Phils. v. Chico*,[27] *Land Bank of the Phils. v. Imperial*, [28] *Land Bank of the Phils. v. Wycoco*,[29] *Reyes v. National Housing Authority*, [30] and *Republic v. Court of Appeals*[31] as basis for ruling that the transaction between landowners and the government in expropriation proceedings is one of loan or forbearance of money, which carries the payment of interest at 12% per annum in case of delay of payment.[32]

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[21] Broken down as follows:

Lot No.	Land Classification	Area (in sq.m.)	Price (per sq.m.)	Amount
2-B-1	Salvage Zone	4,725	₱300	₱1,417,500
2-B-2-A	Agricultural	3,638	₱30	₱ 109,140
2-B-2-B	Agricultural-Interior	14,865	₱10	₱ 148,650
Total		23,228		₱ 1,675,290

[22] See Decision dated 2 May 2007, *id.* at 203-210.

[23] See *id.* at 211-216.

[24] G.R. Nos. 60225-26, 8 May 1992, 208 SCRA 542.

[25] See Order dated 25 October 2007, *id.* at 219-221.

[26] See Appellant's Brief, *id.* at 228-249.

[27] 600 Phil. 272 (2009).

[28] 544 Phil. 378 (2007).

[29] 464 Phil. 83 (2004).

[30] 443 Phil. 603 (2003).

[31] 433 Phil. 106 (2002).

[32] *Rollo*, p. 55.

ISSUES

Petitioner contends that the correct rate for legal interest is only 6%, because 1) pursuant to *National Power Corporation v. Angas*,[33] the transaction was not a loan or forbearance of money, goods or credit, and 2) there was no unjustified delay in the payment of just compensation for the remaining portion of the property.

OUR RULING

The case invoked by petitioner was overturned in 2002 by *Republic v. Court of Appeals*.[34] In *Republic*, this Court said that just compensation amounted to an effective forbearance on the part of the state. Applying *Eastern Shipping Lines*, the Court fixed the applicable interest rate at 12% per annum, computed from the time the property was taken until the full amount of just compensation was paid, in order to eliminate the issue of the constant fluctuation and inflation of the value of the currency over time.[35]

Nevertheless, in line with the recent circular of the Monetary Board of the Bangko Sentral ng Pilipinas (BSP-MB) No. 799, Series of 2013, effective 1 July 2013, the prevailing rate of interest for loans or forbearance of money is six percent (6%) per annum, in the absence of an express contract as to such rate of interest.[36]

The only question that remains is whether there has been a delay in the payment of just compensation for the remaining portion of the property that would warrant the imposition of 12% legal interest.

The issue being one of fact, We accord great respect to the finding of the trial court as affirmed by the CA, that the taking

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[33] *Supra* note 24.

[34] *Supra* note 31.

[35] *Apo Fruits Corporation v. Land Bank of the Phils.*, 647 Phil. 251 (2010).

[36] See *Nacar v. Gallery Frames*, G.R. No. 189871, 13 August 2013, 703 SCRA 439.

of the 23,228-square-meter portion preceded the payment or deposit of just compensation. Petitioner does not even contradict this finding, but merely attributes the delay in the resolution of the case to intervenor-respondents, who had asserted their legal interest over the property, and to the court-appointed commissioners, who had failed to submit their reports on time.[37]

Petitioner appears to have misunderstood the concept of "delay" in expropriation cases. The term does not pertain to the length of time that elapsed from the filing of the Complaint until its resolution. Rather, it refers to the fact that property was taken for public use before compensation was deposited with the court having jurisdiction over the case.[38] The argument that the resolution of the case was prolonged by several factors is therefore unmeritorious.

These are the undisputed facts: 1) the Complaint alleged that only 67,984 of 91,212 square meters of land covered by OCT No. P-8665 were being sought to be expropriated; 2) petitioner actually took possession of the entire 91,212 square meters; 3) it paid just compensation for 67,984 square meters only; 4) as early as 19 June 1995, intervenor-respondents Spouses Versoza had already called the attention of petitioner regarding the discrepancy; and 5) petitioner failed to tender even the provisional value of the remaining 23,228 square meters.

Clearly, there was delay because property was taken for public use before compensation was paid or deposited with the court. Without prompt payment, compensation cannot be considered "just," for property owners are made to suffer the consequence of being immediately deprived of their land, while being made to wait for a decade or more, before actually receiving the amount necessary to cope with their loss.[39] Hence, between the taking of the property and the actual payment, legal interests accrue in order to place the owners in a position as good as the position they were in before the taking occurred.[40]

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[37] *Rollo*, p. 33.

[38] See *Republic v. CA*, *supra* note 31.

[39] *Cosculleula v. CA*, 247 Phil. 359 (1988).

[40] See *Cosculleula v. CA, id.*

In its Consolidated Reply, petitioner invokes good faith. It claims that at the time of the filing of the Complaint in 1995, it merely relied on the available tax declaration covering the entire property, which allegedly indicated the area to be 67,984.[41] The records prove otherwise. In its Pre-trial Brief dated 5 April 1995, petitioner specified OCT No. P-8665 as one of the documents to be presented during trial.[42] The certificate of title, which was issued as early as 3 October 1966, shows on its face that the area covered was "9 hectares, 12 ares, and 12 centares" or 91,212 square meters.[43] The lawyers who signed that pleading are reminded of Canon 10.1 of the Code of Professional Responsibility: "A lawyer shall not do any falsehood, nor consent to the doing of any in Court; nor shall he mislead, or allow the Court to be misled by any artifice." The Court expects candor from its officers.

On a last note, the RTC and the CA imposed legal interest from the time of the filing of the Complaint on 10 February 1995. Both courts, however, failed to determine when petitioner actually took possession of the property. Absent such finding, We are left to rely on the records showing that a Writ of Possession was issued on 2 March 1995. Since it is from this fact that the date of the deprivation of property can be established, it is only proper that accrual of legal interest should begin on that date, not on the date of the filing of the Complaint.

WHEREFORE, the Petition is **DENIED**. The Court of Appeals Decision dated 18 August 2010 in CA-G.R. CV No. 90778 is hereby **AFFIRMED** with **MODIFICATION**. The just compensation shall be subject to legal interest at the rate of 12% per annum from 2 March 1995 to 30 June 2013 and, thereafter, 6% per annum from 1 July 2013 until full payment is made, pursuant to *Bangko Sentral ng Pilipinas* Monetary Board Circular No. 799, Series of 2013, and applicable jurisprudence.

SO ORDERED.

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

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[41] *Rollo,* p. 334.

[42] *Id.* at 94.

[43] *Supra* note 13.

EN BANC

[A.C. No. 7330. June 14, 2016]

JUDGE GREGORIO D. PANTANOSAS, JR., *complainant, vs.* **ATTY. ELLY L. PAMATONG,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; MUST CONDUCT THEMSELVES WITH GOOD FIDELITY TOWARDS THE COURTS IN ORDER NOT TO ERODE THE FAITH AND TRUST OF THE PUBLIC IN THE JUDICIARY.— [I]t is the sworn duty of a lawyer to maintain towards the Courts a respectful attitude, "not for the sake of the temporary incumbent of the judicial office, but for the maintenance of its supreme importance." It is precisely for this reason that the Lawyer's Oath enjoins all members of the bar to conduct themselves with good fidelity towards the courts in order not to erode the faith and trust of the public in the judiciary. x x x It is with this exacting standard that we measure respondent Pamatong, and find him wanting. It is not disputed that the *Motion for Inhibition* filed by respondent Pamatong contained blatant accusations of corruption against complainant Pantanosas, and then some. As counsel for the plaintiffs in Civil Case No. 2006-176, it was incumbent upon respondent Pamatong to observe and maintain respect towards the judicial office then being occupied by complainant Pantanosas. Instead of insisting on similar conduct from his clients, respondent Pamatong was the first to cast doubt on the impartiality and independence of the court. x x x That the slanderous remarks x x x were inserted in no less than a public record, *i.e.*, *Motion for Inhibition*, makes matters even worse. Even granting that the bribery charges were true, such personal attacks against the person of complainant Pantanosas should have been reserved for a different forum and certainly not included in a motion filed before a court of law. To be sure, a lawyer is obliged to abstain from scandalous, offensive or menacing language before the courts. As a supposed officer of the court, such behavior exhibited by respondent Pamatong only serves to betray his utter lack of reverence towards the courts, which promotes nothing but the degradation of the administration of justice.

2. ID.; ID.; SHOULD REFRAIN FROM ATTRIBUTING TO A JUDGE MOTIVES NOT SUPPORTED BY THE RECORD OR HAVE NO MATERIALITY TO THE CASE AND SHOULD SUBMIT GRIEVANCES AGAINST JUDGES TO THE PROPER AUTHORITIES ONLY.— The records also disclose that a news article detailing the events that precipitated the bribery charge against complainant Pantanosas was published on September 15, 2006 with the participation of respondent Pamatong. At the outset, it bears stressing that lawyers should refrain from attributing to a judge motives not supported by the record or have no materiality to the case. Here, respondent Pamatong had no reason to divulge his grievances before the public as he had already lodged a complaint against complainant Pantanosas with the OCA on September 12, 2006. x x x Moreover, such action by respondent Pamatong of resorting to the press was highly irresponsible and is contrary to his duty to submit grievances against judges to the proper authorities only.

3. ID.; ID.; DUTY TO UPHOLD THE DIGNITY AND AUTHORITY OF THE COURTS, VIOLATED IN CASE AT BAR; PENALTY.— As regards the recommended penalty of the IBP of suspension from the practice of law for three (3) years, we note that, in similar situations, we had imposed a suspension of less than three (3) years. In *Judge Lacurom v. Atty. Jacoba*, which involved similar facts to the case at bench, this Court suspended the respondent from the practice of law for two (2) years for using offensive language directed towards the complainant judge in a motion filed before the court x x x. Similarly, in *Judge Baculi v. Atty. Battung*, this Court meted the penalty of suspension for one (1) year for the violation of Rule 11.03 of the CPR by the respondent therein due to his in-court demeanor during a motion hearing x x x. Meanwhile, in *Re: Suspension of Atty. Rogelio Z. Bagabuyo*, this Court imposed the penalty of suspension for one (1) year for the respondent's act of resorting to the press instead of availing himself only of judicial remedies in airing out his grievances x x x. From the foregoing, we therefore deem it proper to reduce the period of suspension from three (3) years, as recommended, to two (2) years only.

4. ID.; ID.; HAVE THE RIGHT, BOTH AS AN OFFICER OF THE COURT AND AS A CITIZEN, TO CRITICIZE IN

PROPERLY RESPECTFUL TERMS AND THROUGH LEGITIMATE CHANNELS THE ACTS OF COURTS AND JUDGES, BUT CRITICISMS, NO MATTER HOW TRUTHFUL, SHALL NOT SPILL OVER THE WALLS OF DECENCY AND PROPRIETY.— [L]awyers have the right, both as an officer of the court and as a citizen, to criticize in properly respectful terms and through legitimate channels the acts of courts and judges. However, closely linked to such rule is the cardinal conditions that criticisms, no matter how truthful, shall not spill over the walls of decency and propriety. To that end, the duty of a lawyer to his client's success is wholly subordinate to the administration of justice. True, lawyers must always remain vigilant against unscrupulous officers of the law. However, the purification of our justice system from venal elements must not come at the expense of decency, and worse, the discrediting of the very system that it seeks to protect.

APPEARANCES OF COUNSEL

Mutia Trinidad Venadas & Pantanosas Law Offices for complainant.

D E C I S I O N

CAGUIOA, *J.*:

The practice of law is a privilege burdened with conditions and is reserved only for those who meet the twin standards of legal proficiency and morality.[1] It is so delicately imbued with public interest that it is both a power and a duty of this Court to control and regulate it in order to protect and promote the public welfare.[2] In this regard, this Court will not hesitate to hold its officers accountable for misconduct and the violation of the duty to respect the courts.

The facts culled from the records follow.

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[1] See *Sps. Garcia v. Bala*, 512 Phil. 486 (2005).

[2] *Petition for Leave to Resume Practice of Law, Benjamin M. Dacanay*, 565 Phil. 165, 168 (2007).

During the time period material to this case, complainant Judge Gregorio D. Pantanosas, Jr. (Pantanosas) was the presiding judge of the Regional Trial Court of Cagayan de Oro City, Branch 20 (RTC).[3] Respondent Atty. Elly L. Pamatong (Pamatong) was the counsel of plaintiffs in Civil Case No. 2006-176, entitled *Nick Otero, et al. v. Sheriff of the MTCC Branch 3, Cagayan de Oro City, et al.* for injunction with damages, which was then pending before the RTC. [4]

On September 8, 2006, during the hearing of an application for the issuance of a temporary restraining order (TRO) in Civil Case No. 2006-176, respondent Pamatong was allegedly asked by complainant Pantanosas to remove his *copia* (a hat worn by Muslims) in open court.[5] Respondent Pamatong requested to be exempted allegedly due to religious grounds and embarrassment towards his "bald pate."[6] Complainant Pantanosas thereafter obliged with a caveat that at the next hearing, he would no longer tolerate the wearing of the *copia* inside the courtroom.[7]

Three (3) days after, or on September 11, 2006, respondent Pamatong filed an *Extremely Urgent Motion/Demand for Inhibition or Recusal* in Civil Case No. 2006-176 (*Motion for Inhibition*), which contained the following remarks:

> 6. Finally, in my thirty (30) years of law practice, I never encountered a Judge who appears to be as corrupt as you are, thereby giving me the impression that you are a disgrace to the Judicial System of this land who does not deserved (*sic*) to be a member of the Philippine Bar at all.[8]

On the same day, complainant Pantanosas issued an *Order* refuting all allegations of abusive language and corruption and

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[3] *Rollo,* p. 1.

[4] *Id.* at 2.

[5] *Id.* at 2-3.

[6] *Id.* at 3.

[7] *Id.*

[8] *Id.* at 8.

denying the *Motion for Inhibition* for lack of basis while ordering respondent Pamatong to show cause why he should not be cited in contempt of court.[9] In compliance with the directive of the RTC, respondent Pamatong filed his *Answer to the Order to Show Cause and Motion for Reconsideration*.[10]

On September 18, 2006, complainant Pantanosas filed a *Complaint for Disbarment* dated September 15, 2006 (*Disbarment Complaint*)[11] before this Court against respondent Pamatong on the following grounds: (i) violation of Canon 8 of the Code of Professional Responsibility (CPR)[12] for the language employed by respondent Pamatong in the *Motion for Inhibition*, and (ii) violation of Canons 1[13] and 11[14] of the CPR for engaging in dishonest and deceitful conduct by supposedly causing the publication of an alleged bribe in a local newspaper and maliciously imputing motives to complainant Pantanosas, thereby casting dishonor to and distrust in the judicial system.[15]

On October 25, 2006, this Court issued a *Resolution*, requiring respondent Pamatong to file his comment to the *Disbarment Complaint* within ten (10) days from receipt of notice thereof.[16]

On December 28, 2006, respondent Pamatong timely filed his *Comment on the Complaint for Disbarment and Counter-Complaint* (*Comment*).[17] Following the September 8, 2006 incident, respondent Pamatong alleged in his *Comment* that he

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

[10] *Id.* at 37-39.

[11] *Id.* at 1-6.

[12] Rule 8.01 – A lawyer shall not, in his professional dealings, use language which is abusive, offensive or otherwise improper.

[13] Rule 1.01 – A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.

[14] Rule 11.04 – A lawyer shall not attribute to a judge motives not supported by the record or have no materiality to the case.

[15] *Rollo*, p. 13.

[16] *Id.* at 14.

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

filed a complaint against complainant Pantanosas with the Office of the Court Administrator (OCA) on September 12, 2006, which was docketed as A.M. OCA IPI No. 07-2541-RTJ.[18] Notably, said complaint with the OCA was eventually dismissed through a *Resolution* dated February 28, 2007 issued by this Court.[19] Respondent Pamatong also alleged in his *Comment* that he caused the filing of two (2) separate complaints with two (2) separate offices, namely the Commission on Human Rights[20] and the Office of the Ombudsman.[21]

In the main, respondent Pamatong averred in his *Comment* that the actual courtroom demeanor of complainant Pantanosas during the September 8, 2006 hearing was overbearing, arrogant and derogatory, while also maintaining the truth of the bribery allegations launched against complainant Pantanosas.[22] By way of counter-complaint, respondent Pamatong claimed that the alleged discriminatory conduct of complainant Pantanosas violated Canons 1,[23] 2,[24] and 3[25] of the Code of Judicial Conduct.

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[18] *Id.* at 27-31, *Solicitation of One-Million-Peso Bribe Money, Violation of Rule 137 of the Rules of Court & Gross Violation of Canon 1, Canon 2, & Canon 3 of the Code of Judicial Conduct and Judicial Assault Against Freedom of Religion* dated September 11, 2006.

[19] *Id.* at 224.

[20] *Id.* at 24-26, *Complaint for Violation of Human Rights and Related Offenses Pursuant to the Applicable Provisions of the Constitution and the Universal Declaration of Human Rights* dated September 14, 2006.

[21] *Id.* at 32-36, *Rev. Sultan Elly Velez Lao Pamatong, Esquire's Sworn Statement on (A) the Illegal Demolition of Two Parcels of Land Covered by Case No. 4 OCT. 1310 and (B) Case No. 2006-176 Pending with the RTC of Cagayan De Oro City Wherein Judge Gregorio D. Pantanosas Asked for a One-Million-Peso Bribe Money* dated September 11, 2006.

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

[23] Rule 1.01 – A judge should be the embodiment of competence, integrity and independence.

[24] Rule 2.01 – A judge should so behave at all times as to promote public confidence in the integrity and impartiality of the judiciary.

[25] Rule 3.12 – A judge should take no part in a proceeding where the judge's impartiality might reasonably be questioned. x x x

Respondent Pamatong alleged that in a meeting with complainant Pantanosas in his chambers two (2) days before the September 8, 2006 hearing, the latter allegedly solicited from him One Million Pesos (₱1,000,000.00) in exchange for the issuance of a TRO in Civil Case No. 2006-176.[26] Respondent Pamatong countered that during the TRO hearing on September 8, 2006, he was initially asked by the complainant-judge to approach the bench in order to inquire about the alleged bribe.[27] Upon disclosing that he was unable to secure the money, respondent Pamatong claimed that he was subjected to anti-Islamic comments and humiliating conduct by complainant Pantanosas.[28]

On February 5, 2007, this Court issued a *Resolution* referring the *Disbarment Complaint* to the Integrated Bar of the Philippines (IBP) for investigation, report and recommendation or decision.[29] The case was initially set for mandatory conference on July 23, 2007.[30] After due proceedings, the mandatory conference was terminated and both parties were required to file their respective position papers by the investigating commissioner, Commissioner Manuel M. Maramba.[31] Accordingly, both parties filed their position papers dated January 5, 2009[32] and January 16, 2009,[33] respectively.

On April 19, 2010, this Court issued a *Resolution*, requiring the IBP to inform the Court of the status of the case.[34] In compliance with this Court's directive, the IBP, through Commissioner Albert R. Sordan (Sordan), filed its *Compliance*

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[26] *Rollo*, p. 29.

[27] *Id.* at 28.

[28] *Id.* at 29.

[29] *Id.* at 76.

[30] *Id.* at 147.

[31] *Id.* at 187.

[32] *Id.* at 188-194.

[33] *Id.* at 216-223.

[34] *Id.* at 228.

dated June 25, 2010,[35] informing this Court that the case was among those re-assigned to Commissioner Sordan for investigation, report and recommendation, which was duly noted by this Court in its *Resolution* dated September 8, 2010.[36]

Thus, on August 6, 2010, Commissioner Sordan rendered a *Report and Recommendation*, the dispositive portion of which reads:

> **WHEREFORE**, it is recommended that for violation of the lawyer's oath and breach of ethics of the legal profession as embodied in the Code of Professional Responsibility, **Atty. Elly V. Pamatong** be **SUSPENDED** from the practice of law for **ONE (1) YEAR**, with a **STERN WARNING** that a repetition of the same or similar acts will be dealt with more severely.[37]

On December 15, 2012, in a *Resolution* of even date, the IBP Board of Governors resolved to adopt and approve, with modification the *Report and Recommendation* dated August 6, 2010:

> *RESOLVED to ADOPT and APPROVE, as it is hereby unanimously ADOPTED and APPROVED,* ***with modification****, the Report and Recommendation of the Investigating Commissioner in the above-entitled case, herein made part of this Resolution as Annex "A", and finding the recommendation fully supported by the evidence on record and the applicable laws and rules, and considering Respondent's violation of the Lawyer's Oath and breach of ethics of the legal profession, Atty. Elly V. Pamatong is hereby* ***SUSPENDED from the practice of law for three (3) years*** *with a stern Warning that a repetition of a similar act shall be dealt with more severely.*[38]

Respondent Pamatong then filed a *Motion for Reconsideration and Complaint vs. Commissioner Albert R. Sordan and the*

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[35] *Id.* at 230-231.

[36] *Id.* at 232.

[37] *Id.* at 86.

[38] *Id.* at 78.

IBP Board of Governors dated March 14, 2013,[39] which was subsequently denied through a *Resolution* dated March 22, 2014.[40]

Thereafter, in a *Resolution* dated January 13, 2016, this Court noted the transmittal of the documents pertaining to the case, as well as the notices of resolution dated December 15, 2012 and March 22, 2014, respectively.[41] In view of the penalty imposed, the case was referred to this Court *En Banc*.

For our resolution therefore is the liability of respondent Pamatong under the CPR and for violation of his oath as a member of the bar.

After a judicious examination of the records and the submissions of the parties, we find no cogent reason to disagree with the findings of the IBP in its *Resolution* dated December 15, 2012.[42] However, we modify the penalty accordingly for the reasons to be discussed below.

It cannot be overemphasized that it is the sworn duty of a lawyer to maintain towards the Courts a respectful attitude, "not for the sake of the temporary incumbent of the judicial office, but for the maintenance of its supreme importance."[43] It is precisely for this reason that the Lawyer's Oath enjoins all members of the bar to conduct themselves with good fidelity towards the courts[44] in order not to erode the faith and trust of the public in the judiciary.

As succinctly held in our previous ruling in *Pobre v. Defensor-Santiago*:

A lawyer is an officer of the courts; he is, "like the court itself, an instrument or agency to advance the ends of justice." **His duty**

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[39] *Id.* at 89-99.

[40] *Id.* at 237.

[41] *Id.* at 250.

[42] *Id.* at 78.

[43] *Pobre v. Defensor-Santiago*, 613 Phil. 352, 363 (2009).

[44] Lawyer's Oath.

is to uphold the dignity and authority of the courts to which he owes fidelity, "not to promote distrust in the administration of justice." Faith in the courts, a lawyer should seek to preserve. For, to undermine the judicial edifice "is disastrous to the continuity of government and to the attainment of the liberties of the people." Thus has it been said of a lawyer that **"[a]s an officer of the court, it is his sworn and moral duty to help build and not destroy unnecessarily that high esteem and regard towards the courts so essential to the proper administration of justice.**[45] (Emphasis supplied)

It is with this exacting standard that we measure respondent Pamatong, and find him wanting.

It is not disputed that the *Motion for Inhibition* filed by respondent Pamatong contained blatant accusations of corruption against complainant Pantanosas, and then some. As counsel for the plaintiffs in Civil Case No. 2006-176, it was incumbent upon respondent Pamatong to observe and maintain respect towards the judicial office then being occupied by complainant Pantanosas.[46] Instead of insisting on similar conduct from his clients, respondent Pamatong was the first to cast doubt on the impartiality and independence of the court. Worth repeating below are the invectives directed by respondent Pamatong against complainant Pantanosas:

> 6. Finally, in my thirty (30) years of law practice, **I never encountered a Judge who appears to be as corrupt as you are**, thereby giving me the impression that **you are a disgrace to the Judicial System** of this land who does not deserved (*sic*) to be a member of the Philippine Bar at all.[47] (Emphasis supplied)

That the slanderous remarks cited above were inserted in no less than a public record, *i.e.*, *Motion for Inhibition*, makes matters even worse. Even granting that the bribery charges were

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[45] *Pobre v. Defensor-Santiago, supra* note 43, at 364, citing *Surigao Mineral Reservation Board v. Cloribel*, 142 Phil. 1, 15-16 (1970).

[46] Canon 11, Code of Professional Responsibility.

[47] *Rollo*, p. 8.

true, such personal attacks against the person of complainant Pantanosas should have been reserved for a different forum and certainly not included in a motion filed before a court of law. To be sure, a lawyer is obliged to abstain from scandalous, offensive or menacing language before the courts.[48] As a supposed officer of the court, such behavior exhibited by respondent Pamatong only serves to betray his utter lack of reverence towards the courts, which promotes nothing but the degradation of the administration of justice.

The records also disclose that a news article detailing the events that precipitated the bribery charge against complainant Pantanosas was published on September 15, 2006 with the participation of respondent Pamatong. At the outset, it bears stressing that lawyers should refrain from attributing to a judge motives not supported by the record or have no materiality to the case.[49]

Here, respondent Pamatong had no reason to divulge his grievances before the public as he had already lodged a complaint against complainant Pantanosas with the OCA on September 12, 2006.[50] Accordingly, owing to the baseless and impulsive charges filed by respondent Pamatong, the OCA disposed of the complaint using the following language:

A.M. OCA IPI No. 07-2541-RTJ (*Rev. Sultan Elly Velez Lao Pamatong, Esq. vs. Judge Gregorio D. Pantanosas, Jr., Presiding Judge, Regional Trial Court, Branch 20, Cagayan de Oro City*) — The Court ***NOTES*** the Report dated 12 January 2007 of the Office of the Court Administrator on the verified complaint dated 11 September 2006 x x x **finding the complaint devoid of merit because complainant did not present any evidence, other than his bare allegation, to prove the charge of bribery.**

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[48] Rules 8.01 & 11.03, Code of Professional Responsibility.

[49] Rule 11.04, Code of Professional Responsibility.

[50] *Rollo*, pp. 27-31, *Solicitation of One-Million-Peso Bribe Money, Violation of Rule 137 of the Rules of Court & Gross Violation of Canon 1, Canon 2, & Canon 3 of the Code of Judicial Conduct and Judicial Assault Against Freedom of Religion* dated September 11, 2006.

Upon the recommendation of the Office of the Court Administrator, the Court resolves to ***DISMISS*** the instant administrative complaint against Judge Gregorio D. Pantanosas, Jr. for lack of merit.[51] (Emphasis supplied)

Moreover, such action by respondent Pamatong of resorting to the press was highly irresponsible and is contrary to his duty to submit grievances against judges to the proper authorities only.[52] Clearly, respondent Pamatong was motivated solely by improper motives in connection with the TRO application in Civil Case No. 2006-176.

As regards the recommended penalty of the IBP of suspension from the practice of law for three (3) years, we note that, in similar situations, we had imposed a suspension of less than three (3) years.

In *Judge Lacurom v. Atty. Jacoba*, which involved similar facts to the case at bench, this Court suspended the respondent from the practice of law for two (2) years for using offensive language directed towards the complainant judge in a motion filed before the court:

No doubt, **the language contained in the 30 July 2001 motion greatly exceeded the vigor required of Jacoba to defend ably his client's cause. We recall his use of the following words and phrases: abhorrent nullity, legal monstrosity, horrendous mistake, horrible error, boner, and an insult to the judiciary and an anachronism in the judicial process.** Even Velasco-Jacoba acknowledged that the words created "a cacophonic picture of total and utter disrespect."

Respondents nonetheless try to exculpate themselves by saying that every remark in the 30 July 2001 motion was warranted. We disagree.

Well-recognized is the right of a lawyer, both as an officer of the court and as a citizen, to criticize in properly respectful terms and through legitimate channels the acts of courts and judges. However, even the most hardened judge would be scarred by the scurrilous

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[51] *Id.* at 224.

[52] Rule 11.05, Code of Professional Responsibility.

attack made by the 30 July 2001 motion on Judge Lacurom's Resolution. On its face, the Resolution presented the facts correctly and decided the case according to supporting law and jurisprudence. Though a lawyer's language may be forceful and emphatic, it should always be dignified and respectful, befitting the dignity of the legal profession. **The use of unnecessary language is proscribed if we are to promote high esteem in the courts and trust in judicial administration.**

In maintaining the respect due to the courts, a lawyer is not merely enjoined to use dignified language but also to pursue the client's cause through fair and honest means.[53] (Emphasis supplied)

Similarly, in *Judge Baculi v. Atty. Battung*, this Court meted the penalty of suspension for one (1) year for the violation of Rule 11.03 of the CPR by the respondent therein due to his in-court demeanor during a motion hearing:

We agree with the IBP's finding that the respondent violated Rule 11.03, Canon 11 of the Code of Professional Responsibility. Atty. Battung disrespected Judge Baculi by shouting at him inside the courtroom during court proceedings in the presence of litigants and their counsels, and court personnel. The respondent even came back to harass Judge Baculi. This behavior, in front of many witnesses, cannot be allowed. **We note that the respondent continued to threaten Judge Baculi and acted in a manner that clearly showed disrespect for his position even after the latter had cited him for contempt.** In fact, after initially leaving the court, the respondent returned to the courtroom and disrupted the ongoing proceedings. **These actions were not only against the person, the position and the stature of Judge Baculi, but against the court as well whose proceedings were openly and flagrantly disrupted, and brought to disrepute by the respondent.**

Litigants and counsels, particularly the latter because of their position and avowed duty to the courts, cannot be allowed to publicly ridicule, demean and disrespect a judge, and the court that he represents. x x x[54] (Emphasis supplied)

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[53] *Judge Lacurom v. Atty. Jacoba*, 519 Phil. 195, 209-210 (2006).

[54] *Judge Baculi v. Atty. Battung*, 674 Phil. 1, 8 (2011).

Meanwhile, in *Re: Suspension of Atty. Rogelio Z. Bagabuyo*,[55] this Court imposed the penalty of suspension for one (1) year for the respondent's act of resorting to the press instead of availing himself only of judicial remedies in airing out his grievances:

> Lawyers are licensed officers of the courts who are empowered to appear, prosecute and defend; and upon whom peculiar duties, responsibilities and liabilities are devolved by law as a consequence. Membership in the bar imposes upon them certain obligations. Canon 11 of the Code of Professional Responsibility mandates a lawyer to "observe and maintain the respect due to the courts and to judicial officers and [he] should insist on similar conduct by others." Rule 11.05 of Canon 11 states that a lawyer "shall submit grievances against a judge to the proper authorities only."
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> **Respondent violated Rule 11.05 of Canon 11 when he admittedly caused the holding of a press conference where he made statements against the Order dated November 12, 2002 allowing the accused in Crim. Case No. 5144 to be released on bail.**
>
> **Respondent also violated Canon 11 when he indirectly stated that Judge Tan was displaying judicial arrogance in the article entitled, Senior prosecutor lambasts Surigao judge for allowing murder suspect to bail out, which appeared in the August 18, 2003 issue of the Mindanao Gold Star Daily.** Respondent's statements in the article, which were made while Crim. Case No. 5144 was still pending in court, also violated Rule 13.02 of Canon 13, which states that "a lawyer shall not make public statements in the media regarding a pending case tending to arouse public opinion for or against a party." (Emphasis supplied)

From the foregoing, we therefore deem it proper to reduce the period of suspension from three (3) years, as recommended, to two (2) years only.

In closing, we find it befitting to reiterate that lawyers have the right, both as an officer of the court and as a citizen, to criticize in properly respectful terms and through legitimate channels the acts of courts and judges.[56] However, closely linked

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[55] *Re: Suspension of Atty. Rogelio Z. Bagabuyo, Former Senior State Prosecutor*, 561 Phil. 325, 339-340 (2007).

[56] *Habawel v. Court of Tax Appeals*, 672 Phil. 582, 595 (2011).

to such rule is the cardinal condition that criticisms, no matter how truthful, shall not spill over the walls of decency and propriety.[57] To that end, the duty of a lawyer to his client's success is wholly subordinate to the administration of justice.[58]

True, lawyers must always remain vigilant against unscrupulous officers of the law. However, the purification of our justice system from venal elements must not come at the expense of decency, and worse, the discrediting of the very system that it seeks to protect.

WHEREFORE, we **SUSPEND** Atty. Elly L. Pamatong from the practice of law for two (2) years effective upon finality of this Decision. We **STERNLY WARN** the respondent that a repetition of the same or similar infraction shall merit a more severe sanction.

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Bersamin, Perez, Mendoza, Reyes, Perlas-Bernabe, and *Leonen, JJ.,* concur.

Peralta, J., no part, on official leave.

Jardeleza, J., no part, on official business.

Brion and *del Castillo, JJ.,* on official leave.

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[57] *Id.* at 596.

[58] *Areola v. Mendoza*, 724 Phil. 155, 164 (2014).

EN BANC

[A.C. No. 9226. June 14, 2016]
(Formerly CBD 06-1749)

MA. CECILIA CLARISSA C. ADVINCULA, *complainant, vs.* **ATTY. LEONARDO C. ADVINCULA,** *respondent.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; GOOD MORAL CHARACTER MUST BE POSSESSED BY LAWYERS AT THE TIME OF THEIR APPLICATION FOR ADMISSION TO THE BAR, AND MUST BE MAINTAINED UNTIL RETIREMENT FROM THE PRACTICE OF LAW.— The good moral conduct or character must be possessed by lawyers at the time of their application for admission to the Bar, and must be maintained until retirement from the practice of law. x x x [I]t is expected that every lawyer, being an officer of the Court, must not only be in fact of good moral character, but must also be seen to be of good moral character and leading lives in accordance with the highest moral standards of the community. More specifically, a member of the Bar and officer of the Court is required not only to refrain from adulterous relationships or keeping mistresses but also to conduct himself as to avoid scandalizing the public by creating the belief that he is flouting those moral standards. If the practice of law is to remain an honorable profession and attain its basic ideals, whoever is enrolled in its ranks should not only master its tenets and principles but should also, in their lives, accord continuing fidelity to them. The requirement of good moral character is of much greater import, as far as the general public is concerned, than the possession of legal learning.

2. ID.; ID.; IMMORAL CONDUCT; TO BE THE BASIS OF DISCIPLINARY ACTION, SUCH CONDUCT, MUST NOT ONLY BE IMMORAL, BUT GROSSLY IMMORAL.— Immoral conduct has been described as conduct that is so willful, flagrant, or shameless as to show indifference to the opinion of good and respectable members of the community. To be the basis of disciplinary action, such conduct must not only be immoral, but grossly immoral, that is, it must be so corrupt

as to virtually constitute a criminal act or so unprincipled as to be reprehensible to a high degree or committed under such scandalous or revolting circumstances as to shock the common sense of decency.

3. ID.; ID.; ID.; THE DEGREE OF IMMORAL CONDUCT COMMITTED BY ONE WHO IS NOT YET A LAWYER IS NOT AS GRAVE THAN IF HE HAD COMMITTED THE IMMORALITY WHEN ALREADY A MEMBER OF THE PHILIPPINE BAR.— On different occasions, we have disbarred or suspended lawyers for immorality based on the surrounding circumstances of each case. x x x Yet, we cannot sanction Atty. Advincula with the same gravity. Although his siring the child with a woman other than his legitimate wife constituted immorality, he committed the immoral conduct when he was not yet a lawyer. The degree of his immoral conduct was not as grave than if he had committed the immorality when already a member of the Philippine Bar. Even so, he cannot escape administrative liability. Taking all the circumstances of this case into proper context, the Court considers suspension from the practice of law for three months to be condign and appropriate.

4. ID.; ID.; THE SUPREME COURT WIELDS THE POWER TO DISCIPLINE LAWYERS; THE SUSPENSION FROM THE PRACTICE OF LAW OF A LAWYER WHO IS A GOVERNMENT EMPLOYEE SHOULD INCLUDE HIS SUSPENSION FROM OFFICE.— Atty. Advincula manifested in his compliance dated February 26, 2013 that he had immediately accepted the resolution of the IBP Board of Governors suspending him from the practice of law for two months as final and executory; that he had then gone on leave from work in the NBI for two months starting in November and lasting until the end of December, 2012; and that such leave from work involved refraining from performing his duties as a Legal Officer of the NBI. The manifestation of compliance is unacceptable. A lawyer like him ought to know that it is only the Court that wields the power to discipline lawyers. The IBP Board of Governors did not possess such power, rendering its recommendation against him incapable of finality. It is the Court's final determination of his liability as a lawyer that is the reckoning point for the service of sanctions and penalties. As such, his supposed compliance with the

recommended two-month suspension could not be satisfied by his going on leave from his work at the NBI. Moreover, his being a government employee necessitates that his suspension from the practice of law should include his suspension from office. A leave of absence will not suffice. This is so considering that his position mandated him to be a member of the Philippine Bar *in good standing*. The suspension from the practice of law will not be a penalty if it does not negate his continuance in office for the period of the suspension. If the rule is different, this exercise of reprobation of an erring lawyer by the Court is rendered inutile and becomes a mockery because he can continue to receive his salaries and other benefits by simply going on leave for the duration of his suspension from the practice of law.

LEONEN*, J., concurring opinion*:

1. LEGAL ETHICS; ATTORNEYS; A LAWYER'S COMMITMENT TO THE LAWYER'S OATH OR ANY STANDARD OF MORALITY AND CONDUCT UNDER THE CODE OF PROFESSIONAL RESPONSIBILITY STARTS ONLY UPON TAKING THAT OATH.— The standard of morality and the rules of conduct under the Code of Professional Responsibility are applicable only to lawyers. These are not enforced against persons who have not taken the lawyer's oath. A lawyer's commitment to the lawyer's oath or any standard of morality and conduct under the Code of Professional Responsibility starts only upon taking that oath. Oaths are not senseless utterances. Lawyers who take their oath consent to this Court's administrative jurisdiction over their actions. The oath is essentially a promise to act consistently with the value-expectations of this Court. The significance of the oath rests on many assumptions. Taking the oath implies notice to the person of the standards he or she is expected to abide by. It not only implies consent to, but also assumes consciousness of those standards. The person allowed to take the oath is assumed to have the capacity to consider and control his or her actions accordingly. For these reasons, violation of the oath or of the Code of Professional Responsibility is deemed to merit this Court's imposition of a penalty. When a lawyer takes the oath, any action inconsistent with the oath or with the Code of Professional Responsibility may be interpreted as

a willful disregard of the standards embodied in the oath or the Code of Professional Responsibility. As expressed in our Rules of Evidence, a person is presumed to know and intend "the ordinary consequences of his [or her] voluntary act." The oath places "penalty" under the great scope of "ordinary consequence" of a lawyer's actions. x x x [W]ithout the taking the oath, we cannot presume a person's conscious and careful consideration of his or her acts in conforming with this Court's moral and behavioral standards. Without the taking the oath, administrative penalties do not rise to the level of ordinary consequence of a person's actions. x x x Respondent cannot be expected to abide by the standards imposed by the lawyer's oath or by the Code of Professional Responsibility. At that time, this Court had no administrative jurisdiction over his actions. He was not yet a lawyer when he entered into a relationship with Ma. Judith Gonzaga during his marriage with complainant. Imposing a penalty for respondent's actions before he took the lawyer's oath reduces the oath to nothing but a frivolous ceremony. We undermine the significance of the oath if, on that basis, we penalize a person for his or her actions, whether or not he or she subscribed to that oath.

2. ID.; ID.; GOOD MORAL CHARACTER; FOR ADMISSION TO THE BAR, GOOD MORALS ARE SOLELY BASED ON A PERSON'S ACTIONS BEFORE HIS ADMISSION, BUT FOR RETAINING MEMBERSHIP IN THE BAR, THE LAWYER'S ACTIONS WHILE HE IS A MEMBER ARE LOOKED INTO.— While possession of good morals is required before and during one's membership to the bar, the bases and effects of the finding that one meets or does not meet the standard of morality are different in these instances. For admission to the bar, good morals are solely based on a person's actions before his or her admission. A person found to be lacking of the required good morals is disqualified from membership in the bar. A person's actions, on which the finding that a person has met the required good morals is based, are looked into for purposes of admission—not penalty. On the other hand, for retaining membership in the bar, the lawyer's actions while he or she is a member are looked into. These acts may be the bases of administrative penalty. However, this is not to say that a lawyer's actions before his or her admission cannot be the bases of his or her removal from the bar. After all, a person who has not met the moral standards before

admission should not even be admitted to the bar. Thus, if for some reason, grossly immoral acts not considered by this Court during application are later made known and proved to this Court, this Court may choose to remove him or her without disregarding evidence of any possible moral transformation that could have taken place later.

3. ID.; ID.; IMMORALITY; IMMORAL CONDUCT, IF MADE THE BASIS FOR IMPOSING ADMINISTRATIVE PENALTY, SHOULD REFER TO CONDUCT AS OFFICERS OF THE COURT.— [T]his Court should not be too quick to judge a person's actions as grossly immoral so as to constitute unfitness to become a member of the bar. x x x There are different aspects of morality. Morality may be religious or secular. In *Perfecto v. Esidera*[,] x x x this Court stated that the rule against immorality should have a secular basis. Our jurisdiction to determine what is moral or immoral should only be limited to conduct that affects public interest. Immoral conduct, if made the basis for imposing administrative penalty, should refer to conduct as officers of the court. It must be of such depravity as to reduce the public's confidence in our laws and in our judicial system x x x. Respondent had a relationship with another woman during his marriage with complainant. Out of that extra-marital relationship, a child was born. All these had happened before he became a lawyer. Indeed, some may find respondent's actions before becoming a lawyer immoral. However, these do not constitute grossly immoral conduct that is so corrupt and reprehensible for this Court to consider him unfit to be a member of the bar. The dubious character of respondent's actions and his-ill-motive were not clearly demonstrated. Respondent's extra-marital relationship happened during his and complainant's temporary separation. At the time of respondent's application for bar admission, his relationship with his alleged mistress, whom he claimed he did not marry, had already ended. He was already reunited with complainant, his wife. As a result of their reconciliation, they even had their third child, Jose Leandro. In light of respondent's reconciliation with complainant prior to becoming a lawyer, his actions cannot be described as so depraved as to possibly reduce the public's confidence in our laws and judicial system.

APPEARANCES OF COUNSEL

Crisologo Evangelista & Associates for respondent.

D E C I S I O N

BERSAMIN, *J.*:

This administrative case stemmed from the complaint for disbarment dated June 16, 2006 brought to the Integrated Bar of the Philippines (IBP) against Atty. Leonardo C. Advincula (Atty. Advincula) by no less than his wife, Dr. Ma. Cecilia Clarissa C. Advincula (Dr. Advincula).

In her complaint,[1] Dr. Advincula has averred that Atty. Advincula committed unlawful and immoral acts;[2] that while Atty. Advincula was still married to her, he had extra-marital sexual relations with Ma. Judith Ortiz Gonzaga (Ms. Gonzaga);[3] that the extra-marital relations bore a child in the name of Ma. Alexandria Gonzaga Advincula (Alexandria);[4] that Atty. Advincula failed to give financial support to their own children, namely: Ma. Samantha Paulina, Ma. Andrea Lana, and Jose Leandro, despite his having sufficient financial resources;[5] that he admitted in the affidavit of late registration of birth of Alexandria that he had contracted another marriage with Ms. Gonzaga;[6] that even should Atty. Advincula prove that his declaration in the affidavit of late registration of birth was motivated by some reason other than the fact that he truly entered into a subsequent marriage with Ms. Gonzaga, then making such a declaration was in itself still unlawful;[7] that siring a

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[1] *Rollo*, pp. 1-5.

[2] *Id.* at 1.

[3] *Id.* at 2.

[4] *Id.*

[5] *Id.* at 3.

[6] *Id.*

[7] *Id.*

child with a woman other than his lawful wife was conduct way below the standards of morality required of every lawyer;[8] that contracting a subsequent marriage while the first marriage had not been dissolved was also an unlawful conduct;[9] that making a false declaration before a notary public was an unlawful conduct punishable under the *Revised Penal Code*;[10] and that the failure of Atty. Advincula to provide proper support to his children showed his moral character to be below the standards set by law for every lawyer.[11] Dr. Advincula prayed that Atty. Advincula be disbarred.[12]

In his answer,[13] Atty. Advincula denied the accusations. He asserted that during the subsistence of his marriage with Dr. Advincula but prior to the birth of their youngest Jose Leandro, their marital relationship had deteriorated; that they could not agree on various matters concerning their family, religion, friends, and respective careers; that Dr. Advincula abandoned the rented family home with the two children to live with her parents; that despite their separation, he regularly gave financial support to Dr. Advincula and their children; that during their separation, he got into a brief relationship with Ms. Gonzaga; and that he did not contract a second marriage with Ms. Gonzaga.[14]

Atty. Advincula further acknowledged that as a result of the relationship with Ms. Gonzaga, a child was born and named Alexandra;[15] that in consideration of his moral obligation as a father, he gave support to Alexandra;[16] that he only learned that the birth of Alexandra had been subsequently registered

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[8] *Id.*

[9] *Id.* at 4.

[10] *Id.*

[11] *Id.*

[12] *Id.* at 5.

[13] *Id.* at 14-22.

[14] *Id.*

[15] *Id.*

[16] *Id.*

after the child was already enrolled in school;[17] that it was Ms. Gonzaga who informed him that she had the birth certificate of Alexandria altered by a fixer in order to enroll the child;[18] that he strived to reunite his legitimate family, resulting in a reconciliation that begot their third child, Jose Leandro; that Dr. Advincula once again decided to live with her parents, bringing all of their children along; that nevertheless, he continued to provide financial support to his family and visited the children regularly; that Dr. Advincula intimated to him that she had planned to take up nursing in order to work as a nurse abroad because her medical practice here was not lucrative; that he supported his wife's nursing school expenses;[19] that Dr. Advincula left for the United States of America (USA) to work as a nurse;[20] that the custody of their children was not entrusted to him but he agreed to such arrangement to avoid further division of the family;[21] that during the same period he was also busy with his law studies;[22] that Dr. Advincula proposed that he and their children migrate to the USA but he opposed the proposal because he would not be able to practice his profession there;[23] that Dr. Advincula stated that if he did not want to join her, then she would just get the children to live with her;[24] that when Dr. Advincula came home for a vacation he was not able to accompany her due to his extremely busy schedule as Chief Legal Staff of the General Prosecution Division of the National Bureau of Investigation;[25] and that when they finally met arguments flared out, during which she threatened to file a disbarment suit against him in order to force him to allow her to bring their children to

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[17] *Id.*

[18] *Id.*

[19] *Id.*

[20] *Id.*

[21] *Id.*

[22] *Id.*

[23] *Id.*

[24] *Id.*

[25] *Id.* at 19.

the USA.[26] Atty. Advincula prayed that the disbarment case be dismissed for utter lack of merit.[27]

Findings and Recommendations of the IBP-CBD

After exhaustive hearings, Commissioner Angelito C. Inocencio of the IBP Commission on Bar Discipline (CBD) rendered the following findings and observations, and recommended the following sanctions, to wit:

FINDINGS AND CONCLUSIONS

Based on Rule 1.01, Canon 1, Code of Professional Responsibility for Lawyers comes this provisions (sic): "A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct."

This means that members of the bar ought to possess *good moral character*. Remember we must (sic) that the practice of law is a mere privilege. The moment that a lawyer no longer has the required qualifications foremost of which is the presence of that character earlier mentioned, the Honorable Supreme Court may revoke the said practice.

No doubt, Respondent Leanardo (sic) C. Advincula, probably due to the weakness of the flesh, had a romance outside of marriage (sic) with Ma. Judith Ortiz Gonzaga. This he admitted.

From such affair came a child named Ma. Alexandria. He supported her as a moral obligation.

How, then, must we categorize his acts? It cannot be denied that he had committed an adulterous and immoral act.

Was his conduct grossly immoral?

Before answering that, let us recall what the highest Court of the Land defined as immoral conduct: "that conduct which is willful, flagrant or shameless and which shows a moral indifference to the opinion of the good and respectable members of the community."[28]

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[26] *Id.*

[27] *Id.* at 22.

[28] *Id.* at 252.

It is the Commissioner's view that what he did pales when compared to Respondent Leo Palma's case earlier cited.

In that case, the Honorable Supreme Court stressed that Atty. Palma had made a mockery of marriage, a sacred institution demanding respect and dignity.

The highest Court of the Land intoned in the same case: "But what respondent forgot is that he has also duties to his wife. As a husband, he is obliged to live with her; observe mutual love, respect and fidelity; and render help and support."

Deemed favorable to Respondent's cause were the various exhibits he presented evidencing the fact that he supported their children financially. Such conduct could not illustrate him as having championed a grossly immoral conduct.

Another factor to consider is this: Complainant should share part of the blame why their marriage soured. Their constant quarrels while together would indicate that harmony between them was out of the question.

The possibility appears great that she might have displayed a temper that ignited the flame of discord between them.

Just the same, however, while this Commissioner would not recommend the supreme penalty of disbarment for to deprive him of such honored station in life would result in irreparable injury and must require proof of the highest degree pursuant to the Honorable Supreme Court's ruling in *Angeles vs. Figueroa*, 470 SCRA 186 (2005), he must be sanctioned.

And the proof adduced is not of the highest degree.

VI. RECOMMENDATION

In the light of the foregoing disquisition, having, in effect, Respondent's own admission of having committed an extra-marital affair and fathering a child, it is respectfully recommended that he be suspended from the practice of law for at least one month with the additional admonition that should he repeat the same, a more severe penalty would be imposed.

It would be unjust to impose upon him the extreme penalty of disbarment. What he did was not grossly immoral.[29]

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[29] *Id.* at 253-254.

The IBP Board of Governors unanimously adopted the findings and recommendations of the Investigating Commissioner with slight modification of the penalty, thus:

> RESOLVED to ADOPT and APPROVE, as it is hereby unanimously ADOPTED and APPROVED, **with modification**, the Report and Recommendation of the Investigating Commissioner in the above-entitled case, herein made part of this Resolution as Annex "A" and finding the recommendation fully supported by the evidence on record and the applicable laws and rules, and considering respondent's admission of engaging in a simple immorality and also taking into account the condonation of his extra-marital affair by his wife, Atty. Leonardo C. Advincula is hereby **SUSPENDED** from the practice of law for two (2) months.[30]

Atty. Advincula accepted the Resolution of the IBP Board of Governors as final and executory, and manifested in his compliance dated February 26, 2013, as follows:

> 1. That on 28 November 2011 this Honorable Court issued a resolution suspending the undersigned Attorney from the practice of law for two (2) months under "A.C. No. 9226 (formerly CBD Case No. 06-1749) (Ma. Cecilia Clarissa C. Advincula vs. Atty. Leonardo C. Advincula) x x x
> 2. That on 30 October 2012 in faithful compliance with the above order, the undersigned attorney applied for Leave for two (2) months starting November up to December thereby refraining himself from the practice of law as Legal Officer on the National Bureau of Investigation (NBI) x x x
> 3. That the undersigned Attorney would like to notify this Honorable Court of his compliance with the above resolution/ order so that he may be able to practice his law profession again.[31]

Ruling of the Court

The good moral conduct or character must be possessed by lawyers at the time of their application for admission to the

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[30] *Id.* at 244.

[31] *Rollo*, unpaginated.

Bar, and must be maintained until retirement from the practice of law. In this regard, the *Code of Professional Responsibility* states:

> Rule 1.01 — A lawyer shall not engage in unlawful, dishonest, immoral or deceitful conduct.
>
> x x x x x x x x x
>
> CANON 7 — A lawyer shall at all times uphold the integrity and dignity of the legal profession, and support the activities of the Integrated Bar.
>
> x x x x x x x x x
>
> Rule 7.03 — A lawyer shall not engage in conduct that adversely reflects on his fitness to practice law, nor should he, whether in public or private life, behave in a scandalous manner to the discredit of the legal profession.

Accordingly, it is expected that every lawyer, being an officer of the Court, must not only be in fact of good moral character, but must also be seen to be of good moral character and leading lives in accordance with the highest moral standards of the community. More specifically, a member of the Bar and officer of the Court is required not only to refrain from adulterous relationships or keeping mistresses but also to conduct himself as to avoid scandalizing the public by creating the belief that he is flouting those moral standards. If the practice of law is to remain an honorable profession and attain its basic ideals, whoever is enrolled in its ranks should not only master its tenets and principles but should also, in their lives, accord continuing fidelity to them. The requirement of good moral character is of much greater import, as far as the general public is concerned, than the possession of legal learning.[32]

Immoral conduct has been described as conduct that is so willful, flagrant, or shameless as to show indifference to the opinion of good and respectable members of the community. To be the basis of disciplinary action, such conduct must not

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[32] *Dantes v. Dantes*, A.C. No. 6486, September 22, 2004, 438 SCRA 582, 588-589.

only be immoral, but grossly immoral, that is, it must be so corrupt as to virtually constitute a criminal act or so unprincipled as to be reprehensible to a high degree or committed under such scandalous or revolting circumstances as to shock the common sense of decency.[33]

On different occasions, we have disbarred or suspended lawyers for immorality based on the surrounding circumstances of each case. In *Bustamante-Alejandro v. Alejandro*,[34] the extreme penalty of disbarment was imposed on the respondent who had abandoned his wife and maintained an illicit affair with another woman. Likewise, disbarment was the penalty for a lawyer who carried on an extra-marital affair with a married woman prior to the judicial declaration that her marriage was null and void, while he himself was also married.[35] In another case we have suspended for two years, a married attorney who had sired a child with a former client.[36] In *Samaniego v. Ferrer*,[37] suspension of six months from the practice of law was meted on the philandering lawyer.

Yet, we cannot sanction Atty. Advincula with the same gravity. Although his siring the child with a woman other than his legitimate wife constituted immorality, he committed the immoral conduct when he was not yet a lawyer. The degree of his immoral conduct was not as grave than if he had committed the immorality when already a member of the Philippine Bar. Even so, he cannot escape administrative liability. Taking all the circumstances of this case into proper context, the Court considers suspension from the practice of law for three months to be condign and appropriate.

As a last note, Atty. Advincula manifested in his compliance dated February 26, 2013 that he had immediately accepted the

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[33] *Narag v. Narag*, A.C. No. 3405, June 29, 1998, 291 SCRA 451, 464.

[34] A.C. No. 4256, February 13, 2004, 422 SCRA 527, 533.

[35] *Guevarra v. Eala*, A.C. No. 7136, August 1, 2007, 529 SCRA 1, 4.

[36] *Ferancullo v. Ferancullo*, A.C. No. 7214, November 30, 2006, 509 SCRA 1, 17.

[37] A.C. No. 7022, June 18, 2008, 555 SCRA 1, 7.

resolution of the IBP Board of Governors suspending him from the practice of law for two months as final and executory; that he had then gone on leave from work in the NBI for two months starting in November and lasting until the end of December, 2012; and that such leave from work involved refraining from performing his duties as a Legal Officer of the NBI.

The manifestation of compliance is unacceptable. A lawyer like him ought to know that it is only the Court that wields the power to discipline lawyers. The IBP Board of Governors did not possess such power, rendering its recommendation against him incapable of finality. It is the Court's final determination of his liability as a lawyer that is the reckoning point for the service of sanctions and penalties. As such, his supposed compliance with the recommended two-month suspension could not be satisfied by his going on leave from his work at the NBI. Moreover, his being a government employee necessitates that his suspension from the practice of law should include his suspension from office. A leave of absence will not suffice. This is so considering that his position mandated him to be a member of the Philippine Bar *in good standing*. The suspension from the practice of law will not be a penalty if it does not negate his continuance in office for the period of the suspension. If the rule is different, this exercise of reprobation of an erring lawyer by the Court is rendered inutile and becomes a mockery because he can continue to receive his salaries and other benefits by simply going on leave for the duration of his suspension from the practice of law.

WHEREFORE, the Court **FINDS AND DECLARES ATTY. LEONARDO C. ADVINCULA GUILTY** of immorality; and **SUSPENDS** him from the practice of law for a period of **THREE MONTHS EFFECTIVE UPON NOTICE HEREOF**, with a **STERN WARNING** that a more severe penalty shall be imposed should he commit the same offense or a similar offense; **DIRECTS ATTY. ADVINCULA** to report the date of his receipt of the Decision to this Court; and **ORDERS** the Chief of the Personnel Division of the National Bureau of Investigation to implement the suspension from office of **ATTY. ADVINCULA** and to report on his compliance in order to

determine the date of commencement of his suspension from the practice of law.

Let a copy of this Decision be made part of the records of the respondent in the Office of the Bar Confidant; and furnished to the Integrated Bar of the Philippines and the Civil Service Commission for their information and guidance.

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Perez, Mendoza, Reyes, Perlas-Bernabe, and *Caguioa, JJ.,* concur.

Leonen, J., see separate concurring opinion.

Brion, Peralta, and *Jardeleza, JJ.,* on official leave.

Del Castillo, J., on wellness leave.

CONCURRING OPINION

LEONEN, *J.*:

Before his admission to the bar, respondent Atty. Leonardo C. Advincula — who was married to complainant Dr. Ma. Cecilia Clarissa C. Advincula — entered into a brief extra-marital relationship with Ma. Judith Gonzaga, with whom he had a child.[1]

The standard of morality and the rules of conduct under the Code of Professional Responsibility are applicable only to lawyers. These are not enforced against persons who have not taken the lawyer's oath.

A lawyer's commitment to the lawyer's oath or any standard of morality and conduct under the Code of Professional Responsibility starts only upon taking that oath.

Oaths are not senseless utterances. Lawyers who take their oath consent to this Court's administrative jurisdiction over their actions. The oath is essentially a promise to act consistently with the value-expectations of this Court.

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[1] *Ponencia,* p. 2.

The significance of the oath rests on many assumptions. Taking the oath implies notice to the person of the standards he or she is expected to abide by. It not only implies consent to, but also assumes consciousness of those standards. The person allowed to take the oath is assumed to have the capacity to consider and control his or her actions accordingly.

For these reasons, violation of the oath or of the Code of Professional Responsibility is deemed to merit this Court's imposition of a penalty. When a lawyer takes the oath, any action inconsistent with the oath or with the Code of Professional Responsibility may be interpreted as a willful disregard of the standards embodied in the oath or the Code of Professional Responsibility. As expressed in our Rules of Evidence, a person is presumed to know and intend "the ordinary consequences of his [or her] voluntary act."[2] The oath places "penalty" under the great scope of "ordinary consequence" of a lawyer's actions.

On the other hand, without taking the oath, we cannot presume a person's conscious and careful consideration of his or her acts in conforming with this Court's moral and behavioral standards. Without taking the oath, administrative penalties do not rise to the level of ordinary consequence of a person's actions.

This Court, as guardian of constitutional rights, should lead other institutions by exemplifying through its processes the import of the principle of due process.[3] A person cannot adjust his or her past actions now to conform to the standards imposed by an oath he or she takes after. It is unreasonable to expect a person to abide by standards that he or she cannot be presumed to know and apply to actions he or she can no longer control.

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[2] RULES OF COURT, Rule 131, Sec. 3 (c).

[3] CONST., Art. III, Sec. 1 provides:

SECTION 1. No person shall be deprived of life, liberty, or property without due process of law, nor shall any person be denied the equal protection of the laws.

Respondent cannot be expected to abide by the standards imposed by the lawyer's oath or by the Code of Professional Responsibility. At that time, this Court had no administrative jurisdiction over his actions. He was not yet a lawyer when he entered into a relationship with Ma. Judith Gonzaga during his marriage with complainant.

Imposing a penalty for respondent's actions before he took the lawyer's oath reduces the oath to nothing but a frivolous ceremony. We undermine the significance of the oath if, on that basis, we penalize a person for his or her actions, whether or not he or she subscribed to that oath.

While possession of good morals is required before and during one's membership to the bar,[4] the bases and effects of the finding that one meets or does not meet the standard of morality are different in these instances.

For admission to the bar, good morals are solely based on a person's actions before his or her admission. A person found to be lacking of the required good morals is disqualified from membership in the bar. A person's actions, on which the finding that a person has met the required good morals is based, are looked into for purposes of admission — not penalty.

On the other hand, for retaining membership in the bar, the lawyer's actions while he or she is a member are looked into. These acts may be the bases of administrative penalty.

However, this is not to say that a lawyer's actions before his or her admission cannot be the bases of his or her removal from the bar. After all, a person who has not met the moral standards before admission should not even be admitted to the bar. Thus, if for some reason, grossly immoral acts not considered by this Court during application are later made known and proved to this Court, this Court may choose to remove him or her without

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[4] See *Cordova v. Cordova*, 259 Phil. 278, 281 (1989) [*Per Curiam, En Banc*]. See also *Montagne v. Dominguez*, 3 Phil. 577, 589 (1904) [Per *J.* McDonough, *En Banc*].

disregarding evidence of any possible moral transformation that could have taken place later.[5]

However, this Court should not be too quick to judge a person's actions as grossly immoral so as to constitute unfitness to become a member of the bar.

In *Reyes v. Wong*,[6] this Court has ruled that for an act to be administratively punishable for gross immorality, "it must be so corrupt and false as to constitute a criminal act or so unprincipled as to be reprehensible to a high degree."[7] Further:

> [T]he same must be established by clear and convincing proof, disclosing a case that is free from doubt as to compel the exercise by the Court of its disciplinary power. . . . Likewise, the dubious character of the act done as well as the motivation thereof must be clearly demonstrated.[8]

There are different aspects of morality. Morality may be religious or secular. In *Perfecto v. Esidera*:[9]

> Morality refers to what is good or right conduct at a given circumstance. In *Estrada v. Escritor*, this court described morality as "'how we ought to live' and why."
>
> Morality may be religious, in which case what is good depends on the moral prescriptions of a high moral authority or the beliefs

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[5] See *Vitug v. Atty. Rongcal*, 532 Phil. 615, 633 (2006) [Per J. Tinga, Third Division].

[6] 159 Phil. 171 (1975) [Per J. Makasiar, First Division].

[7] *Id.* at 177, citing RULES OF COURT (1964), Rule 138, Sec. 27; *Soberano v. Villanueva*, 116 Phil. 1208, 1212 (1962) [Per J. Concepcion, *En Banc*]; *Mortel v. Aspiras*, 100 Phil. 587, 591-593 (1956) [Per J. Bengzon, *En Banc*]; *Royong v. Oblena*, 117 Phil. 865, 874 (1963) [Per J. Barrera, *En Banc*]; *Bolivar v. Simbol*, 123 Phil. 450, 457-458 (1966) [Per J. Sanchez, *En Banc*]; and *Quingwa v. Puno*, 125 Phil. 831, 838 (1967) [Per J. Regala, *En Banc*].

[8] *Id.* at 178, citing *Go v. Candoy*, 128 Phil. 461, 465 (1967) [Per J. Castro, *En Banc*].

[9] A.M. No. RTJ-15-2417, July 22, 2015 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2015/july2015/RTJ-15-2417.pdf> [Per J. Leonen, Second Division].

of a particular religion. Religion, as this court defined in *Aglipay v. Ruiz*, is "a profession of faith to an active power that binds and elevates man to his Creator." A conduct is religiously moral if it is consistent with and is carried out in light of the divine set of beliefs and obligations imposed by the active power.

Morality may also be secular, in which case it is independent of any divine moral prescriptions. What is good or right at a given circumstance does not derive its basis from any religious doctrine but from the independent moral sense shared as humans.[10] (Citations omitted)

In the same case, this Court stated that the rule against immorality should have a secular basis. Our jurisdiction to determine what is moral or immoral should only be limited to conduct that affects public interest. Immoral conduct, if made the basis for imposing administrative penalty, should refer to conduct as officers of the court. It must be of such depravity as to reduce the public's confidence in our laws and in our judicial system,[11] thus:

The non-establishment clause bars the State from establishing, through laws and rules, moral standards according to a specific religion. Prohibitions against immorality should be based on a purpose that is independent of religious beliefs. When it forms part of our laws, rules, and policies, morality must be secular. Laws and rules of conduct must be based on a secular purpose.

In the same way, this court, in resolving cases that touch on issues of morality, is bound to remain neutral and to limit the bases of its judgment on secular moral standards. When laws or rules refer to morals or immorality, courts should be careful not to overlook the distinction between secular and religious morality if it is to keep its part in upholding constitutionally guaranteed rights.

There is the danger of "compelled religion" and, therefore, of negating the very idea of freedom of belief and non-establishment of religion when religious morality is incorporated in government regulations and policies. As explained in *Estrada v. Escritor*:

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

[11] *Id.* at 9.

> Otherwise, if government relies upon religious beliefs in formulating public policies and morals, the resulting policies and morals would require conformity to what some might regard as religious programs or agenda. The non-believers would therefore be compelled to conform to a standard of conduct buttressed by a religious belief, *i.e.*, to a "compelled religion" anathema to religious freedom. Likewise, if government based its actions upon religious beliefs, it would tacitly approve or endorse that belief and thereby also tacitly disapprove contrary religious or non-religious views that would not support the policy. As a result, government will not provide full religious freedom for all its citizens, or even make it appear that those whose beliefs are disapproved are second-class citizens. Expansive religious freedom therefore requires that government be neutral in matters of religion; governmental reliance upon religious justification is inconsistent with this policy of neutrality.
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> x x x x x x x x x
>
> . . . We have jurisdiction over matters of morality only insofar as it involves conduct that affects the public or its interest.
>
> Thus, for purposes of determining administrative liability of lawyers and judges, "immoral conduct" should relate to their conduct as officers of the court. To be guilty of "immorality" under the Code of Professional Responsibility, a lawyer's conduct must be so depraved as to reduce the public's confidence in the Rule of Law. Religious morality is not binding whenever this court decides the administrative liability of lawyers and persons under this court's supervision. At best, religious morality weighs only persuasively on us.[12] (Citations omitted)

Respondent had a relationship with another woman during his marriage with complainant. Out of that extra-marital relationship, a child was born. All these had happened before he became a lawyer.

Indeed, some may find respondent's actions before becoming a lawyer immoral. However, these do not constitute grossly immoral conduct that is so corrupt and reprehensible for this Court to consider him unfit to be a member of the bar.

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[12] *Id.* at 8-9.

The dubious character of respondent's actions and his ill-motive were not clearly demonstrated. Respondent's extra-marital relationship happened during his and complainant's temporary separation. At the time of respondent's application for bar admission, his relationship with his alleged mistress, whom he claimed he did not marry, had already ended. He was already reunited with complainant, his wife. As a result of their reconciliation, they even had their third child, Jose Leandro.

In light of respondent's reconciliation with complainant prior to becoming a lawyer, his actions cannot be described as so depraved as to possibly reduce the public's confidence in our laws and judicial system.

ACCORDINGLY, I concur in the result.

EN BANC

[A.C. No. 11246. June 14, 2016]

ARNOLD PACAO, *complainant, vs.* **ATTY. SINAMAR LIMOS,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; RULES OF COURT; DISBARMENT OF ATTORNEYS; THE PENALTY OF DISBARMENT IS WARRANTED WHEN A LAWYER FAILS TO DEMONSTRATE THAT SHE STILL POSSESSES THE INTEGRITY AND MORALITY DEMANDED OF A MEMBER OF THE BAR; CASE AT BAR.— The fact that this is Atty. Limos' third transgression exacerbates her offense. The x x x factual antecedents demonstrate her propensity to employ deceit and misrepresentation. It is not too farfetched for this Court to conclude that from the very beginning, Atty. Limos had planned to employ deceit on the

complainant to get hold of a sum of money. Such a conduct is unbecoming and does not speak well of a member of the Bar. Atty. Limos' case is further highlighted by her lack of regard for the charges brought against her. x x x By her failure to present convincing evidence, or any evidence for that matter, to justify her actions, Atty. Limos failed to demonstrate that she still possessed the integrity and morality demanded of a member of the Bar. Her seeming indifference to the complaint brought against her was made obvious by her unreasonable absence from the proceedings before the IBP. Her disobedience to the IBP is, in fact, a gross and blatant disrespect for the authority of the Court. Despite her two prior suspensions, still, Atty. Limos is once again demonstrating to this Court that not only is she unfit to stay in the legal profession for her deceitful conduct but is also remiss in following the dictates of the Court, which has supervision over her. Atty. Limos' unwarranted obstinacy is a great insolence to the Court which cannot be tolerated. The present case comes clearly under the grounds given in Section 27, Rule 138 of the Revised Rules of Court. The Court, however, does not hesitate to impose the penalty of disbarment when the guilty party has become a repeat offender. Considering the serious nature of the instant offense and in light of Atty. Limos' prior misconduct which grossly degrades the legal profession, the imposition of the ultimate penalty of disbarment is warranted. In imposing the penalty of disbarment upon Atty. Limos, the Court is aware that the power to disbar is one to be exercised with great caution and only in clear cases of misconduct that seriously affect the standing and character of the lawyer as a legal professional and as an officer of the Court. However, Atty. Limos' recalcitrant attitude and unwillingness to heed with the Court's warning, which is deemed to be an affront to the Court's authority over members of the Bar, warrant an utmost disciplinary sanction from this Court. Her repeated desecration of her ethical commitments proved herself to be unfit to remain in the legal profession. Worse, she remains apathetic to the need to reform herself.

2. LEGAL ETHICS; ATTORNEYS; PRACTICE OF LAW; A PRIVILEGE BESTOWED BY THE STATE UPON THOSE WHO SHOW THAT THEY POSSESS, AND CONTINUE TO POSSESS, THE QUALIFICATIONS REQUIRED BY LAW FOR THE CONFERMENT OF SUCH PRIVILEGE.— "[T]he practice of law is not a right but a privilege bestowed

by the State upon those who show that they possess, and continue to possess, the qualifications required by law for the conferment of such privilege. Membership in the bar is a privilege burdened with conditions." "Of all classes and professions, the lawyer is most sacredly bound to uphold the laws. He is their sworn servant; and for him, of all men in the world, to repudiate and override the laws, to trample them underfoot and to ignore the very bonds of society, argues recreancy to his position and office, and sets a pernicious example to the insubordinate and dangerous elements of the body politic." Indeed, Atty. Limos has disgraced the legal profession. The facts and evidence obtaining in this case definitely establish her failure to live up to her duties as a lawyer in accordance with the strictures of the lawyer's oath, the Code of Professional Responsibility and the Canons of Professional Ethics, thereby making her unworthy to continue as a member of the bar.

APPEARANCES OF COUNSEL

Divinagracia, Solis and Associates Law Offices for complainant.

D E C I S I O N

***PER CURIAM*:**

Before this Court is a verified complaint[1] filed on November 4, 2011 by Arnold Pacao (complainant), seeking the disbarment of Atty. Sinamar Limos (Atty. Limos) for conduct unbecoming of a member of the Bar.

The Facts

Sometime in March 2008, complainant's wife Mariadel Pacao, former vault custodian of BHF Pawnshop (BHF) branch in Mandaluyong City, was charged with qualified theft by BHF. At the preliminary investigation, Atty. Limos appeared as counsel for BHF. Thereafter, the case was filed before the Regional Trial Court of Mandaluyong City.[2]

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[1] *Rollo*, pp. 2-5.

[2] *Id.* at 2.

To buy peace, the complainant initiated negotiation with BHF, through Atty. Limos, for a possible settlement. A meeting was then arranged between the complainant and Atty. Limos, where the latter represented that she was duly authorized by BHF. After a series of negotiations, Atty. Limos relayed that BHF is demanding the sum of ₱530,000.00 to be paid in full or by installments. Further negotiation led to an agreement whereby the complainant would pay an initial amount of ₱200,000.00 to be entrusted to Atty. Limos, who will then deliver to the complainant a signed affidavit of desistance, a compromise agreement, and a joint motion to approve compromise agreement for filing with the court.[3]

On October 29, 2009, the complainant gave the initial amount of ₱200,000.00 to Atty. Limos, who in turn, signed an Acknowledgment Receipt[4] recognizing her undertakings as counsel of BHF. However, Atty. Limos failed to meet the terms of their agreement. Notwithstanding such failure, Atty. Limos still sought to get from the complainant the next installment amount of their purported agreement, but the latter refused. [5]

Thereafter, in June 2010, the complainant met BHF's representative, Camille Bonifacio, who informed him that Atty. Limos was no longer BHF's counsel and was not authorized to negotiate any settlement nor receive any money in behalf of BHF. The complainant also learned that BHF did not receive the ₱200,000.00 initial payment that he gave to Atty. Limos.[6]

This prompted the complainant to send a demand letter[7] to Atty. Limos to return the ₱200,000.00 initial settlement payment, but the latter failed and refused to do so.[8]

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[3] *Id.* at 2-3.

[4] *Id.* at 6.

[5] *Id.* at 3.

[6] *Id.*

[7] *Id.* at 7.

[8] *Id.* at 3.

The complainant then filed a disbarment case against Atty. Limos before the Integrated Bar of the Philippines (IBP) — Commission on Bar Discipline (CBD). The IBP-CBD required Atty. Limos to file an answer but she did not file any responsive pleading.[9] A mandatory conference was then set on March 1 and 29, 2012, and April 19, 2012, but Atty. Limos failed to attend. Thereafter, the IBP-CBD ordered the parties to submit their position paper, but once again, Atty. Limos did not bother to submit her position paper.

On May 5, 2014, the Investigating Commissioner recommended the disbarment of Atty. Limos.[10] The Investigating Commissioner found enough evidence on record to prove that Atty. Limos committed fraud and practiced deceit on the complainant to the latter's prejudice by concealing or omitting to disclose the material fact that she no longer had the authority to negotiate and conclude a settlement for and on behalf of BHF, nor was authorized to receive the ₱200,000.00 from the complainant. Atty. Limos was likewise ordered to return to the complainant the full amount of ₱200,000.00 with interest thereon at the rate of 12% *per annum* from the date of her receipt of the said amount to the date of her return of the full amount.[11]

In a Resolution[12] dated April 19, 2015, the IBP Board of Governors adopted and approved the Investigating Commissioner's report and recommendation.

On March 8, 2016, the IBP transmitted the notice of the resolution and the case records to the Court for final action pursuant to Rule 139-B of the Rules of Court.[13] As per verification of the Court, neither party has filed a motion for reconsideration or a petition for review thereafter.

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[9] *Id.* at 9.

[10] *Id.* at 96-102.

[11] *Id.* at 102.

[12] *Id.* at 94-95.

[13] *Id.* at 93.

The Issue

Whether or not the instant disbarment complaint constitutes a sufficient basis to disbar Atty. Limos from the practice of law?[14]

Ruling of the Court

To begin with, the Court notes that this is not the first time that Atty. Limos is facing an administrative case, for she had already been twice suspended from the practice of law, by this Court, for three months each in *Villaflores v. Atty. Limos*[15] and *Wilkie v. Atty. Limos*.[16] In *Villaflores*, *Atty. Limos* received attorney's fees of ₱20,000.00 plus miscellaneous expenses of ₱2,000.00, but she failed to perform her undertaking with her client; thus she was found guilty of gross negligence and dereliction of duty. Likewise, in *Wilkie*, Atty. Limos was held administratively liable for her deceitful and dishonest conduct when she obtained a loan of ₱250,000.00 from her client and issued two postdated checks in the latter's favor to pay the said loan despite knowledge of insufficiency of funds to cover the same. In both cases, the Court, gave Atty. Limos a warning that repetition of the same or similar acts by her will merit a more severe penalty.

Once again, for the third time, Atty. Limos is facing an administrative case before this Court for receiving the amount of ₱200,000.00 from the complainant purportedly for a possible amicable settlement with her client BHF. However, Atty. Limos was no longer BHF's counsel and was not authorize to negotiate and conclude a settlement for and on behalf of BHF nor was she authorized to receive any money in behalf of BHF. Her blunder is compounded by the fact that she did not turn over the money to BHF, nor did she return the same to the complainant, despite due demand. Furthermore, she even tried to get the next installment knowing fully well that she was not authorized to enter into settlement negotiations with the complainant as her engagement as counsel of BHF had already ceased.

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[14] *Id.* at 18.

[15] 563 Phil. 453 (2007).

[16] 591 Phil. 1 (2008).

The fact that this is Atty. Limos' third transgression exacerbates her offense. The foregoing factual antecedents demonstrate her propensity to employ deceit and misrepresentation. It is not too farfetched for this Court to conclude that from the very beginning, Atty. Limos had planned to employ deceit on the complainant to get hold of a sum of money. Such a conduct is unbecoming and does not speak well of a member of the Bar.

Atty. Limos' case is further highlighted by her lack of regard for the charges brought against her. Similar with *Wilkie*, despite due notice, Atty. Limos did not bother to answer the complaint against her. She also failed to file her mandatory conference brief and her verified position paper. Worse, Atty. Limos did not even enter appearance either personally or by counsel, and she failed to appear at the scheduled date of the mandatory conferences which she was duly notified.[17]

By her failure to present convincing evidence, or any evidence for that matter, to justify her actions, Atty. Limos failed to demonstrate that she still possessed the integrity and morality demanded of a member of the Bar. Her seeming indifference to the complaint brought against her was made obvious by her unreasonable absence from the proceedings before the IBP. Her disobedience to the IBP is, in fact, a gross and blatant disrespect for the authority of the Court.

Despite her two prior suspensions, still, Atty. Limos is once again demonstrating to this Court that not only is she unfit to stay in the legal profession for her deceitful conduct but is also remiss in following the dictates of the Court, which has supervision over her. Atty. Limos' unwarranted obstinacy is a great insolence to the Court which cannot be tolerated.

The present case comes clearly under the grounds given in Section 27,[18] Rule 138 of the Revised Rules of Court. The Court,

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[17] *Rollo*, p. 98.

[18] SEC. 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

however, does not hesitate to impose the penalty of disbarment when the guilty party has become a repeat offender. Considering the serious nature of the instant offense and in light of Atty. Limos' prior misconduct which grossly degrades the legal profession, the imposition of the ultimate penalty of disbarment is warranted.

In imposing the penalty of disbarment upon Atty. Limos, the Court is aware that the power to disbar is one to be exercised with great caution and only in clear cases of misconduct that seriously affect the standing and character of the lawyer as a legal professional and as an officer of the Court.[19] However, Atty. Limos' recalcitrant attitude and unwillingness to heed with the Court's warning, which is deemed to be an affront to the Court's authority over members of the Bar, warrant an utmost disciplinary sanction from this Court. Her repeated desecration of her ethical commitments proved herself to be unfit to remain in the legal profession. Worse, she remains apathetic to the need to reform herself.

"[T]he practice of law is not a right but a privilege bestowed by the State upon those who show that they possess, and continue to possess, the qualifications required by law for the conferment of such privilege. Membership in the bar is a privilege burdened with conditions."[20] "Of all classes and professions, the lawyer is most sacredly bound to uphold the laws. He is their sworn servant; and for him, of all men in the world, to repudiate and override the laws, to trample them underfoot and to ignore the very bonds of society, argues recreancy to his position and office,

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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.

[19] *Spouses Floran v. Atty. Ediza*, A.C. No. 5325, February 9, 2016.

[20] *Atty. Alcantara, et al. v. Atty. De Vera*, 650 Phil. 214, 220 (2010).

and sets a pernicious example to the insubordinate and dangerous elements of the body politic."[21]

Indeed, Atty. Limos has disgraced the legal profession. The facts and evidence obtaining in this case definitely establish her failure to live up to her duties as a lawyer in accordance with the strictures of the lawyer's oath, the Code of Professional Responsibility and the Canons of Professional Ethics, thereby making her unworthy to continue as a member of the bar.

WHEREFORE, respondent Atty. Sinamar Limos, having violated the Code of Professional Responsibility by committing grave misconduct and willful insubordination, is **DISBARRED** and her name ordered **STRICKEN OFF** the Roll of Attorneys effective immediately.

Let a copy of this Decision be entered in the records of Atty. Sinamar Limos. Further, let other copies be served on the Integrated Bar of the Philippines and on the Office of the Court Administrator, which is directed to circulate them to all the courts in the country for their information and guidance.

This Decision is immediately executory.

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Bersamin, Perez, Mendoza, Reyes, Perlas-Bernabe, Leonen, and *Caguioa, JJ.,* concur.

Brion and *del Castillo, JJ.,* on official leave.

Peralta and *Jardeleza, JJ.,* on official business.

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[21] *Yu, et al. v. Atty. Palaña,* 580 Phil. 19, 28-29 (2008).

EN BANC

[G.R. No. 175592. June 14, 2016]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **EDISON C. MAGBITANG,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THE FACTUAL FINDINGS OF THE TRIAL COURT ARE NOT DISTURBED ON APPEAL BY VIRTUE OF ITS BETTER POSITION TO OBSERVE AND DETERMINE MATTERS OF CREDIBILITY OF THE WITNESSES, HAVING HEARD THE WITNESSES AND OBSERVED THEIR DEPORTMENT DURING TRIAL.— [T]he Court generally defers to the factual findings of the trial court by virtue of the latter's better position to observed and determine matters of credibility of the witnesses, having heard the witnesses and observed their deportment during trial. This deference becomes firmer when the factual findings of the trial court were affirmed by the intermediate reviewing court. The Court does not disturb such factual findings unless the consideration of certain facts of substance and value that were plainly overlooked or misappreciated by the lower courts could affect the outcome of the case. A review of the records persuades the Court to declare that the RTC and the CA correctly appreciated the evidence adduced herein. Hence, their factual findings are upheld.

2. ID.; ID.; ADMISSIBILITY; TESTIMONIAL EVIDENCE; QUALIFICATION OF WITNESSES; THE TESTIMONY OF A CHILD OF SOUND MIND WITH THE CAPACITY TO PERCEIVE AND MAKE KNOWN THE PERCEPTION CAN BE BELIEVED IN THE ABSENCE OF ANY SHOWING OF AN IMPROPER MOTIVE TO TESTIFY.— Under the *Rules of Court*, a child may be a competent witness, unless the trial court determines upon proper showing that the child's mental maturity is such as to render him incapable of perceiving the facts respecting which he is to be examined and of relating the facts truthfully. The testimony of the child of sound mind with the capacity to perceive and make known the perception can be believed in the absence of any showing

of an improper motive to testify. Once it is established that the child fully understands the character and nature of an oath, the testimony is given full credence. In the case of CCC, the Defense did not persuasively discredit his worthiness and competence as a witness. As such, the Court considers the reliance by the trial court on his recollection fully justified.

3. ID.; ID.; WEIGHT AND SUFFICIENCY OF EVIDENCE; CIRCUMSTANTIAL EVIDENCE; NOT NECESSARILY WEAKER IN PERSUASIVE QUALITY THAN DIRECT EVIDENCE.—[W]e dismiss the argument of Magbitang that the trial court erroneously relied on circumstantial evidence to establish his criminal responsibility for the rape with homicide. The evidence of guilt against him consisted in both direct and circumstantial evidence. The direct evidence was supplied by CCC's testimony, while the circumstantial evidence corroborated CCC's testimony. Such evidence, combined, unerringly pointed to Magbitang, and to no other, as the culprit. In this connection, it is worth reminding that circumstantial evidence is not necessarily weaker in persuasive quality than direct evidence.

APPEARANCES OF COUNSEL

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

D E C I S I O N

BERSAMIN, *J.*:

Every child of sound mind with the capacity to perceive and make known his perception can be believed in the absence of any showing of an improper motive to testify.

The Case

We resolve the appeal of accused Edison C. Magbitang of the July 21, 2006 decision,[1] whereby the Court of Appeals (CA) affirmed his conviction for the composite crime of rape with homicide.

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[1] *Rollo*, pp. 3-21; penned by Associate Justice Hakim S. Abdulwahid (retired), with Associate Justice Andres B. Reyes, Jr. (now Presiding Justice)

Antecedents

Magbitang was charged with rape with homicide under the information filed by the Provincial Prosecutor of Nueva Ecija on February 22, 1999 in the Regional Trial Court (RTC) in Guimba, Nueva Ecija, alleging as follows:

> That on or about the 25th day of December 1998, in the Municipality of Guimba, Province of Nueva Ecija, Republic of the Philippines and within the jurisdiction of this Honorable Court, the above-named accused, with lewd design, and taking advantage of the tender age of one [AAA], a seven year old girl, and by means of force and intimidation, did then and there willfully, unlawfully and feloniously have carnal knowledge of the latter against her will and without her consent and after having satisfied his bestial lust, the accused, with intent to kill, did then and there willfully, unlawfully and feloniously strangle the neck and choke the child victim to death, to the damage and prejudice of her family and heirs, in such amount as may be awarded to them under the Civil Code of the Philippines.
>
> CONTRARY TO LAW.[2]

Evidence for the State shows that at around 5 p.m. of December 25, 1998, 7-year old AAA[3] asked permission from her mother, BBB, to go to a nearby store. BBB allowed her daughter to leave the house, but the child did not return home. Later that evening, the child's lifeless body was found by the riverbank. The post-mortem examination of her cadaver revealed that she had succumbed to asphyxiation, and that there were "incidental findings compatible to rape."[4] The lone witness to what had

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and Associate Justice Estela M. Perlas-Bernabe (now a Member of the Court) concurring.

[2] Records, p. 1.

[3] Pursuant to Republic Act No. 9262 (*Anti-Violence Against Women and Their Children Act of 2004*), and its implementing rules, the real names of the victims, as well those of their immediate family or household members, are withheld, and fictitious initials are instead used to represent them, to protect their privacy. See *People v. Cabalquinto*, G.R. No. 167693, September 19, 2006, 502 SCRA 419.

[4] Exhibit "A", RTC records, p. 6.

befallen AAA was 6-year old CCC, who recalled in court that he and AAA had been playing when Magbitang approached AAA; and that Magbitang brought AAA to his house. CCC testified on re-direct examination that he had witnessed Magbitang raping AAA (*inasawa*), as well as burning her face with a cigarette (*sininit-sinit*).[5]

Magbitang, denying the accusation, claimed that he had attended a baptismal party on December 25, 1998, and had been in the party from 4:00 p.m. to 5:00 p.m.; that from the party he had gone looking for his nephew to have the latter tend to his watermelon farm; that he had returned home by around 6 p.m.; that at around 7:30 p.m., he had gone to his farm to check on his nephew; and that he and his wife had remained in the farm until 4 a.m. of the following day.[6]

Ruling of the RTC

In its decision rendered on April 22, 2003,[7] the RTC found Magbitang guilty beyond reasonable doubt of rape with homicide, disposing as follows:

> WHEREFORE, finding the accused guilty beyond reasonable doubt of the crime charged, this court hereby sentences him to death and to pay the heirs of [AAA], the following
>
> 1. ₱100,000.00 in actual damages for the death of [AAA], and
> 2. ₱50,000.00 in moral damages.
>
> SO ORDERED.[8]

The RTC held that CCC had the capacity to observe, recollect and communicate what he had witnessed; hence, he was entitled to credence. It ruled that sufficient circumstantial evidence pointing to Magbitang as the author of the rape with homicide

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[5] TSN, February 6, 2002, p. 3.

[6] TSN, April 24, 2002, pp. 2-6.

[7] CA *rollo*, pp. 24-27; penned by Judge Ismael P. Casabar.

[8] *Id.* at 27.

existed in the records considering his being the last person seen with AAA; that he had admitted leaving the drinking session at the party around 4:00 p.m. or 5:00 p.m., thereby substantiating CCC's testimony; and that AAA's lifeless body had been found at the back of his house.

Ruling of the CA

On appeal, the CA affirmed the conviction. It agreed with the RTC that CCC was a competent witness despite his tender age because he showed his capacity to observe, recollect and communicate whatever he had witnessed; that CCC, being only a child, was not expected to give the exact details of the incident he had witnessed; that CCC was able to positively identify Magbitang during the trial as the culprit;[9] and that the evidence adduced by the Defense consisted only of the uncorroborated and self-serving testimony by Magbitang.

Issues

In this appeal, Magbitang contends that the CA committed the following reversible errors, to wit:

I

THE TRIAL COURT GRAVELY ERRED IN GIVING CREDENCE TO THE MATERIALLY INCONSISTENT TESTIMONY OF THE 6-YEAR OLD WITNESS [CCC].

II

THE LOWER COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF RAPE WITH HOMICIDE DESPITE THE FACT THAT THE LATTER'S GUILT WAS NOT PROVEN BEYOND REASONABLE DOUBT.

III

THE LOWER COURT GRAVELY ERRED IN CONVICTING THE ACCUSED-APPELLANT OF RAPE WITH HOMICIDE BASED ON CIRCUMSTANTIAL EVIDENCE.[10]

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[9] *Rollo*, pp. 16-19.

[10] CA *rollo*, p. 42.

Ruling of the Court

We sustain the conviction but modify the penalty.

To start with, the Court generally defers to the factual findings of the trial court by virtue of the latter's better position to observe and determine matters of credibility of the witnesses, having heard the witnesses and observed their deportment during trial.[11] This deference becomes firmer when the factual findings of the trial court were affirmed by the intermediate reviewing court. The Court does not disturb such factual findings unless the consideration of certain facts of substance and value that were plainly overlooked or misappreciated by the lower courts could affect the outcome of the case.[12]

A review of the records persuades the Court to declare that the RTC and the CA correctly appreciated the evidence adduced herein. Hence, their factual findings are upheld.

Secondly, Magbitang's contention that CCC, being a child of tender age, was not a competent witness because his testimony was filled with inconsistencies and suffered from improbabilities was unfounded.

Under the *Rules of Court*, a child may be a competent witness, unless the trial court determines upon proper showing that the child's mental maturity is such as to render him incapable of perceiving the facts respecting which he is to be examined and of relating the facts truthfully.[13] The testimony of the child of sound mind with the capacity to perceive and make known the perception can be believed in the absence of any showing of an improper motive to testify.[14] Once it is established that the child fully understands the character and nature of an oath, the

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[11] *People v. Ending*, G.R. No. 183827, November 12, 2012, 685 SCRA 180, 190.

[12] *People v. Mangune*, G.R. No. 186463, November 14, 2012, 685 SCRA 578, 588-589.

[13] Section 21 (b), Rule 130, *Rules of Court*.

[14] *People v. Gacho*, G.R. No. 60990, 23 September 1983, 124 SCRA 677.

testimony is given full credence.[15] In the case of CCC, the Defense did not persuasively discredit his worthiness and competence as a witness. As such, the Court considers the reliance by the trial court on his recollection fully justified.

And, thirdly, we dismiss the argument of Magbitang that the trial court erroneously relied on circumstantial evidence to establish his criminal responsibility for the rape with homicide. The evidence of guilt against him consisted in both direct and circumstantial evidence. The direct evidence was supplied by CCC's testimony, while the circumstantial evidence corroborated CCC's testimony. Such evidence, combined, unerringly pointed to Magbitang, and to no other, as the culprit.

In this connection, it is worth reminding that circumstantial evidence is not necessarily weaker in persuasive quality than direct evidence. As the Court said in *People v. Villaflores*: [16]

> We have often conceded the difficulty of proving the commission of rape when only the victim is left to testify on the circumstances of its commission. The difficulty heightens and complicates when the crime is *rape with homicide*, because there may usually be no living witnesses if the rape victim is herself killed. Yet, the situation is not always hopeless for the State, for the *Rules of Court* also allows circumstantial evidence to establish the commission of the crime as well as the identity of the culprit. Direct evidence proves a fact in issue directly without any reasoning or inferences being drawn on the part of the factfinder; in contrast, circumstantial evidence indirectly proves a fact in issue, such that the factfinder must draw an inference or reason from circumstantial evidence. [17] To be clear, then, circumstantial evidence may be resorted to when to insist on direct testimony would ultimately lead to setting a felon free.[18]

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[15] *Id.*

[16] G.R. No. 184926, April 11, 2012, 669 SCRA 365, 384.

[17] *Id.*, citing *People v. Ramos*, G.R. No. 104497, January 18, 1995, 240 SCRA 191, 198; citing Gardner, *Criminal Evidence, Principles, Cases and Readings*, West Publishing Co., 1978 ed., p. 124.

[18] *Id.*, citing *Amora v. People*, G.R. No. 154466, January 28, 2008, 542 SCRA 485, 491.

The *Rules of Court* makes no distinction between direct evidence of a fact and evidence of circumstances from which the existence of a fact may be inferred; hence, no greater degree of certainty is required when the evidence is circumstantial than when it is direct. In either case, the trier of fact must be convinced beyond a reasonable doubt of the guilt of the accused.[19] Nor has the quantity of circumstances sufficient to convict an accused been fixed as to be reduced into some definite standard to be followed in every instance. Thus, the Court said in *People v. Modesto*:[20]

> The standard postulated by this Court in the appreciation of circumstantial evidence is well set out in the following passage from *People vs. Ludday*:[21] "No general rule can be laid down as to the quantity of circumstantial evidence which in any case will suffice. All the circumstances proved must be consistent with each other, consistent with the hypothesis that the accused is guilty, and at the same time inconsistent with the hypothesis that he is innocent, and with every other rational hypothesis except that of guilt."

Notwithstanding our concurrence with the findings of the RTC and the CA, we reduce the penalty of death to *reclusion perpetua* in view of the intervening enactment of Republic Act No. 9346,[22] but without eligibility for parole of Magbitang.[23]

Conformably with the ruling in *People v. Jugueta*,[24] which the Court recently promulgated in order to lay to rest the inconsistencies in the fixing of damages as part of the civil liabilities in crimes, we modify the awards by imposing civil

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[19] *Id.*, citing *People v. Ramos*, *supra*, note 14; citing *Robinson v. State*, 18 Md. App. 678, 308 A2d 734 (1973).

[20] No. L-25484, September 21, 1968, 25 SCRA 36, 41.

[21] 61 Phil. 216, 221-222 (1935).

[22] *An Act Prohibiting the Imposition of Death Penalty in the Philippines (repealing Republic Act 8177 otherwise known as the Act Designating Death by Lethal Injection, Republic Act 7659 otherwise known as the Death Penalty Law and All Other Laws, Executive Orders and Decrees).*

[23] Section 3, R.A. No. 9346.

[24] *People v. Jugueta*, G.R. No. 202124, April 5, 2016.

indemnity of ₱100,000.00; moral damages of ₱100,000.00; and exemplary damages of ₱100,000.00 because the penalty of death, although proper, had to be reduced to *reclusion perpetua* in deference to the application of Republic Act No. 9346.[25] In addition, although we delete the actual damages for failure to prove them, the heirs of AAA were entitled to temperate damages of ₱50,000.00.

Lastly, interest at the rate of 6% *per annum* shall be charged on all the damages herein awarded reckoned from the finality of this decision.[26]

WHEREFORE, the Court **AFFIRMS** the conviction of **EDISON C. MAGBITANG** for rape with homicide; **REDUCES** his penalty from death to *reclusion perpetua,* without eligibility for parole pursuant to Republic Act No. 9346; **DELETES** the award of actual damages; **GRANTS** to the heirs of AAA temperate damages of ₱50,000.00, exemplary damages of ₱100,000.00, civil indemnity of ₱100,000.00, and moral damages of ₱100,000.00; **IMPOSES** interest of 6% *per annum* on all the damages herein awarded reckoned from the finality of this decision; and **ORDERS** the appellant to pay the costs of suit.

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Perez, Mendoza, Reyes, Leonen, and *Caguioa, JJ.,* concur.

Perlas-Bernabe, J., no part due to prior participation in the Court of Appeals.

Brion, Peralta, and *Jardeleza, JJ.,* on official leave.

Del Castillo, J., on wellness leave.

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[25] See *People v. Notarion*, G.R. No. 181493, August 28, 2008, 563 SCRA 618, 631.

[26] *People v. Combate*, G.R. No. 189301, December 15, 2010, 638 SCRA 797, 824; *Nacar v. Gallery Frames*, G.R. No. 189871, August 13, 2013, 703 SCRA 439.

EN BANC

[G.R. No. 194605. June 14, 2016]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **MARIANO OANDASAN, JR.,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; CRIMINAL PROCEDURE; APPEALS; EVERY APPEAL IN A CRIMINAL CASE OPENS THE RECORD FOR REVIEW.— This appeal opens the entire record to determine whether or not the findings against the accuse should be upheld or struck down in his favor. Nonetheless, he bears the burden to show that the trial and the appellate courts had overlooked, misapprehended or misinterpreted facts or circumstances that, if properly considered and appreciated, would significantly shift the outcome of the case in his favor. His failure to discharge this burden notwithstanding, the Court still reviewed the record conformably with the tenet that every appeal in a criminal case opens the record for review. Thus, after evaluating the record, the Court affirms the finding of his being criminally responsible for the killing of Montegrico and Tamanu, and the frustrated killing of Paleg, subject to the rectification of the characterization of the felonies as to Tamanu and Paleg.

2. ID.; EVIDENCE; DENIAL AND ALIBI; CANNOT BE GIVEN GREATER EVIDENTIARY VALUE THAN THE TESTIMONY OF CREDIBLE WITNESSES WHO TESTIFY ON AFFIRMATIVE MATTERS.— There is no doubt that Prosecution witness Ferdinand Cutaran positively identified the accused as the person who had shot Montegrico. Considering that Cutaran's credibility as an eyewitness was unassailable in the absence of any showing or hint of ill motive on his part to falsely incriminate the accused, such identification of the accused as the assailant of Montegrico prevailed over the accused's weak denial and alibi. As such, the CA properly rejected the denial and alibi of the accused as unworthy x x x. We reiterate that denial and alibi do not prevail over the positive identification of the accused by the State's witnesses who are categorical and consistent and bereft of ill motive

towards the accused. Denial, unless substantiated by clear and convincing evidence, is undeserving of weight in law for being negative and self-serving. Moreover, denial and alibi cannot be given greater evidentiary value than the testimony of credible witnesses who testify on affirmative matters.

3. CRIMINAL LAW; REVISED PENAL CODE; AGGRAVATING CIRCUMSTANCES; TREACHERY; WHEN APPRECIATED; WHAT IS DECISIVE IS THAT THE EXECUTION OF THE ATTACK MADE IT IMPOSSIBLE FOR THE VICTIM TO DEFEND HIMSELF OR RETALIATE.— The CA and the RTC appreciated the attendance of treachery only in the fatal shooting of Montegrico (Criminal Case No. 11-9260). Although no witness positively identified the accused as the person who had also shot Tamanu and Paleg, the record contained sufficient circumstantial evidence to establish that the accused was also criminally responsible for the fatal shooting of Tamanu and the near-fatal shooting of Paleg. Indeed, the CA declared the accused as "the lone assailant" of the victims x x x. Although the CA and the RTC correctly concluded that the accused had been directly responsible for the shooting of Tamanu and Paleg, we are perplexed why both lower courts only characterized the killing of Tamanu and the near-killing of Paleg as homicide and frustrated homicide while characterizing the killing of Montegrico as murder because of the attendance of treachery. The distinctions were unwarranted. The fact that the shooting of the three victims had occurred *in quick succession* fully called for a finding of the attendance of treachery in the attacks against *all* the victims. Montegrico, Tamanu and Paleg were drinking together outside their bunkhouse prior to the shooting when the accused suddenly appeared from the rear of the dump truck, walked towards their table and shot Montegrico without any warning. That first shot was quickly followed by more shots. In that situation, none of the three victims was aware of the imminent deadly assault by the accused, for they were just enjoying their drinks outside their bunkhouse. They were unarmed, and did not expect to be shot, when the accused came and shot them. The attack was mounted with treachery because the two conditions in order for this circumstance to be appreciated concurred, namely: *(a)* that the means, methods and forms of execution employed gave the person attacked no opportunity to defend himself or to retaliate; and *(b)* that such means, methods and forms of execution were deliberately and

consciously adopted by the accused without danger to his person. The essence of treachery lay in the attack that came without warning, and was swift, deliberate and unexpected, affording the hapless, unarmed and unsuspecting victims no chance to resist, or retaliate, or escape, thereby ensuring the accomplishment of the deadly design without risk to the aggressor, and without the slightest provocation on the part of the victims. What was decisive is that the execution of the attack made it impossible for the victims to defend themselves or to retaliate.

4. ID.; ID.; ID.; ID.; A RESORT NOT ONLY TO DIRECT EVIDENCE BUT ALSO TO CIRCUMSTANTIAL EVIDENCE IS PERMITTED TO ESTABLISH BEYOND REASONABLE DOUBT THE EXISTENCE OF TREACHERY AS AN AGGRAVATING OR ATTENDANT CIRCUMSTANCE.— Treachery as an aggravating or attendant circumstance must be established beyond reasonable doubt. This quantum is hardly achieved if there is no testimony showing *how* the accused actually commenced the assault against the victim. But to absolutely require such testimony in all cases would cause some murders committed without eyewitnesses to go unpunished by the law. To avoid that most undesirable situation, the *Rules of Court* permits a resort not only to direct evidence but also to circumstantial evidence. Indeed, the proof competent to achieve the quantum is not confined to direct evidence from an eyewitness, who may be unavailable. Circumstantial evidence can just as efficiently and competently achieve the quantum. The *Rules of Court* nowhere expresses a preference for direct evidence of a fact to evidence of circumstances from which the existence of a fact may be properly inferred. The *Rules of Court* has not also required a greater degree of certainty when the evidence is circumstantial than when it is direct, for, in either case, the trier of fact must still be convinced beyond a reasonable doubt of the guilt of the accused. The quantity of circumstances sufficient to convict an accused has not been fixed as to be reduced into some definite standard to be followed in every instance.

5. REMEDIAL LAW; CRIMINAL PROCEDURE; PROSECUTION OF OFFENSES; INFORMATION; THE ALLEGATIONS OF THE INFORMATION ON THE NATURE OF THE OFFENSE CHARGED, NOT THE NOMENCLATURE

GIVEN BY THE OFFICE OF THE PUBLIC PROSECUTOR, ARE CONTROLLING IN THE DETERMINATION OF THE OFFENSE CHARGED.— The averment in the second paragraph of the information filed x x x [in] Criminal Case No. II-9261 (in relation to the shooting of Paleg) that *homicide was the consequence of the acts of execution by the appellant* does not prevent finding the accused guilty of frustrated murder. The rule is that the allegations of the information on the nature of the offense charged, not the nomenclature given it by the Office of the Public Prosecutor, are controlling in the determination of the offense charged. Accordingly, considering that the information stated in its first paragraph that the accused, "armed with a gun, with intent to kill, with evident premeditation and with treacher[y], conspiring together and helping one another, did then and there willfully, unlawfully and feloniously assault, attack and shot (sic) one Engr. Mario Paleg y Ballad, inflicting upon the latter a gunshot wound," the accused can be properly found guilty of frustrated murder, a crime sufficiently averred in the information.

6. CRIMINAL LAW; REVISED PENAL CODE; MURDER, PENALTY; FRUSTRATED MURDER, PENALTY.— As a consequence, the accused was criminally liable for two counts of murder for the fatal shooting of Montegrico and Tamanu, and for frustrated murder for the near-fatal shooting of Paleg. In the absence of any modifying circumstances, *reclusion perpetua* is the penalty for each count of murder, while *reclusion temporal* in its medium period is the penalty for frustrated murder. The indeterminate sentence for the frustrated murder is eight years of *prision mayor*, as the minimum, to 14 years, eight months and one day of *reclusion temporal*, as the maximum.

7. CIVIL LAW; CIVIL CODE; DAMAGES; CIVIL INDEMNITY FOR DEATH; DEFINED; THE GRANT IS MANDATORY AND A MATTER OF COURSE, AND WITHOUT NEED OF PROOF OTHER THAN THE FACT OF DEATH AS THE RESULT OF THE CRIME OR QUASI-DELICT, AND THE FACT THAT THE ACCUSED WAS RESPONSIBLE THEREFOR.— Civil indemnity comes under the general provisions of the *Civil Code* on damages, and refers to the award given to the heirs of the deceased as a form of monetary restitution or compensation for the death of the victim at the

hands of the accused. Its grant is mandatory and a matter of course, and without need of proof other than the fact of death as the result of the crime or quasi-delict, and the fact that the accused was responsible therefor. The mandatory character of civil indemnity in case of death from crime or quasi- delict derives from the legal obligation of the accused or the defendant to fully compensate the heirs of the deceased for his death as the natural consequence of the criminal or quasi-delictual act or omission.

8. ID.; ID.; ID.; ID.; THE CIVIL INDEMNITY FOR DEATH, BEING COMPENSATORY IN NATURE, MUST ATTUNE TO CONTEMPORANEOUS ECONOMIC REALITIES WHICH IS THE LEGISLATIVE JUSTIFICATION FOR PEGGING THE MINIMUM, BUT NOT THE MAXIMUM, OF THE INDEMNITY.— Article 2206 of the *Civil Code* x x x has fixed the death indemnity to be "at least three thousand pesos, even though there may have been mitigating circumstances." Yet, the granting of civil indemnity was not introduced by the *Civil Code*, for the courts had granted death indemnity to the heirs of the victims even long prior to August 30, 1950, the date of the effectivity of the *Civil Code*. The award of civil indemnity dated back to the early years of the Court. There was also legislation on the matter, starting with Commonwealth Act No. 284, approved on June 3, 1938 x x x. In fixing the civil indemnity, the Legislature thereby set a minimum. The *Civil Code*, in Article 2206, took the same approach by specifying the amount to be *at least* ₱3,000.00, which was directly manifesting the legislative intent of enabling the courts to increase the amount *whenever the circumstances would warrant*. Civil indemnity for death has been increased through the years from the minimum of ₱2,000.00 to as high as ₱100,000.00. The increases have been made to consider the economic conditions, primarily the purchasing power of the peso as the Philippine currency. x x x. It is again timely to raise the civil indemnity for death arising from crime or quasi-delict. We start by reminding that human life, which is not a commodity, is priceless. The value of human life is incalculable, for no loss of life from crime or quasi-delict can ever be justly measured. Yet, the law absolutely requires every injury, especially loss of life, to be compensated in the form of damages. For this purpose, damages may be defined as the pecuniary compensation, recompense, or satisfaction for an

injury sustained, or, as otherwise expressed, the pecuniary consequences that the law imposes for the breach of some duty or the violation of some right. As such, damages refer to the amount in money awarded by the court as a remedy for the injured. Although money has been accepted as the most frequently used means of punishing, deterring, compensating and regulating injury throughout the legal system, it has been explained that money in the context of damages is not awarded as a replacement for other money, but as substitute for that which is generally more important than money; *it is the best thing that a court can do.* Regardless, the civil indemnity for death, being compensatory in nature, must attune to contemporaneous economic realities; otherwise, the desire to justly indemnify would be thwarted or rendered meaningless. This has been the legislative justification for pegging the minimum, but not the maximum, of the indemnity.

9. ID.; ID.; ID.; MORAL DAMAGES, EXEMPLARY DAMAGES, AND CIVIL INDEMNITY; AWARDED IN CASE AT BAR.— On April 5, 2016, the Court promulgated its decision in *People v. Jugueta* (G.R. No. 202124), whereby it adopted certain guidelines on fixing the civil liabilities in crimes resulting in the death of the victims taking into proper consideration the stages of execution and gravity of the offenses, as well as the number of victims in composite crimes. Other factors were weighed by the Court. In the case of murder where the appropriate penalty is *reclusion perpetua,* the Court has thereby fixed ₱75,000.00 for moral damages, ₱75,000.00 for exemplary damages, and ₱75,000.00 for civil indemnity as the essential civil liabilities, in addition to others as the records of each case will substantiate. Hence, we impose herein the same amounts for such items of damages in each count of murder. It appears that the accused and the heirs of Montegrico stipulated that the civil indemnity of the accused in case of conviction should not exceed ₱150,000.00. The stipulation cannot stand because the civil indemnity arising from each murder should only be ₱75,000.00. In crimes in which death of the victim results, civil indemnity is granted even in the absence of allegation and proof. Similarly, moral damages are allowed even without allegation and proof, it being a certainty that the victims' heirs were entitled thereto as a matter of law. x x x On his part, Paleg, being the victim of frustrated murder, is entitled to ₱50,000.00 as moral damages, ₱50,000.00 as

civil indemnity, and ₱50,000.00 as exemplary damages, ₱25,000.00 as temperate damages (for his hospitalization and related expenses). This quantification accords with the pronouncement in *People v. Jugueta, supra.*

10. ID.; ID.; ID.; TEMPERATE DAMAGES; GRANTED WHEN THE ACTUAL EXPENDITURE IS NOT ESTABLISHED WITH CERTAINTY.— Also in accordance with *People v. Jugueta*, x x x temperate damages of ₱50,000.00 should further be granted to the heirs of Montegrico and Tamanu considering that they were presumed to have spent for the interment of each of the deceased. It would be unjust to deny them recovery in the form of temperate damages just because they did not establish with certainty the actual expenditure for the interment of their late-lamented family members.

11. ID.; ID.; ID.; EXEMPLARY DAMAGES; AWARDED WHEN AT LEAST ONE AGGRAVATING CIRCUMSTANCE ATTENDED THE COMMISSION OF THE CRIME.— Article 2230 of the *Civil Code* authorizes the grant of exemplary damages if at least one aggravating circumstance attended the commission of the crime. For this purpose, exemplary damages of ₱75,000.00 are granted to the heirs of Montegrico and Tamanu, respectively, based on the attendant circumstance of treachery. Whether treachery was a qualifying or attendant circumstance did not matter x x x.

APPEARANCES OF COUNSEL

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

D E C I S I O N

BERSAMIN, *J.*:

This case involves a shooting incident that resulted in the deaths of two victims and the frustrated killing of a third victim. Although the trial court properly appreciated the attendance of treachery and pronounced the accused guilty of murder for the fatal shooting of the first victim, it erroneously pronounced the accused guilty of homicide and frustrated homicide as to the

second and third victims on the basis that treachery was not shown to be attendant. The Court of Appeals (CA) concurred with the trial court's characterization of the felonies.

We disagree with both lower courts because treachery was competently shown to be attendant in the shooting of each of the three victims. Thus, we pronounce the accused guilty of two counts of murder and one count of frustrated murder.

Antecedents

Three informations were filed against the accused, two of which were for murder involving the fatal shooting of Edgardo Tamanu and Danilo Montegrico, and the third was for frustrated homicide involving the near-fatal shooting of Mario Paleg.

The informations, docketed as Criminal Case No. II-9259, Criminal Case No. II-9260, and Criminal Case No. II-9261 of the Regional Trial Court in Tuguegarao City (RTC), averred as follows:

Criminal Case No. II-9259[1]

That on or about July 29, 2003, in the municipality of Gattaran, province of Cagayan, and within the jurisdiction of this Honorable Court, the above-named accused armed with a gun, with intent to kill, with evident premeditation and with treachery, conspiring together and helping one another, did then and there willfully, unlawfully and feloniously assault, attack and shot (sic) one Edgardo Tamanu y Palattao, inflicting upon the latter a gunshot wound which caused his death.

Criminal Case No. II-9260[2]

That on or about July 29, 2003, in the municipality of Gattaran, province of Cagayan, and within the jurisdiction of this Honorable Court, the above-named accused armed with a gun, with intent to kill, with evident premeditation and with treachery, conspiring together and helping one another, did then and there willfully, unlawfully and feloniously assault, attack and shot (sic) one Danilo

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[1] *Rollo*, pp. 3-4.

[2] *Id.* at 4.

Montegrico, inflicting upon the latter a gunshot wound which caused his death.

Criminal Case No. II-9261[3]

That on or about July 29, 2003, in the municipality of Gattaran, province of Cagayan, and within the jurisdiction of this Honorable Court, the above-named accused armed with a gun, with intent to kill, with evident premeditation and with treacher[y], conspiring together and helping one another, did then and there willfully, unlawfully and feloniously assault, attack and shot (sic) one Engr. Mario Paleg *y* Ballad, inflicting upon the latter a gunshot wound.

That the accused had performed all the acts of execution which would have produce (sic) the crime of Homicide as a consequence, but which, nevertheless, did not produce it by reason of causes independent of his own will.

The CA summarized the facts in its assailed judgment, to wit:

Ferdinand Cutaran, 37 years old, driver at Navarro Construction, testified that on July 29, 2003 between 8:00 to 9:00 in the evening, he and his companions Jose Ifurung, Arthur Cutaran and victim Danny Montegrico were having a drinking spree outside the bunkhouse of Navarro Construction at Barangay Peña Weste, Gattaran, Cagayan. Suddenly, appellant who appeared from back of a dump truck, aimed and fired his gun at Montegrico. Cutaran ran away after seeing the appellant shoot Montegrico. He did not witness the shooting of the other two victims Edgar Tamanu and Mario Paleg. When he returned to the crime scene, he saw the bodies of Montegrico, Tamanu and Paleg lying on the ground. Cutaran and his companions rushed the victims to Lyceum of Aparri Hospital.

As a result of the shooting incident, Danilo Montegrico, 34, and Edgardo Tamanu, 33, died; while Mario Paleg survived. The Medical Certificate dated August 13, 2003 issued by Lyceum of Aparri Hospital disclosed that Paleg was confined from July 29-30, 2003 for treatment of a gun shot wound on his right anterior hind spine.

Prudencio Bueno, 68 years old, a checker at Navarro Construction and a resident of Centro 14 Aparri, Cagayan, stated that after having

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[3] *Id.*

dinner with Cutaran and the others on the date and time in question, he went inside the bunkhouse to drink water. Suddenly, he heard successive gun reports (sic). When he peeped through a window he saw the accused approaching from the back of a dump truck holding something, and going to the table where they were eating. He confessed that he did not actually see the appellant fire his gun at the victims.

Dr. Nida Rosales, Municipal Health Officer of Gattaran, Cagayan testified that she conduced a post-mortem examination on the body of Montegrico; that Montegrico sustained a single gunshot wound below the ribs; and that the injury caused his death.

The accused-appellant raised the defense of denial and alibi. Accused-appellant, 38 years old, a native of Bulala Sur, Aparri, Cagayan, testified that from July up to October 2003, he was staying at his sister's house in Imus, Cavite. He was hired by SERG Construction, Inc. as a mason to work on a subdivision project in Rosario, Cavite. On that fateful day of July 29, 2003, he reported for work from 7:00 a.m. up to 5:00 p.m. To bolster his claim, he presented an Employment Certificate dated January 20, 2007 issued by Engr. Renato Bustamante of SERG Construction and a time record sheet dated July 29, 2003. He went back to Aparri in October 2003 after the completion of his project in Cavite. He further stated that he worked at Navarro Construction in February, 2003; that he had a previous misunderstanding with his former co-workers witnesses Cutaran and Bueno when he caught the two stealing sacks of cement from the company; that as a result, Cutaran and Bueno were transferred to another project and their employer assigned him as checker in replacement of Bueno; that the two planned to kill him as he prevented them from doing their fraudulent act; and that he resigned between the months of March and May 2003 because the two kept on disturbing him.

Fred Escobar, 48 years old, a resident of Pallagao, Baggao, Cagayan, testified that on July 29, 2003, he was having a drink with Montegrico and three other men whom he did not know; that when he was about to go home at around 8:00 p.m., a stranger appeared and fired his gun at Montegrico; that the assailant whom he did not know fired his gun several times. He asserted that appellant was not the assailant since the latter was shorter in stature.[4]

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

Judgment of the RTC

On June 1, 2009, the RTC rendered its judgment,[5] to wit:

WHEREFORE, the Court finds the accused Mariano Oandasan, Jr. *guilty beyond reasonable doubt as principal*:

a) in Criminal Case No. II-9260, for Murder for killing Danilo Montegrico and sentences accused with the penalty of reclusion perpetua and to pay the heirs of Danilo Montegrico the sum of One Hundred Fifty Thousand Pesos (₱150,000.00);

b) in Criminal Case No. II-9259, for Homicide for killing Edgardo Tamanu and sentences accused with the indeterminate penalty of six (6) years and one (1) day of prision mayor as minimum to seventeen (17) years and four (4) months of reclusion temporal as maximum and to pay the heirs of Edgardo Tamanu the sum of Fifty Thousand Pesos (₱50,000.00); and

c) in Criminal Case No. II-9261, for Frustrated Homicide for wounding Mario Paleg, and sentences the accused with the penalty of two (2) years and one (1) day of prision correccional as minimum to eight (8) years and one (1) day of prision mayor as maximum.

SO ORDERED.[6]

Decision of the CA

On appeal, the CA affirmed the judgment of the RTC through its decision promulgated on June 29, 2010,[7] to wit:

WHEREFORE, premises considered, the appeal is **DENIED**. The Judgment dated June 1, 2009 of the RTC, Branch 6 of Aparri, Cagayan is **AFFIRMED with MODIFICATION** in that appellant is **ORDERED** to pay the heirs of Edgardo Tamanu the amounts of ₱75,000.00 as civil indemnity and ₱75,000.00 as moral damages, and Mario Paleg, the sum of ₱50,000.00 as moral damages.

SO ORDERED.[8]

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[5] CA *rollo*, pp. 13-20; penned by Presiding Judge Roland R. Velasco.

[6] *Id.* at 20.

[7] *Rollo*, pp. 2-13; penned by Associate Justice Portia Aliño-Hormachuelos (retired), with the concurrence of Associate Justice Japar B. Dimaampao and Associate Justice Jane Aurora C. Lantion.

[8] *Id.* at 12.

Hence, this ultimate appeal, with the accused still insisting on the reversal of his convictions.

Ruling of the Court

This appeal opens the entire record to determine whether or not the findings against the accused should be upheld or struck down in his favor. Nonetheless, he bears the burden to show that the trial and the appellate courts had overlooked, misapprehended or misinterpreted facts or circumstances that, if properly considered and appreciated, would significantly shift the outcome of the case in his favor. His failure to discharge this burden notwithstanding, the Court still reviewed the record conformably with the tenet that every appeal in a criminal case opens the record for review.[9] Thus, after evaluating the record, the Court affirms the finding of his being criminally responsible for the killing of Montegrico and Tamanu, and the frustrated killing of Paleg, subject to the rectification of the characterization of the felonies as to Tamanu and Paleg.

I
Denial and alibi do not overcome positive identification of the accused

There is no doubt that Prosecution witness Ferdinand Cutaran positively identified the accused as the person who had shot Montegrico. Considering that Cutaran's credibility as an eyewitness was unassailable in the absence of any showing or hint of ill motive on his part to falsely incriminate the accused, such identification of the accused as the assailant of Montegrico prevailed over the accused's weak denial and alibi. As such, the CA properly rejected the denial and alibi of the accused as unworthy, and we adopt the following stated reasons of the CA for the rejection, to wit:

> As for the defense of alibi, for it to prosper, it must be established by positive, clear and satisfactory proof that it was physically impossible for the accused to have been at the scene of the crime at

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[9] *People v. Bongalon,* G.R. No. 169533, March 20, 2013, 694 SCRA 12, 21.

the time of its commission, and not merely that the accused was somewhere else. Physical impossibility refers to the distance between the place where the accused was when the crime happened and the place where it was committed, as well as the facility of the access between the two places. In the case at bar, appellant failed to prove the element of physical impossibility for him to be at the scene of the crime at the time it took place. His alibi that he was in Cavite and the employment certificate and time record sheet which he presented cannot prevail over the positive and categorical testimonies of the prosecution witnesses. Alibi is the weakest defense not only because it is inherently weak and unreliable, but also because it is easy to fabricate. It is generally rejected when the accused is positively identified by a witness.[10]

We reiterate that denial and alibi do not prevail over the positive identification of the accused by the State's witnesses who are categorical and consistent and bereft of ill motive towards the accused. Denial, unless substantiated by clear and convincing evidence, is undeserving of weight in law for being negative and self-serving. Moreover, denial and alibi cannot be given greater evidentiary value than the testimony of credible witnesses who testify on affirmative matters.[11]

II

Treachery also attended the shooting of Tamanu and Paleg; hence, the accused is guilty of two counts of murder and one count of frustrated murder

The CA and the RTC appreciated the attendance of treachery only in the fatal shooting of Montegrico (Criminal Case No. II-9260). Although no witness positively identified the accused as the person who had also shot Tamanu and Paleg, the record contained sufficient circumstantial evidence to establish that the accused was also criminally responsible for the fatal shooting of Tamanu and the near-fatal shooting of Paleg. Indeed, the

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[10] *Rollo*, pp. 10-11.

[11] *People v. Agcanas*, G.R. No. 174476, October 11, 2011, 658 SCRA 842, 847.

CA declared the accused as "the lone assailant" of the victims based on its following analytical appreciation, to wit:

> The evidence in this case shows that the attack was unexpected and swift. Montegrico and his friends were just drinking outside the bunkhouse when the appellant suddenly appeared from the back of a dump truck, walked towards their table and, without any warning, fired at Montegrico. This shot was followed by more shots directed at Montegrico's friends, Tamanu and Paleg. Indisputably, Montegrico was caught off guard by the sudden and deliberate attack coming from the appellant, leaving him with no opportunity to raise any defense against the attack. Also, appellant deliberately and consciously adopted his mode of attack by using a gun and made sure that Montegrico, who was unarmed, would have no chance to defend himself.
>
> We hold that the circumstantial evidence available was enough to convict accused-appellant. Circumstantial evidence is competent to establish guilt as long as it is sufficient to establish beyond a reasonable doubt that the accused, and not someone else, was responsible for the killing. For circumstantial evidence to suffice to convict an accused, the following requisites must concur: (1) there is more than one circumstance; (2) the facts from which the inferences are derived are proven; and (3) the combination of all the circumstances is such as to produce a conviction beyond reasonable doubt. In this case, these requisites for circumstantial evidence to sustain a conviction are present. ***First***, the witnesses unanimously said that they saw appellant coming from the back of a dump truck and shoot Montegrico pointblank. ***Second***, appellant fired his gun several times. ***Third***, immediately after the shooting incident, three victims were found lying on the ground and rushed to the hospital. ***Fourth***, the Certificates of Death of Montegrico and Tamanu and the Medical Certificate of Paleg revealed that they all sustained gun shot wounds. Thus, it can be said with certitude that appellant was the lone assailant. The foregoing circumstances are proven facts, and the Court finds no reason to discredit the testimonies of the prosecution's witnesses. Well-entrenched is the rule that the trial court's assessment of the credibility of witnesses is accorded great respect and will not be disturbed on appeal, inasmuch as the court *a quo* was in a position to observe the demeanor of the witnesses while testifying. The Court does not find any arbitrariness or error on the part of the RTC as would warrant a deviation from this rule.[12]

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[12] *Rollo*, pp. 9-10.

Although the CA and the RTC correctly concluded that the accused had been directly responsible for the shooting of Tamanu and Paleg, we are perplexed why both lower courts only characterized the killing of Tamanu and the near-killing of Paleg as homicide and frustrated homicide while characterizing the killing of Montegrico as murder because of the attendance of treachery. The distinctions were unwarranted. The fact that the shooting of the three victims had occurred *in quick succession* fully called for a finding of the attendance of treachery in the attacks against *all* the victims. Montegrico, Tamanu and Paleg were drinking together outside their bunkhouse prior to the shooting when the accused suddenly appeared from the rear of the dump truck, walked towards their table and shot Montegrico without any warning. That first shot was quickly followed by more shots. In that situation, none of the three victims was aware of the imminent deadly assault by the accused, for they were just enjoying their drinks outside their bunkhouse. They were unarmed, and did not expect to be shot, when the accused came and shot them.

The attack was mounted with treachery because the two conditions in order for this circumstance to be appreciated concurred, namely: *(a)* that the means, methods and forms of execution employed gave the person attacked no opportunity to defend himself or to retaliate; and *(b)* that such means, methods and forms of execution were deliberately and consciously adopted by the accused without danger to his person.[13] The essence of treachery lay in the attack that came without warning, and was swift, deliberate and unexpected, affording the hapless, unarmed and unsuspecting victims no chance to resist, or retaliate, or escape, thereby ensuring the accomplishment of the deadly design without risk to the aggressor, and without the slightest provocation on the part of the victims.

What was decisive is that the execution of the attack made it impossible for the victims to defend themselves or to retaliate.

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[13] *Luces v. People*, G.R. No. 149492, January 20, 2003, 395 SCRA 524, 532-533.

Jurisprudence has been illustrative of this proposition. In *People v. Flora*,[14] for instance, treachery was appreciated as an attendant circumstance in the killing of two victims, and in the attempted killing of a third victim, warranting the conviction of the accused for two murders and attempted murder, notwithstanding that although the accused had first fired at his *intended* victim, he had missed and had instead hit the two other victims, with the Court observing that the three victims were all nonetheless "helpless to defend themselves." In another illustrative ruling, *People v. Pinto, Jr.*,[15] treachery was held to attend the three killings and the wounding of a fourth victim because the attack was sudden and the victims were defenseless; hence, the killings were murders, and the wounding frustrated murder.

Treachery as an aggravating or attendant circumstance must be established beyond reasonable doubt. This quantum is hardly achieved if there is no testimony showing *how* the accused actually commenced the assault against the victim. But to absolutely require such testimony in all cases would cause some murders committed without eyewitnesses to go unpunished by the law. To avoid that most undesirable situation, the *Rules of Court* permits a resort not only to direct evidence but also to circumstantial evidence. Indeed, the proof competent to achieve the quantum is not confined to direct evidence from an eyewitness, who may be unavailable. Circumstantial evidence can just as efficiently and competently achieve the quantum. The *Rules of Court* nowhere expresses a preference for direct evidence of a fact to evidence of circumstances from which the existence of a fact may be properly inferred. The *Rules of Court* has not also required a greater degree of certainty when the evidence is circumstantial than when it is direct, for, in either case, the trier of fact must still be convinced beyond a reasonable doubt of the guilt of the accused.[16] The quantity of circumstances

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[14] G.R. No. 125909, June 23, 2000, 334 SCRA 262, 275-276.

[15] G.R. No. L-39519, November 21, 1991, 204 SCRA 9, 35.

[16] *People v. Ramos*, G.R. No. 104497, January 18, 1995, 240 SCRA 191, 199, citing *Robinson v. State*, 18 Md. App. 678, 308 A2d 734 (1973).

sufficient to convict an accused has not been fixed as to be reduced into some definite standard to be followed in every instance. As the Court has observed in *People v. Modesto*:[17]

> The standard postulated by this Court in the appreciation of circumstantial evidence is well set out in the following passage from *People vs. Ludday*:[18] "No general rule can be laid down as to the quantity of circumstantial evidence which in any case will suffice. All the circumstances proved must be consistent with each other, consistent with the hypothesis that the accused is guilty, and at the same time inconsistent with the hypothesis that he is innocent, and with every other rational hypothesis except that of guilt."

It is of no consequence, therefore, that Cutaran, who had meanwhile fled to safety upon hearing the shot that had felled Montegrico, did not witness the actual shooting of Tamanu and Paleg; or that Paleg, although surviving the assault against him and Tamanu, did not testify during the trial. What is of consequence is that the records unquestionably and reliably showed that Tamanu and Paleg were already prostrate on the ground when Cutaran returned to the scene; and that the gunshots had been fired in quick succession, thereby proving with moral certainty that the accused was the same person who also shot Tamanu and Paleg.

The averment in the second paragraph of the information filed in Criminal Case No. II-9261 (in relation to the shooting of Paleg) that *homicide was the consequence of the acts of execution by the appellant*[19] does not prevent finding the accused guilty of frustrated murder. The rule is that the allegations of the information on the nature of the offense charged, not the nomenclature given it by the Office of the Public Prosecutor,

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[17] G.R. No. L-25484, September 21, 1968, 25 SCRA 36, 41.

[18] 61 Phil. 216, 221-222 (1935).

[19] The second paragraph of the information reads:

> **That the accused had performed all the acts of execution which would have produce (sic) the crime of Homicide as a consequence, but which, nevertheless, did not produce it by reason of causes independent of his own will.** (*Rollo*, p. 3).

are controlling in the determination of the offense charged. Accordingly, considering that the information stated in its first paragraph that the accused, "armed with a gun, with intent to kill, with evident premeditation and with treacher[y], conspiring together and helping one another, did then and there willfully, unlawfully and feloniously assault, attack and shot (sic) one Engr. Mario Paleg y Ballad, inflicting upon the latter a gunshot wound," the accused can be properly found guilty of frustrated murder, a crime sufficiently averred in the information.

III
Criminal Liabilities

As a consequence, the accused was criminally liable for two counts of murder for the fatal shooting of Montegrico and Tamanu, and for frustrated murder for the near-fatal shooting of Paleg. In the absence of any modifying circumstances, *reclusion perpetua* is the penalty for each count of murder, while *reclusion temporal* in its medium period is the penalty for frustrated murder. The indeterminate sentence for the frustrated murder is eight years of *prision mayor*, as the minimum, to 14 years, eight months and one day of *reclusion temporal*, as the maximum.

IV
Civil Liability

For death caused by a crime or quasi-delict, Article 2206 of the *Civil Code* enumerates the damages that may be recovered from the accused or defendant, to wit:

> Article 2206. The amount of damages for death caused by a crime or quasi-delict shall be at least three thousand pesos, even though there may have been mitigating circumstances. In addition:
>
> (1) The defendant shall be liable for the loss of the earning capacity of the deceased, and the indemnity shall be paid to the heirs of the latter; such indemnity shall in every case be assessed and awarded by the court, unless the deceased on account of permanent physical disability not caused by the defendant, had no earning capacity at the time of his death;
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> (2) If the deceased was obliged to give support according to the provisions of Article 291, the recipient who is not an heir called

to the decedent's inheritance by the law of testate or intestate succession, may demand support from the person causing the death, for a period not exceeding five years, the exact duration to be fixed by the court;

(3) The spouse, legitimate and illegitimate descendants and ascendants of the deceased may demand moral damages for mental anguish by reason of the death of the deceased.

The first item of civil liability is the civil indemnity for death, or death indemnity.

Civil indemnity comes under the general provisions of the *Civil Code* on damages, and refers to the award given to the heirs of the deceased as a form of monetary restitution or compensation for the death of the victim at the hands of the accused. Its grant is mandatory and a matter of course, and without need of proof other than the fact of death as the result of the crime or quasi-delict,[20] and the fact that the accused was responsible therefor. The mandatory character of civil indemnity in case of death from crime or quasi-delict derives from the legal obligation of the accused or the defendant to fully compensate the heirs of the deceased for his death as the natural consequence of the criminal or quasi-delictual act or omission. This legal obligation is set in Article 2202 of the *Civil Code*, *viz*.:

Article 2202. In crimes and quasi-delicts, the defendant shall be liable for all damages which are the natural and probable consequences of the act or omission complained of. It is not necessary that such damages have been foreseen or could have reasonably been foreseen by the defendant.

Article 2206 of the *Civil Code*, *supra*, has fixed the death indemnity to be "at least three thousand pesos, even though there may have been mitigating circumstances." Yet, the granting of civil indemnity was not introduced by the *Civil Code*, for the courts had granted death indemnity to the heirs of the victims even long prior to August 30, 1950, the date of the effectivity

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[20] *People v. Molina*, G.R. No. 184173, March 13, 2009, 581 SCRA 519, 542.

of the *Civil Code*. The award of civil indemnity dated back to the early years of the Court.[21] There was also legislation on the matter, starting with Commonwealth Act No. 284, approved on June 3, 1938, which provided in its Section 1 the following:

> Section 1. — The civil liability or the death of a person shall be fixed by the competent court at a reasonable sum, upon consideration of the pecuniary situation of the party liable and other circumstances, but it shall in no case be less than two thousand pesos.

In fixing the civil indemnity, the Legislature thereby set a minimum. The *Civil Code*, in Article 2206, took the same approach by specifying the amount to be *at least* ₱3,000.00, which was directly manifesting the legislative intent of enabling the courts to increase the amount *whenever the circumstances would warrant.*

Civil indemnity for death has been increased through the years from the minimum of ₱2,000.00 to as high as ₱100,000.00. The increases have been made to consider the economic conditions, primarily the purchasing power of the peso as the Philippine currency. In 1948, in *People v. Amansec*,[22] the Court awarded to the heirs of the victim of homicide the amount of ₱6,000.00 as death indemnity, raising the ₱2,000.00 allowed by the trial court, the legal minimum at the time, and justified the increase by adverting to the "difference between the value of the present currency and that at the time when the law fixing a minimum indemnity of ₱2,000.00 was enacted."[23] Later on, in 1968, the Court, in *People v. Pantoja*,[24] saw a significant need to further upgrade the civil indemnity for death to ₱12,000.00. To justify the upgrade, the Court included a review of the more recent history of civil indemnity for death in this jurisdiction, to wit:

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[21] In 1905, civil indemnity in the amount of ₱500.00 was allowed for death in *United States v. Bastas*, 5 Phil. 251 (1905), a murder case. In 1908, the amount of ₱1,000.00 was awarded to the heirs of the deceased in *United States v. Indon*, 11 Phil. 64 (1908).

[22] 80 Phil. 424 (1948).

[23] *Id.* at 435.

[24] G.R. No. L-18793, October 11, 1968, 25 SCRA 468.

In 1947, when the Project of Civil Code was drafted, the Code Commission fixed the sum of ₱3,000 as the minimum amount of compensatory damages for death caused by a crime or quasi-delict. The Project of Civil Code was approved by both Houses of the Congress in 1949 as the New Civil Code of the Philippines, which took effect in 1950. In 1948 in the case of *People vs. Amansec*, 80 Phil. 424, the Supreme Court awarded ₱6,000 as compensatory damages for death caused by a crime "*considering the difference between the value of the present currency and that at the time when the law fixing a minimum indemnity* of ₱2,000 was enacted." The law referred to was Commonwealth Act No. 284 which took effect in 1938. In 1948, the purchasing power of the Philippine peso was one-third of its pre-war purchasing power. In 1950, when the New Civil Code took effect, the minimum amount of compensatory damages for death caused by a crime or quasi-delict was fixed in Article 2206 of the Code at ₱3,000. The article repealed by implication Commonwealth Act No. 284. Hence, from the time the New Civil Code took effect, the Courts could properly have awarded ₱9,000 as compensatory damages for death caused by a crime or quasi-delict. *It is common knowledge that from 1948 to the present (1968), due to economic circumstances beyond governmental control, the purchasing power of the Philippine peso has declined further such that the rate of exchange now in the free market is U.S. $1.00 to almost ₱4.00 Philippine pesos. This means that the present purchasing power of the Philippine peso is one-fourth of its pre-war purchasing power*. We are, therefore, of the considered opinion that the amount of award of compensatory damages for death caused by a crime or quasi-delict should now be ₱12,000.[25] (Italics supplied)

Increases were made from time to time until the death indemnity reached the threshold of ₱50,000.00, where it remained for a long time.[26] In that time, however, the Court occasionally granted

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[25] *Id.* at 473.

[26] *E.g.*, *People v. Dagani*, G.R. No. 153875, August 16, 2006, 499 SCRA 64, 84-85; *Baxinela v. People*, G.R. No. 149652, March 24, 2006, 485 SCRA 331, 339, 345*; People v. Quirol*, G.R. No. 149259, October 20, 2005, 509 SCRA 473, 519*; People v. Hernandez*, G.R. No. 139697, June 15, 2004, 432 SCRA 104, 125; *People v. Opuran*, G.R. Nos. 147674-75; March 17, 2004, 425 SCRA 654, 673; *People v. Muñez*, G.R. No. 150030, May 9, 2003, 403 SCRA 208, 215; *People v. Callet*, G.R. No. 135701,

₱75,000.00 as civil indemnity for death.[27] The Court retained the death indemnity at ₱75,000.00 in subsequent cases, as in *People v. Dela Cruz* (2007)[28] and *People v. Buban*.[29] In *People v. Anod*,[30] decided on August 5, 2009, the Court clarified that the award of ₱75,000.00 was appropriate only if the imposable penalty was death but reduced to *reclusion perpetua* by virtue of the enactment of Republic Act No. 9346 (*An Act Prohibiting the Imposition of Death Penalty*). Hence, where the proper imposable penalty was *reclusion perpetua*, death indemnity in murder remained at ₱50,000.00. Yet, the Court, in an apparent self-contradiction less than a month after *Anod*, promulgated *People v. Arbalate*,[31] wherein it fixed ₱75,000.00 as death indemnity despite the imposable penalty being *reclusion perpetua*, with the Court holding that death indemnity should be ₱75,000.00 regardless of aggravating or mitigating circumstances provided the penalty prescribed by law was death or *reclusion perpetua*.

Death indemnity of ₱75,000.00 became the standard in murder where the penalty was *reclusion perpetua*. This standard has been borne out by *People v. Soriano*,[32] *People v. Jadap*,[33] and

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May 9, 2002, 382 SCRA 43, 55; *People v. Diaz*, G.R. No. 130210, December 8, 1999, 320 SCRA 168, 177; *People v. Sanchez*, G.R. No. 131116, August 27, 1999, 313 SCRA 258, 271; *People v. Espanola*, G.R. No. 119308, April 18, 1997, 271 SCRA 689, 718 (for homicide).

[27] *E.g.*, *People v. Abulencia*, G.R. No. 138403, August 22, 2001, 363 SCRA 496, 509 (for rape with homicide); *People v. Tubongbanua*, G.R. No. 171271, August 31, 2006, 500 SCRA 727, 742; *People v. Quiachon*, G.R. No. 170236, August 31, 2006, 500 SCRA 704, 719 (where the Court held that even if the penalty of death was not to be imposed because of the prohibition in Republic Act No. 9346, the civil indemnity of ₱75,000.00 was proper because it was not dependent on the actual imposition of the death penalty but on the fact that the qualifying circumstances warranted the imposition of the death penalty that attended the commission of the offense).

[28] G.R. No. 171272, June 7, 2007, 523 SCRA 433, 455.

[29] G.R. No. 170471, May 11, 2007, 523 SCRA 118, 134.

[30] G.R. No. 186420, August 5, 2009, 597 SCRA 205, 212-213.

[31] G.R. No. 183457, September 17, 2009, 600 SCRA 239, 255.

[32] G.R. No. 182922, December 14, 2009.

[33] G.R. No. 177983, March 30, 2010, 617 SCRA 179, 198.

People v. Sanchez (2010).[34] But the consistency in applying the standard was broken in 2010, when the Court, in *People v. Gutierrez* (2010),[35] a murder case, reverted to ₱50,000.00 as civil indemnity. *People v. Gutierrez* (2010) was followed by *People v. Apacible*,[36] also for murder, with the Court, citing *People v. Anod*,[37] reducing the civil indemnity from ₱75,000.00, the amount originally awarded by the lower court, to ₱50,000.00. Oddly enough, on June 29, 2010, or two months before the promulgation of *Apacible*, the Court promulgated *People v. Orias*[38] and therein awarded ₱75,000.00 as civil indemnity and even made a sweeping declaration that such amount was given automatically in cases of murder and homicide. It is notable, however, that *People v. Ocampo*[39] and *People v. Amodia*,[40] the two rulings cited as authority for the declaration, involved charges and convictions for murder, not homicide.

The Court reverted to the flat amount of ₱50,000.00 as death indemnity in murder where the proper imposable penalty was *reclusion perpetua* in *People v. Dela Cruz* (2010),[41] *Talampas v. People*[42] and *People v. Gabrino*.[43] Subsequently, the Court went back to ₱75,000.00 in *People v. Mediado*[44] and *People v. Anti camara*,[45] both murder cases. In *People v. Escleto*,[46] the Court, prescribing *reclusion perpetua* upon not finding any

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[34] G.R. No. 188610, June 29, 2010, 622 SCRA 548, 569.

[35] G.R. No. 188602, February 4, 2010, 611 SCRA 633, 647-648.

[36] G.R. No. 189091, August 25, 2010, 629 SCRA 523, 529.

[37] G.R. No. 186420, August 25, 2009, 597 SCRA 205, 212.

[38] G.R. No. 186539, June 29, 2010, 622 SCRA 417, 437.

[39] G.R. No. 177753, September 25, 2009, 601 SCRA 58, 73.

[40] G.R. No. 173791, April 7, 2009, 584 SCRA 518, 545.

[41] G.R. No. 188353, February 16, 2010, 612 SCRA 738, 751-752.

[42] G.R. No. 180219, November 23, 2011, 661 SCRA 197.

[43] G.R. No. 189981, March 9, 2011, 645 SCRA 187, 205.

[44] G.R. No. 169871, February 2, 2011, 641 SCRA 366, 371.

[45] G.R. No. 178771, June 8, 2011, 651 SCRA 489, 522.

[46] G.R. No. 183706, April 25, 2012, 671 SCRA 149, 160.

aggravating circumstance to be attendant, imposed ₱75,000.00 as civil indemnity for the death of the victim. The Court did the same thing in *People v. Camat*[47] and *People v. Laurio*,[48] where the Court, prescribing only *reclusion perpetua* due to lack of any aggravating circumstance, awarded ₱75,000.00 as civil indemnity for death. In *People v. Buyagan*,[49] the Court, in awarding ₱75,000.00 as civil indemnity for the deaths of each of the victims, said that the civil indemnity should be increased from ₱50,000.00 to ₱75,000.00 inasmuch as the imposable penalty against the appellant would have been death had it not been for the enactment of Republic Act No. 9346.

In 2013, the Court once again changed its mind and awarded only ₱50,000.00 as civil indemnity in murder. Thus, in *People v. Pondivida*[50] and *People v. Alawig*,[51] the Court sentenced the accused to *reclusion perpetua* and awarded only ₱50,000.00 as civil indemnity.

Incidentally, the civil indemnity for homicide remained pegged at ₱50,000.00 for almost two decades [*e.g., Lozano v. Court of Appeals*,[52] *People v. Gutierrez* (2002),[53] *People v. Dagani*,[54] *Seguritan v. People*,[55] *People v. Valdez*,[56] *People v. Lagman*[57] and *Sombol v. People*.[58]] In attempted robbery with homicide (*People v. Barra*), the civil indemnity was ₱50,000.00.[59]

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[47] G.R. No. 188612, July 30, 2012, 677 SCRA 640, 672.

[48] G.R. No. 182523, September 13, 2012, 680 SCRA 560, 573.

[49] G.R. No. 187733, February 8, 2012, 665 SCRA 571, 580.

[50] G.R. No. 188969, February 27, 2013, 692 SCRA 217, 226.

[51] G.R. No. 187731, September 18, 2013, 706 SCRA 88, 114-115.

[52] G.R. No. 90870, February 5, 1991, 193 SCRA 525, 530-531.

[53] G.R. Nos. 144907-09, September 17, 2002, 389 SCRA 268, 276.

[54] G.R. No. 153875, August 16, 2006, 499 SCRA 64, 84.

[55] G.R. No. 172896, April 19, 2010, 618 SCRA 406, 420.

[56] G.R. No. 175602, January 18, 2012, 663 SCRA 272, 290.

[57] G.R. No. 197807, April 16, 2012, 669 SCRA 512, 529.

[58] G.R. No. 194564, April 10, 2013, 695 SCRA 630, 633, 638.

[59] G.R. No. 198020, July 10, 2013, 701 SCRA 99, 105, 108.

It is again timely to raise the civil indemnity for death arising from crime or quasi-delict. We start by reminding that human life, which is not a commodity, is priceless. The value of human life is incalculable, for no loss of life from crime or quasi-delict can ever be justly measured. Yet, the law absolutely requires every injury, especially loss of life, to be compensated in the form of damages. For this purpose, damages may be defined as the pecuniary compensation, recompense, or satisfaction for an injury sustained, or, as otherwise expressed, the pecuniary consequences that the law imposes for the breach of some duty or the violation of some right.[60] As such, damages refer to the amount in money awarded by the court as a remedy for the injured.[61] Although money has been accepted as the most frequently used means of punishing, deterring, compensating and regulating injury throughout the legal system,[62] it has been explained that money in the context of damages is not awarded as a replacement for other money, but as substitute for that which is generally more important than money; *it is the best thing that a court can do.*[63] Regardless, the civil indemnity for death, being compensatory in nature, must attune to contemporaneous economic realities; otherwise, the desire to justly indemnify would be thwarted or rendered meaningless. This has been the legislative justification for pegging the minimum, but not the maximum, of the indemnity.

The reasoning in Pantoja,[64] *supra*, has been premised on the pronouncement in *People v. Amansec*[65] to the effect that the increase to ₱6,000.00 in "*compensatory damages for death*

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[60] *People v. Ballesteros*, G.R. No. 120921 January 29, 1998, 285 SCRA 438, 448.

[61] Casis, Rommel J., *Analysis of Philippine Law and Jurisprudence on Damages*, University of the Philippines College of Law, 2012, p. 2.

[62] *Id.*, citing Pat O' Malley, *The Currency of Justice: Fines And Damages In Consumer Societies*, 1 (2009).

[63] *Id.* at 2-3, citing H. McGregor on Damages, 9 (1997).

[64] *Supra* note 23.

[65] *Supra* note 22.

caused by a crime" from the legally imposed minimum indemnity of ₱2,000.00 under Commonwealth Act No. 284 (which took effect in 1938) was in consideration of "*the difference between the value of the present currency and that at the time when the law fixing a minimum indemnity* of ₱2,000 was enacted." The *Pantoja* Court thus raised the amount of death indemnity to ₱12,000.00 by taking judicial cognizance of the fact "*that from 1948 to the present (1968), due to economic circumstances beyond governmental control, the purchasing power of the Philippine peso has declined further such that the rate of exchange now in the free market is U.S. $1.00 to almost ₱4.00 Philippine pesos.* This means that the present purchasing power of the Philippine peso is one-fourth of its pre-war purchasing power." Subsequent increases have been similarly justified.

On April 5, 2016, the Court promulgated its decision in *People v. Jugueta* (G.R. No. 202124), whereby it adopted certain guidelines on fixing the civil liabilities in crimes resulting in the death of the victims taking into proper consideration the stages of execution and gravity of the offenses, as well as the number of victims in composite crimes. Other factors were weighed by the Court. In the case of murder where the appropriate penalty is *reclusion perpetua*, the Court has thereby fixed ₱75,000.00 for moral damages, ₱75,000.00 for exemplary damages, and ₱75,000.00 for civil indemnity as the essential civil liabilities, in addition to others as the records of each case will substantiate. Hence, we impose herein the same amounts for such items of damages in each count of murder.

It appears that the accused and the heirs of Montegrico stipulated that the civil indemnity of the accused in case of conviction should not exceed ₱150,000.00.[66] The stipulation cannot stand because the civil indemnity arising from each murder should only be ₱75,000.00. In crimes in which death of the victim results, civil indemnity is granted even in the absence of allegation and proof. Similarly, moral damages are allowed even without allegation and proof, it being a certainty that the victims' heirs were entitled thereto as a matter of law.

[66] CA *Rollo*, p. 19.

Also in accordance with *People v. Jugueta*, *supra*, temperate damages of ₱50,000.00 should further be granted to the heirs of Montegrico and Tamanu considering that they were presumed to have spent for the interment of each of the deceased. It would be unjust to deny them recovery in the form of temperate damages just because they did not establish with certainty the actual expenditure for the interment of their late-lamented family members.[67]

In this respect, we mention that Article 2230 of the *Civil Code* authorizes the grant of exemplary damages if at least one aggravating circumstance attended the commission of the crime. For this purpose, exemplary damages of ₱75,000.00 are granted to the heirs of Montegrico and Tamanu, respectively, based on the attendant circumstance of treachery. Whether treachery was a qualifying or attendant circumstance did not matter, for, as clarified in *People v. Catubig*:[68]

> The term "aggravating circumstances" used by the Civil Code, the law not having specified otherwise, is to be understood in its broad or generic sense. The commission of an offense has a two-pronged effect, one on the public as it breaches the social order and the other upon the private victim as it causes personal sufferings, each of which is addressed by, respectively, the prescription of heavier punishment for the accused and by an award of additional damages to the victim. The increase of the penalty or a shift to a graver felony underscores the exacerbation of the offense by the attendance of aggravating circumstances, whether ordinary or qualifying, in its commission. Unlike the criminal liability which is basically a State concern, the award of damages, however, is likewise, if not primarily, intended for the offended party who suffers thereby. It would make little sense for an award of exemplary damages to be due the private offended party when the aggravating circumstance is ordinary but to be withheld when it is qualifying. Withal, the ordinary or qualifying nature of an aggravating circumstance is a distinction that should only be of consequence to the criminal, rather than to the civil, liability of the offender. In fine, relative to the

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[67] See *People v. Isla*, G.R. No. 199875, November 21, 2012, 686 SCRA 267, 283.

[68] G.R. No. 137842, August 23, 2001, 363 SCRA 621.

civil aspect of the case, an aggravating circumstance, whether ordinary or qualifying, should entitle the offended party to an award of exemplary damages within the unbridled meaning of Article 2230 of the Civil Code.[69]

On his part, Paleg, being the victim of frustrated murder, is entitled to ₱50,000.00 as moral damages, ₱50,000.00 as civil indemnity, and ₱50,000.00 as exemplary damages, ₱25,000.00 as temperate damages (for his hospitalization and related expenses). This quantification accords with the pronouncement in *People v. Jugueta, supra*.

In line with pertinent jurisprudence,[70] interest of 6% *per annum* shall be charged on all the items of civil liability imposed herein, computed from the date of the finality of this decision until fully paid.

WHEREFORE, the Court **FINDS** and **DECLARES** accused **MARIANO OANDASAN, JR. GUILTY** beyond reasonable doubt of **TWO COUNTS OF MURDER** in Criminal Case No. II-9259 and Criminal Case No. II-9260 for the killing of Edgardo Tamanu and Danilo Montegrico, respectively; and of **FRUSTRATED MURDER** in Criminal Case No. II-9261 for the frustrated killing of Mario Paleg, and, **ACCORDINGLY, SENTENCES** him to suffer ***RECLUSION PERPETUA*** in Criminal Case No. II-9259 and in Criminal Case No. II-9260, and the **INDETERMINATE SENTENCE OF EIGHT YEARS OF *PRISION MAYOR*, AS THE MINIMUM, TO 14 YEARS, EIGHT MONTHS AND ONE DAY OF *RECLUSION TEMPORAL*, AS THE MAXIMUM**, in Criminal Case No. II-9261; and to pay the following by way of civil liability, to wit:

1) To the heirs of Danilo Montegrico, civil indemnity of ₱75,000.00; moral damages of ₱75,000.00; exemplary damages of ₱75,000.00; and temperate damages of ₱50,000.00;

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[69] *Id.* at 635.

[70] *People v. Combate*, G.R. No. 189301, December 15, 2010, 638 SCRA 797, 824; *Nacar v. Gallery Frames*, G.R. No. 189871, August 13, 2013, 703 SCRA 439.

2) To the heirs of Edgardo Tamanu, civil indemnity of ₱75,000.00; moral damages of ₱75,000.00; exemplary damages of ₱75,000.00; and temperate damages of ₱50,000.00; and

3) To Mario Paleg, civil indemnity of ₱50,000.00; moral damages of ₱50,000.00; exemplary damages of ₱50,000.00; and temperate damages of ₱25,000.00.

All monetary awards for damages shall earn interest at the legal rate of 6% *per annum* from the finality of this decision until fully paid.

The accused shall pay the costs of suit.

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Perez, Mendoza, Reyes, Perlas-Bernabe, Leonen, and *Caguioa, JJ.,* concur.

Brion, Peralta, and *Jardeleza, JJ.,* on official leave.

Del Castillo, J., on wellness leave.

THIRD DIVISION

[A.C. No. 8677. June 15, 2016]

MARITA CABAS, *petitioner, vs.* **ATTY. RIA NINA L. SUSUSCO and CHIEF CITY PROSECUTOR EMELIE FE DELOS SANTOS,** *respondents.*

SYLLABUS

1. LEGAL ETHICS; ATTORNEYS; GROSS NEGLIGENCE, DEFINED; IN ORDER TO BE GUILTY OF GROSS NEGLECT OF DUTY, IT MUST BE SHOWN THAT

RESPONDENT MANIFESTED FLAGRANT AND CULPABLE REFUSAL OR UNWILLINGNESS TO PERFORM A DUTY.— Gross neglect of duty or gross negligence refers to negligence characterized by the want of even slight care, or by acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally, with a conscious indifference to the consequences, insofar as other persons may be affected. It is the omission of that care that even inattentive and thoughtless men never fail to give to their own property. It denotes a flagrant and culpable refusal or unwillingness of a person to perform a duty. In cases involving public officials, gross negligence occurs when a breach of duty is flagrant and palpable. x x x In order to be guilty of gross neglect of duty, it must be shown that respondent manifested flagrant and culpable refusal or unwillingness to perform a duty. However, in the instant case, Pros. Delos Santos' delay in the approval of the resolution cannot be said as flagrant and prompted by culpable refusal or unwillingness to perform her official duties. As found by the IBP, there was documentary evidence to show that Pros. Delos Santos was on approved leave during the most part of the period where the delay took place. It cannot be likewise said that she failed to perform her duties as she in fact approved the Resolution dated March 28, 2010, *albeit,* delayed by 48 days. Indeed, considering her heavy caseload, surely there will be backlog during her absence which she also has to attend to, thus, resulting in the delay of the approval of subject resolution. Moreover, under Section 4 of R. A. No. 6033, *any willful or malicious refusal on the part of any fiscal or judge to carry out the provisions of this Act shall constitute sufficient ground for disciplinary action which may include suspension or removal, however,* in the instant case, there was no showing of malice or bad faith on the part of Pros. Delos Santos with regard to her failure to review the subject resolution.

2. REMEDIAL LAW; EVIDENCE; WEIGHT AND SUFFICIENCY OF EVIDENCE; SUBSTANTIAL EVIDENCE; THE QUANTUM OF PROOF NECESSARY FOR A FINDING OF GUILT IN ADMINISTRATIVE PROCEEDINGS.— In administrative proceedings, the quantum of proof necessary for a finding of guilt is substantial evidence, *i.e.,* that amount of relevant evidence that a reasonable mind might accept as adequate to support a conclusion. Further, the complainant

has the burden of proving by substantial evidence the allegations in his complaint. The basic rule is that mere allegation is not evidence and is not equivalent to proof. Charges based on mere suspicion and speculation likewise cannot be given credence. In the present case, there is no sufficient, clear and convincing evidence to hold both Atty. Sususco and Pros. Emilie Fe Delos Santos administratively liable for Gross Neglect of Duty.

R E S O L U T I O N

PERALTA, *J.*:

Before us is an Administrative Complaint filed by Marita Cabas (*Cabas*) against respondents Atty. Ria Nina L. Sususco (*Atty. Sususco*) and Prosecutor Emilie Fe Delos Santos (*Pros. Delos Santos*), docketed as A.C. No. 8677 for gross dereliction of duty and violation of Republic Act (R.A.) No. 6033.

In her Affidavit-Complaint[1] dated July 7, 2010, Cabas, an indigent, narrated that on January 11, 2010, she, together with two more complainants, filed a complaint for malicious prosecution against a certain Mauricio Valdez before the City Prosecutor's Office of Olongapo City. She alleged that they were falsely accused of Estafa by Mauricio Valdez and were in fact acquitted in an Order dated December 4, 2009.

On May 21, 2010, Cabas filed an *Ex Parte* Urgent Motion to Resolve the Case before the Prosecutor's Office, which was received on the same day.

On June 3, 2010, Cabas filed anew a Second *Ex-Parte* Motion to Resolve the Case, and was received on the same day by the Prosecutor's office.

On June 23, 2010, a Third *Ex-Parte* Motion to Resolve the Case was again filed and was received on June 24, 2010.

On July 1, 2010, Cabas received a copy of the Resolution dated March 28, 2010, dismissing her complaint.

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

Cabas accused respondents of dereliction of duty and violation of R.A. No. 6033 for their failure to immediately and promptly decide the criminal case for malicious prosecution she filed, notwithstanding the fact that they availed of the benefits granted by law to indigents under R.A. No. 6033.

Cabas pointed out that said complaint should have been resolved in two (2) weeks after the complaint was filed with the City Prosecutor's Office pursuant to R.A. No. 6033. Thus, the instant complaint.

On August 11, 2010, the Court resolved to require respondents to file their comments relative to the complaint filed against them.[2]

In their Comments, both respondents denied that they are guilty of dereliction of duty and of violation of R.A. No. 6033.

Atty. Sususco averred that the complaint for malicious prosecution filed by Cabas, docketed as I.S. No. III-10-INV-10A-00049, was assigned to her on March 9, 2010 after the partial detail of Senior State Prosecutor Edwin Dayog, to whom the case was first assigned for investigation, was revoked on January 15, 2010 pursuant to DOJ Department Order No. 32. To support her claim, Atty. Sususco submitted the Affidavit[3] of Jaime P. Navarro, attesting to the fact that the case was assigned to the former only on March 9, 2010.

Atty. Sususco further explained that on March 28, 2010, she issued a Resolution[4] recommending the dismissal of the case. Later on, along with the entire records of the case, the same was forwarded by her secretary, Mrs. Marjory F. Ramos, to the Office of City Prosecutor Emilie Fe Delos Santos for review and approval. To support her claim, Atty. Sususco attached to her comment a photocopy of said Resolution and the Affidavit[5]

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[2] *Id.* at 13.

[3] *Id.* at 23.

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

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

of Esperanza Del Rosario, Senior Administrative Assistant I of OCP-Olongapo City and a certified copy of the pertinent page[6] of the logbook showing the receipt of said Resolution.

Atty. Sususco likewise alleged that her March 28, 2010 Resolution was finally approved on June 18, 2010 and released on June 24, 2010.

For her part, Pros. Delos Santos denied that she was negligent of her duties as City Prosecutor of Olongapo. In fact, she claims that she has indeed approved the Resolution dated March 28, 2010 on June 18, 2010, and that the Office of the City Prosecutor released the same on June 24, 2010.

Pros. Delos Santos further explained that she was on leave from March 15, 2010 to April 13, 2010, and that 2nd Assistant Prosecutor Evangeline Tiongson was designated as officer-in-charge. Thereafter, she was on vacation leave from April 14, 2010 to April 16, 2010 and from April 26, 2010 to April 27, 2010. Again, from April 19, 2010 to April 23, 2010, she was also on sick leave. To support her allegations, Pros. Delos Santos attached copies of her leave forms.[7]

Finally, with regard to the unresolved motions of Cabas, both Atty. Sususco and Pros. Delos Santos insisted that there was no longer a need to resolve them as Resolution dated March 28, 2010 rendered said motions as moot and academic.

On October 20, 2010, the Court then resolved to refer the instant case to the Integrated Bar of the Philippines (*IBP*) for investigation, report and recommendation/decision.[8]

Mandatory conferences between the parties were set on March 10, 2011. Both parties were likewise directed to submit their verified position papers.

In her Position Paper, Cabas maintained that respondents are guilty of dereliction of duty and deliberate violation of R.A.

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[6] *Id.* at 35.

[7] *Id.* at 55-60.

[8] *Id.* at 63.

No. 6033 because it took almost six (6) months before respondents resolved the criminal complaint she filed.

Cabas pointed out that pursuant to R.A. No. 6033, the complaint she filed as an indigent should have been resolved in two (2) weeks after the complaint was filed with the City Prosecutor's Office of Olongapo City. Nonetheless, despite several motions to resolve said complaint, the same remained unresolved for several months.

In its Report and Recommendation dated March 8, 2013, the IBP-Commission on Bar Discipline (*IBP-CBD*) found Pros. Delos Santos guilty of dereliction of duty for failing to promptly discharge the duties of her office, and recommended that she be reprimanded. However, the IBP-CBD dismissed the charges against Atty. Sususco for lack of merit.

The IBP-CBD found Atty. Sususco to have discharged her duties with facility, promptness and without unnecessary delay considering that the case was assigned to her only on March 9, 2010. Despite the lapse of nineteen (19) days, Atty. Sususco was able to provide reasonable explanation to show that the delay in the resolution of the case was unintentional.

However, as to the charges against Pros. Delos Santos, the IBP-CBD posits that the latter failed to properly explain the delay in approving or rejecting the recommendation of Atty. Sususco. Pros. Delos Santos failed to explain why she was not able to rule on Atty. Sususco's recommendation from the time said Resolution and the records of the case were forwarded to her office on March 28, 2010.

In a Notice of Resolution No. XX-2013-469 dated April 16, 2013, the IBP-Board of Governors adopted and approved *in toto* the Report and Recommendation of the IBP-CBD.

On August 28, 2013, Pros. Delos Santos moved for reconsideration. She explained that she was not remiss in her duties as prosecutor. She claimed that while she had in fact failed to account for the 48 days of delay upon her return from leave, she assumed that the commission was aware of her heavy workload as a City Prosecutor.

Pros. Delos Santos presented a Certification from Jaime Navarro, Administrative Officer III of the Office of the City Prosecutor of Olongapo City, certifying that said office received a total of 856 cases from January to June 2010. Mr. Navarro also certified that from January 1 to March 31, 2010, a total of 444 cases were referred to Pros. Delos Santos for approval and for which 377 cases or 85% were approved, resolved and/or disposed.

Pros. Delos Santos further added that she also concurrently heads the Task Force for numerous scam and kidnapping cases. She is likewise tapped to attend to tasks assigned by the DOJ, such as preparing and implementing action plans, attending conferences, among others.

Finally, Pros. Delos Santos pointed out that in her twenty-four (24) years in government service, nineteen (19) years as prosecutor, she had maintained an untarnished record. She, thus, prayed that the complaint against her will be likewise dismissed.

In a Notice of Resolution No. XXI-2014-273 dated May 3, 2014, the IBP-Board of Governors resolved to grant respondent Delos Santos' motion for reconsideration after finding merit in the latter's explanation. Thus, as regards respondent Delos Santos, Resolution No. XX-2013-469 dated April 16, 2013 was reversed and set aside and, accordingly, the penalty imposed upon her was reduced to stern warning.

RULING

We adopt the findings and recommendation of the IBP-Board of Governors.

Gross neglect of duty or gross negligence refers to negligence characterized by the want of even slight care, or by acting or omitting to act in a situation where there is a duty to act, not inadvertently but willfully and intentionally, with a conscious indifference to the consequences, insofar as other persons may be affected. It is the omission of that care that even inattentive and thoughtless men never fail to give to their own property. It denotes a flagrant and culpable refusal or unwillingness of a

person to perform a duty. In cases involving public officials, gross negligence occurs when a breach of duty is flagrant and palpable.[9]

In administrative proceedings, the quantum of proof necessary for a finding of guilt is substantial evidence, *i.e.*, that amount of relevant evidence that a reasonable mind might accept as adequate to support a conclusion. Further, the complainant has the burden of proving by substantial evidence the allegations in his complaint. The basic rule is that mere allegation is not evidence and is not equivalent to proof. Charges based on mere suspicion and speculation likewise cannot be given credence.[10] In the present case, there is no sufficient, clear and convincing evidence to hold both Atty. Sususco and Pros. Emilie Fe Delos Santos administratively liable for Gross Neglect of Duty.

As noted by the IBP, Atty. Sususco, although the subject case was assigned belatedly to her, was able to discharge her duties with promptness, and was in fact able to submit the Resolution on March 28, 2010.

As to the liability of Pros. Emilie Fe Delos Santos of gross neglect of duty, we likewise find no proof to support such allegation.

In order to be guilty of gross neglect of duty, it must be shown that respondent manifested flagrant and culpable refusal or unwillingness to perform a duty. However, in the instant case, Pros. Delos Santos' delay in the approval of the resolution cannot be said as flagrant and prompted by culpable refusal or unwillingness to perform her official duties. As found by the IBP, there was documentary evidence to show that Pros. Delos Santos was on approved leave during the most part of the period where the delay took place. It cannot be likewise said that she failed to perform her duties as she in fact approved the Resolution dated March 28, 2010, *albeit*, delayed by 48 days. Indeed,

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[9] *Civil Service v. Rabang*, 572 Phil. 316, 323 (2008).

[10] *Dr. De Jesus v. Guerrero III, et al.*, 614 Phil. 520, 529 (2009).

considering her heavy caseload, surely there will be backlog during her absence which she also has to attend to, thus, resulting in the delay of the approval of subject resolution.

Moreover, under Section 4 of R.A. No. 6033, *any willful or malicious refusal on the part of any fiscal or judge to carry out the provisions of this Act shall constitute sufficient ground for disciplinary action which may include suspension or removal,* however, in the instant case, there was no showing of malice or bad faith on the part of Pros. Delos Santos with regard to her failure to review the subject resolution.

WHEREFORE, we **AFFIRM** the Resolution of the Board of Governors of the Integrated Bar of the Philippines, adopting the Report and Recommendation of the Investigating Commissioner, and **DISMISS** the charges against Atty. Ria Nina L. Sususco for lack of merit. We likewise **AFFIRM** the **REVERSAL** of the Resolution of the Board of Governors of the Integrated Bar of the Philippines, and, accordingly, **DISMISS** the charges against Prosecutor Emilie Fe Delos Santos. However, Prosecutor Emilie Fe Delos Santos is hereby **STERNLY WARNED** to be circumspect in the performance of her duties, and that a repetition of the same or similar acts in the future shall be dealt with more severely.

SO ORDERED.

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

Jardeleza, J., on leave.

FIRST DIVISION

[G.R. No. 185169. June 15, 2016]

HEIRS OF CATALINO DACANAY, HIS WIFE ERLINDA DACANAY, THEIR CHILDREN AURORA D. CONSTANTINO and REYNALDO DACANAY; LOLITA DACANAY VDA. DE PARASO; HEIRS OF SOLEDAD APOSTOL, NAMELY: HER HUSBAND LEONARDO CAGUIOA, THEIR CHILDREN AMALIA, DANILO, RONALD, MARLENE, ROBERT, ROLDAN, THELMA and TERESA, ALL SURNAMED CAGUIOA, *petitioners, vs.* **JUAN SIAPNO, JR., MARIO RILLON, SPOUSES JOSE TAN and LETICIA DY TAN,** *respondents.*

SYLLABUS

REMEDIAL LAW; CIVIL PROCEDURE; JUDGMENTS; *RES JUDICATA*; REQUISITES; NOT PRESENT IN CASE AT BAR.— The trial court committed an error of law when it dismissed the Complaint on the ground of *res judicata.* For the principle to apply, the following requisites must concur: 1) There is a final judgment or order. 2) The court rendering the judgment has jurisdiction over the parties and subject matter. 3) The former judgment is a judgment on the merits. 4) There is between the first and the second actions an identity of parties, subject matter, and causes of action. The fourth requisite is absent in this case. *There is no identity of parties.* It is undisputed that petitioners were not parties to the DARAB case; it was between Rillon and Sps. Tan. x x x *There is no identity of cause of action.* DARAB Case No. 9631 involved a tenant's right to redeem the land, while the instant case involves the validity of the transfer documents. x x x The DARAB Decision only settled the preferential right of a tenant to redeem the land and not the validity of the documents.

APPEARANCES OF COUNSEL

Eugenio Manaois for petitioners.
Nolan R. Evangelista for respondents Sps. Tan.

Regino Palma Raagas Esguerra and Associates Law Offices for respondent Rillon.

D E C I S I O N

SERENO, *C.J.*:

This is a Petition for Review on *Certiorari* under Rule 45 of the Rules of Court assailing the Resolution[1] dated 8 September 2008 and the Order[2] dated 13 October 2008 in Civil Case No. 18857 issued by Regional Trial Court (RTC) Branch 69 in Lingayen, Pangasinan. The trial court dismissed petitioners' Complaint[3] for Declaration of Nullity of Documents with Partition and Damages and denied[4] their Motion for Reconsideration.

The sole issue raised by petitioners is whether the RTC committed a grave error of law when it dismissed the Complaint pursuant to a Decision[5] dated 3 July 2006 rendered by the Department of Agrarian Reform Adjudication Board (DARAB) in DARAB Case No. 9631.

We answer in the affirmative. There is no identity of parties and causes of action between the case before the RTC and the case heard by the DARAB.

FACTS OF THE CASE

Petitioners claim to be the descendants and heirs of Esperanza Espiritu *vda. de* Apostol, who was allegedly the original owner of a parcel of land located at *Barangay* Olo-Cacamposan, Mangatarem, Pangasinan.[6] It had an area of 13,165 square meters, and was initially covered by Original Certificate of Title (OCT)

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[1] *Rollo*, pp. 95-99; Penned by Judge Ma. Susana T. Baua.

[2] *Id.* at 113.

[3] *Id.* at 32-38.

[4] *Id.* at 113; Order dated 13 October 2008.

[5] *Id.* at 55-60.

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

No. P-13438[7] registered in the name of "HEIRS OF ESPERANZA ESPIRITU, represented by Antonia Apostol."

Sometime in 1995, OCT No. P-13438 was cancelled and Transfer Certificate of Title (TCT) No. 202765[8] was issued to Juan C. Siapno, Jr. (Siapno). In April 1996, TCT No. 202765 was likewise cancelled and TCT No. 212328 was issued to Spouses Jose Sy Tan and Leticia Dy Tan (Sps. Tan).

Petitioners allege that Espiritu had three daughters: Feliciana, Juana, and Anastacia. Feliciana married Vicente Dacanay with whom she had a son, Catalino and a daughter, Lolita. Juana died without issue. Anastacia married Roberto Fabros with whom she had a daughter, Soledad. Soledad married Leonardo Caguioa, and their children are now among the petitioners in this case.

According to petitioners, the transfer of title from the heirs of Esperanza Espiritu to Siapno was made possible by a forged Affidavit of Declaration of Heirs[9] allegedly executed by Feliciana's son, Catalino, on 16 December 1994. In the document, Catalino was represented as single and the only heir and nephew of Espiritu. On the same day, he appeared to have sold the subject parcel of land to Siapno through a Deed of Absolute Sale.[10]

On 19 March 1996, Siapno sold the subject parcel of land to Sps. Tan. Thereafter, respondent Mario Rillon (Rillon), claiming to be the tenant of Catalino, filed a Complaint before the DARAB.[11] He alleged that because he had not been notified of the sale between Siapno and Sps. Tan, he failed to exercise his right of redemption provided under Republic Act (R.A.) No. 3844, as amended by R.A. No. 6389.[12] On 3 July 2006, the

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[7] *Id.* at 44-45.

[8] *Id.* at 50.

[9] *Id.* at 47.

[10] *Id.* at 49.

[11] *Id.* at 55.

[12] *Id.* at 57-58.

DARAB found him to be a *bona fide* tenant of the subject property, hence, entitled to redeem it.

On 7 May 2008, petitioners filed a Complaint before the RTC assailing the series of transfers of ownership over the subject parcel of land. They prayed for the declaration of nullity of the Affidavit of Declaration of Heirs, the Deed of Absolute Sale in favor of Siapno, TCT No. 202765, Tax Declaration No. 8894, the Deed of Absolute Sale in favor of Sps. Tan, and TCT No. 212328.[13] They also prayed for the reversion of the land to the heirs of Espiritu and the partition thereof among them.[14] Further, petitioner asked for moral damages, attorney's fees, litigation expenses and appearance fee.[15] They attached a copy of the Marriage Contract[16] between Catalino and Erlinda Brudo as proof that in 1994, he was already married. They clarified that Catalino was a grandson, not a nephew, of Espiritu.[17] Pointing out that the title had already been transferred to the heirs of Espiritu, they likewise argued that Catalino could not have inherited the land from Espiritu.[18] Petitioners posited that Rillon could not redeem the land, because the purported sales between Catalino and Siapno, and later between Siapno and Sps. Tan, were void *ab initio.*[19]

Siapno, in his Answer with Compulsory Counterclaim,[20] prayed that the Complaint be dismissed against him on the ground that venue had been improperly laid. He theorized that the action was *in personam*, and should have been filed in the place where any of the plaintiffs or defendants resided.[21] He argued that the

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[13] *Id.* at 37.

[14] *Id.*

[15] *Id.*

[16] *Id.* at 48.

[17] *Id.* at 34-35.

[18] *Id.* at 35.

[19] *Id.* at 36.

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

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

court had no jurisdiction over the subject of the action considering that 14 years had elapsed since the Deed of Absolute Sale was executed.[22] He also attached several documents allegedly showing that Lolita and several other plaintiffs had consented to the sale made by Catalino.[23]

Sps. Tan filed a separate Answer with Compulsory Counterclaim,[24] in which they denied knowledge of the circumstances surrounding the sale between Catalino and Siapno. The spouses claimed to be buyers in good faith and put up as an affirmative defense the fact that petitioners had no cause of action against them, because they have already been stripped of their rights to the land by virtue of the DARAB Decision.[25] Like Siapno, they also argued that the action had prescribed. In addition, they argued that the subject matter was outside the jurisdiction of the RTC since the assessed value of the property was less than ₱20,000. They further argued that the case was prematurely filed because "there is no showing that there are co-heirs who refuse an extrajudicial partition."[26]

Rillon likewise filed a separate Answer with Compulsory Counterclaim,[27] in which he denied knowledge of the series of transfers of the subject parcel of land. He maintained that the plaintiffs had no cause of action against him, because he was the rightful owner of the land by virtue of the DARAB Decision.[28]

RULING OF THE RTC

The RTC noted that at the time of the filing of the Complaint, the DARAB Decision had become final and executory. The court justified its dismissal of the Complaint as follows:

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[22] *Id.* at 67.

[23] See *id.* at 69-76.

[24] *Id.* at 61-64.

[25] *Id.* at 62.

[26] *Id.* at 63.

[27] *Id.* at 87-93.

[28] *Id.* at 88.

[W]hen the DARAB adjudicated the parcel of land to defendant Rillon, it, in effect, declared the sales between Catalino Dacanay and defendant Siapno and later between defendant Siapno and defendants-spouses Tan to be inefficacious. This renders the prayer of plaintiffs that the said sales be declared null and void futile.

Relative thereto, since title and ownership over the subject parcel of land have been declared to be vested in defendant Rillon by final and executory judgment, the prayer of plaintiffs that the said property be partitioned among them is likewise futile. Stated simply and as a matter of common sense, there is nothing to partition.

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[A]s pointed out by defendants-spouses Tan, plaintiffs must first establish their status as the rightful heirs, and therefore co-owners, of the estate of the late Esperanza Espiritu before any partition of the latter's estate may be effected. And this may be determined only in a settlement proceeding in accordance with the procedure laid down by the Rules.

Petitioners filed a Motion for Reconsideration,[29] but it was denied by the RTC. On the theory that the case concerns pure questions of law, they have elevated the case directly to this Court.

Petitioners argue that their cause of action is not barred by the DARAB Decision.[30] They contend that *res judicata* does not apply because the DARAB case was between Rillon and Sps. Tan only, and that the Decision therein merely upheld the tenant's right to redeem the land. Petitioners emphasize that the DARAB did not pass upon the validity of the documents sought to be declared null and void before the RTC.[31] They pray that the trial court's Resolution dated 8 September 2008 and Order dated 13 October 2008 be reversed, and that the case be remanded to the same branch for the continuation of trial on the merits.[32]

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[29] *Id.* at 101-109.

[30] *Id.* 23-25.

[31] *Id.* at 23.

[32] *Id.* at 29.

Siapno filed an Opposition to Petition for Review,[33] which the Court treated as his Comment.[34] He asserted that the land had been sold to him by the heirs of Espiritu, and that the action to declare the documents void had already prescribed.[35]

Upon orders of the Court, Sps. Tan filed their Comment[36] and claimed that the Petition failed to set forth questions of law. Further, they asserted that the complaint stated no cause of action because petitioners did not allege that the decedent left no will and no debts, and that all the heirs could not agree to divide the estate among themselves.[37] According to the spouses, the action for partition was also outside the jurisdiction of the RTC since the assessed value of the land as shown in the Tax Declaration was only ₱2,150.[38]

For his part, Rillon argued that the DARAB Decision had already become final and executory.[39] And because the lot had been validly transferred to him by virtue of the decision, he viewed the complaint as lacking a cause of action.[40]

OUR RULING

We rule for petitioners. The trial court committed an error of law when it dismissed the Complaint on the ground of *res judicata*. For the principle to apply, the following requisites must concur:

1) There is a final judgment or order.

2) The court rendering the judgment has jurisdiction over the parties and subject matter.

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[33] *Id.* at 235-236.

[34] In a Resolution dated 4 March 2009; *id.* at 237.

[35] *Id.* at 235.

[36] *Id.* at 238-240.

[37] *Id.* at 239.

[38] *Id.* at 238-239.

[39] *Id.* at 242-244.

[40] *Id.* at 246.

3) The former judgment is a judgment on the merits.

4) There is between the first and the second actions an identity of parties, subject matter, and causes of action.[41]

The fourth requisite is absent in this case.

There is no identity of parties. It is undisputed that petitioners were not parties to the DARAB case; it was between Rillon and Sps. Tan.

In *Green Acres Holdings, Inc. v. Cabral*,[42] the petitioner therein was also not made party to the DARAB case. The Court ruled that in conformity with the constitutional guarantee of due process of law, no one shall be affected by any proceeding to which one is a stranger, and strangers to a case are not bound by any judgment rendered by the court. [43] For the same reason, DARAB Case No. 9631 should not bind petitioners in this case.

There is no identity of cause of action. DARAB Case No. 9631 involved a tenant's right to redeem the land, while the instant case involves the validity of the transfer documents. There is merit in petitioners' argument that the DARAB cannot be deemed to have invalidated the sale, as it did not even touch upon the validity of the documents.[44] The DARAB Decision merely lifted a portion of the Decision of the Provincial Agrarian Reform Adjudicator, which mentioned the Deeds of Sale between Catalino and Siapno and then Siapno and Sps. Tan only in connection with the land description. Indeed, it was a bit of a stretch for the trial court to have concluded that when the DARAB adjudicated the parcel of land to Rillon, it "in effect" declared the sale between Catalino and Siapno and later between Siapno and Sps. Tan to be inefficacious.[45] The DARAB Decision only

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[41] See *Mesina v. CA*, G.R. No. 100228, 13 July 1994, 234 SCRA 103; *Estate of Vda. de Panlilio v. Dizon*, 562 Phil. 518 (2007).

[42] 710 Phil. 235 (2013).

[43] *Id.*

[44] *Rollo*, p. 23.

[45] *Id.* at 99.

settled the preferential right of a tenant to redeem the land and not the validity of the documents.

We stress that our ruling in this case is limited only to the propriety of the dismissal of the Complaint on the ground of *res judicata*. The other grounds for dismissal that have been raised by respondents, but have not been addressed by the trial court, are not foreclosed by this Resolution. We have decided not to pass upon these grounds, as they entail fact-finding, which is not a function of this Court. Considering that the trial court has not made any factual determination of the issues raised by respondents, We deem it best to remand the case for proper disposition.

The IBP is directed to conduct disciplinary proceedings against petitioners' counsel.

The resolution of this case has been delayed by the contumacious behavior of petitioners' counsel, Atty. Eugenio F. Manaois (Atty. Manaois). The Court has given him opportunities to remedy a defect in the Verification and Certification of Non-Forum Shopping attached to the Petition. The Court even allowed him to sign the Petition after it had been filed. However, he has failed to comply with the Resolutions dated 3 December 2008 and 28 January 2009 and with the show cause order embodied in the Resolution dated 25 November 2009. He has not even bothered to offer any explanation for his failure to do so.

We hereby institute disciplinary proceedings[46] against Atty. Manaois and refer the case to the Integrated Bar of the Philippines (IBP) for investigation, report, and recommendation based on the following facts:

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[46] Section 1 of Rule 139-B of the Rules of Court states that proceedings for the disbarment, suspension, or discipline of attorneys may be taken by the Supreme Court *motu proprio*. The Court has exercised this power in several cases. See *Co v. New Prosperity Plastic Products*, G.R. No. 183994, 30 June 2014, 727 SCRA 503 and *Mallari v. Government Service Insurance System*, 624 Phil. 700 (2010).

In the Resolution[47] dated 3 December 2008, the Court required Atty. Manaois to submit, a) proof of service of the Motion for extension upon the RTC; and b) his updated IBP official receipt number and date of issue, both within 10 days of notice; and c) an affidavit of service of the motion for extension with a properly accomplished *jurat* showing that the affiants have exhibited before the notary public at least one current identification document issued by an official agency bearing their photographs and signatures as required under Sections 2, 6 and 12, Rule II of the 2004 Rules on Notarial Practice, as amended. The Court also directed the parties or their counsel to indicate their contact details on all papers and pleadings to be filed with the Court. Records show that Atty. Manaois received a copy of the Resolution on 6 January 2009.[48] No compliance was ever submitted.

In a Resolution[49] dated 28 January 2009, the Court additionally required Atty. Manaois to submit, within five days from notice, a) proof of authority of petitioners Erlinda Dacanay and Leonardo Caguioa to sign the verification of the petition and the certification against forum shopping for and on behalf of other petitioners; and b) the verification of the petition and certification against forum shopping, and an affidavit of service, both with properly accomplished *jurat*. Records show that Atty. Manaois received a copy of the Resolution on 3 April 2009.[50] No compliance was ever submitted.

In a Resolution[51] dated 25 November 2009, the Court resolved to 1) require petitioners to file a consolidated reply; 2) require Atty. Manaois to show cause why he should not be disciplinarily dealt with or held in contempt of court for failure to comply

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[47] *Rollo*, p. 8.

[48] See Reply of the Postmaster to the letter of the Clerk of Court dated 18 May 2009; *id.* at 254.

[49] *Id.* at 229.

[50] See Registry Return Receipt; *id.* at 230-A.

[51] *Id.* at 256.

with the Resolutions dated 3 December 2008 and 28 January 2009; and 3) require Atty. Manaois to comply with both Resolutions within 10 days from notice. Records show that Atty. Manaois received a copy of the Resolution on 1 February 2010.[52] No reply to the show cause order was ever submitted.

In a Resolution[53] dated 14 April 2010, the Court imposed on Atty. Manaois a fine of ₱2,000 to be paid within ten days, required him to file a consolidated reply, and to comply with the Resolution dated 25 November 2009. Records show that he received a copy of the Resolution on 18 June 2010.[54]

In a Resolution[55] dated 21 March 2011, the Court imposed an additional ₱1,000 fine, with a warning that should he fail to pay the fine and submit a Consolidated Reply, he shall be ordered arrested and detained by the National Bureau of Investigation.

It was only on 22 June 2011, more than a year after the Court had issued the order, that Atty. Manaois paid the fine and submitted the Consolidated Reply.[56] No explanation for the delay was given to the Court.

In a Resolution[57] dated 3 August 2011, the Court required Atty. Manaois to update his IBP membership dues and to submit proof thereof within five days from notice. To date, he has yet to comply with that order.

The unexplained and repeated failure of Atty. Manaois to heed Our orders leads Us to question his fitness and commitment to remain as an officer of the court.

WHEREFORE, the petition is **GRANTED**. The Resolution dated 8 September 2008 and Order dated 13 October 2008 issued

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[52] See Registry Return Receipt; *id.* at 256-A.

[53] *Id.* at 258.

[54] *Id.* at 259.

[55] *Id.* at 266.

[56] *Id.* at 272-286.

[57] *Id.* at 289.

by the Regional Trial Court of Lingayen, Pangasinan, Branch 69, in Civil Case No. 18857 are **REVERSED** and **SET ASIDE**. Let the records of the case be **REMANDED** to that court, which is **DIRECTED** to proceed with the case with dispatch.

The Commission on Bar Discipline-Integrated Bar of the Philippines is **DIRECTED** to investigate Atty. Eugenio F. Manaois for his acts that appear to have violated the Lawyer's Oath and the Code of Professional Responsibility and, thereafter, to **SUBMIT** its report and recommendation to this Court.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 187696. June 15, 2016]

FILOMENA CABLING, *petitioner, vs.* **RODRIGO DANGCALAN,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; *BATAS PAMBANSA BILANG 129,* AS AMENDED; JURISDICTION IN CIVIL CASES; *ACCION PUBLICIANA* AND *REIVINDICATORIA*; TO DETERMINE WHICH COURT HAS JURISDICTION OVER THE ACTION, THE COMPLAINT MUST ALLEGE THE ASSESSED VALUE OF THE REAL PROPERTY SUBJECT OF THE COMPLAINT, AND IF THE ASSESSED VALUE IS NOT ALLEGED, THE ACTION SHOULD BE DISMISSED FOR LACK OF JURISDICTION.— It is no longer good law that all cases for recovery of possession or *accion publiciana* lie with the RTC, regardless of the value

of the property. As early as 2001, this Court had already declared that all cases involving title to or possession of real property with an assessed value of less than ₱20,000, if outside Metro Manila, fall under the original jurisdiction of the municipal trial court. This pronouncement was based on Republic Act No. 7691, which was approved by Congress on 25 March 1994. x x x [T]he actions envisaged in x x x [Sections 19 (2) and 33 (3) of Batas Pambansa Bilang (B.P. Blg.) 129, as amended by Republic Act No. 7691] are *accion publiciana* and *reivindicatoria.* To determine which court has jurisdiction over the action, the complaint must allege the assessed value of the real property subject of the complaint. The Court explained further in *Penta Pacific Realty Corporation v. Ley Construction and Development Corporation* that its jurisdiction would now be determined by the assessed value of the disputed land, or of the adjacent lots if it is not declared for taxation purposes. If the assessed value is not alleged in the complaint, the action should be dismissed for lack of jurisdiction. The reason behind this rule is that the trial court is not afforded the means of determining from the allegations of the basic pleading whether jurisdiction over the subject matter of the action pertains to it or to another court. After all, courts cannot take judicial notice of the assessed or market value of lands.

2. ID.; CIVIL PROCEDURE; JURISDICTION; JURISDICTION OVER THE SUBJECT MATTER OF A CASE IS CONFERRED BY LAW AND DETERMINED BY THE ALLEGATIONS IN THE COMPLAINT.— Jurisdiction over the subject matter of a case is conferred by law and determined by the allegations in the complaint, as well as by the character of the reliefs sought. Once it is vested by the allegations in the complaint, jurisdiction remains vested in the trial court irrespective of whether or not the plaintiff is entitled to recover upon all or some of the claims asserted therein. As the CA has correctly held, the allegations in the Complaint filed by petitioner sufficiently made out a case for recovery of possession or *accion publiciana.* The same cannot be said, however, of the ultimate outcome of her appeal from the RTC Decision. The MCTC correctly exercised its exclusive and original jurisdiction in finding for petitioner as the plaintiff. On the other hand, the appeal of respondent, as the defendant, properly fell under the appellate jurisdiction of the RTC, under Section

22 of *B.P. Blg.* 129 as amended. Hence, neither decision can be struck down for being a total nullity.

3. ID.; ID.; APPEALS; QUESTION OF LAW AND QUESTION OF FACT, HOW DETERMINED; THE SUPREME COURT RESOLVES ONLY QUESTIONS OF LAW; EXCEPTIONS. — The test of whether a question is one of law or of fact is whether the appellate court can determine the issue raised without reviewing or evaluating the evidence. If so, it is a question of law; otherwise it is a question of fact. Good faith is a question of fact that must be proved. Similarly, the question of prescription of an action involves the ascertainment of factual matters, such as the date when the period to bring the action commenced to run. We resolve only questions of law; We do not try facts or examine testimonial or documentary evidence on record. We may have at times opted for the relaxation of the application of procedural rules, but We have resorted to this option only under exceptional circumstances, such as when: (a) the findings are grounded entirely on speculation, surmises, or conjectures; (b) the inference made is manifestly mistaken, absurd, or impossible; (c) there is grave abuse of discretion; (d) the judgment is based on a misapprehension of facts; (e) the findings of fact are conflicting; (f) in making its findings, the CA went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (g) the CA's findings are contrary to those of the trial court; (h) the findings are conclusions without a citation of the specific evidence on which they are based; (i) the facts set forth in the petition, as well as in the petitioner's main and reply briefs, are not disputed by the respondent; (j) the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; or (k) the CA manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion. None of the above circumstances, however, are extant in this case.

APPEARANCES OF COUNSEL

Public Attorney's Office for petitioner.
Manasseh S. Bastes for respondent.

D E C I S I O N

SERENO, *C.J.*:

Before this Court is a Petition for Review on Certiorari assailing the Court of Appeals (CA) Decision[1] declaring void for lack of jurisdiction the Decision[2] issued by the 2nd Municipal Circuit Trial Court (MCTC) of Malitbog-Tomas Oppus, Southern Leyte, as well as the Decision[3] rendered by Branch 25, Regional Trial Court (RTC) of Maasin City, Southern Leyte.

ANTECEDENT FACTS

This case stemmed from the Complaint for recovery of possession and damages filed by Filomena Cabling (petitioner) against Rodrigo Dangcalan (respondent) over respondent's alleged encroachment on petitioner's property.

In her Complaint,[4] petitioner alleged that she owned a 125-square-meter parcel of land located at San Vicente, Malitbog, Southern Leyte. It was denominated as Lot No. 5056 and had an assessed value of ₱2,100. Adjoining her property was a parcel of land that respondent had bought from her brother, Gerardo Montajes. Despite knowing the boundaries of their respective properties, however, respondent constructed a perimeter fence that encroached on petitioner's land. After several unheeded demands for respondent to remove the encroachment and a failed conference before the *Lupong Tagapamayapa*, petitioner filed the Complaint before the MCTC in May 2001.[5]

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[1] *Rollo*, pp. 19-30; dated 24 January 2008, penned by Associate Justice Francisco P. Acosta with Associate Justices Pampio A. Abarintos and Amy C. Lazaro-Javier concurring.

[2] *Id.* at 79-85; dated 2 June 2004, penned by Judge Sulpicio D. Cunanan.

[3] *Id.* at 109-120; dated 17 January 2005, penned by Judge Romeo M. Gomez.

[4] *Id.* at 52-60.

[5] *Id.*

Respondent denied any encroachment on petitioner's property and raised prescription as an affirmative defense.[6] He claimed that he had constructed the perimeter fence together with his house way back in 1987, and that petitioner knew about it. She had actually observed some phases of the construction to ensure that it would not exceed their property boundaries. Yet, petitioner filed her Complaint only in 2001, which was beyond the 10-year period for acquisitive prescription under Article 1134 of the New Civil Code.[7]

RULINGS OF THE MCTC AND THE RTC

After trial, the MCTC rendered judgment in favor of petitioner. Relying on the sketch plan and the testimony of the court-appointed commissioner, it ruled that respondent's perimeter fence had indeed encroached on some 13 square meters of petitioner's property. The court further ruled that respondent was a builder in bad faith, because he did not verify the actual boundaries of the lot that he had purchased from petitioner's brother. Respondent had the lot titled under his name in 1988, but it was surveyed only in August 2001.[8]

The dispositive portion of the MCTC Decision reads:

WHEREFORE, in the light of the foregoing considerations, the Court hereby renders judgment in favor of the plaintiff, ordering the defendant of the following to wit:

1. Surrendering the defendant's possession of the portion of land in question to plaintiff, the true owner of the portion of land, and as defendant is a builder in bad faith loses what was built on said portion without right to indemnity. (Art. 448, Civil Code of the Philippines);

2. To pay the plaintiff of the monthly rental at ₱50.00 per month for the possession of said portion in question starting from the time the defendant demanded by the plaintiff to vacate up to the time the former actually vacate; and

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[6] *Id.* at 75.

[7] *Id.* at 74-76.

[8] *Supra* note 2.

3. To pay the plaintiff for moral damages in the amount of ₱20,000, exemplary damages in the amount of ₱10,000 and actual damages in the amount of ₱2,000.00 and

4. To pay the costs of suit.[9]

Upon appeal by respondent, however, the RTC ruled differently. Unlike the MCTC, it did not give credence to the commissioner's sketch plan. The RTC noted that the sketch plan had no accompanying Commissioner's Report, and that the basis of the survey was not clear. It also ruled that the MCTC should have first ruled on the issue of prescription because respondent had raised it in a timely manner, albeit via an Amended Answer.[10]

The dispositive portion of the RTC Decision reads:

WHEREFORE, judgment is hereby rendered reversing the decision of the lower court declaring:

1. That the action has already prescribed and/or that plaintiff was already in laches when this action was filed in 1990, and defendant has already acquired the portion in litigation by prescription;

2. That when defendant built the concrete perimeter fence on the lot in litigation in August 1987, he was a builder in good faith;

3. No pronouncement as to damages and costs.[11]

CA RULING

Petitioner then filed a Petition for Review under Rule 42 before the CA,[12] raising the following issues:

I

WHETHER THE TRIAL COURT ERRED IN DISMISSING THE COMPLAINT OF THE PETITIONER ON THE GROUND OF ACQUISITIVE PRESCRIPTION AND EXTINCTIVE PRESCRIPTION.

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[9] *Id.* at 84-85.

[10] *Supra* note 3.

[11] *Id.* at 119-120.

[12] *Id.* at 37-56.

II

WHETHER THE TRIAL COURT ERRED IN DECLARING THAT THE COMPLAINT OF THE PETITIONER IS BARRED BY LACHES.

III

WHETHER THE TRIAL COURT ERRED IN DECLARING THAT THE RESPONDENT IS A BUILDER IN GOOD FAITH.[13]

On 24 January 2008, the CA denied the Petition and annulled both the RTC and MCTC Decisions for lack of jurisdiction.[14] Instead of ruling on the issues presented by petitioner, the appellate court held that the threshold question was whether the MCTC had jurisdiction over petitioner's complaint. After examining the averments therein, the CA ruled that the MCTC had no jurisdiction because the Complaint was clearly an *accion publiciana*. As such, it was a plenary action for the recovery of the real right of possession, which properly fell under the RTC's jurisdiction. Accordingly, all proceedings in petitioner's Complaint, including her appeal before the RTC, were invalid and the decisions rendered thereon could be struck down at any time.[15]

The dispositive portion of the CA Decision reads:

WHEREFORE, the petition is DENIED. The Decision of the 2nd Municipal Circuit Trial Court (MCTC) of Malitbog-Tomas Oppus, Southern Leyte dated June 2, 2004 and the January 17, 2005 Decision of the Regional Trial Court, 8th Judicial Region, Branch 25, Maasin City reversing the Decision of the MCTC are BOTH declared NULL and VOID for lack of jurisdiction, and the instant Complaint for recovery of possession with damages is DISMISSED without prejudice.[16]

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[13] *Id.* at 42.

[14] *Supra* note 1.

[15] *Id.* at 29.

[16] *Id.* at 30.

On 1 April 2009, the CA denied petitioner's Motion for Reconsideration.[17] Hence, this Petition.

ISSUE

The only legal issue We shall resolve is whether the CA erred in nullifying the RTC and the MCTC Decisions on the ground that the MCTC had no jurisdiction over petitioner's Complaint for *accion publiciana*.

COURT RULING

We GRANT the petition.

It is no longer good law that all cases for recovery of possession or *accion publiciana* lie with the RTC, regardless of the value of the property.[18]

As early as 2001, this Court had already declared that all cases involving title to or possession of real property with an assessed value of less than ₱20,000, if outside Metro Manila, fall under the original jurisdiction of the municipal trial court.[19] This pronouncement was based on Republic Act No. 7691,[20] which was approved by Congress on 25 March 1994.

Jurisdiction over civil actions involving title to or possession of real property or interest therein, as set forth in Sections 19 (2) and 33 (3) of *Batas Pambansa Bilang* (*B.P. Blg.*) 129,[21] as amended by Republic Act No. 7691, is as follows:

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[17] *Id.* at 167-170.

[18] *Penta Pacific Realty Corporation v. Ley Construction and Development Corporation*, G.R. No. 161589, 24 November 2014, 741 SCRA 426, 438; *Spouses Cruz v. Spouses Cruz*, 616 Phil. 519, 526 (2009), citing *Quinagoran v. Court of Appeals*, 557 Phil. 650, 657 (2007).

[19] *Aliabo v. Carampatan*, 407 Phil. 31, 36 (2001).

[20] An Act Expanding the Jurisdiction of the Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts, Amending for the Purpose *Batas Pambansa Blg.* 129, Otherwise Known as the "Judiciary Reorganization Act of 1980."

[21] Judiciary Reorganization Act of 1980.

SECTION 19. *Jurisdiction in civil cases.* — Regional Trial Courts shall exercise exclusive original jurisdiction:

x x x x x x x x x

(2) In all civil actions which involve the title to, or possession of, real property, or any interest therein, where the assessed value of the property involved exceeds [t]wenty thousand pesos (₱20,000.00) or for civil actions in Metro Manila, where such value exceeds Fifty thousand pesos (₱50,000.00) except actions for forcible entry into and unlawful detainer of lands or buildings, original jurisdiction over which is conferred upon Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts;

SECTION 33. *Jurisdiction of Metropolitan Trial Courts, Municipal Trial Courts and Municipal Circuit Trial Courts in civil cases.* — Metropolitan Trial Courts, Municipal Trial Courts, and Municipal Circuit Trial Courts shall exercise:

x x x x x x x x x

(3) Exclusive original jurisdiction in all civil actions which involve title to, or possession of, real property, or any interest therein where the assessed value of the property or interest therein does not exceed [t]wenty thousand pesos (₱20,000.00) or, in civil actions in Metro Manila, where such assessed value does not exceed Fifty thousand pesos (₱50,000.00) exclusive of interest, damages of whatever kind, attorney's fees, litigation expenses and costs: Provided, That value of such property shall be determined by the assessed value of the adjacent lots.

In *Laresma v. Abellana*,[22] We clarified that the actions envisaged in the aforequoted provisions are *accion publiciana* and *reivindicatoria*. To determine which court has jurisdiction over the action, the complaint must allege the assessed value of the real property subject of the complaint. The Court explained further in *Penta Pacific Realty Corporation v. Ley Construction and Development Corporation*[23] that its jurisdiction would now

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[22] 424 Phil. 766, 782 (2004).

[23] *Supra* note 18, at 439.

be determined by the assessed value of the disputed land, or of the adjacent lots if it is not declared for taxation purposes. If the assessed value is not alleged in the complaint, the action should be dismissed for lack of jurisdiction. The reason behind this rule is that the trial court is not afforded the means of determining from the allegations of the basic pleading whether jurisdiction over the subject matter of the action pertains to it or to another court. After all, courts cannot take judicial notice of the assessed or market value of lands.[24]

Clearly, the CA erred in nullifying both the RTC and the MCTC decisions.

Jurisdiction over the subject matter of a case is conferred by law and determined by the allegations in the complaint, as well as by the character of the reliefs sought. Once it is vested by the allegations in the complaint, jurisdiction remains vested in the trial court irrespective of whether or not the plaintiff is entitled to recover upon all or some of the claims asserted therein.[25] As the CA has correctly held, the allegations in the Complaint filed by petitioner sufficiently made out a case for recovery of possession or *accion publiciana*. The same cannot be said, however, of the ultimate outcome of her appeal from the RTC Decision. The MCTC correctly exercised its exclusive and original jurisdiction in finding for petitioner as the plaintiff. On the other hand, the appeal of respondent, as the defendant, properly fell under the appellate jurisdiction of the RTC, under Section 22 of *B.P. Blg. 129* as amended. Hence, neither decision can be struck down for being a total nullity.

Petitioner now argues that the CA's dismissal of her Complaint without prejudice to the filing of another case before the RTC, would only force her to re-litigate the same issues that the MCTC has already thoroughly considered. Additionally, she contends

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[24] *Hilario v. Salvador*, 497 Phil. 327, 336 (2005), citing *Ouano v. PGTT International Investment Corporation,* 434 Phil. 28-37 (2002).

[25] *De Vera v. Spouses Santiago*, G.R. No. 179457, 22 June 2015; *Hilario v. Salvador, supra*.

that the RTC Decision was not in accord with the applicable provisions of the New Civil Code. She claims that respondent cannot be deemed a builder in good faith, because he failed to verify the actual boundaries of his property prior to the construction of his perimeter fence. Further, neither prescription nor *laches* applies, because petitioner filed her Complaint in 2001, which was well within the 30-year prescriptive period set forth in Article 1141 of the New Civil Code for real actions over immovables.[26] For these reasons, she urges us to reinstate the MCTC Decision.[27]

Respondent, on the other hand, has not filed any comment despite Our repeated directives to his counsel on record.[28]

Suffice it to say that the errors ascribed by petitioner to the RTC Decision are factual issues that properly belong to the jurisdiction of the CA. The test of whether a question is one of law or of fact is whether the appellate court can determine the issue raised without reviewing or evaluating the evidence. If so, it is a question of law; otherwise it is a question of fact.[29]

Good faith is a question of fact that must be proved.[30] Similarly, the question of prescription of an action involves the ascertainment of factual matters, such as the date when the period to bring the action commenced to run.[31]

We resolve only questions of law; We do not try facts or examine testimonial or documentary evidence on record.[32] We may have at times opted for the relaxation of the application of

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[26] *Supra* note 1, at 9-13.

[27] *Id.* at 14.

[28] *Id.* at 177. In a Resolution dated 5 September 2011, we deemed as waived the filing of respondent's Comment on the Petition.

[29] *Crisostomo v. Garcia, Jr.*, 516 Phil. 743, 749 (2006).

[30] *Civil Service Commission v. Maala*, 504 Phil. 646, 653 (2005); *Cabrera v. Tiano*, 118 Phil. 558, 562 (1960).

[31] *Cabrera v. Tiano, id.*

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

procedural rules, but We have resorted to this option only under exceptional circumstances, such as when: (a) the findings are grounded entirely on speculation, surmises, or conjectures; (b) the inference made is manifestly mistaken, absurd, or impossible; (c) there is grave abuse of discretion; (d) the judgment is based on a misapprehension of facts; (e) the findings of fact are conflicting; (f) in making its findings, the CA went beyond the issues of the case, or its findings are contrary to the admissions of both the appellant and the appellee; (g) the CA's findings are contrary to those of the trial court; (h) the findings are conclusions without a citation of the specific evidence on which they are based; (i) the facts set forth in the petition, as well as in the petitioner's main and reply briefs, are not disputed by the respondent; (j) the findings of fact are premised on the supposed absence of evidence and contradicted by the evidence on record; or (k) the CA manifestly overlooked certain relevant facts not disputed by the parties, which, if properly considered, would justify a different conclusion.[33]

None of the above circumstances, however, are extant in this case. The simple reason is that the CA opted to gloss over the factual issues raised by petitioner on the wrong premise that the decisions of the trial courts were void.

WHEREFORE, premises considered, the Petition for Review on Certiorari is **GRANTED**. The Court of Appeals Decision dated 24 January 2008 and Resolution dated 1 April 2009 in CA-G.R. SP No. 88408 are **REVERSED** and **SET ASIDE**. The case is **REMANDED** to the Court of Appeals for the prompt resolution of the case on the merits.

SO ORDERED.

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

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[33] *De Vera v. Spouses Santiago, supra* note 25.

FIRST DIVISION

[G.R. No. 189401. June 15, 2016]

VIL-REY PLANNERS and BUILDERS, *petitioner, vs.* **LEXBER, INC.,** *respondent.*

[G.R. No. 189447. June 15, 2016]

STRONGHOLD INSURANCE COMPANY, INC., *petitioner, vs.* **LEXBER, INC.,** *respondent.*

SYLLABUS

1. CIVIL LAW; CIVIL CODE; OBLIGATIONS AND CONTRACTS; BREACH OF CONTRACT; REFERS TO THE FAILURE OF A PARTY, WITHOUT LEGAL REASON, TO COMPLY WITH THE TERMS OF A CONTRACT OR PERFORM ANY PROMISE THAT FORMS EITHER A PART OR THE WHOLE OF IT.— Breach of contract is the failure of a party, without legal reason, to comply with the terms of a contract or perform any promise that forms either a part or the whole of it. The failure of Vil-Rey to complete the works under the third contract was never an issue in this case. In fact, that failure was readily admitted by Moises Villarta, its managing partner, in his testimony before the trial court x x x. [A]side from this testimony, no proof was presented to show that Vil-Rey was able to accomplish 95% of the works under the third contract. Nevertheless, even if we were to assume that this claim is true, it still falls short of the obligation to finish 100% of the works. In the third contract, [i]t is clear that the next payment for Vil-Rey would have fallen due upon completion of the works. Thus, it cannot put up the defense that its failure to comply with its obligation was because it was not paid.

2. ID.; ID.; ID.; RECIPROCAL OBLIGATIONS; ARISE FROM THE SAME CAUSE, SUCH THAT THE OBLIGATION OF ONE IS DEPENDENT UPON THAT OF THE OTHER.— [T]he parties clearly took on reciprocal obligations. These are obligations that arise from the same cause, such that the obligation of one is dependent upon that of the other.

The reciprocal obligation in this case was Lexber's payment of the 50% balance upon Vil-Rey's completion of the works on or before 15 January 1997. However, despite the grant of extension until 31 January I997, and even after the lapse of another five-day grace period, Vil-Rey failed to finish the works under the third contract. The law provides that the obligation of a person who fails to fulfill it shall be executed at that person's cost. The CA was correct in ruling that Vil-Rey should be held liable for the amount paid by Lexber to another contractor to complete the works. x x x In the absence of a clear showing of bad faith on the part of Vil-Rey, it shall be liable for damages only with regard to those that are the natural and probable consequences of its breach. In this case, the failure of Vil-Rey to finish the works compelled Lexber to secure the services of another contractor, to which the latter paid a total of ₱284,084.46. Considering that this amount was not a loan or forbearance of money, We impose interest at the rate of 6% per annum from 17 February 1997 until the finality of this Decision. Thereafter, it shall earn interest at the rate of 6% per annum until satisfaction.

3. ID.; ID.; ID.; ID.; DELAY BY ONE OF THE PARTIES BEGINS FROM THE MOMENT THE OTHER FULFILLS THE OBLIGATION.— As agreed, Vil-Rey shall acquire a surety bond from Stronghold equivalent to 50% of the contract price of ₱1,168,728.37 upon Lexber's downpayment of the same amount. Accordingly, on 24 December 1996, Vil-Rey secured the second surety bond in the amount of ₱584,364.19. On the same day, Lexber made a downpayment of only ₱500,000. Article 1169 of the Civil Code provides that in reciprocal obligations, delay by one of the parties begins from the moment the other fulfills the obligation. In this case, Lexber is guilty of delay with regard to the amount of ₱84,364.19, which should be paid. Also, the delay shall make it liable to Vil-Rey for damages, which We impose in the form of interest at the rate of 6% per annum from 24 December 1996 until the finality of this Decision. Thereafter, it shall earn interest at the rate of 6% per annum until satisfaction.

4. ID.; ID.; ID.; SURETYSHIP; A SURETY BOND IS AN ACCESSORY CONTRACT DEPENDENT FOR ITS EXISTENCE UPON THE PRINCIPAL OBLIGATION IT GUARANTEES.— The second surety bond clearly guaranteed

the full and faithful performance of the "obligations" of Vil-Rey under the third contract, and it was not secured just to answer for "defects in the materials used and workmanship utilized." As a performance bond, the second surety bond guaranteed that Vil-Rey would perform the contract, and provided that if the latter defaults and fails to complete the contract, Stronghold itself shall complete the contract or pay damages up to the limit of the bond. A surety bond is an accessory contract dependent for its existence upon the principal obligation it guarantees. Being so associated with the third contract as a necessary condition or component thereof, the second surety bond cannot be separated or severed from its principal. Considering that the third contract provided that the works shall be completed on or before 15 January 1997, the second surety bond was deemed to have guaranteed the completion of the works on the same date.

5. ID.; ID.; ID.; ID.; A SURETY IS DISCHARGED FROM ITS OBLIGATION WHEN THERE IS A MATERIAL ALTERATION OF THE PRINCIPAL CONTRACT, BUT NO RELEASE FROM THE OBLIGATION SHALL TAKE PLACE WHEN THE CHANGE IN THE CONTRACT DOES NOT HAVE THE EFFECT OF MAKING THE OBLIGATION MORE ONEROUS TO THE SURETY.— It is true that a surety is discharged from its obligation when there is a material alteration of the principal contract, such as a change that imposes a new obligation on the obligor; or takes away some obligation already imposed; or changes the legal effect, and not merely the form, of the original contract. Nevertheless, no release from the obligation shall take place when the change in the contract does not have the effect of making the obligation more onerous to the surety. In this case, the extension of the third contract for 15 days and the grant of an additional five-day grace period did not make Stronghold's obligation more onerous. On the contrary, the extensions were aimed at the completion of the works, which would have been for the benefit of Stronghold. This perspective comes from the provision of the second surety bond that "if [Vil-Rey] shall in all respects duly and fully observe and perform all x x x the aforesaid covenants, conditions and agreements to the true intent and meaning thereof, then this obligation shall be null and void, otherwise to remain in full force and effect." The completion of the works would have discharged Stronghold from its liability.

6. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; WHEN A PARTY DELIBERATELY ADOPTS A CERTAIN THEORY, WHICH BECOMES THE BASIS FOR THE MANNER ON WHICH THE CASE IS TRIED AND DECIDED, THE PARTY WILL NOT BE PERMITTED TO CHANGE THAT THEORY ON APPEAL.— Stronghold contends that the extension of time for the completion of the third contract without its knowledge discharged it from its obligation under the second surety bond. What further militates against this contention is the fact that it was raised for the first time in the Motion for Partial Reconsideration of the CA Decision dated 16 April 2009. Prior to the filing of that motion by Stronghold, its consistent argument before the RTC and even before the CA was that the second surety bond guaranteed only the materials and the workmanship utilized by Vil-Rey; and that the absence of any complaint from Lexber in this regard discharged Stronghold. We have ruled that issues, grounds, points of law, or theories not brought to the attention of the trial courts cannot be passed upon by reviewing courts. Thus, when a party deliberately adopts a certain theory, which becomes the basis for the manner on which the case is tried and decided, the party will not be permitted to change that theory on appeal; otherwise, it would be unfair to the adverse party.

7. CIVIL LAW; CIVIL CODE; OBLIGATIONS AND CONTRACTS; DAMAGES; ATTORNEY'S FEES; TO BE PAID IN CASE OF BREACH OF CONTRACTUAL STIPULATIONS NECESSITATING A PARTY TO SEEK JUDICIAL INTERVENTION TO PROTECT ITS RIGHTS; ATTORNEY'S FEES AS PROVIDED FOR IN THE CONTRACTS ARE IN THE NATURE OF LIQUIDATED DAMAGES WHICH MAY BE EQUITABLY REDUCED BY THE COURTS.— Attorney's fees as provided for in the contracts are in the nature of liquidated damages agreed upon by the parties. These fees are to be paid in case of breach of the contractual stipulations necessitating a party to seek judicial intervention to protect its rights. Normally, the obligor is bound to pay the stipulated indemnity without the necessity of proof of the existence or the measure of damages caused by the breach. In this case, the failure of Vil-Rey to fulfill its obligation to finish the works under the third contract compelled Lexber to seek judicial intervention. Pursuant to a contractual stipulation therefor, the payment of attorney's fees to Lexber shall be the

obligation of Vil-Rey and Stronghold. However, considering the circumstances surrounding this case, We reduce the award to 10% of ₱284,084.46, which was the amount Lexber paid to another contractor for the completion of the works. Liquidated damages may be equitably reduced by the courts. Since the failure of Vil-Rey to fulfill its obligations was apparently caused by financial difficulties, and Lexber was also guilty of delay with regard to the latter's reciprocal obligation to make a downpayment of 50% of the amount of the third contract upon Vil-Rey's acquisition of a surety bond in the same amount, the courts' power may be properly exercised in this case.

APPEARANCES OF COUNSEL

Rodolfo C. Adajar for petitioner Vil-Rey Planners & Builders.
Buñag & Lotilla Law Offices for petitioner Stronghold Insurance Co., Inc.
Dante S. David for respondent Lexber, Inc.

D E C I S I O N

SERENO, *C.J.*:

Before us are petitions for review on certiorari under Rule 45 of the Rules of Court seeking to nullify the Court of Appeals (CA) Decision[1] and Resolution[2] in CA-G.R. CV No. 90241. The CA Decision found Vil-Rey Planners and Builders (Vil-Rey) and Stronghold Insurance Company, Inc. (Stronghold), solidarily liable to Lexber, Inc. (Lexber) in the amount of ₱284,084.46 plus attorney's fees of ₱50,000. The CA Resolution denied the motions for reconsideration filed by Vil-Rey and Stronghold.

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[1] *Rollo* (G.R. No. 189447), pp. 40-50. The Decision dated 16 April 2009 issued by the Court of Appeals (CA) Thirteenth Division was penned by Associate Justice Estela M. Perlas-Bernabe (now a Member of this Court), with Associate Justices Amelita G. Tolentino and Ramon M. Bato, Jr., concurring.

[2] *Id.* at 52, dated 1 September 2009.

FACTS

Vil-Rey and Lexber entered into a Construction Contract dated 17 April 1996[3] (first contract) whereby the former undertook to work on the compacted backfill of the latter's 56,565-square-meter property in *Barangay* Bangad, Cabanatuan City. Based on the first contract, Vil-Rey shall complete the project in 60 days for a consideration of ₱5,100,000. Lexber released to Vil-Rey a mobilization downpayment of ₱500,000 secured by Surety Bond G(16) No. 066915[4] (first surety bond) issued by Stronghold. For its part, Vil-Rey agreed to indemnify Stronghold for whatever amount the latter might be adjudged to pay Lexber under the surety bond.[5]

Vil-Rey and Lexber mutually terminated the first contract and entered into a Construction Contract dated 1 July 1996[6] (second contract) to cover the remaining works, but under revised terms and conditions. The contract amount was ₱2,988,700.20, and the scope of work was required to be completed in 60 days.

On 23 December 1996, Vil-Rey and Lexber executed Work Order No. CAB-96-09[7] (third contract) for the completion of the remaining works by 15 January 1997. Under the third contract, a consideration of ₱1,168,728.37 shall be paid on the following basis: 50% downpayment to be secured by a surety bond in the same amount issued by Stronghold upon approval of the work order and 50% balance upon completion of the works. Accordingly, Stronghold issued Surety Bond G(16) No. 077258[8] (second surety bond) in the amount of ₱584,364.19 in favor of Lexber. Vil-Rey again obligated itself to indemnify Stronghold for whatever amount the latter might be held to pay under the surety bond.[9]

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[3] *Id.* at 55-61.

[4] *Id.* at 53.

[5] *Id.* at 54.

[6] *Id.* at 70-74.

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

[8] *Id.* at 79.

[9] *Id.* at 80.

In a letter dated 21 January 1997[10] addressed to Lexber, Vil-Rey requested the extension of the contract period to 31 January 1997. Lexber granted the request for extension.[11] However, Vil-Rey failed to complete the works by the end of the extended period, or even after Lexber gave it another five days to finish the works.[12] Lexber then wrote Stronghold seeking to collect on the two surety bonds issued in favor of the former.[13]

When negotiations failed, Lexber filed a Complaint[14] for sum of money and damages against Vil-Rey and Stronghold before the Regional Trial Court of Quezon City, Branch 93 (RTC).

In its Answer (with Counterclaim),[15] Vil-Rey denied that it was guilty of breach of contract and insisted that it was Lexber that owed the amount of ₱1,960,558.40 to the former. Vil-Rey alleged that under the first contract, it was able to finish 75.33% of the works, but that Lexber paid an amount equivalent to only 50% of the contract, thereby leaving a balance of ₱1,291,830 in Vil-Rey's favor. Furthermore, considering that almost 100% of the works were finished under the third contract, Vil-Rey had receivables of ₱668,728.40 representing the contract amount of ₱1,168,728.37 less the downpayment of ₱500,000. It also prayed for the payment of moral damages and attorney's fees.

Stronghold filed its Answer[16] alleging that its liability under the surety bonds was very specific. Under the first surety bond, it guaranteed only the mobilization down payment of 10% of the total consideration for the first contract. The mobilization downpayment was fully liquidated prior to the mutual termination of the first contract. Also, no collection could be made on the

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[10] *Id.* at 81.

[11] *Id.* at 81, 82.

[12] *Id.* at 82.

[13] *Id.* at 83.

[14] *Id.* at 87-90.

[15] *Id.* at 108-112.

[16] *Id.* at 99-105.

second surety bond, because Lexber failed to allege that there were defects in the materials used and workmanship utilized by Vil-Rey in undertaking the works. Stronghold put forward its counterclaim against Lexber for attorney's fees, litigation expenses, and cross-claim against Vil-Rey for any and all amounts Stronghold may be ordered to pay under the surety bonds pursuant to the indemnity agreements.

RULING OF THE RTC

In a Decision dated 12 December 2005,[17] the RTC adjudged Vil-Rey and Stronghold jointly and severally liable to Lexber in the amount of ₱2,988,700.20, with interest at the rate of 12% per annum as actual and compensatory damages from the time of the breach until full satisfaction. The trial court also ordered Vil-Rey and Stronghold to pay attorney's fees in the amount of ₱500,000 plus the costs of suit. It upheld the indemnity agreements and granted Stronghold's cross-claim against Vil-Rey.

The RTC emphasized that parties to a contract are bound by the stipulations therein. When the contract requires the accomplishment of tasks at a given time and the obligor fails to deliver, there is breach of contract that entities the obligee to damages. In this case, when Vil-Rey failed to finish the works on time, it became liable to Lexber for damages brought about by the breach. The trial court found no merit in the claim of Vil-Rey that there was underpayment and brushed aside the latter's counterclaim.

As regards Stronghold, the trial court found that the wording of the surety bonds did not embody the parties' true intent, which was to ensure the faithful performance by Vil-Rey of its obligations. Considering its failure in this regard, Stronghold should pay the total amount of the two surety bonds to Lexber.

In an Order dated 22 October 2007,[18] the RTC decreed a partial reconsideration and ordered Vil-Rey and Stronghold to

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[17] *Id.* at 212-220. The Decision was penned by Pairing Judge Samuel H. Gaerlan.

[18] *Id.* at 255-257. The Order was penned by Presiding Judge Ramon Paul L. Hernando.

pay Lexber *in solidum* in the amount of ₱1,084,364.19. This represented the true total amount of the two surety bonds, with 12% interest per annum as actual and compensatory damages from the time of the breach until full satisfaction. Furthermore, attorney's fees were reduced to ₱200,000.

Vil-Rey and Stronghold filed an appeal before the CA.

RULING OF THE CA

In the assailed Decision dated 16 April 2009,[19] the CA modified the RTC Order and further lowered the liability of Vil-Rey and Stronghold to ₱284,084.46 with interest at the rate of 6% per annum from 11 February 1997 until the finality of the Decision. Thereafter, the amount shall earn 12% interest per annum until full satisfaction. The appellate court also reduced attorney's fees to ₱50,000.

The CA ruled that, considering the mutual termination of the first and second contracts, no liability could be assessed against Vil-Rey. Whatever claims Lexber had against Vil-Rey had been deemed waived with the execution of the third contract. Consequently, Stronghold could not be made to pay under the first surety bond, which covered only the mobilization downpayment under the first contract.

Nevertheless, there was a clear breach of the third contract, and Vil-Rey should be held liable for the natural and probable consequences of the breach as duly proven. In this case, Lexber was able to prove that it sustained damages in the amount of ₱284,084.46, which was the amount it paid another contractor tasked to complete the works left unfinished by Vil-Rey. That amount was charged against the second surety bond, which guaranteed not only the workmanship and the quality of the materials used in the project, but also the obligations of Vil-Rey.

The CA modified the interest imposed considering that the obligation breached was not a loan or forbearance of money. Like the RTC, it denied the counterclaims of Vil-Rey and

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[19] *Id.* at 40-50.

Stronghold against Lexber, but upheld Stronghold's cross-claim against Vil-Rey.

Vil-Rey's motion for reconsideration and Stronghold's motion for partial reconsideration were denied by the CA in the challenged Resolution dated 1 September 2009.[20]

ISSUES

Dissatisfied, Vil-Rey and Stronghold filed the instant petitions before us raising the following issues for our resolution:

1. Whether Vil-Rey is liable for breach of contract
2. Whether Stronghold's liability under the second surety bond was extinguished by the extension of the third contract
3. Whether Lexber is entitled to attorney's fees

OUR RULING

I.
Vil-Rey is liable for breach of contract.

In resisting the ruling of the CA that Vil-Rey was guilty of breach of contract, the latter alleges that the appellate court's findings are based on a misapprehension of facts.[21] Vil-Rey argues that the consideration for the third contract was ₱1,168,728.37, of which it was paid only ₱500,000. Considering that there remained a balance of ₱668,728.37, the amount was more than enough to offset that incurred by Lexber in order to finish the works.

The argument misses the point.

Breach of contract is the failure of a party, without legal reason, to comply with the terms of a contract or perform any promise that forms either a part or the whole of it.[22] The failure of Vil-Rey to complete the works under the third contract was never an issue in this case. In fact, that failure was readily admitted

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[20] *Id.* at 52.

[21] *Rollo* (G.R. No. 189401), pp. 24-26.

[22] *R.S. Tomas, Inc. v. Rizal Cement Co., Inc.*, 685 Phil. 9 (2012).

by Moises Villarta, its managing partner,[23] in his testimony before the trial court:

> Q. What happened after you accomplished 95% under the [third contract]?
> A. The only remaining there would be the compaction and fill density test.
>
> Q. Could you please tell us why you did not finish the compaction and density test under the [third] contract.
> A. Because I lacked funds. I was not paid anymore.[24]

To clarify, aside from this testimony, no proof was presented to show that Vil-Rey was able to accomplish 95% of the works under the third contract. Nevertheless, even if we were to assume that this claim is true, it still falls short of the obligation to finish 100% of the works.

In the third contract, Vil-Rey and Lexber agreed on the following terms of payment:

> 50% downpayment upon approval of this work order against a surety bond from Stronghold Insurance Corporation
> 50% balance upon completion of work
>
> The work will be completed on or before 15 January 1997 x x x.[25]

It is clear that the next payment for Vil-Rey would have fallen due upon completion of the works. Thus, it cannot put up the defense that its failure to comply with its obligation was because it was not paid.

Under the above provisions, the parties clearly took on reciprocal obligations. These are obligations that arise from the same cause, such that the obligation of one is dependent upon that of the other.[26]

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[23] *Rollo* (G.R. No. 189401), p. 16.

[24] *Id.* at 23.

[25] *Rollo*, (G.R. No. 189447), p. 78.

[26] *Metropolitan Bank and Trust Co. v. Chiok*, G.R. Nos. 172652, 175302 & 175394, 26 November 2014, 742 SCRA 435, 472.

The reciprocal obligation in this case was Lexber's payment of the 50% balance upon Vil-Rey's completion of the works on or before 15 January 1997. However, despite the grant of extension until 31 January 1997, and even after the lapse of another five-day grace period, Vil-Rey failed to finish the works under the third contract.

The law provides that the obligation of a person who fails to fulfill it shall be executed at that person's cost.[27] The CA was correct in ruling that Vil-Rey should be held liable for the amount paid by Lexber to another contractor to complete the works. Furthermore, Article 2201 of the Civil Code provides:

> Article 2201. In contracts and quasi-contracts, the damages for which the obligor who acted in good faith is liable shall be those that are the natural and probable consequences of the breach of the obligation, and which the parties have foreseen or could have reasonably foreseen at the time the obligation was constituted.
>
> In case of fraud, bad faith, malice or wanton attitude, the obligor shall be responsible for all damages which may be reasonably attributed to the non-performance of the obligation.

In the absence of a clear showing of bad faith on the part of Vil-Rey, it shall be liable for damages only with regard to those that are the natural and probable consequences of its breach. In this case, the failure of Vil-Rey to finish the works compelled Lexber to secure the services of another contractor, to which the latter paid a total of ₱284,084.46. Considering that this amount was not a loan or forbearance of money, We impose interest at the rate of 6% per annum[28] from 17 February

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[27] CIVIL CODE, Article 1167.

[28] *Nacar v. Gallery Frames*, G.R. No. 189871, 13 August 2013, 703 SCRA 439, 458. The Court ruled thus:

> **To recapitulate and for future guidance, the guidelines laid down in the case of *Eastern Shipping Lines* are accordingly modified to embody BSP-MB Circular No. 799, as follows:**
>
> I. When an obligation, regardless of its source, *i.e.*, law, contracts, quasi-contracts, delicts or quasi-delicts is breached, the contravenor can be held liable for damages. The provisions under Title XVIII on "Damages" of the Civil Code govern in determining the measure of recoverable damages.

1997[29] until the finality of this Decision. Thereafter, it shall earn interest at the rate of 6% per annum until satisfaction.[30]

We shall not close this discussion without passing upon another reciprocal obligation assumed by the parties under the third contract. As agreed, Vil-Rey shall acquire a surety bond from

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II. With regard particularly to an award of interest in the concept of actual and compensatory damages, the rate of interest, as well as the accrual thereof, is imposed, as follows:

1. When the obligation is breached, and it consists in the payment of a sum of money, *i.e.*, a loan or forbearance of money, the interest due should be that which may have been stipulated in writing. Furthermore, the interest due shall itself earn legal interest from the time it is judicially demanded. In the absence of stipulation, the rate of interest shall be 6% per annum to be computed from default, *i.e.*, from judicial or extrajudicial demand under and subject to the provisions of Article 1169 of the Civil Code.
2. When an obligation, not constituting a loan or forbearance of money, is breached, an interest on the amount of damages awarded may be imposed at the discretion of the court at the rate of 6% per annum. No interest, however, shall be adjudged on unliquidated claims or damages, except when or until the demand can be established with reasonable certainty. Accordingly, where the demand is established with reasonable certainty, the interest shall begin to run from the time the claim is made judicially or extrajudicially (Art. 1169, Civil Code), but when such certainty cannot be so reasonably established at the time the demand is made, the interest shall begin to run only from the date the judgment of the court is made (at which time the quantification of damages may be deemed to have been reasonably ascertained). The actual base for the computation of legal interest shall, in any case, be on the amount finally adjudged.
3. When the judgment of the court awarding a sum of money becomes final and executory, the rate of legal interest, whether the case falls under paragraph 1 or paragraph 2, above, shall be 6% per annual from such finality until its satisfaction, this interim period being deemed to be by then an equivalent to a forbearance of credit.

[29] The day after the lapse of the five-day grace period that Lexber gave Vil-Rey. The notice of delay and noncompliance sent by Lexber was received by Vil-Rey on 11 February 1997 [*Rollo* (G.R. No. 189447), p. 49]. In the said notice, Lexber gave Vil-Rey a grace period of five days from notice within which to complete the project.

[30] *Id.*

Stronghold equivalent to 50% of the contract price of ₱1,168,728.37 upon Lexber's downpayment of the same amount. Accordingly, on 24 December 1996, Vil-Rey secured the second surety bond in the amount of ₱584,364.19. On the same day, Lexber made a downpayment of only ₱500,000.[31]

Article 1169 of the Civil Code provides that in reciprocal obligations, delay by one of the parties begins from the moment the other fulfills the obligation. In this case, Lexber is guilty of delay with regard to the amount of ₱84,364.19, which should be paid. Also, the delay shall make it liable to Vil-Rey for damages,[32] which We impose in the form of interest at the rate of 6% per annum[33] from 24 December 1996 until the finality of this Decision. Thereafter, it shall earn interest at the rate of 6% per annum until satisfaction[34]

The parties shall be allowed to compensate the amounts due them to the extent of their respective obligations.

II.
The extension of the third contract did not extinguish Stronghold's liability under the second surety bond.

Stronghold claims that the extension of time for the completion of the works under the third contract from 15 January 1997 to 31 January 1997 was made without its consent as surety.[35] It is argued that an extension of payment given by the creditor to the debtor without notice to or consent of the surety extinguishes the surety's obligation, unless a continuing guarantee was

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[31] *Rollo* (G.R. No. 189447), p. 132.

[32] CIVIL CODE, Article 1170, which states:

Those who in the performance of their obligations are guilty of fraud, negligence, or delay, and those who in any manner contravene the tenor thereof, are liable for damages.

[33] *Supra* note 29.

[34] *Id.*

[35] *Rollo* (G.R. No. 189447), pp. 21-25.

executed by the surety. Stronghold insists that the CA erred in construing the second surety bond as a continuing guarantee despite clear stipulations to the contrary.[36] Furthermore, considering that the second surety bond guaranteed only the materials and the workmanship that would be utilized by Vil-Rey, the absence of any complaint from Lexber in this respect discharged Stronghold.[37]

The following were the conditions and the obligations assumed by Stronghold under the second surety bond:

> TO GUARANTEE [VIL-REY'S] OBLIGATIONS AND TO ANSWER FOR ANY DEFECTS IN THE MATERIALS USED AND WORKMANSHIP UTILIZED IN THE LAND FILLING OF LEXBER HOMES CABANATUAN (REMAINING WORKS).
>
> AND THAT THE LIABILITY OF THIS BOND SHALL NOT EXCEED THE SUM OF PESOS, FIVE HUNDRED EIGHTY FOUR THOUSAND THREE HUNDRED SIXTY FOUR & 19/100 ONLY, (₱584,364.19), PHILIPPINE CURRENCY.[38]

The second surety bond clearly guaranteed the full and faithful performance of the "obligations" of Vil-Rey under the third contract, and it was not secured just to answer for "defects in the materials used and workmanship utilized." As a performance bond, the second surety bond guaranteed that Vil-Rey would perform the contract, and provided that if the latter defaults and fails to complete the contract, Stronghold itself shall complete the contract or pay damages up to the limit of the bond.[39]

A surety bond is an accessory contract dependent for its existence upon the principal obligation it guarantees.[40] Being

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[36] *Id.* at 25-30.

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

[38] *Id.* at 79.

[39] *J Plus Asia Development Corp. v. Utility Assurance Corp.*, G.R. No. 199650, 26 June 2013, 700 SCRA 134, 158.

[40] *Prudential Guarantee & Assurance, Inc. v. Anscor Land, Inc.*, 644 Phil. 634 (2010).

so associated with the third contract as a necessary condition or component thereof, the second surety bond cannot be separated or severed from its principal.[41] Considering that the third contract provided that the works shall be completed on or before 15 January 1997, the second surety bond was deemed to have guaranteed the completion of the works on the same date.

It is true that a surety is discharged from its obligation when there is a material alteration of the principal contract, such as a change that imposes a new obligation on the obligor; or takes away some obligation already imposed; or changes the legal effect, and not merely the form, of the original contract.[42] Nevertheless, no release from the obligation shall take place when the change in the contract does not have the effect of making the obligation more onerous to the surety.[43]

In this case, the extension of the third contract for 15 days and the grant of an additional five-day grace period did not make Stronghold's obligation more onerous. On the contrary, the extensions were aimed at the completion of the works, which would have been for the benefit of Stronghold. This perspective comes from the provision of the second surety bond that "if [Vil-Rey] shall in all respects duly and fully observe and perform all x x x the aforesaid covenants, conditions and agreements to the true intent and meaning thereof, then this obligation shall be null and void, otherwise to remain in full force and effect."[44] The completion of the works would have discharged Stronghold from its liability.

We find no merit in the contention of Stronghold that the extensions extinguished its obligation as a surety.[45] We note that it also realized the importance of the completion of the

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[41] *Id.*

[42] *Stronghold Insurance Co., Inc. v. Tokyu Construction Co., Ltd.*, 606 Phil. 400, 413 (2009).

[43] *Id.*

[44] *Rollo* (G.R. No. 189447), p. 79.

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

works as far as it was concerned, as shown in its letter to Vil-Rey dated 25 March 1997:

> Enclosed is a copy of the letter dated February 18, 1997 we received on February 20, 1997 from Lexber, Inc., posting formal claim against our bonds at caption due to your failure to complete your contracted project within the stipulated period.
>
> Please take appropriate action to make good your commitment and contractual obligations to the Obligee within five (5) days from receipt hereof and advise us on any development you have with them on the matter for our guidance.[46]

Even as late as 25 March 1997, Stronghold still sought the completion of the works to the point of giving Vil-Rey a period of five days to fulfill its commitments. Clearly, it cannot now claim that it was prejudiced by the extensions given by Lexber, when it was prepared to give an extension of its own just so Vil-Rey could finish the works.

Stronghold contends that the extension of time for the completion of the third contract without its knowledge discharged it from its obligation under the second surety bond. What further militates against this contention is the fact that it was raised for the first time in the Motion for Partial Reconsideration[47] of the CA Decision dated 16 April 2009. Prior to the filing of that motion by Stronghold, its consistent argument before the RTC and even before the CA was that the second surety bond guaranteed only the materials and the workmanship utilized by Vil-Rey; and that the absence of any complaint from Lexber in this regard discharged Stronghold.

We have ruled that issues, grounds, points of law, or theories not brought to the attention of the trial courts cannot be passed upon by reviewing courts.[48] Thus, when a party deliberately adopts a certain theory, which becomes the basis for the manner

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[46] *Id.* at 84.

[47] *Id.* at 391-396.

[48] *General Credit Corp. v. Alsons Development and Investment Corp.*, 542 Phil. 219 (2007).

on which the case is tried and decided, the party will not be permitted to change that theory on appeal; otherwise, it would be unfair to the adverse party.[49]

At any rate, as surety, Stronghold has the right to be indemnified for whatever it may be ordered to pay Lexber. This right is provided in the law and not merely based on the indemnity agreement Stronghold executed with Vil-Rey.

In *Escaño v. Ortigas, Jr.*,[50] we explained the right to full reimbursement by a surety for whatever it pays the creditor:

> [E]ven as the surety is solidarily bound with the principal debtor to the creditor, the surety who does pay the creditor has the right to recover the full amount paid, and not just any proportional share, from the principal debtor or debtors. Such right to full reimbursement falls within the other rights, actions and benefits which pertain to the surety by reason of the subsidiary obligation assumed by the surety.
>
> What is the source of this right to full reimbursement by the surety? We find the right under Article 2066 of the Civil Code, which assures that "[t]he guarantor who pays for a debtor must be indemnified by the latter," such indemnity comprising of, among others, "the total amount of the debt." Further, Article 2067 of the Civil Code likewise establishes that "[t]he guarantor who pays is subrogated by virtue thereof to all the rights which the creditor had against the debtor."
>
> Articles 2066 and 2067 explicitly pertain to guarantors, and one might argue that the provisions should not extend to sureties, especially in light of the qualifier in Article 2047 that the provisions on joint and several obligations should apply to sureties. We reject that argument, and instead adopt Dr. Tolentino's observation that "[t]he reference in the second paragraph of [Article 2047] to the provisions of Section 4, Chapter 3, Title I, Book IV, on solidary or several obligations, however, does not mean that suretyship is withdrawn from the applicable provisions governing guaranty." For if that were not the implication, there would be no material difference between the surety as defined under Article 2047 and the joint and several debtors, for both classes of obligors would be governed by exactly the same rules and limitations.

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[49] *Chua v. CA*, 449 Phil. 25 (2003).

[50] 553 Phil. 24 (2007).

Accordingly, the rights to indemnification and subrogation as established and granted to the guarantor by Articles 2066 and 2067 extend as well to sureties as defined under Article 2047. x x x[51]

III.
Lexber is entitled to reduced attorney's fees.

Section 9.3 of the first contract provides that in the event Lexber has to institute judicial proceedings in order to enforce any term or condition therein, Vil-Rey shall pay attorney's fees equivalent to not less than 25% of the total amount adjudged.[52] This provision was adopted in the second contract[53] and even in the third contract, which provides that all conditions in the second contract shall remain in force.[54]

Attorney's fees as provided for in the contracts are in the nature of liquidated damages agreed upon by the parties. These fees are to be paid in case of breach of the contractual stipulations necessitating a party to seek judicial intervention to protect its rights.[55] Normally, the obligor is bound to pay the stipulated indemnity without the necessity of proof of the existence or the measure of damages caused by the breach.[56]

In this case, the failure of Vil-Rey to fulfill its obligation to finish the works under the third contract compelled Lexber to seek judicial intervention. Pursuant to a contractual stipulation therefor, the payment of attorney's fees to Lexber shall be the obligation of Vil-Rey and Stronghold.

However, considering the circumstances surrounding this case, We reduce the award to 10% of ₱284,084.46, which was the amount Lexber paid to another contractor for the completion

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[51] *Id.* at 42-44.

[52] *Rollo* (G.R. No. 189447), p. 60.

[53] *Id.* at 73.

[54] *Id.* at 78.

[55] *Spouses Suatengco v. Reyes*, 594 Phil. 609 (2008).

[56] *Id.*

of the works. Liquidated damages may be equitably reduced by the courts.[57] Since the failure of Vil-Rey to fulfill its obligations was apparently caused by financial difficulties, and Lexber was also guilty of delay with regard to the latter's reciprocal obligation to make a downpayment of 50% of the amount of the third contract upon Vil-Rey's acquisition of a surety bond in the same amount, the courts' power may be properly exercised in this case.

WHEREFORE, the Court of Appeals Decision dated 16 April 2009 and Resolution dated 1 September 2009 in CA-G.R. CV No. 90241 are hereby **MODIFIED** as follows:

1. Vil-Rey Planners and Builders and Stronghold Insurance Company, Inc., are hereby **ORDERED** to jointly and severally pay the following amounts to Lexber, Inc.:
   a. ₱284,084.46, with interest at the rate of 6% per annum from 17 February 1997 until full payment
   b. 10% of ₱284,084.46 as attorney's fees
2. Vil-Rey Planners and Builders is hereby **ORDERED** to indemnify Stronghold Insurance Company, Inc., for whatever amount the latter shall pay Lexber, Inc.
3. Lexber, Inc. is hereby **ORDERED** to pay Vil-Rey Planners and Builders the amount of ₱84,364.19, with interest at the rate of 6% per annum from 24 December 1996 until full payment.

Vil-Rey Planners and Builders and Lexber, Inc., shall be allowed to compensate the amounts due them to the extent of their respective obligations.

SO ORDERED.

Leonardo-de Castro, Bersamin, Reyes,[*] and *Caguioa, JJ.,* concur.

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[57] CIVIL CODE, Article 2227, which states:

Liquidated damages, whether intended as an indemnity or a penalty, shall be equitably reduced if they are iniquitous or unconscionable.

[*] Designated additional Member/in lieu of Associate Justice Estela M. Perlas-Bernabe per raffle dated 23 May 2016.

THIRD DIVISION

[G.R. No. 190876. June 15, 2016]

YELLOW BUS LINE EMPLOYEES UNION (YBLEU), *petitioner, vs.* **YELLOW BUS LINE, INC. (YBLI),** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; SPECIAL CIVIL ACTIONS; CERTIORARI; MAY BE FILED ONLY IF APPEAL IS NOT AVAILABLE; EXCEPTIONS.— YBL filed a special civil action for *certiorari* before the Court of Appeals. The general rule is that the correct remedy to reverse or modify a Voluntary Arbitrator's or a panel of Voluntary Arbitrators' decision or award is to appeal the award or decision before the Court of Appeals via Rule 43 of the Rules of Court x x x. In *Philippine Electric Corporation v. Court of Appeals, et al.,* we discussed at length the nature of a special civil action for certiorari and the instances where we allowed such a petition to be filed in lieu of appeal x x x. "An extraordinary remedy, a petition for certiorari may be filed only if appeal is not available. If appeal is available, an appeal must be taken even if the ground relied upon is grave abuse of discretion. As an exception to the rule, this court has allowed petitions for certiorari to be filed in lieu of an appeal '(a) when the public welfare and the advancement of public policy dictate; (b) when the broader interests of justice so require; (c) when the writs issued are null; and (d) when the questioned order amounts to an oppressive exercise of judicial authority.'" x x x In this case where the evidentiary facts do not jive with the conclusion of the Panel, it is valid reasoning that it is in the interest of justice that the Court of Appeals gave cognizance to a *certiorari* petition.

2. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; JUST CAUSES; GROSS AND HABITUAL NEGLECT OF DUTY; GROSS NEGLIGENCE CONNOTES WANT OR ABSENCE OF OR FAILURE TO EXERCISE SLIGHT CARE OR DILIGENCE, OR THE ENTIRE ABSENCE OF CARE.— Both Gardonia

and Querol were dismissed for just cause. x x x Article 282 of the Labor Code provides that one of the just causes for terminating an employment is the employee's gross and habitual neglect of his duties. This cause includes gross inefficiency, negligence and carelessness. Gross negligence connotes want or absence of or failure to exercise slight care or diligence, or the entire absence of care. It evinces a thoughtless disregard of consequences without exerting any effort to avoid them. Indeed, Gardonia and Querol were both negligent in operating the bus causing death and damages to property.

3. ID.; ID.; ID.; NOTICE REQUIREMENT; NON-COMPLIANCE THEREWITH AMOUNTS TO A VIOLATION OF THE EMPLOYEE'S RIGHT TO DUE PROCESS WHICH WARRANTS HIS ENTITLEMENT TO INDEMNITY.— Section 2, Rule XXIII, Book V of the Rules Implementing the Labor Code expressly states: "Section 2. *Standard of due process: requirements of notice.* – In all cases of termination of employment, the following standards of due process shall be substantially observed. I. For termination of employment based on just causes as defined in Article 282 of the Code: (a) A written notice served on the employee specifying the ground or grounds for termination, and giving to said employee reasonable opportunity within which to explain his side; (b) A hearing or conference during which the employee concerned, with the assistance of counsel if the employee so desires, is given opportunity to respond to the charge, present his evidence or rebut the evidence presented against him; and (c) A written notice of termination served on the employee indicating that upon due consideration of all the circumstance, grounds have been established to justify his termination." x x x While a hearing was conducted where the two employees were given an opportunity to air their side, there was only one notice given to the erring drivers. That same notice included both the charges for negligence and the decision of dismissal from employment. Evidently, the two employees' rights to due process were violated which warrants their entitlement to indemnity. x x x [W]e affirm the award of nominal damages. Where the dismissal is based on an authorized cause under Article 283 of the Labor Code but the employer failed to comply with the notice requirement, the sanction against the employer should be stiff as the dismissal process was initiated by the employer's exercise of his management prerogative. This is different from dismissal

based on a just cause under Article 282 with the same procedural infirmity. In such case, the sanction to be imposed upon the employer should be tempered as the dismissal process was, in effect, initiated by an act imputable to the employee. The amount of ₱30,000.00 as nominal damages awarded by the Court of Appeals conforms to prevailing jurisprudence.

APPEARANCES OF COUNSEL

Raymond Quiocho Salas for petitioner.
Llewelyn Purisima for respondent.

D E C I S I O N

PEREZ, *J.*:

The primary issue for resolution pivots on the validity of the dismissal of two drivers working for petitioner Yellow Bus Line, Inc. (YBL).

This petition for review seeks to reverse the Decision[1] dated 31 July 2009 of the Court of Appeals in CA-G.R. SP No. 00284, which set aside the decision of the Panel of Voluntary Arbitrators declaring the dismissal of Jimmy Gardonia (Gardonia) and Francisco Querol (Querol) illegal.

The facts, as culled from the records, are as follow:

Gardonia and Querol were hired by YBL as drivers on 17 December 1993 and 14 February 1995, respectively.

In October 2002, Gardonia was driving along the National Highway in Polomolok, South Cotabato when his bus bumped into a motorcycle while trying to overtake it. The collision resulted in the death of the motorcycle driver and his passenger. YBL shouldered the hospitalization bills amounting to ₱290,426.91 and paid ₱135,000.00 as settlement of the claim of the heirs of the motorcycle riders.

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[1] *Rollo*, pp. 53-70; Penned by Associate Justice Elihu A. Ybañez with Associate Justices Rodrigo F. Lim, Jr. and Ruben C. Ayson concurring.

Three (3) months later, the bus that Querol was driving suffered a mechanical breakdown. A mechanic and a towing truck arrived to pick up Querol. He was ordered by the mechanic to drive the bus while the towing truck would trail behind. Querol was apparently driving too fast and he rammed the bus into a sugar plantation in Barangay Talus, Malungon, South Cotabato.

YBL conducted separate hearings on the two incidents. Thereafter, Gardonia and Querol were found to be negligent. Termination letters were sent to them on 16 December 2002 and 16 January 2003, respectively.

Yellow Bus Line Employees Union (Union), representing its members Gardonia and Querol, filed a complaint for illegal dismissal against YBL through the grievance machinery, as stipulated in their Collective Bargaining Agreement. The Union and YBL failed to resolve their dispute, thus the case was elevated to the National Conciliation and Mediation Board (NCMB) Satellite Regional Office in Koronadal City, South Cotabato.

During the initial conference, YBL's representative Norlan Yap allegedly agreed to reinstate Gardonia and Querol. The management of YBL however refused to abide by the said agreement. Thus, another conference was conducted in order for the parties to resolve their dispute but no agreement was reached.

On 25 August 2004, the Panel of Accredited Voluntary Arbitrators[2] (Panel) found that Gardonia and Querol were illegally dismissed and ordered their reinstatement. The dispositive portion of the decision reads:

WHEREFORE, PREMISES CONSIDERED, Judgment is hereby rendered in favor of the Complainants/employees against the respondents/employer and order is hereby issued:

1. Declaring the termination of services of the two (2) drivers illegal;

2. Ordering the respondents to reinstate complainants and pay backwages computed at the time of their separation from

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[2] Atty. Jose T. Albano, Atty. Midpantao Adil and Atty. George C. Jabido.

> the service, which is December 20, 2002 for Jimmy Gardonia and January 19, 2003 for Francisco Querol, until actual reinstatement in the payroll.[3]

The Panel also ruled that the parties already arrived at a compromise agreement during the initial conference with respect to the reinstatement of the drivers. Thus, this agreement is final and binding on the parties pursuant to Article 227 of the Labor Code, which provides that "any compromise settlement, including those involving labor standard laws, voluntarily agreed upon by the parties with the assistance of the Bureau or the regional office of the Department of Labor, shall be final and binding upon the parties."

YBL filed a motion for reconsideration but it was informed by the Panel that its decision is not subject to reconsideration in accordance with the Revised Procedural Guidelines in the Conduct of Voluntary Arbitration Proceedings.[4]

YBL's petition for *certiorari* questioning the decision of the Panel was given due course by the Court of Appeals which eventually ruled in favor of YBL. First, the Court of Appeals held that Article 227 of the Labor Code is not applicable in this case. Instead, the case falls under Articles 260, 261, 262-A and 262-B because it involves the grievance machinery and voluntary arbitration. Second, the Court of Appeals found that no compromise settlement was actually reached because a second round of conference had to be conducted in the NCMB office. Third, Norlan Yap, the representative of YBL, had no authority to enter into a compromise. Fourth, the Court of Appeals reversed the findings of the Panel with respect to the cause of the drivers' dismissal. The Court of Appeals found that the accidents were not caused by *force majeure*, rather they were brought about by the negligence of the drivers.

The Union filed a motion for reconsideration but it was denied by the Court of Appeals in a Resolution[5] dated 24 November 2009.

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[3] *Rollo,* p. 124.

[4] CA *rollo,* p. 51.

[5] *Rollo,* pp. 71-72.

In support of its petition for review on *certiorari,* the Union assigned the following alleged errors committed by the Court of Appeals, to wit:

> The Honorable Court of Appeals erred in granting the petition filed by the respondent YBL considering that the technical infirmities and procedural lapses would render nugatory the public welfare and policy favoring labor and in effect, violate the very substantial justice it supposedly upholds in relaxing the rules of procedure in favor of respondent company.[6]
>
> The Court of Appeals erred in disagreeing with the findings of fact of the Panel of Voluntary Arbitrators, there being no showing that the decision was arbitrary or in utter disregard to the evidence on record, and as such, findings of facts of quasi-judicial agencies are accorded not only with respect, but with finality.[7]

The Union essentially argues that the Court of Appeals should have dismissed the petition for certiorari outright on the ground of the failure of YBL's counsel to file the correct mode of appeal, *i.e.*, petition for review under Rule 43 of the Rules of Court. The Union asserts that the Court of Appeals failed to provide a justifiable reason to exempt YBL from strictly complying with the rules. The Union adds that in this case, no broader interest of justice requires a liberal interpretation of the rules.

The Union maintains there was no showing that the findings of the Panel of Voluntary Arbitrators are arbitrary constitutive of grave abuse of discretion. The Union points out that the decision of the Panel is not merely based on the premise of a compromise agreement but that the Panel found that there was no just cause to terminate the two drivers considering that the incidents they were involved in are mere accidents. The Union insists the case was settled at the level of conciliation-mediation proceedings when the parties entered into an amicable settlement. The Union contends that the amount of indemnity granted by the Court of Appeals, assuming *arguendo* that there is just cause for

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[6] *Id.* at 27.

[7] *Id.* at 37.

termination, should be ₱50,000.00 and not ₱30,000.00 in accordance with jurisprudence.

In its Comment,[8] YBL defends the Court of Appeals in its decision to entertain the petition. YBL stresses that for the broader interest of justice, the appellate court took cognizance of the case and reversed the holding of the Panel of Arbitrators which anchored its decision on an alleged compromise agreement. YBL claims that the two drivers were found to be negligent.

YBL also emphasizes that the statement of the conciliator-mediator that "the case is settled into amicable settlement and the same is considered closed" is merely a remark regarding the development of the matter before him. YBL avers that this should not in any way be deemed final because it can be inferred from the Submission Agreement, the parties expressly agreed to submit the matter of the drivers' dismissal for adjudication before the Panel of Voluntary Arbitrators. Lastly, YBL maintains that the drivers were dismissed for just cause on the ground of gross negligence.

Preliminarily, we note that YBL filed a special civil action for *certiorari* before the Court of Appeals. The general rule is that the correct remedy to reverse or modify a Voluntary Arbitrator's or a panel of Voluntary Arbitrators' decision or award is to appeal the award or decision before the Court of Appeals via Rule 43 of the Rules of Court, thus:

Section 1. *Scope*. —

This Rule shall apply to appeals from judgments or final orders of the Court of Tax Appeals and from awards, judgments, final orders or resolutions of or authorized by any quasi-judicial agency in the exercise of its quasi-judicial functions. Among these agencies are the Civil Service Commission, Central Board of Assessment Appeals, Securities and Exchange Commission, Office of the President, Land Registration Authority, Social Security Commission, Civil Aeronautics Board, Bureau of Patents, Trademarks and Technology Transfer, National Electrification Administration, Energy

[8] *Id.* at 211-224.

Regulatory Board, National Telecommunications Commission, Department of Agrarian Reform under Republic Act No. 6657, Government Service Insurance System, Employees Compensation Commission, Agricultural Inventions Board, Insurance Commission, Philippine Atomic Energy Commission, Board of Investments, Construction Industry Arbitration Commission, and voluntary arbitrators authorized by law.

In *Philippine Electric Corporation v. Court of Appeals, et al.*,[9] we discussed at length the nature of a special civil action for certiorari and the instances where we allowed such a petition to be filed in lieu of appeal, thus:

> A petition for certiorari is a special civil action "adopted to correct errors of jurisdiction committed by the lower court or quasi-judicial agency, or when there is grave abuse of discretion on the part of such court or agency amounting to lack or excess of jurisdiction." An extraordinary remedy, a petition for certiorari may be filed only if appeal is not available. If appeal is available, an appeal must be taken even if the ground relied upon is grave abuse of discretion.
>
> As an exception to the rule, this court has allowed petitions for certiorari to be filed in lieu of an appeal "(a) when the public welfare and the advancement of public policy dictate; (b) when the broader interests of justice so require; (c) when the writs issued are null; and (d) when the questioned order amounts to an oppressive exercise of judicial authority."
>
> In Unicraft Industries International Corporation, et al. *v.* The Hon. Court of Appeals, petitioners filed a petition for certiorari against the Voluntary Arbitrator's decision. Finding that the Voluntary Arbitrator rendered an award without giving petitioners an opportunity to present evidence, this court allowed petitioners' petition for certiorari despite being the wrong remedy. The Voluntary Arbitrator's award, this court said, was null and void for violation of petitioners' right to due process. This court decided the case on the merits.
>
> In Leyte IV Electric Cooperative, Inc. *v.* LEYECO IV Employees Union-ALU, petitioner likewise filed a petition for certiorari against the Voluntary Arbitrator's decision, alleging that the decision lacked basis in fact and in law. Ruling that the petition for certiorari was

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[9] G.R. No. 168612, 10 December 2014.

filed within the reglementary period for filing an appeal, this court allowed petitioner's petition for certiorari in the broader interests of justice.

In *Mora v. Avesco Marketing Corporation*, this court held that petitioner Noel E. Mora erred in filing a petition for certiorari against the Voluntary Arbitrator's decision. Nevertheless, this court decided the case on the merits "in the interest of substantial justice to arrive at the proper conclusion that is conformable to the evidentiary facts."

In this case where the evidentiary facts do not jive with the conclusion of the Panel, it is valid reasoning that it is in the interest of justice that the Court of Appeals gave cognizance to a *certiorari* petition.

We now go to the merits.

The ruling of the Panel delves into two issues: the validity of the alleged compromise agreement and the validity of the drivers' dismissal.

We shall discuss the issues successively.

The Union claims that a settlement at the conciliation level has already been forged with YBL, while YBL claims otherwise.

The pertinent portion of the Conciliation Report is reproduced below:

> During the conference, both parties appeared where[in] two of the complainants in the names of Mr. Quero S. Francisco and Jimmy C. Gardonia manifested that they want [to] be returned back to their posts in the company and Management representative Mr. Norlan A. Yap, the Personnel Manager of the Company, accepted the appeal of the above complainants.
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> x x x x x x x x x
>
> So, this case is settled into Amicable settlement and the same hereby considered closed.[10]

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[10] *Rollo*, p. 103.

We cannot consider this Conciliation Report as the complete settlement between the parties. As reasoned by the Court of Appeals, and we agree, that:

x x x The Conciliation Report . . . did not write *finis* the issues between the parties as manifested by a second round of conference in the NCMB office and the subsequent submission of the dispute to the Panel. If indeed, a compromise had been reached, there should have been no need for further negotiations and the case would not have reached the Panel. Clearly, the Panel viewed the grievance machinery and voluntary arbitration underwent [sic] by the parties in piecemeal instead of looking at it as one process which culminated in the decision of the Panel now assailed by Yellow Bus.

The facts of the case reveal that private respondents moved for the execution of what was embodied in the *Conciliation Report* before the NCMB. This simply cannot be done. The handwritten report of Conciliator-Mediator Nagarano M. Mascara al Haj could not, by any stretch of imagination, be considered as a final arbitration award nor a decision of a voluntary arbitrator within the purview of Article 262-A of the Labor Code which is a proper subject of execution. In fact, the initial conference before the Conciliator-Mediator is not more than what it implies — that it is the initial stage of negotiation between the parties prior to the submission of the dispute to the Panel.

[E]ven granting *arguendo* that a compromise agreement had indeed been reached between private respondents and Norlan Yap, yet the same could not bind Yellow Bus in the absence of any authorization or special power of attorney bestowed upon Norlan Yap by Yellow Bus to enter into a compromise agreement. For sure, Norlan Yap's authority was limited only to represent and appear in behalf of Yellow Bus during the initial conference in the NCMB. Norlan Yap's statement thereat could not bind Yellow Bus in the absence of substantial evidence showing that said compromise agreement was entered into with the knowledge and consent of Yellow Bus. Article 1878 of the Civil Code provides:

> ART. 1878. Special powers of attorney are necessary in the following cases:
>
> x x x x x x x x x
>
> (3) To compromise, to submit questions to arbitration, to renounce the right to appeal x x x.

The need of a special power of attorney in order for a representative to bind its principal in a compromise agreement is also underscored in Section 8, Rule III of the 1999 NLRC Rules, which states:

> *Section 8. Authority to bind party. — Attorneys and other representatives of parties shall have authority to bind their clients in all matters of procedure; but they cannot, without a special power of attorney or express consent, enter into a compromise agreement with the opposing party in full or partial discharge of a client's claim.*

Furthermore, there is no showing that Yellow Bus ratified the act of Norlan Yap. Its CEO, Ricardo R. Yap, even refused to acknowledge the compromise agreement.[11]

We hasten to add that the parties expressly agreed to submit the case to the voluntary arbitration when they still failed to reach a settlement. The Union should not have agreed and stood its ground if it believed that a compromise agreement had already been struck during the conciliation conference. By acquiescing to the referral to voluntary arbitration, the Union is now estopped from asserting that there was a settlement at conciliation level.

The meat of the controversy actually devolves upon the legality of the dismissal of the two company drivers, who happen to be a union officer and a member. We have scrutinized the records and hold that the Panel of Voluntary Arbitrators committed grave abuse of discretion when its finding, that the drivers were not negligent, disregarded the evidence on record.

As a matter of fact, there is nothing in the records which would support the Panel's conclusion that the drivers were driving at a moderate speed at that time when the accident happened, and that it was caused by *force majeure*. In the case of Gardonia, he admitted that he was overtaking the motorcycle on its left when said motorcycle suddenly negotiated a left turn on the intersection causing the bus to hit the motorcycle. Gardonia claimed that he blew his horn when he tried to overtake the said motorcycle. Before hitting the motorcycle, Gardonia stated that

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[11] *Id.* at 63-65.

he tried to apply the brakes and swerved the steering wheel to the left, but it was too late.[12] On the other hand, the bus conductor, who was traveling with Gardonia, insisted that the motorcycle was running slowly and was about to go to the left side of the road near the intersection when it was hit by the bus.[13] The bus conductor established the fault of Gardonia. Gardonia already saw that the motorcycle was swerving to the left. Both the bus, with the motorcycle ahead, were nearing an intersection. It is evidently wrong for Gardonia to proceed in the attempt to overtake the motorcycle. Section 41 (c),[14] Article II of Republic Act No. 4136 prohibits the overtaking by another vehicle at any intersection of the highway. Gardonia also admitted to driving at a speed of 60-70 kilometers per hour.[15] It is reasonable to assume that he accelerated his speed while overtaking the motorcycle. Thus he did find it difficult to apply his brakes or make last-minute maneuvers to avoid hitting the motorcycle. Clearly, it was Gardonia's act of negligence which proximately caused the accident, and so he was dismissed by YBL on the ground of reckless imprudence resulting in homicide and damage to property.

Anent Querol, he claimed that a bicycle suddenly emerged from the left side of the road and crossed the highway, causing him to swerve his steering wheel to the left.[16] The bus rammed

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[12] CA *rollo*, p. 87.

[13] *Id.* at 90.

[14] Section 41. *Restrictions on overtaking and passing.*

(c) The driver of a vehicle shall not overtake or pass any other vehicle proceeding in the same direction, at any railway grade crossing, not at any intersection of highways unless such intersection or crossing is controlled by traffic signal, or unless permitted to do so by a watchman or a peace officer, except on a highway having two or more lanes for movement of traffic in one direction where the driver of a vehicle may overtake or pass another vehicle on the right. Nothing in this section shall be construed to prohibit a driver overtaking or passing upon the right another vehicle which is making or about to make a left turn.

[15] CA *rollo*, p. 88.

[16] *Id.* at 125.

into a sugar plantation. On the contrary, the mechanic of the bus and the driver of the tow truck both asserted that they saw Querol driving the bus too fast. When they caught up with him, Querol's bus was already in the sugar plantation. The version of the mechanic and the tow truck driver was not refuted.[17] Querol was driving recklessly despite the fact that said bus was newly repaired. YBL also conducted its ocular inspection of the area and found that there was no road crossing at the scene of the incident which contradicts Querol's statement that a bicycle suddenly crossed the highway. Moreover, it was revealed that the bus was found in the sugar plantation at a distance of 60 meters from the highway.[18] This proved that the bus was running very fast. The accident is evidently caused by Querol. YBL submits that the amount of damages incurred by the bus totaled ₱84,446.59. Querol was validly terminated for violation of Company Rules and Regulations.

Both Gardonia and Querol were dismissed for just cause. Article 282 of the Labor Code provides:

> Art. 282. *Termination by employer*. — An employer may terminate an employment for any of the following causes:
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> 1. Serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work;
> 2. Gross and habitual neglect by the employee of his duties;
> 3. Fraud or willful breach by the employee of the trust reposed in him by his employer or duly authorized representative;
> 4. 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
>
> Other causes analogous to the foregoing.

Article 282 of the Labor Code provides that one of the just causes for terminating an employment is the employee's gross

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[17] *Id.* at 127-132.

[18] *Id.* at 97.

and habitual neglect of his duties. This cause includes gross inefficiency, negligence and carelessness. Gross negligence connotes want or absence of or failure to exercise slight care or diligence, or the entire absence of care. It evinces a thoughtless disregard of consequences without exerting any effort to avoid them.[19]

Indeed, Gardonia and Querol were both negligent in operating the bus causing death and damages to property.

We also affirm the Court of Appeals holding that YBL failed to observe statutory due process in dismissing the two drivers.

Section 2, Rule XXIII, Book V of the Rules Implementing the Labor Code expressly states:

> Section 2. *Standard of due process: requirements of notice.*
>
> — In all cases of termination of employment, the following standards of due process shall be substantially observed.
>
> I. For termination of employment based on just causes as defined in Article 282 of the Code:
>
> (a) A written notice served on the employee specifying the ground or grounds for termination, and giving to said employee reasonable opportunity within which to explain his side;
>
> (b) A hearing or conference during which the employee concerned, with the assistance of counsel if the employee so desires, is given opportunity to respond to the charge, present his evidence or rebut the evidence presented against him; and
>
> (c) A written notice of termination served on the employee indicating that upon due consideration of all the circumstance, grounds have been established to justify his termination.

In *Unilever Philippines, Inc. v. Rivera*,[20] this Court reiterated the procedural guidelines for the termination of employees as expounded in *King of Kings Transport, Inc. v. Mamac*:[21]

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[19] *Century Iron Works, Inc. v. Bañas*, 711 Phil. 576, 589 (2013).

[20] 710 Phil. 124, 136-137 (2013).

[21] 553 Phil. 108, 115-116 (2007).

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

(2) After serving the first notice, the employers should schedule and conduct a hearing or conference wherein the employees will be given the opportunity to: (1) explain and clarify their defenses to the charge against them; (2) present evidence in support of their defenses; and (3) rebut the evidence presented against them by the management. During the hearing or conference, the employees are given the chance to defend themselves personally, with the assistance of a representative or counsel of their choice. Moreover, this conference or hearing could be used by the parties as an opportunity to come to an amicable settlement.

(3) After determining that termination of employment is justified, the employers shall serve the employees a written notice of termination indicating that: (1) all circumstances involving the charge against the employees have been considered; and (2) grounds have been established to justify the severance of their employment. (Emphasis omitted)

While a hearing was conducted where the two employees were given an opportunity to air their side, there was only one notice given to the erring drivers. That same notice included

both the charges for negligence and the decision of dismissal from employment. Evidently, the two employees' rights to due process were violated which warrants their entitlement to indemnity.

Finally, we affirm the award of nominal damages. Where the dismissal is based on an authorized cause under Article 283 of the Labor Code but the employer failed to comply with the notice requirement, the sanction against the employer should be stiff as the dismissal process was initiated by the employer's exercise of his management prerogative. This is different from dismissal based on a just cause under Article 282 with the same procedural infirmity. In such case, the sanction to be imposed upon the employer should be tempered as the dismissal process was, in effect, initiated by an act imputable to the employee.[22] The amount of ₱30,000.00 as nominal damages awarded by the Court of Appeals conforms to prevailing jurisprudence.[23]

WHEREFORE, the instant petition is **DENIED** and the Decision dated 31 July 2009 and Resolution dated 24 November 2009 of the Court of Appeals in CA-G.R. SP No. 00284 stating that:

> x x x The assailed decision of the Panel of Voluntary Arbitrators dated 25 August 2004 is hereby **SET ASIDE** and a new one entered upholding the legality of the dismissal but ordering petitioner to pay each of the private respondents — Jimmy Gardonia and Francisco Querol the amount of ₱30,000.00, representing nominal damages for non-compliance with statutory due process.[24]

are **AFFIRMED.**

SO ORDERED.

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

Jardeleza, J., on official leave.

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[22] *Industrial Timber Corporation v. Ababon*, 515 Phil. 805, 822-823 (2006) citing *San Miguel Corporation v. Aballa*, 500 Phil. 170, 209 (2005).

[23] *Libcap Marketing Corp. v. Baquial*, G.R. No. 192011, 30 June 2014, 727 SCRA 520, 537; *Deoferio v. Intel Technology*, G.R. No. 202996, 18 June 2014, 726 SCRA 676, 692; *Samar-Med Distribution v. National Labor Relations Commission*, 714 Phil. 16, 32 (2013).

[24] *Rollo*, p. 69.

THIRD DIVISION

[G.R. No. 194664. June 15, 2016]

FLORITA LIAM, *petitioner, vs.* **UNITED COCONUT PLANTERS BANK,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION UNDER RULE 45 OF THE RULES OF COURT; LIMITED TO REVIEW OF LEGAL QUESTIONS.— The crucial point of contention is actually the correct interpretation of the nature of the agreements between PPGI and UCPB and their repercussions to the Contract to Sell between PPGI and Liam. These matters are legal questions as they do not require an examination of the probative value of the evidence presented by the parties but rather the determination of the applicable law on the given state of facts. The Court has delineated the distinctions between a question of law and a question of fact x x x. [T]he petition is the proper subject of the Court's review under Rule 45 of the Rules of Court.

2. CIVIL LAW; CIVIL CODE; OBLIGATIONS AND CONTRACTS; ASSIGNMENT OF CREDIT; REFERS TO THE PROCESS OF TRANSFERRING THE RIGHT OF THE ASSIGNOR TO THE ASSIGNEE WHO WOULD THEN HAVE THE RIGHT TO PROCEED AGAINST THE DEBTOR.— "An assignment of credit is an agreement by virtue of which the owner of a credit, known as the assignor, by a legal cause, such as sale, *dation* in payment, exchange or donation, and without the consent of the debtor, transfers his credit and accessory rights to another, known as the assignee, who acquires the power to enforce it to the same extent as the assignor could enforce it against the debtor. It may be in the form of sale, but at times it may constitute a *dation* in payment, such as **when a debtor, *in order to obtain a release from his debt,* assigns to his creditor a credit *he has against a third person***." Simply, an assignment of credit is the process of transferring the right of the assignor to the assignee who would then have the right to proceed against the debtor. The assignment may be done either gratuitously or onerously, in which case, the assignment has an effect similar to that of a sale.

3. ID.; ID.; ID.; SUBROGATION; RESULTS IN A SUBJECTIVE NOVATION OF THE CONTRACT IN THAT A THIRD PERSON IS SUBROGATED TO THE RIGHTS OF THE CREDITOR.— [S]ubrogation is a process by which the third party pays the obligation of the debtor to the creditor with the latter's consent. As a consequence, the paying third party steps into the shoes of the original creditor as subrogee of the latter. It results in a subjective novation of the contract in that a third person is subrogated to the rights of the creditor.

4. ID.; ID.; ID.; ASSIGNMENT OF CREDIT AND SUBROGATION, DISTINGUISHED; THE DISTINCTION ACTUALLY DEALS WITH THE NECESSITY OF THE CONSENT OF THE DEBTOR IN THE ORIGINAL TRANSACTION.— The crucial distinction between assignment and subrogation actually deals with the necessity of the consent of the debtor in the original transaction. In an assignment of credit, the consent of the debtor is not necessary in order that the assignment may fully produce legal effects. What the law requires in an assignment of credit is not the consent of the debtor but merely notice to him as the assignment takes effect only from the time he has knowledge thereof. A creditor may, therefore, validly assign his credit and its accessories without the debtor's consent. Meanwhile, subrogation requires an agreement among the three parties concerned — the original creditor, the debtor, and the new creditor. It is a new contractual relation based on the mutual agreement among all the necessary parties. x x x The absence of Liam's consent to the transactions between PPGI and UCPB affirms their nature as assignment of credit. x x x [T]he consent of the debtor is not essential in assignment of credit. What the law requires is merely notice to him. A creditor may, therefore, validly assign his credit and its accessories without the debtor's consent. The purpose of the notice is only to inform the debtor that from the date of the assignment, payment should be made to the assignee and not to the original creditor.

5. ID.; ID.; ID.; INTERPRETATION OF CONTRACTS; IF THE TERMS OF A CONTRACT ARE CLEAR AND LEAVE NO DOUBT UPON THE INTENTION OF THE CONTRACTING PARTIES, THE LITERAL MEANING OF ITS STIPULATIONS SHALL CONTROL.— "The primary consideration in determining the true nature of a contract is

the intention of the parties. If the words of a contract appear to contravene the evident intention of the parties, the latter shall prevail. Such intention is determined not only from the express terms of their agreement, but also from the contemporaneous and subsequent acts of the parties." However, if the terms of a contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulations shall control. The provisions of the x x x agreements between PPGI and UCPB are clear, explicit and unambiguous as to leave no doubt about their objective of executing an assignment of credit instead of subrogation. The MOA and the Deed of Sale/Assignment clearly state that UCPB became an assignee of UCPB's outstanding receivables of its condominium buyers. The Court perceives no *proviso* or any extraneous factor that incites a contrary interpretation. Even the simultaneous and subsequent acts of the parties accentuate their intention to treat their agreements as assignment of credit.

6. REMEDIAL LAW; CIVIL PROCEDURE; PLEADINGS; COMPLAINT; THE ASSIGNEE IN THE CASE AT BAR CANNOT BE IMPLEADED IN THE COMPLAINT FOR SPECIFIC PERFORMANCE, FOR THE INTENTION OF THE PARTIES WAS MERELY TO ASSIGN THE RECEIVABLES UNDER THE CONTRACTS TO SELL.— The CA is correct when it concluded that as a mere assignee, UCPB cannot be impleaded in Liam's complaint for specific performance. It is clear that the intention of the parties was merely to assign the receivables; and therefore, there is no ground to hold UCPB solidarily liable with PPGI. x x x Following our pronouncement in the case of *Chin Kong Wong Choi* [*v. UCPB*], which finds application in the present case, UCPB should not be held liable for the obligations and liabilities of PPGI under its contract to sell with Liam, considering that the bank is a mere assignee of the rights and receivables under the Agreement it executed with PPGI. There being no other grounds to hold UCPB solidarily liable with PPGI, the instant petition must be denied for lack of merit.

7. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE AGENCIES; HOUSING AND LAND USE REGULATORY BOARD (HLURB); HLURB RULES OF PROCEDURE; APPEAL BOND; THE POSTING OF AN APPEAL BOND IS MANDATED ONLY IN CASES

WHERE THE APPEALED JUDGMENT INVOLVES A MONETARY AWARD.— It is incorrect for Liam to argue that the Decision dated August 16, 2007 of HLURB Arbiter Torres has become final and executory in view of UCPB's failure to post a bond when it appealed to the HLURB Board of Commissioner. x x x [T]he HLURB Rules of Procedure mandates the posting of an appeal bond only in cases where the appealed judgment involves a monetary award. The Decision dated August 16, 2007 of HLURB Arbiter Torres was not a judgment for a specific sum of money. Instead, it ordered UCPB to give Liam the privilege to choose among the available units at Palm Tower, San Antonio Village, or in the alternative, to maintain the previous unit subject of the Contract to Sell.

APPEARANCES OF COUNSEL

Joel F. Pradia for petitioner.
Barcelon & Associates for respondent UCPB.

D E C I S I O N

REYES, *J.*:

This is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court seeking to annul and set aside the Decision[2] dated September 24, 2010 of the Court of Appeals (CA) in CA-G.R. SP No. 112195 holding that United Coconut Planters Bank (UCPB) was wrongly impleaded in Florita Liam's (Liam) complaint for specific performance before the Housing and Land Use Regulatory Board (HLURB).

The Facts

On April 11, 1996, Liam entered into a contract to sell[3] with developer Primetown Property Group, Inc. (PPGI) for the

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[1] *Rollo*, pp. 9-34.

[2] Penned by Presiding Justice Andres B. Reyes, Jr., with Associate Justices Japar B. Dimaampao and Jane Aurora C. Lantion concurring; *id.* at 248-261.

[3] *Id.* at 85-90.

purchase of Condominium Unit No. 603, Hongkong Tower, of the latter's Makati Prime City (MPC) condominium project in San Antonio Village, Makati City for the price of ₱2,614,652.66. The parties also stipulated that the unit will be delivered not later than 35 months from the start of actual construction.

To finance the construction of the condominium project, PPGI obtained a loan from UCPB. PPGI thereafter partially settled its loan by transferring to UCPB its right to collect all receivables from condominium buyers, including Liam. For this purpose, PPGI and UCPB executed a Memorandum of Agreement (MOA)[4] and a document denominated as Sale of Receivables and Assignment of Rights and Interests (Deed of Sale/Assignment)[5] both dated April 23, 1998.

On May 29, 1998, PPGI notified Liam of the sale of its receivables to UCPB. PPGI directed her to remit any remaining balance of the condominium unit's purchase price to UCPB. PPGI further stated that "[the] payment arrangement shall in no way cause any amendment of [the] terms and conditions, nor the cancellation of the Contract to Sell [she] executed with PPGI."[6]

Liam heeded the notice and forthwith remitted her payments to UCPB. However, on March 9, 1999, Liam wrote UCPB asking for the deferment of her amortization payments until such time that the unit is ready for delivery.[7] At that point, Liam stopped making payments. On February 28, 2001, Liam again wrote UCPB complaining of the delayed delivery of the unit and reiterating that she will only resume making payments once the unit is delivered. Liam also requested the waiver of interests and penalties for the period prior to UCPB's assumption as the payee of her amortizations.[8]

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[4] *Id.* at 282-292.

[5] *Id.* at 293-297.

[6] *Id.* at 91.

[7] *Id.* at 92.

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

Her requests, however, were left unanswered. Thus, on April 14, 2004, Liam demanded for the refund of all the payments she made for PPGI's failure to deliver the unit on the stipulated date.[9]

On July 1, 2005, UCPB proposed to Liam a financing package for the full settlement of the balance of the purchase price.[10]

On October 17, 2005, Liam saw UCPB's newspaper advertisement offering to the public the sale of 'ready for occupancy' units in the Palm Tower of MPC condominium project at a much lower price.[11]

On November 14, 2005, Liam requested UCPB to suspend the restructuring of her loan and instead asked for the downgrading of her purchased two-bedroom condominium unit to another unit equivalent in value to the ₱1,223,000.00 total payments she already made. She also questioned the realty tax and documentary stamp tax imposed by UCPB in the proposed financing package.[12]

Her requests, however, remained unheeded. Thus, on April 10, 2006, Liam filed a Complaint[13] for specific performance before the HLURB against PPGI and UCPB. The complaint recounted the foregoing episodes and alleged that UCPB promised to deliver the unit within six months. Liam prayed that she be given first priority to choose among the available units at Palm Tower which has a minimum price of ₱24,984.15 per square meter and that her total payments of ₱1,232,259.91 be credited to the contract for her newly chosen unit. To justify her plea, Liam averred that UCPB has already devaluated the market values of the condominium units from the original purchase price of ₱43,089.00 per sq.m. to ₱24,984.15 per sq.m.

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[9] *Id.* at 96-97.

[10] *Id.* at 98.

[11] *Id.* at 101.

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

[13] *Id.* at 78-84.

Liam also claimed that she is not liable for the realty taxes on her unit because she is neither in possession thereof nor the holder of its title.

Liam further complained that UCPB has been biased in charging the interest rates to its buyers at 13% *per annum* as against the 11% *per annum* rate imposed on auction buyers. UCPB was also allegedly unfair in charging buyers with realty taxes and capital gains tax when the same should be shouldered by the developer.

In its Answer,[14] PPGI denied receiving any demand from Liam and averred that she is already estopped from making any claims against PPGI because she agreed to the substitution of PPGI by UCPB. In the same pleading, PPGI moved for the deferment of the proceedings in view of its pending petition for corporate rehabilitation before Branch 138 of the Regional Trial Court of Makati City, which ordered on August 15, 2003, that the enforcement of all claims against PPGI he suspended.[15] Finally, PPGI counterclaimed for attorney's fees and litigation expenses.

Meanwhile, UCPB averred that it had no legal obligation to deliver the unit to Liam because it is not the developer of the condominium project. UCPB maintained that it is merely a creditor of PPGI. UCPB explained that it only acquired PPGI's right to collect its receivables from Liam and other condominium buyers. UCPB denied giving a specific date for the completion of Liam's unit because such matter was beyond its control but rather devolved upon PPGI as the developer.

UCPB further declared that the units are already complete, hence, Liam should resume payment of her amortizations. UCPB contended that it already acted favorably on Liam's request for waiver of penalties and interests.

UCPB explained that the newspaper advertisements pertained to the units it acquired from PPGI as payment for the latter's

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[14] *Id.* at 37-43.

[15] *Id.* at 44-45.

loan. The advertisements did not have any connection to the contract to sell between Liam and PPGI, the purchase price of which was the prevailing market price at the time of its signing.

Finally, UCPB tagged the complaint as a malicious and unnecessary suit and demanded for indemnification of its legal expenses in the amount of ₱50,000.00.[16]

Ruling of the HLURB

In a Decision[17] dated August 16, 2007, HLURB Arbiter Marino Bernardo M. Torres (Torres) ruled in favor of Liam, to wit:

WHEREFORE, premises considered, it is hereby ordered that:

1. UCPB give [Liam] the privilege to choose among the available units at Palm Tower, San Antonio Village, or in the alternative[,] to maintain the previous unit subject of the Contract to Sell;

2. The Realty Tax must be [for] the account of the respondent UCPB, the unit being in the possession of the respondent;

3. The Capital Gains Tax having been waived, [the] documentary stamp tax must also be charged to respondent UCPB.

It is so ordered.[18]

Upon the appeal filed by PPGI and UCPB, the above ruling was affirmed with modification by the HLURB Board of Commissioners in a Decision[19] dated May 22, 2008, thus:

WHEREFORE, premises considered, the appeal is PARTIALLY GRANTED. Accordingly[,] the judgment appealed from is MODIFIED to read as follows:

1. Ordering the parties to continue with their contract and upon [Liam's] full payment of the purchase price of ₱2,614,652.66, ordering

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[16] *Id.* at 105-110.

[17] *Id.* at 138-139.

[18] *Id.* at 139.

[19] Composed of Commissioner and Chief Executive Officer Romulo Q. Fabul, Commissioner Jesus Y. Pang and *Ex-Officio* Commissioner Joel I. Jacob; *id.* at 166-170.

respondent UCPB to deliver [U]nit 603 of HongKong Tower and to execute the corresponding deed of sale in [Liam's] favor. In the alternative, at the option of [Liam], [UCPB] is ordered to refund to her the total installment payments made with interest at 6% per annum until fully paid reckoned from the filing of the complaint.

2. Declaring that the [R]ealty [T]ax must be for the account of the respondent UCPB, the unit being in the possession of the respondent.

3. Declaring that [Liam] is liable for the payment of the documentary stamp tax.

SO ORDERED.[20]

In so ruling, the HLURB Board of Commissioners ratiocinated that Liam cannot complain about the lower purchase price of other units or demand for the amendment of the stipulated price in her Contract to Sell with PPGI. Liam and PPGI have long agreed on the purchase price before the lower price of the other units was even advertised. Liam was, however, held entitled to a refund because the unit was not completed within the period stipulated in the contract.[21]

Liam was held not liable for realty tax because she was never in possession of the condominium unit. She was nevertheless held liable to pay the documentary stamp taxes for the registration of the deed of sale.[22]

Ruling of the Office of the President

UCPB thereafter appealed to the Office of the President (OP) arguing that it should not be obligated to refund Liam's alleged total installment payments because it did not step into the shoes of PPGI.[23] In the Decision[24] dated May 7, 2009, the OP, through the Deputy Executive Secretary for Legal Affairs, rejected

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[20] *Id.* at 169-170.

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

[22] *Id.* at 169.

[23] *Id.* at 171-183.

[24] *Id.* at 72-76.

UCPB's argument. The OP held that the Deed of Sale/Assignment between UCPB and PPGI covered all the rights and interests arising from or out of the contract to sell between Liam and PPGI. The OP ruling disposed thus:

> **WHEREFORE,** premises considered, the appeal is **DISMISSED**. The Decision dated May 22, 2008 rendered by the Board of Commissioners of the Housing and Land Use Regulatory Board is hereby AFFIRMED.
>
> **SO ORDERED**.[25]

On UCPB's motion for reconsideration, the OP reiterated its findings in a Resolution[26] dated December 10, 2009, by stressing that since PPGI assigned all its rights and interests to UCPB, the latter is deemed subrogated to and bound by exactly the same conditions to which PPGI was bound under the contract to sell. Thus, UCPB is obligated to return the payments of Liam after the project was not completed on time.

Ruling of the CA

Unwavering, UCPB sought recourse before the CA contending that it was merely an agent of PPGI in collecting the receivables from Liam and was never a party to the contract to sell. Hence, it cannot be made to assume the liabilities of PPGI as owner, developer or project manager of the condominium unit. Even assuming that UCPB is liable, its liability must be limited to the amount it actually received from Liam in behalf of PPGI.[27]

In a Decision[28] dated September 24, 2010, the CA ruled in favor of UCPB. The CA limited the issue to the liability of UCPB for specific performance under the contract to sell between PPGI and Liam.

The CA ruled that Liam had no right to demand for specific performance from UCPB because it was not a privy to the contract

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[25] *Id.* at 76.

[26] *Id.* at 77.

[27] *Id.* at 48-68.

[28] *Id.* at 248-261.

to sell. The obligations of PPGI to Liam remained subsisting and it continued to be Liam's obligor with respect to the delivery of the condominium units even after the assignment. Thus, UCPB cannot be held liable for PPGI's breach of its obligation to Liam. The CA concluded that UCPB was wrongly impleaded in the complaint for specific performance. Accordingly, the CA ruling disposed as follows:

> **IN VIEW OF THE FOREGOING**, the assailed 7 May 2009 Decision of the Office of the President is hereby **REVERSED** and **SET ASIDE.**
>
> **SO ORDERED.**[29]

Liam moved for the reconsideration[30] of the foregoing judgment but her motion was denied in the Resolution[31] dated December 3, 2010 of the CA. Hence, the present petition submitting the following issues for resolution, *viz*.:

> WHETHER OR NOT THE HONORABLE SUPREME COURT, ALBEIT NOT A TRIER OF FACTS, BUT BEING THE FINAL ARBITER OF ANY JUSTIFIABLE CONTROVERSIES, HAS THE POWER AND AUTHORITY TO REVIEW THE FACTS AND EVIDENCE OBTAINING IN THIS CASE DUE TO THE EXISTENCE OF WELL RECOGNIZED EXCEPTIONS TO THE RULE[;]
>
> WHETHER OR NOT THE [CA] ERRED IN REVERSING AND SETTING ASIDE THE DECISIONS OF THE OFFICES *A QUO*[;]
>
> WHE[T]HER OR NOT THE [CA] ERRED IN NOT HOLDING THAT THE DECISION OF THE HLURB HAS BECOME FINAL AND EXECUTORY BY THE [UCPB'S] FAILURE TO POST THE REQUIRED APPEAL BOND PURSUANT TO SECTION 2 OF RULE XVI[,] IN RELATION [TO SECTION] 1 OF RULE XVIII, OF THE RULES OF PROCEDURE OF THE [HLURB] BOARD OF COMMISSIONERS.[32]

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[29] *Id.* at 261.

[30] *Id.* at 262-269.

[31] *Id.* at 277-278.

[32] *Id.* at 19.

Ruling of the Court

The Court denies the petition.

Preliminary Considerations

Contrary to Liam's submissions, there are no factual issues in this appeal since the following circumstances and events are not disputed by the parties: a) PPGI and Liam have a subsisting Contract to Sell; b) PPGI executed agreements with UCPB without Liam's consent; c) PPGI failed to deliver the condominium unit subject of the Contract to Sell within the stipulated period.

The crucial point of contention is actually the correct interpretation of the nature of the agreements between PPGI and UCPB and their repercussions to the Contract to Sell between PPGI and Liam. These matters are legal questions[33] as they do not require an examination of the probative value of the evidence presented by the parties but rather the determination of the applicable law on the given state of facts.[34] The Court has delineated the distinctions between a question of law and a question of fact as follows:

> A question of law arises when there is doubt as to what the law is on a certain state of facts, while there is a question of fact when the doubt arises as to the truth or falsity of the alleged facts. *For a question to be one of law, the same must not involve an examination of the probative value of the evidence presented by the litigants or any of them*. The resolution of the issue must rest solely on what the law provides on the given set of circumstances. Once it is clear that the issue invites a review of the evidence presented, the questioned posed is one of fact. Thus, the test of whether a question is one of law or of fact is not the appellation given to such question by the party raising the same; rather, it is whether the appellate court can determine the issue raised without reviewing or evaluating the evidence, in which case, it is a question of law; otherwise, it is a question of fact.[35] (Italics in the original)

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[33] See *Licaros v. Gatmaitan*, 414 Phil. 857, 873 (2001).

[34] See *Engr. Dueñas v. Guce-Africa*, 618 Phil. 10, 19 (2009).

[35] *Id.*, citing *Velayo-Fong v. Sps. Velayo*, 539 Phil. 377, 386-387 (2006).

Thus, the petition is the proper subject of the Court's review under Rule 45 of the Rules of Court.

The transaction between UCPB and PPGI was an assignment of credit and not subrogation.

"An assignment of credit is an agreement by virtue of which the owner of a credit, known as the assignor, by a legal cause, such as sale, *dation* in payment, exchange or donation, and without the consent of the debtor, transfers his credit and accessory rights to another, known as the assignee, who acquires the power to enforce it to the same extent as the assignor could enforce it against the debtor. It may be in the form of sale, but at times it may constitute a *dation* in payment, such as **when a debtor, *in order to obtain a release from his debt,* assigns to his creditor a credit he has against a third person**."[36]

Simply, an assignment of credit is the process of transferring the right of the assignor to the assignee who would then have the right to proceed against the debtor. The assignment may be done either gratuitously or onerously, in which case, the assignment has an effect similar to that of a sale.[37]

On the other hand, subrogation is a process by which the third party pays the obligation of the debtor to the creditor with the latter's consent. As a consequence, the paying third party steps into the shoes of the original creditor as subrogee of the latter.[38] It results in a subjective novation of the contract in that a third person is subrogated to the rights of the creditor.[39]

The crucial distinction between assignment and subrogation actually deals with the necessity of the consent of the debtor in the original transaction. In an assignment of credit, the consent

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[36] *Spouses Serfino v. Far East Bank and Trust Company, Inc.*, 697 Phil. 51, 57 (2012), citing *Aquintey v. Sps. Tibong*, 540 Phil. 422, 446 (2006).

[37] *Licaros v. Gatmaitan, supra* note 33, at 866-867.

[38] *Id.* at 867.

[39] *Starbright Sales Enterprises, Inc. v. Philippine Realty Corporation, et al.*, 679 Phil. 330, 336 (2012).

of the debtor is not necessary in order that the assignment may fully produce legal effects. What the law requires in an assignment of credit is not the consent of the debtor but merely notice to him as the assignment takes effect only from the time he has knowledge thereof. A creditor may, therefore, validly assign his credit and its accessories without the debtor's consent.[40]

Meanwhile, subrogation requires an agreement among the three parties concerned — the original creditor, the debtor, and the new creditor. It is a new contractual relation based on the mutual agreement among all the necessary parties.[41]

The terms of the MOA and Deed of Sale/Assignment between PPGI and UCPB unequivocally show that the parties intended an assignment of PPGI's credit in favor of UCPB.

Section 1 of the MOA is explicit that as partial settlement of its loan, PPGI sold in favor of UCPB its unsold condominium units in MPC as well as its outstanding receivables from the 539 units covered by Contracts to Sell, *viz*.:

ARTICLE I

SUBJECT

Section 1.01 In partial settlement of **FIRST PARTY's** [PPGI] outstanding and/or maturing obligation with **SECOND PARTY** [UCPB], **to the extent of ₱1,160,965,734.33, FIRST PARTY** has offered the following modes of settlement, *viz*.:

a. Absolute Sale over unsold condominium units/parking spaces of Makati Prime City (hereinafter referred as MPC) including all existing and future improvements thereon situated at St. Pauls Road, Antonio Village, Makati City, and covered by Condominium Certificates of Titles (CCTs) registered with the Register of Deeds for Makati City, the technical description of which are listed in Annex "A" and made integral part hereof;

x x x x x x x x x

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[40] *Licaros v. Gatmaitan, supra* note 33, at 867-868.

[41] *Id.* at 868.

c. Sale of outstanding receivables due or payable to SECOND PARTY over 538 "MPC" sold units and 176 "KIENER" sold units, from Buyers who have purchased said units and the Assignment of Rights and Interests arising out of the units pertinent [to] Contract to Sell (CTS) as evidenced by pertinent and individual Contracts to Sell (CTS), hereto attached as Annex "C";

x x x x x x x x x[42]
(Emphasis supplied)

"This agreement was implemented through the Deed of Sale/Assignment whereby the parties reiterated and emphasized that they intended an assignment of PPGI's receivables thus giving UCPB the right to run after the former's condominium buyers with outstanding balances under a Contract to Sell, like herein petitioner Liam."[43] The operative provisions of the Deed of Sale/Assignment provide thus:

WHEREAS, under the terms and conditions of the Memorandum of Agreement, the FIRST PARTY [PPGI] had agreed to sell, transfer, convey and set over unto SECOND PARTY [UCPB], all the Accounts Receivables accruing from FIRST PARTY's Makati Prime City Condominium Project ("MPC" for brevity) and Kiener Hills Condominium Project ("KIENER" for brevity), as enumerated in a list hereto attached as Annexes "A" and "B", respectively and forms an integral part hereof, together with all the incidental rights, titles, interests and participations over the units covered by the Contracts to Sell from which the Account[s] Receivables have arisen;

WHEREAS, the parties have agreed that the consideration of this [Deed of Sale/Assignment] shall be the aggregate amount of PESOS: SEVEN HUNDRED FORTY-EIGHT MILLION (₱748,000,000.00), Philippine currency broken down as follows:

x x x x x x x x x

NOW, THEREFORE, for and in consideration of the foregoing premises and the aggregate amount of PESOS: SEVEN HUNDRED FORTY-EIGHT MIL[L]ION (₱748,000,000.00) Philippine currency,

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[42] *Rollo*, pp. 285-286.

[43] *Id.* at 299.

FIRST PARTY [PPGI] hereby sells, transfers, conveys and set over as by these presents it has assigned, transferred, conveyed and set over unto SECOND PARTY [UCPB] all Accounts Receivables accruing from FIRST PARTY's "MPC" and "KIENER" as enumerated in a list hereto attached as Annexes "A" and "B" respectively together with the assignment of all its rights, titles, interests and participations over the units covered by or arising from the Contracts to Sell from which the Accounts Receivables have arisen, under the following terms and conditions:

1. The FIRST PARTY hereby sells, transfers, conveys, assigns and sets over unto the SECOND PARTY [HLURB]:

a. all the Account Receivables or moneys due which may grow due upon the said receivables pursuant to the list attached as Annexes "A" and "B";

b. all its rights and interest arising from or out of the Contract to Sell of its respective receivable[s]/condominium unit.

x x x x x x x x x[44]

"The primary consideration in determining the true nature of a contract is the intention of the parties. If the words of a contract appear to contravene the evident intention of the parties, the latter shall prevail. Such intention is determined not only from the express terms of their agreement, but also from the contemporaneous and subsequent acts of the parties."[45] However, if the terms of a contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulations shall control.[46]

The provisions of the foregoing agreements between PPGI and UCPB are clear, explicit and unambiguous as to leave no doubt about their objective of executing an assignment of credit instead of subrogation. The MOA and the Deed of Sale/ Assignment clearly state that UCPB became an assignee of PPGI's outstanding receivables of its condominium buyers.

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[44] *Id.* at 293-294.

[45] *Spouses Villaceran, et al. v. De Guzman*, 682 Phil. 426, 435 (2012).

[46] CIVIL CODE OF THE PHILIPPINES, Article 1370.

The Court perceives no *proviso* or any extraneous factor that incites a contrary interpretation. Even the simultaneous and subsequent acts of the parties accentuate their intention to treat their agreements as assignment of credit.

As Liam herself submits, her consent to the MOA and Deed of Sale/Assignment was not secured and she only learned about them when PPGI informed her to remit her payments to UCPB in a letter dated May 29, 1998, which reads:

> This refers to your purchase of Unit #603 of Hongkong Tower, [MPC], a project of [PPGI], the development of which has been partially financed by [UCPB] wherein the rights, title and interest over the said unit(s); which includes among others your installment payments have been assigned to them.
>
> In connection with Section 18 of Presidential Decree No. 957, x x x, we hereby direct your goodself to remit all payments under your Contract to Sell directly to [UCPB] x x x.
>
> This payment arrangement shall in no way cause any amendment of the other terms and conditions, nor the cancellation of the Contract to Sell you have executed with PPGI.[47]

The absence of Liam's consent to the transactions between PPGI and UCPB affirms their nature as assignment of credit. As already mentioned, the consent of the debtor is not essential in assignment of credit. What the law requires is merely notice to him. A creditor may, therefore, validly assign his credit and its accessories without the debtor's consent. The purpose of the notice is only to inform the debtor that from the date of the assignment, payment should be made to the assignee and not to the original creditor.[48]

The last paragraph of the letter also confirms that UCPB's acquisition of PPGI's receivables did not involve any changes in the Contract to Sell between PPGI and Liam; neither did it vary the rights and the obligations of the parties therein. Thus, no novation by subrogation could have taken place.

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[47] *Rollo*, p. 91.

[48] *Project Builders, Inc. v. Court of Appeals*, 411 Phil. 264, 274 (2001).

The CA was therefore correct in ruling that the agreement between PPGI and UCPB was an assignment of credit. UCPB acquired PPGI's right to demand, collect and receive Liam's outstanding balance; UCPB was not subrogated into PPGI's place as developer under the Contract to Sell.

UCPB was improperly impleaded in Liam's complaint.

The CA is correct when it concluded that as a mere assignee, UCPB cannot be impleaded in Liam's complaint for specific performance. It is clear that the intention of the parties was merely to assign the receivables, and therefore, there is no ground to hold UCPB solidarily liable with PPGI.

In the recent case of *Chin Kong Wong Choi v. UCPB*,[49] the Court reiterated the rulings of the CA in the cases of *UCPB v. O'Halloran*[50] and *UCPB v. Ho*,[51] thus:

> In *UCPB v. O'Halloran*, docketed as C.A.-G.R. S.P. No. 101699, respondent O'Halloran's accounts with Primetown were also assigned by Primetown to UCPB, under the same Agreement as in this case. Since Primetown failed to deliver the condominium units upon full payment of the purchase price, O'Halloran likewise sued both Primetown and UCPB for cancellation of the contracts to sell, and the case eventually reached the CA. The CA held UCPB liable to refund the amount it actually received from O'Halloran. The CA held that there is no legal, statutory or contractual basis to hold UCPB solidarily liable with Primetown for the full reimbursement of the payments made by O'Halloran. The CA found that based on the Agreement, **UCPB is merely the assignee of the receivables under the contracts to sell to the extent that the assignment is a manner adopted by which Primetown can pay its loan to the bank.** The CA held that the assignment of receivables did not make UCPB the owner or developer of the unfinished project to make it solidarily liable with Primetown. The CA decision dated 23 July 2009 in C.A.-G.R. S.P. No. 101699 became final and executory

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[49] G.R. No. 207747, March 11, 2015, 753 SCRA 153.

[50] CA-G.R. SP No. 101699, July 23, 2009.

[51] CA-G.R. SP No. 113446, May 9, 2013.

upon Entry of Judgment on 17 August 2009 for O'Halloran and 18 August 2009 for UCPB.

In *UCPB v. Ho*, docketed as C.A.-G.R. S.P. No. 113446, respondent Ho was similarly situated with O'Halloran and Spouses Choi. Upon reaching the CA, the CA considered the Agreement between UCPB and Primetown as an assignment of credit, because: 1) the parties entered into the Agreement without the consent of the debtor; 2) UCPB's obligation "to deliver to the buyer the title over the condominium unit upon their full payment" signifies that the title to the condominium unit remained with Primetown; 3) UCPB's prerogative "to rescind the contract to sell and transfer the title of condominium unit to its name upon failure of the buyer to pay the full purchase price" indicates that UCPB was merely given the right to transfer title in its name to apply the property as partial payment of Primetown's obligation; and 4) the Agreement clearly states that the assignment is limited to the receivables and does not include "any and all liabilities which [Primetown] may have assumed under the individual contract to sell." Thus, the CA ruled that **UCPB was a mere assignee of the right of Primetown to collect on its contract to sell with Ho**. The CA, then, applied the ruling in *UCPB v. O'Halloran* in finding UCPB jointly liable with Primetown only for the payments UCPB had actually received from Ho.

On 4 December 2013, this Court issued a Resolution denying Ho's petition for review for failure to show any reversible error on the part of the CA. On 2 April 2014, this Court likewise denied the motion for reconsideration with finality. Thus, the 9 May 2013 Decision of the Special Fifteenth Division of the CA in CA-G.R. SP No. 113446 became final and executory.[52] (Citations omitted and emphasis in the original)

Following our pronouncement in the case of *Chin Kong Wong Choi*, which finds application in the present case, UCPB should not be held liable for the obligations and liabilities of PPGI under its contract to sell with Liam, considering that the bank is a mere assignee of the rights and receivables under the Agreement it executed with PPGI. There being no other grounds to hold UCPB solidarily liable with PPGI, the instant petition must be denied for lack of merit.

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[52] *Chin Kong Wong Choi v. UCPB, supra* note 49, at 163-165.

The lack of an appeal bond before the HLURB Board of Commissioners did not render final and executory the appealed judgment of the HLURB Arbiter.

It is incorrect for Liam to argue that the Decision dated August 16, 2007 of HLURB Arbiter Torres has become final and executory in view of UCPB's failure to post a bond when it appealed to the HLURB Board of Commissioners. Section 2, Rule XVI of the 2004 HLURB Rules of Procedure,[53] provides:

> Sec. 2. *Contents of the Appeal Memorandum.* — The appeal memorandum shall state the date when the appellant received a copy of the decision, the grounds relied upon, the arguments in support thereof, and the relief prayed for.
>
> In addition, the appellant shall attach to the appeal memorandum the following:
>
> a. Affidavit of service of the appeal memorandum executed jointly by the appellant and his counsel, which substantially complies with Supreme Court Circular No. 19-91, stating in essence the date of such service, copies of the registry return receipt shall likewise be attached;
>
> b. A verified certification jointly executed by the appellant and his counsel in accord with Supreme Court Circular No. 28-91 as amended, attesting that they have not commenced a similar, related or any other proceeding involving the same subject matter or causes of action before any other court or administrative tribunal in the Philippines; and
>
> **c. In case of money judgment, an appeal bond satisfactory to the Board equivalent to the amount of the award excluding interests, damages and attorney's fees.**[54] (Emphasis ours)

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[53] The Rules of Procedure in effect at the time the appeal to the HLURB Board of Commissioners was filed. Currently, the 2011 HLURB Rules of Procedure is in effect.

[54] The rule was cited as a reference in *Peña v. GSIS*, 533 Phil. 670, 678 (2006).

Evidently, the HLURB Rules of Procedure mandates the posting of an appeal bond only in cases where the appealed judgment involves a monetary award. The Decision dated August 16, 2007 of HLURB Arbiter Torres was not a judgment for a specific sum of money. Instead, it ordered UCPB to give Liam the privilege to choose among the available units at Palm Tower, San Antonio Village, or in the alternative, to maintain the previous unit subject of the Contract to Sell.[55]

WHEREFORE, premises considered, the petition is **DENIED**. The Decision dated September 24, 2010 of the Court of Appeals in CA-G.R. SP No. 112195 is hereby **AFFIRMED**.

SO ORDERED.

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

Jardeleza, J., on leave.

THIRD DIVISION

[G.R. No. 195224. June 15, 2016]

VIRGINIA JABALDE *y* JAMANDRON, *petitioner, vs.* **PEOPLE OF THE PHILIPPINES,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; QUESTION OF LAW AND QUESTION OF FACT, DISTINGUISHED.— "The Court has consistently ruled that a question of law exists when there is a doubt or controversy as to what the law is on a certain state of facts. On the other hand, there is a question of fact when the doubt or difference

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[55] *Rollo,* p. 139.

arises as to the truth or the alleged falsehood of the alleged facts. For a question to be one of law, it must involve no examination of the probative value of the evidence presented by the litigants or any of them." In the case on hand, Jabalde neither questions the veracity or the falsehood of the alleged facts nor the sufficiency of the evidence, but the appreciation of R.A. No. 7610 on the factual circumstances of the case. Jabalde is simply correct in raising the question of law in the instant petition.

2. CRIMINAL LAW; VIOLATION OF SECTION 10(a), ARTICLE VI OF REPUBLIC ACT 7610 (THE SPECIAL PROTECTION OF CHILDREN AGAINST ABUSE, EXPLOITATION AND DISCRIMINATION ACT); CHILD ABUSE; COMMITTED WHEN THE LAYING OF HANDS IS SHOWN BEYOND REASONABLE DOUBT TO BE INTENDED BY THE ACCUSED TO DEBASE, DEGRADE OR DEMEAN THE INTRINSIC WORTH AND DIGNITY OF THE CHILD AS A HUMAN BEING.— [O]n the substantive issue of the applicability of R.A. No. 7610 in the case at bar, the Court agrees with the contention of Jabalde x x x that the acts complained of do not fall within the definition of the said law x x x. The law under which Jabalde was charged, tried and found guilty of violating is Section 10(a), Article VI, of R.A. No. 7610 x x x. Child abuse, the crime charged, is defined by Section 3(b) of R.A. No. 7610 x x x. In the recent case of *Bongalon v. People*, the Court expounded the definition of "child abuse" being referred to in R.A. No. 7610. In that case, therein petitioner was similarly charged, tried, and convicted by the lower courts with violation of Section 10(a), Article VI of R.A. No. 7610. The Court held that only when the laying of hands is shown beyond reasonable doubt to be intended by the accused to debase, degrade or demean the intrinsic worth and dignity of the child as a human being should it be punished as child abuse, otherwise, it is punished under the RPC x x x. Jabalde was accused of slapping and striking Lin, hitting the latter on his nape, and immediately thereafter, choking the said offended party causing the latter to sustain injuries. However, the records of the case do not show that Jabalde intended to debase, degrade or demean the intrinsic worth and dignity of Lin as a human being. Black's Law Dictionary defined debasement as "the act of reducing the value, quality, or purity of something." Degradation, on

the other hand, is "a lessening of a person's or thing's character or quality." Webster's Third New International Dictionary defined demean as "to lower in status, condition, reputation, or character." The laying of the hands on Lin was an offshoot of Jabalde's emotional outrage after being informed that her daughter's head was punctured, and whom she thought was already dead. x x x Moreover, the testimony of the examining physician, Dr. Muñoz, belied the accusation that Jabalde, with cruelty and with intent, abused, maltreated and injured Lin x x x. It would be unforeseeable that Jabalde acted with cruelty when prosecution's witness herself testified that the abrasions suffered by Lin were just "mildly inflicted." If Jabalde indeed intended to abuse, maltreat and injure Lin, she would have easily hurt the 7-year-old boy with heavy blows. x x x The spontaneity of the acts of Jabalde against Lin is just a product of the instinctive reaction of a mother to rescue her own child from harm and danger as manifested only by mild abrasions, scratches, or scrapes suffered by Lin, thus, negating any intention on inflicting physical injuries. Having lost the strength of her mind, she lacked that specific intent to debase, degrade or demean the intrinsic worth and dignity of a child as a human being that was so essential in the crime of child abuse. In fine, the essential element of intent was not established with the prescribed degree of proof required for a successful prosecution under Section 10(a), Article VI of R.A. No. 7610.

3. ID.; REVISED PENAL CODE; SLIGHT PHYSICAL INJURIES; COMMITTED WHEN THERE IS NO EVIDENCE OF ACTUAL INCAPACITY OF THE OFFENDED PARTY FOR LABOR OR OF THE REQUIRED MEDICAL ATTENDANCE, OR WHEN THERE IS NO PROOF AS TO THE PERIOD OF THE OFFENDED PARTY'S INCAPACITY FOR LABOR OR OF THE REQUIRED MEDICAL ATTENDANCE.— Jabalde is liable for slight physical injuries under Article 266(2) of the RPC x x x. As found out by Dr. Muñoz, Lin only sustained abrasions namely: two linear abrasions of 1 cm in length at the base of the right mandibular area; one linear abrasion of 1 inch in length at the right lateral neck; two linear abrasions of 1 cm in length at the back of the neck; and four minute circular abrasions at the left lateral neck. When there is no evidence of actual incapacity of the offended party for labor or of the required medical attendance; or when there is no

proof as to the period of the offended party's incapacity for labor or of the required medical attendance, the offense is only slight physical injuries.

4. ID.; ID.; INTENTIONAL FELONIES; IN ORDER FOR AN INTENTIONAL FELONY TO EXIST, IT IS NECESSARY THAT THE ACT BE COMMITTED BY MEANS OF *DOLO* OR MALICE.— Although it is found out x x x that Jabalde lacked the intent to debase, degrade or demean the intrinsic worth and dignity of the child as a human being as required under Section 10 (a), Article VI of R.A. No. 7610, her acts of laying hands against Lin showed the essential element of intent which is a prerequisite in all crimes punishable under the RPC. The case of *Villareal v. People* is instructing. In that case, the Court discussed that the RPC belongs to the classical school of thought. The criminal liability is thus based on the free will and moral blame of the actor. The dentity of *mens rea* — defined as a guilty mind, a guilty or wrongful purpose or criminal intent — is the predominant consideration. In order for an intentional felony to exist, it is necessary that the act be committed by means of *"dolo"* or "malice". The Court further explained that the term *"dolo"* or "malice" is a complex idea involving the elements of freedom, intelligence, and intent. The element of intent is described as the state of mind accompanying an act, especially a forbidden act. It refers to the purpose of the mind and the resolve with which a person proceeds. On the other hand, the term "felonious" means, *inter alia*, malicious, villainous, and/or proceeding from an evil heart or purpose. With these elements taken together, the requirement of intent in intentional felony must refer to malicious intent, which is a vicious and malevolent state of mind accompanying a forbidden act.

5. ID.; ID.; MITIGATING CIRCUMSTANCES; PASSION AND OBFUSCATION; ELEMENTS; PRESENT IN CASE AT BAR.— In imposing the correct penalty, x x x the Court has to consider the mitigating circumstance of passion or obfuscation under Article 13(6) of the RPC, because Jabalde lost his reason and self-control, thereby diminishing the exercise of his will power. There is passional obfuscation when the crime was committed due to an uncontrollable burst of passion provoked by prior unjust or improper acts, or due to a legitimate stimulus so powerful as to overcome reason. For passion and obfuscation

to be considered a mitigating circumstance, it must be shown that: (1) an unlawful act sufficient to produce passion and obfuscation was committed by the intended victim; (2) the crime was committed within a reasonable length of time from the commission of the unlawful act that produced the obfuscation in the accused's mind; and (3) the passion and obfuscation arose from lawful sentiments and not from a spirit of lawlessness or revenge. With her having acted under the belief that Lin had killed her daughter, Jabalde is entitled to the mitigating circumstance of passion and obfuscation.

APPEARANCES OF COUNSEL

Hermosa Law Office for petitioner.
Office of the Solicitor General for respondent.

D E C I S I O N

REYES, *J.*:

Before the Court is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court assailing the Decision[2] dated August 12, 2010 and the Resolution[3] dated January 4, 2011 of the Court of Appeals (CA) in CA-G.R. CR No. 00424, which affirmed with modification the Judgment[4] promulgated on May 31, 2006 of the Regional Trial Court (RTC) of Bayawan City, Negros Oriental, Branch 63, in Criminal Case No. 210, finding Virginia Jabalde *y* Jamandron (Jabalde) guilty beyond reasonable doubt for violation of Section 10 (a), Article VI, of Republic Act (R.A.) No. 7610, otherwise known as the "Special Protection of Children Against Abuse, Exploitation, Discrimination Act."

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[1] *Rollo*, pp. 11-22.

[2] Penned by Associate Justice Ramon A. Cruz, with Associate Justices Pampio A. Abarintos and Myra V. Garcia-Fernandez concurring; *id.* at 26-38.

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

[4] Issued by Judge Orlando C. Velasco; *id.* at 44-50.

The Antecedent Facts

The CA narrated the facts as follows:

Jabalde pleaded "not guilty" in a criminal information dated October 14, 2002, for violation of Section 10 (a), Article VI, of R.A. No. 7610, before the RTC of Dumaguete City, Branch 31,[5] which reads:

That on December 13, 2000 at 9:00 o'clock in the morning, more or less, in Barangay Cawitan, Santa Catalina, Negros Oriental, and within the jurisdiction of the Honorable Court, [Jabalde], with cruelty and with intent to abuse, maltreat and injure one LIN J. BITOON, 8 years of age, did then and there willfully, unlawfully and feloniously slap and strike said Lin J. Bitoon, hitting said Lin J. Bitoon on the latter's nape; and immediately thereafter[,] [c]hoke the said offended party, causing the latter to sustain the following injuries: Abrasions: Two (2), linear 1 cm in length at the base of the right mandibular area; One (1), linear 1 inch at the right lateral neck; Two (2), linear 1 cm in length at the anterior neck; and Four (4), minute circular at the left lateral neck, which acts of sa[i]d accused caused the said offended part[y] not only physical but also emotional harm prejudicial to his development.

CONTRARY to the aforesaid.[6]

The witnesses presented by the prosecution were: Lin J. Bitoon (Lin), the minor victim; Dr. Rosita Muñoz (Dr. Muñoz), the physician who examined Lin; Ray Ann Samson (Ray Ann), the classmate of Lin who witnessed the incident; and Aileen Bitoon (Aileen), the mother of Lin.[7]

Lin testified that in the year 2000, he was a Grade 1 pupil of Cawitan Elementary School. At around 9:00 a.m. of December 13, 2000, he was playing "*langit lupa*" during recess with Ray Ann, Marco, Nova and another classmate. During the course of their game, he touched the shoulder of Nova, Jabalde's

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

[6] *Id.* at 27.

[7] *Id.*

daughter, causing the latter to fall down and wounding her head. He then helped Nova to stand while one of his classmates called Jabalde. Afraid of what happened, he ran towards a dilapidated building, which was near the place of the incident. Soon thereafter, Jabalde arrived and slapped him on his neck and choked him. Lin was able to get out of her hold when he removed her hands from his neck. He immediately ran towards their house some 500 meters away from the school. He told his mother Aileen about the incident. Thereafter, he was brought to Sta. Catalina Hospital for treatment and a medical certificate was then issued to him.[8]

Dr. Muñoz testified that she was the physician who issued the medical certificate to Lin on December 13, 2000 for the physical examination conducted upon the latter. Dr. Muñoz stated that Lin sustained abrasions: two (2) linear abrasions 1 cm in length at the base of the right mandibular area; one (1) linear abrasion 1 inch in length at the right lateral neck; two (2) linear abrasions 1 cm in length at the back of the neck; and four (4) minute circular abrasions at the left lateral neck. According to her, the abrasions could have been caused by a hard object but mildly inflicted and that these linear abrasions were signs of fingernail marks. Moreover, the abrasions were greenish in color signifying that they were still fresh. She did not notice other injuries on the body of Lin except those on his neck.[9]

Ray Ann, the classmate and playmate of Lin, testified that she knows Jabalde because she was a teacher at Cawitan Elementary School. At about 9:00 a.m. of December 13, 2000, she was playing "*langit lupa*" with Lin, Nova, Ryan and Rhea. Nova, who was standing on top of an unstable stone fell on the ground and thereafter hit her head on the stone. Then, somebody called Jabalde, Nova's mother. When Jabalde came to see her daughter, she struck Lin on his neck then squeezed it. Lin cried and was able to free himself and ran towards their house. Jabalde then shouted, "Better that you are able to free yourself because

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

[9] *Id.* at 28.

if not I should have killed you."[10] Ray Ann saw Lin again after their class dismissal at 11:00 a.m. when she went to their house. Lin did not return to school again because he was afraid of Jabalde. During cross examination, Ray Ann testified that Lin did not run into the dilapidated building after the incident and that she was near them when Jabalde struck Lin.[11]

Aileen testified that Lin is her son who was born on September 4, 1993, and at the time of the incident, he was still 7 years old. That at about 10:00 a.m. of December 13, 2000, Lin came home crying and trembling. Lin told her that he was strangled by Jabalde, who happens to be Aileen's aunt and Lin's grandmother. Lin was running back and forth crying but Aileen noticed his neck with scratches. Thereafter, she went to see his teacher-in-charge whom she asked for details of the incident. While in the school campus, she did not see Jabalde. She also testified that they went to Dr. Muñoz for the examination of her son's injuries. Afterwards, they went home. Her son no longer returned to the school because of fear but they let him pass on that school year. During cross-examination, she testified that Jabalde's house is just adjacent to their house in Cawitan, Sta. Catalina. Aileen also filed two cases against her for stealing and physical injuries in the year 2002 in Sta. Catalina. After she filed two cases, she then filed the instant complaint in the Provincial Prosecution's Office in Dumaguete City. She said it took her until 2002 to file the present charges against Jabalde because she was still pregnant during the time of the incident and that her husband was still assigned in Surigao. She admitted that when she was still a child, she already feared Jabalde. She also initiated the filing of the present case because she heard that if she will not file a case against Jabalde, the latter instead will file a case against them.[12]

The defense, on the other hand, presented Jabalde herself. She testified that she is a school teacher at Cawitan Elementary School for 18 years. Lin is her grandson and that his mother

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[10] *Id*.

[11] *Id*.

[12] *Id.* at 29.

Aileen is her niece. She remembered that it was about 10:00 a.m. of December 13, 2000, she was teaching Mathematics when some children went to her classroom and shouted "Mam Jabalde, Ma'm Jabalde, Nova's head was punctured (*nabuslot*)".[13] Thinking that her daughter was dead, her vision got blurred and she fainted. When she returned into consciousness, she sat on her chair in front of the board for about 5 to 10 minutes. The children then came again and shouted that her daughter's head got punctured. She ran towards her daughter's classroom while at the same time, looking for a gathering of people in the hope of finding her daughter. But, before reaching the place of the incident, she saw her grandson Lin crying. She asked him the whereabouts of Nova but he just kept on jumping and so she held him still. Lin said, "*Lola*[,] forgive me, forgive me"[14] and immediately ran. Jabalde proceeded to her daughter's room and saw the latter seated on the desk. Thereafter, she brought Nova to her own classroom and applied first aid. Then she resumed teaching. She believed that there was a motive in filing the instant complaint which has something to do with a family grudge because of inheritance.[15]

Another defense witness Rhealuz Pedrona, playmate of Nova and Lin, testified that Nova got injured while they were playing "*langit lupa*" during their recess on December 13, 2000. She went to Jabalde to inform her that Nova's head was punctured. Jabalde immediately ran to the place of incident. She, however, did not see Jabalde slap or choke Lin.[16]

In its Judgment[17] promulgated on May 31, 2006, the RTC found Jabalde guilty beyond reasonable doubt for violation of Section 10 (a), Article VI, of R.A. No. 7610. The dispositive portion of the judgment reads:

WHEREFORE, the prosecution having proved the guilt of [Jabalde] beyond reasonable doubt of violation of paragraph (a), Section 10,

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[13] *Id.*

[14] *Id.* at 30.

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

[16] *Id.* at 30.

[17] *Id.* at 44-50.

Article VI of R.A. 7610, as amended, [Jabalde] is **Convicted**. Appreciating in her favor the mitigating circumstance of passion and obfuscation, and applying the provisions of the indeterminate sentence law, [Jabalde] is hereby sentenced to an indeterminate penalty of imprisonment ranging from six (6) months and one (1) day of prision correccional in its minimum period, as minimum to six (6) years and one (1) day of prision mayor in its minimum period, as maximum

The bond posted for her temporary liberty is hereby ordered release.

SO ORDERED.[18]

Naturally dissatisfied with the trial court's decision, Jabalde appealed to the CA.

Ruling of the CA

On August 12, 2010, the CA dismissed Jabalde's appeal and affirmed the RTC decision with modification.[19] The dispositive portion of the decision reads:

WHEREFORE, the 31 May 2006 Decision, of the [RTC], Branch 63, Bayawan City, Negros Oriental, is **AFFIRMED with MODIFICATION** that [Jabalde] is hereby sentenced to suffer the penalty of **four (4) years, nine (9) months and eleven (11) days of prision correccional, as minimum, to six (6) years, eight (8) months and one (1) day of prision mayor, as maximum.**

SO ORDERED.[20]

Jabalde filed a motion for reconsideration but it was denied by the CA on January 4, 2011.[21]

The Issues

1. Whether or not acts complained of are covered by the Revised Penal Code (RPC) or R.A. No. 7610.

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[18] *Id.* at 49.

[19] *Id.* at 26-38.

[20] *Id.* at 36.

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

2. Whether or not under the facts established, the lower court erred in appreciating the acts of Jabalde as constitutive of violation of Section 10 (a), Article VI of R.A. No. 7610.

Ruling of the Court

The petition is meritorious.

Jabalde posits that in her case, the act of inflicting injuries, however minute they were, is punishable under the RPC particularly Article 266 (1)[22] which defines slight physical injuries; hence, she should be punished under the RPC and not under Section 10 (a), Article VI of R.A. No. 7610.[23]

The Office of the Solicitor General (OSG) pointed out in its Comment[24] filed on May 24, 2011 that since the issue was just raised for the first time on appeal by Jabalde, this is already barred by estoppel citing the cases of *People v. Francisco*[25] and *People v. Lazaro, Jr.*[26]

The cases cited by the OSG do not apply in this case. In *Francisco*, the appellant assailed the order of the trial court for failing to ascertain the voluntariness of his plea of guilt for the records show neither proof nor a transcript of the proceedings that the appellant indeed voluntarily made a guilty plea and that he fully understood its import. The appellant also maintained that he was not given the opportunity to present evidence and that the case was submitted for decision immediately after the prosecution filed its offer of evidence. In *Lazaro*, the appellant

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[22] Art. 266. *Slight physical injuries and maltreatment.* — The crime of slight physical injuries shall be punished:

(1). By *arresto menor* when the offender has inflicted physical injuries which shall incapacitate the offended party from labor from one to nine days, or shall require medical attendance during the same period.

[23] *Rollo*, pp. 19-20.

[24] *Id.* at 82-87.

[25] 649 Phil. 729 (2010).

[26] 619 Phil. 235 (2009).

raised the buy-bust team's alleged non-compliance with Section 21, Article II of R.A. No. 9165. In both cases, this Court held that issues raised for the first time on appeal are barred by estoppel.

However, the reliance on the foregoing cases is misplaced due to different factual antecedents. Here, Jabalde postulates that the acts complained of do not fall within the definition of R.A. No. 7610 and therefore, she should not be convicted on the basis of the said law, to wit:

> [Jabalde] postulates that other acts of child abuse falling under Section 10 (a), Art. II, R.A. 7610 is limited to acts not punishable under the [RPC]. As the law is being defined in this section:
>
> "Any person who shall commit any other acts of child abuse, cruelty or exploitation or be responsible for other conditions prejudicial to the child's development including those covered by Article 59 of Presidential Decree No. 603, as amended, but not covered by the [RPC], as amended, shall suffer the penalty of prision mayor in its maximum period[."]
>
> Needless to say, acts which are covered under the [RPC] will be dealt with under the provisions of the [RPC] and definitely, out of the context of R.A. 7610, particularly Section 10 (a). In the case of [Jabalde], the act of inflicting injuries, however minute they were, is punishable under the [RPC] particularly Article 266 (1) which defines slight physical injuries. The act of [Jabalde] in slapping, striking and choking [Lin], causing abrasions on the different parts of his neck is absolutely covered within the realm of Article 266 (1). When the offender has inflicted physical injuries which shall incapacitate the offended party for labor from one to nine days, or shall require medical attendance during the same period, shall be punished with arresto menor.[27] (Citations omitted)

Here, Jabalde questions the applicability of R.A. No. 7610 on the factual circumstances of the case and is correct in claiming that the instant petition raises pure question of law[28] and not question of fact[29] as being argued by the OSG. In *Cucueco v.*

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[27] *Rollo*, pp. 19-20.

[28] *Id.* at 106.

[29] *Id.* at 83.

CA,[30] the Court discussed the distinction between questions of law and questions of fact, to wit:

> The distinction between questions of law and questions of fact has long been settled. There is a "question of law" when the doubt or difference arises as to what the law is on certain state of facts, and which does not call for an examination of the probative value of the evidence presented by the parties-litigants. On the other hand, there is a "question of fact" when the doubt or controversy arises as to the truth or falsity of the alleged facts. Simply put, when there is no dispute as to fact, the question of whether or not the conclusion drawn therefrom is correct, is a question of law.
>
> Simple as it may seem, determining the true nature and extent of the distinction is sometimes complicated. **In a case involving a "question of law," the resolution of the issue must rest solely on what the law provides on the given set of circumstances**. Once it is clear that the issue invites a review of the evidence presented, the question posed is one of fact. If the query requires a re-evaluation of the credibility of witnesses, or the existence or relevance of surrounding circumstances and their relation to each other, the issue in that query is factual.
>
> x x x The test of whether a question is one of law or of fact is not the appellation given to such question by the party raising the same; rather, it is whether the appellate court can determine the issue raised without reviewing or evaluating the evidence, in which case, it is a question of law; otherwise, it is a question of fact.[31] (Citations omitted and emphasis ours)

"The Court has consistently ruled that a question of law exists when there is a doubt or controversy as to what the law is on a certain state of facts. On the other hand, there is a question of fact when the doubt or difference arises as to the truth or the alleged falsehood of the alleged facts. For a question to be one of law, it must involve no examination of the probative value of the evidence presented by the litigants or any of them."[32]

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[30] 484 Phil. 254 (2004).

[31] *Id.* at 264-265.

[32] *Tamondong v. CA*, 486 Phil. 729, 739 (2004).

In the case on hand, Jabalde neither questions the veracity or the falsehood of the alleged facts nor the sufficiency of the evidence, but the appreciation of R.A. No. 7610 on the factual circumstances of the case. Jabalde is simply correct in raising the question of law in the instant petition.

Now, on the substantive issue of the applicability of R.A. No. 7610 in the case at bar, the Court agrees with the contention of Jabalde in her Reply to OSG's Comment[33] that the acts complained of do not fall within the definition of the said law, to wit:

> The [OSG] in his comment is correct in saying that the issues that could be raised in a petition for review are purely questions of law. Guided by this principle, [Jabalde] comes to this Court to raise a question of law. [Jabalde] has been arguing when she availed of his right to appeal that the acts of the [OSG] does not fall within the definition of R.A. 7610 and should not be convicted on the basis of the said law. This is not a new matter that [Jabalde] raised.[34]

The law under which Jabalde was charged, tried and found guilty of violating is Section 10 (a), Article VI, of R.A. No. 7610, which states:

> SEC. 10. *Other Acts of Neglect, Abuse, Cruelty or Exploitation and Other Conditions Prejudicial to the Child's Development.*
>
> (a) **Any person who shall commit any other acts of child abuse, cruelty or exploitation or to be responsible for other conditions prejudicial to the child's development including those covered by Article 59 of Presidential Decree No. 603,** as amended, but not covered by the Revised Penal Code, as amended, shall suffer the penalty of *prision mayor* in its minimum period. (Emphasis ours)

Child abuse, the crime charged, is defined by Section 3 (b) of R.A. No. 7610, as follows:

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[33] *Rollo,* pp. 105-108.

[34] *Id.* at 106.

SEC. 3. *Definition of terms.* —

x x x x x x x x x

(b) "Child Abuse" refers to the maltreatment, whether habitual or not, of the child which includes any of the following:

(1) Psychological and physical abuse, neglect, cruelty, sexual abuse and emotional maltreatment;

(2) Any act by deeds or words which debases, degrades or demeans the intrinsic worth and dignity of a child as a human being;

(3) Unreasonable deprivation of his basic needs for survival, such as food and shelter; or

(4) Failure to immediately give medical treatment to an injured child resulting in serious impairment of his growth and development or in his permanent incapacity or death.

In the recent case of *Bongalon v. People*,[35] the Court expounded the definition of "child abuse" being referred to in R.A. No. 7610. In that case, therein petitioner was similarly charged, tried, and convicted by the lower courts with violation of Section 10 (a), Article VI of R.A. No. 7610. The Court held that only when the laying of hands is shown beyond reasonable doubt to be intended by the accused to debase, degrade or demean the intrinsic worth and dignity of the child as a human being should it be punished as child abuse, otherwise, it is punished under the RPC, to wit:

Although we affirm the factual findings of fact by the RTC and the CA to the effect that the petitioner struck Jayson at the back with his hand and slapped Jayson on the face, we disagree with their holding that his acts constituted *child abuse* within the purview of the above-quoted provisions. **The records did not establish beyond reasonable doubt that his laying of hands on Jayson had been intended to debase the "intrinsic worth and dignity" of Jayson as a human being, or that he had thereby intended to humiliate or embarrass Jayson. The records showed the laying of hands on Jayson to have been done at the spur of the moment and in anger**, indicative of his being then overwhelmed by his fatherly

[35] 707 Phil. 11 (2013).

concern for the personal safety of his own minor daughters who had just suffered harm at the hands of Jayson and Roldan. **With the loss of his self-control, he lacked that specific intent to debase, degrade or demean the intrinsic worth and dignity of a child as a human being that was so essential in the crime of *child abuse***.[36] (Emphasis ours and italics in the original)

Jabalde was accused of slapping and striking Lin, hitting the latter on his nape, and immediately thereafter, choking the said offended party causing the latter to sustain injuries.[37] However, the records of the case do not show that Jabalde intended to debase, degrade or demean the intrinsic worth and dignity of Lin as a human being.

Black's Law Dictionary defined debasement as "the act of reducing the value, quality, or purity of something."[38] Degradation, on the other hand, is "a lessening of a person's or thing's character or quality."[39] Webster's Third New International Dictionary defined demean as "to lower in status, condition, reputation, or character."[40]

The laying of the hands on Lin was an offshoot of Jabalde's emotional outrage after being informed that her daughter's head was punctured, and whom she thought was already dead. In fact, her vision got blurred and she fainted. When she returned into consciousness, she sat on her chair in front of the board for about five to ten minutes.[41] Moreover, the testimony of the examining physician, Dr. Muñoz, belied the accusation that Jabalde, with cruelty and with intent, abused, maltreated and injured Lin, to wit:

[T]he abrasions could have been caused by a hard object but **mildly inflicted**. She also testified that the linear abrasions were signs of

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

[37] *Rollo*, p. 27.

[38] *Black's Law Dictionary* 430 (8th ed. 2004).

[39] *Id.* at 456.

[40] *Webster's Third New International Dictionary* 599 (1986).

[41] *Rollo*, p. 29.

fingernail marks. She did not notice other injuries on the body of the victim except those on his neck. Moreover, the abrasions were greenish in color, signifying that they were still fresh.[42] (Emphasis ours)

It would be unforeseeable that Jabalde acted with cruelty when prosecution's witness herself testified that the abrasions suffered by Lin were just "mildly inflicted." If Jabalde indeed intended to abuse, maltreat and injure Lin, she would have easily hurt the 7-year-old boy with heavy blows.

As a mother, the death of her child, who has the blood of her blood, and the flesh of her flesh, is the most excruciating idea that a mother could entertain. The spontaneity of the acts of Jabalde against Lin is just a product of the instinctive reaction of a mother to rescue her own child from harm and danger as manifested only by mild abrasions, scratches, or scrapes suffered by Lin, thus, negating any intention on inflicting physical injuries. Having lost the strength of her mind, she lacked that specific intent to debase, degrade or demean the intrinsic worth and dignity of a child as a human being that was so essential in the crime of child abuse. In fine, the essential element of intent was not established with the prescribed degree of proof required for a successful prosecution under Section 10 (a), Article VI of R.A. No. 7610.

What crime, then, did Jabalde commit?

Jabalde is liable for slight physical injuries under Article 266 (2) of the RPC, to wit:

ART. 266. *Slight physical injuries and maltreatment* — The crime of slight physical injuries shall be punished:

x x x x x x x x x

2. By arresto menor or a fine not exceeding 20 pesos and censure when the offender has caused physical injuries which do not prevent the offended party from engaging in his habitual work nor require medical assistance.

x x x x x x x x x

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[42] *Id.* at 28.

As found out by Dr. Muñoz, Lin only sustained abrasions namely: two linear abrasions of 1 cm in length at the base of the right mandibular area; one linear abrasion of 1 inch in length at the right lateral neck; two linear abrasions of 1 cm in length at the back of the neck; and four minute circular abrasions at the left lateral neck.[43] When there is no evidence of actual incapacity of the offended party for labor or of the required medical attendance; or when there is no proof as to the period of the offended party's incapacity for labor or of the required medical attendance, the offense is only slight physical injuries.[44]

Although it is found out, as discussed hereinabove, that Jabalde lacked the intent to debase, degrade or demean the intrinsic worth and dignity of the child as a human being as required under Section 10 (a), Article VI of R.A. No. 7610, her acts of laying hands against Lin showed the essential element of intent which is a prerequisite in all crimes punishable under the RPC.

The case of *Villareal v. People*[45] is instructing. In that case, the Court discussed that the RPC belongs to the classical school of thought. The criminal liability is thus based on the free will and moral blame of the actor. The identity of *mens rea* — defined as a guilty mind, a guilty or wrongful purpose or criminal intent — is the predominant consideration. In order for an intentional felony to exist, it is necessary that the act be committed by means of "*dolo*" or "malice".[46]

The Court further explained that the term "*dolo*" or "malice" is a complex idea involving the elements of freedom, intelligence, and intent. The element of intent is described as the state of mind accompanying an act, especially a forbidden act. It refers to the purpose of the mind and the resolve with which a person proceeds. On the other hand, the term "felonious" means, *inter alia*, malicious, villainous, and/or proceeding from an evil heart

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[43] *Id.*

[44] *Li v. People*, 471 Phil. 128, 150 (2004); *People v. Arranchado, et al.*, 109 Phil. 410, 414 (1960).

[45] 680 Phil. 527 (2012).

[46] *Id.* at 564.

or purpose. With these elements taken together, the requirement of intent in intentional felony must refer to malicious intent, which is a vicious and malevolent state of mind accompanying a forbidden act.[47]

> In order to be found guilty of the felonious acts under Articles 262 to 266 of the [RPC], the employment of physical injuries must be coupled with *dolus malus*. As an act that is *mala in se*, the existence of malicious intent is fundamental, since injury arises from the mental state of the wrongdoer — *iniuria ex affectu facientis consistat*. If there is no criminal intent, the accused cannot be found guilty of an intentional felony. Thus, in case of physical injuries under the [RPC], there must be a specific *animus iniuriandi* or malicious intention to do wrong against the physical integrity or well-being of a person, so as to incapacitate and deprive the victim of certain bodily functions. Without proof beyond reasonable doubt of the required *animus iniuriandi*, the overt act of inflicting physical injuries *per se* merely satisfies the elements of freedom and intelligence in an intentional felony. The commission of the act does not, in itself, make a man guilty unless his intentions are.[48]

In the case at bar, the positive testimonies of the minor victim Lin that Jabalde slapped him on his neck and choked him,[49] and that of Ray Ann that she saw Jabalde struck Lin on his neck, squeezed it and then shouted, "Better that you are able to free yourself because if not I should have killed you,"[50] deserve more credit than Jabalde's own statement that she merely held Lin still because the latter kept on jumping.[51] The laying of the hands and the utterance of words threatening the life of Lin established the fact that Jabalde, indeed, intended to cause or inflict physical injuries on, much less kill, Lin.

The penalty for slight physical injuries is *arresto menor*, which ranges from one (1) day to thirty (30) days of imprisonment.[52]

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[47] *Id.* at 564-565.

[48] *Id.* at 589-590.

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

[50] *Id.* at 28.

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

[52] REVISED PENAL CODE, Article 27.

In imposing the correct penalty, however, the Court has to consider the mitigating circumstance of passion or obfuscation under Article 13 (6) of the RPC,[53] because Jabalde lost his reason and self-control, thereby diminishing the exercise of his will power.[54] There is passional obfuscation when the crime was committed due to an uncontrollable burst of passion provoked by prior unjust or improper acts, or due to a legitimate stimulus so powerful as to overcome reason.[55] For passion and obfuscation to be considered a mitigating circumstance, it must be shown that: (1) an unlawful act sufficient to produce passion and obfuscation was committed by the intended victim; (2) the crime was committed within a reasonable length of time from the commission of the unlawful act that produced the obfuscation in the accused's mind; and (3) the passion and obfuscation arose from lawful sentiments and not from a spirit of lawlessness or revenge.[56] With her having acted under the belief that Lin had killed her daughter, Jabalde is entitled to the mitigating circumstance of passion and obfuscation.

Arresto menor is prescribed in its minimum period (*i.e.*, one [1] day to ten [10] days) when only mitigating circumstance is present in the case.[57] Accordingly, with the Indeterminate Sentence Law being inapplicable due to the penalty imposed not exceeding one year,[58] Jabalde shall suffer a penalty of one (1) day to ten (10) days of *arresto menor*.

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[53] ART. 13. *Mitigating circumstances.* — The following are mitigating circumstances:

x x x x x x x x x

6. That of having acted upon an impulse so powerful as naturally to have produced passion or obfuscation.

[54] *Bongalon v. People, supra* note 35, at 21-22.

[55] *People v. Lobino*, 375 Phil. 1065, 1074 (1999).

[56] *People v. Gonzalez, Jr.*, 411 Phil. 893, 924 (2001).

[57] REVISED PENAL CODE, Article 64 (2).

[58] Act No. 4103, as amended by Act No. 4225 and Republic Act No. 4203, Section 2.

WHEREFORE, the Decision dated August 12, 2010 and Resolution dated January 4, 2011 of the Court of Appeals in CA-G.R. CR No. 00424 are **SET ASIDE**; and a new judgment is **ENTERED** (a) finding petitioner Virginia Jabalde *y* Jamandron **GUILTY** beyond reasonable doubt of the crime of **SLIGHT PHYSICAL INJURIES** under paragraph 2, Article 266, of the Revised Penal Code, and (b) sentencing her to suffer the penalty of one (1) day to ten (10) days of *arresto menor*.

SO ORDERED.

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

Jardeleza, J., on official business.

THIRD DIVISION

[G.R. No. 195382. June 15, 2016]

ORION WATER DISTRICT, represented by its General Manager, CRISPIN Q. TRIA, *ET AL.*, *petitioner, vs.* **THE GOVERNMENT SERVICE INSURANCE SYSTEM (GSIS),** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; JURISDICTION; JURISDICTION OVER THE SUBJECT MATTER OF A CASE IS CONFERRED BY LAW AND DETERMINED BY THE ALLEGATIONS IN THE COMPLAINT.— "Basic as a hornbook principle is that jurisdiction over the subject matter of a case is conferred by law and determined by the allegations in the complaint which comprise a concise statement of the ultimate facts constituting the plaintiff's cause of action." A reading of the complaint filed by GSIS shows that it is aimed at recovering the premium arrearages of OWD on the life and retirement policies of its employees which by law is

supposed to deduct from the salaries of the employees concerned and remit to GSIS accordingly. It is well to remember that membership in the GSIS is compulsory for all employees receiving compensation who have not reached the compulsory retirement age, irrespective of employment status. Pursuant to this, Section 6(b) of R.A. No. 8291 imposes a positive duty on the employer to deduct and remit the contributions to the GSIS. x x x In case of delayed remittance, Section 7 of the law charges interest on the unremitted amount at the rate of not less than two percent (2%) which shall be shouldered by the employer. Continued refusal of the employer to remit contributions gives rise to a cause of action on the part of GSIS to institute the necessary action in the appropriate court or tribunal to recover unremitted contributions x x x [, pursuant to] Section 41(w) of R.A. No. 8291 x x x. [T]he GSIS properly instituted the complaint with the RTC, which has the jurisdiction in civil cases where the demand for sums of money or value of property exceeds ₱300,000.00 in the provinces, or ₱400,000.00 in Metro Manila.

2. POLITICAL LAW; ADMINISTRATIVE LAW; PRESIDENTIAL DECREE NO. 242; DOES NOT INTRUDE INTO THE JURISDICTION OF REGULAR COURTS AS IT ONLY PRESCRIBES AN ADMINISTRATIVE PROCEDURE FOR THE SETTLEMENT OF CERTAIN TYPES OF DISPUTES BETWEEN OR AMONG DEPARTMENTS, BUREAUS, OFFICES, AGENCIES, AND INSTRUMENTALITIES OF THE NATIONAL GOVERNMENT, INCLUDING GOVERNMENT-OWNED AND CONTROLLED CORPORATIONS.— [N]ot all controversies between or among government offices, departments or instrumentalities fall under the mentioned provisions of E.O. No. 292. To fully understand the scope of the law, reference must be made to Presidential Decree (P.D.) No. 242, the precursor of Chapter 14, Book IV of E.O. No. 292, from which the entirety of the provisions in question was lifted. Under P.D. No. 242, it was clearly articulated that it only applies to particular instances of disputes among government offices. x x x That the law is not all-encompassing was elaborated in *Philippine Veterans Investment Development Corporation (PHIVIDEC) v. Judge Velez*, where the Court emphasized that P.D. No. 242 applies only to certain cases of disputes. It does not intrude into the jurisdiction of regular courts as it "only prescribes an *administrative* procedure for the settlement of **certain types**

of disputes between or among departments, bureaus, offices, agencies, and instrumentalities of the National Government, including [GOCCs], so that they need not always repair to the courts for the settlement of controversies **arising from the interpretation and application of statutes, contracts or agreements.** "Section 1 of P.D. No. 242 is now Section 66, Chapter 14, Book IV of E.O. No. 292. Although there was a noticeable change in the language of the law, there was no indication of an intention to broaden its scope far larger than the original law. x x x Following the *ejusdem generis* rule on statutory construction, disputes that should be referred to administrative arbitration must relate to the interpretation and application of statutes, contracts or agreements, or any other cases of similar nature. The usage of the phrase *"such as those arising from the interpretation and application of statutes, contracts or agreements"* in the provision means that the situation must be held similar or analogous to those expressly enumerated in the law in question.

3. ID.; ID.; EXECUTIVE ORDER NO. 292; ADMINISTRATIVE SETTLEMENT; ONLY DISPUTES, CLAIMS AND CONTROVERSIES SOLELY BETWEEN AND AMONG DEPARTMENTS, BUREAUS, OFFICES, AGENCIES, AND INSTRUMENTALITIES OF THE NATIONAL GOVERNMENT, INCLUDING GOVERNMENT-OWNED AND CONTROLLED CORPORATIONS SHALL BE ADMINISTRATIVELY SETTLED OR ADJUDICATED.— [T]he instant case does not partake of the instances contemplated in Section 66. The complaint filed by GSIS does not concern the interpretation of a law, contract or agreement between government agencies. It is a complaint for collection of sum of money, specifically to unremitted premium contributions which by law, the OWD, as the employer, is mandated to deliver to GSIS within the prescribed period of time. x x x Even assuming that the instant case falls under any of the instances of disputes stated in Section 66, it cannot still qualify for administrative settlement since the case also involved officials of OWD and not solely between GSIS and OWD. Explicitly provided in Section 66 is that only disputes, claims and controversies ***solely*** between and among departments, bureaus, offices, agencies, and instrumentalities of the National Government, including GOCCs shall be administratively settled or adjudicated.

APPEARANCES OF COUNSEL

Office of the Government Corporate Counsel for petitioner.
GSIS Legal Department for respondent.

R E S O L U T I O N

REYES, *J.*:

Before this Court is a petition for review on *certiorari*[1] under Rule 45 of the Rules of Court filed by Orion Water District (OWD) assailing the Decision[2] dated October 14, 2010 and Resolution[3] dated January 24, 2011 of the Court of Appeals (CA) in CA-G.R. SP No. 105377.

Antecedent Facts

The instant case stemmed from a Complaint[4] for Collection of Sum of Money and Damages filed on April 4, 2006 by the Government Service Insurance System (GSIS) before the Regional Trial Court (RTC) of Pasay City (raffled to Branch 115 and docketed as Civil Case No. 06-0417 CFM) against OWD, a local water district organized as a government-owned and controlled corporation (GOCC), and its officers, namely: Manager, Bener E. Guzman (Guzman); Head of Agency, Ceferina Macdon; Finance Officer, Yolanda S. Urbano (Urbano); and Cashier, Cecile B. Swim (Swim). GSIS alleged that OWD and its officers failed and refused to pay, remit or deliver the employees' personal share in the premiums of their life and retirement policies covering the period of July 1993 to July 31, 2000, amounting to Five Hundred Fifty-One Thousand Four Hundred Seven Pesos and Sixteen Centavos (₱551,407.16). It averred that it repeatedly demanded the payment of said arrearages from OWD, through its Manager,

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

[2] Penned by Associate Justice Sesinando E. Villon, with Associate Justices Rebecca De Guia-Salvador and Amy C. Lazaro-Javier concurring; *id.* at 30-37.

[3] *Id.* at 39.

[4] *Id.* at 86-93.

who received the last demand letter on November 21, 2002. Despite receipt of the demand letter, however, OWD failed to remit its premium arrearages.[5]

On March 13, 2007, OWD filed a Motion to Dismiss[6] alleging that the RTC has no jurisdiction over the subject matter of the case. It asseverated that since GSIS and OWD are both GOCCs, jurisdiction over disputes or controversies between them lies with the Secretary of Justice, pursuant to Sections 66 to 70,[7] Chapter 14, Book IV of Executive Order (E.O.) No. 292.[8]

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[5] *Id.* at 89.

[6] *Id.* at 75-80.

[7] **SEC. 66.** *How Settled*. — All disputes, claims and controversies, solely between or among the departments, bureaus, offices, agencies and instrumentalities of the National Government, including government-owned or controlled corporations, such as those arising from the interpretation and application of statutes, contracts or agreements, shall be administratively settled or adjudicated in the manner provided in this Chapter. This Chapter shall, however, not apply to disputes involving the Congress, the Supreme Court, the Constitutional Commissions, and local governments.

SEC. 67. *Disputes Involving Questions of Law*. — All cases involving only questions of law shall be submitted to and settled or adjudicated by the Secretary of Justice as Attorney-General of the National Government and as *ex officio* legal adviser of all government-owned or controlled corporations. His ruling or decision thereon shall be conclusive and binding on all the parties concerned.

SEC. 68. *Disputes Involving Questions of Fact and Law*. — Cases involving mixed questions of law and of fact or only factual issues shall be submitted to and settled or adjudicated by:

(1) The Solicitor General, if the dispute, claim or controversy involves only departments, bureaus, offices and other agencies of the National Government as well as government-owned or controlled corporations or entities of whom he is the principal law officer or general counsel; and

(2) The Secretary of Justice, in all other cases not falling under paragraph (1).

SEC. 69. *Arbitration*. — The determination of factual issues may be referred to an arbitration panel composed of one representative each of the parties involved and presided over by a representative of the Secretary of Justice or the Solicitor General, as the case may be.

SEC. 70. *Appeals*. — The decision of the Secretary of Justice as well as that of the Solicitor General, when approved by the Secretary of Justice, shall be final and binding upon the parties involved. Appeals may, however, be taken to the President where the amount of the claim or the value of the property exceeds one million pesos. The decision of the President shall be final.

[8] *Rollo*, pp. 76-77.

Ruling of the RTC

On March 28, 2008, the RTC issued an Order[9] denying the motion to dismiss for lack of merit. It held, as follows:

> After this Court perused the arguments of both parties, this Court finds the motion unmeritorious.
>
> The defendants failed to even allege that they are disputing or controverting the claim filed by the [GSIS], or that the dispute, claim or controversy between the parties arises from the interpretation or application of the statutes, contracts or agreements involved in this case.
>
> WHEREFORE, the Motion is Denied.
>
> SO ORDERED.[10]

On May 22, 2008, OWD and its officers filed a Motion for Reconsideration[11] reiterating their claim of lack of jurisdiction of the RTC. In an Order[12] dated June 27, 2008, the RTC denied the said motion.

Meanwhile, in May 2006, Guzman resigned as General Manager of OWD and was replaced by Crispin Q. Tria (Tria). Swim and Urbano likewise resigned from their respective posts sometime in 2000.[13]

On September 22, 2008, OWD, represented by General Manager Tria, filed a petition for *certiorari*[14] with the CA, imputing grave abuse of discretion on the RTC for issuing Orders dated March 28, 2008 and June 27, 2008, and maintaining that it has jurisdiction over the subject matter of the case, in complete contradiction with Sections 66 to 70, Chapter 14, Book IV of E.O. No. 292. It emphasized that under the mentioned law, the

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[9] Rendered by Presiding Judge Francisco G. Mendiola; *id.* at 81-82.

[10] *Id.*

[11] *Id.* at 83-84.

[12] *Id.* at 85.

[13] *Id.* at 126.

[14] *Id.* at 43-64.

jurisdiction to settle disputes among government offices lies with the Department of Justice, as represented by the Secretary of Justice, whose decision shall be appealable to the Office of the President and, thereafter, to the CA by way of a petition for review under Rule 43 of the Rules of Court.[15]

Ruling of the CA

On October 14, 2010, the CA rendered its Decision[16] affirming the challenged orders of the RTC. The CA ruled that Sections 66 to 70, Chapter 14, Book IV of E.O. No. 292 are inapplicable since the dispute is not solely between GOCCs. Further, it held that Republic Act (R.A.) No. 8291, pertaining to "The GSIS Act of 1997", particularly Section 41 (w) thereof clearly sanctioned the filing of complaint with the RTC.[17]

OWD filed a Motion for Reconsideration[18] dated November 17, 2010 but the same was denied by the CA in its Resolution[19] dated January 24, 2011. Hence, the instant petition.

OWD contends that the CA erred in upholding the Orders dated March 28, 2008 and June 27, 2008 of the RTC notwithstanding clear provisions of law that the latter has no jurisdiction over the subject matter of the case.

Ruling of the Court

The Court finds the petition unmeritorious.

"Basic as a hornbook principle is that jurisdiction over the subject matter of a case is conferred by law and determined by the allegations in the complaint which comprise a concise statement of the ultimate facts constituting the plaintiff's cause of action."[20] A reading of the complaint filed by GSIS shows

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[15] *Id.* at 53.

[16] *Id.* at 30-37.

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

[18] *Id.* at 139-145.

[19] *Id.* at 39.

[20] *City of Dumaguete v. Philippine Ports Authority*, 671 Phil. 610, 629 (2011).

that it is aimed at recovering the premium arrearages of OWD on the life and retirement policies of its employees which by law is supposed to deduct from the salaries of the employees concerned and remit to GSIS accordingly.

It is well to remember that membership in the GSIS is compulsory for all employees receiving compensation who have not reached the compulsory retirement age, irrespective of employment status.[21] Pursuant to this, Section 6 (b) of R.A. No. 8291 imposes a positive duty on the employer to deduct and remit the contributions to the GSIS. The provision reads as follows:

> SEC. 6. *Collection and Remittance of Contributions.* — x x x
>
> (b) Each employer shall remit directly to the GSIS the employees' and employers' contributions within the first ten (10) days of the calendar month following the month to which the contributions apply. The remittance by the employer of the contributions to the GSIS shall take priority over and above the payment of any and all obligations, except salaries and wages of its employees.

In case of delayed remittance, Section 7[22] of the law charges interest on the unremitted amount at the rate of not less than two percent (2%) which shall be shouldered by the employer. Continued refusal of the employer to remit contributions gives rise to a cause of action on the part of GSIS to institute the necessary action in the appropriate court or tribunal to recover unremitted contributions. Section 41 (w) of R.A. No. 8291 specifies, thus:

> SEC. 41. *Powers and Functions of the GSIS.* — x x x
>
> x x x x x x x x x

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[21] R.A. No. 8291, Section 3.

[22] SEC. 7. Interests on Delayed Remittances. — Agencies which delay the remittance of any and all monies due the GSIS shall be charged interests as may be prescribed by the Board but not less than two percent (2%) simple interest per month. Such interest shall be paid by the employers concerned.

w) to ensure the collection or recovery of all indebtedness, liabilities and/or accountabilities, including unpaid premiums or contributions in favor of the GSIS arising from any cause or source whatsoever, due from all obligors, whether public or private. The Board shall demand payment or settlement of the obligations referred to herein within thirty (30) days from the date the obligation becomes due, and **in the event of failure or refusal of the obligor or debtor to comply with the demand, to initiate or institute the necessary or proper actions or suits, criminal, civil or administrative or otherwise, before the courts,** tribunals, commissions, boards, or bodies of proper jurisdiction within thirty (30) days reckoned from the expiry date of the period fixed in the demand within which to pay or settle the account;

x x x x x x x x x

As correctly held by the CA, the GSIS properly instituted the complaint with the RTC, which has the jurisdiction in civil cases where the demand for sums of money or value of property exceeds ₱300,000.00 in the provinces, or ₱400,000.00 in Metro Manila.[23]

OWD, however, insists that the case should have been submitted to the Secretary of Justice for administrative settlement pursuant to Sections 66 to 70, Chapter 14, Book IV of E.O. No. 292, which, it argues, apply when the dispute or controversy is between two government offices.

The Court disagrees.

As properly held by the CA, the provisions of E.O. No. 292 are inapplicable in the instant case. It bears to stress that not all controversies between or among government offices, departments or instrumentalities fall under the mentioned provisions of E.O. No. 292. To fully understand the scope of the law, reference must be made to Presidential Decree (P.D.) No. 242, the precursor of Chapter 14, Book IV of E.O. No. 292, from which the entirety of the provisions in question was

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[23] BATAS PAMBANSA BILANG 129, Section 19 (8), as amended by R.A. No. 7691.

lifted. Under P.D. No. 242, it was clearly articulated that it only applies to particular instances of disputes among government offices. Section 1 thereof states:

> **SEC. 1.** Provisions of law to the contrary notwithstanding, all disputes, claims and controversies solely between or among the departments, bureaus, offices, agencies and instrumentalities of the National Government, including constitutional offices or agencies, **arising from the interpretation and application of statutes, contracts or agreements,** shall henceforth be administratively settled or adjudicated as provided hereinafter: Provided, That this shall not apply to cases already pending in court at the time of the effectivity of this decree. (Emphasis ours)

That the law is not all-encompassing was elaborated in *Philippine Veterans Investment Development Corporation (PHIVIDEC) v. Judge Velez*,[24] where the Court emphasized that P.D. No. 242 applies only to certain cases of disputes. It does not intrude into the jurisdiction of regular courts as it "only prescribes an *administrative* procedure for the settlement of **certain types of disputes** between or among departments, bureaus, offices, agencies, and instrumentalities of the National Government, including [GOCCs], so that they need not always repair to the courts for the settlement of controversies **arising from the interpretation and application of statutes, contracts or agreements.**"[25]

Section 1 of P.D. No. 242 is now Section 66, Chapter 14, Book IV of E.O. No. 292. Although there was a noticeable change in the language of the law, there was no indication of an intention to broaden its scope far larger than the original law. Section 66 reads as follows:

> **SEC. 66.** *How Settled.* — All disputes, claims and controversies, solely between or among the departments, bureaus, offices, agencies and instrumentalities of the National Government, including government-owned or controlled corporations, such as those arising

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[24] 276 Phil. 439 (1991).

[25] *Id.* at 443.

from the interpretation and application of statutes, contracts or agreements, shall be administratively settled or adjudicated in the manner provided in this Chapter. This Chapter shall, however, not apply to disputes involving the Congress, the Supreme Court, the Constitutional Commissions, and local governments.

Following the *ejusdem generis* rule on statutory construction, disputes that should be referred to administrative arbitration must relate to the interpretation and application of statutes, contracts or agreements, or any other cases of similar nature. The usage of the phrase "*such as those arising from the interpretation and application of statutes, contracts or agreements*" in the provision means that the situation must be held similar or analogous to those expressly enumerated in the law in question.

It does not need further elaboration that the instant case does not partake of the instances contemplated in Section 66. The complaint filed by GSIS does not concern the interpretation of a law, contract or agreement between government agencies. It is a complaint for collection of sum of money, specifically to unremitted premium contributions which by law, the OWD, as the employer, is mandated to deliver to GSIS within the prescribed period of time. There is no obscure question of law or ambiguous provision of a contract involved that resulted to a discord between GSIS and OWD, which could have warranted the application of Section 66. On the contrary, the law is unequivocal with respect to the duty of GSIS to ensure the prompt collection of contributions and OWD's responsibility, as an employer, to deduct and remit contributions to the system. Unfortunately, OWD reneged in its obligation and refused to comply despite repeated notices; hence, the filing of a complaint for collection of unremitted contributions by GSIS.

Even assuming that the instant case falls under any of the instances of disputes stated in Section 66, it cannot still qualify for administrative settlement since the case also involved officials of OWD and not solely between GSIS and OWD. Explicitly provided in Section 66 is that only disputes, claims and controversies ***solely*** between and among departments, bureaus, offices, agencies, and instrumentalities of the National

Government, including GOCCs shall be administratively settled or adjudicated. Thus, in *Philippine National Oil Company v. CA*,[26] the Court held that Section 1 of P.D. No. 242 does not apply notwithstanding the fact that the case involved three (3) government agencies, *i.e.*, the Bureau of Internal Revenue, Philippine National Oil Company and Philippine National Bank. It ruled, thus:

> Section 1 of P.D. No. 242 explicitly provides that only disputes, claims and controversies ***solely*** between or among departments, bureaus, offices, agencies, and instrumentalities of the National Government, including constitutional offices or agencies, as well as [GOCCs], shall be administratively settled or adjudicated. While the BIR is obviously a government bureau, and both PNOC and PNB are [GOCCs], respondent Savellano is a private citizen. His standing in the controversy could not be lightly brushed aside. It was private respondent Savellano who gave the BIR the information that resulted in the investigation of PNOC and PNB; who requested the BIR Commissioner to reconsider the compromise agreement in question; and who initiated CTA Case No. 4249 by filing a Petition for Review.[27]

WHEREFORE, in view of the foregoing disquisition, the instant petition is **DENIED**. The Decision dated October 14, 2010 and Resolution dated January 24, 2011 of the Court of Appeals in CA-G.R. SP No. 105377 are **AFFIRMED**.

SO ORDERED.

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

Jardeleza, J., on official business.

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[26] 496 Phil. 506 (2005).

[27] *Id.* at 558.

THIRD DIVISION

[G.R. No. 196557. June 15, 2016]

GREGORIO "TONGEE" BALAIS, JR., *petitioner, vs.* **SE'LON by AIMEE, AMELITA REVILLA and ALMA BELARMINO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; RULE 45 OF THE RULES OF COURT; LIMITED TO REVIEWING ERRORS OF LAW; EXCEPTION; PRESENT IN CASE AT BAR.— The Court's jurisdiction in cases brought before it from the CA via Rule 45 of the Rules of Court is generally limited to reviewing errors of law. The Court is not the proper venue to consider a factual issue as it is not a trier of facts. This rule, however, is not ironclad and a departure therefrom may be warranted where the findings of fact of the CA are contrary to the findings and conclusions of the NLRC and the LA, as in this case. In this regard, there is therefore a need to review the records to determine which of them should be preferred as more conformable to evidentiary facts. In the instant case, the conflict between the NLRC's and the CA's factual findings as shown in the records of this case prompts the Court to evaluate such findings anew.

2. ID.; EVIDENCE; IF AN ALLEGATION IS NOT SPECIFICALLY DENIED OR THE DENIAL IS A NEGATIVE PREGNANT, THE ALLEGATION IS DEEMED ADMITTED.— In the instant case, a perusal of the records would show that both parties presented their own versions of stories, not necessarily contradicting but nonetheless lacking in some material points. Balais alleged that he was illegally dismissed as his dismissal was allegedly made verbally and without due process of law. Yet, Balais failed to explain what possibly prompted said termination or even the likely motive for the same. x x x Respondents, on the other hand, alleged that there was no illegal dismissal as it was Balais himself who did not report to work, thus, he abandoned his work. Interestingly, however, both parties never denied that there was an altercation between them. Without admitting that

he violated the salon policy of rotation of the junior stylists, Balais maintained that said policy runs counter with customary salon practice which allows senior hairstylists to choose their preferred junior stylist to assist them. For their part, supplemental to their claim of abandonment, respondents averred that assuming that Balais was dismissed, they insisted that there was a valid ground therefor as he was disrespectful and insubordinate due to his failure to comply with the salon's policy. x x x While respondents were evasive on the complete details of how the reported incident of termination transpired, they never categorically denied that said incident happened or the fact that Belarmino uttered: *"get out of this company! I do not need you here."* Belarmino attempted to sidestep the fact that she actually said it, yet, raised the defense that assuming she had indeed verbally terminated Balais, she was justified in doing so because of the disrespect shown to her. Under the rules of evidence, if an allegation is not specifically denied or the denial is a negative pregnant, the allegation is deemed admitted. In fine, the fact that respondents are even raising their own justification for the alleged verbal dismissal means that the said verbal dismissal actually transpired. If in the first place, said incident of verbal dismissal truly never happened, there is nothing to assume anymore or to justify. The fact that Belarmino was offering justification for her action, it follows that indeed said incident of verbally dismissing Balais on-the-spot actually happened. Putting two versions of the story together, considering that none of the parties categorically deny that an altercation erupted between them which resulted in the dismissal of Balais, and the tenor of Belarmino's statements leaving no room for interpreting it other than a verbal dismissal, we are inclined to believe that there was indeed a dismissal.

3. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; JUST CAUSES; ABANDONMENT; ELEMENTS.— To constitute abandonment, two elements must concur: (a) the failure to report for work or absence without valid or justifiable reason, and (b) a clear intention to sever the employer-employee relationship, with the second element as the more determinative factor and being manifested by some overt acts. Mere absence is not sufficient. The employer has the burden of proof to show a deliberate and unjustified refusal of the employee to resume his employment

without any intention of returning. Respondents, other than their bare allegation of abandonment, failed to prove that these two elements were met. It cannot be said that Balais failed to report back to work without justifiable reason as in fact he was told that he was no longer wanted in the salon.

4. ID.; ID.; ID.; ID.; WILLFUL DISOBEDIENCE OF THE EMPLOYER'S LAWFUL ORDERS; REQUISITES.— Willful disobedience of the employer's lawful orders, as a just cause for the dismissal of an employee, envisages the concurrence of at least two requisites: (1) the employee's assailed conduct must have been willful or intentional, the willfulness being characterized by a "wrongful and perverse attitude;" and (2) the order violated must have been reasonable, lawful, made known to the employee and must pertain to the duties which he had been engaged to discharge. It must be likewise stressed anew that the burden of proving the insubordination as a just and valid cause for dismissing an employee rests on the employer and his failure to do so shall result in a finding that the dismissal is unjustified. In this case, the salon policy of rotating the junior stylists who will assist the senior stylist appears to be reasonable, lawful, made known to petitioner and pertained to his duty as senior hairstylist of respondent. x x x The fact alone that Balais failed to comply with the salon policy does not establish that his conduct in failing to comply with the salon's policy had been willful, or characterized by a wrongful and perverse attitude. Balais' justification may be adverse to that of the salon's policy but it was neither willful nor characterized by a perverse attitude.

5. ID.; ID.; ID.; WHEN THE DISMISSAL IS GROUNDED ON A JUST AND VALID CAUSE, THE TOTALITY OF INFRACTIONS OR THE NUMBER OF VIOLATIONS COMMITTED DURING THE PERIOD OF EMPLOYMENT SHALL BE CONSIDERED IN DETERMINING THE PENALTY TO BE IMPOSED UPON AN ERRING EMPLOYEE.— In adjudging that the dismissal was grounded on a just and valid cause, the totality of infractions or the number of violations committed during the period of employment shall be considered in determining the penalty to be imposed upon an erring employee. Let it not be forgotten that what is at stake is the means of livelihood, the name, and the reputation of the employee. To countenance an arbitrary

exercise of the management's prerogative to terminate an employee is to negate the employee's constitutional right to security of tenure.

6. ID.; ID.; ID.; TWO-NOTICE REQUIREMENT; THE EMPLOYER IS MANDATED TO FURNISH THE EMPLOYEE WITH TWO WRITTEN NOTICES TO EFFECT THE DISMISSAL OF AN EMPLOYEE.— [T]o effect the dismissal of an employee, the law requires not only that there be just and valid cause as provided under Article 282 of the Labor Code. It likewise enjoins the employer to afford the employee the opportunity to be heard and to defend himself. On the latter aspect, the employer is mandated to furnish the employee with two (2) written notices: (a) a written notice containing a statement of the cause for the termination to afford the employee ample opportunity to be heard and defend himself with the assistance of his representative, if he so desires; (b) if the employer decides to terminate the services of the employee, the employer must notify him in writing of the decision to dismiss him, stating clearly the reason therefor. Here, a perusal of the records revealed that, indeed, Belarmino's manner of verbally dismissing Balais on-the-spot fell short of the two-notice requirement.

7. ID.; ID.; ID.; SEPARATION PAY; GRANTED IF REINSTATEMENT IS NO LONGER FEASIBLE BECAUSE OF THE STRAINED RELATIONS BETWEEN THE EMPLOYER AND THE EMPLOYEE OR WHEN THE EMPLOYER HAS ALREADY CEASED THE OPERATION OF ITS BUSINESS.— Under the law and prevailing jurisprudence, "an illegally dismissed employee is entitled to reinstatement as a matter of right." Aside from the instances provided under Articles 283 and 284 of the Labor Code, separation pay is, however, granted when reinstatement is no longer feasible because of strained relations between the employer and the employee. In cases of illegal dismissal, the accepted doctrine is that separation pay is available in lieu of reinstatement when the latter recourse is no longer practical or in the best interest of the parties. However, other than the strained relationship between the parties, it appears that respondent salon had already ceased operation of its business, thus, reinstatement is no longer feasible. Consequently, the Court awards separation pay to the petitioner equivalent to

one (l) month pay for every year of service, with a fraction of at least six (6) months considered as one (1) whole year, from the time of her illegal dismissal up to the finality of this judgment as an alternative to reinstatement.

8. **ID.; ID.; ID.; BACKWAGES; AN ILLEGALLY DISMISSED EMPLOYEE IS ENTITLED TO FULL BACKWAGES COMPUTED FROM THE TIME THE ACTUAL COMPENSATION WAS WITHHELD UP TO THE TIME OF ACTUAL REINSTATEMENT BUT IF REINSTATEMENT IS NO LONGER POSSIBLE, THE BACKWAGES SHALL BE COMPUTED FROM THE TIME OF ILLEGAL TERMINATION UP TO THE FINALITY OF THE DECISION.—** Also, employees who are illegally dismissed are entitled to full backwages, inclusive of allowances and other benefits or their monetary equivalent, computed from the time their actual compensation was withheld from them up to the time of their actual reinstatement but if reinstatement is no longer possible, the backwages shall be computed from the time of their illegal termination up to the finality of the decision. Accordingly, the petitioner is entitled to an award of full backwages from the time he was illegally dismissed up to the finality of this decision.

9. **ID.; ID.; ATTORNEY'S FEES; THE AWARD IS LEGALLY AND MORALLY JUSTIFIABLE WHEN AN EMPLOYEE WAS FORCED TO LITIGATE AND INCUR EXPENSES TO PROTECT HIS RIGHTS AND INTEREST.—** Balais is x x x entitled to attorney's fees in the amount of 10% of the total monetary award pursuant to Article 111 of the Labor Code. It is settled that where an employee was forced to litigate and, thus, incur expenses to protect his rights and interest, the award of attorney's fees is legally and morally justifiable.

APPEARANCES OF COUNSEL

Julio G. Morada for petitioner.
RRV Legal Consultancy Firm for respondents.

D E C I S I O N

PERALTA, *J.*:

This is a Petition for Review on *Certiorari*[1] under Rule 45 of the Rules of Court seeking the reversal of the Decision[2] dated February 25, 2011 and Resolution[3] dated April 19, 2011 of the Court of Appeals, respectively, in CA-G.R. SP No. 114899 entitled "*Se'lon by Aimee and/or Amelita Revilla and Alma Belarmino v. NLRC and Gregorio "Tongee" Balais, Jr.*"

The instant petition stemmed from a complaint for illegal dismissal, non-payment of 13th month pay, damages and attorney's fees filed by Gregorio "Tongee" Balais, Jr. (*Balais*) against Se'lon by Aimee, Amelita Revilla and Alma Belarmino before the NLRC.

Balais narrated that he was Salon de Orient's senior hairstylist and make-up artist from October 16, 2004 until November 26, 2007 when respondent Amelita Revilla (*Revilla*) took over the business. Revilla, however, retained his services as senior hairstylist and make-up artist. Under the new management, Salon De Orient became Se'lon by Aimee and respondent Alma Belarmino (*Belarmino*) was appointed as its salon manager, who was in-charge of paying the employees' wages, dismissing erring employees, and exercising control over them. Balais, on the other hand, being the senior hairstylist and make-up artist, allegedly had the discretion to choose from among the junior hairstylist who should assist him in servicing his clients, as customarily observed in beauty salons. He worked during the 10am-7pm shift or 11am-8pm shift, six (6) days a week with Sunday as his regular rest day for a monthly salary of Php18,500.00 paid every two (2) weeks. In June 2008, his salary

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[1] *Rollo*, pp. 9-37.

[2] Penned by Associate Justice Amy C. Lazaro-Javier, with Associate Justices Rebecca De Guia-Salvador and Sesinando E. Villon, concurring; *id.* at 38-49.

[3] *Id.* at 50.

was reduced to Php15,000.00. Balais claimed that his working relationship with respondents had been harmonious until the evening of July 1, 2008 when Belarmino dismissed him without due process, in the following manner:

Belarmino angrily shouted: "*You get out of this Company! I do not need you here at Se'lon by Aimee*!"

Balais Jr., calmly replied: "*Ibigay mo ang 13th month ko and sweldo ko, at separation pay*."

Belarmino angrily replied: "*Maghabla ka kahit saan na korte at haharapin kita*."

Balais Jr. responded: "*Maski ang Jollibee nagbibigay nang 13th month pay, sweldo and separation pay pag may tinatanggal na empleyado*!"

Belarmino retorted: "*Eh di doon ka magtrabaho sa Jollibee kasi doon nagbibigay sila nang 13th month pay, sweldo at separation pay pag may tinatanggal na empleyado*."

Balais felt humiliated as he was berated in front of his co-workers. The next day, he did not report for work anymore and instead filed the complaint before the NLRC.

For their part, respondents alleged that it was known to all their employees that one of the salon's policies was for junior stylists to take turns in assisting any of the senior stylists for purposes of equalizing commissions. However, Belarmino was told that Balais failed to comply with this policy as the latter allegedly gave preference to only two (2) junior stylists, disregarding the other two (2) junior stylists. When Belarmino asked Balais for explanation, the latter allegedly snapped and retorted that he would do whatever he wanted. Belarmino reminded him of the salon's policy and his duty to comply with it but petitioner allegedly insisted he would do as he pleased and if they can no longer take it, they would have to dismiss him. After the incident, Balais sued them and never reported back to work.

Respondents insisted that Balais was not terminated from employment but he instead abandoned his work. Respondents explained that even assuming that he was indeed dismissed,

there was a valid ground therefor as his acts amounted to serious misconduct against a superior and willful disobedience to reasonable policy related to his work.

On February 11, 2009, the Labor Arbiter rendered a Decision[4] holding respondents liable for illegal dismissal. It gave credence and weight to Balais' version that he was dismissed without cause and notice for merely defending his decision to avail of the services of some selected junior stylist of his choice.

Aggrieved, respondents appealed the decision before the NLRC.

On February 19, 2010, the NLRC affirmed *in toto* the findings of the Labor Arbiter, declaring petitioner to be illegally dismissed.[5] It ratiocinated that Se'lon by Aimee failed to prove that the act of petitioner amounted to gross insubordination. Other than respondents' bare denial of illegal dismissal, the same was unsubstantiated by a clear and convincing evidence. The NLRC further pointed out that respondents failed to produce a copy of the supposed salon policy on the rule of rotation of junior stylists, thus, the veracity of the allegation of insubordination against Balais failed to convince.

Respondents moved for reconsideration, but the same was denied in a Resolution dated April 22, 2010.

Thus, before the Court of Appeals, respondents filed a Petition for *Certiorari* with Prayer for the Issuance of a Temporary Restraining Order and/or Writ of Preliminary Injunction seeking to annul or modify the Resolutions of the NLRC.

On February 25, 2011, the Court of Appeals granted the petition and reversed and set aside the NLRC Decision and rendered a Decision[6] sustaining petitioner's dismissal as valid and required respondents to pay Balais his accrued 13th month pay and unpaid salaries.

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[4] *Rollo*, pp. 52-67.

[5] *Id.* at 68-78.

[6] *Id.* at 38-49.

Petitioner moved for reconsideration, but was denied in a Resolution dated April 19, 2011. Thus, the instant petition for review on *certiorari* raising the following issues:

I

WHETHER THE COURT OF APPEALS HAS DECIDED A QUESTION OF SUBSTANCE BY DECLARING THE PETITIONER AS VALIDLY DISMISSED WHICH IS NOT IN ACCORD WITH LAW AND APPLICABLE DECISION OF THE SUPREME COURT.

II

WHETHER THE COURT OF APPEALS HAS DEPARTED FROM THE ACCEPTED AND USUAL COURSE OF JUDICIAL PROCEEDINGS AND CONTRARY TO THE FINDINGS OF THE LABOR ARBITER AND NLRC.[7]

We find merit in the petition.

The Court's jurisdiction in cases brought before it from the CA via Rule 45 of the Rules of Court is generally limited to reviewing errors of law. The Court is not the proper venue to consider a factual issue as it is not a trier of facts. This rule, however, is not ironclad and a departure therefrom may be warranted where the findings of fact of the CA are contrary to the findings and conclusions of the NLRC and the LA, as in this case. In this regard, there is therefore a need to review the records to determine which of them should be preferred as more conformable to evidentiary facts.[8] In the instant case, the conflict between the NLRC's and the CA's factual findings as shown in the records of this case prompts the Court to evaluate such findings anew.

Whether there was a valid dismissal.

The principle echoed and re-echoed in our jurisprudence is that the *onus* of proving that the employee was dismissed for a just cause rests on the employer, and the latter's failure to

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[7] *Id.* at 23.

[8] *INC Shipmanagement v. Moradas*, G.R. No. 178564, January 15, 2014.

discharge that burden would result in a finding that the dismissal is unjustified.[9]

In the instant case, a perusal of the records would show that both parties presented their own versions of stories, not necessarily contradicting but nonetheless lacking in some material points.

Balais alleged that he was illegally dismissed as his dismissal was allegedly made verbally and without due process of law. Yet, Balais failed to explain what possibly prompted said termination or even the likely motive for the same. He nevertheless submitted the Affidavits of Gemma Guerero[10] and Marie Gina A. Toralde,[11] to prove his allegation.

Respondents, on the other hand, alleged that there was no illegal dismissal as it was Balais himself who did not report to work, thus, he abandoned his work.

Interestingly, however, both parties never denied that there was an altercation between them. Without admitting that he violated the salon policy of rotation of the junior stylists, Balais maintained that said policy runs counter with customary salon practice which allows senior hairstylists to choose their preferred junior stylist to assist them. For their part, supplemental to their claim of abandonment, respondents averred that assuming that Balais was dismissed, they insisted that there was a valid ground therefor as he was disrespectful and insubordinate due to his failure to comply with the salon's policy.

Noteworthy is the fact that respondents never denied that the incident narrated by Balais actually happened. In *Solas v. Power & Telephone Supply Phils., Inc.*,[12] this silence constitutes an admission that fortifies the truth of the employee's narration. While respondents were evasive on the complete details of how

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[9] *Universal Staffing Services, Inc. v. National Labor Relations Commission*, 581 Phil. 199, 207-208 (2008).

[10] CA *rollo*, pp. 86-87.

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

[12] 585 Phil. 513, 524 (2008).

the reported incident of termination transpired, they never categorically denied that said incident happened or the fact that Belarmino uttered: "*get out of this company! I do not need you here.*" Belarmino attempted to sidestep the fact that she actually said it, yet, raised the defense that assuming she had indeed verbally terminated Balais, she was justified in doing so because of the disrespect shown to her.

Under the rules of evidence, if an allegation is not specifically denied or the denial is a negative pregnant, the allegation is deemed admitted.[13] In fine, the fact that respondents are even raising their own justification for the alleged verbal dismissal means that the said verbal dismissal actually transpired. If in the first place, said incident of verbal dismissal truly never happened, there is nothing to assume anymore or to justify. The fact that Belarmino was offering justification for her action, it follows that indeed said incident of verbally dismissing Balais on-the-spot actually happened.

Putting two versions of the story together, considering that none of the parties categorically deny that an altercation erupted between them which resulted in the dismissal of Balais, and the tenor of Belarmino's statements leaving no room for interpreting it other than a verbal dismissal, we are inclined to believe that there was indeed a dismissal.

This being the case, having established that there was dismissal, it becomes axiomatic that respondents prove that the dismissal was valid.

Respondents averred that there was abandonment as Balais failed to report back to work the following day after the incident.

In this regard, this Court finds that respondents failed to establish that Balais abandoned his work. To constitute abandonment, two elements must concur: (a) the failure to report for work or absence without valid or justifiable reason, and

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[13] *Venzon v. Rural Bank of Buenavista (Agusan del Norte), Inc.*, G.R. No. 178031, August 28, 2013, 704 SCRA 138, 147-148; *Bañares v. Atty. Barican*, 157 Phil. 134, 138 (1974).

(b) a clear intention to sever the employer-employee relationship, with the second element as the more determinative factor and being manifested by some overt acts.[14] Mere absence is not sufficient. The employer has the burden of proof to show a deliberate and unjustified refusal of the employee to resume his employment without any intention of returning. Respondents, other than their bare allegation of abandonment, failed to prove that these two elements were met. It cannot be said that Balais failed to report back to work without justifiable reason as in fact he was told that he was no longer wanted in the salon.

Moreover, we likewise note the high improbability of petitioner intentionally abandoning his work, taking into consideration his length of service, *i.e.*, 18 years of service with the salon. It does not make sense for an employee who had worked for his employer for 18 years would just abandon his work and forego whatever benefits he may be entitled, unless he was made to believe or was told that he was already terminated.

Respondents cannot discharge the burden of proving a valid dismissal by merely alleging that they did not dismiss Balais; neither can they escape liability by claiming that Balais abandoned his work. When there is no showing of a clear, valid and legal cause for the termination of employment, the law considers it a case of illegal dismissal.

Thus, respondents, presumably thinking that their claim of abandonment holds no water, it likewise manifested that assuming Balais was indeed terminated, there was a valid ground therefor because of his insubordination.

We disagree.

Willful disobedience of the employer's lawful orders, as a just cause for the dismissal of an employee, envisages the concurrence of at least two requisites: (1) the employee's assailed conduct must have been willful or intentional, the willfulness

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[14] *Tatel v. JLFP Investigation Agency*, G.R. No. 206942, February 25, 2015.

being characterized by a "wrongful and perverse attitude;" and (2) the order violated must have been reasonable, lawful, made known to the employee and must pertain to the duties which he had been engaged to discharge.[15]

It must be likewise stressed anew that the burden of proving the insubordination as a just and valid cause for dismissing an employee rests on the employer and his failure to do so shall result in a finding that the dismissal is unjustified.

In this case, the salon policy of rotating the junior stylists who will assist the senior stylist appears to be reasonable, lawful, made known to petitioner and pertained to his duty as senior hairstylist of respondent. However, if we will look at Balais' explanation for his alleged disobedience thereto, it likewise appears to be reasonable and lawful, to wit:

x x x x x x x x x

The duty of the Senior Stylist has the overall function in seeing to it that the service accorded to the client is excellent, thus, he has the right to refuse service of a junior stylist whom he thinks that such junior stylist cannot give equal or over and above the service that he can give to the client, thus his refusal to obey the respondent does not constitute a just cause for the treatment given by respondent to herein respondent (sic).

x x x x x x x x x

The fact alone that Balais failed to comply with the salon policy does not establish that his conduct in failing to comply with the salon's policy had been willful, or characterized by a wrongful and perverse attitude. Balais' justification maybe adverse to that of the salon's policy but it was neither willful nor characterized by a perverse attitude. We take note that the alleged non-compliance with the salon policy was brought to the attention of Balais for the first time only during the said incident. There was no showing of prior warnings as to his non-compliance. While respondents wield a wide latitude of discretion in the

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[15] Labor Code, Art. 282 (a); *Gold City Integrated Port Services, Inc. v. National Labor Relations Commission*, 267 Phil. 863, 872 (1990).

promulgation of policies, rules and regulations on work-related activities of its employees, these must, however, be fair and reasonable at all times, and the corresponding sanctions for violations thereof, when prescribed, must be commensurate thereto as well as to the degree of the infraction. Given that Balais' preference on who will assist him is based on the junior stylists' competence, the same should have been properly taken into account in the imposition of the appropriate penalty for violation of the rotation policy. Suspension would have sufficed to caution him and other employees who may be wont to violate the same policy.

In adjudging that the dismissal was grounded on a just and valid cause, the totality of infractions or the number of violations committed during the period of employment shall be considered in determining the penalty to be imposed upon an erring employee.[16] Let it not be forgotten that what is at stake is the means of livelihood, the name, and the reputation of the employee. To countenance an arbitrary exercise of the management's prerogative to terminate an employee is to negate the employee's constitutional right to security of tenure.

Whether the dismissal was effected with due process of law.

Under Article 277 (b) of the Labor Code, the employer must send the employee who is about to be terminated, a written notice stating the cause/s for termination and must give the employee the opportunity to be heard and to defend himself.

Article 277 of the Labor Code provides, *inter alia*:

(a) x x x

(b) Subject to the constitutional right of workers to security of tenure and their right to be protected against dismissal except for a just and authorized cause and notice under Article 283 of this Code, ***the employer shall furnish the worker whose employment is sought to be terminated a written notice containing a statement of causes for termination and shall afford the latter ample opportunity to be heard and to defend himself with the assistance of his***

[16] *Merin v. National Labor Relations Commission*, 590 Phil. 596, 602 (2008).

representative if he so desires in accordance with company rules and regulations promulgated pursuant to guidelines set by the Department of Labor and Employment. x x x

In particular, Rule XXIII, Book V of the Omnibus Rules Implementing the Labor Code states:

> Sec. 2. *Standards of due process: requirements of notice*. — In all cases of termination of employment, the following standards of due process shall be substantially observed:
>
> 1. For termination of employment based on just causes as defined in Article 282 of the Code:
>
> ***(a) A written notice served on the employee specifying the ground or grounds for termination, and giving to said employee reasonable opportunity within which to explain his side;***
> ***(b) A hearing or conference during which the employee concerned, with the assistance of counsel if the employee so desires, is given opportunity to respond to the charge, present his evidence or rebut the evidence presented against him; and***
> ***(c) A written notice of termination served on the employee indicating that upon due consideration of all the circumstances, grounds have been established to justify his termination.***

Thus, to effect the dismissal of an employee, the law requires not only that there be just and valid cause as provided under Article 282 of the Labor Code. It likewise enjoins the employer to afford the employee the opportunity to be heard and to defend himself. On the latter aspect, the employer is mandated to furnish the employee with two (2) written notices: (a) a written notice containing a statement of the cause for the termination to afford the employee ample opportunity to be heard and defend himself with the assistance of his representative, if he so desires; (b) if the employer decides to terminate the services of the employee, the employer must notify him in writing of the decision to dismiss him, stating clearly the reason therefor.

Here, a perusal of the records revealed that, indeed, Belarmino's manner of verbally dismissing Balais on-the-spot fell short of

the two-notice requirement. There was no showing of prior warnings on Balais' alleged non-compliance with the salon policy. There was no written notice informing him of his dismissal as in fact the dismissal was done verbally and on-the-spot. Respondents failed to furnish Balais the written notice apprising him of the charges against him, as prescribed by the Labor Code. There was no attempt to serve a notice of dismissal on Balais. Consequently, he was denied due process of law accorded in dismissals.

Reliefs of Illegally Dismissed Employees

Having established that Balais was illegally dismissed, the Court now determines the reliefs that he is entitled to and their extent. Under the law and prevailing jurisprudence, "an illegally dismissed employee is entitled to reinstatement as a matter of right." Aside from the instances provided under Articles 283[17] and 284[18] of the Labor Code, separation pay is, however, granted

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[17] Article 283. *Closure of establishment and reduction of personnel.* The employer may also terminate the employment of any employee due to the installation of labor-saving devices, redundancy, retrenchment to prevent losses or the closing or cessation of operation of the establishment or undertaking unless the closing is for the purpose of circumventing the provisions of this Title, by serving a written notice on the workers and the Ministry of Labor and Employment at least one (1) month before the intended date thereof. In case of termination due to the installation of labor-saving devices or redundancy, the worker affected thereby shall be entitled to a separation pay equivalent to at least his one (1) month pay or to at least one (1) month pay for every year of service, whichever is higher. In case of retrenchment to prevent losses and in cases of closures or cessation of operations of establishment or undertaking not due to serious business losses or financial reverses, the separation pay shall be equivalent to one (1) month pay or at least one-half (1/2) month pay for every year of service, whichever is higher. A fraction of at least six (6) months shall be considered one (1) whole year.

[18] Article 284. *Disease as ground for termination.* — An employer may terminate the services of an employee who has been found to be suffering from any disease and whose continued employment is prohibited by law or is prejudicial to his health as well as to the health of his co-employees: Provided, That he is paid separation pay equivalent to at least one (1) month salary or to one-half (1/2) month salary for every year of service, whichever is greater, a fraction of at least six (6) months being considered as one (1) whole year.

when reinstatement is no longer feasible because of strained relations between the employer and the employee. In cases of illegal dismissal, the accepted doctrine is that separation pay is available in lieu of reinstatement when the latter recourse is no longer practical or in the best interest of the parties.[19]

However, other than the strained relationship between the parties, it appears that respondent salon had already ceased operation of its business, thus, reinstatement is no longer feasible. Consequently, the Court awards separation pay to the petitioner equivalent to one (1) month pay for every year of service, with a fraction of at least six (6) months considered as one (1) whole year, from the time of her illegal dismissal up to the finality of this judgment, as an alternative to reinstatement.[20]

Also, employees who are illegally dismissed are entitled to full backwages, inclusive of allowances and other benefits or their monetary equivalent, computed from the time their actual compensation was withheld from them up to the time of their actual reinstatement but if reinstatement is no longer possible, the backwages shall be computed from the time of their illegal termination up to the finality of the decision. Accordingly, the petitioner is entitled to an award of full backwages from the time he was illegally dismissed up to the finality of this decision.[21]

Balais is likewise entitled to attorney's fees in the amount of 10% of the total monetary award pursuant to Article 111[22] of

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[19] *Cheryll Santos Leus v. St. Scholastica's College Westgrove*, G.R. No. 187226, January 28, 2015.

[20] *Id.*

[21] *Id.*

[22] Art. 111. *Attorney's Fees.*

(a) In cases of unlawful withholding of wages, the culpable party may be assessed attorney's fees equivalent to ten percent of the amount of wages recovered.

(b) It shall be unlawful for any person to demand or accept, in any judicial or administrative proceedings for the recovery of wages, attorney's fees which exceed ten percent of the amount of wages recovered.

the Labor Code. It is settled that where an employee was forced to litigate and, thus, incur expenses to protect his rights and interest, the award of attorney's fees is legally and morally justifiable. Finally, legal interest shall be imposed on the monetary awards herein granted at the rate of six percent (6%) per annum from the finality of this judgment until fully paid.[23]

WHEREFORE, in consideration of the foregoing, the petition is **GRANTED**. The Decision dated February 25, 2011 and the Resolution dated April 19, 2011 of the Court of Appeals in CA-G.R. SP No. 114899 are hereby **REVERSED** and **SET ASIDE**.

The respondents are hereby declared **GUILTY OF ILLEGAL DISMISSAL AND ARE** hereby **ORDERED** to pay the petitioner, Gregorio Balais, Jr., the following:

(a) separation pay in lieu of actual reinstatement equivalent to one (1) month pay for every year of service, with a fraction of at least six (6) months considered as one (1) whole year from the time of his dismissal up to the finality of this Decision;

(b) full backwages from the time of his illegal dismissal up to the finality of this Decision; and

(c) attorney's fees equivalent to ten percent (10%) of the total monetary award.

The monetary awards herein granted shall earn legal interest at the rate of six percent (6%) *per annum* from the date of the finality of this Decision until fully paid. The case is **REMANDED** to the Labor Arbiter for the computation of petitioner's monetary award.

SO ORDERED.

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

Jardeleza, J., on leave.

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[23] *Cheryll Santos Leus v. St. Scholastica's College Westgrove*, G.R. No. 187226, January 28, 2015.

SECOND DIVISION

[G.R. No. 197122. June 15, 2016]

INGRID SALA SANTAMARIA and ASTRID SALA BOZA, *petitioners, vs.* **THOMAS CLEARY,** *respondent.*

[G.R. No. 197161. June 15, 2016]

KATHRYN GO-PEREZ, *petitioner, vs.* **THOMAS CLEARY,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; DEPOSITIONS PENDING ACTION; THERE IS NO DISTINCTION AS TO WHO CAN AVAIL OF DEPOSITION; DEPOSITIONS MAY BE USED WITHOUT THE DEPONENT BEING ACTUALLY CALLED TO THE WITNESS STAND BY THE PROPONENT, UNDER CERTAIN CONDITIONS AND FOR CERTAIN LIMITED PURPOSES.— Utmost freedom governs the taking of depositions to allow the widest scope in the gathering of information by and for all parties in relation to their pending case. x x x As regards the taking of depositions, Rule 23, Section 1 is clear that the testimony of any person may be taken by deposition upon oral examination or written interrogatories at the instance of any party. *San Luis* explained that this provision "does not make any distinction or restriction as to who can avail of deposition." Thus, this Court found it immaterial that the plaintiff was a non-resident foreign corporation and that all its witnesses were Americans residing in the United States. On the use of depositions taken, we refer to Rule 23, Section 4 of the Rules of Court. This Court has held that "depositions may be used without the deponent being actually called to the witness stand by the proponent, under certain conditions and for certain limited purposes." These exceptional cases are enumerated in Rule 23, Section 4(c) x x x. The difference between the *taking* of depositions and the *use* of depositions taken is apparent in Rule 23, which provides separate sections to govern them. Jurisprudence has also discussed the importance of this

distinction and its implications. "x x x ***The right to take statements and the right to use them in court have been kept entirely distinct. The utmost freedom is allowed in taking depositions; restrictions are imposed upon their use. As a result, there is accorded the widest possible opportunity for knowledge by both parties of all the facts before the trial.*** x x x" The rules and jurisprudence support greater leeway in allowing the parties and their witnesses to be deposed in the interest of collecting information for the speedy and complete disposition of cases. x x x [Respondent] invoked Rule 23, Section 4(c)(2) of the Rules of Court and requested to have his deposition taken in Los Angeles as he was "out of the Philippines." x x x That neither the presiding judge nor the parties will be able to personally examine and observe the conduct of a deponent does not justify denial of the right to take deposition. This objection is common to all depositions. Allowing this reason will render nugatory the provisions in the Rules of Court that allow the taking of depositions. x x x That respondent is "not suffering from any impairment, physical or otherwise" does not address the ground raised by respondent in his Motion. Respondent referred to Rule 23, Section 4(c)(2) of the Rules of Court, in that he was "out of the Philippines." This Section does not qualify as to the condition of the deponent who is outside the Philippines.

2. ID.; ID.; ID.; PROTECTIVE ORDERS; MUST BE ISSUED UPON NOTICE AND FOR GOOD CAUSE.— Rule 23, Section 16 of the Rules of Court is on orders for the protection of parties and deponents from annoyance, embarrassment, or oppression. x x x The provision includes a full range of protective orders, from designation the place of deposition, limiting those in attendance, to imposing that it be taken through written interrogatories. At the extreme end of this spectrum would be a court order that completely denies the right to taken deposition. This is what the trial court issued in this case. While Section 16 grants the courts power to issue protective orders, this grant involves discretion on the part of the court, which "must be exercised, not arbitrarily, capriciously or oppressively, but in a reasonable manner and in consonance with the spirit of the law, to the end that its purpose may be attained." A plain reading of this provision shows that there are two (2) requisites before a court may issue a protective order: (1) there must be notice; and (2) the order must be for good cause shown. In

Fortune Corporation v. Court of Appeals, this Court discussed the concept of good cause as used in the rules: "The matter of good cause is to be determined by the court in the exercise of judicial discretion. ***Good cause means a substantial reason—one that affords a legal excuse***. Whether or not substantial reasons exist is for the court to determine, as there is no hard and fast rule for determining the question as to what is meant by the term "for good cause shown." The requirement, however, that good cause be shown for a protective order puts the ***burden on the party seeking relief to show some plainly adequate reasons for the order***. A particular and specific demonstration of facts, as distinguished from conclusory statements, is required to establish good cause for the issuance of a protective order. ***What constitutes good cause furthermore depends upon the kind of protective order that is sought***."

3. ID.; ID.; ID.; DEPOSITION SERVES THE DOUBLE FUNCTION OF A METHOD OF DISCOVERY AND A METHOD OF PRESENTING TESTIMONY.— Jurisprudence has discussed how "[u]nder the concept adopted by the new Rules, the deposition serves the double function of a method of discovery—with use on trial not necessarily contemplated—and a method of presenting testimony." The taking of depositions has been allowed as a departure from open-court testimony. *Jonathan Landoil International Co. Inc. v. Spouses Mangundadatu* is instructive: "The Rules of Court and jurisprudence, however, do not restrict a deposition to the sole function of being a mode of discovery before trial. Under certain conditions and for certain limited purposes, it may be taken even after trial has commenced and may be used without the deponent being actually called to the witness stand. In *Dasmariñas Garments v. Reyes*, we allowed the taking of the witnesses' testimonies through deposition, in lieu of their actual presence at the trial. Thus, ***[d]epositions may be taken at any time after the institution of any action, whenever necessary or convenient***. x x x In keeping with the principle of promoting the just, speedy and inexpensive disposition of every action and proceeding, ***depositions are allowed as a 'departure from the accepted and usual judicial proceedings of examining witnesses in open court*** where their demeanor could be observed by the trial judge.' Depositions are allowed, ***provided they are taken in accordance with the provisions of the Rules of Court*** (that is, with leave of court if the summons have been

served, without leave of court if an answer has been submitted); and provided, further, that a circumstance for their admissibility exists."

4. ID.; ID.; ID.; THE ADMISSIBILITY OF THE DEPOSITION DOES NOT PRECLUDE THE DETERMINATION OF ITS PROBATIVE VALUE AT THE APPROPRIATE TIME.— In any case, Rule 23 of the Rules of Court still allows for objections to admissibility during trial. The difference between admissibility of evidence and weight of evidence has long been laid down in jurisprudence. These two are not to be equated. Admissibility considers factors such as competence and relevance of submitted evidence. On the other hand, weight is concerned with the persuasive tendency of admitted evidence. x x x As regards weight of evidence, "the admissibility of the deposition does not preclude the determination of its probative value at the appropriate time." In resorting to depositions, respondent takes the risk of not being able to fully prove his case.

APPEARANCES OF COUNSEL

Jo & Pintor Law Offices for petitioners Santamaria & Boza.
Palma & Partners for petitioner Go-Perez.
Romulo Mabanta Buenaventura Sayoc & Delos Reyes for respondent Cleary.

D E C I S I O N

LEONEN, *J.*:

This case stems from a motion for court authorization to take deposition in Los Angeles by respondent Thomas Cleary, an American citizen and Los Angeles resident who filed a civil suit against petitioners Ingrid Sala Santamaria, Astrid Sala Boza, and Kathryn Go-Perez before the Regional Trial Court of Cebu.

We resolve whether a foreigner plaintiff residing abroad who chose to file a civil suit in the Philippines is allowed to take deposition abroad for his direct testimony on the ground that he is "out of the Philippines" pursuant to Rule 23, Section 4 (c) (2) of the Rules of Court.

These two separate Petitions[1] assail the Court of Appeals' (1) August 10, 2010 Decision[2] that granted Thomas Cleary's (Cleary) Petition for Certiorari and reversed the trial court's Orders[3] denying Cleary's Motion for Court Authorization to Take Deposition[4] before the Consulate-General of the Philippines in Los Angeles; and (2) May 11, 2011 Resolution[5] that denied reconsideration.

On January 10, 2002, Cleary, an American citizen with office address in California, filed a Complaint[6] for specific performance and damages against Miranila Land Development Corporation, Manuel S. Go, Ingrid Sala Santamaria (Santamaria), Astrid Sala Boza (Boza), and Kathyrn Go-Perez (Go-Perez) before the Regional Trial Court of Cebu.

The Complaint involved shares of stock of Miranila Land Development Corporation, for which Cleary paid US$191,250.00.[7] Cleary sued in accordance with the Stock Purchase and Put Agreement he entered into with Miranila Land Development Corporation, Manuel S. Go, Santamaria, Boza, and Go-Perez. Paragraph 9.02 of the Agreement provides:

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[1] Both Petitions were filed pursuant to Rule 45 of the Rules of Court.

[2] *Rollo* (G.R. No. 197122), pp. 19-24. The Decision was penned by Associate Justice Edwin D. Sorongon and concurred in by Executive Justice Portia A. Hormachuelos and Associate Justice Socorro B. Inting of the Eighteenth Division, Court of Appeals, Cebu City.

[3] *Id.* at 97-98 and 124-125.

[4] *Id.* at 84-87.

[5] *Id.* at 25-26. The Resolution was penned by Executive Justice Portia Aliño-Hormachuelos (Chair) and concurred in by Associate Justices Myra V. Garcia-Fernandez and Nina G. Antonio-Valenzuela of the Eighteenth Division, Court of Appeals, Cebu City.

[6] *Id.* at 27-34; *rollo* (G.R. No. 197161), pp. 47-54. A copy of the Complaint is attached as Annex C of both Petitions. The civil case entitled *Thomas Cleary v. Miranda Land Development Corporation, et al.* was docketed as Civil Case No. CEB-27296.

[7] *Rollo* (G.R. No. 197161), p. 51, Complaint.

Any suit, action or proceeding with respect to this Agreement may be brought in (a) the courts of the State of California, (b) the United States District Court for the Central District of California, or (c) the courts of the country of Corporation's incorporation, as Cleary may elect in his sole discretion, and the Parties hereby submit to any such suit, action proceeding or judgment and waives any other preferential jurisdiction by reason of domicile.[8]

Cleary elected to file the case in Cebu.

Santamaria, Boza, and Go-Perez filed their respective Answers with Compulsory Counterclaims.[9] The trial court then issued a notice of pre-trial conference dated July 4, 2007.[10]

In his pre-trial brief, Cleary stipulated that he would testify "in support of the allegations of his complaint, either on the witness stand or by oral deposition."[11] Moreover, he expressed his intent in availing himself "of the modes of discovery under the rules."[12]

On January 22, 2009, Cleary moved for court authorization to take deposition.[13] He prayed that his deposition be taken before the Consulate-General of the Philippines in Los Angeles and be used as his direct testimony.[14]

Santamaria and Boza opposed[15] the Motion and argued that the right to take deposition is not absolute.[16] They claimed that

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[8] *Id.* at 68, Stock Purchase and Put Agreement.

[9] Santamaria filed an Answer with Compulsory Counterclaims on July 21, 2006 (*rollo* (G.R. No. 197122), p. 60), Boza on March 27, 2007 (*Id.* at 72), and Go-Perez on June 6, 2002 (*rollo* (G.R. No. 197161), p. 80).

[10] *Rollo* (G.R. No. 197161), p. 84, Pre-trial Brief.

[11] *Id.* at 100, Annex F of Petition.

[12] *Id.*

[13] *Rollo* (G.R. No. 197122), pp. 84-87, Annex F of Petition.

[14] *Id.* at 6, Petition; *rollo* (G.R. No. 197161), p. 17, Petition.

[15] *Rollo* (G.R. No. 197122), pp. 88-90, Santamaria and Boza's Opposition.

[16] *Id.* at 88.

Cleary chose the Philippine system to file his suit, and yet he deprived the court and the parties the opportunity to observe his demeanor and directly propound questions on him.[17]

Go-Perez filed a separate Opposition,[18] arguing that the oral deposition was not intended for discovery purposes if Cleary deposed himself as plaintiff.[19] Since he elected to file suit in the Philippines, he should submit himself to the procedures and testify before the Regional Trial Court of Cebu. [20] Moreover, Go-Perez argued that oral deposition in the United States would prejudice, vex, and oppress her and her co-petitioners who would need to incur costs to attend.[21]

The trial court denied Cleary's Motion for Court Authorization to Take Deposition in the Order[22] dated June 5, 2009. It held that depositions are not meant to be a substitute for actual testimony in open court. As a rule, a deponent must be presented for oral examination at trial as required under Rule 132, Section 1 of the Rules of Court. "As the supposed deponent is the plaintiff himself who is not suffering from any impairment, physical or otherwise, it would be best for him to appear in court and testify under oath[.]"[23] The trial court also denied reconsideration. [24]

Cleary elevated the case to the Court of Appeals.

On August 10, 2010, the Court of Appeals granted Cleary's Petition for Certiorari and reversed the trial court's ruling.[25] It

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[17] *Id.* at 89.

[18] *Id.* at 91-96, Go-Perez's Opposition.

[19] *Id.* at 91.

[20] *Id.* at 94.

[21] *Id.* at 92-93.

[22] *Rollo*, (G.R. No. 197161), pp. 125-126. The Order was penned by Presiding Judge Estela Alma A. Singco of Branch 12 of the Regional Trial Court, Cebu.

[23] *Id.* at 126.

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

[25] *Rollo* (G.R. No. 197122), pp. 19-24.

held that Rule 23, Section 1 of the Rules of Court allows the taking of depositions, and that it is immaterial that Cleary is the plaintiff himself.[26] It likewise denied reconsideration.[27]

Hence, the present Petitions were filed.

Petitioners Ingrid Sala Santamaria and Astrid Sala Boza maintain in their appeal that the right of a party to take the deposition of a witness is not absolute.[28] Rather, this right is subject to the restrictions provided by Rule 23, Section 16[29] of the Rules of Court and jurisprudence.[30] They cite *Northwest Airlines v. Cruz*,[31] in that absent any compelling or valid reason, the witness must personally testify in open court according to the general rules on examination of witnesses under Rule 132 of the Rules of Court.[32]

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[26] *Id.* at 21-22.

[27] *Id.* at 25-26.

[28] *Id.* at 252, Santamaria and Boza's Memorandum.

[29] RULES OF COURT, Rule 23, Sec. 16 provides:

SEC. 16. *Orders for the protection of parties and deponents*. — After notice is served for taking a deposition by oral examination, upon motion seasonably made by any party or by the person to be examined and for good cause shown, the court in which the action is pending may make an order that the deposition shall not be taken, or that it may be taken only at some designated place other than that stated in the notice, or that it may be taken only on written interrogatories, or that certain matters shall not be inquired into, or that the scope of the examination shall be held with no one present except the parties to the action and their officers or counsel, or that after being sealed the deposition shall be opened only by order of the court, or that secret processes, developments, or research need not be disclosed, or that the parties shall simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court or the court may make any other order which justice requires to protect the party or witness from annoyance, embarrassment, or oppression. (16a, R24)

[30] *Rollo* (G.R. No. 197122), p. 252.

[31] 376 Phil. 96 (1999) [Per *J.* Kapunan, First Division].

[32] *Rollo* (G.R. No. 197122), p. 253.

Likewise, petitioners Santamaria and Boza submit that Cleary cannot, for his sole convenience, substitute his open-court testimony by having his deposition taken in the United States.[33] This will be very costly, time-consuming, disadvantageous, and extremely unfair to petitioners and their counsels who are based in the Philippines.[34]

Petitioners Santamaria and Boza argue that the proposed deposition in this case is not for discovery purposes as Cleary is the plaintiff himself.[35] The Court of Appeals Decision gives foreigners undue advantage over Filipino litigants in cases under similar circumstances, where the parties and the presiding judge do not have the opportunity to personally examine and observe the conduct of the testifying witness.[36] Thus, the court's suggestion for written interrogatories is also not proper as open-court testimony is different from mere serving of written interrogatories.[37]

Lastly, petitioners Santamaria and Boza claim that Cleary's sole allegation that he is a resident "out of the Philippines" does not warrant departure from open-court trial procedure under Rule 132, Section 1 of the Rules of Court.[38]

In her Petition, petitioner Kathryn Go-Perez makes two (2) arguments. First, she contends that granting a petition under Rule 65 involves a finding of grave abuse of discretion, but the Court of Appeals only found "error" in the trial court orders.[39] She cites *Triplex Enterprises v. PNB-Republic Bank*[40] and *Yu v. Reyes-Carpio*,[41] in that a writ of certiorari is restricted to

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[33] *Id.* at 254.

[34] *Id.* at 255.

[35] *Id.*

[36] *Id.* at 256.

[37] *Id.* at 257.

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

[39] *Id.* at 270-275, Go-Perez's Memorandum.

[40] 527 Phil. 685 (2006) [Per *J.* Corona, Second Division].

[41] 667 Phil. 474 (2011) [Per *J.* Velasco, Jr., First Division].

extraordinary cases where the act of the lower court is void.[42] It is designed to correct errors of jurisdiction and not errors of judgment.[43] *People v. Hubert Webb*[44] has held that the use of discovery procedures is directed to the sound discretion of the trial judge and certiorari will be issued only to correct errors of jurisdiction.[45] It cannot correct errors of procedure or mistakes in the findings or conclusions by the lower court.[46]

Second, petitioner Go-Perez submits that the Court of Appeals erred in disregarding Rule 23, Section 16 of the Rules of Court, which imposes limits on the right to take deposition.[47] Cleary's self-deposition in the United States, which is not for discovery purposes, is oppressive, vexatious, and bordering on harassment.[48] The Court of Appeals also erred in ignoring applicable jurisprudence such as *Northwest*, where this Court found that the deposition taken in the United States was to accommodate the petitioner's employee who was there, and not for discovery purposes. Thus, the general rules on examination of witnesses under Rule 132 of the Rules of Court should be observed.[49]

Lastly, petitioner Go-Perez contends that the Court of Appeals ignored Rule 132, Section 1 of the Rules of Court, which provides that a witness must testify in open court.[50] That Cleary is the plaintiff himself is material as there is nothing for him to discover when he deposes himself.[51]

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[42] *Rollo* (G.R. No. 197122), pp. 272-273.

[43] *Id.*

[44] 371 Phil. 491 (1999) [Per J. Ynares-Santiago, First Division].

[45] *Id.* at 273-274.

[46] *Rollo* (G.R. No. 197122), pp. 273-274.

[47] *Id.* at 275.

[48] *Id.* at 277.

[49] *Id.* at 278.

[50] *Id.* at 279.

[51] *Id.* at 281.

On the other hand, respondent Thomas Cleary maintains that Rule 23, Section 4 of the Rules of Court on the taking of deposition applies.[52] He is "out of the Philippines" as an American citizen residing in the United States. This is true even when he entered the Stock Purchase and Put Agreement with petitioners in 1999 and filed the case in 2009.[53] Cleary cites *Dasmariñas Garments v. Rey*es[54] and *San Luis v. Rojas*.[55] The trial court even "previously scheduled the hearing subject to the notice from the Department of Foreign Affairs for the taking of deposition."[56] However, this was later disallowed upon petitioners' opposition.[57]

Respondent submits that the rules on depositions do not authorize nor contemplate any intervention by the court in the process. All that is required under the rules is that "reasonable notice" be given "in writing to every other party to the action[.]"[58] Thus, the trial court's discretion in ruling on whether a deposition may be taken is not unlimited.[59]

Respondent adds that this Court has allowed the taking of testimonies through deposition in lieu of their actual presence at trial.[60] He argues that with the new rules, depositions serve as both a method of discovery and a method of presenting testimony.[61] That the court cannot observe a deponent's demeanor is insufficient justification to disallow deposition. Otherwise,

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[52] *Id.* at 232-233, Cleary's Memorandum.

[53] *Id.* at 233.

[54] G.R. No. 108229, August 24, 1993, 225 SCRA 622, 629-632 [Per *C.J.* Narvasa, Second Division].

[55] 571 Phil. 51, 69-71 (2008) [Per *J.* Austria-Martinez, Third Division].

[56] *Rollo* (G.R. No. 197122), p. 233, Go-Perez's Memorandum.

[57] *Id.*

[58] *Id.* at 236, citing *Dasmariñas Garments v. Reyes*, G.R. No. 108229, August 24, 1993, 225 SCRA 622, 632 [Per *C.J.* Narvasa, Second Division].

[59] *Id.*

[60] *Id.* at 237.

[61] *Id.*

no deposition can ever be taken as this objection is common to all depositions.[62]

Respondent contends that *Northwest* does not apply as the deposition in that case was found to have been improperly and irregularly taken.[63]

Lastly, respondent argues that the presiding judge of the trial court acted with grave abuse of discretion in denying his Motion for Court Authorization to Take Deposition.[64] That he is an American residing in the United States is undisputed. The trial court even issued the Order dated January 13, 2009 directing him to inform the court of the "steps he . . . has taken and the progress of his request for a deposition taking filed, if any, with the Department of Justice."[65] In later disallowing the deposition as he is "not suffering from any impairment, physical or otherwise," the presiding judge acted in an arbitrary manner amounting to lack of jurisdiction.[66] The deposition sought is in accordance with the rules. The expenses in attending a deposition proceeding in the United States cannot be considered as a substantial reason to disallow deposition since petitioners may send cross-interrogatories.[67]

These consolidated Petitions seek a review of the Court of Appeals Decision reversing the trial court's ruling and allowing Cleary to take his deposition in the United States. Thus, the issues for resolution are:

First, whether the limitations for the taking of deposition under Rule 23, Section 16 of the Rules of Court apply in this case; and

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[62] *Id.* at 238.

[63] *Id.* at 237.

[64] *Id.* at 239.

[65] *Id.*

[66] *Id.* at 240.

[67] *Id.* at 241.

Second, whether the taking of deposition under Rule 23, Section 4 (c) (2) of the Rules of Court applies to a non-resident foreigner plaintiff's direct testimony.

I

Utmost freedom governs the taking of depositions to allow the widest scope in the gathering of information by and for all parties in relation to their pending case.[68] The relevant section in Rule 23 of the Rules of Court provides:

RULE 23
DEPOSITIONS PENDING ACTION

SECTION 1. *Depositions pending action, when may be taken.* — By leave of court after jurisdiction has been obtained over any defendant or over property which is the subject of the action, or without such leave after an answer has been served, ***the testimony of any person, whether a party or not, may be taken, at the instance of any party, by deposition upon oral examination or written interrogatories***. The attendance of witnesses may be compelled by the use of a subpoena as provided in Rule 21. Depositions shall be taken only in accordance with these Rules. The deposition of a person confined in prison may be taken only by leave of court on such terms as the court prescribes. (Emphasis supplied)

As regards the taking of depositions, Rule 23, Section 1 is clear that the testimony of any person may be taken by deposition upon oral examination or written interrogatories at the instance of any party.

San Luis explained that this provision "does not make any distinction or restriction as to who can avail of deposition."[69] Thus, this Court found it immaterial that the plaintiff was a non-resident foreign corporation and that all its witnesses were Americans residing in the United States.[70]

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[68] See *Fortune Corp. v. Court of Appeals*, G.R. No. 108119, January 19, 1994, 229 SCRA 355, 376 [Per *J.* Regalado, Second Division].

[69] *San Luis v. Rojas*, 571 Phil. 51, 65 (2008) [Per *J.* Austria-Martinez, Third Division].

[70] *Id.*

On the use of depositions taken, we refer to Rule 23, Section 4 of the Rules of Court. This Court has held that "depositions may be used without the deponent being actually called to the witness stand by the proponent, under certain conditions and for certain limited purposes."[71] These exceptional cases are enumerated in Rule 23, Section 4 (c) as follows:

> SEC 4. *Use of depositions.* — At the trial or upon the hearing of a motion or an interlocutory proceeding, any part or all of a deposition, so far as admissible under the rules of evidence, may be used against any party who was present or represented at the taking of the deposition or who had due notice thereof, in accordance with any one of the following provisions:
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> x x x x x x x x x
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> (c) The deposition of a witness, whether or not a party, may be used by any party for any purpose if the court finds: (1) that the witness is dead; or ***(2) that the witness resides at distance more than one hundred (100) kilometers from the place of trial or hearing, or is out of the Philippines, unless it appears that his absence was procured by the party offering the deposition;*** or (3) that the witness is unable to attend or testify because of age, sickness, infirmity, or imprisonment; or (4) that the party offering the deposition has been unable to procure the attendance of the witness by subpoena; or (5) upon application and notice, that such exceptional circumstances exist as to make it desirable, in the interest of justice and with due regard to the importance of presenting the testimony of witnesses orally in open court, to allow the deposition to be used[.] (Emphasis supplied)

The difference between the *taking* of depositions and the *use* of depositions taken is apparent in Rule 23, which provides separate sections to govern them. Jurisprudence has also discussed the importance of this distinction and its implications:

> The availability of the proposed deponent to testify in court does not constitute "good cause" to justify the court's order that his deposition shall not be taken. That the witness is unable to attend or testify is one of the grounds when the deposition of a witness

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[71] *Dasmariñas Garments v. Reyes*, G.R. No. 108229, August 24, 1993, 225 SCRA 622, 630 [Per *C.J.* Narvasa, Second Division].

may be used in court during the trial. But the same reason cannot be successfully invoked to prohibit the taking of his deposition.

The right to take statements and the right to use them in court have been kept entirely distinct. The utmost freedom is allowed in taking depositions; restrictions are imposed upon their use. As a result, there is accorded the widest possible opportunity for knowledge by both parties of all the facts before the trial. Such of this testimony as may be appropriate for use as a substitute for *viva voce* examination may be introduced at the trial; the remainder of the testimony, having served its purpose in revealing the facts to the parties before trial, drops out of the judicial picture.

. . . [U]nder the concept adopted by the new Rules, the deposition serves the double function of a method of discovery — with use on trial not necessarily contemplated — and a method of presenting testimony. Accordingly, no limitations other than relevancy and privilege have been placed on the taking of depositions, while the use at the trial is subject to circumscriptions looking toward the use of oral testimony wherever practicable.[72] (Emphasis supplied)

The rules and jurisprudence support greater leeway in allowing the parties and their witnesses to be deposed in the interest of collecting information for the speedy and complete disposition of cases.

In opposing respondent's Motion for Court Authorization to Take Deposition, petitioners contest at the deposition-taking stage. They maintain that the right to take deposition is subject to the restrictions found in Rule 23, Section 16 of the Rules of Court on orders for the protection of parties and deponents.[73]

II

Rule 23, Section 16 of the Rules of Court is on orders for the protection of parties and deponents from annoyance, embarrassment, or oppression. The provision reads:

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[72] *Hyatt Industrial v. Ley Construction*, 519 Phil. 272, 288-289 (2006) [Per *J.* Austria-Martinez, First Division], citing *Fortune Corporation v. Court of Appeals*, G.R. No. 108119, January 19, 1994, 229 SCRA 355, 376-377 [Per *J.* Regalado, Second Division].

[73] *Rollo* (G.R. No. 197122), p. 252, Santamaria and Boza's Memorandum.

SEC. 16. *Orders for the protection of parties and deponents.* — After notice is served for taking a deposition by oral examination, upon motion seasonably made by any party or by the person to be examined and for good cause shown, the court in which the action is pending may make an order that the deposition shall not be taken, or that it may be taken only at some designated place other than that stated in the notice, or that it may be taken only on written interrogatories, or that certain matters shall not be inquired into, or that the scope of the examination shall be held with no one present except the parties to the action and their officers or counsel, or that after being sealed the deposition shall be opened only by order of the court, or that secret processes, developments, or research need not be disclosed, or that the parties shall simultaneously file specified documents or information enclosed in sealed envelopes to be opened as directed by the court or the court may make any other order which justice requires ***to protect the party or witness from annoyance, embarrassment, or oppression***. (Emphasis supplied)

The provision includes a full range of protective orders, from designating the place of deposition, limiting those in attendance, to imposing that it be taken through written interrogatories. At the extreme end of this spectrum would be a court order that completely denies the right to take deposition. This is what the trial court issued in this case.

While Section 16 grants the courts power to issue protective orders, this grant involves discretion on the part of the court, which "must be exercised, not arbitrarily, capriciously or oppressively, but in a reasonable manner and in consonance with the spirit of the law, to the end that its purpose may be attained."[74]

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[74] *Fortune Corp. v. Court of Appeals*, G.R. No. 108119, January 19, 1994, 229 SCRA 355, 368 [Per *J.* Regalado, Second Division]. *Fortune* cites *Lopez v. Maceren*, 95 Phil. 753, 756-757 (1954) [Per *J.* Concepcion, *En Banc*] on the objectives of Rule 24 (then Rule 18), Sec. 16:

"Referring to the objective of Section 16 of then Rule 18 (now Rule 24) of the Rules of Court, former Chief Justice Manuel V. Moran had these comments:

The advisory committee of the United States Supreme Court said that this provision is ***intended to be one of the safeguards for the protection of the parties and deponents on account of the unrestricted right to discovery***

A plain reading of this provision shows that there are two (2) requisites before a court may issue a protective order: (1) there must be notice; and (2) the order must be for good cause shown. In *Fortune Corporation v. Court of Appeals,*[75] this Court discussed the concept of good cause as used in the rules:

The matter of good cause is to be determined by the court in the exercise of judicial discretion. ***Good cause means a substantial reason — one that affords a legal excuse***. Whether or not substantial

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given by Sections 1 and 2 of this Rule. A party may take the deposition of a witness who knows nothing about the case, with the only purpose of annoying him or wasting the time of the other parties. In such case, the court may, on motion, order that the deposition shall not be taken. ***Or, a party may designate a distinct place for the taking of a deposition, and the adverse party may not have sufficient means to reach that place, because of poverty or otherwise, in which case the court, on motion, may order that the deposition be taken at another place, or that it be taken by written interrogatories.*** The party serving the notice may wish to inquire into matters the disclosure of which may be oppressive or embarrassing to the deponent, especially if the disclosure is to be made in the presence of third persons, or, the party serving the notice may attempt to inquire into matters which are absolutely private of the deponent, the disclosure of which may affect his interests and is not absolutely essential to the determination of the issues involved in the case. Under such circumstances, the court, on motion, may order 'that certain matter shall not be inquired into or that the scope of the examination shall be limited to certain matters, or that the examination shall be held with no one present except the parties to the action and their officers or counsel, or that after being sealed the deposition shall be opened only by order of the court, or that secret processes, developments, or research need not be disclosed, or that the parties shall simultaneously file specific documents or informations enclosed in sealed envelopes to be opened as directed by the court.' In other words, this provision affords the adverse party, as well as the deponent, sufficient protection against abuses that may be committed by a party in the exercise of his unlimited right to discovery. As a writer said: 'Any discovery involves a prying into another person's affairs, a prying that is quite justified if it is to be a legitimate aid to litigation, but not justified if it is not to be such an aid.' For this reason, ***courts are given ample powers to forbid discovery which is intended not as an aid to litigation, but merely to annoy, embarrass or oppress either the deponent or the adverse party, or both***" (*Id.* at 368-369; emphasis supplied).

[75] G.R. No. 108119, January 19, 1994, 229 SCRA 355 [Per *J.* Regalado, Second Division].

reasons exist is for the court to determine, as there is no hard and fast rule for determining the question as to what is meant by the term "for good cause shown."

The requirement, however, that good cause be shown for a protective order puts the ***burden on the party seeking relief to show some plainly adequate reasons for the order***. A particular and specific demonstration of facts, as distinguished from conclusory statements, is required to establish good cause for the issuance of a protective order. ***What constitutes good cause furthermore depends upon the kind of protective order that is sought***.

In light of the general philosophy of full discovery of relevant facts and the board statement of scope in Rule 24, and in view of the power of the court under Sections 16 and 18 of said Rule to control the details of time, place, scope, and financing for the protection of the deponents and parties, ***it is fairly rare that it will be ordered that a deposition should not be taken at all.*** All motions under these subparagraphs of the rule must be supported by "good cause" and a strong showing is required before a party will be denied entirely the right to take a deposition. A mere allegation, without proof, that the deposition is being taken in bad faith is not a sufficient ground for such an order. Neither is an allegation that it will subject the party to a penalty or forfeiture. The mere fact that the information sought by deposition has already been obtained through a bill of particulars, interrogatories, or other depositions will not suffice, although if it is entirely repetitious a deposition may be forbidden. The allegation that the deponent knows nothing about the matters involved does not justify prohibiting the taking of a deposition, nor that whatever the witness knows is protected by the "work product doctrine," nor that privileged information or trade secrets will be sought in the course of the examination, nor that all the transactions were either conducted or confirmed in writing.[76] (Emphasis supplied, citations omitted)

Thus, we consider the trial court's explanation for its denial of respondent's Motion for Court Authorization to Take Deposition. The trial court's Order was based on two (2) premises: first, that respondent should submit himself to our court processes since he elected to seek judicial relief with our courts; and second,

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[76] *Id.* at 371-372.

that respondent is not suffering from any impairment and it is best that he appear before our courts considering he is the plaintiff himself.[77]

III

On the first premise, apparent is the concern of the trial court in giving undue advantage to non-resident foreigners who file suit before our courts but do not appear to testify. Petitioners support this ruling. They contend that the open-court examination of witnesses is part of our judicial system. Thus, there must be compelling reason to depart from this procedure in order to avoid suits that harass Filipino litigants before our courts.[78] Moreover, they argue that it would be costly, time-consuming, and disadvantageous for petitioners and their counsels to attend the deposition to be taken in Los Angeles for the convenience of respondent.[79]

In the Stock Purchase and Put Agreement, petitioners and respondent alike agreed that respondent had the sole discretion to elect the venue for filing any action with respect to it.

Paragraph 9.02 of the Agreement is clear that the parties "waive any other preferential jurisdiction by reason of domicile."[80] If respondent filed the suit in the United States — which he had the option to do under the Agreement — this would have been even more costly, time-consuming, and disadvantageous to petitioners who are all Filipinos residing in the Philippines.

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[77] *Rollo* (G.R. No. 197122), p. 98, Regional Trial Court Order states:

"As correctly pointed out by the defendants, as plaintiff elected to seek judicial relief in the Philippines, he should submit himself to the processes and procedures as provided by the Rules of Court. As the supposed deponent is the plaintiff himself who is not suffering from any impairment, physical or otherwise, it would be best for him to appear in court and testify under oath, and have a fair contest with the basic issues and facts disclosed to the fullest practicable extent."

[78] *Id.* at 256, Santamaria and Boza's Memorandum.

[79] *Id.* at 255.

[80] *Rollo* (G.R. No. 197161), p. 68, Stock Purchase and Put Agreement.

There is no question that respondent can file the case before our courts. With respondent having elected to file suit in Cebu, the bone of contention now is on whether he can have his deposition taken in the United States. The trial court ruled that respondent should consequently submit himself to the processes and procedures under the Rules of Court.

Respondent did avail himself of the processes and procedures under the Rules of Court when he filed his Motion. He invoked Rule 23, Section 4 (c) (2) of the Rules of Court and requested to have his deposition taken in Los Angeles as he was "out of the Philippines."

Moreover, Rule 23, Section 1 of the Rules of Court no longer requires leave of court for the taking of deposition after an answer has been served. According to respondent, he only sought a court order when the Department of Foreign Affairs required one so that the deposition may be taken before the Philippine Embassy or Consulate.[81]

That neither the presiding judge nor the parties will be able to personally examine and observe the conduct of a deponent does not justify denial of the right to take deposition. This objection is common to all depositions.[82] Allowing this reason will render nugatory the provisions in the Rules of Court that allow the taking of depositions.

As suggested by the Court of Appeals, the parties may also well agree to take deposition by written interrogatories[83] to afford

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[81] *Rollo* (G.R. No. 197122), pp. 84-87.

[82] *Fortune Corp. v. Court of Appeals*, G.R. No. 108119, January 19, 1994, 229 SCRA 355, 377 [Per *J*. Regalado, Second Division], citing *Lopez v. Maceren*, 95 Phil. 753 (1954) [Per *J.* Concepcion, *En Banc*].

[83] RULES OF COURT, Rule 23, Sec. 25 provides:

> SEC. 25. *Deposition upon written interrogatories*; service of notice and of interrogatories. — A party desiring to take the deposition of any person upon written interrogatories shall serve them upon every other party with a notice stating the name and address of the person who is to answer them and the name or descriptive title and address of the officer before whom the deposition is to be taken. Within ten (10) days thereafter,

petitioners the opportunity to cross-examine without the need to fly to the United States.[84]

The second premise is also erroneous. That respondent is "not suffering from any impairment, physical or otherwise" does not address the ground raised by respondent in his Motion. Respondent referred to Rule 23, Section 4 (c) (2) of the Rules of Court, in that he was "out of the Philippines."[85] This Section does not qualify as to the condition of the deponent who is outside the Philippines.

IV

Petitioners argue that the deposition sought by respondent is not for discovery purposes as he is the plaintiff himself.[86] To support their contention, they cite *Northwest*, where this Court held that Rule 132 of the Rules of Court — on the examination of witnesses in open court — should be observed since the deposition was only to accommodate the petitioner's employee who was in the United States, and not for discovery purposes.[87]

Jurisprudence has discussed how "[u]nder the concept adopted by the new Rules, the deposition serves the double function of a method of discovery — with use on trial not necessarily contemplated — and a method of presenting testimony."[88] The taking of depositions has been allowed as a departure from open-

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a party so served may serve cross-interrogatories upon the party proposing to take the deposition. Within five (5) days thereafter, the latter may serve re-direct interrogatories upon a party who has served cross-interrogatories. Within three (3) days after being served with re-direct interrogatories, a party may serve recross-interrogatories upon the party proposing to take the deposition.

[84] *Rollo* (G.R. No. 197122), p. 22, Court of Appeals Decision.

[85] *Id.* at 84.

[86] *Id.* at 255, Santamaria and Boza's Memorandum.

[87] *Id.* at 278, Go-Perez's Memorandum, citing *Northwest Airlines, Inc. v. Cruz*, 376 Phil. 96, 112 (1999) [Per *J.* Kapunan, First Division].

[88] *Fortune Corporation v. Court of Appeals*, G.R. No. 108119, January 19, 1994, 229 SCRA 355, 377 [Per *J.* Regalado, Second Division].

court testimony. *Jonathan Landoil International Co., Inc. v. Spouses Mangundadatu*[89] is instructive:

> The Rules of Court and jurisprudence, however, do not restrict a deposition to the sole function of being a mode of discovery before trial. Under certain conditions and for certain limited purposes, it may be taken even after trial has commenced and may be used without the deponent being actually called to the witness stand. In *Dasmariñas Garments v. Reyes*, we allowed the taking of the witnesses' testimonies through deposition, in lieu of their actual presence at the trial.
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> Thus, ***"[d]epositions may be taken at any time after the institution of any action, whenever necessary or convenient.*** There is no rule that limits deposition-taking only to the period of pre-trial or before it; no prohibition against the taking of depositions after pre-trial." There can be no valid objection to allowing them during the process of executing final and executory judgments, when the material issues of fact have become numerous or complicated.
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> In keeping with the principle of promoting the just, speedy and inexpensive disposition of every action and proceeding, ***depositions are allowed as a "departure from the accepted and usual judicial proceedings of examining witnesses in open court*** where their demeanor could be observed by the trial judge." Depositions are allowed, ***provided they are taken in accordance with the provisions of the Rules of Court*** (that is, with leave of court if the summons have been served, without leave of court if an answer has been submitted); and provided, further, that a circumstance for their admissibility exists.
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> When a deposition does not conform to the essential requirements of law and may reasonably cause material injury to the adverse party, its taking should not be allowed. This was the primary concern in *Northwest Airlines v. Cruz*. In that case, the ends of justice would be better served if the witness was to be brought to the trial court to testify. The locus of the oral deposition therein was not within the reach of ordinary citizens, as there were time constraints; and the trip required a travel visa, bookings, and a substantial travel fare. In *People v. Webb*, the taking of depositions was unnecessary,

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[89] 480 Phil. 236 (2004) [Per *J.* Panganiban, Third Division].

since the trial court had already admitted the Exhibits on which the witnesses would have testified. (Emphasis supplied)[90]

Petitioners rely on *Northwest* in that absent any compelling or valid reason, the witness must personally testify in open court.[91] They add that the more recent *Republic v. Sandiganbayan*[92] reiterated the rulings in *Northwest*;[93] specifically, that *Northwest* emphasized that the "court should always see to it that the safeguards for the protection of the parties and deponents are firmly maintained."[94] Moreover, "[w]here the deposition is taken not for discovery purposes, but to accommodate the deponent, then the deposition should be rejected in evidence."[95] *Northwest* and *Republic* are not on all fours with this case.

Northwest involved a deposition in New York found to have been irregularly taken. The deposition took place on July 24, 1995, two (2) days before the trial court issued the order allowing deposition.[96] The Consul that swore in the witness and the stenographer was different from the Consulate Officer who undertook the deposition proceedings.[97] In this case, on the other

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[90] *Id.* at 254-256, citing *Dasmariñas Garments v. Reyes*, G.R. No. 108229, August 24, 1993, 225 SCRA 622, 634-635 [Per *C.J.* Narvasa, Second Division]; *East Asiatic Co., Ltd., v. CIR*, 148-B Phil. 401, 425 (1971) [Per *J.* Barredo, *En Banc*]; *Northwest Airlines, Inc. v. Cruz*, 376 Phil. 96, 111 (1999) [Per *J.* Kapunan, First Division]; *Lopez v. Maceren*, 95 Phil. 753, 756 (1954) [Per *J.* Concepcion, *En Banc*]; *People v. Webb*, 371 Phil. 491 (1999) [Per *J.* Ynares-Santiago, First Division]; RULES OF COURT, Rule 1, Sec. 6; Rule 23, Sec. 4; Rule 134.

[91] *Rollo* (G.R. No. 197122), p. 278.

[92] 678 Phil. 358 (2011) [Per *J.* Brion, *En Banc*].

[93] *Rollo* (G.R. No. 197122), p. 280.

[94] *Northwest Airlines, Inc. v. Cruz*, 376 Phil. 96, 111 (1999) [Per *J.* Kapunan, First Division].

[95] *Republic v. Sandiganbayan*, 678 Phil. 358, 415 (2011) [Per *J.* Brion, *En Banc*].

[96] *Northwest Airlines, Inc. v. Cruz*, 376 Phil. 96, 102 (1999) [Per *J.* Kapunan, First Division].

[97] *Id.* at 113.

hand, deposition taking was not allowed by the trial court to begin with.

In *Northwest*, respondent Camille Cruz's opposition to the notice for oral deposition included a suggestion for written interrogatories as an alternative.[98] This would have allowed cross-interrogatories, which would afford her the opportunity to rebut matters raised in the deposition in case she had contentions. However, this suggestion was denied by the trial court for being time-consuming.[99] In this case, petitioners argued even against written interrogatories for being a mile of difference from open-court testimony.[100]

In *Republic*, the issue involved Rule 23, Section 4 (c) (3) of the Rules of Court in relation to Rule 130, Section 47 on testimonies and depositions at a former proceeding.[101] The deposition of Maurice Bane was taken in London for one case, and what the court disallowed was its *use* in another case.[102]

In sum, Rule 23, Section 1 of the Rules of Court gives utmost freedom in the taking of depositions. Section 16 on protection orders, which include an order that deposition not be taken, may only be issued after notice and for good cause shown. However, petitioners' arguments in support of the trial court's Order denying the taking of deposition fails to convince as good cause shown.

The civil suit was filed pursuant to an agreement that gave respondent the option of filing the case before our courts or the courts of California. It would have been even more costly, time-consuming, and disadvantageous to petitioners had respondent filed the case in the United States.

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[98] *Id.* at 102.

[99] *Id.* at 113.

[100] *Rollo* (G.R. No. 197122), p. 257.

[101] *Republic v. Sandiganbayan*, 678 Phil. 358, 408-414 (2011) [Per *J.* Brion, *En Banc*].

[102] *Id.* at 414-416.

Further, it is of no moment that respondent was not suffering from any impairment. Rule 23, Section 4 (c) (2) of the Rules of Court, which was invoked by respondent, governs the use of depositions taken. This allows the use of a deposition taken when a witness is "out of the Philippines."

In any case, Rule 23 of the Rules of Court still allows for objections to admissibility during trial. The difference between admissibility of evidence and weight of evidence has long been laid down in jurisprudence. These two are not to be equated. Admissibility considers factors such as competence and relevance of submitted evidence. On the other hand, weight is concerned with the persuasive tendency of admitted evidence.[103]

The pertinent sections of Rule 23 on admissibility are:

> SEC. 6. *Objections to admissibility*. — Subject to the provisions of Section 29 of this Rule, objection may be made at the trial or hearing to receiving in evidence any deposition or part thereof for any reason which would require the exclusion of the evidence if the witness were then present and testifying.
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> SEC. 29. *Effect of errors and irregularities in depositions.* . . .
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> (c) *As to competency and relevancy of evidence.* — Objections to the competency of a witness or the competency, relevancy [sic], or materiality of testimony are not waived by failure to make them before or during the taking of the deposition, unless the ground of the objection is one which might have been obviated or removed if presented at that time[.]

As regards weight of evidence, "the admissibility of the deposition does not preclude the determination of its probative

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[103] *Ayala Land, Inc. v. Tagle*, 504 Phil. 94, 103-104 (2005) [Per *J.* Chico-Nazario, Second Division], citing *Permanent Savings and Loan Bank v. Velarde*, 482 Phil. 193, 202-203 (2004) [Per *J.* Austria-Martinez, Second Division]; *PNOC Shipping and Transport Corporation v. Court of Appeals*, 358 Phil. 38, 60 (1998) [Per *J.* Romero, Third Division]; *De la Torre v. Court of Appeals*, 355 Phil. 628, 641 (1998) [Per *J.* Mendoza, Second Division].

value at the appropriate time."[104] In resorting to depositions, respondent takes the risk of not being able to fully prove his case.

Thus, we agree with the Court of Appeals in granting the Petition for Certiorari and reversing the trial court's denial of respondent's Motion for Court Authorization to Take Deposition.

WHEREFORE, the Petitions are **DENIED** for lack of merit.

SO ORDERED.

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

Brion and *del Castillo, JJ.,* on official leave.

FIRST DIVISION

[G.R. No. 197393. June 15, 2016]

PHILIPPINE SAVINGS BANK, *petitioner, vs.* **MANUEL P. BARRERA,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR CODE; APPEALS; APPEAL FROM LABOR ARBITER'S MONETARY AWARD; SUPERSEDEAS BOND; BONDS ISSUED BY A REPUTABLE BONDING COMPANY DULY ACCREDITED BY THE SUPREME COURT ARE ACCEPTABLE IN LABOR CASES.— [In *U-Bix Corp. v. Hollero,*] both the NLRC and the CA held that the *supersedeas* bond posted by petitioners had no force and effect, because a perusal of the bond revealed that the Certification of Accreditation and Authority issued by the OCA covers an authority to transact surety business in relation to "civil/special

[104] *Id.* at 103.

proceedings cases only" and does not include labor cases filed before the NLRC. The Court therein ruled that the bonds may also be used for labor cases. In the present case, the CA overlooked the fact that it is within the province of the NLRC to accredit surety companies for cases it hears. The Supreme Court only accredits surety companies for judicial courts x x x. This fact explains why labor cases were not enumerated in the Certification of Accreditation and Authority issued to the PCIC. This is not to say that the certification issued by the OCA is worthless before the NLRC. On the contrary, the 2005 Revised Rules of Procedure of the NLRC expressly provided that bonds issued by a reputable bonding company duly accredited by the Supreme Court are acceptable.

2. ID.; ID.; ID.; ID.; ID.; THE REQUIREMENT OF POSTING A SUPERSEDEAS BOND FOR THE PERFECTION OF AN APPEAL MAY BE RELAXED WHEN THERE HAS BEEN SUBSTANTIAL COMPLIANCE WITH THE RULE.— [T]he Court has relaxed the requirement of posting a *supersedeas* bond for the perfection of an appeal when there has been substantial compliance with the rule. For example, in *Del Rosario* v. *Philippine Journalists, lnc.*, the Court allowed the appeal to proceed despite the subsequent revocation of the authority of a bonding company, because "technical rules of procedure should not hamper the quest for justice and truth." We find that the purpose of the appeal bond — to ensure, during the period of appeal, against any occurrence that would defeat or diminish recovery by the aggrieved employees under the judgment if subsequently affirmed — has been met. Records show that as of 22 January 2011, the *supersedeas* bond in the amount of ₱476,137.39 was still in existence. Generally, only errors of law are reviewed by this Court in petitions for review. However, there are well-recognized exceptions to this rule, as in this case, when the factual findings of the NLRC contradict those of the labor arbiter. In the interest of judicial economy and efficiency, and given that the records are sufficient to make a determination of the validity of respondent's dismissal, the Court has decided to reevaluate and review the factual findings.

3. ID.; ID.; TERMINATION OF EMPLOYMENT; JUST CAUSES; LOSS OF CONFIDENCE; THE BANK EMPLOYEE'S FAILURE TO STRICTLY COMPLY WITH THE BANK'S STANDARD OPERATING PROCEDURE

AND HIS COMPLICITY IN THE ISSUANCE OF FRAUDULENT BANK CERTIFICATIONS JUSTIFY THE LOSS OF CONFIDENCE IN CASE AT BAR.— The loss of confidence had sufficient basis. As an account and marketing officer, respondent was tasked with the approval of loans, which is an element of a core banking function. Without a doubt, he was entrusted with delicate matters, including the custody, handling, care and protection of the bank's assets. Given the sensitive functions of his position, he was expected to strictly observe and comply with the bank's standard operating procedures. x x x The bank has an existing policy on user IDs and passwords: BOPD Code 003-01-04.2 dated 6 August 2002, obligating designated branch personnel to keep their passwords confidential at all times. The purpose was to establish accountabilities and limit control over transactions and/or functions. Respondent, who was one of those branch personnel so designated, disclosed his password to another employee, who later disclosed it to a contractual employee. x x x On 19 October 2001, the bank released IOL No. OPS 01-023 regarding the issuance of bank certifications for deposits and loans x x x. We cannot fault petitioner for dismissing a bank officer who has failed to grasp the significance of bank certifications despite his employment with the bank for seven years. x x x Indeed, the question of whether the employee received monetary consideration for the issuance of fraudulent bank certificates was immaterial; what was reprehensible was that the employee allowed himself to be a conduit for defrauding persons and/or institutions that relied on the certificates.

4. ID.; ID.; ID.; GROSS AND HABITUAL NEGLIGENCE; COMMITTED WHEN THE BANK EMPLOYEE IN CASE AT BAR DELEGATED THE FUNCTION THAT HAD BEEN SPECIFICALLY REPOSED IN HIM AND WHEN HE FAILED TO EXERCISE THE REQUISITE AMOUNT OF DILIGENCE IN SIGNING BANK CERTIFICATIONS. — [R]espondent also demonstrated gross and habitual negligence when he delegated a function that had been specifically reposed in him. His thoughtless disregard of the consequences of allowing an unauthorized person to have unbridled access to the bank's system and his repeated failure to perform his duties for a period of time justified his dismissal. x x x [R]espondent was guilty of gross and habitual negligence when he failed to exercise the requisite amount of care or

diligence in signing the bank certifications. Bank policy clearly required that certifications be issued only to clients who had opened their accounts legitimately with the usual identity requirements. Even if it were true that he had no access to the information, respondent should have been alerted of the irregularity by the fact that at least three requests for change of account name had been submitted in the course of a week. However, respondent proceeded to sign the certifications without question, evincing a thoughtless disregard of the consequences of his actions.

APPEARANCES OF COUNSEL

Alonso and Associates for petitioner.
Manuel Lao Ong for respondent.

D E C I S I O N

SERENO, *C.J.*:

This is a Petition[1] for Review under Rule 45 of the Rules of Court. The Petition assails the Court of Appeals (CA) Decision[2] dated 17 February 2011 and Resolution[3] dated 15 June 2011 in C.A.-G.R. SP No. 02612, nullifying the National Labor Relations Commission (NLRC) Decision[4] dated 29 September 2006 and Resolution[5] dated 20 December 2006 in NLRC Case No. V-000445-2006. The CA reinstated the labor arbiter's Decision[6] dated 16 December 2005 in RAB Case No. VI-04-10274-05.

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[1] *Rollo*, pp. 13-74.

[2] Penned by Associate Justice Pampio A. Abarintos and concurred in by Associate Justices Ramon A. Cruz and Myra V. Garcia-Fernandez; *id.* at 79-90.

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

[4] Penned by Presiding Commissioner Gerardo C. Nograles and concurred in by Commissioners Oscar S. Uy and Aurelio D. Menzon; *id.* at 232-243.

[5] *Id.* at 279-281.

[6] Rendered by Labor Arbiter Phibun D. Pura; *id.* at 166-176.

Petitioner argues that the CA committed reversible error in overturning and setting aside the NLRC Decision and Resolution on the sole ground that the *supersedeas* bond posted was invalid.[7] The CA concluded that the bond was irregular and had no force and effect, because the surety company's authority to transact business as a bonding company refers only to civil cases and does not include labor cases.

We do not agree with this conclusion.

THE FACTS

Petitioner is a banking institution organized and existing under the laws of the Philippines.[8] Respondent worked for petitioner for seven years in various capacities.[9] In 2004, he was assigned to the Bacolod branch as a marketing officer and was put in command of the loans department.[10]

During a quality assurance review, it was discovered that respondent had allowed a contractual employee to use the former's user ID for account booking and approval in the bank's Integrated Loans System.[11] The unauthorized disclosure of system ID and password was a violation of bank policy.[12]

Respondent admitted that he had disclosed his user ID and password, but only to a Ms. Mary Ann Cacal — a regular employee who had to go on maternity leave.[13] He explained that he did so for the continuity of transactions in instances when he had to go out of the bank to coordinate with dealers or interview clients.[14]

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[7] *Id.* at 31.

[8] *Id.* at 15.

[9] *Id.* at 80.

[10] *Id.*

[11] *Id.*

[12] *Id.* at 30.

[13] *Id.* at 554.

[14] *Id.*

He insisted that he was merely following a precedent set by the branch head, Mr. Loubert Sajo.[15]

While the investigation of this matter was pending, the bank discovered another infraction committed by respondent — the unauthorized issuance of bank certifications.[16] The internal audit group found that he, along with other officers, was involved in lending the account of Spouses Armando and Grace Ong (Sps. Ong) to different individuals in order to generate bank certifications in favor of the latter.[17] Bank policy explicitly stated that "no account shall be allowed to be opened for certification purposes only."[18]

As a result of the investigation, it was discovered that a Request for Change was accomplished on 2 June 2004 to change the account name of Sps. Ong to that of Spouses Orville and Lolita Bautista (Sps. Bautista). The account number remained the same. Respondent was shown to be a signatory to the Certification that there existed a deposit with the bank of a sum of money as of 1 June 2004 in the name of Sps. Bautista. After two days, another Request for Change was processed to revert the account name to that of Sps. Ong. On 7 June 2004, respondent again signed and approved a bank certification in favor of a certain Karen Galoyo using the same account number.[19] Documents showed deficiencies in the signature cards and other requirements for the processing of a request for change of account name.[20]

On 15 February 2005, an administrative hearing was conducted.[21] On 15 March 2005, petitioner served on respondent

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[15] *Id.* at 492.

[16] *Id.* at 23.

[17] *Id.*

[18] *Id.* at 522.

[19] *Id.* at 26.

[20] *Id.* at 27.

[21] See Minutes, *id.* at 510.

a Notice of Termination for grave violation of bank policies, code of conduct, and trust and confidence.[22]

On 4 April 2005, respondent filed a Complaint for illegal dismissal.

THE RULING OF THE LABOR ARBITER

The labor arbiter ruled in favor of respondent and ordered his immediate reinstatement, as well as the payment of ₱476,137.39 representing back wages, 13th month pay, moral and exemplary damages, attorney's fees, quarterly bonus, and refund for travel expenses and other benefits. The labor arbiter found that the alleged infractions were never fully substantiated by clear and convincing evidence:

> It appeared that complainant's failure to report the alleged bank's irregularities/anomalies was never established since there was no clear irregularities/anomalies to reckon with, nor was he apprised that failure to do so, if there is any, would constitute valid ground for dismissal.
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> As to complainant's unauthorized disclosure of system ID and password to an agency staff who was just assigned as replacement of an employee who was on leave is, to the mind of this Labor Tribunal, is not enough ground to constitute serious/grave misconduct to warrant outright dismissal of the complainant x x x In the instant case, this Office finds that complainant was honest enough to admit that although he shared his system ID and password to Ms. Chua, it was done in good faith and with good intention to insure that booking transactions can be made even if he was out in the field as Marketing Officer.[23]

Petitioner appealed to the NLRC.

THE RULING OF THE NLRC

Respondent filed a Motion to Dismiss[24] on the ground of lack of authority to file appeal memorandum and non-perfection

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[22] See Termination of Employment for Cause, *id.* at 511-512.

[23] *Id.* at 171-172.

[24] *Id.* at 225-231.

thereof. He pointed out that the *supersedeas* bond was irregular, because the Certification of Accreditation and Authority issued by the Office of the Court Administrator (OCA) stated that the Philippine Charter Insurance Corporation (PCIC) was only authorized to issue bonds for civil cases:

PHILIPPINE CHARTER INSURANCE CORPORATION

is hereby granted the authority to transact, through its authorized agents specified herein, surety in relation to CIVIL CASES ONLY filed/pending before the Municipal Trial Courts in Cities of Bacolod City, Cebu City and Iloilo City. Valid until January 31, 2006, unless otherwise suspended or revoked.

Nevertheless, the NLRC gave due course to the appeal and reversed the Decision of the labor arbiter. It found that the complainant had been dismissed for cause and afforded due process.[25] It went over the evidence presented and found that petitioner was able to substantiate the validity of complainant's termination.[26] The NLRC found that respondent had violated the bank's Code of Conduct when he disclosed his user ID and password despite the strict prohibition on its disclosure.[27] With regard to the bank certifications, it did not give credence to his defense that it was a ministerial duty on the part of the respondent to affix his signature.[28] According to the NLRC, the reasons given by respondent revealed his laxity in protecting the interest of the bank.[29] The management prerogative of the bank to institute measures that would curb irregularities was upheld.

The NLRC Decision, however, did not address the argument raised in the Motion to Dismiss regarding the irregularity of the appeal bond. Respondent therefore filed a Petition for Certiorari with the CA.

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[25] *Id.* at 241.

[26] *Id.*

[27] *Id.* at 242.

[28] *Id.*

[29] *Id.*

THE RULING OF THE CA

The CA held that the NLRC had committed grave abuse of discretion amounting to lack or excess of jurisdiction when the latter gave due course to the bank's appeal even if it was apparent that the appeal had not been perfected owing to a defective and irregular appeal bond.[30]

The CA observed that the certification and accreditation issued by the OCA did not state that the PCIC was allowed to issue bonds relative to labor cases filed before the NLRC.[31] The appellate court further held that the appeal should not have been given due course because of its non-perfection within the reglementary period.[32]

The CA did not see the need to resolve the other issue — whether the NLRC gravely abused its discretion in reversing the Decision of the labor arbiter — because "to do so is tantamount to allowing a lost remedy to prosper."[33]

Petitioner's Motion for Reconsideration was denied.

Petitioner attributes grave and reversible error to the CA in granting respondent's Petition for Certiorari based solely on an erroneous technical ground without adjudicating the case on the merits. Petitioner prays that this Court reinstate the Decision of the NLRC.

In his Comment,[34] respondent asserts that the CA properly found that the appeal before the NLRC had not been perfected; hence, the Decision of the labor arbiter has become final and executory.

OUR RULING

The Petition is meritorious.

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[30] *Id.* at 85.

[31] *Id.* at 88.

[32] *Id.*

[33] *Id.* at 90.

[34] *Id.* at 550-576.

The Court was confronted with a similar question in *U-Bix Corp. v. Hollero*.[35] In that case, both the NLRC and the CA held that the *supersedeas* bond posted by petitioners had no force and effect, because a perusal of the bond revealed that the Certification of Accreditation and Authority issued by the OCA covers an authority to transact surety business in relation to "civil/special proceedings cases only" and does not include labor cases filed before the NLRC. The Court therein ruled that the bonds may also be used for labor cases.

In the present case, the CA overlooked the fact that it is within the province of the NLRC to accredit surety companies for cases it hears. The Supreme Court only accredits surety companies for judicial courts:

II. ACCREDITATION OF SURETY COMPANIES: In order to preclude spurious and delinquent surety companies from transacting business with the courts, no surety company or its authorized agents shall be allowed to transact business involving surety bonds with the Supreme Court, Court of Appeals, the Court of Tax Appeals, the Sandiganbayan, Regional Trial Courts, Shari'a District Courts, Metropolitan Trial Courts, Municipal Trial Courts in Cities, Municipal Trial Courts, Municipal Circuit Trial Courts, Shari'a Circuit Courts and other courts which may thereafter be created, unless accredited and authorized by the Office of the Court Administrator.[36]

This fact explains why labor cases were not enumerated in the Certification of Accreditation and Authority issued to the PCIC. This is not to say that the certification issued by the OCA is worthless before the NLRC. On the contrary, the 2005 Revised Rules of Procedure of the NLRC expressly provided that bonds issued by a reputable bonding company duly accredited by the Supreme Court are acceptable.[37]

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[35] G.R. No. 199660 (Resolution), 13 July 2015.

[36] A.M. No. 04-7-02-SC, Guidelines on Surety Bonds.

[37] Rule VI, Section 6. BOND. — In case the decision of the Labor Arbiter or the Regional Director involves a monetary award, an appeal by the employer may be perfected only upon the posting of a bond, which shall either be in the form of cash deposit or surety bond equivalent in amount to the monetary award, exclusive of damages and attorney's fees.

In addition, the Court has relaxed the requirement of posting a *supersedeas* bond for the perfection of an appeal when there has been substantial compliance with the rule.[38] For example, in *Del Rosario v. Philippine Journalists, Inc.*,[39] the Court allowed the appeal to proceed despite the subsequent revocation of the authority of a bonding company, because "technical rules of procedure should not hamper the quest for justice and truth."

We find that the purpose of the appeal bond — to ensure, during the period of appeal, against any occurrence that would defeat or diminish recovery by the aggrieved employees under the judgment if subsequently affirmed[40] — has been met. Records show that as of 22 January 2011, the *supersedeas* bond in the amount of ₱476,137.39 was still in existence.[41]

We now resolve the prayer to reinstate the NLRC Decision.

Generally, only errors of law are reviewed by this Court in petitions for review. However, there are well-recognized

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In case of surety bond, the same shall be issued by a reputable bonding company duly accredited by the Commission or the Supreme Court, and shall be accompanied by original or certified true copies of the following:

x x x x x x x x x

[38] In *Phil. Touristers, Inc. v. MAS Transit Workers Union-ANGLO-KMU* (G.R. No. 201237, 3 September 2014, 734 SCRA 298), the Court considered the defects (*i.e.*, that it was initially issued in favor of MTI and not PTI, and that the bonding company had no authority to transact business in all courts of the Philippines at that time) to have been cured by the posting of a bond compliant with the order of the NLRC.

In *Manila Mandarin Employees Union v. NLRC* (332 Phil. 354 [1996]) — another labor case — the Court accepted a bond issued by a company that had an authorized maximum net retention level lower than the sum involved. The Court ruled that the imputed defect is inconsequential considering that the surety company had been duly accredited by the Supreme Court and licensed by the Insurance Commission.

[39] 613 Phil. 134 (2009).

[40] *Cordova v. Keysa's Boutique*, 507 Phil. 147 (2005).

[41] See Renewal Certificate; *rollo*, p. 513.

exceptions[42] to this rule, as in this case, when the factual findings of the NLRC contradict those of the labor arbiter.

In the interest of judicial economy and efficiency, and given that the records are sufficient to make a determination of the validity of respondent's dismissal, the Court has decided to reevaluate and review the factual findings.

We uphold the finding of the NLRC that respondent was validly dismissed.

The unauthorized disclosure of username and password exposed the bank to incalculable losses.

The loss of confidence had sufficient basis. As an account and marketing officer, respondent was tasked with the approval of loans, which is an element of a core banking function.[43] Without a doubt, he was entrusted with delicate matters, including the custody, handling, care and protection of the bank's assets. Given the sensitive functions of his position, he was expected to strictly observe and comply with the bank's standard operating procedures.

This he failed to do.

The bank has an existing policy on user IDs and passwords: BOPD Code 003-01-04.2[44] dated 6 August 2002, obligating designated branch personnel to keep their passwords confidential at all times. The purpose was to establish accountabilities and limit control over transactions and/or functions.[45] Respondent,

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[42] *Insular Life Assurance Co., Ltd. v. Court of Appeals*, G.R. No. 126850, 28 April 2004 citing *Langkaan Realty Development, Inc. v. United Coconut Planters Bank*, 400 Phil. 1349 (2000); *Nokom v. National Labor Relations Commission,* 390 Phil. 1228 (2000); *Commissioner of Internal Revenue v. Embroidery and Garments Industries (Phil.), Inc*., 364 Phil. 541 (1999); *Sta. Maria v. Court of Appeals*, 349 Phil. 275 (1998).

[43] Section 3, 3.1 of RA 8791 or "The General Banking Law of 2000" defines banks as "entities engaged in the lending of funds obtained in the form of deposits from the public."

[44] *Rollo*, p. 519.

[45] *Id.* at 45.

who was one of those branch personnel so designated, disclosed his password to another employee, who later disclosed it to a contractual employee.

Respondent tried to excuse his action by pointing out that the branch head was also guilty of the same offense. (After investigation, this allegation proved to be false.) Although respondent later attempted to seek understanding on account of his heavy workload, we cannot force the employer to accept these excuses. We understand that the failure of respondent to report irregularities being committed in the branch, coupled with his disregard of the control procedure, allowed unauthorized access into the bank system. To a great degree, it exposed the bank to unauthorized transactions that would have been difficult to trace and determine.

Aside from breaking the trust of his employer, respondent also demonstrated gross and habitual negligence when he delegated a function that had been specifically reposed in him. His thoughtless disregard of the consequences of allowing an unauthorized person to have unbridled access to the bank's system and his repeated failure to perform his duties for a period of time justified his dismissal.

Respondent's complicity in the issuance of fraudulent bank certifications justifies the loss of confidence.

On 19 October 2001, the bank released IOL No. OPS 01-023[46] regarding the issuance of bank certifications for deposits and loans, the relevant portions of which state:

All concerned Department/Branches are hereby reminded to be careful in issuing bank certification by observing necessary procedures such as but not limited to the following:

1. The branch/department shall restrict the issuance of Bank Certificate to bonafide Bank clients who:

[46] *Id.* at 522.

– must have opened their accounts legitimately, complete with the usual identity requirements, and
– has written a request for bank certifications on deposits and loans, signed by him, signature verified and approved by the concerned Operating/Department Head.

x x x x x x x x x.

3. No account shall be allowed to be opened for certification purposes only.

x x x x x x x x x.

Issuance of false certification shall be dealt with in accordance with the Bank's Officers/Employees Code of Ethics and Behavior.

Respondent claimed that he was merely prevailed upon by the branch head to sign the bank certifications, and that the signing was ministerial upon the presentation of a letter-request and a printout of the client's name and account number.[47]

First, We cannot fault petitioner for dismissing a bank officer who has failed to grasp the significance of bank certifications despite his employment with the bank for seven years. In his reply to petitioner's Memorandum dated 29 December 2004, respondent explained that he had signed the Bank Certification dated 4 June 2004, because there were only two bank officers at that time — he and the branch head — and "the client was getting impatient waiting for his document."[48]

In *Sajo v. Philippine Saving's Bank*[49] involving the very same branch head and including the very same bank certifications referred to in this case, the Court did not find reversible error on the part of the CA in ruling that the termination was valid. Indeed, the question of whether the employee received monetary consideration for the issuance of fraudulent bank certificates was immaterial; what was reprehensible was that the employee allowed himself to be a conduit for defrauding persons and/or institutions that relied on the certificates.[50]

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[47] *Id.* at 504-505.

[48] *Id.* at 504.

[49] Resolution dated 1 March 2010 in G.R. No. 190490; *id.* at 546-547.

[50] *Rollo*, p. 536.

In *Rivera v. Allied Banking Corp.*,[51] the dismissed employee explained that the arrangement with the client regarding the opening of joint accounts for her foreign currency check deposits used for rediscounting transactions was merely an accommodation service, which was done in good faith and in accordance with the bank's policies. The Court, nonetheless, upheld the validity of his termination.

Second, respondent was guilty of gross and habitual negligence when he failed to exercise the requisite amount of care or diligence in signing the bank certifications. Bank policy clearly required that certifications be issued only to clients who had opened their accounts legitimately with the usual identity requirements. Even if it were true that he had no access to the information, respondent should have been alerted of the irregularity by the fact that at least three requests for change of account name had been submitted in the course of a week. However, respondent proceeded to sign the certifications without question, evincing a thoughtless disregard of the consequences of his actions.[52]

Third, respondent cannot hide behind his designation as an account officer in charge of loans to claim ignorance of branch operations. It must be emphasized that he admitted to having been appointed as branch head of PSB-Bacolod from 1 June 1998 to 30 June 2001; and assistant branch head of PSB-Cebu City and PSB-General Santos from 1 July 2001 to 31 August 2002 and from 1 August 2002 to 30 June 2003, respectively.[53] He cannot deny that for at least five years, he should have had an in-depth knowledge and understanding of bank operations and policies.

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[51] G.R. No. 196597, 21 October 2015.

[52] In *Dycoco, Jr. v. Equitable PCI Bank* [642 Phil. 494 (2010)] Jesus Dycoco, Jr. was found to have violated his duties and responsibilities as a personal banking manager when he signed and approved transactions without the necessary signatures of the concerned clients. The Court pointed out that it was his obligation to ensure that all requirements be complied with, and that the bank's interest be at all times protected. It was incumbent on him to enforce strict compliance with bank policies and internal control procedures while maintaining the highest level of service quality.

[53] *Rollo*, p. 134.

Fourth, respondent had the discretion to refuse to sign the document. Even if he was under compulsion from the branch head to sign, the act would still have been inexcusable. In fact, the Court has upheld the dismissal of employees who claimed that they only committed illegal acts upon the instructions of their superior.[54]

Petitioner properly exercised its management prerogative in terminating the services of respondent.

Because of its status as a business affected with public interest,[55] a bank is expected to exercise the highest degree of diligence in the selection and supervision of its employees.[56]

We cannot coerce petitioner to retain an employee whom it cannot trust to perform duties of the highest fiduciary nature.[57] As a general rule, employers are allowed wider latitude of discretion in terminating the employment of managerial employees, as the latter perform functions that require the employers' full trust and confidence.[58]

The NLRC correctly ruled:

> We cannot prevent respondent in the exercise of its management prerogative to institute measures that will curb irregularities. Hence, respondent bank cannot be faulted when it scrutinized the violative acts of complainant and considered him unworthy to remain in its employ after affording him ample opportunity to defend himself.[59]

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[54] See *San Miguel Corp. v. National Labor Relations Commission*, 256 Phil. 271 (1989).

[55] *Simex International, Inc. v. Court of Appeals*, 262 Phil. 387 (1990).

[56] *Far East Bank and Trust Co. v. Tentmakers Group, Inc.*, 690 Phil. 134 (2012).

[57] Law and jurisprudence have long recognized the right of employers to dismiss employees by reason of loss of trust and confidence. More so, in the case of supervisors or personnel occupying positions of responsibility, loss of trust justifies termination. See *Rivera v. Allied Banking Corp.*, G.R. No. 196597, 21 October 2015.

[58] *Salvador v. Philippine Mining Service Corp.*, 443 Phil. 878 (2003).

[59] *Rollo*, p. 242.

The degree of responsibility, care and trustworthiness expected of bank officials and employees is, by the very nature of their work, far greater than that of ordinary officers and employees in other business firms.[60] Hence, no effort must be spared by banks and their officers and employees to ensure and preserve the trust and confidence of their clients and the general public, as well as the integrity of bank records.[61]

WHEREFORE, the instant petition is **GRANTED**. The assailed decision and resolution of the Court of Appeals are **SET ASIDE,** and the Decision dated 29 September 2006 of the National Labor Relations Commission in NLRC Case No. V-000445-2006 is **REINSTATED**.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 201584. June 15, 2016]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **APOLONIO "TOTONG" AVILA *y* ALECANTE,** *accused-appellant.*

SYLLABUS

1. REMEDIAL LAW; EVIDENCE; DENIAL; CANNOT BE GIVEN GREATER EVIDENTIARY VALUE OVER

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[60] *United Coconut Planters Bank v. Basco,* 480 Phil. 803 (2004) citing *Lim Sio Bio v. Court of Appeals,* G.R. No. 100867, 221 SCRA 307 (1993) and *Philippine Commercial and International Bank v. Court of Appeals,* 403 Phil. 361 (2001).

[61] *Id.*

CONVINCING STRAIGHTFORWARD AND PROBABLE TESTIMONY ON AFFIRMATIVE MATTERS.— The child witness in this case positively identified the accused several times during the trial as the person who killed his sister. Such resoluteness cannot be doubted of a child, especially of one of tender age. The testimony of a single witness, when positive and credible, is sufficient to support a conviction even of murder. The defense failed to destroy the credibility of the child witness during the questioning. The defense of denial of the accused cannot be given more weight and credence over that of the child's positive identification. It is established jurisprudence that denial cannot prevail over the witnesses' positive identification of the accused-appellant; more so where the defense did not present convincing evidence that it was physically impossible for accused-appellant to have been present at the crime scene at the time of the commission of the crime. A defense of denial which is unsupported and unsubstantiated by clear and convincing evidence becomes negative and self-serving, deserving no weight in law, and cannot be given greater evidentiary value over convincing, straightforward and probable testimony on affirmative matters. Denial is an intrinsically weak defense which must be buttressed with strong evidence of non-culpability to merit credibility.

2. ID.; ID.; CREDIBILITY OF WITNESSES; MINOR INCONSISTENCIES IN THE TESTIMONY OF A WITNESS DO NOT REFLECT ON HIS CREDIBILITY.— [T]he testimony of children of sound mind is likely to be more correct and truthful than that of older persons, so that once established that they have understood the character and nature of an oath, their testimony should be given full credence. The trivial inconsistencies in Ryan's eye witness narration of details are understandable, considering the suddenness of the attack, the dreadful scene unfolding before his eyes, and the imperfection of the human memory. It is for this reason that jurisprudence uniformly pronounces that minor inconsistencies in the testimony of a witness do not reflect on his credibility. What remains important is the positive identification of the accused as the assailant. Ample margin of error and understanding must be accorded to young witnesses who, much more than adults, would be gripped with tension due to the novelty of the experience of testifying before the court.

3. ID.; ID.; ID.; FINDINGS OF THE TRIAL COURT THEREON ARE GENERALLY RESPECTED ON APPEAL, FOR IT HAS THE SUPERIOR ADVANTAGE IN OBSERVING THE CONDUCT AND DEMEANOR OF THE WITNESS WHILE TESTIFYING.— [W]hen the main thrust of the appeal is on the credibility of the prosecution witnesses, and appellant fails to demonstrate why this Court should depart from the cardinal principle that the findings of the trial court on the matter of credibility should not be disturbed, the same should be respected on appeal. The trial court has the superior advantage in observing the conduct and demeanor of the witness while testifying unless some fact or circumstance which could affect the result of the case may have been overlooked. We have gone through the records of this case and We find no cause which would justify rejecting the trial court's findings or prevent the CA from relying thereon.

4. CRIMINAL LAW; REVISED PENAL CODE; MURDER; QUALIFYING OR AGGRAVATING CIRCUMSTANCES; THE CENTRAL FACT OF KILLING AND EVERY QUALIFYING OR AGGRAVATING CIRCUMSTANCE ALLEGED TO HAVE BEEN PRESENT AND TO HAVE ATTENDED THE KILLING MUST BE PROVED BEYOND REASONABLE DOUBT.— Murder is the unlawful killing of a person, which is not parricide or infanticide, provided that any of the attendant circumstances enumerated in Article 248 of the Revised Penal Code is present. x x x Before a qualifying circumstance may be taken into consideration, it must be proved with equal certainty as that which establishes the commission of the crime. It is not only the central fact of killing that must be proved beyond reasonable doubt; every qualifying or aggravating circumstance alleged to have been present and to have attended such killing, must similarly be shown by the same degree of proof. As with the finding of guilt of the accused, any doubt to its existence should be resolved in favor of the accused. This Court finds that only the circumstance of treachery should be appreciated, qualifying the crime to Murder.

5. ID.; ID.; QUALIFYING CIRCUMSTANCES; EVIDENT PREMEDITATION; ELEMENTS; THE ESSENCE OF PREMEDITATION IS THAT THE EXECUTION OF THE ACT WAS PRECEDED BY REFLECTION DURING A

PERIOD OF TIME SUFFICIENT TO ARRIVE AT A CALM JUDGMENT.— To establish evident premeditation, there must be proof of (1) the time when the offender determined to commit the crime, (2) an act manifestly indicating that the culprit has clung to his determination, and (3) a sufficient lapse of time between the determination and execution to allow him to reflect upon the consequences of his act and to allow his conscience to overcome the resolution of his will had he desired to hearken to its warnings. The essence of premeditation is that the execution of the act was preceded by reflection during a period of time sufficient to arrive at a calm judgment. When it is not shown as to how and when the plan to kill was hatched or what time had elapsed before it was carried out, evident premeditation cannot be considered. It must be based on external acts and must not be merely suspected. There must be a demonstration of outward acts of a criminal intent that is notorious and manifest. The prosecution failed to satisfy the requisites of evident premeditation. The records contain no evidence regarding the planning and preparation of the killing of Janjoy. It was likewise not shown that accused-appellant clung to his determination to kill Janjoy. In fact, the only thing established by the prosecution witness' testimony was accused-appellant's plan to kill Rovic Vasquez, not Janjoy Vasquez. Thus, it cannot be said that accused-appellant had a preconceived plan to kill Janjoy.

6. ID.; ID.; ID.; ABUSE OF SUPERIOR STRENGTH; MERE SUPERIORITY IN NUMBERS IS NOT INDICATIVE OF THE PRESENCE OF THE CIRCUMSTANCE; THE EVIDENCE MUST ESTABLISH THAT THE ASSAILANTS PURPOSELY SOUGHT THE ADVANTAGE, OR THAT THEY HAD THE DELIBERATE INTENT TO USE THIS ADVANTAGE.— Abuse of superior strength is present whenever there is notorious inequality of forces between the victim and the aggressor, assuming a situation of superiority of strength notoriously advantageous for the aggressor selected or taken advantage of by him in the commission of the crime. The fact that there were two persons who attacked the victim does not per se establish that the crime was committed with abuse of superior strength, there being no proof of the relative strength of the aggressors and the victim. Mere superiority in numbers is not indicative of the presence of this circumstance. The evidence must establish that the assailants purposely sought the advantage, or that they had the deliberate intent to

use this advantage. The prosecution failed to adduce evidence of a relative disparity in age, size and strength, or force, except for the showing that there were two assailants present when the crime was committed.

7. ID.; ID.; ID.; TREACHERY; REQUISITES; A FINDING OF EXISTENCE OF TREACHERY SHOULD BE BASED ON CLEAR AND CONVINCING EVIDENCE THAT THE MANNER OF EXECUTION OF THE CRIME ENSURED THE SAFETY OF THE ACCUSED FROM RETALIATION AND AFFORDED THE VICTIM NO OPPORTUNITY TO DEFEND HIMSELF.— There is treachery when the offender commits any of the crimes against persons, employing means, methods, or forms in the execution thereof, which tend directly and specially to ensure its execution, without risk to himself arising from the defense which the offended party might make. The requisites of treachery are: (1) The employment of means, method, or manner of execution which will ensure the safety of the malefactor from defensive or retaliating acts on the part of the victim, no opportunity being given to the latter to defend himself or to retaliate; and (2) deliberate or conscious adoption of such means, method or manner of execution. A finding of existence of treachery should be based on "clear and convincing evidence." The prosecution, through the eyewitness testimony of Ryan Vasquez, was able to prove the treacherous manner of killing the victim. Ryan testified that the accused-appellant and his companion were peeping inside the house before the first shot was fired. The first shot was fired from behind a closed door, catching the victim by surprise. The second shot to the victim's head was fired immediately after the door was forced open by the accused-appellant. Such manner of execution of the crime ensured the safety of accused-appellant from retaliation and afforded the victim no opportunity to defend herself.

8. CIVIL LAW; CIVIL CODE; DAMAGES; ACTUAL DAMAGES; THE CLAIMANT MUST PRODUCE COMPETENT PROOF TO JUSTIFY THE AWARD.— In awarding actual damages amounting to ₱113,412.18, the RTC relied on a hand written receipt (Exhibit F), which was merely executed by the victim's father. Such document is self-serving and does not hold weight. Time and again, this Court has held that only expenses supported by receipts and which appear to have been actually expended in connection with the death of the victims

may be allowed. It is necessary that the claimant produce competent proof to justify an award for actual damages. Only substantiated expenses and those which appear to have been genuinely incurred in connection with the death, wake or burial of the victim will be recognized by the courts. This Court has repeatedly held that self-serving statements of account are not sufficient basis for an award of actual damages. Corollary to the principle that a claim for actual damages cannot be predicated on flimsy, remote, speculative, and insubstantial proof, courts are, likewise, required to state the factual bases of the award.

9. ID.; ID.; ID.; LOSS OF EARNING CAPACITY; AWARDED NOT FOR LOSS OF EARNINGS BUT FOR LOSS OF CAPACITY TO EARN MONEY, AND IT NECESSARILY FOLLOWS THAT EVIDENCE BE PRESENTED THAT THE VICTIM, IF NOT YET EMPLOYED AT THE TIME OF DEATH, WAS REASONABLY CERTAIN TO COMPLETE TRAINING FOR A SPECIFIC PROFESSION. — The prosecution pointed out that the victim, Janjoy was 18 years old and at the time of her death, a second year college student at AMA College. Article 2206 of the Civil Code provides that in addition to the indemnity for death caused by a crime or *quasi delict*, the defendant shall be liable for the loss of the earning capacity of the deceased and the indemnity shall be paid to the heirs of the latter. Compensation of this nature is awarded not for loss of earnings but for loss of capacity to earn money. It necessarily follows that evidence must be presented that the victim, if not yet employed at the time of death, was reasonably certain to complete training for a specific profession. x x x In the case at bar, Rovic Vasquez, father of the victim, only testified as to the fact that Janjoy was a second year college student of AMA College at the time of her death. No mention was made of the victim's course in college, more so of her desired or perceived profession in the future. Unlike in *Metro Manila Transit Corporation v. CA* where evidence of good academic record, extra-curricular activities and varied interests were presented in court, claimants in this case offered no such evidence. Hence, there is no basis for awarding compensation for loss of capacity.

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.*:

We resolve in this Decision the appeal from the September 13, 2011 Decision[1] of the Court of Appeals (CA) in CA-G.R. CR-H.C. No. 04311. The CA sustained the September 9, 2009 Decision of the Regional Trial Court (RTC), Branch 219 of Quezon City, which found Apolonio "Totong" Avila (accused-appellant) guilty beyond reasonable doubt of murder, and imposed on him the penalty of *reclusion perpetua*.

The Facts

In an Information[2] dated October 23, 2002, the prosecution charged the appellant with the crime of murder, to wit:

"That on or about the 20th day of October 2002, in Quezon City, Philippines, the said accused, conspiring, confederating with another person whose true name, identity and whereabouts has not as yet been ascertained and mutually helping each other, with intent to kill, qualified by evident premeditation and treachery, taking advantage of superior strength, did then and there wil[l]fully, unlawfully and feloniously attack, assault and employ personal violence upon the person of one [JANJOY] VASQUEZ Y DAGANATO, by then and there shooting [her] with a gun hitting [her] on the head and stomach, thereby inflicting upon [her] serious and mortal wounds which were the direct and immediate cause of [her] untimely death, to the damage and prejudice of the heirs of said [Janjoy] Vasquez y Daganato.

CONTRARY TO LAW."[3]

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[1] *Rollo*, pp. 2-14; penned by Associate Justice Stephen C. Cruz; with Associate Justices Isaias P. Dicdican and Socorro B. Inting, concurring.

[2] Records, p. 1.

[3] *Id.*

Upon being arraigned, appellant pleaded NOT GUILTY to the crime charged. Pre-trial conference was terminated on December 12, 2002. Thereafter, trial on the merits ensued.

The prosecution's version of the facts of the case as laid down in the RTC Decision[4] and the Appellee's Brief[5] is hereby summarized as follows:

> On October 20, 2002 at about 7:30 in the evening, Ryan Vasquez, the 9-year-old brother of the victim, returned home after borrowing a guitar next door as instructed by his sister. Ryan was atop the stairscase leading to their house when he saw "Totong" and another man lingering outside their door. Ryan saw the two men peeping inside the house and out of fear of being spotted by Totong and his companion, he hid in a spot by the stairs, which was more or less 8 meters away from where the men were standing.[6] While hiding, Ryan saw Totong fire the first shot. The bullet went through the door, hitting his sister [Janjoy] on the right side of her body.[7] Totong then kicked the door open and shot [Janjoy] on the head.[8] The two men immediately fled the scene. Ryan rushed inside the house and saw his sister lying on the ground bleeding. He hurried to his Ate Milda's nearby house and asked for help. Ryan's Ate Milda and Kuya Ricky brought [Janjoy] to the hospital.

The victim's neighbor and aunt sought to shed light on the whereabouts of accused-appellant before and after the shooting incident. Bryan Hermano, a 19 year old construction worker and neighbor of the Vasquez family, testified that on the same night between the hours of 7 and 8 o'clock in the evening, he was at the basketball court when he overheard Totong talking to his companion, Bong Muslim, about his plan to kill Rovic Vasquez, father of the victim. Unfortunately, before he could warn Rovic Vasquez, he learned that Janjoy was already shot. Jonalyn Vasquez, aunt of the victim, was at home that night and around 7 to 7:30

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[4] *Id.* at 257-280; penned by Judge Bayani V. Vargas.

[5] CA *rollo*, pp. 151-170.

[6] TSN, February 20, 2003, p. 12.

[7] *Id.* at 11.

[8] TSN, February 6, 2003, p. 8.

in the evening, she heard a gun shot coming from the next house. Upon hearing the gun shot, she immediately went outside and saw the accused walking on the pathway between her house and the victim's house. She claimed that no person other than the accused used said pathway after the shooting incident. The father of the victim, Rovic Vasquez, testified as to the funeral and burial expenses incurred by his family. He maintained that he incurred expenses for the burial lot and coffin amounting to ₱60,000.00 and expenses for food and drinks during the wake amounting to ₱8,400.00. A handwritten receipt amounting to ₱113,412.18, showing a breakdown of total expenses was also submitted.

The defense of accused-appellant is one of denial and alibi. His version of the facts as summarized in his Brief[9] is hereby adopted as follows:

"Between 11 o'clock to 12 o'clock in the evening of October 20, 2002, Apolonio Avila was inside a room which he rented on that same day at Freedom Park, Batasan Hills, Quezon City. While sleeping, he heard a loud bang at the door and several men forcibly entered. They introduced themselves as policemen and barangay officials further asked him if he was Totong. Avila was then informed that he was a suspect in a crime that took place at the lower part of Batasan and was invited to go to Police Station 6 without being presented a warrant of arrest. Upon arrival thereat, they waited for Rovic Vasquez, the private complainant in the case. At that time, he was not required to give any statement nor was he asked to sign a waiver. When the complainant arrived, he was brought to Camp Karingal to be incarcerated. He was not informed of the reason of his detention and was subjected to inquest proceeding only after three (3) days, on October 23, 2002. He affirmed that he was only renting a room in Freedom Park and was a resident of Santiago, Caloocan City. He confirmed knowing the complainant as he was a '*kababayan*', but he firmly denied knowing a 'Toto Pulis' and 'Boy Muslim'."

Accused-appellant was the sole witness for the defense. On cross-examination, he testified that Rovic Vasquez, father of the victim, was his friend and *kababayan*. He claimed that he

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[9] CA *rollo*, pp. 103-118.

has known Rovic for a long time and there was no point in time when their friendship has turned sour even at the time when he was arrested. He also claimed that he only moved to Freedom Park, Batasan Hills, Quezon City because the complainant invited him to their place to rent a room as it would be more convenient for him. Accused-appellant also testified that no weapon search was conducted when he was apprehended, neither was he subjected to a paraffin test.

Ruling of the Regional Trial Court

After trial on the merits, the trial court rendered judgment on September 9, 2009. The trial court found accused-appellant guilty, imposing upon him the penalty of *reclusion perpetua*. The lower court held him liable to the heirs of the victim for ₱113,412.18 as actual damages; ₱50,000.00 as civil indemnity for death; and ₱50,000.00 as moral damages. The dispositive portion of the decision reads:

"**WHEREFORE**, finding the accused ***APOLONIO AVILA Y ALECANTE*** guilty beyond reasonable doubt of the crime of Murder, he is hereby sentenced to suffer the penalty of Reclusion Perpetua. The accused is likewise ordered to pay the heirs of Jan Joy Vasquez *y* Daganato the total amount of *TWO HUNDRED THIRTEEN THOUSAND FOUR HUNDRED TWELVE PESOS AND EIGHTEEN CENTAVOS (₱213,412.18), as civil liability.*

SO ORDERED."[10]

Aggrieved, the accused sought to reverse the foregoing decision by pointing out the supposed glaring inconsistencies in the testimonies of the prosecution witnesses. The accused argued that Ryan Vasquez could not have witnessed the incident because it was only after he returned from the store that he saw his sister already bleeding. The accused-appellant insists that the eye witness testimony was seriously marred by the admission of Ryan that he only testified upon his mother's instructions. In addition, the accused-appellant dismissed the testimony of Jonalyn Vasquez as implausible, theorizing that his presence near the scene of the crime, as testified by Jonalyn, does not

[10] *Rollo*, p. 5.

outrightly equate to his guilt. He further argues that his "nonchalance" about the incident certainly appears counter-intuitive to how guilty persons normally react after committing a crime. He opined that while criminals often flee the crime scene, he, on the other hand, stayed put and cooperated with the police. Lastly, accused-appellant insists that Bryan Hermano's testimony actually exculpated him as it showed that he was somewhere else at the time of the commission of the crime.

Ruling of the Court of Appeals

The CA found no merit in accused-appellant's arguments. The CA held that contrary to Avila's contention, the testimony of witness Ryan Vasquez was reasonably consistent in spite of his young age. The few dispensable ambiguities in the matter concerning his exact whereabouts at the time he witnessed the shooting was later clarified in his re-direct examination. In his cross-examination, the child became momentarily ambiguous when he stated that he discovered his sister already shot and bleeding after returning home from the store.[11] Nonetheless, the CA found the ambiguities rather circumstantial, if not, completely understandable given that the line of questioning was leading, *viz*.:

x x x x x x x x x

Q: So you went to the store and [bought] something?
A: Yes, Sir.

Q: And later on, after buying that something, you [returned]?
A: Yes, Sir.

Q: And you already discovered that your sister Jan Joy was shot when you [returned] from the store?
A: Yes, Sir.

Q: As a matter of fact, she was bleeding already at the time you [returned]?
A: Yes, Sir.[12]

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[11] *Supra* note 6 at 5.

[12] *Id.*

The CA observed that the questions were all answerable by a "yes" and that it is only but natural that the child witness answered in the affirmative. Nonetheless, the witness managed to clarify his earlier statements during the re-direct examination. The witness also cooperated unhesitatingly when he was presented with the pictures of the crime scene. Not only did he identify the pictures, he also described them, in particular, where he hid at the time of the shooting, how he could make out the assailants from where he stood[13] and where and how the accused and his companion were positioned shortly before committing the crime.[14] The CA maintained that there is nothing in the testimony that may be considered irrevocably flawed. It is not uncommon during the trial that witnesses omit certain details, sometimes inadvertently, in the narration and in the process commit inconsistencies. More than anyone else, a 9-year-old child is susceptible to this.

With regard to Bryan Hermano's testimony, the CA ruled that any ambiguity as to his location between the time he heard of the plot and the time of the shooting was ironed out later in his testimony. Accused-appellant casts doubt on the testimony of Jonalyn Vasquez because it was in conflict with that of Ryan Vasquez's. Jonalyn recounted that she saw accused pass by the pathway between her house and that of the victim's; whereas Ryan initially told the court that accused and his companion rushed out of the scene after shooting the victim. The CA held that the manner of describing the action of the accused after the commission of the crime is generally a matter of observation, and thus, the perception of one witness may differ significantly from that of another's, especially in this case where witnesses were situated in separate locations, allowing them to witness the occurrences from different vantage points. Hence, the perceived contradiction in Jonalyn's testimony and that of Ryan should not be taken to mean that neither of the testimonies was truthful. If at all, the flimsy distinctions in their testimonies should be seen as badges of credibility instead of fabrication.

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[13] TSN, March 20, 2003, p. 6.

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

As for the testimonies of the other witnesses, the CA held that the supposed inconsistencies pointed out by the defense are simply ambiguities that can be deciphered after a more thorough reading. Moreover, the nature of their testimonies does not serve to prejudice the prosecution just because they do not point directly to the accused as the culprit of the crime. The testimonies were presented to shed light on such incidental matters.

The CA affirmed the decision of the RTC and denied the appeal. The dispositive portion of the decision reads:

"**WHEREFORE**, premises considered, the appeal is hereby DISMISSED for lack of merit. Accordingly, the assailed Decision of the Regional Trial Court (RTC) of Quezon City, Branch 219 dated September 9, 2009 is **AFFIRMED** in toto.

SO ORDERED."[15]

The case was certified and elevated to this Court by the CA pursuant to Section 13 of Rule 124 of the Revised Rules of Court after it has reviewed and affirmed the decision of the RTC.

Our Ruling

We adopt the CA decision and affirm accused-appellant's conviction. Accused-appellant's contentions are bereft of merit.

The defense of denial cannot be given more weight over a witness' positive identification

The CA appropriately did not give credence to accused-appellant's defenses of alibi and denial; more so when it is pitted against the testimony of an eye witness. The child witness in this case positively identified the accused several times during the trial as the person who killed his sister. Such resoluteness cannot be doubted of a child, especially of one of tender age. The testimony of a single witness, when positive and credible, is sufficient to support a conviction even of murder.[16] The

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[15] *Rollo*, p. 13.

[16] *People v. De la Cruz*, 358 Phil. 513, 523 (1998).

defense failed to destroy the credibility of the child witness during the questioning. The defense of denial of the accused cannot be given more weight and credence over that of the child's positive identification. It is established jurisprudence that denial cannot prevail over the witnesses' positive identification of the accused-appellant; more so where the defense did not present convincing evidence that it was physically impossible for accused-appellant to have been present at the crime scene at the time of the commission of the crime.[17] A defense of denial which is unsupported and unsubstantiated by clear and convincing evidence becomes negative and self-serving, deserving no weight in law, and cannot be given greater evidentiary value over convincing, straightforward and probable testimony on affirmative matters.[18] Denial is an intrinsically weak defense which must be buttressed with strong evidence of non-culpability to merit credibility.[19]

Inconsistencies in testimonies with respect to minor details may be disregarded without impairing witness credibility

As consistently ruled by the Court, the testimony of children of sound mind is likely to be more correct and truthful than that of older persons, so that once established that they have understood the character and nature of an oath, their testimony should be given full credence.[20] The trivial inconsistencies in Ryan's eye witness narration of details are understandable, considering the suddenness of the attack, the dreadful scene unfolding before his eyes, and the imperfection of the human memory. It is for this reason that jurisprudence uniformly pronounces that minor inconsistencies in the testimony of a witness do not reflect on his credibility. What remains important is the

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[17] *People v. Salcedo, et al.*, 667 Phil. 765, 775-776 (2011); citing *Lumanog, et al. v. People,* 644 Phil. 296, 404-405 (2010).

[18] *People v. Mateo*, 582 Phil. 369, 384 (2008).

[19] *People v. Tamolon, et al.*, 599 Phil. 542, 552 (2009).

[20] *People v. Tenoso, et al.*, 637 Phil. 595, 602 (2010).

positive identification of the accused as the assailant.[21] Ample margin of error and understanding must be accorded to young witnesses who, much more than adults, would be gripped with tension due to the novelty of the experience of testifying before the court.[22]

In *People v. Crisostomo*,[23] this Court held that the discordance in the testimonies of witnesses on minor matters heightens their credibility and shows that their testimonies were not coached or rehearsed, especially where there is consistency in relating the principal occurrence and positive identification of the assailant.[24] It is well settled that when the main thrust of the appeal is on the credibility of the prosecution witnesses, and appellant fails to demonstrate why this Court should depart from the cardinal principle that the findings of the trial court on the matter of credibility should not be disturbed, the same should be respected on appeal.[25] The trial court has the superior advantage in observing the conduct and demeanor of the witness while testifying unless some fact or circumstance which could affect the result of the case may have been overlooked.[26] We have gone through the records of this case and We find no cause which would justify rejecting the trial court's findings or prevent the CA from relying thereon.

Evident premeditation, abuse of superior strength and treachery as qualifying circumstances in the crime of Murder

Murder is the unlawful killing of a person, which is not parricide or infanticide, provided that any of the attendant circumstances enumerated in Article 248 of the Revised Penal

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[21] *People v. Lagota*, 271 Phil. 923, 931-932 (1991).

[22] *People v. Abaño*, 425 Phil. 264, 278 (2002).

[23] 354 Phil. 867, 876 (1998).

[24] *Sumalpong v. CA*, 335 Phil. 1218, 1223-1224 (1997).

[25] *People v. Custodio*, 274 Phil. 829, 835-836 (1991).

[26] *People v. Cantuba*, 428 Phil. 817, 829 (2002).

Code is present. The trial court ruled that treachery and abuse of superior strength were attendant in the commission of the crime and that the prosecution failed to establish the qualifying circumstance of evident premeditation. Before a qualifying circumstance may be taken into consideration, it must be proved with equal certainty as that which establishes the commission of the crime. It is not only the central fact of killing that must be proved beyond reasonable doubt; every qualifying or aggravating circumstance alleged to have been present and to have attended such killing, must similarly be shown by the same degree of proof.[27] As with the finding of guilt of the accused, any doubt to its existence should be resolved in favor of the accused.[28] This Court finds that only the circumstance of treachery should be appreciated, qualifying the crime to Murder.

To establish evident premeditation, there must be proof of (1) the time when the offender determined to commit the crime, (2) an act manifestly indicating that the culprit has clung to his determination, and (3) a sufficient lapse of time between the determination and execution to allow him to reflect upon the consequences of his act and to allow his conscience to overcome the resolution of his will had he desired to hearken to its warnings.[29] The essence of premeditation is that the execution of the act was preceded by reflection during a period of time sufficient to arrive at a calm judgment.[30] When it is not shown as to how and when the plan to kill was hatched or what time had elapsed before it was carried out, evident premeditation cannot be considered. It must be based on external acts and must not be merely suspected. There must be a demonstration of outward acts of a criminal intent that is notorious and manifest.[31] The prosecution failed to satisfy the requisites of

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[27] *People v. Derilo*, 338 Phil. 350, 364 (1997).

[28] *Cirera v. People*, G.R. No. 181843, July 14, 2014, 730 SCRA 27, 48; citing *People v. Ayupan*, 427 Phil. 200, 218 (2002).

[29] *People v. Gravino*, 207 Phil. 107, 116 (1983).

[30] *People v. Ariola*, G.R. No. L-38457, October 29, 1980, 100 SCRA 523, 530.

[31] *People v. Narit*, 274 Phil. 613, 626, (1991).

evident premeditation. The records contain no evidence regarding the planning and preparation of the killing of Janjoy. It was likewise not shown that accused-appellant clung to his determination to kill Janjoy. In fact, the only thing established by the prosecution witness' testimony was accused-appellant's plan to kill Rovic Vasquez, not Janjoy Vasquez.[32] Thus, it cannot be said that accused-appellant had a preconceived plan to kill Janjoy.

Abuse of superior strength is present whenever there is notorious inequality of forces between the victim and the aggressor, assuming a situation of superiority of strength notoriously advantageous for the aggressor selected or taken advantage of by him in the commission of the crime.[33] The fact that there were two persons who attacked the victim does not per se establish that the crime was committed with abuse of superior strength, there being no proof of the relative strength of the aggressors and the victim. Mere superiority in numbers is not indicative of the presence of this circumstance.[34] The evidence must establish that the assailants purposely sought the advantage, or that they had the deliberate intent to use this advantage.[35] The prosecution failed to adduce evidence of a relative disparity in age, size and strength, or force, except for the showing that there were two assailants present when the crime was committed.

There is treachery when the offender commits any of the crimes against the persons, employing means, methods, or forms in the execution thereof, which tend directly and specially to ensure its execution, without risk to himself arising from the defense which the offended party might make.[36] The requisites of treachery are: (1) The employment of means, method, or manner of execution which will ensure the safety of the malefactor from

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[32] TSN, June 7, 2005, p. 5.

[33] *People v. Beduya, et al.*, 641 Phil. 399, 410 (2010).

[34] *Id.*

[35] *People v. Escoto*, 313 Phil. 785, 799 (1995).

[36] REVISED PENAL CODE, Art. 14 (16).

defensive or retaliating acts on the part of the victim, no opportunity being given to the latter to defend himself or to retaliate; and (2) deliberate or conscious adoption of such means, method or manner of execution. A finding of existence of treachery should be based on "clear and convincing evidence."[37] The prosecution, through the eyewitness testimony of Ryan Vasquez, was able to prove the treacherous manner of killing the victim. Ryan testified that the accused-appellant and his companion were peeping inside the house before the first shot was fired.[38] The first shot was fired from behind a closed door, catching the victim by surprise.[39] The second shot to the victim's head was fired immediately after the door was forced open by the accused-appellant.[40] Such manner of execution of the crime ensured the safety of accused-appellant from retaliation and afforded the victim no opportunity to defend herself. Thus, We hold that the circumstance of treachery should be appreciated, qualifying the crime to Murder.

Damages and civil liability

Anent the damages awarded, We find that modification is in order. In awarding actual damages amounting to ₱113,412.18, the RTC relied on a hand written receipt (Exhibit F), which was merely executed by the victim's father. Such document is self-serving and does not hold weight. Time and again, this Court has held that only expenses supported by receipts and which appear to have been actually expended in connection with the death of the victims may be allowed.[41] It is necessary that the claimant produce competent proof to justify an award for actual damages. Only substantiated expenses and those which appear to have been genuinely incurred in connection with the

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[37] *Cirera v. People*, *supra* note 28; citing *People v. Felix*, 357 Phil. 684, 700 (1998).

[38] TSN, February 20, 2003, p. 12.

[39] *Id.* at 11.

[40] TSN, February 6, 2003, p. 8.

[41] *People v. Salibad*, G.R. No. 210616, November 25, 2015.

death, wake or burial of the victim will be recognized by the courts.[42] This Court has repeatedly held that self-serving statements of account are not sufficient basis for an award of actual damages. Corollary to the principle that a claim for actual damages cannot be predicated on flimsy, remote, speculative, and insubstantial proof, courts are, likewise, required to state the factual bases of the award.[43]

A close examination of the records reveals that the prosecution only submitted the following evidence to substantiate the claim for actual damages:

Provisional receipt dated Oct. 29, 2002 issued by La Funeraria Paz (Exhibit D)	₱5,000.00
Official Receipt dated Oct. 21, 2002 issued by La Funeraria Paz (Exhibit D-1)	₱ 5,000.00
Provisional Receipt dated October 28, 2002 issued by La Funeraria Paz (Exhibit D-2)	₱19,000.00
Handwritten receipt dated October 28, 2002 issued by Paraiso Memorial Park (Exhibit D-5)	₱48,000.00
TOTAL	₱77,000.00

Based on the foregoing, the RTC erred in granting ₱8,400.00 in actual damages for food and beverage expenses incurred during the wake as the records are wanting of any receipt that substantiates such expenses. The RTC likewise erred in including college tuition fee expenses in the computation of actual damages granted; said expenses were not incurred in connection with the death, funeral or burial of the victim. Thus, accused-appellant shall be liable for ₱77,000.00 as actual damages.

The prosecution pointed out that the victim, Janjoy was 18 years old and at the time of her death, a second year college

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[42] *People v. Jamiro*, 344 Phil. 700, 722 (1997).

[43] *Oceaneering Contractors (Phils.), Inc. v. Barretto*, 657 Phil. 607, 617 (2011).

student at AMA College. Article 2206 of the Civil Code provides that in addition to the indemnity for death caused by a crime or *quasi delict*, the defendant shall be liable for the loss of the earning capacity of the deceased and the indemnity shall be paid to the heirs of the latter. Compensation of this nature is awarded not for loss of earnings but for loss of capacity to earn money.[44] It necessarily follows that evidence must be presented that the victim, if not yet employed at the time of death, was reasonably certain to complete training for a specific profession. In *People v. Teehankee, Jr.*,[45] this Court did not award any compensation for loss of earning capacity to the heirs of a college freshman because there was no sufficient evidence on record to show that the victim would eventually become a pilot. In said case, the prosecution merely presented evidence to show the fact of the victim's graduation from high school and the fact of his enrollment in flying school. Whereas, in *Metro Manila Transit Corporation v. CA*,[46] the Court granted compensation for loss of earning capacity resulting from the death of a minor who has not yet commenced employment for the reason that the victim's parents did not content themselves with simply establishing the victim's enrollment in a university. They presented evidence to show that the victim was a good student, promising artist, and obedient child. They showed that the victim consistently performed well in her studies since grade school. Several professors testified that the victim in said case had the potential of becoming an artist. The professors' testimonies were more than sufficiently established by the numerous samples of the victim's paintings and drawings submitted as exhibits by the heirs of the victim. In the case at bar, Rovic Vasquez, father of the victim, only testified as to the fact that Janjoy was a second year college student of AMA College at the time of her death. No mention was made of the victim's course in college, more so of her desired or perceived profession in the future. Unlike in *Metro Manila Transit Corporation v. CA* where

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[44] *Metro Manila Transit Corporation v. CA*, 359 Phil. 18, 38 (1998).

[45] 319 Phil. 128, 208 (1995).

[46] *Supra* note 44 at 39.

evidence of good academic record, extra-curricular activities and varied interests were presented in court, claimants in this case offered no such evidence. Hence, there is no basis for awarding compensation for loss of capacity.

In accordance with *People v. Gambao*,[47] wherein this Court increased the amounts of indemnity and damages where death is the penalty warranted by the facts but is not imposable under present law, accused-appellant shall also be liable for ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages and ₱100,000.00 as exemplary damages.

WHEREFORE, the decision of the Court of Appeals in CA-G.R. CR-H.C. No. 04311 is hereby **AFFIRMED WITH MODIFICATION**. Accused-appellant Apolonio "Totong" Avila is found **GUILTY** beyond reasonable doubt of Murder and sentenced to suffer the penalty of *reclusion perpetua* without eligibility for parole and ordered to pay the heirs of Janjoy Vasquez the amounts of ₱100,000.00 as civil indemnity, ₱100,000.00 as moral damages, ₱100,000.00 as exemplary damages, and ₱77,000.00 as actual damages. All monetary awards for damages shall earn interest at the legal rate of 6% per annum from the date of finality of this judgment until fully paid.

SO ORDERED.

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

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

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[47] 718 Phil. 507, 531 (2013).

[*] Designated as Additional Member in lieu of Justice Francis H. Jardeleza per raffle dated May 18, 2016.

SECOND DIVISION

[G.R. No. 208393. June 15, 2016]

CITY OF TAGUIG, *petitioner, vs.* **CITY OF MAKATI,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; FORUM SHOPPING; HOW COMMITTED.— Jurisprudence has recognized that forum shopping can be committed in several ways: "(1) filing multiple cases based on the same cause of action and with the same prayer, the previous case not having been resolved yet (where the ground for dismissal is *litis pendentia*); (2) filing multiple cases based on the same cause of action and the same prayer, the previous case having been finally resolved (where the ground for dismissal is *res judicata*); and (3) filing multiple cases based on the same cause of action but with different prayers (splitting of causes of action, where the ground for dismissal is also either *litis pendentia* or *res judicata*)."

2. ID.; ID.; ID.; TEST FOR DETERMINING FORUM SHOPPING.—The test for determining forum shopping is settled. In *Yap v. Chua, et al.*: "To determine whether a party violated the rule against forum shopping, the most important factor to ask is whether the elements of *litis pendentia* are present, or whether a final judgment in one case will amount to *res judicata* in another; otherwise stated, the test for determining forum shopping is whether in the two (or more) cases pending, there is identity of parties, rights or causes of action, and reliefs sought." x x x These settled tests notwithstanding: "Ultimately, what is truly important to consider in determining whether forum-shopping exists or not is the vexation caused the courts and parties-litigant by a party who asks different courts and/or administrative agencies to rule on the same or related causes and/or to grant the same or substantially the same reliefs, in the process creating the possibility of conflicting decisions being rendered by the different fora upon the same issue."

3. ID.; ID.; *LITIS PENDENTIA*; REQUISITES.— [*L*]*itis pendentia* "refers to that situation wherein another action is pending

between the same parties for the same cause of action, such that the second action becomes unnecessary and vexatious." For *litis pendentia* to exist, three (3) requisites must concur: "The requisites of *litis pendentia* are: (a) the identity of parties, or at least such as representing the same interests in both actions; (b) the identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) the identity of the two cases such that judgment in one, regardless of which party is successful, would amount to *res judicata* in the other."

4. ID.; ID.; JUDGMENTS; *RES JUDICATA*; REQUISITES.— [R]es judicata or prior judgment bars a subsequent case when the following requisites are satisfied: "(1) the former judgment is *final*; (2) it is rendered by a court having *jurisdiction* over the subject matter and the parties; (3) it is a judgment or an order *on the merits;* (4) there is – between the first and the second actions – *identity* of parties, of subject matter, and of causes of action."

5. ID.; ID.; ANNULMENT OF JUDGMENT AND MOTION FOR RECONSIDERATION; HAVE PURPOSES WHICH ARE FUNDAMENTALLY THE SAME AND THEY GRANT SUBSTANTIALLY THE SAME RELIEF WHICH IS TO SET ASIDE A JUDGMENT IN ORDER THAT A DIFFERENT, FAVORABLE ONE MAY TAKE ITS PLACE.— Rule 47 of the 1997 Rules of Civil Procedure "govern[s] the annulment by the Court of Appeals of judgments or final orders and resolutions in civil actions of Regional Trial Courts for which the ordinary remedies of new trial, appeal, petition for relief or other appropriate remedies are no longer available through no fault of the petitioner." x x x Rule 47, Section 7 specifies the effect of a judgment granting a Petition for Annulment of Judgment x x x. Rule 37, Section 3 specifies the effect of granting a motion for reconsideration: "If the court finds that excessive damages have been awarded or that the judgment or final order is contrary to the evidence or law, it may ***amend*** such judgment or final order accordingly." x x x In terms of immediacy of relief, there is a difference between motions for reconsideration of judgments and final orders, on the one hand, and petitions for annulment of judgment, on the other. The grant of a Motion for Reconsideration grants the movant immediate relief, the court's issuance granting the Motion is itself the amended judgment

superseding the original Decision. On the other hand, the grant of a Petition for Annulment of Judgment only allows for a "renewal of litigation." Nevertheless, the purposes of Motions for Reconsideration and Petitions for Annulment of Judgment are fundamentally the same: the setting aside of a judgment in order that a different, favorable, one may take its place. ***They "grant . . . substantially the same reliefs."***

6. ID.; ID.; ID.; LACK OF CAUSE OF ACTION; CAN BE A BASIS FOR PURSUING A MOTION FOR RECONSIDERATION AND A PETITION FOR ANNULMENT OF JUDGMENT.— [A] Rule 47 petition was not even opportune. It was not as though respondent City of Makati was left with no other remedy but a Rule 47 petition. Lack of jurisdiction could have just as easily been raised as an error in its Appeal or in its Motion for Reconsideration. ***It is as much a cause for pursuing a motion for reconsideration or an appeal as it is for pursuing a petition for annulment of judgment***. A petition for annulment of judgment is based only on two (2) grounds: first, extrinsic fraud; and second, lack of jurisdiction or denial of due process." In contrast, a motion for reconsideration of a judgment or final order may cover "grounds that the damages awarded are excessive, that the evidence is insufficient to justify the decision or final order, or that the decision or final order is contrary to law." x x x The Omnibus Motion Rule explicitly refers to Rule 9, Section 1. This provision provides for the following exceptions to the Omnibus Motion Rule: (a) lack of jurisdiction over the subject matter; (b) litis pendentia; (c) res judicata; and (d) prescription. Thus, even if these grounds are not pleaded in a motion attacking a judgment, such as a motion for reconsideration, they are not deemed waived. Clearly, ***lack of jurisdiction may be invoked as a ground in a motion for reconsideration***. It can thereby serve as basis for setting aside or amending a judgment or final order. Accordingly, ***it is as much a cause for pursuing a motion for reconsideration as it is a petition for annulment of judgment.***

7. ID.; ID.; SPECIAL CIVIL ACTIONS; DIRECT CONTEMPT; WILLFUL AND DELIBERATE FORUM SHOPPING CONSTITUTES DIRECT CONTEMPT, AND IS A CAUSE FOR ADMINISTRATIVE SANCTIONS.— Rule 7, Section 5 of the 1997 Rules of Civil Procedure provides that, apart from being a ground for summary dismissal, "willful and

deliberate forum shopping . . . shall constitute direct contempt, [and is] a cause for administrative sanctions." Thus, it would be inadequate to stop with a mere declaration that respondent City of Makati, which acted through its counsels, engaged in forum shopping. It was among the matters prayed for by petitioner City of Taguig that appropriate sanctions be imposed for respondent City of Makati's willful and deliberate forum shopping. So too, respondent City of Makati's defenses have been duly pleaded and considered in this case. Under Rule 71, Section 1 of the 1997 Rules of Civil Procedure, direct contempt committed against a Regional Trial Court or a court of equivalent or higher rank is punishable by imprisonment not exceeding 10 days and/or a fine not exceeding ₱2,000.00. Accordingly, a fine of ₱2,000.00 is imposed on each of respondent City of Makati's counsels who filed the Petition for Annulment of Judgment before the Court of Appeals: Atty. Pio Kenneth I. Dasal, Atty. Glenda Isabel L. Biason, and Atty. Gwyn Gareth T. Mariano.

APPEARANCES OF COUNSEL

Grace U. Fonacier and *Fatima A. Alconcel-Relente* for petitioner.

Gwyn Gareth T. Mariano, Glenda Isabel L. Biason and *Pio Kenneth I. Dasal* for respondent.

D E C I S I O N

LEONEN, *J.*:

Simultaneously pursuing an appeal (or motion for reconsideration) and a petition for annulment of judgment is an act of forum shopping. This act, which heaps vexation upon courts and parties-litigants, is illustrated by the facts of this case in which conflicting decisions have been rendered by different courts upon the same issue. The actions of respondent City of Makati (Makati) through its counsels is at the border of what appears to be a contumacious attempt to obfuscate the resolution of cases through the abuse of legal processes.

We grant the Petition.

This resolves a Petition for Review on Certiorari[1] praying that the assailed Court of Appeals Resolutions dated April 30, 2013[2] and July 25, 2013[3] in CA-G.R. SP No. 120495 be modified by including a declaration that Makati is guilty of wilful and deliberate forum shopping, and that appropriate sanctions be imposed for it.[4]

Petitioner City of Taguig (Taguig) suggests that the assailed rulings should be considered a "denial of the relief sought"[5] when the Court of Appeals, in its July 25, 2013 Resolution, supposedly took no action on Taguig's prayer in a Motion for Clarification that the Court of Appeals' April 30, 2013 Resolution "be reinforced with the pronouncement that respondent City of Makati did commit forum shopping."[6]

CA-G.R. SP No. 120495 relates to the Petition for Annulment of Judgment that Makati filed before the Court of Appeals after an unfavorable Decision rendered by the Regional Trial Court in Makati's territorial dispute with Taguig. The assailed April 30, 2013 Resolution denied Makati's Motion for Reconsideration in CA-G.R. SP No. 120495 and dismissed its Petition for Annulment of Judgment.[7] The assailed July 25, 2013 Resolution was issued in response to a Motion for Clarification dated

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[1] *Rollo*, pp. 100-130.

[2] *Id.* at 81-83. The Resolution was penned by Associate Justice Hakim S. Abdulwahid and concurred in by Associate Justices Marlene Gonzales-Sison and Leoncia Real-Dimagiba of the Former Seventh Division, Court of Appeals, Manila.

[3] *Id.* at 92-93. The Resolution was penned by Associate Justice Hakim S. Abdulwahid and concurred in by Associate Justices Marlene Gonzales-Sison and Leoncia Real-Dimagiba of the Former Seventh Division, Court of Appeals Manila.

[4] *Id.* at 126.

[5] *Id.* at 15, Motion for Extension of Time to File Petition for Review on *Certiorari*.

[6] *Id.*

[7] *Id.* at 83.

May 20, 2013, which Taguig filed before the Court of Appeals following the April 30, 2013 Resolution.[8]

On November 22, 1993, Taguig, then a municipality, filed before the Regional Trial Court of Pasig City a Complaint against Makati (then also a municipality), Former Executive Secretary Teofisto P. Guingona, Jr., Former Department of Environment and Natural Resources Secretary Angel Alcala, and Former Director of the Lands Management Bureau Abelardo Palad, Jr.[9]

The Complaint (Territorial Dispute Case) was denominated as one for "Judicial Confirmation of the Territory and Boundary Limits of Tagig [sic] and Declaration of the Unconstitutionality and Nullity of Certain Provisions of Presidential Proclamations 2475 and 518, with Prayer for Writ of Preliminary Injunction and Temporary Restraining Order."[10] This was docketed as Civil Case No. 63896 and raffled to Branch 153 of the Regional Trial Court of Pasig City.[11] In this Complaint, Taguig asserted that the areas comprising the Enlisted Men's Barangays, or EMBOs, as well as the area referred to as Inner Fort in Fort Bonifacio, were within its territory and jurisdiction.[12]

In the Decision[13] dated July 8, 2011, the Regional Trial Court, through Judge Briccio C. Ygaña (Judge Ygaña), ruled in favor of Taguig. The dispositive portion of this Decision reads:

WHEREFORE, premises considered, judgment is hereby rendered in favor of plaintiff Municipality, now City of Taguig and against all the defendants, as follows:

1. Fort Bonifacio Military Reservation consisting of Parcels 3 and 4, Psu-2031, is confirmed part of the territory of the plaintiff City of Taguig;

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[8] *Id.* at 92.

[9] *Id.* at 439. Guingona, Alcala, and Palad were impleaded in their respective capacities as the occupants of the specified offices.

[10] *Id.* at 138.

[11] *Id.*

[12] *Id.* at 439, Petition for Annulment of Judgment.

[13] *Id.* at 194-214.

2. Proclamation No. 2475, Series of 1986 and Proclamtion [sic] No. 518, Series of 1990 are hereby declared UNCONSTITUTIONAL and INVALID, insofar as they altered boundaries and diminished the areas of territorial jurisdiction of the City of Taguig without the benefit of a plebiscite as required in Section 10, Article X of the 1987 Constitution.

3. Making the Writ of Preliminary Injunction dated August 2, 1994 issued by this Court, explicitly referring to Parcels 3 and 4, Psu-2031 comprising Fort Bonifacio, be made PERMANENT, to wit:

a) enjoining defendants Secretary of the Department of Environment and Natural Resources and Director of Lands Management Bureau, from disposing of, executing deeds of conveyance over, issuing titles, over the lots covered by Proclamation Nos. 2475 and 518; and

b) enjoining defendant Municipality, now City of Makati, from exercising jurisdiction over, making improvements on, or otherwise treating as part of its territory, Parcels 3 and 4, Psu-2031 comprising Fort Bonifacio.

4. Ordering defendants to pay the cost of the suit.

SO ORDERED.[14] (Emphasis in the original)

On July 28, 2001, Makati filed before the Court of Appeals a Petition for Annulment of Judgment[15] under Rule 47 of the 1997 Rules of Civil Procedure. This Petition was docketed as CA-G.R. SP No. 120495.[16] It assailed the Regional Trial Court's July 8, 2011 Decision as having been rendered without jurisdiction and in violation of due process.[17] It claimed that the July 8, 2011 Decision was rendered by Judge Ygaña after he had retired, and was merely antedated (*i.e.*, to make it appear that it was

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[14] *Id.* at 214.

[15] *Id.* at 437-457.

[16] *Id.* at 437.

[17] *Id.* at 452-454.

rendered before he retired).[18] It prayed that this Decision be annulled and set aside.[19]

Specifically, the Petition for Annulment of Judgment alleged that in the afternoon of July 12, 2011, three (3) days after Judge Ygaña's retirement took effect and four (4) days after Judge Ygaña could have validly promulgated a judgment, three (3) of Makati's legal counsels — Atty. Pio Kenneth I. Dasal, Atty. Glenda Isabel L. Biason, and Atty. Gwyn Gareth T. Mariano — went to the Regional Trial Court to check if Judge Ygaña had rendered judgment and, if so, to obtain a copy for Makati.[20] Atty. Jerome T. Victor (Atty. Victor), Clerk of Court of Branch 153 of the Regional Trial Court of Pasig City, allegedly could not produce any copy of a promulgated Decision. Likewise, he was supposedly unable to produce Branch 153's Book of Judgments.[21] The Petition for Annulment of Judgment further cited Atty. Victor as saying that the only record (or "book"[22]) he had was Branch 153's Book of Entry of Final Judgments.[23]

The Petition added that "right there and then" Makati's three (3) counsels made a hand-written letter[24] asking Atty. Victor to issue a certification to the effect that, as of July 8, 2011, Judge Ygaña had not promulgated a Decision on the territorial dispute case. Atty. Victor then issued a Certification dated July 12, 2011, which reads:

CERTIFICATION

This is to certify that the draft of the Decision in the above-entitled case has already been finished on July 8, 2011, but the same is still undergoing review, revision and counterchecking with

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[18] *Id.* at 451-452.

[19] *Id.* at 455.

[20] *Id.* at 444-445.

[21] *Id.* at 444.

[22] *Id.*

[23] *Id.*

[24] *Id.* at 493.

the voluminous records by Judge Briccio C. Ygaña, before the same is finalized.

This Certification is issued upon the request of Atty. Pio Kenneth I. Dasal, Atty. Glenda Isabel L. Biason and Atty. Gwyn Gareth T. Mariano.

City of Taguig, July 12, 2011.

(sgd.)
Atty. JEROME T. VICTOR
Branch Clerk of Court[25]
(Emphasis in the original)

Makati's Petition for Annulment of Judgment further alleged that in the morning of July 13, 2011, Makati received a copy of the July 8, 2011 Decision.[26] This copy was supposedly received under protest as it was Makati's position that the July 8, 2011 Decision was void for having been rendered by a retired judge.[27] A handwritten note on the registry return receipt reads:

The undersigned counsel receives this Decision under PROTEST because in light of the July 12, 2011 Certification of the Clerk of Court of this Court, this Decision is void.

(sgd.)
Pio Kenneth I. Dasal
7/13/11 1:30 p.m.[28]

Also following the Regional Trial Court's July 8, 2011 Decision, Makati filed before the same court its Motion for Reconsideration *Ad Cautelam* of the July 8, 2011 Decision.[29] Like the Petition for Annulment of Judgment, this Motion was dated July 28, 2011.

On August 8, 2011, Taguig filed before the Court of Appeals a Motion to Dismiss Makati's Petition for Annulment of

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[25] *Id.* at 494.

[26] *Id.* at 445.

[27] *Id.* at 445-446.

[28] *Id.* at 516.

[29] *Id.* at 215-277.

Judgment.[30] This Motion assailed Makati's Petition: (1) for being fatally defective as it supposedly failed to comply with the requirement for Rule 47 petitions to prosper, that is, that the ordinary remedies of new trial, reconsideration, appeal, petition for relief, and other appropriate remedies are not available;[31] (2) for being unnecessary and premature, given that Makati had a pending Motion for Reconsideration before the Regional Trial Court;[32] (3) for supposedly not having a certification of non-forum shopping appended to it;[33] and (4) for forum shopping, as Makati was simultaneously pursuing its Petition for Annulment of Judgment before the Court of Appeals and its Motion for Reconsideration before the Regional Trial Court.[34]

Makati then filed a Comment (on Taguig's Motion to Dismiss)[35] dated December 15, 2011.

In its Comment, Makati argued that there was no need to wait for ordinary remedies to become unavailable. It cited *Tiu v. First Plywood Corporation*[36] as supposedly providing an exception to the requirement invoked by Taguig. Makati asserted that, in accordance with *Tiu*, "a judgment rendered by a court without jurisdiction is null and void, and may therefore be assailed anytime, without having to wait for ordinary remedies to become unavailable."[37] Citing *Nazareno v. Court of Appeals*,[38] it emphasized that the subject of its Petition for Annulment of Judgment was a supposedly void, i.e., non-existent, Decision.

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[30] *Id.* at 517-526.

[31] *Id.* at 518-520.

[32] *Id.* at 521.

[33] *Id.* at 521-522.

[34] *Id.* at 522-524.

[35] *Id.* at 527-535.

[36] 629 Phil. 120 (2010) [Per *J.* Carpio-Morales, First Division], as cited in *rollo*, p. 527, Makati's Comment on Taguig's Motion to Dismiss.

[37] *Rollo*, p. 527.

[38] 428 Phil. 32 (2002) [Per *J.* De Leon, Jr., Second Division], as cited in *rollo*, p. 528.

Thus, as there was no "effective or operative judgment to appeal from[,]"[39] it was not necessary to wait for the expiration of ordinary remedies.[40]

On Taguig's claim that it engaged in forum shopping, Makati claimed that its Petition for Annulment of Judgment and Motion for Reconsideration *Ad Cautelam* were based on different causes of action, raised different issues, and sought different remedies. The Petition for Annulment of Judgment related to the validity of the July 8, 2011 Decision, that is, that it was void for having been rendered by a retired judge. On the other hand, the Motion for Reconsideration *Ad Cautelam* pertained to the merits of the territorial dispute or to the substance of the respective territorial claims of Taguig and Makati.[41] Makati also emphasized that pages 21 to 22 of its Petition for Annulment of Judgment contained a verification and certification of non-forum shopping duly signed by the Mayor of Makati, Jejomar Erwin S. Binay, Jr.[42]

Meanwhile, Pairing Judge Leili Cruz Suarez (Judge Suarez) took over the territorial dispute case in the Regional Trial Court. On December 19, 2011, Judge Suarez issued an Order[43] denying Makati's Motion for Reconsideration *Ad Cautelam*. In another Order dated February 13, 2012, which acted on a Motion for Clarification filed by Taguig, the Regional Trial Court, also through Judge Suarez, stated that "*the findings of fact and conclusions of law in the Decision dated 8 July 2011, are all in order and soundly based*."[44]

Makati then filed a Notice of Appeal *Ad Cautelam* dated January 3, 2012.[45] This appeal before the Court of Appeals

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[39] *Rollo*, pp. 528-529, citing *Nazareno v. Court of Appeals*, 428 Phil. 32, 41 (2002) [Per J. De Leon, Jr. Second Division].

[40] *Id.*

[41] *Id.* at 530-532.

[42] *Id.* at 532.

[43] *Id.* at 262-275.

[44] *Id.* at 26.

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

was docketed as CA-G.R. CV No. 98377.[46] On October 5, 2012, Makati filed its Appellant's Brief *Ad Cautelam*.[47]

On January 6, 2012, Taguig filed its Reply to Makati's Comment on its Motion to Dismiss the Petition for Annulment of Judgment.[48] Taguig claimed that the Regional Trial Court's December 19, 2011 Order in the territorial dispute case, issued through Judge Suarez, rendered *functus officio* Makati's Petition for Annulment of Judgment, and reduced its resolution to "a mere academic exercise."[49] It insisted on its assertion that the Petition for Annulment of Judgment was fatally defective for failing to comply with Rule 47's requirements. It also assailed the jurisprudence cited by Makati as being inapplicable since in those cases, nullity of the subject cases were "obvious and beyond dispute."[50] It underscored its claim that Makati engaged in forum shopping as "[t]here is only one cause of action [which] revolves around the alleged rendition of a wrongful decision."[51]

Makati then filed a Rejoinder[52] dated February 2, 2012 reiterating its position that it did not commit forum shopping. It emphasized that the Motion for Reconsideration *Ad Cautelam* was merely a precautionary measure.[53] It claimed that the Petition for Annulment of Judgment was not rendered *functus officio* by the Regional Trial Court's December 19, 2011 Order as that Order included an express recognition that the matter of lack of jurisdiction was a matter in which the trial court would have to defer to the Court of Appeals:

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[46] *Id.* at 92.

[47] *Id.* at 278-360.

[48] *Id.* at 538-547.

[49] *Id.* at 538.

[50] *Id.* at 539.

[51] *Id.* at 540.

[52] *Id.* at 562-569.

[53] *Id.* at 564.

This Court agrees with Makati on this point. This Court cannot state, at this juncture, if the assailed decision is void for lack of jurisdiction since Makati has already filed a Petition for Annulment of Judgment with the Court of Appeals. . . This Court cannot pass judgment and has to defer to the Court of Appeals (Tenth Division) with regard to Makati's Petition for Annulment of Judgment.[54]

Taguig then filed a Sur-rejoinder [55] dated February 15, 2012.

In the Resolution[56] dated May 16, 2012, the Court of Appeals denied Taguig's Motion to Dismiss. It favored Makati's assertion in its Comment on the Motion to Dismiss that Judge Ygaña's July 8, 2011 Decision may be assailed at any time as this Decision was assailed for being void and having been issued without jurisdiction.[57] It also noted that contrary to Taguig's allegation, a Verification and Certificate of Non-forum Shopping was attached to the Petition.[58] It likewise agreed with Makati's position that the Petition for Annulment of Judgment and Motion for Reconsideration *Ad Cautelam* were based on different causes of action, raised different issues, and sought different remedies.[59]

On June 4, 2012, Taguig moved for reconsideration.[60] Taguig asserted that the Regional Trial Court's December 19, 2011 and February 13, 2012 Orders, penned by Judge Suarez, "stand on their own, independently of the assailed judgment as the final resolution of the [territorial dispute] case at the RTC level."[61] It emphasized that a Petition for Annulment of Judgment was the wrong remedy as the assailed July 8, 2011 Decision was not yet final and executory.[62] It insisted that Makati engaged in

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[54] *Id.* at 263.

[55] *Id.* at 588-590.

[56] *Id.* at 21-23.

[57] *Id.* at 22.

[58] *Id.*

[59] *Id.* at 23.

[60] *Id.* at 25-34.

[61] *Id.* at 27.

[62] *Id.* at 29.

forum shopping and, in support of this assertion, emphasized that Judge Suarez made this finding in the Regional Trial Court's December 19, 2011 Order.[63]

In the Resolution dated December 18, 2012,[64] the Court of Appeals granted Taguig's Motion for Reconsideration and dismissed Makati's Petition for Annulment of Judgment: (1) for being *functus officio* and/or moot; (2) for being premature; and (3) for forum shopping.[65]

The Court of Appeals reasoned that the Petition for Annulment of Judgment had become ineffectual as the Regional Trial Court's December 19, 2011 and February 13, 2012 Orders "amounted to Pairing Judge Suarez' own analysis of the relevant facts and law juxtaposed with the pieces of evidence on record, making them the equivalent of her own disposition of the merits of the case."[66] Thus, the sole relief that Makati could expect was the setting aside of the July 8, 2011 Decision which the Regional Trial Court had itself already "displaced."[67]

The Court of Appeals added that a Petition for Annulment of Judgment was improper if other appropriate remedies were available. Since Makati had recourse to a motion for reconsideration, its Petition for Annulment of Judgment was premature.[68]

The Court of Appeals likewise ruled that in filing a Motion for Reconsideration and Petition for Annulment of Judgment, Makati effectively split a single cause of action and thereby engaged in forum shopping.[69]

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

[64] *Id.* at 57-64.

[65] *Id.*

[66] *Id.* at 60.

[67] *Id.* at 61.

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

[69] *Id.* at 63.

On January 21, 2013, Makati moved for reconsideration.[70] It argued that the Petition for Annulment of Judgment could not have been rendered *functus officio* or moot by the Regional Trial Court's December 19, 2011 and February 13, 2012 Orders as these Orders did not replace but merely affirmed the July 8, 2011 Decision penned by Judge Ygaña.[71] It also insisted that a Petition for Annulment of Judgment was available to it at any time as the ground it invoked was lack of jurisdiction.[72] It maintained that the Petition for Annulment of Judgment and Motion for Reconsideration *Ad Cautelam* were based on distinct causes of action.[73]

In the assailed Resolution[74] dated April 30, 2013, the Court of Appeals denied Makati's Motion for Reconsideration. It abandoned its conclusions in its December 18, 2012 Resolution that the Petition for Annulment of Judgment had become *functus officio* and/or moot and that Makati engaged in forum shopping. However, it maintained that the Petition for Annulment of Judgment was premature:

> After considering the arguments raised by both parties, we agree with petitioner [Makati] that the subsequent orders of the trial court did not render its petition moot or *functus officio*, as the subsequent orders did not supplant the assailed Decision but actually affirmed the same. We likewise agree with petitioner that it did not commit forum-shopping. We subscribe to our previous ruling in our Resolution dated May 16, 2012, that the issues raised and the remedies sought by petitioner in the appeal *ad cautelam* and in this petition for annulment are independent and different from each other. Thus, there was no splitting of cause of action and no forum-shopping committed.
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> However, the fact remains that petitioner also pursued its appeal *ad cautelam* before this Court, which remains pending before its

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[70] *Id.* at 66-78.

[71] *Id.* at 67-70.

[72] *Id.* at 70-74.

[73] *Id.* at 74-76.

[74] *Id.* at 81-83.

Sixth Division and as correctly pointed out by respondent, the availability of the appeal as an ordinary remedy, which in fact petitioner availed of, renders this extraordinary remedy of an action for annulment of judgment unnecessary or, at the very least, premature.[75]

Alleging that the Court of Appeals' pronouncement that the Petition for Annulment of Judgment was premature was "inconsistent with and emasculated by the pronouncements that the instant petition was not mooted by the subsequent orders of the lower court and that petitioner Makati did not commit forum shopping,"[76] Taguig filed before the Court of Appeals what it called a Motion for Clarification.[77] The Motion prayed that "the Resolution dated April 30, 2013 be reinforced with clarificatory pronouncements that the instant petition was rendered moot by the subsequent orders of the lower court through Hon. Leili Cruz Suarez as Pairing Judge and that petitioner Makati did commit forum shopping."[78]

In resolving Taguig's Motion for Clarification, the Court of Appeals issued the second assailed Resolution[79] dated July 25, 2013, stating:

Relative to respondent City of Taguig's Motion for Clarification filed on May 22, 2013 and by way of clarification, the phrase "for being unnecessary and/or premature" appearing in the dispositive portion of the April 30, 2013 Resolution, means that the filing of the appeal docketed as CA-G.R. CV No. 98377 now pending with the Sixth Division of this Court has rendered the petition for annulment of judgment in the above-entitled case moot and academic, hence, unnecessary.[80]

Construing the Court of Appeals' silence (in its July 25, 2013 Resolution) on the issue of forum shopping as a "denial of the

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[75] *Id.* at 82-83.

[76] *Id.* at 87.

[77] *Id.* at 85-87.

[78] *Id.* at 87.

[79] *Id.* at 92-93.

[80] *Id.* at 92.

relief sought[,]"[81] petitioner City of Taguig comes to this Court through the present Petition for Review on Certiorari under Rule 45 of the 1997 Rules of Civil Procedure. It prays that the assailed Court of Appeals' April 30, 2013 and July 25, 2013 Resolutions be modified by including a declaration that respondent City of Makati is guilty of willful and deliberate forum shopping and that appropriate sanctions be imposed.[82]

On February 24, 2014, respondent City of Makati filed its Comment[83] on the present Petition. On April 10, 2014, petitioner City of Taguig filed its Reply.[84]

This case centers on the issue of whether respondent City of Makati engaged in forum shopping in simultaneously pursuing: first, a Petition for Annulment of the July 8, 2011 Regional Trial Court Decision; and second, a Motion for Reconsideration (later Appeal) of the same July 8, 2011 Decision.

Should it be found to have engaged in forum shopping, this Court must reckon if it was done in such a licentious manner as to warrant the imposition of sanctions on the persons liable for it.

I

Top Rate Construction & General Services, Inc. v. Paxton Development Corporation[85] explained that:

> Forum shopping is committed by a party who institutes two or more suits in different courts, either simultaneously or successively, in order to ask the courts to rule on the same or related causes or to grant the same or substantially the same reliefs, on the supposition that one or the other court would make a favorable disposition or increase a party's chances of obtaining a favorable decision or action.[86]

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[81] *Id.* at 15.

[82] *Id.* at 126.

[83] *Id.* at 646-658.

[84] *Id.* at 664-677.

[85] 457 Phil. 740 (2003) [Per *J.* Bellosillo, Second Division].

[86] *Id.* at 747-748, citing *Santos v. Commission on Elections*, 447 Phil. 760, 770-771 (2003) [Per *J.* Ynares-Santiago, *En Banc*]; *Young v. Keng*

First Philippine International Bank v. Court of Appeals[87] recounted that forum shopping originated as a concept in private international law:

> To begin with, forum-shopping originated as a concept in private international law, where non-resident litigants are given the option to choose the forum or place wherein to bring their suit for various reasons or excuses, including to secure procedural advantages, to annoy and harass the defendant, to avoid overcrowded dockets, or to select a more friendly venue. To combat these less than honorable excuses, the principle of *forum non conveniens* was developed whereby a court, in conflicts of law cases, may refuse impositions on its jurisdiction where it is not the most "convenient" or available forum and the parties are not precluded from seeking remedies elsewhere.
>
> In this light, *Black's Law Dictionary* says that forum-shopping "occurs when a party attempts to have his action tried in a particular court or jurisdiction where he feels he will receive the most favorable judgment or verdict." Hence, according to *Words and Phrases*, "a litigant is open to the charge of 'forum shopping' whenever he chooses a forum with slight connection to factual circumstances surrounding his suit, and litigants should be encouraged to attempt to settle their differences without imposing undue expense and vexatious situations on the courts."[88] (Emphasis in the original)

Further, *Prubankers Association v. Prudential Bank and Trust Co*.[89] recounted that:

> The rule on forum-shopping was first included in Section 17 of the Interim Rules and Guidelines issued by this Court on January 11, 1983, which imposed a sanction in this wise: "A violation of the rule shall constitute contempt of court and shall be a cause for the

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Seng, 446 Phil. 823, 832 (2003) [Per *J*. Panganiban, Third Division]; *Executive Secretary v. Gordon*, 359 Phil. 266, 271-272 (1998) [Per *J*. Mendoza, *En Banc*].

[87] 322 Phil. 280 (1996) [Per *J*. Panganiban, Third Division].

[88] *Id.* at 303-304, citing JOVITO SALONGA, *PRIVATE INTERNATIONAL LAW* 56 *et seq*. (1995), *Black's Law Dictionary* 590 (5th ed., 1979); and 17 Words and Phrases 646 (permanent ed.).

[89] 361 Phil. 744 (1999) [Per *J*. Panganiban, Third Division].

summary dismissal of both petitions, without prejudice to the taking of appropriate action against the counsel or party concerned." Thereafter, the Court restated the rule in Revised Circular No. 28-91 and Administrative Circular No. 04-94. Ultimately, the rule was embodied in the 1997 amendments to the Rules of Court.[90]

Presently, Rule 7, Section 5 of the 1997 Rules of Civil Procedure requires that a Certification against Forum Shopping be appended to every complaint or initiatory pleading asserting a claim for relief. It also provides for the consequences of willful and deliberate forum shopping:

RULE 7
PARTS OF A PLEADING

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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*

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[90] *Id.* at 754-755.

direct contempt, as well as a cause for administrative sanctions. (Emphasis supplied)

Though contained in the same provision of the 1997 Rules of Civil Procedure, the rule requiring the inclusion of a Certification against Forum Shopping is distinct from the rule against forum shopping. In *Korea Exchange Bank v. Gonzales*:[91]

> The general rule is that compliance with the certificate of forum shopping is separate from and independent of the avoidance of the act of forum shopping itself. Forum shopping is a ground for summary dismissal of both initiatory pleadings without prejudice to the taking of appropriate action against the counsel or party concerned.[92]

Top Rate Construction discussed the rationale for the rule against forum shopping as follows:

> It is an act of malpractice for it trifles with the courts, abuses their processes, degrades the administration of justice and adds to the already congested court dockets. What is critical is the vexation brought upon the courts and the litigants by a party who asks different courts to rule on the same or related causes and grant the same or substantially the same reliefs and in the process creates the possibility of conflicting decisions being rendered by the different fora upon the same issues, regardless of whether the court in which one of the suits was brought has no jurisdiction over the action.[93]

Jurisprudence has recognized that forum shopping can be committed in several ways:

> (1) filing multiple cases based on the same cause of action and with the same prayer, the previous case not having been resolved

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[91] 496 Phil. 127 (2005) [Per *J.* Callejo, Sr., Second Division].

[92] *Id.* at 145, citing *Prubankers Association v. Prudential Bank and Trust Co*., 361 Phil. 744 (1999) [Per *J.* Panganiban, Third Division].

[93] *Top Rate Construction & General Services, Inc. v. Paxton Development Corporation*, 457 Phil. 740, 748 (2003) [Per *J.* Bellosillo, Second Division], citing *Joy Mart Consolidated Corp. v. Court of Appeals,* G.R. No. 88705, 11 June 1992, 209 SCRA 738, 745 [Per *J.* Griño-Aquino, First Division] and *Villanueva v. Adre*, 254 Phil. 882, 888 (1989) [Per *J.* Sarmiento, Second Division].

yet (where the ground for dismissal is *litis pendentia*); (2) filing multiple cases based on the same cause of action and the same prayer, the previous case having been finally resolved (where the ground for dismissal is *res judicata*); and (3) filing multiple cases based on the same cause of action but with different prayers (splitting of causes of action, where the ground for dismissal is also either *litis pendentia* or *res judicata*).[94] (Emphasis in the original)

Similarly, it has been recognized that forum shopping exists "where a party attempts to obtain a preliminary injunction in another court after failing to obtain the same from the original court."[95]

The test for determining forum shopping is settled. In *Yap v. Chua, et al.*:[96]

To determine whether a party violated the rule against forum shopping, the most important factor to ask is whether the elements of *litis pendentia* are present, or whether a final judgment in one case will amount to *res judicata* in another; otherwise stated, the test for determining forum shopping is whether in the two (or more) cases pending, there is identity of parties, rights or causes of action, and reliefs sought.[97]

For its part, *litis pendentia* "refers to that situation wherein another action is pending between the same parties for the same cause of action, such that the second action becomes unnecessary and vexatious."[98] For *litis pendentia* to exist, three (3) requisites must concur:

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[94] *Collantes v. Court of Appeals*, 546 Phil. 391, 400 (2007) [Per J. Chico-Nazario, *En Banc*], citing *Ao-As v. Court of Appeals*, 524 Phil. 645, 660 (2006) [Per J. Chico-Nazario, First Division].

[95] *Executive Secretary v. Gordon*, 359 Phil. 266, 272 (1898) [Per J. Mendoza, *En Banc*], citing *Fil-Estate Golf and Development, Inc. v. Court of Appeals*, 333 Phil. 465, 486-487 (1996) [Per J. Kapunan, First Division].

[96] 687 Phil. 392 (2012) [Per J. Reyes, Second Division].

[97] *Id.* at 400, citing *Young v. John Keng Seng*, 446 Phil. 823, 833 (2003) [Per J. Panganiban, Third Division].

[98] *Id.*

The requisites of *litis pendentia* are: (a) the identity of parties, or at least such as representing the same interests in both actions; (b) the identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) the identity of the two cases such that judgment in one, regardless of which party is successful, would amount to *res judicata* in the other.[99]

On the other hand, *res judicata* or prior judgment bars a subsequent case when the following requisites are satisfied:

(1) the former judgment is *final*; (2) it is rendered by a court having *jurisdiction* over the subject matter and the parties; (3) it is a judgment or an order *on the merits*; (4) there is — between the first and the second actions — *identity* of parties, of subject matter, and of causes of action.[100] (Emphasis in the original)

These settled tests notwithstanding:

Ultimately, what is truly important to consider in determining whether forum-shopping exists or not is the vexation caused the courts and parties-litigant by a party who asks different courts and/or administrative agencies to rule on the same or related causes and/or to grant the same or substantially the same reliefs, in the process creating the possibility of conflicting decisions being rendered by the different fora upon the same issue.[101]

II

Respondent City of Makati pursued two (2) simultaneous remedies: a Petition for Annulment of Judgment under Rule 47 of the 1997 Rules of Civil Procedure (docketed as CA-G.R. SP No. 120495); and a Motion for Reconsideration (later, an Appeal, docketed as CA-G.R. CV No. 98377).

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[99] *Id.*, citing *Villarica Pawnshop, Inc. v. Gernale*, 601 Phil. 66, 78 (2009) [Per J. Austria-Martinez, Third Division].

[100] *Luzon Development Bank v. Conquilla*, 507 Phil. 509, 523 (2005) [Per J. Panganiban, Third Division], citing *Allied Banking Corporation v. Court of Appeals*, G.R. No. 95223, January 10, 1994, 229 SCRA 252, 258 [Per J. Mendoza, Second Division].

[101] *First Philippine International Bank v. Court of Appeals*, 322 Phil. 280, 313 (1996) [Per J. Panganiban, Third Division].

There is identity of parties in both cases: the cities of Makati and Taguig.

Nonetheless, respondent City of Makati argues that it could not have engaged in forum shopping as its Petition for Annulment of Judgment and Motion for Reconsideration/Appeal were based on different causes of action, raised different issues, and sought different reliefs. It asserted that the Petition for Annulment of Judgment related to the validity of the July 8, 2011 Decision, i.e., that it was void for having been rendered by a retired judge. It added that, in contrast, the Motion for Reconsideration/Appeal pertained to the merits of the territorial dispute or the substance of the respective territorial claims of petitioner City of Taguig and respondent City of Makati.

These arguments are specious considering the basic nature of a Rule 47 Petition and that of an appeal.

Rule 47 of the 1997 Rules of Civil Procedure "govern[s] the annulment by the Court of Appeals of judgments or final orders and resolutions in civil actions of Regional Trial Courts for which the ordinary remedies of new trial, appeal, petition for relief or other appropriate remedies are no longer available through no fault of the petitioner."

Alaban v. Court of Appeals[102] discussed the nature, purpose, and availability of petitions for annulment of judgment:

> An action for annulment of judgment is a remedy in law independent of the case where the judgment sought to be annulled was rendered. *The purpose of such action is to have the final and executory judgment set aside* so that there will be a renewal of litigation. It is resorted to in cases where the ordinary remedies of new trial, appeal, petition for relief from judgment, or other appropriate remedies are no longer available through no fault of the petitioner, and is based on only two grounds: extrinsic fraud, and lack of jurisdiction or denial of due process. A person need not be a party to the judgment sought to be annulled, and it is only essential that he can prove his allegation that the judgment was

[102] 507 Phil. 682 (2005) [Per *J.* Tinga, Second Division].

obtained by the use of fraud and collusion and he would be adversely affected thereby.[103] (Emphasis supplied)

No stretch of legal imagination can justify as final and executory the Order assailed in the Petition for Annulment of Judgment filed by respondent City of Makati. It was still subject to appeal. Respondent City of Makati's having availed itself of this remedy is, in fact, the entire impetus for this Decision.

Rule 47, Section 7 specifies the effect of a judgment granting a Petition for Annulment of Judgment:

RULE 47
ANNULMENT OF JUDGMENTS OR FINAL ORDERS AND RESOLUTIONS

x x x x x x x x x

SEC. 7. *Effect of judgment. — A judgment of annulment shall set aside the questioned judgment or final order or resolution and render the same null and void,* without prejudice to the original action being refiled in the proper court. However, where the judgment or final order or resolution is set aside on the ground of extrinsic fraud, the court may on motion order the trial court to try the case as if a timely motion for new trial had been granted therein. (Emphasis supplied)

While petitions for annulment of judgment are governed by Rule 47 of the 1997 Rules of Civil Procedure, motions for reconsideration of judgments and final orders (as opposed to Motions for Reconsideration of interlocutory orders) are governed by Rule 37 of the 1997 Rules of Civil Procedure. Rule 37, Section 1 provides:

RULE 37
NEW TRIAL OR RECONSIDERATION

SECTION 1. *Grounds of and period for filing motion for new trial or reconsideration.* — Within the period for taking an appeal,

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[103] *Id.* at 694, citing *Islamic Da'Wah Council of the Philippines v. Court of Appeals*, 258 Phil. 802 (1989) [Per *J.* Cortes, Third Division]; RULES OF COURT, Rule 47, Sec. 1; and *Pinlac v. Court of Appeals*, 402 Phil. 684 (2001) [Per *J.* Ynares-Santiago, First Division].

the aggrieved party may move the trial court to set aside the judgment or final order and grant a new trial for one or more of the following causes materially affecting the substantial rights of said party:

x x x x x x x x x

Within the same period, the aggrieved party may also move for reconsideration upon the grounds that the damages awarded are excessive, that the evidence is insufficient to justify the decision or final order, or that the decision or final order is contrary to law.

Rule 37, Section 3 specifies the effect of granting a motion for reconsideration: "If the court finds that excessive damages have been awarded or that the judgment or final order is contrary to the evidence or law, it may ***amend*** such judgment or final order accordingly."

Escquivel v. Alegre[104] discussed the nature of amended judgments and contrasting it with supplemental judgments:

> In an amended and clarified judgment, the lower court makes a thorough study of the original judgment and renders the amended and clarified judgment only after considering all the factual and legal issues. **The amended and clarified decision is an entirely new decision which supersedes the original decision**. . . [A] supplemental decision does not take the place or extinguish the existence of the original. As its very name denotes, it only serves to bolster or adds something to the primary decision. A supplement exists side by side with the original. It does not replace that which it supplements.[105] (Emphasis supplied)

In terms of immediacy of relief, there is a difference between motions for reconsideration of judgments and final orders, on the one hand, and petitions for annulment of judgment, on the other. The grant of a Motion for Reconsideration grants the movant immediate relief, the court's issuance granting the Motion

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[104] 254 Phil. 316 (1989) [Per *J.* Paras, Second Division].

[105] *Id.* at 325-326, citing *Magdalena Estate, Inc. v. Caluag*, 120 Phil. 338 (1964) [Per *J.* Regala, *En Banc*]; *Sta. Romana v. Lacson*, 191 Phil. 435 (1981) [Per *J.* Fernandez, First Division]; and *Aznar III, et al. v. Bernard, et al.*, 244 Phil. 285 (1988) [Per *J.* Sarmiento, Second Division].

is itself the amended judgment superseding the original Decision. On the other hand, the grant of a Petition for Annulment of Judgment only allows for a "renewal of litigation."[106] Nevertheless, the purposes of Motions for Reconsideration and Petitions for Annulment of Judgment are fundamentally the same: the setting aside of a judgment in order that a different, favorable, one may take its place. ***They "grant . . . substantially the same reliefs."***[107]

Ley Construction and Development Corp. v. Hyatt Industrial Manufacturing Corp.[108] involved a civil action for specific performance and damages filed by Ley Construction against Hyatt Industrial. During the proceedings, Ley Construction served notices to take several depositions. The trial court initially allowed the taking of these depositions. Subsequently, however, the trial court issued orders through which it cancelled all the depositions set for hearing, supposedly not to delay the disposition of the case. Ley Construction filed before the Court of Appeals a Petition for Certiorari under Rule 65 of the 1997 Rules of Civil Procedure assailing the trial court's (interlocutory) order recalling the taking of depositions. During the pendency of this Petition, the trial court issued the Resolution dismissing Ley Construction's action for specific performance and damages. The Court of Appeals also dismissed Ley Construction's Rule 65 Petition. Ley Construction then appealed to this court. Resolving Ley Construction's appeal, this court stated:

> Third, petitioner's submission that the Petition for Certiorari has a practical legal effect is in fact an admission that the two actions are one and the same. Thus, in arguing that the reversal of the two interlocutory Orders "would likely result in the setting aside of the dismissal of petitioner's amended complaint," petitioner effectively contends that its Petition for Certiorari, like the appeal, seeks to set aside the Resolution and the two Orders.

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[106] *Alaban v. Court of Appeals*, 507 Phil. 682 (2005) [Per *J.* Tinga, Second Division].

[107] *First Philippine International Bank v. Court of Appeals*, 322 Phil. 280, 313 (1996) [Per *J.* Panganiban, Third Division]. Emphasis supplied.

[108] 393 Phil. 633 (2000) [Per *J.* Panganiban, Third Division].

Such argument unwittingly discloses a recourse to forum shopping, which has been held as "the institution of two or more actions or proceedings grounded on the same cause on the supposition that one or the other court would make a favorable disposition." Clearly, by its own submission, petitioner seeks to accomplish the same thing in its Petition for Certiorari and in its appeal: both assail the two interlocutory Orders and both seek to set aside the RTC Resolution.

Hence, even assuming that the Petition for Certiorari has a practical legal effect because it would lead to the reversal of the Resolution dismissing the Complaint, it would still be denied on the ground of forum shopping.[109] (Emphasis supplied)

Thus, in *Ley Construction*, even if the specific relief sought by the petitioner's Rule 65 Petition was the setting aside of the trial court's orders recalling the taking of depositions, it was recognized that granting this relief would result in the "practical legal effect"[110] of setting aside the trial court's dismissal of its Complaint for specific performance and damages. Thus, the petitioner would have "accomplish[ed] the same thing in its Petition for Certiorari and in its Appeal," that is, its Rule 65 Petition and its appeal would have granted practically, or "substantially," the same relief.

Ley Construction discredits respondent City of Makati's claim that it could not have engaged in forum shopping as its Rule 47 Petition and its Motion for Reconsideration/Appeal were grounded on different causes of action.

Ley Construction involved two (2) remedies: first, a Petition for Certiorari under Rule 65; and second, an Appeal. Rule 65, Section 1[111] of the 1997 Rules of Civil Procedure states that a

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[109] *Id.* at 641-642.

[110] *Id.* at 641.

[111] RULES OF COURT, Rule 65, Sec. 1 provides:

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

Petition for Certiorari is available "[w]hen any tribunal, board or officer exercising judicial or quasi-judicial functions has acted without or in excess of its or his jurisdiction, or with grave abuse of discretion amounting to lack or excess of jurisdiction." Thus, a petition for certiorari raises questions of jurisdiction. It does not, in the strict sense, delve into the merits or substance of the case or the proceedings, which allegedly occasioned an error in jurisdiction.

In *Ley Construction*, one could have dwelt on the fine distinction between, on one hand, Rule 65 petitions as proceedings grounded on errors in jurisdiction, and, on the other, appeals as proceedings that go into the merits or substance of a case. This is not entirely different from respondent City of Makati's invitation to dwell on the difference between, on one hand, its Rule 47 Petition as assailing the issuance of a judgment without jurisdiction, and, on the other, its Motion for Reconsideration (later, Appeal), as focusing on the substance of its and of petitioner City of Taguig's respective territorial claims.

Besides, a Rule 47 petition was not even opportune. It was not as though respondent City of Makati was left with no other remedy but a Rule 47 petition. Lack of jurisdiction could have just as easily been raised as an error in its Appeal or in its Motion for Reconsideration. ***It is as much a cause for pursuing a motion for reconsideration or an appeal as it is for pursuing a petition for annulment of judgment***.

A petition for annulment of judgment is based only on two (2) grounds: first, extrinsic fraud; and second, lack of jurisdiction

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any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.

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 a sworn certification of non-forum shopping as provided in the third paragraph of section 3, Rule 46.

or denial of due process."[112] In contrast, a motion for reconsideration of a judgment or final order may cover "grounds that the damages awarded are excessive, that the evidence is insufficient to justify the decision or final order, or that the decision or final order is contrary to law."[113]

Rule 37, Section 2 of the 1997 Rules of Civil Procedure spells out what a motion for reconsideration must contain:

> RULE 37
> NEW TRIAL OR RECONSIDERATION
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> x x x x x x x x x
>
> SEC. 2. *Contents of motion for new trial or reconsideration and notice thereof.* — The motion shall be made in writing stating the ground or grounds therefor, a written notice of which shall be served by the movant on the adverse party.
>
> A motion for new trial shall be proved in the manner provided for proof of motion. A motion for the cause mentioned in paragraph (a) of the preceding section shall be supported by affidavits of merits which may be rebutted by affidavits. A motion for the cause mentioned in paragraph (b) shall be supported by affidavits of the witnesses by whom such evidence is expected to be given, or by duly authenticated documents which are proposed to be introduced in evidence.
>
> A motion for reconsideration shall point out specifically the findings or conclusions of the judgment or final order which are not supported by the evidence or which are contrary to law making express reference to the testimonial or documentary evidence or to the provisions of law alleged to be contrary to such findings or conclusions.
>
> A pro forma motion for new trial or reconsideration shall not toll the reglementary period of appeal. (Emphasis supplied)

However, Rule 37, Section 2 is not the sole provision in the 1997 Rules of Civil Procedure that spells out what a motion for reconsideration must state. Rule 15, Section 8, commonly referred to as the Omnibus Motion Rule, states:

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[112] *Alaban v. Court of Appeals*, 507 Phil. 682, 694 (2005) [Per *J.* Tinga, Second Division], citing RULES OF COURT, Rule 47, Sec. 1.

[113] RULES OF COURT, Rule 37, Sec. 1.

RULE 15
MOTIONS

x x x x x x x x x

SEC. 8. Omnibus motion. — Subject to the provisions of Section 1 of Rule 9, *a motion attacking a* pleading, order, *judgment,* or proceeding *shall include all objections then available, and all objections not so included shall be deemed waived*. (Emphasis supplied)

The Omnibus Motion Rule explicitly refers to Rule 9, Section 1.[114] This provision provides for the following exceptions to the Omnibus Motion Rule:

(a) lack of jurisdiction over the subject matter;

(b) litis pendentia;

(c) res judicata; and

(d) prescription.

Thus, even if these grounds are not pleaded in a motion attacking a judgment, such as a motion for reconsideration, they are not deemed waived.

Clearly, ***lack of jurisdiction may be invoked as a ground in a motion for reconsideration.*** It can thereby serve as basis for setting aside or amending a judgment or final order. Accordingly, ***it is as much a cause for pursuing a motion for reconsideration as it is a petition for annulment of judgment.***

III

Makati points out that there is jurisprudence to the effect that a petition for annulment of judgment, if based on lack of

[114] RULES OF COURT, Rule 9, Sec. 1 provides:

SECTION 1. *Defenses and objections not pleaded.* — Defenses and objections not pleaded either in a motion to dismiss or in the answer are deemed waived. However, when it appears from the pleadings or the evidence on record that the court has no jurisdiction over the subject matter, that there is another action pending between the same parties for the same cause, or that the action is barred by a prior judgment or by statute of limitations, the court shall dismiss the claim.

jurisdiction, need not "allege that the ordinary remedies of new trial, reconsideration or appeal were no longer available through no fault of his."[115] Indeed, as explained in *Tiu*, "[t]his is so because a judgment rendered or final order issued by the [Regional Trial Court] without jurisdiction is null and void and may be assailed any time either collaterally or in a direct action, or by resisting such judgment or final order in any action or proceeding whenever it is invoked."[116]

Moreover, it is correct that *Nazareno* stated that "[a] judgment promulgated after the judge who signed the decision has ceased to hold office is not valid and binding."[117] This is so because "[w]hen a judge[,] retired all his authority to decide any case, i.e., to write, sign and promulgate the decision thereon also 'retired' with him. In other words, he had lost entirely his power and authority to act on all cases assigned to him prior to his retirement."[118]

In this case, however, *Tiu* and *Nazareno* afford Makati no relief, the crux of the present Petition being the matter of forum shopping.

Tiu involved a petition for annulment of judgment filed ***after*** the assailed judgment attained finality. In that case, by the time a petition for annulment of judgment was filed, an execution sale had already been held.

Tiu is markedly different from this case. In *Tiu*, a petition for annulment of judgment was availed of at the proper time and not in a manner that indicated an abuse of court processes. Here, respondent City of Makati's conduct was assailed by petitioner City of Taguig precisely because respondent City of Makati ***simultaneously*** pursued a Petition for Annulment of Judgment and a Motion for Reconsideration.

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[115] *Tiu v. First Plywood Corporation*, 629 Phil. 120 (2010) [Per *J.* Carpio-Morales, First Division].

[116] *Id.* at 132.

[117] *Id.* at 40, citing *People v. Court of Appeals*, 99 Phil. 786, 790 (1956) [Per *J.* Bengzon, *En Banc*].

[118] *Id.* at 41, citing *People v. Labao*, G.R. No. 102826, March 17, 1993, 220 SCRA 100 [Per *J.* Bellosillo, First Division].

Nazareno involved a criminal case for serious physical injuries (Criminal Case No. 2335) in which a Decision was promulgated by a judge who was substituting for a suspended judge. Specifically, Acting Judge Aurelio Icasiano, Jr., promulgated a Decision penned and signed by the suspended Presiding Judge Manuel C. Diosomito. This Decision was dated November 8, 1995.[119]

Following the promulgation of this Decision, Romeo P. Nazareno (Nazareno) filed a Petition for Annulment of Judgment before the Court of Appeals. This Petition was denied by the Court of Appeals. A subsequent appeal before this Court was not entertained, it having been filed 12 days late.[120]

Failing in his Petition for Annulment of Judgment, Nazareno ***went back to the Municipal Trial Court of Naic, Cavite and filed a Notice of Appeal***. The Regional Trial Court of Naic, Cavite, however, dismissed his appeal for having been supposedly filed out of time. Nazareno then filed a Petition for Mandamus and Certiorari before the Court of Appeals, which the Court of Appeals dismissed. Nazareno then filed an appeal before this court.[121]

Deciding Nazareno's Appeal, this Court noted that the November 8, 1985 Decision was a void judgment. As a void judgment, "it cannot be deemed to have become final and executory."[122] Citing *Metropolitan Waterworks and Sewerage System v. Sison*,[123] this Court emphasized that "the situation is the same as it would be if there were no judgment. Accordingly, it leaves the parties litigants in the same position they were in before the trial."[124] Accordingly, "in the interest of justice,"[125]

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[119] *Id.* at 36.

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

[121] *Id.* at 37.

[122] *Id.* at 41.

[123] 209 Phil. 325 (1983) [Per *J.* Escolin, Second Division].

[124] *Id.*

[125] *Id.*

not only did this court rule that the November 8, 1985 Decision may still be appealed from; it was ruled that Criminal Case No. 2335 must be remanded to the Municipal Trial Court of Naic, Cavite "for adjudication and promulgation of [an entirely] new decision."[126]

In *Nazareno*, the petitioner did not *simultaneously* pursue a Petition for Annulment of Judgment and an Appeal. Respondent City of Makati did so here. In ***Nazareno***, the petitioner had the prudence to not trifle with court processes and "creat[e] the possibility of conflicting decisions." On the contrary, the petitioner deferred to the Court of Appeals where his Petition for Annulment of Judgment was then pending. It was only after this Court dismissed his Appeal from the Court of Appeals' adverse Decision that he filed a Notice of Appeal.

Nazareno, far from helping respondent City of Makati's case, actually weakens it. *Nazareno* shows that an appeal (or a motion for reconsideration as a prelude to an Appeal) need not be pursued simultaneously with a Petition for Annulment of Judgment. *Nazareno* shows that a party burdened by a decision issued without jurisdiction need not simultaneously go to several fora to obtain relief. *Nazareno* shows that the issuance of a decision despite a tribunal's lack of jurisdiction is no license for forum shopping.

IV

Respondent City of Makati emphasized that its Motion for Reconsideration and Appeal were mere precautionary measures. We are not impressed by this argument. Appending the phrase "ad cautelam" to an application for relief does not alter the nature of the remedy being pursued. Had it been granted by the trial court, the Motion for Reconsideration — ad cautelam or otherwise — would have ultimately resulted in the setting aside of the assailed decision.

The antecedents of the present Petition show that respondent City of Makati's actions have actually and already given rise

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[126] *Id.*

to the harm sought to be avoided by the rule against forum shopping. The Regional Trial Court conflicted with the Court of Appeals.

In its December 19, 2011 Order, the Regional Trial Court found that respondent City of Makati engaged in forum shopping:

> The Rules of Court, the code governing judicial procedure, prescribes the remedies (actions and special proceedings) that may be availed of for the myriad reliefs that persons may conceivably have need of and seek in this jurisdiction. *But, that the adjective law makes available several remedies does not imply that a party may resort to them simultaneously or at his pleasure or whim. There is a sequence and a hierarchical order which must be observed in availing of them*. Impatience at what may be felt to be the slowness of the judicial process, or even a deeply held persuasion in the rightness of one's cause does not justify short-cuts in procedure, or playing fast and loose with the rules thereof.
>
> *The rationale against forum shopping is that a party should not be allowed to pursue simultaneous remedies in two different fora*. Filing multiple petitions or complaints constitutes abuse of court processes, which tend to degrade the administration of justice, wreaks havoc upon orderly judicial procedure, and adds to the congestion of the heavily burdened dockets of the courts.
>
> Without passing judgment on the Petition for Annulment of Judgment filed by Makati with the Court of Appeals, this Court would like to quote Section 1, Rule 47 of the Rules of Court which provides:
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> > SECTION 1. Coverage. — This Rule shall govern the *annulment by the Court of Appeals of judgments* or final orders and resolutions *in civil actions of Regional Trial Courts for which the ordinary remedies of new trial, appeal, petition for relief or other appropriate remedies are no longer available through no fault of the petitioner.*
>
> There was still an available remedy for Makati and it correctly and timely filed the present Motion for Reconsideration *Ad Cautelam*. If applicable, there is still another remedy available to either party, appeal to the Court of Appeals and the Supreme Court.
>
> Among the sanctions provided by the Rules and jurisprudence when there is forum shopping is the summary dismissal of the action with prejudice.

However, this court would not strictly apply the sanctions provided in order to give the parties the full measure of the proceedings that they are allowed to avail of under the law after the issuance of this order.[127] (Emphasis in the original, citations omitted)

For its part, the Court of Appeals has strangely flip-flopped on the question of respondent City of Makati's forum shopping. Its May 16, 2012 Resolution denying petitioner City of Taguig's Motion to Dismiss absolved respondent City of Makati of the charge of forum shopping. Its December 18, 2012 Resolution granted petitioner City of Taguig's Motion for Reconsideration and dismissed respondent City of Makati's Petition for Annulment of Judgment for, among other reasons, forum shopping. Its April 30, 2013 Resolution denied respondent City of Makati's Motion for Reconsideration but abandoned its earlier conclusion that respondent City of Makati engaged in forum shopping. Finally, its July 25, 2013 Resolution granted petitioner City of Taguig's prayer that a pronouncement be made to the effect that respondent City of Makati's Petition for Annulment of Judgment was moot. This Resolution, however, was silent on the matter of forum shopping.

Respondent City of Makati's actions have not only vexed courts and an adverse litigant. They have actually and already given rise to conflicting decisions, not only between different courts — the Regional Trial Court and the Court of Appeals — but even within the Court of Appeals itself. The damage to the administration of justice is not hypothetical; it is a realized harm.

V

Rule 7, Section 5 of the 1997 Rules of Civil Procedure provides that, apart from being a ground for summary dismissal, "willful and deliberate forum shopping . . . shall constitute direct contempt, [and is] a cause for administrative sanctions." Thus, it would be inadequate to stop with a mere declaration that respondent City of Makati, which acted through its counsels, engaged in forum shopping.

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[127] *Rollo*, pp. 274-275.

It was among the matters prayed for by petitioner City of Taguig that appropriate sanctions be imposed for respondent City of Makati's wilful and deliberate forum shopping. So too, respondent City of Makati's defenses have been duly pleaded and considered in this case. Under Rule 71, Section 1 of the 1997 Rules of Civil Procedure, direct contempt committed against a Regional Trial Court or a court of equivalent or higher rank is punishable by imprisonment not exceeding 10 days and/or a fine not exceeding ₱2,000.00. Accordingly, a fine of ₱2,000.00 is imposed on each of respondent City of Makati's counsels who filed the Petition for Annulment of Judgment before the Court of Appeals: Atty. Pio Kenneth I. Dasal, Atty. Glenda Isabel L. Biason, and Atty. Gwyn Gareth T. Mariano.

WHEREFORE, the Petition is **GRANTED**. The assailed Resolutions dated April 30, 2013 and July 25, 2013 of the Court of Appeals Seventh Division in CA-G.R. SP No. 120495 are **MODIFIED**. Respondent City of Makati is declared to have engaged in forum shopping in simultaneously pursuing a Petition for Annulment of Judgment before the Court of Appeals and a Motion for Reconsideration before Branch 153 of the Regional Trial Court of Pasig City, and later, an Appeal before the Court of Appeals.

We find respondent City of Makati, through its counsels Atty. Pio Kenneth I. Dasal, Atty. Glenda Isabel L. Biason, and Atty. Gwyn Gareth T. Mariano, **GUILTY** of direct contempt, and **FINE** Atty. Pio Kenneth I. Dasal, Atty. Glenda Isabel L. Biason and Atty. Gwyn Gareth T. Mariano ₱2,000.00 each.

SO ORDERED.

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

Brion and *del Castillo, JJ.,* on official leave.

THIRD DIVISION

[G.R. No. 208646. June 15, 2016]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **LORETO SONIDO *y* CORONEL,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REVISED PENAL CODE; STATUTORY RAPE; ELEMENTS.— The crime charged was rape under paragraph 1 (d) of Article 266-A of the Revised Penal Code, as amended by R.A. No. 8353. Statutory rape is committed by sexual intercourse with a woman below twelve (12) years of age regardless of her consent, or the lack of it to the sexual act. Proof of force, intimidation, or consent is unnecessary. These are not elements of statutory rape as the absence of free consent is conclusively presumed when the victim is below the age of twelve. At that age, the law presumes that the victim does not possess discernment and is incapable of giving intelligent consent to the sexual act. To convict an accused of the crime of statutory rape, the prosecution carries the burden of proving; (1) the age of the complainant; (2) the identity of the accused; and (3) the sexual intercourse between the accused and the complainant. Full penile penetration of the female genitalia is likewise not required because carnal knowledge is simply the act of a man having sexual bodily connections with a woman.

2. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; IN RAPE CASES, THE TESTIMONIES OF CHILD VICTIMS ARE GIVEN FULL WEIGHT AND CREDIT, FOR YOUTH AND IMMATURITY ARE GENERALLY BADGES OF TRUTH AND SINCERITY.— 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. AAA vividly described the rape committed against her as an eight-year old on 29 December 2004. Her recollections during trial revealed a credible and consistent narration of her ordeal with appellant's hands. AAA disclosed details that no child

of her young age could have invented or concocted; she never wavered in her allegations of rape against appellant that the Court is convinced that the RTC and the Court of Appeals were correct in according full credence to her. 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 immaturity are generally badges of truth and sincerity.

3. ID.; ID.; ID.; ASSESSMENT THEREON BY THE TRIAL COURT JUDGE IS GENERALLY BINDING AND CONCLUSIVE BECAUSE OF HIS UNIQUE OPPORTUNITY TO OBSERVE THE DEMEANOR OF THE WITNESS ON THE WITNESS STAND.— [T]he assessment of the credibility of witnesses is best left to the trial court judge because of his unique opportunity to observe their deportment and demeanor on the witness stand, a vantage point denied [of] appellate courts. And when the trial court judge's findings have been affirmed by the Court of Appeals, these are generally binding and conclusive upon this Court. While there are exceptions to the rule, the Court finds no substantial reason to overturn the similar conclusions of the RTC and the Court of Appeals on the matter of AAA's credibility.

4. ID.; ID.; ID.; INCONSISTENCIES IN THE TESTIMONY OF THE WITNESS WITH REGARD TO MINOR OR COLLATERAL MATTERS DO NOT DIMINISH THE VALUE OF THE TESTIMONY IN TERMS OF TRUTHFULNESS OR WEIGHT.— [I]naccuracies and inconsistencies are expected in a rape victim's testimony. Rape is a painful experience which is oftentimes not remembered in detail. It causes deep psychological wounds that scar the victim for life and which her conscious and subconscious mind would opt to forget. Inconsistencies in the testimony of the witness with regard to minor or collateral matters do not diminish the value of the testimony in terms of truthfulness or weight. The gravamen of the felony is the carnal knowledge by the appellant of the private complainant under any of the circumstances provided in Article 266-A of the Revised Penal Code, as amended by R.A. No. 8353.

5. CRIMINAL LAW; REVISED PENAL CODE; RAPE; HYMENAL LACERATION IS NOT AN ELEMENT OF

RAPE.— While indeed AAA's medical examination did not show traces of injuries or lacerations, the rule is settled that hymenal lacerations are not an element of rape. In fact, it has also been ruled that a medical examination 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.

6. ID.; ID.; ID.; CARNAL KNOWLEDGE; THE MERE TOUCHING OF THE EXTERNAL GENITALIA BY THE PENIS CAPABLE OF CONSUMMATING THE SEXUAL ACT IS SUFFICIENT TO CONSTITUTE CARNAL KNOWLEDGE.— The Court also has said often enough that in concluding that carnal knowledge took place, full penetration of the vaginal orifice is not an essential ingredient, nor is the rupture of the hymen necessary; the mere touching of the external genitalia by the penis capable of consummating the sexual act is sufficient to constitute carnal knowledge. To be precise, the touching of the labia majora or the labia minora of the pudendum by the penis constitutes consummated rape. Herein, AAA unflinchingly testified that appellant "*inserted his penis but it was not fully inserted though it was pressed very hard x x x;*" and that she did feel appellant's male anatomy inside her female anatomy but the latter pulled it out "*hurriedly.*" The examining physician confirmed that any abrasion caused by the incident could have healed in the intervening period as female genitalia are very vascular."

7. REMEDIAL LAW; EVIDENCE; ALIBI AND DENIAL; CANNOT PREVAIL OVER THE POSITIVE IDENTIFICATION OF THE ACCUSED, WHEN CATEGORICAL AND CONSISTENT AND WITHOUT ANY ILL MOTIVE ON THE PART OF THE EYEWITNESSES TESTIFYING ON THE MATTER.— Appellant confirmed that AAA had been living in his home but denied the rape allegations and attributed such fabrications to an allegedly vengeful neighbor, Amas. The Court is not swayed. Denial is inherently weak. Being a negative defense, if not substantiated by clear and convincing evidence, it 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 declared 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.

8. CRIMINAL LAW; REVISED PENAL CODE; STATUTORY RAPE; PENALTY.— Statutory rape, penalized under Article 266 A (1), paragraph (d) of the Revised Penal Code, as amended by R.A. No. 8353 or the Anti-Rape Law of 1997, carries the penalty of *reclusion perpetua* unless attended by qualifying circumstances defined under Article 266-B. The prosecution only gave proof of AAA's age at the time of the crime but did not substantiate the allegation of kinship between AAA and appellant. There being no qualifying circumstance, the penalty of *reclusion perpetua*, without eligibility for parole, imposed by the RTC, affirmed by the Court of Appeals, is proper.

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.*:

For review is the Decision[1] of the Court of Appeals in C.A. G.R. CR-H.C. No. 00781-MIN dated 30 May 2013, which dismissed the appeal of appellant Loreto Sonido y Coronel and affirmed with modification the Judgment[2] of the Regional Trial Court (RTC) of Davao City, Branch 12, in Criminal Case No. 55,993-05, finding appellant guilty beyond reasonable doubt of the crime of rape.

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[1] *Rollo*, pp. 3-18; Penned by Associate Justice Renato C. Francisco with Associate Justices Romulo V. Borja and Oscar V. Badelles concurring.

[2] Records, pp. 159-184; Presided by Presiding Judge Pelagio S. Paguican.

Consistent 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. AAA's personal circumstances as well as other information tending to establish her identity, and that of her immediate family or household members, are not disclosed in this decision.

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

> That on or about December 29, 2004, in the City of Davao, Philippines, and within the jurisdiction of this Honorable Court, the above-mentioned accused, willfully, unlawfully and feloniously, had carnal knowledge [of AAA], 8 years old and a niece of the accused, which fact is herein alleged as an aggravating/qualifying circumstance.[4]

Upon arraignment, appellant pleaded not guilty to the crime charged. Trial on the merits ensued. The prosecution presented AAA, Dr. Paterna Banglot (Dr. Banglot), Delfin Amas, Sr. (Amas), Barangay Captain Danilo Cristal and Prudencio Lagare, Jr., a police officer, as witnesses. Appellant was the lone witness for the defense.

The prosecution established that on 29 December 2004, eight (8) year-old AAA was sleeping in the *sala* of appellant's house and she awoke to find herself undressed with appellant, whom she calls *Tatay* Loreto (the husband of her mother's sister), on top of her. Appellant removed her underpants and inserted his penis into her vagina. AAA complained of pain to no avail. The incident was repeated shortly thereafter. Appellant then shouted threats against her and her family's life.[5] AAA subsequently reported the incident on even date to appellant's neighbor, Amas, who then brought her to *Barangay* Captain Danilo Cristal.[6]

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[3] 533 Phil. 703 (2006).

[4] Records, p. 1.

[5] TSN, 12 May 2006, pp. 7-23.

[6] *Id.* at 14 and TSN, 27 June 2007, pp. 2-12.

AAA was subjected to a physical examination by Dr. Banglot of the Davao Medical Center, Women and Children Protection Unit. Dr. Banglot's Medical Certificate states as follows:

ANOGENITAL EXAM

Genitalia	Annular hymen. Non-estrogenized. No hymenal laceration noted.
Anus	Good sphincteric tone.

IMPRESSION

1. Disclosure of Sexual Abuse
2. Medical Evaluation Revealed: Normal Genital Findings.

Note: Normal genital finding do not exclude sexual abuse.[7]

During direct examination, Dr. Banglot explained that sexual abuse may have happened but did not leave any mark on AAA's body. She further stated that considering the lapse of time (about twelve hours) between the incident and the examination, any abrasion would no longer be seen and will have healed because female genitalia are very vascular and have ample blood supply.[8]

Appellant denied the allegations against him. He asserted that he never touched nor committed any act of sexual abuse against AAA. He made insinuations that the charges are fabrications devised by Amas with whom appellant had a previous tiff.[9]

After trial, on 06 November 2009, appellant was found guilty beyond reasonable doubt of rape. The RTC disposed:

Wherefore, Premises Considered, Judgment is hereby rendered finding the Accused guilty beyond reasonable doubt of the crime of rape, defined and penalized under Article 266-A in relation to Article 266-B of the Revised Penal Code and hereby sentences the said Accused to suffer the penalty of RECLUSION PERPETUA and to pay Private Complainant [AAA] the sum of Seventy-Five Thousand

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[7] Records, p. 7.

[8] TSN, 3 July 2007, pp. 13-15.

[9] TSN, 2 July 2008, pp. 17-24.

(₱75,000.00) Pesos as civil indemnity and Seventy-Five Thousand (₱75,000.00) Pesos as moral damages.

Under Article 29 of the Revised Penal Code, the Accused who is detained is hereby entitled to the full credit of his preventive imprisonment if he agreed voluntarily in writing to abide by the rules and regulations imposed upon convicted prisoners. If he did not agree, he shall be entitled to 4/5 of his preventive imprisonment.[10]

On intermediate review, the Court of Appeals affirmed the RTC Decision and rendered the assailed decision affirming with modification the trial court's judgment, to wit:

WHEREFORE, the appeal is **DENIED**. The assailed Judgment dated November 06, 2009 of the Regional Trial Court, 11th Judicial Region, Branch 12 of Davao City, in Criminal Case No. 55,993-05 is **AFFIRMED** with **MODIFICATIONS** that civil indemnity and moral damages be reduced to FIFTY THOUSAND (₱50,000.00) PESOS and exemplary damages be awarded in the amount of THIRTY THOUSAND (₱30,000.00) PESOS. An interest at the rate of six percent (6%) period shall be applied to the award of civil indemnity, moral and exemplary damages from the finality of the judgment until fully paid.[11]

Appellant filed the instant appeal. In a Resolution[12] dated 09 October 2013, 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.[13]

The Court finds no reason to reverse appellant's conviction.

Articles 266-A and 266-B of the Revised Penal Code, as amended by Republic Act (R.A.) No. 8353,[14] define and punish rape as follows:

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[10] Records, p. 184.

[11] *Rollo*, p. 17.

[12] *Id.* at 24.

[13] *Id.* at (no proper pagination, should be p. 35); As noted by the Court in its Resolution dated 5 February 2014.

[14] Effective 22 October 1997.

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.

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 crime charged was rape under paragraph 1 (d) of Article 266-A of the Revised Penal Code, as amended by R.A. No. 8353. Statutory rape is committed by sexual intercourse with a woman below twelve (12) years of age regardless of her consent, or the lack of it to the sexual act. Proof of force, intimidation, or consent is unnecessary. These are not elements of statutory rape as the absence of free consent is conclusively presumed when the victim is below the age of twelve. At that age, the law presumes that the victim does not possess discernment and is incapable of giving intelligent consent to the sexual act. To convict an accused of the crime of statutory rape, the prosecution carries the burden of proving; (1) the age of the complainant; (2) the identity of the accused; and (3) the sexual intercourse between the accused and the complainant.[15] Full penile penetration of the female genitalia is likewise not required because carnal knowledge is simply the act of a man having sexual bodily connections with a woman.[16]

In rape cases, primordial is the credibility of the victim's testimony because the accused may be convicted solely on said

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[15] *People v. Mingming*, 594 Phil. 170, 185-186 (2008).

[16] *People v. Teodoro*, 704 Phil. 335, 345 (2013).

testimony provided it is credible, natural, convincing and consistent with human nature and the normal course of things.[17]

AAA vividly described the rape committed against her as an eight-year old[18] on 29 December 2004. Her recollections during trial revealed a credible and consistent narration of her ordeal with appellant's hands. AAA disclosed details that no child of her young age could have invented or concocted; she never wavered in her allegations of rape against appellant that the Court is convinced that the RTC and the Court of Appeals were correct in according full credence to her. 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.[19]

Appellant's argument that AAA's testimony is rife with inconsistencies, reason to acquit him of the crime charged, fails to convince us. The recognized rule in this jurisdiction is that the assessment of the credibility of witnesses is best left to the trial court judge because of his unique opportunity to observe their deportment and demeanor on the witness stand, a vantage point denied appellate courts. And when the trial court judge's findings have been affirmed by the Court of Appeals, these are generally binding and conclusive upon this Court.[20] While there are exceptions to the rule, the Court finds no substantial reason to overturn the similar conclusions of the RTC and the Court of Appeals on the matter of AAA's credibility. Besides, inaccuracies and inconsistencies are expected in a rape victim's testimony. Rape is a painful experience which is oftentimes not remembered in detail. It causes deep psychological wounds that scar the victim for life and which her conscious and

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[17] *People v. Pascua*, 462 Phil. 245, 252 (2003).

[18] Records, p. 6; Exhibit "D".

[19] *People v. Aguilar*, 643 Phil. 643, 654 (2010) citing *People v. Corpuz*, 517 Phil. 622, 636-637 (2006).

[20] *People v. Manalili*, 716 Phil. 762, 772-773 (2013).

subconscious mind would opt to forget.[21] Inconsistencies in the testimony of the witness with regard to minor or collateral matters do not diminish the value of the testimony in terms of truthfulness or weight. The gravamen of the felony is the carnal knowledge by the appellant of the private complainant under any of the circumstances provided in Article 266-A of the Revised Penal Code, as amended by R.A. No. 8353.[22]

While indeed AAA's medical examination did not show traces of injuries or lacerations, the rule is settled that hymenal lacerations are not an element of rape.[23] In fact, it has also been ruled that a medical examination 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.[24]

The Court also has said often enough that in concluding that carnal knowledge took place, full penetration of the vaginal orifice is not an essential ingredient, nor is the rupture of the hymen necessary; the mere touching of the external genitalia by the penis capable of consummating the sexual act is sufficient to constitute carnal knowledge. To be precise, the touching of the labia majora or the labia minora of the pudendum by the penis constitutes consummated rape.[25] Herein, AAA unflinchingly testified that appellant "*inserted his penis but it was not fully inserted though it was pressed very hard x x x*;" and that she did feel appellant's male anatomy inside her female anatomy but the latter pulled it out "*hurriedly*."[26] The examining physician confirmed that any abrasion caused by the incident could have

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[21] See *People v. Pareja*, 724 Phil. 759, 774 (2014) citing *People v. Saludo*, 662 Phil. 739, 753 (2011).

[22] *People v. Macapanas*, 634 Phil. 125, 145 (2010).

[23] *People v. Esteban*, G.R. No. 200920, 9 June 2014, 725 SCRA 517, 526.

[24] See *People v. Lerio*, 381 Phil. 80, 88 (2000).

[25] See *People v. Campuhan*, 385 Phil. 912, 920 (2000).

[26] TSN, 12 May 2006, pp. 33-36.

healed in the intervening period as female genitalia are very vascular.[27]

Appellant confirmed that AAA had been living in his home but denied the rape allegations and attributed such fabrications to an allegedly vengeful neighbor, Amas. The Court is not swayed. Denial is inherently weak. Being a negative defense, if not substantiated by clear and convincing evidence, it would merit no weight in law and cannot be given greater evidentiary value than the testimony of credible witnesses who testified on affirmative matters.[28] This Court has strongly declared 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.[29]

The prosecution evidence has altogether proven beyond reasonable doubt appellant's guilt of the crime of statutory rape.

Statutory rape, penalized under Article 266 A (1), paragraph (d) of the Revised Penal Code, as amended by R.A. No. 8353 or the Anti-Rape Law of 1997, carries the penalty of *reclusion perpetua* unless attended by qualifying circumstances defined under Article 266-B. The prosecution only gave proof of AAA's age at the time of the crime but did not substantiate the allegation of kinship between AAA and appellant. There being no qualifying circumstance, the penalty of *reclusion perpetua*, without eligibility for parole, imposed by the RTC, affirmed by the Court of Appeals, is proper. However, we increase the amount of civil indemnity of ₱50,000.00 to ₱75,000.00, moral damages of ₱50,000.00 to ₱75,000.00 and exemplary damages of ₱30,000.00 to ₱75,000.00 pursuant to prevailing jurisprudence.[30] The amount of damages awarded should earn interest at the rate of six percent

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[27] TSN, 3 July 2007, pp. 13-15.

[28] See *People v. Tagana*, 468 Phil. 784, 807 (2004).

[29] *Id.* at 807-808.

[30] *People v. Jugueta*, G.R. No. 202124, 5 April 2016.

(6%) *per annum* from the finality of this judgment until said amounts are fully paid.[31]

WHEREFORE, premises considered, the Decision dated 30 May 2013 of the Court of Appeals, Cagayan de Oro City, Twenty-First Division, in CA-G.R. CR-HC No. 00781-MIN, finding appellant Loreto Sonido *y* Coronel guilty of rape in Criminal Case No. 55,993-05, is **AFFIRMED** with **MODIFICATIONS**. Appellant Loreto Sonido y Coronel is ordered to pay the private offended party as follows: ₱75,000.00 as civil indemnity, ₱75,000.00 as moral damages, ₱75,000.00 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), Peralta, Mendoza,[*] and *Reyes, JJ.,* concur.

FIRST DIVISION

[G.R. No. 211065. June 15, 2016]

HEIRS OF JOSE EXTREMADURA, represented by ELENA H. EXTREMADURA, *petitioners, vs.* **MANUEL EXTREMADURA and MARLON EXTREMADURA,**[1] *respondents.*

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[31] *People v. Vitero*, 708 Phil. 49, 65 (2013).

[*] Additional Member per Raffle dated 23 May 2016.

[1] Mentioned as "Manuel Estremadura and Marlon Estremadura" in some parts of the records.

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; ACTION FOR QUIETING OF TITLE; TO PROSPER, THE PLAINTIFF MUST HAVE LEGAL OR EQUITABLE TITLE TO, OR INTEREST IN, THE PROPERTY WHICH IS THE SUBJECT MATTER OF THE ACTION; EQUITABLE TITLE, DEFINED.— In order for an action for quieting of title to 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. x x x Based on jurisprudence, equitable title has been defined as "[a] title derived through a valid contract or relation, and based on recognized equitable principles; the right in the party, to whom it belongs, to have the legal title transferred to him. x x x. In order that a plaintiff may draw to himself an equitable title, he must show that the one from whom he derives his right had himself a right to transfer. x x x." In this case, Jose's title to the subject land was derived through a contract of sale, as evidenced by a notarized document denominated as Deed of Absolute Sale dated December 18, 1984, whereby the previous owner/s, Corazon, the widow of Alfredo, transferred the subject land and two (2) other adjoining parcels to Jose for and in consideration of ₱6,000.00, for which Jose duly paid the required capital gains tax. That Corazon had the right to transfer the land by virtue of her ownership thereof was clearly established during the trial.

2. CIVIL LAW; CIVIL CODE; SALES; OBLIGATIONS OF THE VENDOR; DELIVERY OF THE THING SOLD; THE EXECUTION OF A PUBLIC INSTRUMENT GIVES RISE ONLY TO A *PRIMA FACIE* PRESUMPTION OF DELIVERY, WHICH IS NEGATED BY THE FAILURE OF THE VENDEE TO TAKE ACTUAL POSSESSION OF THE LAND SOLD.— Article 1477 of the Civil Code recognizes that the "ownership of the thing sold shall be transferred to the vendee upon the actual or constructive delivery thereof." Related to this article is Article 1497 of the same Code which provides that "[t]he thing sold shall be understood as delivered, when it is placed in the control and possession of the vendee." Article 1498 of the Civil Code lays down the general rule that the execution of a public instrument "shall be equivalent to the delivery of the thing which is the object of the contract,

if from the deed the contrary does not appear or cannot clearly be inferred." However, the execution of a public instrument gives rise only to a *prima facie* presumption of delivery, which is negated by the failure of the vendee to take actual possession of the land sold. A person who does not have actual possession of the thing sold cannot transfer constructive possession by the execution and delivery of a public instrument.

3. ID.; ID.; PROPERTY, OWNERSHIP, AND ITS MODIFICATIONS; POSSESSION; THE OWNER OF A REAL ESTATE HAS POSSESSION, EITHER WHEN HE HIMSELF IS PHYSICALLY IN OCCUPATION OF THE PROPERTY, OR WHEN ANOTHER PERSON WHO RECOGNIZES HIS RIGHTS AS OWNER IS IN SUCH OCCUPANCY.— In this case, the *prima facie* presumption of constructive delivery to Jose was not successfully negated by proof that the subject land was not actually placed in the latter's control and possession. Primarily, it should be stressed that **"[p]ossession is acquired by the material occupation of a thing or the exercise of a right, or by the fact that it is subject to the action of our will, or by the proper acts and legal formalities established for acquiring such right.**" Jose exercised possession of the subject land **through Manuel (and eventually, his son, Marlon**) whom he allowed to stay and care for the land in exchange for the delivery of the produce thereof. x x x In this relation, case law teaches that "[i]t is not necessary that the owner of a parcel of land should himself occupy the property as someone in his name may perform the act. In other words, the owner of real estate has possession, either when he himself is physically in occupation of the property, or when another person who recognizes his rights as owner is in such occupancy," as the parties in this case.

4. ID.; ID.; ID.; ID.; TAX DECLARATIONS OR REALTY TAX PAYMENTS ARE NOT CONCLUSIVE EVIDENCE OF OWNERSHIP BUT THEY ARE GOOD *INDICIA* OF POSSESSION IN THE CONCEPT OF AN OWNER.— Not only did Jose exercise his right as owner of the subject land by receiving the fruits thereof, he likewise performed his duties by paying taxes therefor, evidence of which he presented in court during trial. "Although tax declarations or realty tax payments of property are not conclusive evidence of ownership, nevertheless, they are good *indicia* of possession in the

concept of owner for no one in his right mind would be paying taxes for a property that is not in his actual or at least constructive possession. They constitute at least proof that the holder has a claim of title over the property. The voluntary declaration of a piece of property for taxation purposes manifests not only one's sincere and honest desire to obtain title to the property and announces his adverse claim against the State and all other interested parties, but also the intention to contribute needed revenues to the Government. Such an act strengthens one's *bona fide* claim of acquisition of ownership."

APPEARANCES OF COUNSEL

Esguerra & Blanco for petitioners.
Edman B. Pares for respondents.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[2] are the Decision[3] dated September 24, 2013 and the Resolution[4] dated December 12, 2013 of the Court of Appeals (CA) in CA-G.R. CV No. 99082, which reversed the Decision[5] dated November 23, 2011 of the Regional Trial Court of Sorsogon City, Branch 52 (RTC) in Civil Case No. 2005-7552 declaring Jose Extremadura (Jose) as the rightful owner of the land occupied by respondents Manuel and Marlon Extremadura (respondents).

The Facts

Jose, now deceased,[6] filed Civil Case No. 2005-7552 for quieting of title with recovery of possession, rendition of accounting,

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[2] *Rollo*, pp. 11-29.

[3] *Id.* at 35-43. Penned by Associate Justice Jose C. Reyes, Jr. with Associate Justices Mario V. Lopez and Socorro B. Inting concurring.

[4] *Id.* at 45.

[5] CA *rollo*, pp. 35-41. Penned by Presiding Judge Victor C. Gella.

[6] See Certificate of Death, records, p. 115.

and damages,[7] against his brother, Manuel Extremadura (Manuel), and his nephew, Marlon Extremadura (Marlon), claiming that he (Jose) purchased three (3) parcels of agricultural land located in Sitio Ponong, Barrio Rizal, Casiguran, Sorsogon from his aunt, Corazon S. Extremadura (Corazon), the widow of his uncle, Alfredo H. Extremadura (Alfredo), through a Deed of Absolute Sale dated December 18, 1984.[8] Since Jose resided in Manila, he placed one parcel, with an area of 3.4945 square meters (subject land), in Manuel's care, in exchange for which, the latter and his son, Marlon, religiously delivered the produce of said land from 1984 until 1995. Unfortunately, respondents (Manuel and Marlon) continuously refused to deliver the produce of the land or vacate the same despite his repeated demands;[9] hence, the complaint.

In their defense,[10] respondents averred that they have been in open, continuous, peaceful, adverse, and uninterrupted possession of the subject land, where their residential house stands, and in the concept of owner for almost fifty (50) years; thus, Jose's action was already barred by prescription or *laches*. They further claimed that the fact that they gave Jose portions of the land's produce was merely in keeping with the Filipino culture of sharing blessings with siblings and relatives. Also, they argued that the deed of absolute sale presented by Jose is not the legal or beneficial title contemplated by Article 476[11] of the Civil Code.[12]

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[7] See Complaint dated June 2, 2005; *id.* at 1-3.

[8] *Id.* at 4-5.

[9] See *id.* at 1. See also *rollo*, p. 36.

[10] See Answer dated July 18, 2005; records, pp. 12-17.

[11] Art. 476. Whenever there is a cloud title to real property or any interest therein, by reason of any instrument, record, claim, encumbrance or proceeding which is apparently valid or effective but is in truth and in fact invalid, ineffective, voidable, or unenforceable, and may be prejudicial to said title, an action may be brought to remove such cloud or to quiet the title.

An action may also be brought to prevent a cloud from being cast upon title to real property or any interest therein.

[12] See records, pp. 13-15. See also *rollo*, p. 37.

The RTC Ruling

In a Decision[13] dated November 23, 2011, the RTC rendered judgment declaring Jose as the owner of the subject land, and thereby directed respondents to immediately relinquish and surrender possession thereof to the former.[14] It ruled that Jose had a better right over the land as proven by the deed of absolute sale executed in his favor, which was notarized and, therefore, enjoys the presumption of regularity. Respondents, on the other hand, were declared to have failed to substantiate their claim, finding, among others, that their possession was not in the concept of an owner.[15]

Aggrieved, respondents elevated their case on appeal[16] before the CA.

The CA Ruling

In a Decision[17] dated September 24, 2013, the CA granted respondents' appeal and, thus, dismissed Civil Case No. 2005-7552.[18] It held that Jose failed to establish legal and equitable title over the subject land, observing that the notarized deed of sale executed in Jose's favor did not transfer the land's ownership to him given that he was never placed in possession and control thereof. Moreover, having found that the subject land was not in the possession of the alleged vendor, Corazon, the CA debunked Jose's claim that he is a buyer in good faith, charging him of failing to probe the rights of the actual possessors of the land and to clarify the true nature of the latter's possession before purchasing the same.[19]

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[13] CA *rollo*, pp. 35-41.

[14] *Id.* at 41.

[15] See *id.* at 39-41.

[16] See Notice of Appeal dated December 7, 2011; records, pp. 138-139.

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

[18] *Id.* at 42.

[19] See *id.* at 40-42.

The motion for reconsideration[20] filed by the heirs of Jose, represented by Elena Extremadura (petitioners), was denied by the CA in a Resolution[21] dated December 12, 2013 for lack of merit; hence, the instant petition.

The Issue Before the Court

The issue for the Court's resolution is whether or not the CA correctly dismissed Civil Case No. 2005-7552 filed by Jose.

The Court's Ruling

The petition is impressed with merit.

In order for an action for quieting of title to 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.[22] In the case of *Mananquil v. Moico*,[23] the Court expounded that:

> An action for quieting of title is essentially a common law remedy grounded on equity. The competent court is tasked to determine the respective rights of the complainant and other claimants, not only to place things in their proper place, to make the one who has no rights to said immovable respect and not disturb the other, but also for the benefit of both, so that he who has the right would see every cloud of doubt over the property dissipated, and he could afterwards without fear introduce the improvements he may desire, to use, and even to abuse the property as he deems best. But "for an action to quiet title to prosper, two indispensable requisites must concur, namely: (1) the plaintiff or complainant has a legal or an equitable title to or interest in the real property subject of the action; and (2) the deed, claim, encumbrance, or proceeding claimed to be casting cloud on his title must be shown to be in fact invalid or inoperative despite its *prima facie* appearance of validity or legal efficacy."[24]

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[20] Dated October 23, 2013. CA *rollo*, pp. 93-100.

[21] *Rollo*, p. 45.

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

[23] *Id.*

[24] *Id.* at 126-127; citation omitted.

Contrary to the position taken by the CA, the Court finds that Jose satisfactorily established his equitable title over the subject land entitling him — and now, petitioners as his successors-in-interest — to the removal of the cloud or doubt thereon, particularly, the claim of respondents that they are the owners thereof.

Based on jurisprudence, equitable title has been defined as "[a] title derived through a valid contract or relation, and based on recognized equitable principles; the right in the party, to whom it belongs, to have the legal title transferred to him x x x. In order that a plaintiff may draw to himself an equitable title, he must show that the one from whom he derives his right had himself a right to transfer. x x x."[25]

In this case, Jose's title to the subject land was derived through a contract of sale, as evidenced by a notarized document denominated as Deed of Absolute Sale[26] dated December 18, 1984, whereby the previous owner/s, Corazon, the widow of Alfredo, transferred the subject land and two (2) other adjoining parcels to Jose for and in consideration of ₱6,000.00, for which Jose duly paid[27] the required capital gains tax. That Corazon had the right to transfer the land by virtue of her ownership thereof was clearly established during the trial. As Manuel himself admitted:

> Q: You say, you were borne (sic) on that land. **When you grew up who were the persons the one occupying that land to be considered you as owner (*sic*)?**
> **A: My uncle and auntie.**
>
> Q: Can you name them?
> **A: Alfredo Extremadura and Trinidad[28] [Corazon] Extremadura.**[29]

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[25] *PVC Investment & Mgt. Corporation v. Borcena*, 507 Phil. 668, 681 (2005), citing *Ballantine's Law Dictionary*, 2nd Ed., pp. 441-442.

[26] Records, pp. 4-5.

[27] See Documentary Stamp Tax/Return; *id.* at 49.

[28] This appears to be a typographical error. During the pre-trial, the identity of Corazon Extremadura as the wife of the late Alfredo Extremadura was admitted. See records, p. 38.

[29] Transcript of Stenographic Notes (TSN) dated September 25, 2008, p. 4; emphases and underscoring supplied.

x x x x x x x x x

Q: Now, as the former owners of that property were your uncle and aunts (*sic*), Alfredo Extremadura and his wife, Trinidad [Corazon] Extremadura, what did they do or in what mode did they transferred (*sic*) that property to you?

x x x x x x x x x

A: I lived in that property.

x x x x x x x x x

Q: And, you were saying that they did not sell to you, donate it to you or that they executed any document to transfer ownership of that property to you?

x x x x x x x x x

A: None, Your Honor.

x x x x x x x x x

Q: You said, your uncle and aunt are the owners of that property, despite that, did you pay the taxes thereto?
A: Yes, sir.

Q: In whose name was the taxes named?
A: In the name of Alfredo Extremadura and his wife, Trinidad [Corazon] Extremadura.

x x x x x x x x x

Q: Why was it in the name of Alfredo Extremadura?
A: The payment of taxes was in the name of Alfredo Extremadura because he is the owner of the property, the husband and wife.

x x x x x x x x x

Q: Up to when Alfredo Extremadura was the owner of that property?
A: When he was still alive.[30]

While the CA did not express any misgivings on the existence and execution of the deed of sale in Jose's favor, it nonetheless

[30] *Id.* at 10-15; emphasis supplied.

found that "despite the notarized Deed of Absolute Sale x x x, this [did] not constitute constructive delivery, as to affect the transfer of ownership from the seller to the buyer."[31]

The CA is mistaken.

Article 1477 of the Civil Code recognizes that the "ownership of the thing sold shall be transferred to the vendee upon the actual or constructive delivery thereof." Related to this article is Article 1497 of the same Code which provides that "[t]he thing sold shall be understood as delivered, when it is placed in the control and possession of the vendee."[32]

Article 1498 of the Civil Code lays down the general rule that the execution of a public instrument "shall be equivalent to the delivery of the thing which is the object of the contract, if from the deed the contrary does not appear or cannot clearly be inferred." However, the execution of a public instrument gives rise only to a *prima facie* presumption of delivery, which is negated by the failure of the vendee to take actual possession of the land sold. A person who does not have actual possession of the thing sold cannot transfer constructive possession by the execution and delivery of a public instrument.[33]

In this case, the *prima facie* presumption of constructive delivery to Jose was not successfully negated by proof that the subject land was not actually placed in the latter's control and possession. Primarily, it should be stressed that "**[p]ossession is acquired by the material occupation of a thing or the exercise of a right, or by the fact that it is subject to the action of our will, or by the proper acts and legal formalities established for acquiring such right**."[34] Jose exercised possession of the subject land **through Manuel (and eventually, his son, Marlon)** whom he allowed to stay and care for the land in exchange for the delivery of the produce thereof. Article 524 of the Civil Code states:

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[31] *Rollo*, p. 41.

[32] *Santiago v. Villamor*, 699 Phil. 297, 304 (2012).

[33] *Id.* at 304-305; citations omitted.

[34] Article 531 of the Civil Code; emphasis and underscoring supplied.

Art. 524. Possession may be exercised in one's own name or in that of another.

In this relation, case law teaches that "[i]t is not necessary that the owner of a parcel of land should himself occupy the property as someone in his name may perform the act. In other words, the owner of real estate has possession, either when he himself is physically in occupation of the property, or when another person who recognizes his rights as owner is in such occupancy,"[35] as the parties in this case.

Notably, the fact that respondents delivered the produce of the land to Jose, which Manuel admitted in open court, can only be construed as his recognition of Jose's ownership of the land despite his tenuous claim that he merely did so because Jose is his brother, thus:

ATTY. DE ALBAN:

Q: According to the plaintiff, he owns this land and that you were delivering products to him since 1984 to 1995?
A: I was giving him products being my brother, sir.

x x x x x x x x x

Q: And you said that you have been giving him products because he is your brother. How many times, if you can recall, that you have been giving him?
A: Whenever he comes home from Manila, I gave him products, sir.

Q: What did you give him?
A: Products and sometimes, chicken.

COURT:

Q: In kind?
A: Yes, Your Honor.

x x x x x x x x x

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[35] *Piedad v. Gurieza*, G.R. No. 207525, June 18, 2014, 727 SCRA 71, 77-78; citation omitted.

ATTY. DE ALBAN:

x x x x x x x x x

Q: Were there instances while your brother was in Manila that you also send him some products?
A: Yes, sir.

Q: Through whom?
A: I gave him personally.

Q: What I mean, where did you give him?
A: Here in Ponong, sir.

Q: When he comes here?
A: Yes, sir because I never went to Manila.

Q: There were instances that you sent him products through other people?
A: Yes, sir.[36]

Not only did Jose exercise his right as owner of the subject land by receiving the fruits thereof, he likewise performed his duties by paying taxes therefor, evidence of which he presented in court during trial.[37] "Although tax declarations or realty tax payments of property are not conclusive evidence of ownership, nevertheless, they are good *indicia* of possession in the concept of owner for no one in his right mind would be paying taxes for a property that is not in his actual or at least constructive possession. They constitute at least proof that the holder has a claim of title over the property. The voluntary declaration of a piece of property for taxation purposes manifests not only one's sincere and honest desire to obtain title to the property and announces his adverse claim against the State and all other interested parties, but also the intention to contribute needed revenues to the Government. Such an act strengthens one's *bona fide* claim of acquisition of ownership."[38]

On the other hand, Manuel merely claimed that he paid taxes on the land but he never presented proof of the alleged payments.

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[36] TSN dated July 31, 2008 pp. 5-8.

[37] See Exhibits B, G, G-1, and G-2; records, pp. 45 and 50-52.

[38] *Republic of the Philippines v. CA,* 328 Phil. 238-248 (1996).

In addition, the weakness of his case is further exposed by his faulty supposition that he has become the owner of the land only because he was born on the same and had lived thereon.

> Q: You said, you are a brother of Jose Extremadura, is that correct?
> A: Yes, sir.
>
> Q: You also stated, that you are the owner of the subject property, is that also correct?
> A: Yes, sir.
>
> Q: How did you acquire that property?
> A: Because I lived in that property and I was borned (sic) in that property.
>
> **Q: Now, by living in that property and by being borne (sic) in that property, you believed you can (sic) acquired the ownership of that land?**
> **A: Yes, sir.**[39]
>
> x x x x x x x x x
>
> COURT:
>
> Q: You said, you were the owner after the death of Alfredo Extremadura, **what would you show to the Court to prove that the land was transferred to you or that you inherited the land or it was donated to you or was given to you by the spouses, Alfredo and Trinidad [Corazon] Extremadura**?
> Q: That is a very simple question?
> A: **Because I live there, Your Honor.**[40]

Thus, by sheer preponderance of evidence, the Court concludes that Jose — not only through the execution of the Deed of Absolute Sale in his favor, but also as evinced by his exercise of the rights and obligations as owner thereof — was able to prove his title over the subject land. Therefore, the action for quieting of title in Civil Case No. 2005-7552 should prosper to the benefit of his heirs, herein petitioners.

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[39] TSN dated September 25, 2008, pp. 3-4; emphases and underscoring supplied.

[40] *Id.* at 17-18; emphases and underscoring supplied.

WHEREFORE, the petition is **GRANTED**. The Decision dated September 24, 2013 and the Resolution dated December 12, 2013 of the Court of Appeals in CA-G.R. CV No. 99082 are hereby **REVERSED** and **SET ASIDE**. Accordingly, the Decision dated November 23, 2011 of the Regional Trial Court of Sorsogon City, Branch 52 in Civil Case No. 2005-7552 is **REINSTATED**.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 211269. June 15, 2016]

RUBEN E. TIU, *petitioner, vs.* **HON. NATIVIDAD G. DIZON, Acting Chairperson of the Board of Pardons and Parole, HON. FRANKLIN JESUS BUCAYU, Director of the Bureau of Corrections, HON. SECRETARY LEILA M. DE LIMA of the Department of Justice, HON. PAQUITO N. OCHOA JR., the Executive Secretary,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; SPECIAL PROCEEDINGS; *HABEAS CORPUS*; THE WRIT OF *HABEAS CORPUS* WILL NOT ISSUE WHERE THE PERSON IN WHOSE BEHALF THE WRIT IS SOUGHT IS IN THE CUSTODY OF AN OFFICER UNDER PROCESS ISSUED BY A COURT OR JUDGE WITH JURISDICTION OR BY VIRTUE OF A JUDGMENT OR ORDER OF A COURT OF RECORD.— The object of the writ of *habeas corpus* is to inquire into the legality of the detention, and, if the detention is

found to be illegal, to require the release of the detainee. Well-settled is the rule that the writ will not issue where the person in whose behalf the writ is sought is in the custody of an officer under process issued by a court or judge with jurisdiction or by virtue of a judgment or order of a court of record. The writ is denied if the petitioner fails to show facts that he is entitled thereto *ex merito justicias*. In this case, petitioner is serving sentence by virtue of a final judgment convicting him of the offense of selling and delivering prohibited drugs defined and penalized under Section 15, Article III of RA 6425, as amended by RA 7659. He failed to show, however, that his further incarceration is no longer lawful and that he is entitled to relief under a writ of *habeas corpus.*

2. POLITICAL LAW; EXECUTIVE DEPARTMENT; PRESIDENT; PARDONING POWER; PARDON, DEFINED; A PARDON IS A DEED, TO THE VALIDITY OF WHICH DELIVERY IS ESSENTIAL.— [P]ardon is an act of grace, proceeding from the power entrusted with the execution of the laws, which exempts the individual, on whom it is bestowed, from the punishment the law inflicts for a crime he has committed. It is the private, though official act of the executive magistrate, delivered to the individual for whose benefit it is intended and not communicated officially to the court. A pardon is a deed, to the validity of which delivery is essential.

3. ID.; ID.; ID.; CONDITIONAL PARDON; TO BE COMPLETE AND EFFECTIVE, THE INDIVIDUAL PARDON PAPERS MUST BE ISSUED TO THE PARDONEE.— The executive clemency extended by PGMA on June 3, 2010 to a number of prisoners including petitioner was made "subject to the conditions indicated in the corresponding documents." It is undisputed, however, that no individual pardon papers were issued in petitioner's favour, thereby rendering the grant of executive clemency to him as **incomplete and ineffective** x x x. The necessity for the individual pardon papers is best explained by the nature of a conditional pardon, which is "a contract between the sovereign power or the Chief Executive and the convicted criminal to the effect that the former will release the latter subject to the condition that if he does not comply with the terms of the pardon, he will be recommitted to prison to serve the unexpired portion of the sentence or an additional one. By the pardonee's consent to the terms stipulated in this contract, the pardonee has thereby placed himself under

the supervision of the Chief Executive or his delegate who is duty-bound to see to it that the pardonee complies with the terms and conditions of the pardon." The individual pardon papers, therefore, contain the terms and conditions of the contract of pardon, the compliance of which is essential to the pardonee's freedom from recommitment to prison.

4. ID.; STATUTES; ACT NO. 2489; PRIVILEGES OF A COLONIST; REDUCTION OF SENTENCE; THE REDUCTION OF A PRISONER'S SENTENCE IS A PARTIAL PARDON AND THE EXCLUSIVE PREROGATIVE TO EXTEND THE SAME IS REPOSED IN THE PRESIDENT.— [T]he conferment by the Director of Corrections of a colonist status to petitioner **did not** operate to reduce the latter's sentence. Section 5 of Act No. 2489 is clear and unambiguous: *"[p]risoners serving sentences of life imprisonment* ***receiving and retaining the classification of penal colonists*** *or trusties will automatically have the sentence of life imprisonment modified to a sentence of thirty years* ***when receiving the executive approval for this classification*** *upon which the regular credit now authorized by law and special credit authorized in the preceding paragraph, for good conduct, may be made."* **The wording of the law is such that the act of classification as a penal colonist or trustie is separate from and necessarily precedes the act of approval by the Executive.** Under Section 6, Chapter 3, Part II, Book I of the BuCor-OM x x x, the Director of Corrections may, upon the recommendation of the Classification Board of the Bureau of Corrections, classify an inmate as a colonist. It is crucial, however, that the prisoner not only receives, but retains such classification, because the grant of a colonist status may, for cause, be revoked at any time by the Superintendent with the approval of the Director of Corrections pursuant to Section 9 of the same Chapter. It is the classification of the penal colonist and trustie of the Director of Corrections which subsequently receives executive approval. The foregoing is bolstered by the fact that **the reduction of a prisoner's sentence is a partial pardon, and our Constitution reposes in the President the power and the exclusive prerogative to extend the same.** The 1987 Constitution, specifically under Section 19, Article VII thereof, provides that the President possesses the power to grant pardons, along with other acts of executive clemency, which petitioner explicitly recognized by applying for

commutation of sentence even during the pendency of his request for the implementation of the conditional pardon.

5. ID.; EXECUTIVE DEPARTMENT; PRESIDENT; PARDONING POWER; EXCLUSIVELY EXERCISED BY THE PRESIDENT AND CANNOT BE DELEGATED UNDER THE DOCTRINE OF QUALIFIED POLITICAL AGENCY. — It has long been recognized that the exercise of the pardoning power, notwithstanding the judicial determination of guilt of the accused, demands the **exclusive exercise by the President** of the constitutionally vested power. Stated otherwise, since the Chief Executive is required by the Constitution to act in person, he may not delegate the authority to pardon prisoners under the doctrine of qualified political agency, which "essentially postulates that the heads of the various executive departments are the alter egos of the President, and, thus, the actions taken by such heads in the performance of their official duties are deemed the acts of the President unless the President himself should disapprove such acts."

APPEARANCES OF COUNSEL

Glenbelle M. Granado and *Aguinaldo & Aguinaldo-Baluya Law Offices* for petitioner.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Before the Court is a petition for *habeas corpus*[1] filed by petitioner Ruben E. Tiu (petitioner), who is detained at the Sablayan Prison and Penal Farm in Sablayan, Occidental Mindoro, seeking his immediate release from prison on the strength of his conditional pardon without parole conditions, as well as the automatic reduction or his sentence by virtue of his status as a penal colonist.[2]

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[1] *Rollo*, pp. 3-6. An Amended Petition for *Habeas Corpus* was filed on July 7, 2014; *id.* at 75-81.

[2] See Certification dated June 23, 2014 issued by Chief Document Section Rex L. Celestino; *id.* at 84.

The Facts

On June 16, 2000, petitioner and two others[3] were found guilty beyond reasonable doubt by the Regional Trial Court of Makati City, Branch 143, of selling, delivering, and giving away to a poseur-buyer 1,977 grams of *methamphetamine hydrochloride*, commonly known as "*shabu*," a regulated drug, without authority of law or corresponding license therefor.[4] Consequently, they were sentenced to suffer the penalty of *reclusion perpetua* and to pay the fine of ₱10,000,000.00 each.[5] Their conviction, which was affirmed by the Court in a Decision[6] dated March 10, 2004, became final and executory on July 29, 2004.[7]

On March 24, 2009, the Board of Pardons and Parole (BPP) issued Resolution No. 022-3-09[8] recommending the grant of executive clemency to petitioner, among many others. On June 3, 2010, acting on said recommendation, then President Gloria Macapagal-Arroyo (PGMA) granted[9] him "conditional pardon without parole conditions,"[10] but was, nonetheless, still "subject to the conditions indicated in [the individual pardon papers]."[11] It turned out, however, that no such papers were issued in petitioner's favor. Thus, petitioner repeatedly requested[12] for a

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[3] Namely, Rosalina Sumili *a.k.a.* Rose and Tan Hung *a.k.a.* Emmie Tan. See *id.* at 4.

[4] See Decision in *People of the Philippines v. Tiu*, 469 Phil. 163, 166 (2004).

[5] *Id.* at 179.

[6] *Id.*

[7] See BPP Resolution No. 022-3-09 dated March 24, 2009; *rollo*, pp. 112-113.

[8] Approved by then Secretary of Justice Raul M. Gonzalez. *Id.* at 111-115.

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

[10] *Id.* at 88.

[11] See *id.* at 85.

[12] See indorsement letter dated April 5, 2011; *id.* at 18. See also various letter-requests dated July 6, 2011 (*id.* at 20), March 11, 2013 (*id.* at 21), and July 29, 2013 (*id.* at 22-24 and 25-27).

certificate of conditional pardon without parole conditions from the Legal Affairs Office of the Office of the President (OP), but said requests were denied by Deputy Executive Secretary for Legal Affairs Michael G. Aguinaldo (Deputy Executive Secretary Aguinaldo) in three (3) separate letters dated March 13, 2013,[13] August 12, 2013,[14] and August 14, 2013,[15] informing petitioner that the records of his case were referred back to the BPP. Respondent Natividad G. Dizon, Chairman of the BPP, confirmed in a letter[16] dated September 5, 2013 that: *(a)* petitioner's Certificate of Conditional Pardon without Parole Conditions was not signed by PGMA; *(b)* consequently, the documents relative to petitioner's case were returned to the BPP; and *(c)* the BPP had resolved to defer action thereon pending compliance with all the basic requirements for executive clemency.[17]

In the meantime, President Benigno Simeon C. Aquino III signed into law Republic Act No. (RA) 10592,[18] which, subject to its provisions, would substantially increase the Good Conduct Time Allowance (GCTA) of qualified inmates. Thus, on July 27, 2013, petitioner's *carpeta* was returned to the Bureau of Corrections in Muntinlupa City for the re-computation of his time served.[19]

On July 7, 2014, petitioner filed the instant Amended Petition for *Habeas Corpus*,[20] insisting on the efficacy and enforceability of his conditional pardon without parole conditions, which allegedly necessitates his release from prison. Further, he claims

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[13] *Id.* at 116.

[14] *Id.* at 117.

[15] *Id.* at 118.

[16] *Id.* at 119-120.

[17] See *id.* at 119.

[18] Entitled "AN ACT AMENDING ARTICLES 29, 94, 97, 98, AND 99 OF ACT NO. 3815, AS AMENDED, OTHERWISE KNOWN AS THE REVISED PENAL CODE," approved on May 29, 2013.

[19] *Rollo*, pp. 119-120.

[20] *Id.* at 75-81.

that he is entitled to nineteen (19) years and seven (7) months of GCTA, computed hereafter, which, when tacked to his actual service of fourteen (14) years and nine (9) months, would add up to thirty-four (34) years and four (4) months, or more than his alleged reduced sentence of thirty (30) years:[21]

MONTHS	DAYS GCTA	MONTHLY GCTA
01 October 1999-01 October 2001	20 days	24 months
01 October 2002-01 October 2005	23 days	36 months
01 October 2006-01 October 2010	25 days	178 months
01 October 2011-01 July 2014	30 days	44 months

He argues that, since he was granted a "colonist status" by then Director of Corrections Gaudencio S. Pangilinan (Director of Corrections Pangilinan) on December 21, 2011, as contained in Correction's Order No. 015-5-2012,[22] his sentence was automatically reduced to thirty (30) years[23] pursuant to Section 7 (b), Chapter 3, Part II, Book I of the Bureau of Corrections Operating Manual (BuCor-OM), the pertinent portions of which read as follows:

SECTION 7. *Privileges of a colonist*. — **A colonist** shall have the following privileges:

a. credit of an additional GCTA of five (5) days for each calendar month while he retains said classification aside from the regular GCTA authorized under Article 97 of the Revised Penal Code;

b. automatic reduction of the life sentence imposed on the colonist to a sentence of thirty (30) years;

x x x (Emphasis and underscoring supplied)

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[21] *Id.* at 80.

[22] See *id.* at 84.

[23] See *id.* at 76-77.

To bolster his claim of reduction of sentence, petitioner cites[24] Sections 5 and 7 of Act No. 2489,[25] which provide for automatic modification of sentence from life imprisonment to thirty (30) years for prisoners receiving and retaining the classification of penal colonists or trusties. He theorizes[26] that, although said law **requires executive approval** for such classification, his colonist status was nonetheless "regularly awarded" by the Director of Corrections whose authority to so classify him as such is derived from Section 6, Chapter 3, Part II, Book I of the BuCor-OM. The aforementioned provisions read:

Provisions in Act No. 2489

Section 5. Prisoners serving sentences of life imprisonment **receiving and retaining the classification of penal colonists** or trusties will automatically have the sentence of life imprisonment modified to a sentence of thirty years **when receiving the executive approval for this classification** upon which the regular credit now authorized by law and special credit authorized in the preceding paragraph, for good conduct, may be made.

Section 7. The provisions of this Act as applied in the case of **penal colonists** and trusties may, **by executive approval and upon recommendation of the Director of Prisons [(now Director of Corrections)]**, be made applicable to all first-class workmen confined in Bilibid Prison who have earned the privilege of classification as penal colonists or trusties by serving one-fifth of the time sentence as imposed by the court, or seven years in the case of a life-sentenced prisoner, in addition to the compensation allowed, if any of such first-class workmen shall by written petition elect to remain in the industrial division at Bilibid Prison: *Provided*, That no prisoner shall receive the benefit of this section during the first two years of imprisonment unless authorized by the Director of Prisons [(now Director of Corrections)] for special reasons. (Emphases and underscoring supplied)

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[24] *Id.* at 77.

[25] "AN ACT AUTHORIZING SPECIAL COMPENSATION, CREDITS, AND MODIFICATION IN THE SENTENCE OF PRISONERS AS A REWARD FOR EXCEPTIONAL CONDUCT AND WORKMANSHIP, AND FOR OTHER PURPOSES" (January 1, 1915).

[26] *Rollo*, p. 77.

Section 6, Chapter 3, Part II, Book I of the BuCor-OM

Section 6. *Colonist*. — **The Director may, upon the recommendation of the Classification Board, classify an inmate who has the following qualifications as a colonist**:

a. be at least a first class inmate and has served one (1) year immediately preceding the completion of the period specified in the following qualifications;

b. has served imprisonment with good conduct for a period equivalent to one fifth (1/5) of the maximum term of his prison sentence, or seven (7) years in the case of a life sentence. (Emphasis and underscoring supplied)

Finally, petitioner invokes Section 5[27] of RA 10592, which provides that the time allowances for good conduct **once granted shall not be revoked**.[28] He further proposes that RA 10592 be given retroactive effect in light of the liberal construction provided for in the rules to favor detained or convicted prisoners like him.[29]

On the other hand, herein respondents, through the Office of the Solicitor General (OSG), maintain[30] that a prisoner serving a sentence of life imprisonment receiving and retaining classification as a penal colonist will automatically have his sentence modified to thirty (30) years of imprisonment only **"when receiving the executive approval for this classification."**[31] However, petitioner failed to obtain such executive approval.

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[27] Section 5. Article 99 of the same Act is hereby further amended to read as follows:

"Art. 99. *Who grants time allowances*. — Whenever lawfully justified, the Director of the Bureau of Corrections, the Chief of the Bureau of Jail Management and Penology and/or the Warden of a provincial, district, municipal or city jail shall grant allowances for good conduct. Such allowances once granted shall not be revoked."

[28] *Rollo*, p. 77.

[29] See *id.* at 78-79.

[30] See Comment filed on August 18, 2015; *id.* 193-202.

[31] *Id.* at 197.

They argue further against petitioner's reliance on the BuCor-OM, which is a mere administrative rule or regulation that cannot amend Act No. 2489 by abridging or expanding its scope.[32] Petitioner's colonist status granted merely by the Director of Corrections, without executive approval, did not modify his sentence.[33] Hence, there being no unlawful restraint, no writ of *habeas corpus* should be issued in his favor.

The Issue Before the Court

The essential issue for the Court's resolution is whether or not a writ of *habeas corpus* should be issued in favor of petitioner.

The Court's Ruling

The petition lacks merit.

The object of the writ of *habeas corpus* is to inquire into the legality of the detention, and, if the detention is found to be illegal, to require the release of the detainee. Well-settled is the rule that the writ will not issue where the person in whose behalf the writ is sought is in the custody of an officer under process issued by a court or judge with jurisdiction or by virtue of a judgment or order of a court of record.[34] The writ is denied if the petitioner fails to show facts that he is entitled thereto *ex merito justicias*.[35]

In this case, petitioner is serving sentence by virtue of a final judgment convicting him of the offense of selling and delivering prohibited drugs defined and penalized under Section 15, Article III of RA 6425,[36] as amended by RA 7659.[37] He failed

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[32] *Id.* at 198.

[33] *Id.*

[34] *Mangila v. Pangilinan*, G.R. No. 160739, July 17, 2013, 701 SCRA 355, 361.

[35] *Id.*, citing *Caballes v. CA*, 492 Phil. 410, 422 (2005).

[36] Otherwise known as "The Dangerous Drugs Act of 1972" (March 30, 1972).

[37] Entitled "AN ACT TO IMPOSE DEATH PENALTY ON CERTAIN HEINOUS CRIMES, AMENDING FOR THAT PURPOSE THE REVISED PENAL

to show, however, that his further incarceration is no longer lawful and that he is entitled to relief under a writ of *habeas corpus*.

First. Petitioner's insistence on the efficacy and enforceability of the conditional pardon without parole conditions granted to him by PGMA on June 3, 2010 deserves scant consideration.

It must be emphasized that pardon is an act of grace, proceeding from the power entrusted with the execution of the laws, which exempts the individual, on whom it is bestowed, from the punishment the law inflicts for a crime he has committed. It is the private, though official act of the executive magistrate, delivered to the individual for whose benefit it is intended and not communicated officially to the court. A pardon is a deed, to the validity of which delivery is essential.[38]

The executive clemency extended by PGMA on June 3, 2010 to a number of prisoners including petitioner was made "subject to the conditions indicated in the corresponding documents."[39] It is undisputed, however, that no individual pardon papers were issued in petitioner's favour, thereby rendering the grant of executive clemency to him as **incomplete and ineffective**, as clarified by Deputy Executive Secretary Aguinaldo.[40] The necessity for the individual pardon papers is best explained by the nature of a conditional pardon, which is "a contract between the sovereign power or the Chief Executive and the convicted criminal to the effect that the former will release the latter subject to the condition that if he does not comply with the terms of the pardon, he will be recommitted to prison to serve the unexpired portion of the sentence or an additional one. By the pardonee's consent to the terms stipulated in this contract, the pardonee

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CODE, AS AMENDED, OTHER SPECIAL PENAL LAWS, AND FOR OTHER PURPOSES," approved on December 13, 1993.

[38] *Monsanto v. Factoran, Jr.*, 252 Phil. 192, 198-199 (1989).

[39] *Rollo*, p. 85.

[40] *Id.* at 118.

has thereby placed himself under the supervision of the Chief Executive or his delegate who is duty-bound to see to it that the pardonee complies with the terms and conditions of the pardon."[41] The individual pardon papers, therefore, contain the terms and conditions of the contract of pardon, the compliance of which is essential to the pardonee's freedom from recommitment to prison.

Notably, when the records of petitioner's case were referred back to the BPP, it required compliance first with all the basic requirements for executive clemency before acting thereon.[42] This is not to say, however, that petitioner's pardon papers may not have been issued due to non-compliance with the requirements, which is a matter that the Court shall not, and could not, resolve here. This is because the grant of pardon and the determination of the terms and conditions of a conditional pardon are purely executive acts which are not subject to judicial scrutiny.[43]

Second*.** As correctly argued by the OSG, the conferment by the Director of Corrections of a colonist status to petitioner **did not** operate to reduce the latter's sentence. Section 5 of Act No. 2489 is clear and unambiguous: "[*p*]*risoners serving sentences of life imprisonment* ***receiving and retaining the classification of penal colonists *or trusties will automatically have the sentence of life imprisonment modified to a sentence of thirty years* ***when receiving the executive approval for this classification*** *upon which the regular credit now authorized by law and special credit authorized in the preceding paragraph, for good conduct, may be made*."[44]

The wording of the law is such that the act of classification as a penal colonist or trustie is separate from and necessarily precedes the act of approval by the Executive. Under Section

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[41] *Torres v. Director, Bureau of Corrections*, 321 Phil. 1105, 1109 (1995).

[42] *Id.* at 119.

[43] *Torres v. Gonzales*, 236 Phil. 292, 302 (1987).

[44] Emphases, underscoring, and italics supplied.

6, Chapter 3, Part II, Book I of the BuCor-OM quoted earlier, the Director of Corrections may, upon the recommendation of the Classification Board[45] of the Bureau of Corrections, classify an inmate as a colonist. It is crucial, however, that the prisoner not only receives, but retains such classification, because the grant of a colonist status may, for cause, be revoked at any time by the Superintendent with the approval of the Director of Corrections pursuant to Section 9[46] of the same Chapter. It is the classification of the penal colonist and trustie of the Director of Corrections which subsequently receives executive approval.

The foregoing is bolstered by the fact that **the reduction of a prisoner's sentence is a partial pardon,**[47] **and our Constitution reposes in the President the power and the exclusive prerogative to extend the same.**[48] The 1987 Constitution, specifically under Section 19, Article VII thereof, provides that the President possesses the power to grant pardons, along with other acts of executive clemency,[49] which petitioner explicitly recognized by applying for commutation of sentence even during the pendency of his request for the implementation of the conditional pardon.[50] Section 19, Article VII of the 1987 Constitution reads:

Section 19. Except in cases of impeachment, or as otherwise provided in this Constitution, the President may grant reprieves,

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[45] Composed of the Superintendent (Chairman), Chief, Reception and Diagnostic Center (Vice-Chairman), Medical Officer; Chief, Education Section and Chief, Agro-Industries Section (Members), and Chief Overseer (Secretary). See Section 1, Chapter 3, Part II, Book I of the BuCor-OM.

[46] Section 9. *Revocation of colonist status.* — The grant of colonist status may, for cause, be revoked at anytime by the Superintendent with the Approval of the Director.

[47] *Gabor v. Director of Prisons*, 87 Phil. 592, 595 (1950).

[48] See *Garcia v. Chairman, Commission on Audit*, G.R. No. 75025 September 14, 1993, 226 SCRA 356, 360-361.

[49] See *Risos-Vidal v. Commission on Elections*, G.R. No. 206666, January 21, 2015.

[50] See *rollo*, p. 118.

commutations, and pardons, and remit fines and forfeitures, after conviction by final judgment.

He shall also have the power to grant amnesty with the concurrence of a majority of all the Members of the Congress.

It has long been recognized that the exercise of the pardoning power, notwithstanding the judicial determination of guilt of the accused, demands the **exclusive exercise by the President** of the constitutionally vested power.[51] Stated otherwise, since the Chief Executive is required by the Constitution to act in person, he may not delegate the authority to pardon prisoners under the doctrine of qualified political agency, which "essentially postulates that the heads of the various executive departments are the alter egos of the President, and, thus, the actions taken by such heads in the performance of their official duties are deemed the acts of the President unless the President himself should disapprove such acts."[52]

In sum, there being no unlawful restraint on petitioner's liberty, no relief under a writ of *habeas corpus* can be granted to him.

WHEREFORE, the petition is **DISMISSED**.

SO ORDERED.

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

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[51] See *Angeles v. Gaite*, 620 Phil. 422, 434 (2009).

[52] *Manalang-Demigillo v. Trade and Investment Development Corporation of the Philippines*, G.R. No. 168613, March 5, 2013, 692 SCRA 359, 373-374.

FIRST DIVISION

[G.R. No. 213054. June 15, 2016]

TERESITA TAN, *petitioner, vs.* **JOVENCIO F. CINCO, SIMON LORI HOLDINGS, INC., PENTACAPITAL INVESTMENT CORPORATION, FORTUNATO G. PE, RAYMUNDO G. PE, JOSE REVILLA REYES, JR., and DEPUTY SHERIFF ROMMEL IGNACIO,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; COURTS; DOCTRINE OF JUDICIAL STABILITY; COURTS OF CONCURRENT AND COORDINATE JURISDICTION SHOULD NOT, CANNOT, AND ARE NOT PERMITTED TO INTERFERE IN THEIR RESPECTIVE CASES, MUCH LESS WITH THEIR ORDERS OR JUDGMENTS.— [T]he various branches of the regional trial courts of a province or city, having as they do the same or equal authority and exercising as they do concurrent and coordinate jurisdiction, should not, cannot, and are not permitted to interfere with their respective cases, much less with their orders or judgments. A contrary rule would obviously lead to confusion and seriously hamper the administration of justice. In this case, the Court finds that the Parañaque RTC violated the doctrine of judicial stability when it took cognizance of Teresita's nullification case despite the fact that the collection case from which it emanated falls within the jurisdiction of the Makati RTC. Verily, the nullification case ought to have been dismissed at the outset for lack of jurisdiction, as the Parañaque RTC is bereft of authority to nullify the levy and sale of the subject property that was legitimately ordered by the Makati RTC, a coordinate and co-equal court. x x x To reiterate, the determination of whether or not the levy and sale of a property in the execution of a judgment was valid properly falls within the jurisdiction of the court that rendered the judgment and issued the writ of execution.

2. ID.; CIVIL PROCEDURE; JUDGMENTS; A JUDGMENT ISSUED IN VIOLATION OF THE DOCTRINE OF

JUDICIAL STABILITY IS NULL AND VOID FOR HAVING BEEN RENDERED BY A COURT WITHOUT JURISDICTION.— Teresita's nullification case filed before the Parañaque RTC was improper and in glaring violation of the doctrine of judicial stability. The judgment rendered by the Makati RTC in the collection case, as well as the execution thereof, and all other incidents arising therefrom, may not be interfered with by the Parañaque RTC, a court of concurrent jurisdiction, for the simple reason that the power to open, modify, or vacate the said judgment or order is not only possessed but is restricted to the court in which the judgment or order is rendered or issued. Consequently, the Parañaque RTC lacked jurisdiction over the same, rendering all the proceedings therein, as well as the Decision and other orders issued thereon, void for lack of jurisdiction. A judgment rendered by a court without jurisdiction is null and void and may be attacked anytime. It creates no rights and produces no effect. It remains a basic fact in law that the choice of the proper forum is crucial, as the decision of a court or tribunal without jurisdiction is a total nullity. A void judgment for want of jurisdiction is no judgment at all. All acts performed pursuant to it and all claims emanating from it have no legal effect.

APPEARANCES OF COUNSEL

Mendoza Antero & Associates for petitioner.
Ma. Loreto U. Navarro for respondents.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated January 22, 2013 and the Resolution[3] dated June 11, 2014 rendered by the Court of Appeals (CA) in CA-

[1] *Rollo*, pp. 10-46.

[2] *Id.* at 51-63. Penned by Associate Justice Ramon A. Cruz, with Associate Justices Noel G. Tijam and Romeo F. Barza concurring.

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

G.R. SP No. 122492, which reversed and set aside the Orders dated August 5, 2011[4] and October 17, 2011[5] of the Regional Trial Court of Parañaque City, Branch 257 (Parañaque RTC) and directed the allowance and approval of respondents' Notice of Appeal[6] filed on June 17, 2011.

The Facts

In 2001, respondents Simon Lori Holdings, Inc. (SLHI), Fortunato G. Pe, Raymundo G. Pe, Jovencio F. Cinco, and Jose Revilla Reyes, Jr. (individual lenders) extended a loan to one Dante Tan (Dante) in the amount of ₱50,000,000.00. The loan was facilitated by PentaCapital Investment Corporation (PentaCapital) and was secured by Dante's shares in Best World Resources Corporation (BWRC).[7] When Dante failed to pay the loan upon maturity and despite demands, he proposed to settle the same by selling his shares in BWRC and assigning the proceeds to SLHI, the individual lenders, and PentaCapital (respondents).[8]

However, when he was due to execute the corresponding deeds of assignment, Dante disappeared, leaving his obligations unpaid.[9] Hence, respondents filed an action for sum of money against him before the Regional Trial Court of Makati City, Branch 146 (Makati RFC), docketed as Civil Case No. 01-357 (collection case).[10] After due proceedings, the Makati RTC rendered judgment[11] on May 21, 2002 ordering Dante to pay respondents the sum of ₱100,100,000.00 with legal interest from June 26, 2000 until the principal amount is fully paid, plus attorney's

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[4] *Id.* at 190-193. Penned by Judge Rolando G. How.

[5] *Id.* at 194.

[6] *Id.* at 181-182. See also p. 55.

[7] *Id.* at 52.

[8] *Id.* See also pp. 93-95.

[9] *Id.* See also p. 95.

[10] *Id.*

[11] *Id.* at 92-99. Penned by Pairing Judge Cesar D. Santamaria.

fees and costs. Dante's attempts to reverse the decision on appeal proved futile, thus, a Writ of Execution[12] (writ) was issued on February 16, 2005.

In order to enforce the writ, Deputy Sheriff Rommel Ignacio (Sheriff Ignacio) levied on a property covered by Transfer Certificate of Title (TCT) No. 126981[13] registered in Dante's name (subject property). An auction sale was then conducted on March 29, 2005.[14] Consequently, Dante sought the quashal of the writ by presenting an affidavit executed by his wife, herein petitioner Teresita Tan (Teresita) attesting to the conjugal nature of the subject property. Meanwhile, the period to redeem the subject property lapsed without redemption having been made; hence, a Sheriff's Final Deed of Sale[15] was issued in favor of respondents.[16]

Undeterred, Dante filed an Omnibus Motion[17] alleging that the subject property was a family home and therefore, exempt from execution, and that being a conjugal property, it cannot be made to answer for his personal obligations without any showing that it had redounded to the benefit of the family.[18] The Makati RTC denied[19] Dante's Omnibus Motion, ruling that Dante had belatedly raised the issues respecting the conjugal nature of the subject property, and besides, the issue on whether the subject property was a family home had already been previously resolved.[20] Moreover, he had contracted the obligation

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[12] *Id.* at 84-86.

[13] *Id.* at 79-83.

[14] *Id.* at 53.

[15] *Id.* at 89-90.

[16] *Id.* at 53.

[17] *Id.* at 137-144.

[18] *Id.* at 53.

[19] See Order dated January 8, 2007; *id.* at 272-277. Penned by Presiding Judge Encarnacion Jaja G. Moya.

[20] *Id.* at 53.

while engaged in his business; hence, it can be presumed that the conjugal partnership was benefited.[21] Finally, the Makati RTC held that attachment and levy on the subject property had been validly done.[22] Consequently, it directed the issuance of a writ of possession in favor of respondents and ordered Dante and all persons claiming rights under him to vacate the subject property.[23] Dante's motion for reconsideration was denied, and there being no appeal taken therefrom, the Makati RTC's disposition of the case became final.[24]

On May 2, 2007, Teresita — Dante's wife — filed before the Parañaque RTC a complaint [25] against respondents, respondent Sheriff Ignacio, and the Register of Deeds of Parañaque City, docketed as Civil Case No. 07-0134, for the nullification of the auction sale and the cancellation of the certificate of sale issued in favor of respondents (nullification case). [26]

The Proceedings Before the Parañaque RTC

After due proceedings, the Parañaque RTC initially dismissed[27] the nullification case on the ground of *res judicata*, ruling that the issues raised therein had already been passed upon by the Makati RTC with Teresita's active and voluntary participation.[28] However, upon Teresita's motion for reconsideration,[29] the Parañaque RTC, in an Order[30] dated January 6, 2011, reversed

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[21] *Id.*

[22] *Id.*

[23] *Id.*

[24] *Id.* at 54.

[25] *Id.* at 109-120.

[26] *Id.* at 54.

[27] See Order dated July 8, 2010; *id.* at 153-162. Penned by Judge Rolando G. How.

[28] *Id.* at 54.

[29] *Id.* at 163-174.

[30] *Id.* at 100-108.

its initial disposition and instead, nullified the auction sale, the certificate of sale, and the Final Deed of Sale in favor of respondents.[31] It held that Teresita was considered a third party in the collection case before the Makati RTC, not having been impleaded therein together with her husband Dante, and that the submission of her Affidavit before the Makati RTC did not make her a party to the said case.[32] Moreover, she had not waived her right to institute a separate action to recover the subject property, and the nullification case was not, after all, barred by *res judicata*.[33]

Respondents' motion for reconsideration[34] was denied in an Order[35] dated April 27, 2011, which they received on May 23, 2011.[36] Intending to file a petition for *certiorari* before the CA, they filed a Motion for Extension of Time[37] on June 2, 2011. Eventually realizing their error, and apparently unaware that the CA had already denied their motion for extension in an Order dated June 13, 2011, respondents withdrew their motion for extension before the CA on June 17, 2011 and instead, simultaneously filed a Notice of Appeal[38] before the Parañaque RTC. Unfortunately, it was filed ten (10) days late.[39]

In an Order[40] dated August 5, 2011, the Parañaque RTC denied the Notice of Appeal for having been filed out of time. Respondents' motion for reconsideration was likewise denied in an Order[41]

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[31] *Id.* at 54. See also pp. 107-108.

[32] *Id.* at 55.

[33] *Id.*

[34] *Id.* at 175-179.

[35] *Id.* at 180.

[36] *Id.* at 181.

[37] *Id.* at 184-185.

[38] *Id.* at 181-182.

[39] *Id.* at 55.

[40] *Id.* at 190-193.

[41] *Id.* at 194.

dated October 17, 2011.[42] Aggrieved, respondents filed a petition for *certiorari*[43] before the CA, arguing, *inter alia*, that the Parañaque RTC had no jurisdiction and power to review the proceedings of a co-equal court.

The CA Ruling

In a Decision[44] dated January 22, 2013, the CA granted the petition and directed the Parañaque RTC to allow respondents' Notice of Appeal. While conceding that the perfection of an appeal within the reglementary period is mandatory and jurisdictional, the CA nonetheless found meritorious and sound reasons for the exceptional allowance of respondents' appeal.[45] It held that it was a more prudent course of action for the Parañaque RTC to excuse respondents' technical lapse in order to afford the parties a review of the case on appeal instead of disposing the case based on technicality.[46] Citing the *doctrine of judicial stability* or non-interference in the regular orders or judgments of a co-equal court, it found that the affirmance of the Parañaque RTC's assailed issuances would allow Teresita's husband, Dante, to continue to evade his obligations which was already finally adjudicated by the Makati RTC, a co-equal court and the first one to take cognizance of the controversy, on the basis of technicality.[47]

Teresita's motion for reconsideration was denied in the Resolution[48] dated June 11, 2014; hence, this petition.

The Issues Before the Court

At the core of the issues advanced for the Court's resolution is the question of whether or not the Parañaque RTC violated

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[42] *Id.* at 55.

[43] *Id.* at 202-223.

[44] *Id.* at 51-63.

[45] *Id.* at 57-58.

[46] *Id.* at 58.

[47] *Id.*

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

the doctrine of judicial stability when it took cognizance of the nullification case filed by Teresita and declared as null and void the auction sale, the certificate of sale, and the Final Deed of Sale in favor of respondents.

The Court's Ruling

The petition is devoid of merit.

In *Barroso v. Omelio*,[49] the Court explained the doctrine of judicial stability as follows:

> The doctrine of judicial stability or non-interference in the regular orders or judgments of a co-equal court is an elementary principle in the administration of justice: no court can interfere by injunction with the judgments or orders of **another court of concurrent jurisdiction** having the power to grant the relief sought by the injunction. The rationale for the rule is founded on the concept of jurisdiction: **a court that acquires jurisdiction over the case and renders judgment therein has jurisdiction over its judgment, to the exclusion of all other coordinate courts, for its execution and over all its incidents, and to control, in furtherance of justice, the conduct of ministerial officers acting in connection with this judgment.**
>
> Thus, we have repeatedly held that a case where an execution order has been issued is considered as still pending, so that all the proceedings on the execution are still proceedings in the suit. A court which issued a writ of execution has the inherent power, for the advancement of justice, to correct errors of its ministerial officers and to control its own processes. To hold otherwise would be to divide the jurisdiction of the appropriate forum in the resolution of incidents arising in execution proceedings. Splitting of jurisdiction is obnoxious to the orderly administration of justice.
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> To be sure, the law and the rules are not unaware that an issuing court may violate the law in issuing a writ of execution and have recognized that there should be a remedy against this violation. The remedy, however, is not the resort to another co-equal body but

[49] G.R. No. 194767, October 14, 2015, citing *Cabili v. Balindong*, 672 Phil. 398, 406-409 (2011).

to a higher court with authority to nullify the action of the issuing court. This is precisely the judicial power that the 1987 Constitution, under Article VIII, Section 1, paragraph 2, speaks of and which this Court has operationalized through a petition for *certiorari*, under Rule 65 of the Rules of Court. (Emphases supplied; citations omitted)

To summarize, the various branches of the regional trial courts of a province or city, having as they do the same or equal authority and exercising as they do concurrent and coordinate jurisdiction, should not, cannot, and are not permitted to interfere with their respective cases, much less with their orders or judgments. A contrary rule would obviously lead to confusion and seriously hamper the administration of justice.[50]

In this case, the Court finds that the Parañaque RTC violated the doctrine of judicial stability when it took cognizance of Teresita's nullification case despite the fact that the collection case from which it emanated falls within the jurisdiction of the Makati RTC. Verily, the nullification case ought to have been dismissed at the outset for lack of jurisdiction, as the Parañaque RTC is bereft of authority to nullify the levy and sale of the subject property that was legitimately ordered by the Makati RTC, a coordinate and co-equal court. In fact, the Parañaque RTC was already on the right track when it initially dismissed the nullification case in its Decision[51] dated July 8, 2010. However, it changed its stance and reconsidered its disposition upon Teresita's motion for reconsideration, thereby committing reversible error. To reiterate, the determination of whether or not the levy and sale of a property in the execution of a judgment was valid properly falls within the jurisdiction of the court that rendered the judgment and issued the writ of execution.[52]

Thus, Teresita's nullification case filed before the Parañaque RTC was improper and in glaring violation of the doctrine of judicial stability. The judgment rendered by the Makati RTC

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[50] *Spouses Ching v. CA*, 446 Phil. 121, 129 (2003); *Cojuangco v. Villegas*, 263 Phil. 291, 297 (1990).

[51] *Rollo*, pp. 153-162.

[52] *Spouses Ching v. CA, supra* note 50, at 128-129.

in the collection case, as well as the execution thereof, and all other incidents arising therefrom, may not be interfered with by the Parañaque RTC, a court of concurrent jurisdiction, for the simple reason that the power to open, modify, or vacate the said judgment or order is not only possessed but is restricted to the court in which the judgment or order is rendered or issued.[53] Consequently, the Parañaque RTC lacked jurisdiction over the same, rendering all the proceedings therein, as well as the Decision and other orders issued thereon, void for lack of jurisdiction.

A judgment rendered by a court without jurisdiction is null and void and may be attacked anytime. It creates no rights and produces no effect. It remains a basic fact in law that the choice of the proper forum is crucial, as the decision of a court or tribunal without jurisdiction is a total nullity. A void judgment for want of jurisdiction is no judgment at all. All acts performed pursuant to it and all claims emanating from it have no legal effect.[54]

WHEREFORE, the petition is **DENIED**. The Order dated January 6, 2011 rendered by the Regional Trial Court of Parañaque City, Branch 257 in Civil Case No. 07-0134, the proceedings therein, as well as all orders issued thereafter are hereby declared **NULL** and **VOID** for lack of jurisdiction.

SO ORDERED.

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

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[53] *Philippine Commercial International Bank v. CA*, 454 Phil. 338, 369 (2003).

[54] *Tiu v. First Plywood Corporation*, 629 Phil. 120, 133 (2010).

SECOND DIVISION

[G.R. No. 213919. June 15, 2016]

PEOPLE OF THE PHILIPPINES, *appellee, vs.* **VIRGILIO A. QUIM,** *appellant.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); SALE OR POSSESSION OF SHABU; THE ILLEGAL DRUG ITSELF CONSTITUTES THE *CORPUS DELICTI* OF THE OFFENSE AND THE FACT OF ITS EXISTENCE IS VITAL FOR THE CONVICTION OF THE ACCUSED.— In drug-related prosecutions, the State should not only establish all the elements of the sale and possession of shabu under RA 9165, but also prove the *corpus delicti*, the body of the crime, to discharge its overall duty of proving the guilt of the accused beyond reasonable doubt. The illegal drug itself constitutes the *corpus delicti* of the offense and the fact of its existence is vital for the conviction of the accused.

2. ID.; ID.; CUSTODY AND DISPOSITION OF CONFISCATED ILLEGAL DRUGS; CHAIN OF CUSTODY; TO ENSURE THAT THE INTEGRITY AND EVIDENTIARY VALUE OF THE SEIZED DRUG ARE PRESERVED, THE PROSECUTION IS REQUIRED TO BE ABLE TO ACCOUNT FOR EACH LINK IN THE CHAIN OF CUSTODY OF THE DANGEROUS DRUG, FROM THE MOMENT IT WAS SEIZED FROM THE ACCUSED TO THE TIME IT WAS PRESENTED IN COURT.— Section 21, paragraph 1, Article II of RA 9165 states the initial stage in the custody and disposition of the confiscated illegal drugs x x x. The Implementing Rules and Regulations of RA 9165 provide the guidelines in the custody and disposition of the confiscated illegal drugs x x x. To ensure that the integrity and the evidentiary value of the seized drug are preserved, the chain of custody rule requires the prosecution to be able to account for each link in the chain of custody of the dangerous drug, from the moment it was seized from the accused up to the time it was presented in court. Testimony must be presented

on every link in the chain of custody, from the moment the dangerous drug was seized up to the time it is offered in evidence. In this case, there was a gap in the chain of custody of the seized drug at the very beginning. The prosecution's lone witness, PO2 Repompo omitted to testify to whom the poseur buyer handed the shabu which was allegedly bought from appellant during the buy-bust operation.

3. **ID.; ID.; ID.; ID.; MARKING; THE SEIZED DRUGS MUST BE MARKED IMMEDIATELY UPON CONFISCATION AND IN THE PRESENCE OF THE APPREHENDED VIOLATOR TO ENSURE THAT THE SEIZED ITEMS ARE THE ONES EVENTUALLY OFFERED IN EVIDENCE.—** Another breach in the chain of custody was the marking of the sachet of shabu by SPO1 Navales which was not done in the presence of appellant. During his testimony, PO2 Repompo stated that he was present when SPO1 Navales marked the sachet of shabu at the place where they made the search. No mention was made of the whereabouts of appellant when the marking on the sachet of shabu was made, which leads to the conclusion that appellant was not present when the marking was made. The seized drugs must be marked immediately upon confiscation and in the presence of the apprehended violator to ensure that the seized items are the ones eventually offered in evidence. It is imperative that the marking of the seized illegal drugs be done in the presence of the accused. In this case, it was not shown that appellant was present during the marking of the shabu.

4. **ID.; ID.; ID.; ID.; THE NON-PRESENTATION OF THE POLICE OFFICER WHO BROUGHT THE SHABU FROM THE PLACE WHERE THE SEARCH OCCURRED TO THE POLICE STATION CONSTITUTES A BROKEN LINK IN THE CHAIN OF CUSTODY OF THE SEIZED DRUG.—** Another lapse committed by the prosecution is the non-presentation of SPO1 Navales who brought the shabu from the place where the search occurred to the police station. Only the prosecution's lone witness, PO2 Repompo testified that SPO1 Navales brought the shabu to the police station. No other details were provided by PO2 Repompo other than stating that it was SPO1 Navales who brought the shabu to the police station. Thus, it was not clear whether PO2 Repompo saw SPO1 Navales in possession of the shabu from the time SPO1 Navales

marked the shabu up to the time the shabu was brought to the police station. This constitutes another broken link in the chain of custody of the seized drug. x x x The prosecution's failure to establish every link in the chain of custody of the illegal drug gravely compromised its identity and evidentiary value. The lack of conclusive identification of the illegal drug which is the *corpus delicti* of the offense charged against appellant warrants his acquittal.

APPEARANCES OF COUNSEL

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

D E C I S I O N

CARPIO, *J.*:

The Case

This is an appeal from the 24 April 2014 Decision[1] of the Court of Appeals in CA-G.R. CR-HC No. 01018, affirming with modification the Decision[2] of the Regional Trial Court, Branch 13, Cebu City (trial court), in Criminal Case No. CBU-69184, convicting appellant Virgilio A. Quim (appellant) for violation of Section 5, Article II of Republic Act No. 9165 (RA 9165), otherwise known as the Comprehensive Dangerous Drugs Act of 2002.

The Facts

The Information against appellant reads:

That on the 3rd day of April 2004 at around 9:50 A.M., in Barangay Valladolid Municipality of Carcar, Province of Cebu, Philippines and within the jurisdiction of this Honorable Court, the above-named

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[1] *Rollo*, pp. 4-23. Penned by Associate Justice Renato C. Francisco, with Associate Justices Gabriel T. Ingles and Marilyn B. Lagura-Yap concurring.

[2] CA *rollo*, pp. 32-36. Penned by Presiding Judge Meinrado P. Paredes.

accused, without authority of law, did then and there willfully, unlawfully and feloniously SELL and DELIVER one (1) heat-sealed transparent plastic packet of 0.04 gram of white crystalline substance to a poseur buyer in a buy-bust operation for and in consideration of the sum of One Hundred Pesos (₱100.00), with Serial Number HC872365, and when subjected for laboratory examination gave positive result for the presence of Methylamphetamine [sic] Hydrochloride, a dangerous drug.[3]

Upon arraignment, appellant pleaded not guilty. The prosecution presented PO2 Jose Yamasaki Repompo (PO2 Repompo) as its lone witness. PO2 Repompo testified that after a report confirmed appellant as selling shabu in Carcar, Cebu, the police officers applied for a search warrant which was granted. A team was then formed to conduct a buy-bust operation. The team was composed of SPO3 Rolando Cayubit (SPO3 Cayubit), SPO1 Roland Navales (SPO1 Navales), SPO1 Meliton Agadier, Jr. (SPO1 Agadier), PO2 Repompo, the civilian asset as a poseur buyer, and other Philippine National Police personnel (PNP). On 3 April 2004, at around 9:15 a.m., the civilian asset who acted as poseur buyer approached appellant who was just outside his house. The police officers who composed the buy-bust team were positioned about 10 to 15 meters from where the transaction occurred. The poseur buyer then handed the ₱100 marked money to appellant who gave the poseur buyer one packet of shabu. The police team then arrested appellant and they were able to recover from appellant ₱290, including the ₱100 marked money. SPO1 Navales marked the shabu specimen with "VAQ-1." Appellant was then brought to the police station. The Chief of Police prepared a letter-request for laboratory examination and PO2 Repompo delivered the shabu specimen to the PNP Crime Laboratory, where the specimen was found positive for methamphetamine hydrochloride or shabu.

The defense presented five witnesses: (1) Darlene Quim, (2) Asuncion Quim, (3) Gerard[4] Quim, (4) Evelyn Lapenia, and (5) appellant.

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[3] Records, p. 1.

[4] Also spelled as "Gerald" in some parts of the Records.

Darlene Quim, the daughter of appellant, testified that on 3 April 2004, her father and brother were fixing a fluorescent lamp outside their house when policemen came and arrested them. One of the policemen poked a gun at her and she shouted for help. The police officers frisked her father and brother but nothing was recovered from them. Sometime later, a barangay official arrived. The police officers entered and searched their house three times.

Asuncion Quim, appellant's wife, testified that in the morning of 3 April 2004, she was inside their house with her daughter. From the sala where she was reading a pocketbook, she could see her husband and their son fixing a fluorescent lamp just outside their house. Police officers suddenly entered their house and one policeman poked a gun at her daughter, who shouted for help. The other police officers searched their bedrooms. Meanwhile, her husband and son were being handcuffed by police officers. When the barangay officials arrived, the police officers searched their bedrooms again. During the search, her husband and son were brought outside the house, while she and her daughter were made to stay in the living room. The police officers who searched the rooms did not recover anything. She later learned at the police station that her husband was charged with possession and sale of illegal drugs.

Gerard Quim, son of appellant, testified that at around 9:00 a.m. on 3 April 2004, he was with his father fixing a fluorescent lamp outside their house. His mother and sister were inside their house. Around 10 policemen arrived, and some went inside their house while the others handcuffed him and his father. When his father asked what was happening, one of the police officers told his father to return the firearm pledged to him by Wilson. Some of the police officers entered the bedrooms but recovered nothing. When the barangay officials arrived, he and his father were frisked by police officers but nothing was recovered from them.

Evelyn Lapenia, a barangay official, testified that on 3 April 2004, she was asked to go to appellant's house. When she arrived at appellant's house, there were several police officers present.

Together with two other barangay officials, they accompanied the police officers inside the toilet and bedroom, which was already topsy-turvy. She surmised that the bedroom was already searched even before they arrived, but she did not see anything recovered by the police officers from their search. She was then led outside the house where she saw a table with some items on top. She was made to sign a piece of paper which listed the items laid on the table. The police officers told her these were the things found by the police officers in the rooms searched.

Appellant testified that at around 10:00 a.m. on 3 April 2004, he and his son Gerard were fixing the electric lamp just outside their house. His daughter Darlene was inside the house sitting by the door, while his wife was also inside the house. Appellant noticed that the house of their neighbor, Nerio Marte, was surrounded by policemen. Some police officers proceeded to their house. Two police officers, SPO1 Navales and SPO3 Cayubit, approached him and his son, while the rest of the policemen entered their house. SPO3 Cayubit then showed him a search warrant and asked if he was Virgilio Quim, to which he answered yes. He was about to read the search warrant when he heard his daughter cry out for help. He and his son rushed inside the house and he saw Saki poking a gun at his daughter. When the Judge[5] asked appellant about Saki's identity, appellant told the Judge that Saki is PO2 Jose Yamasaki Repompo. Appellant told the Judge that PO2 Repompo was known as Saki in their place. Upon further interrogation by the Judge, appellant testified that a week before the incident, PO2 Repompo, SPO1 Agadier, and SPO1 Navales went to his house to get the firearm which was pledged to him by Wilson. He told them that the firearm was not in his possession. When they attempted to enter his house, he told them that they needed a search warrant.

Continuing his testimony on the alleged incident, appellant said that the police officers searched the rooms twice but nothing was recovered. When the barangay officials arrived, the police officers again searched the rooms but still recovered nothing.

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[5] Presiding Judge Meinrado P. Paredes.

The police officers kept asking him to just turn over the firearm which was pledged to him but which was no longer in his possession. He was then handcuffed by the police. Police Officer Avila arrived together with Nerio Marte, who was already handcuffed. Avila then threw a blue plastic bag on the table, which was opened by SPO1 Navales. SPO1 Navales placed the items on the table and listed the items on a piece of paper. SPO1 Navales then asked appellant to sign the paper but appellant refused because the items enumerated were not his.

The Ruling of the Trial Court

On 4 August 2008, the trial court rendered a Decision, the dispositive portion of which reads:

> WHEREFORE, judgment is hereby rendered finding accused Virgilio A. Quim guilty beyond reasonable doubt of the crime of Violation of Sec. 5, Article II, RA 9165 and sentence him to life imprisonment plus a fine in the sum of ₱400,000.00.
>
> The shabu described in the information and presented in court is hereby ordered confiscated in favor of the government and destroyed.
>
> With costs against the accused.
>
> SO ORDERED.[6]

The trial court held that the positive assertion of the prosecution witness prevails over the negative general denial of the defense. The trial court found that the prosecution proved all the elements of the crime charged.

The Ruling of the Court of Appeals

On appeal, appellant contended that the prosecution failed to prove his guilt beyond reasonable doubt.

The Court of Appeals affirmed the trial court's decision but increased the fine imposed from ₱400,000 to ₱500,000. The Court of Appeals held that the prosecution had sufficiently established all the elements constituting the sale of shabu by appellant: the identity of appellant and the shabu, his act of

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[6] CA *rollo*, p. 36.

selling shabu in exchange for ₱100 buy-bust money and the actual delivery thereof to the poseur buyer.

Hence, this appeal.

The Issue

The issue is whether appellant is guilty of sale of methamphetamine hydrochloride under Section 5, Article II of RA 9165.

The Court's Ruling

We find the appeal meritorious.

Appellant was convicted based on the sole testimony of PO2 Repompo. PO2 Repompo testified that he was 10 to 15 meters away from the alleged transaction:

ATTY. LIGTAS

Q You testified before that when you reached the area of the accused you hid yourself a distance at around ten (10) to fifteen (15) meters away, do you recall that in your direct testimony?
A Yes ma'am.

Q How did you conceal yourself?
A We were stooping down in that banana plantation.

Q And you were ten (10) to fifteen (15) meters away, is that correct? You will confirm that, from the accused and informant?
A Yes, ma'am.

Q And from that distance you, of course, could not hear what was being spoken between the accused and your informant?
A No ma'am.

Q By the way, you were hiding behind some banana tress [sic]?
A Yes ma'am.

Q And there were [a] number of these banana trees?
A Yes ma'am.

Q And the banana [trees] were so planted that they were not in a line?

A I could not recall. It was panted but there were so many banana plants in the place.

Q You claimed Mr. Witness that you saw the accused handed over [a] deck of shabu to the informant or poseur buyer, is it not right?

A Yes, after the poseur buyer handed the ₱100.00 bill and the accused handed the one deck of shabu to the poseur-buyer.

Q Is it the one you have identified?

A Yes ma'am.

Q As the one allegedly handed by the accused to the poseur buyer?

A Yes ma'am.

Q Could you please tell the Honorable Court on estimate of the size of this deck of shabu, this plastic packet?

A Small plastic packet.

Q Would you agree with me Mr. Witness that this small pack could be hidden between two fingers of the person's hand?

A Maybe.

Q Would you try to hold it between two fingers and see if it can be concealed by your two fingers?

INTERPRETER

The witness is holding the said sample, Your Honor, and based on the way he hold[s] it, only part or half of the plastic packet is hidden.[7]

Appellant in this case is accused of selling 0.04 gram of shabu contained in a plastic sachet. PO2 Repompo, who was hiding behind the banana trees approximately 10 to 15 meters away, would indeed find it hard to have a clear view of the alleged transaction, much less see the small plastic sachet containing the 0.04 gram of shabu allegedly being passed from appellant to the poseur buyer. Since appellant denied selling the shabu or that the drug transaction happened, the prosecution should have presented the poseur buyer to rebut appellant's testimony instead

[7] TSN, 28 November 2007, pp. 9-11.

of just relying on the lone testimony of PO2 Repompo who admitted that he observed the alleged transaction from a distance of 10 to 15 meters.[8] Neither did the prosecution present the other members of the buy-bust team as witnesses to corroborate the testimony of PO2 Repompo.

Even if PO2 Repompo did see clearly the alleged transaction, still the substantial gaps in the chain of custody of the seized illegal drug raise doubts on the authenticity of the evidence presented in court.

In drug-related prosecutions, the State should not only establish all the elements of the sale and possession of shabu under RA 9165, but also prove the *corpus delicti*, the body of the crime, to discharge its overall duty of proving the guilt of the accused beyond reasonable doubt.[9] The illegal drug itself constitutes the *corpus delicti* of the offense and the fact of its existence is vital for the conviction of the accused.[10]

Section 21, paragraph 1, Article II of RA 9165 states the initial stage in the custody and disposition of the confiscated illegal drugs:

> (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;

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[8] In *People v. Ale* [229 Phil. 81 (1986)], the Court held that the presence and identity of the poseur buyer is vital to the case as his very existence is disputed by the accused. The Court found it incredible to believe that the police officers who testified in court could clearly see the alleged illegal transaction from a distance of 10 to 15 meters.

[9] *People v. Guzon*, 719 Phil. 441 (2013); *People v. Coreche*, 612 Phil. 1238 (2009).

[10] *People v. Enumerable*, G.R. No. 207993, 21 January 2015, 747 SCRA 495.

The Implementing Rules and Regulations of RA 9165 provide the guidelines in the custody and disposition of the confiscated illegal drugs, thus:

> 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:
>
> (a) The apprehending officer/team having initial custody and control of the drugs shall, immediately after seizure and confiscation, physically inventory and photograph the same in the presence of the accused or the person/s from whom such items were confiscated and/or seized, or his/her representative or counsel, a representative from the media and the Department of Justice (DOJ), and any elected public official who shall be required to sign the copies of the inventory and be given a copy thereof; *Provided*, that the physical inventory and photograph shall be conducted at the place where the search warrant is served; or at the nearest police station or at the nearest office of the apprehending officer/team, whichever is practicable, in case of warrantless seizures; *Provided, further*, that non-compliance with these requirements under justifiable grounds, as long as the integrity and evidentiary value of the seized items are properly preserved by the apprehending officer/team, shall not render void and invalid such seizures of and custody over said items;
>
> x x x x x x x x x

To ensure that the integrity and the evidentiary value of the seized drug are preserved, the chain of custody rule requires the prosecution to be able to account for each link in the chain of custody of the dangerous drug, from the moment it was seized from the accused up to the time it was presented in court.[11]

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[11] *People v. Sorin*, G.R. No. 212635, 25 March 2015, 754 SCRA 594, 603, citing *People v. Viterbo*, G.R. No. 203434, 23 July 2014, 730 SCRA 672.

Testimony must be presented on every link in the chain of custody, from the moment the dangerous drug was seized up to the time it is offered in evidence.[12]

In this case, there was a gap in the chain of custody of the seized drug at the very beginning. The prosecution's lone witness, PO2 Repompo omitted to testify to whom the poseur buyer handed the shabu which was allegedly bought from appellant during the buy-bust operation. In his testimony, PO2 Repompo stated that after they frisked appellant, SPO1 Agadier recovered ₱290 including the marked money which they turned over to the team recorder SPO1 Navales.[13] During the continuation of his testimony, PO2 Repompo stated that SPO1 Agadier turned over the sachet of shabu and the ₱290 to SPO1 Navales.[14] It was not clear whether the sachet of shabu was the one bought by the poseur buyer from appellant. Even if such item did refer to the alleged shabu bought from appellant, still no mention was made on how SPO1 Agadier came to possess it. After testifying about the poseur buyer buying the shabu from appellant, PO2 Repompo no longer mentioned the succeeding actions of the poseur buyer, particularly to whom the poseur buyer gave the shabu for custody. The only conclusion from this omission is that PO2 Repompo did not witness the subsequent acts of the poseur buyer, especially with regard to the custody of the shabu. The pertinent portions of PO2 Repompo's testimony read:

FISCAL BALANSAG
Q Is your poseur buyer a policeman?
A A civilian asset.

Q Did you see the poseur buyer and Virgilio Quim met [sic] in a certain place, Mr. Witness?
A Yes.

Q From where?
A Near the gate of the house of Virgilio Quim.

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[12] *People v. Watanama*, 692 Phil. 102 (2012).

[13] TSN, 3 October 2007, pp. 8-9.

[14] TSN, 7 November 2007, p. 5.

Q Have you observed what your poseur buyer and Virgilio Quim do [sic] at that time?
A Our poseur buyer handed a 100-peso bill and in return, Virgilio Quim handed a one deck of shabu.

Q How far were you from the place where your poseur buyer and Virgilio Awa Quim met?
A 10 to 15 meters.

Q You mentioned about the buy-bust money. Can you give us the serial number of the buy bust money?
A The serial number of the buy bust money is HC[8]72365.

Q After you saw your poseur buyer handed [sic] the 100-peso bill to Virgilio Quim and Virgilio Quim in return, gave [sic] the 1 pack of shabu. What happened next?
A After that we rushed up towards the subject and Virgilio Quim noticed that I and Agadier were approaching. So he ran towards his house and I and Agadier followed him and informed him of his constitutional rights and put him under arrest.

Q Did you say anything to the accused Virgilio?
A We informed him that we arrested him for selling shabu.

Q Aside from informing him that he is selling shabu, what else did you tell to the accused?
A We also informed him that we were armed with a search warrant.

Q Did you frisk him, Mr. Witness?
A Not yet.

Q When did you frisk the accused?
A When the search started.

Q What did you confiscate from the accused?
A Nothing.

COURT

Q How about Agadier?
A SPO1 Agadier recovered from his possession ₱290.00 including, the buy-bust money.

Q After Agadier recovered the money ₱290.00 including the marked money, what else did you do?
A We turned it over to the team recorder.

COURT
You start from there.

COURT
Q Who was your team recorder?
A SPO1 Navales.

FISCAL BALANSAG
That would be all, Your Honor.[15]

During the continuation of the hearing, PO2 Repompo further testified:

PROSECUTOR BALANSAG
Q After SPO1 Mel[i]ton Agadier confiscated from the accused the ₱290.00 which included the buy-bust money what happened then?
A We turned it over to our team recorder SPO1 Roland Navales.

Q What did you turn over to SPO1 Roland Navales?
A The one sachet of shabu and the ₱290.00 including the buy bust money were turned over by SPO1 Agadier to SPO1 Navales.

Q After turning over the one sachet of shabu and the ₱290.00 which includes the buy-bust money, what happened then?
A After our team leader SPO3 Cayubit informed the search warrant to Virgilio Quim.[16]

Clearly, there is a gap between the time the poseur buyer allegedly received the sachet of shabu from appellant and when SPO1 Agadier came into possession of the shabu which he handed over to SPO1 Navales. Unfortunately, the prosecution did not present SPO1 Agadier or the poseur buyer to testify on this matter.

Another breach in the chain of custody was the marking of the sachet of shabu by SPO1 Navales which was not done in the presence of appellant. During his testimony, PO2 Repompo stated that he was present when SPO1 Navales marked the sachet

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[15] TSN, 3 October 2007, pp. 7-9.

[16] TSN, 7 November 2007, pp. 5-6.

of shabu at the place where they made the search.[17] No mention was made of the whereabouts of appellant when the marking on the sachet of shabu was made, which leads to the conclusion that appellant was not present when the marking was made. The seized drugs must be marked immediately upon confiscation and in the presence of the apprehended violator to ensure that the seized items are the ones eventually offered in evidence.[18] It is imperative that the marking of the seized illegal drugs be done in the presence of the accused.[19] In this case, it was not shown that appellant was present during the marking of the shabu.

Another lapse committed by the prosecution is the non-presentation of SPO1 Navales who brought the shabu from the place where the search occurred to the police station. Only the prosecution's lone witness, PO2 Repompo testified that SPO1 Navales brought the shabu to the police station.[20] No other details were provided by PO2 Repompo other than stating that it was SPO1 Navales who brought the shabu to the police station. Thus, it was not clear whether PO2 Repompo saw SPO1 Navales in possession of the shabu from the time SPO1 Navales marked the shabu up to the time the shabu was brought to the police station. This constitutes another broken link in the chain of custody of the seized drug. In *Mallillin v. People*,[21] the Court held:

> As a method of authenticating evidence, the chain of custody rule requires that the admission of an exhibit be preceded by evidence sufficient to support a finding that the matter in question is what the proponent claims it to be. It would include testimony about every link in the chain, from the moment the item was picked up to the time it is offered into evidence, in such a way that every person who touched the exhibit would describe how and from whom it was

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[17] TSN, 7 November 2007, pp. 7-8.

[18] *Fajardo v. People*, 691 Phil. 752 (2012).

[19] *People v. Dahil*, G.R. No. 212196, 12 January 2015, 745 SCRA 221.

[20] TSN, 7 November 2007, p. 9.

[21] 576 Phil. 576 (2008).

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.[22]

The prosecution's failure to establish every link in the chain of custody of the illegal drug gravely compromised its identity and evidentiary value. The lack of conclusive identification of the illegal drug which is the *corpus delicti* of the offense charged against appellant warrants his acquittal.

WHEREFORE, we **GRANT** the appeal and **ACQUIT** appellant Virgilio A. Quim based on reasonable doubt. We **ORDER** his immediate release from detention, unless he is detained for any other lawful cause.

SO ORDERED.

Mendoza and *Leonen, JJ.,* concur.

Brion and *del Castillo, JJ.,* on official leave.

THIRD DIVISION

[G.R. No. 214440. June 15, 2016]

PEOPLE OF THE PHILIPPINES, *plaintiff-appellee, vs.* **ALEX MENDEZ RAFOLS,** *accused-appellant.*

SYLLABUS

1. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002);

[22] *Id.* at 587.

ILLEGAL SALE OF DANGEROUS DRUGS; ELEMENTS; THE COMMISSION OF THE OFFENSE OF ILLEGAL SALE OF DANGEROUS DRUGS MERELY REQUIRES THE CONSUMMATION OF THE SELLING TRANSACTION WHICH HAPPENS THE MOMENT THE BUYER RECEIVES THE DRUG FROM THE SELLER.— 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. Appellant was apprehended, indicted and convicted by way of a buy-bust operation, a form of entrapment to capture lawbreakers in the execution of their criminal plan. The commission of the offense of illegal sale of dangerous drugs 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.

2. ID.; ID.; ILLEGAL POSSESSION OF DANGEROUS DRUGS; ELEMENTS; 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. — For a successful 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. Obtained through a valid search the drug operatives conducted pursuant to Section 13, Rule 126 of the Rules of Court, the sachets recovered from appellant's person all tested positive for Methamphetamine 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 to explain the absence of *animus possidendi* rests upon the accused, and in the case at bar, this the appellant failed to do.

3. REMEDIAL LAW; EVIDENCE; CREDIBILITY OF WITNESSES; THERE IS GENERAL DEFERENCE TO THE ASSESSMENT THEREON BY THE TRIAL COURT AS IT HAD THE OPPORTUNITY TO DIRECTLY OBSERVE THE WITNESSES ON THE WITNESS STAND.— Prosecutions involving illegal drugs depend largely on the credibility of the police officers or drug operatives who conducted the buy-bust operation. Thus, there is general deference to the assessment on this point by the trial court as it had the opportunity to directly observe the witnesses, their demeanor, and their credibility on the witness stand. An independent examination of the records shows no compelling reason to depart from this rule. Records reveal the lack of any ill-motive on the part of the buy-bust team to falsely testify against appellant. The RTC and the appellate court accordingly gave proper credence to the testimony of the drug operatives for the prosecution. The testimonies of the witnesses were consistent, positive and straightforward.

4. ID.; ID.; DENIAL AND FRAME-UP; HAVE BEEN VIEWED WITH DISFAVOR DUE TO THE EASE OF THEIR CONCOCTION AND THE FACT THAT THEY BECOME COMMON AND STANDARD DEFENSES IN PROSECUTIONS FOR ILLEGAL SALE AND POSSESSION OF DANGEROUS DRUGS.— Against the positive testimonies of the 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 defenses in prosecutions for illegal sale and possession of dangerous drugs.

5. CRIMINAL LAW; REPUBLIC ACT NO. 9165 (THE COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002); BUY-BUST OPERATION; PRIOR SURVEILLANCE IS NOT NECESSARY ESPECIALLY WHEN THE POLICE OPERATIVES ARE ACCOMPANIED BY THE INFORMANT DURING THE ENTRAPMENT.— The inconsistencies, if any, in x x x [the] testimonies [of the prosecution witnesses], as alleged by appellant, are but a few, involve minor details and do not touch upon the material points and thus, cannot overturn a conviction established by competent

and credible evidence. The supposed inconsistency, if at all there is one, on whether a prior surveillance had been made does not affect the legality of the buy-bust operation as it has been ruled that a prior surveillance is not necessary especially when the police operatives, as in this case, are accompanied by the informant during the entrapment.

6. ID.; ID.; CUSTODY AND DISPOSITION OF CONFISCATED ILLEGAL DRUGS; CHAIN OF CUSTODY RULE; MARKING; SHOULD BE DONE IN THE PRESENCE OF THE APPREHENDED VIOLATOR AND IMMEDIATELY UPON CONFISCATION; MARKING UPON IMMEDIATE CONFISCATION HAS BEEN INTERPRETED TO INCLUDE MARKING AT THE NEAREST POLICE STATION OR THE OFFICE OF THE APPREHENDING TEAM.— On the supposed failure to comply with the procedures prescribed by Section 21 of R.A. No. 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. lt bears underscoring that law and its implementing rules in fact are silent on the matter of the marking of the seized items. Consistency with the "chain of custody" rule however requires that the marking should be done (l) in the presence of the apprehended violator and (2) immediately upon confiscation. These requirements were complied with the marking of the seized items in appellant's presence at the PDEA office. Dir. Ortiz explained that the marking had to be made there to ensure his men's safety as there were only six (6) of them who effected the arrest in a slum area. Marking upon immediate confiscation has been interpreted to include marking at the nearest police station, or herein, the office of the apprehending team. In any event, 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. The prosecution was able to prove an unbroken chain of custody of the illegal drugs from their seizure, marking, photographing, inventory to their submission to the PNP Laboratory for analysis, to the identification of the same during the trial of the case. As long as the chain of custody is unbroken, the guilt of the appellant will not be affected.

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.*:

For review is the Decision[1] of the Court of Appeals in CA-G.R. CR-HC No. 01533 dated 27 June 2014, which affirmed the Judgment[2] dated 11 July 2012 of the Regional Trial Court (RTC) of Cebu City, Branch 7 in Criminal Case Nos. CBU-81836 and CBU-81837. The RTC convicted Alex Mendez Rafols (appellant) 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. CBU-81836

That on or about the 5th day or December 2007, at about 9:15 in the evening, in the City of Cebu, Philippines and within the jurisdiction of this Honorable Court, the said accused, with deliberate intent, and without authority of law, did then and there sell, deliver or give away to poseur buyer one (1) small heat sealed plastic pack of white crystalline substance weighing 0.04 gram, locally known as shabu, containing methamphetamine hydrochloride, a dangerous drug.[3]

CRIMINAL CASE NO. CBU-81837

That on or about the 5th day of December 2007, at about 9:15 in the evening, in the City of Cebu, Philippines and within the jurisdiction

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[1] *Rollo*, pp. 4-15; Penned by Associate Justice Ma. Luisa C. Quijano-Padilla with Associate Justices Gabriel T. Ingles and Marie Christine Azcarraga-Jacob concurring.

[2] Records (Crim. Case No. CBU-81837), pp. 107-113; Penned by Presiding Judge Enriqueta Loquillano-Belarmino.

[3] Records (Crim. Case No. CBU-81836), p. 1.

of this Honorable Court, the said accused, with deliberate intent, did then and there have in his possession and control six (6) heat sealed transparent plastic sachet[s] of white crystalline substance weighing 0.24 gram, locally known as shabu, containing methamphetamine hydrochloride, a dangerous drug, without authority of law.[4]

Appellant pleaded not guilty to the offenses charged. Joint trial ensued.

The prosecution built its case on the theory that the drug operatives apprehended appellant during a buy-bust operation. During the buy-bust operation, appellant sold one (1) plastic sachet of *shabu* to the *poseur buyer* while a search on appellant's person yielded six (6) plastic sachets of *shabu* which the police seized.

Upon receipt of information that appellant is engaged in illegal drug activities in Sito Riverside, *Barangay* Day-as, Cebu City, a buy-bust team was formed headed by Director Levi S. Ortiz (Dir. Ortiz) of the Philippine Drug Enforcement Agency (PDEA) to apprehend appellant on 5 December 2007, pursuant to an Authority to Operate.[5] IA3 George Cansancio was designated as *poseur buyer*. The buy-bust money was marked with "LSO," the initials of Dir. Ortiz.[6]

The informant and the *poseur buyer* proceeded to the location while the rest of the buy-bust team strategically positioned themselves at the target area. Seeing the *poseur buyer* with the informant, the appellant asked the former if he wanted to buy *shabu*. The *poseur buyer* replied in the affirmative, stated the quantity when asked how much he wanted to purchase, and immediately gave appellant the buy-bust money. Appellant took out from his pocket a silver container out of which he got the plastic sachet containing the white crystalline substance believed to be shabu. After the exchange, the *poseur buyer* executed the

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[4] Records (Crim. Case No. CBU-81837), p. 1.

[5] *Id.* at 6.

[6] TSN, 12 January 2012, pp. 4-12.

pre-arranged signal to another police officer, FO3 Priscillano C. Gingoyon (FO3 Gingoyon), who assisted in the arrest of appellant. Appellant was apprised of his constitutional rights and the violation he had committed. A body search on appellant's person yielded six (6) plastic sachets of white crystalline substance and the buy-bust money. The buy-bust team took appellant and the confiscated items to the PDEA office for investigation. After marking, inventory and photographing of the same were done in the presence of appellant, *barangay tanods* and a media representative, the confiscated items were taken to the Philippine National Police (PNP) Crime Laboratory for analysis and examination.[7] Rendielyn Sahagun (Sahagun), Forensic Chemist of the PNP Crime Laboratory, conducted an examination on the specimens submitted and found them to be positive for the presence of *shabu*.[8]

Appellant testified on his behalf and anchored his defense on denial and frame-up. He denied selling *shabu* and claimed that on the date and time of the incident, he was at his nephew's eatery to ask for money to purchase his mother's medicine. En route to buying medicine, appellant was blocked by two (2) men in civilian clothes. The men grabbed hold of him and brought him to the police station for his supposed participation in a fight between neighbors. There, the police officers allegedly showed him one (1) plastic sachet of *shabu* and a One Hundred Peso (₱100.00) bill as buy-bust money. Appellant admitted on the witness stand to having been previously arrested for possession of illegal drugs but claimed that the evidence against him had been planted. And although in the instant case the evidence was allegedly likewise planted, appellant by his own volition opted not to file a case against the police officers who arrested him.[9]

On 11 July 2012, the RTC convicted appellant of all the charges. The RTC relied on the presumption of regularity in

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[7] TSN, 30 July 2009, pp. 4-19; TSN, 3 August 2011, p. 11.

[8] TSN, 16 April 2009, p. 7; Records (Crim. Case No. CBU-81837), p. 89.

[9] TSN, 7 June 2012, pp. 5-26.

the buy-bust operation and the lack of improper motive on the part of the police officers. The RTC rejected the proferred defenses and found that the prosecution sufficiently established all the elements of the crimes charged and the identity of appellant as the perpetrator. The RTC disposed, thus:

> WHEREFORE, in view of the foregoing, accused Alex Mendez Rafols is hereby convicted beyond reasonable doubt of the crimes charged and is sentenced to suffer the following [penalties]:
>
> 1. life imprisonment and a fine of ₱500,000.00 for violation of Section 5, Article II of RA 9165;
>
> 2. twelve (12) years and one (1) day to fifteen (15) years and a fine [of] ₱300,000.00 for Violation of Section 11, Article II of RA 9165;
>
> The total seven (7) packs of shabu are forfeited in favor of the government.[10]

On 27 June 2014, 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, disposing as follows:

> **WHEREFORE**, the appeal is **DENIED**. The Judgment of the Regional Trial Court, Branch 7, Cebu City dated July 11, 2012 in Criminal Cases (sic) Nos. CBU-81836 and CBU-81837 finding accused-appellant Alex Mendez Rafols guilty beyond reasonable doubt of violating Sections 5 and 11 of Article II of Republic Act (RA) 9165 is hereby **AFFIRMED**.[11]

On appeal before this Court, we find no reversible error committed by the RTC and the Court of Appeals in convicting appellant of the crimes charged.

The prosecution was able to establish with moral certainty the following elements required for all prosecutions for illegal

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[10] Records (Crim. Case No. CBU-81837), pp. 112-113.

[11] *Rollo*, p. 14.

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.[12] Appellant was apprehended, indicted and convicted by way of a buy-bust operation, a form of entrapment to capture lawbreakers in the execution of their criminal plan.[13] The commission of the offense of illegal sale of dangerous drugs 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.[14]

Appellant was caught delivering one heat sealed plastic sachet containing white crystalline substance to the *poseur buyer* in exchange for ₱100.00. The *poseur buyer*, IA3 Cansancio, positively identified appellant in open court to be the person who sold to him the item which upon examination was confirmed to be *shabu*. Upon presentation thereof in open court, the *poseur buyer* duly identified it to be the same object sold to him by appellant.[15]

For a successful 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.[16] Obtained through a valid search the drug operatives conducted pursuant to Section 13, Rule 126 of the Rules of Court,[17] the

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[12] *People v. Almeida*, 463 Phil. 637, 647 (2003).

[13] *Cruz v. People*, 597 Phil. 722, 728 (2009).

[14] *People v. Unisa*, 674 Phil. 89, 108 (2011).

[15] TSN, 3 August 2011, pp. 3-19.

[16] *People v. Concepcion*, 414 Phil. 247, 255 (2001).

[17] 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.

sachets recovered from appellant's person all tested positive for Methamphetamine 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.[18] The burden to explain the absence of *animus possidendi* rests upon the accused, and in the case at bar, this the appellant failed to do.[19]

Prosecutions involving illegal drugs depend largely on the credibility of the police officers or drug operatives who conducted the buy-bust operation. Thus, there is general deference to the assessment on this point by the trial court as it had the opportunity to directly observe the witnesses, their demeanor, and their credibility on the witness stand. An independent examination of the records shows no compelling reason to depart from this rule.[20]

Records reveal the lack of any ill-motive on the part of the buy-bust team to falsely testify against appellant. The RTC and the appellate court accordingly gave proper credence to the testimony of the drug operatives for the prosecution.[21] The testimonies of the witnesses were consistent, positive and straightforward. Further, appellant's failure to file cases against the buy-bust team for planting evidence reinforces the prosecution's theory that appellant was arrested for being caught *in flagrante delicto* selling *shabu*.[22]

Against the positive testimonies of the 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

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[18] *Asiatico v. People*, 673 Phil. 74, 81 (2011).

[19] *Abuan v. People*, 536 Phil. 672, 695 (2006).

[20] *People v. Alivio*, 664 Phil. 565, 574 (2011).

[21] *People v. Buenaventura*, 677 Phil. 230, 240 (2011).

[22] *People v. Alivio*, *supra* note 20 at 575.

common and standard defenses in prosecutions for illegal sale and possession of dangerous drugs.[23] The inconsistencies, if any, in their testimonies, as alleged by appellant, are but a few, involve minor details and do not touch upon the material points and thus, cannot overturn a conviction established by competent and credible evidence.[24] The supposed inconsistency, if at all there is one, on whether a prior surveillance had been made does not affect the legality of the buy-bust operation as it has been ruled that a prior surveillance is not necessary especially when the police operatives, as in this case, are accompanied by the informant during the entrapment.[25]

On the supposed failure to comply with the procedures prescribed by Section 21 of R.A. No. 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.[26] It bears underscoring that law and its implementing rules in fact are silent on the matter of the marking of the seized items. Consistency with the "chain of custody" rule however requires that the marking should be done (1) in the presence of the apprehended violator and (2) immediately upon confiscation.[27] These requirements were complied with the marking of the seized items in appellant's presence at the PDEA office. Dir. Ortiz explained that the marking had to be made there to ensure his men's safety as there were only six (6) of them who effected the arrest in a slum area.[28] Marking upon immediate confiscation has been interpreted to include marking at the nearest police station, or herein, the office of the apprehending team.[29] In any event, what is of utmost importance is the preservation of the

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[23] *People v. Mantalaba*, 669 Phil. 461, 475 (2011).

[24] *People v. Cruz*, 623 Phil. 261, 276 (2009).

[25] *People v. Bartolome*, 703 Phil. 148, 164 (2013).

[26] See *People v. Daria*, 615 Phil. 744, 758 (2009).

[27] *People v. Beran*, 724 Phil. 788, 819-820 (2014).

[28] TSN, 12 January 2012, p. 21.

[29] See *People v. Somoza*, 714 Phil. 368, 388 (2013).

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] The prosecution was able to prove an unbroken chain of custody of the illegal drugs from their seizure, marking, photographing, inventory to their submission to the PNP 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, the guilt of the appellant will not be affected.[33]

R.A. No. 9165 or the Comprehensive Dangerous Drugs Act of 2002 prescribes life imprisonment to death and a fine ranging from ₱5,000,000.00 to ₱10,000,000.00 as penalties in violation of Section 5, Article II thereof. The passage of R.A. No. 9346[34] proscribes the imposition of the death penalty, thus the appellate court correctly affirmed the penalty of life imprisonment and a 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.[35] The Court of Appeals likewise correctly affirmed the penalty of imprisonment of twelve (12) years and one (1) day as minimum to fifteen (15) years as maximum, together with the fine of ₱300,000.00 imposed by the RTC.

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[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] TSN, 12 January 2012, pp. 10-17, 22.

[33] *People v. Manlangit*, 654 Phil. 427, 442 (2011).

[34] *People v. Concepcion*, 578 Phil. 957, 979-980 (2008).

[35] *Sy v. People*, 671 Phil. 164, 182 (2011).

WHEREFORE, premises considered, the appeal is **DISMISSED** for lack of merit. The Decision dated 27 June 2014 of the Court of Appeals in CA-G.R. CR-HC No. 01533 affirming the conviction of Alex Mendez Rafols by the Regional Trial Court, Branch 7, of Cebu City in Criminal Case Nos. CBU-81836 and CBU-81837 in violation of Sections 5 and 11, Article II of Republic Act No. 9165, sentencing him 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 to fifteen (15) years as maximum and a fine of ₱300,000.00, is hereby **AFFIRMED**.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 214901. June 15, 2016]

LAND BANK OF THE PHILIPPINES, *petitioner, vs.* **APOLONIO KHO, represented by his heirs, namely: PERLA LUZ, KRYPTON, KOSELL, KYRIN, and KELVIN, all surnamed KHO,** *respondents.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; AGRARIAN LAWS; PRESIDENTIAL DECREE NO. 27; JUST COMPENSATION; SHOULD BE COMPUTED PURSUANT TO SECTION 17 OF REPUBLIC ACT NO. 6657 WHEN THE CLAIM FOLDERS WERE RECEIVED BY THE LAND BANK OF

[*] Additional Member per Raffle dated 23 May 2016.

THE PHILIPPINES PRIOR TO JULY 1, 2009; CASE AT BAR.— Case law dictates that when the acquisition process under PD 27 is still incomplete, such as in this case where the just compensation due to the landowner has yet to be settled, just compensation should be determined and the process concluded under RA 6657, as amended. x x x [I]t bears pointing out that while Congress passed **RA 9700** on August 7, 2009, further amending certain provisions of RA 6657, as amended, among them, Section 17, and declaring "[t]hat all previously acquired lands wherein valuation is subject to challenge by landowners shall be completed and finally resolved pursuant to Section 17 of [RA 6657], as amended," DAR AO 2, series of 2009, which is the implementing rules of RA 9700, had clarified that the said law shall not apply to claims/cases where the **claim folders were received by the LBP prior to July 1, 2009.** In such a situation, just compensation **shall be determined in accordance with Section 17 of RA 6657, as amended, *prior to its further amendment by RA 9700.*** x x x It is significant to stress, however, that DAR AO 1, series of 2010 which was issued in line with Section 31 of RA 9700 empowering the DAR to provide the necessary rules and regulations for its implementation, became effective only *subsequent to July 1, 2009.* Consequently, it cannot be applied in the determination of just compensation for the subject land where the claim folders were undisputedly received by the LBP *prior to July 1, 2009*, and, as such, should be valued in accordance with Section 17 of RA 6657 prior to its further amendment by RA 9700 pursuant to the cut-off date set under DAR AO 2, series of 2009 (cut-off rule). Notably, DAR AO 1, series of 2010 did not expressly or impliedly repeal the cut-off rule set under DAR AO 2, series of 2009, having made no reference to any cut-off date with respect to land valuation for previously acquired lands under PD 27 and EO 228 wherein valuation is subject to challenge by landowners. Consequently, the application of DAR AO 1, series of 2010 should be, thus, limited to those where the claim folders were received *on or subsequent to July 1, 2009*. In this case, the Court has gone over the records and found that the RTC and the CA neither considered the cut-off rule nor explained its reasons for deviating therefrom. Since the claim folders were received by the LBP prior to July 1, 2009, the RTC should have computed just compensation using pertinent DAR regulations applying Section 17 of RA 6657 prior to its

amendment by RA 9700 instead of adopting the new DAR issuance, absent any cogent justifications otherwise. Therefore, as it stands, the RTC and the CA were duty-bound to utilize the basic formula prescribed and laid down in pertinent DAR regulations existing prior to the passage of RA 9700, to determine just compensation.

2. ID.; ID.; JUST COMPENSATION; HOW DETERMINED.— For purposes of determining just compensation, the fair market value of an expropriated property is determined by its character and its price at the time of *taking,* or the time when the landowner was deprived of the use and benefit of his property, such as when the title is transferred in the name of the beneficiaries. In addition, the factors enumerated under Section 17 of RA 6657, as amended, *i.e.*, (*a*) the acquisition cost of the land, (*b)* the current value of like properties, (*c*) the nature and actual use of the property, and the income therefrom, (d) the owner's sworn valuation, (*e*) the tax declarations, *(f)* the assessment made by government assessors, (*g*) the social and economic benefits contributed by the farmers and the farmworkers, and by the government to the property, and (*h*) the nonpayment of taxes or loans secured from any government financing institution on the said land, if any, must be equally considered.

3. ID.; ID.; ID.; THE REGIONAL TRIAL COURT, ACTING AS A SPECIAL AGRARIAN COURT, MAY EXERCISE ITS JUDICIAL DISCRETION IN THE EVALUATION OF THE FACTORS FOR JUST COMPENSATION, WHICH CANNOT BE RESTRICTED BY A FORMULA DICTATED BY THE DEPARTMENT OF AGRARIAN REFORM WHEN FACED WITH SITUATIONS THAT DO NOT WARRANT ITS STRICT APPLICATION.— [T]he RTC, acting as a SAC, is reminded that it is not strictly bound by the different formula created by the DAR if the situations before it do not warrant their application. To insist on a rigid application of the formula goes beyond the intent and spirit of the law, bearing in mind that the valuation of property or the determination of just compensation is essentially a judicial function which is vested with the courts, and not with administrative agencies. Therefore, the RTC must still be able to reasonably exercise its judicial discretion in the evaluation of the factors for just compensation, which cannot be restricted

by a formula dictated by the DAR when faced with situations that do not warrant its strict application. However, the RTC must explain and justify in clear terms the reason for any deviation from the prescribed factors and formula.

APPEARANCES OF COUNSEL

LBP Legal Services Group for petitioner.
Ismael Baldado for respondents.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Before the Court is a petition for review on *certiorari*[1] assailing the Decision[2] dated August 29, 2014 of the Court of Appeals of Cebu City (CA) in CA-G.R. SP No. 06365, which affirmed the Decision[3] dated August 11, 2011 of the Regional Trial Court of Dumaguete City, Negros Oriental, Branch 32 (RTC), acting as a Special Agrarian Court (SAC), in Civil Case No. 2007-14511, directing petitioner the Land Bank of the Philippines (LBP) to: (a) pay respondents the remaining balance of the just compensation in the amount of ₱1,353,008.26, with legal interest at the rate of 12% per annum (p.a.) from May 27, 2002 until fully paid; (b) pay its share in the Commissioners' fees in the amount of ₱30,000.00; and (c) release the initial deposit of ₱49,601.20 to respondents Apolonio Kho, represented by his heirs, namely: Perla Luz, Krypton, Kosell, Kyrin, and Kelvin, all surnamed Kho (respondents).

The Facts

Apolonio was the registered owner of a parcel of land located at Lamogong, Manjuyod, Negros Oriental, containing an area

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[1] *Rollo*, pp. 24-61.

[2] *Id.* at 67-88. Penned by Associate Justice Jhosep Y. Lopez with Justices Marilyn B. Lagura-Yap and Marie Christine A. Jacob concurring.

[3] *Id.* at 122-134. Penned by Judge Roderick A. Maxino.

of 23.2885 hectares (has.), and covered by Transfer Certificate of Title (TCT) No. HT-556. He was survived by his spouse Perla Luz Kho and his four (4) children, namely: Krypton, Kosell, Kelvin, and Kyrin.[4]

A 22.9747-ha. portion of the said land (subject land) was placed under the Operation Land Transfer Program[5] pursuant to Presidential Decree No. (PD) 27.[6] On December 6, 1993, Claims Processing Form No. 07 (NO) E093-0157 covering 10.9410 has. was approved by the LBP, which, together with the Department of Agrarian Reform (DAR), offered as just compensation the amount of **₱25,269.32**[7] in accordance with[8] Executive Order No. (EO) 228,[9] series of 1987. On the other hand, Claims Processing Form No. 07 (NO) EO91-0588 covering the remaining area of 12.0337 has. was received by the LBP on September 19, 1997, which valued the land at **₱24,331.88**.[10]

However, Apolonio rejected the valuations,[11] prompting the LBP to deposit the said amounts in cash and Agrarian Reform Bonds on December 8, 1993 and December 8, 1997 in his name.[12]

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[4] *Id.* at 68.

[5] *Id.*

[6] Entitled "DECREEING THE EMANCIPATION OF TENANTS FROM THE BONDAGE OF THE SOIL, TRANSFERRING TO THEM THE OWNERSHIP OF THE LAND THEY TILL AND PROVIDING THE INSTRUMENTS AND MECHANISM THEREFOR," (October 21, 1972).

[7] See *rollo*, pp. 69 and 118.

[8] *Id.* at 294-295.

[9] Entitled "DECLARING FULL LAND OWNERSHIP TO QUALIFIED FARMER BENEFICIARIES COVERED BY PRESIDENTIAL DECREE NO. 27; DETERMINING THE VALUE OF REMAINING UNVALUED RICE AND CORN LANDS SUBJECT TO P.D. NO. 27; AND PROVIDING FOR THE MANNER OF PAYMENT BY THE FARMER BENEFICIARY AND MODE OF COMPENSATION TO THE LANDOWNER," (approved on July 17, 1987).

[10] See *rollo*, pp. 68 and 114.

[11] See Section 16 (d) and (e) of RA 6557, as amended.

[12] *Rollo*, pp. 122 and 294-295.

After a summary administrative proceeding for the determination of just compensation, docketed as DARAB Case No. VII-03-NO-03,[13] the Office of the Provincial Adjudicator of the Department of Agrarian Reform Adjudication Board (PARAD) issued an Order[14] dated July 31, 2003, fixing the value of the subject land at **₱109,748.35**[15] in accordance with EO 228 but set the **Government Support Price (GSP)** for corn at **₱4.50/kilogram (kg)** in 1993 and **₱6.00/kg** in 1997, as certified by the National Food Authority Provincial Manager of Negros Oriental, while the **Average Gross Production** (**AGP**) was fixed at **23 cavans/ha.** as established by the Barangay Committee on Land Production of Brgy. Lamogong, Bindoy, Negros Oriental.[16]

Meanwhile, on May 27, 2002, TCT No. HT-556 was partially cancelled covering the subject land, and the corresponding Emancipation Patents were issued transferring ownership to the beneficiaries.[17]

Disagreeing with the PARAD's computation, the LBP appealed to the Department of Agrarian Reform Adjudication Board (DARAB),[18] which dismissed the same in a Decision[19] dated December 11, 2006, thereby affirming *in toto* the PARAD's order.[20] The LBP moved for reconsideration but the same was denied in a Resolution dated August 18, 2007.[21]

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[13] *Id.* at 99.

[14] *Id.* at 99-102. Signed by Provincial Adjudicator Vivian Olis-Maquiling.

[15] See *id.* at 102. Using the formula **LV = AGP x 2.5 x GSP**
Where: LV = Land Value
AGP = Average Gross Production of corn in cavan of 50 kilos
GSP = Government Support Price

[16] *Id.* at 101-102.

[17] *Id.* at 69 and 123.

[18] *Id.* at 103 and 105.

[19] *Id.* at 103-109. Penned by Member Edgar A. Igano with Vice-Chairman Augusto P. Quijano, Ma. Patricia Rualo-Bello and Delfin B. Samson, concurring. Chairman Nasser C. Pangandaman and Members Narciso B. Nieto and Nestor R. Acosta did not take part.

[20] *Id.* at 108.

[21] See the Petition in Civil Case No. 07-34-13, *id.* at 218.

Thus, on October 3, 2007,[22] the LBP filed a petition[23] for the determination of just compensation before the RTC of Bais City, Negros Oriental, Branch 45, docketed as Civil Case No. 07-34-13.

Subsequently, in view of the passage of **Republic Act No. (RA) 9700**[24] and the issuance of the implementing guidelines under **DAR Administrative Order No. (AO) 1, series of 2010**,[25] respondents filed a Motion for Re-evaluation asking the court to direct the LBP to conduct a revaluation of the subject land pursuant thereto,[26] which the RTC granted in an Order [27] dated February 22, 2010 (February 22, 2010 Order).

Thereafter, the case was transferred to the RTC of Dumaguete City, Branch 32, which was the designated SAC, and was re-docketed as Civil Case No. 2007-14511.[28]

In compliance with the February 22, 2010 Order, the LBP submitted its Report[29] dated October 12, 2010 fixing[30] the just

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[22] *Id.* at 70.

[23] *Id.* at 217-219.

[24] Entitled "AN ACT STRENGTHENING THE COMPREHENSIVE AGRARIAN REFORM PROGRAM (CARP), EXTENDING THE ACQUISITION AND DISTRIBUTION OF ALL AGRICULTURAL LANDS, INSTITUTING NECESSARY REFORMS, AMENDING FOR THE PURPOSE CERTAIN PROVISIONS OF REPUBLIC ACT No. 6657, OTHERWISE KNOWN AS THE COMPREHENSIVE AGRARIAN REFORM LAW OF 1988, AS AMENDED, AND APPROPRIATING FUNDS THEREFOR," (approved on August 7, 2009).

[25] Entitled "RULES AND REGULATIONS ON VALUATION AND LANDOWNERS COMPENSATION INVOLVING TENANTED RICE AND CORN LANDS UNDER PRESIDENTIAL DECREE (P.D.) No. 27 AND EXECUTIVE ORDER (E.O.) No. 228," (July 1, 2009).

[26] *Rollo*, pp. 70 and 123.

[27] *Id.* at 226.

[28] *Id.* at 71.

[29] *Id.* at 112-113.

[30] Using the formula: **LV** = **(CNI x 0.90)** + **(MV x 0.10)** (See *id.* at 114.)

Where: CNI = Capitalized Net Income is expressed as $\frac{(AGP \times SP) \times 0.20}{0.12}$

compensation for the subject land at **₱842,483.40**.[31] The LBP pegged the **AGP** at the rate of **35 cavans/ha**.,[32] and the **GSP** at **₱13.00/kg**[33] based on certifications of the Municipal Agriculturist for the cropping periods from July 2008 to June 2009.[34]

During trial, the LBP presented, among others, the testimony of Municipal Agriculture Officer (MAO) of Manjuyod, Cheryl S. Baldado,[35] regarding the rates of production and farmgate prices of various crops for the years 2008 and 2009 in the Municipality of Manjuyod, and the certifications[36] she had issued in relation thereto. Respondents, on the other hand, did not present any witness[37] but offered several documentary evidence in support of their claim.[38]

In the course thereof, the RTC appointed three (3) Commissioners to assist in the determination of the just compensation for the subject land.[39] In their Appraisal Report[40]

MV = Market Value per Tax Declaration which is the latest Tax Declaration and Schedule of Unit of Market Value (SUMV) issued prior to June 30, 2009 and grossed-up up to June 30, 2009.

* **Reckoning date of AGP and SP shall be June 30, 2009**. (See Item IV [1] of DAR AO 1, series of 2010)

[31] *Rollo*, pp. 114 and 118. CF No. 07(NO)EO91-0588 was revalued to ₱441,276.38 while CF No. 07 (NO) EO93-0157 was recomputed at ₱401,207,02.

[32] See *id.* at 114.

[33] See *id.*

[34] See *id.* at 114, 118, 136, and 284-285.

[35] See Order dated June 15, 2011; *id.* at 267.

[36] *Id.* at 284-285.

[37] See *id.* at 267.

[38] See Offer of Exhibits; *id.* at 244-245.

[39] *Id.* at 71.

[40] *Id.* at 246-252.

as of December 10, 2010, the Commissioners fixed the just compensation for the land at **₱1,402,609.46**, taking into consideration the valuation factors provided under Section 17 of RA 6657, as amended, and the formula provided under DAR AO 1, series of 2010.[41] In arriving at such value, the Commissioners used the following variables: *(a)* the **AGP** for the period July 1, 2008 to June 30, 2009 was pegged at **65.71 cavans/ha**. based on the AGP data for corn in Lamogong that was secured from the MAO of Manjuyod;[42] *(b)* the average selling price (**SP**) for the same period was set at **₱11.54/kg**[43] or **₱577/cavan**[44] as determined by the National Food Authority,[45] and (c) the Market Value[46] (**MV**) per tax declaration, which was grossed-up up to June 30, 2009,[47] was computed at ₱959,900.60.[48] A Narrative Report[49] was submitted in amplification of the foregoing variables which showed in detail their corresponding computations.

Meanwhile, on October 19, 2010, the LBP had deposited to the account of Apolonio its adjusted/revalued computation for CF Nos. 07 (NO) EO91-0588 and 07 (NO) EO93-0157 in the amounts of ₱375,708.98[50] and ₱416,944.50, respectively.[51]

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[41] *Id.* at 248.

[42] See *id.* at 251.

[43] *Id.*

[44] *Id.* at 252.

[45] *Id.* at 251.

[46] See Tax Declaration No. 99-12-014-00049; *id.* at 257, including dorsal portion. The Municipal Assessor's Office of Manjuyod placed the property's adjusted market value (AMV) as of 1999 at **₱539,270.00**.

[47] *Id.* at 251.

[48] *Id.* at 252.

[49] *Id.* at 249-252.

[50] From the total readjusted computation of ₱375,937.70, the amount of ₱228.72 was deducted representing interest earned in trust, see *id.* at 296.

[51] See *id.* at 287 and 296-297.

The RTC Ruling

In a Decision[52] dated August 11, 2011, the RTC adopted *in toto* the valuation submitted by the Commissioners,[53] and fixed the just compensation for the subject land at **₱1,402,609.46**[54] based on the formula provided under DAR AO 1, series of 2010.[55] It found the Commissioners' report to be comprehensive and detailed,[56] and the computation presented therein was reasonable and fair with all the factors mentioned in Section 17 of RA 6657 duly considered.[57] In contrast, it observed the LBP's revaluation to be a mere mathematical computation without detailing the factors that were considered in arriving at the final amount.[58]

However, the RTC, noting that the initial valuation of ₱49,601.20 deposited by the LBP in Apolonio's favor has not yet been withdrawn, ordered that said amount be deducted from the just compensation award, and released in favor of the respondents. In this regard, the RTC imposed a 12% annual legal interest on the unpaid just compensation amounting to ₱1,353,008.26, reckoned from the time of taking on May 27, 2002, when Apolonio's title (TCT No. HT-556) was partially cancelled, and the corresponding emancipation patents issued to the beneficiaries, until full payment.[59]

Finally, considering that the appointment of the Commissioners was indispensable in the determination of just compensation, and the respondents had already paid their share in the Commissioners' fees, the LBP was ordered to pay its corresponding share in the amount of ₱30,000.00.[60]

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[52] *Id.* at 122-134.

[53] *Id.* at 130.

[54] *Id.* at 134.

[55] *Id.* at 128.

[56] *Id.* at 126.

[57] *Id.* at 130.

[58] *Id.* at 126.

[59] *Id.* at 133-134.

[60] *Id.* at 134.

The LBP's motion for reconsideration[61] was denied in an Order[62] dated August 31, 2011, prompting it to elevate its case to the CA.[63]

The CA Ruling

In a Decision[64] dated August 29, 2014, the CA dismissed the petition and affirmed the ruling of the RTC directing the LBP to pay the balance of the just compensation in the amount of ₱1,353,008.26 with legal interest of 12% p.a. from the date of taking on May 27, 2002, until fully paid, and to pay its share in the Commissioners' fees.[65] The CA agreed with the findings of the RTC that the Commissioners' computation was in accordance with law,[66] citing,[67] however, the formula provided under DAR AO 5, series of 1998[68] instead of DAR AO 1, series of 2010 that was adopted by the RTC in arriving at the valuation. It likewise sustained the award of 12% annual legal interest on the unpaid just compensation[69] considering the delay in the release of the re-evaluated amount of ₱842,483.40.[70] It also found the charge of Commissioners' fees against the LBP to be in accordance with Section 16, Rule 141 of the Rules of Court, and that the amount of ₱30,000.00 was fair and commensurate to the work performed by the Commissioners.[71]

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[61] Dated August 25, 2011. *Id.* at 135-143.

[62] *Id.* at 195.

[63] Petition for Review; *id.* at 145-180.

[64] *Id.* at 67-88.

[65] *Id.* at 87.

[66] *Id.* at 77.

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

[68] Entitled "REVISED RULES AND REGULATIONS GOVERNING THE VALUATION OF LANDS VOLUNTARILY OFFERED OR COMPULSORILY ACQUIRED PURSUANT TO REPUBLIC ACT NO. 6657," (approved on April 15, 1998)

[69] *Rollo*, p. 80.

[70] *Id.* at 84-85.

[71] *Id.* at 85-86.

The LBP no longer filed a motion for reconsideration prior to the filing of the instant appeal.

The Issues Before the Court

The essential issues for the Court's resolution are whether or not the CA committed reversible error in upholding the RTC Decision: (*a*) fixing the just compensation for the subject land; (*i*) citing the formula provided under DAR AO 5, series of 1998, instead of AO 1, series of 2010 that was applied by the RTC; and (*ii*) using the values from the MAO Certification adopted by the Commissioners; and (*b*) holding the LBP liable for 12% annual legal interest on the unpaid just compensation, and for the Commissioners' fees.

The Court's Ruling

Case law dictates that when the acquisition process under PD 27 is still incomplete, such as in this case where the just compensation due to the landowner has yet to be settled, just compensation should be determined and the process concluded under RA 6657, as amended.[72]

For purposes of determining just compensation, the fair market value of an expropriated property is determined by its character and its price at the time of *taking*, or the time when the landowner was deprived of the use and benefit of his property, such as when the title is transferred in the name of the beneficiaries. In addition, the factors enumerated under Section 17 of RA 6657, as amended, *i.e.*, (*a*) the acquisition cost of the land, (*b*) the current value of like properties, (*c*) the nature and actual use of the property, and the income therefrom, (*d*) the owner's sworn valuation, (*e*) the tax declarations, (*f*) the assessment made by government assessors, (*g*) the social and economic benefits contributed by the farmers and the farmworkers, and by the government to the property, and (*h*) the nonpayment of taxes or loans secured from any government financing institution on the said land, if any, must be equally considered.[73]

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[72] *DAR v. Sta. Romana*, G.R. No. 183290, July 9, 2014, 729 SCRA 387, 396; *DAR v. Beriña*, G.R. Nos. 183901 & 183931, July 9, 2014, 729 SCRA 403, 412.

[73] *DAR v. Sta. Romana*, *id.* at 396-397.

However, it bears pointing out that while Congress passed **RA 9700** on August 7, 2009, further amending certain provisions of RA 6657, as amended, among them, Section 17, and declaring "[t]hat all previously acquired lands wherein valuation is subject to challenge by landowners shall be completed and finally resolved pursuant to Section 17 of [RA 6657], as amended,"[74] DAR AO 2, series of 2009, which is the implementing rules of RA 9700, had clarified that the said law shall not apply to claims/cases where the **claim folders were received by the LBP prior to July 1, 2009**.[75] In such a situation, just compensation **shall be determined in accordance with Section 17 of RA 6657, as amended, *prior to its further amendment by RA 9700***.[76]

Preliminarily, the Court notes that notwithstanding the CA's reference to the formula[77] provided under DAR AO 5, series of 1998, it still applied the formula under DAR AO 1, series of 2010 considering that it merely affirmed the RTC's computation which utilized values[78] corresponding to those prescribed therein, *i.e.*, the latest available gross production and selling prices for 12 months immediately preceding July 1, 2009,[79] in arriving at the capitalized net income (**CNI**).

It is significant to stress, however, that DAR AO 1, series of 2010 which was issued in line with Section 31 of RA 9700[80]

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[74] See Section 5 of RA 9700 which further amended Section 7 of RA 6657, as amended on the "Priorities" in the acquisition and distribution of agricultural lands.

[75] Item VI of DAR AO 2, series of 2009, entitled "RULES AND PROCEDURES GOVERNING THE ACQUISITION AND DISTRIBUTION OF AGRICULTURAL LANDS UNDER REPUBLIC ACT (R.A.) NO. 6657, AS AMENDED BY R.A. NO. 9700," (approved on October 15, 2009).

[76] *Id.* See also *DAR v. Sta. Romana*, *supra* note 72 at 398; *DAR v. Beriña*, *supra* note 72 at 417.

[77] The two (2) AOs would essentially employ the same formula, *i.e.*, **LV = (CNI x 0.9) + (MV x 0.1)**; see Item II (A) (A.1) of DAR AO 5, series of 1998, and Item IV (1) of DAR AO 1, series of 2010.

[78] *I.e.*, production values and farm gate prices for the period July 2008 to June 2009; see *rollo*, pp. 114, 118, 136 and 284-285.

[79] See Item IV (1) of DAR AO 1, series of 2010 on "Land Valuation."

[80] See Item VIII of DAR AO 1, series of 2010 on "Effectivity."

empowering the DAR to provide the necessary rules and regulations for its implementation, became effective only *subsequent to July 1, 2009*.[81] Consequently, it cannot be applied in the determination of just compensation for the subject land where the claim folders were undisputedly received by the LBP *prior to July 1, 2009*,[82] and, as such, should be valued in accordance with Section 17 of RA 6657 prior to its further amendment by RA 9700 pursuant to the cut-off date set under DAR AO 2, series of 2009[83] (cut-off rule). Notably, DAR AO 1, series of 2010 did not expressly or impliedly repeal the cut-off rule set under DAR AO 2, series of 2009, having made no reference to any cut-off date with respect to land valuation for previously acquired lands under PD 27 and EO 228 wherein valuation is subject to challenge by landowners. Consequently, the application of DAR AO 1, series of 2010 should be, thus, limited to those where the claim folders were received *on or subsequent to July 1, 2009*.

In this case, the Court has gone over the records and found that the RTC and the CA neither considered the cut-off rule nor explained its reasons for deviating therefrom. Since the claim folders were received by the LBP prior to July 1, 2009, the RTC should have computed just compensation using pertinent DAR regulations applying Section 17 of RA 6657 prior to its amendment by RA 9700 instead of adopting the new DAR issuance, absent any cogent justifications otherwise. Therefore, as it stands, the RTC and the CA were duty-bound to utilize the basic formula prescribed and laid down in pertinent DAR regulations existing prior to the passage of RA 9700, to determine just compensation.

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[81] While DAR AO 1, series of 2010 provided that it shall take effect on July 1, 2009, it was only published on February 18, 2010 at the Philippine Star and Manila Times newspapers. See <http://www.lis.dar.gov.ph/documents/140> (last accessed on April 25, 2016).

[82] *I.e.*, on December 6, 1993 and September 19, 1997; see *rollo*, pp. 68-69, 114 and 118.

[83] See *DAR v. Sta. Romana*, *supra* note 72 at 398; *DAR v. Beriña*, *supra* note 72 at 417.

Nonetheless, the RTC, acting as a SAC, is reminded that it is not strictly bound by the different formula created by the DAR if the situations before it do not warrant their application.[84] To insist on a rigid application of the formula goes beyond the intent and spirit of the law, bearing in mind that the valuation of property or the determination of just compensation is essentially a judicial function which is vested with the courts, and not with administrative agencies. Therefore, the RTC must still be able to reasonably exercise its judicial discretion in the evaluation of the factors for just compensation, which cannot be restricted by a formula dictated by the DAR[85] when faced with situations that do not warrant its strict application. However, the RTC must explain and justify in clear terms the reason for any deviation from the prescribed factors and formula.[86]

Accordingly, while the parties did not raise as issue the *improper* application of DAR AO 1, series of 2010, the Court finds a need to ***remand*** the case to the RTC for the determination of just compensation to ensure **compliance with the law, and to give everyone — the landowner, the farmers, and the State — their due**.[87] To this end, the RTC is hereby directed to observe the following guidelines in the remand of the case:

1. ***Just compensation must be valued at the time of taking,*** or the time when the owner was deprived of the use and benefit of his property,[88] in this case, when emancipation patents were issued in the names of the farmer-beneficiaries on May 27, 2002.[89] Hence, the evidence to be presented by the parties before the trial court for the valuation of the subject land must be based on the values prevalent on such time of taking for like agricultural lands.[90]

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[84] *Id.* See also *Mercado v. LBP*, G.R. No. 196707, June 17, 2015.

[85] See *DAR v. Sta. Romana*, *supra* note 72 at 400-401; *DAR v. Beriña*, *supra* note 72 at 419.

[86] *LBP v. Eusebio, Jr.*, G.R. No. 160143, July 2, 2014, 728 SCRA 447, 464.

[87] See *Mercado v. LBP*, *supra* note 84.

[88] *Id.*

[89] See *rollo*, pp. 69 and 123.

[90] See *DAR v. Sta. Romana*, *supra* note 72 at 398; *DAR v. Beriña*, *supra* note 72 at 417.

2. ***Just compensation must be arrived at pursuant to the guidelines set forth in Section 17 of RA 6657, as amended, prior to its amendment by RA 9700***. However, the RTC is reminded that while it should take into account the different formula created by the DAR in arriving at the just compensation for the subject land, it is not strictly bound thereto if the situations before it do not warrant their application.[91] In any event, should the RTC find the said guidelines to be inapplicable, it must clearly explain the reasons for deviating therefrom, and for using other factors or formula in arriving at the reasonable just compensation for the acquired property.[92]

3. ***Interest may be awarded as may be warranted by the circumstances of the case and based on prevailing jurisprudence***. In previous cases, the Court has allowed the grant of legal interest in expropriation cases where there is delay in the payment since the just compensation due to the landowners was deemed to be an effective forbearance on the part of the State.[93] Legal interest on the unpaid balance shall be pegged at the rate of 12% p.a. from the time of taking on May 27, 2002 until June 30, 2013 only. Thereafter, or beginning July 1, 2013, until fully paid, the just compensation due the landowners shall earn interest at the new legal rate of 6% p.a.[94] in line with the amendment introduced by BSP-MB Circular No. 799,[95] series of 2013.

WHEREFORE, the petition is **PARTLY GRANTED**. The Decision dated August 29, 2014 of the Court of Appeals of Cebu City in CA-G.R. SP No. 06365 is hereby **REVERSED** and **SET ASIDE**. Civil Case No. 2007-14511 is **REMANDED** to the Regional Trial Court of Negros Oriental, Dumaguete City, Branch 32 for reception of evidence on the issue of just

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[91] *Id.*

[92] See *Mercado v. LBP*, *supra* note 84.

[93] *Id.*

[94] See *Nacar v. Gallery Frames*, G.R. No. 189871, August 13, 2013, 703 SCRA 439, 454-456.

[95] Entitled "Subject: Rate of interest in the absence of stipulation" issued on dated June 21, 2013.

compensation in accordance with the guidelines set in this Decision. The trial court is directed to conduct the proceedings in said case with reasonable dispatch, and to submit to the Court a report on its findings and recommended conclusions within sixty (60) days from notice of this Decision.

SO ORDERED.

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

THIRD DIVISION

[G.R. No. 217575. June 15, 2016]

SOUTH COTABATO COMMUNICATIONS CORPORATION and GAUVAIN J. BENZONAN, *petitioners, vs.* **HON. PATRICIA STO. TOMAS, SECRETARY OF LABOR AND EMPLOYMENT, ROLANDO FABRIGAR, MERLYN VELARDE, VINCE LAMBOC, FELIPE GALINDO, LEONARDO MIGUEL, JULIUS RUBIN, EDEL RODEROS, MERLYN COLIAO, and EDGAR JOPSON,** *respondents.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE PROCEEDINGS; DUE PROCESS; THE ESSENCE IS SIMPLY AN OPPORTUNITY TO BE HEARD, OR, AS APPLIED TO ADMINISTRATIVE PROCEEDINGS, AN OPPORTUNITY TO EXPLAIN ONE'S SIDE OR AN OPPORTUNITY TO SEEK A RECONSIDERATION OF THE ACTION OR RULING COMPLAINED OF.— The essence of due process, jurisprudence teaches, is simply an opportunity to be heard, or, as applied to administrative proceedings, an opportunity to explain one's

side or an opportunity to seek a reconsideration of the action or ruling complained of. As long as the parties are, in fine, given the opportunity to be heard before judgment is rendered, the demands of due process are sufficiently met. That petitioners were given ample opportunity to present their evidence before the Regional Director is indisputable. They were notified of the summary investigations conducted on March 3, 2004 and April 1, 2004 both of which they failed to attend. To justify their non-appearance, petitioners claim they requested a resetting of the April 1, 2004 hearing due to the unavailability of their counsel. However, no such explanation was proffered as to why they failed to attend the first hearing. At any rate, it behooved the petitioners to ensure that they, as well as their counsel, would be available on the dates set for the summary investigation as this would enable them to prove their claim of non-existence of an employer-employee relationship. Clearly, their own negligence did them in. Their lament that they have been deprived of due process is specious.

2. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; PETITION FOR REVIEW ON *CERTIORARI*; FACTUAL FINDINGS OF QUASI-JUDICIAL AGENCIES ARE ACCORDED GREAT RESPECT, EVEN FINALITY, BY THE SUPREME COURT, FOR ONLY ERRORS OF LAW ARE GENERALLY REVIEWED IN PETITIONS FOR REVIEW ON *CERTIORARI*.— [T]he determination as to whether such employer—employee relationship was, indeed, established requires an examination of facts. It is a well-settled rule that findings of fact of quasi-judicial agencies are accorded great respect, even finality, by this Court. This proceeds from the general rule that this Court is not a trier of facts, as questions of fact are contextually for the labor tribunals to resolve, and only errors of law are generally reviewed in petitions for review on *certiorari* criticizing the decisions of the CA.

3. ID.; EVIDENCE; WEIGHT AND SUFFICIENCY OF EVIDENCE; SUBSTANTIAL EVIDENCE; IN LABOR CASES, THE QUANTUM OF PROOF NECESSARY IS SUBSTANTIAL EVIDENCE, OR SUCH AMOUNT OF RELEVANT EVIDENCE WHICH A REASONABLE MIND MIGHT ACCEPT AS ADEQUATE TO JUSTIFY A CONCLUSION.— The findings of fact should x x x be supported by substantial evidence from which the said tribunals

can make their own independent evaluation of the facts. In labor cases, as in other administrative and quasi-judicial proceedings, the quantum of proof necessary is substantial evidence, or such amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion. Although no particular form of evidence is required to prove the existence of an employer-employee 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. In addition, the findings of fact tainted with grave abuse of discretion will not be upheld. This Court will not hesitate to set aside the labor tribunal's findings of fact when it is clearly shown that they were arrived at arbitrarily or in disregard of the evidence on record or when there is showing of fraud or error of law.

4. LABOR AND SOCIAL LEGISLATION; LABOR CODE; DEPARTMENT OF LABOR AND EMPLOYMENT; VISITORIAL AND ENFORCEMENT POWERS; THE EXERCISE THEREOF REQUIRES THE EXISTENCE OF AN ACTUAL EMPLOYER-EMPLOYEE RELATIONSHIP BETWEEN THE PARTIES.— The assailed May 20, 2004 Order of the Regional Director and November 8, 2004 Order of the Secretary of Labor were issued pursuant to Article 128 of the Labor Code x x x. Under the x x x provision, the Secretary of Labor, or any of his or her authorized representatives, is granted visitorial and enforcement powers for the purpose of determining violations of, and enforcing, the Labor Code and any labor law, wage order, or rules and regulations issued pursuant thereto. Indispensable to the DOLE's exercise of such power is the existence of an actual employer-employee relationship between the parties. x x x Like the NLRC, the DOLE has the authority to rule on the existence of an employer-employee relationship between the parties, considering that the existence of an employer-employee relationship is a condition *sine qua non* for the exercise of its visitorial power. Nevertheless, it must be emphasized that without an employer-employee relationship, or if one has already been terminated, the Secretary of Labor is without jurisdiction to determine if violations of labor standards provision had in fact been committed, and to direct employers to comply with their alleged violations of labor standards.

5. ID.; ID.; EMPLOYER-EMPLOYEE RELATIONSHIP; GUIDELINES IN DETERMINING THE EXISTENCE OF AN EMPLOYER-EMPLOYEE RELATIONSHIP; NOT APPLIED IN CASE AT BAR.— In determining the existence of an employer-employee relationship, *Bombo Radyo* specifies the guidelines or indicators used by courts, i.e. (1) the selection and engagement of the employee; (2) the payment of wages; (3) the power of dismissal; and (4) the employer's power to control the employee's conduct. The DOLE Secretary, or his or her representatives, can utilize the same test, even in the course of inspection, making use of the same evidence that would have been presented before the NLRC. x x x [T]he Regional Director merely noted the discovery of violations of labor standards provisions in the course of inspection of the DXCP premises. No such categorical determination was made on the existence of an employer- employee relationship utilizing any of the guidelines set forth. In a word, the Regional Director had presumed, not demonstrated, the existence of the relationship. Of particular note is the DOLE's failure to show that petitioners, thus, exercised control over private respondents' conduct in the workplace. The power of the employee to control the work of the employee, or the control test, is considered the most significant determinant of the existence of an employer-employee relationship. Neither did the Orders of the Regional Director and Secretary of Labor state nor make reference to any concrete evidence to support a finding of an employer-employee relationship and justify the monetary awards to private respondents. Substantial evidence, such as proofs of employment, clear exercise of control, and the power to dismiss that prove such relationship and that petitioners committed the labor laws violations they were adjudged to have committed, are grossly absent in this case.

6. POLITICAL LAW; JUDICIAL DEPARTMENT; DECISIONS; COMPLIANCE WITH THE REQUIREMENT THAT A DECISION MUST CLEARLY AND DISTINCTLY STATE THE FACTS AND THE LAW ON WHICH IT IS BASED IS A VITAL ELEMENT OF DUE PROCESS AS IT ENABLES THE PARTIES TO KNOW HOW THE DECISION IS ARRIVED AT AS WELL AS THE LEGAL REASONING BEHIND IT.— [A]nother well-grounded reason exists to set aside the May 20, 2004 Order of the Regional Director and November 8, 2004 Order of the Secretary of Labor.

> The said Orders contravene Article VIII, Section 14 of the Constitution, which requires courts to express clearly and distinctly the facts and law on which decisions are based x x x. As stressed by this Court in *San Jose v. NLRC*, faithful compliance by the courts and quasi-judicial bodies, such as the DOLE, with Art. VIII, Sec. 14 is a vital element of due process as it enables the parties to know how decisions are arrived at as well as the legal reasoning behind them. x x x To this end, *University of the Philippines v. Hon. Dizon* instructs that the Constitution and the Rules of Court require not only that a decision should state the ultimate facts but also that it should specify the supporting evidentiary facts, for they are what are called the findings of fact. A decision that does not clearly and distinctly state the facts and the law on which it is based leaves the parties in the dark as to how it was reached and is especially prejudicial to the losing party, who is unable to pinpoint the possible errors of the court (or quasi-judicial body) for review by a higher tribunal. Accordingly, this Court will not hesitate to strike down decisions rendered not hewing to the Constitutional directive, as it did to a Decision rendered by the NLRC in *Anino, et al. v. Hinatuan Mining Corporation* for non-observance of the said requirement x x x.

APPEARANCES OF COUNSEL

Office of the Solicitor General for public respondent.

D E C I S I O N

VELASCO, JR., *J.*:

This is a Petition for Review on Certiorari under Rule 45 of the Rules of Court, seeking to reverse and set aside the Decision[1] dated November 28, 2014 and Resolution dated March 5, 2015 of the Court of Appeals (CA) in CA-G.R. SP No. 00179-MIN, affirming the Orders dated November 8, 2004 and February 24, 2005 issued by the Secretary of Labor and Employment.

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[1] Penned by Associate Justice Maria Filomena D. Singh and concurred in by Associate Justices Romulo V. Borja and Rafael Antonio M. Santos.

Factual Antecedents

On January 19, 2004, the Department of Labor and Employment Region-XII (DOLE) conducted a Complaint Inspection[2] at the premises of DXCP Radio Station, which is owned by petitioner South Cotabato Communications Corporation. The inspection yielded a finding of violation of labor standards provisions of the Labor Code involving the nine (9) private respondents, such as:

1. Underpayment of Wages
2. Underpayment of 13th Month Pay
3. Non-payment of the five (5) days Service Incentive Leave Pay
4. Non-payment of Rest Day Premium Pay
5. Non-payment of the Holiday Premium Pay
6. Non-remittance of SSS Contributions
7. Some employees are paid on commission basis aside from their allowance[s][3]

Consequently, the DOLE issued a Notice of Inspection Result directing petitioner corporation and/or its president, petitioner Gauvain J. Benzonan (Benzonan), to effect restitution and/or correction of the alleged violations within five (5) days from notice. Due to petitioners' failure to comply with its directive, the DOLE scheduled on March 3, 2004 a Summary Investigation at its Regional Office No. XII, Provincial Extension Office, in General Santos City. However, petitioners failed to appear despite due notice. Another hearing was scheduled on April 1, 2004 wherein petitioners' counsel, Atty. Thomas Jacobo (Atty. Jacobo), failed to attend due to an alleged conflict in schedule. Instead, his secretary, Nona Gido, appeared on his behalf to request a resetting, which the DOLE Hearing Officer denied.[4] Thus, in an Order dated May 20, 2004, the DOLE Region-XII OIC Regional Director (DOLE Regional Director) directed petitioners to pay private respondents the total amount of ₱759,752,

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[2] Pursuant to Inspection Authority No. R1201-0401-CI-052.

[3] *Rollo*, p. 89.

[4] *Id.* at 62-63.

representing private respondents' claim for wage differentials, 13th month pay differentials, service incentive leave pay, holiday premium pay, and rest day premium pay.

Therefrom, petitioners appealed to the Secretary of Labor, raising two grounds: (1) denial of due process; and (2) lack of factual and legal basis of the assailed Order.

The denial of due process was predicated on the refusal of the Hearing Officer to reset the hearing set on April 1, 2004, which thus allegedly deprived petitioners the opportunity to present their evidence. Likewise, petitioners asserted that the Order of the Regional Director does not state that an employer-employee relationship exists between petitioners and private respondents, which is necessary to confer jurisdiction to the DOLE over the alleged violations.

In an Order[5] dated November 8, 2004, the Secretary of Labor affirmed the findings of the DOLE Regional Director on the postulate that petitioners failed to question, despite notice of hearing, the noted violations or to submit any proof of compliance therewith. And in view of petitioners' failure to present their evidence before the Regional Director, the Secretary of Labor adopted the findings of the Labor Inspector and considered the interviews conducted as substantial evidence. The Secretary of Labor likewise sustained what is considered as the straight computation method adopted by the Regional Office as regards the monetary claims of private respondents,[6] thus:

> WHEREFORE, premises considered, the appeal by DXCP Radio Station and Engr. Gauvain Benzonan is hereby **DISMISSED** for lack of merit. The Order dated May [20], 2004 of the Regional Director, directing appellants to pay the nine (9) appellees the aggregate amount of Seven Hundred Fifty Nine Thousand Seven Hundred Fifty Two Pesos (Php759,752.00), representing their claims for wage differentials, 13th month pay differentials, service incentive leave pay, holiday pay premium and rest day premium, is **AFFIRMED**.
>
> SO ORDERED.

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[5] *Id.* at 89-92.

[6] *Id.* at 91.

Petitioners moved for, but was denied, reconsideration of the Secretary of Labor's Order.

Petitioners elevated the case to the Court of Appeals (CA) via a Petition for Certiorari under Rule 65 of the Rules of Court. By a Resolution[7] dated July 20, 2005, the CA dismissed the petition owing to procedural infirmities because petitioners failed to attach a Secretary's Certificate evidencing the authority of petitioner Benzonan, as President, to sign the petition. On appeal,[8] this Court remanded the case back to the CA for determination on the merits.[9]

Ruling of the Court of Appeals

In its Decision dated November 28, 2014 in CA-G.R. SP No. 00179-MIN, the CA upheld the Secretary of Labor, holding that petitioners cannot claim denial of due process, their failure to present evidence being attributed to their negligence.

Petitioners moved for the reconsideration of the Decision, grounded on similar arguments raised before the Secretary of Labor, citing in addition, the pronouncement of the National Labor Relations Commission (NLRC) in the related case of NLRC No. MAC-01-010053-2008 entitled *Rolando Fabrigar, et al. v. DXCP Radio Station, et al.* There, the NLRC held that no employer-employee relationship exists between petitioners and private respondents Rolando Fabrigar (Fabrigar), Edgar Jopson (Jopson), and Merlyn Velarde (Velarde). For clarity, two separate actions were instituted by private respondents Fabrigar, Jopson, and Velarde against petitioners: the first, for violation of labor standards provisions with the DOLE; and the second, for illegal dismissal filed with the NLRC. The latter case arose from the three respondents' claim of constructive

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[7] *Id.* at 262-264.

[8] *Id.* at 301-340, Petition for Review on *Certiorari* dated July 17, 2006.

[9] Decision dated December 15, 2010 in G.R. No. 173326, penned by Associate Justice Teresita J. Leonardo-de Castro and concurred in by Chief Justice Renato C. Corona and Associate Justices Presbitero J. Velasco, Jr., Mariano C. Del Castillo, and Jose Portugal Perez.

dismissal effected by petitioners following the inspection by the DOLE. In ruling for petitioners, the NLRC, in its Resolution[10] dated April 30, 2008, declared that there is no employer-employee relationship between the parties, thus negating the notion of constructive dismissal.

The CA denied petitioners' motion for reconsideration in its Resolution dated March 5, 2014. Hence, this petition.

Petitioners presently seek the reversal of the CA's Decision and Resolution and ascribe the following errors to the court *a quo*:

I. The [CA] did not completely and properly dispose of the case pending before it as it never resolved all justiciable issues raised x x x, particularly, that the determination of presence or absence of employer-employee relationship is indispensable in the resolution of this case as jurisdiction is dependent upon it.

II. There is [no] single basis, either factual or legal, for the issuance of the May 20, 2004 Order of the Regional Director x x x against the petitioners as it was issued relying merely on pure allegations and without any substantial proof on the part of the claimants, contrary to law and jurisprudence.

III. The [CA] gravely erred in ruling that the Secretary of Labor x x x did not act in a whimsical and capricious manner or with grave abuse of discretion tantamount to lack or excess of jurisdiction in affirming the Order of the [Regional Director] despite the glaring fact that no evidence were submitted by private respondents as to the basis of [their] claim and nature of their employment.

IV. The [CA] erred in ruling that the Secretary of Labor x x x did not deny [petitioners their] right to due process in affirming the x x x Order of [the] Regional Director x x x notwithstanding [the evidence] submitted before her [that there] exist no employer-employee relation[ship] among the parties and that the [DOLE] has no jurisdiction over the case.[11]

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[10] *Id.* at 647-651.

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

In the matter of denial of due process, petitioners maintain that they were prevented from presenting evidence to prove that private respondents are not their employees when the Regional Director submitted the case for resolution without affording them an opportunity to ventilate their case or rebut the findings of the inspection. In addition, petitioners assail the Order of the Regional Director for want of factual and legal basis, particularly the lack of categorical finding on the existence of an employer-employee relationship between the parties — an element which petitioners insist is a prerequisite for the exercise of the DOLE's jurisdiction,[12] following *People's Broadcasting (Bombo Radyo, Phils., Inc.) v. The Secretary of Labor and Employment, et al.*[13] Petitioners likewise note that the November 8, 2004 Order of the DOLE Secretary denying petitioner's appeal, as well as the Decision of the CA, is silent on the employer-employee relationship issue, which further suggests that no real and proper determination of the existence of such relationship was ever made by these tribunals.

In its Comment, the DOLE counters that the results of the interviews conducted in the premises of DXCP in the course of its inspection constitute substantial evidence that served as basis for the monetary awards to private respondents.[14]

From the foregoing, the issue for the resolution can be reduced into the question of whether the CA erred in upholding the November 8, 2004 Order of the Secretary of Labor, which in turn affirmed the May 20, 2004 Order of the Regional Director. Inextricably linked to the resolution of the said issue is a determination of whether an employer-employee relationship had sufficiently been established between the parties as to warrant the assumption of jurisdiction by the DOLE and issuance of the said May 20, 2004 and November 8, 2004 Orders.

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[12] *Rollo*, pp. 41-42.

[13] G.R. No. 179652, May 8, 2009, 587 SCRA 724.

[14] DOLE Comment, p. 6.

The Court's Ruling

Petitioners were not denied due process

Petitioners' claim of denial of due process deserves scant consideration. The essence of due process, jurisprudence teaches, is simply an opportunity to be heard, or, as applied to administrative proceedings, an opportunity to explain one's side or an opportunity to seek a reconsideration of the action or ruling complained of.[15] As long as the parties are, in fine, given the opportunity to be heard before judgment is rendered, the demands of due process are sufficiently met.[16]

That petitioners were given ample opportunity to present their evidence before the Regional Director is indisputable. They were notified of the summary investigations conducted on March 3, 2004 and April 1, 2004, both of which they failed to attend. To justify their non-appearance, petitioners claim they requested a resetting of the April 1, 2004 hearing due to the unavailability of their counsel.[17] However, no such explanation was proffered as to why they failed to attend the first hearing. At any rate, it behooved the petitioners to ensure that they, as well as their counsel, would be available on the dates set for the summary investigation as this would enable them to prove their claim of non-existence of an employer-employee relationship. Clearly, their own negligence did them in. Their lament that they have been deprived of due process is specious.

This thus brings to the fore the issues of whether the Orders of the Regional Director and Secretary of Labor are supported by factual and legal basis, and, concomitantly, whether an employer-employee relationship was sufficiently established between petitioners and private respondents as to warrant the exercise by the DOLE of jurisdiction.

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[15] *Sarapat v. Salanga,* G.R. No. 154110, November 23, 2007, 538 SCRA 324; citing *Westmont Pharmaceuticals, Inc. v. Samaniego,* G.R. Nos. 146653-54 & 147407-408, February 20, 2006, 482 SCRA 611, 619.

[16] *Montemayor v. Bundalian, et al.,* G.R. No. 149335, July 1, 2003, 405 SCRA 264.

[17] *Rollo,* p. 32.

At the outset, the determination as to whether such employer-employee relationship was, indeed, established requires an examination of facts. It is a well-settled rule that findings of fact of quasi-judicial agencies are accorded great respect, even finality, by this Court. This proceeds from the general rule that this Court is not a trier of facts, as questions of fact are contextually for the labor tribunals to resolve, and only errors of law are generally reviewed in petitions for review on certiorari criticizing the decisions of the CA.[18]

The findings of fact should, however, be supported by substantial evidence from which the said tribunals can make their own independent evaluation of the facts. In labor cases, as in other administrative and quasi-judicial proceedings, the quantum of proof necessary is substantial evidence, or such amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.[19] Although no particular form of evidence is required to prove the existence of an employer-employee relationship, and any competent and relevant evidence to prove the relationship may be admitted,[20] a finding that the relationship exists must nonetheless rest on substantial evidence.[21]

In addition, the findings of fact tainted with grave abuse of discretion will not be upheld. This Court will not hesitate to set aside the labor tribunal's findings of fact when it is clearly shown that they were arrived at arbitrarily or in disregard of the evidence on record or when there is showing of fraud or error of law.[22]

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[18] *Magsaysay Maritime Services and Princess Cruise Lines, Ltd. v. Laurel,* G.R. No. 195518, March 20, 2013, 694 SCRA 225.

[19] *Tenaza, et al. v. R. Villegas Taxi Transport,* G.R. No. 192998, April 2, 2014.

[20] *Legend Hotel (Manila) v. Realuyo,* G.R. No. 153511, July 18, 2012, 677 SCRA 10, 19; citing *Opulencia Ice Plant and Storage v. NLRC,* G.R. No. 98368, December 15, 1993, 228 SCRA 473.

[21] *Legend Hotel (Manila) v. Realuyo,* G.R. No. 153511, July 18, 2012, 677 SCRA 10.

[22] *People's Broadcasting (Bombo Radyo, Phils., Inc.) v. The Secretary of Labor and Employment, et al., supra* note 13.

This case clearly falls under the exception. After a careful review of this case, the Court finds that the DOLE failed to establish its jurisdiction over the case.

The assailed May 20, 2004 Order of the Regional Director and November 8, 2004 Order of the Secretary of Labor were issued pursuant to Article 128 of the Labor Code, to wit:

> ART. 128. *Visitorial and enforcement power.* — (a) The Secretary of Labor and Employment or his duly authorized representatives, including labor regulation officers, shall have access to employer's records and premises at any time of the day or night whenever work is being undertaken therein, and the right to copy therefrom, to question any employee and investigate any fact, condition or matter which may be necessary to determine violations or which may aid in the enforcement of this Code and of any labor law, wage order or rules and regulations issued pursuant thereto.
>
> (b) Notwithstanding the provisions of Articles 129 and 217 of this Code to the contrary, and in cases where the relationship of employer-employee still exists, the Secretary of Labor and Employment or his duly authorized representatives shall have the power to issue compliance orders to give effect to the labor standards provisions of this Code and other labor legislation based on the findings of labor employment and enforcement officers or industrial safety engineers made in the course of inspection. The Secretary or his duly authorized representatives shall issue writs of execution to the appropriate authority for the enforcement of their orders, except in cases where the employer contests the findings of the labor employment and enforcement officer and raises issues supported by documentary proofs which were not considered in the course of inspection. (As amended by Republic Act No. 7730, June 2, 1994). x x x

Under the aforequoted provision, the Secretary of Labor, or any of his or her authorized representatives, is granted visitorial and enforcement powers for the purpose of determining violations of, and enforcing, the Labor Code and any labor law, wage order, or rules and regulations issued pursuant thereto. Indispensable to the DOLE's exercise of such power is the existence of an actual employer-employee relationship between the parties.

The power of the DOLE to determine the existence of an employer-employee relationship between petitioners and private

respondents in order to carry out its mandate under Article 128 has been established beyond cavil in *Bombo Radyo*,[23] thus:

> It can be assumed that **the DOLE in the exercise of its visitorial and enforcement power somehow has to make a determination of the existence of an employer-employee relationship**. Such prerogatival determination, however, cannot be coextensive with the visitorial and enforcement power itself. Indeed, such determination is merely preliminary, incidental and collateral to the DOLE's primary function of enforcing labor standards provisions. The determination of the existence of employer-employee relationship is still primarily lodged with the NLRC. This is the meaning of the clause "in cases where the relationship of employer-employee still exists" in Art. 128 (b).
>
> Thus, before the DOLE may exercise its powers under Article 128, two important questions must be resolved: (1) Does the employer-employee relationship still exist, or alternatively, was there ever an employer-employee relationship to speak of; and (2) Are there violations of the Labor Code or of any labor law?
>
> **The existence of an employer-employee relationship is a statutory prerequisite to and a limitation on the power of the Secretary of Labor, one which the legislative branch is entitled to impose**. The rationale underlying this limitation is to eliminate the prospect of competing conclusions of the Secretary of Labor and the NLRC, on a matter fraught with questions of fact and law, which is best resolved by the quasi-judicial body, which is the NLRC, rather than an administrative official of the executive branch of the government. If the Secretary of Labor proceeds to exercise his visitorial and enforcement powers absent the first requisite, as the dissent proposes, his office confers jurisdiction on itself which it cannot otherwise acquire. (emphasis ours)

The foregoing ruling was further reiterated and clarified in the resolution of the reconsideration of the same case, wherein the jurisdiction of the DOLE was delineated vis-à-vis the NLRC where the employer-employee relationship between the parties is at issue:

> No limitation in the law was placed upon the power of the DOLE to determine the existence of an employer-employee relationship.

[23] *Id.*

No procedure was laid down where the DOLE would only make a preliminary finding, that the power was primarily held by the NLRC. The law did not say that the DOLE would first seek the NLRC's determination of the existence of an employer-employee relationship, or that should the existence of the employer-employee relationship be disputed, the DOLE would refer the matter to the NLRC. **The DOLE must have the power to determine whether or not an employer-employee relationship exists, and from there to decide whether or not to issue compliance orders in accordance with Art. 128(b) of the Labor Code**, as amended by RA 7730.

The DOLE, in determining the existence of an employer-employee relationship, has a ready set of guidelines to follow, the same guide the courts themselves use. The elements to determine the existence of an employment relationship are: (1) the selection and engagement of the employee; (2) the payment of wages; (3) the power of dismissal; (4) the employer's power to control the employee's conduct. The use of this test is not solely limited to the NLRC. The DOLE Secretary, or his or her representatives, can utilize the same test, even in the course of inspection, making use of the same evidence that would have been presented before the NLRC. (emphasis ours)

Like the NLRC, the DOLE has the authority to rule on the existence of an employer-employee relationship between the parties, considering that the existence of an employer-employee relationship is a condition *sine qua non* for the exercise of its visitorial power. Nevertheless, it must be emphasized that without an employer-employee relationship, or if one has already been terminated, the Secretary of Labor is without jurisdiction to determine if violations of labor standards provision had in fact been committed,[24] and to direct employers to comply with their alleged violations of labor standards.

The Orders of the Regional Director and the Secretary of Labor do not contain clear and distinct factual basis necessary to establish the jurisdiction of the DOLE and to justify the monetary awards to private respondents

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[24] *People's Broadcasting (Bombo Radyo, Phils., Inc.) v. The Secretary of Labor and Employment, et al.*, G.R. No. 179652, March 6, 2012, 667 SCRA 538.

For expediency, the May 20, 2004 Order of the Regional Director is pertinently reproduced hereunder:

O R D E R

This refers to the Complaint Inspection conducted at DXCP Radio Station and/or Engr. Gauvain Benzonan, President, located at NH Lagao Road, General Santos City on January 19, 2004 pursuant to Inspection Authority No. R1201-0401-CI-052 which resulted to the discovery of the Labor Standards violations, namely:

1. Underpayment of Wages
2. Underpayment of 13th Month Pay
3. Non-payment of the five (5) days Service Incentive Leave Pay
4. Non-payment of Rest Day Premium Pay
5. Non-payment of the Holiday Premium Pay
6. Non-remittance of SSS Contributions
7. Some employees are paid on commission basis aside from their allowance[s]

Proceeding from the conduct of such inspection was the issuance of the Notice of Inspection Result requiring the respondent DXCP Radio Station and/or Engr. Gauvain Benzonan, President, to effect restitution and/or correction of the noted violations at the plant/ company level within five (5) calendar days from notice thereof. But, Engr. Gauvain Benzonan failed to do so.

On March 3, 2004, a summary investigation was conducted at the [DOLE], Regional Office No. XII, Provincial Extension Office, General Santos City. In that scheduled Summary Investigation, only complainants appeared, assisted by Mr. Fred Huervana, National President of the Philippine Organization of Labor Unions, x x x while respondent failed to appear despite due notice.

On April 1, 2004, another Summary Investigation was conducted x x x [There] complainants appeared, x x x while respondent was represented by Ms. Nona Gido, Secretary of Atty. Thomas Jacobo, counsel for the respondent. During the deliberation, Ms. Nona Gido manifested that her presence in that scheduled summary investigation was to request for the re-scheduling of such hearing, however, such request was denied. Mr. Fred Huervana declared that as he gleaned from the Notice of Inspection Result issued by the labor inspector, the Non-payment of the Provisional Emergency Relief Allowance

(PERA) was not included from among the discovered violations, hence he requested that it should be included in the computation. Such request was denied x x x. Further, Mr. Fred Huervana, declared that this case be submitted for decision based on the merit of the case.

Failure of the parties to reach a final settlement prompted this Office to compute the entitlements of the seven (7) affected workers for their salary differential, underpayment of 13th month pay, non-payment of the five (5) days service incentive leave pay, non-payment of holiday premium pay and non-payment of rest day premium pay in the total amount of SEVEN HUNDRED FIFTY NINE THOUSAND SEVEN HUNDRED FIFTY TWO PESOS (₱759,752.00) x x x.[25]

In determining the existence of an employer-employee relationship, *Bombo Radyo* specifies the guidelines or indicators used by courts, i.e., (1) the selection and engagement of the employee; (2) the payment of wages; (3) the power of dismissal; and (4) the employer's power to control the employee's conduct. The DOLE Secretary, or his or her representatives, can utilize the same test, even in the course of inspection, making use of the same evidence that would have been presented before the NLRC.[26]

As can be gleaned from the above-quoted Order, the Regional Director merely noted the discovery of violations of labor standards provisions in the course of inspection of the DXCP premises. No such categorical determination was made on the existence of an employer-employee relationship utilizing any of the guidelines set forth. In a word, the Regional Director had presumed, not demonstrated, the existence of the relationship. Of particular note is the DOLE's failure to show that petitioners, thus, exercised control over private respondents' conduct in the workplace. The power of the employee to control the work of the employee, or the control test, is considered the most significant determinant of the existence of an employer-employee relationship.[27]

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[25] *Rollo*, pp. 62-63.

[26] *People's Broadcasting (Bombo Radyo, Phils., Inc.) v. The Secretary of Labor and Employment, et al., supra* note 24.

[27] *Coca Cola Bottlers Phils., Inc. v. NLRC*, G.R. No. 120466, May 17, 1999, 307 SCRA 131, 139.

Neither did the Orders of the Regional Director and Secretary of Labor state nor make reference to any concrete evidence to support a finding of an employer-employee relationship and justify the monetary awards to private respondents. Substantial evidence, such as proofs of employment, clear exercise of control, and the power to dismiss that prove such relationship and that petitioners committed the labor laws violations they were adjudged to have committed, are grossly absent in this case. Furthermore, the Orders dated May 20, 2004 and November 8, 2004 do not even allude to the substance of the interviews during the inspection that became the basis of the finding of an employer-employee relationship.

The Secretary of Labor adverts to private respondents' allegation in their Reply[28] to justify their status as employees of petitioners. The proffered justification falls below the quantum of proof necessary to establish such fact as allegations can easily be concocted and manufactured. Private respondents' allegations are inadequate to support a conclusion absent other concrete proof that would support or corroborate the same. Mere allegation, without more, is not evidence and is not equivalent to proof.[29] Hence, private respondents' allegations, essentially self-serving statements as they are and devoid under the premises of any evidentiary weight, can hardly be taken as the substantial evidence contemplated for the DOLE's conclusion that they are employees of petitioners.

In a similar vein, the use of the straight computation method in awarding the sum of ₱759,752 to private respondents, without reference to any other evidence other than the interviews conducted during the inspection, is highly telling that the DOLE failed to consider evidence in arriving at its award and leads this Court to conclude that such amount was arrived at arbitrarily.

It is quite implausible for the nine (9) private respondents to be entitled to uniform amounts of Service Incentive Leave (SIL)

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[28] *Rollo*, p. 91; Order dated November 8, 2004.

[29] *Centro Project Manpower Services Corporation v. Naluis*, G.R. No. 160123, June 17, 2015.

pay, holiday pay premium, and rest day premium pay for three (3) years, without any disparity in the amounts due them since entitlement to said benefits would largely depend on the actual rest days and holidays worked and amount of remaining leave credits in a year. Whoever claims entitlement to the benefits provided by law should establish his or her right thereto.[30] The burden of proving entitlement to overtime pay and premium pay for holidays and rest days lies with the employee because these are not incurred in the normal course of business.[31] In the case at bar, evidence pointing not only to the existence of an employer-employee relationship between the petitioners and private respondents but also to the latter's entitlement to these benefits are miserably lacking.

It may be that petitioners have failed to refute the allegation that private respondents were employees of DXCP. Nevertheless, it was incumbent upon private respondents to prove their allegation that they were, indeed, under petitioners' employ and that the latter violated their labor rights. A person who alleges a fact has the onus of proving it and the proof should be clear, positive and convincing.[32] Regrettably, private respondents failed to discharge this burden. The pronouncement in *Bombo Radyo* that the determination by the DOLE of the existence of an employer-employee relationship must be respected should not be construed so as to dispense with the evidentiary requirement when called for.

It cannot be stressed enough that the existence of an employer-employee relationship between the parties is essential to confer jurisdiction of the case to the DOLE. Without such express

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[30] *Javier v. Fly Ace Corporation*, G.R. No. 192558, February 15, 2012; citing *Cootauco v. MMS Phil. Maritime Services, Inc.*, G.R. No. 184722, March 15, 2010, 615 SCRA 529.

[31] *Loon, et al. v. Power Master, Inc.*, G.R. No. 189404, December 11, 2013; citing *Lagatic v. NLRC*, 349 Phil. 172, 185-186 (1998).

[32] *Basay v. Hacienda Consolacion*, G.R. No. 175532, April 19, 2010, 618 SCRA 422; citing *Leopard Integrated Services, Inc. v. Macalinao*, G.R. No. 159808, September 30, 2008, 567 SCRA 192, 200.

finding, the DOLE cannot assume to have jurisdiction to resolve the complaints of private respondents as jurisdiction in that instance lies with the NLRC.[33]

The Orders of the Regional Director and Secretary of Labor do not comply with Article VIII, Section 16 of the Constitution

As a necessary corollary to the foregoing considerations, another well-grounded reason exists to set aside the May 20, 2004 Order of the Regional Director and November 8, 2004 Order of the Secretary of Labor. The said Orders contravene Article VIII, Section 14 of the Constitution, which requires courts to express clearly and distinctly the facts and law on which decisions are based, to wit:

> Section 14. No decision shall be rendered by any court without expressing therein clearly and distinctly the facts and the law on which it is based.
>
> No petition for review or motion for reconsideration of a decision of the court shall be refused due course or denied without stating the legal basis therefor.

As stressed by this Court in *San Jose v. NLRC*,[34] faithful compliance by the courts and quasi-judicial bodies, such as the DOLE, with Art. VIII, Sec. 14 is a vital element of due process as it enables the parties to know how decisions are arrived at as well as the legal reasoning behind them. Thus:

> This Court has previously held that judges and arbiters should draw up their decisions and resolutions with due care, and make certain that they truly and accurately reflect their conclusions and their final dispositions. A decision should faithfully comply with Section 14, Article VIII of the Constitution which provides that no decision shall be rendered by any court without expressing therein clearly and distinctly the facts of the case and the law on which it is based. If such decision had to be completely overturned or set

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[33] *People's Broadcasting (Bombo Radyo, Phils., Inc.) v. The Secretary of Labor and Employment, et al., supra* note 24.

[34] G.R. No. 121227, August 17, 1998, 294 SCRA 336; citing *Juan Saballa, et al. v. NLRC*, G.R. Nos. 102472-84, August 22, 1996, 260 SCRA 697.

aside, upon the modified decision, such resolution or decision should likewise state the factual and legal foundation relied upon. The reason for this is obvious: aside from being required by the Constitution, the court should be able to justify such a sudden change of course; it must be able to convincingly explain the taking back of its solemn conclusions and pronouncements in the earlier decision. The same thing goes for the findings of fact made by the NLRC, as it is a settled rule that such findings are entitled to great respect and even finality when supported by substantial evidence; otherwise, they shall be struck down for being whimsical and capricious and arrived at with grave abuse of discretion. It is a requirement of due process and fair play that the parties to a litigation be informed of how it was decided, with an explanation of the factual and legal reasons that led to the conclusions of the court. A decision that does not clearly and distinctly state the facts and the law on which it is based leaves the parties in the dark as to how it was reached and is especially prejudicial to the losing party, who is unable to pinpoint the possible errors of the court for review by a higher tribunal. x x x

To this end, *University of the Philippines v. Hon. Dizon*[35] instructs that the Constitution and the Rules of Court require not only that a decision should state the ultimate facts but also that it should specify the supporting evidentiary facts, for they are what are called the findings of fact. A decision that does not clearly and distinctly state the facts and the law on which it is based leaves the parties in the dark as to how it was reached and is especially prejudicial to the losing party, who is unable to pinpoint the possible errors of the court (or quasi-judicial body) for review by a higher tribunal.[36]

Accordingly, this Court will not hesitate to strike down decisions rendered not hewing to the Constitutional directive, as it did to a Decision rendered by the NLRC in *Anino, et al. v. Hinatuan Mining Corporation*[37] for non-observance of the said requirement:

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[35] G.R. No. 171182, August 23, 2012.

[36] *Anino, et al. v. Hinatuan Mining Corporation, et al.*, G.R. No. 123226, May 21, 1998; citing *Saballa v. NLRC*, August 22, 1996, 260 SCRA 697.

[37] *Id.*

In the present case, the NLRC was definitely wanting in the observance of the aforesaid constitutional requirement. Its assailed five-page Decision consisted of about three pages of quotation from the labor arbiter's decision, including the dispositive portion, and barely a page (two short paragraphs of two sentences each) of its own discussion of its reasons for reversing the arbiter's findings. It merely raised a doubt on the motive of the complaining employees and took "judicial notice that in one area of Mindanao, the mining industry suffered economic difficulties." In affirming peremptorily the validity of private respondents' retrenchment program, it surmised that "[i]f small mining cooperatives experienced the same fate, what more with those highly mechanized establishments."

The Court is not unmindful of the State's policy to zealously safeguard the rights of our workers, as no less than the Constitution itself mandates the State to afford full protection to labor. Nevertheless, it is equally true that the law, in protecting the rights of the laborer, authorizes neither oppression nor self-destruction of the employer.[38] The constitutional policy to provide full protection to labor is not meant to be a sword to oppress employers.[39] Certainly, an employer cannot be made to answer for claims that have neither been sufficiently proved nor substantiated.

WHEREFORE, the petition is **GRANTED**. The Decision dated November 28, 2014 and Resolution dated March 5, 2015 of the Court of Appeals in CA-G.R. SP No. 00179-MIN are accordingly **REVERSED** and **SET ASIDE**. The Order of the then Secretary of Labor and Employment dated November 8, 2004 denying petitioners' appeal and the Order of the Regional Director, DOLE Regional Office No. XII, dated May 20, 2004, are **ANNULLED**, without prejudice to whatever right or cause of action private respondents may have against petitioners.

SO ORDERED.

Peralta, Perez, and *Reyes, JJ.,* concur.

Jardeleza, J., on leave.

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[38] *Serrano v. NLRC*, 380 Phil. 416 (2000).

[39] *Agabon v. NLRC*, G.R. No. 158693, November 17, 2004.

THIRD DIVISION

[G.R. No. 217732. June 15, 2016]

EMILIO S. AGCOLICOL, JR., *petitioner, vs.* **JERWIN CASIÑO,** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; LABOR RELATIONS; TERMINATION OF EMPLOYMENT; CONSTRUCTIVE DISMISSAL; DEFINED; THERE IS CONSTRUCTIVE DISMISSAL WHEN AN EMPLOYEE IS INTENTIONALLY PLACED BY THE EMPLOYER IN A SITUATION WHEREIN THE FORMER IS COERCED INTO SEVERING HIS TIES WITH THE LATTER.— An employee is considered to be constructively dismissed from service if an act of clear discrimination, insensibility or disdain by an employer has become so unbearable to the employee as to leave him or her with no option but to forego with his or her continued employment. From said definition, it can be gathered that various situations, whereby the employee is intentionally placed by the employer in a situation which will result in the former's being coerced into severing his ties with the latter, can result in constructive dismissal. One such situation is where an employee is preventively suspended pending investigation for an indefinite period of time.

2. ID.; ID.; OMNIBUS RULES IMPLEMENTING THE LABOR CODE; PREVENTIVE SUSPENSION; SHOULD NOT EXCEED THE 30-DAY LIMIT; AN INDEFINITE PREVENTIVE SUSPENSION IS TANTAMOUNT TO CONSTRUCTIVE DISMISSAL.— [N]ot all preventive suspensions are tantamount to constructive dismissal. The employer's right to place an employee under preventive suspension is recognized in Rule XXIII, Implementing Book V of the Omnibus Rules Implementing the Labor Code. x x x To be valid, however, not only must the preventive suspension be imposed pursuant to Section 8, it must also follow the 30-day limit exacted under the succeeding Section 9 of the Rule. x x x On the 30-day limit on the duration of an employee's preventive suspension, We have previously ruled that "when

> preventive suspension exceeds the maximum period allowed without reinstating the employee either by actual or payroll reinstatement or when preventive suspension is for [an] indefinite period, only then will constructive dismissal set in." x x x In the case at hand, there is no question that what was meted was an indefinite preventive suspension pending investigation as clearly stated in the Memorandum Order dated November 27, 2012. This, in itself, is already a clear violation of the proscription against indefinite or prolonged preventive suspensions, making the suspension tantamount to constructive dismissal as repeatedly held by this Court in a long line of cases.

APPEARANCES OF COUNSEL

Zosimo M. Abratique for petitioner.
George Florendo for respondent.

D E C I S I O N

VELASCO, JR., *J.*:

The Case

Before the Court is a Petition for Review on Certiorari under Rule 45 of the Rules of Court, questioning the Resolution[1] of the Court of Appeals (CA) dated September 30, 2014 in CA-G.R. SP No. 137026 and its Resolution dated March 26, 2015 which denied reconsideration. The CA Decision dismissed petitioner Emilio S. Agcolicol, Jr.'s appeal and affirmed the National Labor Relations Commission's (NLRC) April 30, 2014 Resolution in NLRC Case LAC No. 02-000498-14.

The Facts

Respondent Jerwin Casiño (Casiño) was hired by petitioner in 2009 as Stock Custodian and Cook in the latter's Kubong

[1] Penned by Associate Justice Amy C. Lazaro-Javier and concurred in by Associate Justices Mariflor P. Punzalan Castillo and Zenaida T. Galapate-Laguilles.

Sawali Restaurant. Upon discovery of theft involving company property where respondent was allegedly a conspirator, a criminal complaint for qualified theft against him and his co-employees was filed on November 26, 2012 before the Office of the City Prosecutor of Baguio City. Additionally, he and his co-employees were preventively suspended indefinitely pending investigation. He was informed of the suspension through a Memorandum Order dated November 27, 2012, effective November 28, 2012, by the restaurant's Human Resource Manager, Henry Revilla. The said Memorandum Order reads:

"TO : ***MS. JESSICA VDAMULLOG***
MR. JERWIN CASINO
MR. ROSENDO [LOMBOY]

FROM: ***HUMAN RESOURCE MANAGER***

SUBJECT: ***MEMORANDUM ORDER***

You are hereby notified that starting tomorrow, November 28, 2012, a preventive suspension will be imposed indefinitely while investigation is still under going on the case filed to you by the Owner, Mr. Sonny S. Agcolicol, Jr. with [regard] to "Qualified Theft" based on the evidences gathered by under cover agents and questionable documents on the inventory and delivery reports found out by outside auditing group.

Your assigned [tasks] will then [cease] and the Management will assign its own personnel to handle your previous job description.

For your reference and strict guidance!

(signed)
HENRY G. REVILLA
Human Resource Manager

Cc: ***MR. SONNY S. AGCOLICOL, JR.***
Operations Manager"[2]

Meanwhile, the criminal complaint for qualified theft was later dismissed for lack of basis.

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

According to respondent, sometime thereafter, he received a letter dated January 10, 2013 where he was made to explain why his services should not be terminated.[3] Said letter, in its entirety, reads:

January 10, 2013

ROSENDO LOMBOY
No. 64 Dominican Hill
Baguio City

Dear Mr. Lomboy

We have not heard from you since November 27, 2012. After you have received the subpoena from the office of the City Prosecutor on the said date you simply walked out of the establishment and have never reported back to work. Notwithstanding the case filed against you with the said office of the City Prosecutor of Baguio, we have not dropped you from the rolls of employees though you are considered as absent without leave (AWOL).

We are giving you three (3) days from receipt hereof to explain in writing why you should not be dropped from the rolls of employees for being AWOL. Likewise[,] please include in your written explanation why [you] should not be terminated for grave misconduct arising from the pilferages committed. We are adopting the complaint before the City Prosecutor as the charges against you. Failure on your part to do so shall constrain us to act accordingly.

For your compliance.

HENRY G. REVILLA
Human Resource Manager

cc. MR. SONNY S. AGCOLICOL, Jr.
Operations Manager[4]

The letter was clearly addressed only to Lomboy but it appears from respondent's allegations in his complaint that he considered said letter as a directive for him to give said explanation.[5]

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[3] *Id.* at 73, 93.

[4] *Id.* at 118.

[5] *Id.* at 73.

On May 17, 2013, respondent filed with the NLRC a complaint for illegal dismissal, illegal suspension, and non-payment of monetary benefits.[6]

For his part, petitioner denies having dismissed respondent, arguing that they were prevented from completing the investigation because respondent stopped reporting for work after Reynante Camba, his co-employee, was arrested. This, according to petitioner, prevented him from complying with the twin-notice rule. Nevertheless, petitioner insists, respondent was never dismissed from work notwithstanding the audit team's finding that his participation in the scam was extensive. Furthermore, petitioner contends that respondent's monetary claims were speculative.

Meanwhile, respondent's co-employee, Rosendo Lomboy, suspected to be involved in the incident, also filed a separate complaint against petitioner, allegedly based on the same set of facts, before the NLRC.[7] Petitioner sought a consolidation of the two cases which motion was granted.

Decision of the NLRC First Division in the *Lomboy* case

Despite said consolidation, however, Labor Arbiter Monroe C. Tabingan resolved the case involving Lomboy ahead of that of respondent Casiño, since it was filed first. In said Decision, the Labor Arbiter ruled in favor of Lomboy, holding that the latter was illegally dismissed.

Later, upon elevation of the case to the NLRC, the NLRC First Division partially granted the appeal and reversed the Labor Arbiter's ruling on the illegality of Lomboy's dismissal.

The NLRC disagreed with the Labor Arbiter's finding that respondent was illegally dismissed. There, the Commission held that Lomboy's services were not terminated and that, as a matter of fact, Lomboy was given the opportunity to explain his failure

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[6] Docketed as NLRC Case No. RAB-CAR-05-0174.

[7] Docketed as NLRC Case No. RAB-CAR-03-0080-13.

to report for work in the January 10, 2013 letter.[8] According to the NLRC:

> In the instant case, the records would show that [petitioner] did not terminate the services of [Lomboy]. In fact, based on the 10 January 2013 letter, respondents gave [Lomboy] an opportunity to explain in writing why he should not be dropped from the employees' roll for being absent without leave. No termination letter was ever sent to [Lomboy] nor was there any allegation that he was prevented from reporting back for work.[9]

The NLRC First Division then went on to rule that Lomboy "interpreted the letter of preventive suspension [as] tantamount to termination to which the Commission does not agree."[10] In so ruling, the First Division relied on this Court's pronouncement in *MZR Industries v. Colambot* that "[i]n the absence of any showing of an overt or positive act proving that petitioners had dismissed respondent, the latter's claim of illegal dismissal cannot be sustained — as the same would be self-serving, conjectural and of no probative value."[11]

Thus, according to the NLRC First Division, petitioner's error was that he failed to comply with the provisions of the Omnibus Rules Implementing the Labor Code, particularly on the 30-day limit in imposing a preventive suspension.[12]

The NLRC accordingly dismissed the complaint for illegal dismissal but affirmed the grant of salary differentials, service incentive leave pay, and 13th month pay, disposing of the case in this manner:

> WHEREFORE, the instant appeal is hereby PARTIALLY GRANTED. The decision of Labor Arbiter Monroe C. Tabingan dated 19 August 2013 is hereby SET ASIDE and a new one entered dismissing the complaint for illegal dismissal. However, respondent

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[8] *Rollo*, p. 86.

[9] *Id.*

[10] *Id.*

[11] G.R. No. 179001, August 28, 2013.

[12] *Rollo*, p. 87.

Kubong Sawali Restaurant is hereby ordered to reinstate complainant to his former position but without backwages and to pay the complainant Three Thousand Nine Hundred Twenty (Php3,920.00) representing his salaries and benefits for fourteen (14) days — the period he was placed under illegal suspension. Furthermore, respondent Kubong Sawali Restaurant is ordered to pay complainant the following amounts as awarded by the labor arbiter:

(1)	Salary differentials on account of underpaid wages	=	Php 2,275.00
(2)	Service incentive leave pay	=	Php 4,200.00
(3)	13th month pay	=	Php 18,330.00
	TOTAL	=	Php 24,805.00

All other monetary claims are dismissed for lack of merit.

SO ORDERED.[13]

The parties no longer questioned the Decision after petitioner's motion for reconsideration was denied.

Labor Arbiter's Decision[14] in Casiño's case

As for Casiño, finding merit in his complaint, the Labor Arbiter also held that Casiño was constructively dismissed and disposed of the case in this wise:

WHEREFORE, premises all considered, judgment is hereby rendered ordering respondents Emilio Agcolicol. Jr. and Kubong Sawali Restaurant jointly and severally liable to pay complainant JERWIN CASIÑO the following:

(1) Separation pay of one (1) month pay for every year of service in the amount of ₱280.00 x 26 days x 4 years **₱29,120.00**;

(2) Full backwages from the time he was illegally dismissed up to the finality of the decision, in the amount of **₱107,021.10**;

Computation

₱280.00 x 26 days x 13.5 months	=	₱98,280.00
13th Month Pay: ₱243 x 26 x 13.5/12	=	7,107.75
SILP: ₱280.00 x 5 days x 1 yr. + 2 months	=	1,633.35

[13] *Id.* at 88.

[14] Dated January 14, 2014, by Labor Arbiter Monroe C. Tabingan.

(3) Salary differentials on account of underpaid wages in the amount of **₱8,216.00**
Computation:
Jan. 1, 2011-June 17, 2012
₱272.00-260 x 26 x 17.5 months = ₱5,460.00
June 18, 2012-Nov. 27, 2012
₱280.00-260 x 26 x 5.3 months = ₱2,756.00
₱8,216.00

(4) Service incentive leave pay in the amount of ₱280.00 x 5 days x 1 year and 11 months = **₱2,683.35**;

(5) 13th month pay for 2010, 2012 and 2013 in the amount of **₱11,700.85**; and
Computation:

2010 = ₱235 x 26 days x 12/12 =	₱6,110.00
2012 = ₱235.00 x 26 x 5.5/12 =	2,800.40
[2013 = ₱]243.00 x 26 x 5.3/12 =	2,790.45
	₱11,700.85

(6) Attorney's fees in the amount of **₱15,874.13**

All other claims are dismissed for lack of merit.

SO ORDERED.[15]

The Labor Arbiter held that there is no truth to petitioner's defense that respondent abandoned his work thereat since he was clearly suspended indefinitely following his being charged with the crime of qualified theft which was later proved to be baseless. Too, petitioner never lifted said suspension and did not reinstate respondent in his job after the dismissal of the qualified theft case.

Resolution[16] of the NLRC Second Division in Casiño's case

On appeal, the NLRC affirmed the Labor Arbiter's Decision in this manner:

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[15] *Rollo*, pp. 80-81.

[16] Dated April 30, 2014, NLRC Second Division. Penned by Commissioner Erlinda T. Agus and concurred in by Commissioner Raul T. Aquino and Teresita D. Castillon-Lora.

WHEREFORE, premises considered, the instant Appeal filed by the respondents is hereby DENIED for lack of merit.

The Decision dated January 14, 2014 of Labor Arbiter Monroe C. Tabingan in NLRC RAB Case No. CAR-05-0174-13 is hereby **AFFIRMED** in toto.

SO ORDERED.

Unlike in Lomboy's case, here the NLRC agreed with the Labor Arbiter's finding that Casiño was constructively dismissed. In so ruling, the NLRC Second Division relied on *Pido v. NLRC, et al.* where the employee was placed under preventive suspension for an indefinite period of time pending the investigation of the complaint against him. There, We held that the prolonged suspension of the employee, which in said case lasted for nine (9) months before the employee filed the case for constructive dismissal, owing to the employer's neglect to conclude the investigation, had ripened to constructive dismissal.[17]

Anent the January 10, 2013 Letter, the NLRC Second Division ruled that it was "more of an afterthought and was meant to cure the illegal dismissal of the complainant arising from his indefinite preventive suspension."[18] The NLRC Second Division went on to state that petitioner "never directed [respondent] to immediately return to work. If it was actually a case of [respondent's] absence without leave, [petitioner] should have required [respondent] to report back immediately, and failing to do so, then that is the only time that the [petitioner] should have required the [respondent] to explain his failure to return to work and why he should not be removed from the roll of employees."[19]

Because of the alleged conflicting rulings of the two Divisions of the NLRC in the cases of Lomboy and Casiño, petitioner, via a motion for reconsideration, brought to the NLRC Second Division's attention the ruling of the First Division in the Lomboy case.

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[17] G.R. No. 169812, February 23, 2007, 516 SCRA 609.

[18] *Rollo*, p. 100.

[19] *Id.* at 101.

Petitioner's motion for reconsideration was, however, denied by the Commission in its July 8, 2014 Resolution. Thus, he elevated the case to the CA via a Rule 65 Petition.

CA Ruling

Finding no merit in the petition, the CA affirmed the Labor Arbiter and NLRC's disposition of the constructive dismissal case, holding that: (1) the findings of the Labor Arbiter and the NLRC are supported by substantial evidence; (2) the Memorandum Order issued by petitioner's human resource manager indeed imposed an indefinite preventive suspension; (3) this indefinite suspension resulted in Casiño's constructive dismissal; (4) that Casiño was included in the list of suspended employees, contrary to petitioner's assertion that the memo order, which was addressed to him and his co-employee, was only intended for his co-employee since it was not personally served on respondent; (5) anent the monetary awards, the Labor Arbiter's findings are duly supported by the documentary evidence presented; and (6) petitioner failed to attach copies of all relevant and pertinent pleadings and documents to his petition.

The *fallo* of the assailed Resolution reads:

ACCORDINGLY, the petition is **DENIED DUE COURSE** and **DISMISSED** for utter lack of merit.

SO ORDERED.

His Motion for Reconsideration having been denied,[20] petitioner now seeks relief from this Court.

Issues

With this factual background, petitioner submits the following issues for Our resolution:

I. Whether the CA erred in affirming the Decision of the Second Division of the NLRC and holding that the private respondent was illegally dismissed;

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[20] *Id.* at 64-65, via CA Resolution dated March 26, 2015.

II. Whether the CA erred when it did not reconcile the decisions of the First and Second Divisions of the NLRC notwithstanding that the said decisions are based on the same set of facts; and
III. Whether the CA and the NLRC erred in not looking beyond the suspension into the cause of the termination after it had held that the suspension was equivalent to illegal dismissal.

Petitioner insists that the NLRC made conflicting rulings on exactly the same set of facts, considering that in Lomboy's case, it held that Lomboy was not illegally dismissed. He contends that, unlike in the instant case, the 1st Division of the NLRC held that Lomboy's allegation that he was terminated from work was unsubstantiated. He claims that, along with Lomboy, Casiño was made to explain his failure to report to work through the January 10, 2013 letter. Furthermore, according to him, the theft of company property was sufficient justification for the latter's dismissal, maintaining that an employer should not be compelled to continue employing a person who is admittedly guilty of misfeasance or malfeasance and whose continued employment is patently inimical to the employer. Lastly, petitioner contends that assuming that it was indeed constructive dismissal, what he only failed to do was to observe the procedural requirements of dismissing an employee.

Our Ruling

We resolve to deny the petition.

Foremost, while a careful review of the records shows that petitioner, in handling Casiño's case, observed the same procedure used in Lomboy's case where he was exonerated from the illegal dismissal charge, this Court is of the view that the alleged conflict in the NLRC rulings is unnecessary in the resolution of the instant petition. Besides, We cannot fault the CA for not reconciling the two dispositions considering that res judicata by conclusiveness of judgment is not applicable in the instant case due to the absence of the element of identity of parties. This is further shown by the fact that petitioner himself refrained from invoking the principle in arguing that the NLRC ruling in

Casiño's case should follow that in Lomboy's case which already attained finality.

Thus, even though We are faced with the absurd situation of two cases having the same set of facts and where the difference is only on the employee involved, giving rise to two different dispositions from the NLRC, We find it appropriate to simply deal with the issue of whether respondent was indeed constructively dismissed or not considering that said matter is the meat of the controversy. Perhaps it is worth mentioning that situations like these can and should be avoided, especially if the parties did not fall short in informing the quasi-judicial agency or court that a related case is pending or has been resolved already so as to avoid conflicting rulings or varied appreciation of the same set of facts and evidence presented.

With that, We now tackle the issue of constructive dismissal through the imposition of an indefinite preventive suspension.

An employee is considered to be constructively dismissed from service if an act of clear discrimination, insensibility or disdain by an employer has become so unbeatable to the employee as to leave him or her with no option but to forego with his or her continued employment.[21]

From said definition, it can be gathered that various situations, whereby the employee is intentionally placed by the employer in a situation which will result in the former's being coerced into severing his ties with the latter, can result in constructive dismissal. One such situation is where an employee is preventively suspended pending investigation for an indefinite period of time.

At this point it is well to note that not all preventive suspensions are tantamount to constructive dismissal. The employer's right to place an employee under preventive suspension is recognized in Rule XXIII, Implementing Book V of the Omnibus Rules Implementing the Labor Code. Section 8 of said Rule provides:

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[21] See *Mandapat v. Add Force Personnel Services, Inc. and CA*, G.R. No. 180285, July 6, 2010, 624 SCRA 155, 161.

SEC. 8. ***Preventive suspension.*** The employer may place the worker concerned under preventive suspension if his continued employment poses a serious and imminent threat to the life or property of the employer or of his co-workers.

To be valid, however, not only must the preventive suspension be imposed pursuant to Section 8, it must also follow the 30-day limit exacted under the succeeding Section 9 of the Rule. Thus:

SEC. 9. ***Period of suspension.*** No preventive suspension shall last longer than thirty (30) days. The employer shall thereafter reinstate the worker in his former or in a substantially equivalent position or the employer may extend the period of suspension provided that during the period of extension, he pays the wages and other benefits due to the worker. In such case, the worker shall not be bound to reimburse the amount paid to him during the extension if the employer decides, after completion of the hearing, to dismiss the worker.

Here, there is no inquiry on the propriety of petitioner's resort to the imposition of a preventive suspension. What is now in question is the fact that respondent was preventively suspended by **petitioner for an indefinite period of time** and whether the imposition of indefinite preventive suspension is tantamount to constructive dismissal.

On the 30-day limit on the duration of an employee's preventive suspension, We have previously ruled that "when preventive suspension exceeds the maximum period allowed without reinstating the employee either by actual or payroll reinstatement or when preventive suspension is for [an] indefinite period,[22] only then will constructive dismissal set in."[23]

In *Pido*, upon which case the NLRC Second Division hinged its ruling in Casiño's case, We considered the employee's "prolonged suspension, owing to [the employer's] neglect to conclude the investigation, had ripened to constructive dismissal."

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[22] See *Pido v. NLRC, et al., supra* note 17.

[23] *Mandapat v. Add Force Personnel Services, Inc. and CA*, G.R. No. 180285, July 6, 2010, 624 SCRA 155, 163; citations omitted.

There, the employee was placed under preventive suspension for an indefinite period of time pending the investigation of a complaint against him. After the imposition of said suspension, however, the employer "merely chose to dawdle with the investigation in absolute disregard of [the employee's] welfare." In that case, the employer did not inform the employee that it was extending its investigation, nor was the latter paid his wages and other benefits after the lapse of the 30-day period of suspension. Neither did the employer issue an order lifting the suspension or any official communication for the employee to assume his post or another post. Having resulted in the employee's nine (9)-month preventive suspension, this Court considered such to have ripened into constructive dismissal.[24]

Moreover, in *C. Alcantara & Sons, Inc. v. NLRC*, We considered the employer's imposition of a preventive suspension pending final investigation of the employee's case, coupled with the former's lack of intention to conduct said final investigation, as tantamount to constructive dismissal.[25]

In another case, *Premiere Development Bank, et al. v. NLRC*, We agreed with the NLRC that the employee having been placed on preventive suspension in excess of the 30-day limit was a predetermined effort of dismissing the latter from the service in the guise of preventive suspension.[26] There, the NLRC found that the prolonged suspension was the result of the employer's desire to force the employee to submit to an inquiry.

Similarly, in *Hyatt Taxi Services, Inc. v. Catinoy*, this Court held that the employer's actions were tantamount to constructive dismissal when it failed to recall the employee to work after the expiration of the suspension, taken together with the former's precondition that the employee withdraw the complaints against it.[27] In said case, the employee involved reported for work after

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[24] *Pido v. NLRC, et al., supra* note 17.

[25] G.R. No. 73521, January 5, 1994, 229 SCRA 109, 114.

[26] G.R. No. 114695, July 23, 1998, 293 SCRA 49, 59.

[27] G.R. No. 143204, June 26, 2001, 359 SCRA 686, 697.

the lapse of his suspension but was told that he would not be able to resume his employment if he will not withdraw the cases that he filed against them.[28]

In the case at hand, there is no question that what was meted was an indefinite preventive suspension pending investigation as clearly stated in the Memorandum Order dated November 27, 2012. This, in itself, is already a clear violation of the proscription against indefinite or prolonged preventive suspensions, making the suspension tantamount to constructive dismissal as repeatedly held by this Court in a long line of cases.

What further strengthens Our finding against petitioner is the fact that after the imposition of the indefinite preventive suspension on November 28, 2012 and despite the City Prosecutor's dismissal of the case for qualified theft against respondent on December 28, 2012,[29] petitioner never issued a return-to-work order to respondent or any similar correspondence. The only communication received by respondent after the November 27, 2012 Memorandum Order is the January 10, 2013 Letter, which letter was addressed to Lomboy.

Additionally, the fact that the Letter was addressed to Lomboy is, to Us, an indication of petitioner's lack of intention to obtain an explanation from respondent for his absences. This is so because, obviously, said Letter was intended for Lomboy.

As in the above-cited cases, petitioner's actuations and omissions after the imposition of the indefinite preventive suspension, coupled with the contents of the Letter and the circumstances surrounding its issuance, are proof of petitioner's lack of desire to have respondent continue in his employment at Kubong Sawali. It does not cure petitioner's violation of the 30-day limit. On the contrary, it strengthens the finding that respondent was indeed constructively dismissed. There is, therefore, no reason for Us to disturb the ruling of the CA affirming that of the NLRC Second Division.

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[28] *Id.* at 696.

[29] *Rollo*, pp. 73, 137.

With these, We find no need to tackle the other issues presented.

WHEREFORE, premises considered, the petition is **DENIED**. The September 30, 2014 and March 26, 2015 Resolutions of the Court of Appeals are hereby **AFFIRMED**.

SO ORDERED.

Peralta, Perez, and *Reyes, JJ.,* concur.

Jardeleza, J., on leave.

FIRST DIVISION

[G.R. No. 183543. June 20, 2016]

NATIONAL HOUSING AUTHORITY, *petitioner, vs.* **MANILA SEEDLING BANK FOUNDATION, INC.,** *respondent.*

SYLLABUS

1. POLITICAL LAW; PROCLAMATION NO. 1670 RESERVING LAND AT DILIMAN, QUEZON CITY FOR MANILA SEEDLING BANK FOUNDATION, INC.; USUFRUCTUARY RIGHT CIRCUMSCRIBED WITHIN THE LIMITS OF SEVEN-HECTARE AREA ALLOTTED TO IT; ENCROACHMENT OF NINE ADDITIONAL HECTARES OF THE NHA RENDERED IT A POSSESSOR IN BAD FAITH AS TO THE EXCESS; CONSEQUENCES THEREOF. — In *National Housing Authority v. CA,* this Court upheld the usufructuary right of respondent over the seven-hectare area granted under Proclamation No. 1670. However, the Court also emphasized that the rights of respondent were circumscribed within the limits of the seven-hectare area allotted to it: x x x. Since respondent had no right to act beyond the confines of the seven-hectare area granted to it, and since it was fully

aware of this fact, its encroachment of nine additional hectares of petitioner's property rendered it a possessor in bad faith as to the excess. x x x [E]ven if petitioner tolerated the encroachment by respondent, the fact does not change the latter's status as a possessor in bad faith. We have ruled that a person whose occupation of realty is by sheer tolerance of the owner is not a possessor in good faith. Under Article 549 in relation to Articles 546 and 443 of the Civil Code, a possessor in bad faith has a specific obligation to reimburse the legitimate possessor for everything that the former received, and that the latter could have received had its possession not been interrupted. x x x As provided in the law, respondent shall be made to account for the fruits it received from the time it took possession until the time it surrendered the excess to petitioner. Respondent has admitted that it leased out the excess to various establishments and earned profits therefrom. Having done so, it is bound to pay the corresponding amounts to petitioner. Respondent, however, shall be entitled to a refund of the necessary expenses it incurred. Necessary expenses are those made for the preservation of the land occupied, or those without which the land would deteriorate or be lost. These may also include expenditures that augment the income of the land or those that are incurred for its cultivation, production, and upkeep.

2. CIVIL LAW; DAMAGES; EXEMPLARY DAMAGES, ATTORNEY'S FEES AND LITIGATION EXPENSES, NOT PROPER IN CASE AT BAR.— [W]e are constrained to deny petitioner's prayer for the award of exemplary damages. While respondent was a possessor in bad faith, there is no evidence that it acted in a wanton, fraudulent, reckless, oppressive or malevolent manner. The award of attorney's fees and litigation expenses to petitioner is also improper. It was not forced to litigate because of the unfounded claims of respondent. Rather, it was the latter that initiated the instant proceedings by filing the complaint for injunction before the RTC. Respondent felt that its rights over the seven-hectare area granted under Proclamation No. 1670 were being threatened by petitioner through the proposal for transfer.

APPEARANCES OF COUNSEL

Office of the Government Corporate Counsel for petitioner.
Balgos Gumaru Faller Tan & Javier for respondent.

D E C I S I O N

SERENO, *C.J.*:

This is a Petition for Review on Certiorari under Rule 45 of the Rules of Court assailing the Decision[1] and Resolution[2] of the Court of Appeals (CA) in CA-G.R. CV No. 85262. The CA affirmed the Decision[3] of the Regional Trial Court of Quezon City, Branch 104 (RTC). The RTC had ordered Manila Seedling Bank Foundation, Inc. (respondent) to turn over to the National Housing Authority (petitioner) possession of the area in excess of the seven hectares granted to respondent under Proclamation No. 1670. The trial court, however, denied petitioner's claim for rent, exemplary damages, attorney's fees and litigation expenses.

FACTS

Petitioner is the owner[4] of a 120-hectare piece of government property in Diliman, Quezon City, reserved for the establishment of the National Government Center.[5] By virtue of Proclamation No. 1670[6] issued on 19 September 1977, President Ferdinand

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[1] *Rollo*, pp. 29-38. The Decision dated 8 April 2008 issued by the Court of Appeals (CA) Eleventh Division was penned by Associate Justice Apolinario D. Bruselas, Jr., with Associate Justices Rebecca de Guia-Salvador and Vicente S.E. Veloso concurring.

[2] *Id.* at 46; dated 30 June 2008.

[3] *Id.* at 71-81. The Decision dated 21 January 2005 was penned by Presiding Judge Thelma A. Ponferrada.

[4] *Id.* at 30.

[5] Proclamation No. 481, issued on 24 October 1968 by President Ferdinand Marcos, is entitled "Excluding from the Operation of Proclamation No. 42, dated July 5, 1954, which Established the Quezon Memorial Park, situated at Diliman, Quezon City, Certain Parcels of the Land Embraced therein and Reserving the Same for National Government Center Site Purposes."

[6] Entitled "Excluding from the Operation of Proclamation No. 481, dated October 24, 1968, which Established the National Government Center Site, Situated at Diliman, Quezon City, Certain Parcels of Land Embraced therein, and Reserving the Same for the Purposes of the Manila Seedling Bank Foundation."

Marcos reserved a seven-hectare area thereof and granted respondent usufructuary rights over it.[7]

Respondent occupied a total of 16 hectares, thereby exceeding the seven-hectare area it was allowed to occupy.[8] It leased the excess to private tenants.[9]

On 11 November 1987, President Corazon Aquino issued Memorandum Order No. 127[10] revoking the reserved status of the remaining 50 hectares of the 120-hectare property. Petitioner was expressly authorized to commercialize the area and sell it to the public through bidding. President Fidel Ramos subsequently issued Executive Order No. 58[11] on 15 February 1993 creating an inter-agency executive committee (Executive Committee) composed of petitioner and other government agencies to oversee the comprehensive development of the remaining 50 hectares, therein referred to as the North Triangle Property.

As respondent occupied a prime portion of the North Triangle Property, the Executive Committee proposed the transfer of respondent to areas more suitable to its operations.[12]

On 12 August 1994, respondent filed before the RTC a Complaint[13] for injunction with prayer for the issuance of a writ of preliminary injunction against petitioner. Respondent sought the protection of its occupancy and possession of the property reserved for it under Proclamation No. 1670. In its

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[7] *Rollo*, p. 30.

[8] *Id.* at 31.

[9] *Id.*

[10] Entitled "Releasing as Reserved Site for the National Government Center the Remaining Fifty (50) Hectares of the National Housing Authority (NHA) Property Covered by Proclamation No. 481, and for Other Purposes."

[11] Entitled "Creating an Inter-Agency Executive Committee to Oversee the Comprehensive Development of the National Housing Authority Property in North Triangle, Quezon City."

[12] *Rollo*, pp. 59-62.

[13] *Id.* at 48-53.

Answer with Compulsory Counterclaim,[14] petitioner prayed that respondent be ordered to vacate the seven-hectare area and the excess, and to pay rent therefor on top of exemplary damages, attorney's fees, and litigation expenses.

On 11 November 1994, the RTC issued a writ of preliminary injunction enjoining petitioner from causing the relocation of respondent.[15] The trial court eventually issued a summary judgment on 12 February 1998 granting a final injunction over the seven-hectare area in respondent's favor.[16] The court, however, reserved the determination of the counterclaim of petitioner as to the excess. Petitioner's motion for reconsideration and respondent's motion for partial reconsideration were both denied in the RTC Order dated 5 June 1998.[17]

Petitioner's certiorari petition was denied by the CA,[18] which remanded the case to the RTC for further proceedings on the matter of petitioner's counterclaim.[19] Petitioner no longer questioned the CA ruling.[20] In the meantime, it recovered possession of the excess on 1 March 1999.[21]

RULING OF THE RTC

In a Decision dated 21 January 2005,[22] the RTC validated the turnover of the excess to petitioner, but disallowed the recovery of rent, exemplary damages, attorney's fees and litigation expenses.

The trial court found that respondent had leased the excess to various establishments upon authority given by Minister of

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[14] *Id.* at 64-69.

[15] *Id.* at 71.

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

[17] *Id.* at 72.

[18] *Id.* at 72, 75.

[19] *Id.* at 72-73.

[20] *Id.* at 17.

[21] *Id.* at 79.

[22] *Id.* at 71-81.

Natural Resources Ernesto Maceda.[23] As he had administrative control over respondent at the time, he gave it that authority to enable it to earn income to finance its operations, considering that it no longer received any donation from the national government since 1986.[24]

The RTC also found that respondent had protected the excess by developing it and keeping squatter syndicates from taking possession. [25] For that reason, the expenses it incurred for the development of the excess were more than sufficient to compensate petitioner in terms of rent.[26]

Aggrieved, petitioner filed an appeal before the CA.[27]

RULING OF THE CA

In the assailed Decision dated 8 April 2008,[28] the CA affirmed the RTC ruling.

The appellate court held that respondent cannot be considered an officious manager under the principle of *negotiorum gestio*, as the latter had not established that the excess was either abandoned or neglected by petitioner.[29]

As respondent possessed the excess by tolerance of petitioner, a demand to vacate was necessary to establish the reckoning point for the filing of an unlawful detainer action, as well as for the recovery of rent and damages.[30] In that case, the CA found that the Executive Committee's proposal for the transfer of respondent was not a demand in contemplation of the law.[31]

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[23] *Id.* at 81.

[24] *Id.* at 80-81.

[25] *Id.*

[26] *Id.* at 81.

[27] *Id.* at 82-99.

[28] *Id.* at 29-38.

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

[30] *Id.*

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

According to the appellate court, considering that the excess was eventually surrendered by respondent to petitioner without any demand, there was no basis for the award of rent and damages in the absence of bad faith.[32]

Petitioner's motion for reconsideration was denied in the challenged Resolution dated 30 June 2008.[33]

ISSUE

Petitioner now comes before us raising the sole issue of whether it is entitled to recover rent, exemplary damages, attorney's fees, and litigation expenses from respondent.

OUR RULING

In *National Housing Authority v. CA*,[34] this Court upheld the usufructuary right of respondent over the seven-hectare area granted under Proclamation No. 1670. However, the Court also emphasized that the rights of respondent were circumscribed within the limits of the seven-hectare area allotted to it:

> A usufruct gives a right to enjoy the property of another with the obligation of preserving its form and substance, unless the title constituting it or the law otherwise provides. This controversy would not have arisen had [respondent] respected the limit of the beneficial use given to it. [Respondent's] encroachment of its benefactor's property gave birth to the confusion that attended this case. To put this matter entirely to rest, it is not enough to remind [petitioner] to respect [respondent's] choice of the location of its seven-hectare area. **[Respondent], for its part, must vacate the area that is not part of its usufruct. [Respondent's] rights begin and end within the seven-hectare portion of its usufruct. This Court agrees with the trial court that [respondent] has abused the privilege given it under Proclamation No. 1670**. The direct corollary of enforcing [respondent's] rights within the seven-hectare area is the negation of any of [respondent's] acts beyond it.[35] (Emphasis supplied)

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[32] *Id.* at 37.

[33] *Id.* at 46.

[34] 495 Phil. 693 (2005).

[35] *Id.* at 704.

Since respondent had no right to act beyond the confines of the seven-hectare area granted to it, and since it was fully aware of this fact, its encroachment of nine additional hectares of petitioner's property rendered it a possessor in bad faith as to the excess.[36]

While respondent may have been allowed by then Minister of Natural Resources Ernesto Maceda to lease the excess to various establishments, such authority did not come from petitioner, who is the owner. At any rate, even if petitioner tolerated the encroachment by respondent, that fact does not change the latter's status as a possessor in bad faith. We have ruled that a person whose occupation of realty is by sheer tolerance of the owner is not a possessor in good faith.[37]

Under Article 549 in relation to Articles 546 and 443 of the Civil Code, a possessor in bad faith has a specific obligation to reimburse the legitimate possessor for everything that the former received, and that the latter could have received had its possession not been interrupted.[38] The provisions state:

Article 549. **The possessor in bad faith shall reimburse the fruits received and those which the legitimate possessor could have received, and shall have a right only to the expenses mentioned in paragraph 1 of article 546 and in article 443.** The expenses incurred in improvements for pure luxury or mere pleasure shall not be refunded to the possessor in bad faith; but he may remove the objects for which such expenses have been incurred, provided

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[36] Article 526 of the Civil Code provides:

He is deemed a possessor in good faith who is not aware that there exists in his title or mode of acquisition any flaw which invalidates it.

He is deemed a possessor in bad faith who possesses in any case contrary to the foregoing.

Mistake upon a doubtful or difficult question of law may be the basis of good faith.

[37] *Resuena v. CA*, 494 Phil. 40 (2005); *Spouses Kilario v. CA*, 379 Phil. 515 (2000).

[38] *Quevada v. Glorioso*, 356 Phil. 105 (1998); *Director of Lands v. Palarca*, 53 Phil. 147 (1929); *Larena v. Villanueva*, 53 Phil. 923 (1928); *Lerma v. De La Cruz*, 7 Phil. 581 (1907).

that the thing suffers no injury thereby, and that the lawful possessor does not prefer to retain them by paying the value they may have at the time he enters into possession.

Article 546. **Necessary expenses shall be refunded to every possessor;** but only the possessor in good faith may retain the thing until he has been reimbursed therefor.

Useful expenses shall be refunded only to the possessor in good faith with the same right of retention, the person who has defeated him in the possession having the option of refunding the amount of the expenses or of paying the increase in value which the thing may have acquired by reason thereof.

Article 443. He who receives the fruits has the obligation to pay the expenses made by a third person in their production, gathering, and preservation. (Emphases supplied)

As provided in the law, respondent shall be made to account for the fruits it received from the time it took possession until the time it surrendered the excess to petitioner. Respondent has admitted that it leased out the excess to various establishments and earned profits therefrom.[39] Having done so, it is bound to pay the corresponding amounts to petitioner.

Respondent, however, shall be entitled to a refund of the necessary expenses it incurred. Necessary expenses are those made for the preservation of the land occupied,[40] or those without which the land would deteriorate or be lost.[41] These may also include expenditures that augment the income of the land or those that are incurred for its cultivation, production, and upkeep.[42]

Both the CA[43] and the RTC[44] found that respondent had exerted efforts and expended money to develop the excess and protect

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[39] *Rollo*, pp. 79-81.

[40] *Alburo v. Villanueva*, 7 Phil. 277 (1907).

[41] *Mendoza v. De Guzman*, 52 Phil. 164 (1928).

[42] *Id.*

[43] *Rollo*, p. 35.

[44] *Id.* at 81.

it from squatter syndicates. These expenses would naturally fall under those defined as necessary expenses for which respondent, even as a possessor in bad faith, is entitled to be reimbursed.

These necessary expenses have not been itemized by respondent. On the other hand, We are not inclined to adopt the allegation of petitioner as to the amount of rental it could have received from the lease of the excess based on a professional appraisal.[45] There is a need to remand the case to the RTC for the conduct of trial for the purpose of determining the amounts the parties are entitled to as laid out in this Decision.

Finally, We are constrained to deny petitioner's prayer for the award of exemplary damages. While respondent was a possessor in bad faith, there is no evidence that it acted in a wanton, fraudulent, reckless, oppressive or malevolent manner.[46] The award of attorney's fees and litigation expenses to petitioner is also improper. It was not forced to litigate because of the unfounded claims of respondent. Rather, it was the latter that initiated the instant proceedings by filing the complaint for injunction before the RTC. Respondent felt that its rights over the seven-hectare area granted under Proclamation No. 1670 were being threatened by petitioner through the proposal for transfer.

WHEREFORE, the Court of Appeals Decision dated 8 April 2008 and Resolution dated 30 June 2008 in CA-G.R. CV No. 85262 are hereby **SET ASIDE**.

Let the case be **REMANDED** to the Regional Trial Court of Quezon City, Branch 104, for the reception of evidence for the purpose of determining the amounts the parties are entitled to, as well as their respective rights and obligations over the

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[45] *Id.* at 22.

[46] Art. 2232 of the Civil Code provides:

In contracts and quasi-contracts, the court may award exemplary damages if the defendant acted in a wanton, fraudulent, reckless, oppressive, or malevolent manner.

excess of the seven-hectare area, from the time respondent took possession until the same was surrendered to petitioner, in accordance with Articles 549, 546, and 443 of the Civil Code.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 193075. June 20, 2016]

EMMANUEL REYES, SR. and MUTYA M. REYES, *petitioners, vs.* **HEIRS OF DEOGRACIAS FORLALES, namely: NAPOLEON FORLALES, LITA HELEN FORLALES-FRADEJAS, JAIME FORLALES, JR., JULIUS FORLALES FORTUNA, HORACE FORLALES, GALAHAD FORLALES, JR., INDEPENDENCIA FORLALES-FETALVERO, MELITON FORLALES, JR., MILAGROS V. FORLALES and MERCEDES FORLALES-BAUTISTA,** *respondents.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; LIMITED TO QUESTIONS OF LAW.— The issues that may be resolved in this Rule 45 petition should be limited to the determination of what the law is on the established facts. Otherwise stated, we shall limit our review to whether the CA and the trial courts correctly applied the law in resolving the present case.

2. ID.; SPECIAL CIVIL ACTIONS; FORCIBLE ENTRY AND UNLAWFUL DETAINER; DISTINCTION; SIGNIFICANT IN RECKONING WHEN THE ONE-YEAR PERIOD TO

FILE AN EJECTMENT SUIT SHOULD BEGIN.— With the identification of the disputed portion properly settled, we find that the key to resolving the present controversy is to accurately determine whether the complaint filed by the respondents was one for forcible entry or unlawful detainer. While both remedies are summary actions to recover physical possession of property, they are distinct and different causes of action under Rule 70 of the Rules of Court. The plaintiff may file a *forcible entry* case to recover possession against a defendant whose occupation is illegal from the very beginning if he acquired the possession by force, intimidation, threat, strategy or stealth. On the other hand, he may file an *unlawful detainer* suit when the defendant's possession of the property was inceptively lawful by virtue of a contract (express or implied) with the plaintiff, but became illegal when he continued his possession despite the termination of the right to do so. The difference between these two actions is greatly significant in reckoning when the one-year period to file an ejectment suit should begin. If the entry is illegal from its inception, the action which may be filed against the intruder within one (1) year therefrom is forcible entry. If not – or the entry is legal but the possession thereafter became illegal – the case is one of unlawful detainer which must be filed within one (1) year from the date of the last demand to vacate. Hence, to determine whether the case was filed on time, it is necessary to ascertain whether the complaint is one for forcible entry or for unlawful detainer. Since the main distinction between the two actions is based on when and how the defendant entered the property, the determinative facts should be alleged in the complaint.

3. ID.; ID.; UNLAWFUL DETAINER; ALLEGATIONS REQUIRED IN THE COMPLAINT; A CASE FOR UNLAWFUL DETAINER ALLEGING TOLERANCE MUST DEFINITELY ESTABLISH ITS EXISTENCE FROM THE START OF POSSESSION.— The allegations in the complaint determine the nature of the action, as well as the court which has jurisdiction over the case. A complaint sufficiently alleges a **cause of action for unlawful detainer** if it recites the following: (1) initially, possession of property by the defendant was by contract with or by tolerance of the plaintiff; (2) eventually, such possession became illegal upon notice by the plaintiff to the defendant of the termination of the right of possession; (3) thereafter, the defendant remained

in possession of the property and deprived the plaintiff of the enjoyment thereof; and (4) within one year from the last demand on the defendant to vacate the property, the plaintiff instituted the complaint for ejectment. In the absence of these allegations of facts, an action for unlawful detainer is not the proper remedy and the municipal trial court or metropolitan trial court do not have jurisdiction over the case. xxx In *Sarona v. Villegas*, we explained that a case for unlawful detainer alleging tolerance must definitely establish its existence from the start of possession; otherwise, a case for forcible entry can hide behind an action for unlawful detainer and permit it to be filed beyond the required one-year prescription period from the time of forcible entry.

4. ID.; CIVIL PROCEDURE; PRINCIPLE OF *RES JUDICATA*; TWO ASPECTS ARE (a) BAR BY A PRIOR JUDGMENT, AND (b) CONCLUSIVENESS OF JUDGMENT.— Between the parties involved, a final and executory judgment has the effect of *res judicata* – which has two aspects, namely: (a) *bar by a prior judgment* or when the judgment bars the prosecution of a subsequent action based on the same claim or cause of action; and (b) *conclusiveness of judgment* or when the judgment precludes the re-litigation of particular issues or facts on a different demand or cause of action.

5. ID.; ID.; ID.; JUDGMENT MUST BE BASED ON THE MERITS.— For *res judicata* to apply, the judgment relied on must be a legal declaration of the respective rights and duties of the parties based upon the disclosed facts. In other words, the judgment must be based on the merits – matters of substance in law – as distinguished from matters of form. x x x [A] judgment on the merits does not have to be one rendered after a trial on the merits for it would be enough that the judgment considered the merits of the complaint.

6. ID.; ID.; *ACCION PUBLICIANA*; PROPER ACTION TO RECOVER RIGHT OF POSSESSION WHEN DISPOSSESSION HAS LASTED FOR MORE THAN ONE YEAR.— An ***accion publiciana*** is the plenary action to recover the right of possession which should be brought before the proper RTC when dispossession has lasted for more than one year. If at the time of the filing of the complaint, more than one year had elapsed since defendant had turned the plaintiff out of possession or the defendants' possession had become

> illegal, the action will be not one of forcible entry or illegal detainer, but an *accion publiciana*. In *Gonzaga v. Court of Appeals*, we clarified the purpose of ejectment suits in relation to a real action to recover possession or ownership of a property:
> x x x **[W]here a person supposes himself to be the owner of a piece of property and desires to vindicate his ownership against the party actually in possession, it is incumbent upon him to institute an action to this end in a court of competent jurisdiction**; and he [cannot] be permitted, by invading the property and excluding the actual possessor, to place upon the latter the burden of instituting an action to try the property right.

APPEARANCES OF COUNSEL

Rolly F. Roldan, Jr. for petitioners.
Petroni F. Fradejas for respondents.

D E C I S I O N

BRION, *J.*:

We resolve the petition for review on *certiorari*[1] assailing the **October 27, 2009** decision[2] and the **July 9, 2010** resolution[3] of the Court of Appeals (*CA*) in CA-G.R. SP No. 107624.

The assailed decision affirmed the September 2, 2008 decision[4] of the Regional Trial Court (*RTC*), Branch 82, Odiongan, Romblon, in Civil Case No. OD-806 which, in turn, affirmed the July 20, 2007 decision[5] of the 5th Municipal Circuit Trial

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[1] Under Rule 45 of the Rules of Court; *rollo*, pp. 7-41.

[2] *Id.* at 42-53; penned by Associate Justice Martin S. Villarama, Jr., and concurred in by Associate Justice Magdangal M. De Leon and Associate Justice Ricardo R. Rosario.

[3] *Id.* at 54-56; penned by Associate Justice Magdangal M. De Leon and concurred in by Associate Justices Mariflor Punzalan-Castillo and Ricardo R. Rosario.

[4] *Id.* at 74-90; penned by Executive Judge Jose M. Madrid.

[5] *Id.* at 70-73, penned by Judge Peter W. Montojo.

Court (*MCTC*) of Odiongan-Ferrol, Branch 5, Odiongan, Romblon, in Civil Case No. O3-288.

THE FACTUAL ANTECEDENTS

The present case originated from an unlawful detainer suit filed on October 27, 2005 by respondents Heirs of Deogracias Forlales (*respondents*) against petitioners Emmanuel Reyes, Sr. and Mutya M. Reyes (*petitioners*) demanding that the petitioners vacate a portion of Lot No. 1408 (*disputed portion*) located at Barangay Dapawan, Municipality of Odiongan, Province of Romblon. The portion of land occupied by the petitioners formed part of the estate of Deogracias Forlales which was adjudicated to Mercedes Forlales Bautista (*Mercedes*).

As early as 1978, the petitioners claimed that they had already been occupying the disputed portion. For one reason or another, they executed an affidavit dated September 18, 1988, saying that their stay on the lot owned by Mercedes was with the permission of Independencia Forlales Fetalvero (*Independencia*), the administrator of the estate of Deogracias Forlales, and was subject to the terms and conditions imposed by the rightful owner.[6]

On January 5, 1989, Mercedes invited the petitioners to see her for a formal talk regarding their temporary stay on her property, but the latter refused and simply sent a note asking Mercedes if they could stay longer "for the sake of convenience" of their family.[7]

On **May 28, 1993**, upon realizing that the petitioners still had not vacated the disputed portion, Independencia wrote the petitioners, asking them to vacate the premises within six (6) months from receipt of the letter.

No action followed until the respondents filed a complaint for unlawful detainer on August 28, 1997, docketed as **Civil**

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[6] *Id.* at 232; Annex "A" of the respondents' comment; Exhibit "B" for the respondents.

[7] *Id.* at 233, Annex "B" of the respondents' comment; Exhibit "C", for the respondents.

Case No. OD-229. This complaint was dismissed on **September 29, 1997**, because the respondents filed it one (1) year beyond May 28, 1993, the date Independencia demanded that the petitioners vacate the premises. This decision became final and executory on **October 15, 1997**.

On May 16, 2005, the respondents, through Independencia, instituted a complaint for ejectment and demolition of the house before the Office of the Sangguniang Barangay, Brgy. Dapawan, Odiongan, Romblon. On May 27, 2005, Independencia sent a formal letter to the petitioners demanding that they vacate the subject property, cease and desist from constructing their house, and remove what had already been constructed.

The respondents' complaint remained unresolved at the barangay level, prompting Independencia to file on October 27, 2005, a complaint for ejectment against the petitioners before the MCTC.

The respondents claimed that the petitioners acknowledged in their affidavit dated September 18, 1988, that Independencia allowed them to occupy a portion of the lot owned by Mercedes on a temporary basis and by mere tolerance. Moreover, in her letter dated January 1998, Mutya stated that their stay on the land was only for the sake of convenience to the family.

The respondents further alleged that sometime in December 2004, they noticed that the petitioners were already building a two-storey house made of strong and concrete materials. This prompted Independencia to report the on-going construction to the Municipality of Odiongan. In turn, the building official concerned issued a notice of illegal construction which the petitioners received on December 15, 2004. All the same, the petitioners refused to cease construction.

The petitioners, on the other hand, claimed that the lot where their house currently stands used to belong to Alejandra Forlales Fabella and Linda Fontamillas, successively.[8] They alleged that

[8] Cadastral Lot No. 780-P was donated by Alejandra Forlales Fabella to Linda Fontamillas pursuant to a deed of donation dated September 2, 1993.

these owners allowed them to occupy the disputed portion which was eventually sold to them.

The petitioners mainly argued in their answer that the complaint for ejectment had prescribed. They maintained that if the respondents' suit were to be considered a Forcible Entry case, the right to file it within one (1) year from deprivation of possession had lapsed because their entry allegedly took place even before 1998. Alternatively, as an Unlawful Detainer case, the right to file the action had likewise prescribed because the respondents considered the occupation of the petitioners illegal either when they filed an ejectment case on August 28, 1997, or when they formally demanded the respondents to vacate on May 28, 1993.

The petitioners also contended that the ejectment complaint should be dismissed for *res judicata* because the respondents had filed a similar suit that was dismissed for being filed beyond the one-year period allowed by law.

In its July 20, 2007 decision, the MCTC found that the lot the petitioners are occupying was the lot owned by the respondents. It held that the petitioners' claim that they own the lot was refuted by the affidavit and the note coming from the petitioners themselves.

On the issue on *res judicata*, the MCTC held that the petitioners' claim could not stand because the earlier ejectment case was not dismissed after trial on the merits. Accordingly, the MCTC ordered the petitioners: (1) to vacate the property and deliver it peacefully to the respondents; (2) to remove any improvements they might have introduced on the property; and (3) to pay the fair rental value in the amount of ₱800.00 per month from May 27, 2005 or the date of demand.

On appeal, the RTC affirmed the MCTC's finding that the petitioners were occupying the lot owned by the respondents. The RTC ruled that although the petitioners' possession lasted beyond May 28, 1993 — the date of the first demand to vacate — their continued possession from then up to the time they received the last demand to vacate on May 27, 2005, should be considered as *possession by mere tolerance.*

The RTC concluded that the one-year prescriptive period for filing the ejectment suit should be counted from the date of the last demand to vacate because it was only from that time that the petitioners' possession became illegal.

After the RTC denied their motion for reconsideration, the petitioners filed a petition for review under Rule 42 of the Rules of Court before the CA.

The CA affirmed the findings of the lower courts and upheld their rulings on the substantive issues. The CA agreed with the RTC that the occupancy of the petitioners from May 28, 1993 to May 27, 2005, was possession by mere tolerance. It also agreed with the MCTC that the earlier ejectment suit was dismissed based on a technicality and was not resolved on the merits.

The CA found no merit in the petitioners' motion for reconsideration; hence, the present petition before this Court.

THE PETITION FOR REVIEW

For the most part, the petitioners insist that the one-year period for filing an unlawful detainer suit should start from May 28, 1993 — the date when the respondents first gave their formal demand. They argue that the period should be counted from this date because this was the date when they initially considered the petitioners' possession unlawful.

The petitioners add that the fact that the respondents filed a complaint for ejectment on August 28, 1997, should indicate that they considered the possession illegal on that date. For this reason, the petitioners point out that the CA erred in affirming the ruling that their possession, from May 28, 1993 to May 27, 2005, of the disputed portion was by mere tolerance because the respondents clearly did not tolerate their continued occupation.

Further, the petitioners suggest that counting the one-year period from the demand made by the respondents on May 27, 2005, would make the period for filing an unlawful detainer case within the sole control of the plaintiffs (respondents in this case) by simply sending a demand letter after letter to gain another fresh one-year period after every demand.

Moreover, since the respondents filed the present ejectment case more than twelve (12) years after sending their first demand to vacate, the MCTC no longer has jurisdiction as this case would no longer be an unlawful detainer case.

Finally, the petitioners invoke the principle of *res judicata* as there was a previous decision involving exactly the same issues, subject matter, and parties. They assert that the dismissal of the earlier case was on the merits because it was based on the respondents' failure to file a case within the one-year period from the demand made on May 28, 1993.

On the factual issues, the petitioners claim that the lot on which they built their house is not the same land owned by the respondents. In their complaint dated August 28, 1997, the respondents admitted that the portion occupied by the petitioners is part of Lot No. 780-P and not of Lot No. 1408. Furthermore, in the complaint they filed against Linda Fontamillas for the cancellation of the deed of donation, the respondents likewise acknowledged that the lot they were referring to was Lot No. 780-P. Lastly, the respondents have not actually presented any proof that the petitioners are occupying a portion of Lot No. 1408 because the verification survey to check the location of the disputed portion was not concluded.

OUR RULING

We find the petition meritorious.

We note that the petitioners raise both questions of fact and law in the present petition. We can no longer review questions of fact as this would require us to reevaluate evidence previously considered and passed upon by the lower courts. The issues that may be resolved in this Rule 45 petition should be limited to the determination of what the law is on the established facts.[9] Otherwise stated, we shall limit our review to whether the CA and the trial courts correctly applied the law in resolving the present case.

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[9] *Go v. Looyuko*, G.R. No. 196529, July 1, 2013, 700 SCRA 313, 318-319. See also *Soriente v. Estate of Concepcion*, G.R. No. 160239, November 25, 2009, 605 SCRA 315.

In view of this limitation, we are bound by the factual findings that the petitioners occupy the lot that belongs to the respondents. The courts *a quo* could have hardly erroneously appreciated the evidence in this case as there were documents on record showing that the petitioners asked the respondents if they could continue staying on the respondents' property. Thus, the issue of whether they occupied Lot No. 780-P or a portion of Lot No. 1408 does not matter at this point as the petitioners recognized the authority of the respondents over the portion they built their house on.

On the issue of the proper characterization of the respondent's complaint before the MCTC

With the identification of the disputed portion properly settled, we find that the key to resolving the present controversy is to accurately determine whether the complaint filed by the respondents was one for forcible entry or unlawful detainer.

While both remedies are summary actions to recover physical possession of property, they are distinct and different causes of action under Rule 70 of the Rules of Court. The plaintiff may file a *forcible entry* case to recover possession against a defendant whose occupation is illegal from the very beginning if he acquired the possession by force, intimidation, threat, strategy, or stealth.[10] On the other hand, he may file an *unlawful detainer* suit when the defendant's possession of the property was inceptively lawful by virtue of a contract (express or implied) with the plaintiff, but became illegal when he continued his possession despite the termination of the right to do so.[11]

The difference between these two actions is greatly significant in reckoning when the one-year period to file an ejectment suit should begin. If the entry is illegal from its inception, the action which may be filed against the intruder within one (1) year

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[10] *Sarmienta v. Manalite Homeowners Association, Inc.,* G.R. No. 182953, October 11, 2010, 632 SCRA 538, 546.

[11] *Ibid.*

therefrom is forcible entry.[12] If not — or the entry is legal but the possession thereafter became illegal — the case is one of unlawful detainer which must be filed within one (1) year from the date of the last demand to vacate.[13]

Hence, to determine whether the case was filed on time, it is necessary to ascertain whether the complaint is one for forcible entry or for unlawful detainer. Since the main distinction between the two actions is based on when and how the defendant entered the property, the determinative facts should be alleged in the complaint.[14]

The allegations in the complaint determine the nature of the action, as well as the court which has jurisdiction over the case.[15] A complaint sufficiently alleges a **cause of action for unlawful detainer** if it recites the following: (1) initially, possession of property by the defendant was by contract with or by tolerance of the plaintiff; (2) eventually, such possession became illegal upon notice by the plaintiff to the defendant of the termination of the right of possession; (3) thereafter, the defendant remained in possession of the property and deprived the plaintiff of the enjoyment thereof; and (4) within one year from the last demand on the defendant to vacate the property, the plaintiff instituted the complaint for ejectment.[16] In the absence of these allegations of facts, an action for unlawful detainer is not the proper remedy

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[12] See *Ten Forty Realty and Development Corp. v. Cruz*, G.R. No. 151212, September 10, 2003, 410 SCRA 484, 492, citing *Sarmiento v. Court of Appeals*, 320 Phil. 146, 153-154 (1995) in *Go, Jr. v. Court of Appeals*, G.R. No. 142276, August 14, 2001, 362 SCRA 755, 766.

[13] *Ibid.*

[14] *Delos Reyes v. Spouses Odones*, G.R. No. 178096, March 23, 2011, 646 SCRA 328, 335-336.

[15] *Pagadora v. Ilao*, G.R. No. 165769, December 12, 2011, 662 SCRA 14, 30.

[16] *Cabrera v. Getaruela*, G.R. No. 164213, April 21, 2009, 586 SCRA 129, 136-137. See also *Jose v. Alfuerto*, G.R. No. 169380, November 26, 2012, 686 SCRA 323, 334; and *Delos Reyes v. Spouses Odones*, *supra* note 14 at 344.

and the municipal trial court or metropolitan trial court do not have jurisdiction over the case.[17]

In this case, the complaint alleged the following:

> 3. That sometime in 1998 or even before that the defendant had constructed a residential house of light materials in a portion of land belonging to the heirs of DEOGRACIAS FORLALES, which portion was intended to be adjudicated to MERCEDES FORLALES BAUTISTA upon partition of the estate of DEOGRACIAS FORLALES;
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> 4. That the defendants spouses acknowledged that they were occupying a portion of land owned by MERCEDES FORLALES BAUTISTA located at Dapawan, Odiongan, Romblon, and that their occupancy is temporary in nature as stated in their affidavit dated September 18, 19[8]8, [. . .] thus they were allowed to occupy the portion of the land by the administrator INDEPENDENCIA FORLALES FETALVERO of the property by tolerance;
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> 5. That the defendant MUTYA REYES reiterated in her letter to MERCEDES FORLALES BAUTISTA dated January 1989 that their stay in the land is for the sake of convenience to the family only;
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> x x x x x x x x x
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> 8. That sometime in December 2004, plaintiffs observed the defendants constructing a two (2) storey residential house of strong and concrete materials in [sic] Lot No. 1408, which prompted the administrator of said lot INDEPDENDENCIA FORLALES FETALVERO to report the ongoing construction to the Office of the Building Official of Odiongan, Romblon;
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> x x x x x x x x x
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> 10. That the defendants refused to cease work on their construction, notwithstanding subsequent notices for the Building Official, by reason of which, the plaintiffs, thru INDEPENDENCIA FORLALES FETALVERO, filed a

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[17] *Estate of Soledad Manantan v. Somera*, G.R. No. 145867, April 7, 2009, 584 SCRA 81, 90; *Canlas v. Tubil*, G.R. No. 184285, September 25, 2009, 601 SCRA 147, 156.

complaint for Ejectment and Demolition of House dated May 16, 2005;

11. That, however, because the defendant MUTYA REYES is the Barangay Chairman, the resolution of the complaint seems to be dragging on, hence, a formal letter demand for the defendants to vacate, cease and desist from construction and removal of whatever had been constructed was sent dated May 27, 2005;[18]

On its face, the allegations in the complaint make out a case for unlawful detainer as it would seem that the respondents allowed the petitioners to occupy the disputed portion up until they sent their final demand to vacate on May 27, 2005. But, as correctly raised by the petitioners right from the very start, the respondents had already considered the occupancy unlawful as early as 1993. In other words, contrary to how the CA and the trial courts appreciated the petitioners' occupancy from 1993 to 2005, we find that their possession during this period was not by mere tolerance.

In *Sarona v. Villegas*,[19] we explained that a case for unlawful detainer alleging tolerance must definitely establish its existence from the start of possession; otherwise, a case for forcible entry can hide behind an action for unlawful detainer and permit it to be filed beyond the required one-year prescription period from the time of forcible entry:

A close assessment of the law and the concept of the word "tolerance" confirms our view heretofore expressed that such tolerance must be present right from the start of possession sought to be recovered, to categorize a cause of action as one of unlawful detainer — not of forcible entry. Indeed, to hold otherwise would espouse a dangerous doctrine. And for two reasons: *First*. Forcible entry into the land is an open challenge to the right of the possessor. Violation of that right authorizes the speedy redress — in the inferior court — provided for in the rules. If one year from the forcible entry is allowed to lapse before a suit is filed, then the remedy ceases to be

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[18] *Rollo*, pp. 57-61; Annex "C" of the petition for review on *certiorari*.

[19] 131 Phil. 365, 371-372 (1968), cited in *Jose v. Alfuerto*, *supra* note 16.

speedy; and the possessor is deemed to have waived his right to seek relief in the inferior court. *Second*. If a forcible entry action *in the inferior court* is allowed after the lapse of a number of years, then the result may well be that no action for forcible entry can really prescribe. No matter how long such defendant is in physical possession, plaintiff will merely make a demand, bring suit in the inferior court — upon a plea of tolerance to prevent prescription to set in — and summarily throw him out of the land. Such a conclusion is unreasonable. Especially if we bear in mind the postulates that proceedings of forcible entry and unlawful detainer are summary in nature, and that the one year time bar to suit is but in pursuance of the summary nature of the action.[20] [italics supplied]

While the foregoing enlightens us when the alleged tolerance must be present (to distinguish the action for unlawful detainer from a forcible entry suit), this explanation similarly applies when a plaintiff files *different and successive* complaints for unlawful detainer.

At present, we find it hard to believe that the respondents tolerated the occupancy after their attempts to dispossess the petitioners from the lot.

Professor Tolentino defines and characterizes "tolerance" in the following manner:

> [. . .] acts merely tolerated are those which by reason of neighborliness or familiarity, the owner of property *allows* his neighbor or another person to do on the property; they are generally those particular services or benefits which one's property can give to another without material injury or prejudice to the owner, who *permits* them out of friendship or courtesy. They are acts of little disturbances which a person, in the interest of neighborliness or friendly relations, *permits* others to do on his property, such as passing over the land, tying a horse therein, or getting some water from a well. And even though this is *continued* for a long time, no right will be acquired by prescription. [. . .]
>
> There is tacit consent of the possessor to the acts which are merely tolerated. Thus, *not every case of knowledge and silence on the*

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[20] *Id.* at 373, citing *Monteblanco v. Hinigaran Sugar Plantation*, 63 Phil. 797, 802-803 (1936).

part of the possessor can be considered mere tolerance. **By virtue of tolerance that is considered as an authorization, permission or license, acts of possession are realized or performed. The question reduces itself to the existence or non-existence of the permission.**[21] [citations omitted; italics and emphasis supplied]

In this light, the occupation from May 28, 1993 up to May 27, 2005 cannot be characterized as possession by mere tolerance. The filing of the first complaint for unlawful detainer four (4) years after May 28, 1993, affirms the fact that the respondents no longer wanted the petitioners to occupy the disputed portion as early as 1993. It was duly alleged in their first complaint that it was on May 28, 1993, when the respondents finally demanded the petitioners to vacate. Thus, the possession of the petitioners after said date started becoming illegal because they no longer had a right to occupy the portion of the lot.

We likewise cannot consider the possession after the dismissal on September 29, 1997, of the first case for unlawful detainer, until the final demand that triggered the present complaint was sent on May 27, 2005. The evidence for the respondents shows that they allowed the petitioners to remain on the disputed portion of the lot thereafter. As plaintiffs, it was incumbent upon the respondents to substantiate their allegation with proof that they continuously tolerated the petitioners occupying the disputed portion until May 27, 2005.

More importantly, we cannot allow the respondents' present suit to prosper because we would effectively allow circumvention of the one-year limitation. This period would be rendered useless if every plaintiff could simply make a new formal demand to vacate every time the Municipal Trial Courts dismisses their complaint on grounds that it was filed beyond the one-year limitation period.

While the rule is to start counting the one-year period from when the last demand was made,[22] our ruling in *Desbarats v.*

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[21] *Id.* at 372.

[22] *Republic v. Sunvar Realty Development Corporation*, G.R. No. 194880, June 20, 2012, 674 SCRA 320.

Vda. De Laureano[23] (whose circumstances are similar to the present case) justifies that the period should be reckoned from the date of the first demand to vacate.[24] In the *Desbarats* case, the lessor persistently made efforts to repossess the property after giving the first demand to vacate. The lessor also filed a complaint for unlawful detainer which was likewise subsequently dismissed. After the complaint was dismissed — as what happened to the respondents in this case — there was no action taken up by the lessor until the second demand to vacate was made.

Consequently, the respondents availed of the wrong remedy after the MCTC dismissed the first complaint because the period allowed to file a complaint for unlawful detainer already lapsed one year after May 28, 1993.

On the issue of res judicata

We likewise find the petitioners' argument of *res judicata* meritorious.

Between the parties involved, a final and executory judgment has the effect of *res judicata* — which has two aspects, namely: (a) *bar by a prior judgment* or when the judgment bars the prosecution of a subsequent action based on the same claim or cause of action; and (b) *conclusiveness of judgment* or when the judgment precludes the re-litigation of particular issues or facts on a different demand or cause of action. Here, the aspect of *res judicata* the petitioners are invoking is conclusiveness of judgment because the present complaint for unlawful detainer is based on a different and more recent formal demand to vacate.

For *res judicata* to apply, the judgment relied on must be a legal declaration of the respective rights and duties of the parties based upon the disclosed facts. In other words, the judgment must be based on the merits — matters of substance in law — as distinguished from matters of form.

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[23] G.R. No. L-21875, September 27, 1966, 18 SCRA 116, cited in *Racaza v. Gozum*, 523 Phil. 695, 710 (2006).

[24] *Id.* at 121.

The courts *a quo* ruled that the principle of *res judicata* does not apply in this case as there is no showing that the previous case was dismissed after a trial on the merits. To our mind, the lower courts gravely erred on this point because a judgment on the merits does not have to be one rendered after a trial on the merits for it would be enough that the judgment considered the merits of the complaint.[25]

The dismissal of the first complaint for unlawful detainer was a judgment on the merits because it was based on the complaint and its annexes and on the allegations of the respondents. The earlier decision was on the merits because the respondents failed to show that the complaint was filed within one-year after making a formal demand. This error cannot be considered as a matter of form or technicality for such allegation is a material allegation in any unlawful detainer complaint.

We agree with the petitioners that this defect cannot be remedied by simply sending another formal demand a few years after the first complaint was dismissed. The one-year period to file an unlawful detainer suit has clearly lapsed for the respondents in the present case because of the fact that their mistake already existed at the time of the filing of the first complaint.

Instead, the respondents should have opted to file a real action to recover possession or an *accion publiciana* of the disputed portion with the appropriate RTC after the MCTC dismissed their first unlawful detainer suit.

An ***accion publiciana*** is the plenary action to recover the right of possession which should be brought before the proper RTC when dispossession has lasted for more than one year.[26] If at the time of the filing of the complaint, more than one year had elapsed since defendant had turned the plaintiff out of possession or the defendants' possession had become illegal,

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[25] See *Perez v. Court of Appeals*, G.R. No. 157616, July 22, 2005, 464 SCRA 89, 107; *Luzon Development Bank v. Conquilla*, G.R. No. 163338, September 21, 2005, 470 SCRA 533, 543-544.

[26] *Republic v. Sunvar Realty Development Corporation*, *supra* note 22.

the action will be not one of forcible entry or illegal detainer, but an *accion publiciana*.[27]

In *Gonzaga v. Court of Appeals*,[28] we clarified the purpose of ejectment suits in relation to a real action to recover possession or ownership of a property:

> In giving recognition to the action of forcible entry and detainer t**he purpose of the law is to protect the person who in fact has actual possession;** and in the case of controverted right, it requires the parties to preserve the *status quo* until one or the other of them sees fit to invoke the decision of a court of competent jurisdiction upon the question of ownership. It is obviously just that the person who has first acquired possession should remain in possession pending [the] decision; and the parties cannot be permitted meanwhile to engage in petty warfare over the possession of the property which is the subject of dispute. To permit this would be highly dangerous to individual security and disturbing to social order. Therefore, **where a person supposes himself to be the owner of a piece of property and desires to vindicate his ownership against the party actually in possession, it is incumbent upon him to institute an action to this end in a court of competent jurisdiction;** and he [cannot] be permitted, by invading the property and excluding the actual possessor, to place upon the latter the burden of instituting an action to try the property right.[29] [emphases supplied]

In addition, we must also consider that there is no credible evidence on record that could establish which lot the petitioners' house actually stands on as the verification survey was not concluded in this case. In other words, the proper RTC would be more competent to resolve the issue of who among the parties have a better right of possession over the disputed portion of the lot.

All told, the CA committed a reversible error when it affirmed the trial courts' ruling; the ejectment complaint filed by the

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[27] *Canlas v. Tubil*, G.R. No. 184285, September 25, 2009, 601 SCRA 147, 157.

[28] G.R. No. 130841, February 26, 2008, 546 SCRA 532.

[29] *Id.* at 540-541, citing *Mediran v. Villanueva*, 37 Phil. 752, 761 (1918).

respondents on October 27, 2005 should have been dismissed for being filed beyond the one-year period allowed under the law.

WHEREFORE, premises considered, we **GRANT** the present petition, **REVERSE** and **SET ASIDE** the October 27, 2009 decision and the July 9, 2010 resolution of the CA in CA-G.R. SP No. 107624. The complaint for ejectment dated October 27, 2005 filed by respondents is hereby **DISMISSED**. Costs against the respondents.

SO ORDERED.

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

Del Castillo, J., on leave.

FIRST DIVISION

[G.R. No. 194065. June 20, 2016]

PHILIPPINE BANK OF COMMUNICATIONS, *petitioner, vs.* **COMMISSIONER OF INTERNAL REVENUE,** *respondent.*

SYLLABUS

1. TAXATION; NATIONAL INTERNAL REVENUE CODE; DOCUMENTARY STAMP TAX (DST); THE LIABILITY FOR THE PAYMENT OF THE DST FALLS DUE ONLY UPON THE OCCURRENCE OF A TAXABLE TRANSACTION; ONLY THEN THAT PAYMENT MAY BE CONSIDERED FOR THE PURPOSE OF FILING A CLAIM FOR A REFUND OR TAX CREDIT.— A DST is a tax on documents, instruments, loan agreements, and papers evidencing the acceptance, assignment, sale or transfer of an obligation, right or property incident thereto. The DST is actually

an excise tax, because it is imposed on the transaction rather than on the document. The rule is that the date of payment is when the tax liability falls due. x x x For DS metering machine users, the payment of the DST upon loading/reloading is merely an advance payment for future application. The liability for the payment of the DST falls due only upon the occurrence of a taxable transaction. Therefore, it is only then that payment may be considered for the purpose of filing a claim for a refund or tax credit.

2. ID.; ID.; ID.; ID.; ID.; CLAIM FOR REFUND OF ERRONEOUSLY PAID DOCUMENTARY STAMP TAX (DST) MUST BE WITHIN TWO YEARS FROM THE DATE OF PAYMENT.— Under Section 229 of the NIRC of 1997, the claim for a refund of erroneously paid DST must be within two years from the date of payment of the DST. x x x [T]he date of imprinting the documentary stamp on the taxable document must be considered as the date of payment contemplated under Section 229 of the NIRC.

APPEARANCES OF COUNSEL

Angara Abello Concepcion Regala & Cruz for petitioner.
The Solicitor General for respondent.

D E C I S I O N

SERENO, *C.J.:*

This is a Petition for Review[1] filed by the Philippine Bank of Communications (petitioner) under Rule 45 of the 1997 Rules of Civil Procedure assailing the Court of Tax Appeals *en banc* (CTA *en banc*) Decision[2] dated 13 May 2010 and Resolution[3] dated 14 October 2010 in C.T.A. EB Nos. 555 and 556.

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[1] *Rollo,* pp. 17-38.

[2] *Id.* at 43-66: penned by Associate Justice Esperanza R. Fabon-Victorino and concurred in by then Presiding Justice Ernesto D. Acosta, Associate Justices Juanito C. Castañeda Jr., Lovell R. Bautista, Erlinda P. Uy, and Olga Palanca-Enriquez.

[3] *Id.* at 67-77.

THE FACTS

Pursuant to Revenue Regulations (RR) No. 7-92, the Bureau of Internal Revenue (BIR) issued Certificate No. 08-0434 on 31 July 2001 authorizing petitioner to operate and use the On-line Electronic Documentary Stamp Metering Machine (DS metering machine) with Serial No. SN363 1711.

Petitioner purchased documentary stamps from the BIR and loaded them to its DS metering machine. During the period 23 March 2004 to 23 December 2004, petitioner executed several repurchase agreements with the *Bangko Sentral ng Pilipinas* (BSP). The documentary stamps were imprinted on the Confirmation Letters corresponding to those repurchase agreements through petitioner's DS metering machine.

Petitioner claimed that the repurchase agreements were not subject to the documentary stamp tax (DST). Thus, on 12 May 2006, it filed with the BIR an administrative claim for the issuance of tax credit certificates for the alleged erroneous payment of the DST in the total amount of ₱11,063,866.67.

Alleging the inaction of the BIR on the administrative claim of petitioner, the latter filed a Petition for Review with the CTA on 18 May 2006. Petitioner reiterated its claim for the refund or issuance of its tax credit certificate for the amount of ₱11,063,866.67 representing the erroneously paid DST for several repurchase agreements it had executed with the BSP.

THE CTA SECOND DIVISION RULING[4]

The CTA Division found that the evidence adduced by petitioner showed that the latter had duly executed various repurchase agreements with the BSP from 23 March 2004 to 23 December 2004. It further held that the repurchase agreements were exempt from the imposition of the DST pursuant to Section 9 of Republic Act (R.A.) No. 9243,[5] which provides:

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[4] *Id.* at 93-112; CTA Second Division Decision dated 13 July 2009, penned by Associate Justice Erlinda P. Uy and concurred in by Associate Justices Juanito C. Castañeda, Jr. and Olga Palanca-Enriquez.

[5] An Act Rationalizing the Provisions on the Documentary Stamp Tax of the National Internal Revenue Code of 1997, as amended, and for other purposes.

SECTION 9. Section 199 of the National Internal Revenue Code of 1997, as amended is hereby further amended to read as follows:

> SEC. 199. *Documents and Papers Not Subject to Stamp Tax.* — The provisions of Section 173 to the contrary notwithstanding, the following instruments, documents and papers shall be exempt from the documentary stamp tax:
>
> x x x x x x x x x
>
> (h) Derivatives: *Provided*, That for purposes of this exemption, repurchase agreements and reverse repurchase agreements shall be treated similarly as derivatives.
>
> x x x x x x x x x
>
> (1) All contracts, deeds, documents and transactions related to the conduct of business of the Banko Sentral ng Pilipinas.

Although the DST on the repurchase agreements were paid, the CTA Division found that petitioner had substantiated only ₱10,633,881.20. Out of that amount, ₱3,072,521.60 was barred by prescription, and only the claim for the remaining ₱7,561,359.60 fell within the two-year prescriptive period. The CTA Division reckoned the counting of the two-year period from the date of the Confirmation Letters of the repurchase agreements. Considering that petitioner filed its administrative claim on 12 May 2006 and the judicial claim on 18 May 2006, the DST paid on the repurchase agreements earlier than 18 May 2004 was disallowed due to prescription.

THE CTA *en banc* RULING[6]

The CTA *en banc* ruled that insofar as the taxpayers using the DS metering machine were concerned, the DST was deemed paid upon the purchase of documentary stamps for loading and reloading on the DS metering machine, through the filing of the DST Declaration under BIR Form No. 2000. Thus, the two-year prescriptive period for taxpayers using DS metering machine started to run from the date of filing of the DST Declaration under BIR Form No. 2000, and not from the date appearing on

[6] *Supra* note 2.

the documentary stamp imprinted through the DS metering machine. Consequently, the refundable amount was further reduced to ₱5,238,495.40 representing the erroneously paid DST that had not yet been barred by prescription.

ISSUE

The arguments raised by petitioner boil down to the sole issue of whether the date of imprinting the documentary stamps on the document or the date of purchase of documentary stamps for loading and reloading on the DS metering machine should be deemed as payment of the DST contemplated under Section 200 (D) of the NIRC for the purpose of counting the two-year prescriptive period for filing a claim for a refund or tax credit.

THE COURT'S RULING

Under Section 229[7] of the NIRC of 1997, the claim for a refund of erroneously paid DST must be within two years from the date of payment of the DST. When read in conjunction with Section 200[8] of the same Code, Section 229 shows that payment

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[7] SEC. 229. *Recovery of Tax Erroneously or Illegally Collected*. — No suit or proceeding shall be maintained in any court for the recovery of any national internal revenue tax hereafter alleged to have been erroneously or illegally assessed or collected, or of any penalty claimed to have been collected without authority, or of any sum alleged to have been excessively or in any manner wrongfully collected, until a claim for refund or credit has been duly filed with the Commissioner; but such suit or proceeding may be maintained, whether or not such tax, penalty, or sum has been paid under protest or duress.

In any case, no such suit or proceeding shall be filed **after the expiration of two (2) years from the date of payment of the tax** or penalty **regardless of any supervening cause that may arise after payment**: *Provided, however*, That the Commissioner may even without a written claim therefor, refund or credit any tax, where on the face of the return upon which payment was made, such payment appears clearly to have been erroneously paid. (Emphasis supplied)

[8] SEC. 200. *Payment of Documentary Stamp Tax*. —

(A) *In General*. — The provisions of Presidential Decree No. 1045 notwithstanding, any person liable to pay documentary stamp tax upon any document subject to tax under Title VII of this Code shall file a tax return and pay the tax in accordance with the rules and regulations to be prescribed by the Secretary of Finance, upon recommendation of the Commissioner.

of the DST may be done by imprinting the stamps on the taxable document through a DS metering machine, in the manner as may be prescribed by rules and regulations.

In relation thereto, the BIR has issued the following regulations:

REVENUE REGULATIONS NO. 05-97[9]

SUBJECT: *Revised Regulations Prescribing the New Procedure on the Purchase and Affixture of Documentary Stamp on Taxable Documents/Transactions*

x x x x x x x x x

SECTION 4. *New Procedure on Purchase of a Documentary Stamp for Use in BIR Registered Metering Machine*. — Purchase of Documentary Stamps for future applications not covered by Sections 2 and 3 of these Regulations shall be allowed only to persons authorized to use BIR Registered Metering Machine under Revenue Regulations No. 7-92, dated September 7, 1992.

(B) *Time for Filing and Payment of the Tax*. — Except as provided by rules and regulations promulgated by the Secretary of Finance, upon recommendation of the Commissioner, the tax return prescribed in this Section shall be filed within ten (10) days after the close of the month when the taxable document was made, signed, issued, accepted, or transferred, and the tax thereon shall be paid at the same time the aforesaid return is filed.

(C) *Where to File*. — Except in cases where the Commissioner otherwise permits, the aforesaid tax return shall be filed with and the tax due shall be paid through the authorized agent bank within the territorial jurisdiction of the Revenue District Office which has jurisdiction over the residence or principal place of business of the taxpayer. In places where there is no authorized agent bank, the return shall be filed with the Revenue District Officer, collection agent, or duly authorized Treasurer of the city or municipality in which the taxpayer has his legal residence or principal place of business.

(D) *Exception*. — In lieu of the foregoing provisions of this Section, the tax may be paid either through purchase and actual affixture; or by imprinting the stamps through a documentary stamp metering machine, on the taxable document, in the manner as may be prescribed by rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner. (Emphasis supplied)

[9] Dated 31 January 1997.

SECTION 5. *Documentary Stamp Tax Declaration*. — The following persons are required to accomplish and file a documentary stamp tax declaration under BIR Form 2000;

x x x x x x x x x

5.3 **Any person duly authorized to use DST Metering Machine shall file a DST Declaration under BIR Form No. 2000 each time documentary stamps are purchased for loading or reloading on the said machine.** This declaration shall be filed with any duly Authorized Agent Bank, Revenue Recollection Officer, or duly authorized City or Municipal Treasurer in the Philippines. The amount of documentary stamps to be reloaded on the Metering Machine should be equal to the amount of documentary stamps consumed from previous purchase. The details of usage or consumption of documentary stamps should be indicated on the declaration.

On the basis of these provisions, the CTA *en banc* ruled in this case that payment of the DST was done when the documentary stamps were loaded/reloaded on the DS metering machine and the corresponding DST Declaration was filed. Thus, the two-year prescriptive period for the claim for a refund of petitioner's erroneously paid DST was reckoned from the date the DS metering machine was reloaded.

The CTA *en banc*, in ruling on the particular issue of prescription, said that RR No. 05-97 should govern the payment of the DST considering that petitioner is a DS metering machine user. The DST is deemed paid upon the purchase of documentary stamps for loading/reloading on the DS metering machine through the filing of the DST Declaration (BIR Form No. 2000) as required by the said regulation.

We do not agree.

The DS metering machine was developed and used for businesses with material DST transactions like banks and insurance companies for their regular transactions. These businesses authorized by the BIR may load documentary stamps on their DS metering machine in accordance with the rules and regulations. In other words, this system allows advanced payment of the DST for future applications.

However, for purposes of determining the prescriptive period for a claim for a refund or tax credit, this Court finds it imperative to emphasize the nature of the DST.

A DST is a tax on documents, instruments, loan agreements, and papers evidencing the acceptance, assignment, sale or transfer of an obligation, right or property incident thereto. The DST is actually an excise tax, because it is imposed on the transaction rather than on the document.[10]

The rule is that the date of payment is when the tax liability falls due. Jurisprudence has made exceptions for reckoning the period of prescription from the actual date of payment of tax by instead reckoning that date from the filing of the final adjusted returns, i.e., income tax and other withholding taxes.[11] These exceptions are nevertheless grounded on the same rationale that payment of the tax is deemed made when it falls due.

In *Gibbs v. Commissioner of Internal Revenue*,[12] this Court ruled that "[p]ayment is a mode of extinguishing obligations (Art. 1231, Civil Code) and it means not only the delivery of money but also the performance, in any other manner, of an obligation. A taxpayer, resident or non-resident, does so not really to deposit an amount to the Commissioner of Internal Revenue, but, in truth, to perform and extinguish his tax obligation for the year concerned. In other words, he is paying his tax liabilities for that year. Consequently, a taxpayer whose income is withheld at source will be deemed to have paid his tax liability when the same falls due at the end of the tax year. It is from this latter date then, or when the tax liability falls due, that the two-year prescriptive period under Section 306 (now part of

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[10] *Commissioner of Internal Revenue v. First Express Pawnshop Co., Inc.*, 607 Phil. 227 (2009).

[11] *Commissioner of Internal Revenue v. TMX Sales, Inc.*, G.R. No. 83736, 15 January 1992, 205 SCRA 184; *Philippine Bank of Communications v. Commissioner of Internal Revenue*, 361 Phil. 916 (1999); *ACCRA Investments Corp. v. Court of Appeals*, G.R. No. 96322, 20 December 1991, 204 SCRA 957.

[12] 122 Phil. 714 (1965).

Section 230) of the Revenue Code starts to run with respect to payments effected through the withholding tax system." The aforequoted ruling presents two alternative reckoning dates: (1) the end of the tax year; and (2) the date when the tax liability falls due.[13]

Applying the same rationale to this case, the payment of the DST and the filing of the DST Declaration Return upon loading/reloading of the DS metering machine must not be considered as the "date of payment" when the prescriptive period to file a claim for a refund/credit must commence. For DS metering machine users, the payment of the DST upon loading/reloading is merely an advance payment for future application. The liability for the payment of the DST falls due only upon the occurrence of a taxable transaction. Therefore, it is only then that payment may be considered for the purpose of filing a claim for a refund or tax credit. Since actual payment was already made upon loading/reloading of the DS metering machine and the filing of the DST Declaration Return, the date of imprinting the documentary stamp on the taxable document must be considered as the date of payment contemplated under Section 229 of the NIRC.

This interpretation is more logical and consistent with Section 200 (D) that "the tax may be paid x x x by imprinting the stamps through a documentary stamp metering machine, on the taxable document, in the manner as may be prescribed by rules and regulations to be promulgated by the Secretary of Finance, upon recommendation of the Commissioner." The policies issued by the Secretary of Finance were made to regulate the use of the DS metering machine, but they cannot be interpreted to limit the prescriptive period for claims for a refund. In fact, the details attached to the DST Declaration Return are those of usage or consumption of the DST from the previous purchase. It is in effect a final return of the DST previously purchased, but advances the payment for the new purchase. Thus, to cure the ambiguity caused by the uniqueness of this system, we must

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[13] *ACCRA Investments Corp. v. Court of Appeals, supra.*

bear in mind the nature of the tax for the purpose of determining prescription.

Applying the foregoing to this case, the DST fell due when petitioner entered into repurchase agreements with the BSP and the corresponding documentary stamps were imprinted on the Confirmation Letters. Considering, however, that this transaction is exempt from tax, petitioner is entitled to a refund. The prescriptive period for the filing of a claim for a refund or tax credit under Section 229 must be reckoned from the date when the documentary stamps were imprinted on the Confirmation Letters.

Consequently, the CTA Division's counting of the prescriptive period from the date when the documentary stamps were imprinted on the Confirmation Letters of the repurchase agreements is more in accord with the rationale of Section 229. Since we also find that the evidence presented by petitioner was carefully considered, we find no reason to overturn the factual finding of the CTA Division. Accordingly, the Decision in C.T.A. Case No. 7486 dated 13 July 2009[14] must be reinstated.

WHEREFORE, premises considered, the Petition is **PARTLY GRANTED**. The CTA *en banc* Decision dated 13 May 2010 and Resolution dated 14 October 2010 in C.T.A. EB Nos. 555 and 556 are hereby **SET ASIDE**, and the Decision in C.T.A. Case No. 7486 dated 13 July 2009 is **REINSTATED**.

SO ORDERED.

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

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[14] *Rollo,* pp. 93-112.

THIRD DIVISION

[G.R. No. 200072. June 20, 2016]

PHILIP YU, *petitioner, vs.* **VIVECA LIM YU,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; PROCEDURE IN THE COURT OF APPEALS; ANNULMENT OF JUDGMENT; DISCUSSED. — Annulment of judgment is a recourse equitable in character, allowed only in exceptional cases as where there is no available or other adequate remedy. Section 2, Rule 47 of the 1997 Rules of Civil Procedure provides that judgments may be annulled only on grounds of extrinsic fraud and lack of jurisdiction or denial of due process. The objective of the remedy of annulment of judgment or final order is to undo or set aside the judgment or final order, and thereby grant to the petitioner an opportunity to prosecute his cause or to ventilate his defense.

2. ID.; ID.; ID.; GROUNDS; LACK OF JURISDICTION AND EXTRINSIC FRAUD; DISCUSSED.— If the ground relied upon is lack of jurisdiction, the entire proceedings are set aside without prejudice to the original action being refiled in the proper court. If the judgment or final order or resolution is set aside on the ground of extrinsic fraud, the CA may on motion order the trial court to try the case as if a timely motion for new trial had been granted therein. Extrinsic fraud exists when there is a fraudulent act committed by the prevailing party outside of the trial of the case, whereby the defeated party was prevented from presenting fully his side of the case by fraud or deception practiced on him by the prevailing party. Fraud is extrinsic where the unsuccessful party had been prevented from exhibiting fully his case, by means of fraud or deception, as by keeping him away from court, or by a false promise of a compromise; or where the defendant never had knowledge of the suit, being kept in ignorance by the acts of the plaintiff; or where an attorney fraudulently or without authority assumes to represent a party and connives at his defeat; these and similar cases which show that there has never been a real contest in the trial or hearing of the case are reasons for which a new suit may be sustained to set aside and annul the former judgment and open the case for a new and fair hearing.

Ultimately, the overriding consideration is that the fraudulent scheme of the prevailing litigant prevented a party from having his day in court.

3. ID.; CIVIL PROCEDURE; EXTRATERRITORIAL SERVICE; INSTANCES WHEN SUMMONS BY EXTRATERRITORIAL SERVICE MAY BE SERVED; MODES WHERE EXTRATERRITORIAL SERVICE OF SUMMONS MAY BE EFFECTED.— Summons is a writ by which the defendant is notified of the action brought against him. Through its service, the court acquires jurisdiction over his person. As a rule, Philippine courts cannot try any case against a defendant who does not reside and is not found in the Philippines because of the impossibility of acquiring jurisdiction over his person unless he voluntarily appears in court. Section 15, Rule 14 of the Rules of Court, however, enumerates the actions *in rem* or *quasi in rem* when Philippine courts have jurisdiction to hear and decide the case because they have jurisdiction over the *res*, and jurisdiction over the person of the non-resident defendant is not essential. x x x Thus, under Section 15 of Rule 14, a defendant who is a non-resident and is not found in the country may be served with summons by extraterritorial service in four instances: (1) *when the action affects the personal status of the plaintiff*; (2) when the action relates to, or the subject of which is property within the Philippines, in which the defendant has or claims a lien or interest, actual or contingent; (3) when the relief demanded consists, wholly or in part, in excluding the defendant from any interest in property located in the Philippines; or (4) when the property of the defendant has been attached within the Philippines. In these instances, extraterritorial service of summons may be effected under any of three modes: (1) by personal service out of the country, with leave of court; (2) *by publication and sending a copy of the summons and order of the court by registered mail to the defendant's last known address*, also with leave of court; or (3) by any other means the judge may consider sufficient.

4. ID.; ID.; ID.; ID.; ID.; BY PUBLICATION AND SENDING A COPY OF THE SUMMONS AND ORDER OF THE COURT BY REGISTERED MAIL TO THE DEFENDANT'S LAST KNOWN ADDRESS; STRICT COMPLIANCE IS REQUIRED.— In *Acance v. Court of Appeals*, x x x the Court ruled that "the failure to strictly comply correctly with the

requirements of the rules regarding the mailing of copies of the summons and the order for its publication is a fatal defect in the service of summons." Citing *Dulap, et al. v. Court of Appeals, et al*., it elucidated as follows: It is the duty of the court to require the fullest compliance with all the requirements of the statute permitting service by publication. Where service is obtained by publication, the entire proceeding should be closely scrutinized by the courts and a strict compliance with every condition of law should be exacted. Otherwise great abuses may occur, and the rights of persons and property may be made to depend upon the elastic conscience of interested parties rather than the enlightened judgment of the court or judge. Indeed, due process requires that those with interest to the thing in litigation be notified and given an opportunity to defend those interests. When defendants are deprived of such opportunity to duly participate in, and even be informed of, the proceedings, due to a deceitful scheme employed by the prevailing litigant, as in this case, there exists a violation of their due process rights. Any judgment issued in violation thereof necessarily suffers a fatal infirmity for courts, as guardians of constitutional rights cannot be expected to deny persons their due process rights while at the same time be considered as acting within their jurisdiction.

APPEARANCES OF COUNSEL

Aguirre Abaño Pamfilo Paras Pineda & Agustin Law Offices for petitioner.

Zamora Poblador Vasquez & Bretaña for respondent.

D E C I S I O N

PERALTA, *J.*:

Before the Court is a petition for review on *certiorari* under Rule 45 of the Rules of Court seeking to reverse and set aside the Decision[1] dated September 30, 2011 and Resolution[2] dated

[1] Penned by Associate Justice Japar B. Dimaampao, with Associate Justices Antonio L. Villamor and Jane Aurora C. Lantion, concurring; *rollo*, pp. 38-48.

[2] *Id.* at 50-51.

January 5, 2012 of the Court of Appeals (*CA*) in CA-G.R. SP No. 111414 which granted the petition for the annulment of the Decision[3] dated August 20, 2008 of the Regional Trial Court (*RTC*), Fourth Judicial Region, Branch 10, Balayan, Batangas.

The factual antecedents are as follows.

Petitioner Philip Yu and respondent Viveca Lim Yu were married on November 18, 1984. They had four children and maintained their conjugal home at Room 1603 Horizon Condominium, Meralco Avenue, Pasig, Metro Manila. In 1993, however, Viveca left the conjugal home with their four children and filed a Petition for Legal Separation against Philip before the RTC of Pasig City, Branch 261, for repeated physical violence, grossly abusive conduct against her and the children, sexual infidelity, and attempt on her life. She prayed for permanent custody over the children, support, and the dissolution and distribution of their conjugal partnership valued at approximately ₱5,000,000.00.[4]

Philip denied the accusations against him claiming that it was Viveca who actually attacked him a few times. He narrated that his marriage to Viveca was arranged according to the Chinese tradition and that it was much later when he discovered Viveca's excessively jealous, cynical, and insecure behaviour. He countered that since she abandoned the family home, taking their four children away, she was not entitled to support. She was, likewise, unqualified to become the administrator of their conjugal funds, which had outstanding obligations. Thus, Philip prayed in his Counterclaim for the declaration of nullity of their marriage due to Viveca's psychological incapacity, rendering her incapable of complying with her marital obligations.[5]

On April 24, 2007, however, Philip filed a Motion to Withdraw Counterclaim for Declaration of Nullity of Marriage revealing that he no longer had the desire to have his marriage declared

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[3] Penned by Judge Cristino E. Judit; *id.* at 66-76.

[4] *Id.* at 39.

[5] *Id.*

void. Despite Viveca's fervent opposition, the Pasig RTC granted the motion.[6]

On July 1, 2009, the RTC of Pasig City rendered a Decision[7] dismissing the Petition for Legal Separation in the following wise:

> **From the facts obtaining in this case, the Court finds that the parties are in *pari delicto* warranting a denial of this petition.** Respondent's illicit relationship with Linda Daet and his repeated verbal and physical abuses towards petitioner come within the purview of pars. 8 and 1 of Art. 55 of the Family Code of the Philippines whereas petitioner's unjustifiable abandonment bringing with her their children without the knowledge and consent of respondent and her assaulting respondent with a 10-inch knife are those contemplated in pars. 10 and 9 of the same code.
>
> **Notwithstanding the foregoing Court's findings, the same becomes moot with the declaration of nullity of the marriage of the parties, on the ground of the psychological incapacity of petitioner, Viveca Yu, pursuant to the Decision of Branch 10, RTC of Balayan, Batangas, which attained its finality on October 13, 2008.** Since the marriage of the parties was declared a nullity there is, therefore, no legal basis to issue a decree of legal separation to the spouses whose marriage has already been declared of no force and effect.
>
> WHEREFORE, premises considered, this petition should be, as it is hereby DISMISSED, for lack of merit.
>
> SO ORDERED.[8]

Claiming to be completely unaware of the proceedings before the RTC of Balayan, Batangas, nullifying her marriage with Philip on the ground of her psychological incapacity, Viveca filed a Petition for Annulment of Judgment[9] before the CA seeking to annul the Decision dated August 20, 2008 of said court.

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[6] *Id.* at 40.

[7] *Id.* at 219-225.

[8] *Id.* at 225. (Emphasis ours)

[9] *Id.* at 80-107.

According to Viveca, jurisdiction over her person did not properly vest since she was not duly served with Summons. She alleged that she was deprived of her right to due process when Philip fraudulently declared that her address upon which she may be duly summoned was still at their conjugal home, when he clearly knew that she had long left said address for the United States of America. Viveca likewise maintained that had Philip complied with the legal requirements for an effective service of summons by publication, she would have been able to rightly participate in the proceedings before the Batangas court.

On September 30, 2011, the CA granted Viveca's petition ruling as follows:

> The *Petition for Declaration of Nullity of Marriage* affecting the personal status of private respondent is in the nature of an action *in rem*. This is so because the term "personal status" includes family relations, particularly the relations between husband and wife.
>
> With this premise in mind, it is beyond cavil that the court *a quo* was justified in resorting to *Summons* by publication. Petitioner is a non-resident defendant who left the Philippines with her children way back in 1997 and has now been living in the United States of America. The court *a quo* validly acquired jurisdiction to hear and decide the case given that as adumbrated, in a proceeding in rem, 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*.
>
> **Still and all, there is more to this case than meets the eye. Private respondent knew that petitioner left the conjugal home on account of their marital difficulties.** She temporarily resided at her parent's house in Greenhills, Mandaluyong, Metro Manila. **But during the pendency of the *Legal Separation* case, she lived in Quezon City. This much was revealed by private respondent himself in the *Amended Answer with Counterclaim* filed in the *Legal Separation* suit —**
>
> "10. **After abandoning the conjugal abode on 24 August 1993, petitioner resided at her parent's house in Richbelt Condominium, Annapolis Street, Greenhills, Mandaluyong, Metro Manila, until she moved to her present address in October 1993.** x x x

This knowledge notwithstanding, private respondent declared before the court *a quo* that the "last known address" of petitioner was still her conjugal abode at Unit 1603 Horizon Condominium, Meralco Avenue, Ortigas, Pasig City. While private respondent knew that it was well-nigh impossible for petitioner to receive *Summons* and other court notices at their former conjugal home, still, he supplied the aforesaid address.

We cannot turn a blind eye to the fact that private respondent moved for the dismissal of his counterclaim for nullity of marriage in the Legal Separation case in 2007 as he had by then had the sinister motive of filing the *Petition for Declaration of Nullity of Marriage* before the court *a quo*. Private respondent knew that if he breathed a word on the filing and pendency of the latter *Petition*, petitioner would vigorously resist it as revealed by her tenacious opposition in the proceedings before the RTC-Pasig.

The deceitful scheme employed by private respondent deprived petitioner of her constitutional right to due process which ensued in her failure to participate in the proceedings before the court *a quo*. To Our mind, this compelling justification warrants the annulment of judgement.[10]

In its Resolution dated January 5, 2012, the CA denied Philip's Motion for Reconsideration finding no cogent and persuasive reason to revise or reverse its Decision. Hence, this petition invoking the following grounds:

I.

THE COURT OF APPEALS ERRED WHEN IT SET ASIDE THE FINAL AND EXECUTORY DECISION OF THE COURT A QUO DESPITE ITS ACCURATE FINDINGS THAT THE COURT A QUO PROPERLY ACQUIRED JURISDICTION OVER THE ACTION IN REM THROUGH SUMMONS BY PUBLICATION.

II.

THE PUBLICATION OF THE ORDER OF THE COURT A QUO, SUMMONS, THE COMPLAINT AS WELL AS THE DECISION RENDERED THEREIN IS NOTICE TO THE WHOLE WORLD INCLUDING RESPONDENT. RESPONDENT WAS THEREFORE

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[10] *Id.* at 43-45. (Emphasis ours)

CONSTRUCTIVELY NOTIFIED OF THE PROCEEDINGS AND WAS NOT DENIED DUE PROCESS HAVING BEEN DULY NOTIFIED BY PUBLICATION.

III.

RESPONDENT HAS BEEN DOMICILED IN THE UNITED STATES OF AMERICA FOR MORE THAN TEN (10) YEARS AND WHOSE ADDRESS IS UNKNOWN TO PETITIONER. AS FAR AS PETITIONER IS CONCERNED, UNIT 1603 HORIZON CONDOMINIUM, MERALCO AVENUE, PASIG CITY IS THE LAST KNOWN ADDRESS OF RESPONDENT, BEING THE CONJUGAL HOME.

IV.

PETITIONER IS CURRENTLY NOT A RESIDENT OF THE CONJUGAL HOME.

V.

THE OFFICE OF THE SOLICITOR GENERAL AND/OR THE OFFICE OF THE CITY PROSECUTOR OF BALAYAN, BATANGAS, APPEARED AS COUNSEL FOR THE STATE AND FULLY PROTECTED THE INTEREST OF THE STATE INCLUDING THE INTEREST OF RESPONDENT.

VI.

PETITIONER CANNOT BE FAULTED FOR MOVING FOR THE WITHDRAWAL OF HIS COUNTER-CLAIM FOR DECLARATION OF NULLITY OF MARRIAGE, WHICH IS ALLOWED BY SECTION 2, RULE 17 OF THE NEW RULES OF COURT AS AMENDED, AND SAID WITHDRAWAL WAS EVEN APPROVED BY THE RTC OF PASIG.

VII.

THE PETITION FOR ANNULMENT OF DECISION FILED BEFORE THE COURT OF APPEALS WAS DEFECTIVE AND NOT IN ACCORDANCE WITH RULE 47 OF THE NEW RULES OF COURT, AS AMENDED, FOR HAVING FAILED TO STATE AND ALLEGE THE DEFENSES THAT RESPONDENT HAS AGAINST PETITIONER.

VIII.

EVEN ASSUMING ARGUENDO THAT THE DEFENSES THAT ARE AVAILABLE TO RESPONDENT ARE THOSE THAT WERE

PRESENTED IN THE LEGAL SEPARATION CASE THAT WAS DISMISSED BY THE RTC OF PASIG CITY, SAID GROUNDS ONLY BOLSTER THE FACT THAT THE DECISION DATED AUGUST 20, 2008 OF THE RTC OF BALAYAN, BATANGAS, CORRECTLY NULLIFIED THE MARRIAGE DUE TO RESPONDENT'S PSYCHOLOGICAL INCAPACITY.

IX.

THE COURT OF APPEALS DID NOT OBSERVE AND FOLLOW SECTIONS 6 AND 7 OF RULE 47 OF THE REVISED RULES OF COURT, AS AMENDED.

In essence, Philip questions the appellate court's judgment of setting aside the decision of the Batangas RTC despite its own finding that said court validly acquired jurisdiction when Summons was duly served on Viveca by publication. He maintains that since service of summons was properly accomplished by publication thereof in a newspaper of general circulation as well as its personal service on Viveca at her last known address, it logically follows that any and all resolutions rendered by the trial court are valid and binding on the parties. Thus, the decision of the Batangas court which acquired jurisdiction over the *res* should be immutable as it is already final and executory.[11]

Philip also questions the appellate court's choice of supporting jurisprudence alleging them to be inapplicable to the instant case. He asserts that the teachings in *Spouses Belen v. Judge Chavez*,[12] *Biaco v. Philippine Countryside Rural Bank*,[13] and *Ancheta v. Judge Ancheta*[14] fail to be instructive simply because they involve substituted service of summons whereas the mode of service in this case is by publication. Philip further asserts that said jurisprudential doctrines even teach us that in proceedings *in rem* or *quasi in rem*, such as the case at hand, jurisdiction over the defendant is not a prerequisite to confer jurisdiction

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[11] *Id.* at 16.

[12] 573 Phil. 58 (2008).

[13] 544 Phil. 45 (2007).

[14] 468 Phil. 900 (2004).

on the court for as long as the court acquires jurisdiction over the *res*. Thus, summons must be served upon the defendant not for the purpose of vesting the court with jurisdiction but merely for satisfying the due process requirements, which in this case was duly complied with when Viveca, who is a non-resident, not found in the Philippines, was served with summons by publication.[15]

Hence, Philip faults the CA in finding that due to his bad faith in maliciously supplying the Batangas court with an erroneous address wherein Viveca may supposedly be summoned, she was deprived of her constitutional right to due process, warranting the annulment of the subject judgment. According to him, as far as he was concerned, Viveca's last known address was their conjugal home. This is because the addresses supplied in the proceedings of the Legal Separation case before the RTC of Pasig City were merely temporary in nature.[16] Philip recalled that when Viveca left their conjugal abode on August 24, 1993, she temporarily stayed at her parents' house in Greenhills, Mandaluyong, for less than two months then, thereafter, stayed at her temporary residence at Domingo Street, Cubao, Quezon City, in October 1993. Considering that said addresses were merely temporary, Philip claims that he should not be faulted for using their conjugal abode as Viveca's "last known address." According to him, what is mandated by the rules as the defendant's "last known address" is his or her last known *permanent* address, and certainly not one of temporary nature.[17]

The petition is bereft of merit.

Annulment of judgment is a recourse equitable in character, allowed only in exceptional cases as where there is no available or other adequate remedy. Section 2, Rule 47 of the 1997 Rules of Civil Procedure provides that judgments may be annulled only on grounds of extrinsic fraud and lack of jurisdiction or

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[15] *Rollo*, p. 18.

[16] *Id.* at 23.

[17] *Id.* at 25.

denial of due process.[18] The objective of the remedy of annulment of judgment or final order is to undo or set aside the judgment or final order, and thereby grant to the petitioner an opportunity to prosecute his cause or to ventilate his defense. If the ground relied upon is lack of jurisdiction, the entire proceedings are set aside without prejudice to the original action being refiled in the proper court. If the judgment or final order or resolution is set aside on the ground of extrinsic fraud, the CA may on motion order the trial court to try the case as if a timely motion for new trial had been granted therein.[19]

Extrinsic fraud exists when there is a fraudulent act committed by the prevailing party outside of the trial of the case, whereby the defeated party was prevented from presenting fully his side of the case by fraud or deception practiced on him by the prevailing party.[20] Fraud is extrinsic where the unsuccessful party had been prevented from exhibiting fully his case, by means of fraud or deception, as by keeping him away from court, or by a false promise of a compromise; or where the defendant never had knowledge of the suit, being kept in ignorance by the acts of the plaintiff; or where an attorney fraudulently or without authority assumes to represent a party and connives at his defeat; these and similar cases which show that there has never been a real contest in the trial or hearing of the case are reasons for which a new suit may be sustained to set aside and annul the former judgment and open the case for a new and fair hearing. Ultimately, the overriding consideration is that the fraudulent scheme of the prevailing litigant prevented a party from having his day in court.[21]

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[18] *Biaco v. Philippine Countryside Rural Bank, supra* note 13, at 53.

[19] *Pinausukan Seafood House, Roxas Boulevard, Inc. v. Far East Bank & Trust Company, now Bank of the Philippine Islands, and Hector I. Galura*, G.R. No. 159926, January 20, 2014, 714 SCRA 226, 241.

[20] *Alba v. Court of Appeals*, 503 Phil. 451, 462 (2005).

[21] *Pinausukan Seafood House, Roxas Boulevard, Inc. v. Far East Bank & Trust Company, now Bank of the Philippine Islands, and Hector I. Galura, supra* note 19, at 243.

In the present case, We find that Viveca was completely prevented from participating in the Declaration of Nullity case because of the fraudulent scheme employed by Philip insofar as the service of summons is concerned.

Summons is a writ by which the defendant is notified of the action brought against him. Through its service, the court acquires jurisdiction over his person.[22] As a rule, Philippine courts cannot try any case against a defendant who does not reside and is not found in the Philippines because of the impossibility of acquiring jurisdiction over his person unless he voluntarily appears in court. Section 15, Rule 14 of the Rules of Court, however, enumerates the actions *in rem* or *quasi in rem* when Philippine courts have jurisdiction to hear and decide the case because they have jurisdiction over the *res*, and jurisdiction over the person of the non-resident defendant is not essential.[23] Said section provides:

> Section 15. Extraterritorial service. — **When the defendant does not reside and is not found in the Philippines, and the action affects the personal status of the plaintiff** or relates to, or the subject of which is, property within the Philippines, in which the defendant has or claims a lien or interest, actual or contingent, or in which the relief demanded consists, wholly or in part, in excluding the defendant from any interest therein, or the property of the defendant has been attached within the Philippines, service may, by leave of court, be effected out of the Philippines by personal service as under section 6; or **by publication in a newspaper of general circulation in such places and for such time as the court may order, in which case a copy of the summons and order of the court shall be sent by registered mail to the last known address of the defendant, or in any other manner the court may deem sufficient.** Any order granting such leave shall specify a reasonable time, which shall not be less than sixty (60) days after notice, within which the defendant must answer. (17a)

Thus, under Section 15 of Rule 14, a defendant who is a non-resident and is not found in the country may be served with

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[22] *Romualdez-Licaros v. Licaros*, 449 Phil. 824, 833 (2003).

[23] *Macasaet v. Co, Jr.*, G.R. No. 156759, June 5, 2013, 697 SCRA 187, 200.

summons by extraterritorial service in four instances: (1) *when the action affects the personal status of the plaintiff*; (2) when the action relates to, or the subject of which is property within the Philippines, in which the defendant has or claims a lien or interest, actual or contingent; (3) when the relief demanded consists, wholly or in part, in excluding the defendant from any interest in property located in the Philippines; or (4) when the property of the defendant has been attached within the Philippines.[24]

In these instances, extraterritorial service of summons may be effected under any of three modes: (1) by personal service out of the country, with leave of court; (2) *by publication and sending a copy of the summons and order of the court by registered mail to the defendant's last known address*, also with leave of court; or (3) by any other means the judge may consider sufficient.[25]

In the present case, it is undisputed that when Philip filed the Petition for Declaration of Nullity of Marriage, an action which affects his personal status, Viveca was already residing in the United States of America. Thus, extraterritorial service of summons under Section 15, Rule 14 of the Rules of Court is the proper mode by which summons may be served on Viveca, a non-resident defendant who is not found in the Philippines. In compliance therewith, Philip claims that Viveca was duly served summons because: (1) copies of the summons, complaint, and order of the Batangas court were published in *Tempo*, a newspaper of general circulation on March 27, 2008 and April 3, 2008;[26] and (2) the sheriff served copies of the summons, complaint, and order of the Batangas court on Viveca at their conjugal home in Pasig City, her last known address.[27] Thus, he contends that the second mode of extraterritorial service of summons mentioned above — by publication and sending a copy

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[24] *Romualdez-Licaros v. Licaros*, *supra* note 22, at 835.

[25] *Id.*

[26] *Rollo*, p. 11.

[27] *Id.* at 12.

of the summons and order of the court by registered mail to the defendant's last known address — was sufficiently complied with. The Court finds, however, that such service of summons on their conjugal home address cannot be deemed compliant with the requirements of the rules and is even tantamount to deception warranting the annulment of the Batangas court's judgment.

Philip fervently asserts the propriety of their conjugal home address as Viveca's "last known address," well within the true meaning and intent of the rules. But as borne by the records of the instant case, not only is he mistaken, factual considerations herein belie his claims of good faith. First and foremost, it is undisputed that the parties herein are also parties in a Legal Separation case, previously filed by Viveca way back in 1994. There was, in said case, a disclosure of their basic personal information, which customarily includes their respective local addresses, wherein they may be served with court papers. In fact, as pointed out by the appellate court, Philip knew that Viveca had already left their conjugal home and moved to a different local address for purposes of the pendency of the Legal Separation case, as shown by his stipulation in his Amended Answer with Counterclaim that "after abandoning the conjugal abode on 24 August 1993, petitioner resided at her parent's house in Richbelt Condominium, Annapolis Street, Greenhills, Mandaluyong, Metro Manila, until she moved to her present address in October 1993." Thus, Philip cannot be allowed to feign ignorance to the fact that Viveca had already intentionally abandoned their conjugal abode and that of all the addresses that Viveca resided at, their conjugal home in Horizon Condominium is her least recent address. In fact, it may very well be considered as the address she is least likely to be found considering the circumstances in which she left the same. Note that from the very beginning of the Legal Separation case in 1994, all the way up until the promulgation by the Pasig RTC of its decision thereon in 2009, there is no showing that Viveca had ever received any document in relation to said case, nor is there any proof that Philip had ever sent any pertinent file to Viveca, at the conjugal address. There is, therefore, no reason

for Philip to assume, in good faith, that said address is in truth and in fact Viveca's "last known address" at which she may receive summons. His contention that the rules require the defendant's "last known address" to be of a permanent, and not of a temporary nature, has no basis in law or jurisprudence.

In addition, the Court is curious as to why Philip filed the instant Petition for Declaration of Nullity of Marriage[28] before the RTC of Batangas City on February 15, 2008 when less than a year before filing the same, he had motioned the RTC of Pasig City on April 24, 2007 to withdraw his counterclaim for the same declaration of nullity of marriage.[29] In his petition before the Court, Philip explained that he withdrew his counterclaim in the Legal Separation case in his "desire to explore the possibility of having a so-called 'universal settlement' of all the pending cases with respondent and her relatives for the sake of his love for his four (4) children."[30] Yet, in an apparent, direct contravention of this so-called "desire," he filed an identical action which sought the same nullity of his marriage with Viveca. Thus, while there may be no outright admission on Philip's part as to a sinister motive, his inconsistent actions effectively negate his claims of good faith.

It is interesting to note, moreover, that as pointed out by Viveca, Philip does not even reside in Batangas, the city of the court wherein he filed his Petition for Declaration of Nullity of Marriage. In a Certification[31] issued by Ricardo V. Bautista, Barangay Chairman of Poblacion 1, Calatagan, Batangas, it was categorically stated that "the name Philip Yu is not a resident of Barangay Poblacion 1, Calatagan, Batangas." Section 4 of A.M. No. 02-11-10-SC, otherwise known as the *Rule on Declaration of Absolute Nullity of Void Marriages and Annulment of Voidable Marriages*, which took effect on March 15, 2003, provides:

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[28] *Id.* at 52-60.

[29] *Id.* at 39.

[30] *Id.* at 27.

[31] *Id.* at 226.

Section 4. *Venue*. — **The Petition shall be filed in the Family Court of the province or city where the petitioner or the respondent has been residing for at least six months prior to the date of filing.** Or in the case of non-resident respondent, where he may be found in the Philippines, at the election of the petitioner.[32]

It is, therefore, evident that not only did Philip contradict his previous Motion to Withdraw his Counterclaim for the Declaration of Nullity of marriage, he even violated a basic mandate of law so as to be able to file the same action before a different court in a city he was not even a resident of.

Thus, while individually and in isolation, the aforementioned doubtful circumstances may not instantly amount to extrinsic fraud, these circumstances, when viewed in conjunction with each other, paint a deceitful picture which resulted in a violation of Viveca's constitutional right to due process. True, the service of summons in this case is not for the purpose of vesting the court with jurisdiction, but for the purpose of complying with the requirements of fair play or due process. But because of Philip's employment of deceptive means in the service of summons on Viveca, said purpose of satisfying the due process requirements was never accomplished. To this Court, when Philip declared before the Batangas court that Viveca's last known address was still their conjugal home with full and undisputed knowledge that she had already intentionally abandoned the same and had even established a more recent, local residence herein evinces a clear lack of good faith. As a result, Viveca never had knowledge of the filing of the Declaration of Nullity of Marriage suit, only finding out about the same when the Pasig City RTC had promulgated its decision on the Legal Separation case. It is clear, therefore, that because of the service of summons at the erroneous address, Viveca was effectively prevented from participating in the proceedings thereon.

In *Acance v. Court of Appeals*,[33] where the extraterritorial service of summons on the non-resident, US citizen, defendants

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[32] Emphasis supplied.

[33] 493 Phil. 676 (2005).

therein were held to be defective due to the absence of proof that the summons, complaint, and order of the court were duly served at their last known correct address, the Court ruled that "the failure to strictly comply correctly with the requirements of the rules regarding the mailing of copies of the summons and the order for its publication is a fatal defect in the service of summons."[34] Citing *Dulap, et al. v. Court of Appeals, et al.*,[35] it elucidated as follows:

> It is the duty of the court to require the fullest compliance with all the requirements of the statute permitting service by publication. Where service is obtained by publication, the entire proceeding should be closely scrutinized by the courts and a strict compliance with every condition of law should be exacted. Otherwise great abuses may occur, and the rights of persons and property may be made to depend upon the elastic conscience of interested parties rather than the enlightened judgment of the court or judge.[36]

Indeed, due process requires that those with interest to the thing in litigation be notified and given an opportunity to defend those interests.[37] When defendants are deprived of such opportunity to duly participate in, and even be informed of, the proceedings, due to a deceitful scheme employed by the prevailing litigant, as in this case, there exists a violation of their due process rights. Any judgment issued in violation thereof necessarily suffers a fatal infirmity for courts, as guardians of constitutional rights cannot be expected to deny persons their due process rights while at the same time be considered as acting within their jurisdiction.[38] This Court, therefore, deems as proper the annulment of the Batangas court's judgment issued without proper service of summons.

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[34] *Acance v. Court of Appeals, supra,* at 688.

[35] 149 Phil. 636 (1971).

[36] *Dulap, et al. v. Court of Appeals, supra,* at 649. (Citation omitted)

[37] *De Pedro v. Romasan Development Corporation,* G.R. No. 194751, November 26, 2014, 743 SCRA 52, 72.

[38] *Id.*

WHEREFORE, premises considered, the instant petition is **DENIED**. The assailed Decision dated September 30, 2011 and Resolution dated January 5, 2012 of the Court of Appeals in CA-G.R. SP No. 111414 are **AFFIRMED**.

SO ORDERED.

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

SECOND DIVISION

[G.R. No. 202830. June 20, 2016]

SPOUSES ADRIANO SALISE AND NATIVIDAD PAGUDAR, SPOUSES TEODORO VIRTUDAZO AND NECITAS SALISE, JEROME G. DIOLANTO, SPOUSES EULALIO D. DAMASING AND POTENCIANA LABIA, SPOUSES FRANCISCO AND SIMPLICIA BABAYA-ON, SPOUSES RUFINO BUTIHIN AND CECILIA CAGNO, SPOUSES EFITACIO G. PAMISA AND VIRGELIA VIRTUDAZO, DELFIN B. SARINAS, SPOUSES FELIPE C. VIRTUDAZO, JR. AND GRACE TUTO, SPOUSES ANGEL BARBOSA AND FLORENCIA SALISE, SPOUSES FRANKLIN AND LEONORA PAMISA, SPOUSES MARCELO MANIQUE AND CECILIA CARBON, LARRY PAMISA, SPOUSES ENRIQUE CARBON AND ERLINDA SOMO, SPOUSES WILFREDO A. JUANILO AND MINDA VILLARMIA, SPOUSES FELIX REQUILME AND CERINA SALVO, SPOUSES CARLITO FABE AND EMELITA MANGGANA, LUIBEN MAGTO, SPOUSES SERAFIN AND LILIA SURIGAO, SPOUSES HILARIO BACABIS AND RETIFICACION DABLO, SPOUSES REYNALDO S. SALUCOT AND ANECITA DESCALLAR, SPOUSES

HAGENIO PAUG AND EVELITA VIRTUDAZO, SPOUSES MAXIMO BORREZ AND VILMA SALISE, SPOUSES FELIMON V. SALVO, JR., EVA MACATOL and RITA V. SALVO, *petitioners, vs.* **DEPARTMENT OF AGRARIAN REFORM ADJUDICATION BOARD REGION X ADJUDICATOR ABETO SALCEDO, JR. and RICARDO GACULA,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; CIVIL PROCEDURE; MOTION FOR EXTENSION OF TIME TO COMPLY WITH COURT ORDER; MOTION NOT ACTED UPON IN DUE TIME IS DEEMED DENIED.—** [T]he facts of the case reveals that the real cause of the CA's dismissal of the petition for review was the petitioners' belated filing of their compliance with the CA's May 4, 2012 resolution. [I]n the assailed May 4, 2012 CA resolution, the petitioners x x x were directed to submit competent evidence of identity that the notarization required, within ten (10) days from May 16, 2012 – the date of petitioners' receipt of the resolution, or until May 31, 2012. [P]etitioners' counsel requested an extension of twenty (20) more days from March 25, 2012, or until June 15, 2012, within which to submit proof of the petitioners-affiants' identities. But the petitioners' motion for extension of time was not acted upon by the CA. The petitioners filed their compliance only on June 7, 2012. The rule is that a motion not acted upon in due time is deemed denied. Thus, the filing of the petitioners' compliance with the CA on June 7, 2012, was out of time.

2. **ID.; ID.; ID.; ID.; LIBERALLY CONSTRUED CONSIDERING THE CIRCUMSTANCES OF THE CASE AND THE SUBSTANTIVE ISSUES RAISED.— In view of the circumstances of this case and the substantive issues raised by the petitioners, we find justification to liberally apply the rules of procedure to the present case and admit the petitioners' compliance though belatedly filed.** Rules of procedure should be viewed as mere tools designed to facilitate the attainment of justice; their strict and rigid application, which would result in technicalities that tend to frustrate rather than promote substantial justice, must always be eschewed.

APPEARANCES OF COUNSEL

Carrasco & Carrasco Law Office for petitioners.
J.P. Villanueva & Associates for private respondent.

D E C I S I O N

BRION, *J.*:

Before us is a petition for review on *certiorari*[1] assailing the resolutions dated May 4, 2012[2] and July 12, 2012[3] of the Court of Appeals (*CA*), Cagayan de Oro City Station, in CA-G.R. SP No. 04425-MIN. On technical grounds, the CA dismissed the appeal (Petition for Review) filed by the petitioners against the resolutions of the Department of Agrarian Reform Adjudication Board (*DARAB*) Region X in DARAB Case No. UDK-0001-04.

Antecedent Facts

On January 17, 1996, respondent Ricardo Gacula filed a petition[4] to cancel the Certificates of Land Ownership Award (*CLOA*) issued to petitioners:[5] Spouses Adriano Salise and Natividad Pagudar, Spouses Teodoro Virtudazo and Necitas Salise, Jerome G. Diolanto, Sps. Eulalio D. Damasing and Potenciana Labia, Sps. Francisco and Simplicia Babaya-on, Sps. Rufino Butihin and Cecilia Cagno, Sps. Efitacio G. Pamisa and Virgelia Virtudazo, Delfin B. Sarinas, Sps. Felipe C. Virtudazo, Jr. and Grace Tuto, Sps. Angel Barbosa and Florencia Salise, Sps. Franklin and Leonora Pamisa, Sps. Marcelo Manique and Cecilia Carbon, Larry Pamisa, Sps. Enrique Carbon and

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[1] Filed under Rule 45 of the Rules of Court.

[2] Penned by Associate Justice Maria Elisa Sempio Diy, with Associate Justices Romulo V. Borja and Zenaida T. Galapate-Laguilles, concurring; *rollo*, pp. 25-26.

[3] *Rollo*, pp. 28-32.

[4] Docketed as DARAB Case No. X(06)-904.

[5] A total of 47 individual-petitioners.

Erlinda Somo, Sps. Carlito Fabe and Emelita Manggana, Luiben Magto, Spouses Serafin and Lilia Surigao, Spouses Hilario Bacabis and Retificacion Dablo, Spouses Reynaldo S. Salucot and Anecita Descallar, Spouses Hagenio Paug and Evelita Virtudazo, Spouses Maximo Borrez and Vilma Salise, Spouses Wilfredo A. Juanilo and Minda Villarmia, Sps. Felix B. Reguarme and Cerina Salvo, Sps. Felimon V. Salvo, Jr. and Eva Macatol, and Rita V. Salvo, over a 30-hectare land in the upper lands of Lomboy, Indahag, Cagayan de Oro City.

On October 23, 1996, Provincial Agrarian Reform Adjudicator (*PARAD*) Leandricia Monsanto dismissed *without prejudice* the petition for cancellation, due to a pending prior application made by Gacula for the exemption of the subject land from the Comprehensive Agrarian Reform Program (*CARP*). Gacula appealed the dismissal of his petition to the Department of Agrarian Reform Adjudication Board (*DARAB*) Central Office in Diliman, Quezon City.

On January 14, 1998, pending Gacula's appeal with the DARAB, then Department of Agrarian Reform (*DAR*) Secretary Ernesto Garilao granted Gacula's application to exempt the subject land from the CARP. One of the petitioners, Jerome G. Diolanto, filed a motion for reconsideration to Sec. Garilao's order.

On March 4, 1999, DAR Secretary Horacio "Boy" Morales granted Diolanto's motion and declared the subject land not exempt from CARP. Gacula moved to reconsider this ruling.

On December 1, 1999, Acting DAR Secretary Conrado Navarro reversed Sec. Morales' order and upheld Sec. Garilao's order that declared the subject land exempt from CARP.

On October 15, 2001, DARAB Director Delfin B. Samson issued an Order of Finality to the December 1, 1999 order of Sec. Navarro.

Gacula's Manifestation before the DARAB

On January 12, 2001, the DARAB Central Office dismissed Gacula's appeal to the dismissal of his petition for cancellation of the CLOAs.

On March 10, 2003, despite the dismissal of the cancellation proceedings, Gacula still filed a Manifestation that he was no longer interested in pursuing his appeal and suggested that the October 23, 1996 decision of PARAD Monsanto (that dismissed without prejudice his petition to cancel the petitioners' CLOAs) be considered final. In the same manifestation, Gacula requested that Sec. Navarro's December 1, 1999 order be implemented.

Acting on Gacula's manifestation, Adjudicator Abeto Salcedo, Jr. of DARAB Region X issued, on November 27, 2003, an order[6] cancelling the petitioners' CLOAs and placing Gacula in possession of the 30-hectare property. The petitioners claimed that Adjudicator Salcedo's November 27, 2003 order was issued without proper notice and hearing.[7]

On December 1, 2003, Adjudicator Salcedo issued a Writ of Execution[8] to implement Sec. Navarro's December 1, 1999 order. The petitioners alleged that on the day following the issuance of the writ of execution, DARAB Sheriff Bienvenido Maestro, together with armed men claiming to be security guards and policemen, immediately fenced the subject land with barbed wire, preventing access to and from their properties.[9]

The petitioners, represented by new counsel, timely filed an entry of appearance and notice of appeal to Adjudicator Salcedo's November 27, 2003 order. Another motion for reconsideration to the same order was filed by a certain Atty. Antonio Zoilo Velez, a former DAR lawyer who had represented two of the petitioners in earlier proceedings.

In an order[10] dated December 18, 2003, Adjudicator Salcedo denied the petitioners' notice of appeal and entry of appearance due to improper substitution of counsel. Also, he denied the

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[6] *Rollo*, pp. 73-79.

[7] *Id.* at 41.

[8] *Id.* at 80-81.

[9] *Rollo*, p. 99.

[10] *Id.* at 88-91.

motion for reconsideration filed by Atty. Velez because his November 27, 2003 order cancelling the petitioners' CLOAs was, according to him, not appealable.[11]

Petitioners' Urgent Motion with the DARAB

On December 30, 2003, the petitioners filed with the DARAB Central Office an Urgent Motion [12] to restrain Adjudicator Salcedo from acting on the incidents of the case and from further executing his November 27, 2003 order. **The petitioners contended that Adjudicator Salcedo's orders were illegal and patently null and void for having been issued in excess of authority and in gross violation of the petitioners' rights to due process.**

Almost seven years later, the DARAB, in a resolution[13] dated April 26, 2011, dismissed the petitioners' urgent motion for lack of jurisdiction. It held that, in alleging that Adjudicator Salcedo had exceeded his authority in issuing the questioned orders, the petitioners' motion was, in effect, a petition for *certiorari* under Rule 65 of the Rules of Court over which the DARAB has no jurisdiction.

The petitioners moved to reconsider but the DARAB denied their motion in a resolution[14] dated August 1, 2011; hence, they filed a Petition for Review with the CA pursuant to Section 1, Rule XV of the 2009 DARAB Rules of Procedure.

Proceedings before the CA

In a resolution[15] dated September 9, 2011, the CA (Cagayan de Oro City Station) **partially dismissed the petition for review** insofar as the following sixteen (16) petitioners were concerned: Jerome G. Diolante, Sps. Carlito G. Fabe and Emelita Manggana,

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[11] *Id.* at 91.

[12] *Id.* at 92-108.

[13] *Id.* at 55-61.

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

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

Luiben N. Magto, Sps. Serafin and Lilia Surigao, Sps. Hilario S. Bacabis and Retificacion Dablo, Sps. Reynaldo S. Salucot and Anecita Descallar, Sps. Hagenio Paug and Evelita Virtudazo, Sps. Maximo M. Borres and Vilma Salise, and Sps. Felimon V. Salvo, Jr. and Eva Macatol, **for their failure to sign the Verification and Certification of Non-Forum Shopping** attached to the petition.

In the same resolution, **the CA directed the other remaining petitioners**, through their counsel, **to correct the procedural defects of their petition**: (a) failure to furnish the DARAB Central Office with a copy of their petition, and (b) failure to allege the dates of their receipt of the DARAB's April 26, 2011 resolution and of the filing of their motion for reconsideration thereto.

Petitioners' 1st Compliance with Motion to Admit Joint Affidavits of Merit

On September 22, 2011, the petitioners filed with the CA their compliance[16] with motion to admit the joint affidavits of merit executed by the 16 petitioners named in the September 9, 2011 resolution of the CA. The affidavits stated the reasons why the 16 petitioners failed to sign the verification and certification of non-forum shopping attached to the petition for review.

In a resolution dated May 4, 2012, the **CA noted the petitioners' compliance** but observed another defect on the verification and certification of non-forum shopping, *i.e.*, **some of the affiants failed to present competent evidence of identity that the notarization required. Thus, the CA directed the petitioners-affiants who failed to provide the necessary proof of identity to submit the required proof within ten (10) days from receipt of its resolution**; otherwise, their petition for review shall be dismissed.

In the same resolution, the **CA denied the petitioners' motion to admit** because the affidavits of merit attached to the motion also lacked the required proof of identity from the affiants.

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[16] *Rollo*, pp. 114-128.

The petitioners received a copy of the CA's May 4, 2012 resolution on May 16, 2012.

On May 25, 2012, the petitioners filed a motion for extension of time of twenty (20) days or until June 15, 2012, within which to submit a new verification and certification of non-forum shopping.

Petitioners' 2nd Compliance with Motion for Reconsideration

On June 7, 2012, the petitioners filed their compliance with motion for reconsideration (to the denial of their motion to admit) with the CA.

In a resolution dated July 12, 2012, the **CA denied the petitioners' compliance with motion for reconsideration** because: (1) the filing thereof was seven (7) days late considering that the petitioners received its May 4, 2012 resolution on May 16, 2012 and had only ten (10) days or until May 31, 2012 within which to file their compliance; and (2) the signatures on the new verification and certification showed "some variations" with those found in the verification and certification previously submitted by the petitioners. **Consequently, the CA dismissed outright the petitioners' petition for review**, prompting the petitioners to file a petition for review on *certiorari* before this Court.

The Petition

In the present petition, the petitioners mainly pray for the liberal application of the Rules of Procedure to their case. They contend that the CA erred in dismissing their petition for review purely on technical grounds, without consideration of the substantive issues raised in their petition.

Citing *Altres, et al. v. Empleo, et al.* (Altres),[17] the petitioners allege that the verification and certification of non-forum shopping attached to their petition for review with the CA **substantially complied** with the Rules, despite the missing signatures and the lack of proof of identity of some of them. They particularly

[17] G.R. No. 180986, December 10, 2008, 573 SCRA 583-585.

argue that the incompleteness of the verification did not render their petition for review fatally defective, and that the signature of only one of them in the certification of non-forum shopping is sufficient because they invoke a common cause of action (or defense) against the same respondent.

OUR RULING

We find for the petitioners and GRANT the present petition.

The Court in *Altres* outlined, for the bar and the bench, the guidelines in determining compliance (or noncompliance) with the verification and certification of non-forum shopping, to wit:

1) A distinction must be made between noncompliance with the requirement on or submission of **defective verification**, and non-compliance with the requirement on or submission of **defective certification** against forum-shopping.

2) **As to verification**, noncompliance therewith or a defect therein does not necessarily render the pleading fatally defective. The court may order its submission or correction or act on the pleading if the attending circumstances are such that strict compliance with the Rule may be dispensed with in order that the ends of justice may be served thereby.

3) Verification is deemed *substantially complied* with when one who has ample knowledge to swear to the truth of the allegations in the complaint or petition signs the verification, and when matters alleged in the petition have been made in good faith or are true and correct.

4) **As to certification** against forum shopping, noncompliance 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.**

6) Finally, the certification against forum shopping must be executed by the party-pleader, not by his counsel. If, however, for reasonable or justifiable reasons, the party-pleader is unable to sign, he must execute a Special Power of Attorney designating his counsel of record to sign on his behalf. (*emphasis supplied*)

Our pronouncements in *Altres*, however, do not apply to the resolution of this case. The dismissal of the petitioners' petition for review with the CA did not result from the incomplete signatures of the petitioners in the Verification and Certification on non-forum shopping. A closer look into the facts of the case reveals that the real cause of the CA's dismissal of the petition for review was the petitioners' belated filing of their compliance with the CA's May 4, 2012 resolution.

Recall that in the assailed May 4, 2012 CA resolution, the petitioners who actually signed the verification and certification of non-forum shopping were directed to submit competent evidence of identity that the notarization required, within ten (10) days from May 16, 2012 — the date of petitioners' receipt of the resolution, or until May 31, 2012. Due to the difficulty in individually locating the petitioners, the petitioners' counsel requested an extension of twenty (20) more days from March 25, 2012, or until June 15, 2012, within which to submit proof of the petitioners-affiants' identities. But the petitioners' motion for extension of time was not acted upon by the CA. The petitioners filed their compliance only on June 7, 2012.

The rule is that a motion not acted upon in due time is deemed denied.[18] Thus, the filing of the petitioners' compliance with the CA on June 7, 2012, was, indeed, out of time.

In view, however, of the circumstances of this case and the substantive issues raised by the petitioners, we find justification to liberally apply the rules of procedure to the present case and admit the petitioners' compliance though belatedly filed.

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[18] *Orosa v. Court of Appeals,* G.R. No. 118696, September 3, 1996, 261 SCRA 376.

Rules of procedure should be viewed as mere tools designed to facilitate the attainment of justice; their strict and rigid application, which would result in technicalities that tend to frustrate rather than promote substantial justice, must always be eschewed.[19]

The present petitioners, who are farmers-beneficiaries of the CARP, cry for substantial justice as they claim to have been denied due process in the cancellation of their CLOAs. The petitioners were occupants of the subject land since the 1950s and were issued CLOAs over their respective farm-lots in 1992. They mainly contend that Adjudicator Salcedo's November 27, 2003 order cancelling their CLOAs was issued without proper notice and hearing.

The cancellation of CLOAs issued to farmer-beneficiaries under the CARP involves the filing of a *petition* for such purpose with the DARAB Provincial Adjudicator,[20] and requires that the petition be served upon each of the defendants or respondents named therein.[21] The petition is then heard in a quasi-judicial

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[19] *Ginete v. Court of Appeals*, 357 Phil. 36, at 51-53 (1998).

[20] Section 1.6, Rule II of the 2003 DARAB Rules of Procedure, the rules applicable to this case, provides:

> SECTION 1. *Primary and Exclusive Original Jurisdiction*. — The Adjudicator shall have primary and exclusive original jurisdiction to determine and adjudicate the following cases:
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> x x x x x x x x x
>
> 1.6 Those involving the correction, partition, cancellation, secondary and subsequent issuances of Certificates of Land Ownership Award (CLOAs) and Emancipation Patents (EPs) which are registered with the Land Registration Authority.
>
> x x x x x x x x x

And Section 1, Rule IV of the same Rules provides:

> SECTION 1. *Complaint or Petition*. — **An action before the Adjudicator shall be initiated by filing a sworn complaint or verified petition with the Adjudicator in the Province where the land involved is located.** (*emphasis supplied*)
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> x x x x x x x x x

[21] The rest of Section 1, Rule IV of the 2003 DARAB Rules of Procedure provides:

proceeding before the Provincial Adjudicator, whose decision may be appealed to the DARAB, and then to the CA through a Petition for Review under Rule 43 of the Rules of Court.

In the petitioners' case, the cancellation of their CLOAs was prompted by a mere Manifestation filed by Gacula. A mere manifestation can hardly be equated with a petition that the DARAB Rules of Procedure require for the cancellation of CLOAs. In his manifestation, Gacula merely stated that he was no longer interested in pursuing his appeal to PARAD Monsanto's October 23, 1996 decision and asked for the implementation of Sec. Navarro's December 1, 1999 order. Under these facts, Gacula's manifestation stated no cause of action.

Also, it is worth noting that, at the time Gacula filed his Manifestation in 2003, the petition for cancellation that he previously filed with PARAD Monsanto had long been dismissed, on appeal, by the DARAB in 2001. Thus, Gacula's Manifestation stood independently, as there was no longer a pending petition for cancellation of the petitioners' CLOAs with the DARAB.

These circumstances, to our minds, cast an overwhelming doubt on the validity and authority of Adjudicator Salcedo to issue the order that cancelled the petitioners' CLOAs.

SECTION 1. *Complaint or Petition.* — x x x

Upon the filing of the complaint or petition, the hour, day, month and year when it was filed shall be stamped thereon.

The complaint shall include the affidavit(s) of witnesses and documentary evidence, if any. The complaint or petition shall be duly signed by the complainant or petitioner, or his counsel, or by one who can show a special power of attorney to represent the complainant or petitioner.

It shall state the area of the land involved and the Barangay where the land is located, or if the land is located in two (2) or more barangays, the barangay where the larger portion of the land is located.

It shall also state the name and residence of the complainant or petitioner and that of the defendant or respondent, the facts constituting the cause of action, and the relief being sought.

Two (2) copies of the complaint or petition, and its annexes or attachments, and as many copies required to be served upon each of the defendants or respondents, shall be filed. *(emphasis supplied*)

These same circumstances now cause us to recognize the present case as an exception from the Court's policy of strict compliance with procedural rules.

We reiterate that rules of procedure are promulgated to help secure, not override substantial justice. Thus, the petitioners' petition for review with the CA should not have been dismissed outright purely on technical grounds considering that they have raised a substantially meritorious case for appeal. In *Aguam v. Court of Appeals*,[22] we enunciated that:

> "Dismissal of appeals purely on technical grounds is frowned upon where the policy of the court is to encourage hearings of appeals on their merits and the rules of procedure ought not to be applied in a very rigid, technical sense; rules of procedure are used only to help secure, not override substantial justice. It is a far better and more prudent course of action for the court to excuse a technical lapse and afford the parties a review of the case on appeal to attain the ends of justice rather than dispose of the case on technicality and cause a grave injustice to the parties, giving a false impression of speedy disposal of cases while actually resulting in more delay, if not a miscarriage of justice."[23]

WHEREFORE, premises considered, we hereby **GRANT** the present petition for review on *certiorari* and **REVERSE** and **SET ASIDE** the resolutions dated May 4, 2012, and July 12, 2012, of the Court of Appeals, Cagayan de Oro City, in CA-G.R. SP No. 04425-MIN.

The CA is ordered to admit the Compliance dated June 7, 2012, filed by the petitioners, reinstate the petitioners' Petition for Review, and to decide with dispatch the present case on its merits.

SO ORDERED.

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

Del Castillo, J., on leave.

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[22] 388 Phil. 587 (2000).

[23] *Id.* at 593-594.

SECOND DIVISION

[G.R. No. 203152. June 20, 2016]

GEORGIA ROYO ADLAWAN, in her own behalf and as surviving spouse of ALFONSO V. ADLAWAN, *petitioner, vs.* **NICETAS I. JOAQUINO, FLORENCIA J. SON, EUSTOLIA J. MATA, BEATRIZ J. SATIRA, TERESA J. BERMEJO, CORAZON J. COGINA, MARIA J. NOVAL and VISITACION J. DELA TORRE,** *respondents.*

SYLLABUS

1. **REMEDIAL LAW; JURISDICTION; COURT OF APPEALS; EXCLUSIVE ORIGINAL JURISDICTION OVER ACTIONS TO ANNUL JUDGMENTS OF THE REGIONAL TRIAL COURTS.—** Section 9 (2) of Batas Pambansa *(B.P.)*Blg. 129, as amended, vests in the Court of Appeals, formerly the Intermediate Appellate Court, the exclusive original jurisdiction over actions to annul judgments of the Regional Courts. Apart from being conferred by law, the CA's exclusive and original jurisdiction to annul judgments of the RTCs is by reason of the principle that a judgment of a court of competent jurisdiction may not be opened, modified, or vacated by any court of concurrent jurisdiction. This principle is known as the "doctrine of non-interference or judicial stability."

2. **ID.; ID.; DOCTRINE OF NON-INTERFERENCE OR JUDICIAL STABILITY; A TRIAL COURT HAS NO AUTHORITY TO ANNUL THE FINAL JUDGMENT OF A CO-EQUAL COURT.—** The doctrine of non-interference or judicial stability dictates that a trial court has no authority to interfere with the proceedings of a court of equal jurisdiction, **much less to annul the final judgment of a co-equal court.** The rationale for this doctrine is founded on the concept of jurisdiction – "verily, a court that acquires jurisdiction over the case and renders judgment therein has jurisdiction over its judgment, to the exclusion of all other coordinate courts, for its execution and over all its incidents, and to control, in furtherance of justice, the conduct of ministerial officers acting in connection with this judgment."

3. ID.; ID.; JURISDICTION IS CONFERRED BY LAW AND ANY JUDGMENT ISSUED WITHOUT IT IS VOID; RULE APPLIES EVEN IF RAISED FOR THE FIRST TIME ON APPEAL OR EVEN AFTER FINAL JUDGMENT.— There is no rule in procedural law as basic as the principle that jurisdiction is conferred by law, and any judgment, order, or resolution issued without it is void and cannot be given any effect. **This rule applies even if the issue on jurisdiction was raised for the first time on appeal or even after final judgment**.

4. ID.; ID.; ID.; SINGULAR EXCEPTION TO THE RULE OPERATES ON THE PRINCIPLE OF ESTOPPEL BY LACHES APPLIED IN THE CASE OF *TIJAM VS. SIBONGHANOY*; NOT APPLICABLE IN CASE AT BAR AS FACTUAL SETTING IS DIFFERENT.— The singular exception to the basic rule operates on the principle of estoppel by laches – whereby a party may be barred by laches from invoking the lack of jurisdiction at a late hour for the purpose of annulling everything done in the case with the active participation of said party invoking the plea. The Court had occasion to apply this exception and adjudged a party estopped from assailing the court's jurisdiction in the often cited case of *Tijam v. Sibonghanoy*, *x x x* In *Sibonghanoy*, the defense of lack of jurisdiction was raised for the first time in a motion to dismiss filed by a party-surety almost fifteen (15) years later and at a stage when the proceedings had already been elevated to the CA. Prior to this, the party-surety invoked the jurisdictions of both the trial and appellate courts in order to obtain affirmative relief, and even submitted the case for final adjudication on the merits. It was only after the CA had rendered an adverse decision that the party-surety raised the question of jurisdiction. **In the present case, we find no sufficient justification to apply the exception of estoppel by laches as the factual setting present in *Sibonghanoy* is not similar to that of the present case.** x x x We also held in *Sibonghanoy* that: "The doctrine of laches or of stale demands is based upon grounds of public policy which requires, for the peace of society, the discouragement of stale claims and, unlike the statute of limitations, **is not a mere question of time but is principally a question of the inequity or unfairness of permitting a right or claim to be enforced or asserted.** We emphasize that our ruling in *Sibonghanoy* establishes an exception which is to be

applied only after under extraordinary circumstances or to those cases similar to its factual situation. The rule to be followed is that the lack of a court's jurisdiction is a non-waivable defense that a party can raise at any stage of the proceedings in a case, even on appeal; the doctrine of estoppel, being the exception to such non-waivable defense, must be applied with great care and the equity must be strong in its favor.

APPEARANCES OF COUNSEL

Navarro Navarro and Associates for petitioner.
Pedro Cortes Son for private respondents.
Francisco M. Senerpida, co-counsel for respondents.

D E C I S I O N

BRION, *J.*:

This is a petition for review on *certiorari*[1] assailing the **August 17, 2010** decision[2] and the **July 12, 2012** resolution[3] of the Court of Appeals (CA), Cebu City, in **CA-G.R. CEB CV No. 00871.**

Antecedent Facts

The present case involves a portion of a 3,614 square-meter parcel of land (referred to as Lot No. 7-B, located in Talamban, Cebu City; Lot No. 7-B) which was originally owned by Leonora Yngles, the predecessor of respondents Nicetas I. Joaquino, Florencia J. Son, Eustolia J. Mata, Beatriz J. Satira, Teresa J. Bermejo, Corazon J. Cogina, Maria J. Noval, and Visitacion J. Dela Torres (*respondents*).

Lot No. 7-B was later divided into four parcels, one of which was **Lot No. 7-B1** (the subject lot), which was acquired by

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[1] Filed under Rule 45 of the Rules of Court.

[2] Penned by Associate Justice Agnes Reyes-Carpio, with Associate Justices Edgardo L. Delos Santos and Eduardo B. Peralta, Jr., concurring; *rollo*, pp. 55-64.

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

petitioner Georgia Royo Adlawan and her husband, Alfonso V. Adlawan (*spouses Adlawan*).

By way of background, Leonora is the mother of Jose, Agapito, Zacarias, Gavina, and Magdalena (all surnamed Joaquino). She died in 1930 and left to her children a house and lot in Mabolo, Cebu City (*Mabolo property*).

Magdalena died in 1939, with no will and heirs. She owned five parcels of land in Talamban, Cebu City, which includes Lot No. 7-B.

Gavina died in 1945 and was survived by her compulsory heirs, namely: Epifania, **Vicenta**, Felix, Constancia, Vicente, and Angela (all surnamed Ouano).

Agapito died three years later, in 1948, and was survived by his compulsory heirs, Florentino and Nicetas (both surnamed Joaquino).

On June 12, 1950, Jose Joaquino, the only surviving brother, together with the heirs of the deceased Gavina, Agapito, and Zacarias (whose year of death is not stated in the records), executed an "Agreement of Partition" distributing the properties of Leonora and Magdalena as follows:

Parcel 1, Mabolo property consisting of house and lot left by Leonora Yngles	-	to the heirs of Zacarias Joaquino;
Parcels II, III, IV, V, and VI, located at Talamban, Cebu City, left by Magdalena Joaquino	-	to be divided in three (3) equal parts for Jose Joaquino, the heirs of Agapito Joaquino, and the heirs of Gavina Joaquino.[4]

On June 7, 1982, Remedios Cabello, the daughter of Vicenta Ouano (one of Gavina's heirs), filed a petition for reconstitution of title of Lot No. 7-B. She claimed to have acquired the entire Lot No. 7-B from Vicenta and had the title transferred to her

[4] *Id.* at 16.

name, and that her transfer certificate of title (TCT) was burned in a house fire in 1979, hence, her filing of the petition for reconstitution.

In an order dated **June 1, 1983**, the Regional Trial Court (*RTC*) Branch 14, Cebu City, granted Remedios's petition and ordered the reconstitution of the title of Lot No. 7-B.[5] The RTC's June 1, 1983 order became final and executory on **June 30, 1983**.[6]

Subsequently, Lot No. 7-B was divided into four parcels of land (*i.e.*, Lot Nos. 7-B1, 7-B2, 7-B3, and 7-B4), which were issued separate TCTs. Remedios sold Lot No. 7-B1 to spouses Francisco and Margarita Robles (*spouses Robles*).

On June 10, 1987, the respondents filed with the RTC, **Branch 17**, Cebu City, a **complaint to annul Remedios's title and the titles issued therefrom, with damages**. They alleged that Remedios, in conspiracy with the spouses Robles, misrepresented during the reconstitution proceedings that she obtained the title for the entire Lot No. 7-B from Vicenta and that this title was burned in a house fire, when, in fact, she had not acquired any title to Lot No. 7-B.

On June 15, 1987, notices of *lis pendens* were annotated on the titles sought to be annulled, including Lot No. 7-B1.[7]

Remedios and the spouses Robles moved to dismiss the complaint on the ground of failure to prosecute due to the plaintiffs' (*referring to the respondents*) failure — despite the two extensions of time given by the court — to comment to the motion to dismiss the former previously filed.

In an order dated **July 10, 1992**, the RTC, Branch 17, Cebu City, dismissed the respondents' complaint for annulment of title for their failure to prosecute the case. The RTC's July 10, 1992 order became final and executory on **August 1, 1992**.

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[5] *Id.* at 17.

[6] *Ibid.*

[7] *Rollo*, p. 35.

On **August 11, 1992**, the notice of *lis pendens* annotated on the title of Lot No. 7-B1 was cancelled.[8]

On August 31, 1992, the respondents filed with the RTC, Branch 17, Cebu City, a **petition for relief** from the RTC's final and executory order dated July 10, 1992, in the annulment of title case. They alleged that their failure to prosecute was due to the negligence of their present counsel, Atty. Pedro Son, who failed to communicate to their previous counsel his intent to take active participation in the prosecution of the case.

Meanwhile, on December 17, 1992, the spouses Robles sold Lot No. 7-B1, with an area of 1,204 sqm to the spouses Adlawan.

In an order dated April 12, 1993, the RTC granted the respondents' petition for relief from judgment and ordered the reinstatement of their complaint for annulment of title.

Remedios and the spouses Robles moved to reconsider the RTC's grant of the petition for relief but the RTC denied their motion in an order dated May 28, 1993.[9] They appealed the RTC's denial order to the CA (which also denied their appeal) and to this Court. This Court ultimately denied Remedios and the spouses Robles' appeal in a resolution dated November 17, 1993, which became final and executory on December 20, 1993.[10]

On June 16, 1994, the respondents filed a supplemental complaint[11] impleading the spouses Adlawan as additional defendants.[12]

In their answer[13] to the complaint, the spouses Adlawan claimed to be buyers in good faith and for value of Lot No. 7-B1 and denied knowledge of the then pending petition for relief from

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

[9] *Id.* at 35.

[10] *Ibid.*

[11] *Id.* at 31-38.

[12] *Id.* at 12.

[13] *Rollo*, pp. 45-48.

judgment involving the subject lot. They alleged that, at the time they purchased Lot No. 7-B1 from the spouses Robles, the title to their lot no longer contained any annotation of any pending litigation involving the property; and that the notice of *lis pendens* then annotated on the lot's title was already cancelled before the property was sold to them.

In a decision dated March 31, 2005, the RTC, acting on the respondents' reinstated complaint for annulment of title, declared null and void the reconstitution of Remedios's title and the titles issued therefrom. Remedios, the spouses Robles, and the newly impleaded defendants, the spouses Adlawan, appealed their case to the CA.

The CA Ruling

The issues raised before the CA were:

1. Whether the court a quo erred in granting the petition for relief from judgment filed by the plaintiff-appellees (*referring to the respondents*) after this case was finally dismissed and without proper substitution of counsel;
2. Whether the court a quo erred in declaring the order for reconstitution issued by RTC, Branch 14, Cebu City, a co-equal court, and the titles issued pursuant thereto, as null and void;
3. Whether the court a quo erred in failing to sustain that the Adlawan Spouses were purchasers in good faith and for value; and
4. Whether the court a quo erred in failing to consider that the plaintiffs-appellees got more than Remedios Cabello from the estate of Leonora Yngles.[14]

In the assailed August 17, 2010 decision, the CA denied the appeal of Remedios, the spouses Robles, and the spouses Adlawan. It affirmed the nullity of Remedios's reconstituted title after it found that no TCT over Lot No. 7-B was ever issued to Remedios from which title the reconstitution proceedings could be based.

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[14] *Id.* at 60.

On the issue of the lack of jurisdiction of the RTC, Branch 17, Cebu City, to annul the order of reconstitution of RTC, Branch 14, Cebu City, the CA ruled that, while it is correct that only the CA has the jurisdiction to annul the judgments of the RTC, the defendants-appellants were already estopped to question the RTC's jurisdiction for the first time on appeal and after losing the case in the RTC twenty (20) years later.

Also, the CA ruled that the spouses Adlawan were not buyers in good faith of Lot No. 7-B1; that they bought the subject lot before title thereto was reconstituted. The CA stated that the notice of *lis pendens* then annotated on Remedios' reconstituted title should have prompted the spouses to investigate the vendor's title.

The CA no longer found it necessary to rule on the issue of whether the RTC erred in not considering that the plaintiffs-appellees (*referring to the respondents*) have already received more than Remedios's share in the distribution of Leonora's estate.

The Petition

Petitioner Georgia Adlawan, in her own behalf and as surviving spouse of Alfonso V. Adlawan, filed the present petition for review on *certiorari* with this Court raising the following issues:

I. WHETHER OR NOT THE COURT OF APPEALS ERRED IN CONCLUDING THAT APPELLANTS WERE ESTOPPED FROM QUESTIONING THE LACK OF JURISDICTION OF THE LOWER (sic) FOR THE FIRST TIME ON APPEAL?

II. WHETHER OR NOT THE COURT OF APPEALS ERRED IN DECLARING THE RECONSTITUTED TITLES AS NULL AND VOID NOTWITHSTANDING ITS FINDING THAT THE LOWER COURT EXCEEDED ITS JURISDICTION IN ANNULLING THE ORDER OF RECONSTITUTION ISSUED BY THE RTC, BRANCH 14, CEBU CITY, A CO-EQUAL COURT? and

III. WHETHER OR NOT THE COURT OF APPEALS ERRED IN FAILING TO SUSTAIN THAT THE ADLAWAN

SPOUSES WERE PURCHASERS IN GOOD FAITH AND FOR VALUE.[15]

OUR RULING

We find MERIT in the present petition.

Section 9 (2) of Batas Pambansa (*B.P.*) Blg. 129,[16] as amended, vests in the Court of Appeals, formerly the Intermediate Appellate Court, the exclusive original jurisdiction over actions to annul judgments of the Regional Trial Courts.

Apart from being conferred by law, the CA's exclusive and original jurisdiction to annul judgments of the RTCs is by reason of the principle that a judgment of a court of competent jurisdiction may not be opened, modified, or vacated by any court of concurrent jurisdiction.[17] This principle is known as the "doctrine of non-interference or judicial stability."

The doctrine of non-interference or judicial stability dictates that a trial court has no authority to interfere with the proceedings of a court of equal jurisdiction,[18] **much less to annul the final judgment of a co-equal court**.[19] The rationale for this doctrine is founded on the concept of jurisdiction — "verily, a court that acquires jurisdiction over the case and renders judgment therein has jurisdiction over its judgment, to the exclusion of all other coordinate courts, for its execution and over all its incidents, and to control, in furtherance of justice, the conduct of ministerial officers acting in connection with this judgment."[20]

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

[16] Entitled AN ACT REORGANIZING THE JUDICIARY, APPROPRIATING FUNDS THEREFOR, AND FOR OTHER PURPOSES, Approved on August 14, 1981.

[17] *Philippine National Bank v. Pineda*, G.R. No. L-46658, May 13, 1991, 197 SCRA 1, 12.

[18] *PDCP Development Bank v. Vestil*, 332 Phil. 507 (1996).

[19] *Nery v. Leyson*, G.R. No. 139306, August 29, 2000, 339 SCRA 232.

[20] *Cabili v. Balindong*, A.M. No. RTJ-10-2225, September 6, 2011, 656 SCRA 747.

Since the assailed reconstituted title in this case, from which the petitioner's title originated was ordered issued by the RTC Branch 14, Cebu City, the respondents' complaint to annul said title — by reason of the doctrine of non-interference — should have been filed with the CA and not with another RTC branch. Evidently, the RTC Branch 17, Cebu City, as a co-equal court, has no jurisdiction to annul the reconstitution of title previously ordered by the RTC, Branch 14, Cebu City. In fact, the CA was of the same view that the RTC, Branch 17, Cebu City, exceeded its jurisdiction when it declared the order of reconstitution issued by the RTC, Branch 14, Cebu City, as null and void.[21]

The CA, however, ruled that the defendants (Remedios and the spouses Robles) in the annulment of title case (filed before the RTC, Branch 17, Cebu City) were already estopped to question the RTC's lack of jurisdiction as the defendants, including the petitioner, never raised the issue of jurisdiction in the proceedings before the RTC; that the defendants belatedly raised the issue on jurisdiction for the first time on appeal to the CA and only twenty (20) years later, after they lost the case in the RTC.

We disagree with the CA. There is no rule in procedural law as basic as the principle that jurisdiction is conferred by law,[22] and any judgment, order, or resolution issued without it is void[23] and cannot be given any effect.[24] **This rule applies even if the issue on jurisdiction was raised for the first time on appeal or even after final judgment**.[25]

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[21] *Rollo,* p. 61.

[22] *Machado v. Gatdula*, G.R. No. 156287, February 16, 2010, 612 SCRA 546, 559, citing *Spouses Vargas v. Spouses Caminas*, G.R. Nos. 137839-40, June 12, 2008, 554 SCRA 305, 317; *Metromedia Times Corporation v. Pastorin*, G.R. No. 154295, July 29, 2005, 465 SCRA 320, 335; and *Dy v. National Labor Relations Commission*, 229 Phil. 234, 242 (1986).

[23] *Id.* at 560, citing *National Housing Authority v. Commission on the Settlement of Land Problems*, G.R. No. 142601, October 23, 2006, 505 SCRA 38, 43.

[24] *Id.* at 561.

[25] *Id.* at 559, citing *Lozon v. NLRC*, 310 Phil. 1, 12-13 (1995), citing *La Naval Drug Corporation v. Court of Appeals*, 236 SCRA 78 (1994).

The singular exception to the basic rule mentioned, which the CA applied to this case, operates on the principle of estoppel by laches — whereby a party may be barred by laches from invoking the lack of jurisdiction at a late hour for the purpose of annulling everything done in the case with the active participation of said party invoking the plea.[26] The Court had occasion to apply this exception and adjudged a party estopped from assailing the court's jurisdiction in the often cited case of *Tijam v. Sibonghanoy*[27] where we held that:

> "[a] party cannot invoke the jurisdiction of a court to secure affirmative relief against his opponent and, after obtaining or failing to obtain such relief, repudiate or question that same jurisdiction. x x x, it was further said that the question whether the court had jurisdiction either of the subject matter of the action or of the parties was not important in such cases because the party is barred from such conduct not because the judgment or order of the court is valid and conclusive as an adjudication, but for the reason that such practice cannot be tolerated obviously for reasons of public policy."[28]

In *Sibonghanoy*, the defense of lack of jurisdiction was raised for the first time in a motion to dismiss filed by a party-surety almost fifteen (15) years later and at a stage when the proceedings had already been elevated to the CA. Prior to this, the party-surety invoked the jurisdictions of both the trial and appellate courts in order to obtain affirmative relief, and even submitted the case for final adjudication on the merits. It was only after the CA had rendered an adverse decision that the party-surety raised the question of jurisdiction.

In the present case, we find no sufficient justification to apply the exception of estoppel by laches as the factual setting present in *Sibonghanoy* is not similar to that of the present case.

For one, the present petitioner is not in the same situation as the party-surety in *Sibonghanoy* because the present petitioner

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[26] *Figueroa v. People*, G.R. No. 147406, July 14, 2008.

[27] 131 Phil. 556 (1968).

[28] *Id.* at 564.

raised the lack of jurisdiction of the RTC, Branch 17, Cebu City, in her appeal brief to the CA and before the CA had rendered its decision; in *Sibonghanoy*, the party questioned the court's jurisdiction only after the CA had rendered an adverse decision.

Second, the unfairness and inequity that the application of estoppel seeks to avoid is not present in this case. The present case does not involve a situation where a party who, *after obtaining affirmative relief from the court,* later on turned around to assail the jurisdiction of the same court that granted such relief by reason of an unfavorable judgment. The petitioner and her husband did not obtain affirmative relief from the court whose jurisdiction they are assailing, as they never won their case in the proceedings below.

We further consider that the petitioner and her husband were merely impleaded as additional defendants in the reinstated complaint for annulment of title — a case originally between the respondents and the defendants Remedios and the spouses Robles. We note that the original annulment of title case was filed by the respondents in 1987. The RTC had dismissed the case for failure to prosecute in 1992 but the complaint was later reinstated after a petition for relief from judgment was successfully filed by the respondents. **The petitioner and her husband were impleaded as defendants in the case only in 1994.** The fact that the petitioner and her husband were not privy to the cases originally filed before the two RTCs (*i.e.*, Branches 14 and 17, Cebu City), coupled with their claim of good faith, convinces us that the petitioner is not guilty of laches despite belatedly raising the question of jurisdiction only thirteen (13) years later, or in 2007, in their appeal brief to the CA.[29]

We also held in *Sibonghanoy* that:

"The doctrine of laches or of stale demands is based upon grounds of public policy which requires, for the peace of society, the discouragement of stale claims and, unlike the statute of limitations, is not **a mere question of time but is principally a question of the**

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[29] *Rollo*, p. 62. See Footnote 12.

inequity or unfairness of permitting a right or claim to be enforced or asserted."[30] [emphasis supplied]

We emphasize that our ruling in *Sibonghanoy* establishes an exception which is to be applied only under extraordinary circumstances or to those cases similar to its factual situation.[31] The rule to be followed is that the lack of a court's jurisdiction is a non-waivable defense that a party can raise at any stage of the proceedings in a case, even on appeal; the doctrine of estoppel, being the exception to such non-waivable defense, must be applied with great care and the equity must be strong in its favor.[32]

In view of the void judgment of the RTC, Branch 17, Cebu City, in Civil Case No. CEB-6025, we find it unnecessary to delve into the other issues raised by the petitioner. Such void judgment cannot be the source of any right or the creator of any obligation, and all acts performed pursuant to it and claims emanating from it have no legal effect.[33]

WHEREFORE, we hereby **GRANT** the present petition for review on *certiorari* and **REVERSE and SET ASIDE** the decision dated August 17, 2010 and the resolution dated July 12, 2012 of the Court of Appeals in CA-G.R. CEB CV No. 00871.

Accordingly, we **DECLARE NULL and VOID**, for lack of jurisdiction, the decision dated March 31, 2005, issued by the Regional Trial Court, Branch 17, Cebu City, in Civil Case No. CEB-6025.

SO ORDERED.

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

Del Castillo, J., on leave.

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[30] *Supra* note 27, at 563-564.

[31] *Regalado v. Go*, G.R. No. 167988, February 6, 2007, 514 SCRA 616.

[32] *C & S Fishfarm Corp. v. Court of Appeals*, 442 Phil. 279, 290-291 (2002).

[33] *Polystyrene Manufacturing Company, Inc. v. Privatization and Management Office,* G.R. No. 171336, October 4, 2007, 534 SCRA 640, 651.

FIRST DIVISION

[G.R. No. 211015. June 20, 2016]

CAGAYAN ELECTRIC POWER & LIGHT COMPANY, INC. (CEPALCO) and CEPALCO ENERGY SERVICES CORPORATION (CESCO), formerly CEPALCO ENERGY SERVICES & TRADING CORPORATION (CESTCO), *petitioners, vs.* **CEPALCO EMPLOYEE'S LABOR UNION-ASSOCIATED LABOR UNIONS-TRADE UNION CONGRESS OF THE PHILIPPINES (TUCP),** *respondent.*

[G.R. No. 213835. June 20, 2016]

CAGAYAN ELECTRIC POWER & LIGHT COMPANY, INC. (CEPALCO) and CEPALCO ENERGY SERVICES CORPORATION (CESCO), formerly CEPALCO ENERGY SERVICES & TRADING CORPORATION (CESTCO), *petitioners, vs.* **CEPALCO EMPLOYEE'S LABOR UNION-ASSOCIATED LABOR UNIONS-TRADE UNION CONGRESS OF THE PHILIPPINES (TUCP),** *respondent.*

SYLLABUS

1. LABOR AND SOCIAL LEGISLATION; RULES IMPLEMENTING ARTICLES 106-109 OF THE LABOR CODE, AS AMENDED (DO 18-02), CRITERIA ON WHAT CONSTITUTES LABOR-ONLY CONTRACTING.— Section 5 of Department Order No. 18-02, Series of 2002, otherwise known as the "Rules Implementing Articles 106 to 109 of the Labor Code, as Amended" (DO 18-02), provides the following criteria to gauge whether or not an arrangement constitutes labor-only contracting: ***Section 5. Prohibition against labor-only contracting.*** Labor-only contracting is hereby declared prohibited. For this purpose, labor-only contracting shall refer to an arrangement where the contractor or subcontractor merely recruits, supplies or places workers to perform a job, work or service for a principal,

and any of the following elements are present: **i) The contractor or subcontractor does not have substantial capital or investment which relates to the job, work or service to be performed and the employees recruited, supplied or placed by such contractor or subcontractor are performing activities which are directly related to the main business of the principal; or ii) the contractor does not exercise the right to control over the performance of the work of the contractual employee.** The foregoing provisions shall be without prejudice to the application of Article 248 (C) of the Labor Code, as amended. "Substantial capital or investment" refers to capital stocks and subscribed capitalization in the case of corporations, tools, equipment, implements, machineries and work premises, actually and directly used by the contractor or subcontractor in the performance or completion of the job, work or service contracted out. The "right to control" shall refer to the right reserved to the person for whom the services of the contractual workers are performed, to determine not only the end to be achieved, but also the manner and means to be used in reaching that end.

2. ID.; LABOR CODE; LABOR ONLY CONTRACTING; CONSIDERED AS A FORM OF UNFAIR LABOR PRACTICE (ULP) WHEN THE SAME IS DEVISED BY THE EMPLOYER TO INTERFERE WITH THE EMPLOYEES IN THE EXERCISE OF THEIR RIGHTS TO SELF-ORGANIZATION; PROHIBITED ACTIVITIES CONSTITUTIVE OF ULP.— Labor-only contracting is considered as a form of ULP when the same is devised by the employer to "interfere with, restrain or coerce employees in the exercise of their rights to self-organization" [as provided under] Article 259 (c) of the Labor Code, as amended. x x x The need to determine whether or not the contracting out of services (or any particular activity or scheme devised by the employer for that matter) was intended to defeat the worker's right to self-organization is impelled by the underlying concept of ULP. This is stated in Article 258 of the Labor Code, as amended, to wit: Article 258. *Concept of Unfair Labor Practice and Procedure for Prosecution Thereof.* – **Unfair labor practices violate the constitutional right of workers and employees to self-organization,** are inimical to the legitimate interests of both labor and management, **including their right to bargain collectively** and otherwise deal with each other in

an atmosphere of freedom and mutual respect, disrupt industrial peace and hinder the promotion of healthy and stable labor-management relations.

3. ID.; ID.; ID.; DECISION IN CASE AT BAR LIMITED TO LABOR-ONLY CONTRACTING IN RELATION TO CHARGES OF ULP; DOES NOT MOOT THE ISSUE OF LABOR-ONLY CONTRACTING AS A PROHIBITED ACT.— [I]t should be made clear that the disposition of these cases should be limited only to the foregoing declaration. [T]he complaints filed by respondent were only for ULP. While there is nothing infirm in passing upon the matter of labor-only contracting since it was vigorously litigated in these proceedings, the resolution of the same must only be read in relation to the charges of ULP. x x x [B]eing a preliminary matter actively argued by respondent to prove the charges of ULP, the same was not rendered moot and academic by the eventual dismissal of the complaints as an issue only becomes moot and academic if it becomes a "dead" issue, devoid of any practical value or use to be passed upon.

4. REMEDIAL LAW; CIVIL PROCEDURE; PARTIES; RESPONDENT WHO IS NOT A REAL PARTY-IN-INTEREST HAS NO LEGAL STANDING.— [R]espondent is not a real party-in-interest and hence, had no legal standing [in case at bar]. [It] failed to demonstrate how it stands to be benefited or injured by the judgment [here] or that any personal or direct injury would be sustained by it if the reliefs were not granted.

APPEARANCES OF COUNSEL

Quiason Makalintal Barot Torres Ibarra and Sison for petitioners.

Seno Mendoza & Associates for respondent.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Before the Court are petitions for review on *certiorari*[1] which assail: *(a)* in G.R. No. 211015, the Decision[2] dated September 14, 2012 and the Resolution[3] dated January 15, 2014 of the Court of Appeals (CA) in CA-G.R. SP No. 03169-MIN; and *(b)* in G.R. No. 213835, the Decision[4] dated November 11, 2013 and the Resolution[5] dated July 17, 2014 of the CA in CA-G.R. SP No. 04296-MIN. In both cases, the CA absolved herein petitioners Cagayan Electric Power & Light Company, Inc. (CEPALCO) and CEPALCO Energy Services Corporation (CESCO), formerly CEPALCO Energy Services & Trading Corporation,[6] from the charges of Unfair Labor Practice (ULP) filed by herein respondent CEPALCO Employee's Labor Union-Associated Labor Unions-Trade Union Congress of the Philippines (respondent), but nonetheless, pronounced that CESCO was engaged in labor-only contracting and that, in consequence, the latter's employees are actually the regular employees of CEPALCO in the same manner and extent as if they were directly employed by CEPALCO.

The Facts

Respondent is the duly certified bargaining representative of CEPALCO's regular rank-and-file employees. On the other hand,

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[1] *Rollo* (G.R. No. 211015), pp. 433-470; *rollo* (G.R. No. 213835), pp. 9-48.

[2] *Rollo* (G.R. No. 211015), pp. 488-505. Penned by Associate Justice Marilyn B. Lagura-Yap with Associate Justices Edgardo A. Camello and Renato C. Francisco concurring.

[3] *Id.* at 506-507. Penned by Associate Justice Renato C. Francisco with Associate Justices Edgardo A. Camello and Edward B. Contreras concurring.

[4] *Rollo* (G.R. No. 213835), pp. 50-59. Penned by Associate Justice Renato C. Francisco with Associate Justices Oscar V. Badelles and Edward B. Contreras concurring.

[5] *Id.* at 60. Penned by Associate Justice Edward B. Contreras with Associate Justice Oscar V. Badelles and Rafael Antonio M. Santos concurring.

[6] Referred to as "CESTCO" in some parts of the records.

CEPALCO is a domestic corporation engaged in electric distribution in Cagayan de Oro and other municipalities in Misamis Oriental; while CESCO is a business entity engaged in trading and services.[7]

On February 19, 2007, CEPALCO and CESCO (petitioners) entered into a Contract for Meter Reading Work[8] where CESCO undertook to perform CEPALCO's ***meter-reading activities.*** As a result, several employees and union members of CEPALCO were relieved, assigned in floating positions, and replaced with CESCO workers,[9] prompting respondent to file a complaint[10] for ULP against petitioners, docketed as **NLRC Case No. RAB-10-07-00408-2007**. Respondent alleged that when CEPALCO engaged CESCO to perform its meter-reading activities, its intention was to evade its responsibilities under the Collective Bargaining Agreement (CBA) and labor laws, and that it would ultimately result in the dissipation of respondent's membership in CEPALCO.[11] Thus, respondent claimed that CEPALCO's act of contracting out services, which used to be part of the functions of the regular union members, is violative of Article 259 (c)[12] of the Labor Code, as amended,[13] governing ULP of employers. It further averred that for engaging in labor-only contracting, the workers placed by CESCO must be deemed regular rank-and-file employees of CEPALCO, and that the Contract for Meter Reading Work be declared null and void.[14]

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[7] *Rollo* (G.R. No. 211015), pp. 489 and 661-662.

[8] Said contract was made effective on March 1, 2007; see *id.* at 572-574.

[9] *Id.* at 584.

[10] Dated July 9, 2007. *Id.* at 583-588. The Complaint states in full that it is "For: Unfair Labor Practice, Violation of Department Order No. 3, Series of 2001 (Labor-Only-Contracting and engaging in prohibited activities), Damages and Attorney's Fees."

[11] *Id.* at 584-585.

[12] Formerly Article 248 (c) of the Labor Code.

[13] See Department of Labor and Employment Department Advisory No. 01, Series of 2015, entitled "RENUMBERING OF THE LABOR CODE OF THE PHILIPPINES, AS AMENDED," approved on July 21, 2015.

[14] *Rollo* (G.R. No. 211015), p. 586.

In defense,[15] petitioners averred that CESCO is an independent job contractor and that the contracting out of the meter-reading services did not interfere with CEPALCO's regular workers' right to self-organize, denying that none of respondent's members was put on floating status.[16] Moreover, they argued that the case is only a labor standards issue, and that respondent is not the proper party to raise the issue regarding the status of CESCO's employees and, hence, cannot seek that the latter be declared as CEPALCO's regular employees.[17]

In a Decision[18] dated August 20, 2008, the Labor Arbiter (LA) dismissed the complaint for lack of merit. The LA found that petitioners have shown by substantial evidence that CESCO carries on an independent business of contracting services, in this case for CEPALCO's meter-reading work, and that CESCO has an authorized capital stock of ₱100,000,000.00, as well as equipment and materials necessary to carry out its business.[19] As an independent contractor, CESCO is the statutory employer of the workers it supplied to CEPALCO pursuant to their contract.[20] Thus, there is no factual basis to say that CEPALCO committed ULP as there can be no splitting or erosion of the existing rank-and-file bargaining unit that negates interference with the exercise of CEPALCO workers' right to self-organize.[21]

On appeal[22] by respondent, the National Labor Relations Commission (NLRC), in a Decision[23] dated April 30, 2009,

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[15] See position paper dated December 21, 2007; *id.* at 589-608.

[16] *Id.* at 599.

[17] *Id.* at 605-606.

[18] *Id.* at 622-627. Penned by Executive Labor Arbiter Bario-Rod M. Talon.

[19] *Id.* at 626.

[20] *Id.*

[21] *Id.* at 627.

[22] See Notice and Memorandum of Appeal dated September 11, 2008; *id.* at 628-641.

[23] *Id.* at 661-666. Penned by Commissioner Dominador B. Medroso, Jr. with Presiding Commissioner Salic B. Dumarpa concurring. Commissioner Proculo T. Sarmen took no part.

affirmed the LA's ruling *in toto*, finding that the evidence proffered by respondent proved inadequate in establishing that the service contract amounted to the interference of the right of the union members to self-organization and collective bargaining.[24]

Respondent's motion for reconsideration[25] was denied in a Resolution[26] dated June 30, 2009; hence, it filed a petition for *certiorari*[27] before the CA, docketed as **CA-G.R. SP No. 03169-MIN**.

Pending resolution of **CA-G.R. SP No. 03169-MIN**, or on January 5, 2010, CEPALCO and CESCO entered into another Contract of Service,[28] this time for the ***warehousing works*** of CEPALCO. Alleging that three (3) union members who were assigned at the warehouse of the logistics department were transferred to other positions and departments without their conformity and, eventually, were replaced by workers recruited by CESCO, respondent filed another complaint[29] for ULP against petitioners, docketed as **NLRC Case No. RAB-10-12-00602-2009**, similarly decrying that CEPALCO was engaged in labor-only contracting and, thus, committed ULP.[30]

As in the first case against them, petitioners posited[31] that CEPALCO did not engage in ULP when it contracted out its warehousing works[32] and that CESCO is an independent

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[24] *Id.* at 664.

[25] Dated June 5, 2009. *Id.* at 667-675.

[26] *Id.* at 685-686.

[27] Dated September 25, 2009. *Id*. at 700-726.

[28] "To Perform Warehousing Works." *Rollo* (G.R. No. 213835), pp. 103-107. The contract was notarized on January 5, 2010 (see *id.* at 107).

[29] Dated December 10, 2009. *Id.* at 125-130. The Complaint states in full that it is: "For: Unfair Labor Practice (Union busting), Illegal Lock-out, Violation of Department Order No. 18-02, Rules Implementing Articles 106-109 of the Labor Code (Labor-Only-Contracting and engaging in prohibited activities)."

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

[31] See Position Paper dated July 13, 2010; *id.* at 149-173.

[32] *Id.* at 159.

contractor.[33] They further reiterated their argument that respondent is not the proper party to seek any form of relief for the CESCO employees.[34]

In a Decision[35] dated July 29, 2010, the LA dismissed the case for lack of merit, citing its earlier decision in **NLRC Case No. RAB-10-07-00408-2007**. It explained that the only difference between the previous case and the present case was that in the former, CEPALCO contracted out its meter-reading activities, while in the latter, it contracted out its warehousing works. However, both cases essentially raised the same issue between the same parties, i.e., whether or not the contracting out of services being performed by the union members constitute ULP.[36] As such, the NLRC applied the principle of *res judicata* under the rule on conclusiveness of judgment and dismissed the complaint for ULP.[37] At any rate, it found that respondent failed to present substantial evidence that CEPALCO's contracting out of the warehousing works constituted ULP.[38]

On appeal[39] by respondent, the NLRC, in a Resolution[40] dated February 21, 2011, dismissed the appeal and affirmed the LA's ruling *in toto*. Respondent's motion for reconsideration[41] was denied in a Resolution[42] dated April 15, 2011; hence, it elevated

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[33] *Id.* at 162.

[34] *Id.* at 166.

[35] *Id.* at 175-181. Penned by Labor Arbiter Rammex C. Tiglao.

[36] *Id.* at 179.

[37] *Id.*

[38] *Id.* at 180.

[39] See Notice and Memorandum of Appeal dated August 31, 2010; *id.* at 182-197.

[40] *Id.* at 200-206. Penned by Commissioner Dominador B. Medroso, Jr. with Presiding Commissioner Violeta O. Bantug and Commissioner Aurelio D. Menzon concurring.

[41] Not attached to the records of these cases.

[42] *Rollo* (G.R. No. 213835), pp. 208-209.

the matter to the CA via petition for *certiorari*,[43] docketed as **CA-G.R. SP No. 04296-MIN**.

The Ruling in CA-G.R. SP No. 03169-MIN

In a Decision[44] dated September 14, 2012, the CA partially granted respondent's *certiorari* petition and reversed and set aside the assailed NLRC issuances.

Preliminarily, the CA found that CESCO was engaged in labor-only contracting in view of the following circumstances: *(a)* there was absolutely no evidence to show that CESCO exercised control over its workers, as it was CEPALCO that established the working procedure and methods, supervised CESCO's workers, and evaluated them;[45] *(b)* there is no substantial evidence to show that CESCO had substantial capitalization as it only had a paid-up capital of ₱51,000.00 as of May 30, 1984, and there was nothing on CESCO's list of machineries and equipment that could have been used for the performance of the meter-reading activities contracted out to it;[46] and *(c)* the workers of CESCO performed activities that are directly related to CEPALCO's main line of business.[47] Moreover, while CESCO presented a Certificate of Registration[48] with the Department of Labor and Employment, the CA held that it was not a conclusive evidence of CESCO's status as an independent contractor.[49] Consequently, the workers hired by CESCO pursuant to the service contract for the meter-reading activities were declared regular employees of CEPALCO.[50]

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[43] Dated July 5, 2011. *Id.* at 210-231.

[44] *Rollo* (G.R. No. 211015), pp. 488-505.

[45] *Id.* at 497.

[46] *Id.* at 499-500.

[47] *Id.* at 501.

[48] See Certificate of Registration Numbered X-05-09-010; *id.* at 545.

[49] *Id.* at 501.

[50] *Id.* at 504-505.

However, the CA found no substantial evidence that CEPALCO was engaged in ULP, there being no showing that when it contracted out the meter-reading activities to CESCO, CEPALCO was motivated by ill will, bad faith or malice, or that it was aimed at interfering with its employees' right to self-organize.[51]

Petitioners' motion for reconsideration[52] was denied in a Resolution[53] dated January 15, 2014; hence, the present petition docketed as **G.R. No. 211015**.

The Ruling in CA-G.R. SP No. 04296-MIN

In a Decision [54] dated November 11, 2013, the CA partially granted respondent's petition, finding that CESCO was a labor-only contractor as it had no substantial capitalization, as well as tools, equipment, and machineries used in the work contracted out by CEPALCO. [55] As such, it stated that CESCO is merely an agent of CEPALCO, and that the latter is still responsible to the workers recruited by CESCO in the same manner and extent as if those workers were directly employed by CEPALCO.[56]

Nonetheless, same as the ruling in **CA-G.R. SP No. 03169-MIN**, the CA found that CEPALCO committed no ULP for lack of substantial evidence to establish the same.[57]

Petitioners' motion for reconsideration[58] was denied in a Resolution[59] dated July 17, 2014; hence, the present petition docketed as **G.R. No. 213835**.

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[51] *Id.* at 503-504.

[52] Not attached to the records of these cases.

[53] *Rollo* (G.R. No. 211015), pp. 506-507.

[54] *Rollo* (G.R. No. 213835), pp. 50-59.

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

[56] *Id.* at 58.

[57] *Id.*

[58] Not attached to the records of these cases.

[59] *Rollo* (G.R. No. 213835), p. 60.

The Issues Before the Court

In both **G.R. Nos. 211015** and **213835**,[60] petitioners lament that the CA erred in declaring CESCO as a labor-only contractor notwithstanding the fact that CEPALCO has already been absolved of the charges of ULP. To this, petitioners argue that the issue of whether or not CESCO is an independent contractor was mooted by the finality of the finding that there was no ULP on the part of CEPALCO.[61] Also, they aver that respondent is not a party-in-interest in this issue because the declaration of the CA that the employees of CESCO are considered regular employees will not even benefit the respondent.[62] If there is anyone who stands to benefit from such rulings, they are the employees of the CESCO who are not impleaded in these cases. In any event, petitioners insist that CESCO is a legitimate contractor. Overall, they prayed that the assailed CA rulings be reversed and set aside insofar as the CA found CESCO as engaged in labor-only contracting and that its employees are actually the regular employees of CEPALCO. [63]

The Court's Ruling

The petitions are partly meritorious.

At the outset, it is well to note that the status of CESCO as a labor-only contractor was raised in respondent's complaints before the labor tribunals only in relation to the charges of ULP. In particular, respondent, in its complaint in **NLRC Case No. RAB-10-07-00408-2007**, mainly argued that the "[labor-only] contracting agreement between CEPALCO and [CESCO] discriminates regular union member employees and will ultimately result in the dissipation of its ranks in the line maintenance and

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[60] These cases were consolidated in the Court's Resolution dated November 12, 2014. See *rollo* (G.R. No. 211015), pp. 837-838; and *rollo* (G.R. No. 213835), pp. 321-322.

[61] See *rollo* (G.R. No. 211015), p. 456; and *rollo* (G.R. No. 213835), p. 38.

[62] See *rollo* (G.R. No. 211015), p. 454; and *rollo* (G.R. No. 213835), p. 37.

[63] See *rollo* (G.R. No. 211015), p. 469; and *rollo* (G.R. No. 213835), p. 42.

construction department."[64] This is similar to the thrust of its complaint in **NLRC Case No. RAB-10-12-00602-2009**, wherein they averred that "the [labor-only] contracting arrangement between CEPALCO and [CESCO] discriminates union members and restrains or coerces employees in the exercise of their rights to [self-organization] and collective bargaining[,] and amounts to union busting."[65] As the LA in the latter case aptly observed, "the essential issue between the same parties remain[s] identical: whether the contracting out of activities or services being performed by [u]nion members constitute [ULP]."[66]

Under Article 106[67] of the Labor Code, as amended, labor-only contracting is an arrangement where the contractor, who

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[64] *Rollo* (G.R. No. 211015), p. 585.

[65] *Rollo* (G.R. No. 213835), p. 128.

[66] *Id.* at 179.

[67] Art. 106. *Contractor or Sub-contractor*. — Whenever an employer enters into a contract with another person for the performance of the former's work, the employees of the contractor and of the latter's sub-contractor, if any, shall be paid in accordance with the provisions of this Code.

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

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

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

does not have substantial capital or investment in the form of tools, equipment, machineries, work premises, among others, supplies workers to an employer and the workers recruited are performing activities which are directly related to the principal business of such employer. **Section 5 of Department Order No. 18-02, Series of 2002, otherwise known as the "Rules Implementing Articles 106 to 109 of the Labor Code, As Amended" (DO 18-02), provides the following criteria to gauge whether or not an arrangement constitutes labor-only contracting:**

Section 5. Prohibition against labor-only contracting. — Labor-only contracting is hereby declared prohibited. For this purpose, labor-only contracting shall refer to an arrangement where the contractor or subcontractor merely recruits, supplies or places workers to perform a job, work or service for a principal, and any of the following elements are present:

i) The contractor or subcontractor does not have substantial capital or investment which relates to the job, work or service to be performed and the employees recruited, supplied or placed by such contractor or subcontractor are performing activities which are directly related to the main business of the principal; or

ii) the contractor does not exercise the right to control over the performance of the work of the contractual employee.

The foregoing provisions shall be without prejudice to the application of Article 248 (C) of the Labor Code, as amended.

"Substantial capital or investment" refers to capital stocks and subscribed capitalization in the case of corporations, tools, equipment, implements, machineries and work premises, actually and directly used by the contractor or subcontractor in the performance or completion of the job, work or service contracted out.

The "right to control" shall refer to the right reserved to the person for whom the services of the contractual workers are performed, to determine not only the end to be achieved, but also the manner and means to be used in reaching that end. (Emphases supplied)

Labor-only contracting is considered as a form of ULP when the same is devised by the employer to "interfere with, restrain or coerce employees in the exercise of their rights to self-organization."[68] Article 259 of the Labor Code, as amended, which enumerates certain prohibited activities constitutive of ULP, provides:

> Article 259. *Unfair Labor Practices of Employers.* — It shall be unlawful for an employer to commit any of the following unfair labor practice:
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> x x x x x x x x x
>
> (c) To contract out services or functions being performed by union members **when such will interfere with, restrain or coerce employees in the exercise of their rights to self-organization.**
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> x x x x x x x x x
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> (Emphasis and underscoring supplied)

The need to determine whether or not the contracting out of services (or any particular activity or scheme devised by the employer for that matter) was intended to defeat the workers' right to self-organization is impelled by the underlying concept of ULP. This is stated in Article 258 of the Labor Code, as amended, to wit:

> Article 258. *Concept of Unfair Labor Practice and Procedure for Prosecution Thereof.* — **Unfair labor practices violate the constitutional right of workers and employees to self-organization,** are inimical to the legitimate interests of both labor and management, **including their right to bargain collectively** and otherwise deal with each other in an atmosphere of freedom and mutual respect, disrupt industrial peace and hinder the promotion of healthy and stable labor-management relations.
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> x x x x x x x x x
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> (Emphasis and underscoring supplied)

Thus, in *Great Pacific Employees Union v. Great Pacific Life Assurance Corporation*,[69] the Court observed:

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[68] See Article 259 (c) of the Labor Code, as amended.

[69] 362 Phil. 452 (1999).

There should be no dispute that all the prohibited acts constituting unfair labor practice in essence **relate to the workers' right to self-organization**. Thus, an employer may be held liable under this provision if his conduct affects in whatever manner the right of an employee to self-organize.[70]

Similarly, in *Bankard, Inc. v. NLRC*:[71]

The Court has ruled that the prohibited acts considered as ULP relate to the workers' right to self-organization and to the observance of a CBA. **It refers to "acts that violate the workers' right to organize." Without that element, the acts, even if unfair, are not ULP.** Thus, an employer may only be held liable for unfair labor practice if it can be shown that his acts affect in whatever manner the right of his employees to self-organize.[72] (Emphasis and underscoring supplied)

In these cases, the Court agrees with the CA that CEPALCO was engaged in labor-only contracting as its Contract for Meter-Reading Work dated February 19, 2007 and Contract of Service to Perform Warehousing Works dated January 5, 2010 (subject contracts) with CESCO fit the criteria provided for in Section 5 of DO 18-02, as above-highlighted.

To be specific, petitioners failed to show that CESCO has substantial capital or investment which relates to the job, work or service to be performed. While it is true that: *(a)* CESCO's Amended Articles of Incorporation[73] as of November 26, 2008 shows that CESCO's authorized capital stock is ₱200,000,000.00 as of September 26, 2008,[74] which was increased from ₱100,000,000.00[75] on May 30, 2007; and *(b)* its financial

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[70] *Id.* at 464.

[71] 705 Phil. 428 (2013).

[72] *Id.* at 437-438, citing *Culili v. Eastern Telecommunications Philippines, Inc.*, 657 Phil. 342, 367-368 (2011); and *General Santos Coca-Cola Plant Free Workers Union-Tupas v. Coca-Cola Bottlers Phils., Inc. (General Santos City)*, 598 Phil. 879, 885 (2009).

[73] *Rollo* (G.R. No. 211015), pp. 522-530.

[74] *Id.* at 525.

[75] See Amended Articles of Incorporation as of August 29, 2007; *id.* at 515.

statement[76] as of 2010 and 2011 shows that its paid-up capital stock is in the sum of ₱81,063,000.00,[77] there is no available document to show CESCO's authorized capital stock at the time of the **contracting out of CEPALCO's *meter-reading* activities** to CESCO on February 19, 2007. As it is, the increases in its authorized capital stock and paid-up capital were only made after November 26, 2008, hence, are only relevant with regard to the time CEPALCO contracted out its warehousing works to CESCO on January 5, 2010. Since the amount of CESCO's authorized capital stock at the time CEPALCO contracted out its meter-reading activities was not shown, the Court has no means of determining whether it had substantial capital at the time the contract therefor was entered into. Furthermore, the list[78] of CESCO's office equipment, furniture and fixtures, and vehicles offered in evidence by petitioners does not satisfy the requirement that they could have been used in the performance of the specific work contracted out, *i.e.*, meter-reading service. As the CA aptly pointed out,[79] the tools and equipment utilized by CESCO in the meter-reading activities are owned by CEPALCO, emphasizing the fact that CESCO has no basic equipment to carry out the service contracted out by CEPALCO.

It is also evident that meter-reading is a job that is directly related to the main business of CEPALCO, considering that the latter is an electric distribution utility,[80] which is necessarily tasked with the evaluation and appraisal of meters in order to bill its clients.

More significantly, records are devoid of evidence to prove that the work undertaken in furtherance of the meter-reading contract was made under the sole control and supervision of

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[76] See General Form for Statement; *id.* at 532-540.

[77] *Id.* at 535.

[78] *Id.* at 546-547.

[79] *Id.* at 500.

[80] See *id.* at 435. See also *rollo* (G.R. No. 213835), p. 11.

CESCO. Instead, as noted[81] by the CA, it was CEPALCO that established the working procedure and methods and supervised CESCO's workers in their tasks.

On the other hand, although it may be said that CESCO had substantial capital when CEPALCO contracted out its ***warehousing* works** on January 5, 2010, there is, however, lack of credible evidence to show that CESCO had the aforesaid substantial investment in the form of equipment, tools, implements, machineries, and work premises to perform the warehousing activities on its own account. Similarly, the job contracted out is directly related to CEPALCO's electric distribution business, which involves logistics, inventories, accounting, billing services, and other related operations. Lastly, same as above, no evidence has been offered to establish that CESCO exercised control with respect to the manner and methods of achieving the warehousing works, or that it supervised the workers assigned to perform the same.

The foregoing findings notwithstanding, the Court, similar to the CA and the labor tribunals, finds that CEPALCO's contracting arrangements with CESCO did not amount to ULP. This is because respondent was not able to present any evidence to show that such arrangements violated CEPALCO's workers' right to self-organization, which, as above-mentioned, constitutes the core of ULP. Records do not show that this finding was further appealed by respondent. **Thus, the complaints filed by respondent should be dismissed with finality**.

At this juncture, it should be made clear that the disposition of these cases should be limited only to the foregoing declaration. Again, the complaints filed by respondent were only for ULP. While there is nothing infirm in passing upon the matter of labor-only contracting since it was vigorously litigated in these proceedings, the resolution of the same must only be read in relation to the charges of ULP. As earlier stated, labor-only contracting was invoked by respondent as a prohibited act under Article 259 (c) of the Labor Code, as amended. As it turned

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[81] *Rollo* (G.R. No. 211015), pp. 497-500.

out, however, respondent failed to relate the arrangement to the defining element of ULP, *i.e.*, that it violated the workers' right to self-organization. Hence, being a preliminary matter actively argued by respondent to prove the charges of ULP, the same was not rendered moot and academic by the eventual dismissal of the complaints as an issue only becomes moot and academic if it becomes a "dead" issue, devoid of any practical value or use to be passed upon. In *Pormento v. Estrada*:[82]

> An action is considered "moot" when it no longer presents a justiciable controversy because the issues involved have become academic or dead or when the matter in dispute has already been resolved and hence, one is not entitled to judicial intervention unless the issue is likely to be raised again between the parties. There is nothing for the court to resolve as the determination thereof has been overtaken by subsequent events.[83]

For another, the Court also observes that while respondent did ask for the nullification of the subject contracts between petitioners, and even sought that the employees provided by CESCO to CEPALCO be declared as the latter's own employees, petitioners correctly argue that respondent is not a real party-in-interest and hence, had no legal standing insofar as these matters are concerned. This is because respondent failed to demonstrate how it stands to be benefited or injured by a judgment on the same, or that any personal or direct injury would be sustained by it if these reliefs were not granted. In *Joya v. Presidential Commission on Good Government*,[84] the Court explained:

> "Legal standing" means a personal and substantial interest in the case such that the party has sustained or will sustain direct injury as a result of the x x x act being challenged. The term "interest" is material interest, an interest in issue and to be affected by the decree, as distinguished from mere interest in the question involved, or a mere incidental interest. Moreover, the interest of the party plaintiff

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[82] 643 Phil. 735 (2010).

[83] *Id.* at 739.

[84] G.R. No. 96541, August 24, 1993, 225 SCRA 568.

must be personal and not one based on a desire to vindicate the constitutional right of some third and unrelated party.[85]

If at all, it would be the employees of CESCO who are entitled to seek the foregoing reliefs since in cases of labor-only contracting, "the person or intermediary shall be considered merely as an agent of the employer who shall be responsible to the workers in the same manner and extent as if the latter were directly employed by him."[86] However, they have not been impleaded in these cases. Thus, as prayed for by petitioners, the Court must set aside the portions of the assailed CA Decisions declaring: *(a)* the workers hired by CESCO, pursuant to the contracts subject of these cases, as regular employees of CEPALCO; and *(b)* the latter responsible to said workers in the same manner and extent as if they were directly employed by it. This pronouncement not only squares with the rules on real party-in-interest and legal standing, but also with the precept that no one shall be affected by any proceeding to which he is a stranger, and that strangers to a case are not bound by any judgment rendered by the court.[87]

With the principal issues already resolved, the Court sees no need to delve into other ancillary issues that would have no effect to the conclusion of these cases.

WHEREFORE, the petitions are **PARTLY GRANTED**. The portions of the Decisions and Resolutions of the Court of Appeals (CA) in CA-G.R. SP No. 03169-MIN and CA-G.R. SP No. 04296-MIN declaring that the workers hired by CESCO, pursuant to the contracts subject of these cases, are regular employees of CEPALCO, and that the latter is responsible to said workers in the same manner and extent as if those workers were directly employed by CEPALCO are hereby **DELETED**. The rest of the CA Decisions stand.

SO ORDERED.

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

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[85] *Id.* at 576.

[86] See Article 106 of the Labor Code, as amended.

[87] See *Green Acres Holdings, Inc. v. Cabral,* 710 Phil. 235, 251 (2013).

FIRST DIVISION

[G.R. No. 215348. June 20, 2016]

ELDEFONSO G. DEL ROSARIO and JOSEFINO R. ORTIZ, *petitioners, vs.* **CRISTINA OCAMPO-FERRER,** *respondent.*

SYLLABUS

REMEDIAL LAW; JURISDICTION; DOCTRINE OF JUDICIAL STABILITY OR NON-INTERFERENCE IN THE REGULAR ORDERS OR JUDGMENTS OF A CO-EQUAL COURT; ENFORCEMENT OF WRIT OF EXECUTION THAT EMANATED FROM RTC-LAS PIÑAS BR. 275 CANNOT BE ASSAILED IN RTC-LAS PIÑAS BR. 198.— [U]nder the doctrine of judicial stability or non-interference in the regular orders or judgments of a co-equal court, the various trial courts of a province or city, having the same equal authority, should not, cannot, and are not permitted to interfere with their respective cases, much less with their orders or judgments. xxx In the case at bar, the Court notes that in performing a levy on and subsequent auction sale of the property covered by TCT No. 30480, Sheriff Ortiz was merely enforcing the writ of execution issued by the RTC-Las Piñas Br. 275 pursuant to its ruling in Civil Case No. LP-03-0088. Since said writ of execution emanated from the RTC-Las Piñas Br. 275, its enforcement cannot be assailed in a co-equal court such as the RTC-Las Piñas Br. 198. x x x [T]he RTC-Las Piñas Br. 198 has no jurisdiction to annul actions emanating from a lawful order of a co-equal court such as the RTC-Las Piñas Br. 275. x x x [T]he proper remedy to assail orders originating from the RTC-Las Piñas Br. 275 is to file an action before a higher court with authority to nullify such orders.

APPEARANCES OF COUNSEL

Edillor Soriano & Tatad Law Offices for petitioners.
Malveda Cachero and Balocating Law Offices for respondent.

R E S O L U T I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated May 27, 2014 and the Resolution[3] dated November 10, 2014 of the Court of Appeals (CA) in CA-G.R. CV No. 100487, holding, *inter alia*, that the levy on and sale of the real property owned by respondent Cristina Ocampo-Ferrer (Ocampo-Ferrer) was procedurally defective, thereby nullifying the Certificate of Sale in favor of petitioner Eldefonso G. Del Rosario (Del Rosario), the annotation thereof on Transfer Certificate of Title (TCT) No. 30480, and the Officer's Deed of Final Sale.

The Facts

Sometime in February 2001, Ocampo-Ferrer obtained a loan in the amount of ₱850,000.00 from Del Rosario, secured by a parcel of land[4] situated in Calauan, Laguna and covered by TCT No. T-165897. After Ocampo-Ferrer defaulted on said loan, Del Rosario filed a complaint[5] for sum of money against her before the Regional Trial Court of Las Piñas City (RTC-Las Piñas), Branch 275[6] (RTC-Las Piñas Br. 275), docketed as Civil Case No. LP-03-0088. On December 8, 2004, Ocampo-Ferrer and Del Rosario entered into a Compromise Agreement[7] whereby Ocampo-Ferrer bound herself to pay Del Rosario the amount of ₱1,200,000.00 on or before June 19, 2005, and that

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[1] *Rollo*, pp. 10-18.

[2] *Id.* at 20-27. Penned by Associate Justice Jose C. Reyes, Jr. with Associate Justices Mario V. Lopez and Socorro B. Inting concurring.

[3] *Id.* at 75.

[4] Records (Civil Case No. LP-03-0088), pp. 14-15.

[5] *Id.* at 1-5.

[6] The case was originally raffled to RTC-Las Piñas Branch 200, but was re-raffled to Branch 275 because of the former's designation by the Supreme Court as a Special Court for Drug Cases. See *id.* at 127.

[7] *Id.* at 265-266.

upon receipt of payment, Del Rosario shall return the owner's duplicate copy of TCT No. T-165897. Accordingly, the RTC-Las Piñas Br. 275 issued an Order[8] dated December 10, 2004, adopting and approving the said Agreement as the Decision in Civil Case No. LP-03-0088.[9]

Despite the foregoing, Ocampo-Ferrer still failed to comply with her obligation, thus, compelling Del Rosario to move for execution,[10] which was granted by the RTC-Las Piñas Br. 275 in an Order[11] dated December 16, 2005. After the issuance of the Writ of Execution, [12] petitioner Sheriff Josefino Ortiz (Sheriff Ortiz) of RTC-Las Piñas Br. 275 issued a Demand/Notice to Pay[13] to Ocampo-Ferrer, which the latter failed to act upon. This prompted Sheriff Ortiz to levy Ocampo-Ferrer's parcel of land located in Las Piñas, covered by TCT No. 30480,[14] and to schedule the public auction of said land. At the auction sale, Del Rosario came out as the sole and highest bidder, and consequently, a Certificate of Sale[15] dated February 20, 2006 was issued in his favor.[16] In view of the foregoing, Ocampo-Ferrer filed a complaint[17] before the RTC-Las Piñas, Branch 198 (RTC-Las Piñas Br. 198) seeking the annulment of the sheriff's sale, as well as payment of damages, docketed as Civil Case No. LP-07-0037. In her complaint, Ocampo-Ferrer claimed that Del Rosario and Sheriff Ortiz committed unlawful acts in enforcing the writ of execution in Civil Case No. LP-03-0088.[18]

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[8] *Rollo*, pp. 28-29. Penned by Judge Bonifacio Sanz Maceda.

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

[10] Records (Civil Case No. LP-03-0088), pp. 270-271.

[11] *Id.* at 283.

[12] *Id.* at 295-296.

[13] *Id.* at 293.

[14] *Id.* at 289-291.

[15] *Id.* at 309.

[16] *Rollo*, pp. 21-22.

[17] Records (Civil Case No. LP-07-0037), pp. 2-9.

[18] See *id.* See also *rollo*, p. 22.

For their part,[19] petitioners vehemently denied the accusations against them. They likewise averred that: *(a)* the complaint was barred by prior judgment in Civil Case No. LP-03-0088 and that Ocampo-Ferrer never challenged the same; and *(b)* the subject matter of Civil Case No. LP-07-0037 is not within the jurisdiction of RTC-Las Piñas Br. 198 as it is a co-equal court of RTC-Las Piñas Br. 275.[20]

The RTC-Las Piñas Br. 198 Ruling

In a Decision[21] dated November 9, 2012, the RTC-Las Piñas Br. 198 dismissed the case for lack of merit and ordered Del Rosario to return the owner's duplicate copy of TCT No. T-165897 to Ocampo-Ferrer. It found that Ocampo-Ferrer failed to prove that the actions taken by Del Rosario and Sheriff Ortiz in enforcing the compromise judgment in Civil Case No. LP-03-0088 — by levying the property covered by TCT No. 30480 and its consequent auction sale — were unlawful and illegal. Since the levy and auction sale operated to extinguish Ocampo-Ferrer's obligation to Del Rosario, the RTC-Las Piñas Br. 198 ordered the latter to return to the former the owner's duplicate copy of TCT No. T-165897 in accordance with the aforesaid compromise judgment.[22]

Ocampo-Ferrer moved for reconsideration[23] but the same was denied in an Order[24] dated February 8, 2013. Aggrieved, she appealed to the CA.[25]

The CA Ruling

In a Decision[26] dated May 27, 2014, the CA reversed and set aside the ruling of the RTC-Las Piñas Br. 198 and, accordingly,

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[19] See Answer with Affirmative Defenses and Counterclaim dated March 26, 2007; records (Civil Case No. LP-07-0037), pp. 55-61.

[20] *Id.* See also *rollo*, p. 22.

[21] *Rollo*, pp. 30-37. Penned by Judge Erlinda Nicolas-Alvaro.

[22] *Id.* at 32-36.

[23] Records (Civil Case No. LP-07-0037), pp. 1323-1331.

[24] *Id.* at 1362-1363.

[25] See Notice of Appeal dated March 11, 2013; CA *rollo*, pp. 48-49.

[26] *Rollo*, pp. 20-27.

declared null and void the following: *(a)* the levy performed by Sheriff Ortiz on the property covered by TCT No. 30480 and the consequent auction sale of the same; and *(b)* the Certificate of Sale in favor of Del Rosario, the annotation thereof on TCT No. 30480, and the Officer's Deed of Final Sale.[27] Explaining the appropriate manner of enforcing judgments for money as laid down under Section 9, Rule 39 of the Rules of Court, the CA held that Sheriff Ortiz's levy on the property covered by TCT No. 30480 was procedurally defective as there was no showing that Sheriff Ortiz gave Ocampo-Ferrer the opportunity to exercise the option of immediately choosing which among her properties should be levied upon. In this regard, the CA even posited that assuming *arguendo* that Ocampo-Ferrer was given said option but failed to exercise the same, Sheriff Ortiz should have first levied on her personal properties, and if the same were insufficient to answer for the money judgment, it is only then that he can levy on her real properties, such as the one covered by TCT No. 30480.[28]

Petitioners moved for reconsideration[29] which was, however, denied in the Resolution[30] dated November 10, 2014; hence, this petition.

The Issue Before the Court

The issue for the Court's resolution is whether or not the CA correctly held that the levy and consequent sale of the property covered by TCT No. 30480 is null and void.

The Ruling of the Court

The petition is meritorious.

At the outset, the Court emphasizes that under the doctrine of judicial stability or non-interference in the regular orders or

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[27] *Id.* at 26.

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

[29] CA *rollo*, pp. 227-229.

[30] *Rollo*, p. 75.

judgments of a co-equal court, the various trial courts of a province or city, having the same equal authority, should not, cannot, and are not permitted to interfere with their respective cases, much less with their orders or judgments.[31] *In Barroso v. Omelio*,[32] the Court had the opportunity to thoroughly explain the said doctrine in this manner:

> The doctrine of judicial stability or non-interference in the regular orders or judgments of a co-equal court is an elementary principle in the administration of justice: no court can interfere by injunction with the judgments or orders of another court of concurrent jurisdiction having the power to grant the relief sought by the injunction. **The rationale for the rule is founded on the concept of jurisdiction: a court that acquires jurisdiction over the case and renders judgment therein has jurisdiction over its judgment, to the exclusion of all other coordinate courts, for its execution and over all incidents, and to control, in furtherance of justice, the conduct of ministerial officers acting in connection with this judgment.**
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> Thus, we have repeatedly held that a case where an execution order has been issued is considered as still pending, so that all proceedings on the execution are still proceedings in the suit. **A court which issued a writ of execution has the inherent power, for the advancement of justice, to correct errors of its ministerial officers and to control its own processes. To hold otherwise would be to divide the jurisdiction of the appropriate forum in the resolution of incidents arising in execution proceedings**. Splitting of jurisdiction is obnoxious to the orderly administration of justice.
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> To be sure, the law and the rules are not unaware that an issuing court may violate the law in issuing a writ of execution and have recognized that there should be a remedy against this violation. **The remedy, however, is not the resort to another co-equal body but to a higher court with authority to nullify the action of the**

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[31] See *Barroso v. Omelio*, G.R. No. 194767, October 14, 2015, citing *The Heirs of the Late Spouses Laura Yadno & Pugsong Mat-an v. The Heirs of the Late Spouses Anchales*, 697 Phil. 390, 400 (2012).

[32] See *id.*

issuing court. This is precisely the judicial power that the 1987 Constitution, under Article VIII, Section 1, paragraph 2, speaks of and which this Court has operationalized through a petition for *certiorari*, under Rule 65 of the Rules of Court.

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It is not a viable legal position to claim that a TRO against a writ of execution is issued against an erring sheriff, not against the issuing Judge. A TRO enjoining the enforceability of a writ addresses the writ itself, not merely the executing sheriff. x x x As already mentioned above, **the appropriate action is to assail the implementation of the writ before the issuing court in whose behalf the sheriff acts, and, upon failure, to seek redress through a higher judicial body.**[33] (Emphases and underscoring supplied)

In the case at bar, the Court notes that in performing a levy on and subsequent auction sale of the property covered by TCT No. 30480, Sheriff Ortiz was merely enforcing the writ of execution issued by the RTC-Las Piñas Br. 275 pursuant to its ruling in Civil Case No. LP-03-0088. Since said writ of execution emanated from the RTC-Las Piñas Br. 275, its enforcement cannot be assailed in a co-equal court such as the RTC-Las Piñas Br. 198, as it would violate the doctrine of judicial stability or non-interference in the regular orders or judgments of a co-equal court. Unfortunately, Ocampo-Ferrer still chose to assail the enforcement of said writ by filing a case before the RTC-Las Piñas Br. 198. Worse, the RTC-Las Piñas Br. 198 — and even the CA on appeal — chose to resolve the case on the merits instead of simply dismissing the same in deference to the aforesaid doctrine.

As correctly pointed out by petitioners at the earliest opportunity in their Answer with Affirmative Defenses and Counterclaim,[34] the RTC-Las Piñas Br. 198 has no jurisdiction to annul actions emanating from a lawful order of a co-equal court such as the RTC-Las Piñas Br. 275.[35] In other words,

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[33] See *id.*, citing *Cabili v. Balindong*, 672 Phil. 398, 406-411 (2011).

[34] Dated March 26, 2007; records (Civil Case No. LP-07-0037), pp. 55-61.

[35] *Id.* at 59.

when the RTC-Las Piñas Br. 275 took cognizance of Civil Case No. LP-03-0088, it acquired full jurisdiction over the matters at hand, to the exclusion of all other coordinate courts. Thus, in consonance with the afore-discussed doctrine, the proper remedy to assail orders originating from the RTC-Las Piñas Br. 275 is to file an action before a higher court with authority to nullify such orders and not before a co-equal body. Hence, the RTC-Las Piñas Br. 198 erred in taking cognizance of Civil Case No. LP-07-0037 as this case sought to annul an order coming from a co-equal court. Verily, the RTC-Las Piñas Br. 198 should have dismissed Civil Case No. LP-07-0037 on the ground of lack of jurisdiction, without prejudice to its re-filing in the appropriate court.

WHEREFORE, the petition is **GRANTED**. The Decision dated May 27, 2014, and the Resolution dated November 10, 2014 of the Court of Appeals in CA-G.R. CV No. 100487 are hereby **SET ASIDE**. Civil Case No. LP-07-0037, originally pending before the Regional Trial Court of Las Piñas City, Branch 198, is **DISMISSED** on the ground of lack of jurisdiction.

SO ORDERED.

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

FIRST DIVISION

[G.R. No. 215950. June 20, 2016]

TRIDHARMA MARKETING CORPORATION, *petitioner, vs.* **COURT OF TAX APPEALS, SECOND DIVISION, and THE COMMISSIONER OF INTERNAL REVENUE,** *respondents.*

SYLLABUS

1. **TAXATION; COURT OF TAX APPEALS (CTA) UNDER RA NO. 1125 AS AMENDED BY RA 9282; UNDER SECTION 11, THE CTA MAY ORDER THE SUSPENSION OF THE COLLECTION OF TAXES PROVIDED THAT THE TAXPAYER EITHER: (1) DEPOSITS THE AMOUNT CLAIMED; OR (2) FILES A SURETY BOND FOR NOT MORE THAN DOUBLE THE AMOUNT.—** [Under] Section 11 of Republic Act No. 1125 (R.A. No. 1125), as amended by Republic Act No. 9282 (RA 9282) it is stated that: x x x No appeal taken to the Court of Tax Appeals from the decision of the Collector of Internal Revenue or the Collector of Customs shall suspend the payment, levy, distraint, and/or sale of any property of the taxpayer for the satisfaction of his tax liability as provided by existing law: ***Provided, however,*** **That when in the opinion of the Court the collection by the Bureau of Internal Revenue or the Commissioner of Customs may jeopardize the interest of the Government and/or the taxpayer the Court at any stage of the proceeding may suspend the said collection and require the taxpayer either to deposit the amount claimed or to file a surety bond for not more than double the amount with the Court.** Clearly, the CTA may order the suspension of the collection of taxes provided that the taxpayer either: (1) deposits the amount claimed; or (2) files a surety bond for not more than double the amount.

2. **ID.; ID.; ID.; ON FILING OF SURETY BOND, GRAVE ABUSE OF DISCRETION WAS COMMITTED IN FIXING THE AMOUNT OF BOND AT NEARLY FIVE TIMES THE NET WORTH OF PETITIONER WITHOUT CONDUCTING THE NECESSARY PRELIMINARY HEARING; REMAND OF THE CASE TO THE CTA MADE PROPER.—** The petitioner argues that the surety bond amounting to ₱4,467,391,881.76 greatly exceeds its net worth and makes it legally impossible to procure the bond from bonding companies that are limited in their risk assumptions. As shown in its audited financial statements for the year ending December 31, 2013, its net worth only amounted to ₱916,768,767.00, making the amount of ₱4,467,391,881.76 fixed for the bond nearly five times greater than such net worth. x x x [T]he CTA in Division gravely abused its discretion under Section 11 because

it fixed the amount without conducting a preliminary hearing to ascertain whether there were grounds to suspend the collection of the deficiency assessment on the ground that such collection would jeopardize the interests of the taxpayer. x x x Moreover, Section 11 of R.A. No. 1125, as amended, indicates that the requirement of the bond as a condition precedent to suspension of the collection applies only in cases where the processes by which the collection sought to be made by means thereof are carried out in consonance with the law, not when the processes are in plain violation of the law that they have to be suspended for jeopardizing the interests of the taxpayer. x x x Consequently, to prevent undue and irreparable damage to the normal business operations of the petitioner, the remand to the CTA of the questions involving the suspension of collection and the correct amount of the bond is the proper course of action.

APPEARANCES OF COUNSEL

Siguion Reyna, Montecillo & Ongsiako for petitioner.
The Solicitor General for respondents.

D E C I S I O N

BERSAMIN, *J.*:

In this special civil action for *certiorari*,[1] the taxpayer assails the resolutions issued on July 8, 2014[2] and December 22, 2014[3] in CTA Case No. 8833 whereby the Court of Tax Appeals (CTA), Second Division, granted its motion for suspension of the collection of tax but required it to post a surety bond amounting to ₱4,467,391,881.76.

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[1] *Rollo*, pp. 3-32; Petition for *Certiorari* (With Urgent Application for the Issuance of a Status Quo Ante Order/Temporary Restraining Order and/or Writ of Preliminary Injunction) filed under Rule 65 of the *Rules of Court.*

[2] *Id.* at 41-46; penned by Associate Justice Juanito C. Castañeda, Jr. with Associate Justice Caesar A. Casanova concurring. Associate Justice Amelia R. Cotangco-Manalastas was on leave but took part in the Resolution dated December 22, 2014.

[3] *Id.* at 47-51.

The relevant facts follow.

On August 16, 2013, the petitioner received a Preliminary Assessment Notice (PAN) from the Bureau of Internal Revenue (BIR) assessing it with various deficiency taxes — income tax (IT), value-added tax (VAT), withholding tax on compensation (WTC), expanded withholding tax (EWT) and documentary stamp tax (DST) — totalling ₱4,640,394,039.97, inclusive of surcharge and interest. A substantial portion of the deficiency income tax and VAT arose from the complete disallowance[4] by the BIR of the petitioner's purchases from Etheria Trading in 2010 amounting to ₱4,942,937,053.82. The petitioner replied to the PAN through its letter dated August 30, 2013.[5]

On September 23, 2013, the petitioner received from the BIR a Formal Letter of Demand assessing it with deficiency taxes for the taxable year ending December 31, 2010 amounting to ₱4,697,696,275.25, inclusive of surcharge and interest. It filed a protest against the formal letter of demand. Respondent Commissioner of Internal Revenue (CIR) required the petitioner to submit additional documents in support of its protest, and the petitioner complied.[6]

On February 28, 2014, the petitioner received a Final Decision on Disputed Assessment worth ₱4,473,228,667.87, computed as follows:[7]

Tax Type	Basic Tax	Surcharge	Interest	Total
1. IT	1,527,100,903.98	763,550,451.99	878,605,999.55	₱3,169,257,355.52
2. VAT	612,723,525.25	306,361,762.63	379,049,238.36	1,298,134,526.24

[4] *Id.* at 7; The BIR disallowed all of petitioner's purchases from Etheria on the following grounds: (1) the invoices and receipts issued by Etheria were supposedly not valid evidence of the purchases because they were not pre-numbered, but stamped; (2) Etheria's Authority to Print receipts was unofficial; (3) the validity of petitioner's payments to Globalhills and Cadense, by virtue of SPA's issued by Etheria, were allegedly questionable in view of these entities' low capitalization; and (4) petitioner allegedly acted in bad faith.

[5] *Id.*

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

[7] *Id.*

3. WHT	1,679,413.14		1,048,137.84	2,727,550.98
4. DST	534,493.40		336,511.18	871,004.58
5. EWT	1,378,127.78		860,102.76	2,238,230.54
TOTAL	**2,143,416,463.55**	**1,069,912,214.62**	**1,259,899,989.69**	**4,473,228,667.87**

The petitioner filed with the CIR a protest through a Request for Reconsideration. However, the CIR rendered a decision dated May 26, 2014 denying the request for reconsideration.[8]

Prior to the CIR's decision, the petitioner paid the assessments corresponding to the WTC, DST and EWT deficiency assessments, inclusive of interest, amounting to ₱5,836,786.10. It likewise reiterated its offer to compromise the alleged deficiency assessments on IT and VAT.[9]

On June 13, 2014, the petitioner appealed the CIR's decision to the CTA *via* its so-called Petition for Review with Motion to Suspend Collection of Tax, which was docketed as CTA Case No. 8833 and raffled to the CTA Second Division.[10]

The CTA in Division issued the first assailed resolution on July 8, 2014, stating thusly:

> In the instant case, petitioner's Financial Statements and Independent Auditor's Report for December 31, 2013 and 2012, as identified by its witness, indicate that the company's total equity for the year 2012 and 2013 was ₱955,095,301 and ₱916,768,767, respectively. To yield to respondent's alleged assessment and collection in the amount of ₱4,467,391,881.76 would definitely jeopardize the normal business operations of petitioner thereby causing irreparable injury to its ability to continue.
>
> Moreover, considering petitioner's willingness to post bond, as manifested during the June 19, 2014 hearing, in such reasonable amount as may be fixed by this Court, pursuant to Section 11 of R.A. No. 1125, as amended, this Court in the interest of substantial justice, resolves to grant petitioner's Motion.

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[8] *Id.* at 8.

[9] *Id.*

[10] *Id.*

x x x x x x x x x

WHEREFORE, considering the urgency of the action to be enjoined, petitioner's Motion for Suspension of Collection of Tax in the amount of ₱4,467,391,881.76 allegedly representing its deficiency Income Tax and Value Added Tax for taxable year 2010 is **GRANTED**. Provided, however, that petitioner deposits with this Court an acceptable surety bond equivalent to 150% of the assessment or in the amount of **SIX BILLION SEVEN HUNDRED ONE MILLION EIGHTY SEVEN THOUSAND EIGHT HUNDRED TWENTY TWO and 64/100 PESOS (₱6,701,087,822.64)** within fifteen (15) days from notice hereof.

Moreover, pursuant to Supreme Court Circular *A.M. No. 04-7-02-SC*, otherwise known as the "Proposed Guidelines on Corporate Surety Bonds", petitioner is hereby **ORDERED** to submit the following documents with the surety bond stated above:

1. Certified copy of a valid Certificate of Accreditation and Authority issued by the Office of the Court Administrator;

2. Copy of the Certificate of Compliance with Circular No. 66 of the Insurance Commission duly certified by the Insurance Commission;

3. Proof of payment of legal fees under the Rules of Court and the documentary stamp tax (thirty centavos [₱0.30] on each four pesos [₱4.00] or fractional part thereof, of the premium charged, pursuant to Section 187 Title VII of Rep. Act No. 8424) and Value Added Tax (VAT) under the National Internal Revenue Code;

4. Photocopy of the Certificate of Accreditation and Authority issued by the Court Administrator containing the photograph of the authorized agent (after presentation to the Clerk of Court of the original copy thereof as Copy of the Certificate of Accreditation and Authority containing the photograph of the agent); and

5. Secretary Certificate containing the specimen signatures of the agents authorized to transact business with the courts.

In addition, the said bond must be a continuing bond which shall remain effective until the above-captioned case is finally decided, resolved or terminated by this Court without necessity of renewal on a yearly basis, or its validity being dependent on the payment of a renewal premium pursuant to Section 177 of the Insurance Code.

Failure to comply with the above requirements will cause the setting aside of this Resolution granting petitioner's motion for the suspension of the collection of the tax liability.

x x x x x x x x x

SO ORDERED.[11]

The petitioner filed its Motion for Partial Reconsideration praying, among others, for the reduction of the bond to an amount it could obtain.

On December 22, 2014, the CTA in Division issued its second assailed resolution reducing the amount of the petitioner's surety bond to ₱4,467,391,881.76, which was the equivalent of the BIR's deficiency assessment for IT and VAT.[12]

Hence, the petitioner has commenced this special civil action for *certiorari*, asserting:

I.

WITH ALL DUE RESPECT, THE CTA SECOND DIVISION COMMITTED GRAVE ABUSE OF DISCRETION IN REFUSING TO CONSIDER, AND IN COMPLETELY IGNORING, THE PATENT ILLEGALITY OF THE ASSESSMENT THAT, UNDER LAW AND JURISPRUDENCE, FULLY JUSTIFIED DISPENSING WITH THE REQUIREMENT OF POSTING A BOND.

II.

WITH ALL DUE RESPECT, THE CTA SECOND DIVISION COMMITTED GRAVE ABUSE OF DISCRETION IN IMPOSING A GARGANTUAN BOND IN THE AMOUNT OF ₱4,467,391,881.76 THAT PETITIONER HAS DEMONSTRATED BY UNREFUTED EVIDENCE TO BE FACTUALLY AND LEGALLY IMPOSSIBLE TO PROCURE.

III.

WITH ALL DUE RESPECT, THE CTA SECOND DIVISION COMMITTED GRAVE ABUSE OF DISCRETION IN

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[11] *Id.* at 44-46.

[12] *Id.* at 50-51.

GRANTING AN ILLUSORY RELIEF, AND IN EFFECTIVELY DENYING PETITIONER ACCESS TO THE REMEDY PROVIDED BY LAW. UPON UNCONTRADICTED EVIDENCE, THE IMPOSITION OF A BOND IS NOT ONLY UNJUST, BUT WILL CAUSE IRREPARABLE INJURY UPON PETITIONER EVEN BEFORE IT IS HEARD.[13]

On February 9, 2015, the Court issued a temporary restraining order[14] enjoining the implementation of July 8, 2014 and December 22, 2014 resolutions of the CTA in Division, and the collection of the deficiency assessments.

Issue

Did the CTA in Division commit grave abuse of discretion in requiring the petitioner to file a surety bond despite the supposedly patent illegality of the assessment that was beyond the petitioner's net worth but equivalent to the deficiency assessment for IT and VAT?

Ruling of the Court

The petition for *certiorari* is meritorious.

Section 11 of Republic Act No. 1125 (R.A. No. 1125),[15] as amended by Republic Act No. 9282 (RA 9282)[16] it is stated that:

> Sec. 11. *Who may appeal; effect of appeal.* — x x x
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> x x x x x x x x x
>
> No appeal taken to the Court of Tax Appeals from the decision of the Collector of Internal Revenue or the Collector of Customs

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[13] *Id.* at 13-14.

[14] *Id.* at 325-327.

[15] Entitled *An Act Creating the Court of Tax Appeals.*

[16] Entitled *An Act Expanding the Jurisdiction of the Court of Tax Appeals (CTA), Elevating its Rank to the Level of a Collegiate Court with Special Jurisdiction and Enlarging its Membership, Amending for the Purpose Certain Sections or Republic Act No. 1125, as Amended, Otherwise Known as the Law Creating the Court of Tax Appeals, and for Other Purposes.*

shall suspend the payment, levy, distraint, and/or sale of any property of the taxpayer for the satisfaction of his tax liability as provided by existing law: ***Provided, however,* That when in the opinion of the Court the collection by the Bureau of Internal Revenue or the Commissioner of Customs may jeopardize the interest of the Government and/or the taxpayer the Court at any stage of the proceeding may suspend the said collection and require the taxpayer either to deposit the amount claimed or to file a surety bond for not more than double the amount with the Court.** (bold emphasis supplied.)

Clearly, the CTA may order the suspension of the collection of taxes provided that the taxpayer either: (1) deposits the amount claimed; or (2) files a surety bond for not more than double the amount.

The petitioner argues that the surety bond amounting to ₱4,467,391,881.76 greatly exceeds its net worth and makes it legally impossible to procure the bond from bonding companies that are limited in their risk assumptions.[17] As shown in its audited financial statements for the year ending December 31, 2013, its net worth only amounted to ₱916,768,767.00,[18] making the amount of ₱4,467,391,881.76 fixed for the bond nearly five times greater than such net worth.

The surety bond amounting to ₱4,467,391,881.76 imposed by the CTA was within the parameters delineated in Section 11 of R.A. 1125, as amended. The Court holds, however, that the CTA in Division gravely abused its discretion under Section 11 because it fixed the amount of the bond at nearly five times the net worth of the petitioner without conducting a preliminary hearing to ascertain whether there were grounds to suspend the collection of the deficiency assessment on the ground that such collection would jeopardize the interests of the taxpayer. Although the amount of ₱4,467,391,881.76 was itself the amount of the assessment, it behoved the CTA in Division to consider other factors recognized by the law itself towards suspending the

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[17] *Rollo*, pp. 18-23.

[18] *Id.* at 129.

collection of the assessment, like whether or not the assessment would jeopardize the interest of the taxpayer, or whether the means adopted by the CIR in determining the liability of the taxpayer was legal and valid. Simply prescribing such high amount of the bond like the initial 150% of the deficiency assessment of ₱4,467,391,881.76 (or ₱6,701,087,822.64), or later on even reducing the amount of the bond to equal the deficiency assessment would practically deny to the petitioner the meaningful opportunity to contest the validity of the assessments, and would likely even impoverish it as to force it out of business.

At this juncture, it becomes imperative to reiterate the principle that the power to tax is not the power to destroy. In *Philippine Health Care Providers, Inc. v. Commissioner of Internal Revenue*,[19] the Court has stressed that:

> As a general rule, the power to tax is an incident of sovereignty and is unlimited in its range, acknowledging in its very nature no limits, so that security against its abuse is to be found only in the responsibility of the legislature which imposes the tax on the constituency who is to pay it. So potent indeed is the power that it was once opined that the power to tax involves the power to destroy.
>
> Petitioner claims that the assessed DST to date which amounts to ₱376 million is way beyond its net worth of ₱259 million. Respondent never disputed these assertions. Given the realities on the ground, imposing the DST on petitioner would be highly oppressive. It is not the purpose of the government to throttle private business. On the contrary, the government ought to encourage private enterprise. Petitioner, just like any concern organized for a lawful economic activity, has a right to maintain a legitimate business. As aptly held in *Roxas, et al. v. CTA, et al.*:
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> > The power of taxation is sometimes called also the power to destroy. Therefore it should be exercised with caution to minimize injury to the proprietary rights of a taxpayer. It must be exercised fairly, equally and uniformly, lest the tax collector "kill the hen that lays the golden egg."
>
> Legitimate enterprises enjoy the constitutional protection not to be taxed out of existence. Incurring losses because of a tax imposition

[19] G.R. No. 167330, September 18, 2009, 600 SCRA 413, 442-444.

may be an acceptable consequence but killing the business of an entity is another matter and should not be allowed. It is counter-productive and ultimately subversive of the nation's thrust towards a better economy which will ultimately benefit the majority of our people.

Moreover, Section 11 of R.A. 1125, as amended, indicates that the requirement of the bond as a condition precedent to suspension of the collection applies only in cases where the processes by which the collection sought to be made by means thereof are carried out in consonance with the law, not when the processes are in plain violation of the law that they have to be suspended for jeopardizing the interests of the taxpayer.[20]

The petitioner submits that the patent illegality of the assessment was sufficient ground to dispense with the bond requirement because the CIR was essentially taxing its sales revenues without allowing the deduction of the cost of goods sold by virtue of the CIR refusing to consider evidence showing that it had really incurred costs.[21] However, the Court is not in the position to rule on the correctness of the deficiency assessment, which is a matter still pending in the CTA. Conformably with the pronouncement in *Pacquiao v. Court of Tax Appeals, First Division, and the Commissioner of Internal Revenue*,[22] a ruling that has precedential value herein, the Court deems it best to remand the matter involving the petitioner's plea against the correctness of the deficiency assessment to the CTA for the conduct of a preliminary hearing in order to determine whether the required surety bond should be dispensed with or reduced.

In *Pacquiao*, the petitioners were issued deficiency IT and VAT assessments for 2008 and 2009 in the aggregate amount of ₱2,261,217,439.92, which amount was above their net worth of ₱1,185,984,697.00 as reported in their joint Statement of

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[20] See *Collector of Internal Revenue v. Reyes and Court of Tax Appeals*, 100 Phil. 822, 828 (1957).

[21] *Rollo*, pp. 14-18.

[22] G.R. No. 213394, April 6, 2016.

Assets, Liabilities and Net Worth (SALN). They had paid the VAT assessments but appealed to the CTA the IT assessments. Notwithstanding their appeal, the CIR still initiated collection proceedings against them by issuing warrants of distraint or levy against their properties, and warrants of garnishment against their bank accounts. As a consequence, they went to the CTA through an urgent motion to lift the warrants and to suspend the collection of taxes. The CTA in Division found the motion to suspend tax collection meritorious, and lifted the warrant of distraint or levy and garnishment on the condition that they post a cash bond of ₱3,298,514,894.35, or surety bond of ₱4,947,772,341.53. They thus came to the Court to challenge the order to post the cash or surety bond as a condition for the suspension of collection of their deficiency taxes. In resolving their petition, the Court held and disposed:

> Absent any evidence and preliminary determination by the CTA, the Court cannot make any factual finding and settle the issue of whether the petitioners should comply with the security requirement under Section 11, R.A. No. 1125. The determination of whether the methods, employed by the CIR in its assessment, jeopardized the interests of a taxpayer for being patently in violation of the law **is a question of fact that calls for the reception of evidence** which would serve as basis. In this regard, the CTA is in a better position to initiate this given its time and resources. The remand of the case to the CTA on this question is, therefore, more sensible and proper.
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> For the Court to make any finding of fact on this point would be premature. As stated earlier, there is no evidentiary basis. All the arguments are mere allegations from both sides. Moreover, **any finding by the Court would pre-empt the CTA** from properly exercising its jurisdiction and settle the main issues presented before it, that is, whether the petitioners were afforded due process; whether the CIR has valid basis for its assessment; and whether the petitioners should be held liable for the deficiency taxes.
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> x x x x x x x x x
>
> In the conduct of its preliminary hearing, the CTA must balance the scale between the inherent power of the State to tax and its right to prosecute perceived transgressors of the law, on one side; and the constitutional rights of petitioners to due process of law and the equal protection of the laws, on the other. In case of doubt,

the tax court must remember that as in all tax cases, such scale should favor the taxpayer, for a citizen's right to due process and equal protection of the law is amply protected by the Bill of Rights under the Constitution.[23]

Consequently, to prevent undue and irreparable damage to the normal business operations of the petitioner, the remand to the CTA of the questions involving the suspension of collection and the correct amount of the bond is the proper course of action.

WHEREFORE, the Court **GRANTS** the petition for *certiorari*; **ANNULS** and **SETS ASIDE** the resolutions issued on July 8, 2014 and December 22, 2014 in CTA Case No. 8833 requiring the petitioner to post a surety bond of ₱4,467,391,881.76 as a condition to restrain the collection of the deficiency taxes assessed against it; **PERMANENTLY ENJOINS** the enforcement of the resolutions issued on July 8, 2014 and December 22, 2014 in CTA Case No. 8833; and **REQUIRES** the Court of Tax Appeals, Second Division, to forthwith conduct a preliminary hearing in CTA Case No. 8833 to determine and rule on whether the bond required under Section 11 of Republic Act No. 1125 may be dispensed with or reduced to restrain the collection of the deficiency taxes assessed against the petitioner.

No pronouncement on costs of suit.

SO ORDERED.

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

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[23] *Id.*

FIRST DIVISION

[G.R. No. 216452. June 20, 2016]

TING TRUCKING/MARY VIOLAINE A. TING, *petitioner, vs.* **JOHN C. MAKILAN,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; APPEALS; LIMITED TO ERRORS OF LAW; EXCEPTION; CONTRARY FINDINGS IN CASE AT BAR BETWEEN THE LABOR COURTS AND THE COURT OF APPEALS.— At the outset, it is settled that the jurisdiction of the Supreme Court in cases brought before it from the CA *via* Rule 45 of the Rules of Court is generally limited to reviewing errors of law. The Court is not the proper venue to consider a factual issue as it is not a trier of facts. The rule, however, is not ironclad and a departure therefrom may be warranted where the findings of fact of the LA and the NLRC, on the one hand, and the CA, on the other hand, are contradictory, as in this case. There is therefore a need to review the records to determine whether the CA, in the exercise of its *certiorari* jurisdiction, erred in finding grave abuse of discretion on the part of the NLRC, in ruling that respondent was not illegally dismissed.

2. SPECIAL CIVIL ACTIONS; CERTIORARI; GRAVE ABUSE OF DISCRETION; MAYBE ASCRIBED TO THE NLRC IN LABOR DISPUTES WHEN ITS FINDINGS AND CONCLUSIONS ARE NOT SUPPORTED BY SUBSTANTIAL EVIDENCE.— To justify the grant of the extraordinary remedy of *certiorari*, petitioner must satisfactorily show that the court or quasi-judicial authority gravely abused the discretion conferred upon it. Grave abuse of discretion connotes a capricious and whimsical exercise of judgment, done in a despotic manner by reason of passion or personal hostility, the character of which being so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law. In labor disputes, grave abuse of discretion may be ascribed to the NLRC when, *inter alia*, its findings and

conclusions are not supported by substantial evidence, or that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.

3. LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; GROUNDS FOR DISMISSAL; SERIOUS MISCONDUCT; MUST BE RELATED TO THE PERFORMANCE OF THE EMPLOYEE'S DUTIES AND WITH WRONGFUL INTENT.— Fundamental is the rule that an employee can be dismissed from employment only for a valid cause. Serious misconduct is one of the just causes for termination under Article 297 of the Labor Code, which reads in part: ART. 297. **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; x x x Misconduct is defined as an improper or wrong conduct. It is a transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies wrongful intent and not mere error in judgment. To constitute a valid cause for the dismissal within the text and meaning of Article [297] of the Labor Code, the employee's misconduct must be serious – that is, of such grave and aggravated character and not merely trivial or unimportant. Additionally, the misconduct must be related to the performance of the employee's duties showing him to be unfit to continue working for the employer. Further, the act or conduct must have been performed with wrongful intent.

4. ID.; ID.; ID.; ID.; SUBSTANTIAL PROOF OF THE EXISTENCE OF THE IRREGULARITIES COMMITTED IS SUFFICIENT AS BASIS FOR DISCIPLINARY ACTION. — [W]hile there may be no direct evidence to prove that respondent actually committed the offenses charged, there was substantial proof of the existence of the irregularities committed by him. It is well to point out that substantial proof, and not clear and convincing evidence or proof beyond reasonable doubt, is sufficient as basis for the imposition of any disciplinary action upon the employee. The standard of substantial evidence is satisfied where the employer has reasonable ground to believe that the employee is responsible for the misconduct and his

participation therein renders him unworthy of the trust and confidence demanded by his position, as in this case.

5. LABOR AND SOCIAL LEGISLATION; TERMINATION OF EMPLOYMENT; DISMISSAL; NON-OBSERVANCE OF PROCEDURAL DUE PROCESS WARRANTS THE AWARD OF ₱20,000.00 NOMINAL DAMAGES.— [W]hile petitioner [employer] had reason to sever respondent's employment, the Court agrees with the CA that there was no observance of procedural due process for which the award of nominal damages in the amount of ₱20,000.00 was in order and deemed just and reasonable under the circumstances.

APPEARANCES OF COUNSEL

Romeo Carlos M. Ting, Jr. for petitioner.
Edmundo Manlapao for respondent.

D E C I S I O N

PERLAS-BERNABE, *J.*:

Assailed in this petition for review on *certiorari*[1] are the Decision[2] dated February 25, 2014, and the Resolution[3] dated December 12, 2014, of the Court of Appeals, Cebu City (CA), in CA-G.R. SP No. 06785, which reversed and set aside the Decision[4] dated July 29, 2011 and the Resolution[5] dated November 24, 2011 of the National Labor Relations Commission (NLRC) in NLRC Case No. VAC-05-000345-2011, declaring respondent John C. Makilan (respondent) to have been illegally dismissed.

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[1] *Rollo*, pp. 8-32.

[2] *Id.* at 34-46. Penned by Associate Justice Gabriel T. Ingles with Associate Justices Marilyn B. Lagura-Yap and Ma. Luisa C. Quijano-Padilla concurring.

[3] *Id.* at 49-52.

[4] *Id.* at 171-178. Penned by Commissioner Julie C. Rendoque with Presiding Commissioner Violeta Ortiz-Bantug and Commissioner Aurelio D. Menzon concurring.

[5] *Id.* at 180-181.

The Facts

Petitioner Ting Trucking is a sole proprietorship owned by Mary Violaine A. Ting (petitioner), and is engaged in hauling services to and from Negros, Cebu, and Iloilo, with nine (9) employees in its workforce.[6]

On February 12, 2010, respondent was hired as a driver with the following wage conditions: standby pay of ₱150.00 per day, additional allowance of ₱300.00 for trips from Bacolod City to Iloilo City and vice versa, and ₱500.00 for trips from Bacolod City to Cebu City and vice versa, weekly food supply in the amount of ₱539.00, and additional out of town allowance of ₱100.00 for trips from Bacolod City to Iloilo City and ₱150.00 for trips from Bacolod City to Cebu City. In the course of his employment, respondent was assigned one (1) helper, Genesis O. Chavez (Chavez).[7]

On August 20, 2010, respondent claimed that while on his way to work, he received a call from petitioner informing him to stop reporting for work purportedly to avoid his regularization,[8] prompting him to file a complaint[9] for illegal dismissal against petitioner before the NLRC Regional Arbitration Branch No. VI, docketed as NLRC RAB Case No. VI-09-10705-10. He maintained that he did not receive oral or written notice of any fault or infraction and that he was not given any notice of dismissal.[10]

On the other hand, petitioner denied that respondent was illegally dismissed. She stated that the latter was never hired on a probationary basis and that he was a regular employee.[11] Nonetheless, respondent abused the trust and confidence reposed

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[6] *Id.* at 90 and 133.

[7] *Id.* at 90-91.

[8] *Id.* at 70.

[9] See Complaint dated September 3, 2010; *id.* at 58.

[10] *Id.* at 70.

[11] *Id.* at 94.

on him after learning from Chavez the several anomalies he had committed while in the performance of his duties,[12] namely: *(a)* he would only put in ₱2,500.00 worth of fuel into the truck despite being given a gas allowance of ₱3,500.00, and pocket the balance, *(b)* on June 23, 2010, he took twenty (20) kilos of corn worth ₱600.00 from the cargo he was to deliver and brought it home, *(c)* on July 16, 2010, while the truck was at the Roro Port of Bacolod City, he siphoned ten (10) liters of diesel fuel valued at ₱470.00 and sold the same, and *(d)* he took the spare parts of the truck worth ₱15,000.00 which he likewise sold, and when asked to return the said parts, instructed Chavez to look for scrap spare parts to present to petitioner.[13] In addition, petitioner learned from her secretary, Fely M. Bonganciso[14] (Bonganciso), that respondent's truck ran out of fuel on eight (8) different occasions prompting the former to demand the turn over of the fuel receipts which was not heeded. [15] On August 16, 2010, respondent's truck ran out of fuel again and upon reaching its destination, the cargo owner informed petitioner that several kilos of corn cargo — valued at ₱2,800.00 — were missing, and that they would deduct the said amount from their payment.[16] Thereafter, or from August 17 to 20, 2010, respondent no longer reported for work and was spotted by his co-workers driving a public utility jeepney.[17] Thus, on August 20, 2010, petitioner called respondent and confronted him about the discrepancy in the cargo he delivered on August 16, 2010, and reiterated the demand to turn over the fuel receipts as well as the spare parts of the motor vehicle which he failed to comply.[18] As a result, a complaint[19] for Qualified Theft was filed against

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[12] *Id.* at 93.

[13] *Id.* at 91.

[14] "Bongansiso" in some parts of the record. *Id.* at 175.

[15] *Id.* at 92 and 100.

[16] *Id.* at 92.

[17] *Id.* at 92 and 176.

[18] *Id.* at 92.

[19] *Id.* at 80-82.

him before the City Prosecutor of Bacolod. Lastly, petitioner contended that respondent's claim of illegal dismissal was belied by his receipt of his standby pay on August 21, 2010, and that his money claims were without legal basis.[20] In support thereof, petitioner submitted, among others, the affidavits of Bonganciso,[21] Chavez and co-employees,[22] as well as several charge invoices[23] that were signed by respondent acknowledging receipt of the spare parts on behalf of Ting Trucking.

The LA Ruling

In a Decision[24] dated March 3, 2011, the Labor Arbiter (LA) ruled that respondent's actions constituted serious misconduct, a just cause for termination under Article 297[25] (a) of Presidential Decree No. 442,[26] otherwise known as the "Labor Code of the Philippines," as amended (Labor Code). However, the LA observed that the dismissal was effected without procedural due process; hence, petitioner was ordered to pay respondent nominal damages in the amount of ₱20,000.00.[27]

In so ruling, the LA found substantial evidence to support the charges leveled against respondent and took note of the criminal case for Qualified Theft filed against him.[28] The LA

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

[21] *Id.* at 97-100.

[22] *Id.* at 102-103, 112, and 113-114.

[23] *Id.* at 104-111.

[24] *Id.* at 132-149. Penned by Labor Arbiter Henry B. Tañoso.

[25] Article 282 was renumbered as Article 297 under Department Advisory No. 01, series of 2015, issued by the Department of Labor and Employment.

[26] Entitled "A DECREE INSTITUTING A LABOR CODE, THEREBY REVISING AND CONSOLIDATING LABOR AND SOCIAL LAWS TO AFFORD PROTECTION TO LABOR, PROMOTE EMPLOYMENT AND HUMAN RESOURCES DEVELOPMENT AND ENSURE INDUSTRIAL PEACE BASED ON SOCIAL JUSTICE" (January 1, 1980).

[27] *Rollo*, p. 144.

[28] *Id.* at 141.

observed that respondent did not deny selling the spare parts that were taken out from his assigned truck.[29] Accordingly, the LA held that his actions constituted serious misconduct since it showed his propensity to gain from his employer's property and the latter's customers while in the performance of his duties, clearly making him unfit to work for petitioner.[30]

With respect to his money claims, the LA held that respondent was not entitled to service incentive leave pay as the company was admittedly employing less than ten (10) employees thereby exempting it from said benefit under Article 95[31] of the Labor Code.[32] The LA likewise found no factual and legal bases to award the claims for holiday pay, overtime pay, and damages.[33] On the other hand, the LA ruled that respondent was underpaid[34] for the periods February 21, 2010 to February 27, 2010, May 23 to May 29, 2010, and June 6, 2010 to June 12, 2010, and is entitled to his proportionate 13th month pay, pursuant to PD No. 851 as amended by Memorandum Order No. 28, as well as attorney's fees for having been compelled to litigate to protect his interests.[35]

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[29] *Id.*

[30] *Id.* at 138-149.

[31] Art. 95. **Right to Service Incentive Leave.** — (a) Every employee who has rendered at least one year of service shall be entitled to a yearly service incentive leave of five days with pay.

(b) **This provision shall not apply to those who are already enjoying the benefit herein provided, those enjoying vacation leave with pay of at least five days and those employed in establishments regularly employing less than ten employees** or in establishments exempted from granting this benefit by the Secretary of Labor and Employment after considering the viability or financial condition of such establishment.

(c) The grant of benefit in excess of that provided herein shall not be made a subject of arbitration or any court or administrative action. (Emphasis supplied.)

[32] *Rollo,* p. 146.

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

[34] *Id.* at 145-146.

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

Only respondent appealed[36] to the NLRC, arguing, among others, that the LA erred in ruling that he did not deny the allegations leveled against him and that petitioner had adduced substantial evidence justifying his termination.[37]

The NLRC Ruling

In a Decision[38] dated July 29, 2011, the NLRC affirmed the LA ruling that respondent's actions constituted serious misconduct which warranted his dismissal.[39] It held that respondent failed to support with clear and convincing evidence his claim that the documentary and testimonial evidence raised against him were all fabricated.[40] It observed that petitioner's witnesses — Chavez and Bonganciso — were credible, holding that Chavez was constantly with respondent during the trips, while Bonganciso was petitioner's secretary who was tasked to disburse the salaries of the employees and monitor the trips of the trucks.[41] It added that there was no showing of ill motive on their part to falsely testify against him. Moreover, it found the charge invoices to have clearly identified respondent as the one who had received the spare parts.[42] Lastly, the testimony of his co-workers seeing him drive a passenger jeepney on August 20, 2010 contradicted his claim that he was dismissed by petitioner on said date.[43]

Dissatisfied, respondent moved for reconsideration,[44] which the NLRC denied in a Resolution[45] dated November 24, 2011,

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[36] See Notice of Appeal dated April 25, 2011; *id.* at 150.

[37] *Id.* at 151-160.

[38] *Id.* at 171-178.

[39] *Id.* at 177.

[40] *Id.* at 175.

[41] *Id.* at 175-176.

[42] *Id.*

[43] *Id.* at 176.

[44] *Id.* at 299-301.

[45] *Id.* at 180-181. Penned by Commissioner Julie C. Rendoque with Presiding Commissioner Violeta Ortiz-Bantug concurring.

prompting him to elevate his case to the CA *via* a petition for *certiorari*,[46] docketed as CA-G.R. SP. No. 06785.

The CA Ruling

In a Decision[47] dated February 25, 2014, the CA gave due course to the petition and reversed the NLRC's decision, and, accordingly, ordered the remand of the case to the LA for computation of respondent's backwages, 13th month pay, attorney's fees and separation pay.[48] Contrary to the findings of the LA and the NLRC, the CA did not give credence to the testimonies of Chavez and the other employees, noting that petitioner failed to call respondent's attention to the instances when the truck ran out of fuel, and that the July 16, 2010 siphoning of fuel while at the Roro Port of Bacolod City was not one of the eight (8) recorded instances when his truck ran out of fuel.[49] Likewise, no evidence was presented to substantiate the claim that respondent had gassed up his fuel tank less than the required amount of ₱3,500.00, pointing out that petitioner should have been prudent in demanding the fuel receipts at all times and not merely make assumptions.[50] It further opined that petitioner's delayed reaction over the alleged theft and pilferage left much to be desired.[51] Also, respondent's act of filing a complaint for illegal dismissal was inconsistent with the claim that he abandoned his employment.[52] As such, the CA concluded that the charges against respondent were fabricated and that his dismissal was tainted with malice and bad faith, for which reason it deemed it proper to award moral and exemplary damages in the amounts of ₱10,000.00 and ₱5,000.00, respectively.[53] Finally, it noted

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[46] *Id.* at 183-200.

[47] *Id.* at 34-46.

[48] *Id.* at 39-46.

[49] *Id.* at 41-43.

[50] *Id.* at 42.

[51] *Id.* at 43.

[52] *Id.* at 44.

[53] *Id.* at 45-46.

that petitioner did not appeal the LA's grant of salary differentials, proportionate 13th month pay, nominal damages and attorney's fees, and therefore were deemed to have attained finality.[54]

Unperturbed, petitioner moved for reconsideration,[55] which the CA denied in a Resolution[56] dated December 12, 2014; hence, the instant petition.

The Issue Before the Court

The core issue for the Court's resolution is whether or not the CA correctly ascribed grave abuse of discretion on the part of the NLRC in ruling that respondent's dismissal was valid.

The Court's Ruling

The petition is impressed with merit.

At the outset, it is settled that the jurisdiction of the Supreme Court in cases brought before it from the CA *via* Rule 45 of the Rules of Court is generally limited to reviewing errors of law. The Court is not the proper venue to consider a factual issue as it is not a trier of facts. The rule, however, is not ironclad and a departure therefrom may be warranted where the findings of fact of the LA and the NLRC, on the one hand, and the CA, on the other hand, are contradictory, as in this case. There is therefore a need to review the records to determine whether the CA, in the exercise of its *certiorari* jurisdiction, erred in finding grave abuse of discretion on the part of the NLRC, in ruling that respondent was not illegally dismissed.[57]

To justify the grant of the extraordinary remedy of *certiorari*, petitioner must satisfactorily show that the court or quasi-judicial authority gravely abused the discretion conferred upon it. Grave abuse of discretion connotes a capricious and whimsical exercise

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[54] *Id.* at 45.

[55] *Id.* at 315-326.

[56] *Id.* at 49-52.

[57] *Tan Brothers Corporation of Basilan City v. Escudero*, 713 Phil. 392, 399-400 (2013).

of judgment, done in a despotic manner by reason of passion or personal hostility, the character of which being so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law.[58]

In labor disputes, grave abuse of discretion may be ascribed to the NLRC when, *inter alia*, its findings and conclusions are not supported by substantial evidence, or that amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion.[59]

Guided by the foregoing considerations, the Court finds that the CA committed reversible error in granting respondent's *certiorari* petition since the NLRC did not gravely abuse its discretion in ruling that respondent was not illegally dismissed. The NLRC's ruling cannot be equated to a capricious and whimsical exercise of judgment since its pronouncement of a dismissal grounded on a just cause squares with existing legal principles.

Fundamental is the rule that an employee can be dismissed from employment only for a valid cause. Serious misconduct is one of the just causes for termination under Article 297 of the Labor Code, which reads in part:

ART. 297. **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;

x x x x x x x x x

Misconduct is defined as an improper or wrong conduct. It is a transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and

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[58] See *Cebu People's Multipurpose Cooperative v. Carbonilla, Jr.,* G.R. No. 212070, January 20, 2016.

[59] *Id.*

implies wrongful intent and not mere error in judgment.[60] To constitute a valid cause for the dismissal within the text and meaning of Article [297] of the Labor Code, the employee's misconduct must be serious — that is, of such grave and aggravated character and not merely trivial or unimportant.[61] Additionally, the misconduct must be related to the performance of the employee's duties showing him to be unfit to continue working for the employer. Further, the act or conduct must have been performed with wrongful intent.[62] Thus, for serious misconduct to be a just cause for dismissal, the concurrence of the following elements is required: **(*a*) the misconduct must be serious; (*b*) it must relate to the performance of the employee's duties showing that the employee has become unfit to continue working for the employer; and (*c*) it must have been performed with wrongful intent.**[63]

In the case at bar, all of the foregoing requisites have been duly established by substantial evidence. Records disclose that respondent was charged of misappropriating fuel allowance, theft of fuel and corn, and sale of spare parts while in the performance of his duties. Submitted as proof thereof was the affidavit of Chavez, among others. Contrary to the findings of the CA, the Court finds the same to be substantial evidence. Other than respondent's claim that the charges were fabricated and that Chavez was a biased witness, no evidence was presented that would taint the latter's credibility. In fact, it was not shown that Chavez was impelled by dubious or ill-motive to testify falsely against respondent; hence, his testimony should be accorded full faith and credence.

It is worthy to note that despite the absence of fuel receipts to substantiate the charge of misappropriation of the ₱3,500.00

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[60] See *Imasen Philippine Manufacturing Corporation v. Alcon,* G.R. No. 194884, October 22, 2014, 739 SCRA 186, 196.

[61] *Id.* at 196-197.

[62] See *Nissan Motors Phils., Inc. v. Angelo,* 673 Phil. 150, 160 (2011).

[63] See *Universal Robina Sugar Milling Corporation v. Ablay*, G.R. No. 218172, March 16, 2016.

gas/fuel allowance by filling the truck's fuel tank with ₱2,500 worth of fuel only and pocketing the rest, it is undisputed that respondent's truck ran out of fuel on eight (8) separate occasions, including his last trip on August 16, 2010 with no justification proffered for such shortages. And while the July 16, 2010 incident where Chavez claimed to have seen respondent siphon fuel from the truck's fuel tank was not one of the eight (8) instances that his truck ran out of fuel, the foregoing charge cannot be disregarded given the pattern of unexplained fuel shortages incurred by respondent which naturally leads one to a fair and reasonable conclusion that at the very least he may have either under-filled his assigned truck's fuel tank or siphoned fuel therefrom to petitioner's prejudice.

The same holds true for the charge of theft of corn given that respondent blatantly failed to account for the discrepancy in the weight of his cargo worth ₱2,800.00 that he delivered on August 16, 2010. Likewise, while the receipts do not prove that respondent sold the replaced spare parts, it was nonetheless established that the said spare parts were turned over to his custody and possession. It was therefore incumbent upon respondent to show that he had turned over possession of these spare parts to petitioner, which the former utterly failed to discharge.

Indeed, it bears stressing that while there may be no direct evidence to prove that respondent actually committed the offenses charged, there was substantial proof of the existence of the irregularities committed by him. It is well to point out that substantial proof, and not clear and convincing evidence or proof beyond reasonable doubt, is sufficient as basis for the imposition of any disciplinary action upon the employee.[64] The standard of substantial evidence is satisfied where the employer has reasonable ground to believe that the employee is responsible for the misconduct and his participation therein renders him unworthy of the trust and confidence demanded by his position,[65] as in this case.

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[64] *Philippine Airlines, Inc. v. Tongson*, 459 Phil. 742, 753 (2003).

[65] *Id.* at 753-754.

In fine, having established the various infractions committed by respondent that is tantamount to serious misconduct warranting his dismissal by substantial evidence, no grave abuse of discretion can be imputed against the NLRC in sustaining the finding of the LA that his dismissal was proper under the circumstances. Nonetheless, while petitioner had reason to sever respondent's employment, the Court agrees with the CA that there was no observance of procedural due process for which the award of nominal damages in the amount of ₱20,000.00[66] was in order and deemed just and reasonable under the circumstances.

Finally, since there was no finding of illegal dismissal, the Court finds no basis to uphold the CA's award of moral and exemplary damages.

WHEREFORE, the petition is **GRANTED**. The Decision dated February 25, 2014, and the Resolution dated December 12, 2014, of the Court of Appeals, Cebu City (CA), in CA-G.R. SP No. 06785 are hereby **REVERSED** and **SET ASIDE**. The Decision dated July 29, 2011 and the Resolution dated November 24, 2011 of the National Labor Relations Commission in NLRC Case No. VAC-05-000345-2011 are **REINSTATED**.

SO ORDERED.

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

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[66] While the Court in *Agabon v. NLRC*, 485 Phil. 248, 287-288 (2004) awarded nominal damages in the amount of ₱30,000.00 for a procedurally infirm dismissal based on a just cause, as in this case, records do not show that the award of nominal damages in the amount of ₱20,000.00 was ever contested by herein respondent on appeal; hence, the same cannot be modified by the Court in this case.

EN BANC

[A.C. No. 9574. June 21, 2016]

MYRNA M. DEVEZA, *complainant, vs.* **ATTY. ALEXANDER M. DEL PRADO,** *respondent.*

SYLLABUS

LEGAL ETHICS; CODE OF PROFESSIONAL RESPONSIBILITY; DUTY OF ALL LAWYERS TO UPHOLD THE INTEGRITY AND DIGNITY OF THE LEGAL PROFESSION; PROHIBITION FROM ENGAGING IN ANY UNLAWFUL, DISHONEST, IMMORAL OR DECEITFUL CONDUCT; VIOLATED IN CASE AT BAR; PENALTY.— Canon 7 of the Code of Professional Responsibility specifically mandates all lawyers to uphold the integrity and dignity of the legal profession. Rule 1.01 of Canon 1 of the same code proscribes a lawyer from engaging in any unlawful, dishonest, immoral or deceitful conduct. They should refrain from doing any act which might lessen in any degree the confidence and trust reposed by the public in the fidelity, honesty and integrity of the legal profession. In the present case, Atty. Del Prado committed an act which fell short of the standard of the norm of conduct required of every lawyer. He deceived the complainant by making her sign the deed of sale and making her believe that he would pay in full the balance of the purchase price after he had the document notarized. Complainant waited for Atty. Del Prado to make good his promise to pay but despite several demands, he continued reneging on his obligation which prompted her to file a case against him. Moreover, Atty. Del Prado wantonly disregarded the lawful orders of the Court and IBP-CBD to file his comment and position paper and to appear in the mandatory conference despite due notice. His continued defiance of the orders of the Court and the IBP-CBD is a deliberate and contemptuous affront on the court's authority which cannot be tolerated. x x x **WHEREFORE,** finding respondent **GUILTY** of violating Rule 1.01 of Canon 1 and Canon 7 of the Code of Professional Responsibility, the Court hereby **SUSPENDS** him from the practice of law for Five (5) years effective upon receipt of this decision with a **WARNING** that a repetition of the same or a similar act will be dealt with more severely.

APPEARANCES OF COUNSEL

Perfecto S. Corpus, Jr. for complainant.

D E C I S I O N

***PER CURIAM*:**

Before the Court is a Complaint-Affidavit[1] for disbarment filed by Myrna M. Deveza (*complainant*) against respondent Atty. Alexander M. Del Prado (*Atty. Del Prado*) for dishonesty and for acts unbecoming a lawyer.

In her complaint-affidavit, complainant alleged, among others, the following:

2. The charge arose from the following facts:

(a) In February 2003, Atty. Alexander del Prado bought my lot located at No. 3242 Malvar St., Brgy. Pagasa, Camarin, Caloocan City, consisting of 633.80 sq. meters and covered by Transfer Certificate of Title No. 178828 of the Register of Deeds of Caloocan City for ₱1,500.00 per square meters on installment basis.

(b) To evidence the said sale, we executed a Contract to Sell. Atty. Del Prado took all the copies of the Contract to Sell on the pretext that he will have the document notarized but he never gave me a copy of the said document.

(c) Atty. Del Prado defaulted in his obligation to pay me the purchase price of the said lot by leaving a balance of ₱565,950.00.

(d) When I sent him a demand letter for the payment of his obligation and/or rescission of sale, he called me and told me that he will meet me and my son at Jollibee, Muñoz Branch, where he will pay his unpaid balance. He likewise asked me to bring the title over the property.

(e) Upon meeting Atty. Del Prado at Jollibee Muñoz Branch, he asked for the title of the property and I showed it to

[1] *Rollo*, pp. 1-2.

him. Then Atty. Del Prado brought out a completely filled up Deed of Sale and he asked us to sign it before he will give us his payment.

(f) After we have signed the Deed of Absolute Sale, he gave us ₱5,000.00 and he told us that he would have the document first notarized before he will give us his complete payment.
x x x

(g) At that juncture, Atty. Del Prado tried to put inside his bag our title over the property but I was able to grab it from him.

(h) Atty. Del Prado never paid us the balance of the purchase price for the lot he bought from us.

(i) [Worst], Atty. Del Prado used the Deed of Absolute Sale that he made us sign by means of fraud as evidence in the civil case I filed against him for rescission of contract [that misled] the court.

x x x x x x x x x.[2]

In a Resolution,[3] dated September 3, 2012, the Court required Atty. Del Prado to comment on the complaint-affidavit but failed to do so.

Pursuant to the Court Resolution,[4] dated November 18, 2013, the complaint was referred to the Integrated Bar of the Philippines (*IBP*) for investigation, report and recommendation.

On June 18, 2014, the case was set for mandatory conference but only the counsel of complainant appeared. Despite due notice, Atty. Del Prado did not attend the mandatory conference. The parties were then required to submit their respective position papers but Atty. Del Prado again did not heed to the order of the IBP.

On September 2, 2014, the IBP-CBD, in its Report and Recommendation,[5] stated that Atty. Del Prado's failure to answer the complaint despite several notices and his continuous absence

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[2] *Id.* at 1-2.

[3] *Id.* at 29.

[4] *Id.* at 32.

[5] *Id.* at 51-53.

in the scheduled hearings shows his flouting resistance to the lawful orders of the court and illustrates his despiciency for his oath of office as a lawyer. The IBP-CBD recommended that Atty. Del Prado be meted the penalty of suspension from the practice of law and as a member of the bar for a period of two (*2*) years.

In its Notice of Resolution No. XXI-2015-014,[6] dated January 30, 2015, the IBP-Board of Governors adopted and approved with modification the report and recommendation of the CBD and suspended Atty. Del Prado from the practice of law for a period of five (*5*) years.

The Court agrees with the findings and recommendation of the IBP.

The practice of law is a privilege bestowed only to those who show that they possess and continue to possess the legal qualifications for it. As vanguards of our legal system, they are expected to maintain not only legal proficiency but also a high standard of morality, honesty, integrity and fair dealing.[7] Because of their important role in the society, the Court shall not hesitate to discipline a lawyer for any conduct that is wanting in morality, honesty, probity and good demeanor, whether such conduct was committed in their professional or in private capacity.[8]

Canon 7 of the Code of Professional Responsibility specifically mandates all lawyers to uphold the integrity and dignity of the legal profession. Rule 1.01 of Canon 1 of the same code proscribes a lawyer from engaging in any unlawful, dishonest, immoral or deceitful conduct. They should refrain from doing any act which might lessen in any degree the confidence and trust reposed by the public in the fidelity, honesty and integrity of the legal profession.[9]

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[6] *Id.* at 49-50.

[7] *Bengco v. Atty. Bernardo*, 687 Phil. 7, 16 (2012).

[8] *Tomlin II v. Atty. Moya II*, 518 Phil. 325, 330 (2006).

[9] *Maligsa v. Cabanting*, 338 Phil. 912, 917 (1997).

In the present case, Atty. Del Prado committed an act which fell short of the standard of the norm of conduct required of every lawyer. He deceived the complainant by making her sign the deed of sale and making her believe that he would pay in full the balance of the purchase price after he had the document notarized. Complainant waited for Atty. Del Prado to make good his promise to pay but despite several demands, he continued reneging on his obligation which prompted her to file a case against him.

Moreover, Atty. Del Prado wantonly disregarded the lawful orders of the Court and IBP-CBD to file his comment and position paper and to appear in the mandatory conference despite due notice. His continued defiance of the orders of the Court and the IBP-CBD is a deliberate and contemptuous affront on the court's authority which cannot be tolerated.[10] Atty. Del Prado should bear in mind that he is a lawyer and an officer of the court who is duty bound to obey and respect the court processes. He must acknowledge, at all times, the orders of the Court and the IBP-CBD in deference to their authority over him as a member of the bar.[11]

WHEREFORE, finding respondent Atty. Alexander Del Prado **GUILTY** of violating Rule 1.01 of Canon 1 and Canon 7 of the Code of Professional Responsibility, the Court hereby **SUSPENDS** him from the practice of law for Five (5) years effective upon receipt of this decision with a **WARNING** that a repetition of the same or a similar act will be dealt with more severely.

Let copies of this decision be furnished all courts in the country and the Integrated Bar of the Philippines for their information and guidance. Let also a copy of this decision be appended to the personal record Atty. Alexander Del Prado in the Office of the Bar Confidant.

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Brion, Peralta, Bersamin, Perez, Mendoza, Reyes, Perlas-Bernabe, Leonen, Jardeleza, and *Caguioa, JJ.,* concur.

Del Castillo, J., on official leave.

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[10] *Supra* note 7, at 15.

[11] *Toledo v. Atty. Abalos,* 374 Phil. 15, 18 (1999).

EN BANC

[A.M. No. P-16-3459. June 21, 2016]
(Formerly OCA IPI No. 13-4119-P)

ATTY. JOSELITA C. MALIBAGO-SANTOS, CLERK OF COURT VI, OFFICE OF THE CLERK OF COURT, REGIONAL TRIAL COURT, ANTIPOLO CITY, RIZAL, *complainant, vs.* **JUANITO B. FRANCISCO, JR., SHERIFF IV, OFFICE OF THE CLERK OF COURT [OCC], REGIONAL TRIAL COURT, ANTIPOLO CITY, RIZAL,** *respondent.*

SYLLABUS

1. POLITICAL LAW; ADMINISTRATIVE LAW; COURT EMPLOYEES; A SHERIFF MUST ALWAYS PERFORM HIS/HER DUTY, WITH INTEGRITY.— Our Constitution states that "[p]ublic office is a public trust." It provides that "[p]ublic officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice, and lead modest lives." Sheriffs play a crucial role in our justice system as our front-line representatives tasked with executing final judgments by the courts. Consequently, a sheriff must always perform his or her duty with integrity for "once he [or she] loses the people's trust, he [or she] diminishes the people's faith in the judiciary."

2. ID.; ID.; ID.; PROHIBITED FROM ACCEPTING ANY FORM OF REMUNERATION IN RELATION TO THE PERFORMANCE OF THEIR OFFICIAL DUTIES.— Codes of ethics for public employees such as sheriffs prohibit them from accepting any form of remuneration in relation to the performance of their official duties. Canon I, Section 4 of the Code of Conduct for Court Personnel provides that "[c]ourt personnel shall not accept any fee or remuneration beyond what they receive or are entitled to in their official capacity." Canon III, Section 2(b) also states that "[c]ourt personnel shall not [r]eceive tips or other remunerations for assisting or attending to parties engaged in transactions or involved in actions or proceedings with the Judiciary." x x x This Court

has considered the solicitation and acceptance of monetary considerations by sheriffs as conduct unbecoming of a court employee, grave misconduct, and dishonesty. x x x Both respondent and Plantersbank allege that no solicitation took place and that Plantersbank insisted on giving respondent the amount as a token of appreciation and gratitude. Still, this Court has repeatedly emphasized that "sheriffs are not authorized to receive any *voluntary* payments from parties in the course of the performance of their duties." This opens doubt on monetary considerations being made for wrongful and unethical purposes, creates cracks in our justice system, and proves "inimical to the best interests of the service."

3. ID.; ID.; REVISED RULES ON ADMINISTRATIVE CASES IN THE CIVIL SERVICE; RULE 10, SECTION 46 (A)(10) CONSIDERS THE ACCEPTANCE OF ANY GRATUITY IN THE COURSE OF OFFICIAL DUTY AS A GRAVE OFFENSE PUNISHABLE BY DISMISSAL FROM THE SERVICE; MITIGATED CONSIDERING FIRST OFFENSE IN 30 YEARS OF GOVERNMENT SERVICE.— Rule 10, Section 46(A)(10) of the Revised Rules on Administrative Cases in the Civil Service considers the acceptance of any gratuity in the course of official duty as a grave offense punishable by dismissal from the service: x x x This Court, however, has imposed a lower penalty in some cases after considering that it was the respondent sheriff's first offense. Here, the Office of the Court Administrator found that it is respondent's first time to be charged with this kind of misdeed after over 30 years in government service. We adopt the Office of the Court Administrator's findings of fact and recommendation for disciplinary action with modification in that respondent should be suspended from service for one (1) year.

D E C I S I O N

LEONEN, *J.*:

Sheriffs play an important role in the effective and efficient administration of our justice system.[1] They must, at all times,

[1] See *Tan v. Paredes*, 502 Phil. 305, 314 (2005) [*Per Curiam, En Banc*], citing *Ignacio v. Payumo*, 398 Phil. 51, 55 (2000) [Per *J.* Gonzaga-Reyes, Third Division].

maintain the high ethical standards expected of those serving in the judiciary. They cannot receive any voluntary monetary considerations from any party in relation to the performance of their duties as officers of the court.[2]

The Office of the Court Administrator received a Confidential Memorandum[3] dated January 21, 2013 from Presiding Judge Ma. Consejo Gengos-Ignalaga (Judge Ignalaga) of the Regional Trial Court of Antipolo City, addressed to Executive Judge Ronaldo B. Martin.[4] It detailed her findings and recommendations after conducting a formal investigation on the letter-complaint of Regional Trial Court Clerk of Court Atty. Joselita Malibago-Santos (Atty. Santos) against Sheriff Juanito B. Francisco, Jr. (Sheriff Francisco).[5] The facts were summarized as follows.

On March 28, 2012, Atty. Santos received a letter of Intent to Redeem Subject Property[6] dated March 28, 2012 from Overlook Resort, Inc. and its President, Raymond C. Ricardo, in relation to its extrajudicial foreclosure case.[7]

Planters Development Bank (Plantersbank) was adjudged highest bidder during the auction held earlier on January 10, 2012.[8] Thus, Atty. Santos wrote the bank's Senior Vice President, Ma. Agnes J. Angeles, to inform her of the mortgagors' intent to redeem the foreclosed property.[9] In accordance with the rules, she requested the bank to submit a statement of account of all the expenses it incurred relative to the foreclosure sale.[10]

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[2] See *Pasok v. Diaz*, 677 Phil. 520, 530 (2011) [*Per Curiam, En Banc*].

[3] *Rollo,* pp. 4-10.

[4] *Id.* at 4, Confidential Memorandum.

[5] *Id.*

[6] *Id.* at 16.

[7] *Id.* at 4.

[8] *Id.*

[9] *Id.*

[10] *Id.* at 4-5.

On April 27, 2012, Atty. Santos received a letter from Atty. Alexander L. Paulino, legal counsel for Plantersbank,[11] stating the redemption price of ₱5,053,706.89 for the foreclosed property.[12] Attached to the letter were statements of accounts and receipts in support of this amount,[13] including a receipt dated February 24, 2012 for ₱8,000.00 signed by Sheriff Francisco, who was then Sheriff-in-Charge, thus:

> Received from Planters Development Bank Cashier's Check dated January 16, 2012 with Check No. 33826 in the amount of Php8,000.00 representing the Posting Fee and Sheriff's Expenses relative to the EJF Case No. 11-8933 entitled Planters Development Bank *versus* Raymond C. Ricardo, et al.
>
> (sgd.)
> JUANITO B. FRANCISCO JR.
> Sheriff-In-Charge[14]

In a memorandum dated May 21, 2012, Atty. Santos required Sheriff Francisco to explain why he did not submit an estimate of expenses and liquidation in relation to the ₱8,000.00 he received.[15]

Sheriff Francisco submitted an Explanation dated May 24, 2012 and a Position Paper dated October 12, 2012. He admitted receiving a check for ₱8,000.00 from Jeson Talbo Ganalongo of Plantersbank.[16] He explained that he received the check on February 24, 2012, when the auction had already been concluded, as a token of appreciation.[17] The auction was conducted in the manner provided by law, without any irregularity.[18] Rule 141,

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[11] *Id.* at 18-19, letter dated March 28, 2012.

[12] *Id.* at 5, and 18.

[13] *Id.* at 5, and 22-31, annexes to the letter dated April 27, 2012.

[14] *Id.* at 5, and 30, Receipt.

[15] *Id.* at 5.

[16] *Id.* at 6.

[17] *Id.* at 6 and 8.

[18] *Id.* at 7.

Section 10 of the Rules of Court, which required the submission of estimate expenses, only pertains to execution of writs, and in his honest belief, this provision does not apply to extrajudicial foreclosure proceedings.[19]

Sheriff Francisco alleged that he did not solicit nor demand any fee, and even initially declined the gratuity.[20] However, Plantersbank insisted that it regularly gives this standard amount as posting fee and sheriff's expense.[21] Plantersbank's counsel also later amended the quoted redemption price to exclude the ₱8,000.00, erroneously included in the list of itemized expenses.[22]

In her Confidential Memorandum, Judge Ignalaga recommended that Sheriff Francisco be found guilty of simple misconduct and reprimanded as penalty.[23]

The Office of the Court Administrator directed Sheriff Francisco to comment on the Confidential Memorandum.[24] Sheriff Francisco filed a Manifestation dated August 12, 2013 adopting his Position Paper dated October 12, 2012 as his Comment.[25] He mentioned that he has been in government service since 1984, and this was his first time to be charged of an alleged misdeed.[26]

In its Memorandum dated March 16, 2015, the Office of the Court Administrator recommended that:

1. the instant complaint against respondent Sheriff Juanito B. Francisco, Jr., Sheriff IV, Office of the Clerk of Court, Regional Trial Court, Antipolo City, Rizal, be **RE-DOCKETED** as a regular administrative matter; and

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[19] *Id.*

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

[21] *Id.* at 6-8, and 37, letter dated August 28, 2012.

[22] *Id.* at 8, and 77, letter dated September 11, 2012.

[23] *Id.* at 10.

[24] *Id.* at 69, OCA Indorsement, and 82.

[25] *Id.* at 70, Sheriff Francisco's Manifestation.

[26] *Id.*

2. respondent Sheriff be found **GUILTY** of gross misconduct and be **SUSPENDED** for three (3) months without pay with a **STERN WARNING** that a repetition of the same offense shall be dealt with more severely.[27] (Emphasis in the original)

The Office of the Court Administrator discussed that the act of accepting any gift or gratuity in the course of official duty is considered a grave offense under Rule 10, Section 46 (A) (10) of the Revised Rules on Administrative Cases in the Civil Service and is punishable with dismissal for the first offense.[28] However, as this was Sheriff Francisco's first infraction after over 30 years of service, it recommended a lower penalty of three (3)-month suspension without pay.[29]

The sole issue for resolution is whether respondent Sheriff Juanito B. Francisco, Jr. is guilty of gross misconduct when he accepted the ₱8,000.00 check from Plantersbank.

We rule in the affirmative.

Our Constitution states that "[p]ublic office is a public trust."[30] It provides that "[p]ublic officers and employees must at all times be accountable to the people, serve them with utmost responsibility, integrity, loyalty, and efficiency, act with patriotism and justice, and lead modest lives."[31]

Sheriffs play a crucial role in our justice system as our front-line representatives tasked with executing final judgments by the courts.[32] Consequently, a sheriff must always perform his

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[27] *Id.* at 83, OCA Memorandum.

[28] *Id.*

[29] *Id.*

[30] CONST., Art. XI, Sec. 1.

[31] CONST., Art. XI, Sec. 1.

[32] See *Gillera v. Fajardo*, A.M. No. P-14-3237, October 21, 2014, 738 SCRA 632, 638-639 [*Per Curiam, En Banc*], citing *Lopez v. Ramos*, 500 Phil. 408, 417 (2005) [Per *J.* Tinga, Second Division] and *Go v. Hortaleza*, 578 Phil. 377, 382 (2008) [Per *J.* Leonardo-de Castro, First Division]. See also *Pilot v. Baron*, 695 Phil. 592, 594-595, (2012) [Per *J.* Perlas-Bernabe, Second Division].

or her duty with integrity for "once he [or she] loses the people's trust, he [or she] diminishes the people's faith in the judiciary."[33]

Rule 141, Section 10 of the Rules of Court requires sheriffs to submit their expense estimates to the court for approval, thus:

> SECTION 10. *Sheriffs, PROCESS SERVERS and other persons serving processes.* —
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> x x x x x x x x x
>
> With regard to sheriff's expenses in executing writs issued pursuant to court orders or decisions or safeguarding the property levied upon, attached or seized, including kilometrage for each kilometre of travel, guards' fees, warehousing and similar charges, the interested party shall pay said expenses in an amount estimated by the sheriff, subject to the approval of the court. Upon approval of the said estimated expenses, the interested party shall deposit such amount with the clerk of court and *ex-officio* sheriff, who shall disburse the same to the deputy sheriff assigned to effect the process, subject to liquidation within the same period for rendering return on the process. The liquidation shall be approved by the court. Any unspent amount shall be refunded to the party making the deposit. A full report shall be submitted by the deputy sheriff assigned with his return, and the sheriff's expenses shall be taxed as costs against the judgment debtor.

In his Position Paper, respondent submits that this provision only applies to execution of writs and not to extrajudicial foreclosure proceedings such as this case.[34] He admits that he accepted the check, but this was done "in an honest belief that [his] official duties as regards the [extrajudicial foreclosure proceedings] ha[ve] already ceased."[35]

Codes of ethics for public employees such as sheriffs prohibit them from accepting any form of remuneration in relation to the performance of their official duties.

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[33] See *Gillera v. Fajardo*, A.M. No. P-14-3237, October 21, 2014, 738 SCRA 632, 638-639 [*Per Curiam, En Banc*], citing *Lopez v. Ramos*, 500 Phil. 408, 417 (2005) [Per J. Tinga, Second Division] and *Go v. Hortaleza*, 578 Phil. 377, 386 (2008) [Per J. Leonardo-De Castro, First Division].

[34] *Rollo*, p. 73, Position Paper.

[35] *Id.* at 74.

Canon I, Section 4 of the Code of Conduct for Court Personnel[36] provides that "[c]ourt personnel shall not accept any fee or remuneration beyond what they receive or are entitled to in their official capacity."[37]

Canon III, Section 2 (b) also states that "[c]ourt personnel shall not [r]eceive tips or other remunerations for assisting or attending to parties engaged in transactions or involved in actions or proceedings with the Judiciary."[38]

Relevant are two (2) of our statutes, namely: Presidential Decree No. 46[39] and Republic Act No. 6713, Section 7 (d):[40]

PRESIDENTIAL DECREE NO. 46

MAKING IT PUNISHABLE FOR PUBLIC OFFICIALS AND EMPLOYEES TO RECEIVE, AND FOR PRIVATE PERSONS TO GIVE, GIFTS ON ANY OCCASION, INCLUDING CHRISTMAS

WHEREAS, under existing laws and the civil service rules, it is prohibited to receive, directly or indirectly, any gift, present or any other form of benefit in the course of official duties;

WHEREAS, it is believed necessary to put more teeth to existing laws and regulations to wipe out all conceivable forms of graft and corruption in the public service, the members of which should not only be honest but above suspicion and reproach; and

WHEREAS, the stoppage of the practice of gift-giving to government men is a concrete step in the administration's program of reforms for the development of new moral values in the social structure of the country, one of the main objectives of the New Society;

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[36] A.M. No. 03-06-13-SC (2004).

[37] A.M. No. 03-06-13-SC (2004), Canon I, Sec. 4.

[38] A.M. No. 03-06-13-SC (2004), Canon III, Sec. 2 (b).

[39] Pres. Decree No. 46 is entitled Making It Punishable For Public Officials And Employees To Receive, And For Private Persons To Give, Gifts On Any Occasion, Including Christmas. It was enacted on November 10, 1972.

[40] Code of Conduct and Ethical Standards for Public Officials and Employees (1989).

NOW, THEREFORE, I, FERDINAND E. MARCOS, President of the Philippines, by virtue of the powers vested in me by the Constitution as Commander-in-Chief of all the Armed Forces of the Philippines, and pursuant to Proclamation No. 1081 dated September 21, 1972, and General Order No. 1 dated September 22, 1972, do hereby make it punishable for any public official or employee, whether of the national or local governments, to receive, directly or indirectly, and for private persons to give, or offer to give, any gift, present or other valuable thing on any occasion, including Christmas, when such gift, present or other valuable thing is given by reason of his official position, *regardless of whether or not the same is for past favor or favors or the giver hopes or expects to receive a favor or better treatment in the future from the public official or employee concerned in the discharge of his official functions*. Included within the prohibition is the throwing of parties or entertainments in honor of the official or employee or his immediate relatives.

For violation of this Decree, the penalty of imprisonment for not less than one (1) year nor more than five (5) years and perpetual disqualification from public office shall be imposed. The official or employee concerned shall likewise be subject to administrative disciplinary action and, if found guilty, shall be meted out the penalty of suspension or removal, depending on the seriousness of the offense[.] (Emphasis supplied)

. . . . . .

REPUBLIC ACT NO. 6713

AN ACT ESTABLISHING A CODE OF CONDUCT AND ETHICAL STANDARDS FOR PUBLIC OFFICIALS AND EMPLOYEES, TO UPHOLD THE TIME-HONORED PRINCIPLE OF PUBLIC OFFICE BEING A PUBLIC TRUST, GRANTING INCENTIVES AND REWARDS FOR EXEMPLARY SERVICE, ENUMERATING PROHIBITED ACTS AND TRANSACTIONS AND PROVIDING PENALTIES FOR VIOLATIONS THEREOF AND FOR OTHER PURPOSES

. . . . . .

Section 7. Prohibited Acts and Transactions. — In addition to acts and omissions of public officials and employees now prescribed in the Constitution and existing laws, the following shall constitute prohibited acts and transactions of any public official and employee and are hereby declared to be unlawful:

. . . . . .

(d) *Solicitation or acceptance of gifts. — Public officials and employees shall not solicit or accept, directly or indirectly, any gift, gratuity, favor, entertainment, loan or anything of monetary value from any person in the course of their official duties or in connection with any operation being regulated by, or any transaction which may be affected by the functions of their office*.[41] (Emphasis supplied)

This Court has considered the solicitation and acceptance of monetary considerations by sheriffs as conduct unbecoming of a court employee, grave misconduct, and dishonesty.[42] In *Astorga v. Villanueva*,[43] we discussed the need to put an end to the deplorable behavior of soliciting litigants:

The Code of Conduct for Court Personnel requires that court personnel avoid conflicts of interest in performing official duties. It mandates that court personnel should not receive tips or other remunerations for assisting or attending to parties engaged in

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[41] See also Rep. Act No. 6713, Secs. 3 (c) and (d):

Section 3. *Definition of Terms*. — As used in this Act, the term:

. . . . . .

(c) "Gift" refers to a thing or a right disposed of gratuitously, or any act or liberality, in favor of another who accepts it, and shall include a simulated sale or an ostensibly onerous disposition thereof. It shall not include an unsolicited gift of nominal or insignificant value not given in anticipation of, or in exchange for, a favor from a public official or employee.

(d) "Receiving any gift" includes the act of accepting directly or indirectly, a gift from a person other than a member of his family or relative as defined in this Act, even on the occasion of a family celebration or national festivity like Christmas, if the value of the gift is neither nominal or insignificant, or the gift is given in anticipation of, or in exchange for, a favor.

[42] See *De Guzman, Jr. v. Mendoza*, 493 Phil. 690, 698 (2005) [Per *J.* Ynarez-Santiago, First Division], citing *Adoma v. Gatcheco*, 489 Phil. 273, 278 (2005) [Per *J.* Ynares-Santiago, First Division].

[43] A.M. No. P-09-2668, February 24, 2015, 751 SCRA 410 [*Per Curiam, En Banc*].

transactions or involved in actions or proceedings with the judiciary. "The Court has always stressed that all members of the judiciary should be free from any whiff of impropriety, not only with respect to their duties in the judicial branch but also to their behavior outside the court as private individuals, in order that the integrity and good name of the courts of justice shall be preserved." Court personnel cannot take advantage of the vulnerability of party-litigants.

. . . . . .

Indeed, "[a]s a court employee, [one] should be more circumspect in [one's] behavior and should [steer] clear of any situation casting the slightest of doubt on [one's] conduct."[44]

Both respondent and Plantersbank allege that no solicitation took place and that Plantersbank insisted on giving respondent the amount as a token of appreciation and gratitude.[45]

Still, this Court has repeatedly emphasized that "sheriffs are not authorized to receive any *voluntary* payments from parties in the course of the performance of their duties."[46] This opens doubt on monetary considerations being made for wrongful and unethical purposes, creates cracks in our justice system, and proves "inimical to the best interests of the service."[47]

The Concurring Opinion[48] in *Re: Allegations Made under Oath at the Senate Blue Ribbon Committee Hearing Held on September 26, 2013 against Associate Justice Gregory S. Ong*

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[44] *Id.* at 443, citing *Villahermosa, Sr. v. Sarcia*, 726 Phil. 408, 416-417 [*Per Curiam, En Banc*].

[45] *Rollo*, p. 74, Position Paper, and 37, Letter.

[46] *Pasok v. Diaz*, 677 Phil. 520, 530 (2011) [*Per Curiam, En Banc*]. See also *Tan v. Paredes*, 502 Phil. 305, 313 (2005) [*Per Curiam, En Banc*].

[47] *Tan v. Paredes*, 502 Phil. 305, 313 (2005) [*Per Curiam, En Banc*], citing *Bernabe v. Eguia*, 458 Phil. 97, 105 (2003) [Per *J.* Ynares-Santiago, First Division].

[48] *J.* Leonen, Concurring Opinion in *Re: Allegations made under Oath at the Senate Blue Ribbon Committee Hearing Held on September 26, 2013 Against Associate Justice Gregory S. Ong, Sandiganbayan*, A.M. No. SB-14-21-J, September 23, 2014, 736 SCRA 12, 197-251 [*Per Curiam, En Banc*].

explained that the prohibition against accepting gifts by public employees applies irrespective of when they were given in relation to the conduct of official duty. The law penalizes accepting gifts "regardless of whether or not the same is for past favors or the giver hopes or expects to receive a favor or better treatment in the future from the public official or employee concerned in the discharge of his official functions."[49]

Respondent's admission that he accepted a check for ₱8,000.00,[50] which he claims need not be accounted as expense estimates for court approval in accordance with Rule 141, Section 10,[51] establishes his culpability.

Rule 10, Section 46 (A) (10) of the Revised Rules on Administrative Cases in the Civil Service considers the acceptance of any gratuity in the course of official duty as a grave offense punishable by dismissal from the service:

> **Section 46.** ***Classification of Offenses.*** — Administrative offenses with corresponding penalties are classified into grave, less grave or light, depending on their gravity or depravity and effects on the government service.
>
> A. The following grave offenses shall be punishable by dismissal from the service:
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> . . . . . .
>
> 10. Soliciting or accepting directly or indirectly, any gift, gratuity, favor, entertainment, loan or anything of monetary value which in the course of his/her official duties or in connection with any operation being regulated by, or any transaction which may be affected by the functions of his/her office. The propriety or impropriety of the foregoing shall be determined by its value, kinship, or relationship between giver and receiver and the motivation. A thing of monetary value is one which is evidently or manifestly excessive by its very nature[.]

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[49] *Id.* at 212, citing Pres. Decree No. 46 (1972).

[50] *Rollo*, p. 61, Position Paper.

[51] *Id.* at 59-60.

This Court, however, has imposed a lower penalty in some cases after considering that it was the respondent sheriff's first offense.[52] Here, the Office of the Court Administrator found that it is respondent's first time to be charged with this kind of misdeed after over 30 years in government service.[53]

We adopt the Office of the Court Administrator's findings of fact and recommendation for disciplinary action with modification in that respondent should be suspended from service for one (1) year.

Nevertheless, the mitigation of the imposable penalty will not absolve respondent from any other liability that may arise from his infraction. "Public office is a public trust."[54] A public officer's accountability to the people demands the "utmost responsibility, integrity, loyalty, and efficiency"[55] in the performance of duties without need of any gift or token of gratitude.

This Court will no longer tolerate court employees who receive gifts or tokens from party-litigants for favorable treatment or efficient service. Subsequent incidents of this nature will be dealt with more severely in the future.

Those serving in the judiciary must carry the heavy burden and duty of preserving public faith in our courts and justice system by maintaining high ethical standards.[56] They must stand as "examples of responsibility, competence and efficiency, and they must discharge their duties with due care and utmost diligence

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[52] See, for instance, *De Guzman, Jr. v. Mendoza*, 493 Phil. 690, 699 (2005) [Per *J.* Ynarez-Santiago, First Division]; *Adoma v. Gatcheco*, 489 Phil. 273, 281 (2005) [Per *J.* Ynares-Santiago, First Division]; *Apuyan v. Sta. Isabel*, 474 Phil. 1, 20 (2004) [Per *J.* Austria-Martinez, Second Division]; and *Albello v. Galvez*, 443 Phil. 323, 329 (2003) [Per *J.* Vitug, First Division].

[53] *Rollo*, p. 83, OCA Memorandum.

[54] CONST., Art. XI, Sec. 1.

[55] CONST., Art. XI, Sec. 1.

[56] *Pasok v. Diaz*, 677 Phil. 520, 528 (2011) [*Per Curiam, En Banc*].

since they are officers of the court and agents of the law."[57] We do not tolerate any misconduct that tarnishes the judiciary's integrity.[58]

WHEREFORE, respondent Sheriff Juanito B. Francisco, Jr., Sheriff IV, Office of the Clerk of Court, Regional Trial Court, Antipolo City, Rizal, is found **GUILTY** of gross misconduct and is hereby **SUSPENDED** from the service for one (1) year without pay, with a stern warning that a repetition of the same or similar act will be dealt with more severely. This penalty is without prejudice to any appropriate proceeding that may be filed against respondent for his infraction.

Further, Atty. Alexander L. Paulino is **STERNLY WARNED** for his acts in facilitating and/or condoning respondent's acceptance of the check. The repetition of the same or similar act will not be tolerated by this Court.

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Brion, Peralta, Bersamin, Perez, Mendoza, Reyes, Perlas-Bernabe, Jardeleza, and *Caguioa, JJ.,* concur.

Del Castillo, J., on official leave.

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[57] *Id.*

[58] *Santos v. Leaño,* A.M. No. P-16-3419, February 23, 2016 <http://sc.judiciary.gov.ph/pdf/web/viewer.html?file=/jurisprudence/2016/february2016/P-16-3419.pdf> 2 [*Per Curiam, En Banc*].

EN BANC

[G.R. No. 186050. June 21, 2016]

ARTHUR BALAO, WINSTON BALAO, NONETTE BALAO, JONILYN BALAO-STRUGAR, and BEVERLY LONGID, *petitioners, vs.* **EDUARDO ERMITA, GILBERTO TEODORO, RONALDO PUNO, NORBERTO GONZALES, Gen. ALEXANDER YANO, Gen. JESUS VERZOSA, Brig. Gen. REYNALDO MAPAGU, Lt. P/Dir. EDGARDO DOROMAL, Maj. Gen. ISAGANI CACHUELA, Commanding Officer of the AFP-ISU based in Baguio City, PSS EUGENE MARTIN, and several JOHN DOES,** *respondents.*

[G.R. No. 186059. June 21, 2016]

SECRETARY EDUARDO ERMITA, SECRETARY GILBERTO TEODORO, SECRETARY RONALDO PUNO, SECRETARY NORBERTO GONZALES, GEN. ALEXANDER YANO, P/DGEN. JESUS VERZOSA, BRIG. GEN. REYNALDO MAPAGU, MAJ. GEN. ISAGANI CACHUELA, and POL. SR. SUPT. EUGENE MARTIN, *petitioners, vs.* **ARTHUR BALAO, WINSTON BALAO, NONETTE BALAO, JONILYN BALAO-STRUGAR, and BEVERLY LONGID,** *respondents.*[*]

SYLLABUS

POLITICAL LAW; RULE ON THE WRIT OF *AMPARO*; UNDER SECTION 20, THE COURT IS MANDATED TO ARCHIVE, AND NOT DISMISS, THE CASE SHOULD IT DETERMINE THAT IT COULD NOT PROCEED FOR A VALID CAUSE; ARCHIVING THE CASE AT BAR IS PREMATURE CONSIDERING THE PRESENCE OF AN

[*] As titled in the Decision. See *rollo* (G.R. No. 186059), Vol. II, p. 1130. Public Respondent then President Gloria Macapagal-Arroyo was dropped as party-respondent in the petition for writ of *amparo* in the December 13, 2011 Decision (see *id.* at 1161).

ACTIVE LEAD WORTH PURSUING.— Under Section 20 of the *Amparo* rule, the court is mandated to archive, and not dismiss, the case should it determine that it could not proceed for a valid cause. x x x Jurisprudence states that archiving of cases is a procedural measure designed to temporarily defer the hearing of cases **in which no immediate action is expected**, but where no grounds exist for their outright dismissal. Under this scheme, **an inactive case is kept alive but held in abeyance until the situation obtains in which action thereon can be taken**. To be sure, the *Amparo* rule sanctions the archiving of cases, provided that it is impelled by a valid cause, such as when the witnesses fail to appear due to threats on their lives or to similar analogous causes that would prevent the court from **effectively** hearing and conducting the *amparo* proceedings which, however, do not obtain in these cases. Here, while it may appear that the investigation conducted by the AFP reached an impasse, it must be pointed out that there was still an active lead worth pursuing by the PNP. Thus, the investigation had not reached a dead-end – which would have warranted the case's archiving – because the testimony of Gonzales set forth an immediate action on the part of the PNP which could possibly solve, or uncover new leads, in the ongoing investigation of James's abduction. Therefore, the RTC's recommendation that these cases should be archived is clearly premature, and hence, must be rejected.

APPEARANCES OF COUNSEL

National Union of Peoples Lawyers for petitioners in G.R. No. 186050 and for respondent in G.R. No. 186059.

The Solicitor General for Eduardo Ermita, et al.

R E S O L U T I O N

PERLAS-BERNABE, *J.*:

For the Court's resolution are the recommendations in the Final Report[1] dated January 15, 2016 submitted by the Regional

[1] *Id.* at 1270-1284. Penned by Presiding Judge Jennifer P. Humiding.

Trial Court of La Trinidad, Benguet, Branch 63 (RTC) in compliance with the directives in the Court's Decision[2] dated December 13, 2011 (December 13, 2011 Decision) in the above-captioned consolidated cases.

The Facts

The instant case arose when James M. Balao (James), founding member of the Cordillera Peoples Alliance (CPA), a coalition of non-government organizations working for the cause of indigenous peoples in the Cordillera Region,[3] was abducted by five (5) unidentified armed men on September 17, 2008, in front of Saymor's Store at Tomay, La Trinidad, Benguet.[4] After efforts to find him proved futile, James's siblings, namely: Arthur Balao, Winston Balao, Nonette Balao, and Jonilyn Balao-Strugar, together with CPA Chairperson Beverly Longid (CPA Chairperson Longid; collectively, Balao, *et al.*) filed a petition for the issuance of a writ of *amparo* in James's favor before the RTC, docketed as Special Proceedings No. 08-AMP-0001.[5]

The RTC Ruling

In a Judgment[6] dated January 19, 2009, the RTC granted the privilege of the writ of *amparo*, thereby directing herein public officers, namely: then President Gloria Macapagal-Arroyo, Executive Secretary Eduardo R. Ermita, Defense Secretary Gilberto C. Teodoro, Jr., Interior and Local Government Secretary Ronaldo V. Puno, National Security Adviser Norberto B.

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[2] *Id.* at 1130-1163. Penned by Retired (Ret.) Associate Justice Martin S. Villarama, Jr. and joined by then Chief Justice Renato C. Corona, Associate Justices Presbitero J. Velasco, Jr., Teresita J. Leonardo-de Castro, Arturo D. Brion, Diosdado M. Peralta, Lucas P. Bersamin, Mariano C. Del Castillo, Roberto A. Abad (Ret.), Jose Portugal-Perez, Jose Catral Mendoza, Bienvenido L. Reyes, and Estela M. Perlas-Bernabe. Chief Justice Maria Lourdes P. A. Sereno dissented and was joined by Senior Associate Justice Antonio T. Carpio. (See also 678 Phil. 532 [2011]).

[3] *Id.* at 1132.

[4] *Id.* at 1132-1133.

[5] See *id.* at 1014.

[6] See *rollo* (G.R. No. 186059), Vol. II, pp. 1146-1148. See also *rollo* (G.R. No. 186050), Vol. I, pp. 26-38. Penned by Judge Benigno M. Galacgac.

Gonzales, Armed Forces of the Philippines (AFP) Chief of Staff General Alexander B. Yano, Philippine National Police (PNP) Police Director General Jesus A. Verzosa, Philippine Army (PA) Chief Brigadier General Reynaldo B. Mapagu, PNP Criminal Investigation and Detection Group (PNP-CIDG) Chief Lt. P/Dir. Edgardo Doromal, Northern Luzon Command (NOLCOM) Commander Major General Isagani C. Cachuela, PNP-Cordillera Administrative Region Regional Director Police Senior Superintendent Eugene Gabriel Martin, and several John Does (the public officers)[7] to: *(a)* disclose where James is being detained or confined; *(b)* release him from his unlawful detention; and *(c)* cease and desist from inflicting harm on his person.[8] The RTC held that James's unlawful disappearance was due to his activist/political leanings and because the CPA was seen as a front of the Communist Party of the Philippines-New People's Army (CPP-NPA).[9] The RTC further ruled that the investigation conducted by the public officers was "very limited, superficial[,] and one-sided" which, thus, unmistakably violated James's right to security of his person.[10] Meanwhile, the RTC denied the interim reliefs that Balao, *et al.* prayed for — *i.e.*, the issuance of inspection order, production order, and witness protection order — considering that they failed to comply with the stringent provisions of The Rule on the Writ of *Amparo*[11] (*Amparo* rule) in order to grant the same.[12]

Separately, both parties appealed to the Court. In **G.R. No. 186050**, Balao, *et al.* challenged the RTC's denial of the interim reliefs, while, in **G.R. No. 186059**, the public officers assailed the RTC's judgment extending the privilege of the writ of *amparo*.[13]

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[7] *Rollo* (G.R. No. 186059), Vol. II, pp. 1131-1132.

[8] *Id.* at 1146.

[9] *Id.* at 1147.

[10] *Id.*

[11] A.M. No. 07-9-12-SC (October 24, 2007).

[12] *Rollo* (G.R. No. 186059), p. 1146.

[13] *Id.* at 1148.

The Court's Ruling in the December 13, 2011 Decision

In the December 13, 2011 Decision,[14] the Court reversed the grant of the privilege of the writ of *amparo*, holding that the totality of evidence presented in these cases did not fulfill the evidentiary standard provided for by *Amparo* rule so as to establish that James was a victim of an enforced disappearance. Citing *Roxas v. Macapagal-Arroyo*,[15] the Court ruled that government involvement in the abduction of James could not be simply inferred based on past incidents in which the victims also worked or were affiliated with left-leaning groups.[16] To add, the Court clarified that the doctrine of command responsibility could not be applied in *amparo* proceedings, considering that pinpointing criminal culpability is not the issue thereat, but rather, the same was conceived to determine responsibility or at least accountability for enforced disappearances (and extralegal killings), and to impose the appropriate remedies to address them.[17] More importantly, the Court held that, after a judicious review of the records, the participation of members of the AFP or PNP in the abduction of James was not sufficiently proven. It highlighted that no concrete evidence was presented by Balao, *et al.* which would have satisfactorily showed that James's abductors were connected with them. Relatedly, Balao, *et al.* likewise failed to present adequate proof that James was being held or detained upon the orders or with acquiescence of government agents.[18]

Notwithstanding these findings, the Court, however, concurred with the RTC's observations describing the investigations made by the public officers as "very limited, superficial[,] and one-sided" and, hence, ineffective.[19] As aptly pointed out by the

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[14] *Id.* at 1130-1163.

[15] 644 Phil. 480 (2010). See also *rollo* (G.R. No. 186059), p. 1151.

[16] *Rollo* (G.R. No. 186059), Vol. II, p. 1151.

[17] See *id.* at 1151-1153.

[18] See *id.* at 1153.

[19] See *id.* at 1154-1155.

RTC to which the Court agreed, there was a seeming prejudice on the part of the public officers to pin suspects who were not connected with the government,[20] further noting that they did not discharge the burden of exercising extraordinary diligence in investigating James's abduction, considering their abject failure to pursue critical leads in: (*a*) ascertaining the identities of James's abductors using the cartographic sketches described by the witnesses; and (*b*) tracing the plate numbers of vehicles that were allegedly used in conducting surveillance which were previously reported by James to his family and to the CPA.[21]

In order to safeguard the constitutional right to liberty and security of James who remained missing to date, the Court found it apt to remand the case to the RTC so as to monitor and ensure that the investigative efforts by the public officers would be discharged with extraordinary diligence, as required under Section 17[22] of the *Amparo* rule. For this purpose, the RTC may conduct hearings, as it may deem necessary, to validate the results of the investigation.[23] Lastly, anent the petition in **G.R. No. 186050**, the Court upheld the RTC ruling denying the interim reliefs prayed for by Balao, *et al.*, holding that the issuance of inspection and production orders could not be based on insufficient claims, lest it would have sanctioned a "fishing expedition."[24]

In light of the foregoing, the Court partly modified the RTC ruling, as follows: *(a)* reversing the grant of the privilege of

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[20] *Id.* at 1154.

[21] *Id.* at 1156-1157.

[22] SEC. 17. *Burden of Proof and Standard of Diligence Required*. — The parties shall establish their claims by substantial evidence.

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The respondent who is a public official or employee must prove that extraordinary diligence as required by applicable laws, rules and regulations was observed in the performance of duty.

The respondent public official or employee cannot invoke the presumption that official duty has been regularly performed to evade responsibility or liability.

[23] See *rollo* (G.R. No. 186059), pp. 1158 and 1161-1162.

[24] *Id.* at 1158-1159.

the writ of *amparo*; *(b)* affirming the denial of the prayer for inspection and production order, without prejudice to the subsequent grant thereof, as it may be deemed necessary; and *(c)* ordering the incumbent Chief of Staff of the AFP and Director General of the PNP to continue and pursue with extraordinary diligence — as required under Section 17 of the *Amparo* rule — the investigation of James's abduction, and specifically to take the necessary steps to: [i] identify the persons described in the cartographic sketches; [ii] locate the vehicles bearing the plate numbers provided by Balao, *et al.* and which James had reported as conducting surveillance on his person and to investigate their owners; and [iii] pursue other leads relevant to his abduction.[25]

Within six (6) months from notice of the said Decision, the PNP and PNP-CIDG were ordered to undertake their respective investigations, and within fifteen (15) days from completion, the AFP and PNP shall submit a full report of their investigations to the RTC which, in turn, shall have thirty (30) days to submit its **Full Report** to this Court for **Final Action**.[26]

Proceedings after the December 13, 2011 Decision

In a Notice[27] dated November 28, 2013, the Court directed the Commission on Human Rights (CHR) and the National Bureau of Investigation (NBI) to conduct independent and parallel investigations on the disappearance of James.

In a Further Partial Compliance[28] dated October 30, 2014, the RTC informed the Court that it scheduled a hearing on March 7, 2014 to determine, among others, the results of the investigation being conducted by the Special Investigation Task Group (SITG)-Balao,[29] as monitored by the AFP and PNP, and that of the CHR.[30]

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[25] *Id.* at 1159-1162.

[26] *Id.* at 1161.

[27] See *rollo* (G.R. No. 186050), Vol. IV, p. 1555.

[28] *Id.* at 1554-1568.

[29] See *id.* at 1895.

[30] *Id.* at 1558.

Thereafter, the PNP, through SITG-Balao Commander PSS Rodolfo S. Azurin, Jr., moved to require the Military Intelligence Group 1 (MIG 1) based at Camp Henry T. Allen, Baguio City to produce a copy of their Roster of Troops for calendar year 2008 in order to counter-check a name who was traced as the last owner of the vehicle that was allegedly used in conducting surveillance against James.[31] Meanwhile, the AFP, through Chief of Staff General Emmanuel T. Bautista, filed a manifestation and compliance, confirming the reports of SITG-Balao that the owner of the Mitsubishi Versa L-300 Van with plate number USC-922[32] was an active service officer of the Philippine Army identified as Major Ferdinand Bruce M. Tokong (Maj. Tokong).[33] After granting PNP's motion, and upon submission of the Roster of Troops, it was, however, revealed that Maj. Tokong's name was not in the list.[34] Separately, the CHR filed an Investigation Report[35] praying for the issuance of an order directing a certain Brian Gonzales (Gonzales) — who Balao, *et al.* claimed to be an asset of MIG 1 and, incidentally, was also their cousin — to appear before the RTC, considering that he was repeatedly mentioned in James's journal entries.[36] Consequently, the next hearing date was scheduled on February 20, 2015.[37]

In a Compliance by Way of Additional Partial Updates[38] dated March 20, 2015, the RTC notified the Court that the PNP had submitted its Formal Report,[39] recommending the termination

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[31] *Id.* at 1556-1557.

[32] Which was one the vehicles mentioned as conducting surveillance against James.

[33] See *rollo* (G.R. No. 186050), Vol. IV, pp. 1558-1560.

[34] *Id.* at 1566.

[35] Dated March 6, 2014. *Id.* at 1585-1592. Issued by Atty. Harold D. Kub-Aron.

[36] See *id.* at 1567 and 1591.

[37] See *id.* at 1568.

[38] *Id.* at 1884-1888-A.

[39] See Formal Report (Re: Order dated August 1, 2014) dated November 12, 2014. *Id.* at 1889-1907. Issued by Police Senior Superintendent Commander, SITG Balao Rodolfo S. Azurin, Jr.

of investigation of the SITG-Balao without prejudice to the continuation of the investigation by the local police unit concerned.[40] The PNP reported that they traced the vehicles (that were purportedly used for surveillance) to their respective owners; however, their investigations did not yield any significant breakthrough.[41] The RTC, then, summarized the updates of each party during the February 20, 2015 hearing: *(a)* the PNP manifested that it did not receive any information about the case after the submission of its report; *(b)* the AFP mentioned that, aside from comparing the cartographic sketches of the suspects with all their personnel,[42] it was also investigating the possible involvement of Maj. Tokong, and undertook to submit the results thereof to the RTC after its declassification, and for this, it asked for a period of fifteen (15) days to submit the same; *(c)* the CHR revealed that it sent summons to Gonzales which were, however, repeatedly ignored, and thus, prayed for the issuance of a *subpoena* on his person; and *(d)* Balao, *et al.* confirmed that Gonzales was James's first cousin and were confounded why he was not investigated beforehand, considering that he was a member of the PNP intelligence group and they already provided his name as early as 2008.[43]

Moreover, the PNP manifested that they encountered problems in gathering evidence and in pursuing a possible lead because of the continuous refusal of Balao, *et al.* to present certain personalities identified as "Uncle John" and "Rene," alleged housemates and last companions of James.[44] To know their identities, the PNP stated that CPA Chairperson Longid should be compelled to appear before the RTC.[45] Before the conclusion

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[40] *Id.* at 1906.

[41] See *id.* at 1897-1901.

[42] *Rollo* (G.R. No. 186050), Vol. IV, p. 1887. See also *rollo* (G.R. No. 186059), Vol. II, p. 1248.

[43] See *rollo* (G.R. No. 186050) Vol. IV, pp. 1884-A-1885-A.

[44] *Id.* at 1887-1887-A. See *id.* at 1931 and 1934.

[45] *Id.* at 1887-A.

of the hearing, the AFP made a commitment to submit its investigation about Maj. Tokong's involvement. Accordingly, the RTC set the next hearing on September 4, 2015 to allow the declassification of some documents, as well as to give all parties additional time to complete their respective investigations.[46]

In a Final Report[47] dated January 15, 2016, the RTC discussed the contents of the confidential AFP Report[48] concluding that Maj. Tokong had no involvement in the abduction of James.[49] The AFP Report mentioned that while it was true that Maj. Tokong went to Baguio for his rest and recreation sometime in September 2008 — which was approved by Colonel Lyndon V. Paniza — it would be contrary to the experience of man if he would use his own personal vehicle to conduct surveillance on James as this would, in effect, expose him. Had Maj. Tokong indeed conducted surveillance operations, he would have, at the very least, used another vehicle to avoid liability. By using his personal vehicle, this only strengthened Maj. Tokong's good faith and intention that he went to Baguio for his personal vacation.[50]

The RTC, thereafter, highlighted the contents of Gonzales's testimony, stating that: *(a)* he was not an asset of the AFP or NBI; *(b)* James feared that he was being followed by unknown persons, and he never mentioned of any vehicle tailing him, as those plate numbers were only given by CPA Chairperson Longid; *(c)* acting on the request of James to check if the latter was included in the *order of battle* or watch list, Gonzales called his *bilas* (sister-in-law's husband) in the AFP Intelligence Service

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[46] See *id.* at 1888-1888-A.

[47] *Rollo* (G.R. No. 186059), Vol. II, pp. 1270-1284.

[48] Re: Investigation Report Submission of Result of Investigation (Re: Petition for Writ of *Amparo* in favor of James Balao) September 29, 2015. *Id.* at 1285-1289.

[49] *Id.* at 1288.

[50] *Id.* at 1271-1272.

Unit and friends in the PNP who both said that James was not in the list; *(d)* he denied sending text messages to James except their exchanges on July 13, 2008; *(e)* James appeared to have wanted to leave the CPA, considering that he was inquiring on how to obtain a visa to go to Japan; and *(f)* he suspected the colleagues of James in the CPA as his abductors, considering that they were the only persons — *i.e.*, such as his housemates — who knew or had information of his schedule, activities, or whereabouts, and more importantly, the CPA had been dictating what his cousins should say or do, and had prevented them from communicating with him.[51]

The RTC opined that the investigation of James's abduction had reached an impasse,[52] thereby recommending that these cases be archived, considering that the investigation of the AFP had reached a standstill with its conclusion that Maj. Tokong did not conduct surveillance operations on James, and that the testimony of Gonzales presented a new angle in the abduction that must be further verified.[53] In light of the foregoing, the RTC respectfully recommended for the Court to: (*a*) **archive** the instant case; (*b*) **relieve** the AFP and CHR of their respective obligations to investigate the abduction of James; and (*c*) **direct** the PNP to continue the investigation by further pursuing the angle raised by Gonzales who had also expressed his willingness to cooperate in identifying the housemates of James (who are also possible leads and persons-of-interest). In this relation, the RTC noted that while archived, these cases may still be re-opened by any interested party should new evidence arise.[54]

The Issue Before the Court

The main issue for resolution is whether or not the Court should adopt the recommendations of the RTC in the Final Report dated January 15, 2016.

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[51] See *id.* at 1273-1277.

[52] *Id.* at 1279.

[53] *Id.* at 1283.

[54] *Id.* at 1283-1284.

The Court's Ruling

The recommendations in the Final Report dated January 15, 2016 are partly adopted.

At the outset, the Court observes that exhaustive efforts and extraordinary diligence were exercised by the PNP, AFP, and CHR in investigating the abduction of James, pursuant to the parameters laid down in the December 13, 2011 Decision. On the part of the AFP, the Court notes its active participation in the RTC proceedings, and as gleaned from the AFP Report, it investigated the possible involvement of Maj. Tokong, but who was subsequently cleared from any participation in James's abduction for lack of evidence.[55] The AFP likewise stated that it compared the results of the cartographic sketches with their personnel,[56] but still, did not yield any significant developments.

On the part of the PNP, records show that it keenly investigated the ownership of the vehicles that were reportedly used for surveillance on James. According to its Formal Report, the SITG-Balao traced the vehicles ownership history, as well as the activities and trips of the vehicle on the day of James's abduction, but found no considerable leads.[57] It must, however, be stressed that the angle raised by Gonzales in his testimony — *i.e.*, that James could have been possibly abducted by CPA members — presented a significant development that is worth investigating. It was reported that James had housemates living with him who were only identified as "Uncle John" and "Rene," allegedly members of the CPA.[58] Notably, the PNP previously tried to investigate these persons-of-interest, but lamented the continuous refusal of Balao, *et al.*, particularly CPA Chairperson Longid, to disclose their identities. This notwithstanding, Gonzales, however, manifested that he could identify these individuals.[59]

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[55] See *id.* at 1288.

[56] *Rollo* (G.R. No. 186050), Vol. IV, p. 1887. See also *rollo* (G.R. No. 186059), Vol. II, p. 1248.

[57] See *rollo* (G.R. No. 186050), Vol. IV, pp. 1896-1900.

[58] See *id.* at 1887-A and 1931 and 1934.

[59] *Rollo* (G.R. No. 186059), p. 1283.

Under Section 20 of the *Amparo* rule, the court is mandated to archive, and not dismiss, the case should it determine that it could not proceed for a valid cause, *viz*.:

> Section 20. *Archiving and Revival of Cases*. — **The court shall not dismiss the petition, but shall archive it, if upon its determination it cannot proceed for a valid cause** such as the failure of petitioner or witnesses to appear due to threats on their lives.
>
> A periodic review of the archived cases shall be made by the *amparo* court that shall, *motu proprio* or upon motion by any party, order their revival when ready for further proceedings. The petition shall be dismissed with prejudice upon failure to prosecute the case after the lapse of two (2) years from notice to the petitioner of the order archiving the case.
>
> The clerks of court shall submit to the Office of the Court Administrator a consolidated list of archived cases under this Rule not later than the first week of January of every year. (Emphasis and underscoring supplied)

Jurisprudence states that archiving of cases is a procedural measure designed to temporarily defer the hearing of cases **in which no immediate action is expected**, but where no grounds exist for their outright dismissal. Under this scheme, **an inactive case is kept alive but held in abeyance until the situation obtains in which action thereon can be taken**.[60] To be sure, the *Amparo* rule sanctions the archiving of cases, provided that it is impelled by a valid cause, such as when the witnesses fail to appear due to threats on their lives or to similar analogous causes that would prevent the court from **effectively** hearing and conducting the *amparo* proceedings which, however, do not obtain in these cases.

Here, while it may appear that the investigation conducted by the AFP reached an impasse, it must be pointed out that there was still an active lead worth pursuing by the PNP. Thus, the investigation had not reached a dead-end — which would

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[60] See *Republic of the Phils. v. Express Telecommunication Co., Inc.*, 424 Phil. 372, 394 (2002).

have warranted the case's archiving — because the testimony of Gonzales set forth an immediate action on the part of the PNP which could possibly solve, or uncover new leads, in the ongoing investigation of James's abduction. Therefore, the RTC's recommendation that these cases should be archived is clearly premature, and hence, must be rejected.

WHEREFORE, the recommendations of the Regional Trial Court of La Trinidad, Benguet, Branch 63 (RTC) in the Final Report dated January 15, 2016 are **PARTLY ADOPTED**. Accordingly, the Court hereby resolved to:

(a) **REJECT** the recommendation of the RTC to archive these cases;

(b) **RELIEVE** the Armed Forces of the Philippines and the Commission on Human Rights from their respective obligations to investigate the abduction of James Balao; and

(c) **DIRECT** the Philippine National Police (PNP) to further investigate the angle presented by Bryan Gonzales and to ascertain the identities of "Uncle John" and "Rene" who are persons-of-interest in these cases.

The PNP is given six (6) months from notice hereof to complete its investigation. Within fifteen (15) days from completion, the PNP shall submit the results thereof to the RTC. Within thirty (30) days thereafter, the RTC shall submit its full report and recommendation to the Court for final action.

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Brion, Peralta, Bersamin, Perez, Mendoza, Reyes, Leonen, Jardeleza, and *Caguioa, JJ.,* concur.

Del Castillo, J., on official leave.

EN BANC

[G.R. No. 199422. June 21, 2016]

COMMISSIONER OF INTERNAL REVENUE, *petitioner, vs.* **KEPCO ILIJAN CORPORATION,** *respondent.*

SYLLABUS

1. REMEDIAL LAW; CIVIL PROCEDURE; ANNULMENT OF JUDGMENT; DISCUSSED.— Annulment of judgment, as provided for in Rule 47 of the Rules of Court, is based only on the grounds of extrinsic fraud and lack of jurisdiction. It is a recourse that presupposes the filing of a separate and original action for the purpose of annulling or avoiding a decision in another case. Annulment is a remedy in law independent of the case where the judgment sought to be annulled is rendered. It is unlike a motion for reconsideration, appeal or even a petition for relief from judgment, because annulment is not a continuation or progression of the same case, as in fact the case it seeks to annul is already final and executory. Rather, it is an extraordinary remedy that is equitable in character and is permitted only in exceptional cases.

2. ID.; ID.; ID.; COURT OF TAX APPEALS SITTING EN BANC CANNOT ANNUL A DECISION OF ONE OF ITS DIVISIONS.— Annulment of judgment involves the exercise of original jurisdiction, as expressly conferred on the Court of Appeals by Batas Pambansa Bilang (*BP Blg.*) 129, Section 9(2). It also implies power by a superior court over a subordinate one, as provided for in Rule 47 of the Rules of Court, wherein the appellate court may annul a decision of the regional trial court, or the latter court may annul a decision of the municipal or metropolitan trial court. [T]he law and rules are silent when it comes to a situation in which the Court of Tax Appeals is called upon to annul its own judgment. More specifically, in the case at bar, the CTA sitting *en banc* is being asked to annul a decision of one of its divisions. However, the laws creating the CTA and expanding its jurisdiction (RA Nos. 1125 and 9282) and the court's own rules of procedure (the Revised Rules of the CTA) do not provide for such a scenario. x x x [T]he Revised Rules of the CTA and even the Rules of Court which apply suppletorily thereto provide for no instance in

which the *en banc* may reverse, annul or void a *final* decision of a division. Verily, the Revised Rules of the CTA provide for no instance of an annulment of judgment at all.

3. ID.; SPECIAL CIVIL ACTIONS; CERTIORARI; CERTIORARI FILED BEFORE THE COURT IS THE PROPER REMEDY TO ASSAIL THE DECISION OF CTA DIVISION.— [The] remedy for petitioner was to file a petition for *certiorari* under Rule 65, filed as an original action before this Court and not before the CTA *En Banc*. *Certiorari* is available when there is no appeal or any other plain, speedy and adequate remedy in the ordinary course of law, such as in the case at bar. Since the petition below invoked the gross and palpable negligence of petitioner's counsel which is allegedly tantamount to its being deprived of due process and its day in court as party-litigant and, as it also invokes lack of jurisdiction of the CTA First Division to entertain the petition filed by private respondent since the same allegedly fails to comply with the reglementary periods for judicial remedies involving administrative claims for refund of excess unutilized input VAT under the National Internal Revenue Code (*NIRC*), which periods it claims to be jurisdictional, then the proper remedy that petitioner should have availed of was indeed a petition for *certiorari* under Rule 65, an original or independent action premised on the public respondent having acted without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction. x x x In the case involving petitioner, the petition could have been filed directly with this court, even without any need to file a motion for reconsideration with the CTA division or *En Banc*, as the case appears to fall under one of the recognized exceptions to the rule requiring such a motion as a prerequisite to filing such petition.

4. ID.; STRICT COMPLIANCE WITH THE RULES OF PROCEDURE, EMPHASIZED; FAILURE TO AVAIL OF THE PROPER REMEDY FATAL TO THE DECISION THAT ALREADY BECAME FINAL AND EXECUTORY.— [P]etitioner's failure to avail of [the proper] remedy and mistaken filing of the wrong action are fatal to its case and renders and leaves the CTA First Division's decision as indeed final and executory. By the time the instant petition for review was filed by petitioner with this Court, more than sixty (60) days have passed since petitioner's alleged discovery of its loss in the case as brought about by the alleged negligence or fraud of its

counsel. Thus, the current discussion serves no further purpose other than as merely a future guide to the bench and the bar when confronted with a similar situation. Although in select cases, this Court has asseverated that "it is always within its power to suspend its own rules or to except a particular case from its operation, whenever the purposes of justice require it" and that the Rules of Court were conceived and promulgated to set forth guidelines in the dispensation of justice but not to bind and chain the hand that dispenses it, for otherwise, courts will be mere slaves to or robots of technical rules, shorn of judicial discretion. We have also equally stressed that strict compliance with the rules of procedure is essential to the administration of justice.

APPEARANCES OF COUNSEL

The Solicitor General for petitioner.
Zambrano & Gruba Law Offices for respondent.

D E C I S I O N

PERALTA, *J.*:

This is a petition for Review on *Certiorari* under Rule 45 of the Rules of Court seeking the reversal of the Resolutions[1] dated July 27, 2011[2] and November 15, 2011[3] of the Court of Tax Appeals (*CTA*) *En Banc*.

The facts follow.

For the first[4] and second[5] quarters of the calendar year 2000, respondent filed its Quarterly value-added tax (*VAT*) returns

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[1] Penned by Associate Justice Juanito C. Castañeda, Jr., with Presiding Justice Ernesto D. Acosta, Associate Justices Lovell R. Bautista, Erlinda P. Uy, Caesar A. Casanova, Olga Palanca-Enriquez, Esperanza R. Fabon-Victorino, Cielito N. Mindaro-Grulla, Amelia R. Cotangco-Manalastas, concurring.

[2] *Rollo*, pp. 9-20.

[3] *Id.* at 29-32.

[4] CTA Records, p. 14.

[5] *Id.* at 16.

with the Bureau of Internal Revenue (*BIR*). It also filed the Application for Zero Rated Sales for calendar year 2000 which was duly approved by the BIR.[6]

Thereafter, respondent filed with the BIR its claim for refund in the amount of ₱449,569,448.73 representing input tax incurred for the first and second quarters of the calendar year 2000 from its importation and domestic purchases of capital goods and services preparatory to its production and sales of electricity to the National Power Corporation.[7]

Petitioner did not act upon respondent's claim for refund or issuance of tax credit certificate for the first and second quarters of the calendar year 2000. Consequently, respondent filed a Petition for Review[8] on March 21, 2002, and an Amended Petition for Review[9] on September 12, 2003.

In her Answer,[10] petitioner alleged the following Special and Affirmative Defenses: (1) respondent is not entitled to the refund of the amounts prayed for; (2) the petition was prematurely filed for respondent's failure to exhaust administrative remedies; (3) respondent failed to show that the taxes paid were erroneously or illegally collected; and (4) respondent has no cause of action.

After the issues were joined, trial on the merits ensued.

Respondent, thereafter, filed its Memorandum on September 1, 2008. For failure of petitioner to file the required Memorandum despite notice, the CTA First Division issued a Resolution[11] dated September 12, 2008 submitting the case for decision.

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[6] *Id.* at 18.

[7] *Id.* at 19-35. See also *rollo*, p. 141.

[8] *Id.* at 1-9.

[9] *Id.* at 427-435.

[10] *Id.* at 44-45.

[11] *Id.* at 1067.

On September 11, 2009, the CTA First Division rendered a Decision,[12] the dispositive portion[13] of which reads as follows:

IN VIEW OF THE FOREGOING, THIS Court finds petitioner entitled to a refund in the amount of ₱443,447,184.50, representing unutilized input VAT paid on its domestic purchases and importation of capital goods for the first and second quarters of 2000, as computed below:

Amount of Input VAT Claim		₱449,569,448.73
Less:	Input VAT Pertaining to Non-Capital Goods	706,328.22
Input VAT Claim Pertaining to Capital Goods Purchases		₱448,863,120.51
Less:	Not Properly Substantiated Input VAT	
	Per ICPA's Findings	45,878.55
	Per this Court's Further Verification	5,370,057.46
Refundable Input VAT on Capital Goods Purchases		**₱443,447,184.50**

There being no motion for reconsideration filed by the petitioner, the abovementioned decision became final and executory and a corresponding Entry of Judgment was issued on October 10, 2009. Thus, on February 16, 2010, the Court issued a Writ of Execution,[14] the pertinent portion of which reads as follows:

You are hereby ORDERED to REFUND in favor of the petitioner KEPCO ILIJAN CORPORATION, the amount of ₱443,447,184.50 representing unutilized input VAT paid on its domestic purchases and importation of capital goods for the first and second quarters of 2000, pursuant to the Decision of this Court, promulgated on September 11, 2009, which has become final and executory on October 10, 2009, by virtue of the Entry of Judgment issued on said date.

The Sheriff of this Court is hereby directed to see to it that this Writ is carried out by the Respondent and/or his agents, and shall

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[12] *Rollo*, pp. 134-148. Penned by Associate Justice Caesar A. Casanova, with Associate Justice Lovell R. Bautista concurring, and Presiding Justice Ernesto D. Acosta dissenting.

[13] *Id.* at 147.

[14] *Id.* at 151.

make the corresponding return/report thereon within thirty (30) days after receipt of the Writ.

SO ORDERED.

Petitioner alleges that she learned only of the Decision and the subsequent issuance of the writ of March 7, 2011 when the Office of the Deputy Commissioner for Legal and Inspection Group received a Memorandum from the Appellate Division of the National Office recommending the issuance of a Tax Credit Certificate in favor of the respondent in the amount of ₱443,447,184.50.

Accordingly, on April 11, 2011 petitioner filed a petition for annulment of judgment with the CTA *En Banc*, praying for the following reliefs: (1) that the Decision dated September 11, 2009 of the CTA First Division in CTA Case No. 6412 be annulled and set aside; (2) that the Entry of Judgment on October 10, 2009 and Writ of Execution on February 16, 2010 be nullified; and (3) that the CTA First Division be directed to re-open CTA Case No. 6412 to allow petitioner to submit her memoranda setting forth her substantial legal defenses.

In opposition, respondent filed its Motion to Deny Due Course (To The Petition for Annulment of Judgment), arguing, among others, that petitioner is not lawfully entitled to the annulment of judgment on the ground that the CTA *En Banc* is bereft of jurisdiction to entertain annulment of judgments on the premise that the Rules of Court, Republic Act No. (RA No.) 9282,[15] and the Revised Rules of the Court of Tax Appeals do not expressly provide a remedy on annulment of judgments.

On July 27, 2011, the CTA *En Banc* issued a Resolution[16] dismissing the petition. Petitioner filed a motion for

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[15] *AN ACT EXPANDING THE JURISDICTION OF THE COURT OF TAX APPEALS (CTA), ELEVATING ITS RANK TO THE LEVEL OF A COLLEGIATE COURT WITH SPECIAL JURISDICTION AND ENLARGING ITS MEMBERSHIP, AMENDING FOR THE PURPOSE CERTAIN SECTIONS OF REPUBLIC ACT NO. 1125, AS AMENDED, OTHERWISE KNOWN AS THE LAW CREATING THE COURT OF TAX APPEALS, AND OTHER PURPOSES.*

[16] *Supra* note 2.

reconsideration, but the same was denied in a Resolution[17] dated November 15, 2011.

Hence, this petition.

Petitioner raises the following arguments to support her petition:

I

THE COURT OF TAX APPEALS (EN BANC) HAS JURISDICTION TO TAKE COGNIZANCE OF THE PETITION FOR ANNULMENT OF JUDGMENT.

II

THE NEGLIGENCE COMMITTED BY PETITIONER'S COUNSEL IS GROSS, PALPABLE AND CONSTITUTES TOTAL ABANDONMENT OF PETITIONER'S CAUSE WHICH IS TANTAMOUNT TO EXTRINSIC FRAUD.

III

THE COURT OF TAX APPEALS (*FIRST DIVISION*) HAS NO JURISDICTION OVER THE ORIGINAL PETITION FILED BY RESPONDENT.

IV

PETITIONER IS NOT BARRED BY LACHES FROM ASSAILING THE JURISDICTION OF THE COURT OF TAX APPEALS (*FIRST DIVISION*) OVER THE PETITION FILED BY RESPONDENT.[18]

Prefatorily, we first pass upon the issue of whether the CTA *En Banc* has jurisdiction to take cognizance of the petition for annulment of judgment filed by petitioner.

Annulment of judgment, as provided for in Rule 47 of the Rules of Court, is based only on the grounds of extrinsic fraud and lack of jurisdiction. It is a recourse that presupposes the filing of a separate and original action for the purpose of annulling or avoiding a decision in another case. Annulment is a remedy

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[17] *Supra* note 3.

[18] *Rollo*, p. 44.

in law independent of the case where the judgment sought to be annulled is rendered.[19] It is unlike a motion for reconsideration, appeal or even a petition for relief from judgment, because annulment is not a continuation or progression of the same case, as in fact the case it seeks to annul is already final and executory. Rather, it is an extraordinary remedy that is equitable in character and is permitted only in exceptional cases.[20]

Annulment of judgment involves the exercise of original jurisdiction, as expressly conferred on the Court of Appeals by Batas Pambansa Bilang (*BP Blg.*) 129, Section 9 (2). It also implies power by a superior court over a subordinate one, as provided for in Rule 47 of the Rules of Court, wherein the appellate court may annul a decision of the regional trial court, or the latter court may annul a decision of the municipal or metropolitan trial court.

But the law and the rules are silent when it comes to a situation similar to the case at bar, in which a court, in this case the Court of Tax Appeals, is called upon to annul its own judgment. More specifically, in the case at bar, the CTA sitting *en banc* is being asked to annul a decision of one of its divisions. However, the laws creating the CTA and expanding its jurisdiction (RA Nos. 1125 and 9282) and the court's own rules of procedure (the Revised Rules of the CTA) do not provide for such a scenario.

It is the same situation among other collegial courts. To illustrate, the Supreme Court or the Court of Appeals may sit and adjudicate cases in divisions consisting of only a number of members, and such adjudication is already regarded as the decision of the Court itself.[21] It is provided for in the Constitution, Article VIII, Section 4 (1) and BP Blg. 129, Section 4, respectively. The divisions are not considered separate and distinct courts but are divisions of one and the same court; there is no hierarchy of courts within the Supreme Court and the Court of

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[19] *Macalalag v. Ombudsman*, 468 Phil. 918, 923 (2004).

[20] *Nudo v. Hon. Caguioa, et al.*, 612 Phil. 517, 522 (2009).

[21] See *Land Bank of the Philippines v. Suntay*, 678 Phil. 879, 912 (2011).

Appeals, for they each remain as one court notwithstanding that they also work in divisions.[22] The Supreme Court sitting *en banc* is not an appellate court *vis-a-vis* its divisions, and it exercises no appellate jurisdiction over the latter.[23] As for the Court of Appeals *en banc*, it sits as such only for the purpose of exercising administrative, ceremonial, or other non-adjudicatory functions.[24]

Thus, it appears contrary to these features that a collegial court, sitting *en banc*, may be called upon to annul a decision of one of its divisions which had become final and executory, for it is tantamount to allowing a court to annul its own judgment and acknowledging that a hierarchy exists within such court. In the process, it also betrays the principle that judgments must, at some point, attain finality. A court that can revisit its own final judgments leaves the door open to possible endless reversals or modifications which is anathema to a stable legal system.

Thus, the Revised Rules of the CTA and even the Rules of Court which apply suppletorily thereto provide for no instance in which the *en banc* may reverse, annul or void a *final* decision of a division. Verily, the Revised Rules of the CTA provide for no instance of an annulment of judgment at all. On the other hand, the Rules of Court, through Rule 47, provides, with certain conditions, for annulment of judgment done by a superior court, like the Court of Appeals, against the final judgment, decision

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[22] *Id.*

[23] The command in *Firestone Ceramics, Inc. v. Court of Appeals*, Dissenting Opinion of then Associate Justice Minerva Gonzaga-Reyes, 389 Phil. 810, 822 (2000) that "no doctrine or principle of law laid down by the court in a decision rendered *en banc* or in division may be modified or reversed except by the court sitting *en banc*" (CONSTITUTION, Art. VIII, Section 4[3]) does not refer to the modification or reversal of a ruling in a specific case, but to a doctrine or legal principle which reversal, in any case, applies only prospectively or to future cases. As stated in *Spouses Benzonan v. Court of Appeals*, G.R. Nos. 97973 & 97998, January 27, 1992; 205 SCRA 515, *Heirs of Gamboa v. Teves*, 696 Phil. 276 (2012); Velasco, Jr., *J., dissenting*.

[24] B.P. Blg. 129, Sec. 4.

or ruling of an inferior court, which is the Regional Trial Court, based on the grounds of extrinsic fraud and lack of jurisdiction. The Regional Trial Court, in turn, also is empowered to, upon a similar action, annul a judgment or ruling of the Metropolitan or Municipal Trial Courts within its territorial jurisdiction. But, again, the said Rules are silent as to whether a collegial court sitting *en banc* may annul a final judgment of its own division.

As earlier explained, the silence of the Rules may be attributed to the need to preserve the principles that there can be no hierarchy within a collegial court between its divisions and the *en banc,* and that a court's judgment, once final, is immutable.

A direct petition for annulment of a judgment of the CTA to the Supreme Court, meanwhile, is likewise unavailing, for the same reason that there is no identical remedy with the High Court to annul a final and executory judgment of the Court of Appeals. RA No. 9282, Section 1 puts the CTA on the same level as the Court of Appeals, so that if the latter's final judgments may not be annulled before the Supreme Court, then the CTA's own decisions similarly may not be so annulled. And more importantly, it has been previously discussed that annulment of judgment is an original action, yet, it is not among the cases enumerated in the Constitution's Article VIII, Section 5 over which the Supreme Court exercises original jurisdiction. Annulment of judgment also often requires an adjudication of facts, a task that the Court loathes to perform, as it is not a trier of facts.[25]

Nevertheless, there will be extraordinary cases, when the interest of justice highly demands it, where final judgments of the Court of Appeals, the CTA or any other inferior court may still be vacated or subjected to the Supreme Court's modification, reversal, annulment or declaration as void. But it will be accomplished not through the same species of original action or petition for annulment as that found in Rule 47 of the Rules of Court, but through any of the actions over which the Supreme

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[25] *INC Shipmanagement, Inc. v. Moradas*, 724 Phil. 374 (2014).

Court has original jurisdiction as specified in the Constitution, like 65 of the Rules of Court.

Hence, the next query is: Did the CTA *En Banc* correctly deny the petition for annulment of judgment filed by petitioner?

As earlier discussed, the petition designated as one for annulment of judgment (following Rule 47) was legally and procedurally infirm and, thus, was soundly dismissed by the CTA *En Banc* on such ground. Also, the CTA could not have treated the petition as an appeal or a continuation of the case before the CTA First Division because the latter's decision had become final and executory and, thus, no longer subject to an appeal.

Instead, what remained as a remedy for the petitioner was to file a petition for *certiorari* under Rule 65, which could have been filed as an original action before this Court and not before the CTA *En Banc*. *Certiorari* is available when there is no appeal or any other plain, speedy and adequate remedy in the ordinary course of law, such as in the case at bar. Since the petition below invoked the gross and palpable negligence of petitioner's counsel which is allegedly tantamount to its being deprived of due process and its day in court as party-litigant[26] and, as it also invokes lack of jurisdiction of the CTA First Division to entertain the petition filed by private respondent since the same allegedly fails to comply with the reglementary periods for judicial remedies involving administrative claims for refund of excess unutilized input VAT under the National Internal Revenue Code (*NIRC*),[27] which periods it claims to be jurisdictional, then the proper remedy that petitioner should have availed of was indeed a petition for *certiorari* under Rule 65, an original or independent action premised on the public respondent having acted without or in excess of jurisdiction or with grave abuse of discretion amounting to lack or excess of jurisdiction. However, since a *certiorari* petition is not a

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[26] *Rollo*, pp. 55-71.

[27] *Id.* at 71-76.

continuation of the appellate process borne out of the original case but is a separate action focused on actions that are in excess or wanting of jurisdiction,[28] then it cannot be filed in the same tribunal whose actions are being assailed but is instead cognizable by a higher tribunal which, in the case of the CTA, is this Court.[29] In the case involving petitioner, the petition could have been filed directly with this Court, even without any need to file a motion for reconsideration with the CTA division or *En Banc*, as the case appears to fall under one of the recognized exceptions to the rule requiring such a motion as a prerequisite to filing such petition.[30]

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[28] *City of Manila v. Grecia-Cuerdo*, G.R. No. 175723, February 4, 2014, 715 SCRA 182.

[29] RA 1125, as amended by RA 9282, Sec. 19.

[30] The exceptions to the rule of filing such a motion prior to a resort to a petition for *certiorari* are:

a) where the order is a patent nullity, as where the court *a quo* has no jurisdiction;

b) where the questions raised in the *certiorari* proceedings have been duly raised and passed upon by the lower court, or are the same as those raised and passed upon in the lower court;

c) where t**here is an urgent necessity for the resolution of the question and any further delay would prejudice the interests of the Government** or of the petitioner or the subject matter of the petition is perishable;

d) where, under the circumstances, a motion for reconsideration would be useless;

e) **where petitioner was deprived of due process and there is extreme urgency for relief**;

f) where, in a criminal case, relief from an order of arrest is urgent and the granting of such relief by the trial court is improbable;

g) **where the proceedings in the lower court are a nullity for lack of due process**;

h) where the proceeding was *ex parte* or in which the petitioner had no opportunity to object; and

i) where the issue raised is one purely of law or **public interest is involved**. (*Rapid Manpower Consultants, Inc. v. De Guzman*, G.R. No. 187418, September 28, 2015.)

The office of a *certiorari* petition is detailed in the Rules of Court, thus:

> Section 1. *Petition for certiorari*. — When any tribunal, board or officer exercising judicial or quasi-judicial functions **has acted without or in excess of its or his jurisdiction**, or with grave abuse of discretion amounting to lack or excess of jurisdiction, and there is no appeal, or any plain, speedy, and adequate remedy in the ordinary course of law, a person aggrieved thereby may file a verified petition in the proper court, alleging the facts with certainty and praying that judgment be rendered annulling or modifying the proceedings of such tribunal, board or officer, and granting such incidental reliefs as law and justice may require.
>
> 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 a sworn certification of non-forum shopping as provided in the third paragraph of Section 3, Rule 46. (1a)

The writ of *certiorari* is an "extraordinary remedy" that is justified in the "absence of an appeal or any plain, speedy and adequate remedy in the ordinary course of law."[31] It may be given due course as long as petitioners allege that they had no appeal or any other efficacious remedy against the appellate court's decision.[32]

Direct resort to this Court *via* a *certiorari* petition on the same grounds as in this case has jurisprudential precedents. In one, We held that when the appellate court's decision is void for lack of due process, the filing of a petition for *certiorari* with this court without a motion for reconsideration is justified.[33] This Court also has held that a petition for *certiorari* under Rule 65 of the Rules of Court is available when the proceedings in question amount to depriving the petitioner his day in court.[34]

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[31] *Davao Merchant Marine Academy v. Court of Appeals (Fifth Division)*, 521 Phil. 524, 530 (2006).

[32] *Id.*

[33] *People v. Duca*, 618 Phil. 154, 169 (2009).

[34] See *Rural Bank of Calinog (Iloilo), Inc. v. Court of Appeals*, 501 Phil. 387, 396 (2005).

It is true that *certiorari* is not a substitute for appeal, but exempt from this rule is a case when the trial court's decision or resolution was issued without jurisdiction or with grave abuse of discretion.[35] ***When a fraudulent scheme prevents a party from having his day in court or from presenting his case, the fraud is one that affects and goes into the jurisdiction of the court***.[36] A question as to lack of jurisdiction of the respondent tribunal or agency is properly the office of a petition for *certiorari*.

In any event, petitioner's failure to avail of this remedy and mistaken filing of the wrong action are fatal to its case and renders and leaves the CTA First Division's decision as indeed final and executory. By the time the instant petition for review was filed by petitioner with this Court on December 9, 2011, more than sixty (60) days have passed since petitioner's alleged discovery (on March 7, 2011) of its loss in the case as brought about by the alleged negligence or fraud of its counsel.

Thus, the current discussion serves no further purpose other than as merely a future guide to the bench and the bar when confronted with a similar situation.

Although in select cases, this Court has asseverated that "it is always within its power to suspend its own rules or to except a particular case from its operation, whenever the purposes of justice require it" and that the Rules of Court were conceived and promulgated to set forth guidelines in the dispensation of justice but not to bind and chain the hand that dispenses it, for otherwise, courts will be mere slaves to or robots of technical rules, shorn of judicial discretion.[37] We have also equally stressed that strict compliance with the rules of procedure is essential to the administration of justice.

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[35] *Id.*

[36] See *Encinares v. Achero*, 613 Phil. 391, 404 (2009), quoting *Republic v. Guerrero*, 520 Phil. 296, 309 (2006).

[37] *Ginete v. Court of Appeals*, 357 Phil. 36, 52 (1998), citing *C. Viuda de Ordoveza v. Raymundo*, 63 Phil. 275 (1936).

In this case, even if there was allegedly a deliberate effort from petitioner's counsel to refuse to participate, despite notice, in the conduct of the case after the filing of the Answer right up to the issuance of the Writ of Execution against petitioner,[38] equally apparent is the failure of petitioner and/or petitioner's responsible subordinates to supervise the said counsel as well as the conduct and progress of the case. Not only was there an apparent negligence of counsel,[39] which binds the client, there likewise appears to have been lapses on the part of the client — the petitioner and the petitioner's responsible subordinates — themselves. Equally oft-repeated is the rule that service made upon the present counsel of record at his given address is service to the client.[40] Thus, it is harder to justify a relaxation of the rules when the litigant itself suffers from inexcusable neglect. It is an oft-repeated pronouncement that clients should take the initiative of periodically checking the progress of their cases, so that they could take timely steps to protect their interest.[41] Failing such, clients are left with more recourse against the consequence of their and their counsel's omissions.

To prevent similar disadvantageous incidents against the government in the future, the BIR is **DIRECTED** to **ADOPT** mechanisms, procedures, or measures that can effectively monitor the progress of cases being handled by its counsels. Likewise, the Ombudsman is **DIRECTED** to **CONDUCT** an in-depth investigation to determine who were responsible for the apparent mishandling of the present case that resulted in the loss of almost half-a-billion pesos, which the government could have used to finance its much needed infrastructure, livelihood projects, and other equally important projects.

WHEREFORE, premises considered, the petition for review is hereby **DENIED**. The assailed Resolutions dated July 27, 2011

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[38] *Rollo*, pp. 40-42.

[39] *Macondray & Co., Inc. v. Provident Insurance Corporation*, 487 Phil. 158, 168 (2004).

[40] *Id.*

[41] *Id.*

and November 15, 2011 of the Court of Tax Appeals *En Banc* are **AFFIRMED**.

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Brion, Bersamin, Perez, Mendoza, Reyes, Perlas-Bernabe, Leonen, and *Caguioa, JJ.,* concur.

Jardeleza, J., no part.

Del Castillo, J., on official leave.

EN BANC

[G.R. No. 209714. June 21, 2016]

RAPHAEL C. FONTANILLA, *petitioner, vs.* **THE COMMISSIONER PROPER, COMMISSION ON AUDIT,** *respondent.*

SYLLABUS

1. **REMEDIAL LAW; SPECIAL CIVIL ACTIONS; CERTIORARI; PROPER REMEDY TO ASSAIL THE DECISIONS OF THE COA.—** Article IX-A, Section 7 of the Constitution provides that decisions, orders, or rulings of the COA may be brought to this court on *certiorari* by the aggrieved party. This is echoed by Section 2, Rule 64, of the Rules of Court, which states that a judgment or final order or resolution of the COA may be brought by the aggrieved party to this Court on *certiorari* under Rule 65.

2. **ID.; ID.; ID.; ID.; AVAILING THE REMEDY OF APPEAL INSTEAD OF CERTIORARI, OVERLOOKED AS THE ACT COMPLAINED OF AMOUNTED TO GRAVE ABUSE OF DISCRETION.—** Dr. Fontanilla did not use the correct

remedy when he filed an appeal by *certiorari* under Rule 45 of the Rules of Court [instead of certiorari under Rule 65 thereof to assail the ruling of the COA.] x x x Under the scales of justice, technical procedural rules pale in comparison and are outweighed by substantive violations affecting the bill of rights. In our examination of the petition and the records, we found that although the petition does not expressly use the technical terms "*grave abuse of discretion*" and "*errors of jurisdiction*," Dr. Fontanilla's claim that the COA did not give him the chance to explain his side, *if true*, would characterize the COA's act as grave abuse of discretion. Thus, requiring the COA to comment was the more appropriate course of action to take, rather than to summarily deny the petition.

3. POLITICAL LAW; ADMINISTRATIVE LAW; ADMINISTRATIVE DUE PROCESS; DEFECT CURED WITH THE FILING OF A MOTION FOR RECONSIDERATION; NOT APPLICABLE WHERE THE MOTION WAS FILED PRECISELY TO RAISE THE ISSUE OF VIOLATION OF THE RIGHT TO DUE PROCESS AND LACK OF OPPORTUNITY TO BE HEARD ON THE MERITS.— While we have ruled in the past that the filing of a motion for reconsideration cures the defect in procedural due process because the process of reconsideration is itself an opportunity to be heard, this ruling does not embody an absolute rule that applies in all circumstances. *The mere filing of a motion for reconsideration cannot cure the due process defect, especially if the motion was filed precisely to raise the issue of violation of the right to due process and the lack of opportunity to be heard on the merits remained*. In other words, if a person has not been given the opportunity to squarely and intelligently answer the accusations or rebut the evidence presented against him, or raise substantive defenses through the proper pleadings before a quasi-judicial body (like the COA) where he or she stands charged, then a due process problem exists. This problem worsens and the denial of his most basic right continues if, in the first place, he is found liable without having been charged and this finding is confirmed in the appeal or reconsideration process without allowing him to rebut or explain his side on the finding against him. Time and again, we have ruled that the essence of due process is the *opportunity to be heard.* In administrative proceedings, one is heard when he is accorded

a *fair and reasonable opportunity* to explain his case or is given the chance to have the ruling complained of reconsidered.

4. ID.; ID.; ID.; ADDITIONAL REQUISITES.— We stress that administrative due process also requires the following: 1) A finding or decision by a competent tribunal that is ***supported by substantial evidence***, either presented at the hearing or at least contained in the records or disclosed to the parties affected; 2) The tribunal must act on its own independent consideration of the law and facts of the controversy and ***not simply accept the view of a subordinate in arriving at a decision***; and 3) The tribunal should in all controversial questions, render its decision ***in such a manner that the parties to the proceeding can know the various issues involved*** and the reason for the decision rendered.

APPEARANCES OF COUNSEL

Psyche Rizsavi B. Fontanilla-Mamadra for petitioner.
The Solicitor General for respondent.

D E C I S I O N

BRION, *J.*:

We resolve the petition for review on *certiorari*[1] filed by Dr. Raphael C. Fontanilla (*Dr. Fontanilla*) to assail the September 18, 2013 ruling[2] of the Commission on Audit (*COA*) Proper in Decision No. 2013-137. This COA decision affirmed the June 25, 2009 decision[3] of the Adjudication and Settlement Board (*ASB*).

Antecedents

Dr. Fontanilla is the Schools Division Superintendent of the Department of Education (*DepEd*) in South Cotobato.[4] Under

[1] *Rollo*, pp. 3-17. The petition is filed under Rule 45 of the Rules of Court.

[2] *Id.* at 20-24. Unanimously signed and approved by Chairperson Ma. Gracia M. Pulido Tan and Commissioners Heidi L. Mendoza and Rowena V. Guanzon.

[3] *Id.* at 59-62. Decision No. 2009-075.

[4] *Id.* at 20.

his supervision was Ms. Luna V. Falcis, the Division's designated Special Disbursing Officer (Clerk II).[5] Falcis had the duty, among others, to encash checks for the DepEd's expenses and activities.[6]

On August 30, 2007, Falcis, together with a co-worker, went to the Land Bank of the Philippines, Koronadal City Branch, to encash a check for **Php313,024.50**.[7] After completing the transaction, they took a public utility tricycle in going back to their office. On their way, three men blocked their path and at gunpoint grabbed the envelope containing the money. The robbers then sped away in a motorcycle.[8]

Falcis reported the incident to the police. In their investigation report, the police remarked that Falcis regularly goes to the bank without a security escort, which emboldened the suspects to commit the robbery.[9]

After the robbery was reported to the COA Resident Auditor of the DepEd South Cotabato Division,[10] Falcis filed with the COA Audit Team Leader (*ATL*) a request for relief from money accountability (*request for relief*).[11]

The ATL investigated the incident and found that Falcis failed to exert extra care and due diligence in handling the encashment; she did not request a security escort and the use of a government vehicle. The ATL forwarded its findings to the Regional Legal and Adjudication Office (*COA Regional Office*) for further study.[12]

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[5] *Id.* at 29.

[6] *Id.* at 54.

[7] *Id.* at 25.

[8] *Id.* at 20.

[9] *Id.* at 42.

[10] *Id.* at 25. Letter dated August 31, 2007.

[11] *Id.* at 39. Letter dated November 21, 2007.

[12] *Id.* at 56. Endorsement dated November 26, 2007.

The COA Regional Office concurred with the ATL findings and elevated Falcis's request for relief to the Adjudication and Settlement Board (*ASB*) of the COA National Office, for final disposition.[13]

The ASB's Findings

The ASB denied Falcis's request for relief based on the finding that she had been negligent, thus, liable for the amount of money lost.[14] The ASB cited Section 105 (2) of Presidential Decree No. 1445 or the *Government Auditing Code of the Philippines* (*Audit Code*), which states:

> *Section 105. Measure of liability of accountable officers. —*
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> x x x x x x x x x
>
> (2) Every officer accountable for government funds shall be liable for all losses resulting from the unlawful deposit, use, or application thereof and for all losses attributable to negligence in the keeping of the funds.

The ASB also ruled that Dr. Fontanilla is jointly and solidarily liable with Falcis under Section 104 of the Audit Code which makes the head of the agency accountable because he did not exert the required diligence:

> *Section 104. Records and reports required by primarily responsible officers*. — The head of any agency or instrumentality of the national government or any government-owned or -controlled corporation and any other self-governing board or commission of the government shall exercise the **diligence of a good father of a family** in supervising accountable officers under his control to prevent the incurrence of loss of government funds or property, **otherwise he shall be jointly and solidarily liable with the person primarily accountable** therefor . . . [emphasis ours]

In the words of the ASB, *Dr. Fontanilla did not make any effort to correct the situation by closely supervising Falcis,*

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[13] *Id.* at 58. Indorsement dated June 10, 2008.

[14] *Id.* at 60.

providing the needed guidelines, transport, and escort for the lowly clerk to handle big amounts of money, thus failing to meet the standards required under Section 104. The dispositive portion of the ASB's decision reads:

> **WHEREFORE**, in view of the foregoing, and considering the recommendation of the COA officials concerned, the instant request for relief from money accountability is hereby DENIED for lack of merit. **Ms. Falcis and the Schools Division Superintendent at the time of the robbery, Dr. Raphael C. Fontanilla, are *jointly and solidarily liable* for the amount lost**.[15] [emphasis ours]

Falcis moved for the reconsideration of the ruling.[16] Dr. Fontanilla, on the other hand, moved for intervention, exclusion, and reconsideration.[17]

In his motion, Dr. Fontanilla claimed that he was *denied due process.* He explained that there was *no notice*, he was *not ordered to participate in the proceedings nor was he given a chance to present his side*. He asserted that, effectively, the COA did not acquire jurisdiction over his person; thus, any adjudication against him must necessarily be without any legal force.[18]

Dr. Fontanilla stressed that he was never a party to the case. He was informed of his liability only when Falcis gave him a photocopy of the decision. He thus prayed that he should be allowed to intervene to explain his side.[19]

In sum, Dr. Fontanilla asked the ASB to reconsider its decision and declare void the finding of his liability *until such time that he is allowed to defend himself at a hearing as contemplated by the principles of due process.*[20]

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[15] *Id.* at 61.

[16] *Id.* at 63-66. Motion for Reconsideration dated November 27, 2009.

[17] *Id.* at 67-72. Dated September 8, 2009.

[18] *Ibid.*

[19] *Id.* at 67-70.

[20] *Id.* at 71.

The COA Proper's Decision

The COA treated Dr. Fontanilla's motion for intervention, exclusion, and reconsideration as an appeal from the ASB's decision.[21]

The COA held that Dr. Fontanilla had not been denied administrative due process; Dr. Fontanilla was properly given the chance to be heard (and was thus accorded due process) when the COA entertained his motion/appeal; the COA, on the other hand, also had the opportunity to correct the ASB's decision.[22]

On the issue of negligence, the COA held that Dr. Fontanilla failed to observe the diligence of a good father of a family. He is presumed to be knowledgeable of the transactions made by his subordinates. It is highly improbable that a large amount of money could be withdrawn without his knowledge. The COA opined that although robbery can ordinarily be considered a *force majeure*, its happening can be prevented by complying with the minimum requirements of prudence.[23]

In sum, the COA found that Falcis and Dr. Fontanilla did not exercise precautionary measures necessary to safeguard the money withdrawn from the bank.[24] The dispositive portion of the COA decision reads:

WHEREFORE, in view of the foregoing, the instant appeal is hereby **DENIED** for lack of merit. Accordingly, ASB Decision No. 2009-075 dated June 25, 2006, is hereby **AFFIRMED**.[25]

The Petition

Dr. Fontanilla now assails the COA decision on the sole ground that he has been denied due process.[26] He underscores that the

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[21] *Id.* at 20-24; *Supra* note 2.

[22] *Id.* at 22.

[23] *Id.* at 23.

[24] *Ibid.*

[25] *Ibid.*

[26] *Id.* at 7.

COA proceedings stemmed from Falcis's (and not his) request for relief. He explains that in the entire length of the proceedings, he was not given the opportunity to explain his side.

Dr. Fontanilla traces the steps that led to the COA's finding that he is solidarily liable for the loss of government fund:

1. Falcis filed the request for relief with the ATL on **August 31, 2007**. As Falcis's superior, he "noted" the request for relief.
2. The ATL took cognizance of the request for relief. The ATL did not require him to comment.
3. On **November 26, 2007**, the ATL forwarded the request for relief to the COA Regional Office for further study. The ATL did not rule on his liability nor mention his participation in the incident.
4. On **June 10, 2008**, the COA Regional Office affirmed the ATL's findings. The COA Regional Office did not require him to comment. Again, the decision was silent on his liability.
5. The COA Regional Office elevated the request for relief to the ASB-COA National Office. The ASB denied it on **June 25, 2013**. Notably, the ASB, without requiring him to comment or explain his side, held him jointly and solidarily liable with Falcis. This was the *first time* that the COA touched on his liability. In fact, this was the *first time* the COA mentioned him at all.
6. He learned of his liability through Falcis when the latter gave him a photocopy of the ASB decision. He did not receive an *official copy* of the ASB decision.
7. He then filed his motion for intervention, exclusion, and reconsideration.
8. The COA denied his motion (that it be treated as an appeal) and affirmed the ASB decision finding him liable.[27]

[27] *Id.* at 7-11.

Based on this recital, Dr. Fontanilla insists that he was not given the chance to explain his side during the entire fact-finding process. From August 31, 2007 (the date of filing of the *request for relief*) to September 18, 2013 (the date of the COA proper decision) — *a span of almost six years* — the COA did not inform him of the possibility that he could be held solidarily liable. He therefore did not have the chance to defend himself against any liability.

From the ASB decision, he filed his *motion for intervention* (to allow him to participate in the proceedings), for *exclusion* (to forestall the imposition of liability until he is allowed to defend himself), and for *reconsideration* (of the ASB-COA decisions for denial of due process).[28]

Finally, Dr. Fontanilla argues that the fact that the COA entertained his motion/appeal did not cure the lack of due process. He explains that he merely asked the COA to first allow him to present his side before it rules on his liability; he did not ask the COA to rule on the merits based solely on his motion to intervene. That he filed (and the COA *entertained*) the motion for intervention, exclusion, and reconsideration did not mean that he had been given the opportunity to be heard. On the contrary, the COA did not hear him out on the merits of his defense before finding him liable.[29]

Dr. Fontanilla thus prays that we annul and set aside the COA decision.

The COA's Comment

The COA, through the Office of the Solicitor General, argues that Dr. Fontanilla availed of the wrong remedy. Sections 1 and 2, Rule 64, in relation to Section 1, Rule 65 of the Rules of Court, provide that decisions and resolutions of the COA are reviewable by this Court, not *via* an appeal by *certiorari* under Rule 45, but through a petition for *certiorari* under Rule 65.[30]

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[28] *Id.* at 12.

[29] *Id.* at 12-15.

[30] *Id.* at 101-104.

In any case, the COA submits that had the petition been filed under Rule 65, it would still fail considering that Dr. Fontanilla does not allege any grave abuse of discretion on the part of the COA.[31]

On the issue of due process, the COA submits that Dr. Fontanilla's motion for intervention, exclusion, and reconsideration effectively cured the alleged denial of due process.[32]

Issues

The petition raises the following issues:

1. Did Dr. Fontanilla avail of the wrong remedy? If so, is there basis to liberally apply the Rules of Court?
2. Was Dr. Fontanilla denied due process?

Our Ruling

We grant the petition.

Dr. Fontanilla availed of the wrong remedy but, in a proper case, the Court can liberally apply the Rules of Court.

Dr. Fontanilla did not use the correct remedy when he filed an appeal by *certiorari* under Rule 45 of the Rules of Court.

Article IX-A, Section 7 of the Constitution provides that decisions, orders, or rulings of the COA may be brought to this Court on *certiorari* by the aggrieved party. This is echoed by Section 2, Rule 64, of the Rules of Court, which states that a judgment or final order or resolution of the COA may be brought by the aggrieved party to this Court on *certiorari* under Rule 65.[33]

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[31] *Id.* at 104.

[32] *Id.* at 105.

[33] *Verzosa, Jr. v. Chairman Caraque of the Commission on Audit*, 660 Phil. 131, 158 (2011).

Based on these rules, we could have dismissed the petition outright.

The gravity, however, of Dr. Fontanilla's claim of violation of his right to due process compelled us to examine the merit of his petition; the Court itself would compound the violation of Dr. Fontanilla's right to due process if indeed such violation took place and we would brush it aside because of a technical procedural reason. Under the scales of justice, technical procedural rules pale in comparison and are outweighed by substantive violations affecting the bill of rights.

In our examination of the petition and the records, we found that although the petition does not expressly use the technical terms "*grave abuse of discretion*" and "*errors of jurisdiction*," Dr. Fontanilla's claim that the COA did not give him the chance to explain his side, *if true*, would characterize the COA's act as grave abuse of discretion.[34] Thus, requiring the COA to comment was the more appropriate course of action to take, rather than to summarily deny the petition.[35]

Having said these, we stress that the Constitution and the Rules of Court limit the permissible scope of inquiry in Rules 64 and 65 *certiorari* petitions only to *errors of jurisdiction* or *grave abuse of discretion*. Hence, unless tainted with grave abuse of discretion, the COA's simple errors of judgment cannot be reviewed even by this Court.[36]

With this standard as our guide, we now proceed to resolve Dr. Fontanilla's petition on the issue of whether he had indeed been denied of due process when the COA found him negligent

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[34] It has been held that the denial of due process results in loss or lack of jurisdiction. See *Robinsons Bank Corporation v. Hon. Gaerlan, et al.*, G.R. No. 195289, September 24, 2014, 736 SCRA 414, citing *Landbank of the Philippines v. Pagayatan,* 659 Phil. 198 (2011); *People v. Court of Appeals*, 368 Phil. 169 (1999).

[35] *Rollo*, p. 75. Resolution dated December 3, 2013.

[36] *Reblora v. Armed Forces of the Philippines*, G.R. No. 195842, June 18, 2013, 698 SCRA 727.

and thus solidarily liable for the funds the government lost through robbery.

The COA gravely abused its discretion when it denied Dr. Fontanilla of due process.

We highlight the following undisputed facts:

1. ***Dr. Fontanilla noted and signed Falcis's letter***[37] informing the COA Resident Auditor of the robbery. Thus, as early as August 31, 2007, the COA had already been notified of Dr. Fontanilla's position as Falcis' superior.

2. The results of the ATL's investigation[38] ***did not mention Dr. Fontanilla or his supposed role in the incident.*** Dr. Fontanilla was mentioned for the *first time* when the ASB, with the recommendation of the COA Regional Office,[39] denied the *request for relief*. Not only did the ASB deny the request for relief, it also concluded that Dr. Fontanilla was negligent and solidarily liable with Falcis without previously informing him that he could be held liable.

3. In his motion for intervention, exclusion, and reconsideration with the COA, Dr. Fontanilla alleged that the ASB did not give him the chance to defend himself before declaring him solidarily liability for the amount lost from the robbery. There, ***he asked permission to intervene in the proceedings*** and be given the opportunity to defend himself.

4. The COA treated his motion as an appeal from the ASB decision and brushed aside his claim of violation of due process. It ruled that the fact that his appeal was entertained meant that he was accorded due process. ***Without requiring or allowing Dr. Fontanilla to submit***

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[37] *Supra* note 10.

[38] *Rollo,* p. 57.

[39] *Supra* note 15.

> ***a memorandum or calling the parties for oral arguments,***[40] the COA held Dr. Fontanilla solidarily liable.

Thus, Dr. Fontanilla maintains that his right to due process was violated. The COA counters that his motion for intervention, exclusion, and reconsideration effectively cured the defect in the proceedings.

We reject the COA's reasoning.

While we have ruled in the past that the filing of a motion for reconsideration cures the defect in procedural due process because the process of reconsideration is itself an opportunity to be heard,[41] this ruling does not embody an absolute rule that applies in all circumstances. *The mere filing of a motion for reconsideration cannot cure the due process defect, especially if the motion was filed precisely to raise the issue of violation of the right to due process and the lack of opportunity to be heard on the merits remained*.[42]

In other words, if a person has not been given the opportunity to squarely and intelligently answer the accusations or rebut the evidence presented against him,[43] or raise substantive defenses through the proper pleadings before a quasi-judicial body (like

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[40] Rule X, Section 3 of the COA Rules of Procedure provides: "Upon motion by a party, or *motu proprio*, the **Commission Proper may call for oral arguments of the parties** before the Commission Proper *en banc* subject to such limitation of time and issues as the Commission may prescribe. **In lieu of oral arguments, the parties may be allowed to submit their respective memoranda** within fifteen (15) days from notice thereof." (*emphasis supplied*)

[41] See *Cuerdo v. COA*, 248 Phil. 886 (1988), citing *Marieta Y. Figueroa v. Securities and Exchange Commission*, 245 Phil. 648 (1988); *Benito Rosales, et al. v. Court of Appeals*, 247-A Phil. 437 (1988).

[42] *Office of the Ombudsman v. Reyes*, 674 Phil. 416 (2011).

[43] *Ibid.* Also, in *Gutierrez v. COA*, G.R. No. 200628, January 13, 2015, 745 SCRA 435, we ruled that a party is given an opportunity to be heard if he was able to state his *substantive defenses* in the pleadings filed before the COA and this court.

the COA) where he or she stands charged, then a due process problem exists. This problem worsens and the denial of his most basic right continues if, in the first place, he is found liable without having been charged and this finding is confirmed in the appeal or reconsideration process without allowing him to rebut or explain his side on the finding against him.

Time and again, we have ruled that the essence of due process is the *opportunity to be heard*. In administrative proceedings, one is heard when he is accorded a *fair and reasonable opportunity* to explain his case or is given the chance to have the ruling complained of reconsidered.[44]

Contrary to the COA's posturing, it did not pass upon the merit of Dr. Fontanilla's claim that he was denied due process. Instead of asking Dr. Fontanilla to explain his side (by allowing him to submit his memorandum or calling for an oral argument as provided under Rule X, Section 3 of the COA Rules of Procedure), the COA concluded *right away* that the motion for intervention, exclusion, and reconsideration had effectively cured the alleged denial of due process. The COA failed or simply refused to realize that Dr. Fontanilla filed the motion precisely for the purpose of participating in the proceedings to explain his side.

We cannot tolerate this flippant view of administrative due process in this case or in any other case.

We stress that administrative due process also requires the following: 1) A finding or decision by a competent tribunal that is ***supported by substantial evidence***, either presented at the hearing or at least contained in the records or disclosed to the parties affected; 2) The tribunal must act on its own independent consideration of the law and facts of the controversy and ***not simply accept the view of a subordinate in arriving at a decision***; and 3) The tribunal should in all controversial questions, render its decision ***in such a manner that the parties***

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[44] *Besaga v. Spouses Acosta*, G.R. No. 194061, April 20, 2015, citing *Vivo v. Pagcor*, G.R. No. 187854, November 12, 2013, 709 SCRA 276, 281.

to the proceeding can know the various issues involved and the reason for the decision rendered.[45]

In the present case, not only did the COA deny Dr. Fontanilla's plea to be heard, it proceeded to confirm his liability on reconsideration without hearing his possible defense or defenses.

We cannot overstress that the root of Dr. Fontanilla's liability is his supposed negligence in failing to properly supervise Falcis. The COA arrived at this finding solely because the robbery had taken place. In the words of the COA, *Dr. Fontanilla did not make any effort to correct the situation by closely supervising Falcis, providing the needed guidelines, transport, and escort for the lowly clerk to handle big amounts of money*.

The COA held that[46] Dr. Fontanilla was presumed to be knowledgeable of the transactions entered into by his subordinates. With such a large amount involved, the COA found it improbable that he did not know about the transaction. He must have known of the withdrawal, but he failed to exercise the diligence required.[47]

How the COA came to these conclusions without requiring Dr. Fontanilla to explain his side disturbs us. Its conclusions all the more arouse disquiet since the COA confirmed the ASB's initial and already unilateral findings.

The records of the case fail to sufficiently provide explanations that would mitigate the harshness of the unfairness that took place. The stark reality is that Dr. Fontanilla now stands before us without having been previously allowed to defend himself against the liability unilaterally imposed on him. In response, the OSG simply presents to us its shallow view of the rule that a motion for reconsideration is sufficient compliance with a due process deficiency, without bothering to examine the root

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[45] See *Air Manila, Inc. v. Hon. Balatbat, et al.*, 148 Phil. 502 (1971); *Garcia v. Executive Secretary*, 116 Phil. 344 (1962); *Ang Tibay v. Court of Industrial Relations*, 69 Phil. 635, 642-644 (1940).

[46] *Rollo*, p. 61.

[47] *Id.* at 22.

reason for this jurisprudential ruling and why it does not apply to Dr. Fontanilla's circumstances. We thus have no recourse but to conclude that the COA's ruling was attended by grave abuse of discretion.

WHEREFORE, premises considered, we **GRANT** the petition and **SET ASIDE** the September 18, 2013 decision of the Commission on Audit Proper in Decision No. 2013-137, insofar as it held Dr. Raphael C. Fontanilla jointly and solidarily liable for the loss of Php313,024.50 through robbery.

We **ORDER** the Commission on Audit to direct Dr. Fontanilla to file his memorandum containing his evidence, or to call for oral arguments that would allow him to present his evidence. In either case, both parties shall be heard before the COA can proceed to rule on the question of Dr. Fontanilla's liability.

SO ORDERED.

Sereno, C.J., Carpio, Velasco, Jr., Leonardo-de Castro, Peralta, Bersamin, Perez, Mendoza, Reyes, Perlas-Bernabe, Leonen, and *Caguioa, JJ.,* concur.

Jardeleza, J., no part, prior OSG action.

Del Castillo, J., on official leave.

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ACCION PUBLICIANA

Nature of — An *accion publiciana* is the plenary action to recover the right of possession which should be brought before the proper RTC when dispossession has lasted for more than one year; if at the time of the filing of the complaint, more than one year had elapsed since defendant had turned the plaintiff out of possession or the defendants' possession had become illegal, the action will not be one of forcible entry or illegal detainer, but an *accion publiciana.* (Reyes, Sr. *vs.* Heirs of Deogracias Forlales, G.R. No. 193075, June 20, 2016) p. 541

ACTIONS

Jurisdiction over the subject matter — In *accion publiciana* and *reivindicatoria, to* determine which court has jurisdiction over the action, the complaint must allege the assessed value of the real property subject of the complaint; its jurisdiction would now be determined by the assessed value of the disputed land, or of the adjacent lots if it is not declared for taxation purposes; if the assessed value is not alleged in the complaint, the action should be dismissed for lack of jurisdiction. (Cabling *vs.* Dangcalan, G.R. No. 187696, June 15, 2016) p. 187

— Is conferred by law and determined by the allegations in the complaint, as well as by the character of the reliefs sought; once it is vested by the allegations in the complaint, jurisdiction remains vested in the trial court irrespective of whether or not the plaintiff is entitled to recover upon all or some of the claims asserted therein. (*Id.*)

ADMINISTRATIVE CODE OF 1987 (E.O. NO. 292)

Application of — Only disputes, claims and controversies solely between and among departments, bureaus, offices, agencies, and instrumentalities of the National Government, including GOCCs shall be administratively

settled or adjudicated. (Orion Water District *vs.* GSIS, G.R. No. 195382, June 15, 2016) p. 275

AGGRAVATING CIRCUMSTANCES

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— Treachery as an aggravating or attendant circumstance must be established beyond reasonable doubt. (*Id*.)

AGRARIAN LAWS

Just compensation — For purposes of determining just compensation, the fair market value of an expropriated property is determined by its character and its price at the time of taking, or the time when the landowner was deprived of the use and benefit of his property, such as when the title is transferred in the name of the beneficiaries. (LBP *vs.* Kho, G.R. No. 214901, June 15, 2016) p. 478

— Should be computed pursuant to Sec. 17 of R.A. No. 6657 when the claim folders were received by the Land Bank of the Philippines prior to July 1, 2009. (*Id*.)

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Application of — The court is mandated to archive, and not dismiss, the case should it determine that it could not proceed for a valid cause; archiving of cases is a procedural

measure designed to temporarily defer the hearing of cases in which no immediate action is expected, but where no grounds exist for their outright dismissal; under this scheme, an inactive case is kept alive but held in abeyance until the situation obtains in which action thereon can be taken; *amparo* rule sanctions the archiving of cases, provided that it is impelled by a valid cause, such as when the witnesses fail to appear due to threats on their lives or to similar analogous causes that would prevent the court from effectively hearing and conducting the *amparo* proceedings which, however, do not obtain in these cases. (Balao *vs.* Sec. Ermita, G.R. No. 186050, June 21, 2016) p. 684

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— Court has relaxed the requirement of posting a *supersedeas* bond for the perfection of an appeal when there has been substantial compliance with the rule. (*Id*.)

Appeal in criminal cases — This appeal opens the entire record to determine whether or not the findings against the accused should be upheld or struck down in his favor; nonetheless, he bears the burden to show that the trial and the appellate courts had overlooked, misapprehended or misinterpreted facts or circumstances that, if properly considered and appreciated, would significantly shift the outcome of the case in his favor. (People *vs.* Oandasan, Jr., G.R. No. 194605, June 14, 2016) p. 139

Petition for review on certiorari to the Supreme Court under Rule 45 — A question of law exists when there is a doubt or controversy as to what the law is on a certain state of facts; there is a question of fact when the doubt or difference arises as to the truth or the alleged falsehood of the alleged facts; for a question to be one of law, it

must involve no examination of the probative value of the evidence presented by the litigants or any of them. (Jabalde *y* Jamandron *vs.* People, G.R. No. 195224, June 15, 2016) p. 255

— Findings of fact of quasi-judicial agencies are accorded great respect, even finality, by the Supreme Court; this proceeds from the general rule that the Supreme Court is not a trier of facts, as questions of fact are contextually for the labor tribunals to resolve, and only errors of law are generally reviewed in petitions for review on certiorari criticizing the decisions of the CA. (South Cotabato Communications Corp. *vs.* Hon. Sto. Tomas, G.R. No. 217575, June 15, 2016) p. 494

— Limited to review legal questions. (Liam *vs.* United Coconut Planters Bank, G.R. No. 194664, June 15, 2016) p. 235

— The issues that may be resolved in this Rule 45 petition should be limited to the determination of what the law is on the established facts. (Reyes, Sr. *vs.* Heirs of Deogracias Forlales, G.R. No. 193075, June 20, 2016) p. 541

— The jurisdiction of the Supreme Court in cases brought before it from the CA *via* Rule 45 of the Rules of Court is generally limited to reviewing errors of law. (Ting Trucking *vs.* Makilan, G.R. No. 216452, June 20, 2016) p. 651

— The Supreme Court is not the proper venue to consider a factual issue as it is not a trier of facts; this rule, however is not ironclad and a departure therefrom may be warranted where the findings of fact of the CA are contrary to the findings and conclusions of the NLRC and the LA. (Balais, Jr. *vs.* Se'Lon by Aimee, G.R. No. 196557, June 15, 2016) p. 287

Points of laws, theories, issues, and arguments —- Issues, grounds, points of law, or theories not brought to the attention of the trial courts cannot be passed upon by reviewing courts; when a party deliberately adopts a

certain theory which becomes the basis for the manner on which the case is tried and decided, the party will not be permitted to change that theory on appeal; otherwise, it would be unfair to the adverse party. (Vil-Rey Planners and Builders *vs.* Lexber, Inc., G.R. No. 189401, June 15, 2016) p. 199

Question of law and question of fact — The test of whether a question is one of law or of fact is whether the appellate court can determine the issue raised without reviewing or evaluating the evidence; if so, it is a question of law; otherwise it is a question of fact. (Cabling *vs.* Dangcalan, G.R. No. 187696, June 15, 2016) p. 187

ATTORNEYS

Code of Professional Responsibility — The Code proscribes a lawyer from engaging in any unlawful, dishonest, immoral or deceitful conduct; they should refrain from doing any act which might lessen in any degree the confidence and trust reposed by the public in the fidelity, honesty and integrity of the legal profession. (Deveza *vs.* Atty. Del Prado, A.C. No. 9574, June 21, 2016) p. 665

Conduct of — It is the sworn duty of a lawyer to maintain towards the Courts a respectful attitude, not for the sake of the temporary incumbent of the judicial office, but for the maintenance of its supreme importance; it is precisely for this reason that the Lawyer's Oath enjoins all members of the bar to conduct themselves with good fidelity towards the courts in order not to erode the faith and trust of the public in the judiciary. (Judge Pantanosas, Jr. *vs.* Atty. Pamatong, A.C. No. 7330, June 14, 2016) p. 86

— Lawyers have the right, both as an officer of the court and as a citizen, to criticize in properly respectful terms and through legitimate channels the acts of courts and judges; however, closely linked to such rule is the cardinal conditions that criticisms, no matter how truthful, shall not spill over the walls of decency and propriety. (*Id.*)

— Lawyers should refrain from attributing to a judge motives not supported by the record or have no materiality to the case; lawyers should submit grievances against judges to the proper authorities only. (*Id*.)

— The degree of his immoral conduct was not as grave than if he had committed the immorality when already a member of the Philippine Bar; even so, he cannot escape administrative liability. (Advincula *vs.* Atty. Advincula, A.C. No. 9226[Formerly CBD 06-1749], June 14, 2016) p. 101

— The good moral conduct or character must be possessed by lawyers at the time of their application for admission to the Bar, and must be maintained until retirement from the practice of law; it is expected that every lawyer, being an officer of the Court, must not only be in fact of good moral character, but must also be seen to be of good moral character and leading lives in accordance with the highest moral standards of the community; a member of the Bar and officer of the Court is required not only to refrain from adulterous relationships or keeping mistresses but also to conduct himself as to avoid scandalizing the public by creating the belief that he is flouting those moral standards. (*Id*.)

— To be the basis of disciplinary action, such conduct must not only be immoral, but grossly immoral, that is, it must be so corrupt as to virtually constitute a criminal act or so unprincipled as to be reprehensible to a high degree or committed under such scandalous or revolting circumstances as to shock the common sense of decency. (*Id*.)

Disbarment — Considering the serious nature of the instant offense and in light of respondents prior misconduct which grossly degrades the legal profession, the imposition of the ultimate penalty of disbarment is warranted; in imposing the penalty of disbarment upon respondent, the Court is aware that the power to disbar is one to be exercised with great caution and only in clear cases of misconduct that seriously affect the standing and character

of the lawyer as a legal professional and as an officer of the Court. (Pacao *vs.* Atty. Limos, A.C. No. 11246, June 14, 2016) p. 121

Gross negligence — It denotes a flagrant and culpable refusal or unwillingness of a person to perform a duty; in cases involving public officials, gross negligence occurs when a breach of duty is flagrant and palpable; in order to be guilty of gross neglect of duty, it must be shown that respondent manifested flagrant and culpable refusal or unwillingness to perform a duty. (Cabas *vs.* Atty. Sususco, A.C. No. 8677, June 15, 2016) p. 167

Practice of law — Practice of law is not a right but a privilege bestowed by the State upon those who show that they possess and continue to possess the qualifications required by law for the conferment of such privilege; membership in the bar is a privilege burdened with conditions; of all classes and professions, the lawyer is most sacredly bound to uphold the laws. (Pacao *vs.* Atty. Limos, A.C. No. 11246, June 14, 2016) p. 121

Suspension of — It is only the Court that wields the power to discipline lawyers; the IBP Board of Governors did not possess such power, rendering its recommendation against respondent incapable of finality; it is the Supreme Court's final determination of his liability as a lawyer that is the reckoning point for the service of sanctions and penalties; being a government employee necessitates that his suspension from the practice of law should include his suspension from office; a leave of absence will not suffice considering that his position mandated him to be a member of the Philippine Bar in good standing. (Advincula *vs.* Atty. Advincula, A.C. No. 9226[Formerly CBD 06-1749], June 14, 2016) p. 101

CERTIORARI

Petition for — A judgment or final order or resolution of the COA may be brought by the aggrieved party to this Court on *certiorari* under Rule 65. (Fontanilla *vs.* Commissioner Proper, G.R. No. 209714, June 21, 2016) p. 713

— Available when there is no appeal or any other plain, speedy and adequate remedy in the ordinary course of law. (Commissioner of Internal Revenue *vs.* Kepco Ilijan Corp., G.R. No. 199422, June 21, 2016) p. 698

— Failure to avail of the proper remedy and mistaken filing of the wrong action are fatal to its case and renders and leaves the CTA First Division's decision as indeed final and executory; by the time the instant petition for review was filed by petitioner with the Supreme Court, more than sixty (60) days have passed since petitioner's alleged discovery of its loss in the case as brought about by the alleged negligence or fraud of its counsel. (*Id*.)

— May be filed only if appeal is not available; if appeal is available, an appeal must be taken even if the ground relied upon is grave abuse of discretion; as an exception to the rule, the Supreme Court has allowed petitions for certiorari to be filed in lieu of an appeal: (a) when the public welfare and the advancement of public policy dictate; (b) when the broader interests of justice so require; (c) when the writs issued are null; and (d) when the questioned order amounts to an oppressive exercise of judicial authority. (Yellow Bus Line Employees Union (YBLEU) *vs.* Yellow Bus Line, Inc. (YBLI), G.R. No. 190876, June 15, 2016) p. 219

— To justify the grant of the extraordinary remedy of *certiorari*, petitioner must satisfactorily show that the court or quasi-judicial authority gravely abused the discretion conferred upon it; grave abuse of discretion connotes a capricious and whimsical exercise of judgment, done in a despotic manner by reason of passion or personal hostility, the character of which being so patent and gross as to amount to an evasion of positive duty or to a virtual refusal to perform the duty enjoined by or to act at all in contemplation of law. (Ting Trucking *vs.* Makilan, G.R. No. 216452, June 20, 2016) p. 651

CIVIL SERVICE COMMISSION

Rules on administrative cases — Acceptance of any gratuity in the course of official duty as a grave offense punishable by dismissal from the service. (Atty. Malibago-Santos *vs.* Francisco, Jr., A.M. No. P-16-3459[Formerly OCA IPI No. 13-4119-P], June 21, 2016) p. 670

COMPREHENSIVE DANGEROUS DRUGS ACT OF 2002 (R.A. NO. 9165)

Buy-bust operation — A prior surveillance is not necessary especially when the police operatives are accompanied by the informant during the entrapment. (People *vs.* Rafols, G.R. No. 214440, June 15, 2016) p. 466

Chain of custody — Chain of custody rule requires that the marking should be done: (l) in the presence of the apprehended violator; and (2) immediately upon confiscation. (People *vs.* Rafols, G.R. No. 214440, June 15, 2016) p. 466

— The prosecution's failure to establish every link in the chain of custody of the illegal drug gravely compromised its identity and evidentiary value; the lack of conclusive identification of the illegal drug which is the *corpus delicti* of the offense charged against appellant warrants his acquittal. (People *vs.* Quim, G.R. No. 213919, June 15, 2016) p. 451

— The seized drugs must be marked immediately upon confiscation and in the presence of the apprehended violator to ensure that the seized items are the ones eventually offered in evidence; it is imperative that the marking of the seized illegal drugs be done in the presence of the accused. (*Id*.)

— To ensure that the integrity and the evidentiary value of the seized drug are preserved, the chain of custody rule requires the prosecution to be able to account for each link in the chain of custody of the dangerous drug, from the moment it was seized from the accused up to the time it was presented in court; testimony must be presented

on every link in the chain of custody, from the moment the dangerous drug was seized up to the time it is offered in evidence. (*Id*.)

Illegal sale of dangerous drugs — Elements: (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.* Rafols, G.R. No. 214440, June 15, 2016) p. 466

— 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 to explain the absence of *animus possidendi* rests upon the accused. (*Id*.)

Violation of — In drug-related prosecutions, the State should not only establish all the elements of the sale and possession of shabu under R.A. No. 9165, but also prove the *corpus delicti*, the body of the crime, to discharge its overall duty of proving the guilt of the accused beyond reasonable doubt. (People *vs.* Quim, G.R. No. 213919, June 15, 2016) p. 451

CONTEMPT

Direct contempt — Apart from being a ground for summary dismissal, willful and deliberate forum shopping shall constitute direct contempt, and is a cause for administrative sanctions. (City of Taguig *vs.* City of Makati, G.R. No. 208393, June 15, 2016) p. 367

CONTRACTS

Assignment of credit — An assignment of credit is the process of transferring the right of the assignor to the assignee who would then have the right to proceed against the debtor; the assignment may be done either gratuitously or onerously, in which case, the assignment has an effect similar to that of a sale. (Liam *vs.* United Coconut Planters Bank, G.R. No. 194664, June 15, 2016) p. 235

Breach of — Breach of contract is the failure of a party, without legal reason, to comply with the terms of a contract or perform any promise that forms either a part or the whole of it. (Vil-Rey Planners and Builders *vs.* Lexber, Inc., G.R. No. 189401, June 15, 2016) p. 199

Interpretation of — The primary consideration in determining the true nature of a contract is the intention of the parties; if the words of a contract appear to contravene the evident intention of the parties, the latter shall prevail; intention is determined not only from the express terms of their agreement, but also from the contemporaneous and subsequent acts of the parties; however, if the terms of a contract are clear and leave no doubt upon the intention of the contracting parties, the literal meaning of its stipulations shall control. (Liam *vs.* United Coconut Planters Bank, G.R. No. 194664, June 15, 2016) p. 235

COURT OF APPEALS

Jurisdiction — Formerly the Intermediate Appellate Court, has the exclusive original jurisdiction over actions to annul judgments of the Regional Courts; apart from being conferred by law, the CA's exclusive and original jurisdiction to annul judgments of the RTCs is by reason of the principle that a judgment of a court of competent jurisdiction may not be opened, modified, or vacated by any court of concurrent jurisdiction; this principle is known as the doctrine of non-interference or judicial stability. (Adlawan *vs.* Joaquino, G.R. No. 203152, June 20, 2016) p. 599

COURTS

Doctrine of judicial stability — The various branches of the Regional Trial Courts of a province or city, having as they do the same or equal authority and exercising as they do concurrent and coordinate jurisdiction, should not, cannot, and are not permitted to interfere with their respective cases, much less with their orders or judgments; the determination of whether or not the levy and sale of a property in the execution of a judgment was valid

properly falls within the jurisdiction of the court that rendered the judgment and issued the writ of execution. (Tan *vs.* Cinco, G.R. No. 213054, June 15, 2016) p. 441

CRIMINAL PROCEDURE

Information — The allegations of the information on the nature of the offense charged, not the nomenclature given it by the Office of the Public Prosecutor, are controlling in the determination of the offense charged. (People *vs.* Oandasan, Jr., G.R. No. 194605, June 14, 2016) p. 139

DAMAGES

Actual damages — Only expenses supported by receipts and which appear to have been actually expended in connection with the death of the victims may be allowed; it is necessary that the claimant produce competent proof to justify an award for actual damages. (People *vs.* Avila *y* Alecante, G.R. No. 201584, June 15, 2016) p. 346

Attorney's fees — Attorney's fees as provided for in the contracts are in the nature of liquidated damages agreed upon by the parties; these fees are to be paid in case of breach of the contractual stipulations necessitating a party to seek judicial intervention to protect its rights; the obligor is bound to pay the stipulated indemnity without the necessity of proof of the existence or the measure of damages caused by the breach. (Vil-Rey Planners and Builders *vs.* Lexber, Inc., G.R. No. 189401, June 15, 2016) p. 199

— Where an employee was forced to litigate and thus incur expenses to protect his rights and interest, the award of attorney's fees is legally and morally justifiable. (Balais, Jr. *vs.* Se'Lon by Aimee, G.R. No. 196557, June 15, 2016) p. 287

Civil indemnity — Civil indemnity comes under the general provisions of the Civil Code on damages and refers to the award given to the heirs of the deceased as a form of monetary restitution or compensation for the death of the victim at the hands of the accused; its grant is mandatory and a matter of course, and without need of

proof other than the fact of death as the result of the crime or *quasi-delict* and the fact that the accused was responsible therefor. (People *vs.* Oandasan, Jr., G.R. No. 194605, June 14, 2016) p. 139

— The civil indemnity for death, being compensatory in nature, must attune to contemporaneous economic realities; otherwise, the desire to justly indemnify would be thwarted or rendered meaningless; this has been the legislative justification for pegging the minimum, but not the maximum, of the indemnity. (*Id.*)

Exemplary damages — Article 2230 of the Civil Code authorizes the grant of exemplary damages if at least one aggravating circumstance attended the commission of the crime. (People *vs.* Oandasan, Jr., G.R. No. 194605, June 14, 2016) p. 139

— While respondent was a possessor in bad faith, there is no evidence that it acted in a wanton, fraudulent, reckless, oppressive or malevolent manner; the award of attorney's fees and litigation expenses to petitioner is also improper. (NHA *vs.* Mla. Seedling Bank Foundation, Inc., G.R. No. 183543, June 20, 2016) p. 531

Loss of earning capacity — In addition to the indemnity for death caused by a crime or *quasi delict,* the defendant shall be liable for the loss of the earning capacity of the deceased and the indemnity shall be paid to the heirs of the latter; compensation of this nature is awarded not for loss of earnings but for loss of capacity to earn money; it necessarily follows that evidence must be presented that the victim, if not yet employed at the time of death, was reasonably certain to complete training for a specific profession. (People *vs.* Avila *y* Alecante, G.R. No. 201584, June 15, 2016) p. 346

Temperate damages — It would be unjust to deny recovery in the form of temperate damages just because it was not established with certainty the actual expenditure for the interment of their late-lamented family members. (People *vs.* Oandasan, Jr., G.R. No. 194605, June 14, 2016) p. 139

DENIAL

Defense of — Denial and alibi do not prevail over the positive identification of the accused by the State's witnesses who are categorical and consistent and bereft of ill motive towards the accused; denial, unless substantiated by clear and convincing evidence, is undeserving of weight in law for being negative and self-serving; denial and alibi cannot be given greater evidentiary value than the testimony of credible witnesses who testify on affirmative matters. (People *vs.* Oandasan, Jr., G.R. No. 194605, June 14, 2016) p. 139

— Denial cannot prevail over the witnesses' positive identification of the accused-appellant; more so where the defense did not present convincing evidence that it was physically impossible for accused-appellant to have been present at the crime scene at the time of the commission of the crime; a defense of denial which is unsupported and unsubstantiated by clear and convincing evidence becomes negative and self-serving, deserving no weight in law, and cannot be given greater evidentiary value over convincing, straightforward and probable testimony on affirmative matters. (People *vs.* Avila *y* Alecante, G.R. No. 201584, June 15, 2016) p. 346

— Denial is inherently weak; being a negative defense, if not substantiated by clear and convincing evidence, it would merit no weight in law and cannot be given greater evidentiary value than the testimony of credible witnesses who testified on affirmative matters. (People *vs.* Sonido *y* Coronel, G.R. No. 208646, June 15, 2016) p. 403

DENIAL AND FRAME UP

Defenses of — 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 defenses in prosecutions for illegal sale and possession of dangerous drugs. (People *vs.* Rafols, G.R. No. 214440, June 15, 2016) p. 466

DEPARTMENT OF LABOR AND EMPLOYMENT

Visitorial and enforcement power — The Secretary of Labor, or any of his or her authorized representatives is granted visitorial and enforcement powers for the purpose of determining violations of, and enforcing, the Labor Code and any labor law, wage order, or rules and regulations issued pursuant thereto; indispensable to the DOLE's exercise of such power is the existence of an actual employer-employee relationship between the parties. (South Cotabato Communications Corp. *vs.* Hon. Sto. Tomas, G.R. No. 217575, June 15, 2016) p. 494

DEPOSITIONS

Admissibility of — As regards weight of evidence, the admissibility of the deposition does not preclude the determination of its probative value at the appropriate time. (Santamaria *vs.* Cleary, G.R. No. 197122, June 15, 2016) p. 305

Depositions pending action — Testimony of any person may be taken by deposition upon oral examination or written interrogatories at the instance of any party; it does not make any distinction or restriction as to who can avail of deposition; depositions may be used without the deponent being actually called to the witness stand by the proponent, under certain conditions and for certain limited purposes; the right to take statements and the right to use them in court have been kept entirely distinct; the utmost freedom is allowed in taking depositions. (Santamaria *vs.* Cleary, G.R. No. 197122, June 15, 2016) p. 305

Functions — Deposition serves the double function of a method of discovery with use on trial not necessarily contemplated and a method of presenting testimony; Rules of Court and jurisprudence, however, do not restrict a deposition to the sole function of being a mode of discovery before trial; under certain conditions and for certain limited purposes, it may be taken even after trial has commenced and may be used without the deponent being actually

called to the witness stand; in keeping with the principle of promoting the just, speedy and inexpensive disposition of every action and proceeding, depositions are allowed as a departure from the accepted and usual judicial proceedings of examining witnesses in open court where their demeanor could be observed by the trial judge. (Santamaria *vs.* Cleary, G.R. No. 197122, June 15, 2016) p. 305

Protective order — Section 16 grants the courts power to issue protective orders, this grant involves discretion on the part of the court, which must be exercised, not arbitrarily, capriciously or oppressively, but in a reasonable manner and in consonance with the spirit of the law, to the end that its purpose may be attained; a plain reading of this provision shows that there are two (2) requisites before a court may issue a protective order: (1) there must be notice; and (2) the order must be for good cause shown; good cause means a substantial reason, one that affords a legal excuse. (Santamaria *vs.* Cleary, G.R. No. 197122, June 15, 2016) p. 305

DUE PROCESS

Administrative due process — Administrative due process requires the following: 1) A finding or decision by a competent tribunal that is supported by substantial evidence, either presented at the hearing or at least contained in the records or disclosed to the parties affected; 2) The tribunal must act on its own independent consideration of the law and facts of the controversy and not simply accept the view of a subordinate in arriving at a decision; and 3) The tribunal should in all controversial questions, render its decision in such a manner that the parties to the proceeding can know the various issues involved and the reason for the decision rendered. (Fontanilla *vs.* Commissioner Proper, G.R. No. 209714, June 21, 2016) p. 713

— The essence of due process, jurisprudence teaches, is simply an opportunity to be heard, or, as applied to administrative proceedings, an opportunity to explain one's side or an opportunity to seek a reconsideration of

the action or ruling complained of; as long as the parties are, in fine, given the opportunity to be heard before judgment is rendered, the demands of due process are sufficiently met. (South Cotabato Communications Corp. *vs.* Hon. Sto. Tomas, G.R. No. 217575, June 15, 2016) p. 494

— The mere filing of a motion for reconsideration cannot cure the due process defect, especially if the motion was filed precisely to raise the issue of violation of the right to due process and the lack of opportunity to be heard on the merits remained. (Fontanilla *vs.* Commissioner Proper, G.R. No. 209714, June 21, 2016) p. 713

EJECTMENT

Unlawful detainer distinguished from forcible entry — The plaintiff may file a forcible entry case to recover possession against a defendant whose occupation is illegal from the very beginning if he acquired the possession by force, intimidation, threat, strategy or stealth; on the other hand, he may file an unlawful detainer suit when the defendant's possession of the property was inceptively lawful by virtue of a contract (express or implied) with the plaintiff, but became illegal when he continued his possession despite the termination of the right to do so; the difference between these two actions is greatly significant in reckoning when the one-year period to file an ejectment suit should begin. (Reyes, Sr. *vs.* Heirs of Deogracias Forlales, G.R. No. 193075, June 20, 2016) p. 541

EMPLOYER-EMPLOYEE RELATIONSHIP

Elements — Guidelines or indicators used by courts: (1) the selection and engagement of the employee; (2) the payment of wages; (3) the power of dismissal; and (4) the employer's power to control the employee's conduct. (South Cotabato Communications Corp. *vs.* Hon. Sto. Tomas, G.R. No. 217575, June 15, 2016) p. 494

EMPLOYMENT, TERMINATION OF

Abandonment — To constitute abandonment, two elements must concur: (a) the failure to report for work or absence without valid or justifiable reason; and (b) a clear intention to sever the employer-employee relationship, with the second element as the more determinative factor and being manifested by some overt acts. (Balais, Jr. *vs.* Se'Lon by Aimee, G.R. No. 196557, June 15, 2016) p. 287

Backwages — Employees who are illegally dismissed are entitled to full backwages, inclusive of allowances and other benefits or their monetary equivalent, computed from the time their actual compensation was withheld from them up to the time of their actual reinstatement but if reinstatement is no longer possible, the backwages shall be computed from the time of their illegal termination up to the finality of the decision. (Balais, Jr. *vs.* Se'Lon by Aimee, G.R. No. 196557, June 15, 2016) p. 287

Constructive dismissal — An employee is considered to be constructively dismissed from service if an act of clear discrimination, insensibility or disdain by an employer has become so unbearable to the employee as to leave him or her with no option but to forego with his or her continued employment. (Agcolicol, Jr. *vs.* Casiño, G.R. No. 217732, June 15, 2016) p. 516

Due process — In all cases of termination of employment, the following standards of due process shall be substantially observed for termination of employment based on just causes as defined in Art. 282 of the Code: (a) A written notice served on the employee specifying the ground or grounds for termination and giving to said employee reasonable opportunity within which to explain his side; (b) A hearing or conference during which the employee concerned, with the assistance of counsel if the employee so desires, is given opportunity to respond to the charge, present his evidence or rebut the evidence presented against him; and (c) A written notice of termination served on the employee indicating that upon due

consideration of all the circumstances, grounds have been established to justify his termination. (Yellow Bus Line Employees Union (YBLEU) *vs.* Yellow Bus Line, Inc. (YBLI), G.R. No. 190876, June 15, 2016) p. 219

Employment of managerial employees — Employers are allowed wider latitude of discretion in terminating the employment of managerial employees, as the latter perform functions that require the employers' full trust and confidence. (PSB *vs.* Barrera, G.R. No. 197393, June 15, 2016) p. 330

Gross and habitual negligence — When bank employee delegated a function that had been specifically reposed in him; thoughtless disregard of the consequences of allowing an unauthorized person to have unbridled access to the bank's system and his repeated failure to perform his duties for a period of time justified his dismissal. (PSB *vs.* Barrera, G.R. No. 197393, June 15, 2016) p. 330

Habitual neglect of duty — This cause includes gross inefficiency, negligence and carelessness; gross negligence connotes want or absence of or failure to exercise slight care or diligence, or the entire absence of care. (Yellow Bus Line Employees Union (YBLEU) *vs.* Yellow Bus Line, Inc. (YBLI), G.R. No. 190876, June 15, 2016) p. 219

Just and valid cause — In adjudging that the dismissal was grounded on a just and valid cause, the totality of infractions or the number of violations committed during the period of employment shall be considered in determining the penalty to be imposed upon an erring employee. (Balais, Jr. *vs.* Se'Lon by Aimee, G.R. No. 196557, June 15, 2016) p. 287

Loss of confidence — The bank employee's failure to strictly comply with the banks' standard operating procedure and his complicity in the issuance of fraudulent bank certifications justify the loss of confidence. (PSB *vs.* Barrera, G.R. No. 197393, June 15, 2016) p. 330

Non-observance of procedural due process — There was no observance of procedural due process for which the award of nominal damages in the amount of ₱20,000.00 was in

order and deemed just and reasonable under the circumstances. (Ting Trucking *vs.* Makilan, G.R. No. 216452, June 20, 2016) p. 651

Separation pay — Separation pay is granted when reinstatement is no longer feasible because of strained relations between the employer and the employee; in cases of illegal dismissal, the accepted doctrine is that separation pay is available in lieu of reinstatement when the latter recourse is no longer practical or in the best interest of the parties. (Balais, Jr. *vs.* Se'Lon by Aimee, G.R. No. 196557, June 15, 2016) p. 287

Serious misconduct — An employer may terminate an employment for serious misconduct or willful disobedience by the employee of the lawful orders of his employer or representative in connection with his work; misconduct is defined as an improper or wrong conduct; it is a transgression of some established and definite rule of action, a forbidden act, a dereliction of duty, willful in character, and implies wrongful intent and not mere error in judgment. (Ting Trucking *vs.* Makilan, G.R. No. 216452, June 20, 2016) p. 651

— Substantial proof, and not clear and convincing evidence or proof beyond reasonable doubt, is sufficient as basis for the imposition of any disciplinary action upon the employee; the standard of substantial evidence is satisfied where the employer has reasonable ground to believe that the employee is responsible for the misconduct and his participation therein renders him unworthy of the trust and confidence demanded by his position, as in this case. (*Id*.)

Two-notice requirement — The employer is mandated to furnish the employee with two (2) written notices: (a) a written notice containing a statement of the cause for the termination to afford the employee ample opportunity to be heard and defend himself with the assistance of his representative, if he so desires; and (b) if the employer decides to terminate the services of the employee, the employer must notify him in writing of the decision to

dismiss him, stating clearly the reason therefor. (Balais, Jr. *vs.* Se'Lon by Aimee, G.R. No. 196557, June 15, 2016) p. 287

Willful disobedience — As a just cause for the dismissal of an employee, envisages the concurrence of at least two requisites: (1) the employee's assailed conduct must have been willful or intentional, the willfulness being characterized by a wrongful and perverse attitude; and (2) the order violated must have been reasonable, lawful, made known to the employee and must pertain to the duties which he had been engaged to discharge. (Balais, Jr. *vs.* Se'Lon by Aimee, G.R. No. 196557, June 15, 2016) p. 287

EVIDENCE

Negative pregnant — If an allegation is not specifically denied or the denial is a negative pregnant, the allegation is deemed admitted. (Balais, Jr. *vs*. Se'Lon by Aimee, G.R. No. 196557, June 15, 2016) p. 287

Quantum of proof in labor cases — In labor cases, as in other administrative and quasi- judicial proceedings, the quantum of proof necessary is substantial evidence, or such amount of relevant evidence which a reasonable mind might accept as adequate to justify a conclusion. (South Cotabato Communications Corp. *vs*. Hon. Sto. Tomas, G.R. No. 217575, June 15, 2016) p. 494

Substantial evidence — In administrative proceedings, the quantum of proof necessary for a finding of guilt is substantial evidence; that amount of relevant evidence that a reasonable mind might accept as adequate to support a conclusion. (Cabas *vs*. Atty. Sususco, A.C. No. 8677, June 15, 2016) p. 167

Weight and sufficiency of — Circumstantial evidence is not necessarily weaker in persuasive quality than direct evidence. (People *vs*. Magbitang, G.R. No. 175592, June 14, 2016) p. 130

EXECUTIVE DEPARTMENT

Conditional pardon — Is a contract between the sovereign power or the Chief Executive and the convicted criminal to the effect that the former will release the latter subject to the condition that if he does not comply with the terms of the pardon, he will be recommitted to prison to serve the unexpired portion of the sentence or an additional one; by the pardonee's consent to the terms stipulated in this contract, the pardonee has thereby placed himself under the supervision of the Chief Executive or his delegate who is duty-bound to see to it that the pardonee complies with the terms and conditions of the pardon. (Tiu *vs.* Hon. Dizon, G.R. No. 211269, June 15, 2016) p. 427

Pardon — An act of grace, proceeding from the power entrusted with the execution of the laws, which exempts the individual, on whom it is bestowed, from the punishment the law inflicts for a crime he has committed; it is the private, though official act of the executive magistrate, delivered to the individual for whose benefit it is intended and not communicated officially to the court. (Tiu *vs.* Hon. Dizon, G.R. No. 211269, June 15, 2016) p. 427

— The exercise of the pardoning power, notwithstanding the judicial determination of guilt of the accused, demands the exclusive exercise by the President of the constitutionally vested power. (*Id*.)

— The reduction of a prisoner's sentence is a partial pardon, and our Constitution reposes in the President the power and the exclusive prerogative to extend the same. (*Id*.)

FELONIES

Intentional felonies — In order for an intentional felony to exist, it is necessary that the act be committed by means of "*dolo*" or "malice"; the term "*dolo*" or "malice" is a complex idea involving the elements of freedom, intelligence, and intent; the element of intent is described as the state of mind accompanying an act, especially a forbidden act; it refers to the purpose of the mind and the resolve with which a person proceeds; the term

"felonious" means, *inter alia,* malicious, villainous, and/or proceeding from an evil heart or purpose. (Jabalde *y* Jamandron *vs.* People, G.R. No. 195224, June 15, 2016) p. 255

FORUM SHOPPING

Principle of — Forum shopping can be committed in several ways: (1) filing multiple cases based on the same cause of action and with the same prayer, the previous case not having been resolved yet (where the ground for dismissal is *litis pendentia*); (2) filing multiple cases based on the same cause of action and the same prayer, the previous case having been finally resolved (where the ground for dismissal is *res judicata*); and (3) filing multiple cases based on the same cause of action but with different prayers (splitting of causes of action, where the ground for dismissal is also either *litis pendentia* or *res judicata*). (City of Taguig *vs.* City of Makati, G.R. No. 208393, June 15, 2016) p. 367

— The test for determining forum shopping is whether in the two (or more) cases pending, there is identity of parties, rights or causes of action, and reliefs sought. (*Id*.)

HABEAS CORPUS

Writ of — The object of the writ of *habeas corpus* is to inquire into the legality of the detention and if the detention is found to be illegal, to require the release of the detainee; the writ will not issue where the person in whose behalf the writ is sought is in the custody of an officer under process issued by a court or judge with jurisdiction or by virtue of a judgment or order of a court of record; the writ is denied if the petitioner fails to show facts that he is entitled thereto *ex merito justicias.* (Tiu *vs.* Hon. Dizon, G.R. No. 211269, June 15, 2016) p. 427

HOUSING AND LAND USE REGULATORY BOARD (HLURB)

Rules of procedure — The HLURB Rules of Procedure mandates the posting of an appeal bond only in cases where the appealed judgment involves a monetary award. (Liam *vs.* United Coconut Planters Bank, G.R. No. 194664, June 15, 2016) p. 235

JUDGMENTS

Annulment of judgment — A petition for annulment of judgment is based only on two (2) grounds: first, extrinsic fraud; and second, lack of jurisdiction or denial of due process; In contrast, a motion for reconsideration of a judgment or final order may cover "grounds that the damages awarded are excessive, that the evidence is insufficient to justify the decision or final order, or that the decision or final order is contrary to law. (City of Taguig *vs.* City of Makati, G.R. No. 208393, June 15, 2016) p. 367

— Based only on the grounds of extrinsic fraud and lack of jurisdiction; it is a recourse that presupposes the filing of a separate and original action for the purpose of annulling or avoiding a decision in another case; it is a remedy in law independent of the case where the judgment sought to be annulled is rendered. (Commissioner of Internal Revenue *vs.* Kepco Ilijan Corp., G.R. No. 199422, June 21, 2016) p. 698

— If the ground relied upon is lack of jurisdiction, the entire proceedings are set aside without prejudice to the original action being refiled in the proper court; if the judgment or final order or resolution is set aside on the ground of extrinsic fraud, the CA may on motion order the trial court to try the case as if a timely motion for new trial had been granted therein; extrinsic fraud exists when there is a fraudulent act committed by the prevailing party outside of the trial of the case, whereby the defeated party was prevented from presenting fully his side of the case by fraud or deception practiced on him by the prevailing party. (Yu *vs.* Lim Yu, G.R. No. 200072, June 20, 2016) p. 569

— Involves the exercise of original jurisdiction, as expressly conferred on the Court of Appeals by Batas Pambansa Bilang (*BP Blg.*) 129, Sec. 9(2); implies power by a superior court over a subordinate one; The Court of Tax Appeals sitting *en banc* cannot annul a decision of one of its divisions. (Commissioner of Internal Revenue *vs.* Kepco Ilijan Corp., G.R. No. 199422, June 21, 2016) p. 698

— Judgments may be annulled only on grounds of extrinsic fraud and lack of jurisdiction or denial of due process; the objective of the remedy of annulment of judgment or final order is to undo or set aside the judgment or final order, and thereby grant to the petitioner an opportunity to prosecute his cause or to ventilate his defense. (*Id.*)

— Rule 47 of the 1997 Rules of Civil Procedure governs the annulment by the Court of Appeals of judgments or final orders and resolutions in civil actions of Regional Trial Courts for which the ordinary remedies of new trial, appeal, petition for relief or other appropriate remedies are no longer available through no fault of the petitioner. (City of Taguig *vs.* City of Makati, G.R. No. 208393, June 15, 2016) p. 367

Doctrine of judicial stability — Non-interference in the regular orders or judgments of a co-equal court, the various trial courts of a province or city, having the same equal authority, should not, cannot, and are not permitted to interfere with their respective cases, much less with their orders or judgments. (Del Rosario *vs.* Ocampo-Ferrer, G.R. No. 215348, June 20, 2016) p. 631

Doctrine of non-interference or judicial stability — It dictates that a trial court has no authority to interfere with the proceedings of a court of equal jurisdiction, much less to annul the final judgment of a co-equal court; the rationale for this doctrine is founded on the concept of jurisdiction. (Adlawan *vs.* Joaquino, G.R. No. 203152, June 20, 2016) p. 599

Void judgments — A judgment rendered by a court without jurisdiction is null and void and may be attacked anytime; void judgment for want of jurisdiction is no judgment at all; all acts performed pursuant to it and all claims emanating from it have no legal effect. (Tan *vs.* Cinco, G.R. No. 213054, June 15, 2016) p. 441

JUDICIAL DEPARTMENT

Court's decision — The Constitution and the Rules of Court require not only that a decision should state the ultimate facts but also that it should specify the supporting evidentiary facts, for they are what are called the findings of fact; a decision that does not clearly and distinctly state the facts and the law on which it is based leaves the parties in the dark as to how it was reached and is especially prejudicial to the losing party, who is unable to pinpoint the possible errors of the court (or quasi-judicial body) for review by a higher tribunal. (South Cotabato Communications Corp. *vs.* Hon. Sto. Tomas, G.R. No. 217575, June 15, 2016) p. 494

JURISDICTION

Jurisdiction over the subject matter — Jurisdiction is conferred by law and any judgment, order, or resolution issued without it is void and cannot be given any effect; this rule applies even if the issue on jurisdiction was raised for the first time on appeal or even after final judgment; the singular exception to the basic rule operates on the principle of estoppel by laches whereby a party may be barred by laches from invoking the lack of jurisdiction at a late hour for the purpose of annulling everything done in the case with the active participation of said party invoking the plea. (Adlawan *vs.* Joaquino, G.R. No. 203152, June 20, 2016) p. 599

— Jurisdiction over the subject matter of a case is conferred by law and determined by the allegations in the complaint which comprise a concise statement of the ultimate facts constituting the plaintiff's cause of action. (Orion Water District *vs.* GSIS, G.R. No. 195382, June 15, 2016) p. 275

— P.D. No. 242 applies only to certain cases of disputes; it does not intrude into the jurisdiction of regular courts as it only prescribes an administrative procedure for the settlement of certain types of disputes between or among departments, bureaus, offices, agencies, and instrumentalities of the National Government, including GOCCs, so that they need not always repair to the courts for the settlement of controversies arising from the interpretation and application of statutes, contracts or agreements. (*Id*.)

LABOR CODE

Labor-only contracting — Labor-only contracting is considered as a form of ULP when the same is devised by the employer to interfere with, restrain or coerce employees in the exercise of their rights to self-organization. (Cagayan Electric Power & Light Co., Inc. (CEPALCO) *vs*. CEPALCO Employee's Labor Union-Associated Labor Unions-Trade Union Congress of the Phils. (TUCP), G.R. No. 211015, June 20, 2016) p. 612

— Shall refer to an arrangement where the contractor or subcontractor merely recruits, supplies or places workers to perform a job, work or service for a principal, and any of the following elements are present: (1) the contractor or subcontractor does not have substantial capital or investment which relates to the job, work or service to be performed and the employees recruited, supplied or placed by such contractor or subcontractor are performing activities which are directly related to the main business of the principal; or (2) the contractor does not exercise the right to control over the performance of the work of the contractual employee. (*Id*.)

Omnibus Rules Implementing the Labor Code — To be valid, the preventive suspension must be imposed pursuant to Sec. 8; it must also follow the 30-day limit exacted under the succeeding Sec. 9 of the Rule; on the 30-day limit on the duration of an employee's preventive suspension, when it exceeds the maximum period allowed without reinstating the employee either by actual or payroll

reinstatement or when preventive suspension is for an indefinite period, only then will constructive dismissal set in. (Agcolicol, Jr. *vs.* Casiño, G.R. No. 217732, June 15, 2016) p. 516

LITIS PENDENTIA

Elements — The requisites of *litis pendentia* are: (a) the identity of parties, or at least such as representing the same interests in both actions; (b) the identity of rights asserted and relief prayed for, the relief being founded on the same facts; and (c) the identity of the two cases such that judgment in one, regardless of which party is successful, would amount to *res judicata* in the other. (City of Taguig *vs.* City of Makati, G.R. No. 208393, June 15, 2016) p. 367

MITIGATING CIRCUMSTANCES

Passion and obfuscation — There is passion and obfuscation when the crime was committed due to an uncontrollable burst of passion provoked by prior unjust or improper acts, or due to a legitimate stimulus so powerful as to overcome reason; for passion and obfuscation to be considered a mitigating circumstance, it must be shown that: (1) an unlawful act sufficient to produce passion and obfuscation was committed by the intended victim; (2) the crime was committed within a reasonable length of time from the commission of the unlawful act that produced the obfuscation in the accused's mind; and (3) the passion and obfuscation arose from lawful sentiments and not from a spirit of lawlessness or revenge. (Jabalde *y* Jamandron *vs.* People, G.R. No. 195224, June 15, 2016) p. 255

MOTIONS

Motion for extension of time to comply with court order — A motion not acted upon in due time is deemed denied. (Sps. Salise and Pagudar *vs.* Dept. of Agrarian Reform Adjudication Board Region X Adjudicator Abeto Salcedo, Jr., G.R. No. 202830, June 20, 2016) p. 586

MURDER

Commission of — Murder is the unlawful killing of a person, which is not parricide or infanticide, provided that any of the attendant circumstances enumerated in Art. 248 of the Revised Penal Code is present. (People *vs.* Avila *y* Alecante, G.R. No. 201584, June 15, 2016) p. 346

NATIONAL INTERNAL REVENUE CODE

Documentary stamp tax — A tax on documents, instruments, loan agreements, and papers evidencing the acceptance, assignment, sale or transfer of an obligation, right or property incident thereto; DST is actually an excise tax, because it is imposed on the transaction rather than on the document; the rule is that the date of payment is when the tax liability falls due. (Phil. Bank of Communications *vs.* Commissioner of Internal Revenue, G.R. No. 194065, June 20, 2016) p. 559

— The claim for a refund of erroneously paid DST must be within two years from the date of payment of the DST. (*Id*.)

OBLIGATIONS

Reciprocal obligations — Delay by one of the parties begins from the moment the other fulfills the obligation. (Vil-Rey Planners and Builders *vs.* Lexber, Inc., G.R. No. 189401, June 15, 2016) p. 199

— Obligations that arise from the same cause, such that the obligation of one is dependent upon that of the other. (*Id*.)

Subrogation — A process by which the third party pays the obligation of the debtor to the creditor with the latter's consent; as a consequence, the paying third party steps into the shoes of the original creditor as subrogate of the latter; it results in a subjective novation of the contract in that a third person is subrogated to the rights of the creditor. (Liam *vs.* United Coconut Planters Bank, G.R. No. 194664, June 15, 2016) p. 235

— Distinction between assignment and subrogation actually deals with the necessity of the consent of the debtor in the original transaction; in an assignment of credit, the consent of the debtor is not necessary in order that the assignment may fully produce legal effects; what the law requires in an assignment of credit is not the consent of the debtor but merely notice to him as the assignment takes effect only from the time he has knowledge thereof; a creditor may validly assign his credit and its accessories without the debtor's consent; subrogation requires an agreement among the three parties concerned, the original creditor, the debtor, and the new creditor; it is a new contractual relation based on the mutual agreement among all the necessary parties. (*Id*.)

PARTIES

Real party-in-interest — The party must demonstrate how it stands to be benefited or injured by the judgment or that any personal or direct injury would be sustained by it if the reliefs were not granted. (Cagayan Electric Power & Light Co., Inc. (CEPALCO) *vs.* CEPALCO Employee's Labor Union-Associated Labor Unions-Trade Union Congress of the Phils. (TUCP), G.R. No. 211015, June 20, 2016) p. 612

PLEADINGS

Complaint — The assignee in case at bar cannot be impleaded in the complaint for specific performance, for the intention of the parties was merely to assign the receivables under the contract to sell. (Liam *vs.* United Coconut Planters Bank, G.R. No. 194664, June 15, 2016) p. 235

POSSESSION

Concept — Possession is acquired by the material occupation of a thing or the exercise of a right or by the fact that it is subject to the action of our will, or by the proper acts and legal formalities established for acquiring such right. (Heirs of Jose Extremadura *vs*. Extremadura, G.R. No. 211065, June 15, 2016) p. 414

Tax declarations — Although tax declarations or realty tax payments of property are not conclusive evidence of ownership, nevertheless, they are good *indicia* of possession in the concept of owner for no one in his right mind would be paying taxes for a property that is not in his actual or at least constructive possession. (Heirs of Jose Extremadura *vs.* Extremadura, G.R. No. 211065, June 15, 2016) p. 414

QUALIFYING CIRCUMSTANCES

Abuse of superior strength — Abuse of superior strength is present whenever there is notorious inequality of forces between the victim and the aggressor, assuming a situation of superiority of strength notoriously advantageous for the aggressor selected or taken advantage of by him in the commission of the crime; the fact that there were two persons who attacked the victim does not per se establish that the crime was committed with abuse of superior strength, there being no proof of the relative strength of the aggressors and the victim. (People *vs.* Avila *y* Alecante, G.R. No. 201584, June 15, 2016) p. 346

Evident premeditation — To establish evident premeditation, there must be proof of :(1) the time when the offender determined to commit the crime; (2) an act manifestly indicating that the culprit has clung to his determination; and (3) a sufficient lapse of time between the determination and execution to allow him to reflect upon the consequences of his act and to allow his conscience to overcome the resolution of his will had he desired to hearken to its warnings. (People *vs.* Avila *y* Alecante, G.R. No. 201584, June 15, 2016) p. 346

Treachery — There is treachery when the offender commits any of the crimes against persons, employing means, methods, or forms in the execution thereof, which tend directly and specially to ensure its execution, without risk to himself arising from the defense which the offended party might make; the requisites are: (1) The employment of means, method, or manner of execution which will ensure the safety of the malefactor from defensive or

retaliating acts on the part of the victim, no opportunity being given to the latter to defend himself or to retaliate; and (2) deliberate or conscious adoption of such means, method or manner of execution. (People *vs.* Avila *y* Alecante, G.R. No. 201584, June 15, 2016) p. 346

QUIETING OF TITLE

Action for — In order for an action for quieting of title to 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. (Heirs of Jose Extremadura *vs.* Extremadura, G.R. No. 211065, June 15, 2016) p. 414

RAPE

Commission of — A medical examination is merely corroborative in character and is not an indispensable element for conviction in rape. (People *vs.* Sonido *y* Coronel, G.R. No. 208646, June 15, 2016) p. 403

— In concluding that carnal knowledge took place, full penetration of the vaginal orifice is not an essential ingredient, nor is the rupture of the hymen necessary; the mere touching of the external genitalia by the penis capable of consummating the sexual act is sufficient to constitute carnal knowledge. (*Id.*)

Statutory rape — Statutory rape is committed by sexual intercourse with a woman below twelve (12) years of age regardless of her consent, or the lack of it to the sexual act; proof of force, intimidation or consent is unnecessary; these are not elements of statutory rape as the absence of free consent is conclusively presumed when the victim is below the age of twelve. (People *vs.* Sonido *y* Coronel, G.R. No. 208646, June 15, 2016) p. 403

REGIONAL TRIAL COURT

Jurisdiction — Acting as a special agrarian court, the Regional Trial Court may exercise its judicial discretion in the evaluation of the factors for just compensation, which

cannot be restricted by a formula dictated by the Department of Agrarian Reform when faced with situations that do not warrant its strict application. (LBP *vs.* Kho, G.R. No. 214901, June 15, 2016) p. 478

RES JUDICATA

Elements — Requisites are:(1) the former judgment is final; (2) it is rendered by a court having jurisdiction over the subject matter and the parties; (3) it is a judgment or an order on the merits*;* and (4) there is, between the first and the second actions identity of parties, of subject matter, and of causes of action. (City of Taguig *vs.* City of Makati, G.R. No. 208393, June 15, 2016) p. 367

Principle of — Effect of *res judicata*, which has two aspects, namely: (a) bar by a prior judgment or when the judgment bars the prosecution of a subsequent action based on the same claim or cause of action; and (b) conclusiveness of judgment or when the judgment precludes the re-litigation of particular issues or facts on a different demand or cause of action. (Reyes, Sr. *vs.* Heirs of Deogracias Forlales, G.R. No. 193075, June 20, 2016) p. 541

— For *res judicata* to apply, the judgment relied on must be a legal declaration of the respective rights and duties of the parties based upon the disclosed facts. (*Id*.)

— For the principle to apply, the following requisites must concur: 1) There is a final judgment or order; 2) The court rendering the judgment has jurisdiction over the parties and subject matter; 3) The former judgment is a judgment on the merits; and 4) There is between the first and the second actions an identity of parties, subject matter, and causes of action; the fourth requisite is absent in this case. (Heirs of Catalino Dacanay *vs.* Siapno, Jr., G.R. No. 185169, June 15, 2016) p. 176

RESERVING LAND AT DILIMAN, QUEZON CITY FOR MANILA SEEDLING BANK FOUNDATION, INC. (PROCLAMATION NO. 1670)

Usufructuary — Since respondent had no right to act beyond

the confines of the seven-hectare area granted to it, and since it was fully aware of this fact, its encroachment of nine additional hectares of petitioner's property rendered it a possessor in bad faith as to the excess. (NHA *vs.* Mla. Seedling Bank Foundation, Inc., G.R. No. 183543, June 20, 2016) p. 531

SALES

Contract of — Ownership of the thing sold shall be transferred to the vendee upon the actual or constructive delivery thereof; the thing sold shall be understood as delivered, when it is placed in the control and possession of the vendee; execution of a public instrument shall be equivalent to the delivery of the thing which is the object of the contract, if from the deed the contrary does not appear or cannot clearly be inferred; however, the execution of a public instrument gives rise only to a *prima facie* presumption of delivery, which is negated by the failure of the vendee to take actual possession of the land sold. (Heirs of Jose Extremadura *vs.* Extremadura, G.R. No. 211065, June 15, 2016) p. 414

SHERIFF

Duties — A sheriff must always perform his duty with integrity for once he loses the people's trust, he diminishes the people's faith in the judiciary. (Atty. Malibago-Santos *vs.* Francisco, Jr., A.M. No. P-16-3459[Formerly OCA IPI No. 13-4119-P], June 21, 2016) p. 670

Liability of — Court personnel shall not accept any fee or remuneration beyond what they receive or are entitled to in their official capacity; court personnel shall not receive tips or other remunerations for assisting or attending to parties engaged in transactions or involved in actions or proceedings with the Judiciary. (Atty. Malibago-Santos *vs.* Francisco, Jr., A.M. No. P-16-3459[Formerly OCA IPI No. 13-4119-P], June 21, 2016) p. 670

SLIGHT PHYSICAL INJURIES

Commission of — When there is no evidence of actual incapacity of the offended party for labor or of the required medical attendance or when there is no proof as to the period of the offended party's incapacity for labor or of the required medical attendance, the offense is only slight physical injuries. (Jabalde *y* Jamandron *vs.* People, G.R. No. 195224, June 15, 2016) p. 255

SPECIAL PROTECTION OF CHILDREN AGAINST ABUSE, EXPLOITATION AND DISCRIMINATION ACT (R.A. NO. 7610)

Application of — Only when the laying of hands is shown beyond reasonable doubt to be intended by the accused to debase, degrade or demean the intrinsic worth and dignity of the child as a human being should it be punished as child abuse, otherwise, it is punished under the Revised Penal Code. (Jabalde *y* Jamandron *vs.* People, G.R. No. 195224, June 15, 2016) p. 255

STATUTES

Rules of procedure — Should be viewed as mere tools designed to facilitate the attainment of justice; their strict and rigid application, which would result in technicalities that tend to frustrate rather than promote substantial justice, must always be eschewed. (Sps. Salise and Pagudar *vs.* Dept. of Agrarian Reform Adjudication Board Region X Adjudicator Abeto Salcedo, Jr., G.R. No. 202830, June 20, 2016) p. 586

SUMMONS

Extraterritorial service — As a rule, Philippine courts cannot try any case against a defendant who does not reside and is not found in the Philippines because of the impossibility of acquiring jurisdiction over his person unless he voluntarily appears in court; Sec. 15, Rule 14 of the Rules of Court, however, enumerates the actions *in rem* or *quasi in rem* when Philippine courts have jurisdiction to hear and decide the case because they have jurisdiction over the *res* and jurisdiction over the person of the non-

resident defendant is not essential. (Yu *vs.* Lim Yu, G.R. No. 200072, June 20, 2016) p. 569

Service by publication — It is the duty of the court to require the fullest compliance with all the requirements of the statute permitting service by publication; where service is obtained by publication, the entire proceeding should be closely scrutinized by the courts and a strict compliance with every condition of law should be exacted; otherwise great abuses may occur and the rights of persons and property may be made to depend upon the elastic conscience of interested parties rather than the enlightened judgment of the court or judge. (Yu *vs.* Lim Yu, G.R. No. 200072, June 20, 2016) p. 569

SURETYSHIP

Contract of — A surety bond is an accessory contract dependent for its existence upon the principal obligation it guarantees. (Vil-Rey Planners and Builders *vs.* Lexber, Inc., G.R. No. 189401, June 15, 2016) p. 199

— A surety is discharged from its obligation when there is a material alteration of the principal contract, such as a change that imposes a new obligation on the obligor or takes away some obligation already imposed or changes the legal effect and not merely the form of the original contract; no release from the obligation shall take place when the change in the contract does not have the effect of making the obligation more onerous to the surety. (*Id*.)

TAXATION

Collection of taxes — No appeal taken to the Court of Tax Appeals from the decision of the Collector of Internal Revenue or the Collector of Customs shall suspend the payment, levy, distrait, and/or sale of any property of the taxpayer for the satisfaction of his tax liability as provided by existing law. (Tridharma Marketing Corp. *vs.* CTA[2nd Div.], G.R. No. 215950, June 20, 2016) p. 638

— Section 11 of R.A. No. 1125, as amended, indicates that the requirement of the bond as a condition precedent to suspension of the collection applies only in cases where the processes by which the collection sought to be made by means thereof are carried out in consonance with the law, not when the processes are in plain violation of the law that they have to be suspended for jeopardizing the interests of the taxpayer. (*Id*.)

UNLAWFUL DETAINER

Action for — A complaint sufficiently alleges a cause of action for unlawful detainer if it recites the following: (1) initially, possession of property by the defendant was by contract with or by tolerance of the plaintiff; (2) eventually, such possession became illegal upon notice by the plaintiff to the defendant of the termination of the right of possession; (3) thereafter, the defendant remained in possession of the property and deprived the plaintiff of the enjoyment thereof; and (4) within one year from the last demand on the defendant to vacate the property, the plaintiff instituted the complaint for ejectment. (Reyes, Sr. *vs.* Heirs of Deogracias Forlales, G.R. No. 193075, June 20, 2016) p. 541

WITNESSES

Child witness — A child may be a competent witness unless the trial court determines upon proper showing that the child's mental maturity is such as to render him incapable of perceiving the facts respecting which he is to be examined and of relating the facts truthfully; the testimony of the child of sound mind with the capacity to perceive and make known the perception can be believed in the absence of any showing of an improper motive to testify; once it is established that the child fully understands the character and nature of an oath, the testimony is given full credence. (People *vs.* Magbitang, G.R. No. 175592, June 14, 2016) p. 130

Credibility of — 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. (People *vs.* Sonido *y* Coronel, G.R. No. 208646, June 15, 2016) p. 403

— Prosecutions involving illegal drugs depend largely on the credibility of the police officers or drug operatives who conducted the buy-bust operation; there is general deference to the assessment on this point by the trial court as it had the opportunity to directly observe the witnesses, their demeanor, and their credibility on the witness stand. (People *vs.* Rafols, G.R. No. 214440, June 15, 2016) p. 466

— Testimony of children of sound mind is likely to be more correct and truthful than that of older persons, so that once established that they have understood the character and nature of an oath, their testimony should be given full credence; minor inconsistencies in the testimony of a witness do not reflect on his credibility; what remains important is the positive identification of the accused as the assailant. (People *vs.* Avila *y* Alecante, G.R. No. 201584, June 15, 2016) p. 346

— The assessment of the credibility of witnesses is best left to the trial court judge because of his unique opportunity to observe their deportment and demeanor on the witness stand, a vantage point denied of appellate courts. (People *vs.* Sonido *y* Coronel, G.R. No. 208646, June 15, 2016) p. 403

— The Supreme Court generally defers to the factual findings of the trial court by virtue of the latter's better position to observe and determine matters of credibility of the witnesses, having heard the witnesses and observed their deportment during trial; this deference becomes firmer when the factual findings of the trial court were affirmed by the intermediate reviewing court; the Court does not disturb such factual findings unless the consideration of certain facts of substance and value that were plainly overlooked or misappreciated by the lower courts could

affect the outcome of the case. (People *vs.* Magbitang, G.R. No. 175592, June 14, 2016) p. 130

— When the main thrust of the appeal is on the credibility of the prosecution witnesses and appellant fails to demonstrate why this Court should depart from the cardinal principle that the findings of the trial court on the matter of credibility should not be disturbed, the same should be respected on appeal. (People *vs.* Avila *y* Alecante, G.R. No. 201584, June 15, 2016) p. 346

Testimony of — Inconsistencies in the testimony of the witness with regard to minor or collateral matters do not diminish the value of the testimony in terms of truthfulness or weight. (People *vs.* Sonido *y* Coronel, G.R. No. 208646, June 15, 2016) p. 403

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